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**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

REFERENCE: UA Health (2002-7)
UKR 5/2011

22 August 2011

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health pursuant to General Assembly Resolution 60/351 and to Human Rights Council Resolution 6/29.

I would like to bring your Excellency's Government's attention to the information received concerning recent changes to the **threshold amounts for criminal possession of illegal drugs in Ukraine**.

According to information received, Ministry of Health Resolution No. 634 of 29 July 2010 "On amendments to Ukrainian Ministry of Health Resolution No. 188 dated 01.08.2000" (hereinafter "Resolution No. 634") has allegedly reduced the legal thresholds for the criminal possession of "small", "large" and "extra large" quantities of illegal drugs. It is reported that the threshold for criminal responsibility for possession of acetylated opium, allegedly the most widely-used illegal injected drug in Ukraine, was reduced by a factor of 20, such that anyone found possessing between 0.005 and 1 gram of the substance is liable to criminal prosecution and a potential penalty of up to three years of incarceration or other restrictions on their freedom. It is also reported that a quantity of 0.005 grams of acetylated opium may be found in the residue of several used syringes.

Allegedly, criminalizing the possession of small quantities of illegal drugs will endanger needle/syringe exchange programmes by implicating those who collect or return used syringes containing residue amounts of illegal drugs. This could impact, in turn, upon the effectiveness of HIV prevention efforts in Ukraine. The implementation of the National HIV/AIDS Response Programme in Ukraine could also be inhibited by these changes. It is further reported that increased incarceration for petty drug use could lead to a higher prevalence of communicable diseases, such as HIV, hepatitis and tuberculosis, amongst prisoners.

Reportedly, the changes that Resolution No. 634 brings about would make it more difficult for health and social services to reach drug users, undermining HIV prevention, care and treatment, drug dependency treatment, and other health services. Furthermore, there are reports that government spending on health will be affected by making drug use a law and order issue and diverting funds to the criminal justice system instead, where opioid substitution therapy, and needle and syringe programmes, are not made available to prisoners to prevent the transmission of blood-borne viruses.

While I do not wish to prejudice the accuracy of the information received, I would highly appreciate information from your Excellency's Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of drug users in Ukraine. This right is reflected, inter alia, in article 12 of the International Covenant of Economic, Social and Cultural Rights (ICESCR), which your Excellency's Government ratified on 12 November 1973. The right to health seeks to ensure access to quality health facilities, goods and services without discrimination, including on the grounds of physical or mental disability, or health status. Article 2, paragraph 2, and article 3 of the ICESCR also prohibit discrimination in achieving realization of all rights within the Covenant. As such, an individual's use of drugs cannot constitute grounds for curtailing her/his rights.

In its General Comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights stated that "the creation of conditions which would assure to all medical service and medical attention in the event of sickness, both physical and mental, includes the provision of equal and timely access to basic preventive, curative, rehabilitative health services". This is particularly pertinent in respect of persons who are dependent on drugs, who should be given access to rehabilitative health services without discrimination on the basis of their drug use, as noted above. The Committee also notes that "States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting access for all persons, including prisoners (...), to preventive, curative and palliative health services". This would encompass denial of access to opioid substitution therapy (OST) and needle and syringe programs (NSPs), evidence-based harm reduction measures that have both been demonstrated to contain the spread of blood-borne viruses, including HIV.

Furthermore, article 12 (c) of the ICESCR obliges States parties to take steps to prevent, treat and control epidemics. As HIV has reached epidemic proportions within communities of drug users in the region, particularly in prisons, States are explicitly required to take direct action in this regard. Article 15, paragraph 1 (b) of the Covenant also states that everyone has the right to enjoy the benefits of scientific progress. As a significant body of evidence exists regarding the effectiveness of harm-reduction programmes and policies, such as needle exchange programmes and substitution treatment programmes, States Parties ought to implement and refrain from interfering with such programmes.

The 2010 Vienna Declaration, adopted at the XVIII International AIDS Conference, confirms that criminalization of illicit drug users is fuelling the HIV epidemic in many jurisdictions. As higher rates of legal repression have been associated with higher HIV prevalence among people who use injecting drugs, States should respect the right to health by refraining from adopting legislation that will exacerbate the existing epidemic amongst injecting

drug users, and fulfill the right to health by promoting harm reduction programs amongst affected persons rather than imposing punitive sanctions.

I urge your Excellency's Government to take all necessary measures to ensure that the right to health of all injecting drug users in Ukraine are protected.

It is my responsibility under the mandate provided by the Human Rights Council and reinforced by the appropriate resolution of the General Assembly, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts in the above summary correct?
2. What is the current status of the proposed legislation, and has there been any consideration of the health-related implications of its enactment?
3. What steps are being taken to ensure the right to the highest attainable standard of health for people who use drugs, including access to HIV prevention, treatment, and care and support services is ensured without discrimination in Ukraine, particularly in respect of drug-related laws?
4. What has been done to ensure equal access to harm reduction measures such as OST and NSPs in the Ukrainian prison system?

I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports that will be submitted to the Human Rights Council for its consideration.

Please accept, Excellency, the assurance of my highest consideration.

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard
of physical and mental health