

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

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Executive summary

Taking into account that the universal periodic review shall complement the work of treaty bodies², this report is focused on the implementation of recommendations given to the Government of Ukraine by the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC) in their Concluding Observations with regards to HIV prevention among people who inject drugs (PWID), including children in Ukraine.

For the last 3 years the Government of Ukraine has undertaken some positive steps in order to fulfill its international human rights obligations regarding HIV prevention among people who inject drugs (PWID), including children. At the same time the Government's activities are inconsistent and often contradict each other nullifying the positive impacts. Recommendations to the Government of Ukraine are proposed in this report.

HIV/AIDS among PWID in Ukraine

Sharing unsterile injecting equipment and paraphernalia among PWID is the key driver of HIV (55% of all officially registered cases as of January 2012) and hepatitis C epidemics in Ukraine. Estimated number of opiate users (drug use by way of injection) in 2011 was 250,000 individuals. HIV prevalence rate among PWID in 2011 was 21.5% (c.i. 20.6 – 22.8). In 2008 and 2009 HIV prevalence rate was 22.9% (c.i. 21.9% – 23.9%)³.

As a result of prevention programs targeting PWID the number of new HIV infection among PWID has stabilized and HIV prevalence among them reduced. The prevention programs have influenced the general epidemic – achieving the reduction of HIV infection growth rates. In 2010 growth rate amounted to 3.3% as compared to 2009, in 2011 it was expected to decrease to 0.3%⁴.

HIV/AIDS among children who inject drugs in Ukraine

The proportion of young injecting drug users in Ukraine is growing. People under 25 may represent around half of all injecting drug users in the country. The age of initiation into drug use is under 15,

¹ Information about these organizations is annexed to this report.

² Resolution 60/251 "Human Rights Council" adopted by the General Assembly on 3 April 2006. A/RES/60/251. Para 5(e)

³ Ministry of Health of Ukraine (2012) "Ukraine harmonized AIDS response progress report".

Reporting period: January 2010- December 2011. Kyiv. p.p. 27, 46

http://www.unaids.org/en/dataanalysis/monitoringcountryprogress/progressreports/2012countries/ce_UA_Narrative_Report%5B1%5D.pdf

⁴ HIV/AIDS statistics. International HIV/AIDS Alliance in Ukraine. <http://www.aidsalliance.org.ua/cgi-bin/index.cgi?url=/en/library/statistics/index.htm>

with the average age of first injection being under 18⁵. Official statistics do not reflect the real rates of HIV prevalence for adolescents and youth from the risk populations (e.g., IDUs, CSW, and MSM) – as HIV continues to actively spread in these groups. Many young people from risk populations have limited access to prevention and treatment services provided by the government and civil society organizations because such services are mostly targeted at people 25 years old and older. There is no data collected to measure HIV prevalence in young people aged 15-24⁶.

Treaty Bodies' Concluding Observations regarding HIV prevention among people who inject drugs (PWID), including children in Ukraine.

Committee on Economic, Social and Cultural Rights: Concluding observations. Ukraine. 4 January 2008. E/C.12/UKR/CO/5

Para 28. The Committee is gravely concerned at the high prevalence of HIV/AIDS in the State party, including among women; discrimination against persons with HIV/AIDS and high-risk groups such as sex workers, drug users and incarcerated persons; disclosure of information about their HIV status by law enforcement agencies, healthcare and educational institutions; and the limited access by drug users to substitution therapy.

Para 29. The Committee notes with concern information from the State party that in 2006, 70 persons out of 100,000 (80 out of 100,000 in rural areas) were suffering from tuberculosis, which has become the leading cause of death among persons with HIV/AIDS and is particularly prevalent among the prison population.

Para 51. The Committee recommends that the State party continue its efforts and take urgent measures to improve the accessibility and availability of HIV prevention to all the population and the treatment, care and support of persons living with HIV/AIDS, including in prisons and detention centres, combat discrimination against persons living with HIV/AIDS and high risk groups, ensure the confidentiality of information about a person's HIV status, and make drug substitution therapy and other HIV prevention services more accessible for drug users.

Para 52. The Committee recommends that the State party take urgent measures to improve tuberculosis prevention and accessibility of specialized tuberculosis treatment and medication, in particular in prisons, detention centres and police stations, and reduce delays in screening detainees for tuberculosis.

