

Independent Expert Panel on prevention of and response to harassment, including sexual harassment, bullying and abuse of power at UNAIDS Secretariat

Terms of Reference

BACKGROUND AND CONTEXT

About UNAIDS

Established by an ECOSOC Resolution, the Joint United Nations Programme on HIV/AIDS (UNAIDS) supports and coordinates the efforts of eleven cosponsoring UN organizations (UNHCR, UNICEF, WFP, UNDP, UNFPA, UNODC, UN Women, ILO, UNESCO, WHO, the World Bank, and works with a wide range of other private and public partners in the global response to AIDS.

UNAIDS is governed by a Programme Coordinating Board (PCB) with representatives of 22 governments from all geographical regions, five representatives of nongovernmental organizations including people living with HIV, and the eleven Cosponsors. The Cosponsors also meet as a Committee of Cosponsoring Organizations (CCO) – a standing committee of the PCB. UNAIDS Secretariat has presence in some 80 countries as well as 6 regional offices (Asia Pacific, Eastern Europe and Central Asia, East and Southern Africa, Middle East and North Africa and West and Central Africa, Latin America and the Caribbean,).

The programme of work of the PCB is coordinated by the PCB Bureau. The Bureau is intended to maximize the effectiveness and efficiency of the PCB. Specifically, the responsibilities of the Bureau include:

- Facilitating the smooth and efficient functioning of the PCB sessions;
- Facilitating transparent decision-making at the PCB;
- Preparing the agenda, recommending the allocation of time and the order of discussion items;
- Providing guidance on PCB documentation, as needed; and
- Carrying out additional functions as directed by the PCB.

Context for the Independent Expert Panel (the Panel) on prevention of and response to harassment, including sexual harassment¹; bullying and abuse of power² at UNAIDS Secretariat

¹ Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment." <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/238/36/PDF/N0823836.pdf?OpenElement>

² Abuse of authority is defined in the WHO Code of Ethics and Professional Conduct:

4.1.3 No abuse of authority/power

26. The abuse of authority/power is the improper use of a position of influence, power or authority by an individual towards others. This is particularly serious when the alleged offender uses his or her influence, power or authority to negatively influence the career or employment conditions (including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion) of other individuals, e.g. asking for an amount of money to approve the renewal of a contract. Abuse of authority can include a one-time incident or a series of incidents. It may also consist of conduct that creates a hostile or offensive work environment, which includes, but is not limited to, the use of

There is currently a much-needed spotlight on the issue of harassment, particularly sexual harassment across multiple sectors, including the private sector, governments, international organizations and civil society. Harassment, including sexual harassment, is prevalent across various settings and has been, to a great extent, underreported. The United Nations (UN) - including UNAIDS - is not immune to this, and must also take stock of what has worked and what has not worked to prevent and address harassment, including sexual harassment at the workplace, while identifying best practices and concrete steps to better respond to harassment moving forward.

At UNAIDS, the UNAIDS Secretariat Staff Association (USSA) has tracked staff perceptions on harassment and ill-treatment since 2011 through its annual anonymous staff survey. In the 2017 staff survey, 5.4% (23 people) of the 427 respondents reported that they had experienced sexual harassment in the workplace. Staff also reported experiencing ill-treatment³, discrimination⁴ and abuse of authority⁵.

UNAIDS is very concerned by this data, recognizing that sexual harassment, bullying and abuse of power often constitute a form of gender-based violence rooted in wider gender inequality. In line with its commitment to uphold and promote human rights, gender equality and diversity, the UNAIDS Secretariat has taken various measures to prevent and address harassment at the workplace. In addition to a policy framework with rules and regulations, as well as procedures to report harassment should it occur, the actions have included several all-staff communications from UNAIDS Executive Director Michel Sidibé, stating that there are a number of measures to address this: a zero tolerance policy with regard to harassment in UNAIDS; a mandatory e-learning course on preventing and addressing harassment; wellness visits and capacity building of field offices and departments to address managerial or operational concerns; and dedicated sessions between managers and staff on the issues of sexual harassment and ethical behaviour.

Furthermore, staff have been made aware of the informal and formal mechanisms available to report a complaint and have been reminded of the policy and procedures on Whistleblowing and Protection Against Retaliation. The organisation also makes assistance and support available to staff from the Human Resources Management, the Senior Ethics Officer, Staff Health and Wellbeing Services and the Office of the Ombudsman.

