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Statement by Anand Grover

**SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE
ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF
PHYSICAL AND MENTAL HEALTH**

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Mr. Chairperson,

Distinguished Delegates,

Ladies and Gentlemen,

It is my pleasure to address you in my capacity as the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health – what we more simply refer to as the “right to health”.

Since October 2010, I have undertaken a number of activities to develop the mandate further and to examine, monitor and publicly report on the issues related to the right to health globally. I completed country missions to the Syrian Arab Republic in November 2010 and to Ghana in May 2011. I submitted reports on the right to health and development (A/HRC/17/25) and on the expert consultation on access to medicines as a fundamental component of the right to health (A/HRC/17/43) to the Human Rights Council at its seventeenth session, held in June 2011. I convened an expert consultation and held a public consultation in April 2011, which informed my report on the right to health of older persons submitted to the Council at its eighteenth session, in September 2011 (A/HRC/18/37).

I have contributed to a number of meetings and conferences on the right to health, including the meeting on human rights and the Global Fund to Fight AIDS, Tuberculosis and Malaria, organized by the Open Society Institute/Joint United Nations Programme on HIV/AIDS (UNAIDS) in New York in March 2011. I also held three regional civil society consultations in Nairobi, for East Africa; in Budapest, for Eastern Europe; and in Moscow, for the Russian Federation and Central Asia.

Mr. Chairperson,

My present report focuses on the interaction between criminal laws and other legal restrictions relating to sexual and reproductive health and the right to health. The right to sexual and reproductive health is a fundamental component of the right to health. The International Covenant on Economic, Social and Cultural Rights emphasizes aspects of the right to sexual and reproductive health in article 12.2(a). General Comment No. 14 of the Committee on Economic, Social and Cultural Rights explains that the right to health includes: measures to improve child and maternal health; sexual and reproductive health services, including access to family planning, prenatal and post-natal care, emergency obstetric services; and access to sexual and reproductive health information. Several other international norms acknowledge the importance sexual and reproductive health rights as well. States must therefore ensure that this aspect of the right to health is fully realized.

Around the world, people's lives are impacted every day by criminal laws and other legal restrictions affecting sexual and reproductive health. Women and girls are more likely to experience infringements on their right to sexual and reproductive health given the physiology of human reproduction and the gendered social, cultural and economic context in which sexuality, fertility, pregnancy and parenthood occur. Laws regulating sexual and reproductive health may violate the right to health by restricting access to quality goods, services and information. These laws may inappropriately restrict the freedoms to which people are entitled under the right to health, when they undermine their ability to make important decisions about their bodies and how they choose to plan their lives. Moreover, the application of such laws as a means to achieving certain public health outcomes is generally ineffective. Criminalization of sexual and reproductive health generates and perpetuates stigma. It distorts perceptions among health-care professionals, which as a consequence

further hinders access to health-care services. Where the criminal law is used as a tool by the State to regulate the conduct and decision-making of individuals in the context of sexual and reproductive health, the State coercively substitutes its judgment for that of the individual. The State's interference in such an intimate area of people's lives can infringe human dignity and autonomy and must thus be kept to an absolute minimum.

It is in that context that my present report considers the impact of criminal and other legal restrictions on the following health services and activities: the provision of sexual and reproductive education and information; contraception and family planning; abortion; and conduct during pregnancy.

The provision of comprehensive education and information on sexual and reproductive health is an essential component of the right to health. Adequate knowledge about sexual and reproductive health has proven to be effective in lowering rates of maternal mortality; preventing unintended pregnancies, unsafe abortion, HIV/AIDS and other sexually transmitted infections; and delaying the onset of sexual intercourse. Women and girls are impacted disproportionately by legal restrictions to comprehensive sexual and reproductive health education and information. This makes them less prepared for their sexual and reproductive lives. As a result, women and girls are more vulnerable to coercion, abuse and exploitation, as well as to an increased risk of unintended pregnancy, unsafe abortion, maternal mortality, HIV/AIDS and other sexually transmitted infections. States must remove criminal and other laws restricting access to comprehensive education and information on sexual and reproductive health.

