

**Report to the International Committee on Economic,
Social and Cultural Rights
on the implementation by Ukraine of article 12 of the International Covenant on Economic,
Social and Cultural Rights as it relates to access of people who inject drugs to drug to
health services.**

The report was prepared by the International AIDS Alliance in Ukraine in consultation with NGOs and experts involved in HIV and human rights in Ukraine and the Canadian HIV/AIDS Legal Network. For contacts: Pavlo Skala skala@aid alliance.org.ua

At the outset of this report, we would like to commend the Government of Ukraine for its continuous implementation of internationally recommended and evidence based drug dependence treatment programs such as opioid substitution therapy (OST) and other health services aimed at reducing the adverse consequences of illicit drug use, including HIV. We welcome the overall Government's commitment to fight HIV/AIDS, including in the most vulnerable groups of population, such as people who inject drugs (§§ 429-464 of the Six Periodic Report of Ukraine).

We would like to welcome the recent adoption by the Government of Ukraine of the national Drug Strategy in line with Ukraine's international human rights obligations¹.

Having said this, we remain deeply concerned about the current inconsistency of the Ukrainian drug and health policies and practices, when the results of some positive undertakings (such as the introduction and expansion of OST and needle and syringe programs (NSP) for drug dependence treatment) are nullified by counterproductive discriminatory measures (such as draconian drug laws and arbitrary law enforcement practices) or put at significant risk due to lack of the state financial support. It is against the backdrop of these concerns that the present report is framed.

Connection of this report with the 2007 Concluding Observations

We would like to refer to the following paragraphs of the Committee's 2007 Concluding Observations on Ukraine:

28. The Committee is gravely concerned at the high prevalence of HIV/AIDS in the State party, including among women; discrimination against persons with HIV/AIDS and high-risk groups such as sex workers, drug users and incarcerated persons; disclosure of information about their HIV status by law enforcement agencies, healthcare and educational institutions; and the limited access by drug users to substitution therapy.

51. The Committee recommends that the State party continue its efforts and take urgent measures to improve the accessibility and availability of HIV prevention to all the population and the treatment, care and support of persons living with HIV/AIDS, including in prisons and detention centres, combat discrimination against persons living with HIV/AIDS and high risk groups, ensure the confidentiality of information about a person's HIV status, and make drug substitution therapy and other HIV prevention services more accessible for drug users.

Focus of the report.

From the broad range of issues covered by the article 12 of the International Covenant on Economic, Social and Cultural Rights ("the International Covenant") this report specifically focuses on access to health services for people who inject drugs, particularly, drug treatment, prevention and treatment of HIV, hepatitis C and tuberculosis. The issues of so-called primary drug prevention have not been considered within the purview of this report.

Recommendations to the Government of Ukraine

¹ Decree of the Cabinet of Ministers of 07 August 2013 No 735-p. <http://zakon4.rada.gov.ua/laws/show/735-2013-%D1%80/print1360165899975385>

- Introduce appropriate amendments to criminal laws and ministerial regulations and adjust the threshold quantities of narcotic drugs for the purpose of criminal prosecution to stop subjecting people who use drugs to disproportionately tough punishment, especially incarceration, for possession of illicit drugs for personal use. In particular, repeal the Ukrainian Ministry of Health Resolution No. 188, dated 2 August.2000, as amended by the Ukrainian Ministry of Health Resolution No. 634, dated 29 July 2010.
- Provide adequate financial support for opioid substitution therapy (OST), needle and syringe programs (NSP) and other key interventions for HIV prevention in order to meet the international recommended standards².
- Repeal the Ministry of Health Resolution No 200, dated 27 March 2012, and adopt regulations which would provide for take home OST medications and availability of OST medications in pharmacies, ensure the adequate geographical coverage, avoid discrimination of OST patients in labour market and private life, and lift unnecessary administrative barriers for prescription of OST medications to all in need.
- Ensure that OST is available for drug dependence treatment in closed settings, including all prisons, police custody and pre-trial detention centers.
- Ensure that state regulations do not obstruct NGOs to run NSP. In particular amend the Ministry of Health Order No 223 of 22 October 1993 «On collection, disinfection and surrender of single use plastic medical equipment» to lift unnecessary barriers for NGOs to collect used and contaminated syringes from NSP clients.

