Unit 2C09, South Bank Technopark, 90 London Road,
SE1 6LN, United Kingdom.
Telephone: +44 (0)207 717 1592 Fax: +44 (0)207 922 8822
Email: info@ihra.net Web: www.ihra.net

15th May 2015

Submission: Impact of the world drug problem on the enjoyment of human rights

Referring to para. 1 of the Human Rights Council Resolution A/HRC/28/L.22 **Harm Reduction International,** the **Eurasian Harm Reduction Network,** the **Canadian HIV/AIDS Legal Network,** the **Harm Reduction Coalition, Intercambios,** the **International HIV/AIDS Alliance,** the **International Drug Policy Consortium,** the **International Network of People who Use Drugs,** the **Middle East and North African Harm Reduction Association** and the **Open Society Foundations** welcome the opportunity information relating to 'the impact of the world drug problem on the enjoyment of human rights, and recommendations on respect for and the protection and promotion of human rights in the context of the world drug problem, with particular consideration for the needs of persons affected and persons in vulnerable situations'.

This submission will focus on the human rights impact of current drug policies on the health and human rights of people who use drugs with a particular focus on harm reduction services.

It is estimated that between 8.9 and 22.4 million people inject drugs in 158 countries and territories around the world. Outside of sub-Saharan Africa, up to 30% of all HIV infections are amongst people who inject drugs and are a direct result of a lack of access to sterile injecting equipment. Despite unequivocal evidence in favour of harm reduction as an effective HIV prevention strategy, and despite endorsements of the approach by UNAIDS, WHO and UNODC, the global level of provision of adequate, accessible, acceptable harm reduction services is poor, especially in those countries where such services are needed most.

Human rights abuses against people who use drugs, which impede HIV prevention, treatment and care efforts, are widespread and systemic, and are often driven or justified on the basis of States fulfilling their obligations under the three international drug control conventions. These include denial of life-saving needle and syringe programmes, denial or restriction of opioid substitution therapy, discrimination in accessing antiretroviral therapy (ART), abusive law enforcement practices, mass detention, disproportionate criminal penalties, and coercion and abuse in the name of treatment for drug dependence. Sub-groups amongst people who inject drugs, including those in detention, young people and women, face even greater barriers to access to rights- based harm reduction programmes and are rarely provided with specific services that meet their needs. In many contexts they are explicitly denied access to these services, and face specific and additional human rights violations on the basis of their drug use.[1]

The widespread domestic use of criminal law and (often severe) penal sanctions as tools for drug control or suppression flow directly from State obligations within the international drug control regime, creating an environment of systemic human rights risk. Despite these connections between drug control, human rights and HIV, the United Nations drug control and human rights regimes have developed in what the former UN Special Rapporteur on the right to health, Paul Hunt, has described as 'parallel universes'[2]. The drug control bodies rarely discuss human rights and the human rights bodies and mechanisms, in turn, have rarely focused on drug policy. The result is an international system and policy environment where significant human rights violations, many impeding HIV prevention efforts, fall between these two separate regimes, unaddressed and largely ignored. As was observed by Professor Hunt, the 'widespread, systemic abuse of human rights the human rights abuses to which they are subject are [met with] no public outrage, no public outcry, no public inquiries […] the long litany of abuse scarcely attracts disapproval. Sometimes it even receives some public support'.

[1] For details of the specific human rights violations to which women who use drugs are subjected to in the USA, see International Network of People who Use Drugs, National Advocates for Pregnant Women, Women and Harm Reduction International Network, Sexual Rights Initiative, Family Law & Cannabis Alliance, Sister Reach, Native Youth Sexual Health Network, (2014), 'Submission to the Universal Periodic Review of United States of America'.
[2] Paul Hunt, , 'Human Rights, Health, and Harm Reduction: States' amnesia and parallel universes', Harm Reduction International, 2008.

The human rights entities within the UN system therefore have an important role to play in addressing these systemic gaps.

