TREATMENT OR TORTURE?

APPLYING INTERNATIONAL HUMAN RIGHTS STANDARDS TO DRUG DETENTION CENTERS

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STOP TORTURE IN HEALTH CARE

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Cover Image: Health personnel take a blood sample from a drug user at a rehabilitation center located in Suining, China. In China, as many as 500,000 drug users are detained against their will in the name of addiction treatment each year, according to UNAIDS. (Stringer Shanghai / Reuters)

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Public Health Program

The Open Society Public Health Program aims to build societies committed to inclusion, human rights, and justice, in which health-related laws, policies, and practices reflect these values and are based on evidence. The program works to advance the health and human rights of marginalized people by building the capacity of civil society leaders and organizations, and by advocating for greater accountability and transparency in health policy and practice.

International Harm Reduction Development Program

The International Harm Reduction Development Program (IHRD), part of the Open Society Public Health Program, works to advance the health and human rights of people who use drugs. Through grantmaking, capacity building, and advocacy, IHRD works to reduce HIV, fatal overdose and other drug-related harms; to decrease abuse by police and in places of detention; and to improve the quality of health services. IHRD supports community monitoring and advocacy, legal empowerment, and strategic litigation. Our work is based on the understanding that people unwilling or unable to abstain from illicit drug use can make positive changes to protect their health and that of their families and communities.

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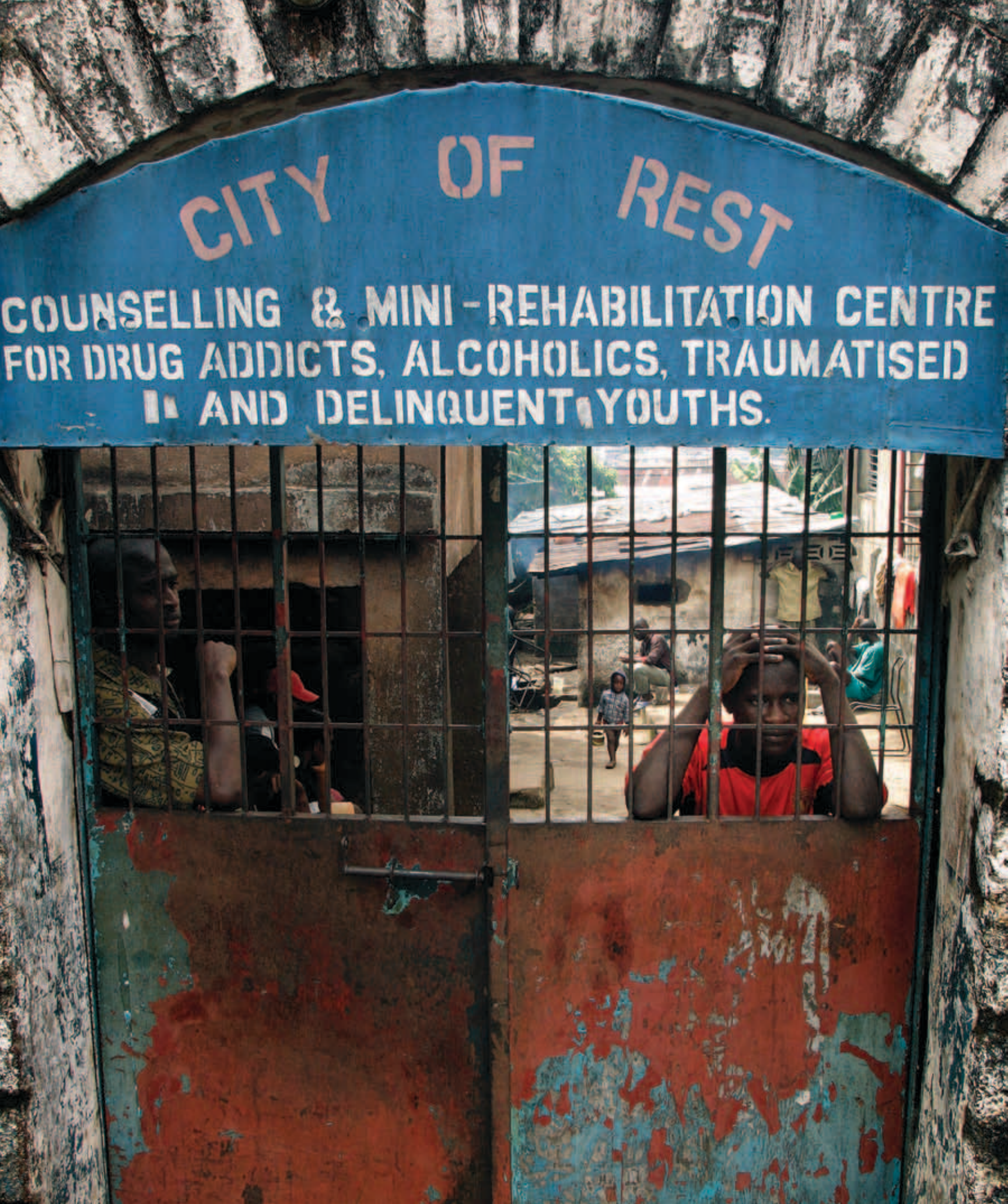
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COUNSELLING & MINI-REHABILITATION CENTRE
FOR DRUG ADDICTS, ALCOHOLICS, TRAUMATISED
AND DELINQUENT YOUTHS.

CAMPAIGN TO STOP TORTURE IN HEALTH CARE

When I go to a hospital or clinic, I expect to receive good quality, respectful care, and I usually do. Unfortunately, that is not the experience for many people around the world.

For them, health care settings are not places of healing, but places where severe mental or physical suffering is inflicted as a result of government policy or negligence.

This is especially true for patients from socially marginalized groups—people living with HIV, gays and lesbians, transgender persons, people who use drugs, and people with intellectual disabilities or mental health problems. Their contact with health facilities is too often characterized by physical abuse, insults, invasion of privacy, forced medical procedures, or denial of treatment. This amounts to cruel, inhuman, and degrading treatment—and in some cases, torture.

Such abuses must stop. That is why a coalition of health and human rights organizations, including the Open Society Foundations, is launching the **Campaign to Stop Torture in Health Care**. We are committed to a world where health care centers are safe, and where our governments act to prevent all forms of torture.

Egregious and pervasive cruelty is often condoned in the name of medicine, public health, or public order. For example, in the so-called "rehabilitation" centers throughout Southeast Asia, people who use drugs are locked away without any access to medical care or legal recourse. The centers rely on physical abuse, shackles, solitary confinement, and other indignities to "treat" drug addiction and extract labor from the detainees. Moreover, they are often overseen by government authorities, with private business exploiting the forced labor inside. Not surprisingly, the vast majority of people quickly return to drug use once they are released from these centers.

It is clear that these practices violate international law. Governments and health providers who undertake them must be held responsible. What's more, detention centers should be closed, and voluntary, scientific-based drug treatment should be provided to those who need it.

We hope you will join us in fighting such abusive treatment worldwide. Visit *www.stoptortureinhealthcare.org* for more information on the campaign and to take action today.

Françoise Girard, *Director*
Open Society Public Health Program

Photo: A young man peers out from the gate of a rudimentary drug treatment center in Freetown, Sierra Leone. Run by a local pastor, the facility is known for its harsh methods. (Fredrik Naumann / Panos)

HUMAN RIGHTS UNDERMINED: DRUG TREATMENT WITHOUT ACCOUNTABILITY

"[C]ountering the world drug problem... must be carried out in full conformity with the purposes and principles of the Charter of the United Nations and other provisions of international law, and in particular with full respect for... all human rights and fundamental freedoms."[1]

—UN General Assembly

The widespread ill-treatment and abuse experienced by people who use illicit drugs has received increasing attention as a human rights issue.[2] One area of particular concern is the violation of human rights in the course of—and sometimes even in the name of—treatment for real or perceived drug dependence.[3]

In some countries, those convicted of various drug offences—and in some cases even those simply found to have used prohibited substances or perceived to be drug users—may be forced to undergo compulsory drug treatment and rehabilitation. Often this means internment in detention centers or camps that are operated by military or paramilitary authorities, police or security forces. The detention of people who use drugs in such centers is a common practice in numerous countries throughout Asia.[4] Estimates of how many people are undergoing compulsory drug detention at any one time in China range from 300,000 to half a million.[5] As many as 60,000 people are interned annually in drug detention centers in Vietnam.[6] Thousands more are detained in drug detention centers in Cambodia, Thailand, Malaysia, Laos and Burma.[7]

The policies and practices by which people are consigned to such centers vary among jurisdictions and often according to the economic status of detainees. In certain settings, access to anonymous (or at least relatively confidential)

Photo: In Thailand and many other Asian nations, the police and military oversee most drug treatment—much of it involuntary and abusive —rather than qualified health professionals. (Patrick Brown / Panos)

treatment for drug dependence—and hence a greater chance of avoiding the attention of law enforcement authorities—is available only to those with the resources to pay for it privately. Numerous reports have documented a regular practice of people accused of drug-related offences being consigned to drug detention centers for months or years, often without trial or any semblance of due process or any proper assessment of whether they are, in fact, drug-dependent. In some countries, "treatment" consists of forced unpaid labor, psychological and moral "re-education," military exercises, and other drills. Detainees are chained or caged, and are subjected to abusive and invasive physical procedures and mental degradation in the name of treatment.

Beyond this so-called treatment, in the best of circumstances, detainees face abject living conditions that include overcrowding and inadequate sanitation and food. Because facilities are overseen by military or public security bureaus—rather than medical professionals—staff are rarely trained in drug dependence treatment. Basic medical services are frequently neglected or ignored entirely, as are services to protect detainees from other health threats such as communicable diseases. Staff also lack training in prison management. In many cases, detainees are routinely subjected to brutal physical and sexual violence from staff or other detainees acting on staff's request.

In a regional review in southeast Asia conducted only a few years ago, the UN Office on Drugs and Crime (UNODC) raised concerns that notwithstanding the increasing numbers of people incarcerated in drug detention centers, "[s]tructured and comprehensive drug treatment and after care in general appears to be provided in only a few countries. Furthermore, no research into the effectiveness of drug treatment in custody, or 'compulsory drug treatment centers' is available."[8] Nonetheless, in the years that followed this report, countries have increased the number of such centers, rather than closed them, with little or no indication of any attempt to assess their clinical effectiveness and their compliance with human rights standards.

These realities demand a human rights response. Unsurprisingly, reports by former detainees and human rights organizations have prompted growing international concern. Leaders at the World Health Organization, UNAIDS, UNDP, World Medical Association and the Global Fund to Fight AIDS, Tuberculosis and Malaria have all called for closure of the detention centers. Other United Nations representatives, including the High Commissioner for Human Rights and the Special Rapporteur on Torture, have also expressed specific concerns. In 2008, WHO and UNODC reported that: "large numbers of people suffering from drug dependence have no access to humane, ethical and effective treatment... Often existing treatment options, either in health care or law enforcement systems, do not respond to the treatment needs of the populations, and violation of human rights and ethical principles of treatment are common."[9] The executive director of the UN Office on Drugs and Crime went one step further, recognizing that "[i]n some countries, what is supposed to be drug treatment amounts to cruel, inhuman or degrading punishment—the equivalent of torture."[10]

In this paper, we examine how the prohibitions in international law against torture and other cruel, inhuman or degrading treatment or punishment can and should be engaged to address at least some of the alarms raised by such drug detention centers.

First, we provide a detailed analysis of the legal definitions of **torture** and of **cruel, inhuman or degrading treatment or punishment,** and offer some general comments about how these categories in international law can be applied to settings in which people are detained in the name of drug dependence treatment.

Second, we consider a number of the practices commonly reported in drug detention centers in light of these specific norms, drawing upon other sources in international law and expert commentary where relevant.

Finally, we conclude with a number of recommendations for advocacy, including engaging the international mechanisms that can be brought to bear to address this neglected human rights crisis,[11] as well as recommendations for national governments and international donors.

TORTURE AND CRUELTY IN HEALTH CARE: WHAT INTERNATIONAL LAW SAYS

"All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person."

Obligations Identified by International Law

The Universal Declaration of Human Rights declares "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[12] The UN General Assembly has explicitly affirmed that this right extends to all individuals detained by the State and is non-derogable:

> All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.
>
> […]
>
> No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment."[13]

The prohibition is also a matter of *jus cogens*, a peremptory norm of customary international law binding on every State regardless of whether it has ratified any particular treaty provision prohibiting such ill-treatment.[14]

The International Covenant on Civil and Political Rights (ICCPR) is the first international treaty to address explicitly the matter of torture and similar abusive treatment. Article 7 states that:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Photo: A police officer lectures detainees during a re-education class at a Chinese drug detention center. (Nir Elias / Reuters)

Photo: At Russia's City Without Drugs Foundation centers, up to 50 people at a time are crammed into a room, handcuffed to their beds, and fed a diet of only bread and water for an initial period of 27 days to ensure they take the treatment seriously. (Brendan Hoffman)

Article 10(1) further provides that:

> All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

The ICCPR also explicitly reiterates, in Article 4(2), that no derogation from the prohibition against torture or cruel, inhuman or degrading treatment or punishment is permissible by any State that has ratified the treaty.

Twenty years after the ICCPR, the UN's principal treaty on the matter of torture and other abusive treatment entered into force. Discussed in greater detail in this chapter, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) fleshes out the general prohibitions stated in the UDHR, the ICCPR and customary international law, and also outlines specific obligations of ratifying States to prevent torture and bring perpetrators to justice.[15] In addition to the CAT, a number of subsequent UN human rights treaties further articulate the right not to be subjected to torture or other forms of ill-treatment specifically for children, migrant workers and their families, and persons with disabilities.[16]

The UN General Assembly has also specifically highlighted the obligations of *law enforcement officials* to abide by the absolute prohibition on torture

or other cruel, inhuman or degrading treatment or punishment.[17] Similarly, the General Assembly has affirmed that *health personnel* are not only required to provide proper medical assistance to individuals under detention or imprisonment, but are also ethically prohibited from partaking in any interrogation methods, punishments or treatments that could amount to torture or other forms of ill-treatment.[18]

Regional human rights systems likewise have strong prohibitions against torture and other egregiously abusive treatment, using formulations essentially similar to those in the UN instruments of wider application. The European Convention on Human Rights provides that "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment."[19] Similarly, the American Convention on Human Rights stipulates that "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."[20] The African Charter on Human and Peoples' Rights proscribes torture and other forms of ill-treatment under the auspices of respect for human dignity. Article 5 of the African Charter states: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."[21]

Conduct Prohibited by Law

The term "cruel, inhuman or degrading treatment or punishment"[22] is grouped together with "torture" in most human rights treaties, but at least under the CAT they are distinct, if overlapping, categories. While the prohibition is non-derogable in the case of both,[23] the legal distinction between torture and other forms of cruel, inhuman or degrading treatment or punishment can be significant in other respects. For example, some legal obligations under CAT only apply in the case of torture (e.g., the requirement that States hold perpetrators criminally responsible), and not to other cruel, inhuman or degrading treatment or punishment.[24] We consider in more detail the definition of each of these categories and their relevance to the treatment of those detained in drug detention centers.

