

HOW THE DECISIONS BEHIND THE ASCENT OF UNAIDS ALSO CAUSED ITS CURRENT LEADERSHIP
CRISIS

ANDREW HENNESSY-STRAHS, J.D., LL.M., RAC, M.P.H. CANDIDATE

The United Nations Joint Programme on HIV/AIDS (UNAIDS) is currently experiencing an existential leadership crisis, which has resulted in the resignation of executive director Michel Sidibé, effective June, 2019.ⁱ This crisis is an inevitable consequence of the decisions made at the inception of UNAIDS which prioritized organizational independence and charismatic leadership.ⁱⁱ In the face of overwhelming evidence that UNAIDS had abrogated its duties to prevent or properly respond to harassment allegations, an independent expert panel reported how UNAIDS leadership had evaded accountability and allowed an organizational culture of impunity to flourish, made all the more profound on account of the UN diplomatic immunity protections for its staff.ⁱⁱⁱ However, it is necessary to confront the history of prejudice that characterized the HIV crisis in order to appreciate how UNAIDS came to be and why it was structured with such a high amount of autonomy. This paper will be a case study of the progression of leadership styles behind UNAIDS: the consecration of Mann, the aplomb of Piot, and the hubris of Sidibé. The case study will investigate how the origins of the then-necessary consolidation of executive power within the UNAIDS organization under its first director Peter Piot, following the precedent of his colleague, Jonathan Mann, director of UNAIDS' predecessor organization, the Global Programme, unintentionally enabled the moral accountability of UNAIDS to languish under Sidibé by deemphasizing sound governance at the conception.

The early bigotry toward HIV inhibited the global community from adequately confronting the virus. First labeled gay-related immune deficiency syndrome (GRID) in 1982 in the United States — and the “slim” virus in Uganda—, AIDS was a legitimate basis for

discrimination in the United States, up until the July 1990 passage of the Americans with Disabilities Act and its protections inspired by the death of Ryan White, a faultless and photogenic schoolchild with hemophilia.^{iv} The palpable discomfort with HIV that had shrouded the global political community had begun to unravel just a few years prior. In 1986, the WHO had launched its first Global AIDS strategy, to be followed by President Reagan's first mention of AIDS in 1987, and the formal establishment of the WHO's Global Programme on AIDS, pursuant to the directive of the General Assembly of the United Nation after its first-ever debate of a health issue.^v

It was in 1976 that the 27-year-old novice microbiologist, Dr. Peter Piot embarked on his career in global infectious disease, when he and his team precariously retrieved yet-to-be-discovered-Ebola virus samples from a thermos of slush, blood, and glass shards, upon their return to Belgium from an epidemiological investigation in Uganda.^{vi} Seven years later, in 1983, while investigating another emerging virus, in Kinshasha, Zaire, Peter Piot first encountered the second of the two unknown lethal viruses – which would come to define his career – one that was currently decimating the ranks of young male and female Zairese patients . . . independent of their sexual orientation.^{vii} Piot confronted the dogmatic institutionalized homophobia of the medical community, transitioning from medical academia to a policy role with the WHO in 1988, joining the WHO's Steering Committee for its Global Programme on AIDS, led by human rights activist, physician, and Piot's colleague, Jonathan Mann.^{viii}

Institutional underestimation of the severity of the emerging HIV virus at the WHO, combined with structural encumbrances that reallocated power from the WHO Director General to the six regional offices drove Piot and Mann's argument that the United Nations must establish an independent organization beholden to the constraints of the WHO's power.^{ix} The governance structure of the WHO empowers the six WHO regional offices at the expense of central leadership.

