

Russian Drug Policy as a Distorting Reflection of the UN Drug Conventions: Stigmatizing Language, Overreliance on Punitive Restrictions, Indifference to Human Rights, and Obliteration of Science

Submission to the Office of the UN High Commissioner for Human Rights,
pursuant to Human Rights Council Resolution 28/28, UN Doc. A/HRC/28/L.22 (2015), from
the Russian Civil Society Mechanism for Monitoring of Drug Policy Reforms in Russia,
with technical assistance of the Andrey Rylkov Foundation for Health and Social Justice
and the Canadian HIV/AIDS Legal Network

May 2015

Background information

This paper is drafted by members of the Russian Civil Society Mechanism for Monitoring of Drug Policy Reforms in Russia, with technical assistance of the Andrey Rylkov Foundation for Health and Social Justice and the Canadian HIV/AIDS Legal Network, and in response to the letter of April 16, 2015 from Nathalie Prouvez, OHCHR Chief of Rule of Law and Democracy Section, by which civil society organizations were invited to provide (1) input with respect to impact of the world drug problem on the enjoyment of human rights, and (2) recommendations on respect for and the protection and promotion of human rights in the context of the world drug problem.¹

This paper is based on information which was submitted by members of the Monitoring Mechanism and its partners to different UN human rights bodies and to the European Court of Human Rights.

Russia is one of the countries most severely affected by the world drug problem. According to the UN Office on Drugs and Crime (UNODC), about 2.29% of the Russian population between the ages of 15-64 inject drugs;² unsafe drug injection remains a leading cause of HIV infection in the country;³ and nearly one-quarter (23%) of all adults imprisoned in penitentiary institutions were people convicted for drug-related offences.⁴

The response of the federal Government of the Russian Federation to the world drug problem is heavily based on the UN drug conventions⁵ and the supremacy of international treaties of the Russian Federation over domestic laws.⁶ For the last several years, Russian authorities have been trying to improve drug

¹ Information about the Canadian HIV/AIDS Legal Network and the Andrey Rylkov Foundation is in Annex I.

² UNODC, 2014 World Drug Report. 2014. Section B, p. 6

³ According to the official statistics of the Federal AIDS Center, 57.3% of all new HIV cases in 2014 were attributed to unsafe injecting drugs. Online at <http://hivrussia.metodlab.ru/files/spravkaHIV2014.pdf>

⁴ Official statistics of the Federal Penitentiary Service of the Russian Federation. Online at <http://xn--h1akkl.xn--p1ai/structure/inspector/iao/statistika/Kratkaya%20har-ka%20UIS/>

⁵ Single Convention on Narcotic Drugs, 1961, as Amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

⁶ Federal Law No 3-FZ of January 8, 1998 *On Narcotic Drugs and Psychotropic Substances*, Article. 3; State Anti-Drug Strategy, adopted by the Decree of the President of the Russian Federation No 690 of June 9, 2010. Para. 3.

laws, including for the purpose of shifting a focus of law enforcement from drug users to drug traffickers. However several principal factors prevent positive changes from coming into practice. These factors, outlined below, are deeply rooted in the punitive and stigmatizing nature of the drug control system which has been shaped in Russia in line with the UN drug conventions.

1. State promotion of stigma and human rights violations against people who use drugs

The seminal international drug control document — the *Single Convention on Narcotic Drugs, 1961* — sets the principal tone of the international drug control system, stating in its Preamble that “addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind.”⁷ On the national level in Russia, this tone translates into the government’s official policy of social intolerance to drug use,⁸ which in practice turns into widespread intolerance to people who use drugs and drives the torture and ill-treatment, discrimination, and other multiple, widespread and systemic violations of human rights against people who use drugs.⁹

2. State promotion of non-scientific drug treatment methods

Resolution II (“Treatment of Drug Addicts”), which was adopted by the UN Conference for the Adoption of a *Single Convention on Narcotic Drugs*, declares “that one of the most effective methods of treatment for addiction is treatment in a hospital institution having a drug free atmosphere.” Although the truth of its content has been already strongly refuted by the World Health Organization,¹⁰ the resolution provides an international basis for the Russian government’s to “justify” its legal ban on opioid substitution therapy (OST) in Russia.¹¹ Russian authorities continue to rely on Resolution II in pursuing abstinence-based drug treatment, while denying evidence-based treatment such as OST,¹² despite it having been recognized and recommended repeatedly by WHO, UNAIDS and UNODC as an essential medicine and an essential element of addressing HIV among people who inject drugs¹³, and despite the recommendation by the UN Committee on Economic, Social and Cultural Rights that Russia make such treatment available¹⁴.

