

CONDOMS, CLEAN NEEDLES, AND GENERIC DRUGS: KEY ISSUES FOR THE XV INTERNATIONAL AIDS CONFERENCE

A Human Rights Watch Backgrounder

The Fifteenth International AIDS Conference will be held in Bangkok, Thailand from July 11-17, 2004. The International AIDS Conference is not just a scientific conference. It is the preeminent forum for discussing key issues of HIV/AIDS policy and holding governments and international donors accountable to their promises to combat the AIDS pandemic. Human Rights Watch has issued numerous reports showing that human rights abuses against persons living with and at high risk of HIV/AIDS contribute significantly to new HIV infections worldwide. This is true in Thailand, the host of this year's AIDS conference, as well as in numerous other countries worldwide. The International AIDS Conference provides an opportunity to expose these abuses and to hold governments to their obligation to mount the most effective possible response to HIV/AIDS.

A SNAPSHOT OF HIV/AIDS IN THAILAND

More than 1 million people have been infected with HIV/AIDS in Thailand, a country of approximately 63.5 million people.¹ While the country is often cited as a "success story" in the prevention of HIV, close to 30,000 new HIV infections occur every year, most of them among married women and injection drug users.² Sex workers and their clients no longer account for the majority of new HIV infections as they did in the 1990s. It is estimated that substantial increases in HIV prevention services for injection drug users, pregnant women and married couples are necessary to avert nearly 60,000 new HIV infections between now and 2010.³

The burden of providing treatment, care and support to people living with HIV/AIDS in Thailand is enormous. As of 2001, approximately 695,000 people or 1.8 percent of the adult population were living with HIV.⁴ Only 13,279 people were receiving antiretroviral therapy as of September 2003, according to government estimates.⁵ Although the number of annual AIDS deaths has declined in recent years from the 2001 total of 55,000, it is expected to remain above 40,000 until 2013.⁶ It is further estimated that approximately 50,000 Thais will develop serious AIDS-related illnesses each year for the next five years.⁷

KEY ISSUE #1: HIV PREVENTION AND "100% CONDOM" PROGRAMS

THE ISSUE: Latex condoms, the only device to protect against sexual transmission of HIV, have been at the cornerstone of global HIV prevention efforts since the beginning of the AIDS epidemic. Guaranteeing access to condoms requires ensuring an adequate stock of condoms in public health facilities and other health outlets; providing comprehensive and age-appropriate information about the effectiveness and correct use of condoms; and taking steps to empower vulnerable groups, particularly women, to negotiate condom use with their sex partners. Investing in comprehensive HIV

prevention programs that include condoms has been shown to reduce the number of people infected with HIV enough to slow the epidemic spread of AIDS.⁸

IN THAILAND: The national “100 percent condom” program established under Prime Minister Anand Panyarachun in 1991-92, which combined regular screening of sex workers for sexually transmitted diseases (STDs) with provision of an ample supply of free condoms in sex establishments, is widely cited as a “best practice” model in HIV prevention.⁹ The program resulted in a dramatic increased condom use and a decrease in demand for commercial sex, averting an estimated 200,000 HIV infections between 1990 and 2000.¹⁰ Human rights groups have criticized 100 percent condom programs for providing a pretext to penalize sex workers and clients who do not use condoms or who become infected with HIV or other STDs.¹¹ Such penalties serve no public health purpose and, in fact, may detract from condom promotion efforts by driving sex workers “underground” and away from health services. Recent reports further suggest that supplies of publicly funded condoms have dwindled in Thailand since the inception of the 100 percent condom program in the early 1990s.¹²