However, despite these measures, and although some progress has been made in some regions in addressing the issues, there has been little change over the years in the numbers of staff reporting harassment, ill-treatment and abuse of authority in the USSA survey.

In addition, UNAIDS Secretariat recently had a formal complaint concerning sexual harassment which has attracted media attention. This led to more people speaking out about their experiences. A number of member states have been clear that tackling harassment –

intimidation, threats, blackmail or coercion. Decisions made through the proper use of managerial and supervisory responsibilities are not considered as abuse of authority.

27. WHO staff members must demonstrate respect in their interactions with colleagues, particularly towards the staff member(s) under their supervision.

³ Feeling diminished by tasks given (43%); being talked badly about (42%); being shouted at (32%); being ridiculed in front of others (24%); receiving criticism of private life (17%); being called obscene or other degrading names (14%)

⁴ Based on origins or nationality (10%); gender (8%); political or religious views (7%); sexual orientation or gender identity (5%); disability (4%)

⁵ Repeatedly being asked to stay in the office after regular hours (36%); work being appraised incorrectly or in a hurtful manner (25%); receiving threats related to continuation of job (15%)

drawing on the stubborn figures from the staff survey, the public case and the subsequent concerns expressed by others – must be a priority for UNAIDS and for the wider UN family.

In February 2018, UNAIDS Executive Director announced a five-point plan to prevent and address harassment, including sexual harassment, and unethical behaviour within UNAIDS. The plan aims to ensure that inappropriate behaviour and abuse of authority is identified early on, that measures taken are properly documented and that action to be taken follows due process and is swift and effective. The five-point plan will be led by the newly appointed UNAIDS Deputy Executive Director, Management and Governance, Gunilla Carlsson.

The Executive Director also called for an establishment of an Independent Expert panel to provide recommendations to UNAIDS on what is needed to be done to prevent and address harassment at the workplace.

At the meeting of the PCB Bureau on 28 February 2018, the PCB Chair stressed the importance of this issue. The Bureau agreed that this should be a priority for UNAIDS and that it would be appropriate for the PCB to have a dedicated debate on this topic.

The Bureau agreed that the Independent Expert Panel should be convened by and reported to the PCB through the Bureau, and that its recommendations would influence the five-point plan, as appropriate.

OBJECTIVES

The Panel will:

- **Review** the current situation in UNAIDS Secretariat, including by looking back over the last 7 years, so as to assess the organisational culture of the UNAIDS Secretariat (e.g. at headquarters, regional and country offices) with particular reference to harassment, including sexual harassment; bullying and abuse of power and retaliation; and to understand why there are high reported levels of harassment reported through the anonymous staff survey on the one hand, but very few formal complaints are filed or submitted.
- **Evaluate** the effectiveness of existing policies and procedures to prevent and address harassment, including sexual harassment; bullying, retaliation and abuse of power in the UNAIDS Secretariat workplace;
- **Recommend** a comprehensive set of prioritised measures relating to organisational culture, policies and fair and due process procedures, which will enable the UNAIDS Secretariat, and its leadership to set a clear tone of zero tolerance – and, as appropriate, the wider UN family – to effectively prevent, manage and respond to harassment, including sexual harassment; and bullying, retaliation and abuse of power in the workplace. In addition, draw from lessons learned and best practices from cosponsoring UN organizations and other partners to provide recommendations on preventing and addressing sexual exploitation and abuse (in the context of relations between staff and beneficiaries) and discrimination.

SCOPE – ISSUES TO BE ADDRESSED

The panel will review, evaluate and make recommendations on the following issues. Some of these issues will be firmly within the control of UNAIDS, whilst others will rely on external systems. The panel will look at all relevant areas, taking into account existing UN policies and processes, best practices outside of the UN system and ensure recommendations are directed according to leadership and responsibility.

