



# CANADA

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I'm not even being arrested, they're not even reading me my rights. They just like grab me, and one's on one side, and one's on the other side, going through my pockets, and like "What have you got?" He said, "Well, you're too clean to be an addict" . . . which means I must be a dealer. . . . What did I do wrong, other than living in the poorest zip code in Canada?

--A resident of the Downtown Eastside, Vancouver, April 2003

## **ABUSING THE USER: POLICE MISCONDUCT, HARM REDUCTION AND HIV/AIDS IN VANCOUVER**

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## I. SUMMARY

Vancouver, Canada is home to one of the worst epidemics of human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) in the developed world. Injection drug users are the most affected persons; as many as 40 percent of them in Vancouver's impoverished Downtown Eastside are living with HIV/AIDS. On April 7, 2003, the Vancouver Police Department launched a major crackdown in the Downtown Eastside of which the stated purpose was to clear the streets of drug dealers. Health and social service providers, some government officials, and many injection drug users fear that one of the main consequences of this aggressive crackdown will be to fuel a new wave of transmission of HIV and other blood-borne and sexually transmitted diseases as well as to increase the risk of complications from overdose, including death.

Operation Torpedo, as the crackdown is commonly known, continues as of this writing.<sup>1</sup> It apparently succeeded in clearing the streets of some of the drug dealers sought by the police, but at a high cost. In a brief stay in the Downtown Eastside toward the end of the first week of the crackdown, Human Rights Watch documented numerous cases of unnecessary use of force and illegal search and seizure by the police directed against persons, mostly injection drug users, who were not charged with dealing drugs. These actions, which violate Canadian and international human rights guarantees, contributed to driving drug users underground and away from life-saving HIV prevention and other health services. Out of fear of police harassment, drug users have curtailed their use of needle exchange programs, a vital service for HIV and hepatitis C prevention. Street-based health services, crucial to injection drug users and the homeless, have been greatly impeded, causing some health workers to fear a major new wave of disease transmission.

City officials in Vancouver, most notably Vancouver's recently elected mayor, Larry Campbell, claim to be committed to a "four-pillar" approach to narcotics drug use, including treatment (for drug addiction), prevention, harm reduction,<sup>2</sup> and law enforcement. The city council has thus far refused the police department's request for extra funds to finance the crackdown; however, since Campbell's term began in January 2003, the crackdown has represented Vancouver's only conspicuous anti-drug initiative. A long promised safe injection site—a location where injection drug users could inject drugs under medical supervision and without police harassment and be referred to other services—remains unrealized. An effective street-based needle exchange program operates on a shoestring. The city government said the treatment and harm reduction "pillars" will be built up as part of a \$50 million (U.S.\$34.5 million) plan, but the plan remains unfunded. The four pillars, as one activist said, appear to be "a tree trunk and three toothpicks."

Vancouver is one of two cities being considered by the International Olympic Committee to host the winter Olympics in 2010; the host city will be chosen in July 2003. As the time of that decision approaches and the temptation to "clean up" the city grows stronger, the risk of human rights violations that fuel HIV/AIDS and hepatitis C as well as severe illness and death from overdose among the city's most marginalized persons will also grow unless the city's strategy changes. Experiences from around the world have shown that HIV transmission increases with the incidence of abuse and stigmatization faced by those most at risk of the disease. Failing to learn this lesson, for Vancouver and the injection drug users who make the city their home, would exact a high and avoidable human cost.

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<sup>1</sup> According to the Vancouver Police Department, the term "Operation Torpedo" refers to an undercover investigation carried out immediately prior to the campaign documented in this report. Much of the local press in Vancouver continued to use the term "Operation Torpedo" after the campaign began.

<sup>2</sup> Harm reduction refers to actions designed to diminish the individual and social harms associated with drug use, including the risk of HIV infection, without requiring the cessation of drug use. In practice, harm reduction programs include needle exchange, replacement therapy using substances such as methadone, health and drug education, HIV and sexually transmitted disease screening, psychological counseling, and medical referrals. For more information on harm reduction, see the web site of the International Harm Reduction Development program of the Open Society Institute, [www.soros.org/harm-reduction](http://www.soros.org/harm-reduction).

## II. RECOMMENDATIONS

### **To the government of the city of Vancouver**

- The Vancouver Police Department should immediately cease all practices of arbitrary arrest, mistreatment and unnecessary use of force in violation of the due process and civil rights protections of Canadian law and international law.
- The city council should continue to withhold funding for the current operation and similar police crackdowns and should urge the police department not to underwrite such crackdowns with its own budget, until concerns about human rights and health and harm reduction-based programs for drug users are addressed.
- The city government should work with provincial authorities to establish an independent commission to investigate complaints of police misconduct and abuse. The city should not rely on the Vancouver Police Department to investigate allegations of abuse by its own personnel. The commission should have the power to receive and investigate complaints, identify problematic practices and policies, recommend reforms, monitor implementation of its recommendations, and provide the public with reports of its activities and findings. The Vancouver Police Department should cooperate fully with independent investigators affiliated with such a commission.
- Officers of the Vancouver Police Department deployed to high-drug areas should receive training on the basic principles of harm reduction, HIV and hepatitis C transmission, services related to the prevention of blood-borne and sexually transmitted diseases, and the work of the street-based and clinic-based health service providers in the Downtown Eastside. A training program should be established for new officers or officers new to the Downtown Eastside as well as refresher training for all officers.
- The city council should conduct public hearings on police conduct during the current police crackdown, including statements from health service providers and issue findings based on these hearings. The council should be attentive to the need to conduct additional hearings, particularly leading up to the July 2003 announcement of the winter Olympic host city and in the aftermath of that announcement.
- If the government of the city of Vancouver deems it necessary to evaluate the police's current campaign, that evaluation should be conducted by independent researchers with well-established credentials, including public health expertise, rather than by one graduate student, as the Vancouver Police Department has planned. Any evaluation of the campaign should assess, at a minimum, its impact on crime and public safety, the drug market on the Downtown Eastside, harm reduction and health outreach services, and the health of injection drug users.

### **To the government of the province of British Columbia**

- Work with the city of Vancouver to establish an independent commission to receive and investigate complaints, identify problematic practices and policies, recommend reforms, monitor implementation of its recommendations, and provide the public with reports of its activities and findings. House and financially support this independent body.
- Invite and support an independent evaluation of the functioning of the British Columbia Human Rights Tribunal in the absence of the recently abolished Human Rights Commission, with particular attention to the frequency and types of dismissals of complaints by the tribunal, the handling of complaints by persons unable to afford legal representation, and the disposition of complaints about discrimination on the basis of illegal drug use.

**To the federal government of Canada**

- Provide oversight to the establishment of an independent commission to receive and investigate complaints, identify problematic practices and policies, recommend reforms, monitor implementation of its recommendations, and provide the public with reports of its activities and findings.
- Ensure that any federally funded project for a pilot safe injection site contains a mechanism to monitor abuse, harassment and intimidation by local police.
- Amend or clarify provisions of the Controlled Drugs and Substances Act that interfere with needle exchange programs by, for example, criminalizing the possession of syringes containing trace amounts of drug residue.
- Assist the city of Vancouver in establishing a training program on harm reduction and related issues for the Vancouver Police Department.
- Assess the experience of the Downtown Eastside of Vancouver, with particular attention to the impact of policing, as a case study to inform the new Canadian Strategy on HIV/AIDS, currently under development.

### **III. METHODS**

Two Human Rights Watch researchers visited the Downtown Eastside of Vancouver for four days in April 2003, beginning on day six of the police crackdown commonly referred to as Operation Torpedo. Human Rights Watch conducted in-person interviews with twenty-six injection drug users, twelve providers of services to the injection drug users, two university-based researchers, and two members of the Vancouver city council. The majority of drug users were identified through local nongovernmental organizations (NGOs) that provide services to injection drug users; others were encountered in public places such as on the street. Human Rights Watch also observed police conduct on the streets of the Downtown Eastside at all hours of the day and night. Other interviews, including one with the district police commander for the area including the Downtown Eastside, were conducted by telephone. The names of some of the injection drug users whose testimonies are recounted in this report have been changed at their request or for their protection.

#### IV. BACKGROUND

Vancouver, British Columbia, Canada, a city renowned for the mountains and beaches that have made it a tourist magnet, is the home to what is arguably the worst AIDS epidemic in the developed world. The Downtown Eastside of Vancouver is among the most impoverished neighborhoods in Canada.<sup>3</sup> The ten-square-block neighborhood with an estimated population of 15,870 is home to about 5000 injection drug users.<sup>4</sup> A high rate of overdose deaths and other health complications of drug use have been observed in Downtown Eastside for many years. During the last mayoral election campaign in 2002, one candidate frequently cited the figure of 1200 drug users having died of overdose or drug-related death in Vancouver in the previous ten years.<sup>5</sup>

An explosive HIV/AIDS epidemic in the neighborhood came to national attention in the mid-1990s. In 1997, an epidemiologist at the University of British Columbia estimated that injection drug users were being infected with HIV at the rate of about 20 percent per year,<sup>6</sup> high by any standard. HIV prevalence among injection drug users in the Downtown Eastside stands at an estimated 30 to 40 percent,<sup>7</sup> comparable to some of the worst epidemics in developing countries. (HIV transmission through use of contaminated injection equipment is generally more efficient than through unprotected sex.) If 30 percent of 5000 drug users in the Downtown Eastside's drug users are HIV-positive, they would account for a very large proportion of the HIV-positive injection drug users in Canada.<sup>8</sup> The HIV-related death rate in the Downtown Eastside was estimated in 2001 to be about thirty-eight times that of the province of British Columbia as a whole.<sup>9</sup> It is estimated that over 90 percent of the injection drug users in the neighborhood have contracted hepatitis C.<sup>10</sup>

In the face of an AIDS epidemic increasingly affecting injection drug users, the Canadian government at all levels has invested in both law enforcement and harm reduction—that is, measures such as syringe exchange and substitution (methadone) therapy that aim to minimize the infectious disease and other harms associated with injecting drugs. Many jurisdictions in Canada, including Vancouver, have invested in needle exchange programs that provide sterile syringes to injection drug users and dispose of used syringes safely.<sup>11</sup> Methadone maintenance therapy<sup>12</sup> is also supported by the Canadian government. Drug users themselves reported to Human Rights Watch

<sup>3</sup> The Downtown Eastside is reported to have the lowest per-capita income of any postal code-determined zone in Canada. Government of Canada, Statistics Canada, *Population Census of Canada*, 1996.

<sup>4</sup> See British Columbia Centre for Excellence in HIV/AIDS and St. Paul's Hospital, Community Health and Safety Evaluation (CHASE) Project, Semi-annual Report, February 2003, p. 6.; and Pivot Legal Society, "To Serve and Protect," November 2002, [http://www.pivotlegal.org/beta/aff/pivot\\_toserveandprotect.pdf](http://www.pivotlegal.org/beta/aff/pivot_toserveandprotect.pdf) (retrieved April 17, 2003).

<sup>5</sup> Clifford Krauss, "A would-be mayor's mission: 'Safe injection sites'," *New York Times*, November 15, 2002, at A1.

<sup>6</sup> See, e.g., David Crary, "AIDS Epidemic Rages in Vancouver," Associated Press, October 16, 1997.

<sup>7</sup> See Joel Baglole, "Vancouver Drug Facilities Draw Ire of U.S. Officials," *Wall Street Journal*, April 1, 2003, citing an estimate of 40 percent HIV prevalence among drug users in the Vancouver area. See also B. Fischer, J. Rehm and T. Blitz-Miller, "Injection drug use and preventive measures: A comparison of Canadian and Western European jurisdictions over time," *Canadian Medical Association Journal*, vol. 162, number 12, pp. 1709-1713, which suggested that the HIV prevalence in the Downtown Eastside in 2000 was 23 to 30 percent.