AROUND THE WORLD: Condoms are under increasing attack by governments and social conservatives who favor HIV prevention programs that stress only sexual abstinence and marital fidelity. In 2003, the administration of U.S. President George W. Bush earmarked one third of prevention spending in the President’s Emergency Plan for AIDS Relief (PEPFAR) to “abstinence until marriage” programs.¹³ The same year saw the removal of scientific information on the effectiveness of condoms from the websites of the U.S. Centers for Disease Control and Prevention (CDC) and the U.S. Agency for International Development (USAID), as well as the appointment of physicians who oppose condom use to the President’s Advisory Council on HIV/AIDS (PACHA).¹⁴ The Holy See (the Vatican), which enjoys non-member permanent observer status at the United Nations, has consistently sought to omit references to condoms from U.N. policy documents. In October 2003, the head of the Vatican’s Pontifical Council for the Family, Alfonso Lopez Trujillo, claimed falsely that condoms contain microscopic pores that are permeable by HIV pathogens.¹⁵ Governments in predominantly Roman Catholic countries have succumbed to pressure by national bishops’ conferences to impose legal restrictions on condoms and comprehensive HIV/AIDS information.¹⁶

- *Governments, U.N. leaders and international donors should use the occasion of the International AIDS Conference to reassert the central importance of condoms in HIV prevention. They should call for the expansion of comprehensive programs that include condoms and comprehensive information about HIV/AIDS and the defunding of programs that give emphasis to abstinence and fidelity at the expense of condom information and services.*

FOR MORE INFORMATION: Human Rights Watch, *Unprotected: Sex, Condoms and the Human Right to Health in the Philippines*, Vol. 16, No. 6(C), April 2004; Human Rights Watch, *Ignorance Only: HIV/AIDS, Human Rights and Federally Funded Abstinence-Only Programs in the United States*, Vol. 14, No. 5 (G), September 2002.

KEY ISSUE #2: HIV/AIDS AND THE “WAR ON DRUGS”

THE ISSUE: People who inject illicit drugs face an extremely high risk of HIV from the sharing of blood-contaminated syringes. Programs such as syringe exchange, which allow drug users to exchange used syringes for sterile ones, have been shown in repeated studies in numerous jurisdictions to reduce HIV transmission. The charge frequently leveled that syringe exchange programs promote drug use has been disproved by repeated studies.¹⁷ Methadone, an orally administered prescription drug that manages opiate craving, also reduces HIV risk by eliminating drug users’ reliance on syringes.¹⁸ In blatant violation of drug users’ human rights, however, many governments reject sterile syringe and methadone programs in favor of policies that focus on mass arrest, incarceration and forced treatment of drug users.

IN THAILAND: Injection drug users are the glaring exception to Thailand’s successful HIV prevention efforts. HIV prevalence among injection drug users in Thailand has stood at roughly 40 percent since the beginning of the AIDS epidemic, even as it has dropped significantly among sex workers, military recruits, sexually transmitted disease (STD) clinic attendees, and other persons at risk of infection.¹⁹ Drug users are projected to account for 30 percent of new HIV infections in Thailand by 2005, a higher percentage than any other group.²⁰ The Thai government opposes syringe exchange and offers only very limited access to methadone maintenance therapy. Worse, the administration of Prime Minister Thaksin Shinawatra has since February 2003 engaged in a brutal “war on drugs” that resulted in the extrajudicial killing of an estimated 2,275 drug suspects in its initial three-month phase.²¹ The war on drugs has driven countless drug users into hiding and away from what few HIV-prevention and other services exist. It has also resulted in the incarceration of thousands of alleged drug offenders in facilities where access to condoms and sterile syringes is severely limited and drug use and sex are reportedly widespread.

