

# Human Rights and Drug Policy

## Harm Reduction in Places of Detention

*“The development of prison policy, legislation, and programmes which are in conformity with international human rights norms should be based upon empirical evidence of their effectiveness at reducing the risks of HIV transmission, an assessment of the harms and costs of HIV/AIDS and related risk behaviours in prisons, and the health of both the prison population and the public at large.”*

—UNODC, WHO & UNAIDS, 2006<sup>1</sup>

### Context: Injecting drug use, HIV/AIDS and places of detention

Over nine million people are incarcerated in penal institutions worldwide.<sup>2</sup> As this figure represents only the prison population at any moment in time, it significantly underestimates the total number of persons who pass through prisons each year, often for short periods of detention. More than a third of those incarcerated in jails and prisons around the world—nearly 10 million people each year—are pretrial detainees.<sup>3</sup>

According to the WHO, prisons are places where, “Two of the greatest public health problems facing all societies overlap: the epidemic of HIV/AIDS and the pandemic harmful use of psychotropic substances such as alcohol and illegal drugs.”<sup>4</sup> In many countries, this intersection fuels very high rates of blood-borne diseases, such as HIV and hepatitis C, among prisoners who share syringes to inject drugs. Often, the groups most vulnerable to HIV/AIDS are also often those at increased risk for incarceration as a result of socioeconomic conditions. As a result, rates of HIV and hepatitis C infection are significantly higher among prison populations than in the community outside of prisons.<sup>5</sup> This is often exacerbated in places of detention by high rates of tuberculosis, sexually transmitted infections, drug use and poor mental health.

HIV infection can spread with alarming speed in prisons, particularly among prisoners who inject drugs. For example, in 2002 an HIV outbreak among injecting drug using prisoners was identified at the Alythus Prison in Lithuania, during which time 263 prisoners tested positive for HIV within the space of a few months. Before this outbreak, testing had identified only 18 HIV infections in Lithuania’s entire prison system, and only 300 persons were known to be living with HIV in the country as a whole.<sup>6</sup> This example illustrates the implications of inadequate prison health systems on overall public health, and national levels of disease and ill-health.

High rates of HIV and other infectious diseases in prisons can lead to alarmingly high rates of mortality among prisoners. In South African prisons, where high rates of both HIV and TB infection are evident, officials recorded a 584% increase in ‘natural deaths’ of prisoners between 1995 and 2000. When the Department of Correctional Services examined post-mortem reports on these deaths in 1999, it concluded that 90% were HIV-related.<sup>7</sup> Based upon these figures and the continuing growth of the South African prison population, the study predicted that, by 2010, 45,000 people would die in the country’s prisons.<sup>8</sup>

The vast majority of people in prison or detention are eventually released back into the outside community. Reducing the spread of HIV in prisons is therefore integrally linked to reducing the spread of infection in the society as a whole.

## Harm Reduction in Places of Detention Worldwide

Despite the alarming levels of HIV infection in many prisons around the world, the evidence of high-risk behaviors among persons in detention and the documented cases of HIV transmission and outbreaks of infection among incarcerated populations, few countries have implemented the health measures necessary to prevent the spread of HIV among this vulnerable group.

According to the WHO, UNODC and UNAIDS,<sup>9</sup> a comprehensive set of interventions in prisons should include:

- information and education, particularly through peers
- provision of condoms and other measures to reduce sexual transmission
- needle and syringe programs
- drug dependence treatment, in particular opioid substitution therapy
- voluntary counseling and HIV testing
- HIV care, treatment and support, including provision of antiretroviral treatment

A small number of countries have been innovative in implementing HIV prevention and treatment services for prisoners. For example, 10 countries currently allow needle/syringe programs in at least some prisons, and 37 allow opioid substitution therapy. However, the vast majority still fall far short of a comprehensive standard. Even in countries where harm reduction measures are allowed, many of these programs are small in scale, are available only in selected regions or prisons and/or do not include all the elements necessary for a comprehensive response.<sup>10</sup>

This failure to provide harm reduction services in prisons is often due to lack of political will or to policies that prioritize zero tolerance for drug use over evidence-based harm-reduction initiatives. In some cases, it is the result of a lack of state resources and technology to meet the overwhelming need. In some cases it is both of these.

Negative public attitudes towards people in detention act as a barrier to objective and pragmatic discussions of prison health policy. In the case of drug use and health, this is further impeded by the unwillingness of many governments to openly address this issue, as even admitting that drug use is occurring in the secure environment of custody is seen as an admission of security failure. At the same time, prisoners report sharing a single needle with dozens of other prisoners. There is also an assumption that harm reduction programs within the prison context will create risks to the safety of prisoners and staff, despite the fact that the experience in countries that have implemented these programs in prisons is that they can be provided in a safe and secure manner.<sup>11</sup>

The unwillingness to address these health concerns in an open and evidence-based fashion further jeopardizes the health and human rights of an already vulnerable population.

## Harm Reduction and the right to health of persons in detention

The failure of states to implement comprehensive harm reduction measures in places of detention—including needle/syringe programs and opioid substitution therapy—violates their obligations in international human rights law.

All persons deprived of liberty have the right to the highest attainable standard of health. The right to health of persons in detention is articulated not just within economic, social and cultural rights, but also finds expression within civil and political rights mechanisms. The Human Rights Committee, for example, has stated that questions of health in detention could be raised under the right to life (Article 6) or the right to humane treatment (Article 10).<sup>12</sup> Indeed both the right to life<sup>13</sup> and right to humane treatment<sup>14</sup> impose positive obligations upon states parties to protect the lives and/or well-being of persons in custody. This has often been interpreted to require government authorities to take action to safeguard the health of prisoners.