Committee on the Rights of the Child: Concluding Observations. Ukraine. 21 April 2011. CRC/C/UKR/CO/3-4

Para 60. The Committee is deeply concerned at the increasing practice of drug injection among children, affecting in particular children in prison, children left behind by migrating parents and children in street situations, and that drug use constitutes a main reason for HIV infection. It is deeply concerned at the lack of specialized youth-friendly services aimed at treatment and rehabilitation for these at-risk children, and that legal and attitudinal barriers impede access to such services (such as order of the Drug Enforcement Department of the Ministry of Internal Affairs No. 40/2/1-106 of 18 January 2011). The Committee is also concerned that the State party's drug strategy 2010-2015 fails to take these issues sufficiently into account and that new regulations relating to personal possession of drugs may bring more at-risk adolescents into contact with the criminal justice system. In addition, the Committee is deeply concerned at the very high proportion of and early initiation age of tobacco and alcohol use among children, related in part to the ineffectiveness and weak enforcement of existing legislation prohibiting the sale of cigarettes and alcohol to children.

Para 61. The Committee recommends that the State party, in partnership with nongovernmental organizations, develop a comprehensive strategy for addressing the alarming situation of drug abuse

⁵ EHRN, IHRA (2010) Briefing to the UN Committee on the Rights of the Child on Ukraine's 4th periodic report on the implementation of the Convention on the Rights of the Child. Injecting drug use, sex work and HIV among children and adolescents at risk. Submitted jointly by the Eurasian Harm Reduction Network and the International Harm Reduction Association.

⁶ See 5, page 23

among children and youth and undertake a broad range of evidence-based measures in line with the Convention, and that it:

(a) Develop specialized and youth-friendly drug-dependence treatment and harm-reduction services for children and young people, building on recent legislative progress on HIV/AIDS and the successful pilot programmes for most-at-risk adolescents initiated by UNICEF;

(b) Ensure that criminal laws do not impede access to such services, including by amending laws that criminalize children for possession or use of drugs;

(c) Ensure that health and law enforcement personnel working with at-risk children are appropriately trained in HIV prevention and that abuses by law enforcement against at-risk children are investigated and punished;

(d) Intensify the enforcement of the prohibition of the sale of alcohol and tobacco to children and address root causes of substance use and abuse among children and youth.

Development of opioid substitution therapy (OST) programmes and other harm reduction services for HIV prevention among PWID.

On the one hand the Government of Ukraine has undertaken significant steps in order to institutionalize OST and harm reduction programs on the national level. In December 2010 amendments were made into the Law on HIV prevention stipulating the guarantees for access of people who inject drugs to harm reduction programs, including OST. The national budget for HIV/AIDS has been consistently increasing during the past several years.

On the other hand the progress is very slow and the coverage of harm reduction services remains low. While the HIV/AIDS funding is increasing, the HIV prevention programming among vulnerable populations comprised less than 1% of all HIV/AIDS expenses in 2010-2011⁷. By April 2012 OST programs in Ukraine had only 6, 678 clients⁸ out of 56, 973 people officially registered as chronically dependent on opioids (11.7%)⁹, making the access to OST for those in need 6 times less than it is recommended by international guidelines¹⁰. The existed programs are of a high threshold, the geographical coverage of programs is poor, often requiring people to travel for several hours every morning to get their dosage. Often the design of the programs does not take into account the needs of clients, such as clients with children, women, people living with HIV/AIDS, and other important considerations. It is not allowed to take home OST medication even for clients who proved to be stable and retain in the program for a long time.

Accessibility and availability of OST and harm reduction services for PWID is obstructed by drug laws and drug law enforcement practices.

In September 2010, a new Concept of Drug Policy through 2015 was introduced with no any measures for drug treatment and/or HIV/AIDS prevention stipulated.

On 7 October 2010 the Ukrainian Ministry of Health Resolution No. 634 dated 29 July 2010 “On amendments to Ukrainian Ministry of Health Resolution No. 188 dated 01.08.2000” (hereinafter “Resolution No. 634”) brought into force amendments that significantly reduce the legal threshold for

⁷ Merkinaite S. (2012) The war against people who use drugs: the costs. Eurasian Harm Reduction Network.

⁸ Recent information on OST patients in Ukraine. Resource center of the Ukrainian Institute on Public Health Policy <http://www.uiphp.org.ua/media/1475>

⁹ National report on drug situation for European Monitoring centre for Drugs and Drug Addiction (data as of 2010). Ukrainian Medical & Monitoring Center of Alcohol And Drugs, by the Ministry of Health of Ukraine. REITOX 2011, page 33, http://www.damonitoring.net.ua/file/zvit_2011.pdf

¹⁰ WHO, UNODC and UNAIDS. *Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users* (WHO, 2009).