- **Leadership and culture** – what is not working now, and how can UNAIDS leaders create a safe and empowering organisational culture where harassment, including sexual harassment; bullying and abuse of power are unacceptable, and people feel safe to challenge unacceptable behaviour.
- **Policies and strategies to prevent harassment, including sexual harassment; bullying and abuse of power** – in what ways do current policies, systems and mechanisms need to be improved, how these are implemented in practice and what best practice would look like, for example, in relation to formal policies and strategies, training and capacity building, internal communications, and peer support networks or other safe spaces for people to talk and raise issues before they escalate.
- **Formal reporting** – a key question for the Panel will be why, despite fairly static reported cases of sexual harassment, very few formal complaints are brought. Is enough being done to protect those who raise complaints? Is underreporting a problem at UNAIDS Secretariat? What can be done to give those experiencing harassment, including sexual harassment; bullying and abuse of power, confidence in the policies and procedures to bring formal complaints where appropriate?
- **Investigation processes - access to justice:** The Panel will review investigation processes applied by UNAIDS Secretariat, including supporting processes in Finance and Human Resources, and will make recommendations on how to ensure these are fit for purpose and fair, reflecting on best practice, including in relation to evidence standards, confidentiality, capacity, timeliness, and responsiveness.
- **Controls and assurance:** The Panel will make recommendations to ensure UNAIDS Secretariat has sufficiently strong internal systems to identify unacceptable behaviour and take swift remediative action. Drawing from best practice, it will also provide recommendations on ensuring that partners receiving support from UNAIDS have adequate safeguards on harassment, including sexual harassment; and bullying and abuse of power.
- **Accountability:** The Panel will make recommendations to ensure accountability is visible and ensured at all levels of the organization (senior management; anyone with supervisory responsibilities; each staff member). Issues to consider here could include performance and management review systems; making consequences for inappropriate and unethical behaviour known to staff; etc.

Whilst the panel will have access to confidential information and will be able to assess past investigations, it will not formally review past investigation or investigate specific cases. Any confidential information the panel has access to will be treated in confidence with appropriate controls, including the deletion of the names of parties involved in specific cases.

COMPOSITION AND MEMBERSHIP

The panel will be composed of approximately 3 - 5 independent experts in the following fields:

- Human rights, ethics and gender equality;
- Organizational culture, leadership and performance;
- Sexual Harassment
- Human resource expertise, including workplace discrimination (all forms);
- Violence against women and men in all their diversity, including sexual exploitation and abuse, victims advocacy;
- International Organisations and multi cultural environments.
- Integrity in public life and experience of public oversight bodies.

As far as possible, the Panel will have balanced gender and regional representation.

Panel members will be required to submit a declaration of interest (DOI) and sign a confidentiality undertaking.

RESOURCES AVAILABLE TO THE PANEL

The Secretariat will provide the Panel with full access to information as requested, including on:

- Relevant WHO and UNAIDS policies, including policies on harassment, diversity and inclusion, on the protection of whistle-blowers, etc.;
- UNAIDS Gender Action Plan;
- WHO Staff Rules and Regulations;
- Results of the USSA survey from 2011 to 2018, as provided by the USSA;
- Progress reports on the UNAIDS “Five-point plan”;
- Information on how harassment complaints have been handled through informal and formal means;
- Interviews with former and current staff, ensuring protection and with a view to a representative and balanced sample (category and criteria to be defined by the Panel).

In the event of a disagreement between the Secretariat and the Panel as to whether or not information should be shared with the Panel, the PCB Bureau will adjudicate, drawing on legal advice as needed.

The Panel will have a budget funded by the UNAIDS Unified Budget, Results and Accountability Framework (UBRAF), to commission specific pieces of work as needed to inform its analysis and recommendations.

One staff member of UNAIDS Secretariat will act as a focal person to provide the relevant information, as required, by the Panel and the PCB Bureau. The PCB Bureau will have the right to choose an appropriate candidate(s) for this role.

EXPECTED OUTPUTS

- Presentation of the Panel members and Panel lead to the 42nd meeting of the PCB⁶
- One preparatory report before the final report;
- Final report to the 43rd meeting of the PCB with recommendations.

GOVERNANCE

Terms of Reference, governance, timelines and reporting will be agreed by the PCB, through the PCB Bureau, currently composed of the PCB Chair (United Kingdom), the PCB Vice-chair (China), the Rapporteur (Algeria), the NGO Delegate from Latin America Caribbean and UNHCR, as the Chair of the Committee of Cosponsoring Organizations. As set out in the Modus Operandi of the PCB, the three Officers of the PCB Bureau have been elected by the PCB taking into account a fair geographical distribution. The Bureau will consult with member states, NGOs and Cosponsors to finalise the approach and will seek to keep PCB members informed throughout the process. The PCB Bureau will act as the oversight structure for the Panel.

⁶ Subject to progress with panel selection.

