

HUMAN RIGHTS Documentation and Advocacy

A GUIDE FOR ORGANIZATIONS
OF PEOPLE WHO USE DRUGS



OPEN SOCIETY INSTITUTE
Public Health Program

HUMAN RIGHTS Documentation and Advocacy

A GUIDE FOR ORGANIZATIONS
OF PEOPLE WHO USE DRUGS

by Karyn Kaplan

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1. Introduction

*If a tree falls in the forest, and nobody is around to hear it,
does it make a sound?*

People who use illicit drugs face daily harassment, discrimination, and abuse—often living these experiences in isolation. Most incidents go unreported, due to fears of reprisal and other harmful physical, mental, social, or legal consequences. Investigations into violations of rights against people who use drugs or efforts to bring perpetrators to justice are rare. Often law enforcement and the society-at-large do not recognize the basic rights of people who use drugs, and blame the victim for any abuse that stems from drug use. Moreover, some government laws and policies directly violate the rights of people who use drugs or create the conditions for violations to occur. Traditional approaches to drug control in many countries include punitive mandatory minimum drug sentences, physical and psychological violence by police, forced drug “rehabilitation” in quasi-prison settings whose programs lack therapeutic rationale or benefit, compulsory HIV testing, and the denial of health care services, employment, and social benefits. In extreme cases, repressive laws and “war on drugs” campaigns have led to extrajudicial killings.

This guidebook aims to help activists recognize human rights abuses that are systematically conducted and condoned by state and non-state actors and silently suffered by people who use drugs. This book focuses on providing activists with the tools necessary to develop a human rights advocacy plan, particularly by documenting abuses against people who use drugs. Documentation of abuse—whether it be testimonials from victims, official police records, or video footage of the abuse—is pivotal to establishing evidence that will be necessary to ensure that perpetrators are held accountable. Ultimately, we hope this guidebook will raise awareness of the link between drug use and human rights.

The Universal Declaration of Human Rights (UDHR), the seminal document of the United Nations, states that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” The declaration was signed by all UN member nations on December 10, 1948, International Human Rights Day. As this guidebook will show, since the signing of the declaration many mechanisms have been put in place for resolving human rights violations and punishing those responsible for abuses.

Human rights work comes in many shapes and sizes, ranging from short term advocacy projects to documentation campaigns that span several years. But there is one constant theme that appears in every successful campaign: commitment to taking action. *Action=Life, Silence=Death*. These slogans from ACT UP, the AIDS Coalition to Unleash Power, one of the most successful activist movements in the face of the global AIDS pandemic, are more than just words. By staying silent, we allow the current state of affairs to go unchallenged. But by mobilizing our communities, we can confront the status quo and affirm that people who use drugs are entitled to the same basic rights as other members of society. In order to better equip activists, this guidebook outlines common human rights mechanisms and explains how to use them, identifies potential avenues for advocacy,

and provides support for activists on how to determine what type of human rights work is the right fit for their communities.

There are many reasons to use the international human rights system for drug user rights advocacy, including the following:

- Documentation can shed light on communities that are often pushed to the shadows, and help achieve positive change.
- Sharing a story of abuse with a global audience can offer meaning, consolation, and hope to the person who experienced the injustice, even if redress is not achieved.
- Recognition by the UN can offer credibility to an issue and move a government to take that issue more seriously. Human rights victories have already been won by drug user advocates at the national and international levels.
- Shaming governments can be effective. User activists have succeeded in embarrassing government leaders by documenting their role in rights violations against people who use drugs.
- Ensuring that human rights systems learn about violations against people who use drugs can defy preconceived notions or politically motivated denial about such abuse, and can pave the way for others to present similar reports and find a more receptive audience in the future.
- Advocates for people who use drugs can form important alliances with other activists and groups, adding power to the broader human rights movement. The International Network of People Who Use Drugs (INPUD)¹ is working regionally and internationally to build coalitions of support for the rights of people who use drugs.

1 Visit www.inpud.org.

Ultimately, each person and activist group must assess the feasibility, safety, and ethics of conducting human rights documentation and advocacy among people who use drugs in a particular community. Yet it is crucial that every group of organized drug users—and those that work with and advocate for people who use drugs—engage in the discussion of how best to “bring rights to life” for such a historically marginalized, vilified, and criminalized group.

Who should use this guidebook?

There is a prevailing myth that in order to do “real” human rights work you have to be a trained lawyer or a human rights “professional.” While partnering with experienced lawyers or human rights organizations can be immensely beneficial, it is not a prerequisite for conducting education, documentation, and advocacy campaigns. Everyone *can* do it, and everyone *should* do it. As Eleanor Roosevelt, a famous champion of international human rights education, said:

“Where, after all, do universal rights begin? In small places, close to home...Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

This guidebook was designed for any advocate or organization working with people who use drugs that is aware of or has experienced human rights violations. Abuses against drug users are countless, but can include police harassment or physical abuse, discrimination by medical or social service providers, violations of medical privacy, wrongful and indefinite detention, and so on.

This guidebook was designed to speak to people who use drugs and other activists who are ready to take action to protect and fulfill the human rights of people who use drugs, and demand that governments take responsibility for their international legal obligations. It was

designed for you if you want to speak truth to power, not shrink in the face of power; if you want to build a community of human rights advocates working toward a shared goal; if you want to dignify your experiences and turn them into weapons to end the same abuse of others.

What will this guidebook do for you?

This book provides a basic overview of the principles and systems of international human rights law and describes how advocates for drug user rights can monitor and document abuses and advocate to improve the situation. It offers relevant resources and information for documenting, advocating, suing, and complaining about government failures to respect, protect, and fulfill core human rights responsibilities.

This guidebook does not pretend to provide a single approach or answer for achieving human rights goals, but offers practical ideas for promoting the dignity and rights of drug users and holding governments accountable to their promises and commitments. In fact, there is no limit to the ways that rights violations can be brought to attention. While traditional avenues to demand accountability from the UN system of governments exist (some of which are outlined in this document), in fact the sky's the limit and you should test both old ways and new.

This book was developed in the context of a global groundswell of drug user and harm reduction advocates demanding more tools for responding to the criminalization, marginalization, social exclusion, incarceration, discrimination, health crises and untimely death of people who use drugs. It grew out of a small but growing trend of peer-driven grassroots rights documentation and advocacy projects by people who use drugs and became a project of collaboration across borders, bringing numerous people with complementary backgrounds and experiences together to share information,

experiences, and resources. We hope that you will use this guidebook to add to this body of knowledge and activism to achieve equal rights for people who use drugs in your community or country.

It is not required to have any previous knowledge of human rights in order to use this book. We try to use accessible language and provide practical tools and resources to jump-start planning your documentation and advocacy right here, right now.

You can start today.

2. Human Rights and Drug Use

“What are we waiting for? Twenty years of incarceration, AIDS, and government neglect. All my friends are either in prison or in heaven. If we don’t do something, who will?”

– Paisan Suwannawong, on why he helped start the Thai Drug User’s Network (December 10, 2002)

Historically, the global response to drug use has mainly relied on prohibitionist approaches, which emphasize repressive measures to reduce drug supply and demand. Typical measures include crop eradication, drug use prevention, and drug user rehabilitation. Some governments’ aggressive attempts to control drug use have led to forced rehabilitation in facilities more akin to labor camps than treatment centers. Although the harm reduction approach² has become increasingly mainstream and accepted in recent years,

2 Harm reduction emphasizes meeting drug users “where they are at” to provide a full range of client-centered, nonjudgmental services that do not require abstinence, in order to reduce the various harms associated with drug use, including HIV and hepatitis, overdose, criminalization, over-incarceration, denial of health and social services, homelessness, and unemployment.

many governments still overtly oppose harm reduction or accept it only begrudgingly and inadequately.