“small,” “large” and “extra large” quantities of certain types of illegal drugs, including those most commonly used by people who use drugs in Ukraine.

The threshold for criminal liability for possession of acetylated opium,¹¹ for example, was reduced by a factor of 20, a situation that means that first and foremost Resolution No. 634 will have substantial negative impacts on people possessing illegal drugs. Anyone detained for the possession of between 0.005 and 1 gram of acetylated opium or heroin faces criminal prosecution and a possible penalty of up to three years incarceration or other restriction of freedom. Before the Resolution was introduced, individuals incurred criminal liability if they were detained with 0.1 gram or more of acetylated opium. A quantity of 0.005 grams is approximately the amount that can be found from residue in several used syringes.

The Resolution No. 634 has the following negative effects:

- It jeopardizes needle and syringe exchange programs that have been the cornerstone of Ukraine’s effective HIV prevention efforts, because outreach staff and PWID who collect or return used syringes face the threat of criminal prosecution if they are detained with used syringes containing drug residue.¹² Available data indicates that since the change, the amount of needles collected through NSPs had decreased due to fear of criminal prosecution for illegal drug possession, thus raising the likelihood of a surge in new HIV cases in the country¹³.
- It brings higher rates of incarceration for petty drug offenses leading to further overcrowding in Ukraine’s already strained prison system, and subsequently will lead to higher prevalence of communicable disease such as HIV, hepatitis and tuberculosis (TB) among prisoners.
- More stringent criminal liability makes PWID even harder for health and social services to reach, undermining HIV prevention, care and treatment, drug dependency treatment, and other vital services.^{14,15}
- The mandate to investigate, prosecute, and imprison a significantly larger number of petty drug offenders reduces the criminal justice system’s ability to deal with more serious offenses, and will necessarily increase government spending at the expense of other national priorities such as health care.
- The authority to impose severe criminal penalties for possession of very small quantities of illegal drugs creates a substantial opportunity for corruption among law-enforcement officers and judicial bodies.

Law enforcement agencies continue to obstruct the development and operations of harm reduction services, including needle and syringe programs and OST.

¹¹ Acetylated opium, locally known as “shirka,” is the most widely-used illegal injected drug in Ukraine (European Centre for Monitoring of Drugs and Drug Addiction. Countries overview: Ukraine, available at: <http://www.emcdda.europa.eu/publications/country-overviews/ua#pdu>).

¹² On 11 November 2010, the Ukrainian Cabinet’s National Council on Combating HIV/AIDS advised the Ukrainian Ministry of Health to amend Resolution No. 188 dated 01.08.2000 and revoke the provisions on small quantities of drugs.

¹³ International HIV/AIDS Alliance in Ukraine (2012). Summary report of the performance under the “Support for HIV/AIDS Prevention, Treatment and Care for Most Vulnerable Populations in Ukraine” program supported by the Global Fund to Fight AIDS, Tuberculosis and Malaria in the second half of the year 2011 (and over the whole year 2011).

¹⁴ Jürgens R et al, (2010) People who use drugs, HIV, and human rights. *The Lancet*, Volume 376, Issue 9739, Pages 475 – 485.

¹⁵ Wolfe D, Cohen J. (2010) “Human Rights and HIV Prevention, Treatment and Care for People Who Inject Drugs: Key Principles and Research Needs”, *Journal of Acquired Immune Deficiency Syndrome*. 55: S56-S62.

In January 2011 police drug enforcement units across the country were mandated to crack down on the OST sites, interrogate OST clients, their relatives and neighbours in order to check the legality of the OST sites' operations. OST clients were harassed by police officers asking for the information; many clients were forced to disclose personal medical data by the threat from police that they would not receive their OST medication. Police disclosed personal data and medical information when speaking with neighbours, friends and relatives of the OST clients¹⁶.

In March 2010 police drug enforcement unit slammed into the OST site in Odessa, arrested drug treatment doctor and kept him for four months in pre-trial detention suspecting him in drug trafficking¹⁷. Due to extremely poor evidences brought by police against the doctor, the charges were not upheld by the court during the trial¹⁸.

Such law enforcement activities bring a chilling effect on the development of harm reduction services among PWID, despite the fact that the national laws on HIV prevention clearly support such services and stipulate their expansion.