3. Restriction of scientific and human rights information under the guise of fighting “drug propaganda”

⁷ Single Convention on Narcotic Drugs, 1961, as Amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961

⁸ State Anti-Drug Strategy, adopted by the Decree of the President of the Russian Federation No 690 of June 9, 2010, para. 23, 48

⁹ Golichenko M., Sarang A. “Atmospheric pressure: Russian drug policy as a driver for violations of the UN Convention against Torture and the International Covenant on Economic, Social and Cultural Rights”. *Health and Hum Rights International Journal*. 15(1) (2013):E135-43. Online at: <http://www.hhrjournal.org/2013/10/24/atmospheric-pressure-russian-drug-policy-as-a-driver-for-violations-of-the-un-convention-against-torture-and-the-international-covenant-on-economic-social-and-cultural-rights/>

¹⁰ WHO, *Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence*. 2009. p. xi

¹¹ Federal Law No 3-FZ of January 8, 1998 On Narcotic Drugs and Psychotropic Substances, Art. 31(6)

¹² Memorandum of the Russian Federation for the European Court of Human Rights concerning applications No 62969/10; 58502/11; 55683/13. Online at <http://rylkov-fond.org/files/2015/04/TGmemorandum-Dec-2-2014.pdf>; Бабаян Э.А. "Легализация" наркотических средств в свете международного права (междисциплинарный подход) // Актуальные проблемы общей и судебной психиатрии. Сборник. - М.: Изд-во ГНИЦ СиСП им. В.П. Сербского, 1993. - С. 236-254

¹³ WHO/UNODC/UNAIDS. *Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users – 2012 revision*. January 2013.

¹⁴ Committee on Economic, Social and Cultural Rights, Concluding Observations on the Russian Federation, E/C.12/RUS/CO/5, May 2011, Para. 29.

The *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* mandates state parties to establish as a criminal offence an act of publicly inciting or inducing others, by any means, to commit drug offences or to use narcotic drugs or psychotropic substances illicitly.¹⁵ Based on this provision, the Russian Federation established an administrative offence of “drug propaganda” and a criminal offence of “incitement to use drugs.” Drug propaganda is defined so broadly that literally any statement or publication which contains words such as heroin or methadone can be categorized as an offence punishable with significant fines.¹⁶ Inciting others to use drugs is a criminal offence punishable with imprisonment.¹⁷ Russian law enforcement agencies use these legal provisions to shut or interfere with harm reduction services for HIV prevention, and to restrict information about drug policy, scientific information about narcotic drugs, and information about recommendations given to Russia by UN agencies and human rights bodies.¹⁸

4. Overreliance on punitive restrictions, and indifference to human rights

The international drug control regime is based on punitive restrictions, which the state parties to the UN Drug Conventions are mandated to exercise on their territories. The lack of human rights language in the UN drug conventions alienates international drug control and human rights systems from each other.¹⁹ Russia’s drug policy documents reflect similar indifference to human rights; the main drug policy document – the federal government’s State Anti-Drug Strategy – has no single reference to human rights. As a result, in practice a human rights framework remains inapplicable to drug control on the national level, which means drug control agencies are virtually unrestricted. In Russia’s highly punitive and stigmatizing environment, law enforcement agencies have a virtual *carte blanche* to discriminate against people who use drugs.²⁰

Because of the above mentioned factors, even when Russian authorities try to undertake legal or policy initiatives which are purportedly aimed at improving the drug control system, including a recent initiative to provide tough punishment only for drug traffickers while diverting people who use drugs to medical services, these initiatives do not lead to any noticeable improvement in practice because the whole system is underpinned by principles of attaching stigma to drug users, relying on punitive restrictions, curtailing freedom of information, and operating in a human rights vacuum.

Below are examples of human rights violations which are widespread in Russia under the guise of drug control.

¹⁵United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. Article 3(c)iii)

¹⁶ Federal Law No 3-FZ of January 8, 1998 “On Narcotic Drugs and Psychotropic Substances”, Article 46; Russian Federation Code of Administrative Offences, Article 6.13.

¹⁷ Criminal Code of the Russian Federation, Article 230.

¹⁸ Please see below the detailed information about violations of freedom of information and freedom of association.

¹⁹ The Beckley Foundation Drug Policy Programme, *Recalibrating the Regime. The Need for a Human Rights-Based Approach to International Drug Policy*. Report 13, March 2008.

²⁰ A. Sarang et al., “Policing Drug Users in Russia: Risk, Fear, and Structural Violence,” *Substance Use & Misuse* 45 (2010):813-864.

