



Report of the third meeting of the Working Group of the Programme Coordinating Board (PCB) to respond to the recommendations of the Joint Inspection Unit (JIU) review of UNAIDS administration

DATE: 14-15 September 2020

VENUE: Virtual

BACKGROUND

1. The Working Group was established by the PCB to review the recommendations directed to the PCB in the 2019 Joint Inspection Unit (JIU) review of the administration and management of UNAIDS. The Working Group met for the third time, virtually, on Monday and Tuesday, 14-15 September 2020.

Day One -- 14 September 2020

WELCOME

2. Julia Martin, independent chair of the Working Group on behalf of PCB Chair Ambassador Deborah Birx of the United States of America, welcomed Working Group members to the second meeting. At the Chair's request, members of the Working Group introduced themselves. The Chair noted that the third meeting of the Working Group was being held virtually over two days, due to continuing quarantine regulations set by the Swiss Government that made a face-to-face meeting logistically not feasible.

APPROVAL OF THE AGENDA

3. The Working Group adopted the agenda. (Annex 1)

APPROVAL OF MINUTES OF MEETING 2

4. The Chair reminded the Working Group that they had received and been invited to comment on two versions of the minutes of Meeting 2 of the Working Group. An earlier version of the minutes received suggested revisions, and a second version was circulated that incorporated these revisions. Having received no objections or additional suggested changes to the revised version by the agreed deadline, these minutes were deemed approved and were posted on the UNAIDS PCB website.

REVIEW OF PROGRESS TO DATE IN CARRYING FORWARD PCB MANDATE TO WORKING GROUP

5. The Chair noted that 3 formal and 10 informal recommendations from the JIU pertained to the PCB, which has tasked the Working Group with two primary deliverables. The first deliverable was a progress report that the Working Group presented to the PCB at its June 2020 meeting. The second deliverable is a final report outlining the Working Group's recommendations on options for implementing the JIU recommendations directed to the PCB.
6. At its first meeting, the Working Group reviewed the PCB's task to the Working Group, agreed on operating procedures and timelines and deemed Formal Recommendation 1 (on developing a new strategic plan for UNAIDS) to have effectively been accepted by the PCB at the December 2019 PCB meeting. At its second meeting, the Working Group took up JIU Formal Recommendation 3 (on possible changes to the PCB Modus Operandi) and Informal Recommendations 4 (on Cosponsor guiding principles and linkages between the PCB and Cosponsor governing boards) and 7 (on term limits and performance expectations of the UNAIDS Executive Director). Progress was made during the second meeting on each of these recommendations, although closure was not reached on Formal Recommendation 4 or Informal Recommendations 4 and 7, with work remaining to be done on each recommendation. The Chair proposed that the Working Group schedule an additional meeting to carry forward work on Formal Recommendation 3. It was noted that the agenda for the third meeting included further

deliberations on Informal Recommendation 4. While the Working Group during its second meeting agreed that term limits of the Executive Director should be brought into alignment with practices of other United Nations agencies with clear performance expectations, the Chair recommended review of relevant practices from other UN agencies and further discussion of Informal Recommendation 7.

REVIEW OF JIU FORMAL RECOMMENDATION 5

7. In Formal Recommendation 5, the JIU recommended that,

“The Programme Coordinating Board should consider creating an independent and external oversight committee to provide independent advice to the Programme Coordinating Board and to the Executive Director in fulfilling their governance and oversight responsibilities.”

To inform its consideration of Formal Recommendation 5, the Chair noted that the Board received several background documents.

- One memorandum summarizing current practices in the United Nations found that nine UNAIDS Cosponsors have advisory bodies in place, with variability of reporting lines, some to the executive head, the governing board or both.
- A second memorandum summarized the JIU’s findings regarding best practices for oversight committees.
- A document provided with examples of terms of reference for advisory committees of the International Labour Organization and the World Health Organization.

The Chair reported that the PCB legal counsel had advised that the PCB has the legal authority to create an advisory body. Should the PCB choose to create such a committee, the committee could, as recommended by the JIU, be independent and external, or it could consist solely of PCB members.