<sup>8</sup> Government of Canada, Health Canada, Centre for Infectious Disease Prevention and Control, "HIV/AIDS Epi Update," April 2002.

<sup>9</sup> CHASE Project, Semi-annual Report, p. 4.

<sup>10</sup> *Ibid.*, p. 5. Hepatitis C is a blood-borne and sexually transmitted viral infection causing liver inflammation. Most patients respond to treatment with costly pharmaceutical drugs. Hepatitis C is the leading cause of liver transplantation in the United States. See U.S. National Institutes of Health, Medical Encyclopedia at <http://www.nlm.nih.gov/medlineplus/ency/article/000284.htm> (retrieved April 19, 2003).

<sup>11</sup> In September 2002, Human Rights Watch and the Canadian HIV/AIDS Legal Network gave an award to the Vancouver Area Network of Drug Users (VANDU), a drug users organization founded in 1998, for its work on harm reduction and respect for the rights of drug users, including its provision of an extensive needle exchange service in the Downtown Eastside.

<sup>12</sup> Substitution or maintenance therapies such as methadone programs provide narcotics drug users with access to legal drugs that can substitute for drugs that are illegal or are obtained through illegal means. As the Drug Policy Alliance notes, these programs seek to assist drug users in switching from illicit drugs of unknown quality, purity and potency to legal drugs obtained from health services or other legal channels, thus reducing the risk of overdose and other medical complications, as well as the need to commit crimes to obtain drugs. Because methadone is dispensed orally, not injected, it also carries no risk

that methadone access in Vancouver and British Columbia is very good.<sup>13</sup> In April 2002, a report commissioned by Health Canada, the federal health ministry, called on the government to allow the establishment of safe injection sites—facilities where users can inject drugs in a calm, clean and medically supervised setting, usually with access to other medical services.<sup>14</sup> The government since proposed that three such sites be established around Canada as a pilot project.<sup>15</sup>

In November 2000, the Vancouver city government released a paper proposing a “four-pillar” approach to drug problems in the city, where the pillars were prevention of drug use, harm reduction, treatment including detoxification programs, and law enforcement to combat drug trafficking.<sup>16</sup> In November 2002, Vancouver elected a mayor and a number of city council members who were affiliated with the so-called Coalition of Progressive Electors (COPE) whose platform included support for protecting the rights of drug users and ensuring safe access to sterile syringes and other harm reduction measures, including a safe injection site.<sup>17</sup> The newly elected mayor, Larry Campbell, promised before the election that if elected he would ensure that a safe site would be up and running by January 2003.<sup>18</sup>

In general, the harm reduction and treatment parts of the four-pillar approach have received relatively little government support compared to law enforcement measures. The city government announced that it has a \$50 million (U.S.\$34.5 million) plan for the three pillars—treatment, prevention and harm reduction—other than law enforcement, but it lacks the funds to implement the plan.<sup>19</sup> This resource allocation in Vancouver reflects a national pattern. A 2001 report of the federal auditor general indicated that over 90 percent of federal monies devoted to combating illicit drugs was devoted to law enforcement activities.<sup>20</sup>

Indeed, the city of Vancouver’s response to injection drug use since the announcement of “four pillars” has included numerous police crackdowns, some of which have impeded access of drug users to needle exchange services. In June 2002, the sidewalk needle exchange service operated by the Vancouver Area Network of Drug Users (VANDU) under the auspices of the Vancouver Coastal Health Authority, a government body, was shut down by a police raid.<sup>21</sup> Needle exchange providers said this was a turning point and signaled a “harder line” by the police in its “war on drugs.”<sup>22</sup> The police had alleged that illegal activity was being conducted near the table, but the chief of police later apologized, and the sidewalk service was reopened.<sup>23</sup>

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of transmission of blood-borne diseases. For heroin addiction, methadone is a “substitution” drug of proven effectiveness. See Drug Policy Alliance, “Reducing Harm: Treatment and Beyond” [online], <http://www.drugpolicy.org/reducingharm/maintenancet/> (retrieved April 16, 2003).

<sup>13</sup> Human Rights Watch interview with Charles Joseph Parker, president, British Columbia Association of People on Methadone, Vancouver, April 12, 2003.

<sup>14</sup> Canadian HIV/AIDS Legal Network, “Establishing Safe Injection Facilities in Canada: Legal and Ethical Issues” (report prepared for Health Canada), April 2002. Available online at [www.aidslaw.ca](http://www.aidslaw.ca).

<sup>15</sup> See, for example, “CTV News Staff, “Committee calls on Ottawa for safe-drug sites,” CTV News, December 9, 2002, [http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1039456835192\\_34866035/](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1039456835192_34866035/) (retrieved April 18, 2003).

<sup>16</sup> City of Vancouver, “A Framework for Action: A Four-Pillar Approach to Drug Problems in Vancouver,” November 21, 2000.

<sup>17</sup> See elements of the COPE platform online at <http://66.51.168.119/test/index.cfm/fuseaction/page.inside/pageID/673DEE84-7676-451B-A13089068C380BAF/index.cfm> (retrieved April 19, 2003).

<sup>18</sup> See, e.g., Frances Bula, “Injection Sites by Jan. 1: Campbell,” *Vancouver Sun*, November 5, 2002.

<sup>19</sup> Frances Bula and Petti Fong, “Police drug plan was six months in the making: Embarrassment over city’s image drove force to act,” *Vancouver Sun*, April 11, 2003.

<sup>20</sup> Government of Canada, Office of the Auditor General, 2001 Report, especially Chapter 11, “Illicit Drugs: The Federal Government’s Role,” Ottawa: 2001.

<sup>21</sup> Frances Bula, “Vancouver police thwart attempt to help addicts: Closing a sidewalk needle exchange shakes coalition of civic agencies,” *Vancouver Sun*, June 6, 2002.

<sup>22</sup> *Ibid.*

<sup>23</sup> See David Carrigg, “Gimme shelter,” *Vancouver Courier*, September 25, 2002.

A November 2002 report by Pivot Legal Society, a Vancouver-based NGO, published the affidavits of drug users in the city who had experienced what Pivot concluded to be torture and beatings, unreasonable use of force, arbitrary and unlawful arrest, unlawful searches, and harassment at the hands of the city police.<sup>24</sup> A number of Pivot's witnesses reported severe beating by police officers after they were already in custody and in handcuffs, and several suffered broken bones and teeth. Of the thirty-six persons who recounted to Pivot unreasonable force by the police, only eight ever finally had charges brought against them.<sup>25</sup> The Pivot report was preceded by two survey-based studies documenting extensive police misconduct on the Downtown Eastside, not only against drug users but against sex trade workers as well.<sup>26</sup>

From November 2002 to January 2003, the Vancouver police again increased their presence around the site of the VANDU sidewalk needle exchange with a round-the-clock or "24/7" presence.<sup>27</sup> The police referred to this operation as the "Seinfeld approach" in which they did nothing but make sure they were visible.<sup>28</sup> This operation had the effect of moving the densest population of injection drug users and sidewalk dwellers from the corner of Main Street and Hastings Avenue, the location of the Carnegie Community Center, to a location about a block away. It also caused a reduction in the number of needles exchanged through the VANDU service.<sup>29</sup>

In January 2003, six Vancouver police officers were suspended from duty when they were accused of taking three suspected drug dealers to a parking lot near the city's Stanley Park and beating them severely.<sup>30</sup> A case against the police was brought to the Vancouver provincial court; the next hearing is scheduled for May 7.<sup>31</sup> The Stanley Park incident occurred a few weeks before the visit of the International Olympic Committee to Vancouver.<sup>32</sup> Vancouver is a candidate city for the 2010 Olympic winter games; the city is dotted with banners saying, "We support the bid" and "Candidate city 2010." VANDU also agreed in March to move its sidewalk needle exchange service from the area outside the Carnegie Center to a nearby indoor location,<sup>33</sup> a move that coincided with the visit of the International Olympic Committee delegation.

Reportedly spurred in part by the prospect of the opening of a safe injection site, the Vancouver Police Department brought to the city council on March 27 a request for support for a "special enforcement team" for drug-related crimes to consist of sixty officers.<sup>34</sup> The strategy of this special unit, according to the Police Department request, was to maintain a very visible physical presence in the Downtown Eastside; the request cited the example of New York City in this regard. The proposal to the city council said the greater police presence would be "important to ensuring this measure [the safe injection site] has every chance to make a difference and succeed." Since the launch of the crackdown, Mayor Larry Campbell has reiterated his support for a pilot safe

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<sup>24</sup> Pivot Legal Society, "To Serve and Protect," November 2002.

<sup>25</sup> Ibid. These included three charges for theft under \$5000, and one charge for each of the following: outstanding warrant for theft under \$5000, outstanding warrant for assault, driving while impaired, failure to appear as a witness in a spousal dispute, and creating a disturbance.

<sup>26</sup> Prostitution Alternatives Counseling Education Society (PACE), "Violence Against Women in Vancouver's Street Level Sex Trade and the Police Response," 2001; data from Vancouver Injection Drug User Study (VIDUS), 2001.

<sup>27</sup> See, for example, minutes of the meeting of the Vancouver Police Board on November 20, 2002

<http://www.city.vancouver.bc.ca/police/policeboard/meetingminutes/2002nov20.html> (retrieved April 19, 2003), and Justin Beddall, "In the city: Cops keep dealers moving," *Westender*, January 23, 2003.

<sup>28</sup> Beddall, *ibid.*

<sup>29</sup> Human Rights Watch interview with Jim Jones of VANDU, Downtown Eastside, April 13, 2003. According to Jones, the 24/7 presence included positioning police cars, motorcycles and officers so that it was at times difficult for drug users to reach the needle exchange table without a close encounter with police or a police vehicle. VANDU's records indicated that the nightly average number of needles exchanged at the table before the 24/7 operation was 1200 to 1400; the figure fell to about 700 during the operation.

<sup>30</sup> Rod Mickleburgh, "Vancouver police accused of brutality," *Globe and Mail (Toronto)*, January 15, 2003.

<sup>31</sup> Petti Fong, "Delay granted in case of six police officers accused in beatings," *Vancouver Sun*, April 12, 2003.

<sup>32</sup> Associated Press, "Olympic officials visit Vancouver sites," March 1, 2003.

<sup>33</sup> Human Rights Watch interview with Jim Jones, April 13, 2003.

<sup>34</sup> Chief Constable, Vancouver Police Department, Administrative report of the Standing Committee on City Services and Budgets [memorandum], March 27, 2003 (CC File No. 3701/1601).

injection site for drug users in the city.<sup>35</sup> City officials said their application for a safe site was delayed as they waited for guidelines from the federal health ministry to apply for funds to support the site, and the application was submitted to Ottawa on March 7, 2003.<sup>36</sup>

The city council refused the police request for extra officers for the purpose of this crackdown.<sup>37</sup> The Police Department, however, went ahead and reallocated forty officers from other parts of the city to the Downtown Eastside, joining the twenty already assigned there, beginning on April 7, 2003.<sup>38</sup> The resulting labor-intensive action in the neighborhood was commonly referred to as Operation Torpedo.

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<sup>35</sup> Frances Bula and Brian Morton, "Mayor kickstarts four-pillar drug plan," *Vancouver Sun*, April 16, 2003.

<sup>36</sup> *Ibid.*

<sup>37</sup> Frank Luba and Ian Austin, "City council torpedoed crime-crackdown funds," *The Province*, April 12, 2003.

