

The Global Commission on HIV and the Law: People Who Use Drugs

HIV and the Law: Risks, Rights and Health is a July 2012 report by the Global Commission on HIV and the Law. The Commission was an independent body of experts and respected statespersons established by United Nations Development Programme to address the ways in which human rights abuses, stigma, and discrimination fuel the global HIV epidemic. The Commission set out to examine where and how these abuses were occurring and to consider how legal reforms—through new legislation, better enforcement of existing law, and court decisions—could slow the spread of HIV and reduce its impact.

The Commission conducted an eighteen month process of research, consultation, analysis, discussion, and decision-making. They held regional dialogues in seven global regions and collected **written and oral submissions from over 1000 individuals and organizations**, more than 700 of whom included people living with, or directly affected by HIV and AIDS.

The report is an important tool for civil society groups, particularly those working with populations at high risk of HIV. This briefing paper highlights the report's findings about people living with HIV. It offers information and language that may be useful for advocacy, campaigning, and lobbying.

Key Report Findings Regarding People Who Use Drugs

Drug possession and personal use of small amounts should be decriminalized.

- ▶ The report finds that criminalization of both drug users and also those possessing small amounts of drugs has resulted in significant rights violations, and has impeded HIV prevention and treatment. For example, in a 2007 police crackdown in Georgia, 4 percent of the male population was subjected to drug testing (many forcibly) and 35 percent of those tested were incarcerated on drug charges (page 31). Many countries continue to treat syringes or injection paraphernalia (including sterile injection equipment important for HIV prevention) as evidence for arrest. Rather than imposing criminal penalties for drug possession, countries should adopt approaches that “remove the fear of arrest and stigma and encourage people who use drugs to get tested for HIV or access treatment” (page 34).

By contrast, drug policies shaped by public health clearly advance HIV prevention. Fully and publicly funded harm reduction services, have virtually eliminated new infections among those who inject drugs.

Investing in harm reduction supplies and programs can reduce HIV spread substantially.

- ▶ Governments that are “supplanting policing with public health promotion” (page 32) have realized this benefit without incurring any increases in drug use or possession in their populations (pages 32–33). The Islamic Republic of Iran, for example, decided in 2005 that, “injecting drug users should be treated as patients by the public health system. The rate of new HIV infections, which had risen until 2005, has dropped ever since” (page 33).

Portugal chose to decriminalize the possession and use of small amounts of drugs in 2001. This resulted in a nearly 250 percent increase in the number of people accessing opioid substitution therapy for drug dependency (from 6,040 to 14,877), a drop in drug use by teens (among whom lifetime heroin use decreased from 2.5 percent to 1.8 percent), and a 17 percent decrease between 1999 and 2003 in the number of new HIV infections among people who use drugs (page 34).

Labeling people who use drugs as patients or sick does not necessarily protect them from human rights abuses (page 31).

- ▶ Many countries maintain registries of those who seek treatment for drug dependence. Being listed on them can “result in denial of employment, travel and immigration, loss of child custody and police harassment” (page 31). Other violations experienced by people using drugs include compulsory drug testing and treatment, and incarceration without due process in drug detention, or so-called rehabilitation centers—where beatings, torture, and forced labor occur, where HIV transmission risk continues, and where HIV treatment is unavailable.

Allies can be found in unexpected places.

- ▶ The report cites the example of the Malaysian AIDS Council partnering with its government’s Department of Islamic Development to “replace ideological conservatism with pragmatism” (page 28). Since the majority of HIV transmission in Malaysia is injection related, the partnership was established in 2008 to engage religious leaders in promoting for evidence-based public health responses to HIV. One result is that Malaysia has recently joined the growing list of countries that are reducing the use of drug detention centers in favor of voluntary, community-based treatment for people who use drugs (page 31).

Actions the Report Recommends (page 54)

To respect human rights and create effective, sustainable national HIV responses, countries must:

- ▶ Stop punishing people who use drugs without doing any harm to others. Decriminalize drug use, possession of drugs for personal use, and possession of injection equipment. Instead, ensure access to the health care to which drug users are entitled—including comprehensive harm reduction services, evidence-based drug dependency treatment, and effective HIV prevention, testing, and treatment upon request.
- ▶ Stop the use of drug detention and compulsory rehabilitation centers, national registries of drug users, mandatory or compulsory testing for drug use and HIV, and all forms of involuntary treatment for drug use.
- ▶ Replace these punitive strategies with evidence-based treatment for drug dependency that people can access voluntarily, as well as confidential HIV testing and comprehensive harm reduction services (as defined by the UN, see page 30).
- ▶ Remove all regulations that inhibit full funding for needle and syringe exchange programs and that discourage access to HIV services by people who use drugs
- ▶ Work with the UN to bring the relevant international laws and bodies into alignment with the above principles, particularly the UN international drug control conventions, including the Single Convention on Narcotic Drugs (1961), Convention on Psychotropic Substances (1971), the Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), and the International Narcotics Control Board.