Harm reduction and human rights

> *Individuals who use drugs do not forfeit their human rights…. Too often, drug users suffer discrimination, are forced to accept treatment, marginalized and often harmed by approaches which over-emphasize criminalization and punishment while under -emphasizing harm reduction and respect for human rights.*
>
> *Navi Pillay*
> *(former) UN High Commissioner on Human Rights*[3]

People who use illicit drugs do not surrender their rights simply because of the illegal status of these substances. They maintain all rights including the right to the highest attainable standard of heath. Access to harm reduction programmes and services, including needle and syringe programmes and opioid substitution therapy (OST), is increasingly accepted as a component element of the right to heath in international law. People who use drugs are also entitled to protections of their rights to privacy, freedom from cruel, inhuman and degrading treatment, freedom of information, freedom to form and register organisations—all of which are routinely violated in the name of drug control.

Within the UN human rights system, harm reduction approaches have increasingly received explicit endorsement, including by the Committee on Economic, Social and Cultural Rights,[4] the Committee on the Rights of the Child,[5] the Office of the High Commissioner for Human Rights[6] and the Special Rapporteurs on Health[7] and on Torture.[8]

For example, in its November 2006 Concluding Observations on Tajikistan, the UN Committee on Economic, Social and Cultural Rights expressed concern at 'the rapid spread of HIV in the State party, in particular among drug users, prisoners, [and] sex workers', and specifically called upon the government to 'establish time-bound targets for extending the provision of free...harm reduction services to all parts of the country'.[9] In 2007, the Committee raised similar concerns in its report on Ukraine, stating it was 'gravely concerned about the high prevalence of HIV/AIDS epidemic in the State party, including among...high risk groups such as sex workers, drug users and incarcerated persons...and the limited access by drug users to substitution therapy'. The Committee recommended that the government 'make drug substitution therapy and other HIV prevention services more accessible for drug users'.[10]

In 2007, the UN Special Rapporteur on the Right to Health stated that harm reduction is not only an essential public health intervention, but that it 'enhances the right to health' of people who inject drugs.[11] In his 2010 annual report, the Special Rapporteur recommended that Member States 'Ensure that all harm-reduction measures (as itemized by UNAIDS) and drug-dependence treatment services, particularly opioid substitution therapy, are available to people who use drugs, in particular those among incarcerated populations'.[12] In a 2009 statement, the High Commissioner for Human Rights recognised 'the longstanding evidence that a harm reduction approach is the most effective way of protecting rights, limiting personal suffering, and

---

[3] 'High Commissioner calls for focus on human rights and harm reduction in international drug policy', United Nations Press Release, 10 March 2009.

[4] See, for example, UN Committee on Economic, Social and Cultural Rights, 'Concluding Observations: Tajikistan' (24 November 2006) UN Doc No E/C.12/TJK/CO/1, para 70.; 'Concluding Observations: Ukraine', (23 November 2007) UN Doc No E/C.12/UKR/CO/5, para. 28.

[5] UN Committee on the Rights of the Child, 'Concluding observations: Ukraine' (21 April 2011) UN Doc. No. CRC/C/UKR/CO/3-4, para. 60(a).

[6] Office of the UN High Commissioner for Human Rights, 'High Commissioner calls for focus on human rights and harm reduction in international drug policy', statement of 10 March 2009.

[7] UN Human Rights Council, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Mission to Sweden' (28 February 2007) UN Doc No A/HRC/4/28/Add.2, para 60.; UN General Assembly, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (6 August 2010) UN Doc. No. A/65/255, paras. 50-61.

8 UN Human Rights Council, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak' (14 January 2009) UN Doc. No. A/HRC/10/44, para. 74(a-c).

9 UN Committee on Economic, Social and Cultural Rights, 'Concluding Observations: Tajikistan' (24 November 2006) UN Doc No E/C.12/TJK/CO/1, para. 70.