In the context of the HIV/AIDS pandemic, which has disproportionately affected people who use drugs (injecting drug users in particular), this failure to support harm reduction has had devastating results. Injectors in many countries have for years suffered HIV prevalence ranging between 50–90 percent. Injecting drug user-related HIV infections account for nearly one-third of all new HIV infections outside of sub-Saharan Africa and approximately 10 percent of all new infections globally, and in many countries IDU-related HIV transmission accounts for the majority of HIV infections. Lifesaving services—such as needle exchange and medication-assisted therapy to reduce opiate cravings—remain out of reach for most people in the developing world, including in countries with governments that seemingly support harm reduction. This reflects a profound lack of respect for the human rights of people who use drugs, yet not enough is being done to address this crisis.

Universal access to HIV/AIDS prevention, care, and treatment for all has been endorsed by UN member states as an urgent goal, but the UN and governments have failed to sufficiently address structural barriers, which impede access for people who use drugs, promote stigma and discrimination, and impair users' ability to enjoy access to the highest attainable standard of physical and mental health and other basic rights. Continued overemphasis by governments on repressive laws and policies to control drugs and drug use further fuels social exclusion and risky drug-taking practices, and creates barriers to access of information, tools for prevention, and health and social services including antiretroviral therapy (ART). These policies create an environment ripe for widespread human rights violations, including police abuse, extortion, arbitrary arrest and detention, lack of due process, and even extrajudicial executions made in the name of drug crackdowns.

Linking human rights and drug use can help hold perpetrators of abuse accountable for their actions. Campaigns to educate, monitor, document, report, and advocate on human rights violations against people who use drugs can lead to improved standards for how people are treated by individuals and institutions of the government, and ultimately toward a vision of a more just and free world where real universal access can be realized.

How is drug use a human rights issue?

In most countries, drug possession and non-medical drug use are criminalized, as are cultivation, production, transport, and distribution of mood-altering substances. At the same time, an overwhelming failure of governments to successfully address the risks associated with drug use has led to a human rights crisis among people who use drugs that both fuels and is fueled by drug user vulnerability to abuse, discrimination, incarceration, disease, and death. The global HIV/AIDS pandemic has amplified this reality in the most tragic way, as hundreds of thousands if not millions of individuals who use drugs have died of AIDS invisibly, having lacked access to the rights to which they were entitled, often in the undignified confines of a prison, while their governments flagrantly denied the existence of a national drug or HIV problem.

By documenting the human rights violations experienced by people who use drugs, activists defy government denial and bring hidden truths to light, challenging discriminatory values and beliefs that abuses against drug users are “normal.” Over the years, groups of people who use drugs and harm reduction and human rights advocates have begun to point out the devastating health, moral, and human rights implications of repressive government drug policy, and have provided evidence showing how government “wars on drugs” have often turned into wars on people who use drugs.

Case Example

Thailand: Human Rights Documentation among People who Use Drugs

In Thailand, violence and discrimination against injecting drug users (IDUs) in the criminal justice and health systems have contributed to HIV prevalence of 50 percent since 1988. The Thai government flouts international standards for HIV prevention and treatment among IDUs, resorting to punitive drug treatment programs and rampant police abuse. IDUs are denied the benefits of Thailand's HIV response and represent nearly one-third of the country's new HIV infections each year. In 2002, Paisan Suwannawong, an HIV-positive former injecting drug user, partnered with Karyn Kaplan, HIV/AIDS officer at the International Gay and Lesbian Human Rights Commission (IGLHRC), to document human rights abuses against IDUs in Thailand. Specifically, they:

- Interviewed 33 IDUs, drug treatment providers, and officials from the Narcotics Control Board, the Attorney General's office, and Ministry of Public Health;
- On International Human Rights Day, December 10, 2002, reported findings back to IDU and community-based AIDS organizations and conducted a human rights and harm reduction training workshop;
- For the first time ever, reported violations of IDUs' rights to the National Human Rights Commission and the Thai Parliament.

The project helped form southeast Asia's first user advocacy group, the Thai Drug Users' Network (TDN). TDN and three partners later received US\$1.3 million from the Global Fund to Fight AIDS, Tuberculosis and Malaria to implement peer-driven HIV-prevention and harm reduction programs across Thailand. The project and Global Fund grant dramatically raised the profile

of IDUs in Thailand and the region, leading to their unprecedented involvement in national and multilateral policymaking, funding, and program development. Additional user-driven human rights documentation projects, most notably during a violent “war on drugs” in 2003, were undertaken with Human Rights Watch and local experts, garnering further national and international awareness and solidarity for drug user issues in Thailand and the region.

In 2005, human rights advocates in China reported that people who use drugs are routinely arrested, detained, and consigned to forced detoxification centers without trial, where they are “re-educated” and forced into rote repetition of slogans and military boot camp-style physical activity. Police and prison officials conduct non-consensual mandatory testing for HIV on injecting drug users despite extreme HIV-related stigma and discrimination and lack of privacy and confidentiality protections.³

In Thailand, where repeated rounds of drug wars have been used by the government to achieve a drug-free nation, the call for extreme measures in the 2003 crackdown led to arbitrary blacklisting, detention and arrest, the forced internment of approximately 50,000 people—including non-drug using family members in detoxification centers—and the extrajudicial execution of more than 2,275 people accused of being involved with drugs.

3 Human Rights Watch. 2005. vol. 17, no. 5, “Restrictions on AIDS Activists in China.” Available online at: <http://www.hrw.org/reports/2005/china0605/china0605.pdf>

Although extrajudicial executions are among the grossest violations of rights, less severe measures also compromise the ability of people who use drugs to enjoy other basic rights, including the rights to health, information, privacy, equality before the law, liberty, freedom from torture and cruel, inhuman or degrading treatment, freedom of movement, and freedom of association. Stereotyping of people who use drugs fueled by repressive drug laws is also prevalent, causing the dehumanization of people who use drugs and thus making it easier to discriminate and commit abuses against them.

In a seminal article forging the connection between harm reduction and human rights, Dr. Alex Wodak described how a prohibitionist approach leads to infringements of various rights, and contributes to the harms suffered by people who use drugs:

“Reliance on criminal sanctions as the major response to illicit drug use inevitably results in the denial of human rights of the IDU population as drug use remains defined as a law enforcement rather than a health problem. Poor health outcomes in this population then follow, because health promotion and health care services are more difficult to provide to a now stigmatized and underground population. Protection of human rights is an essential precondition to improving the health of individual drug users and improving the public health of the communities where they live.”⁴

More and more health and human rights defenders who have witnessed and documented the fallout of the persistent conflicts between public security and public health goals for people who use drugs (and their partners, families, communities, and advocates) are demanding the urgent administration of justice, including by utilizing the international systems created to uphold human rights.