AROUND THE WORLD: Human rights abuses against injection drug users are one of the most important causes of HIV transmission in the world today. In the region of eastern Europe and central Asia, home to the fastest-growing AIDS epidemic in the world in 2001 and 2002,²² harsh anti-drug laws provide a pretext for rampant violations of due process by police and incarceration of drug users in overcrowded prisons. Syringe exchange remains out of reach to the vast majority of drug users who need them, while methadone therapy was as of mid-2002 banned in nine countries representing 80 percent of the region’s HIV-positive injection drug users.²³ Injection drug use accounts for the majority of HIV cases in China, Malaysia and Vietnam, all of which are reporting established AIDS epidemics at over 50,000 cases each.²⁴ In the United States, where injection drug use accounted for 28 percent of new AIDS cases in 2002, all fifty states have laws regulating the possession and distribution of sterile syringes as “drug paraphernalia.”²⁵ Police officers in numerous countries can and do confiscate sterile syringes from participants in legal syringe exchange programs.²⁶

- *Conference delegates should clearly and forcefully condemn human rights violations committed in the name of Thailand's "war on drugs," particularly extrajudicial killings and arbitrary arrests. They should call attention to the global crisis of HIV/AIDS among injection drug users and demand an independent and transparent investigation of the public health impact of drug prohibition strategies.*

FOR MORE INFORMATION: Human Rights Watch, *Not Enough Graves: Thailand's War on Drugs, HIV/AIDS, and Violations of Human Rights*, Vol. 16, No. 8(C), July 2004; Human Rights Watch, *Lessons Not Learned: Human Rights Abuses and HIV/AIDS in the Russian Federation*, Vol. 16, No. 5(D), April 2004; Human Rights Watch, *Injecting Reason: Human Rights and HIV Prevention for Injection Drug Users*, Vol. 15, No. 2(G), September 2003; Human Rights Watch, *Locked Doors: The Human Rights of People Living with HIV/AIDS in China*, Vol. 15, No. 7(c), August 2003; Human Rights Watch, *Ravaging the Vulnerable: Abuses Against Persons at High Risk of HIV Infection in Bangladesh*, Vol. 15, No. 6(C), August 2003; Human Rights Watch, *Fanning the Flames: How Human Rights Abuses Are Fueling the AIDS Epidemic in Kazakhstan*, Vol. 15, No. 3(D), June 2003; Human Rights Watch, *Abusing the User: Police Misconduct, Harm Reduction and HIV/AIDS in Vancouver*, Vol. 15, No. 2(B), May 2003.

KEY ISSUE #3: PATENTS, FREE TRADE AND ACCESS TO GENERIC HIV/AIDS MEDICINES

THE ISSUE: Access to antiretroviral medicines remains out of reach to the vast majority of people living with HIV/AIDS in the developing world.²⁷ A significant barrier to treatment access is the prohibitive price of AIDS medicines and, in turn, the monopoly patents held by brand-name pharmaceutical companies. The agreement on Trade Related Aspects of Intellectual Property (TRIPS) adopted by the World Trade Organization (WTO) represents the consensus of WTO member states on the appropriate balance between intellectual property protection and access to essential medicines. At a 2001 ministerial meeting in Doha, Qatar, WTO member states signed a declaration stating that TRIPS "does not and should not" prevent countries from taking measures to expand drug access, and encouraging countries to use the mechanisms within TRIPS, such as compulsory licensing, "to the full" in meeting their public health objectives.²⁸ However, the United States Trade Representative (USTR) has since negotiated trade agreements that demand a higher level of patent protection than is provided in TRIPS—a level of protection known as "TRIPS-Plus"—flouting the consensus reached at the WTO.

IN THAILAND: In February 2004, the office of the USTR notified the U.S. Congress of its intent to initiate trade negotiations with Thailand. Based on recent trade agreements negotiated by the USTR, such as the Central American Free Trade Agreement (CAFTA), the U.S.-Singapore Free Trade Agreement and the U.S.-Morocco Free Trade Agreement, it can be anticipated that the U.S. will attempt to include "TRIPS-Plus" provisions in any agreement with Thailand. Thailand is home to at least 695,000 people living with HIV/AIDS and recently embarked on an ambitious plan to provide free antiretroviral

drugs to 50,000 people. Because multinational drug companies hold patents on a number of essential HIV/AIDS drugs in Thailand, trade experts predict that TRIPS-Plus provisions will make it harder for Thailand to produce generic drugs within the bounds of intellectual property law. This would, in turn, limit individuals' access to low-cost antiretroviral medicines in violation of their internationally recognized right to the highest attainable standard of health.

