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**Statement by the Secretariat of the
Joint United Nations Programme on HIV/AIDS (UNAIDS)
and the United Nations Development Programme (UNDP)**

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Agenda Item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

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Mr President, distinguished delegates, ladies and gentlemen,

The UNAIDS Secretariat and UNDP thank the Human Rights Council for the opportunity to speak under this agenda item. As this Council knows, for almost 30 years, the world has sought the most effective response to the HIV epidemic. This challenge has repeatedly shown that a human rights-based approach to HIV is the most effective approach to HIV.

This fact has been long recognized by the Commission on Human Rights, this Council and by Member States.¹ This is because human rights and legal protections are essential to enable people to get the HIV information and services they need, to avoid infection, and if HIV positive to disclose their status and get treatment. It is even more critical to get those living with HIV on treatment as the latest science shows that treatment reduces HIV transmission by 92% at the population level², and can have even greater impacts for individuals.³

Many States continue to criminalize sexual minorities, people who use drugs, people who engage in sex work, as well as people living with HIV. The result is that thousands of people fear or are unable to get tested for HIV, to disclose their HIV status, to access HIV prevention, treatment and care. This puts both these groups and the larger public at risk. Under these circumstances, universal access to HIV prevention, treatment, care and support will not be realised; and we will not achieve many of the Millennium Development Goals.

Because of this, the Executive Director of UNAIDS, Michel Sidibé, has made one of the corporate priorities of UNAIDS to support countries to “remove punitive laws, policies, practices, stigma and discrimination that block effective AIDS responses.”⁴

¹ See resolutions by the Commission on Human Rights and Human Rights Council Resolution A/HRC/RES/12/27. States have committed themselves in to protect the rights of people living with HIV and those vulnerable to HIV; to address HIV-related stigma, discrimination, gender inequality and violence against women; to create a legal and social environment safe for voluntary disclosure of HIV status and to reach universal access to HIV prevention, treatment, care and support. For these commitments and others, see the 2001 *Declaration of Commitment on HIV/AIDS* (UN Document A/RES/S-26/2; available on-line at <http://www.un.org/ga/aids/docs/aress262.pdf>) and the 2006 *Political Declaration on HIV/AIDS* (UN Document A/RES/60/262; available on-line at http://data.unaids.org/pub/Report/2006/20060615_hlm_politicaldeclaration_ares60262_en.pdf).

² Deborah Donnell, Jared M Baeten, James Kiarie, Katherine K Thomas, Wendy Stevens, Craig R Cohen, James McIntyre, Jairam R Lingappa, Connie Celum, for the Partners in Prevention HSV/HIV Transmission Study Team (2010), “Heterosexual HIV-1 transmission after initiation of antiretroviral therapy: a prospective cohort analysis”, *Lancet* doi:10.1016/S0140-6736(10)60705-2.

³ The Swiss National AIDS Commission (EKAF) has stated that “an HIV-infected person on antiretroviral therapy with completely suppressed viraemia (‘effective ART’) is not sexually infectious, i.e. cannot transmit HIV through sexual contact.” However, the Commission qualifies its statement, noting that it is considered valid only so long as: (a) the person adheres to antiretroviral therapy, the effects of which must be evaluated regularly by the treating physician, and (b) the viral load has been suppressed (< 40 copies/ml) for at least six months, and (c) there are no other sexually transmitted infections. See P Vernazza *et al* (2008), “Les personnes séropositives ne souffrant d’aucune autre MST et suivant un traitement antirétroviral efficace ne transmettent pas le VIH par voie sexuelle”, *Bulletin des médecins suisses* 89:165-169. Available on-line at http://www.saez.ch/pdf_f/2008/2008-05/2008-05-089.PDF

⁴ Joint Action for Results: UNAIDS Outcome Framework 2009–2011. Available on-line at http://data.unaids.org/pub/Report/2010/jc1713_joint_action_en.pdf

For these reasons, the UNAIDS Secretariat and UNDP welcome the report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health. We hope it will help to generate constructive debate, and catalyse change toward a more rights-based and effective AIDS response.

The report of the Special Rapporteur underlines how the criminal law, when misused, can and does have a very negative impact on the right to health. When the criminal law is applied to adults engaging in private consensual sexual behavior – whether in the context of same-sex sexual orientation or in the context of the exchange of money for sex – it also violates the rights to privacy and liberty and acts as a major impediment to HIV prevention and treatment. Where overly broad criminal laws are applied to people living with HIV, the impact is in direct contradiction to public health efforts to encourage people to come forward to get on treatment and practice safe sex, and reduce HIV transmission in the context of drug use.

The UNAIDS Secretariat and UNDP are fully aware that, in many societies, these issues are the subject of much social, cultural and religious debate. However, the UNAIDS Secretariat and UNDP are concerned that criminalization of aspects of private, consensual adult sexual conduct singles out particular groups for invidious treatment, undermines individual and public health, and transgresses various international human rights norms. Thus, for public health and human rights reasons, the UNAIDS Executive Director and the United Nations Secretary General have called for the removal of punitive laws, policies and practices that hamper the AIDS response. Successful AIDS responses do not punish people, they protect them.

UNDP, on behalf of UNAIDS, is launching the *Global Commission on HIV and the Law*, which comprises public leaders from across the globe and will be supported by experts on HIV, law, human rights and public health. This Commission will marshal the evidence of enabling versus punitive laws on HIV responses, hold regional hearings, and issue evidence-informed recommendations. The UNAIDS Secretariat and UNDP greatly hope that this Commission will help States and civil society to better use law, law enforcement and access to justice to protect *all* people from HIV and its impact, as well as from human rights violations in the context of HIV. We look forward to bring to the Council the findings of the Commission at the end of 2011.

Thank you.