4 Wodak, Alex. 1998. “Health, HIV Infection, Human Rights, and Injecting Drug Use.” *Health and Human Rights*, Vol. 2, No. 4, 24–41. 1998

As Scott Long, a leading U.S. activist for lesbian, gay, bisexual, and transgender rights, wrote:

“You should not assume that the UN alone will bring about change in your country. But it can be a megaphone for what you want to say: it can help you make those changes happen. It may give you just the muscle—and motivation—you need to move the mountain standing in your path.”⁵

This guidebook was envisioned to promote access to the tools and channels necessary for bringing complaints to the international human rights system and getting responses that may help move your local advocacy forward. Right now, in countries all over the world, a drug user is experiencing a grave human rights violation—maybe your voice can end the silence and “move the mountain.”

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- 5 International Gay and Lesbian Human Rights Commission. 2000. Making the Mountain Move: An Activists’ Guide to How International Human Rights Mechanisms Can Work for You. Available online: <http://www.iglhrc.org/files/iglhrc/reports/unguide.pdf>

Articles of the Universal Declaration of Human Rights

Article 1

Right to Equality

Article 2

Freedom from Discrimination

Article 3

Right to Life, Liberty, Personal Security

Article 4

Freedom from Slavery

Article 5

Freedom from Torture and Degrading Treatment

What are human rights?

- Human rights are those rights that belong to every individual without discrimination or discretion, forever.
- Human rights are *universal*: they are the birthright of every member of the human family and define what governments can do to us, cannot do to us, and should do to us.
- Human rights are *inalienable*: one cannot lose these rights any more than one can cease to be a human being.
- Human rights are *indivisible*: One cannot be denied rights because someone decides that one person is “less human” than another.

Human rights hold up the inspiring vision of a free, just, and peaceful world and set minimum standards for how both individuals and institutions should treat people. In a practical sense, they empower

Article 6

Right to Recognition as a Person before the Law

Article 7

Right to Equality before the Law

Article 8

Right to Remedy by Competent Tribunal

Article 9

Freedom from Arbitrary Arrest and Exile

Article 10

Right to Fair Public Hearing

people to take action to demand and defend their rights and the rights of others. The human rights framework is an expanding one, incorporating the emerging claims of oppressed groups over time.

The commitment to principles of justice, basic rights and responsibilities in cultures across the globe long precedes the enshrining of these principles in international human rights documents. However, an effort to recognize rights across borders—rights that belong to all people and that are essential for realizing human dignity—culminated in the unanimous adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations on December 10, 1948.

International human rights law addresses the rights and dignity of all human beings at all times and without discrimination. It provides that *states* must respect and protect human rights and ensure that those within their jurisdiction enjoy their human rights in practice.

Article 11

Right to be Considered Innocent until Proven Guilty

Article 12

Freedom from Interference with Privacy, Family, Home and Correspondence

Article 13

Right to Free Movement in and out of the Country

Article 14

Right to Asylum in other Countries from Persecution

Article 15

Right to a Nationality and the Freedom to Change It

Traditionally it has been seen as applying solely to the relationship of the state with individuals. However, more recently it has been recognized that the state also has a responsibility to intervene when private individuals act in ways that affect the rights of others. For a longer discussion of the classes of human rights, see **Appendix A**.

The sources of human rights law are *treaties*, such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR), authoritative interpretations of treaty law, and general international law. The treaties are described in greater detail in **Appendix B**.

Some countries lack the political will to translate international human rights treaties they have ratified into effective domestic laws that protect all their citizens. Some fail to allocate adequate resources to implement laws even where these exist. Often, government agencies that should enforce human rights treaties are not coordinated or take opposite approaches, such as in cases when ministries of justice, interior, and health have opposing priorities. But laws to protect

Article 16
Right to Marriage and Family

Article 17
Right to Own Property

Article 18
Freedom of Belief and Religion

Article 19
Freedom of Opinion and Information

Article 20
Right of Peaceful Assembly and Association

people who use drugs exist and can be enforced. There have been numerous efforts to introduce national legislation to promote the rights of people who use drugs and repeal discriminatory policies.⁶

Countries have a wide range of responsibilities under international human rights law. These responsibilities include the obligations to *respect* the rights of people who use drugs (for example by bringing to justice government employees, like police or doctors, who violate drug user rights); to *protect* drug user rights (for example by ensuring that they have access to effective harm reduction and drug treatment services and protection from HIV and hepatitis); and to *fulfill* rights (for example by providing information on the law and access to legal aid to ensure that people who use drugs have adequate access to their rights).

6 See *Legislating for Health and Human Rights: Model Law on Drug Use and HIV/AIDS*, <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=620>. The Canadian HIV/AIDS Legal Network has developed this unique, unprecedented, and immensely useful compendium of relevant and proposed drug-related laws and policies.

Article 21

Right to Participate in Government and in Free Elections

Article 22

Right to Social Security

Article 23

Right to Desirable Work and to Join Trade Unions

Article 24

Right to Rest and Leisure

Article 25

Right to Adequate Living Standard

National governments are responsible for taking action to prevent the abuse of drug user human rights, as well as for bringing perpetrators to justice after abuses occur. This might mean launching an awareness campaign about the consequences of repressive drug policies on people who use drugs, prosecuting violent police officers or launching an independent investigation into extrajudicial killings. Governments are responsible for educational, legal, and practical measures to reduce the incidence of violence.

For a longer description of human rights laws and how they developed, see **Appendix D: History of Human Rights**.

Article 26

Right to Education

Article 27

Right to Participate in the Cultural Life of Community

Article 28

Right to a Social Order that Articulates this Document

Article 29

Community Duties Essential to Free and Full Development

Article 30

Freedom from State or Personal Interference in the above Rights

3. Documenting Human Rights Abuses

Documenting human rights abuses is the heart of human rights work. The effectiveness of human rights as a tool depends on the accuracy and comprehensiveness of the evidence gathered. It can contribute to educating and organizing as well as advocating at a political or legal level. Government leaders have been brought down through documentation of human rights violations; the power of the process, both for the victim and the perpetrator, should not be underestimated.

Documentation is about collecting stories, establishing truths and “sounding alarms.” Success can depend on one’s ability to access those stories and give meaning to them, for example through showing patterns of abuse. Since human rights violations are often traumatic experiences and often happen to people who are severely marginalized and oppressed, a significant degree of empathy and understanding of the circumstances surrounding the incident is required as much as understanding the incident itself. Documentation requires serious thought and preparation, and a methodology that respects the dignity of the individual whose rights have been violated. Leadership by or involvement of those directly experiencing the abuse is an important principle in designing and implementing documentation projects.

Documentation can also be used as a capacity-building exercise, with the process as useful and important as its outcome. NGO allies, lawyers, community members, and others can and should be encouraged to participate. While documentation can be used as an educational and organizing tool, advocacy helps documentation bring change, and campaigns should have long-term as well as short-term goals (see **Chapter 4: Turning Documentation into Advocacy**).

Numerous documentation projects by people who use drugs and their allies have been conducted around the world, from Russia to Canada, Thailand to Ukraine. Results have included: favorable UN regional human rights court decisions; public statements by UN officials to governments; investigations launched into rights abuses; increased accountability for police abuse; increased awareness about the human rights of people who use drugs among policymakers, NGOs, and communities; increased funding for harm reduction; increased participation of people who use drugs in policymaking and programming; stronger networks of people who use drugs; and increased research and advocacy on rights abuses of people who use drugs.