(a) Torture

Torture is a particularly severe form of deliberate abuse, causing severe and cruel suffering. It is one of the most brutal human rights violations and is a direct attack on the core of the human personality and human dignity.[25] As noted above, under international human rights law, there

is an absolute prohibition on torture, which is also reflected in international humanitarian law, international criminal law and customary international law.

CAT is the first instrument in international law providing a detailed legal definition of torture,[26] which consists of four defining elements. Under CAT Article 1, "torture" means any act that

1. inflicts *severe* pain or suffering, whether mental or physical;
2. is *intentionally* inflicted on a person;
3. is inflicted for such *purposes* as obtaining information or a confession, punishing, intimidating or coercing someone, or for any reason based on *discrimination* of any kind; and
4. is inflicted by, at the instigation of, or with the consent or acquiescence of a *public official* or other person acting in an official capacity.[27]

How might these four criteria for a finding of torture apply in the context of settings where persons are subjected involuntarily to what is purportedly treatment for drug dependence? The application of the first, second and fourth of these criteria is likely relatively straightforward; the third, however, requires more careful analysis.

With respect to the first and second criteria, in seeking to characterize a given objectionable practice in the context of drug detention as "torture," it will be a question of assessing whether the practice is *intentional* and whether the pain or suffering that it inflicts can be considered *severe*. Applying these elements of the legal definition of torture will depend, of course, on an assessment of the facts of a particular case—with guidance from the jurisprudence as to what kind of conduct has previously been found to satisfy these criteria. As noted by the UN Human Rights Committee with respect to the prohibition in ICCPR Article 7 on torture and cruel, inhuman or degrading treatment or punishment:

> The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.[28]

In establishing that a given practice in a drug detention center amounts to torture, the fourth criterion in the CAT's definition of torture—the nexus with the exercise of some official capacity—is likely to pose little difficulty. In the case of practices that are administered, or services operated, by public authorities, the requirement of some involvement by a public official is easily satisfied. In addition, in the case of private or parastatal authorities administering drug dependence "treatment," where the State's law or regulation

permits a given practice, or the practice is known and acquiesced to by public authorities (e.g. ministry of health, justice or interior or local officials with such responsibilities), it would seem this element of the definition is also satisfied.[29] Indeed, the Committee Against Torture has confirmed that States parties may be held in breach of the CAT for ill-treatment carried out by private actors when public officials, who knew or ought to have known of such treatment, fail to "take any appropriate steps in order to protect the [victim]."[30] The Committee has more recently reaffirmed that:

> States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law. Accordingly, each State party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.[31]

Photo: A policewoman stands guard at a forced labor camp in China where women are detained under the guise of drug treatment. Not surprisingly, relapse rates following detention are close to 100 percent. (Stringer Shanghai/ Reuters)

In addition, the ICCPR is arguably broader than CAT in protecting against torture, as it does not explicitly require that the ill-treatment involve at least the acquiescence of public officials in order to constitute "torture." The Human Rights Committee has interpreted ICCPR Article 7 as encompassing all forms of ill-treatment, whether it is "inflicted by people acting in their official capacity, outside their official capacity or in a private capacity."[32] (The UN Special Rapporteur has also recently observed that the UN Convention on the Rights of Persons with Disabilities extends the protection from torture beyond State actors to communities, families and privately run centers, "including all types of medical institutions," at least in the case of persons with disabilities.)[33]

In the context of administering what is ostensibly drug dependence "treatment," it is satisfying the third criterion in the CAT definition of torture—the requirement to show some *improper purpose or discrimination*—that may be thought to pose more of a challenge, given that it will likely be claimed that the treatment is intended to benefit the "patient," even where it is compulsory and hence imposed against the person's will. However, this criterion for a finding of torture can be shown to exist in a number of ways.

First, in many instances, methods of drug dependence treatment are imposed with an explicit or implicit *punitive* objective, or with the objective of *intimidating* the person into avoiding future drug use, even if these objectives sit alongside an ostensibly therapeutic one. So in at least some instances where drug dependence treatment is abusive, the requisite improper purpose may be established in order to satisfy the definition of torture. Such approaches to drug dependence treatment, which seek to punish or intimidate drug users, are more likely in settings where government policy and/or professional directives or attitudes conflate, sometimes explicitly, the medical condition of addiction with criminality, sin or "social evil"—as drug use is even more likely be seen as morally blameworthy conduct requiring punishment *per se* as well as deterrence through such intimidation. As the UN Special Rapporteur on Health noted in 2010: "Criminalization of drug use fuels the perception that people who use drugs are unproductive criminals or moral degenerates, which in turn allows disciplinary treatment approaches to proliferate."[34] Statements by political or government leaders, or those administering "treatment" in drug detention settings, as well as policy documents or legislation articulating the government's objectives or governing the operations of such centers, are just some examples of evidence that could be used for a finding that abusive practices amount to "torture" because the treatment is imposed for the improper purposes of punishing or intimidating.

Second, conduct may also qualify as torture if applied with *an improper purpose other than one of those explicitly stated* in CAT. The UN Special Rapporteur on Torture has noted that the list of purposes in CAT is non-exhaustive.[35] The third element of the definition of torture in CAT specifically refers to "such purposes as" those that are explicitly listed. This has prompted other jurists to suggest that, in order for abusive conduct undertaken for some other, un-enumerated purpose to constitute "torture" prohibited by CAT,

that other purpose must have something in common with those purposes explicitly mentioned in CAT—i.e., some connection to the interests or policies of the State and its organs.[36] In States where methods of drug dependence treatment are likely to be particularly egregious in inflicting pain and suffering, and where the State plays an active role in administering or dictating the elements of such treatment (e.g., through legislation or other official directives or guidelines), it should not be difficult to establish that such treatment is undertaken in connection with State interests or policies (e.g., to combat "social evils"). When it is State entities themselves that operate or fund facilities for drug detention, the nexus with State policy is self-evident. However, even where abuses occur in privately-operated institutions, without receipt of any government funding, it will often be the case that the State's law or policy determines or influences treatment methods (and in some cases compels treatment) in those institutions, and the State thereby obviously manifests that it has some interest in such treatment. It can, therefore, be argued that the "treatment" is undertaken for a purpose "such as" those mentioned explicitly in CAT.

Even where abuses occur in privately operated institutions, without receipt of any government funding, it will often be the case that the State's law or policy determines or influences treatment methods.

Finally, given the treaty's explicit wording, the third element of CAT's definition of torture may also be satisfied where it can be said that the treatment is carried out for "any reason based on *discrimination* of any kind." The Committee Against Torture has declared that, as is the case with human rights law generally, the basic principle of non-discrimination is "fundamental to the interpretation and application of the Convention," and has emphasized "that the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture."[37] The Committee has noted that:

> The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of… mental or other disability, health status… reason for which the person is detained… or any other status or adverse distinction."[38]

Perceived or actual drug dependence obviously amounts to a "reason for detention" in drug detention settings; as the Committee Against Torture makes clear, ill-treatment based on this ground amounts to discrimination, so presumably this requirement under CAT's definition of torture would be satisfied. In addition, the discriminatory ill-treatment of drug users could be seen as discrimination based on "health status" or "other status"[39] or based on "disability."[40] There is little doubt that drug dependence is a health condition, but one that is often not recognized as such and still marked by intense stigmatization and discrimination, including in approaches to its treatment. As WHO and UNODC have affirmed:

> Drug dependence is considered a multi-factorial health disorder that often follows the course of a relapsing and remitting chronic disease. Unfortunately

> in many societies drug dependence is still not recognized as a health problem and many people suffering from it are stigmatized and have no access to treatment and rehabilitation. […] "Nothing less" must be provided for the treatment of drug dependence than a qualified, systematic, science-based approach such as that developed to treat other chronic diseases considered untreatable some decades ago.[41]

Other experts have articulated the same requirement, in human rights terms, that public policy must not discriminate against people with drug dependence. The UN Special Rapporteur on Torture has observed that: "With regard to human rights and drug policies… drug dependence should be treated like any other health-care condition."[42] Yet in many cases, public officials tolerate (or themselves administer) "treatment" for drug dependence that deviates from the requirements of evidence that are essential in treating other health conditions. To the extent that this is so because it is people who use drugs who are the subjects of this treatment, when non-evidence-based approaches are unacceptable in the treatment of other health conditions, then this sub-standard treatment amounts to discrimination, thereby satisfying this third element of the definition of torture. As noted by the UN Special Rapporteur on the Right to Health: "In place of evidence-based medical management, Governments and enforcement authorities coerce or force drug-dependent individuals into centres where they are subject to ill-treatment and forced labour. This approach discriminates against people who use drugs, denying them their right to access medically appropriate health-care services and treatment."[43]

Finally, note that discrimination may also be relevant to the question of the intent required for a finding of torture. The UN Special Rapporteur on Torture, in considering the particular vulnerability of people with disabilities to ill-treatment, has observed in 2009 that:

> Furthermore, the requirement of intent in article 1 of the Convention against Torture can be effectively implied where a person has been discriminated against on the basis of disability. This is particularly relevant in the context of medical treatment of persons with disabilities, where serious violations and discrimination against persons with disabilities may be masked as "good intentions" on the part of health professionals.[44]

(b) Cruel, inhuman or degrading treatment or punishment

According to the UN General Assembly, "[t]orture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment."[46] But under CAT Article 16(1), each State Party must also "undertake to prevent in any territory under its jurisdiction *other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture* as defined in article 1, when such acts 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."

While the definition of torture is well established, what constitutes cruel, inhuman or degrading treatment remains less well developed. The UN Committee Against Torture has observed that: "In practice, the definitional threshold between ill-treatment and torture is often not clear."[46] The UN General Assembly has explicitly declared that "[t]he term 'cruel, inhuman or degrading treatment or punishment' should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental…"[47] The UN Special Rapporteur and other experts have suggested the following clarifications of the term:

- *Cruel and inhuman*[48] treatment or punishment is made out where there is severe pain or suffering inflicted, by or at the instigation of or with the acquiescence or consent of a public official or other person acting in an official capacity.[49] Conduct can be intentional or negligent, with or without a specific purpose, as opposed to torture which requires both intent and an improper purpose (as described above).[50] (The UN Special Rapporteur on Torture, in his report specifically addressing the vulnerability of people with disabilities to ill-treatment, has observed that "[p]urely negligent conduct lacks the intent required under article 1 [of CAT], and may constitute ill-treatment if it leads to severe pain and suffering."[51]

- *Degrading* treatment or punishment is specifically the infliction of pain or suffering, whether physical or mental, which aims at *humiliating* the victim. The pain and suffering does not have to be "severe" in order to be considered degrading.[52] The European and Inter-American Courts of Human Rights have affirmed that degrading treatment encompasses acts that are designed "to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance."[53]

The European Court of Human Rights has repeatedly held that in order to fall within the scope of the prohibition on torture or other "inhuman or degrading treatment" in the European Convention on Human Rights (Article 3), "ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim."[54] Specifically with respect to understanding the categories of "inhuman" or "degrading," the Court has reviewed the body of its previous jurisprudence and noted that:

> Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and

The Court has deemed treatment to be "degrading" because it was such as to arouse in the victims fear, anguish, and inferiority capable of humiliating and debasing them...

> debasing them…. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3…
>
> The suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element... Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with the respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention… In particular, the Court must have regard to the state of health of the detained person.
>
> An important factor, together with the material conditions, is the detention regime. In assessing whether a restrictive regime may amount to treatment contrary to Article 3 in a given case, regard must be had to the particular conditions, the stringency of the regime, its duration, the objective pursued and its effects on the person concerned…[55]

(c) Pain and suffering in lawfully-authorized dependence treatment

It should be noted that, under CAT, pain or suffering that arises "only from, inherent in or incidental to lawful sanctions" is expressly excluded from the definition of torture.[56] This raises the question of whether pain and suffering resulting from or during compulsory drug dependence treatment cannot constitute torture if the treatment is legally sanctioned under the domestic law of the State. However, it has been argued that a preferable interpretation of this provision in CAT, excluding certain treatment from the definition of torture, is that the meaning of "lawful" in this context means not just authorized by domestic law but also denotes compliance with international standards[57]—indeed, any other interpretation would create an obvious means of circumventing minimum international legal standards and undermine the very purpose of a treaty such as CAT. The UN Declaration against Torture defines "lawful sanctions" as those that do not violate the Standard Minimum Rules on the Treatment of Prisoners.[58] Therefore, any pain or suffering arising in the course of drug dependence treatment could still be considered torture, notwithstanding that such treatment may be legally authorized by domestic law, if it breaches the Standard Minimum Rules.

Note as well that this exclusion does not apply in the case of other cruel, inhuman or degrading treatment prohibited by CAT Article 16 (or by ICCPR and regional treaties)—i.e., even if the pain or suffering arises from, or is

inherent in or incidental to, "lawful sanctions," it is still in violation of the treaties if it is cruel, inhuman or degrading. In this respect, the category of cruel, inhuman or degrading treatment or punishment could be useful in challenging forms of "treatment" that are prescribed by domestic law in cases where it may be harder to succeed with the claim that the treatment amounts to torture within the CAT definition.

VIOLATIONS IN TREATMENT SETTINGS: HOW INTERNATIONAL LAW IS COMMONLY BREACHED

It has long been established in international law that all people who are imprisoned are entitled to the same protection and enjoyment of their human rights as those not detained, "except for those limitations that are demonstrably necessitated by the fact of incarceration."[59]

As the UN Human Rights Committee has observed,

> …neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.[60]

This principle of "retaining all rights" includes, of course, the right to the highest attainable standard of health and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment.[61] The UN's Human Rights Committee has explicitly clarified that the right to humane treatment under ICCPR Article 10 is held not just by those in prison but also by

> … any one deprived of liberty under the laws and authority of the State who is held in prisons, hospitals—particularly psychiatric hospitals—detention camps or correctional institutions or elsewhere. States parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held.[62]

Photo: A 15-year-old boy is chained to a chair, which he must carry with him at all times, at Sierra Leone's City of Rest rehabilitation clinic. (Fredrik Naumann / Panos)

As indicated, in some countries it is government departments or agencies that run drug detention centers; in other instances, drug detention centers may be privately run. As noted above, even in such cases, if a practice is permitted by law, or acquiesced to by public authorities (e.g., who might contract with a private operator), the legal prohibition on torture or other cruel, inhuman, or degrading treatment still applies—and in any event, States are clearly responsible in international law for taking measures to prohibit, prevent and redress torture in private settings.

