To: HUMAN RIGHTS COMMITTEE
106th session (15 October – 2 November 2012)
Country Report Task Force for the adoption of lists of issues on Ukraine

Report from: International HIV/AIDS Alliance in Ukraine; Canadian HIV/AIDS Legal Network; Eurasian Harm Reduction Network¹

At the outset of this report, we would like to commend the Government of Ukraine for its continuous implementation of internationally recommended and effective drug dependence treatment programs such as opioid substitution treatment and other health services aimed at reducing the adverse consequences of illicit drug use.

We would like also to welcome the recent initiative of the State Drug Service of Ukraine to adopt a new national Drug Strategy in line with Ukraine’s international human rights obligations.

Having said this, we remain deeply concerned about the current inconsistency of the Ukrainian drug policy and practices, when the results of some positive undertakings (such as the introduction and expansion of the opioid substitution therapy for drug dependence treatment) are nullified by counterproductive discriminatory measures (such as draconian drug laws and arbitrary law enforcement practices). It is against the backdrop of these concerns that the present report is framed. In summary, the report draws attention to those problems which the Government of Ukraine must urgently remedy in order to meet its obligations under Articles 2, 7, 9 and 10 of the International Covenant on Civil and Political Rights (“the International Covenant”).

Focus of this report
This submission specifically focuses on drug policy, drug law enforcement and judicial practices as they relate to legal obligations imposed on Ukraine under Articles 2, 7, 9 and 10 of the International Covenant.

This submission is drafted with reference to the Concluding Observations on Ukraine adopted by the United Nations Human Rights Committee at its meeting on November 2, 2006, in particular:

Paragraph 7 The State party should ensure the safety and proper treatment of all persons held in custody by the police, including measures necessary to guarantee freedom from torture and from cruel, inhuman or degrading treatment.

Paragraph 11 There is grave overcrowding in detention and prison facilities, and a lack of adequate sanitation, light, food, medical care, and facilities for physical exercise. The high incidence of HIV/AIDS and tuberculosis among detainees in facilities of the State party is also a cause for concern, along with the absence of specialized care for pre-trial detainees. (art. 10)

¹ Information about these organizations is annexed to this report.
The State party should guarantee the right of detainees to be treated humanely and with respect for their dignity, particularly by relieving overcrowding, providing hygienic facilities, and assuring access to health care and adequate food. The State party should reduce the prison population, including by using alternative sanctions.

We would also like to refer to seventh periodic report of Ukraine submitted to the Human Rights Committee on 5 July 2011. Although some parts of this report were about the alternative sanctions and prevention of torture, issues related to drug policy and practices have not been covered at all.

**Recommendations to the Government of Ukraine**

- Introduce amendments to criminal laws and ministerial regulations to stop subjecting people who use drugs to tough punishment, especially incarceration, for possession of illicit drugs for personal use. In particular, repeal the Ukrainian Ministry of Health Resolution No. 188, dated 2 August 2000, as amended by the Ukrainian Ministry of Health Resolution No. 634, dated 29 July 2010.
- Provide political, legal and financial support for opioid substitution therapy in accordance with international standards and repeal the Ministry of Health Resolution No 200, dated 27 March 2012.
- Introduce opioid substitution therapy for drug dependence treatment in prisons, including pre-trial detention facilities.

**Some relevant statistical data and information about drug use**

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

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

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

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

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2 Seventh Periodic Report. Ukraine. 5 July 2011. CCPR/C/UKR/7
3 Guidelines for Psychosocially Assisted Pharmacological Treatment of Opioid Dependence. WHO, 2009
**Vulnerability to tuberculosis for people living with HIV/AIDS (PLWHA)**

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

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

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

Research demonstrates that drug dependence treatment is more effective than cycling people in and out of prison. Research also shows that repressive policies towards drug users do not significantly reduce the level of drug use, nor do they reduce access to illegal narcotic drugs. According to UNODC, “addiction is a health condition and those affected by it should not be imprisoned”. WHO and UNODC advise that “drug use should be seen as a health care condition and drug users should be treated in the health care system rather than in the criminal justice system where possible”.

**Steps undertaken by Ukraine contrary to obligations under Articles 2, 7, 9 and 10 of the International Covenant.**

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Toughening punishment for people who use drugs

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

The threshold for criminal liability for possession of acetylated opium\(^\text{16}\), for example, was reduced by a factor of 20. Anyone in possession of as little as 0.005 grams of acetylated opium or heroin faces criminal prosecution and a penalty of up to three years’ incarceration. A quantity of 0.005 grams is approximately the amount found in the residue of several used syringes.

Resolution No. 634 has the following negative effects:

- It carries higher rates of incarceration for petty drug offences, leading to further overcrowding in Ukraine’s already strained prison system, and consequently leads to a higher prevalence of HIV, hepatitis and tuberculosis among prisoners.
- More stringent criminal liability makes it even harder for health and social services to reach PWID, undermining HIV prevention, care and treatment, drug dependency treatment, and other vital services\(^\text{17,18}\).
- The mandate to investigate, prosecute, and imprison a significantly larger number of petty drug offenders reduces the criminal justice system’s ability to deal with more serious offences, and will necessarily increase government spending at the expense of other national priorities such as health care.
- The authority to impose severe criminal penalties for possession of very small quantities of illegal drugs creates a substantial opportunity for corruption among law-enforcement officers and judicial bodies.