Case Example

Russia: Challenging Illegal Policing Practices and Detention Conditions before the European Court of Human Rights

In 1998, an epileptic, HIV-positive Russian citizen, Viktor Khudobin, was arrested in Moscow for buying one dose of heroin for an undercover agent. After losing both his trial and appeal in Russia, he and his lawyer appealed to the European Court of Human Rights (ECHR) on the grounds that he had been denied adequate medical treatment in prison, that his pre-trial detention was unreasonable, and that he had been illegally entrapped by the police.

In October 2006, the ECHR found that Russian authorities had violated Khudobin's rights under articles 3, 5(3), 5(4), and 6(1) of the ECHR. The court's decision provides a legal basis for detainees in Russia to challenge the conditions of pre-trial detention based on their medical status. Specifically, the court found:

- Under article 3, that Khudobin was refused proper medical assistance and denied the possibility of receiving it from other sources, and that his mental and physical suffering constituted degrading treatment;
- Under article 5(3), that Kudobin's detention of one year and 23 days was not justified by "relevant and sufficient" reasons; and under article 5(4), that the reviews of the applications for release were unduly delayed; and
- Under article 6(1), that the trial court should have considered evidence that Mr. Kudobin had been entrapped by the police, especially considering that he did not have a criminal record and the only allegations of his involvement in drug dealing came from the police informant.

Starting human rights documentation

Documentation is a way of recording a violation, or *getting a “snapshot picture”* of the event of a rights abuse. It is necessary to get the “who, what, where, when, and how” of the incident. Documenting a violation is also a way to begin to bring that discrimination and abuse to public attention. Publicizing abuses is a way to demand justice for the victims of abuse, by pressuring governments to respond and to *hold perpetrators accountable*. Publicizing abuses raises awareness in society and can mobilize support for the accusations or the victims. The level of detail of the documentation can affect the ability of the supporting agencies to accept and act on a complaint and should be as comprehensive as possible. Documentation can also be a way to *secure assistance, relief, and rehabilitation for victims*. For example, if people who use drugs are being excluded from access to HIV/AIDS treatment because of their drug use, a remedy would be access to that treatment. Documentation can help to mobilize international attention to an issue, and push the government to act as a result. One example is how Amnesty International’s campaigns help obtain the release of individuals incarcerated as prisoners of conscience.

Case Example

Ukraine: The Importance of Documentation

Kostyantyn Zverkov from the organization Era Miloserdiya in Odessa, Ukraine, described how important thorough documentation has been to his organization's advocacy on behalf of drug users. "We use our reports when we do advocacy with government officials, such as public health officials. We'll have meetings with people in positions of leadership at medical institutions or in the government. We bring our reports [documenting human rights violations against drug users] to these meetings. When the officials see that we have documented everything, that we have written it all down accurately and clearly, they are forced to admit that these problems exist. They already can't escape it. They can't deny that there are problems the way that they usually try to do when there isn't such evidence presented to them. And, with that, they are forced to change the situation and guarantee that there are better practices and better treatment of drug users."

For example, in response to reports from drug users seeking treatment for tuberculosis that they had been ill-treated by medical staff or denied services and treatment, Era Miloserdiya launched a documentation project. Project staff sought to stop these abuses and change the attitudes and behavior of medical personnel by documenting rights violations through interviews with around 100 drug users on the basis of a carefully developed questionnaire. On the basis of the research, they provided concrete recommendations to the leadership of the relevant medical institutions regarding necessary changes in how treatment is provided.

Once you or your group determine your goals for a human rights advocacy campaign, it is important to document the human rights violations that you want to denounce. Documentation can refer to:

- Interviews with affected persons, including victims and eye-witnesses (transcripts, audio tapes, or video/film);
- Interviews with those who violate human rights (government officials, police, doctors, etc.);
- Official documents (police reports, autopsies, judicial verdicts, medical reports, etc.); or
- Photos or video that show violations.

Documentation can be an empowering process if it involves sharing ownership of information with the affected group, and helps them understand the political, economic, or other mechanisms that allow violations to happen. Often, victims of rights violations who belong to a highly stigmatized or persecuted group do not recognize that a rights violation has happened to them or that certain treatment is wrong. Some do not believe they have any rights at all. In addition to providing a historical record of abuse, community- or peer-driven documentation brings ordinary people into a broader movement against injustice.

Exploring who will conduct the documentation and how documentation will be collected, recorded, stored and used or disseminated is an important part of the process. Issues of power and who “owns” the process should be considered at every step when determining the roles and responsibilities of people involved in the project.

Case Example

Indonesia: Documenting Police Abuses against People Who Use Drugs

In a report on human rights violations against injecting drug users in Indonesia, the organization Jangkar documented numerous cases of ill-treatment of drug users by police. In a 2007 report entitled *Injecting Drug Users' Human Rights Violations*, Jangkar included several powerful stories to raise awareness of the human tragedy when drug users' rights are abused. As one drug user remembered, "I was on the street looking for heroin when I was arrested. I was badly beaten and ended up with swollen legs. The police kept saying, 'Shut up or we'll beat you some more.' My eyes were slapped until they were red. Having found no evidence of a crime, the police then tried to make me agree to become an informant. I refused to do this, so they kept beating me."

Guidelines for documenting human rights violations committed against people who use drugs

Below are some suggestions for initiating your own fact-finding and documentation project. These guidelines are meant to be adapted or modified to your own particular situation and are not meant to be a "one size fits all" approach.

➤ *First, clarify your objectives*

Before you begin a documentation campaign, you need to design the process you will use to conduct your investigation. The following seven questions will help guide you in your campaign:

1. What are the issues we will be investigating?
2. For what reason are we documenting abuses?
3. What strategies will we use to investigate?
4. What support and resources will we need?
5. What are the risks or benefits of doing such an investigation?
6. What methods could we use to draw attention to our findings?
7. What do we wish to achieve as a result of the investigation?

Some additional background questions you may want to answer during this project design process include:

- What is the nature of discrimination and abuse against people who use drugs in our country/region/province/city?
- What are the consequences of these abuses?
- What possible recourse do we have against these abuses?
- What UN treaties have the government ratified that might be relevant? What articles of the Universal Declaration of Human Rights or other human rights treaties are being violated by these acts of abuse?
- What local or national legislation exists to protect against these abuses?
- Is there a national human rights commission or equivalent body? Have they considered these types of abuses before?
- Are there NGOs or other groups that exist to monitor human rights violations, in particular among this group or of these types of violations? Are people who use drugs involved in human rights monitoring? What other allies could help draw attention to your findings?

To establish objectives, there are two elements to keep in mind: *focus* and *consultation*. The *focus* of an investigation can be very general or very specific. We can focus on the abuses against an individual drug user, or against drug users as a group at the national level. More limited objectives may be easier to achieve, and may draw attention to much larger issues. A group may decide to focus on a case of arbitrary detention and arrest, or on larger patterns of police interference with access to health services in a community. Another case could focus on discrimination in employment due to HIV status, or could take on more general issues of access to the highest attainable standard of physical and mental health. It is important to consider that the broader the objective, the longer and larger will be the investigation, with implications on time and money.

It is best to *consult* with directly affected persons to come up with the focus and objectives of an investigation. If the objective is to raise awareness of an individual abuse, such as the denial of health care or HIV treatment to an individual because of her drug user status, it is critical to determine whether that person is ready to publicize or bring attention to that issue. Involving family, community members, or local organizations already working on the issue may be helpful, and may help clarify the objectives of the investigation as well as secure new allies and support.