The sections that follow consider how a variety of circumstances documented in drug detention settings constitute not only violations of the right to health but also violations of the absolute prohibition on torture or other cruel, inhuman or degrading treatment or punishment.

Involuntary medical procedures

Beyond the often arbitrary nature of detention for compulsory treatment and its imposition in ways that do not accord with due process requirements, the involuntariness of compulsory treatment for real or perceived drug dependence is itself inherently of human rights concern. In some settings, evidence indicates that the vast majority of people in so-called drug treatment centers are there involuntarily, and in many cases, regardless of whether they are in fact drug dependent and in need of treatment. For example, a 2008 study in Cambodia found that only one out of 405 people entered drug treatment voluntarily.[63] With respect to involuntary treatment in China, "one 2004 study found that nearly 10 percent of those apprehended by the police on suspicion of drug use swallowed nails, metal filings, or ground glass in order to obtain a medical exemption and escape internment."[64] When those undergoing treatment under compulsion are then subjected to additional medical procedures without consent, the human rights concern is further compounded. For example, it is not uncommon that drug detention centers conduct involuntary HIV testing without informing those tested of their results.[65] Recent studies in China, for example, have documented that HIV testing, without consent and without disclosure of the results, was standard in detoxification and re-education through labor facilities.[66] In Malaysia, detainees in drug detention centers are automatically tested for HIV upon entry and upon release.[67]

The question of compulsory detention as treatment for drug dependence has not yet received extensive discussion in human rights jurisprudence or academic commentary, including with respect to whether and when it amounts to torture or other cruel, inhuman or degrading treatment. However, more general analyses about involuntary medical treatment are of assistance. The involuntary nature of drug dependence treatment imposed in drug detention centers (and of other procedures commonly performed, such as HIV testing) *prima facie* violates human rights, since international human rights standards recognize that medical treatment must be based on free and informed consent.

The right to freedom from medical intervention without informed consent arises in part from the right to security of the person (ICCPR Article 9)—that is, to have control over what happens to one's body. Derogations from such rights should be a measure of last resort and require justification according to established principles, such as the Siracusa Principles adopted by the UN's Economic and Social Council regarding limitations on civil rights.[68] Specifically commenting on the matter of treatment for people with drug dependence, the UN Special Rapporteur on Torture in 2009 has further reminded States that "subjecting persons to treatment or testing without their consent may constitute a violation of the right to physical integrity"[69] (although he does not in this particular instance characterize it ***per se*** as torture or as cruel, inhuman or degrading treatment). He has also recently observed that involuntary treatment and involuntary confinement run counter to various provisions of the Convention on the Rights of Persons with Disabilities (CRPD).[70]

Involuntary medical procedures do not violate just the ICCPR or the CRPD, but also the right to health protected by ICESCR: Article 12 includes "the right to be free from... non-consensual medical treatment"[71] and to receive full information about health and health procedures that one may undergo.[72] Furthermore, the Committee on Economic, Social and Cultural Rights has noted that a State's obligation to respect the right to health includes the obligation

> to refrain… from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness or the prevention and control of communicable diseases. Such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards, including the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.[73]

Beyond the Principles, which date back to 1991, the CRPD now offers greater authoritative guidance on the need for informed consent in the case of treatment of a person with a mental disability, which is also of obvious relevance to the question of treatment for drug dependence. The CRPD establishes that "persons with disabilities enjoy legal capacity on an equal basis with others on all aspects of life," including the right to decide whether to accept medical treatment (Art. 12). The Convention makes clear that persons with disabilities—including mental disabilities—enjoy an equal right to health care as others, explicitly recognizing that medical care must be provided on the basis of free and informed consent, and without discrimination based on disability (Art. 25). Mental disabilities do not justify forced medical treatment, or the presumption that a person lacks the capacity to provide informed consent. The CRPD instead requires States to take positive action, including by adopting legislative and administrative measures, to provide persons with disabilities with access to support they may require to exercise their legal capacity. The UN Special Rapporteur on Torture has called on States to "issue clear and unambiguous guidelines in line with the Convention on what is meant by "free and informed consent," and make available accessible complaints procedures." [74]

In addition to international law, guidelines from international health and drug control agencies addressing the specific context of drug dependence treatment also emphasize the general principle of the right to refuse medical interventions, including drug dependence treatment. The UNODC and WHO have reiterated that drug dependence treatment is governed by the same ethical standards as treatment for other health conditions and that people with drug dependence have the right to autonomy and privacy; in general, treatment should be voluntary: it is "[o]nly in exceptional crisis situations of high risk to self or others, [that] compulsory treatment should be mandated for specific conditions and periods of time as specified by the law."[75] WHO has released "best practice" guidelines specifically for the pharmacological treatment of opioid dependence that underline that treatment should not be compulsory and should only be undertaken with informed consent.[76] In a paper presented to UN Member States at the 2010 session of the UN Commission on Narcotic Drugs (CND), the UNODC Executive Director noted the following:

> With respect to drug treatment, in line with the right to informed consent to medical treatment (and its "logical corollary," the right to refuse treatment), drug dependence treatment should not be forced on patients. Only in exceptional crisis situations of high risk to self or others can compulsory treatment be mandated for specific conditions and for short periods that are no longer than strictly clinically necessary. Such treatment must be specified by law and subject to judicial review. […] Treatment for drug dependence (whether voluntary or compulsory) must be evidence-based, according to established principles of medicine…. Under no circumstances should anyone subject to compulsory treatment be given experimental forms of treatment, or punitive interventions under the guise of drug-dependence treatment.[77]

While involuntary treatment for drug dependence enforced by State detention will, with rare exceptions, amount to a violation of human rights, does it specifically amount to torture or to other cruel, inhuman or degrading treatment? The involuntariness of such treatment is likely not sufficient grounds ***per se*** to characterize the treatment as such, but the nature and efficacy of the treatment will be central to any assessment of whether the treatment may be considered to constitute torture or otherwise be cruel, inhuman or degrading. Logic suggests that the less a method of "treatment" can be shown to be effective and improving the recipient's health (e.g., reducing or eliminating drug dependence), the easier the conclusion that the involuntary imposition of such treatment amounts to cruel, inhuman or degrading treatment or, in more egregious cases, torture. It is hard to see how the involuntary imposition of treatment that is not evidence-based—or worse, treatment that is demonstrably ineffective and even harmful—could escape being characterized, at the least, as cruel and inhuman.

The European Court of Human Rights is the international human rights body that has considered most carefully the issue of consent to treatment, and under which circumstances the imposition of involuntary treatment

can be done in a manner that is human rights-compliant. These cases have concerned persons judged mentally incompetent, and have been considered under the prohibition of torture and inhuman or degrading treatment enshrined in Article 3 of the European Convention on Human Rights.[78] As with the reference to CPRD in the context of mental health care, the reference to this jurisprudence is not to equate simplistically drug dependence with mental disability, but rather to be guided by established reasoning as to how international human rights law applies to the question of imposing involuntary medical interventions in cases where the ability of the recipient to make such decisions is impaired to some degree for some reason (including, in some cases, by the very condition for which treatment is deemed necessary or beneficial).

The European Court adopts the approach that "a measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading."[79] However, the court "must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist."[80] Therefore, in the case of a person judged mentally incompetent—and hence unable to make an informed decision regarding treatment—according to the Court's interpretation, if a qualified physician can sufficiently justify that the treatment of the person is both necessary and in conformity with established medical practice, it can be administered without consent. However, according to the Court:

Photo: At a drug detention center outside Hanoi, Vietnam, detainees are doused repeatedly with cold water. (Julian Abram Wainwright)

> The Court considers that the position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with. While it is for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves and for whom they are therefore responsible, such patients nevertheless remain under the protection of Article 3 [prohibiting torture and other inhuman or degrading treatment].[81]

In such an approach, it is arguable that it is only in the most extreme circumstances of drug dependence—namely, where the extent of the dependence is so severe that it renders a person incapable of making informed decisions regarding treatment and he or she is at imminent risk of harming self or others—that involuntary imposition of treatment could potentially be defensible.

International standards require that qualified healthcare personnel determine that a person poses a serious and imminent risk to him or herself or to a third party, but lacks capacity to give informed consent due to drug dependence to justify a temporary period of mandatory treatment. Drug dependence, in and of itself, is not a sufficient grounds for ordering compulsory drug treatment. The decision should be subject to review by an independent authority and the person subject to compulsory treatment has the right to legal representation in any decision-making process regarding the necessity of the treatment. Compulsory treatment should not be imposed unless it is a medically appropriate, individually prescribed plan, subject to regular review, that comports with international standards.

Compulsory treatment should be no longer than is strictly clinically necessary to return the person to a state of autonomy in which he or she can take decisions regarding his or her own immediate welfare. The treatment should be subject to a statutorily defined time limit, which should be as short as possible, subject to review by an independent authority for its continued necessity. When the compulsory treatment is up for review, continued treatment should automatically cease unless the authority seeking to administer the treatment establishes that the exceptional circumstances for continued treatment persist. The person subject to compulsory treatment (or his or her legal representative) should have the right to challenge the necessity of treatment before a court or the independent authority.

In the absence of such circumstances, the involuntariness of any imposed treatment would not seem to pass human rights scrutiny. However, even if it may be debatable in a given circumstance whether the involuntariness of treatment imposed amounts ***per se*** to torture or at least to other cruel, inhuman or degrading treatment, as has been observed by the European Court of Human Rights, it is certainly the case that the methods by which the compulsory treatment takes place must be consistent with protections against torture and inhuman or degrading treatment.[82] As noted by the UN Special Rapporteur on Torture,[83] forced psychiatric interventions such as

the administration of neuroleptics and other mind-altering drugs have been recognized as a form of torture,[84] and psychiatric experiments and forced injection of tranquilizers against a person's will have been found to constitute inhuman treatment.[85] The use of such measures on people in compulsory drug detention settings would amount to violations of international law; other forms of drug dependence "treatment" administered involuntarily may also be characterized as such upon consideration of the factors identified above.

Denial of adequate health services and medical care

(a) The general right of detained persons to health care

International law has made explicit that persons in detention are entitled to a standard of health care equivalent to that available in the general community, without discrimination based on their legal status. For example, the UN General Assembly in the Basic Principles for the Treatment of Prisoners states: "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation."[86] The UN General Assembly has also explicitly declared that "[h]ealth personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained."[87] The UN Special Rapporteur on Torture has recently stressed that "States have a positive obligation to ensure the same access to prevention and treatment in places of detention as outside."[88] In fact, a strong case has been made, with reference to numerous sources in international law, that the custodial relationship gives rise to a *greater* obligation on the State to provide health care for persons in detention than for persons in the general community.[89]

Recognizing that people detained by the State are particularly vulnerable to ill-health and to neglect or abuse that jeopardizes their health, the UN General Assembly has declared that: "[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided wherever necessary. This care and treatment shall be provided free of charge."[90] Recalling that in some countries it is military, paramilitary or police authorities who run compulsory drug detention centers, it is worth noting that the UN General Assembly has also specifically addressed the obligations of law enforcement officials, stating that they "shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required."[91]

The UN Committee on Economic, Social and Cultural Rights, in its commentary on the right to health, repeatedly stresses the importance of

"States have a positive obligation to ensure the same access to prevention and treatment in places of detention as outside."

Photo: Methadone and buprenorphine, medications provided in community settings, are the gold standards of treatment for people addicted to heroin or other opioids. (Reuters / Sean Yong)

State obligations to ensure access to health facilities, goods, and services to all persons, "especially the most vulnerable or marginalized sections of the population," without discrimination on the basis of *inter alia* "health status including HIV/AIDS" or "political, social or other status" that "has the intention or effect of nullifying or impairing equal enjoyment of the right to health." The Committee notes in particular governments' obligations to "refrain from denying or limiting equal access for all persons, including prisoners or detainees… to preventive, curative, and palliative health services," and to abstain from "enforcing discriminatory practices as State policy."[92]

The prohibition on torture and other cruel, inhuman or degrading treatment may also apply when those detained by the State are denied medical care. The UN Human Rights Committee, the independent expert body which monitors State compliance with the obligations under the ICCPR, has specifically observed that ICCPR Article 10 "imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant."[93] Consequently, it has observed that the State's failure to protect the health of people in detention could, in some cases, amount to inhumane treatment,[94] and has ruled that inadequate medical care in prisons can amount in some cases to torture contrary to ICCPR Article 7.[95]

For example, the Committee found that Uruguay violated ICCPR Articles 7 and 10(1) in the case of a complainant having been tortured for three months "and …being denied the medical treatment his condition requires."[96]

The UN Committee Against Torture[97] and the UN Special Rapporteur on Torture[98] have also specifically raised concerns that the failure to provide adequate health services to detainees may contribute to conditions amounting to cruel, inhuman and degrading treatment. Similarly, at the regional level, the European Committee for the Prevention of Torture, the body that monitors conditions of detention throughout Member States of the Council of Europe, has observed that: "An inadequate level of health care can lead rapidly to situations falling within the scope of the term 'inhuman and degrading treatment'."[99] Furthermore, according to a review,

> [t]he case law of the European Court of Human Rights is clear that the failure to provide necessary medical attention to prisoners—which unnecessarily exacerbates the person's suffering—can constitute a violation of Article 3 [of the European Convention on Human Rights]. According to the Court, 'the authorities are under an obligation to protect the health of persons deprived of liberty and the lack of appropriate medical care may amount to treatment contrary to art. 3.'[100]

Some national courts have also found a similar obligation to ensure access to health services for those in prisons, with the potential for a finding of torture if this is not observed. For example, in the leading case of *Estelle v. Gamble*, the United States Supreme Court affirmed

> …the government's obligation to provide medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical "torture or a lingering death,"... In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose.[101]

(b) Denial of evidence-based treatment for drug dependence

Bizarrely, evidence-based forms of treatment for drug dependence are largely absent in drug detention centers. The UN Special Rapporteur on Torture in 2009 noted that "access of detainees to medical treatment, including access to opioid substitution therapy, is often severely restricted," despite the fact that the WHO, UNODC and UNAIDS "all concur that the therapy is the most effective intervention available for the treatment of opioid dependence."[102] Evidence-based treatment for stimulant dependence is similarly lacking.

WHO and UNODC have stressed that "[d]rug dependent people in prison have the right to receive the health care and treatment that are guaranteed in treatment centers in the community."[103] An important distinction should be made here between prisons—institutions whose existence does not violate international law, and whose primary purpose is the redress of criminal

offenses—and detention centers where people are detained arbitrarily and without access to legal recourse, for the purported purpose of drug treatment and rehabilitation. Opioid substitution therapy has a long record of effective use in community settings, removing the need for institutionalization.