AROUND THE WORLD: The U.S.-Thailand Free Trade Agreement is part of a larger trend of the U.S. government using its bilateral trade authority to undermine public health. In the Caribbean, home to some of the world's highest HIV infection rates after sub-Saharan Africa, the USTR is attempting to include TRIPS-Plus provisions in the Free Trade Area of the Americas (FTAA), currently under negotiation. TRIPS-Plus provisions can also be foreseen in any trade negotiation with the countries of the Southern Africa Customs Union (SACU). The United States has also fought to limit the ability of industrialized countries to export generic medicines produced under compulsory license to countries that lack the capacity to produce medicines locally. A recent legislative initiative would allow Canada to become the first country to issue a compulsory license for export of HIV/AIDS medicines, but it is far from clear that Canada's pharmaceutical industry will take full advantage of this initiative.

- *Conference delegates should reaffirm the Doha Declaration of 2001 and denounce any level of patent protection for essential medicines beyond that provided by the WTO rules. Delegates should further encourage states with pharmaceutical manufacturing capacity to issue compulsory licenses for the manufacture and export of low-cost generic copies of patented antiretroviral medicines for the developing world.*

FOR MORE INFORMATION: Human Rights Watch, "Letter to the U.S. Trade Representative on Access to Essential Medicines in the U.S.-Morocco Free Trade Agreement," February 18, 2004; Human Rights Watch, *The FTAA, Access to HIV/AIDS Treatment, and Human Rights: Background Briefing*, October 29, 2002; Human Rights Watch, "Letter to the U.S. Trade Representative on Doha and AIDS," November 7, 2001.

¹ W. Phoolcharoen et al., "Thailand's Health Care Systems: Response to the HIV epidemic," presented at the sixth International Conference on Healthcare Resource Allocation for HIV/AIDS (ICHRA), Washington, D.C., October 13-14, 2003, p. 14.

² Thai Working Group on AIDS Projections, *Projections for HIV/AIDS in Thailand: 2000-2020* (March 2001), pp. viii, 31.

³ *Ibid.*, p. 46.

⁴ *Ibid.*, p. ix.

⁵ "Development of National Access to Anti-retroviral Program in Thailand," document provided to Human Rights Watch by World Health Organization-Thailand, April 28, 2004.

⁶ Thai Working Group on AIDS Projections, *Projections for HIV/AIDS in Thailand*, p. B-11, table B1i.

⁷ *Ibid.*

⁸ See, e.g., studies cited in R. Gardner et al., *Closing the Condom Gap: Meeting the Need in the Era of HIV/AIDS* (Washington, D.C.: Population Action International, 2002).

⁹ See, e.g., Joint United Nations Programme on HIV/AIDS (UNAIDS), *Connecting lower HIV infection rates with changes in sexual behaviour in Thailand: data collection and comparison* (UNAIDS case study, June 1998); UNAIDS, "Fact sheet: country successes," online:

http://www.unaids.org/html/pub/publications/fact-sheets02/fssuccesses_en_doc.htm (retrieved April 9, 2004).

¹⁰ M. Ainsworth et al., *Thailand's response to AIDS: Building on success, confronting the future: Thailand Social Monitor V* (Bangkok: World Bank, 2000), pp. 9-12. See also, Thai Working Group on AIDS Projections, *Projections for HIV/AIDS in Thailand*, p. xi.

¹¹ See, e.g., B. Loff et al., "Can health programmes lead to mistreatment of sex workers?," *The Lancet*, vol. 361 (June 7, 2003), pp. 1982-3.

¹² M. Ainsworth et al., *Thailand's response to AIDS*, p. 34.

¹³ H.R. 1298, United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, ss. 402(b)(3), 403(a).

