
Lethal Violations: Human Rights Abuses Faced by Injection Drug Users in the Era of HIV/AIDS

by Joanne Csete and Jonathan Cohen*

Introduction

The HIV/AIDS epidemic has attained proportions far beyond the scale that was ever imagined when the virus that drives it was discovered. By some estimates, hundreds of millions of persons may die before the disease is brought under control. Those most affected by HIV/AIDS in most parts of the world—sex trade workers, men who have sex with men, injection drug users, prisoners and migrant workers, for example—are persons who faced social marginalization and discrimination long before there was AIDS. It has been clear from the beginning of the epidemic that discrimination and other abuses faced by those at highest risk of HIV impede government and private-sector efforts to bring the disease under control.

For injection drug users, stigma and discrimination often take the form of profound criminalization and demonization. In many countries of the world, this deep social disdain is abetted by laws on narcotic drugs that are impossible to enforce without violating the human rights of injection drug users. Countries that recognize narcotics drug addiction as an illness and treat it with humane health measures rather than punitively are, unfortunately, a minority. This chapter focuses on human rights abuse faced by injection drug users, with a focus on the particular violations of international human

rights law that are involved in this abuse and on actions that could reduce this abuse.

Background

A significant percentage of new HIV infections around the world every year is linked to injection drug use; in some regions, the percentage is very high. In the former Soviet Union (FSU) and Eastern Europe alone, there are an estimated 4 million injection drug users, and in many countries of the region more than 70 percent of persons living with HIV/AIDS are injection drug users.¹ It is not surprising that this region is home to the world's fastest-growing AIDS epidemic; HIV can be spread extremely fast among injection drug users. In Russia, as late as two years ago, it was reported that 90 percent of people living with HIV/AIDS were injection drug users.² A September 2003 report indicates that the proportion of new cases of HIV in Russia among drug users was 36 percent, an alarming indication that the epidemic has spread to the general population.³ In the United States in 2002, about 28 percent of new cases of HIV were linked directly or indirectly to injection drug use.⁴ In China, injection drug use is estimated to be the most important mode of HIV transmission.⁵

The proven and affordable services that reduce the harm, including HIV transmission, of injection drug use, are well known. Syringe exchange programs and substitution therapy with methadone or buprenorphine are central elements of HIV prevention programs in the countries of western Europe and a few others that have a record of humane treatment of drug users. Among public health experts, there is strong consensus that these programs are very effective and cost-effective in preventing HIV and other drug-related harm. Even in the United States, where there is a ban on federal funding of syringe exchange services, there are eight federally funded studies that demonstrate the effectiveness of syringe exchange in reducing drug-related harm without in any way encouraging drug use.

Nonetheless, access to these services for drug users worldwide remains very limited. The Global HIV Prevention Working Group in

its widely cited report of May 2003 estimated that only 11 percent of injection drug users in the FSU and eastern Europe have access to harm reduction programs such as syringe exchange.⁶ A twenty-seven-country survey by the Central and Eastern Europe Harm Reduction Network in 2002 noted that of eleven countries in eastern Europe and the FSU where over two thirds of the persons with AIDS are drug users, seven do not permit substitution therapy. It is logical to wonder whether human rights abuses faced by drug users contribute to the underutilization of these life-saving services where they exist and whether stigmatization of users contributes to the complete absence of these services in some countries.

Human Rights Abuse of Injection Drug Users

Wide range of abuses executed with impunity

Drug users are susceptible to a wide range of human rights abuses, some linked to laws that are not friendly to their rights, some linked to the social disdain in which they are held, and some linked to both these factors. In many countries, drug users by law can be arrested for possession or use of very small quantities of narcotics. Once they are in custody, their addiction can be used as a tool to coerce them into false confessions, sometimes in ways that constitute torture. Drug users are easy targets on which to pin false charges. Many elements of due process, including access to legal counsel, may be denied them more often than they are denied to other detainees. In Kazakhstan in 2002, Human Rights Watch gathered first-hand accounts from many heroin users of instances of all of these abuses. Abdelkasim Begzhanov, then forty-one, told us in Shymkent that he was beaten by police while in detention, but he decided not to complain about it when the police gave him heroin.