➤ *Second, identify the violations*

In most cases it is governments, and not individuals, families, corporations or others, who are obligated to comply with human rights conventions. Government officials must not violate rights and must take all appropriate measures to promote a right and create an environment in which that right can be realized. For example, in some countries, governments fail to provide people who use drugs with access to essential medical services. In Eastern Europe, institutional barriers often exclude people who use drugs from treatment for TB or HIV. Drug treatment practices are often outdated

or outright abusive, and waiting lists for rehabilitation programs have resulted in clinic staff accepting bribes for access in Lithuania, Russia, and elsewhere. This type of gross neglect and breach of the right to access the highest obtainable standard of health may be the focus of an investigation.

Additionally, governments must prevent violations by non-state actors (i.e., private individuals or corporations) while providing easily accessible redress to victims. Sometimes, it will be easier to demonstrate a government's *failure to protect rights*—or establish an environment that enables the fulfillment of rights—rather than to document a government's failure to “respect” a right. For example, in Eastern Europe and Central Asia, people arrested on drug charges or who seek drug treatment are often placed on state narcological registries. In cases where the registries are used by police to harass people with a history of drug use, or are made public, people may experience employment discrimination or other problems as a result. This type of discrimination must be challenged, and the state must respond by punishing perpetrators or enacting equal protection legislation.

It is not always easy to demonstrate the role of the state in relation to a human rights violation, but it is important to have at least an approximate idea of the nature and dynamics of the violation. This process helps us to formulate questions and remain alert to information that confirms or denies our initial assumptions.

➤ *Third, identify the main factors*

The factors of a human rights violation are usually the people or groups involved in the situation. These generally include:

- *Victims/Survivors of the abuse*
- *Families and/or legal representatives of victims/survivors*
- *Activists or groups working on the issue*

- *Persons or parties suspected of committing the abuse*
- *Persons or parties with direct knowledge of the abuse*

Determining the main factors in advance can help us prepare for the types of interviews we will conduct, including what language to use and who is the most qualified person to conduct the interview, as well as what other support or resources we might need. If we are trying to establish a pattern of abuse rather than focusing on an individual case, we may need to do a number of interviews to show wider government responsibility in the incident. For example, if you are looking into denial of ARV to drug users, you may want to interview health care providers in various locations to demonstrate that this is not an isolated incident. You may also want to talk with local health authorities as well as national public health officials to demonstrate a lack of consistency in implementation of policy (for example, if access to treatment is guaranteed according to national policy, but not provided in practice at the local hospital or clinic).

➤ *Fourth, compile a list of necessary information*

This list can grow over time. Fundamentally, an investigation should address:

- The nature of the violation
- Whether it is an isolated incident or part of a larger pattern
- The persons affected by the violation
- Steps that are being taken by others in relation to this theme
- Actions by the state that caused the violation, or were in response to it
- Actions taken by other institutions, and in some cases, other governments

Depending on the situation you are investigating, you should try to collect as much relevant information as possible. This may include: national and local criminal procedures; how the laws or policies are implemented in practice; human rights legislation that protects the rights that are violated; and the obligations of the government according to that legislation, for example in the national constitution or through government bodies. Media reports or UN and NGO reports that provide facts or analysis may also be valuable.

As mentioned earlier, the basic “who, what, where, when, and why” should be answered as well:

WHO was the victim, accused, aggressor, agent, police, prison official, doctor?

WHAT happened, was used, was the weapon, was the accusation/sentence/law?

WHERE did it happen, what street/hospital/police station/court/jail/treatment center?

WHEN was the year, date, time?

WHY did it happen, and how do you know that the victim’s drug user status was the cause?

➤ *Fifth, identify the sources of information*

Will it be possible to find individuals to provide this information? The criminalization of people who use drugs and subsequent marginalization and hidden nature of drug use may make it difficult to identify or contact your key sources.

➤ *Sixth, develop the methodology of investigation*

Your strategy must ensure that the necessary information can be obtained. While a chosen methodology will vary according to your

concept and goals, it must also be flexible and adapted according to your circumstances or conditions in the place where you are investigating.

In all cases, these principles should guide you:

Impartiality—Though you may be an advocate for the rights of people who use drugs, the ability to collect and present the facts objectively will show that you are not selectively choosing what to report.

Accuracy—The strength of any human rights campaign ultimately depends on the precision of the facts on which it is based. The method of investigation should guarantee this precision; if not, the results could backfire not only for the campaign but for the persons it is intended to help by making them appear untrustworthy.

Specificity—The more detail contained in the results of the investigation, the more useful and compelling they may be. While you may not think you need such a level of detail, it is better to collect more information and evaluate later the level of detail necessary to report your testimonies.

➤ *Seventh, establish financial and human resources*

It is necessary to consider the material, financial, and human resources required for conducting the investigation. The investigators need to know the laws as they pertain to human rights; they should be able to write clearly and in a way that is accessible to others. It is also critical to know the cultures and values of the group that you are addressing, especially if you are not part of that group. For some kinds of violations, we must consult with medical professionals or other specialists.

Especially for organizations representing people who use drugs or other marginalized people, it is both ethically important and useful

to share the plan with all members of your group, including those who will not directly participate in the investigation. Members may have useful feedback, skills, or knowledge to share, and the act of sharing information on abuses and your plan to respond to them will build your team and make your organization stronger.

If you do not have the necessary resources to carry out these tasks, you must seek them outside your organization, and inform funders about all the various funding needs, such as travel expenses, recorders, cameras, and other materials.

➤ *Finally, gather evidence*

Once you have determined your objectives and designed your documentation plan—including carefully selecting interviewers—you must decide what type of evidence you want to gather. If you are gathering material for a specific legal demand, your needs will be different than if you want to write a general report. Human rights evidence generally falls into two categories: testimony and documents. Moreover, both forms of evidence can be either direct or circumstantial:

Direct testimony: The detailed testimony of direct victims is crucial. The testimony of those who have direct knowledge of the abuse will also be important. Investigating a representative number of cases can help prove the seriousness of the problem. For example, even if you want to focus on a single instance of abuse, direct testimony about other similar cases can strengthen your argument and draw attention to larger problems that need to be solved.

Direct documents: Testimony should be complemented with additional documentation. This may include useful documents such as police reports, judicial cases, and medical reports (including photographs of physical evidence such as blood stains and bruises).

Circumstantial testimony: Testimony of observers about events surrounding violations that they did not witness themselves—known as “hearsay”—is also important. Examples may include testimony by a methadone patient who says she has heard numerous reports about other patients being harassed and arrested by the police near the methadone clinic; or testimony by a family member of the victim about what happened after the abuse.

Circumstantial documents: This includes media reports, which are secondhand by definition, and require additional corroboration.

Case Example

Bulgaria: Gathering Evidence

In 2008, Hope-Sofia, a drug user activist organization in Bulgaria, documented a case of an HIV-positive drug user who had been accused of stealing mobile phones, including a phone belonging to a policeman’s daughter. The police attacked the HIV-positive man (referred to as “Timotei” in documents). They beat him so severely that he required hospitalization. Despite medical treatment, Timotei died four days after the beating, and the hospital cited the cause of death as “complications due to AIDS.” Hope-Sofia, in cooperation with the Bulgarian Helsinki Committee, the largest human rights organization in Bulgaria, set out to demonstrate that Timotei’s death was likely due to the ill treatment he received at the hands of the police. To document this case, the two organizations gathered direct testimony by interviewing eyewitnesses to the beatings, photographs showing the bruising and other injuries on Timotei’s body, as well as medical reports and other official documents. On the basis of this evidence, they intend to pursue a case against the responsible police officers through the Bulgarian court system.