8. To frame and guide the Working Group’s review of Formal Recommendation 5, the Chair posed three questions for consideration by the Working Group:

- What is currently not well covered in the PCB’s governance and oversight of the Joint Programme?
- What areas currently uncovered or inadequately covered might be addressed by an independent, external oversight body?
- What, if any, would be the added value of an independent, external advisory body?

9. The Working Group sought clarity on the legal means for implementing an oversight body, and it was agreed that no change in the ECOSOC resolution establishing UNAIDS was needed but instead a decision of the PCB. The Chair noted that legal counsel had advised that no changes in the wording of paragraphs 4 and 5 of the Modus Operandi were allowable, as the wording of these paragraphs was lifted directly from the original ECOSOC resolution. However, changes elsewhere in the Modus Operandi, including through an annex, could be used to establish such an oversight committee.

9. The Working Group agreed that any oversight body could and should be tailored to the unique attributes of the Joint Programme. It was observed that UNAIDS had vastly increased in budget and staffing since its creation and that it was now larger than many other United Nations Agencies or Programmes. Some Working Group members

recommended that any new oversight body focus primarily on the Secretariat and avoid the possibility of creating overlapping or duplicative oversight functions for Cosponsors, most of whom already have an oversight body in place. Drawing from information provided by Cosponsors that currently have an oversight body, such a body would likely require additional outlays of approximately US\$ 70 000 per year.

10. The Working Group reached consensus on the need for greater oversight and accountability for the Joint Programme. It was agreed that the Working Group would recommend the creation of some sort of oversight body. After discussion of the relative merits of an external or internal oversight body, it was agreed that the Working Group would recommend to the PCB that this new oversight body be independent and external. It was also agreed that an external oversight body would primarily focus on the Secretariat, but that it should also have the mandate to assess all UNAIDS funding, including funds flowing to the Cosponsors. It was agreed that an external oversight body should report both to the PCB and to the Executive Director. The Working Group agreed that an external oversight body should coordinate and collaborate with existing oversight bodies of Cosponsors, and that counsel for both Cosponsors and the PCB would need to be engaged to clarify the way forward for needed cooperation and collaboration. It was agreed that the Chair would develop for review by the Working Group, draft terms of reference for the proposed new external advisory body, drawing on best practices identified by the JIU and existing terms of reference of Cosponsor oversight bodies.

The Chair pledged to provide the Working Group with a draft terms of reference for an external oversight body and timeline for review.

REVIEW OF JIU INFORMAL RECOMMENDATION 5

11. For its fifth informal recommendation, the JIU recommended that steps be taken to:

“[bring further definition to the PCB’s responsibilities] in handling allegations against the Executive Director or any other officials handling oversight issues (e.g. ethics officers, investigators, auditors, other senior officials, etc.) that could pose a conflict of interest in handling such issues, which is a best practice that is not currently reflected in policies and procedures of UNAIDS or its secretariat.”

The Chair referred the Working Group to the background memorandum provided prior to the third meeting which summarized PCB legal advice on this topic. According to PCB legal counsel, the PCB cannot legally exercise authority over the individual conduct of the Executive Director, as the United Nations Secretary-General is solely responsible for disciplinary actions relating to the Executive Director. For Secretariat staff below the Executive Director, the Executive Director has sole authority for needed disciplinary action.

PCB Legal counsel advises that the PCB may handle an allegation against the Executive Director only if the allegation constitutes a governance issue, such that it exposes a structural dysfunction within the Joint Programme or prevents the Executive Director from exercising her or his responsibilities. Should the PCB determine that allegations against the Executive Director warrant formal action, legal counsel has advised, its recourse is to include its conclusions and recommendations in its reporting to ECOSOC. The PCB as a body cannot legally petition the Secretary-General, although individual member states have the freedom to approach the Secretary-General in their individual capacity but not on behalf of the full PCB.

