



Submission to the United Nations Human Rights Committee ahead of Ukraine's eighth periodic review

List of Issues

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Reporting organisation:

Harm Reduction International is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.

The International Charitable Foundation "Alliance for Public Health" is a leading Ukrainian non-governmental professional organization making a significant impact on the epidemics of HIV/AIDS, tuberculosis, viral hepatitis and other socially dangerous diseases in Ukraine. In cooperation with state partners and civil society organizations, it provides financial and technical support to programs, covering over 300,000 representatives of most vulnerable populations. It implements the largest Harm Reduction program in the EECA region covering over 220,000 people who inject drugs

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Summary

Harm Reduction International and the Alliance for Public Health welcome the opportunity to submit information on the ongoing violations of Article 6 (the right to life) and Article 7 (the right to be free from torture or cruel, inhuman or degrading treatment) of the International Covenant on Civil and Political Rights (ICCPR), against people who inject drugs and people living with HIV in Ukraine.

This submission will provide a brief overview and a list of questions regarding the following issues:

- a. Lack of harm reduction services in prison;
- b. Failure by the Ukrainian authorities to take appropriate measures to address the HIV epidemic concentrated among Ukraine's stigmatised key populations.

The Human Rights Committee has concluded that conduct similar to that of the Ukrainian authorities can contribute to, and in certain circumstances constitute, a violation of the right to life¹, and of the right to be free from cruel, inhuman or degrading treatment.²

1. Background: People who inject drugs and HIV prevalence in Ukraine

An estimated 350,000 people who inject drugs live in Ukraine. With the exception of Russia, this is the largest recorded population of people who inject drugs in the whole of Europe, as well as of Central Asia.³

People who inject drugs in Ukraine live under the threat of a concentrated HIV epidemic. According to 2018 UNAIDS data, 22.6% of people who inject drugs in Ukraine live with HIV, while general HIV prevalence is recorded at 1%.⁴ A majority of people who inject drugs are unaware of their HIV status (56.9%); an even larger majority has no access to antiretroviral therapy (62.1%).⁵ In other words, an estimated 49,000 persons who inject drugs in Ukraine have HIV and do not receive adequate HIV treatment.

Antiretroviral therapy (ART) is the standard treatment for people newly diagnosed with HIV,⁶ as it stops HIV from multiplying and can eradicate the viral load from the blood.⁷ UN Agencies identified the provision of ART as part of the comprehensive package of interventions for the prevention, treatment and care of HIV among people who inject drugs;⁸ as well as of the package of essential interventions for HIV prevention, treatment and care in prisons.⁹

2. Lack of harm reduction services in Ukrainian prisons. Violation of Articles 6 and 7 ICCPR

2.1. The situation in Ukrainian prisons

As of 2017, approximately 60,000 persons were detained in Ukraine's prisons.¹⁰ Despite promised reforms, Ukrainian NGOs have described the situation in local prisons as "nightmarish,"¹¹ and Ukraine's Ombudsman has declared that "no significant improvement... has taken place".¹²

A disproportionate number of people who inject drugs in Ukraine are at risk of incarceration, and may inject drugs while incarcerated. Approximately 48.7% of respondents in a randomly sampled survey of Ukrainian prisoners have reported prior drug injection,¹³ while a survey of people with HIV that had recently left prison found that 54.6% of them had injected drugs while incarcerated.¹⁴ At least 3,860 Ukrainian prisoners registered as living with HIV,¹⁵ with HIV prevalence in prisons being 23 times higher than among the general population.¹⁶ HIV prevalence among people who inject drugs within Ukraine's prisons exceeds 20%.¹⁷

Harm reduction interventions, such as needle and syringe programmes and opioid substitution therapies, have been recognized as key components of an effective HIV and viral hepatitis response by WHO, UNAIDS and the UNODC.¹⁸ United Nations human rights mechanisms have recognized that the denial of harm

reduction services can contribute to, or in certain conditions constitute, a violation of the right to the highest attainable standard of physical and mental health,¹⁹ and the right to be free from cruel, inhuman or degrading treatment.²⁰

The Ukrainian authorities do not provide adequate harm reduction services to the thousands of persons who inject drugs in Ukraine's prisons:

- **No needle and syringe programmes (NSPs).** Ukrainian prisons have not put in place any NSP within Ukraine's prisons. NSPs would provide sterile needles and syringes to people who inject drugs in order to reduce injection equipment sharing, and therefore transmission of HIV and other blood-borne diseases.²¹ As a result of the current situation, according to a 2015 survey nearly 75% of persons who injected drugs within prison had shared injection equipment.²²
- **Lack of access to opioid substitution therapy.** Opioid substitution therapy (OST) is a medicine for people with opioid dependence. OST is crucial in several aspects. First, OST is taken mostly orally, and even when it is injected, patients are provided with sterile injecting equipment. Therefore, it reduces high-risk behaviours such as needle or syringe sharing. Second, OST avoids opioid withdrawal. An abrupt abstention from opioid use without OST can cause profound mental and physical pain, and have serious medical consequences.²³ Finally, OST reduces the risk of opioid overdose both during incarceration and on release.²⁴

Although some OST programmes in Ukrainian prisons reportedly started in 2016,²⁵ sources such as the Committee for the Prevention of Torture²⁶ and The Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter *Global Fund*)²⁷ have made clear that such access is rare.