The Director General controls about 25% of the human and financial resources, while the Regional Directors for the other jurisdictions control the other 75% (i.e., the Regional Directors have roughly three times as much combined power as the Director General under a perfect allocation of resources; imperfect allocations among the regions or between the Director General and the regions would magnify the gulfs in power).^x Regional Directors are elected by the ministers of health in the countries within their regions, further diminishing the power of the Director General to coordinate and implement global health strategies.^{xi} This fragmentation was problematic because WHO regions that did not appreciate the threat posed by HIV would prioritize other diseases and be unlikely to implement a coordinated HIV strategy.^{xii} Voluntary cooperation was not feasible in the mid 1980's. Restrictive HIV laws, designed to protect people without HIV, had been passed by the legislatures of 104 countries.^{xiii} African countries resented the claim that the African continent was the origin of HIV and were reluctant to even engage in a dialogue with the West.^{xiv} Chinese officials argued HIV could not exist in China because there were no homosexuals, drug users, or prostitutes in China.^{xv} A German judge opined it may be necessary to tattoo and quarantine HIV patients to protect society.^{xvi} Halfdan Mahler, who was the Director General of the WHO at that time, underestimated the impact of HIV, perpetuating the stigma of HIV as a moral disease that primarily affected gay men and drug addicts in the West.^{xvii} In one especially regrettable incident, Mahler opened the first donor meeting for the Global Programme with a reminder that tuberculosis and malaria were killing "many more people" than HIV, suggesting that the WHO may be wasting its time.^{xviii} Mahler subsequently acknowledged his failure to appreciate the threat posed by HIV.^{xix}

Eventually Mann and Piot persuaded Mahler of the urgency of the HIV threat and enlisted his support to permit Mann, as head of the Global Programme, to circumvent some of the

limitations of the WHO's fragmented governance structure.^{xx} By enabling Mann to act independently, the Global Programme attracted donor support because countries that wished to fund HIV efforts were able to do so via the Global Programme without facing the public scrutiny of a prejudiced citizenry if those countries included HIV strategies in their national budgets.^{xxi} Mann formulated the Global Programme's approach against HIV, primarily around human rights and championed optimizing the social, cultural, economic, and political determinants of health (e.g., ending discrimination against people with HIV and disseminating accurate information about transmission, prevention, and treatment).^{xxii} Mann had a unique gift for bridging the concerns of the medical and scientific communities with those of the legal and human rights communities, and was perceived as a "spiritual leader" for his impassioned eloquence.^{xxiii} Mann's charisma immediately built the Global Programme into the "strongest, most influential, and best financed program within the WHO."^{xxiv}

Mahler's unexpected retirement as the WHO's Director General in 1988 would prove fatal to the Global Programme and would ultimately lead to the creation of UNAIDS as a mostly independent organization. Mahler's replacement, Hiroshi Nakajima, "resented Jonathan Mann's privileged position and unorthodox style."^{xxv} Nakajima directly sabotaged Mann's human rights-based approach to HIV by kowtowing to the prejudices of countries skeptical of this approach, suggesting in an interview with *Le Monde* that society may need to reconsider punitive legislation against HIV patients, which was the antithesis of Mann's human rights approach.^{xxvi} Nakajima conducted key policy meetings without Mann and refused to grant Mann's requests concerning budget, travel, and staffing.^{xxvii} Mann resigned from the Global Programme in March, 1990, and the Global Programme never quite recovered under the leadership of Mann's successor, Michael Merson, who was appointed by Nakajima.^{xxviii} Merson deemphasized the human rights focus of

the Global Programme and implemented a hierarchical managerial style that alienated key employees who preferred the informal approach of Mann.^{xxix} Significantly, part of the decline in morale can be attributed to an increase in financial accountability, as Mann had not scrutinized income and expenditures as he should have during his tenure.^{xxx}