Violations of human rights in the name of drug control in Russia

I. Violations of the absolute prohibition of torture and other cruel, inhuman, or degrading treatment or punishment (UN *Convention against Torture*,²¹ and Article 7 of the *International Covenant on Civil and Political Rights*).

Blanket legal ban on opioid substitution therapy for people with opioid dependence, including in those in detention

In their pursuit of a “drug-free world,” Russian authorities promote only one type of drug dependence treatment – abstinence-based treatment. People with severe opioid dependence very often do not benefit from this type of treatment. No other type of treatment is available for them, including in police custody and prisons.

In March 2015, the UN Human Rights Committee noted the legal ban on opioid substitution therapy and expressed concerns over misuse of withdrawal symptoms by police in order to elicit forced confessions from drug dependent people or coerce them into cooperating with the police; the Committee issued corresponding recommendations to the Russian Federation.²²

In December 2013, the UN Special Rapporteur on Torture, and the UN Special Rapporteur on the Right to Health, submitted an allegation letter to the Russian Federation. The letter was related to a well-documented case of a drug-dependent person who was beaten by police and refused drug dependence treatment and HIV medications while being in police custody, all with a purpose to extract a confession from him.²³ Without denying the case, the Russian government did not find any human rights violations against the complainant.²⁴

In a recent judgment of the European Court in the case of *Keller v. Russia*, the Russian authorities admitted that Mr. Keller, who was addicted to drugs, committed suicide whilst suffering opioid withdrawal during arrest because he “feared pre-trial detention because of the difficulty of obtaining drugs in a detention center.”²⁵ This case is yet another shocking example that people with drug dependence rather commit suicide than go to prison where no medical help is available for them.

According to the Special Rapporteur on Torture, the denial of methadone treatment in custodial settings is a violation of the right to be free from torture and ill-treatment in certain circumstances and “similar reasoning should apply to the non-custodial context, particularly in instances where Governments impose a complete ban on substitution treatment.”²⁶

²¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85 (1984).

²² Human Rights Committee, Concluding observations on the seventh periodic report of the Russian Federation, CCPR/C/SR.3157, March 31, 2015. Para 16,17.

²³ Letter from the UN Office of the High Commissioner for Human Rights. December 10, 2013. Reference AL Health (2002-7) G/SO214 (53-24) RUS 11/2013. Available online at https://spdb.ohchr.org/hrdb/24th/Public_-_AL_Russia_10.12.13_%2811.2013%29_Pro.pdf

²⁴ Information submitted by the Russian Federation in response to the enquiry of the Special Rapporteurs of the United Nations Human Rights Council. Reference: AL Health (2002-7) G/SO 214 (53-24) RUS11/2013. Available online at https://spdb.ohchr.org/hrdb/25th/Russie_19.02.14_%2811.2013%29_Trans_Pro.pdf

²⁵ *Keller v. Russia*, no 26824/04, ECHR 2013.

²⁶ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Applying the torture and ill-treatment protection framework in health-care settings, A/HRC/22/53, February 1, 2013, para. 73.

Currently there are three applications under consideration of the European Court of Human Rights, concerning violations of Art. 3 (prohibition of torture) of the European Convention, filed by three persons who were denied opioid substitution therapy by Russian authorities. A particular relevance to these cases is the statement of the UN Special Rapporteur on Torture that “[b]y denying effective drug treatment, State drug policies intentionally subject a large group of people to severe physical pain, suffering and humiliation, effectively punishing them for using drugs and trying to coerce them into abstinence, in complete disregard of the chronic nature of dependency and of the scientific evidence pointing to the ineffectiveness of punitive measures.”²⁷

Humiliation, beating, and violence against drug users by law-enforcement

The use of torture and other kinds of cruel or humiliating treatment and punishment by law enforcement in Russia has already been subject of reviews undertaken by the UN Committee against Torture.²⁸ When such practices concern people who use drugs, they reach an absurd and inexplicable level of inhumanity, which is documented and described in peer-reviewed journals.^{29,30} The state’s explicit policy of “zero tolerance” for drug use, and the legal vulnerability of drug dependent people, results in complete disregard by police for procedural norms, laws and minimal ethical treatment in accordance with basic standards of humanity, when they deals with people who use drugs. Repressive policy towards drug dependent people in Russia is primarily expressed not in laws on paper, but in ways the authorities treat drug dependent people in reality, often violating the laws and legitimating all methods to combat “this evil”.³¹

II. Discriminatory practices and violations of the right to liberty and security of person (Articles 2 and 9 of the International Covenant on Civil and Political Rights)

Law enforcement officers in Russia often use unreasonable causes as justification for the search and arrest of people who use drugs: young age, looking like a “junkie,” association with drug users, needle marks on one’s arm.³² Police have also been known to use medical data on people who have been diagnosed as drug dependent, in order to arrest them.³³ Police Orders stipulate that police should obtain medical information about people who used drugs and drug dependent people registered as such with drug dependence treatment clinics, and use this information for law

²⁷ Ibid, para 74.