Guidelines for conducting interviews

Conducting interviews is perhaps the most important step in the investigation process. If the interviewer is not well-prepared, if the interviewee does not know the reason for the interview, or if the conditions of the interview are not adequate, the results will prejudice the investigation. It is not easy to interview; this is a skill that grows from experience and practice. The steps that follow are general guidelines that should be adapted to each circumstance.

Setting the context

1. **Keep in mind that you want to speak with eyewitnesses about specific cases of human rights violations.** Before conducting the interview, try to find out whether the person was present at the events in question or is merely repeating what other people said. Do not dedicate a great deal of time to those who only heard stories of third parties, as these testimonies cannot serve as evidence, but remember that they can, at times, corroborate what direct witnesses or victims said.
2. **The interview should be conducted in private and with one person.** You should make this clear before starting the interview, since stating in a report that you interviewed the persons in private adds greater credibility to the testimony. Keep in mind that some people will not speak freely if other persons are present, or may be prone to exaggeration. If you have the interview in a space where others are nearby, try to conduct it out of the range of hearing. If the interviewer requires an interpreter, assess whether they are objective and impartial, provide them with appropriate background information and training if necessary, and spend sufficient time prior to the actual interview(s) discussing the issues that will likely be addressed and deciding how you will work together and address problems—for example if there is

terminology the interpreter does not understand or whether you prefer simultaneous or sequential interpretation. It is also important that the interpreter must not summarize what witnesses say, but rather repeat testimony word-for-word, such as, “I was walking in the market when...” rather than “He said that he was walking in the market when....”

In some cases, holding a private interview is impossible or impractical. Using a “focus group” approach to interviewing is also possible, but requires more support for facilitation and may require a second interviewer to help manage questioning, listening, and recording responses.

3. **Be honest and clear about whom you represent, why you are doing the interview, and what the uses are.** It is important to describe what you can and cannot do in this process. Repeating this initial framing can also help if you need to get more details about a specific event or experience that could be traumatic: “If you want me to help other people understand this, it would be helpful if you could tell me more about...”
4. **Tell the person that the interview is confidential, and that you will not reveal her or his identity unless she or he authorizes you to do so.** If the person asks to remain anonymous, do not note her or his real name. You may want to identify a coding system beforehand, if it is too hazardous to record names. You may want to develop an informed consent procedure, such as having the witness sign a form or give oral consent to the interview. An appropriate method for the project should be determined beforehand and developed. If you record audio or videotape the interview, you should consider any potential for compromising someone’s safety if the recording reveals their identity, and should include a discussion of this in your informed consent procedure.
5. **Determine the length of interview.** Have a general sense of the amount of time you expect to interview the victim, based on your question list, and then check with the victim at the

outset whether or not they have that time to give and adapt accordingly. Be flexible and do not rush the process. Do not schedule too many interviews in one day, if there are numerous people you have scheduled to interview.

In 2007, the Indonesian Harm Reduction Network, Jangkar, conducted a study of human rights abuses against injecting drug users across Thailand. They trained interviewers who were selected through the Indonesian Drug User Solidarity Association—a drug user activist network—and harm reduction NGOs. The majority of interviewers were former drug users. The preparation of the interviewers involved a two-day training by a local lawyer with a background in human rights, who spoke about relevant international human rights standards and domestic laws as well as interviewing techniques, the need for confidentiality, and ways to ensure security for both the interviewer and the drug user being interviewed.

Selecting People to Gather Information

The people you choose to gather information are fundamental to the success of an investigation. They must be chosen carefully. Interviewers should display the following characteristics:

► Objectivity and impartiality

—It is important that the person(s) chosen to collect information not show prejudice or a position against the government, private company, or theme they will investigate. This may not be easy, but try to come up with relevant questions for your potential interviewers in order to assess whether they have a prejudicial attitude.

➤ **Empathy**

—Building trust and showing respect to someone about to share painful, difficult experiences with an interviewer, perhaps for the first time, is critical to obtaining accurate information. Interviewer empathy can be improved by focusing on:

– ***body language***

(consider eye contact, sitting distance, formality/informality);

– ***listening skills***

(paying attention, nodding, not interrupting and knowing when it is appropriate to follow up with the next question);

– ***language***

(ask questions if you are not familiar with a slang word; encourage the interviewees to speak in their own style).

➤ **Training and experience**

—Ideally, people chosen to collect information will be trained in data collection and have experience in dealing with the issues and populations central to the investigation. If the goal is to produce a report, they should be able to edit it. If your group does not have some or all of these skills, partnering with another organization that does can both build capacity of your own organization and ensure quality of the final product.

➤ **Having a drug use history**

—This may help build trust, given the extreme social stigma that drug users often experience, and the well-founded fear in disclosing their drug use.

Building trust

Remember that an experience of abuse or discrimination is one aspect of a person's life that is pulled from context and subject to scrutiny in an interview, and as a result the interviewer has an often unavoidable position of power. The interviewer, however, can occupy this position wisely by seeking to use the interview to help heal the rupture in a person's life. Move from the general to the specific. Start with the more general questions about a person's life: *Where do you live? What do you do? Do you have any children?* Engage in some small talk about issues unrelated to their drug use or the violations at hand to put them at ease: *Who's your favorite football team?* This strategy has many benefits: It respects the social, historical, and cultural context of the person's life; provides a reminder that the experience of abuse is but one part of her or his life; and helps build trust between the interviewer and survivor.

Asking questions

Do not ask questions that are suggestive of any answer. Always begin questions with “who, what, when, where, why, how, what do you mean.” Ask brief questions. Do not state your own opinions. You should always feel free to ask the person to explain more.

Avoid asking “yes or no” questions. For cultural reasons, or in order to be amiable, it is possible that the person may answer all of these with “yes.” If trust has not been established between the interviewer and interviewee and in particularly criminalizing and stigmatizing environments, yes/no questions about certain behaviors of the interviewee may lead to “no” answers. Interviewees may be unwilling to honestly answer questions such as “Did you share needles with others?” or “Do you sell drugs to finance your drug use?” In this case, more open-ended questions may lead to more useful answers.

Recording the interview

Take notes, using a notebook at all times. It is not possible to remember the prominent facts without taking notes. Never separate yourself from your notes. Assign a number to each interview; create an ongoing database using these codes, perhaps designating categories of interviewees, i.e., NGOs, public health officials, victims of abuse, etc., to avoid confusion later.

You should take down the names and titles of people and places, in order to make sure that you present them accurately. Verify spelling if necessary. Note the hour, the date, and the place of the interview. Do not use a recorder without the agreement of the person interviewed. When you have finished the interview, ask the person her or his name, age, occupation, place of origin, and nationality if you have not asked these up front. Ask whether you can use her or his name, or perhaps nickname; never use it without permission. Some people allow use of certain identifying factors but not their name, or not their institution's name, so you may end up with a description such as "HIV doctor, Oblast AIDS Center, Eastern Ukraine." If you forget to ask permission, it is better to delete the name and not use it. Ask also which data you can and cannot use—for example, some persons prefer that their place of origin not be mentioned. Whenever in doubt, it is always preferable to omit data that might implicate or endanger a person. When talking with government officials, tape-recording can capture "on-the-record" statements.