Proposed items for inclusion into the List of issues for the Government of Ukraine

1. Taking into account the Ukrainian Ministry of Health Resolution No. 188, dated 2 August.2000, as amended by the Ukrainian Ministry of Health Resolution No. 634, dated 29 July 2010, please provide the Committee with an information about how the State party ensures that the established threshold quantities of narcotic drugs for the purpose of criminal prosecution do not subject people who use drugs to disproportionately tough punishment, especially incarceration, for possession of illicit drugs for personal use.
2. Provide the Committee with the information regarding the state's financial support of HIV prevention programs, in particular OST and NSP.
3. Taking into account the Ministry of Health Resolution No 200, dated 27 March 2012, please provide the Committee with information on whether or not the state authorities have an intention to set up a legal framework to facilitate OST programs in line with WHO recommendations.
4. Please provide the Committee with information whether or not OST is available for drug dependence treatment in closed settings, including all prisons, police custody and pre-trial detention centers.
5. Please provide the Committee with information on whether or not the health authorities have any intention to amend the Ministry of Health Order No 223 of 22 October 1993 «On collection, disinfection and surrender of single use plastic medical equipment» to lift unnecessary barriers for NGOs to collect used and contaminated syringes from NSP clients.

Information about drug use

People who use drugs in Ukraine: highly criminalized and disproportionately represented in the country's prison population

² WHO, UNODC and UNAIDS. *Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users* (WHO, 2009).

As of 1 July 2012, about 18% of the prison population in Ukraine was composed of people convicted for drug crimes (21,300 out of 118,909)³. Every 6th person convicted in 2011 in Ukraine was convicted for drug crimes (25,457 out of total 154,356). More than 55% of all drug crimes were crimes of possession for personal use⁴.

Vulnerability to HIV/AIDS for people who inject drugs (PWID)

Sharing non-sterile injecting paraphernalia among PWID is the key driver of HIV (55% of all officially registered cases as of January 2012) as well as hepatitis C in Ukraine. The estimated number of opiate-injecting users in 2011 was 250,000 individuals. The HIV prevalence rate among PWID in 2011 was 21.5% (confidence interval [c.i.], 20.6 – 22.8). In 2008 and 2009 HIV prevalence rate was 22.9% (c.i., 21.9% – 23.9%)⁵.

Vulnerability to tuberculosis for people living with HIV/AIDS (PLWHA)

As of 1 April 2012, there were 6,890 PLWHA in prisons in Ukraine and 4,834 people with tuberculosis⁶. Due to the high prevalence of tuberculosis in prisons and the high prevalence of HIV among them, people who use drugs are extremely vulnerable to tuberculosis; for some of them, long imprisonment equals a death sentence.

The importance of effective drug dependence treatment to address prison overcrowding and HIV prevention among people who inject drugs

In Ukraine opioids are by far one of the main drugs of choice for people who use drugs. Many of them use opioids intravenously and develop certain level of drug dependence. The World Health Organization (WHO) considers OST as one of the most effective types of opioid dependence treatment, as it greatly reduces heroin and other illicit opioid use, as well as criminal behaviour among drug dependent people⁷. A review of literature conducted by the UN Office on Drugs and Crime (UNODC) clearly demonstrates the effectiveness of OST in crime prevention and thus in reducing the number of people going to jail for drug crimes and drug-related crimes (for example acquisitive crimes)⁸. WHO, UNODC and the UN Joint Programme on HIV/AIDS (UNAIDS) list OST as well as needle and syringe programs (NSP) as a mandatory part of a comprehensive package for HIV prevention among PWID, including in prison settings⁹.