Recommendations to the Government:

In order to fulfill the recommendations given by CESCR in paragraphs 51 and 52 of its Concluding observations on Ukraine of 4 January 2008 the Government of Ukraine should:

1. Continue developing the harm reduction services, including needle and syringe programs and OST programs on order to meet the criteria as recommended in the *Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users* (WHO, 2009) and in full conformity with human rights treaties;
2. Design harm reduction programs to ensure that they take into account the clients' needs, including the geographic locations, hours of operations, gender specifics, needs of clients with children, as well as clients with HIV and other deceases. Provide a possibility for take home medications for stabilized clients;
3. Repeal the Resolution No 634 so the drug enforcement is not concentrated on people who use drugs and does not obstruct harm reduction services. Make sure that the criminal and administrative laws are drafted and implemented in full consistency with the state's human rights obligations, including those which prevent disproportionate punishment, arbitrary detention and discriminative policing;
4. Make sure that law enforcement practices do not obstruct HIV prevention programs aimed at people who use drugs, sex workers or incarcerated people, including by providing law enforcement officers with continuous training on HIV, harm reduction and human rights.

Development of the national policy around HIV, drug use and the rights of the child.

We commend the Government of Ukraine for a few positive steps undertaken for further recognition of the rights of the child:

¹⁶ Open appeal to the President of Ukraine Mr. V. Yanukovich on behalf of the All-Ukrainian Network of People Living with HIV and International HIV/AIDS Alliance in Ukraine on systematic interventions of government authorities into implementation of the programs aimed at fighting HIV/AIDS supported by international donors dated January 21, 2011
http://www.aidsalliance.org.ua/ru/news/pdf/openappeal2011/President_problems_21%2001%202011_eng.pdf

¹⁷ International AIDS Society calls for an end to harassment, intimidation and imprisonment of HIV professionals. 3 September 2010. Geneva. <http://www.iasociety.org/Default.aspx?pageId=422>

¹⁸ The Kiev district court of Odessa city decision dated June 29, 2011.
http://www.aidsalliance.org.ua/ru/news/pdf/09.11.2011podolyan/Court_Verdict_29.06_english.pdf

- In 2010 the discriminatory restrictions for voluntary HIV testing and counselling for juveniles above 14 were removed from the Law “On AIDS Prevention and Social Protection of Population”;
- In August 2011 the position of the Ombudsmen on the rights of the Child was established within the Administration of the President.
- In December 2011 the President issued a decree ordering the Government to implement the recommendations of the Committee on the Rights of the Child.

At the same time, no significant developments have been made in widening access to harm reduction services for most at risk children and removing legal barriers constraining the implementation of the children’s right to health. The evidence based health services remain inaccessible for children and young underage who inject drugs:

- There is a significant lack of specialized harm reduction and drug dependence treatment services for children and young people who use drugs. Those services that do exist are designed primarily for adult opiate users and fail to take into account the dynamics and specificities of drug use among younger people.
- Stigma and prejudices towards people who use drugs and street children who are most at risk of injecting is widespread. Criminal Police for Minors and of other governmental agencies and institutions consider street children and at risk boys and girls as ‘potential criminals’, rather than as the victims that they often are. It is a position that contradicts repeated recommendations by the Committee on the Rights of the Child that children who use drugs should be considered victims and not criminals. It is a perception that, in some cases, is also reflected in behavior towards minors and children living on the streets, including physical or sexual violence.
- There is a range of legal, policy barriers impeding young people’s access to those services that do exist, such as unclear laws on ‘aiding’ or ‘encouraging’ drug use which can deter service provision. According to the current Ukrainian legislation, medical assistance (including needle and syringe exchange) may be provided for minors from the age of 14. However, most services avoid documenting the age of clients due to the fact that harm reduction services such as needle and syringe exchange may be viewed as aiding and abetting or “encouraging” drug use or injection. This is punishable by 2 to 5 years in prison, or, in the case of a minor – from 5 to 12 years.

Recommendations to the Government:

Make sure all recommendations given by CRC in paragraph 61 of its Concluding observations on Ukraine of 21 April 2011 are implemented at full extent with no delays and with appropriate funding and in partnership with UNICEF, the Global Fund to Fight AIDS Tuberculosis and Malaria, health care, social and low-threshold service providers, civil society, children and youth, as part of the Government’s strategy to implement the rights of the child.

Annex



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

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The Canadian HIV/AIDS Legal Network (www.aidslaw.ca), an NGO with a Special Consultative Status with the Economic and Social Council of the United Nations whose mission is to promote the human rights of people living with and vulnerable to HIV/AIDS through research, legal and policy analysis, education and community mobilization.

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

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