Getting details

Make sure you clearly understand what the person says. Don't be afraid to seem like a fool in asking questions. You must understand what happened so that you can explain it to others and describe it in a written report. One of the best strategies is to seek a chronological account of what happened (*What was the first thing that happened? And then? And then?*). Once the person begins to recount the history

in this manner, the task is made all the easier—for that person and you. Getting background or “scene-setting” information can be helpful: *what were you doing that day? Who were you with?* Don’t interrupt the story: if you think it lacks some details, make a note and ask about it when the person finishes speaking. Avoid tangents. Do not ask leading questions. Pay attention to non-verbal cues, such as gestures and pauses. The story may not follow a logical line. Let the interviewee control the flow of the conversation or you may steer it away from something important. Do not summarize the facts and then ask the person if she/he is in agreement with your summary. Do ask for clarification if you think a story has contradictions.

Do not be afraid to ask detailed questions about the development of a story; the person will appreciate the effort you are taking to understand the situation. You should explain to her that you are not asking because you do not believe her, but because you want to make sure that you can explain the story well enough to answer other people’s questions later. Details are important for several reasons:

- ▶ *To counter denial:* state officials may argue, “Those people don’t exist” or “Those things didn’t happen.” Excessive details can serve as a weapon against these official statements.
- ▶ *To demonstrate impartiality:* even though our organizations are serving as advocates for specific reasons, we must try to represent ourselves as objective and impartial for legitimacy. The ability to collect and present all the facts gives the impression that we are not “picking and choosing.”
- ▶ *To provide a convincing narrative:* even the most seemingly insignificant details of people’s lives have significance. The ruptures that break people’s lives apart are part of a narrative, and we must tell convincing stories of people’s lives.

Never be afraid to ask when interviewing: “Is there anything else?” Indeed, details that may seem trivial to some people may prove significant in determining what happened for the interviewer.

Do not act like a prosecutor. Be amiable. Never interrupt the person that you are interviewing in the middle of a sentence. Try to sympathize with the feelings of the person that are being conveyed in the story; many times your silence and attention are the best demonstration of respect. Listen carefully to each answer. Do not be afraid to change the order of the questions you planned to ask, or to eliminate some questions or ask new ones. Remember that each interview has a life of its own; it is not a matter of mere formula. If there are contradictions in the story, try to clarify them, with patience and without attacking.

Anticipate what the people in opposition to the victimized community will want to know, and ask questions that get this information, without making it seem that you are in agreement with them.

Never tell an interviewee what another person recounted to you. In order to get the most reliable information from each interview, you should not introduce information learned in one interview into another interview. Do not try to verify the statement of another person by asking the same questions in another interview. You might want to describe a situation to see if someone can confirm it, but never reveal the names of your informants, for example: “How common is injecting vint in this location?” instead of “Sergey told me he and all the drop-in center clients here inject vint. Is it true?”

Visual details may be helpful, but never take photographs or film without asking for permission. It is sometimes helpful to ask the person to **draw a map or diagram** of the situation. You may also ask them to **demonstrate gestures or movements** if appropriate. For example, “How and with what did the prison official beat you? Can you show me the position you were in when you were beaten?” Note the position and other details in words.

Case Example

Hungary: Anticipating the Opposition

In Hungary, police regularly raided discos and forced young people to undergo urine tests. This violated privacy rights and rules of criminal procedure, and potentially forced discos underground, making it more difficult to conduct harm reduction outreach with club-goers. Led by the Hempseed Association (a drug policy reform group) and with legal representation from the Hungarian Civil Liberties Union (HCLU), over a five-week period in 2005, more than 60 individuals reported to the national police headquarters in Budapest to confess their drug use. The aim of this “civil obedience movement” was to challenge the practice of forced urine tests and to raise the issue of decriminalization of drug use. The action attracted significant media attention and dominated public debate for weeks. Activists expressed their views to the media about the illegal practice of police raids and about decriminalization.

Knowing that many of their opponents would not be sympathetic to the rights of people who use drugs, the campaign in part framed the issues in terms that would be more broadly appealing. HCLU made freedom-of-information requests to the police about the cost of police raids, and used the data to show the raids were not cost-effective. The campaign also played on wider public concerns about police conduct and civil liberties.

The campaign succeeded in obtaining a statement from the police that drug tests could be conducted on a person only after a criminal procedure is initiated against him or her. This effectively made the urine test raids unlawful, and the number of police raids greatly decreased. The campaign also succeeded in making decriminalization of drug use a subject of mainstream debate. More than 70 professionals working on the drug field signed a petition supporting the aims of the campaign. Three months after the action, the first-ever draft bill on decriminalization was introduced in parliament.

Seeking additional information

Ask the person if she or he knows other people who experienced similar situations, or that were with her or him at the moment of abuse. You may ask if the person can help you to locate them or accompany you in seeing them. Ask if she or he has any documents related to the case, such as news articles, statements, medical certificates, referral forms, photographs, etc. If she or he has them, request for authorization to photocopy them and return them immediately.

Try to interview “both sides” in a conflict. This is not always possible, as government officials may not wish to speak with you. Be sure to note these instances.

There are three types of **interviews with government officials**. The following strategies are applicable for each type:

- To get an official’s position on something (drug use, rehabilitation act).
Strategy: Ask targeted questions; let them talk as much as possible.
- To get access to something (jail, drug treatment center, records). This may include getting information about finding a victim.
Strategy: You must be more active, sometimes even aggressive, in approaching them.
- To raise issues of concrete human rights violations.
Strategy: You can be more active and assertive in approaching them. It is often wise to get permission to meet beforehand.

Following up

Be sure to give thanks and appreciation to everyone. Never pass up an opportunity to thank all the people who help you obtain the information that you need. Whenever possible, review your notes at night or listen to the audiotapes to see if there are holes in the story, or if you need to return to ask more questions.

Be sure to clean up your notes and do this as soon as possible after the interview. Make sure your notes are legible.

Monitoring legal systems

In addition to learning about domestic law and international human rights standards, it is important to know and track the legal and criminal system, as many human rights abuses happen in this realm. The following are key areas to consider:

- Understand the criminal procedure, from arrest and detention to criminal charges to trial and sentencing.
- Explore under what law, and through what procedure an arrest is happening.
- Seek a paper trail. In the best situations, there is most likely an accessible paper trail. In more difficult situations, a paper trail rests in the hands of the authorities. An absence of written documentation is part of the United Nations definition of arbitrary detention.
- Learn how the criminal justice system works:
 1. Who conducts investigations? In some cases (British origin), the investigation is conducted by police until the trial; afterwards, a prosecutor acts as an advocate of the police. In other cases (French origin), a prosecutor oversees a trial and has the power to direct the police.

2. Who is in charge of the police? Local level authority, state level authority, military authority, etc.?
3. Are trials open and public?
4. What powers are given to prosecuting and defense attorneys?
5. Is there an appeals process?

Common forms of legally sanctioned abuse

Look for police irregularities in enforcing and applying laws. Do they pick a law with a tangential relationship? Are there patterns of police intimidation, harassment, and abuse (finding people they don't like, or finding undesirables and controlling them through physical abuse, intimidation, restriction of movement, killing)?