10 UN Committee on the Rights of the Child, 'Concluding observations: Ukraine' (21 April 2011) UN Doc. No. CRC/C/UKR/CO/3-4, para. 60(a).

[11] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Mission to Sweden' (28 February 2007) UN Doc No A/HRC/4/28/Add.
2, para 60.

[12] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (6 August 2010) UN Doc. No. A/65/255, para 76.

reducing the incidence of HIV. Let me stress that this is particularly the case for those in detention, who are already vulnerable to many forms of human rights violations'.[13]

The widepread use of domestic criminal law and penal sanctions as tools for drug control have resulted in rising prison populations around the world, further isolating most people who use drugs from harm reduction services. Given the incerased duty of care upon States owed to persons deperived of liberty, and the positive obligations to safeguard the lives, health and well-being of persons in custody, the failure to provide access to harm reduction measures engages multiple human rights obligations, including the rights to life and health, and the prohibition of inhuman or degrading treatment.[14] Indeed, it has been argued that fundamental nature of this duty of care places increased obligations upon States to respond to the health needs of persons deprived of liberty.[15] Therefore, issues of access to harm reduction and HIV services among detained populations is a matter of great urgency.

In the context of drug control, human rights abuses linked to detention are evident even when 'non-penal' sanctions are invoked, such as detention for 'drug treatment'. The 2013 thematic report of the Special Rapporteur on torture, Juan Mendéz, noted the abusive nature of compulsory detention of people who use drugs in the name of treatment, frequently in facilities offering no evidence-based services and instead subjecting people to forced labor and physical and emotion humiliation that Mendez characterized as 'egregious physical and mental abuse' that may rise to the level of torture.[16] Similarly, the former Special Rapporteur on the right to health, Anand Grover, has also condemned 'compulsory [drug] treatment programmes that primarily utilize disciplinary interventions, disregarding medical evidence', and noted forced labor, flogging, solitary confinement and other punishments in the guise of treatment as gross violations of human rights.[17]

Significantly, there is nothing within international drug control law, as codified in the three UN drug control treaties, that legally prohibit States from providing harm reduction services, and key elements of the harm reduction response are endorsed by both the International Narcotics Control Board[18] and the UN Office on Drugs and Crime. Significantly, a 2002 written opinion produced at the request of the International Narcotics Control Board by the Legal Affairs Section of the UN Drug Control Program (the forerunner of the Office on Drugs and Crime) concluded that harm reduction programmes, including safe injecting facilities, were legal under the drug conventions.[19]

Given the lack of prohibitions to harm reduction within the drug treaties, and the explicit endorsement of harm reduction within the UN human rights system, provision of harm reduction services cannot be seen as a policy option at the discretion of States, but must instead be understood as a core obligation of States to meet their international legal obligations.

[13] 'High Commissioner calls for focus on human rights and harm reduction in international drug policy', United Nations Press Release, 10 March 2009.
[14] Rick Lines, 'The right to health of prisoners in international human rights law', International Journal of Prisoner Health, 2008, 4(1):3-53.
[15] Rick Lines, 'From equivalence of standards to equivalence of objectives: The entitlement of prisoners to health care standards higher than those outside prisons', International Journal of Prisoner Health , December 2006, 2(4): 269-280.
[16] UN Human Rights Council, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. (1 February 2013) UN Doc. No. A/HRC/22/53.
[17] UN General Assembly, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (6 August 2010) UN Doc. No. A/65/255.
[18] International Narcotics Control Board, 'Report of the International Narcotics Control Board for 1993' (1994) UN Doc. No. E/INCB/1993/1, para. 29.; International Narcotics Control Board, 'Report of the International Narcotics Control Board for 2004' (2005) UN Doc. No. E/INCB/2004/1, p. iv.
[19] Legal Affairs Section, UN Drug Control Program, 'Flexibility of Treaty Provisions as Regards Harm Reduction Approaches' (20 September 2002) UN Doc. No. E/INCB/2002/W.13/SS.5.