12. Although the PCB lacks the legal ability to directly petition the Secretary-General, the Working Group agreed that additional clarity was needed on PCB procedures in the

event a serious allegation is made against the Executive Director. It was agreed that the issues raised by the JIU's Informal Recommendation 5 are important and require further clarification, specifically with respect to PCB procedures and to the PCB's reporting to ECOSOC, if and when needed. One question that emerged during the Working Group's discussion of this agenda item is whether the PCB's reporting to ECOSOC on such matters is limited to the PCB's regular reporting to ECOSOC (authorized as annually, but in practice occurring biannually) or can occur between regular reporting in cases where more immediate action is required. However, the Working Group reached consensus on accepting PCB legal counsel position that should misconduct issues arise with the Executive Director, the PCB would maintain its focus on oversight of the Joint Programme and its execution, and based on the gravity of such a situation, may move to provide a report to ECOSOC which could include a stated position concerning the effect of the leadership of the Executive Director on the Joint Programme.

13. It was agreed that the Chair would draft a way forward for the Working Group on Informal Recommendation 5, reflecting both the consensus reached by the Working Group and the further input of legal counsel, for review and comment by the Working Group. To inform the development of this draft, it was agreed that the Chair would explore how other United Nations programmes and funds deal with situations of alleged misconduct by Executive Heads, including mechanisms for investigations, investigatory roles and responsibilities, and the use of performance compacts entered into with the Secretary-General. The draft will address how PCB procedures can be clarified in writing in order to avoid future confusion in case a serious allegation arises. The Chair will seek further guidance from legal counsel in order to enable the draft to address procedures for reporting to ECOSOC (including the possibility of reporting outside of periodic reporting already provided in the ECOSOC resolutions) when necessary to address serious allegations against the Executive Director or other senior officials of the Secretariat. The draft way forward for Informal Recommendation 5 will also clarify that UNAIDS processes for investigating staff misconduct applied to the Executive Director and senior officials.
14. After reviewing the agenda for Day Two of the third meeting, the Chair temporarily adjourned the meeting, with agreement to re-convene on Day Two.

Day Two -- 15 September 2020

15. The Chair welcomed Working Group members back for the second day of the third meeting. Noting that the agenda for the two-day meeting had already been approved on Day One, the Chair briefly summarized the outcomes of Day One's proceedings.

REVIEW OF JIU INFORMAL RECOMMENDATION 18

17. In Informal Recommendation 18, the JIU said:

“The secretariat would benefit from the expansion of the audit coverage to better reflect the secretariat's field operations, where risk are higher compared with headquarters-based operations. The Inspectors suggest PCB and the Executive Director review and determine the appropriate level of audit coverage, in consultation with the Internal and External Auditors, while respecting their independence.”

18. The Chair referred the Working Group to a background memorandum prepared by David Webb, Director of WHO's Office of Internal Oversight (IOS). The Chair welcomed Mr Webb's participation in the meeting during the discussion of JIU Informal Recommendation 18. Mr Webb said that oversight within the Joint Programme involved

three distinct lines of defence -- management controls, compliance with reporting requirements and internal audits. IOS has detected a decline in compliance with UNAIDS processes and standards. IOS maintains an annually updated risk register that aims to identify offices or functions with elevated risks that may require more frequent audits. Lower-risk offices and functions that may be audited less frequently are covered through crosscutting reviews of expenditures and transactions.

In addition to offices or functions audited due to the elevated organizational risk they pose, country offices may also be audited in response to an allegation for which there is concrete evidence or in response to issues flagged in the first-line management oversight. Currently, 62 country offices are not routinely audited by IOS, primarily because they have country budgets under US\$1 million. IOS aims to ensure that its risk assessment, which is distinct from the risk register, is independent of management's assessment of risks. Mr Webb said he hoped that in future there would be closer alignment of IOS's assessment and management's view of organizational risks. In future, IOS plans to meet more frequently with the Executive Director to monitor and report on organizational risk.