Poor access to OST programs in general and zero access to effective treatment programs in prisons settings

By April 2012, OST programs in Ukraine had only 6,678 clients (11.7\%)\(^\text{19}\) out of 56,973 people officially registered as chronically dependent on opioids\(^\text{20}\), making access to OST

\(^{16}\) Acetylated opium, locally known as “shirka”, is the most widely used illegal injected drug in Ukraine (European Centre for Monitoring of Drugs and Drug Addiction. Countries overview: Ukraine. Available at: http://www.emcdda.europa.eu/publications/country-overviews/ua#pdu).


\(^{19}\) Recent information on OST patients in Ukraine. Resource center of the Ukrainian Institute on Public Health Policy http://www.uiphp.org.ua/media/1475.

for those in need six times lower than recommended by international guidelines\textsuperscript{21}. Drug dependence treatment is very limited in prisons and not available in pre-trial detention. There is no access to OST in prisons and pre-trial detention centers. According to the UN Special Rapporteur on Torture, “[t]here is no doubt that the withdrawal syndrome can cause severe pain and suffering if medical assistance is not provided accordingly, and that the condition of withdrawal in prisoners creates a strong potential for mistreatment”\textsuperscript{22}.

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

In January 2011, police drug enforcement units across the country were mandated to crack down on OST sites, and interrogate OST clients, their relatives and neighbours in order to check the legality of the sites’ operations. OST clients were harassed by police officers asking for the information; many clients were forced to disclose personal medical data under threat from police that they would not otherwise receive their OST medication. Police disclosed personal data and medical information when speaking with neighbours, friends and relatives of the OST clients\textsuperscript{23}.

In March 2010, a drug enforcement unit raided the OST site in Odessa, arrested a drug treatment doctor and kept him in pre-trial detention for four months, under suspicion of drug trafficking\textsuperscript{24}. Due to extremely poor evidences brought by police against the doctor, the charges were not upheld in court\textsuperscript{25}.

Apart from being questionable in terms of their compliance with Article 9 of the International Covenant, such law enforcement tactics have a chilling effect on the development of OST and other health services for people who use drugs, despite the fact that the national laws on HIV prevention clearly support such services and stipulate their expansion. Thus people who use drugs, especially PWID, have very limited access to drug treatment services and must continue use of illicit opioids, committing crimes to finance their dependence and suffering exposure to higher risks of HIV, hepatitis C and overdose.

**State adoption of laws reducing accessibility to and quality of OST**

The existing OST programs are of a high threshold, and their geographical coverage is poor, often requiring people to travel for several hours every morning to receive their dosage. Often the programs do not take into account the needs of clients, such as people


\textsuperscript{22} 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.

\textsuperscript{23} Open appeal to the President of Ukraine, Mr. V. Yanukovych, on behalf of the All-Ukrainian Network of People Living with HIV and the International HIV/AIDS Alliance in Ukraine, on systematic interventions of government authorities into implementation of programs aimed at fighting HIV/AIDS and supported by international donors, dated January 21, 2011. Available at \url{http://www.aidsalliance.org.ua/ru/news/pdf/openappeal2011/President_problems_21%2001%202011_eng.pdf}.

\textsuperscript{24} International AIDS Society calls for an end to harassment, intimidation and imprisonment of HIV professionals, 3 September 2010. \url{http://www.iasociety.org/Default.aspx?pageId=422}.

with children, women, people living with HIV/AIDS, and other important considerations. Taking one’s OST medication home is not permitted, even for clients who have proven to be stable and who maintain a long adherence to the program. In early June 2012, the Ministry of Health Order No 200, dated 27 March 2012, introduced new regulations regarding OST in Ukraine. This order was strongly criticized by many national and international civil society organizations, including by the national association of OST patients. These groups asserted that the order runs contrary to human rights, including the right to be free from inhuman or degrading treatment or punishment, and the right not to be discriminated. In particular, the order

- sets up arbitrary admitting criteria, stipulating that only those who previously failed drug dependence treatment twice could be admitted into an OST program;
- provides arbitrary criteria for exclusion from the program — for instance, anyone who commits any administrative offence (smoking in public, for example) is subject to exclusion; and
- fails to address the poor design of the existing OST programs, which, in their heavily controlling nature, deprive OST clients of any degree of autonomy or dignity.

Conclusions
The above listed facts demonstrate that at least some of the steps undertaken by Ukraine in recent years run contrary to the recommendations made by the Human Rights Committee in paragraphs 7 and 11 of the 2006 Concluding Observations on Ukraine, and provide for discriminatory policies and practices, particularly affecting those who suffer drug dependence and are vulnerable to HIV, hepatitis C and tuberculosis. On the one hand, the Government of Ukraine failed to ensure the availability, accessibility and quality of treatment for a chronic decease — drug dependence. On the other hand, the Government toughened punishment for possession of drugs for personal use, which is, at least for drug dependent people, a symptom of their chronic decease. In other words, the government fails to recognize the needs of people with chronic illness and subjects them to severe punishment instead of providing treatment. This strongly contradicts the international obligation to prevent inhuman or degrading treatment or punishment. It also further opens doors for the arbitrary arrest and detention of people who use drugs, as well as for the inhuman and degrading treatment of drug dependent people in custody. In addition to this, lack of access to effective drug treatment, such as OST and imprisonment of people who use drugs further contributes to expanding HIV epidemic.

The Government of Ukraine should immediately set about reforming the country’s drug treatment system in line with internationally recognized standards and practices. The Government should also ensure that law enforcement and other criminal justice mechanisms do not substitute or obstruct medical and social services for people who use drugs. In the absence of these reforms, Ukraine’s commitment to articles 2, 7, 9 and 10 of the International Covenant on Civil and Political Rights remains, at best, questionable.
Annex

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

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

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

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