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REVIEW OF UN PEACEKEEPERS' HIV TESTING POLICY

PROPOSAL FOR A NEW PANEL

COMMENTS OF JUSTICE M D KIRBY (AUSTRALIA)

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The issue

1. The focus of the draft DKPO Review of HIV Testing Policy for Uniformed Peacekeepers is upon the issue of whether the systematic application of an HIV test to uniformed peacekeepers - and the exclusion from deployment of HIV-positive personnel-is justifiable (p 4). The document acknowledges (pp 4, 15) that there are broader issues of transmission prevention in receiving countries; but they are not the focus of the review.

Discussion in the draft review

2. Current UNAIDS policy (2001) is that VCT is sufficient, pre-AIDS HIV should not exclude personnel from deployment and pre-deployment testing is not required (p 6). However, the review has identified a distinct clinical problem. Mission data on HIV/AIDS is poor. However, although most peace-keeping situations involve short rotations of duty, in at least a few cases, a significant number of troops have died or been sent home because of AIDS (not HIV)-related conditions. In one instance (the UN Mission in Liberia (UNMIL), most of the deaths and repatriations were from troop-contributing countries (TCC) which did not have mandatory pre-deployment testing policies (p 10).

3. The review has found uneven and inconsistent approaches to testing on the part of TCC both for their own armed services and also pre-deployment for peacekeeping missions. In part, the latter is due to

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the distinction between mandatory testing specifically as part of preparations for deployment and mandatory testing as part of routine medicals (p 5). Another source of confusion is differences in approach depending on whether the individuals deployed are from police or the military deployment. There is no correlation between a country's stage of development and its likely policy for testing its defence force troops (pp 5-6). There is no consensus on the issue of pre-deployment testing of peacekeepers. Some developed countries may find mandatory pre-deployment testing to be an obstacle to deciding to contribute peacekeepers (p 6).

4. There are concerning instances of different understandings on the part of individual soldiers, field headquarters and national headquarters as to whether troops have in fact tested negative and whether the testing was mandatory or voluntary (pp 5-6). This leads to the recommendation to ensure that all pre-deployment testing is accompanied by pre and post-test counselling.

5. There may be real issues of fitness for deployment of peacekeepers with HIV (pp 9-12). Both for individual personnel and potentially affecting mission capacity -

* The standard of health care for people living with HIV/AIDS available in host countries will often be poor,
* Peacekeeping missions may not be able to afford to provide ARVs and blood monitoring,
* AIDS complicating diseases may be endemic, and
* Mission-related stress can affect immune systems and immunisation/vaccination requirements may complicate HIV infection (pp 6, 11-12).

6. An ethical and public health issue is the risk of peacekeepers spreading HIV. There is an important power differential between peacekeepers and the their host population. The well-known but indeterminate case of UNTAC in Cambodia is discussed (pp 7-8). Where personnel from different TCCs are deployed in the one spot, reports of failure to attend wounded troops from certain TCCs may be connected to concerns about the testing policies of high prevalence TCCs (p 9).

7. On the other hand, requiring mandatory testing of peacekeepers and excluding people with HIV from peacekeeping work could:
   (a) Undermine the effort to reduce HIV-related stigma and discrimination,

(b) Send people with HIV underground; and

(c) Provide a UN model for discriminating against people with HIV in other circumstances such as travel restrictions. If policy guidance was changed, it would be necessary for testing peacekeepers at deployment to be established as an exception justified by the elevated vulnerability of the host community (pp 9, 14). But as well, there would be no guarantee that troops or police testing positive would be supplied with ARVs and that they be protected from discrimination (p 8). Because in particular of the need to set up the infrastructure to sustain it, there would be financial costs incurred by TCCs in implementing a mandatory pre-deployment testing policy - with accompanying counselling - where not presently in place. No-one is prepared to even discuss reimbursement of these costs to TCCs (p 14).

Recommendations in the draft review

8. Recommendations for immediate implementation are -

* To develop a strategy for targeted support of TCCs sending HIV positive troops and police who have died or been repatriated as a result of AIDS,
* Encouraging a continuation of VCT during peacekeeping missions and pre-deployment where it presently occurs (both to identify PLWHA and to raise HIV awareness and change risky behaviours),
* Monitoring of HIV/AIDS, data collection and analysis needs to be strengthened in missions
* Measures should be taken to support TCCs providing ARVs to peacekeepers with HIV

In the longer term, there are sufficient grounds for guidance on pre-deployment HIV testing to be reconsidered. It is proposed that UNAIDS should convene an expert panel to consider the issue. The panel should include medical and human rights experts, human resources and representatives from military and police forces. Proposed subject-matter for the terms of reference is set out (p 16).

Comments and evaluation

9. In my opinion this is a well-thought out and well-considered document. The draft does not set up a false dichotomy of individual rights versus community protection. It recognises the constructive

role to be played by a human rights-based approach to public health issues (p 4, also p 15). Correctly, it sees the close interrelationship between human rights strategies and health and military deployment strategies. They are accepted as interrelated and inter connected. This is the correct approach, consistent with the general approach of the previous UNAIDS panel report on testing of UN peacekeepers.

10. My response to a proposal for mandatory testing of peacekeepers ten years ago would have been different. However, with time, experience in the field, the advent of new therapies and cheaper tests and knowledge of the disease that has been accumulated, it would be timely to initiate a new panel. Its work should be based on sound empirical data and a good mix of expertise, background and viewpoints. The hope should be that members of the expert panel are selected for their ability to see the different sides of the issues as comprehensively as the authors of the draft review have done.

11. Above all, it will be important to have balanced and sensitive membership of the panel so that it does not become a stalking horse for the compulsory testers who have a general agenda for instituting broad national and international policies of widespread and compulsory testing for H IV (often without backing this up with VCT, viable measures against stigma and guaranteed access to ARVs). The compulsory testers are now in full flight (even in CDC (USA) and some UN agencies). As the draft review recognises there are possible implications in the outcome of this review for stepping up international travel testing requirements. That would be disproportionate. The personnel of the proposed panel would therefore be extremely important.

12. I acknowledge the assistance I have derived in reaching these tentative views from discussions with a legal colleague in Australia, Mr David Buchanan, Senior Counsel of Sydney. He shares the foregoing views.

13. The views expressed are personal. They have not been discussed with members of the UNAIDS Panel on Human Rights of which I am a member. In due course that Panel should, in my view, be consulted.

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