[They beat me] with a wooden club. They spread me legs wide apart like this. I had bruises, and I wanted to lodge a complaint with the prosecutor, but they told me, "You won't get anywhere anyway." And they began to bring me heroin so that I wouldn't

complain, so that I wouldn't have pain, so that I wouldn't go cold turkey. I shut up.⁷

Several users in Kazakhstan described having robbery or other charges pinned on them. A former user, Nurali Amanzholov, now president of an organization that supports people with AIDS in Kazakhstan, told Human Rights Watch:

If the drug user is beaten and confesses, he is offered a certain charge. If he accepts the charge, for example, if he already committed a robbery and did a sentence, he is told "Accept this [other] crime too." At trial, he'll be prepared to accept more because he will have been beaten solid for two days. One year more or less [in prison] is not going to make much difference to him.⁸

Entrenched corruption in police forces and prisons involved in the "drug war" makes reform of law enforcement practices a distant dream in many countries. Aryeh Neier, president of the Open Society Institute, notes the near inevitability of corruption in the ranks of persons meant to enforce repressive drug laws in many countries:

Bitter experience in all parts of the world has taught us that it is extremely difficult—and perhaps impossible—to enforce criminal laws against drugs without both extensive corruption and severe abuses of human rights. The corruption is directly tied to efforts to enforce the law. Because of the risks posed by law enforcement, drug traffickers demand high prices for their goods, ensuring that the money in the trade provides temptations for bribery and extortion. There are also links between human rights abuses and corruption. Law enforcement officials intent on personal gain are especially ready to engage in abuses.⁹

Human Rights Watch's work in Kazakhstan, Bangladesh and other locations bears out this observation. In Kazakhstan, numerous injection drug users reported that police assume that drug users have access to large sums of cash and offer reductions in sentences or other inducements for bribes.¹⁰ In Bangladesh, the combination of a poorly paid police force that acts with relative impunity and general social

disdain for drug users provided a perfect setting for extortion by police. Numerous drug users said police would threaten them with violence or with long periods of detention if they didn't pay bribes.¹¹ Police corruption and involvement in the drug trade obviously make the goal of less punitive and repressive drug laws that much less attainable.

There are even more extreme cases of human rights violations of drug users, often in the guise of crackdowns against drug dealers. In February 2003, the prime minister of Thailand announced a new "war on drugs" that eventually led to the extrajudicial killing of over 2200 alleged drug dealers,¹² many of whom were probably users but not dealers. Thai Interior Minister Wan Muhamad Nor Matha did not disguise the government's intentions. Referring to drug dealers, he was quoted as saying: "They will be put behind bars or even vanish without a trace. Who cares? They are destroying our country."¹³ According to local human rights activists, the central government reportedly put extreme pressure on local officials to draw up lists of drug criminals and gave them short deadlines to "take care of" those on the list. The United Nations continues to praise Thailand as a success story in the fight against AIDS and supports Thailand's hosting of the 2004 International AIDS Conference in Bangkok.¹⁴ Human Rights Watch also recently documented atrocious mistreatment of injection drug users in China, where forced labor and "social re-education" are the inhumane response of the state to the disease of drug addiction in the midst an AIDS epidemic shrouded in secrecy.¹⁵

One obvious consequence of draconian drug laws and police harassment and extortion of drug users is that in many countries a very high percentage of drug users spend time in state detention, and in some countries a high percentage of prison inmates and persons in pre-trial detention are drug users.

Access to HIV prevention services

Even if abuses of injection drug users are not as extreme as those in Thailand or China, it is clear that human rights violations can constitute an important impediment to HIV prevention services for drug users. Where drug users face deep social stigma, they may be reluctant

to use any government or even private services such as syringe exchanges. In some countries, needle exchange workers have themselves faced human rights abuses, especially from the police, and, as noted above, harm reduction services such as syringe exchange and substitution therapy remain illegal in many jurisdictions.

Human Rights Watch has documented instances where, without shutting down needle exchange and other services, police harassment or the threat of harassment has effectively kept injection drug users from life-saving services. In Canada, a country with a generally positive record on support for harm reduction programs, police crackdowns and chronic abuse of drug users in an impoverished neighborhood of Vancouver has at times driven injection drug users away from needle exchange services.¹⁶ In Bangladesh, the periodic arrests of needle exchange outreach workers in recent years has disrupted the few such services available to drug users in the country.¹⁷ One drug user told us that these arrests frighten users into staying away from the syringe exchanges, leaving them with little choice but to share needles.