The Committee on Economic, Social and Cultural Rights has stated explicitly that, “States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees...[to] curative and palliative health services.”<sup>15</sup> It has also taken the opinion that states have the obligation to implement preventative health programmes in places of detention. In its 1997 Concluding Observations on the Russian Federation, the Committee expressed specific concern “over the re-emergence of tuberculosis... particularly in prisons, where the health and social conditions of detention are unacceptable.”<sup>16</sup> This concern was repeated in the Committee’s 2003 Concluding Observations.<sup>17</sup> In both cases, the Committee recommended that the states take steps to combat the spread of TB in prisons, which indicates an obligation under the ICESCR to implement preventative health programs in prisons.<sup>18</sup>

The Committee has found that lack of provision of harm reduction measures conflicts with state obligations under Article 12 of the Covenant. In its 2006 Concluding Observations on Tajikistan, the Committee expressed concern at “the rapid spread of HIV in the State party, in particular among drug users, prisoners, [and] sex workers,” and specifically called upon the government to “establish time-bound targets for extending the provision of free...harm reduction services to all parts of the country.”<sup>19</sup> In its 2007 Concluding Observations on Ukraine, the Committee recommended that the state “continue its efforts and take urgent measures to improve the accessibility and availability of HIV prevention to all the population and the treatment, care and support of persons living with HIV/AIDS, including in prisons and detention centres,” including making “drug substitution therapy and other HIV prevention services more accessible for drug users.”<sup>20</sup>

## Harm reduction in places of detention and freedom from cruel, inhuman and degrading treatment

The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment has recently recommended that, “Needle and syringe programmes in detention should be used to reduce the risk of infection with HIV/AIDS.”<sup>21</sup> He also noted that, “[W]ithdrawal symptoms can cause severe pain and suffering if not alleviated by appropriate medical treatment”<sup>22</sup> and that “denial of medical treatment and/or absence of access to medical care in custodial situations may constitute cruel, inhuman or degrading treatment or punishment and is therefore prohibited under international human rights law.”<sup>23</sup>

- 1 UNODC, WHO & UNAIDS, HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for an Effective National Response, 2006, p.11.
- 2 R Walmsley, World Prison Population List, 6<sup>th</sup> ed., International Centre for Prison Studies, 2005, p.1.
- 3 Open Society Justice Initiative and the Open Society Institute "Why We Need a global Campaign for Justice," Justice Fact sheet, September 2009.
- 4 World Health Organization Europe Status Paper of Prison, Drugs and Harm Reduction (WHO Regional Office for Europe Copenhagen 2005) Doc No EUR/05/5049062. 3.
- 5 WHO, UNODC & UNAIDS, Effectiveness of interventions to address HIV in prisons, 2007.
- 6 R Jürgens, "HIV/AIDS in Prisons: Recent Developments," Canadian HIV/AIDS Policy and Law Review , 2002, vol. 13, no. 19.
- 7 KC Goyer, HIV/AIDS in Prison: Problems, Policies and Potential (February 2003), in Monographs of the African Human Securities Initiative, No 79, ch 1.
- 8 Ibid.
- 9 WHO, UNODC & UNAIDS, Effectiveness of interventions to address HIV in prisons, 2007.
- 10 See International Harm Reduction Association, "Global State of Harm Reduction 2008" <http://www.ihra.net/GlobalStateofHarmReduction>.
- 11 WHO, UNODC & UNAIDS, Effectiveness of interventions to address HIV in prisons, 2007.
- 12 Cabal and Pasini v Australia (7 August 2003) UN Doc CCPR/C/78/D/1020/2002, para 7(7).
- 13 Human Rights Committee, "General Comment No. 6: The Right to Life Article 6" (30 April 1982) UN Doc HRI\GEN\1\Rev.1 para 5.
- 14 Human Rights Committee "General Comment 21: Humane treatment of persons deprived of liberty (Art. 10)" (10 April 1992) Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies UN Doc.HRI/GEN/1/Rev.6 para 3.
- 15 Committee on Economic Social and Cultural Rights, "General Comment No. 14: The right to the highest attainable standard of health," August 11, 2000, UN Doc E/C.12/2000/4, para 34, emphasis in original.
- 16 Committee on Economic, Social and Cultural Rights "Concluding Observations: Russian Federation," 1997, UN Doc E/1998/22 para 112.
- 17 Committee on Economic, Social and Cultural Rights "Concluding Observations: Russian Federation," 2003, UN Doc E/2004/22 64 para 33.
- 18 Committee on Economic, Social and Cultural Rights (n 16) para 61; Committee on Economic, Social and Cultural Rights (n 17) para 47.
- 19 UN Committee on Economic, Social and Cultural Rights "Concluding Observations: Tajikistan," 24 November 2006, UN Doc. No. E/C.12/TJK/CO/1 para 70.
- 20 UN Committee on Economic, Social and Cultural Rights "Concluding Observations: Ukraine," 4 January 2008, UN Doc. No. E/C.12/UKR/CO/5 para 51.
- 21 UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, 14 January 2009, A/HRC/10/44, para. 74
- 22 UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, 14 January 2009, A/HRC/10/44, para. 57.
- 23 UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, 14 January 2009, A/HRC/10/44, para. 71.