<sup>38</sup> Peg Fong and Frances Bula, "90 arrested in drug sweep: The first five days of a major campaign has produced hundreds of trafficking charges," *Vancouver Sun*, April 12, 2003.

## V. POLICE ABUSE AGAINST INJECTION DRUG USERS

The purpose of the current operation, according to the police, was to shut down the activity of drug dealers in the Downtown Eastside of Vancouver. According to press reports, the operation was preceded by three weeks of undercover work during which the police drew up warrants for the arrest of alleged drug traffickers.<sup>39</sup> The crackdown began with an intensive round of about ninety arrests of alleged drug traffickers on April 7 and 8, 2003, representing about half the number of persons for whom warrants were issued.<sup>40</sup> In the process, the relatively dense presence of injection drug users on the sidewalks and in the numerous alleys of the Downtown Eastside, which had long been a characteristic of the neighborhood, was largely dispersed. While this dramatic change was welcomed by some business owners in the neighborhood,<sup>41</sup> providers of health services and some government officials expressed concern that drug users had simply been driven to more unsafe and more “underground” locations and that they were more difficult to reach with life-saving preventive services such as needle exchange.<sup>42</sup> In interviews with residents of the Downtown Eastside, Human Rights Watch documented numerous types of police misconduct committed in connection with the crackdown, including the excessive use of force, arbitrary detention, illegal search and seizure, and widespread harassment.

### Excessive use of force

A number of persons interviewed by Human Rights Watch described instances of excessive or unnecessary use of force on the part of police officers, including force used when there was no credible threat to police officers’ safety, such as when the detained persons were already in handcuffs.<sup>43</sup> The still visible wounds running down the torso of Gary L., twenty-seven, punctuated his story about an encounter with the police on April 9 outside the Carnegie Community Center, a central location in the Downtown Eastside.

I was just sitting there having a cigarette. . . they [three undercover police officers] just chased me. I came back out to the balcony, and bam, they tackled me. Threw me down on the ground. They tackled me ‘cause I had a warrant. I was . . . minding my own business, next thing you know, I was on the ground. And they hit me pretty damn good, and fast, without even me knowing. Right in the chest. I had a warrant for drug trafficking. I didn’t even know about it. . . . I was in a lot of pain. Very painful. Feels like a jolt getting punched to your head. They tackled me again, I got up, it was two more on top of me. Had me in cuffs and leg irons. Very sore, like this rib right here, two of them are snapped.<sup>44</sup>

Gary L. said he was not only hit in the chest and head but also scraped by a police nightstick with a retractable blade, which produced the long wounds down his chest. He was taken to the hospital where he spent over two hours and was, by his account, handcuffed to the bed. He said he has filed a complaint against the police.

Fred R., forty-six, a resident of the Downtown Eastside, said that at about 4 a.m. on April 12, he observed from his apartment above an area of Carrall Street known as Pigeon Park three uniformed police officers who

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid. The police later reported the total number of traffickers arrested to be ninety-eight. See Bula and Morton, “Mayor kickstarts. . .,” *Vancouver Sun*, April 16, 2003.

<sup>41</sup> See, for example, Amy O’Brian and Petti Fong, “Drug crackdown to continue: VPD chief,” *Vancouver Sun*, April 10, 2003.

<sup>42</sup> See, for example, Canadian Broadcast Company British Columbia, “Police crackdown raises health concerns,” April 16, 2003 [online], at [http://vancouver.cbc.ca/template /servlet/View?filename=bc\\_nurses20030416](http://vancouver.cbc.ca/template /servlet/View?filename=bc_nurses20030416) (retrieved April 18, 2003), as well as testimony below.

<sup>43</sup> The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force. When the use of force and firearms is unavoidable, law enforcement officials should only use force proportionate to the seriousness of the offense and the legitimate objective to be achieved; act to minimize damage and injury; and, ensure that medical assistance is rendered to those in need at the earliest possible moment. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27 to September 17, 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990), principles 4 & 5.

<sup>44</sup> Human Rights Watch interview, Downtown Eastside, April 12, 2003.

detained and put into handcuffs a man and made him lie face down on the ground with his legs spread. “There were three policemen right around him; the situation was obviously under control,” he said.<sup>45</sup> With the man in this position, a police car arrived to join the four police cars already at the site. “The door opened, the policeman comes out, and he steps on the guy’s [leg] just above his ankles—you know, with both of his legs, and he starts going up and down—four, five times—until I yelled ‘Hey, this is police brutality.’” Fred R. said this officer, who was in uniform, walked with his face down after he heard Fred R.’s shouts.

Juan M., forty-four, who is originally from El Salvador said that at 7 p.m. on April 8, the second day of the crackdown, he was walking to the Carnegie Community Center in the heart of the Downtown Eastside, where he does volunteer work. He said four undercover police officers accosted him on the sidewalk. The woman officer in the group said “I know you” and told the others that he was a drug dealer. Juan M. said he said “You’re wrong, lady,” a remark that apparently infuriated the officers. One of the male officers “grabbed my throat and threw me up against the wall,” he said, and while keeping him in a throat-hold the officer told him to open his mouth for a drug search. He said one of the officers punched him on the leg while he was being kept by the throat against the wall, and the officers told him several times that he could be deported if he didn’t cooperate. Eventually, they asked him for identification, and one of the officers told the others, “He’s not our guy.” Juan M. attributed the behavior of the police in this case partly to the fact that “a lot of the drug dealers are Latino.”<sup>46</sup>

A number of persons interviewed by Human Rights Watch were nearby witnesses to acts of brutality. Lewis G., thirty, said he and his wife witnessed a violent incident on the second day of the crackdown that began when the police accosted a man in his thirties who had just injected drugs near the Carnegie Community Center. When the man threw his syringe down, according to this witness, two uniformed policemen nearby “started becoming a little abusive.”

He [the man who had injected] said [something] along the lines of “why are you going after the users and not the dealers?” And the cop turned around and said, “Well, we’re doing our job, this is how it’s going to be.” And he wouldn’t cooperate after that, so they turned around and they went to search him. He kind of took a couple of steps back. One cop turned around and gave him a shot in the mouth. He went down; the second cop jumped on top of him while the first cop, like I said, started kicking him in the chest.

The kicking went on for about I’d say three, four minutes. And then after that they put him in handcuffs, they picked him up, and as they were picking him up they just kept hitting him. That’s when both of them started hitting him. As they were picking him up . . . one cop on either side grabbed his arm, as they were picking him up, the second cop that was giving him the boots to the chest . . . kept kicking him while he was picking him up. The second cop that was on the other side, as soon as they got him up, came up to him and gave him a couple of smacks on the head and then they turned around and they took him away to talk to him. They put the handcuffs on after the cop started kicking him in the stomach when he was down.<sup>47</sup>

Human Rights Watch encountered Gerald B., thirty-five, soon after he had witnessed an arrest that he characterized as unnecessarily rough.

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<sup>45</sup> Human Rights Watch interview, Downtown Eastside, April 14, 2003.

<sup>46</sup> Human Rights Watch interview, Downtown Eastside, April 14, 2003. Many persons encountered by Human Rights Watch remarked on the case of Jose Cardona, a Honduran claiming refugee status in Canada who was allegedly kicked in the groin by a Vancouver police officer in the period of undercover work preceding the current crackdown. It was reported that Cardona was told he was at high risk of losing his testicle because of the injury. One week into the crackdown, the press quoted Byron Cruz, president of the British Columbia Multicultural Health Services Society as asserting that police harassment of Hispanic men in the Downtown Eastside was “running unchecked.” See Adrienne Tanner, “Another abuse allegation for city police,” *The Province*, April 14, 2003, at A11.

<sup>47</sup> Human Rights Watch interview, Downtown Eastside, April 14, 2003.

I was cruising going home, and I seen an officer putting some guy in a van up at Main and Hastings [a central location in the neighborhood]. While he was putting him in the van, I seen the cop grab him from the back of the head and rammed his head under the door while he was getting him inside. So his head bounced off the door and then he slid him right inside there. I don't know whether his head was bleeding or not, he slammed the door right after. But it sounded like it hurt pretty bad. I was not even like ten, fifteen feet away, right on the sidewalk.<sup>48</sup>

Richard F., forty-one, told Human Rights Watch that on the morning of April 12, 2003, he was drinking coffee in a McDonald's restaurant on the Downtown Eastside. Two uniformed police officers entered the restaurant and took the two shopping bags Richard F. had with him. Richard F. followed them as they left the store with his bags. He said they emptied his bags onto the sidewalk "looking for hot stuff." A person Richard F. knew passed on the sidewalk at that time and, according to him, "started mouthing off at the police and told them to go find the real criminals." According to Richard F., one of the officers shoved his acquaintance against the mailbox on the sidewalk, twisted his arm and put him into handcuffs. While in handcuffs, he said, the officer slammed his acquaintance against the police car. Richard F. was taken to the police station at this point. He heard later that his acquaintance, a drug user, was considering filing a complaint against the police.<sup>49</sup>

Pivot Legal Society, a local nongovernmental organization, has prepared cards summarizing the rights of a person stopped by the police, including a statement that a detained person could read to a police officer.<sup>50</sup> Several injection drug users and other persons encountered on the streets of the Downtown Eastside told Human Rights Watch that possession of the card could lead to rougher treatment by the police. "One cop said to me, 'Are you a smart ass? You think I don't know the rules? It's gonna go rough for you now'," said Cliff S., forty-eight, describing an incident during the second day of the crackdown.<sup>51</sup> While a Human Rights Watch researcher was reading one of the rights cards on the street in the heart of the Downtown Eastside, a woman in her thirties approached and said, "Those cards get you beat up by the cops," and ran off. Others echoed the view that an assertion of rights was a likely way to inflame the police.

In some cases, police became even more abusive when individuals who had refused to consent to an illegal search were found to be carrying syringes. This made certain individuals even more apprehensive about asserting their rights, and indeed forced some to incriminate themselves by handing syringes to the police directly.<sup>52</sup> "The first thing they ask is, 'Do you have anything sharp?'," said a volunteer for the VANDU needle exchange who asked to remain anonymous. "If you say 'no' and they put their hand in your pocket and find one, you're really in trouble."<sup>53</sup>

Dirk T., forty-two, said that police may also lash out against individuals who refuse to give their name or admit that they know there is a warrant out for their arrest—even in cases where the police are not in a legal position to demand such information. He said he had just been stopped that day outside a café on Hastings Avenue, when the police demanded to know his criminal history. "If you don't tell them . . . and they find out, they're twice as rough on you," he said. "I asked why I was being stopped, and they said, 'Just shut up and give us your birthday'."<sup>54</sup>

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<sup>48</sup> Human Rights Watch interview, Downtown Eastside, April 12, 2003.

<sup>49</sup> Human Rights Watch interview, Downtown Eastside, April 14, 2003.

<sup>50</sup> The statement on the card says, "Officer, if I am under arrest or being detained, please tell me so. If I am free to go, please tell me so. If I am under arrest, please tell me why. I want to exercise my right to silence and my right to speak to a lawyer before I say anything to you. I do not consent to be searched. If you need me to do something, you must first command me and explain why. I will not willingly talk to you until I speak to a lawyer. Thank you for respecting my rights." The other half of the card summarizes briefly the rights of detained persons in Canadian law.

<sup>51</sup> Human Rights Watch interview, alleyway in the Downtown Eastside, April 12, 2003.

<sup>52</sup> Unlike in much of the United States, possession of hypodermic syringes without a prescription is not illegal in Canada unless the syringes contain controlled substances. However, restrictions on sterile syringe possession may be stipulated in bail, probation or parole orders.