²⁸ Committee against Torture, Conclusions and Recommendations from Review of reports presented by member states in accordance with Article 19 of the Convention against Torture — The Russian Federation, CAT/C/RUS/CO/4, February 6, 2007, para. 9a.

²⁹ A. Sarang et al., “Policing Drug Users in Russia: Risk, Fear, and Structural Violence”, *Substance Use & Misuse* 45 (2010):813-864.

³⁰ Golichenko M., Sarang A. “Atmospheric pressure: Russian drug policy as a driver for violations of the UN Convention against Torture and the International Covenant on Economic, Social and Cultural Rights”. *Health and Human Rights International Journal*. 15(1) (2013):E135-43. Online at: <http://www.hhrjournal.org/2013/10/24/atmospheric-pressure-russian-drug-policy-as-a-driver-for-violations-of-the-un-convention-against-torture-and-the-international-covenant-on-economic-social-and-cultural-rights/>

³¹ A. Sarang et al., “Policing Drug Users in Russia: Risk, Fear, and Structural Violence”.

³² Andrey Rylkov Foundation, Canadian HIV/AIDS Legal Network, Eurasian Harm Reduction Network, Atmospheric Pressure: Russian Drug Policy as a Driver for Violations of the UN Convention Against Torture, 2011. pp. 8–16. Online at: <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=1949>

³³ Levinson L., Torban M., *Drug Registry: As per the law or as per an instruction? Regulation of registration of people who use drugs in the Russian Federation*. Human Rights Institute, 2009. p. 20-21 (Левинсон Л., Торбан М. *Наркоучет: по закону или по инструкции? Регулирование регистрации потребителей наркотиков в Российской Федерации*. Институт прав человека. 2009. С 20-21).

enforcement purposes.³⁴ The review of criminal drug case files demonstrates that in more than 50% of the cases police arrested people for possession of drugs following the information from unspecified source that the suspect was using drugs.³⁵ There is a reason to believe that in many cases this information was received from the medical files. In more than 6% of the cases police stopped and search people who use drugs after approaching them because they “look intoxicated.” The official courts statistics demonstrate that annually police prosecute more than 90,000 people for “non-medical use of drugs” (Article 6.9 of the *Code of Administrative Violations*)³⁶. In more than half of those cases, people are punished with custodial sentences. Article 6.9 of the Code of Administrative Violations stipulates that anyone who consumes narcotic drugs without medical prescription can be prosecuted for this, regardless when the consumption took place, and whether or not a person is actually intoxicated and/or pose any risk to public order at the time of arrest.

In other words, people who use drugs are discriminatorily singled out by law enforcement simply because they are drug users. A typical arrest “procedure” may involve police officers encountering someone on the street whom they believe to be a drug user because of where the person is located or needle marks on the person’s arms, or because the person’s name appears in medical files related to drug dependency. After the subject is brought into custody, drugs are planted on their person to make the case.³⁷

III. Violation of the right to equality before courts and tribunals, the right to a fair trial, and the principle that the criminal law must not be extensively construed to an accused’s detriment (Articles 14 and 15 of the International Covenant on Civil and Political Rights)

The Russian judicial system is not independent of political influence.³⁸ The rate of acquittals in drug-related cases is lower than 1%.³⁹ The scale of drug-related offences in Russia is large,⁴⁰ with more than 75% of drug cases directly related to drug use, not supply. Two thirds of these cases are reviewed in the absence of a court trial, with the defendants pleading guilty to the alleged crimes.⁴¹

³⁴ “Instruction for Community Policing Officers”. Approved by the Ministry of the Interior Order No 1166 of December 31, 2012. Para. 63.2, 65.2, 67.2

³⁵ As part of the on-going legal research, in 2012-2013 the Andrey Rylkov Foundation and the Canadian HIV/AIDS Legal Network, together with their partners in Russia, reviewed 213 drug case files randomly selected from 6 district courts in Russia.

³⁶ The official statistics are available on the website of the Administration of Justice Department of the Supreme Court of Russia at www.cdep.ru.