In many States, access to family planning goods and services is severely curtailed by criminal laws and other legal restrictions. In these jurisdictions, women and men lack access to safe and effective contraception and are denied the freedom to decide whether or not to reproduce. Family planning empowers people to make autonomous and informed choices about their sexual and reproductive health. Evidence shows that access to voluntary family planning can reduce maternal deaths by between 25 and 40 percent. Male condom use not only results in lower incidences of sexually transmitted infections, but, when used correctly and consistently, male condoms are 98 per cent effective toward preventing pregnancy. Criminal laws and other legal restrictions that reduce or deny access to family planning goods and services, including emergency contraception, violate the right to health and reflect discriminatory notions of women's roles in the family and society.

Criminal laws penalizing and restricting induced abortion provide examples of State interference with women's right to health. Such laws restrict women's control over their bodies and require that they continue unplanned pregnancies and give birth when it is not their choice to do so. Criminal restrictions undermine women's dignity and infringe upon their autonomy. At the same time, criminalization generates and perpetuates the stigmatization and marginalization of women. As such, these laws should be eliminated.

As evidence shows, de-criminalization saves lives. Criminal laws that restrict women's access to abortion consistently result in poor physical and mental health for women, in many cases leading to preventable deaths, including suicides. In practice, criminal laws primarily determine whether abortion is safe or unsafe, as they are ineffective in discouraging women from seeking the procedure. A greater number of unsafe abortions are likely to occur if there are restrictions on abortion because

women are forced to seek out unsafe abortions in highly dangerous, clandestine situations in order to avoid criminal sanction. Unsafe abortions are estimated to account for nearly 13 per cent of all maternal deaths globally and result in short- and long-term injuries to approximately 5 million women and girls.

Some States have proposed or enacted criminal laws and other legal restrictions that prohibit certain forms of conduct during pregnancy. Criminal laws have been used to prosecute women for such conduct as the use of illegal drugs and alcohol, failure to follow doctor's orders, and failure to refrain from sexual intercourse during pregnancy. Under fear of criminal prosecution, women may be deterred from accessing health services as well as pregnancy-related information. Criminalization of conduct during pregnancy impedes access to health-care goods, services and information, and thus infringes the right to health of pregnant women.

My report details fourteen recommendations for States toward applying a right-to-health approach. States are encouraged to undertake these reforms in order to develop and implement policies and programs relating to sexual and reproductive health as required by international human rights law. Among these recommendations are the following:

- Decriminalize the provision of information relating to sexual and reproductive health, including evidence-based sexual and reproductive health education;
- Decriminalize the supply and use of all forms of contraception and voluntary sterilization for fertility control and remove requirements for spousal and/or parental consent;
- Suspend or abolish the application of existing criminal laws to various forms of conduct during pregnancy, such as conduct related to treatment of the

foetus, most notably miscarriage, alcohol and drug consumption and HIV transmission;

- Decriminalize abortion, including related laws, such as those concerning abetment of abortion; and
- Ensure that accurate, evidence-based information concerning abortion and its legal availability is publicly available and that health-care providers are fully aware of the law related to abortion and its exceptions.

Distinguished Delegates,

I would like to turn now to the priority areas identified for 2012. I intend to continue my current programme of regional consultations to further disseminate information regarding the right to health, seek information from Governments and civil society groups, and raise awareness about the mechanism for receiving individual complaints. In addition to the consultations in Southern Africa in January 2012, I also hope to participate in the regional consultations for Southeast Asia to be held later in 2012. After a country visit to Vietnam in November 2011, I am also planning to conduct country missions to Azerbaijan, South Korea and Tajikistan, subject to the finalisation of the final dates with the respective Governments.

Mr Chairperson,

I appreciate that in many societies the issues my report addresses are challenging. At the same time, these issues are extremely important to ensure the full enjoyment of human rights for many, and for women and girls in particular. We must therefore be ready to address these sensitive issues. Each society must determine the way forward that best fits its own circumstances, keeping in mind its obligations under the right to health. I stand ready to engage in further dialogue to facilitate this process.

Thank you.