<sup>53</sup> Human Rights Watch interview, VANDU needle exchange program, Washington Hotel, April 13, 2003.

<sup>54</sup> Human Rights Watch interview, Downtown Eastside, April 13, 2003.

The worst of these cases of abuse constitute a violation of article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Canada is a party and which protects against torture and “cruel, inhuman or degrading treatment or punishment.”<sup>55</sup> The Constitution of Canada includes the Canadian Charter of Rights and Freedoms, of which section 12 states: “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.”<sup>56</sup> Canada is also party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which includes broad prohibitions against cruel and degrading actions on the part of law enforcement officers, even in cases in which they are following the orders of a superior.<sup>57</sup>

### **Arbitrary arrest and unreasonable or unlawful search and seizure**

The ICCPR guarantees the right to liberty and the security of person and protection from arbitrary arrest or detention.<sup>58</sup> Canadian law protects against “unreasonable search and seizure” and against arbitrary detention or imprisonment.<sup>59</sup> In addition, under Canadian law, reflecting ICCPR principles, detainees and persons arrested have the right to be informed promptly of any charge against them and to retain counsel if so desired.<sup>60</sup>

In Canada, searches by the police of a person’s possessions or full searches of a person’s body are legal when the person has been arrested or when there is a duly issued search warrant.<sup>61</sup> In other cases, police must demonstrate either that the individual gave his informed consent to be searched or that exigent circumstances, such as a threat to the officers’ safety, necessitated the search. Testimony from numerous witnesses during Human Rights Watch’s brief stay in the Downtown Eastside of Vancouver indicated actions on the part of the Vancouver police that violated all of these provisions.

On the night of April 12 a little before midnight, two Human Rights Watch researchers and a number of other onlookers witnessed the strip search of an African Canadian man on Hastings Street, a main thoroughfare, not far from the intersection of Hastings and Main, the heart of the Downtown Eastside. We were unable to see under what circumstances the man had been detained, but he was displayed publicly with his pants around his ankles, the headlights of a police car shining on him, his hands behind him in handcuffs. A police officer told passers-by that the police had used pepper spray<sup>62</sup> to subdue the man and that “he was being non-compliant”; he was “a threat to our safety.” The man vomited as he sat handcuffed with his pants down in full public view. There were seven police officers milling around him, including two women officers. Two of the male officers were wearing latex gloves.

The Supreme Court of Canada has described strip searches as “a significant invasion of privacy” and “often a humiliating, degrading and traumatic experience for individuals subject to them.”<sup>63</sup> Accordingly, the court

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<sup>55</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. Canada became a party to the ICCPR in 1976.

<sup>56</sup> Government of Canada, Canadian Charter of Rights and Freedoms. Available online at <http://laws.justice.gc.ca/en/charter/> (retrieved April 18, 2003).

<sup>57</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987. Canada became a party to the CAT in 1987.

Cruel, inhuman or degrading treatment or punishment are acts which do not amount to torture, and are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. CAT, art. 16.

<sup>58</sup> ICCPR, article 9.

<sup>59</sup> Canadian Charter of Rights and Freedoms, sections 8 and 9.

<sup>60</sup> *Ibid.*, section 10.

<sup>61</sup> See *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145. Police may conduct a “pat down” search for weapons when they have “articulable cause” to detain someone for investigative purposes: *R. v. Ferris*, [1998] B.C.J. No. 1415. Strip searches are a special category of body search and are discussed below.

<sup>62</sup> Oleoresin capsicum or pepper spray is used to control crowds, threatening individuals or wild animals by blinding and immobilizing them.

<sup>63</sup> *R. v. Golden*, [2001] 3 S.C.R. 679, at para. 83.

has urged that strip searches only be conducted by officers of the same gender as the individual being searched. In addition, strip searches must be conducted at a police station unless there is a demonstrated necessity and urgency to search for weapons or objects that could be used to threaten someone's safety. Non-compliance, the Supreme Court has held, is not the same as a threat to safety: "We particularly disagree with the suggestion that an arrested person's non-cooperation and resistance necessarily entitles the police to engage in behavior that disregards or compromises his or her physical and psychological integrity and safety."<sup>64</sup>

While the search documented above was particularly degrading, many other searches recounted by witnesses reflected strong elements of disrespect for the law and for the person searched. Arnold L., forty-four, was one of several persons encountered by Human Rights Watch who made their living selling food or used items on the streets of the Downtown Eastside. He said he is a cocaine user but had had no criminal record and no trouble with the police for the last seven years. With the current crackdown, he said, police searches threaten his livelihood. "I can't carry my backpack around without being searched by the cops, and then two minutes later by different cops. Just today two cops came up to me and said, 'Hey, goof, fuck off, you goof.' . . . They grabbed me, searched my pockets, asked me where I live. I told them, I sell clothes out of my cart. I was just sitting on the sidewalk with my cart."<sup>65</sup>

Like Arnold L., Gerald B. had not been arrested when police began going through his pockets without his consent. He said he was roughly searched by police on the street on April 11, 2003.

I was sitting outside there [by the Dodson] waiting and having a cigarette, and the next thing you know . . . they come right up to you . . . one cop said, "Hey, how's it goin'?" and meanwhile the other one is going through my pockets. By the time he fuckin' got his hands out of both my pockets, he doesn't even advise me if I have no sharps [that is, syringes] in my pocket or nothing, he's going through my pockets. I don't have sharps; I don't use sharps. I don't know, they should ask. I'm not even being arrested, they're not even reading me my rights. They just like grab me, and one's on one side, and one's on the other side, going through my pockets, and like "What have you got?" He said, "Well, you're too clean to be an addict" . . . which means I must be a dealer. . . . What did I do wrong, other than living in the poorest zip code in Canada?<sup>66</sup>

Other witnesses also reported having had their pockets searched by police without being informed why they were being stopped. On April 21, Christopher W. swore an affidavit describing an illegal search of his pockets in front of the Royal Bank on Main Street.

[T]wo police officers approached me. One of the officers asked me to step to the side next to the wall. I did. He asked me to empty my pockets. I asked him if I was under arrest. . . . The officer did not answer me, but repeated his question, asking me to empty my pockets. Again, I asked if I was under arrest. Then he asked me where I lived. I told him the Downtown Eastside. Then he said, "Why are you being such a fucking asshole?" I said I wasn't being rude. I pointed out my voice was normal, and I was merely asserting my rights. I asked him why he was treating me with such disrespect. The officer said, "Are we going to have to do this the easy way or the hard way. Now, are you going to fucking empty your pockets, or are we going to have to do this for you." I told him that this was against my rights.<sup>67</sup>

The police then told Christopher, a methadone patient, they had information he had been peddling narcotics. They pushed him against a wall, searched his pockets, and seized his prescription pain medication.

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<sup>64</sup> Ibid., para. 116.

<sup>65</sup> Human Rights Watch interview, Downtown Eastside, April 12, 2003.

<sup>66</sup> Human Rights Watch interview, Downtown Eastside, April 12, 2003.

<sup>67</sup> Affidavit of Christopher Watkins, Vancouver, April 21, 2003.

[H]e and his partner pushed me up against the wall, and forced me to spread my legs. They searched my pockets, and took out my prescription medications. . . . The officers started cross-examining me about my medications. “Why do you have morphine?” the blonde officer asked. I replied that I have osteoporosis in my hips, and am frequently in pain. Then he demanded, “Why do you have valium?” I replied that I have problems sleeping. I didn’t tell him this was because I was on methadone, because it was none of his business. The blonde officer said “You know, you are a real fucking asshole.” I told him that it takes one to know one, and that I was only asserting my rights. Then, the officer said “We don’t think you should be carrying your medications around with you.” He unscrewed the caps of the bottles, and dumped the pills on the ground. Then he crushed them with the heel of his boot. He said “That will teach you to be more careful next time.”

Christopher W. was then told by the officer not to carry his pills around with him, or else he would be charged with littering.

Thirty-three-year-old Robert B. described being arrested for shoplifting without the police’s having reasonable or probable grounds to arrest, as is required under Canadian law. Robert B. said he supplemented his income by selling used goods that he found in garbage bins to a middleman who sold them in flea markets. He said he is an injection drug user and had never had trouble with the police until the recent crackdown. His informal commerce has kept him from having to steal to support his drug habit, he said. At noon on April 12, 2003, Robert B. said he was near Pigeon Park on Carrall Street and was sitting with an infant car seat that he had found discarded in an empty lot at the edge of the neighborhood. He said two uniformed police officers approached him and told him that the car seat “looked too clean to be thrown out” and told him he must have had to break into a car to get it.

They said “Have you ever been in trouble?” and I think it was just because I have tattoos. I use but I’m discreet, and I don’t cause problems. I told them, “Take me downtown, look in the computer,” and they put me in handcuffs. They asked where I live, and I had to show them my keys to my room and the front door. They called the owner, and he said “Yeah, he lives there.” They ran my name [that is, checked his record in the computerized police system] after about an hour. I was in cuffs the whole time.<sup>68</sup>

Robert B. was released, but he was not allowed to keep the infant car seat. “Those guys are judge, jury and hangman; now everyone is guilty until proven innocent,” he said.

Like Robert B. and Juan F., a number of witnesses said they thought some element of their outward appearance or racial or ethnic background was part of the motivation for their detention or search. Several witnesses, such as Gerald B., said they believed they were targeted because they are aboriginal or First Nations<sup>69</sup> persons or belonged to other racial minorities. “I’ve been beaten up and harassed several times, just walking down the street at night and being asked if I’m someone—that’s just being a black man in the neighborhood,” said one resident.<sup>70</sup>

Harold P., a member of the Ojibway First Nation, said the police confiscated cash and drugs from him on the first day of the crackdown.

I was going home to get high, and I was on Hastings. Two cops stopped me; they were in uniform. They came out of nowhere and said, “Stop here, we saw you buying drugs.” I said I didn’t buy them—they couldn’t have seen me do it since I didn’t buy them on the street. They

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<sup>68</sup> Human Rights Watch interview, Downtown Eastside, April 14, 2003.

<sup>69</sup> First Nations or First Peoples are terms used to describe the aboriginal societies that existed in Canada before the arrival of Europeans.

<sup>70</sup> Human Rights Watch interview, Downtown Eastside, April 15, 2003.

asked me for ID, and I said I didn't have one. Then they searched me, broke my pipe [a cocaine pipe] and took my money. It was in my wallet in my jacket pocket. They took \$40 [U.S.\$28], then they let me go. They said, "We'll give you a warning, next time we see you we'll take you in." They were sort of rude, saying I was a waste of a life. I said if I'm a waste of a life, then why are you talking to me?<sup>71</sup>

### **Harassment for alleged petty offenses**

Numerous drug users interviewed by Human Rights Watch said that they were detained by the police for jaywalking, walking outside the lines of the pedestrian crosswalk, vagrancy or threat of a vagrancy charge, street vending without a permit, possessing a "stolen" shopping cart, public drunkenness, and other municipal bylaw offenses. "I got two jaywalking tickets in one day" at the beginning of the crackdown, said Dirk T.<sup>72</sup> Harold P. described one of many jaywalking incidents documented during the crackdown.