³⁷ Zubauda Troitskaya. “They have such a practice”. *Chastny Correspondent Newspaper*. April 3, 2012. Online at http://www.chaskor.ru/article/u_nih_takaya_praktika_27520; Application of Ivan Anoshkin to the European Court of Human Rights. June 2013. Online at <http://rylkov-fond.org/blog/prava-cheloveka/kak-zaschitit-svoi-prava/echr/>

³⁸ Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, based on his Mission to the Russian Federation in 2008, A/HRC/11/41/Add.2, 23 March 2009, para. 58.

³⁹ *Ibid.*, para 37.

⁴⁰ According to the Director of the Federal Drug Control Service “one in every eight inmates in Russia has been punished for drug-related crimes; the number of drug users in the penitentiary system grew twice in the period of 2005 to 2011; one in every three court sentences in the largest cities is related to drug crimes; within the total number of terminated offences, drug-related crimes are the third largest group after theft and economic offences.” See Session of the Presidium of the State Council dedicated to the fight against drugs among young people, April 18, 2011. (Заседание президиума Госсовета, посвящённое борьбе с распространением наркотиков среди молодёжи. 18 апреля 2011 года.) <http://президент.рф/news/10986>

⁴¹ Analysis of statistics from the Section on court statistics on the website of the Department of Courts. (Раздел судебная статистика на сайте Судебного Департамента.) www.cdep.ru

When sentencing drug users, courts often ignore the legality of a case or procedural errors made at the time of detention or investigation, which are often suspect and unreliable.⁴² When making their decisions, courts disregard police provocation (police entrapment), which occurs with great frequency, as is evident from numerous judgments of the European Court of Human Rights with regard to Russia.⁴³

Very often the purity of the narcotic mixtures (street drugs) is not established. Drugs possession without intent to supply, in amounts exceeding 2.5 grams for heroin for instance, is punishable by incarceration for up to 10 years (Article 228(2) of the Criminal Code of the Russian Federation). The purity of street drugs, especially heroin, is very weak, often not exceeding 1%. Because of their high tolerance to opioids, people living with drug dependence have to purchase larger amounts of street drugs, thus exposing them to tougher penalties – up to 10 years or even more. When purity is not taken into account, the criminal justice system subjects people with drug dependence to a stricter standard and in fact punishes them for their dependence, clearly violating fundamental notions of fairness and potentially amounting to an arbitrary, disproportionate and discriminatory deprivation of liberty. In addition, when purity is not established, accused people are practically deprived of an opportunity to rely on criminal laws which provide for acquittal for minor offences – e.g., in cases where the purity is less than 1%. Thus, when the purity of the substance is not established, the principle that the criminal law must not be extensively construed to an accused's detriment is violated. European Court of Human Rights considers this principle as a harmonious part of a fundamental rule *nullum crimen, nulla poena sine lege*, article 7 of the European Convention, which is mirrored in Art 15(2) of the International Covenant on Civil and Political Rights⁴⁴.

Forensic reports play key role in establishing what type of substance was allegedly in possession of an accused. Based on the fundamental role of adversarial procedure⁴⁵, the defence should have the right to present independent forensic and other expert reports on drug cases. However, Russian courts very often deny that the defence has such a right and refuse to accept results of independent forensic and other scientific examinations⁴⁶. Moreover in some cases drug enforcement authorities prosecute scientists, who make independent scientific statements on criminal cases at the request of defence, for aid and abetting drug crimes.⁴⁷

IV. Violation of the right to freedom of expression and the right to access to information (Article 19(2) of the International Covenant on Civil and Political Rights)

⁴² Interregional public charity organization “Committee for Civil Rights,” *Main systematic violations of human rights by FSKN*. («Основные нарушения прав человека, систематически допускаемые ФСКН» (2009). Межрегиональная общественная благотворительная правозащитная организация «Комитет за гражданские права». Доклад.) <http://www.zagr.org/371.html>

⁴³ *Vanyan v. Russia*, no. 53203/99, ECHR 2005; *Khudobin v. the Russia*, no. 59696/00, ECHR 2006; *Bannikova v Russian Federation*, no. 18757/06, ECHR 2011; *Veselov and others v Russia*, nos. 23200/10, 24009/07 and 556/10, ECHR 2012.

⁴⁴ The European Court of Human Rights interprets a principle *nullum crimen, nulla poena sine lege* so that it also establishes that the criminal law must not be extensively construed to an accused's detriment. See for example *Korbely v. Hungary*, no 9174/02, § 69, 70, ECHR 2008.

⁴⁵ *Rowe and Davis v. United Kingdom*, no 28901/95, § 60, ECHR 2000-II.