Research demonstrates that drug dependence treatment is more effective than cycling people in and out of prison¹⁰. Research also shows that repressive policies towards drug users do not

³ Official statistics of the State Penitentiary Service of Ukraine. 5 July 2012. Accessible via <http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/628075>

⁴ Comments provided by the Representative of the International HIV/AIDS Alliance in Ukraine, Pavlo Skala, during a press conference on 21 May 2012. Accessible via http://www.yurincom.com/ru/legal_news/?id=11324

⁵ Ministry of Health of Ukraine (2012). "Ukraine harmonized AIDS response progress report".

Reporting period: January 2010- December 2011. Kyiv. p.p. 27, 46
http://www.unaids.org/en/dataanalysis/monitoringcountryprogress/progressreports/2012countries/ce_UA_Narrative_Report%5B1%5D.pdf

⁶ Official statistics of the State Penitentiary Service of Ukraine. 5 July 2012. Accessible via <http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/633088>

⁷ Guidelines for Psychosocially Assisted Pharmacological Treatment of Opioid Dependence. WHO, 2009. Page XI

⁸ Opioid Substitution Therapy: Research Review on Effectiveness in Crime Prevention. UNODC. Moscow, 2007.

⁹ WHO, UNODC, UNAIDS. Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users. WHO. Geneva, 2009.

¹⁰ Doug McVay, Vincent Schiraldi, and Jason Ziedenberg. *Treatment or Incarceration? National and State Findings on the Efficacy and Cost Savings of Drug Treatment Versus Imprisonment*. Justice Policy Institute. January, 2004.

significantly reduce the level of drug use¹¹, nor do they reduce access to illegal narcotic drugs¹². According to UNODC, “addiction is a health condition and those affected by it should not be imprisoned”¹³. WHO and UNODC advise that “drug use should be seen as a health care condition and drug users should be treated in the health care system rather than in the criminal justice system where possible”¹⁴.

Steps undertaken by Ukraine contrary to obligations under Article 12 of the International Covenant.

No financial support for key interventions for HIV prevention among PWID.

Article 12.2 (c) of the International Covenant stipulates the right to prevention, treatment and control of diseases, including HIV/AIDS. According to the CESCR General Comment No 14, the obligation to fulfil the right to health requires States to adopt appropriate budgetary measures towards the full realization of the right to health¹⁵.

Despite these international obligations, the national response to HIV/AIDS in Ukraine, especially the prevention measures, continues to rely heavily on international financial support. The major share of the state financial allocations for HIV/AIDS is for treatment with less than 1/3 allocated for HIV prevention¹⁶. The biggest part of HIV prevention activities is covered by external donors such as the Global Fund to Fight AIDS, Tuberculosis, and Malaria. Contrary to the State’s obligations under article 12.2(c) of the International Covenant the national HIV/AIDS program for 2009-2013 does not stipulate any state funding for the most effective and internationally recommended HIV prevention activities such as OST and NSP.

Toughening punishment for people who use drugs and policing of drug laws at the expense of health services.

According to CESCR General Comment No 14 the obligation to respect the right to health requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. As part of the specific obligations to respect States shall refrain from adopting and enforcing discriminatory practices as State policy¹⁷.

However the state authorities in Ukraine continue adopting and enforcing highly discriminatory policies against people who use drugs.

¹¹ L. Degenhardt, W-T Chiu, N. Sampson et al., “Toward a global view of alcohol, tobacco, cannabis, and cocaine use: Findings from the WHO World Mental Health Surveys,” *PLOS Medicine* 2008;5:1053-67.

A similar finding is contained in UK Drug Policy Commission’s “Submission to the Sentencing Advisory Panel: drug offences”. July, 2009.

¹² United States Office of National Drug Control Policy. The Price and Purity of Illicit Drugs: 1981 through the Second Quarter of 2003; Reuter P. Ten years after the United Nations General Assembly Special Session (UNGASS): assessing drug problems, policies and reform proposals. *Addiction* 2009;104:510-7.; Peter Reuter (RAND) and Franz Trautmann (Trimbos Institute) A report on Global Illicit Drugs Markets 1998-2007, European Communities, 2009.