Following declines in donations, in a push driven primarily by those same donors, the United Nations (through six cosponsoring UN organizations, including the WHO) convened the Task Force on HIV/AIDS Coordination on May 11, 1993, which culminated with United Nations Resolution 1994/24 the following year, establishing the Joint and Co-sponsored Programme on Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome, which would soon come to be known as UNAIDS.^{xxxi} Resolution 1994/24 invited the six UN cosponsors to continue on as the Committee of Cosponsoring Organizations (CCO)-which was charged with helping to develop a programme coordinating board (PCB) that would govern UNAIDS.^{xxxii} However, the CCO resented the usurpation of its influence over the HIV sector and did not contribute much to the development of the governance structure of UNAIDS and its PCB.^{xxxiii} The WHO actively undermined the development of UNAIDS; there are reports of Nakajima discussing how the demise of UNAIDS would enable him and the regional directors to resume leadership in the HIV/AIDS field.^{xxxiv} Peter Piot was chosen to be the first executive director of UNAIDS by UN-Secretary-General Boutros Boutros-Ghali because of his relationship with Jonathan Mann, his scientific gravitas in the field, and because he had “fewer enemies than the other candidates.”^{xxxv} Before he would agree to lead UNAIDS, Peter Piot required that he personally have the final say over staffing decisions and that UNAIDS be accountable not to the CCO, but instead directly to the member states.^{xxxvi} Piot explains his thought process on the second condition:

“The second question was, who’s my boss? It was not a trivial question, and it’s about governance. The proposal from within the UN was that I would report to the

agency heads in the UN. And I said that for me is unacceptable. The reason is not so much my ego. . . . That debate is still going on, and there are still people in the UN system who believe that we are not accountable. . . The second thing was whether the secretariat would be strong or weak. Evidently, the UN agencies wanted a secretariat that was as weak as possible . . . I was not interested in being [that] coordinator.”^{xxxvii}

The governance planning became so intense that Piot embarked on a seminal retreat in February 1995 at Bellagio, Italy, where he created the official UNAIDS name with a small team, which formalized the objectives of the new program: political advocacy, coalition building, and fundraising.^{xxxviii} They were starting from the ground up. In 1995, the UN cosponsors had still not yet authorized a budget and Piot was “literally the only employee” and “was supposed to create a new organization, with no money in one year.”^{xxxix} The composition of the PCB began to take shape and was formalized in July of 1995; it would include 22 rotating member states, subject to three year terms, with voting privileges, the UN cosponsors, and importantly, non-governmental organizations.^{xl} The PCB was reluctant to support UNAIDS, initially proposing a budget of \$40 million over two years (roughly a sixth of what Piot requested); moreover, the developed countries that were among the voting member states were pressuring developing nations to vote for a low budget proposal, by pledging other support outside of the formal voting process.^{xli} Piot’s leadership of UNAIDS necessarily depended upon how effectively he could persuade the heads of states of donor countries of the legitimacy of the UNAIDS approach. And Piot largely succeeded. As the New York times put it upon his 2008 retirement:

“Dr. Peter Piot, the only head of the United Nations AIDS program in its 13-year history, is retiring on Wednesday. He is credited as the person most responsible for making heads of state understand the political, economic and social ramifications of a pandemic that rivals the worst in history.”^{xlii}

Piot’s successor, deputy director of UNAIDS, Michel Sidibé, would inherit a different set of working conditions than Piot had. By 2008, UNAIDS was a unique quasi-

independent organization under the United Nations that had grown significantly in terms of staff, capitalization, and influence. The success of UNAIDS had inspired a global commitment to confront HIV, with the creation of the Global Fund, PEPFAR, the Bill & Melinda Gates Foundation, and the Clinton Foundation.^{xliii} As a result of the success of UNAIDS, Michel Sidibé inherited an organization with a cultish level of executive power with a diminishing mandate. As a leader, Sidibé was passionate and effective in his advocacy for marginalized groups, particularly adolescent girls and young women; he was also effective at strengthening the African continent's response to HIV.^{xliv} However, Sidibé, did not understand the importance of safeguarding the legitimacy and reputation of UNAIDS. According to the independent expert panel:

“Leadership of the UNAIDS Secretariat is seen as charismatic and autocratic, making decisions based on close relationships—‘*like family*’—rather than principles of accountable governance. A highly personal style may have been intended to raise the profile of the work of UNAIDS in the public arena, but has had the effect of becoming a ‘*cult of personality*.’ ”^{xlv}