One use of opioid substitutes is to assist with detoxification by alleviating symptoms of opioid withdrawal. Forced, abrupt opioid withdrawal (both from legally prescribed therapy such as methadone, as well as from illicit opioids) can cause profound mental and physical pain. According to WHO and UNODC, "the main goal of detoxification programmes is to achieve withdrawal in as safe and as comfortable a manner as possible."[104]

Yet the approach to detoxification in drug detention centers most often flies in the face of this basic principle. In many such countries, people subjected to forced detoxification are denied access to medication to assist with the painful physical and mental effects of withdrawal. The practice of un-medicated or "cold turkey" withdrawal, in which patients are denied medications necessary to alleviate painful symptoms of withdrawal from opioid dependence, has been reported in China, Thailand, India, Russia, Cambodia, and Ukraine.[105] In China, some facilities may use opioid substitutes to assist with detoxification, but it is most commonly reported that detainees receive no medication during withdrawal or, at best, herbal remedies of uncertain efficacy.[106] WHO reports that in Cambodia, "during the drug treatment phase, those who are suffering symptoms of withdrawal are simply isolated for a few days,"[107] and some of those detained report being held in cement facilities while withdrawing "cold turkey" and being denied use of toilet facilities despite the diarrhea that is commonly associated with such withdrawal.[108] In Malaysia, methadone is unavailable in most drug detention centers, even for detoxification.[109] In Vietnam, the use of substitution therapy in drug detention centers is explicitly prohibited by government decree; in some centers, residents may receive tranquilizers or herbal preparations during detoxification.[110] WHO cites the Vietnamese government's drug control agency as reporting in 2005 that about 60 percent of detainees reported lack of adequate treatment for various withdrawal symptoms during detoxification.[111] In some cases (e.g., Russia), prescription of medications such as methadone or buprenorphine to assist with detoxification (let alone as maintenance treatment for opioid addiction) is illegal—an instance of the State actively limiting treatment options in ways that directly result in avoidable pain and suffering, which could be characterized as the systemic, deliberate infliction on a mass scale of torture or at least cruel and inhuman treatment.[112]

The failure to ensure access to methadone or other opioid substitutes for detoxification or for ongoing maintenance treatment is not only contrary to ICESCR Article 12 guaranteeing the right to health,[113] but may violate at least the prohibition on cruel, inhuman or degrading treatment. The UNODC Executive Director has observed that:

> Where imprisonment for [drug] possession/use offences precludes access to appropriate drug-dependence treatment, for example, this may constitute a denial of the right to the highest attainable standard of health or even the right to freedom from cruel, inhuman or degrading treatment, rendering the criminal justice response *de facto* disproportionate.[114]

Jurisprudence on the denial of drug dependence treatment as a form of cruel, inhuman or degrading treatment does exist. In a leading case, subsequently cited with approval in numerous other judgments, the European Court of Human Rights held that the failure of prison health services to provide adequate medical care to a prisoner undergoing heroin withdrawal constituted inhuman and degrading treatment.[115] Judith McGlinchey was suffering from severe asthma and withdrawal symptoms, including frequent vomiting, and died as a result. The Court found that the inadequate medical care she received at the prison for her symptoms caused her further distress and suffering and also posed very serious risks to her health, and that the failure of prison authorities to provide adequate care violated the European Convention on Human Rights.[116] The right not to be subjected to cruel or unusual treatment or punishment (as well as other human rights) was also raised in a 2003 Canadian case regarding the provision of methadone maintenance treatment (MMT) in prison.[117] Milton Cardinal sought to continue his MMT while serving a prison sentence, but the correctional facility did not have a methadone program. The Court ordered that he be provided with MMT on an interim basis until the application could be heard.[118] The judge remarked that the denial of MMT was wrong, stating "They have no right to torture your client, none whatsoever. It's almost like keeping food away from him, starving him. He needs this. It's a medical necessity."[119] Similarly, in May 2006, some 200 prisoners and ex-prisoners who had been detained in England and Wales brought an action against the United Kingdom's Home Office (which is responsible for prisons). When they entered prison, the maintenance treatment they had been receiving in the community was stopped and/or they were prescribed insufficient medication. The legal action advanced claims of medical negligence and human rights violations, alleging that the Prison Service failed to provide the minimum standard of treatment deemed reasonable to treat people with drug dependence. The case settled out of court with payments to the claimants.[120]

The judge remarked that the denial of MMT was wrong, stating "They have no right to torture your client, none whatsoever. It's almost like keeping food away from him, starving him. He needs this. It's a medical necessity."

These cases all arose specifically in the context of imprisonment; the obligations of the State to safeguard their health and well-being arise from the fact of having detained them. Recalling that, as noted above, international law explicitly guarantees the human rights of those under *all* forms of detention, the reasoning and conclusions apply equally in the case of detention by the State or its agents in other closed settings, such as drug detention centers. However, as outlined previously, when the ostensible purpose of detention is for treatment, rather than following conviction for a criminal offence, substitution treatment could best be provided in a voluntary manner in a community setting.

While it is necessary to demonstrate an intention to cause suffering in order for conduct to be considered *torture* under CAT, proving this intention is not required in order to establish that treatment is degrading or cruel.[121] Even if the intent of the addiction treatment provider is to help, failure to provide sufficient or appropriate treatment and medical supervision could render the treatment regimen cruel, inhuman or degrading. In the *McGlinchey* case for example, the court noted that the plaintiff missed doses of medication, that authorities failed to take steps to control her vomiting and ensure intake

of fluids, and that gaps in monitoring of her condition contributed to her suffering. Accordingly, the UN Special Rapporteur on Torture has recently reminded States that denying medical care during withdrawal may, in some circumstances, amount to torture or at least cruel, inhuman or degrading treatment:

> There can be no doubt that withdrawal symptoms can cause severe pain and suffering if not alleviated by appropriate medical treatment, and the potential for abuse of withdrawal symptoms, in particular in custody situations, is evident. In a 2003 case [*McGlinchey*], without specifically stating that the woman died from withdrawal, the European Court of Human Rights found a violation of the prohibition of inhuman or degrading treatment or punishment based on "the responsibility owed by prison authorities to provide the requisite medical care for detained persons". Moreover, if withdrawal symptoms are used for any of the purposes cited in the definition of torture enshrined in Article 1 of the Convention against Torture, this might amount to torture.[122]

While denying access to opioid substitution treatment to those detained in drug detention centers can amount to cruel, inhuman or degrading treatment, and perhaps even torture in some circumstances, it does not follow that the only—or even the appropriate—remedy is simply to introduce such treatment in such settings. Rather, use of opioid substitutes, for managing withdrawal symptoms or for longer-term maintenance, is a form of drug dependence treatment that need not take place in a closed setting; patients can remain at home, reporting to a clinic for their medication, while maintaining job and family duties. This is standard practice in many countries where substitution therapy is available, and has been demonstrated time and again to be an effective treatment approach. This, then, further removes any justification for detention as an aspect of drug dependence treatment.

Indeed, it would be perverse, and at odds with the obligation to realize progressively the highest attainable standard of health, for States to continue to spend resources on compulsory detention of people with real or perceived drug dependence, with little or no evidence of efficacy and ample evidence of harm that results, while failing to direct resources to ensure access to voluntary, evidence-based treatment services. Yet some countries continue this approach in the face of documented abuses of human rights and evidence that it is ineffective as treatment. For example, WHO has previously reported relapse rates of 80% after two weeks and over 95 percent after six months among those who had been in China's detoxification centers.[123] More recent research indicates a 95% relapse rate within one year among Chinese who have spent time in detox centers,[124] leading researchers to conclude that such centers offered at best only a period of enforced abstinence from drug use. Similarly, research by the Vietnamese government has reported relapse rates ranging from 70-95% among those treated in the country's drug rehabilitation centers.[125]

(c) Inadequate medical care for HIV, TB or other health conditions

It is commonly the case that people with HIV detained in drug detention centers receive no or inadequate treatment and care. The failure to ensure access to antiretroviral therapy (ART) for HIV-positive drug users who were on treatment prior to detention compromises their health, and ultimately their lives, as incomplete adherence to treatment can lead to resistance to antiretroviral medications and has been associated with clinical progression of HIV disease and mortality.[126] Lack of access to HIV antiretroviral treatment for HIV-positive detainees has been reported in drug detention centers in China, Cambodia and Vietnam. Recent research by Human Rights Watch found that detainees with HIV in Chinese drug detention centers did not routinely receive medical treatment, whether for drug dependence or antiretroviral therapy for their HIV.[127] WHO has previously reported that ART is not available in Cambodia's drug detention centers.[128] It was reported in 2007 that antiretroviral treatment was not available in most of Vietnam's treatment centers, although HIV prevalence was reported at 75 percent.[129] More recently, WHO has reported that despite small-scale implementation that began in 2007, ART remains unavailable in most of Vietnam's centers, and where it is available, staff lack the capacity to administer treatment.[130] Other research has confirmed this ongoing lack of access to treatment.[131]

Similarly, despite a high prevalence of tuberculosis, reports indicate there is little or no access to TB treatment in drug detention centers, and treatment for other opportunistic infections threatening the health of people with compromised immune systems is also often unavailable, except through bribing staff.[132]

Both international and domestic tribunals have held States responsible for failing to ensure access to adequate medical care of those they detain. For example, the European Court of Human Rights has previously found that Ukraine breached the European Convention on Human Rights in part because it had failed to prevent a detainee from contracting tuberculosis while in prison; the Court considered this an indicator of inadequate medical care received by detainees. This, accompanied by overcrowding in prison cells and unsatisfactory hygienic and sanitary conditions, constituted degrading treatment contrary to the Convention.[133] Domestic courts have reached similar conclusions. In Canada, a court found in favor of an HIV-positive man who was denied access to medical treatment pending trial, as well as being held in solitary confinement, finding that this amounted to cruel and unusual treatment in breach of his constitutional rights.[134] In South Africa, four prisoners brought legal action to compel prison authorities to provide them antiretroviral treatments, at a time when such treatment was rarely available in the general population. The court found that, given the government's heightened obligation to provide medical care for those it imprisons, the State was obliged to provide HIV antiretroviral treatment to the two imprisoned plaintiffs for whom such treatment had already been medically prescribed.[135] Subsequently, the High Court in Durban issued a much broader ruling that prison authorities' failure to provide medical care to prisoners with HIV

Photo: Detainees in Cambodia and elsewhere are often forced to perform exhausting military-style exercises as part of their "rehabilitation" programs. (Patrick@picto.asia)

violated their right to health, and ordered the authorities to provide such treatment to all prisoners who qualify medically.[136]

The cases just noted involved the right of those in prisons to adequate medical care and treatment. However, the same reasoning applies equally to other closed settings, such as drug detention centers, where people are detained by the State or its agents, or with the consent or acquiescence of public authorities, thereby giving rise to a heightened State responsibility to safeguard the health of detainees.

(d) Denial of access to HIV prevention measures

The European Court of Human Rights has ruled that States are obliged to take positive measures to ensure that conditions of incarceration conform to international human rights norms and standards, and "compels authorities… to take the practical preventive measures to protect the physical integrity and the health of persons who have been deprived of their liberty."[137] Similarly, the Inter-American Commission on Human Rights has ruled that "the act of imprisonment carries with it a specific and material commitment to protect the prisoner's human dignity so long as that individual is in custody of the State, which includes protecting him from possible circumstances that could imperil his life, health

and personal integrity, among other things."[138] Such reasoning applies equally to any form of detention by the State, whether in a prison or other closed setting.

Yet despite documented high rates of opioid dependence in many countries, high rates of HIV and hepatitis among people who use drugs, and known HIV risk behaviors inside places of detention (including unsafe sex and sharing of drug-injection equipment), HIV prevention measures are often unavailable to detainees in drug detention centers.[139] A UNODC review of countries in East Asia in 2006 reported that none of the countries surveyed, with the exception of Thailand, reported providing anything other than information about HIV prevention to those in drug detention centers—none of the other interventions recommended by UNODC and WHO for HIV prevention and treatment were in place.[140] More recent reports indicate little has changed since that review. For example, reports from Malaysia indicate that condoms are rarely available in drug detention centers, despite accounts of sexual behavior among residents and between residents and guards.[141] There is no access to condoms in drug detention centers in Cambodia.[142] In China, a recent investigation found, through interviews with those detained in detox and "re-education through labor" facilities, that there was little or no information on HIV prevention and no access to sterile injection equipment, despite clear evidence of injection drug use and needle-sharing inside such centers.[143]

This denial of measures to protect against HIV infection clearly engages the right to health. According to the UN Committee on Economic, Social and Cultural Rights, the obligations of States under ICESCR Article 12 include "the establishment of prevention and education programmes for behavior-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS."[144] Laws and policies that "are likely to result in... unnecessary morbidity and preventable mortality may violate the obligation to respect the right to health."[145] They may also amount to violations not only of the right to health but of the prohibition on torture or other cruel, inhuman or degrading treatment, particularly where the State has a heightened responsibility for the health of persons because it has detained them (including in drug detention centers).

In fact, there is jurisprudence that has established that the failure to protect detained persons against disease is not just a matter of the right to health but may also amount to torture or to cruel, inhuman or degrading treatment or punishment.[146] On numerous occasions, the European Court of Human Rights has found that States have an obligation to take measures to protect those it detains against the spread of disease (including tuberculosis), and that failing to do so can amount to a violation of the ECHR Article 3 prohibition on torture and on inhuman or degrading treatment or punishment.[147] Other regional human rights tribunals and UN human rights treaty bodies have taken a similar approach:

> Related to this issue is the fact that the health decline of persons in prison—physical, mental and/or the contracting of diseases—has been cited by the European Court (e.g., *Kalashnikov v. Russia*, 2003; *Nevmerzhitsky v. Ukraine*,

> 2005; *I.I. v. Bulgaria*, 2005; *Alver v. Estonia*, 2005), the UN Human Rights Committee (e.g., *Williams v. Jamaica*, 1997; *Cabal and Pasini v. Australia,* 2003; *Matthews v. Trinidad and Tobago,* 1998) and the Inter-American Court of Human Rights (*Caesar v. Trinidad and Tobago,* 2005) as contributing to overall prison conditions that are cruel, inhuman or degrading and therefore illegal. This would therefore suggest that taking preventative health measures in prisons, such as those to prevent infectious diseases or mental health deterioration, is also a legal duty of the State.[148]

The UN Human Rights Committee has specifically noted, in its 2002 Concluding Observations regarding Moldova's report under the ICCPR, that State failure to protect those it detains against disease amounts to a violation of the right be treated with humanity (under ICCPR Article 10), which logically suggests that denial of measures to protect against disease could also be characterized as inhuman treatment or punishment:

> The Committee is deeply concerned at the conditions prevailing in the State Party's detention facilities, in particular their failure to comply with international standards (as acknowledged by the State Party), including the guarantees provided in articles 7 and 10 of the Covenant. It is particularly disturbed at the prevalence of disease, notably tuberculosis, which is a direct result of prison conditions. It reminds the State Party of its obligation to ensure the health and life of all persons deprived of their liberty. Danger to the health and lives of detainees as a result of the spread of contagious diseases and inadequate care amounts to a violation of article 10 of the Covenant and may also include a violation of articles 9 [right to security of the person] and 6 [right to life].