In its 2018 report on the conditions of health-related rights and medical assistance within penitentiary institutions, Ukraine Ombudsman agreed with these findings, noting that "[drug users] who are detained in remand prison [...] do not receive substitute maintenance therapy. Addiction treatment for such prisoners is provided only in acute conditions."²⁸

- **Treatment for HIV, tuberculosis (TB) and Hepatitis C.** Access to antiretroviral therapy within Ukrainian prisons has increased in the last years, and currently 83% of all registered prisoners with HIV receive it.²⁹ While this is a positive development, according to the Global Fund, "mortality in prisons related to TB, HIV, and some non-communicable diseases remains high".³⁰ At least 365 people died in Ukrainian prisons in 2018, 22 of them from TB.³¹

In the 2018 report on the state of penitentiary institutions in Ukraine, Ukraine's Ombudsman noted that:

"The high level of patients with HIV / AIDS in the penitentiary sphere in the modern stage is due primarily to the following factors: lack of HIV awareness and prevention measures for convicts and persons taken under arrest; lack of motivation for safe behaviour and HIV testing; and lack of access to protection for convicts and remand prisoners (condoms, lubricants, disinfectants)".³²

2.2. Violation of Articles 6 and 7 ICCPR

The situation of persons who inject drugs in Ukrainian prisons should be analysed on the basis of two principles laid down by this Human Rights Committee. First, persons deprived of their liberty enjoy all the rights set forth in the ICCPR, subject only to the restrictions unavoidable in a closed environment.³³ Second, states have a heightened duty of care for the life and health of incarcerated persons.³⁴ This duty is not affected by lack of financial resources, and it implies the obligation to regularly monitor the health of detainees.³⁵

- **Denial of OST.** International human rights bodies have consistently found that depriving persons who are in prison from access to OST and other treatments for opioid-dependence withdrawal can constitute a violation of the right to be free from cruel, inhuman or degrading treatment.³⁶

In 2018 the Council of Europe's Committee for the Prevention of Torture noted, specifically on Ukraine, that "very little was being done in the penitentiary establishments (...) to address the widespread drug addiction problem among prisoners", and recommended that "treatment options for prisoners in withdrawal as well as opioid agonist maintenance should be available in prison to the same extent as in the outside community".³⁷

- **Denial of needle and syringe programmes.** States have been traditionally reticent to incorporate needle and syringe programmes in prisons. Nevertheless, Ukrainian authorities are, or should be, aware that (1) drug injection is prevalent within Ukrainian prisons, and that (2) a substantial number of prisoners who inject drugs under the care of the Ukrainian state are sharing injecting equipment – according to the data provided above as well as anecdotal evidence.

The Ukrainian authorities have a heightened duty of care to take the appropriate measures to protect the right to life of persons under their custody, which includes proactive measures such as providing the necessary medical care and regularly monitoring their health.³⁸ Turning a blind eye to both drug injection and equipment sharing leads to the creation of a high-risk environment for HIV infection, thus contravening this state obligation.

- **Denial of appropriate treatment for HIV, TB, and Hepatitis C.** UN human rights treaty bodies have regarded the denial of appropriate medical treatment for persons in state custody of the state as contributing to, even or constituting by itself, a violation of the right to life³⁹ and of the right to be free from torture and cruel, inhuman or degrading treatment.⁴⁰ When it comes to Ukraine, the European Court of Human Rights has condemned the state for the violation of prisoner's right to be free from torture or inhuman or degrading treatment, in a number of cases relating to failure to provide adequate medical assistance to applicants, most commonly in order to treat HIV, TB, and Hepatitis C.⁴¹

3. Lack of appropriate measures to address the HIV epidemic. Violation of Article 6 ICCPR

3.1. Failure of the Ukrainian authorities to adopt appropriate measures to tackle the HIV epidemic

Next to Russia, Ukraine hosts the largest number of persons living with HIV in Europe, at an estimated 240,000.⁴² The epidemic is concentrated among key populations that are especially vulnerable due to longstanding criminalisation, stigma, and discrimination. The largest key population are people who inject drugs, as 22.6% of all Ukrainians who inject drugs live with HIV – an estimated 79,100 persons.⁴³

For several years, Ukraine was regarded as a "harm reduction success story"⁴⁴. From 2006 to 2012, HIV prevalence among people who inject drugs halved, dropping from 41.8%⁴⁵ to 21.5%.⁴⁶ Among the general population, AIDS-related deaths were also reduced to a half, from 14,000 in 2010 to 7,900 in 2015.⁴⁷

However, this positive trend has drastically slowed down since 2012, and is now under threat due to the withdrawal of international funding.