The systems established by Piot enabled Sidibé to misuse this expansive authority. An independent expert panel that surveyed 60% of the UNAIDS staff, found significant gaps in accountability: 3.8% of respondents reported sexual harassment in the previous year, 58% reported ill-treatment by peers or supervisors, 13.7% reported being the victim of discrimination within UNAIDS, and 43.2% reported having experienced some form of abuse of authority within the organization.^{xlvi} Because of the independence of UNAIDS within the UN system, victims have no functional opportunity to hold anyone accountable at UNAIDS who abuses his/her power.^{xlvii} Specifically, UNAIDS staff are international employees with UN privileges and immunities; consequently, they cannot file employment related claims in national courts, and are left with the Policy on Prevention on Prevention of Harassment of the WHO as their only recourse.^{xlviii} In the context of the #metoo social media movement by sexual misconduct victims who have

courageously come forward, it is essential to understand just how powerful UN immunity can be. At the extremes, it can prevent a rape victim from ever obtaining justice in a criminal or civil court against his/her perpetrator. But UN immunity can also function with a subtle insidiousness by enabling an organization to never meaningfully police sexual misconduct. What happened at UNAIDS reflects just such dereliction. Despite the existence of the WHO policy against harassment, there is actually no prescribed way for employees to make complaints.^{xlix} Additionally, the complaint process vests sole authority in the Executive Director (i.e., Michel Sidibé) to directly and indirectly intervene at multiple points in the process to determine whether a complaint should move forward.^l An example of how Sidibé may have abused this power can be seen in the case of his former deputy director, Luiz Loures, who was accused by a group of women of sexual assault and harassment.^{li} The official investigation concluded that the allegations against Loures were “unsubstantiated,” though he is no longer with UNAIDS.^{lii} One of the potential key witness in Loures’ sexual assault investigation, Miriam Maluwa, was placed on administrative leave by Sidibé after providing evidence against Loures that corroborated an allegation of sexual assault against him that occurred in a hotel elevator.^{liii} The Independent Expert Panel found many examples of similar conduct within the UNAIDS organization.

The progress achieved against HIV/AIDS would not have been possible without the passion of Jonathan Mann and the political adroitness of Peter Piot. UNAIDS was Piot’s successor organization to Mann’s Global Programme. While necessary at the time to mobilize the international community and overcome the resentment of the WHO, the concentration of executive power, combined with diplomatic immunity, was not a sufficient restriction on a leader who did not share the same desire to preserve institutional integrity as an asset of legitimacy for the global political community. Sidibé’s resignation is a necessary first step in restoring credibility to

UNAIDS. However, with the expansion of the HIV sector, the United Nations, along with the PCB, must implement governance changes that empower staff, diminish the outsized (and outdated) role of the executive director, and establish meaningful systems of accountability. In some ways, the ouster of Sidibé provides the rarest of opportunities for a veritable progenitor of the HIV global health movement to rediscover the magic that made UNAIDS indispensable in its earlier days.

ⁱ Nick Cumming-Bruce, *Leader of U.N. AIDS Agency to Step Down After Damning Review*, N.Y. TIMES, Dec. 13, 2018, available at <https://www.nytimes.com/2018/12/13/world/europe/un-aids-sidibe-harassment.html>.

ⁱⁱ UNAIDS Independent Expert Panel, *Report of the Independent Expert Panel on Prevention of and Response to Harassment, Bullying and Abuse of Power at UNAIDS Secretariat*, UNAIDS, Dec. 7, 2018, available at http://www.unaids.org/sites/default/files/media_asset/report-iep_en.pdf

ⁱⁱⁱ *Id.* at 3.

^{iv} *History of HIV and AIDS Overview*, AVERT, Nov. 26, 2018, available at <https://www.avert.org/professionals/history-hiv-aids/overview>.