One specific aspect of the State's legal duty to take HIV prevention measures in custodial settings was engaged by the claim by a prisoner, in *Shelley v. United Kingdom,* that the UK's failure to make sterile needles available in prisons breached various provisions of the European Court of Human Rights, including Article 3 (the prohibition on torture and on inhuman or degrading treatment).[149] Shelley claimed that prisoners who use drugs are at risk of contracting blood-borne viruses such as HIV and hepatitis if they do not have access to sterile needles for injection. He also claimed that disinfecting tablets, which the UK government had proposed to make available throughout prisons, were not as effective as sterile injection equipment. The Court ultimately deemed the complaint inadmissible, partly on the basis that Shelley himself did not claim to use drugs in prison and therefore it was not clear that he personally was "at any real or immediate risk of becoming infected through unclean or shared needles." The general unspecified risk of infection raised by this case was not considered "sufficiently severe" as to raise issues under Article 3 of the Convention; therefore the Court decided there was no duty "at the current time" to pursue any particular preventive health policy (such as introducing access to sterile needles), although it expressly allowed that such a positive obligation might arise in the right circumstances. Given that there was only a general duty to prevent harms to health, the Court chose to respect the "margin of appreciation" for domestic authorities' assessment of priorities, use of resources and social needs.[150] The Court has therefore left for another

day the core question of whether the denial of sterile injecting equipment to drug users in prison (or other places of detention) amounts to torture or to inhuman or degrading treatment or punishment contrary to Article 3 of the ECHR.

However, there is a good argument that a policy and practice of denying such HIV prevention measures to detained persons can be characterized as such. Considering the four-part definition of "torture" in CAT, it is evident that such denial is *intentional* on the part of *public officials*. It inflicts on all detained persons who are injecting drugs, including those who continue using drugs as a result of their condition of drug-dependence, at least the mental anguish of knowing that any such action carries with it an even greater risk of also acquiring a serious and likely fatal infection such as HIV or HCV—and for some detainees, the physical and mental suffering of actual infection and its consequences. It is not unreasonable to characterize such suffering as *severe*. Finally, the denial of such health protection measures rests on a fundamental *discrimination* toward those with the health condition of drug dependence as opposed to health services needed by those with other health conditions—which discrimination is even more stark when such services exist outside places of detention because of the recognized need and value, but are denied to those whom the State detains. As such, the denial can legitimately be characterized as torture contrary to CAT or other applicable instruments, because the four elements of the definition of "torture" are established. In the alternative, the mere fact of the severe suffering inflicted, with official approval, suffices at least to characterize the denial of such well-established HIV/HCV prevention measures as cruel and inhuman treatment.

The director of the facility was quoted as saying: "People criticize us for chaining them, but it is our rule to confine them for three to six months depending on the severity of their condition."

Experimental or unscientific treatment for drug dependence

While there are many different types of treatment for drug dependence, and the evidence base for judging their effectiveness is uneven, certain forms of "treatment" are far removed from current scientific understanding of drug dependence as a chronic medical condition and from compliance with ethical and legal requirements. UNODC and WHO have reiterated the basic principle that "good treatment policy will be based on evidence of effectiveness."[151] Yet in some countries, the unethical use of unscientific or experimental treatments has been documented as commonplace in addressing drug dependence:

- The use of **physical restraints and involuntary seclusion** as supposed "treatment" for drug dependence has been documented in numerous countries. In 2006, The Bangkok Post reported on a facility in Thailand's Mayo district where an estimated 2,000 people were shackled to prevent escape.[152] The director of the facility was quoted as saying: "People

criticize us for chaining them, but it's our rule to confine them for three to six months depending on the severity of their condition."[153] Similarly, in Nagaland, India, at least one center runs on the motto "changed when chained," and shackles participants' legs together and loosens links the longer they remain "drug free."[154]

- The administration of **experimental substances** has also been reported. The only medication reportedly available at the same Thai center mentioned above was a local herbal treatment not approved by the Ministry of Health.[155] In Cambodia, it has been reported that in December 2009, at least 17 people suspected of opioid addiction were rounded up by police, subjected to involuntary urine tests for drug use, held in detention for 10 days without any criminal charge, and administered without consent a seven-day course of an herbal mixture called "Bong Sen." The Vietnamese manufacturer has claimed it is used to detoxify those with opioid addiction and that "100 percent of patients escape from their addiction."[156] One patient described that "the medicine made me feel like I was burning up;" upon release, all 17 people had returned to heroin use within two days.[157] In China, those interviewed by Human Rights Watch in one drug detention center said that the only medication they received was an herbal mixture formulated and tested at the center itself.[158] It is reported that some other Indian centers administer drugs that have been discontinued in Europe due to their adverse effects, while treatment with methadone or buprenorphine, both on WHO's list of essential medicines, is often not available.[159]

- In countries such as China, Vietnam, Malaysia, Cambodia and Thailand, "treatment" consists largely of **physical discipline** exercises, often including military-style drills, perhaps not surprising given that drug detention centers are often run by military or paramilitary personnel, with little involvement of medical professionals.[160] In Thailand, for example, during the "war on drugs" launched in 2003 by the government, reports indicated that many people, many of whom were never involved with drugs, were enrolled in drug detention centers in which the usual course of treatment consisted of "a series of disciplinary drills in a military-style 'boot camp,' after which drug users were declared 'drug free.'"[161] Research in 2008 based on interviews with both former detainees and staff (largely military) responsible for operating drug detention centers reconfirmed that such physical discipline is a mainstay of "treatment" in such centers.[162] Similarly, those detained in China's centers are often subjected to long hours of military-style drills (as well as forced labor), to complement mandatory chants of self-degradation.[163] Reports from Malaysia indicate

> that the military-style discipline and abuse that pass for "treatment" are not effective, as 70-90 percent of those undergoing such treatment return to drug use.[164]

International law contains a clear prohibition on the involuntary imposition of non-evidence-based or experimental treatment, considering such treatment to be torturous or otherwise cruel, inhuman or degrading. As noted above, ICCPR Article 7 states that:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

The UN Human Rights Committee has further noted the complementary requirement to treat all persons "with humanity and with respect for the inherent dignity of the human person" pursuant to ICCPR Article 10, and that this is particularly important in the case of detained persons:

> Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty...[165]

The UN General Assembly has also reaffirmed the prohibition on involuntary experimentation, including in the name of medical treatment, with special attention to those who are particularly vulnerable to such abuses, including detained persons. In its general Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN General Assembly has explicitly affirmed that: "No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health."[166]

The particular vulnerability of persons with disabilities—which, as noted previously, could in some cases be considered to include those with drug-dependence—has also been the subject of concern in international law, and this provides further guidance when considering the use of non-evidence-based treatments on those detained in drug detention settings. Under the Convention on the Rights of Persons with Disabilities (Article 15), medical or scientific experimentation on persons with disabilities, including testing of medicines, is permissible only when the person concerned gives his or her free consent. Commenting on psychosurgical interventions vis-à-vis persons with disabilities, the UN Special Rapporteur on Torture has noted that: "The more intrusive and irreversible the treatment, the greater the obligation on States to ensure that health professionals provide care to persons with disabilities only on the basis of their free and informed consent… Otherwise,

the Special Rapporteur notes that such treatments may constitute torture, or cruel, inhuman or degrading treatment."[167]

With respect to the use of restraints and seclusion, the UN Special Rapporteur on Torture in his report to the UN General Assembly examining the issue of torture in the context of persons with disabilities, has observed that the use of restraints or solitary confinement as a form of control or medical treatment is a common practice for patients with disabilities in institutions, and concluded that "there can be no therapeutic justification for the prolonged use of restraints, which may amount to torture or ill-treatment."[168]

As for seclusion, the UN General Assembly has directed that:

> The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.[169]

The Human Rights Committee has noted that "prolonged solitary confinement of the detained or imprisoned person may amount to acts [of torture] prohibited by article 7 [of the ICCPR],"[170] and according to the Special Rapporteur on Torture: "Within institutions, persons with disabilities are often held in seclusion or solitary confinement as a form of control or medical treatment, although this cannot be justified for therapeutic reasons, or as a form of punishment."[171] The Special Rapporteur has also reminded Member States that "the Committee Against Torture has recognized the harmful physical and mental effects of prolonged solitary confinement and has expressed concern about its use, including as a preventive measure during pre-trial detention, as well as a disciplinary measure."[172] The Committee on the Rights of the Child has recommended that solitary confinement should not be used against children.[173]

From the above analysis, the following assessments can be drawn regarding measures that have been reported from some drug detention centers as imposed in the name of "treatment" for drug dependence:

- **Restraints and seclusion:** The use of physical restraints as a form of "treatment" for drug dependence is not justified. (Restraints or seclusion may only be used as a last resort to prevent imminent harm to the restrained person or others and may only be used for as long as strictly necessary for this purpose.) Any use of solitary confinement as ostensible medical treatment for drug dependence is not justified. (In the event of solitary confinement imposed as punishment on a person in a drug detention center, any such punishment for an adult may not be "prolonged" or otherwise done under inhumane conditions, and such punishment may never be applied to minors.) In the absence of any evidence to suggest effectiveness as treatment for drug dependence, the use of restraints in the name of

therapy is at a minimum cruel and inhuman treatment. If done with the aim of humiliating the person restrained or secluded, it may also be considered degrading. To the extent that such measures are used against people because of their real or perceived drug dependence, when such measures would not be accepted for those with other health conditions, they also amount to torture.

- **Experimental substances:** The administration of experimental substances, including in the name of medical science, to those detained involuntarily in drug detention centers (or without informed consent to those who volunteer for treatment) is never permissible under international law. At a minimum, it amounts to cruel and inhuman treatment. To the extent it is tolerated or encouraged because it is people with real or perceived drug dependence who are subjected to it, when such an approach would not be accepted for those with other health conditions, it also amounts to torture.

- **Physical discipline:** Unless proponents can establish scientifically sound evidence that physical discipline such as military-style drills is effective in the treatment of drug dependence—gathered from ethical studies in which participants have participated voluntarily in trials of such techniques—there is no possible justification for the involuntary imposition of physical discipline such as military-style drills on those detained in drug detention centers. In fact, available data from countries such as Malaysia, Thailand or China, where detention centers include such drills, show little success in treating drug dependence with this method, given high rates of relapse. To impose "treatment" that is shown not to be successful, with subsequent punishments for those who "fail" on such treatment, seems inherently cruel and degrading. Where such physical discipline is so harsh as to result in severe pain or suffering, it rises to the level of cruel and inhuman treatment and even torture.[174]

Physical abuse and degradation

As is common with other places of detention, reports of physical assault, which are not purported to constitute "treatment" for drug dependence, have been received regularly from those who are or have been detained in drug detention settings. In some cases, this treatment is meted out as punishment for breaking the facility's rules or not achieving labor quotas. These include reports of beatings in Cambodia,[175] Vietnam,[176] Thailand,[177] Malaysia,[178] and China.[179] Human Rights Watch recently released a report in which former detainees in Cambodia's drug detention centers reported being shocked

Former detainees in Cambodia's drug detention centers reported being shocked with electric batons, whipped with twisted electrical wire, beaten, forced to perform painful physical exercises such as rolling along the ground, and being chained while standing in the sun.

with electric batons, whipped with twisted electrical wire, beaten, forced to perform painful physical exercises such as rolling along the ground, and being chained while standing in the sun. Former detainees also reported rapes by staff in the centers.[180]

According to additional reports: [181]

- In Malaysia, people formerly detained in government treatment centers describe being kicked, punched, made to crawl through animal excrement, "act like a whale" by drinking and spitting out dirty water, and being abused and caned by a religious leader while being told that they are "worse than an animal."[182] Under legislative amendments introduced in 2002, those who have been through a drug detention setting but subsequently relapse into drug use may be compelled to return to a "rehabilitation centre," and further relapses may result in imprisonment and/or flogging.[183]
- In Singapore, the government reports that people who use drugs may not only be detained for lengthy periods of time, but caned if they relapse into drug use—even though relapse is not uncommon for those with addiction.[184]
- In Guangxi province, China, a recent study found reports of sexual abuse of female detainees by guards. Detainees received mandatory HIV tests but were not told the results. Guards reportedly used the data to know which detainees they could have sex with without using a condom.[185]
- Drug users in Nepal recount that being taken for treatment has included suspension by the arms or legs for hours, beatings on the soles of the feet, threats of rape, and verbal abuse that includes assertions that they do not belong in the "new Nepal."
- Former detainees in Cambodia report being locked in cement facilities where they are forced to withdraw "cold turkey," and not allowed to use the toilet despite the diarrhea that is commonly associated with such withdrawal. Detainees also report sexual violence and beatings with batons and boards, as well as being compelled to confess to unsolved criminal cases. Detainees describe shortages of food so severe that some eat grass and leaves.

In some cases, there is little or no pretense that punishments constitute "treatment" for drug dependence, and of course for some physical abuses reported there is no even remotely plausible nexus that could be claimed (e.g., sexual abuse by guards). In some other instances, it is claimed by authorities that, to at least some degree, there is a therapeutic purpose—"breaking" the addiction and preventing further drug use—but there is little or no evidence to indicate any such (implausible) effect.

However, regardless of the labels or justifications that may be proffered (if any), these acts are easily characterized as violating international legal prohibitions against torture and cruel, inhuman or degrading treatment.[186] They clearly meet three of the four requirements for a finding of "torture" as defined in CAT: (i) severe mental or physical pain or suffering, which is (ii) intentionally inflicted, and (iii) by persons acting in an official capacity. Furthermore, as noted above, there are several reasons as to why and how the fourth element of the definition of "torture"—an *improper* purpose—is also made out: i.e., the obviously punitive nature of the treatment; the fact that such treatment is imposed by the State and thus reflects the pursuit of State objectives; and the discrimination manifest when non-evidence-based treatment is considered acceptable in the case of those with addiction as opposed to other health conditions.