3.1.a. Stagnation of HIV response

There has been very little progress in HIV diagnosis and anti-retroviral coverage among people who inject drugs in Ukraine since 2010. As a consequence, 49,000 Ukrainians who inject drugs live with untreated HIV. Injecting drug use still accounts for between 20% and 40% of new HIV cases.⁴⁸

3.1.b. Limited commitment of the Ukrainian government to funding harm reduction.

The Ukrainian authorities have historically invested very little in harm reduction. In 2015, the Ukrainian government only funded a 14% of the total harm reduction services in Ukraine,⁴⁹ while in 2016 the Global

Fund alone provided 76% of all the funding.⁵⁰ From 2003 to 2018, the Global Fund disbursed USD 555 million to Ukrainian HIV response.⁵¹

3.1.c. Withdrawal of international funding

The Global Fund withdraws financing from middle-income countries like Ukraine, as it is assumed that such countries have enough resources to finance their own HIV response.⁵²

The transition process is well underway in Ukraine. As part of the 2017-2019 grant agreement with the Global Fund, the Ukrainian government committed to assume the responsibility for HIV response within the domestic budget.⁵³ In particular, it committed to provide state funding for HIV prevention programs among high at-risk groups at the level of 50% from 2019 and 80% from 2020. **However, as of August 2019, the State has not yet begun funding of such programs.**⁵⁴

A combination of international funding withdrawal and insufficient investment by the national government has the potential to decimate Ukraine's already stagnating HIV response, and has the potential to impact the right to life of thousands of Ukrainians.

3.2. Violation of Article 6 ICCPR

For states, the right to life entails a positive obligation to take appropriate measures to address the general conditions in society that may give rise to direct threats to life, including the prevalence of life-threatening diseases, such as HIV.⁵⁵

In its 2005 Concluding Observations to Kenya's second periodic report,⁵⁶ this Committee pointed out that under Article 6 ICCPR states are obliged to ensure equal access to adequate HIV treatment. In the subsequent 2012 periodic review,⁵⁷ this Committee further clarified that ensuring equal access entails state action to tackle criminalisation and societal stigmatisation of traditionally marginalised groups (in the case of Kenya, LGBTI communities).

The same principles apply to the situation of people who inject drugs in Ukraine, which is characterised by:

- **Prevalence of a life-threatening disease.** As shown above, the population of people who inject drugs is subject to a concentrated HIV epidemic. HIV prevalence among this population is 22.6%, whereas prevalence among the total population aged 15-49 is 1.5%.⁵⁸
- **Unequal access to treatment.** According to the latest UNAIDS data,⁵⁹ only 43.1% of people who inject drugs living with HIV are aware of their HIV status, as opposed to the 71% of the total population of persons living with HIV. Only 37.9% of people who inject drugs living with HIV have access to ART, compared to a total 52%.
- **Criminalisation.** Although drug possession for personal use is not formally criminalized in Ukraine, the possession of a very small amount of drugs triggers criminal liability and is punishable by up to three years in prison.⁶⁰ For instance, the amount of heroin that can lead to a prison sentence in Ukraine is 0.005 grams. This legal framework results in the *de facto* criminalisation of all drug possession, including possession for personal use. This turns drug users away from interacting with health services, resulting in limited access to HIV-testing and harm reduction programmes.⁶¹
- **Stigma.** Scientific research has shown that in Ukraine harm reduction expansion has been constrained by negative attitudes of public officials towards people who inject drugs in both community and prisons, with some administrators and clinicians endorsing demonising myths and stereotypes about people who inject drugs.⁶²

In these circumstances, the Ukrainian authorities are currently failing to uphold their obligations under Article 6; which can only be fulfilled through the adoption of new and appropriate measures to reduce the current HIV-diagnosis and HIV-treatment gaps for people who inject drugs. This also requires taking the necessary budgetary measures to guarantee that domestic investment compensates for the decrease in harm reduction funding by international donors.

4. List of questions to the Ukrainian authorities

In light of the above, we respectfully call upon this Committee to submit the following questions to the Government of Ukraine:

Article 6 ICCPR (the right to life)

- What measures is the Ukrainian government taking in order to reduce the number of persons living with HIV that are not diagnosed and/or not treated within Ukrainian key populations, including people who inject drugs?
- What measures is the Ukrainian government taking to ensure that the reduction of international funding for HIV response in Ukraine does not impact the level and quality of HIV response services, including the provision of harm reduction services?