^v *How AIDS Changed Everything*, UNAIDS, 2015, 83-84, available at http://www.unaids.org/sites/default/files/media_asset/MDG6Report_en.pdf;

See also, Elizabeth Fee and Manon Parry, *Jonathan Mann, HIV/AIDS, and Human Rights*, 29 J PUBLIC HEALTH POLICY 61 (Mar. 28, 2008)

“In 1987, Mann and Mahler gave a briefing on AIDS to the General Assembly of the United Nations. This was the first time that delegates had ever debated a disease – a historic moment reflecting growing awareness of the significance of the emerging pandemic. At this meeting, drawing on his firm belief that the goals of public health and human rights were compatible and interconnected, Mann argued eloquently against repressive policies such as mandatory HIV testing and quarantine. He delivered a message ‘of realism and tolerance,’ saying that anxiety and fear were causing some to blame others for the epidemic, unveiling ‘dimly disguised prejudices about race, religion, social class, sex and nationality.’ He again stressed the idea that because AIDS spreads through known human actions, ‘all subject to human influence and control’ AIDS was therefore ‘controllable and preventable.’ He would substantially change this optimistic assessment of the power of individuals to protect themselves during his subsequent years at the WHO.”

^{vi} See, e.g., Julia Paoli, *The Scientist Who Discovered Ebola*, NATURE (blog)(Nov. 5, 2014), explaining the backstory of the discovery of Ebola.

^{vii} *UNAIDS: The First 10 Years*, UNAIDS, at 8, 2008, available at http://data.unaids.org/pub/report/2008/jc1579_first_10_years_en.pdf.

^{viii} Victoria Cranna, *World AIDS Day: Peter Piot Collection*; Philip Hilts, *Jonathan Mann, AIDS Pioneer, Is Dead at 51*, N.Y. TIMES, Sept. 4, 1998; Elizabeth Fee and Manon Parry, *Jonathan Mann, HIV/AIDS, and Human Rights*, 29 J PUBLIC HEALTH POLICY (Mar. 28, 2008).

^{ix} Victoria Harden, *Interview in an Oral History with Dr. Peter Piot, Executive Director of the Joint United Nations Program on HIV/AIDS (UNAIDS), and Under Secretary-General of the United Nations, NIH*, at 2, April 8, 2009, (2nd interview), available at <https://history.nih.gov/archives/downloads/piot408.pdf>.

^x Harden, *supra* note ix at 2.

^{xi} *Id.*

^{xii} Fee and Parry *supra* note viii, at 59.

^{xiii} See *Id.* at 55, illustrating how countries embraced stereotypes that would pose a barrier to global cooperation.

^{xiv} *Id.*

^{xv} *Id.*

^{xvi} *Id.*

^{xvii} *Id.*

^{xviii} *Id.*

^{xix} *Id.* at 59; Harden, *supra* note viii at 2.

^{xx} Fee and Parry *supra* note vii, at 59. “Mahler allowed Mann to bypass WHO’s usual chain of command as head of the new GPA.”

^{xxi} *Id.*

^{xxii} *Id.* at 60.

^{xxiii} Jonathan Mann, AIDS Pioneer, Is Dead at 51, N.Y. TIMES, Sept. 4, 1998

^{xxiv} Fee and Parry *supra* note ix, at 59-60.

^{xxv} *Id.* at 64.

^{xxvi} *Id.*

^{xxvii} *Id.*

^{xxviii} *Id.* at 65.

^{xxix} *Id.*

^{xxx} *Id.*

“Merson was however, dedicated to the task; he brought in new staff, and worked hard to maintain the AIDS program. A conscientious manager, he imposed a tight organization with careful tracking of income and expenditures – matters that had been somewhat casually treated under Mann’s tenure. Whereas Mann had operated on passion, commitment, an almost manic energy, and a horizontal approach – disregarding hierarchy and welcoming all comers – Merson preferred a more traditional vertical public health approach and did not make human rights his central focus, as Antonio Gerbase of the WHO, Geneva, explained to one of us (EF) in a September 12, 2006 interview.”

^{xxxi} WHO, Study on a United Nations Programme on HIV/AIDS, A46/A/Conf.Paper No. 11 (May 11, 1993); UN, Economic and Social Council, Resolution 1994/24 (July 26, 1994); *UNAIDS: The First 10 Years*, UNAIDS, *supra* note vii, at 18, at 41 (quoted):

“Susan Holck had joined GPA when Merson took over as its Director and is now Director, General Management, WHO: ‘the push for [UNAIDS] certainly did not come from the UN agencies. The push came from the donors, who were fed up with having to individually respond to requests for funding from each of these different agencies, fed up with the lack of coordination, and fed up with WHO’s inability to really be operational at country level.’”