19. The IOS background memorandum provided to the Working Group members indicated that IOS has determined that current audit coverage is appropriate for an organization of the size and functions of UNAIDS. Asked by the Working Group about the costs of expanding audit coverage, Mr Webb said he had yet to estimate precise costs but noted that since 2008 the internal audit function for UNAIDS had been handled a single professional at the P5 level.
20. The Working Group agreed that both financial and reputational risk should factor into risk assessments. The Working Group requested additional clarity on how country offices transition between low-risk and higher-risk categories as well as additional information on cost implications of expanding audit coverage to a greater number of countries currently categorized as low-risk. It was further agreed that it might be prudent to task a new independent, external oversight committee to address the issue of audit coverage should the PCB accept the Working Group's recommendation to form such a body. The Chair agreed to obtain additional information from IOS following the third meeting and to take the agenda item up again with the Working Group in a future meeting. A consensus position on the JIU's Informal Recommendation 18 was not reached during the third meeting.

REVIEW OF JIU INFORMAL RECOMMENDATION 17

21. JIU Informal Recommendation 17 states:

"In fulfilling the responsibility as chief representative of the financial statements of UNAIDS, the Executive Director should meet with the External Auditor at least once a year. In addition, the auditor should present his or her report directly to PCB and answer any questions and concerns that PCB members may have, which will also enhance the oversight responsibility of PCB."

22. The Chair referred the Working Group to the background memorandum distributed prior to the third meeting. At the 45th meeting of the PCB, the Executive Director expressed her willingness to implement this JIU recommendation, and the PCB welcomed and affirmed this commitment. Reports presented by internal and external auditors were an agenda item at the 46th PCB meeting. In addition, UNAIDS is in the process of establishing an ethics office that will report regularly under this standing PCB agenda item. It was agreed that while the Executive Director will receive the audit reports, these may not be altered before being transmitted to the PCB. It was agreed by the Working

Group that JIU Informal Recommendation 17 had effectively been implemented by these PCB decisions.

REVIEW OF JIU INFORMAL RECOMMENDATION 19

23. JIU Informal Recommendation 19 states:

“A report to PCB should contain a status matrix indicating the acceptance or rejection of the JIU recommendations and the implementation status of previous recommendations, in order to enhance transparency, accountability and system-wide coherence.”

24. Members of the Working Group expressed support for a mechanism to track implementation of JIU recommendations, but concerns were voiced about having a standing agenda item for JIU recommendations, in part due to concern that this might overburden the PCB and the PCB Bureau. It was noted that JIU recommendations not only focus specifically on individual agencies or programmes (such as the most recent report from the JIU regarding the Joint Programme) but also on broader thematic issues, such as multilingualism.
25. The Working Group did not support having an annual, standing agenda item for the PCB on implementation of past or current JIU recommendations, but agreement was reached that some form of regular reporting is warranted under broader oversight reporting to the PCB. Support was expressed for lodging reporting on implementation of JIU recommendations under the umbrella of the independent, external oversight committee.

REVIEW OF JIU INFORMAL RECOMMENDATION 4

26. JIU Informal Recommendation 4 states:

“The relevance and validity of the guiding principles [for co-sponsoring organizations] should be re-evaluated, and stronger linkages between PCB and governing bodies of co-sponsors should be explored.”

The Chair reminded the Working Group that it had begun discussing this informal recommendation at its second meeting, where Cosponsors had been asked to review the guiding principles with an eye towards revising and updating them.

27. Cosponsor representatives on the Working Group described proposed revisions to the guiding principles made by the Global Coordinators. (Annex 2 compared the proposed revised and updated version of the guiding principles with their current formulation.) The new version of the guiding principles proposed by Global Coordinators aims, in part, to clarify how each Cosponsor is addressing HIV in its mandate. It is hoped that the updated principles would be approved by Executive Heads in November and shared with the PCB at its December meeting.
28. The Working Group welcomed the work done by Cosponsors on revising and updating the guiding principles. Working Group members questioned why some of the revised guiding principles appear to be mandatory (using the word “must”) while others appeared to be advisory (using the word “should”). It was agreed that the proposed wording of the eighth principles (regarding having a clear, well-disseminated HIV workplace policy) would be changed from “should” to “must.” It was further agreed that the fourth guiding principle in the revised version (concerning regular contributions to the development and review of policies and frameworks of the Joint Programme) would be expanded to include senior leadership as well as the Executive Head of each