Article 7 ICCPR (the right to be free from torture and other cruel, inhuman or degrading treatment)

- What measures is the Ukrainian government taking to ensure that incarcerated persons who inject drugs have access to essential harm reduction services, including OST, for both drug dependence treatment and the avoidance of opioid withdrawal symptoms?
- What measures is the Ukrainian government taking in order to ensure that there is an appropriate HIV response in Ukraine prisons, including access to diagnosis and treatment, and appropriate measures to prevent new HIV infections, including needle and syringe programmes?

ENDNOTES

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³ Katie Stone and Sam Shirley-Beavan, 'The Global State of Harm Reduction' (Harm Reduction International [HRI], December 2018), 48, <https://www.hri.global/files/2018/12/11/global-state-harm-reduction-2018.pdf>.

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⁶ UNAIDS, 'UNAIDS Topic: HIV Treatment', <https://www.unaids.org/en/topic/treatment>.

⁷ Ibid.

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¹¹ 'Ukraine's Decrepit Prisons Languish despite Promised Reform', France 24, 31 July 2018, <https://www.france24.com/en/20180731-ukraines-decrepit-prisons-languish-despite-promised-reform>.

¹² UNAIDS, 'UNAIDS Data 2019'.

¹³ Lyuba Azbel et al., 'Burden of Infectious Diseases, Substance Use Disorders, and Mental Illness among Ukrainian Prisoners Transitioning to the Community', *PloS One* 8, no. 3 (2013): e59643, <https://doi.org/10.1371/journal.pone.0059643>.

¹⁴ Jacob Izenberg et al., 'Within-Prison Drug Injection among HIV-Infected Ukrainian Prisoners: Prevalence and Correlates of an Extremely High-Risk Behaviour', *Int J. Drug Policy* 25, no. 5 (September 2014): 845–52.

¹⁵ The Global Fund to fight AIDS, Tuberculosis and Malaria, 'Scaling up Programs to Reduce Human Rights-Related Barriers to HIV and TB Services. Baseline Assessment - Ukraine', May 2018, https://www.theglobalfund.org/media/8148/crg_humanrightsbaselineassessmentukraine_report_en.pdf?u=637001819640000000.

¹⁶ Verkhovna Rada Human Rights Ombudsperson, 'Special Report on the State of Compliance with the Health Rights and Medical Assistance in Penitentiary Institutions' (in Ukrainian), 2018, 38, http://www.ombudsman.gov.ua/files/documents/2019/dopovid/%D0%A1%D0%9F%D0%95%D0%A6%D0%86%D0%90%D0%9B%D0%AC%D0%9D%D0%90_%D0%94%D0%9E%D0%9F%D0%9E%D0%92%D0%86%D0%94%D0%AC_001.pdf.

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²⁰ See, for example, Human Rights Council, 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak', 14 January 2009, UN Doc. A/HRC/10/44. Human Rights Committee, 'Concluding Observations to the Initial Review of Moldova', 5 August 2002, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsmq1 D%2b4Wvg6LhA1iuk%2bHo%2bUUI%2f18PqzfybICPY5yac8piWATK8r2LWbh%2fu4BHKEHg9hC51fvbu3ilbqdvjmeXapV vM%2f0qY73OwlMa9OJ3P>.

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²⁸ Verkhovna Rada Human Rights Ombudsperson, 'Special Report on the State of Compliance with the Health Rights and Medical Assistance in Penitentiary Institutions' (in Ukrainian), 2018, 44, http://www.ombudsman.gov.ua/files/documents/2019/dopovid/%D0%A1%D0%9F%D0%95%D0%A6%D0%86%D0%90%D0%9B%D0%AC%D0%9D%D0%90_%D0%94%D0%9E%D0%9F%D0%9E%D0%92%D0%86%D0%94%D0%AC_001.pdf.

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⁵⁰ Ibid.

⁵¹ Office of the Inspector General, The Global Fund to fight AIDS, Tuberculosis and Malaria, 'Audit Report: Global Fund Grants to Ukraine', 24 January 2018, 9, https://www.theglobalfund.org/media/7122/oig_gf-oig-18-003_report_en.pdf?u=636679306150000000.

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⁵⁵ Human Rights Committee, 'General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life' (United Nations, 2018), 26, https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf.

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⁵⁷ Human Rights Committee, 'Concluding Observations on the Third Periodic Report Submitted by Kenya', 31 August 2012, 9, https://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-KEN-CO-3_en.pdf.

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⁵⁹ UNAIDS, 'UNAIDS Data 2019', July 2019, 374, https://www.unaids.org/sites/default/files/media_asset/2019-UNAIDS-data_en.pdf

⁶⁰ European Monitoring Centre for Drugs and Drug Addiction, 'Ukraine Country Overview', accessed 29 August 2019, http://www.emcdda.europa.eu/countries/ukraine_en.

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