^{xxxii} UN, Economic and Social Council, Resolution 1994/24 (July 26, 1994)

“Requests the President of the Economic and Social Council to organize, in cooperation with the Committee of Co-sponsoring Organizations, informal open-ended consultations to be held as soon as possible for the purpose of deciding on the specific composition of the programme coordinating board that will govern the programme, interacting periodically with the Committee during the transition period to facilitate progress towards programme implementation, and reviewing the detailed programme proposal after it is received from the Committee, with a view to making appropriate recommendations on the proposal.”

^{xxxiii} *Id.* at 40, at 31 (quoted):

“Following the ECOSOC resolution in July 1994, the CCO was required to start searching for a Director as soon as possible, through an open, wide-ranging search process; the appointment would then be made by the UN Secretary-General, Boutros Boutros-Ghali.

The bureaucratic and legalistic process intensified. The CCO met for the first time in September 1994 and a transition team was established, with staff members from the six agencies, to work on the new Programme’s structure, budgets and strategy. Elisabeth Manipoud, who was assigned to the team by UNICEF together with Christian Voumard (also from UNICEF), later reflected: ‘One should never forget that this joint and cosponsored programme was imposed on a number of very unwilling Cosponsors who resented more coordination of their respective HIV/AIDS activities. A direct illustration of this is that the six original agencies could never agree on the leader for our transition team. So we started in October 1994 without somebody to give direction, dealing with lots of conflicts and a difficult atmosphere.’”

^{xxxiv} *Id.* at 32-33.

^{xxxv} *Id.* at 32; *See also* Harden *supra* note ix at 5

“**Harden:** Which brings me to the question that as the UN looking for a leader for what became UNAIDS, it was tough. Someone said you were selected because you had fewer enemies than anybody else.

Piot: Yes, that's true.”

^{xxxvi} See Harden *supra* note ix at 7-8.

^{xxxvii} *Id.* at 7-8.

^{xxxviii} *UNAIDS: The First 10 Years*, UNAIDS, at 34-35, 2008; Harden, *supra* note ix at 15.

^{xxxix} Harden, *supra* note ix at 11.

^{xl} UN, Economic and Social Council, Resolution 1995/2 (July 3, 1995).

^{xli} Harden, *supra* note ix at 13.

^{xlii} Lawrence Altman, *Leaving Platform that Elevated AIDS Fight*, N.Y. TIMES, Dec. 29, 2008, available at <https://www.nytimes.com/2008/12/30/health/30docs.html>.

^{xliii} The Global Fund, <https://www.theglobalfund.org/en/overview/>; PEPFAR, <http://www.pepfar.gov>; Bill & Melinda Gates Foundation, <https://www.gatesfoundation.org>; Clinton Foundation, <https://www.clintonfoundation.org>.

^{xliv} UNAIDS Independent Expert Pane, Report of the Independent Expert Panel on Prevention of and Response to Harassment, Bullying and Abuse of Power at UNAIDS Secretariat, UNAIDS, Dec. 7, 2018, at 20.

^{xlv} *Id.* at 4.

^{xlvi} *Id.* at 6-7.

^{xlvii} *Id.* at iii.

^{xlviii} *Id.* at 34.

^{xlix} *Id.* at 42.

^l *Id.*

^{li} Rebecca Ratcliffe, *A ‘Boys’ Club’: UN Agency Accused Over Sexual Harassment Claims*, THE GUARDIAN, Feb. 25, 2018, <https://www.theguardian.com/global-development/2018/feb/24/un-former-employee-call-for-inquiry-sexism-bullying-harassment>.

^{lii} *Id.*

^{liii} Rebecca Ratcliffe, *UN Suspends Key Witness in Alleged Sexual Assault Inquiry*, THE GUARDIAN, Apr. 30, 2018, <https://www.theguardian.com/global-development/2018/apr/30/un-suspends-key-witness-miriam-maluwa-unaid>.