Executive search firm and professional services firm

The PCB Bureau will contract, through UNAIDS Secretariat, an executive search firm and a professional services firm using the UNAIDS Secretariat procurement system. The former will compile the Panel and provide a list of suitable candidates for the Panel. The professional services firm will develop a draft conceptual framework based on the Panel's terms of reference and will manage the overall delivery.

The conceptual framework would include a budget and define additional resources required, for example the provision of secretariat services and support functions to collect information and provide a detailed analysis and diagnosis on the issues within the scope of these terms of reference. This team would be a primary resource for the Panel, would have the same resources at their disposal, and is expected to be required for short, intense periods of review.

Selection

The executive search firm will be able to receive recommendations for the Panel. It will also propose a short-list of potential panel members and chair for approval by the PCB Bureau, ensuring the Panel meets agreed role, profiles, expertise and experience.

Consultations

The Panel will ensure wide consultation with key stakeholders, including but not limited to:

- UNAIDS Secretariat staff;
- UNAIDS Secretariat ex staff;
- the UNAIDS Secretariat Staff Association (USSA);
- Civil society organisations;
- UNAIDS Cosponsors;
- Member States.

Consultation will be done in a clear, structured, transparent way.

Indicative timeline:

Action	Description	Date
Agreement on the approach on the establishment of the Independent Expert Panel	Review of Terms of Reference and timelines by the PCB (all constituencies)	APR - MAY
Proposal by an executive search firm of a short-list of panel members for approval by the PCB Bureau. Selection of a professional services firm to initiate the Panel's work.	Panel formation and preparatory phase Bidding process through UNAIDS Secretariat formal procurement services	MAY - JUN
Review	Research, interviews, visits to headquarters, regional and country offices	JUL - AUG

	Work of the Panel with oversight of the PCB Bureau	
Evaluation	Work of the Panel with oversight of the PCB Bureau	SEPT
Recommendations	Work of the Panel with oversight of the PCB Bureau Finalisation of report.	OCT
Development of the management response	UNAIDS leadership preparation of management response.	NOV
43 rd PCB meeting	Presentation of the recommendations and final decision of the Board UNAIDS management response	DEC

Reporting

The final Panel report will be released to the UNAIDS PCB through the PCB Bureau.

The Chair of the Panel will update the PCB Bureau at regular intervals. Importantly, these progress reports will also be used to inform and hone the ongoing implementation of UNAIDS' "Five-point plan".

The Panel members and lead will be presented at the 42nd meeting of the PCB on 26-28 June 2018.

A final set of recommendations will be presented to the 43rd meeting of PCB. As per all PCB reports, the final recommendations will therefore need to be finalised 6 weeks ahead of the meeting (on 1 November). The 43rd PCB will also be an opportunity for the UNAIDS Secretariat to present its Management Response.

MODALITIES OF WORK AND COMMITMENT EXPECTED

Subject to business needs, the Panel will participate in meetings every 6 weeks. The members of the Panel are expected to review, comment and approve the preparatory and final report of the Panel. With due consideration to expediency, timing and resources, it is recommended that most of these meetings be face to face. During the intervening weeks, it is expected that the Panel will work remotely and meet virtually, as needed.

The Panel will work on consensus basis and the final report must be endorsed by all Panel members. Should consensus be impossible, dissenting panel members may note their concerns in an annex to the final report.

The Chair of the Panel will additionally prepare the Panel's report and present the findings to the PCB and UNAIDS leadership.

The final report of the Panel will be signed off by panel members and made directly available to the PCB.

GUIDING PRINCIPLES OF THE WORK OF THE PANEL

All aspects of UNAIDS work are directed by the following guiding principles:

- aligned to national stakeholders' priorities;
- based on the meaningful and measurable involvement of civil society, especially people living with HIV and populations most at risk of HIV infection;
- based on human rights and gender equality;
- based on the best available scientific evidence and technical knowledge;
- promoting comprehensive responses to AIDS that integrate prevention, treatment, care and support.

Moreover, the members of the panel are expected to:

- Demonstrate a commitment to human rights, gender equality, respect for diversity, inclusion, transparency and accountability;
- Consider diverse perspectives, including cultural diversity, sexual and gender diversity, etc.;
- Seek the inputs and engagement of UN Member States, civil society, UNAIDS Cosponsors as well as UNAIDS Secretariat staff;
- Be forward looking and focus on possible future strategies based on the experience of the past, lessons learnt and international best practices;
- Work collaboratively with other members of the Panel and with those assisting the work of the Panel.

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