How You Can Use the Report

This report provides concrete precedents and examples you can use as evidence when advocating to government and other influential organizations, the media, civil society organizations, and the general public. Because of the report's legitimacy as an official UN document, these case studies and the statements made about them are important tools to support your advocacy, campaigning, and lobbying.

1. To show that harm reduction works.

The report cites compelling examples that harm reduction works. Edinburgh, for example, criminalized the purchase and possession of syringes in 1981. By 1984, over 50 percent of its residents who injected drugs had HIV. The nearby city of Glasgow did not criminalize, and its HIV rate among injecting residents remained under 2 percent from the time of its first recorded HIV-positive diagnosis by an injecting drug user in 1985 till 1990.

You can point to the chart on page 33 showing that, in countries that rely on public health approaches drug use, HIV prevalence among people who use drugs is under 5 percent. HIV rates in countries that rely on punitive approaches are substantially higher (37–42 percent). Additional data on the numbers of countries that were actively supporting harm reduction as of 2010 appears on page 32. These figures can be cited in statements to parliamentarians or ministry officials who resist the idea of harm reduction, as well as in media and public education efforts.

2. To call for seats at the table for people who use drugs and their allies.

If your country receives PEPFAR funding U.S. government funding through the President's Emergency Plan for AIDS Relief (PEPFAR) now requires each recipient country to develop a 5-year strategic framework that spells out how a collaborative, consultative process with numerous stakeholders (including civil society) was used to develop countries' National Strategic Plan on

HIV/AIDS. If your country receives support from the Global Fund to Fight AIDS, TB and Malaria to work with people who inject drugs, they too require countries to ensure participation of those directly affected by HIV in the planning process through the country coordinating mechanism.

In 2010, PEPFAR also issued *Comprehensive HIV Prevention for People Who Inject Drugs: Revised Guidance*, stating that PEPFAR resources can now be used to fund services for people who inject drugs, which includes methadone, buprenorphine, and the overdose antidote naloxone (under U.S. law PEPFAR is not able to support needle and syringe programs). The guidance notes that, “PEPFAR programs in countries should be based on principles related to equity, nondiscrimination, and voluntariness ... all programs should be conceived with the participation of affected populations.” The Global Fund also has an information note on harm reduction affirming the ability to support needle and syringe programs, methadone/buprenorphine, naloxone, and hepatitis C treatment if requested by the country.

These requirements give you a legitimate reason to ask your Ministry of Health how the needs of people who use drugs are being represented in the National Strategic Plan on HIV/AIDS planning process, and by whom. Before undertaking this, it is a good idea to review a copy of your country’s plan carefully to see where and how it already addresses these needs. If the Ministry of Health is not receptive to your request for inclusion, sympathetic local Parliamentarians may support you in advancing this demand. National HIV and AIDS organizations that are already participating in such planning bodies can also be recruited as allies.

3. To consider legal action.

Some courts have upheld important legal challenges to violations of the rights of people who use drugs. An incarcerated man in Canada, for example, successfully sued his government for failure to provide methadone treatment to prisoners. Now all medically eligible federal prisoners

in Canada have access to such treatment (page 57). The Supreme Court of Canada also ruled in 2011 that an insite—a supervised facility where people may inject illegal drugs safely, in a hygienic environment, and without fear of arrest—could remain open because “people who use drugs should not be forced to choose between abstinence and forgoing health services” (page 34).

Challenging laws can result in decisions that have far-reaching effects and set precedents that you can build on in future advocacy efforts. The process of pursuing a court case is labor-intensive and can take years to complete. But, if you can get local human rights organizations and entities that provide pro bono legal representation to take on your challenge, it may yield a decision that improves the situation in your country.

“Sound Bite” Quotes

One benefit of this report is that it simply and eloquently frames key arguments we make as we advocate for change in existing policies. These are listed below as sound bites that organizations can use in their own documents or when talking to the media. Citing the Global Commission on HIV and the Law may add credibility for audiences who are less receptive to such arguments.

- ▶ “Where governments promulgate harm reduction, such as clean needle distribution programmes and safe injection sites, HIV infection rates among people who use drugs can drop significantly” (page 9).
- ▶ “A needle or a condom is only the concrete representation of what key populations (like everyone else) are entitled to: the fundamental human rights to dignity, autonomy and freedom from ill treatment, as well as the right to the highest attainable standard of physical and mental health, regardless of sexuality or legal status” (page 26).

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- ▶ “Punitive laws enforced against people who use drugs but do no harm to others fuel the spread of HIV and keep users from accessing services for HIV and health care” (page 29).
 - ▶ “Harm reduction can make the difference between health and HIV infection—between life and death—not just for people who inject drugs but also for their sex partners and their communities” (page 29).

Open Society Public Health Program

The Public Health Program of the Open Society Foundations 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.

For more information, see: www.opensocietyfoundations.org.