⁴⁶ Application to the European Court of Human Rights on the case of *Konyshev v Russia*, December 14, 2012. www.rylkov-fond.org

⁴⁷ “Outcry over jailed Russian chemist: Narcotics expert Olga Zelenina falsely accused of aiding drug trafficking, say supporters.” *Nature*, 21 September 2012, Online at: <http://www.nature.com/news/outcry-over-jailed-russian-chemist-1.11462>.

Anti-drug propaganda laws provide for so broad a definition of drug propaganda that anything containing the words “heroin” or “methadone” can fall within its scope.⁴⁸ The Federal Drug Control Service has long been known to use this law to suppress human rights and health information.⁴⁹ There are cases when people were prosecuted for drug propaganda for pictures of a hemp leaf on their garments, or cases when bookshops were ordered to stop selling world-renowned books.⁵⁰

Scientific and other public discussions regarding opioid substitution therapy are suppressed in Russia under threat of prosecution for drug propaganda.⁵¹ In 2012, the Federal Drug Control Service shut down as “drug propaganda” the website of the non-governmental organization Andrey Rylkov Foundation for Health and Social Justice for disseminating the recommendation concerning OST that had been delivered to the Russian government by the UN Committee on Economic, Social and Cultural Rights.⁵²

Having such a monopoly on information, authorities actively spread falsehoods regarding opioid substitution therapy⁵³ and promote hatred against human rights defenders who defend the rights of people who use drugs.⁵⁴ This double-manoeuvre carries a substantial chilling effect for any groups or individuals who seek to provide objective information regarding evidence-based drug-dependence treatment methods.⁵⁵

V. Violations of the right to health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)

In May 2011, the UN Committee on Economic, Social and Cultural Rights expressed concerns about the spread of drug addiction and injecting drug use, which is the main driver of the growing epidemic of HIV/AIDS, hepatitis C and tuberculosis in the Russian Federation. The Committee was particularly concerned about the continued ban on the medical use of methadone and buprenorphine for treatment of drug dependence and the fact that the Government does not support opioid substitution therapy and needle and syringe programmes. The Committee urged the Russian Federation to apply a human rights-based approach to drug users so that they do not forfeit their basic right to health; and strongly recommended the Russian Federation to provide clear legal grounds and other support for the internationally recognized measures for HIV prevention among injecting drug users, in particular the

⁴⁸ Federal Law No 3-FZ of January 8, 1998 “On narcotic drugs and psychotropic substances”. Article 46.

⁴⁹ Communication to the United Nations Educational, Scientific and Cultural Organization (UNESCO) regarding violation by the Government of the Russian Federation of the right to enjoy the benefits of scientific progress and its applications. March 2012. http://www.aidslaw.ca/newsite/wp-content/uploads/2013/04/ARF_UNESCO2April2012.pdf

⁵⁰ Ibid.

⁵¹ T. Parfitt, “Vladimir Mendeleevich: fighting for drug substitution treatment,” *The Lancet* 2006, Volume 368, Issue 9532, p. 279.

⁵² Communication to the United Nations Educational, Scientific and Cultural Organization (UNESCO) regarding violation by the Government of the Russian Federation of the right to enjoy the benefits of scientific progress and its applications. March 2012. http://www.aidslaw.ca/newsite/wp-content/uploads/2013/04/ARF_UNESCO2April2012.pdf

⁵³ Mikhail Golichenko and Tatyana Margolin, “Right to Know: True or False?,” *INTERRIGHTS Bulletin*, Vol. 17, No. 3 (2013), p. 138 – 142.

⁵⁴ According to the senior member of the Federal Public Chamber of the Russian Federation A.Kucherena, “those who advocate for legalization of methadone treatment are murderers”. Online at <http://www.kucherena.ru/events/32/-/249/>.

⁵⁵ Mikhail Golichenko and Tatyana Margolin, “Right to Know: True or False?,” *INTERRIGHTS Bulletin*, Vol. 17, No. 3 (2013), p. 141.

opioid substitution therapy with use of methadone and buprenorphine, as well as needle and syringe programmes and overdose prevention programmes.⁵⁶

Not only Russia did not fulfill these recommendations, as noted above, it persecuted a civil society organization which tried to make these recommendations public on its website, shutting down their site for supposed “drug propaganda.”⁵⁷

Russian authorities similarly oppose as drug propaganda evidence-based harm reduction programs, such as needle and syringe programs, and overdose prevention programs, which are aimed at maintaining the health of drug users, and preventing the transmission of infectious diseases and overdose-related deaths. Such programs are classified as drug propaganda at the policy level.⁵⁸

In its December 2014 response to applications pending before the European Court of Human Rights, the Russian Federation strongly rejected opioid substitution therapy, including for the reason that this type of drug dependence treatment did not correspond to the UN drug conventions.⁵⁹

VI. Violations of Articles 2, 5 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Society's stereotypical understanding of women's role as mothers drastically aggravates state-promoted intolerance to drug use.⁶⁰ Cases have been reported where the State financed the production of media disseminating inaccurate and extremely stigmatizing concepts that women who use drugs cannot bear healthy children.⁶¹ Such practices violate Article 5 of CEDAW, which mandates state parties to eliminate practices which are based on stereotyped roles for women in society.