Cosponsor. Support was expressed to include an additional guiding principle requiring that each Cosponsor have an HIV strategy in place, although Cosponsors noted that many agencies are moving away from disease-specific strategies and might resist having one solely for HIV. It was agreed that Cosponsors, following the third meeting, would streamline and standardize the language of the guiding principles, using an active voice and ensuring their alignment with the agreements reached by the Working Group.

29. The Chair then invited the Working Group to discuss strategies to strengthening linkages between the PCB and the governing boards of Cosponsors. There was agreement that ambiguous PCB decisions (such as those “taking note of” a particular action) were difficult for Cosponsor governing boards to interpret or make use of, and the Chair noted that the PCB Bureau had recently discussed the need to sharpen the language of PCB decisions. The Working Group discussed ways to ensure that Member States actively bring HIV issues before Cosponsor governing boards and to increase the visibility of the Joint Programming in these governing bodies. The Chair agreed to propose language for a recommendation to the PCB on improving linkages between the PCB and Cosponsor governing boards, for review and consideration by the Working Group.

NEXT STEPS

30. The Chair noted that the Working Group had yet to reach closure or a final decision on a number of JIU recommendations. Most notably, a consensus has yet to form regarding JIU Recommendation 3 regarding possible changes to the Modus Operandi. The Chair noted that the Working Group had been invited to propose possible changes to the Modus Operandi but that only a limited response had been forthcoming. The Chair invited the Working Group to reflect on the adequacy of the PCB oversight, whether roles and responsibilities pertaining to oversight and accountability to clearly set forth in the Modus Operandi, and whether further clarification of these roles in the Modus Operandi were needed. The Chair observed that, as an independent actor, she was unable to propose a way forward on JIU Recommendation 3 without clear direction from the Working Group. It was noted that legal counsel had advised that the language of paragraphs 4 and 5 of the Modus Operandi may not be changed, as they derive from the language of the original ECOSOC resolutions, but that additional paragraphs or an accompanying annex could be added to the Modus Operandi. It was also noted that JIU Informal Recommendation 6, which is related to Formal Recommendation 3, had not been taken up by the Working Group.
31. It was agreed that the Working Group representative of Canada and its constituency would draft an annex to the Modus Operandi that clarifies the oversight and accountability roles of the PCB. The Chair will then circulate the draft annex to the Working Group, which will have one week to provide feedback. The Chair agreed to circulate an online poll to schedule an additional Working Group meeting to address Formal Recommendation 3 and Informal Recommendation 6, but it was further agreed that this meeting would be cancelled if feedback from the Working Group has not been received.

ANY OTHER BUSINESS

32. In the absence of other business, the meeting was adjourned.

[Annexes follow]

Annex 1: Agenda Second Meeting of the Working Group, 14-15 September 2020

Day One – 14 September 2020

- I. Welcome
- II. Approval of agenda
- III. Posting of minutes of Meeting 2 (June 18)
- IV. Review of progress to date in carrying forwarding PCB mandate to Working Group
- V. JIU Formal Recommendation 5: Review and discussion
- VII. JIU Informal Recommendation 5: Review and discussion
- VIII. Provisional adjournment

Day Two – 15 September 2020

- I. Welcome
- II. Review of outcomes of Day One
- III. JIU Informal Recommendation 17: Review and discussion
- IV. JIU Informal Recommendation 18: Review and discussion
- V. JIU Informal Recommendation 19: Review and discussion
- VI. Continuation of discussion (from Meeting 2) of JIU Informal Recommendation 4
- VII. Next steps:

Scheduling 4th Working Group meeting to finalize recommendations regarding JIU Formal Recommendation 3 and Informal Recommendation 6.