In the alternative, such conduct as described in this chapter certainly constitutes *cruel and inhuman* treatment or punishment, for which there is no requirement to establish an objectionable purpose. And aside from the degree of physical or mental suffering imposed, the instances described can also easily be characterized as *degrading*, given the humiliation inflicted upon the person being "treated." From any perspective, such acts run counter to international law. The UN's Standard Minimum Rules for the Treatment of Prisoners state that "[c]orporal punishment... and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences."[187] The UN Human Rights Committee has confirmed that the prohibition of ill-treatment in ICCPR Article 7 "must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that Article 7 protects, in particular, children, pupils and patients in teaching and *medical institutions* [emphasis added]."[188]

Forced labor

Some countries force detainees in drug detention centers to engage in unpaid labor (e.g., manufacturing products for sale, harvesting crops), and subject detainees to poor working conditions, wages far below market levels or no wages at all, and beatings and threats for not meeting production quotas.[189] In Vietnam, for example, detainees have been punished for failing to meet work quotas by being denied baths for a month, beaten with clubs, and being chained and forced to stand on their toes for more than 24 hours. Some internees report being put in isolation for up to a week in a cell so small that they are forced to sleep, urinate, and defecate in a standing position. Several people interviewed after being released said they felt "lower than animals" after serving such sentences.[190]

Indeed, in some cases, forced labor is a mainstay of the "treatment" offered.[191] While this forced labor is ostensibly to prepare drug users for productive employment after they return to their communities, job training is reported

At least twice the UN Committee Against Torture has expressed its concerns regarding the use of "re-education through labor" camps in China, in which hundreds of thousands of people with real or perceived drug dependence have been detained.

to be poor, and some human rights groups have likened it to slavery.[192] WHO and UNODC have noted that "neither detention nor forced labor have been recognized by science as treatment for drug use disorders."[193]

The elimination of all forms of forced or compulsory labor is a fundamental right recognized in international law and enshrined in various international human rights instruments, including the UDHR (Article 4), the ICCPR (Article 8), the ICESCR (Article 6), and core conventions of the International Labor Organization (ILO), the UN agency that promotes international standards on human and labor rights.[194] While the CAT does not specifically refer to compulsory labor, at least twice the UN Committee Against Torture has expressed its concerns regarding the use of "re-education through labour" camps in China, in which hundreds of thousands of people with real or perceived drug dependence have been detained.[195] Hard labor as punishment has also been raised as a concern by the Committee Against Torture under CAT Article 16.[196] The UN Special Rapporteur on Torture has concluded that China's approach of "re-education through labor" can "be considered a form of inhuman or degrading treatment or punishment, if not mental torture."[197]

As noted above, the UN Human Rights Committee has emphasized that the prohibition in ICCPR Article 7 against torture and other cruel, inhuman or degrading treatment "protects, in particular…. patients in teaching and medical institutions."[198] This could extend to not just government-run drug detention centers but also those operated privately—an important point where there may be the use of forced labor not just to enrich government officials but private actors as well.[199] It is also worth recalling that, while governments have the primary responsibility to promote and protect human rights, "including ensuring that transnational corporations and other business enterprises respect human rights," businesses and other actors also have a duty to promote and secure human rights, as reflected in such instruments as the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights (the UN Norms),[200] the UN Global Compact,[201] and the Guidelines for Multinational Enterprises adopted by the Organisation for Economic Cooperation and Development (OECD).[202]

Detention of minors with adults

As noted above, the Convention on the Rights of the Child (CRC) enshrines an absolute prohibition on subjecting a child to torture or to cruel, inhuman or degrading treatment or punishment.[203] The Special Rapporteur on torture has noted:

> Unlike most adults, children can be deprived of their liberty in a variety of legal settings other than those related to the criminal justice system and are thus reported to be particularly vulnerable to some forms of torture or ill treatment in an institutional environment.... Unlike detention within the justice system, which in most cases will take place for a predetermined period

> of time, children are sometimes held in such institutions and subjected to cruel and inhuman or degrading treatment without time limits or periodic review or judicial oversight of the placement decision. Such indeterminate confinement, particularly in institutions that severely restrict their freedom of movement, can in itself constitute cruel or inhuman treatment.[204]

In the context of drug dependence treatment, the detention of persons under the age of 18 alongside adults in drug detention settings may also amount to torture or to cruel, inhuman or degrading treatment. Detention of minors in the same facilities as adults is widely prohibited under international human rights law and practice, and is generally considered a form of inhuman treatment. The principle was articulated as early as 1957 by the UN General Assembly in the UN Standard Minimum Rules on the Treatment of Prisoners,[205] and has subsequently been reaffirmed by UN Member States in other General Assembly resolutions, including the Rules for the Protection of Juveniles Deprived of their Liberty[206] and the Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").[207] In addition, in the ICCPR, the prohibition on detaining accused juveniles alongside adults is enshrined in Article 10, which in more general terms requires that all persons deprived of their liberty—not simply those detained in connection with a criminal or administrative offence—be "treated with humanity."

Finally, the broader provisions in the Convention on the Rights of the Child leave no doubt that the prohibition on inhumane treatment applies in the case of minors detained in a drug detention setting. Article 37(c) provides that "every child deprived of liberty shall be treated with humanity," while Article 37(d) further specifies that: "In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so…" The UN Committee on the Rights of the Child has noted that "the rights of a child deprived of his/her liberty…apply with respect to children in conflict with the law, and to children placed in institutions for the purposes of care, protection or treatment, including mental health, educational, drug treatment, child protection or immigration institutions."[208] At the very least, in the case of States which have ratified the CRC—which includes virtually every UN Member State (with the exception of Somalia and the United States)—detention of children alongside adults in drug detention centers is presumptively inhuman treatment that violates the CRC. Presumably, it therefore also would be found to violate the CAT's prohibition on inhuman treatment, which is applicable to any State that has also ratified that treaty.


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REMEDYING ABUSES: CONCLUSIONS AND RECOMMENDATIONS

There are multiple reasons why prohibitions against torture and other cruel, inhuman or degrading treatment or punishment should be engaged to address concerns in relation to drug detention centers:

- An allegation of torture or other cruel, inhuman or degrading treatment or punishment carries a particularly harsh stigma for States.
- Because the prohibition is a *jus cogens* norm of customary international law, it binds all States, and therefore is not dependent on whether a given State has ratified a particular treaty.
- Because the right is non-derogable, meaning States may not justify torture or ill-treatment as a means to protect public security or public health, it may provide a firm foundation on which to build a case even if countries are engaged in a "war on drugs" that rests heavily on the enforcement of criminal prohibitions and coercive approaches to drug "treatment."
- The protection of marginalized individuals or populations especially at risk of torture is part of the obligation to prevent torture or ill-treatment,[209] creating an opportunity to highlight the particular vulnerabilities of people who use drugs (and especially those with drug dependence) to torture or cruel, inhuman or degrading treatment.
- The monitoring and enforcement mechanisms with respect to torture are more robust than with many other UN human rights treaties.

The recognition of a wide range of abuses occurring in the context of drug detention settings as torture or cruel, inhuman or degrading treatment or punishment opens up the possibility of using UN (and regional) human rights mechanisms to help prevent and eliminate further abuses.

- In the case of States that have ratified the CAT, there is the possibility of filing **individual complaints** with the Committee Against Torture to seek a remedy and hold perpetrators accountable for torturous or other abusive treatment in drug detention centers. In the case of States that have ratified the

Photo: Supporters of evidence-based drug treatment—as opposed to the abuse-ridden status quo in many places—rally in Bangkok in 2009. (Kaytee Riek)

ICCPR and its Optional Protocol, complaints could also be filed with the Human Rights Committee. Nongovernmental organizations can play an important role in supporting individual complainants in filing such complaints, the accumulation of which will be one strategy for securing reforms to, and closure of, such centers.

- In addition, the CAT permits the Committee against Torture to undertake its own **confidential inquiries** where there is reason to believe torture is systematic or widespread; given the documentation of regular, ongoing and widespread abuses occurring in drug detention centers in numerous countries, the Committee should undertake such an inquiry. Furthermore, pursuant to the Optional Protocol to the Convention against Torture, the 25-member Subcommittee on Prevention of Torture monitors States' compliance with CAT, including through making unannounced visits to places of detention, holding private meetings with any individuals it chooses and providing technical advice to States regarding the establishment of national independent bodies to prevent torture. The Committee and Subcommittee should exercise these powers to investigate drug detention centers, particularly in those countries where serious human rights abuses have been reported.

- The UN **Special Rapporteur on Torture** has already begun to take up some of the concerns regarding human rights abuses reported from drug detention centers in some countries; further investigation and recommendations are warranted.

- It should also be noted that States that have ratified the Optional Protocol to the CAT must also establish their own **independent body at the national level** to monitor places of detention as a means of preventing and responding to torture and other cruel, inhuman or degrading treatment or punishment. All States Parties, but at a minimum those that have assumed this legal treaty obligation, should establish such a body if they have not yet done so—and particularly in those countries where there are extensive systems of detention for drug treatment, such bodies should investigate the conditions in such centers and reports of torture or other ill-treatment.

- The CAT also requires States Parties to submit **periodic reports for review** by the Committee against Torture. Concerns about torture or other abuses in drug detention centers may also be raised during the quadrennial **Universal Periodic Review** of UN Member States.

- As the CAT requires that States Parties take **specific, proactive measures** to prevent torture and other cruel, inhuman or

degrading treatment from happening, NGO submissions, and the conclusions and observations of UN treaty bodies and special procedures, should highlight these obligations and press for such steps to be taken—including the closure of drug detention centers.

However, such human rights mechanisms are only tools to help secure the following actions that are ultimately necessary by national governments and donors to end the abuses in the name of drug treatment:

- Governments that are operating or supporting centers where people are arbitrarily detained for the purposes of drug dependence treatment, or detained in centers where abuses are known to occur should **close all such centers**. The resources dedicated to such centers should instead be dedicated to ensuring equitable access to health services for people with actual drug dependence (properly diagnosed by trained medical professionals in accordance with accepted international standards), including voluntary drug-dependence treatment in community-based health facilities that is evidence-based, meets clinical standards and respects human rights norms. Further-

Photo: In Cambodia, many of those in drug detention centers are still minors. They report being beaten, whipped, and punished with electric shocks. (Lianne Milton)

more, governments should undertake investigations to ensure that abuses, including torture or cruel, inhuman and degrading treatment are not taking place in privately-run centers for the treatment of drug dependence.

- To avoid being complicit in serious human rights violations, international donors (e.g., bilateral donors and the Global Fund to Fight AIDS, Tuberculosis and Malaria) should **cease providing support** that enables the operation of existing drug detention centers or the creation of new centers. Any donor funds might only legitimately be provided to ensure access to necessary medical care for those held in such centers (e.g., antiretroviral treatment for detainees with HIV, TB treatment). However, any such decision must be made only following careful consideration of whether any benefits provided, with limited resources, are undermined by the harms that are perpetrated in such settings—and if ultimately providing such resources do more harm than good, including for those whose health and human rights suffer from detention in such centers.[210] If provided, any such funds should be clearly time-limited and provided only on the express conditions that (a) the authorities commit to a rapid process, with clear timelines and regular reports, for closing drug detention centers and reallocating said resources to scaling up voluntary, community-based, evidence-based services for treatment of drug dependence, and (b) such centers, while still operating as the authorities move to close them, are subject to fully independent monitoring, with results of such monitoring reported publicly. Funds provided to ensure medical care for those detained in such settings should be administered not by authorities responsible for the operation of such centers, but instead by independent, nongovernmental organizations.[211]

The use of the human rights mechanisms noted above, as part of a broader strategy to ensure compliance with human rights standards by government and donors, could make a significant contribution to the ultimate elimination of the myriad human rights abuses that now occur routinely against hundreds of thousands of people who are detained because of their real or perceived dependence on drugs.

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ENDNOTES

1. "International cooperation against the world drug problem," UN General Assembly, Resolution 61/183 (13 March 2007), UN Doc. A/RES/61/183, para. 1.

2. E.g., see Open Society Institute, "Abuses in the Name of Treatment: Reports from the Field" (March 2009), online: http://www.soros.org/initiatives/health/focus/ihrd/articles_publications/publications/treatmentabuse_20090318/treatmentabuse_20090309.pdf. See also the analyses collected in At What Cost? HIV and Human Rights Consequences of the Global "War on Drugs" (New York: Open Society Institute, 2009), and reports and studies cited therein.

3. For an overview of how human rights norms are relevant to the matter of drug dependence treatment, see J. Csete & R. Pearshouse, Dependent on Rights: Assessing Treatment of Drug Dependence from a Human Rights Perspective (Toronto: Canadian HIV/AIDS Legal Network, 2007), via www.aidslaw.ca/drugpolicy.

4. These countries include Cambodia, China, Lao PDR, Malaysia, Myanmar, Thailand, Viet Nam and Indonesia: S. Bezzicheri, "Compulsory Drug Treatment Centers in East Asia" (draft, 28 May 2009) (UN Regional Task Force on Injecting Drug use and HIV/AIDS for Asia and the Pacific"; S. Bezzicheri, "Compulsory Drug Treatment Centers in South and East Asia: Rights and Effectiveness," Presentation, 9th International Conference on AIDS in Asia and the Pacific, Bali (10 August 2009); World Health Organization (Western Pacific Region), Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia and Viet Nam: An application of selected human rights principles (2009). See also: Asian Harm Reduction Network, "Civil Society Reflections on 10 Years of Drug Control in Myanmar, Thailand and Vietnam: A Shadow Report," in At What Cost?, op. cit., pp. 140-163. Many of the examples cited in this paper are drawn from the Asia-Pacific region, where reports of some of the most egregious human rights violations in the name or course of drug dependence treatment have been documented in numerous countries. However, the need to ensure that approaches to drug dependence treatment comply with human rights standards is by no means unique to this region.

5. B. Mathers et al, "HIV prevention, treatment and care for people who inject drugs: A systematic review of global, regional and country level coverage," Lancet 2010; 375: 1014-1028 (see figures at pp. 72-74 in web appendix to article); UNAIDS, "AIDS in China: background information on the epidemic and the response" (May 2009), p. 8 [unpublished document on file with Human Rights Watch].

6. Mathers et al, op cit.

7. Ibid; UNODC Regional Centre for East Asia and the Pacific, HIV/AIDS and Custodial Settings in South East Asia: An Exploratory Review into the Issue of HIV/AIDS and Custodial Settings in Cambodia, China, Lao PDR, Myanmar, Thailand and Viet Nam (UNODC, 2006); R. Pearshouse, Compulsory Drug Treatment in Thailand: Observations on the Narcotic Addict Rehabilitation Act B.C. 2545 (2002) (Toronto: Canadian HIV/AIDS Legal Network, 2009); N. Thomson, Detention as Treatment: Detention of Methamphetamine Users in Cambodia, Laos, and Thailand (Nossal Institute for Global Health & Open Society Institute, March 2010).

8. UNODC Regional Centre for East Asia and the Pacific, HIV/AIDS and Custodial Settings in South East Asia: An Exploratory Review into the Issue of HIV/AIDS and Custodial Settings in Cambodia, China, Lao PDR, Myanmar, Thailand and Viet Nam (UNODC, 2006), p.1.

9. Joint UNODC-WHO Action Programme on Drug Dependence Treatment, "Scaling Up Evidence-Based Services for Drug Dependence Treatment and Care, 2009-2013" (draft, 18 November 2008), on file , p. 3.

10. A.M. Costa, foreword to the World Drug Report 2010 (Vienna: UNODC, 2010), p. 5.

11. This document focuses specifically on the UN human rights system, rather than regional human rights mechanisms, though these too should be engaged in addressing rights violations committed in the name of drug dependence treatment.