¹⁴ See, e.g., Nicholas D. Kristof, "The Secret War on Condoms," *The New York Times*, January 10, 2003; Marie Cocco, "White House Wages Stealth War on Condoms," *Newsday*, November 14, 2002; Caryl Rivers, "In Age of AIDS, Condom Wars Take Deadly Toll," *Women's eNews*, December 10, 2003, <http://womensenews.org/article.cfm/dyn/aid/1633/context/archive> (retrieved February 16, 2004); Art Buchwald, "The Trojan War," *The Washington Post*, December 11, 2003.

¹⁵ BBC News, "Vatican in HIV condom row," online:

<http://newsvote.bbc.co.uk/mpapps/pagetoo...t/news.bbc.co.uk/1/hi/health/3176982.stm> (retrieved February 13, 2004).

¹⁶ See, e.g., Human Rights Watch, *The Philippines: Unprotected: Sex, Condoms and the Human Right to Health* (vol. 16, no. 6(C), May 2004).

¹⁷ See, e.g., Human Rights Watch, *United States: Injecting Reason: Human Rights and HIV Prevention for Injection Drug Users* (vol. 15, no. 2 (G), Sept. 2003), pp. 12-17; M. Ainsworth et al., *Thailand's response to AIDS*, p. 44; World Health Organization, "Harm Reduction Approaches to Injecting Drug Use," online: <http://www.who.int/hiv/topics/harm/reduction/en/print.html> (retrieved April 28, 2004).

¹⁸ World Health Organization (WHO), United Nations Office on Drugs and Crime (UNODC) and UNAIDS, *WHO/UNODC/UNAIDS position paper: Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention* (2004), pp. 13, 14, 18.

¹⁹ See, e.g., C. Beyrer et al., "Drug Use, Increasing Incarceration Rates, and Prison-Associated HIV Risks in Thailand," *AIDS and Behavior*, vol. 7, no. 2 (June 2003), p. 153, citing Ministry of Public Health, Thailand, *HIV/AIDS Sentinel Surveillance Report* (Bangkok, 2000).

²⁰ Thai Working Group on AIDS Projections, *Projections for HIV/AIDS in Thailand*, p. 31.

²¹ See, e.g., Human Rights Watch, *Thailand: Not Enough Graves: The War on Drugs, HIV/AIDS, and Violations of Human Rights* (vol. 16, no. 8(C), July 2004).

²² UNAIDS and WHO, *AIDS Epidemic Update* (UNAIDS/02.58E), December 2002, p. 12; UNAIDS and WHO, *AIDS Epidemic Update* (UNAIDS/01.74E), December 2001, p. 6.

²³ Open Society Institute, *Drugs, AIDS and Harm Reduction: How to Slow the HIV Epidemic in Eastern Europe and the Former Soviet Union* (New York: Open Society Institute International Harm Reduction Development, 2001); Central and Eastern Europe Harm Reduction Network (CEEHRN), *Injecting Drug Users, HIV/AIDS Treatment and Primary Care in Central and Eastern Europe and the Former Soviet Union* (report of a survey), July 2002, p. 24.

²⁴ D. Wolfe and K. Malinowska-Sempruch, *Illicit Drug Policies and the Global HIV Epidemic: Effects of UN and National Government Approaches* (New York: Open Society Institute International Harm Reduction Development, 2004), pp. 3, 15.

²⁵ S. Burris et al., "Syringe Access Law in the United States: A State of the Art Assessment of Law and Policy," online: www.publichealthlaw.net (retrieved November 5, 2002), p. 18.

²⁶ See, e.g., Human Rights Watch, *Injecting Reason*, pp. 20-33.

²⁷ Estimates suggest that only 400,000 of the estimated 6 million people in need of antiretroviral treatment globally were receiving it as of June 2004. WHO, "The 3 by 5 Initiative," online: <http://www.who.int/3by5/en/> (retrieved June 22, 2004).

²⁸ World Trade Organization, *Declaration on the TRIPS Agreement and Public Health* (November 14, 2001), para. 4.