Two days ago, they stopped me for jaywalking. I wasn't really jaywalking. I was crossing Hastings at Main, and I cut off at an angle when I was halfway across the street. They stopped me and found three joints under my hat—they flicked my hat off and found them. Then they sent me on my way and gave me a \$45 [U.S.\$31, for jaywalking] ticket. . . . It was okay before this week. I never got jacked up<sup>73</sup> as much. I don't inject drugs. I've been staying away from Hastings since the crackdown started.<sup>74</sup>

Under Canadian law, police can legally require a person to produce identification documents if a bylaw offense has been committed.<sup>75</sup> In some cases, however, police stopped and demanded identification of individuals without informing them of any infraction. "I see cops jacking people up for a bag of chips," said Will T., who lives near the Downtown Eastside's Pigeon Park. Will T. went on to describe an incident he witnessed the afternoon of April 12 in which police began harassing someone who was selling expired potato chips for a quarter. "I was talking to him, and two cops were on us," he said. "Two cops jumped out, asked him his name, and said he was looking suspicious. They were just harassing him—he was being watched. They just looked inside his bag."<sup>76</sup>

Roger L., a forty-four year-old Métis man, told Human Rights Watch that two nights earlier he was attending a soup line with some friends when "the cops came over and jacked us up and wanted to run our names."<sup>77</sup> He said that in twenty-eight years on the Downtown Eastside, he had never been stopped by the police "unless I caused trouble." That night, he said, "they just said 'What's your name?' and asked me for ID. I thought they were allowed to ask for ID like that." Human Rights Watch researchers observed numerous instances of police stopping people, demanding their identification or interrogating them on the street or in the alleys of the Downtown Eastside without informing them why they were being detained. At about 9:30 p.m. on April 14, two uniformed policemen on horseback stopped two Human Rights Watch researchers and asked them to explain what they were doing on Hastings Avenue where they were chatting on the sidewalk with two apparently homeless people who had just been searched.

From testimony gathered by Human Rights Watch, it was evident that police were using the threat of a citation as a method of harassing Downtown Eastside residents and forcing them off the streets. Charles J. Parker, president of the British Columbia Association of People on Methadone, said the police threatened him with a vagrancy charge early in the crackdown when he was seated on the steps of the public library reading a book. "They were going to charge me with vagrancy for reading a book outside the library, twenty feet from where I

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<sup>71</sup> Human Rights Watch interview, Downtown Eastside, April 15, 2003.

<sup>72</sup> Human Rights Watch interview, Downtown Eastside, April 13, 2003.

<sup>73</sup> "Jacked up" is a common local term referring to detention, often arbitrary, without formal arrest.

<sup>74</sup> Human Rights Watch interview, Downtown Eastside, April 15, 2003.

<sup>75</sup> See *R. v. Moore* (1979), 5 C.R. (3d) 289 (S.C.C.). Bylaws in Vancouver are enforced pursuant to sec. 482.1 of the Vancouver Charter, S.B.C. 1953.

<sup>76</sup> Human Rights Watch interview, Downtown Eastside, April 15, 2003.

<sup>77</sup> Human Rights Watch interview, Downtown Eastside, April 15, 2003.

work and right near where I live,” he said.<sup>78</sup> The police told him he was sitting in front of a fire exit, but, he said, there was no sign or other indication of a fire exit. “Poor people getting \$55 [U.S.\$38] jaywalking fines. . . . how can this be doing any good?” Several people said they have had to change the way they walk to and from their homes because of their fear of getting a ticket with a steep fine for a minor offense. “You know, this is where we live—we can’t hang out, we take the long way around even to go home—they shouldn’t chase us from our home,” said Henry P., thirty-nine, a long-time resident.<sup>79</sup>

Although it took place on March 28, before the current crackdown began, another incident illustrates the way in which charges for petty offenses have contributed to an atmosphere of anxiety. Dolores N., thirty-seven, did volunteer work at the Health Contact Centre of the Vancouver Coastal Health Authority, a regional government body. She had suffered a stroke some months before and as a result walked haltingly. As she left the center after her shift late at night, she said she was stopped by two uniformed policemen. “You’re either drunk or stoned,” they told her. She said she tried to explain that she had had a stroke, which was why her speech and her gait were halting. “They made me turn my pockets out and turn my gloves out, and they wanted to pat me down. They said I would be charged with vagrancy,” she said. She said one of the officers seemed to understand and believe that she had had a stroke but he could not make his colleague back off. She was let go only when she showed her house keys and challenged the officers to see how they fit into the door of her nearby home.<sup>80</sup>

Such accounts vindicate the concerns of many service providers that police have gone far beyond the stated purpose of the current police campaign, to clear the streets of drug dealers and traffickers, by catching drug users who do not sell drugs, homeless persons, sex workers and their clients, and others in their net. Thia Walter of the Life Is not Enough Society, a local NGO providing services to the homeless, said the large number of homeless persons who have been disrupted and in some cases detained by the police is proof that they are exceeding their stated mandate because it is well known that drug dealers do not sleep on the streets.<sup>81</sup> “The police are not just hassling dealers—they’re going after users, homeless people, sex trade workers and johns,” said Ann Livingston, project coordinator of VANDU.<sup>82</sup>

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<sup>78</sup> Human Rights Watch interview, Downtown Eastside, April 12, 2003.

<sup>79</sup> Human Rights Watch interview, Downtown Eastside April 14, 2003.

<sup>80</sup> Human Rights Watch interview, Downtown Eastside April 13, 2003.

<sup>81</sup> Human Rights Watch interview, Downtown Eastside April 12, 2003.

<sup>82</sup> Human Rights Watch interview, Downtown Eastside April 12, 2003.

## VI. HIV/AIDS, DRUG OVERDOSE AND OTHER PUBLIC HEALTH CONCERNS

The conduct of the police with respect to injection and other drug users has contributed to clearing the streets and sidewalks of the Downtown Eastside of the drug users who were previously seen there in large numbers. But health service providers who spoke to Human Rights Watch and many others quoted in the local press expressed deep concern that the displacement of drug users and other aspects of the police presence and conduct would have disastrous health consequences, including fuelling transmission of HIV and hepatitis C from use of contaminated syringes and increasing the risk of overdose and of severe illness from injection or ingestion of poor-quality drugs. “I’ve worked here since 1978, and I haven’t seen these numbers of policemen before,” said Liz James, a nurse in the government-funded Street Nurse Program of Vancouver. She said the police presence has led to a state of “high anxiety and real desperation” among the city’s most vulnerable persons, including injection drug users: “They’re not willing to make contact with us or to engage and get the help they need.”<sup>83</sup>

Article 12 of the International Covenant on Economic, Social and Cultural Rights, to which Canada is party, recognizes “the right of everyone to the enjoyment of the highest attainable standard of health.”<sup>84</sup> Below, Human Rights Watch documents several ways in which police misconduct in Vancouver threatens the health of injection drug users: by interfering with legal needle exchange, street outreach and other harm reduction programs; by increasing the risk of overdose and other complications associated with illegal drug use; and by interrupting basic health care services, including the delivery of HIV/AIDS medication. While abstaining from drugs may be the surest method of avoiding these health outcomes, harm reduction programs such as needle exchange have been conclusively demonstrated to reduce HIV risk without encouraging drug use or drug-related crime.<sup>85</sup> Canadian courts have also found that addiction, whether to legal or illegal drugs, may be a form of handicap or disability on the basis of which individuals may not be discriminated against.<sup>86</sup> Policies that, intentionally or not, single out drug users for police action, deprive them of health services and generally make it harder for them to protect themselves from fatal diseases run afoul of Canada’s constitutional guarantee of equality under the law and its international human rights obligations.

### **Interference with legal needle exchange and street outreach**

Needle exchange, a proven effective intervention for preventing transmission of HIV and other blood-borne infections among injection drug users, is legal in Canada and in many cases funded by the government. Yet needle exchange program staff expressed deep concern that they were unable to reach injection drug users with sterile syringes. According to the records kept by the needle exchange program of VANDU, which includes the only mobile street-based service in the Downtown Eastside, the service provided users an average of 1165

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<sup>83</sup> Human Rights Watch interview, Downtown Eastside, April 14, 2003.

<sup>84</sup> International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976. Canada became a party to the ICESCR in 1976. The Committee on Economic, Social and Cultural Rights, in its general comment on article 12, states:

Violations of the obligation to respect [the right to the highest attainable standard of health] are those State actions, policies or laws that contravene the standards set out in article 12 of the Covenant and are likely to result in bodily harm, unnecessary morbidity and preventable mortality. Examples include the denial of access to health facilities, goods and services to particular individuals or groups as a result of de jure or de facto discrimination; the deliberate withholding or misrepresentation of information vital to health protection or treatment; the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of any of the components of the right to health....

Committee on Economic, Social and Cultural Rights, The right to the highest attainable standard of health, E/C.12/2000/4, CESCR General comment 14 (Aug. 11, 2000), para. 50.

<sup>85</sup> There is a wealth of literature on this subject, much of which is reviewed in Peter Lurie and Ernest Drucker, “An opportunity lost: HIV infections associated with a lack of a national needle-exchange program in the USA,” *The Lancet*, March 1, 1997, pp. 604-608.

<sup>86</sup> See *Entrop v. Imperial Oil Ltd.* (2000) 50 O.R. (3d) 18, holding that drug addiction and alcohol abuse are a handicap for the purposes of the Ontario Human Rights Code. Drug dependency is also included as a prohibited ground of discrimination in s. 10 of the Canadian Human Rights Act, R.S.C. 1985, c. H-6.

syringes per night in the two weeks before the beginning of the crackdown. In contrast, the totals for the first three days of the crackdown, the nights of April 7, 8 and 9, were 773, 816 and 719 respectively, about two-thirds the normal total.<sup>87</sup> Dave Apsey of VANDU added that distribution of condoms, which are also provided by VANDU, had also greatly declined since the beginning of the crackdown. “Usually in a night we go through four boxes [there are 144 condoms per box], but now we’re lucky if we go through one,” he said.<sup>88</sup>

The legal risk assumed by needle exchange participants in Canada may not be as great as in the United States, where possession of drug paraphernalia is potentially a criminal offense. However, Canada’s Controlled Drugs and Substances Act specifically defines as a controlled substance “any thing that contains or has on it a controlled substance and that is used or intended or designed for use...in introducing the substance into the human body.”<sup>89</sup> This provision may be interpreted to include syringes containing trace amounts of drug residue, something needle exchange participants routinely transport back to needle exchange sites.<sup>90</sup> In addition, some needle exchange volunteers told Human Rights Watch that possession of even sterile syringes may be prohibited by bail, probation or parole orders. Courts in the United States have held that stopping, arresting, punishing or in any way penalizing participants in legal needle exchanges on the basis of possession of new or used hypodermic syringes subverts the legislative intent behind permitting needle exchange in the first place.<sup>91</sup>

One of VANDU’s volunteer needle exchangers, who preferred to be anonymous because he himself had been “jacked up” by the police several times during the first week of the crackdown, said he was shocked by the degree to which the police presence was keeping drug users from obtaining clean needles. “Half the people we normally have wouldn’t exchange because the police were there,” he said of one of the first days of the crackdown. “When I was out [offering sterile syringes in the mobile exchange service], there were cops on every corner and a couple on the sidewalk.”<sup>92</sup> A particularly dangerous sign, according to needle exchange workers, is that some of the needles being returned to them are coming back taped together with cellophane or black tape or with very dull points from repeated use.<sup>93</sup> “When you see rigs<sup>94</sup> with tape, you know it’s bad,” said one needle exchange worker. “We know people are reusing and trying to pick out the best of the old rigs. . . . People are asking for bleach<sup>95</sup> and packs of matches to sharpen old needles.”<sup>96</sup>

An additional concern of exchange volunteers was that injectors were too scared to carry the clean needles they were given, leaving them unprepared in case they had an opportunity to inject. “Last night I had someone drop seven brand new rigs into my [disposal] container,” said one volunteer. “He just didn’t want them on him. They were still in their wrappers.”<sup>97</sup> For the same reason, this volunteer observed, injectors were taking fewer new syringes than they normally did. “We give up to ten [as “loans” rather than strictly against exchange of used syringes], and people are only taking one or two,” he said. While accompanying VANDU volunteers on their mobile needle exchange, Human Rights Watch researchers observed that many injection drug users were only asking for enough equipment for a single injection.