¹³ A.M. Costa, UNODC Executive Director. Preface to the World Drug Report for 2009. P.2

¹⁴ WHO, UNODC. Principles of Drug Dependent Treatment. Discussion Paper. March 2008. P. 14

¹⁵ CESCR General Comment No 14(2000). Para 33

¹⁶ Ukraine has ensured financial support for some HIV/AIDS prevention programs. April 5, 2013. Government Internet Portal. http://www.kmu.gov.ua/control/ru/publish/article?art_id=246230790&cat_id=244277212

¹⁷ Ibid. Para 33, 34.

1. On 7 October 2010, the Ukrainian Ministry of Health Resolution No. 634, dated 29 July 2010, “On amendments to Ukrainian Ministry of Health Resolution No. 188, dated 1 August.2000” (hereinafter “Resolution No. 634”) brought into force amendments that significantly reduce the legal threshold for “small”, “large” and “extra-large” quantities of certain types of illegal drugs, including those most commonly used by people who use drugs in Ukraine.

The threshold for criminal liability for possession of acetylated opium¹⁸, for example, was reduced by a factor of 20. Anyone in possession of as little as 0.005 grams of acetylated opium or heroin faces criminal prosecution and a penalty of up to three years’ incarceration. A quantity of 0.005 grams is approximately the amount found in the residue of several used syringes.

Resolution No. 634 has the following negative effects:

- It carries higher rates of incarceration for petty drug offences, leading to further overcrowding in Ukraine’s already strained prison system, and consequently leads to a higher prevalence of HIV, hepatitis and tuberculosis among prisoners.
- More stringent criminal liability makes it even harder for health and social services to reach PWID, undermining HIV prevention, care and treatment, drug dependency treatment, and other vital services^{19,20}.

2. Law enforcement agencies continued obstruction of the development and operation of health programs for people who use drugs, in particular OST.

In January 2011, police drug enforcement units across the country were mandated to crack down on OST sites, and interrogate OST clients, their relatives and neighbours in order to check the legality of the sites’ operations. OST clients were harassed by police officers asking for the information; many clients were forced to disclose personal medical data under threat from police that they would not otherwise receive their OST medication. Police disclosed personal data and medical information when speaking with neighbours, friends and relatives of the OST clients²¹.

In March 2010, a drug enforcement unit raided the OST site in Odessa, arrested a drug treatment doctor and kept him in pre-trial detention for four months, under suspicion of drug trafficking²². Due to extremely poor evidences brought by police against the doctor, the charges were not upheld in court²³.

¹⁸ Acetylated opium, locally known as “shirka”, is the most widely used illegal injected drug in Ukraine (European Centre for Monitoring of Drugs and Drug Addiction. Countries overview: Ukraine. Available at: <http://www.emcdda.europa.eu/publications/country-overviews/ua#pdu>).

¹⁹ Jürgens R at al, (2010) *People who use drugs, HIV, and human rights*. *The Lancet*, [Volume 376, Issue 9739](#), Pages 475 – 485.

²⁰ Wolfe D, Cohen J. (2010) “Human Rights and HIV Prevention, Treatment and Care for People Who Inject Drugs: Key Principles and Research Needs”, *Journal of Acquired Immune Deficiency Syndrome*. 55: S56-S62.