Harm reduction services are becoming more available in some of the countries of the former Soviet Union, but obstacles remain. In Kazakshstan, needle exchange service providers told Human Rights Watch that even if the police did not target needle exchange points as a place to accost drug users, fear of police raids to fill arrest quotas at various times causes utilization of these services to plummet. In addition, service providers themselves have been harassed and in one case in Almaty in 2002, a needle exchange volunteer was detained when police found that he was carrying a booklet on safe injection practices.¹⁸ In Russia, the situation is similarly dire. The 1998 Federal Law on Drugs and Psychotropic Substances is used by law enforcement officials to harass and detain drug users in a wide variety of situations. Many injection drug users reportedly avoid syringe exchange services or drug counseling centers for fear of police harassment or arrest.¹⁹

In the United States, in spite of the government's own evidence of the effectiveness of syringe exchange, these services are relatively few, unsupported by the federal government and in many states forbidden

by law. In addition, even where needle exchange is legal, drug paraphernalia laws that exist throughout the country criminalize possession of syringes by individuals, an enormous impediment to the fearless use of these services by injection drug users. In 2003, Human Rights Watch conducted research in California, where the state has allowed counties to decide the legality of syringe exchange, resulting in a confusing range of laws and regulations governing this life-saving service, including outright prohibition in a number of counties. Even in places where syringe exchange is legal, drug users described to us being caught in a Catch-22 where they too often have to choose between arrest and the protection from HIV that access to clean needles affords. As one man said:

A lot of people [are] too scared to come down here. And that's sad, giving them the excuse to say, "Hey, damn the needle exchange," that's taking their mind away from staying in the program. . . .all because they don't want to come down here and get hassled. They keep using the same ones [syringes] over and over.²⁰

Like five other U.S. states, California also forbids nonprescription pharmacy sale of syringes, a measure that has improved syringe access for drug users in other parts of the U.S.

In short, the rights of injection drug users are regularly abused in the name of the war on drugs, often with apparent popular support and with impunity. Draconian drug laws and stigmatization of drug users are incompatible with containing the global HIV/AIDS epidemic and with the realization of the right of drug users to protect themselves and those around them from a deadly disease.

International Human Rights Law and the Abuse of Injection Drug Users

As with people living with HIV/AIDS, there are no provisions of international human rights law that name injection drug users as persons needing particular protection of their human rights or mention them in any other way. However, the range of human rights abuses that injection drug users face in virtually all parts of the world repre-

sent violations of existing human rights law that applies to all persons.

All persons are protected from arbitrary arrest or detention under the International Covenant on Civil and Political Rights (ICCPR) of 1966, a widely ratified treaty. Article 9 of the ICCPR also ensures that anyone arrested or detained under the law be informed of the charges against him or her and ensured of prompt judicial proceedings. Article 10 covers humane treatment of persons in detention, noting, for instance, that juvenile detainees should be separated from adults and persons already convicted should be separated from those in pre-trial circumstances. Human rights standards for treatment of persons in detention are further elaborated in the Standard Minimum Rules for the Treatment of Prisoners of 1957, which outlines standards of sleeping accommodations, access to light, water, exercise and sanitation facilities, diet, and medical care. Article 22, for example, requires that prisoners who are ill and need specialized care be transferred to the institutions that provide such care and that all prisoners have regular access to qualified medical personnel, including psychiatric professionals. All of these basic standards are frequently violated for drug users.

Harassment by police may constitute a violation of the guarantee of security of person in ICCPR article 9. Some of the police abuse of injection drug users documented by Human Rights Watch and other organizations constitutes torture, which is prohibited by article 7 of the ICCPR and by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1987, another widely ratified instrument. The Convention against Torture enjoins all states to prohibit all acts of torture in their codes of criminal law (article 4) and to ensure that law enforcement officers at all levels are trained in all forms of torture (article 10). Article 11 requires states to “keep under systematic review interrogation rules and . . . arrangements for custody and treatment of persons subjected to any form of arrest, detention or imprisonment . . . with a view to preventing any cases of torture.”

The right to the “highest attainable standard of physical and mental health” is guaranteed by the International Covenant of Economic, Social and Cultural Rights (ICESCR) of 1966. Denial of the right to

health is a common human rights violation faced by injection drug users. Their right to health is often impeded by policies and practices that limit their access both to harm reduction services and to humane treatment for their addiction. The right to health includes the right to obtain health services without fear of punishment, an aspect that is impossible to achieve under the drug law regime in many countries. As the U.N. Committee on Economic, Social and Cultural Rights has stated, policies that “are likely to result in . . . unnecessarily morbidity and preventable mortality” are breaches of governments’ obligation to respect the right to health. Policies that impede access to clean syringes and methadone fit the committee’s description.