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<sup>87</sup> Human Rights Watch interview with Jim Jones, VANDU needle exchange program, Washington Hotel, Downtown Eastside, April 13, 2003.

<sup>88</sup> Human Rights Watch interview with David Apsey, VANDU needle exchange program, Washington Hotel, Downtown Eastside, April 13, 2003.

<sup>89</sup> Controlled Drugs and Substances Act, s. 2(b)(ii)(B).

<sup>90</sup> It could be argued that unless an individual intends to inject the drug residue into his or her body, the syringe containing it does not qualify as a “controlled substance” under the Act.

<sup>91</sup> See *Com. v. Landry*, 779 N.E.2d 638 (Mass, 2002), *Roe v. City of New York*, 232 F.Supp.2d 240 (S.D.N.Y. 2002), *Doe v. Bridgeport Police Dept.*, 198 F.R.D. 325 (D.Conn 2001).

<sup>92</sup> Human Rights Watch interview with Dirk T., forty-two, volunteer worker in the VANDU needle exchange program, April 13, 2003.

<sup>93</sup> Human Rights Watch interview with Jim Jones and Dave Apsey of VANDU, Washington Hotel, April 13, 2003.

<sup>94</sup> “Rigs” is a common way to refer to needles or needles and plungers used for injecting drugs.

<sup>95</sup> Cleaning syringes thoroughly with chlorine bleach can reduce the risk of HIV transmission, but bleach is ineffective against hepatitis C contamination of syringes.

<sup>96</sup> Human Rights Watch interview with Dirk T., April 13, 2003.

<sup>97</sup> Human Rights Watch interview with Dave Apsey, VANDU, April 13, 2003.

Needle exchange volunteers expressed particular concern that fear of arrest was driving drug users into unsafe injection practices.<sup>98</sup> “I have seen people too scared to come down and get new rigs,” said a board member of VANDU.<sup>99</sup> “It’s not worth going to jail for. They’re scared to go; they’re just scared of the cops. To be honest with you, most of them will share. If they’ve got no bleach, they’ll use water to rinse it first.” Charles Joseph Parker, president of the Vancouver Association of People on Methadone, said: “It’s fear of being jacked up . . . so immediately they [drug users] stay away from it [needle exchange]. Of that 30 percent [the decline in needle exchange use], I bet you we’re going to have . . . people who are going to get HIV or at least hep C, but most likely they’re going to wind up with HIV—for the sake of this? We want to be killing our brothers and sisters for this?”<sup>100</sup> Considering the crackdown’s role in driving people to reuse needles, Dave Apsey, a veteran needle exchange worker, said of the police action: “This is not harm reduction—it’s harm production.”<sup>101</sup>

Thirty-five year-old Gerald B., who said he uses needles to inject speed, told Human Rights Watch that the first day of the crackdown was the first time in a long time he shared injection equipment. “That’s when the cops came out,” Gerald B. said. “It was Monday morning. And Monday night I had to come out and get some rigs, but I didn’t want to come out that night because there were too many cops.”<sup>102</sup> Human Rights Watch observed a heavy police presence on and off for four days outside the two main facilities doing needle exchange near the intersection of Main Street and Hastings Avenue where drug users often had to pass police motorcycles and cars parked near the door of the facilities to get to fixed needle exchange services. Human Rights Watch researchers also accompanied mobile needle exchange providers in the neighborhood for four nights during which the police did not interfere with the work.

With a few exceptions, according to VANDU workers, the mobile needle exchange volunteers are not welcomed by owners of the single-room occupancy hotels where VANDU suspects many more drug users are injecting since the beginning of the police crackdown. “A lot of owners don’t want the customers to see needle exchange, and also the tenant might be accused of a crime and doesn’t want the landlord to know,” said Apsey.<sup>103</sup> The VANDU workers noted that in the few hotels where they have through their network been able to distribute clean needles to people hiding in the rooms, they found users very relieved to get needles because they had been reusing old ones and in some cases paying people several dollars for old needles.

In addition to maintaining an intimidating presence near needle exchange sites, police also obstruct legal needle exchange by confiscating syringes from needle exchange participants—even though, as noted above, possession of sterile syringes is legal across Canada. “They [two policemen] searched me for drugs, took my pipe, smashed it; took all my syringes even though they were new—I just got them at the exchange,” said Martin S., fifty-five.<sup>104</sup> Another injection drug user said that on April 15 near the Carnegie Center he witnessed confiscation by two uniformed police officers of “six syringes wrapped in a plastic bag” from a woman who is a long-time resident of the neighborhood.<sup>105</sup> Several needle exchange workers told Human Rights Watch that not only were fewer drug users seeking out needle exchange services since the crackdown, but those who did come were requesting fewer syringes because they did not want to be caught with them on their person if they were stopped by the police.<sup>106</sup> Jim Jones of VANDU noted that many drug users with previous arrests who may be waiting to go to court may have “red zone” bail conditions that prevent them from coming to the Downtown

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<sup>98</sup> Similar findings have been made in other jurisdictions. See, e.g., Ricky Bluthenthal et al., “Collateral damage in the war on drugs: HIV risk behaviors among injection drug users,” *International Journal of Drug Policy* 10, 1999, pp. 25-38; Lisa Maher and David Dixon, “Policing and public health: Law enforcement and harm minimization in a street-level drug market,” *British Journal of Criminology*, Autumn 1999, pp. 488-512.

<sup>99</sup> Human Rights Watch interview, Downtown Eastside, April 12, 2003.

<sup>100</sup> Human Rights Watch interview, Downtown Eastside, April 12, 2003.

<sup>101</sup> Human Rights Watch interview, Downtown Eastside, April 13, 2003.

<sup>102</sup> Human Rights Watch interview, Downtown Eastside, April 12, 2003.

<sup>103</sup> Ibid.

<sup>104</sup> Human Rights Watch interview, Downtown Eastside, April 14, 2003.

<sup>105</sup> Human Rights Watch interview with Daniel R., thirty-five, Downtown Eastside, April 15, 2003.

<sup>106</sup> Human Rights Watch interviews with VANDU needle exchange workers and mobile teams, Downtown Eastside, April 13 and April 14, 2003.

Eastside where they have the best access to needles.<sup>107</sup> The VANDU workers also distribute small tubes of water suitable for injected preparations, and they feared that the lower utilization of their program meant people were injecting with water from puddles or other unclean liquid.

Not only HIV and hepatitis C but a growing syphilis epidemic is at risk of being exacerbated by the fears surrounding the heavy police presence. Street nurse Liz James told Human Rights Watch that on April 15, she met a client whom she had advised to be tested for syphilis, and she was going to administer the test on the sidewalk near the city's Oppenheimer Park. "I lost him because someone came along and said 'The sixes<sup>108</sup> are coming' and everyone scattered. I finally found him a few hours later, but people are not forthcoming anymore with information and contacts."<sup>109</sup> "We can hardly do contact tracing for syphilis and gonorrhea,"<sup>110</sup> said Tuan Luu, also a nurse in the Street Nurse Program. "In the last week it's been difficult to find the people we want to find; everybody is hiding in the hotels."<sup>111</sup>

### **Overdose, "fake" drugs and other complications**

Having to inject drugs in isolated places not only leads to sharing and reusing of injection equipment, said some health providers, but to a higher risk of complications, including death, from overdose. Health service providers and drug users alike told Human Rights Watch that they feared the police crackdown was driving drug users to inject in places where they would be less likely to find help if they needed it—not only in the hotels but in more isolated and hidden parts of town.<sup>112</sup> Service providers said it was too soon to see the impact of the crackdown on overdose deaths and illness. One expressed the concern that "after a while, we'll start finding the bodies."<sup>113</sup> One injection drug user summed up the fears expressed by several health service providers who spoke to Human Rights Watch:

People are dying, and it's harder for people to find them when they are OD-ing [overdosing]. Just down over here, when people are OD-ing in a back alley, you find them and boom. But nobody's there [where the users are now]. Everybody's spilled all over...and they start getting high in the back, by the tracks over here and stuff like that. That's when the bodies are going to start popping up. I have seen people getting high around there, but not OD-ing yet. But it's just a matter of time.<sup>114</sup>

Drug users and service providers said that the crackdown had made it more likely that drug users would purchase and inject poor-quality or "fake" drugs with potentially lethal consequences. Linus Malik, forty-five, a long-time resident of the Downtown Eastside who said he is a non-injecting drug user, noted: "Before you knew who was who [among the dealers]; now there are a lot more strangers selling dope. The regular Hispanic dealers are not coming around because the police know them. It opens the market for new sellers and more stuff that's not real drugs," he said.<sup>115</sup>

George C., forty-two, said: "Now we have people who sell 'bonk'—fake dope. With the police out there, we call it a bonker's paradise. The dealers don't care if they rip you off [with fake drugs] with a cop standing two blocks away, and the police won't arrest you for bonking."<sup>116</sup> He added that drug users don't take the time to

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<sup>107</sup> Human Rights Watch interview, Downtown Eastside April 13, 2003.

<sup>108</sup> "Sixes" is a local reference to the police.

<sup>109</sup> Human Rights Watch interview, Downtown Eastside, April 15, 2003.

<sup>110</sup> Asking persons who test positive for syphilis and gonorrhea for the names of their sexual partners and seeking those persons out for testing and treatment are standard public health practices.

<sup>111</sup> Human Rights Watch interview, Downtown Eastside, April 14, 2003.

<sup>112</sup> For example, Human Rights Watch interview with Charles Joseph Parker, Downtown Eastside, April 12, 2003. This sentiment has been echoed in numerous press reports, for example, Frances Bula and Petti Fong, "Police drug plan was six months in the making: Embarrassment over city's image drove force to act," *Vancouver Sun*, April 11, 2003.

<sup>113</sup> Human Rights Watch interview with Dave Apsey, April 13, 2003.

<sup>114</sup> Human Rights Watch interview, Downtown Eastside, April 12, 2003.

<sup>115</sup> Human Rights Watch interview, Downtown Eastside, April 15, 2003.

<sup>116</sup> Human Rights Watch interview, Downtown Eastside, April 12, 2003.

verify the quality of what they are sold when the police are nearby. Ajax scouring powder and Dr. Scholl's foot powder were among the substances that drug users said were being sold as drugs on the street. In other interviews, observers noted that since the crackdown, more users are having to inject hurriedly with possible adverse consequences. "Within two minutes they want that stuff in them, so they'll do it anywhere they can," said Gerald B., who also noted that users "don't worry about how much is there" and are therefore at high risk of drug overdose.<sup>117</sup>

Several drug users and service providers suggested that the significant entry of doctored or "fake" drugs into the market and the generally greater difficulty of getting drugs since the crackdown would lead to crime and violence among users and dealers. "It's gonna get violent—these crimes come out of desperation when they make it impossible to get dope. Someone who's junk-sick will do anything," said one drug user.<sup>118</sup> Ann Livingston, executive director of VANDU and a long-time resident of the Downtown Eastside, echoed this idea, noting that when access to drugs and to services is disrupted, violence among the most marginalized drug users in the neighborhood increases.<sup>119</sup>

Adding to the potential for increased crime is the police crackdown on informal commerce among Downtown Eastside sidewalk vendors and sellers of scavenged goods. Four informal vendors interviewed by Human Rights Watch, including Arnold L. and Robert B. cited above, said that their sales of used goods or food enabled them to make a living without resorting to theft but that with the crackdown, they might face a situation where they would resort to stealing.<sup>120</sup> The crackdown has coincided with a time of cuts in the budgets of social and health services supported by the province of British Columbia, which some service providers said would add to the risk of higher crime as a result of the crackdown.<sup>121</sup>

### **Interruption of health services**

A number of health service providers raised the concern of interruption of medication for people with HIV/AIDS, tuberculosis and other medical conditions requiring intensive care and follow-up. Mark W. Tyndall, director of the Epidemiology Program at the British Columbia Centre for Excellence on HIV/AIDS and a practicing physician in the Downtown Eastside, told the Canadian Broadcasting Company on April 17 that the police crackdown in the neighborhood was making it more difficult to ensure follow-up in these cases. "We have some pretty crystal clear examples from yesterday where people weren't showing up for their regular ARV [antiretroviral] therapy. It's important that they take [these medicines] daily and consistently. This is jeopardizing their long-term treatment," he said.<sup>122</sup> Tyndall said the trust built up over years with stigmatized and marginalized people can, in the face of a police crackdown, "in a day be thrown out the window." Tyndall also echoed the unanimous view of service providers who spoke to Human Rights Watch that the police crackdown would have been less disruptive to health services if it had taken place after the opening of the proposed safe injection site.

