



## **Punitive laws and human rights violations limit access to HIV prevention and care services for men who have sex with men and transgender people in Asia Pacific**

**Vienna, 21 July 2010** – Some 19 of 48 countries in the Asia Pacific region continue to criminalize male-to-male sex, and these laws often taken on the force of vigilantism, frequently leading to abuse and human rights violations. Correspondingly, HIV prevalence has reached alarming levels among men who have sex with men and transgender populations in many countries of the region. If countries fail to address the legal and human rights context of HIV, this already critical situation is likely to become worse. The implementation of effective, national HIV responses requires governments to consider and address the effects of laws and law enforcement practices on the health of men who have sex with men and transgender people.

This warning came as a key finding in the report entitled *Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: An agenda for action*. Commissioned by the United Nations Development Programme (UNDP) and the Asia Pacific Coalition on Male Sexual Health (APCOM), this report and its key findings were presented during the session on *Criminalizing Homosexual Behavior: Human Rights Violation and Obstacles to Effective HIV/AIDS Prevention* at the XVIII International AIDS Conference in Vienna.

The study found that a range of laws, such as public order and vagrancy offences, are selectively enforced against men who have sex with men and transgender people in many countries of the region. Even in the absence of criminalization, the arbitrary and inappropriate enforcement of other legal provisions often violate the rights of men who have sex with men and transgender persons, thereby obstructing advocacy, outreach, and delivery of HIV and health services. This is among the issues that were at the heart of the 2009 landmark ruling by the Delhi High Court that Section 377 of the Indian Penal Code unfairly discriminates against men who have sex with men.

The report further found that legislation and law enforcement often lags behind national HIV policies, with the result that the coverage and effectiveness of programmes for men who have sex with men and transgender persons are undermined. This indicates the need for greater coordination between health and justice sectors within government and between government and communities. There has been growing awareness among national policy makers that men who have sex with men and transgender people are a key population requiring urgent attention in national HIV programmes.

The existence of punitive laws across the Asia Pacific Region along with selective, discriminatory enforcement practices continues to reduce the effectiveness of national HIV responses. According to Jeff O'Malley, Director of UNDP's HIV Practice, "repressive legal environments institutionalize discrimination, limit funding and in effect obstruct the participation of men who have sex with men and transgender people in protecting themselves and their families, friends and communities from HIV. In the context of HIV and in the context of human rights, we must continue to vigorously defend and promote rights based HIV, health and development policies and programme responses – this necessitates working to remove punitive laws and discriminatory practices."

The study highlighted that there are some recent examples of protective laws, judicial and policy actions to improve the legal environment for men who have sex with men and transgender people, including important court judgments in

Nepal, India, Pakistan, Philippines, Fiji, South Korea and Hong Kong SAR. However, these are exceptional developments and action is required to improve the legal environment in all countries.

“There is a way forward towards ensuring that all citizens of a country, irrespective of their sexual orientation or gender identity can access health services to prevent unnecessary infection,” said Shivananda Khan, Chair of APCOM. “Developing strategic partnerships and alliances between affected communities, the legal profession, human rights bodies, parliamentarians, policy makers and the media is critical.”

Many national HIV policies now accord a priority to men who have sex with men, even though the legal environment remains repressive. Some 22 national HIV responses in the Asia and Pacific region have identified men who have sex with men as a priority population for the purposes of HIV prevention and four countries have specific strategic plans or action plans on men who have sex with men and HIV (Cambodia, China, Indonesia and India). Furthermore, the Global Fund to Fight AIDS, Tuberculosis and Malaria is funding a regional multi-country programme in South Asia on men who have sex with men and HIV, which has been endorsed by seven South Asian countries.

“Comprehensive and rights-based HIV responses among men who have sex with men and transgender people can occur only when a conducive and enabling legal environment is created,” stated John Godwin, the report’s author. “This will allow for unimpeded dissemination of prevention messages and services; participation of men who have sex with men and transgender people in implementing peer-based prevention, care and support programs; greater uptake of testing and treatment; and confidence-building measures among the most marginalized and vulnerable to seek essential health promotion information and access services.”

The report is available for download at:

<http://regionalcentrebangkok.undp.or.th/practices/hivaids>

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