In addition, prohibiting access to clean syringes or substitution therapy discriminates against drug users as a class of persons with a well defined disorder or disability. If the law denied syringes or medicines to insulin-dependent diabetics, the same kind of discrimination would occur, and no one would find it acceptable. The right to health is inherently guaranteed in a non-discriminatory way, and all persons have the right to be free from discrimination on the basis of disability or physical disorders [ref].

The rights of drug users to adequate housing (ICESCR, article 11), freedom from discrimination in the workplace (ICESCR article 7 and anti-discrimination provisions in many instruments), nondiscriminatory access to educational institutions (ICESCR, article 13), and from social security and social insurance systems (ICESCR, article 9) are also regularly violated in many countries. The stigma and discrimination so rampant against drug users in many parts of the world are clear violations of many human rights norms.

Influence of U.N. drug control treaties

The case of the rights of drug users in international law is complicated by the existence of the U.N. treaties on international control of narcotics drugs, which have the force of international law and which in many ways undermine the protection of the rights of drug users. Much of the policy thinking that justifies criminalization of drug users rather than prioritizing humane health services for them is enshrined

in these three United Nations conventions. The conventions, ratified in 1961 (the Single Convention on Narcotic Drugs), 1971 (Convention on Psychotropic Substances) and 1988 (Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances), form the basis for international coordination of policies to control of narcotic drugs. These treaties are widely ratified, including by all of the countries of Central and Eastern Europe and the Soviet Union as well as the United States. Two of these conventions predate the HIV/AIDS epidemic, and the third predates the explosive growth of injection drug use in the world. It was surely never the intention of the framers of these treaties that they would impede the fight against a lethal pandemic but, tragically, this is part of their legacy.

The Open Society Institute, which has pioneered harm reduction services in much of Eastern Europe and the FSU, has concluded that the skyrocketing HIV rates in that region are in significant part due to the way in which governments seek to comply with the outdated and inflexible provisions of the U.N. treaties.²¹ For example, in the 1961 convention, methadone is classified as a “schedule 1” drug to which access should be strictly limited. Some countries use this provision to justify the illegality of methadone in all circumstances, thus denying injecting heroin users one of the most effective means to reduce the harm of their drug use and making illegal one of the most effective tools against AIDS in a drug use-driven epidemic.

The 1988 convention urges countries that are party to it to “adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally,” the possession of illicit drugs. Because this language is so vague, national governments have used it to justify a wide range of repressive antidrug policies that contribute to the marginalization of drug users from life-saving health and harm reduction services.²² At the 1998 U.N. General Assembly Special Session on illicit drugs, members states reaffirmed the three conventions and agreed to work toward achieving “significant and measurable results” in reducing illegal drug consumption by 2008 (with a 50 percent reduction considered the formal target). That deadline has been criticized as unrealistic by many independent observers. Chasing this goal is likely to lead some countries

to adopt draconian measures destined to fail in both reduction of illicit drug use and control of HIV/AIDS. The U.N. Commission on Narcotic Drugs and the U.N. Office on Drugs and Crime have not tried to promote the idea of revising the conventions to ensure better reflection of the realities of the era of HIV/AIDS as well as the well established track record of harm reduction measures.

Subsequent United Nations documents and statements have contained some language that can be construed as compassionate to drug users. The June 2001 declaration from the U.N. General Assembly Special Session on HIV/AIDS calls for “harm reduction efforts related to drug use,” though some member states, notably the U.S., objected to earlier language naming injection drug users as a population particularly in need of services and care. The U.N. International Guidelines on HIV/AIDS and Human Rights of 1998 call on countries to review their laws with an eye toward legalizing and promoting syringe exchange and modifying laws that criminalize the possession and distribution of syringes, but the guidelines do not have the force of international law.

Recommendations for Action

The challenge of improving human rights protections for injection drug users is no small one. That social disdain for drug users is so deep that it would be allowed to impede their right to protect themselves from HIV is shocking, particularly given the excellent track record of harm reduction programs in countries where they have been allowed to operate. Drug users are clearly caught up in a terrible politics of moral judgmentalism, typified by the attitude that they “deserve what they get” if they can’t exercise self-control, which underlies abstinence and law enforcement approaches to drug use in many countries. The political power of religious fundamentalists in many countries, including the United States, strengthens support for these approaches, which are clearly discredited by science.

Drug users’ human rights are also a casualty of a political of denial about HIV/AIDS in many parts of the world. Making the case for the urgency of protecting drug users’ rights and working respectfully with

them to fight HIV/AIDS if a government is in denial about HIV/AIDS or about the extent of the epidemic within its borders. The governments of China and numerous countries of the former Soviet Union, for example, have not allowed epidemiological surveys to go forward to establish the real extent of HIV prevalence in their populations. Some countries, notably many in the Middle East, prefer to deny that significant levels of injection drug use exist in their populations.