Vicki Bright, a community counselor in a program of the Vancouver Coastal Health Authority that provides intensive follow-up for people living with AIDS, said the overnight incarcerations that have been

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<sup>117</sup> Human Rights Watch interview, Downtown Eastside, April 12, 2003.

<sup>118</sup> Human Rights Watch interview with Winston R., age forty, Downtown Eastside, April 12, 2003.

<sup>119</sup> Human Rights Watch interview, Downtown Eastside, April 12, 2003.

<sup>120</sup> Human Rights Watch interviews, Downtown Eastside, April 12, 13 and 14, 2003.

<sup>121</sup> The British Columbia Employment and Assistance Act of September 30, 2002 overhauled the social assistance system of the province, establishing lower rates of income assistance for low-income persons and changing eligibility rules. The Coalition of Progressive Electors with which the current majority of the Vancouver city councillors is affiliated criticized the provincial cuts strongly during the election campaign, echoing the views of many community and antipoverty groups across the province. See COPE statement on the economy [online] at <http://www.cope.bc.ca/index.cfm/fuseaction/page.inside/pageID/90EB1C8D-B626-4573-936354D7ACDF8680/index.html> and the positions of Campaign BC, a coalition of community groups that opposed the cuts [online] at <http://www.campaignbc.ca/index.cfm> (retrieved April 19, 2003).

<sup>122</sup> Canadian Broadcasting Company British Columbia, Radio One, The Afternoon Show, interview with Dr. Mark W. Tyndall, April 17, 2003, available online at <http://www.vancouver.cbc.ca/afternoonshow/>. Heard April 19, 2003.

common under the crackdown can impede the ability of people with HIV/AIDS to get their medications. “One of my female clients was recently picked up [by the police] and missed her methadone and her meds for a night and had no chance to contact us,” she noted.<sup>123</sup> A recent study of 238 injection drug users in Vancouver by the British Columbia Centre for Excellence on HIV/AIDS identified incarceration as one of the strongest determinants of antiretroviral treatment interruption in this population.<sup>124</sup>

Some of the health risks faced by drug users in the crackdown are also faced by sex workers in the neighborhood. Press reports indicated that sex workers were being driven by fear of police harassment to conduct business in dangerous and hidden parts of the city and that the “buddy system” some sex workers use to protect themselves was being disrupted by the crackdown.<sup>125</sup> “On the Downtown Eastside these women are being targeted by police, thrown up against walls and harassed; we are worried that at the end of this, we’ll only have more missing women,” said Wanda Villanueva, a counselor at the Downtown Eastside Women’s Centre.<sup>126</sup> Her mention of missing women refers to a case that drew international attention involving the disappearance and murder over the last several years of sixty-one women sex workers, of whom over half were from the Downtown Eastside.<sup>127</sup>

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<sup>123</sup> Human Rights Watch interview, Downtown Eastside, April 15, 2003.

<sup>124</sup> A. Palepu, M.W. Tyndall, K. Li, B. Yip, R.S. Hogg, M.S. O’Shaughnessy, J.S.G. Montaner, and M.T. Schechter. Access and sustainability of antiretroviral therapy among injection drug users in Vancouver. *Canadian Journal of Infectious Disease*, volume 12(Supp. B), number 32B, 2001.

<sup>125</sup> See, e.g., Amy Carmichael, “Crackdown in Vancouver slum before addiction centre opens angers social workers,” *Canadian Press*, April 11, 2003.

<sup>126</sup> *Ibid*; see also Peg Fong and Frances Bula, “90 arrested in drug sweep...” *Vancouver Sun*, April 12, 2003.

<sup>127</sup> Philip Saunders, “Missing Women of Vancouver: Backgrounder,” February 14, 2003, Canadian Broadcasting Company [online], at [http://www.cbc.ca/news/features/bc\\_missingwomen.html](http://www.cbc.ca/news/features/bc_missingwomen.html). (Retrieved April 11, 2003.) At this writing, the case against a suspect in these murders is being heard in pretrial proceedings. The Vancouver Police Department was widely criticized for the handling of this investigation, including by family members of victims who alleged that the police neglected the case because the victims were sex workers. The Royal Canadian Mounted Police joined the investigation in 2001 in response to this dissatisfaction.

## VII. GOVERNMENT RESPONSE

### Statements by public officials

Numerous public statements by Vancouver Police Department officials since the beginning of the crackdown have lauded its positive impact. The chief of police, Jamie Graham, told the Canadian Broadcasting Company (CBC) that he knew “deep down” that clearing the streets of drug users was “just the right thing to do.” Asked about charges of police brutality linked to the crackdown that had appeared in the media, Graham said: “One of the things I love about a democracy is that people are free to make those kinds of wild accusations. There’s been a couple of reports; I can’t say anything when there’s no name attached. If anyone has a complaint, make your complaint; we’ll investigate it. My reputation stands on every complaint that comes to me.”<sup>128</sup>

Asked by the CBC interviewer about the concern raised by numerous health professionals that the crackdown would fuel a new wave of HIV and hepatitis C transmission, Graham noted: “If certain people get sick, I’m sorry—that happens. What was here before was completely unacceptable, we couldn’t allow that to continue.” He suggested the health sector would need to work harder and find more funds to minimize the health impact of the crackdown.<sup>129</sup> Earlier, a police department spokesperson said the department was working with health authorities and providing referral cards to people on the street to direct them to counseling and needle exchange services.<sup>130</sup> In four days of observing police activity on the streets of the Downtown Eastside and numerous encounters with drug users and service providers, Human Rights Watch did not encounter evidence of such referrals by the police.

Police inspector Doug LePard, the director of the operation, told the press on April 16 that he had heard from many “drug addicts” in the Downtown Eastside who thanked the police for their increased presence. “We’ve got addicts telling us that they feel safer, and they’re the ones most likely to be the victims of predatory crimes. . . . Our presence makes it much more difficult for the predators to pick on the weak.”<sup>131</sup>

Human Rights Watch spoke with the district commander for the part of Vancouver that includes the Downtown Eastside, Bob Rich. Rich lamented that the concerns of human rights and AIDS activists about the crackdown were ignoring the perspective of thousands of Downtown Eastside residents who were entitled to relief from perceived threats of violence and property crime associated with the neighborhood’s drug trade. He acknowledged that Vancouver’s electorate supported a four-pillar approach to the drug problem—an approach he said he also supports—but emphasized that the harm reduction pillar had already begun in the form of needle exchange, and that the police force was not prepared to wait for the opening of a safe injection site to “restore order to a community in distress.”<sup>132</sup> Asked about the potential negative impact of policing on needle exchange efforts, he speculated that actual drug use (and thus the demand for sterile syringes) might decrease as a result of the current police action. He also said that long-term research was needed to determine the precise impact of policing on needle exchange numbers.

Rich objected strongly to the strategy of human rights organizations, most notably the Pivot Legal Society, of making public allegations of police brutality without conducting a full investigation. He acknowledged that some people might be searched in violation of the requirements of section 8 of the Canadian Charter of Rights and Freedoms. Asked whether the police’s current complaint process provided a sufficient avenue of redress for allegations of police misconduct, Rich said that the current system fails to create an apprehension of fairness among complainants and, in a perfect world, would be more balanced.<sup>133</sup> He also

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<sup>128</sup> Canadian Broadcasting Company British Columbia, Radio One, The Afternoon Show, interview with Vancouver Police Chief Jamie Graham, April 18, 2003, available online at <http://www.vancouver.cbc.ca/afternoonshow/>. Heard April 19, 2003.

<sup>129</sup> Ibid.

<sup>130</sup> Amy Carmichael, “Crackdown in Vancouver slum. . .,” *Canadian Press*, April 11, 2003.

<sup>131</sup> Frances Bula and Brian Morton, “Mayor kickstarts four-pillar drug plan,” *Vancouver Sun*, April 16, 2003.

<sup>132</sup> Human Rights Watch telephone interview with Inspector Bob Rich, New York, April 24, 2003.

<sup>133</sup> This is discussed further under “Avenues of complaint and redress,” below.

regretted that the Pivot Legal Society's strategy of distributing "know your rights" cards to drug users was eroding a sense of cooperation between the police and the community.

Shortly after the launch of the crackdown, the police announced that they had engaged a graduate student from a local university to conduct an evaluation of the police's campaign.<sup>134</sup> Though the crackdown was originally presented to the city council as a three-month experiment, the police chief told the press on April 9 that whether the city council approved additional funding for more officers on the Downtown Eastside or not, the police department intended to continue the operation. "One thing we're not going to do is fold up our tent and we're not going to go home," said Police Chief Graham.<sup>135</sup> Subsequently, Inspector Bob Rich told Human Rights Watch that the police department was not necessarily going to continue the operation without an evaluation of its consequences.<sup>136</sup>

Vancouver Mayor Larry Campbell was conspicuous in the broadcast and print media during the first ten days of the crackdown, repeatedly stating that if there was police brutality as part of the crackdown, he wanted details reported and formal complaints made. "If you are being mistreated by the police, it's a very serious concern, and I want to hear about it. But I'm tired of people saying they've been mistreated by the police and not doing anything about it," the mayor told the press.<sup>137</sup>

Some members of the Vancouver City Council expressed concern to Human Rights Watch about the dominance of the law enforcement pillar in the city's actions so far. "Policing can't be the solution," particularly in the absence of massive increases in funding for treatment and harm reduction services, said city council member Tim Louis.<sup>138</sup> "Drug use is a medical problem—it's a health and provincial issue. It is criminal that there is not adequate funding for a safe injection site," he said, noting also the need for treatment on demand for drug users. Ellen Woodsworth, another city councillor elected in the COPE sweep in November 2002, noted that recent cuts in provincial income assistance programs should be seen as a root cause of the drug problem. "Thousands of people have been laid off; training programs, programs for immigrants and refugees and people out of school have been cut," she said, creating conditions ripe for people to be lured into the drug trade in the absence of other livelihood options.<sup>139</sup>

The national and provincial elected representatives of the Downtown Eastside criticized the crackdown and reiterated their support for strengthening the harm reduction "pillar" of the city's four-pillar plan. Member of Parliament Libby Davies and Jenny Kwan, the district's representative to the British Columbia provincial assembly, described the crackdown as "destructive and divisive."<sup>140</sup> The two legislators called for an inquiry into police conduct in the crackdown based on reports they had received "about the confiscation of drugs, intimidation tactics, illegal searches and the use of aggressive police actions against users and non-users, and the violation of people's rights." They encouraged the city council to continue to oppose the intensive police presence, and said the crackdown "needs to be stopped, not reviewed." They also expressed the urgent need for safe injection sites.