Provisional discussion of the briefing to the PCB in October.

Informal Recommendation 6: “PCB may wish to revise paragraph 5 of the Modus Operandi, which covers the functions of PCB to establish [the practice of the reports of the auditors and data and information on ethics activities and investigations being more critically assessed by PCB].” (para. 75)

- VIII. Adjournment

Annex 2: Guiding Principles UNAIDS Cosponsorship

In response to the JIU report on PCB oversight, proposed revisions to the Guiding Principles

September 9, 2020

Proposed Revisions:

1. The organization must bring an identifiable comparative advantage to the UNAIDS Joint Programme and have a mandate to carry out activities related to HIV. [no change]
2. The organization must be a United Nations system body. [no change]
3. The organization's governing body should consider how the organization is addressing HIV within its mandate and policies. [new]
4. The organization's Executive Head should regularly contribute to the development and review of the policies and frameworks of the UNAIDS Joint Programme through the Committee of Cosponsoring Organizations (CCO). [new]
5. The organization should designate its own core resources to fund HIV-related issues, *including through a dedicated team*. [revised]
6. The organization should have resources and capacity at regional and country levels available to support the implementation of HIV-related activities. [revised]
7. There should be a commitment to participate in the Unified Budget Results and Accountability Framework (UBRAF) *or any other future iteration*, including assistance in mobilizing resources for this. [revised]
8. The organization *should* implement a clear, well-disseminated HIV workplace policy. [revised]
9. The organization *should* have a track record of active participation in Joint UN Teams on HIV/AIDS at the country level [revised]

Current Guiding Principles:

1. The organization must bring an identifiable comparative advantage to the UNAIDS partnership and have a mandate to carry out activities related to HIV/AIDS.
2. The organization must be a United Nations system body.
3. The governing body should approve a specific budget for HIV/AIDS activities and put HIV/AIDS on its agenda for regular consideration under the institutional and policy framework of UNAIDS.
4. The organization should designate its own core resources to backstop HIV/AIDS issues, including a dedicated unit headed by senior staff.
5. There should be a commitment to participate in the Unified Budget and Workplan on HIV/AIDS processes at the global and regional levels, including assistance in mobilizing resources for the same.
6. The organization must implement a clear, well disseminated HIV/AIDS workplace policy.
7. No less than \$4 million of the organization's own resources (at global and regional levels) must be devoted to HIV/AIDS-related activities.
8. For sustained membership, the organization should have its own resources for HIV/AIDS-related activities (at global and regional levels), greater than what is received from the Unified Budget and Workplan.
9. HIV/AIDS activities should be under way in at least 40 per cent of countries in which the organization has a presence.
10. The organization must have a track record of active participation in United Nations Theme Groups on HIV/AIDS at the country level.

Annex 3: Follow-up actions from the 3rd Meeting of the Working Group 14-15 September 2020

Working Group Members

1. Working Group representative of Canada and its constituency would draft an annex to the Modus Operandi that clarifies the oversight and accountability roles of the PCB. [Recommendation 3]
2. The Chair will circulate the draft annex to the Working Group, which will have one week to provide feedback.

Working Group Chair

3. The Chair to provide the Working Group with a draft terms of reference for an external oversight body and timeline for review. [Recommendation 5]
4. The Chair to draft language on the PCB role visa vie allegations of misconduct of the Executive Director, reflecting the consensus reached by the Working Group and the further input of legal counsel, for review and comment by the Working Group. [Informal Recommendation 5]
5. The Chair to obtain additional information from IOS on the costs of internal audits and movement of UNAIDS country/regional offices within risk profiles, and revert back to the Working Group in a future meeting. [Informal Recommendation 18]
6. The Chair to propose language on improving linkages between the PCB and Cosponsor governing boards, for review and consideration by the Working Group. [Informal Recommendation 4]

Cosponsors

7. Cosponsors to streamline and standardize the language of the guiding principles, using an active voice and ensuring their alignment with the agreements reached by the Working Group. [Informal Recommendation 4]

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