

Statement on Criminalization of HIV Transmission and Exposure

The UNAIDS Reference Group on HIV and Human Rights was established in 2002 to advise the Joint United Nations Programme on HIV/AIDS on all matters relating to HIV and human rights. The Reference Group speaks with an independent voice; thus, its views do not necessarily reflect the views of the UNAIDS Secretariat or any of the UNAIDS Cosponsors.

In August 2008, at the *XVII International AIDS Conference* in Mexico City, UNAIDS and UNDP released a policy brief on *Criminalization of HIV Transmission*.¹ The following month, the organizations released an accompanying document, the meeting report of the International Consultation on the Criminalization of HIV Transmission, held in Geneva from 31 October to 2 November 2007.² At the same time, UNAIDS and UNDP have supported the joint publication by a coalition of HIV, human rights, and gender organizations worldwide, entitled “*10 Reasons to Oppose Criminalization of HIV Exposure or Transmission*.”³ These publications respond to concerns regarding an increase in the number of countries passing HIV-specific provisions criminalizing HIV exposure and/or transmission, as well as an increasing number of prosecutions for HIV exposure or transmission in some parts of the world.

This statement by the UNAIDS Reference Group on HIV and Human Rights is issued to support the recent documents and their recommendations against overly broad criminalization of HIV exposure and/or transmission. These documents recognize that, in the overwhelming majority of cases, applying criminal law to HIV transmission or exposure does more harm than good. Rather than introducing laws criminalizing HIV exposure and transmission, countries need to change laws and policies that stand in the way of effective HIV prevention and treatment.

The Reference Group recognizes that the push to apply criminal law is often driven by the wish to respond to serious concerns about the ongoing spread of HIV. However, it agrees with UNAIDS and UNDP that governments should limit criminalization to cases of *intentional transmission of HIV*. When individuals *intend* to cause harm through HIV transmission and in fact do transmit the virus, their conduct and the harm caused justifies application of criminal laws. Existing criminal laws can be used in such cases. The creation of HIV-specific offenses is generally not warranted.

By endorsing the *Political Declaration on HIV/AIDS (2006)*, countries made major commitments regarding enacting and enforcing laws to protect the rights and address the needs of people vulnerable to and affected by HIV. Countries need to move quickly to reform laws and policies that stand in the way of evidence-informed prevention and treatment efforts. This includes:

¹ UNAIDS/UNDP. *Criminalization of HIV Transmission*. Geneva, 2008 (http://data.unaids.org/pub/BaseDocument/2008/20080731_jc1513_policy_criminalization_en.pdf).

² UNAIDS & UNDP. Summary of main issues and conclusions. International Consultation on the Criminalization of HIV Transmission, 31 October – 2 November 2007. Geneva, 2008 (http://data.unaids.org/pub/Report/2008/20080919_hivcriminalization_meetingreport_en.pdf).

³ OSI. *10 Reasons to Oppose the Criminalization of HIV Exposure or Transmission*. New York, 2008 (<http://www.soros.org/health/10reasons>).

- promoting a social and legal environment that is supportive of and safe for voluntary disclosure of HIV status;
- removing any legal barriers to provision of HIV prevention measures, including comprehensive age-appropriate sex education and harm reduction services, such as needle-exchange programs and opioid substitution treatment;
- enacting and enforcing comprehensive anti-discrimination laws that protect people living with HIV or at risk of infection;
- reviewing and, if necessary, repealing laws that criminalize or further marginalize vulnerable groups such as sex workers, people who use drugs, and men who have sex with men, driving them away from the prevention, treatment, care and support services they need; and
- reforming national intellectual property legislation to ensure that flexibilities in global trade rules (e.g., the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)) are incorporated into national laws and regulations without delay to promote access to affordable generic HIV pharmaceuticals.

Rather than focusing attention on ineffective and potentially counter-productive provisions criminalizing HIV exposure and/or transmission, governments should expand evidence-informed programmes that have been proven to reduce HIV transmission while protecting the human rights both of people living with HIV and those who are not HIV-infected. From this perspective, highest priority should be given to laws protecting women's full enjoyment of all human rights and their right to be free from violence. This recognizes that applying criminal law to HIV transmission does nothing to prevent the spread of HIV or to address the economic, social, and political marginalization that are at the root of gender-based violence and women's vulnerability to HIV. On the contrary, for the reasons outlined in the UNAIDS/UNDP policy brief, including the fact that women are often first to learn their status within a couple, these laws are likely to be used to prosecute women more often than men. Criminalization of HIV transmission and exposure also will not protect women from coercive or violent behavior, such as rape, that can transmit HIV. Indeed, many countries that already have strong anti-rape laws fail to enforce them. Instead of additional, ineffective HIV-specific laws that will be used against them, urgent efforts are need to ensure timely, effective, and aggressive prosecution of all forms of gender-based violence, and to ensure that victims of sexual violence receive post-exposure prophylaxis that will reduce their risk of contracting HIV.⁴

Such reform to laws and law enforcement must be accompanied by effective public education about non-discrimination and human rights in relation to HIV and by efforts to increase the capacity of individuals to vindicate their rights.

Donors and UN agencies need to prioritize efforts to provide the financial and technical support to countries to fulfill these human rights commitments expressed in the *Political Declaration*.

⁴ Ibid.