Russian authorities are indifferent to special needs of women who live with drug dependence. There is not a single public or municipal rehabilitation center in Russia offering programs which meet the needs of women who use drugs. For example, there is not a single such center allowing women to attend a drug rehabilitation program together with their children. Moreover, drug addiction is considered *per se* a legitimate ground for termination of parental rights.⁶² As a consequence, women who become addicted to drugs usually face just two options—either try and overcome the addiction on their own (which is incredibly difficult) or inevitably get caught in the criminal justice system.

⁵⁶ Committee on Economic, Social and Cultural Rights. Concluding Observations on the Russian Federation, E/C.12/RUS/CO/5, May 2011, Para. 29.

⁵⁷ Human Rights Watch, *Russia: Government Shuts HIV-Prevention Group's Website*. February 8, 2012. Online at <http://www.hrw.org/news/2012/02/08/russia-government-shuts-hiv-prevention-group-s-website>

⁵⁸ Strategy for the Implementation of the National Anti-Drug Policy of the Russian Federation in the Period Until 2020, adopted by Presidential Order N 690 of 9 June 2010, Para. 48. («Стратегия государственной антинаркотической политики Российской Федерации до 2020 года» (Параграф 48). Утверждена Указом Президента № 690 от 9 июня 2010 года.)

⁵⁹ Memorandum of the Russian Federation concerning applications No 62969/10; 58502/11; 55683/13. Online at <http://rylkov-fond.org/files/2015/04/TGmemorandum-Dec-2-2014.pdf>

⁶⁰ Presidential Decree No. 690 of June 9, 2010, “On the approval of the Strategy for the State's anti-drug policy in the Russian Federation for a period until 2020”.

⁶¹ The Administration of Krasnoyarsk Krai paid 420,000 rubles for 12 shocking video clips. <http://www.adme.ru/tvorchestvo-reklama/shokiruyuschaya-soc-reklama-okazalas-goszakazom-218405/>

⁶² Article 69 of the Family Code of the Russian Federation.

Women who use drugs are criminalized to a much greater extent than women from other segments of the population. Compared to drug-using men, women who use drugs face more serious charges, leading to much tougher sentences.⁶³

State authorities do not take into account gender specifics of drug users' behavior, including the fact that women who use drugs often depend on men and tend to use drugs together with their partners. For this reason the proportions of women sentenced for crimes in complicity and for running a drug den are double the respective proportions of men charged with drug offenses.⁶⁴

Russian authorities fail to provide for availability of effective drug dependence treatment services for pregnant women who use drugs, in violation of Article 12(2) of the Convention on the Elimination of All Forms of Discrimination against Women. At least one out of ten (11%) pregnant women uses narcotic drugs.⁶⁵ No medical protocols are available in Russia to guide the prenatal care of women with drug dependence. Most medications prescribed in Russia for the treatment of drug addiction are contraindicated during pregnancy.⁶⁶ Opioid substitution therapy – a gold standard of care for pregnant women with opioid dependence – is under legal ban. Russian gynecologists are not trained in specific aspects of caring for women with drug dependence. Drug addiction is considered an indication for abortion.⁶⁷ The state-promoted intolerance towards patients with addictions causes medical professionals to pressure women who use drugs and who wish to carry the pregnancy to term into having an abortion by misleadingly convincing them that their babies would be born with abnormalities.

In July 2013, the UN Special Rapporteur on the right to health and the UN Special Rapporteur on violence against women brought to the attention of Russian authorities facts, concerning the lack of access of women who use drugs to evidence-based drug dependence treatment.⁶⁸ The Russian Federation

⁶³ Women convicted of drug-related offenses account for about 40% of all incarcerated women in Russia, whereas the proportion of men imprisoned for drug-related offenses stands at some 20% of the male prison population. In 2013, more than 14% of all Russians serving prison sentences for drug offenses were women, while the proportion of women in the overall prison population in Russia is less than 7%. (This analysis is based on sentencing statistics available from the Judicial Department of the Russian Supreme Court at <http://www.cdep.ru/index.php?id=79> and the Federal Penitentiary Service statistics <http://fsin.su/statistics/>).