²¹ Open appeal to the President of Ukraine, Mr. V. Yanukovich, on behalf of the All-Ukrainian Network of People Living with HIV and the International HIV/AIDS Alliance in Ukraine, on systematic interventions of government authorities into implementation of programs aimed at fighting HIV/AIDS and supported by international donors, dated January 21, 2011. Available at http://www.aidsalliance.org.ua/ru/news/pdf/openappeal2011/President_problems_21%2001%202011_eng.pdf

²² International AIDS Society calls for an end to harassment, intimidation and imprisonment of HIV professionals. 3 September 2010. Geneva. <http://www.iasociety.org/Default.aspx?pageId=422>

²³ The Kiev district court of Odessa city decision, dated June 29, 2011. http://www.aidsalliance.org.ua/ru/news/pdf/09.11.2011podolyan/Court_Verdict_29.06_english.pdf

Such law enforcement tactics have a chilling effect on the development of OST and other health services for people who use drugs, despite the fact that the national laws on HIV prevention clearly support such services and stipulate their expansion. Thus people who use drugs, especially people who inject drugs, have very limited access to drug treatment services and continue using illicit opioids, committing crimes to finance their dependence and suffering exposure to higher risks of HIV, hepatitis C and overdose.

Poor access to OST in general and even less access in prisons settings

The obligation to provide the essential medications is listed among the states' core obligations arising from Art 12 of the International Covenant²⁴.

OST medications such as methadone and buprenorphine are in the WHO List of Essential Medicines²⁵. However the availability of OST for those in need remain extremely low in Ukraine.

By April 2012, OST programs in Ukraine had only 6,678 clients (11.7%)²⁶ out of 56,973 people officially registered as chronically dependent on opioids²⁷, making access to OST for those in need six times lower than recommended by international guidelines²⁸.

According to the CESCR General Comment No 14 the state shall refrain from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services²⁹.

Contrary to this obligation drug dependence treatment, including OST, is unavailable in prisons and extremely limited in pre-trial detention. The recently adopted Ministerial Order sets up the legal grounds for access to OST in pre-trial detention centers and the correction settlements but does not provide for OST in prisons³⁰.

State adopted laws reducing accessibility to and quality of OST.

With respect to the right to health the State obligation to fulfill requires the national authorities to adopt appropriate legislative, administrative, and other measures towards the full realization of the right to health³¹. This obligation shall fully extend to the prevention, treatment and control of HIV/AIDS under Art 12.2(c) of the International Covenant.

However, contrary to this obligation, ministerial regulations in Ukraine impede such essential HIV prevention services as OST and NSP.

²⁴ CESCR General Comment No 14(2000). Para 43(d).

²⁵ WHO Model List of Essential Medicines. 18th List, April 2013.

²⁶ Recent information on OST patients in Ukraine. Resource center of the Ukrainian Institute on Public Health Policy <http://www.uiphp.org.ua/media/1475>.

²⁷ National report on drug situation for European Monitoring centre for Drugs and Drug Addiction (data as of 2010). Ukrainian Medical & Monitoring Center of Alcohol And Drugs, by the Ministry of Health of Ukraine. REITOX 2011, page 33, http://www.damonitoring.net.ua/file/zvit_2011.pdf.

²⁸ WHO, UNODC and UNAIDS. *Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users* (WHO, 2009).

²⁹ CESCR General Comment No 14(2000), para 34.

³⁰ Joint Order of the Min of Health, Min of the Interior, Min of Justice, and the State Drug Control Service No 821/937/1549/5/156 of 22 October 2012.

³¹ *Ibid*, para 33.

1. The existing OST programs are of a high threshold, and their geographical coverage is poor, often requiring people to travel for several hours every morning to receive their dosage. Often the programs do not take into account the needs of clients, such as people with children, women, people living with HIV/AIDS, and other important considerations. Taking one's OST medication home is not permitted, even for clients who have proven to be stable and who maintain a long adherence to the program. In early June 2012, the Ministry of Health Order No 200, dated 27 March 2012, introduced new regulations regarding OST in Ukraine. Even after some liberal amendments this order was strongly criticized by many national and international civil society organizations, including by the national association of OST patients. In particular, the order