12. Universal Declaration of Human Rights, UNGA Res. 217(III), UN GAOR, 3rd Sess., Supp. No. 13, UN Doc. A/810 (1948), Article 5.

13. UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, GA Res. 43/173, annex, UN Doc. A/RES/43/173 (1998), Principles 1 and 6 [emphasis added].

14. M. Nowak & E. McArthur, The United Nations Convention Against Torture: A Commentary (Oxford University Press, 2008), p. 8. [hereinafter Commentary]; Committee Against Torture, General Comment No. 2, UN Doc. CAT/C/GC/2/CRP.1/Rev.4 (23 November 2007), para. 1.

15. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNGA 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, Articles 12-14.

16. See: Convention on the Rights of the Child, UNGA Res. 44/25, Annex, UN Doc. A/44/49 (November 20, 1989), Article 37(a) ("No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. …"); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, UNGA Res. 45/158, Annex, UN Doc. A/45/49 (December 18, 1990), Article 10 ("No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."); Convention on the Rights of Persons with Disabilities, UNGA Res. 61/106, UN Doc. A/61/611 (December 13, 2006), Article 15.1 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.").

17. Code of Conduct for Law Enforcement Officials, UN GA Resolution 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, UN Doc. A/34/46 (1979), Article 5.

18. Principles of medical ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, UN GA Resolution 37/194, annex, UN Doc. A/37/51 (18 December 1982), Principle 4. See also Principle 2: "It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment."

19. Convention for the Protection of Human Rights and Fundamental Freedoms, E.T.S. No. 5 (November 4, 1950), Article 3. An identical prohibition applies to all institutions of the European Union and all EU member states in the implementation of EU laws: Charter of Fundamental Rights, Article 4, reproduced in Official Journal of the European Communities, 2000/C 364/01 (18 December 2000).

20. American Convention on Human Rights, O.A.S.T.S. No. 36 (November 22, 1969), Article 5.2. See also the Inter-American Convention to Prevent and Punish Torture, OAS Treaty Series No. 67 (9 December 1985).

21. African Charter on Human and Peoples' Rights, O.A.U. Doc. CAB/LEG/67/3 rev. 5 (June 27, 1981), Article 5. Unlike other human rights instruments, the African Charter prohibits torture and other forms of ill-treatment alongside an explicit reference to slavery.

22. In the case of the European Convention on Human Rights, the formulation is simply "inhuman or degrading treatment or punishment" (Article 3), with the omission of the word "cruel".

23. That no derogation is permitted from the prohibition against cruel, inhuman or degrading treatment or punishment arises out of the interplay between CAT and ICCPR. ICCPR Article 4(2) states that the rights set out in its Article 7 are non-derogable; this includes the prohibition not only on torture but also more broadly on cruel, inhuman or degrading treatment or punishment. In CAT, Article 2 explicitly states that "no exceptional measures whatsoever… may be invoked as a justification of torture"; it makes no reference to other cruel, inhuman or degrading treatment or punishment that may not amount to torture. But CAT Article 2(2) does say that this article "is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application." Even more specific is CAT Article 16(1), which states explicitly that certain provisions of CAT dealing with torture also apply equally to other forms of cruel, inhuman or degrading treatment or punishment. The provisions mentioned do not constitute an exhaustive list, excluding other provisions of CAT. Furthermore, Article 16(2) does state explicitly that the provisions of CAT "are without prejudice to the provisions of any other international instrument … which prohibits cruel, inhuman or degrading treatment or punishment…" Recall, therefore, that the ICCPR, in Article 4, disallows any derogation not only from the prohibition on torture but also from the prohibition on other form of cruel, inhuman or degrading treatment or punishment. It follows that the CAT's own prohibition on cruel, inhuman or degrading treatment or punishment is non-derogable as well.

24. Commentary, pp. 539-40. CAT Articles 4-9 only apply to torture. Whether the obligation in Article 14 to ensure that victims receive redress, compensation and rehabilitation applies with respect to cruel, inhuman or degrading treatment or punishment is not clear from the text of the convention.

25. Commentary, p. 1.

26. Commentary, p. 8.

27. Note that the predecessor instrument to the CAT, the UN General Assembly's Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, op. cit., did not include discrimination as one of the improper purposes informing the definition of torture; this was added to the text of the Convention during subsequent negotiation. As noted here, this is of obvious importance in considering the application of CAT's prohibition on torture in the current context, given the widespread stigmatization of, and discrimination against, people on the basis of their real or perceived drug use or dependence, including in the context of ostensible drug dependence "treatment."

28. UN Human Rights Committee, General Comment 20: Article 7 (Prohibition of torture or cruel, inhuman or degrading treatment or punishment), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 151 (2003), para. 4.

29. Note the wording of CAT Article 1 permits an argument that CAT extends responsibility beyond simply the State, since it refers explicitly not only to a "public official" but also to any "other person acting in an official capacity" – which would, on a plain-language reading of the provision, include someone holding some official capacity even within an entirely private operation (e.g., senior managers of a facility).

30. Committee Against Torture, Hajrizi Dzemajl et al. v. Yugoslavia, Communication No. 161/2000 (1999), para. 9.2.

31. Committee Against Torture, General Comment No. 2: Implementation of article 2 by States parties, UN Doc. CAT/C/GC/2 (25 January 2008), para. 15 [emphasis added] (and see also para. 17).

32. Human Rights Committee, General Comment No. 20, para. 2.

33. Statement by Manfred Nowak, UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly, 63rd Session, 23 October 2008.

34. Grover, Report to the UN General Assembly (6 August 2010), op. cit., para. 30.

35. Commentary, p. 39.

36. H. Burgers & H. Danelius, The United Nations Convention Against Torture: Handbook on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dordrecht, 1988), as referenced in Commentary, p. 39.

37. Committee Against Torture, General Comment No. 2, para. 20.

38. Ibid., para. 21.

39. In a number of international treaties, the term "health status" does not appear independently, but has been considered to fall under the broader rubric of "other status".

40. Drug dependence is recognized as a disability in the anti-discrimination law of some countries. For example, in Canada, federal and provincial/territorial anti-discrimination statutes have all been interpreted so as to recognize that drug dependence constitutes a "disability" (or "handicap" in the more antiquated terminology of some statutes). Since the early 1990s, courts and tribunals have repeatedly affirmed such interpretations. In some cases, this is explicit in the statute: e.g., the Canadian Human Rights (s. 25) defines disability as "any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug." Australian courts and tribunals have also recognized that opioid dependence may constitute a disability for purposes of anti-discrimination legislation. For a non-exhaustive list of cases, see: Legislating for Health and Human Rights: Model Law on Drug Use and HIV/AIDS, Module 7: Stigma and discrimination (Toronto: Canadian HIV/AIDS Legal Network, 2006), p. 14, online via www.aidslaw.ca/modellaw.

41. UNODC & WHO, Principles of Drug Dependence Treatment: Discussion Paper (March 2008), pp. 1-2. UNODC has also reiterated this point more recently, to UN Member States: A. Costa, "Drug control, crime prevention and criminal justice: A Human Rights perspective – Note by the Executive Director" Commission on Narcotic Drugs, 53rd session, UN Doc. E/CN.7/2010/CRP.6 – E/CN.15/2010/CRP.1 (3 March 2010), para. 40.

42. Nowak, Report to Human Rights Council (2009), op. cit., para. 71.

43. Grover, Report to the UN General Assembly (6 August 2010), op. cit., para. 30.

44. M. Nowak, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly, 64th Session, UN Doc. A/64/215 (3 August 2009), para. 49.

45. UN General Assembly, Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN GA Resolution 3452 (XXX), annex, 30 U.N. GAOR Supp. (No. 34) at 91, UN Doc. A/10034 (1975), Article 1(2). Similarly, in the interpretation of regional human rights treaties'

prohibitions on torture and other ill-treatment, the relevant bodies have largely chosen to differentiate torture from other cruel and inhuman treatment based on the severity of the pain or suffering inflicted: e.g., Ireland v. United Kingdom, No. 5310/71 (European Court of Human Rights, 1978); Caesar v. Trinidad and Tobago, Judgment of March 11, 2005, Series C, No. 123 op. cit., para. 69; Loayza Tamayo v. Peru, Judgment of September 17, 1997, Series C, No. 33, para. 57.

46. Committee Against Torture, General Comment No. 2, para. 3.

47. UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN GA Resolution 43/173 (9 December 1998), Principle 6 (note).

48. Commentary, p. 558. Nowak and McArthur suggest that "there is no essential difference between cruel and inhuman treatment": ibid., p. 558, n. 76.

49. It is not clear just how far the concept of person acting in an "official capacity" extends. Reviewing the travaux préparatoires for CAT, Nowak and McArthur suggest that it would extend to "certain non-State actors whose authority is comparable to governmental authority," such as political groups that exercise ***de facto*** authority in a given region: Commentary, pp. 77-79.

50. Commentary, p. 558.

51. M. Nowak, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly, 64th Session, UN Doc. A/64/215 (3 August 2009), para. 49.

52. Ibid. Note that Nowak and McArthur may be suggesting that there must be the aim of humiliation in order for treatment to be degrading. However, presumably treatment can be humiliating even without this intention being present; a more objective approach, not depending on the purpose of the accused, would accord better with the objective of respecting the inherent dignity of the human person that is expressed in CAT and is the fundamental purpose of the corpus of human rights law.

53. Ireland v. United Kingdom, op. cit., para. 167, cited with approval in various other European Court of Human Rights judgments, as well as Loayza Tamayo v. Peru, Series C., No. 33 (Inter-American Court of Human Rights, 1997), para. 57. The (now-defunct) Commission of Human Rights within the Council of Europe has considered degrading treatment as misconduct that "grossly humiliates one or drives him to act against his will or conscience": "The Greek Case", 12 Yearbook of the European Convention on Human Rights (1969).

54. Yordanov v. Bulgaria, Application No. 56856/00, European Court of Human Rights, Judgment (10 August 2006), para. 86.

55. Ibid., paras. 87-89 [emphasis added and references to other cased cited by the Court in support of these propositions omitted; see judgment for full references].

56. CAT, Art. 1(2). Note that this caveat attaches only to the definition of "torture" under CAT. It does not apply to the definition of "cruel, inhuman or degrading treatment or punishment" under CAT (see Article 16). Nor is this caveat found in the prohibitions on torture or other cruel, inhuman or degrading treatment or punishment under the ICCPR (Article 7) or the European, African and Inter-American treaties. In other words, pain or suffering arising from, inherent in or incidental to the enforcement of lawful sanctions may not constitute "torture" contrary to CAT, but it could, at least in theory, amount to torture under another applicable treaty, and could amount to cruel, inhuman or degrading treatment or punishment contrary to CAT and all the other treaties.

57. S. Joseph et al., Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies (World Organisation Against Torture, 2006), p. 213.

58. UN General Assembly, Declaration in the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res. 3452 (9 December 1975).

59. UN Basic Principles for the Treatment of Prisoners, op. cit., Principle 5.

60. UN Human Rights Committee, General Comment 21: Article 10 (Humane treatment of persons deprived of their liberty) (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.

61. UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, GA Res. 43/173, annex, UN Doc. A/RES/43/173 (1998), Principles 1 and 6 [emphasis added].

62. UN Human Rights Committee, General Comment 21, op. cit., para. 3. As some governments claim that detention centres are providing "treatment" for drug dependence, it is also worth noting that the Human Rights Committee has explicitly noted that the prohibition on torture or other cruel, inhuman or degrading treatment or punishment in ICCPR Article 7 "protects, in particular,…patients in teaching and medical institutions": General Comment 20, para. 5.

63. S. Loeu & V. Macdonald, Routine Analysis of Treatment Data provided by Treatment Center run by the Government, 1st Quarterly Report of 2008 (Phnom Penh: Illicit Drug-Related HIV and AIDS Secretariat et al., 2008).

64. OSI, Abuses in the Name of Treatment, op. cit., citing: A. Juny, S. Huili, "Analysis of 272 Cases of Swallowing Foreign Body in Compulsory Detoxification," China Journal of Drug Dependence (zhongguo yaowu yilaixin zazhi) 2004; 13(3): 221-223.

65. Open Society Institute, At What Cost?, op. cit.

66. J.E. Cohen & J. Amon, "Health and Human Rights Concerns of Drug Users in Detention in Guangxi Province, China," PLoS Medicine 2008; 5(12): e234.

67. World Health Organization, Regional Office for the Western Pacific, Assessment of Compulsory Treatment of People Who Use Drugs in Cambodia, China, Malaysia and Viet Nam: An Application of Selected Human Rights Principles (2009), p. 19.

68. UN Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, Annex (1985).

69. Nowak, Report to Human Rights Council, op. cit, para. 71 (and see also para. 59).

70. M. Nowak, Interim Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly, 64th Session, UN Doc. A/63/176 (3 August 2009), para. 44. The Special Rapporteur makes reference to CRPD Articles 3, 12 and 25 in particular.

71. General Comment No. 14, para. 8.

72. General Comment No. 14, para. 34. Given the ease and arbitrariness with which many are detained in compulsory drug treatment centers, including with little or nothing in the way of an informed medical assessment as to the existence or extent of drug dependence, many of those confined in such settings are likely only occasional or recreational drug users

who need little, if any, treatment. In such cases, imposing "treatment" for drug dependence, in whatever form that might take, also violates the right to health because any treatment must be medically appropriate: General Comment 14, para. 12(d).

73. Ibid, para. 34 [emphasis added].

74. M. Nowak, Interim Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly, 64th Session, UN Doc. A/63/176 (3 August 2009), para. 74.

75. WHO and UNODC, Principles of Drug Dependence Treatment: Discussion Paper (March 2008), p. 10.

76. WHO, Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence (Geneva: 2009), pp. xlv-xv, 10, 14.

77. A. Costa, "Drug control, crime prevention and criminal justice: A Human Rights perspective – Note by the Executive Director" Commission on Narcotic Drugs, 53rd session, UN Doc. E/CN.7/2010/CRP.6 – E/CN.15/2010/CRP.1 (3 March 2010), paras. 45-46.

78. See generally R. Lines, "The Right to Health of Prisoners in International Human Rights Law," International Journal of Prisoner Health 2008; 4(1): 3-53.

79. Nevmerzhitsky v. Ukraine, Application No. 54825/00, Judgment of 5 April 2005, para. 94.

80. Herczegfalvy v. Austria, (1992) 15 EHRR 437, para. 82.

81. Ibid [emphasis added].

82. Ibid, paras. 80-82.

83. M. Nowak, Interim report of the Special Rapporteur on torture and cruel, inhuman or degrading treatment of punishment, UN General Assembly, 63rd Session, UN Doc. A/63/175 (2008), para. 63.