### **Avenues of complaint and redress**

The institution to which the mayor and police chief have invited members of the public to lodge complaints about police conduct is one that asks the police themselves to investigate complaints. The Police Complaint Commissioner is, according to the web site of his office, an "officer of the Provincial Legislature, independent of government," but, the site tells the public, the commissioner "will send your complaint to the

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<sup>134</sup> Bula and Fong, "Police drug plan was six months....," *Vancouver Sun*, April 12, 2003.

<sup>135</sup> Amy O'Brian and Petti Fong, "Drug crackdown to continue: VPD chief," *Vancouver Sun*, April 10, 2003.

<sup>136</sup> Voicemail communication from Inspector Bob Rich to Human Rights Watch, April 24, 2003.

<sup>137</sup> Peg Fong and Frances Bula, "90 arrested in drug sweep: The first five days of a major campaign has produced hundreds of trafficking charges," *Vancouver Sun*, April 12, 2003.

<sup>138</sup> Human Rights Watch interview, Vancouver, April 14, 2003.

<sup>139</sup> Human Rights Watch interview, Vancouver, April 14, 2003. See also information on British Columbia's income assistance reforms in footnote 121.

<sup>140</sup> Statement from Libby Davies MP, Vancouver East, and Jenny Kwan MLA, member of the provincial Legislative Assembly, Vancouver Mt. Pleasant, April 11, 2003.

police department for investigation.”<sup>141</sup> In the cases heard by the commissioner from January 2001 to the first quarter of 2002 (the latest reported on the web site), the following actions were taken in response to a variety of complaints: twenty-three officers were given “managerial advice” as to their future conduct, eleven officers received “verbal reprimands,” ten officers received written reprimands, six officers were suspended for one or two days, one officer was suspended for three days and required to attend anger management classes, one was referred to alcoholism counseling, one was temporarily reduced in rank, and one officer was dismissed following accusations of having assaulted his wife and his girlfriend and unlawfully stored firearms.

Police abuse that violates human rights, for example by discriminating against drug users on the basis of disability, may be the subject of complaint before the British Columbia Human Rights Tribunal. Until October 2002, the province of British Columbia like all other Canadian provinces had a Human Rights Commission, but it was abolished by law at that time. The legislation that abolished the commission provided for direct presentation of complaints to the Tribunal, which the provincial government presented as a “streamlining” measure.<sup>142</sup> Policy and human rights groups widely criticized the measure, noting that the Commission’s education and public hearing mandates were essential as complaint adjudication is not enough, and expressing concern that the new law allowed the Tribunal to dismiss complaints without hearing and absolved the government of its previous obligation to provide legal representation for complainants who could not afford lawyers.<sup>143</sup>

Neither the Vancouver city council, nor the provincial and federal health ministries who invest in harm reduction programs, exert any formal control over the policies and operations of the Vancouver police department. “In British Columbia, the police are their own force; they have their own board of directors,” noted city council member Tim Louis. The municipal bylaws establish the mayor as the president of the Vancouver Police Board and allow for one member of the seven-member board to be appointed by the city council.<sup>144</sup>

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<sup>141</sup> See <http://www.opcc.bc.ca/guide.htm> [online], retrieved April 19, 2003.

<sup>142</sup> See, for example, open letter of Geoff Plant, Attorney General of British Columbia on “Restructuring British Columbia’s Human Rights System,” August 1, 2002.

<sup>143</sup> See, for example, British Columbia Group on the Convention on the Elimination of All Forms of Discrimination Against Women (B.C. CEDAW Group), “British Columbia Moves Backwards on Women’s Equality,” January 2003; S Day, “Rolling back human rights in B.C.,” Canadian Centre for Policy Alternatives Human Rights Code Brief, 2002 [online], [http://www.policyalternatives.ca/bc/human\\_rights\\_code\\_brief.pdf](http://www.policyalternatives.ca/bc/human_rights_code_brief.pdf) (retrieved April 19, 2003).

<sup>144</sup> See description of Vancouver Police Board, available online at <http://www.city.vancouver.bc.ca/police/policeboard/index.html> (retrieved April 19, 2003).

## VIII. CONCLUSION

The Vancouver 2010 Bid Corporation, a non-profit corporation designed to win Vancouver the right to host the 2010 Olympics, pledges to “actively address the concerns of those living in inner-city communities during the planning and implementation of the Games.”<sup>145</sup> A police crackdown that violates the fundamental human rights of Vancouver’s most marginalized residents does not begin to fulfill this pledge. This report, issued one month into the current police operation, documents abuses ranging from outright police brutality to conduct that interferes with legal and life-saving health interventions. It reflects a pattern of abuse that has been documented by other groups and corroborated by research data since long before the crackdown began.

The government of Canada at all levels has made important commitments to persons affected by HIV/AIDS in Canada, including the most socially and economically marginalized persons who are most at risk. The government has invested in life-saving needle exchange services for injection drug users since 1987 and has increased support for methadone access in recent years, including in prisons. Canada’s national HIV/AIDS policy is premised on the importance of protecting the rights of those most vulnerable to HIV/AIDS. “Fear, stigma and discrimination—unfortunately, HIV/AIDS still evokes these reactions in Canada and around the world,” says the HIV/AIDS Strategy document of Health Canada. “A key component of the Canadian HIV/AIDS Strategy is to address HIV/AIDS legal, ethical and human rights issues, and to protect and advance the human rights of people living with or affected by HIV/AIDS.”<sup>146</sup>

The police crackdown in the Downtown Eastside of Vancouver flies in the face of these principles. The actions of the police do not reflect sensitivity to narcotics addiction as a medical problem rather than a crime. The city of Vancouver and provincial authorities have not endeavored to ensure that treatment for drug addiction and harm reduction programs receive the same strong support enjoyed by law enforcement measures. The heavy-handed quality of the police crackdown and the apparent disregard by the police of the health and human rights consequences of their actions inevitably add to the marginalization and stigmatization of Vancouver’s most vulnerable persons and may contribute to a new and deadly wave of HIV/AIDS and other infectious diseases as well as overdose-related complications.

As part of its “war on drugs,” the government of Thailand has recently been accused of summarily executing over 1500 suspected drug dealers, many of whom were actually low-level drug users according to press accounts.<sup>147</sup> Repressive laws on narcotics addiction across the former Soviet Union contribute to the stigmatization of drug users there, which feeds the fastest growing AIDS epidemic in the world.<sup>148</sup> If it is not attentive to the actions of its police officers against injection drug users, Canada may find itself torpedoed into the company of nations that fight HIV/AIDS and drug use by violating the rights of their people.

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<sup>145</sup> See <http://www.city.vancouver.bc.ca/olympics/#rep> (retrieved April 20, 2003).

<sup>146</sup> Government of Canada, Health Canada, Canadian Strategy on HIV/AIDS: Human Rights [online] at [http://www.hc-sc.gc.ca/hppb/hiv\\_aids/can\\_strat/rights/index.html](http://www.hc-sc.gc.ca/hppb/hiv_aids/can_strat/rights/index.html) (retrieved April 18, 2003).

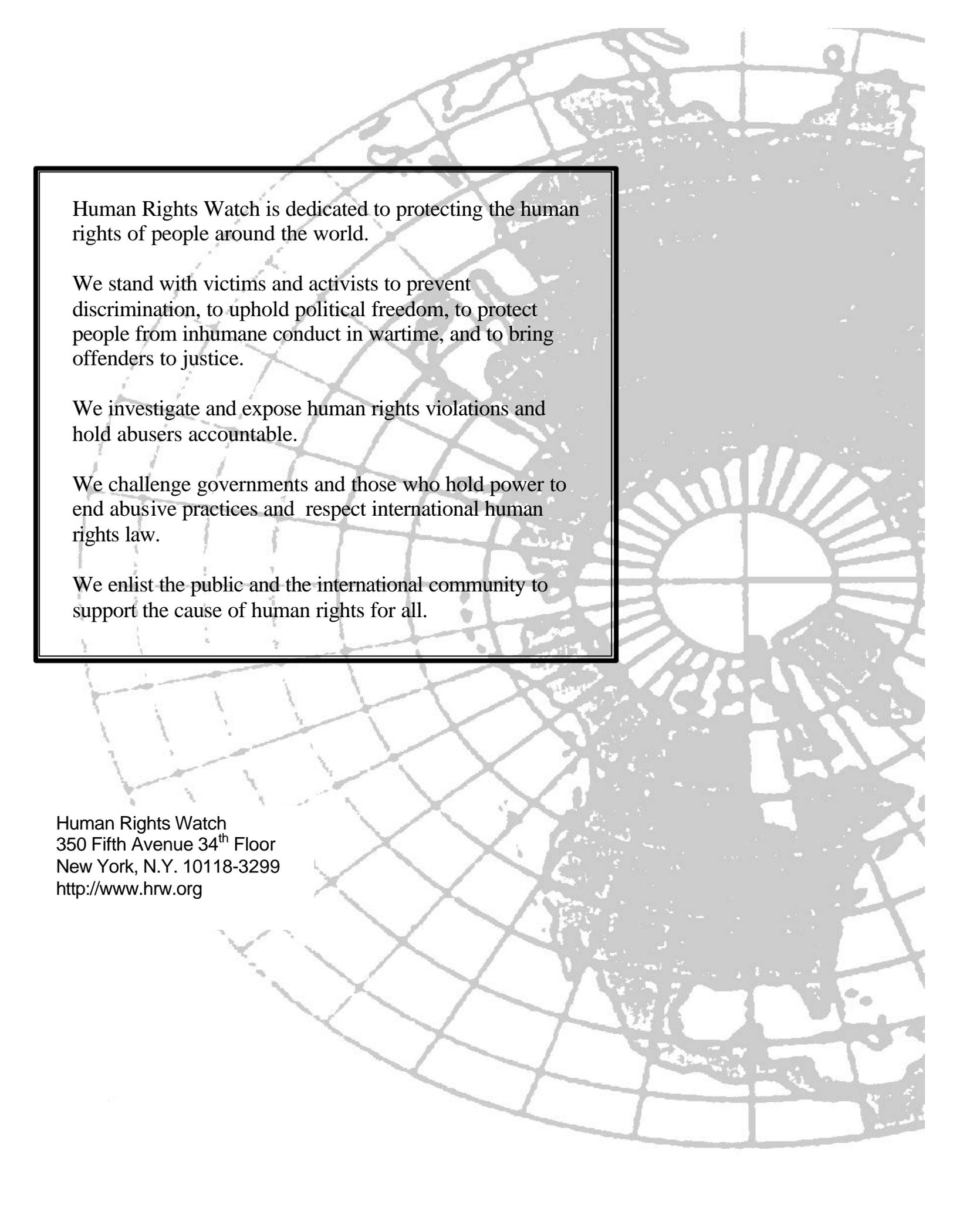
<sup>147</sup> See, for example, Richard C. Paddock, “Thailand wages a bloody war on drugs,” *Los Angeles Times*, March 17, 2003.

<sup>148</sup> United Nations Joint Programme on HIV/AIDS, *Report on the global HIV/AIDS epidemic 2002* (Geneva: United Nations, 2002), and Open Society Institute, International Harm Reduction Development Program, “Drugs, AIDS and Harm Reduction: How to Slow the HIV Epidemic in Eastern Europe and the Former Soviet Union,” especially pages 10-20. Available at <http://www.soros.org/harm-reduction/resourceguide/index2.html> (retrieved April 19, 2003).

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