⁶⁴ When facing criminal charges, women who use drugs are more likely than men to have their offenses categorized as serious crimes: in 2013, more than 43% of women convicted of drug-related offenses were sentenced for drug trafficking, 22% were convicted for particularly serious crimes, and 15% were convicted for crimes committed in complicity. To compare, in the same year, only some 25% of men charged with drug-related offenses were sentenced for drug trafficking, 13% for drug crimes considered particularly serious, and 7% for drug crimes committed in complicity. (This analysis is based on sentencing statistics available from the Judicial Department of the Russian Supreme Court at <http://www.cdep.ru/index.php?id=79> and the Federal Penitentiary Service statistics <http://fsin.su/statistics/>).

⁶⁵ Aylamzyan E. et al., *Obstetrics. National Guidelines*. (GEOTAR-MEDIA, 2009). p. 488. Online at http://med-books.by/books/Aylamzyan_Natsionalnoe_rukovodstvo_Akusherstvo.pdf

⁶⁶ Order of the RF Ministry of Health of 28 April 1998, No 140 endorsing the Standards (Model Protocols) for diagnosis and treatment of patients with addictions.

⁶⁷ Order of the RF Ministry of Health and Social Development of 3 December 2007, No. 736 endorsing the List of medical indications for termination of pregnancy.

⁶⁸ Communication of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on violence against women, its causes and consequences (reference: AL Health (2002-7) G/SO 214 (89-15) RUS 5/2013) Online at [https://spdb.ohchr.org/hrdb/24th/Public_-_AL_Russia_15.07.13_\(5.2013\)_Pro.pdf](https://spdb.ohchr.org/hrdb/24th/Public_-_AL_Russia_15.07.13_(5.2013)_Pro.pdf)

did not deny the facts of the case, but nonetheless denied any human rights had been violated, stating that doctors acted in accordance with Russian laws.⁶⁹

The above-mentioned violations run contrary to Articles 2 and 12 of CEDAW, which mandate state parties to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women, including discrimination concerning the enjoyment of reproductive rights and the right to health by all women.

Conclusion

Russian drug policy is an important case study to observe the reflection of punitive and stigmatizing principles of international drug control. Separation of the international drug control system from the UN human rights framework has manifested at the national level in Russia in an ugly form of unrestricted drug law enforcement resulting in widespread, gross and systematic violations of human rights and fundamental freedoms.

Recommendations on respect for and the protection and promotion of human rights in the context of the world drug problem

1. International drug treaties should clearly stipulate that drug control is subordinate to international human rights standards and the rule of law.
2. All UN human rights bodies should have detailed guidelines how to conduct routine monitoring of the states' compliance with international human rights standards in the sphere of drug control.
3. International drug monitoring and policy bodies such as the International Narcotics Control Board (INCB) and the UN Commission on Narcotic Drugs (CND), assisted by UNODC, should monitor and guide international drug control according to international science and international human rights standards, and based on human rights impact assessments. Punitive prohibitions shall only be measures of the last resort and only when evidence clearly demonstrates that non-criminal means of regulating drugs do not work.
4. Public health, not law enforcement, should occupy the central role in implementation of any international drug control framework at the national level. The UN's specialized agencies on health (e.g. World Health Organization, UNAIDS) and on human rights (e.g. OHCHR, UN Development Programme) should play more active role in promoting an approach to drugs and drug policy within the international drug control system that is based on health and comports with human rights standards.

⁶⁹ Information of the Russian Federation in relation to the communication of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on violence against women, its causes and consequences (reference: AL Health (2002-7) G/SO 214 (89-15) RUS 5/2013). Online at https://spdb.ohchr.org/hrdb/24th/RUS_24.10.13_%285.2013%29_TPro.pdf

Annex I



Andrey Rylkov Foundation for Health and Social Justice (www.rylkov-fond.org) is a grass-roots organization from Moscow, Russia with the mission to promote and develop humane drug policy based on tolerance, protection of health, dignity and human rights. The Foundation engages in 4 key strategies to advance its mission: advocacy, watchdog, service provision and capacity building of affected communities and individuals.

Address: 17-82 Marshala Biryzova Street, Moscow, Russia, 123060



The Canadian HIV/AIDS Legal Network (www.aidslaw.ca) promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research and analysis, advocacy and litigation, public education and community mobilization. The Legal Network is Canada's leading advocacy organization working on the legal and human rights issues raised by HIV/AIDS. (An NGO with Special Consultative Status with the Economic and Social Council of the United Nations)

*Address: 1240 Bay St., Suite 600, Toronto, Ontario, Canada, M5R 2A7
Tel: 1(416)595 1666; Fax: 1 (416) 595 0094*