84. P. Kooijmans, Report of the UN Special Rapporteur on Torture, UN Doc. E/CN.4/1986/15, para. 119.

85. Human Rights Committee, Viana Acosta v. Uruguay, Views on Communication No. 110/1981 (adopted 29 March 1984), UN Doc. CCPR/C/21/D/110/1981, paras. 2.7, 14 and 15.

86. UN Basic Principles for the Treatment of Prisoners, op. cit., Principle 9. See more detailed discussion in Lines, "The Rights to Health of Prisoners in International Human Rights Law," op. cit. Specifically in relation to addressing HIV in prisons, the WHO has outlined guidelines that reflect this principle of equivalence: WHO Guidelines on HIV Infection and AIDS in Prisons (1999), Articles A(4) and C(i)-(iii).

87. UN General Assembly, Principles of medical ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, UN GA Resolution 37/194, annex, UN Doc. A/37/51 (18 December 1982), Principle 1.

88. Nowak, Report to the Human Rights Council (2009), para. 71.

89. R. Lines, "From equivalence of standards to equivalence of objectives: The entitlement of prisoners to health care standards higher than those outside prisons," International Journal of Prisoner Health 2006; 2(4): 269-280.

90. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, op. cit., Principle 24.

91. Code of Conduct for Law Enforcement Officials, UN GA Res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, UN Doc. A/34/46 (1979), Article 6. The definition of "law enforcement officials" includes "all officers of the law… who exercise police powers, especially the powers of arrest or detention."

92. Committee on Economic, Social and Cultural Rights, General Comment 14, UN Doc. E/C.12/2000/4, adopted August 11, 2000, paras. 12, 18 and 34 [emphasis added].

93. UN Human Rights Committee, General Comment 21, op. cit., para. 3.

94. UN Human Rights Committee, Cabal and Pasini v. Australia (7 August 2003), UN Doc. CCPR/C/78/D/1020/2002, para. 7.7.

95. UN Human Rights Committee, Womah Mukong v. Cameroon, Communication No. 458/1991, UN Doc CCPR/C/51/D/458/ (1991).

96. UN Human Rights Committee, Raul Sendic Antonaccio v. Uruguay, Communication No. R.14/63, U.N. Doc. Supp. No. 40 (A/37/40) at 114 (1982), para. 20.

97. See Committee against Torture, "Concluding Observations: New Zealand," UN Doc. A/53/44 19 (1998), para. 175.

98. M. Nowak, "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," UN General Assembly, 62nd Session, UN Doc No A/62/221 (13 August 2007), para. 9.

99. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Third General Report on the CPT's activities covering the period 1 January to 31 December 1992, CPT/Inf (93) 12 [EN] (4 June 1993), para. 30. See also: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "CPT standards," CPT/IN/E, 2002, section 3.

100. Lines, "From equivalence of standards to equivalence of objectives," op. cit., p. 276 with reference to cases.

101. Estelle v. Gamble, 429 US 97 (1976).

102. M. Nowak, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report to the UN Human Rights Council, UN Doc. A/HRC/10/44 (14 January 2009), para. 58, with reference to WHO, UNODC & UNAIDS, "Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention: Position paper" (2004).

103. UNODC & WHO, Principles of Drug Dependence Treatment: Discussion Paper (March 2008), p. 14.

104. Drug abuse treatment and rehabilitation: A practical planning and implementation guide (WHO & UNODC, 2003), p. IV.2.

105. OSI, "Abuses in the Name of Treatment," op. cit.

106. Cohen & Amon, op. cit.; Human Rights Watch, "Where Darkness Has No Limits": Incarceration, Ill-Treatment and Forced Labor as Drug Rehabilitation in China (2010), online: http://www.hrw.org/en/reports/2010/01/07/where-darkness-knows-no-limits.

107. WHO, Assessment of Compulsory Treatment, op. cit., p. 10.

108. OSI, At What Cost?, op cit.

109. World Health Organization, Regional Office for the Western Pacific, Assessment of Compulsory Treatment of People Who Use Drugs in Cambodia, China, Malaysia and Viet Nam: An Application of Selected Human Rights Principles (2009).

110. Government Decree No. 108/2007/ND-CP (26 June 2007), cited in WHO, Assessment of Compulsory Treatment, op. cit.

111. WHO, Assessment of Compulsory Drug Treatment, op. cit., p. 23, citing: Government of Viet Nam, Standing Office for Drugs Control et al., "Project G22: Reduction of HIV infection risk due to drug abuse in Viet Nam" (January 2005).

112. Human Rights Watch, Rehabilitation Required: Russia's Human Rights Obligation to Provide Evidence-based Drug Dependence Treatment (New York, 2007).

113. Note as well that the ICESCR Article 15 also recognizes the right to benefit from scientific progress and its applications; to withhold proven methods for treating those with drug dependence also infringes this right.

114. A. Costa, "Drug control, crime prevention and criminal justice: A Human Rights perspective – Note by the Executive Director" Commission on Narcotic Drugs, 53rd session, UN Doc. E/CN.7/2010/CRP.6 – E/CN.15/2010/CRP.1 (3 March 2010), para. 23.

115. McGlinchey and Others v. the United Kingdom, European Court of Human Rights, Application No. 50390/99, Final Judgment (29 April 2003).

116. McGlinchey, para. 57. In another case, the complainant was a U.K. national receiving methadone as treatment for heroin addiction who arrested in Greece for drug offences. His complaint to the European Commission on Human Rights included the claim that police seized his methadone and, while suffering withdrawal symptoms, requested to see a doctor but was not provided with adequate medical treatment. He also complained about numerous other conditions of his detention, and alleged a violation of several provisions of the European Convention on Human Rights, including Article 3 which prohibits torture or other inhuman or degrading treatment or punishment. However, the Commission found that he had not exhausted domestic remedies open to him under Greek law and therefore dismissed this part of his application as inadmissible: Peers v. Greece, Application No. 28524/94, European Commission of Human Rights, Decision as to Admissibility (21 May 1998).

117. Cardinal v. The Director of the Fort Saskatchewan Correctional Centre and The Director of the Edmonton Remand Centre (Action No 021531397PI) (Albert Court of Queen's Bench); see G. Betteridge, "Alberta Court Orders Methadone Maintenance Therapy for Prisoner on Interim Basis," Canadian HIV/AIDS Policy & Law Review 2003; 8(1): 53-54.

118. Right before the case went to trial, a new policy was brought into force, under which prisoners in Alberta's correctional institutions who had been receiving MMT prior to their incarceration would be permitted to continue treatment while in prison. As a result, the case did not proceed to trial. See N. Whitling, "New policy on methadone maintenance treatment in prisons established in Alberta," Canadian HIV/AIDS Policy & Law Review 2003; 8(3): 45-47.

119. Ibid.

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170. Human Rights Committee, General Comment 20, Article 7, op. cit., para. 6.

171. M. Nowak, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly, UN Doc. A/63/175 (28 July 2008), para. 56. See also the Human Rights Committee's concluding observations on both the second periodic report of Slovakia (UN Doc. CCPR/CO/78/SVK, para. 13) and the second periodic report of the Czech Republic (UN Doc. CCPR/C/CZE/CO/2, para. 13), wherein the Committee expressed concern about the persistent use of cage or net beds as a means to restrain psychiatric patients, recalling that this practice is considered inhuman and degrading treatment and amounts to a violation of ICCPR Articles 7, 9 and 10.

172. Ibid, para. 80, with reference to the following: concluding observations of the Committee on the third periodic report of Denmark, Official Records of the General Assembly, Fifty-second Session, Supplement No. 44 (A/52/44), chap. IV, sect. I, paras. 181 and 186; on the third periodic report of Sweden (ibid., chap. IV, sect. K, paras. 220 and 225; on the third periodic report of Norway (ibid., Fifty-third Session, Supplement No. 44 (A/53/44), chap. IV, sect. H, paras. 154 and 156; on the third periodic report of France (CAT/C/FRA/CO/3), para. 19; on the second periodic report of the United States of America (CAT/C/USA/CO/2), para.. 36; and on the third periodic report of New Zealand (CAT/C/CR/32/4, paras. 5 (d) and 6 (d)).

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174. Even if such physical discipline could be shown (in an ethical fashion) to be effective as a form of treatment for drug dependence, it would still be unjustifiable to impose it involuntarily except in the case where it could be legitimately claimed that it is necessary because the person is at high risk of causing self-harm or harm to others.
It is hard to imagine such a scenario in which physical discipline could be considered such an urgent intervention.

175. WHO interviews with persons released from "My Chance" compulsory drug treatment facility in Phnom Penh, Cambodia (2008), cited in: S. Bezzicherri, "Compulsory Drug Treatment Centers in East Asia" (draft, 28 May 2009) (UNODC & UNAIDS, 2009) [on file]; OSI, At What Cost?; Human Rights Watch, "Skin on the Cable".

176. "Compulsory drug treatment in Vietnam: interview with a drug user who was sent to a drug treatment centre of Hanoi," BBC Radio (Vietnam), 3 November 2008 (original in Vietnamese: http://www.bbc.co.uk/vietnamese/vietnam/story/2008/05/080522_drug_human_right.shtml, English translation: http://www.ihrablog.net/2008/11/compulosry-drug-treatment-in-vietnam.html).

177. R. Pearshouse, Compulsory Drug Treatment in Thailand: Observations on the Narcotic Addict Rehabilitation Act B.E. 2545 (2002) (Toronto: Canadian HIV/AIDS Legal Network, 2009).

178. OSI. Human Rights Abuses in the Name of Drug Treatment: Reports from the Field (2009).

179. HRW, "An Unbreakable Cycle"; Cohen & Amon, PLoS Medicine 2009.

180 Human Rights Watch, "Skin on the Cable," op. cit., p. 24.

181. Some details of the list below taken or adapted from OSI, "Abuses in the Name of Drug Treatment", op. cit.

182. OSI, "Abuses in the Name of Drug Treatment", op. cit.

183. bin Ali Umar, op. cit., with reference to Dangerous Drug Act 1952 (Amendment) 2002 Act, A1167.

184. Singapore Central Narcotics Bureau, Annual Bulletin 2007, pp. 16-19; Singapore Central Narcotics Bureau, Treatment and Rehabilitation Regime and Long-Term Imprisonment for Abusers of Cannabis and Cocaine, [original no longer available on CNB website, but summary is available http://www.ihrablog.net/2009/03/cnd-day-2-singapores-brutality-on.html and see CNB Press release of 25 July 2007 at http://www.prisons.gov.sg/press/25072007.html].

185. Cohen & Amon, op. cit.

186. UN Commission on Human Rights, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Mission to China," E/CN.4/2005/6/Add.6 (10 March 2006).

187. UN Standard Minimum Rules for the Treatment of Prisoners, para. 31.

188. Human Rights Committee, General Comment No. 20, para. 5 [emphasis added].

189. Regarding China, see: Human Rights Watch, Locked Doors: The Human Rights of People Living with HIV/AIDS in China (2003), pp. 46-47; Human Rights Watch, "Where Darkness Has No Limits", op. cit.; OSI, "Human Rights Abuses in the Name of Drug Treatment", op. cit.; Cohen & Amon, op. cit.; regarding Malaysia, see: A.Y. Naing et al, "Harm reduction services in a closed setting", Presentation, Harm Reduction 2009 (Bangkok, 21 April 2009), online: http://www.ihra.net/Assets/1861/1/Presentation_21st_C17_Naing.pdf. Regarding Vietnam, see: BBC, Interview with a drug user who was sent to a drug treatment center of Hanoi (translation of a Vietnamese audio interview), 22 May 2008 (last accessed 24 January 2010) at http://www.bbc.co.uk/vietnamese/vietnam/story/2008/05/080522_drug_human_right.shtml.

190. Some details of the list below taken or adapted from OSI, "Abuses in the Name of Drug Treatment", op. cit.

191. See Human Rights Watch, Skin on the Cable, op. cit.; Human Rights Watch, "Where Darkness Knows No Limits," op. cit.

192. Vietnam Committee on Human Rights, "Notes on criminal penalties for drug users in Vietnam" (Boissy Saint Léger: VCHR, 2000).

193. UNODC/WHO, "Principles of Drug Dependence Treatment," p. 14.

194. Convention concerning Forced or Compulsory Labour, ILO Convention No. 29 (1930), 39 UNTS 55, Article 2(1). ILO Convention No. 29 is the most widely ratified of the core ILO Conventions (174 of the 183 ILO Members), although notable exceptions include China as well as the United States and Canada: see ILOLEX, "Ratifications of the fundamental human rights conventions by country" (updated as of 23 January 2010). Two other ILO conventions are of particular relevance: the Abolition of Forced Labour Convention, ILO Convention No. 105, 320 U.N.T.S. 291 (entered into force Jan. 17, 1959), and the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ILO Convention No. 182, 2133 U.N.T.S.161 (entered into force Nov. 19, 2000).

195. UN Committee Against Torture, "Conclusions and recommendations of the Committee against Torture: China," UN Doc. No. A/48/44 (1993) paras. 400, 412-413, 419-420; UN Committee Against Torture, "Conclusions and recommendations of the Committee against Torture: China," UN Doc. No. A/55/44 (2000), para. 111.

196. M. Nowak & E. McArthur, The United Nations Convention Against Torture: A Commentary (2008), p. 560.

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198. Human Rights Committee, General Comment No. 20, para. 5, op. cit.

199. In Vietnam, for example, the centers are government institutions, run under the Ministry of Labor, Invalids and Social Affairs, but the contracts are with private companies and center directors and staff reap the profits. (Wolfe, D. and Saucier, R. Conversations with former detention center detainees, 2010. Notes on file with the editor.)

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205. UN General Assembly, Standard Minimum Rules for the Treatment of Prisoners (1955), UN Doc. A/CONF/611, Articles 8, 85(2).

206. UN General Assembly, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA Res. 45/113, annex, 45 UN GAOR Supp. (No. 49A) at 205, UN Doc. A/45/49 (1990), para. 29.

207. UN General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, GA Res. 40/33, annex, UN GAOR Supp. (No. 53) at 207, UN Doc. A/40/53 (1985), para.. 3.4, 26.3.

208. UN Committee on the Rights of the Child, General Comment No. 10: Children's rights in juvenile justice, UN Doc. CRC/C/GC/10, fn 1 (2007) [emphasis added].

209. CAT, General Comment No. 2, para. 21.

210. R. Saucier et al, "The Limits of Equivalence: Ethical Dilemmas in Providing Care in Drug Detention Centers," International Journal of Prisoner Health 2010; 6(2): 37-43.

211. Clearly, any such funds are legitimately used to ensure access to urgent medical care that detainees need, but agreement to fund longer-term care and treatment risks further legitimizing or maintaining centers whose very existence is illegitimate and which are rife with egregious human rights abuses. As noted above, there would be no reason to fund the delivery of opioid substitution treatment on a long-term, maintenance basis in such centers, as such treatment for drug dependence is more effectively delivered on a voluntary basis in the community and hence there is no justification for detention as part of making such treatment available.

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