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## Press Release - For Immediate Release

### **Punitive and Discriminatory Laws limit access to HIV prevention and care services for men having sex with men in Asia Pacific**

**Hong Kong, May 17, 2010** - More than 90 percent of men having sex with men in the Asia Pacific region do not have access to HIV prevention and care services. HIV prevalence has reached alarming levels among men who have sex with men and transgender populations in many countries of Asia and the Pacific. If countries fail to address the legal context of the epidemic, this already critical situation is likely to become worse. The implementation of effective, human rights-based national HIV responses requires governments to consider the effect of laws and law enforcement practices on the health of men who have sex with men (MSM) and transgender persons.

Coinciding with the International Day against Homophobia, this warning came as a key finding in the report on "Laws affecting HIV responses among men who have sex with men and transgender persons in Asia and the Pacific: an agenda for action". This forthcoming report with its key findings were reviewed today during the "High Level Dialogue on Punitive laws, Human rights and HIV prevention among men who have sex with men in the Asia Pacific Region" convened by the United Nations Development Programme (UNDP), the Asia Pacific Coalition on Male Sexual Health (APCOM) and the Center for Comparative and Public Law (CCPL) at the Faculty of Law, The University of Hong Kong.

The report showed that 19 of 48 countries in the Asia Pacific region criminalize male to male sex, and these laws often taken on the force of vigilantism, often leading to abuse and human rights violations. Even in the absence of criminalization, other provisions of law often violate the rights of MSM and transgender persons along with arbitrary and inappropriate enforcement, thereby obstructing HIV interventions, advocacy and outreach, and service delivery. This very debate was at the heart of the recent landmark ruling by the Delhi High Court that Section 377 of the Indian Penal Code unfairly discriminates against men who have sex with men and consenting adults in general.

Furthermore, the report found that legislation and law enforcement often lags behind national HIV policies, with the result that the reach and effectiveness of programs for MSM and transgender persons are undermined. This indicates the need for greater coordination between health and justice sectors within government. There has been growing awareness among national policy makers of the need to identify MSM as a key population to be addressed by national HIV programmes.

"The effectiveness of the HIV response will depend not just on the sustained scale up of HIV prevention, treatment and care, but on whether the legal and social environment support or hinder programmes for those who are most vulnerable" said Mandeep Dhaliwal, UNDP Cluster Leader on Human Rights, Gender & Sexual Diversity. "The development and strengthening of an enabling legal and social environment is critical for comprehensive interventions for men who have sex with men and transgender people to have the greatest impact."

Finally, the study highlighted that there are some recent examples of protective laws, judicial and policy actions to improve the legal environment for MSM and transgender people, including important court judgments in Nepal, India, Pakistan, Philippines, Fiji, South Korea and Hong Kong. However, these are exceptional developments and action is required to improve the legal environment in all countries. Developing strategic partnerships and alliances between affected communities, the legal profession, human rights bodies, parliamentarians and policy makers is critical.

The High Level Panelists, including former High Court Justices, and representatives from Parliament, civil society and the UN system, reviewed how comprehensive and rights based HIV prevention among men who have sex with men and transgender people can occur only when a conducive and enabling legal environment is created. This will allow for unimpeded dissemination of prevention messages and services; appropriate provision of treatment, care and support services; and confidence-building measures among the most marginalized and vulnerable to seek essential information and access services.

“A strategy of comprehensive, rights based HIV prevention requires bold and effective legal and policy measures to reach out to vulnerable communities and individuals at risk,” stated the Honourable Michael Kirby of Australia. “It is here that reform of laws and law enforcement practices affecting private, adult same sex activities must be seen as an imperative step in the path of reducing the isolation, stigma and vulnerability lived by communities and individuals. This will help enhance their self-respect and dignity as citizens and protect their legal rights, including receiving information on safer sex practices.”

Many national HIV policies now accord a priority to MSM, even though the legal environment remains repressive. Some 22 national HIV responses in the Asia and Pacific region have identified MSM as a most-at-risk or priority population for the purposes of HIV prevention and four countries have specific strategic plans or action plans on MSM and HIV (Cambodia, China, Indonesia and India). Furthermore, a successful, community led multi country proposal to the Global Fund to Fight AIDS, Tuberculosis and Malaria on MSM and HIV has been endorsed by seven countries in South Asia.

The Honorable Ajit Prakash Shah from India said, “If society can display inclusiveness and understanding, MSM and transgender persons can be assured of a life of dignity and non-discrimination. They cannot be excluded or ostracized merely because some of us perceive them as ‘deviants’ or ‘different’. We should not forget that discrimination is the antithesis of equality and that it is the recognition of equality which will foster the dignity of every individual.”

The preliminary findings reviewed at the High Level Dialogue are from a study commissioned by UNDP and APCOM. The study considered published research, legislation, legal cases, grey literature, and drew from two regional consultations with community representatives and legal experts. The final report of the study’s findings will be delivered at the XVIII International AIDS Conference, Vienna, at the session on Criminalizing Homosexual Behaviour: Human Rights Violation and Obstacles to Effective HIV/AIDS Prevention, 20 July 2010.

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