As with all human rights challenges, political courage is urgently needed. Among the actions that must be taken to redress entrenched and widespread abuses of the rights of injection drug users are the following:

Spread the word on the link between human rights abuses and harm reduction: The track record of harm reduction services has been widely studied but remains underappreciated by many policy-makers. The link between human rights abuses and effectiveness and success of harm reduction services is much less well understood. Harm reduction services are a fortuitous combination of programs that are effective and cost-effective in public health terms and interventions that are human rights-friendly. Accounts, including economic analyses, of the ways in which harm reduction services have helped to contain AIDS and reduced other drug-related harm while respecting the rights of users are needed in terms that policy-makers and the general public can understand.

High-level leadership: In the history of HIV/AIDS, many important victories have been led by civil society organizations, including organizations of people living with AIDS. But in country after country, experience has shown that frank recognition of all facets of the HIV/AIDS epidemic, including its link to injection drug use, has been invaluable for creating an environment in which programs can be effective and wide-reaching. It is not surprising that many politicians shy away from being associated with drug users, prisoners, sex workers, and other persons on the frontlines of the epidemic. But in the face of an AIDS catastrophe, politicians must transcend that cowardice and

recognize publicly that injection drug users can be part of the solution to AIDS if public officials work respectfully with them.

International treaties and statements from U.N. bodies: It is a shame that the United Nations system has been so silent on the rights of drug users, especially their right to protect themselves and those around them from HIV/AIDS and other life-threatening conditions. It is more than a shame that U.N. treaties actively promote approaches that ignore the need for protection of the rights of drug users. It is high time that the U.N. recognize and address the unintended negative consequences of the three drug control treaties as HIV/AIDS cuts a swath through the world. The General Assembly should mandate that the treaties be revisited with an eye toward eventual agreement on an international drug control strategy that puts reduction of drug-related harm at the top of the policy agenda. The United Nations agencies that are co-sponsors of the Joint U.N. Programme on HIV/AIDS (UNAIDS), including the U.N. Office on Drugs and Crime in Vienna, should take a lead in bringing these anachronistic conventions into the twenty-first century. They should speak publicly about the lethal consequences of failing to support harm reduction measures and should put resources into mobilizing member states to follow through with words and actions in support of these life-saving services. The United Nations needs to bring all its resources to bearing in leading the global community away from repressive and ineffective “wars” on drugs.

Conclusion

HIV/AIDS has had a special link to human rights and human rights violations from the first. Any disease that started out with the name “gay-related immune deficiency” would be likely to have some human rights challenges built in. The history of HIV/AIDS around the world has been shaped to a large degree by the fact that the persons first and most affected by the disease—sex workers, injection drug users, prisoners and migrant workers in addition to gay and bisexual men, for example—did not generally enjoy political popular-

ity and in many cases were without strong organizations or solidarity networks. The human rights challenges of galvanizing popular support or high-level political energy for a fight against a disease affecting these populations were clear from the beginning.

Remarkably, there is great rhetorical commitment to the idea that protecting the human rights of people affected by HIV/AIDS is an important part of fighting the epidemic. But it is shocking and saddening that in the third decade of the AIDS epidemic's horrific destruction, that commitment remains a rhetorical one, perhaps especially with regard to the rights of injection drug users. The challenge for human rights and harm reduction advocates alike is to bridge the gap between the rhetoric and the reality of AIDS and human rights. If this could be achieved by non-governmental advocates alone, the gap would already be bridged. Those who see everyday the life-saving impact of harm reduction services and the transforming effect of working respectfully with drug users do not need to be convinced further. But government action will be required, and some measure of political courage will be essential. One can only hope that enough political leaders, before it's too late, will realize that trampling on the rights of drug users only gives HIV/AIDS the upper hand.

ENDNOTES

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*Joanne Csete is director of the HIV/AIDS Program at Human Rights Watch. She worked on public health programs in Africa for over ten years and was previously chief of policy and program planning in the regional office of UNICEF.

Jonathan Cohen is a researcher in the HIV/AIDS Program at Human Rights Watch. He previously served as clerk in the Supreme Court of Canada and has documented a range of human rights issues related to HIV/AIDS.

DEBATE QUESTIONS

1. According to Human Rights Watch, what human rights violations do drug users encounter?
2. How have UN drug-control treaties contributed to human rights violations?
3. What international human-rights instruments can be used to protect the rights of drug users?