- Sets up unnecessary administrative barriers for the admission of clients to OST programs. According to the Order, only the commission of two drug treatment doctors can decide whether or not the client should be admitted to OST program. This criteria is very hard to meet in many areas and health care facilities where there is only one drug treatment doctor;
- Provides arbitrary criteria for exclusion from the program — for instance, anyone who relapse into illicit drug use or do not attend the program for more than 10 days is subject for the exclusion from the program. This criteria does not take into account the chronic nature of drug dependence and the fact that for many patients relapses and instability are inevitable parts of their pathway to recovery;
- Fails to address the poor design of the existing OST programs, which, in their heavily controlling nature, deprive OST clients of any degree of autonomy or dignity. For instance OST clients are prohibited to drive regardless ample evidence from around the world that they can drive as safely as those who do not take OST medications; also OST clients are arbitrary prohibited to occupy the so-called “positions which require higher attention”;
- Runs contrary to the Government Decree of May 13, 2013 No 333 which allows taking home medications even if such medications are in the list of controlled substances. Also this Decree stipulates that a single doctor, not a commission, could prescribe medications from the list of controlled substances, including narcotic drugs.

2. The current Ministry of Health Order No 223 of 22 October 1993 «On collection, disinfection and surrender of single use plastic medical equipment» sets up unnecessary requirement to disassemble and disinfect every syringe before the destruction. It also does not provide for collecting, storing, and destruction of used syringes by NGOs. As a result many NGOs which run NSP have to stop collecting used and contaminated syringes from clients.

Conclusions

The above listed facts demonstrate that at least some of the steps undertaken by Ukraine in recent years run contrary to the recommendations made by CESCR in the 2008 Concluding Observations on Ukraine, and provide for discriminatory policies and practices, particularly affecting those who suffer drug dependence and are vulnerable to HIV, hepatitis C and tuberculosis. On the one hand, the Government of Ukraine failed to ensure the availability, accessibility and quality of treatment for a chronic disease — drug dependence as well as sustainable funding for drug treatment and HIV prevention programs such as OST and NSP. On the other hand, the Government toughened punishment for possession of drugs for personal use, which is, at least for drug dependent people, a symptom of their chronic disease. In other words, the government fails to recognize the needs of people with chronic illness and subjects them to severe punishment instead of providing treatment.

The Government of Ukraine should immediately set about reforming the country's drug laws and policies in line with internationally recognized standards and practices, and allocate appropriate funding for HIV prevention, in particular among the most vulnerable groups. The Government should also ensure that law enforcement and other criminal justice mechanisms as well as various ministerial regulations do not substitute or obstruct medical and social services for people who use drugs. In the absence of these reforms, Ukraine's commitment to articles 12 of the *International Covenant* remains, at best, questionable.

Annex



The International HIV/AIDS Alliance in Ukraine (<http://www.aidsalliance.org.ua>) is the International charitable foundation, the largest Ukrainian NGO leading national response to HIV/AIDS, one of the implementers of the National HIV/AIDS Program in Ukraine that is financially supported by the Global Fund to fight AIDS, Tuberculosis and Malaria with a mission to reduce the spread of the HIV infection and AIDS mortality and alleviate the negative impact of epidemic through supporting community action against HIV/AIDS in Ukraine and disseminating effective approaches to HIV prevention and care throughout Eastern Europe and Central Asia. Over 350 NGOs across Ukraine have got support from Alliance-Ukraine to implement the harm reduction projects, opioid substitution therapy and other projects on HIV prevention.

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The Canadian HIV/AIDS Legal Network (www.aidslaw.ca) promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research and analysis, advocacy and litigation, public education and community mobilization. The Legal Network is Canada's leading advocacy organization working on the legal and human rights issues raised by HIV/AIDS. (An NGO with Special Consultative Status with the Economic and Social Council of the

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The Eurasian Harm Reduction Network (www.harm-reduction.org) is an NGO with a Special Consultative Status with the Economic and Social Council of the United Nations which operates as a regional network with a mission to promote humane, evidence-based harm reduction approaches to drug use, with the aim of improving health and protecting human rights at the individual, community, and societal level.

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