Look for violations of legal procedures by police or courts. Get a copy of the relevant local, state/provincial, national criminal or penal procedure code. These codes translate procedures into rights for individuals in a specific case. Look for ways that the procedure in a case violates international or domestic standards.

International standards regarding criminal procedure

- According to international law, arbitrary arrest is illegal.
- One must have legal representation at any trial.
- Torture and physical abuse represent non-derogable rights (which means states may not violate these rights, without any exception).
- Some standards are proportionate to the severity of the offense and sentence.
- A paper record must accompany each stage in a trial.

Guidelines for interviewing people in detention

Access to prisons is often difficult; it is usually granted either by a central authority (often the interior ministry) or an official sometimes called a commandant or warden. Private interviews are not often allowed; prison officials may accompany the interviewer or listening devices may be installed in the room. In these situations, prisoners may pass along vital information in writing (whether in addition to or instead of verbal interviews), as written questionnaires are usually subject to less scrutiny. It's helpful to include a final written question: "Tell us anything you want to let us know that cannot be said out loud."

Prison visits can also be seen as an opportunity to report on human rights violations in prisons generally. Ask to tour the prison and take notes on any problems with conditions or apparent treatment of prisoners that may constitute an abuse and could be used later.

4. Turning Documentation into Advocacy

Advocacy is a crucial component of human rights work on behalf of people who use drugs, and finding the right allies and support is a key ingredient to success. There are many resources available to help you to design an appropriate advocacy strategy, from deciding what methodology is most appropriate to evaluating or making meaning of the outcome. At the end of this guidebook, a partial list of resources is provided.

There are numerous local and international documents and standards that can be referred to for guidance in human rights advocacy work. Certain ones are legally binding and others are not. Since the human rights framework is an evolving one, it is not prudent to rely solely on this system for standards for advocacy goals. Apart from the major human rights treaties, you might consider some of the following documents that do provide guidance that are relevant to people who use drugs and HIV/AIDS or harm reduction advocates:

1. UN General Assembly Special Session (UNGASS) “**Millennium Declaration**” (2000) which sets out goals to be achieved by 2015.

2. UNGASS “**Declaration of Commitment on HIV/AIDS**” (2001) adopted unanimously by the member states of the United Nations; it sets real targets for prevention, funding and access to essential medicines, and represents a collective statement and blueprint for civil society to promote action on AIDS and hold governments accountable. The declaration also includes a strong and clear commitment to harm reduction.
3. International Guidelines on HIV/AIDS and Human Rights.
4. UNGASS “**Political Declaration**” and “**Declaration on the Guiding Principles of Drug Demand Reduction**” (as well as an “Action Plan” to implement the Declaration).
5. UN Administrative Committee on Coordination (ACC) Subcommittee on Drug Control’s “**Preventing the Transmission of HIV among Drug Abusers: A position paper of the United Nations System,**” which endorses syringe and needle exchange programs and draws on other UN human rights documents to present the UN system-wide position.

In addition, there are numerous time-bound national and regional guidelines, such as WHO’s bi-regional strategy, which lay out basic principles that should form the basis of any programs targeting IDUs. Most important are the laws, policies, and regulations of your own national and local government, which can be monitored for how well they comply with international human rights obligations.

After the investigation

The planning before the investigation should indicate the nature of the abuse, the supposed perpetrators, and the obligation of the state involved. But a successful investigation will allow us to question these initial assumptions and refine them, allowing us to arrive at more dependable conclusions and more precise arguments. The process

of analysis should be a rigorous process. Its goal is to examine the facts of the investigation and to evaluate it; to show that a violation of a protected human right actually occurred; to prove that the state is responsible, whether by action or inaction. The following are important steps to analyzing your evidence.

1. Show that there is a protected right

We should show that the abuses we investigate violate a right that the government involved is obligated to protect according to human rights legislation at the national or international level. In those countries where the right is protected at the international level, it should be shown that the state has ratified that treaty and consequently has the legal obligation to comply with its requirements. When several rights are involved, each should be indicated separately to show that the state was obligated to protect each one.

Some rights that have been invoked in defense of people who use drugs are: the right to health services, access to information, freedom from arbitrary arrest and detention, and the right to life. Drug user activists need to develop the analytic framework to show the connections between the lives of our communities and protected human rights, which many times do not explicitly refer to issues related to drug use. This process, while arduous, can be instructive. It is a challenge to move beyond the current interpretations of rights, which may not include us, and provide the basis by which the interpretation of these rights should be expanded.

2. Show that a violation of rights on the basis of “drug user status” occurred

Not every human rights violation that a drug user suffers has to do with their drug user status, so it is important to demonstrate a cause-effect relationship if your investigation is mainly concerned with abuses against drug users.

Case Example

Russia: Denial of Medical Care to People Who Use Drugs

In interviews with victims and witnesses, an activist group in Kazan, Russia, has been able to clearly document the refusal by medical personnel to provide care on the basis of people's drug user status. In one case, a man described his desperate attempt to get medical treatment for his wife, who was experiencing severe side effects of withdrawal. The man remembered, "When the ambulance arrived and they saw that my wife was going through withdrawal, instead of providing medical help to her they got angry with her. They said, 'You are so young and already a drug addict! If you are trying to kill yourself, then why should we even try to help you?'" They did not help her. Five hours later, after his wife's condition deteriorated further, the man again called an ambulance. This time the medical workers said, "You yourself know what to do. Only drugs will help her. We aren't going to take her to the hospital, because no one will let her in anyway." Although the medical workers gave his wife an injection to ease her pain before leaving, she died several hours later.

3. *Show clearly the responsibility of the state*

As we have examined before, we should analyze whether the state is responsible through direct action, through failure to prevent abuses, or inability to punish perpetrators of human rights violations.

4. *Identify and evaluate possible solutions*

It is critical to consider how to put an end to the abuse and to prepare concrete recommendations for all responsible parties, including

the state as well as nongovernmental bodies and actors. To identify the broadest and most effective range of solutions to the problems identified, it is a good idea to consult with directly affected people, who best can express what they would like to have done. You can, for example, ask this at some point near the end of interviews: “What would you recommend the government do to put a stop to this abuse? How do you think we should help solve this problem?”

5. *Publicize the results*

A fundamental component of any strategy for defending human rights is to decide the best form to present the results of an investigation. One possible format is a written report. Other possibilities are editorial letters or articles to be published in newspapers, magazines, and public forums—these can be particularly effective if a goal of the investigation is to educate the public.

If the objective is to get witnesses and facts that support a case that is already in the courts, then the presentation should be fine-tuned to be useful in this legal context. When the objective is to support a presentation before human rights bodies at any level, the report should be structured in a way that offers the information that this mechanism requires. When using the documentation for political action at the national, regional, or international level, it is useful to develop a detailed report that can be published and disseminated widely.

When writing reports, we should always include conclusions and recommendations. These should target local, national, regional, and international levels as appropriate, have grounding in national or international legislation, and be realizable.

The content of the report, of course, should be approved in advance by the persons most affected by the violations, and who should also be involved in follow-up advocacy if possible.

Send copies of reports to the government (noting that your group did so officially in the text); to activists; nongovernmental organizations; relevant corporations and donor organizations; and the media. The more attention a report receives, the more likely it will generate pressure from the public so its conclusions can be implemented.

Case Example

Ukraine: Publicizing the Results of Research

“In order to reach a wide audience with information about abuses against drug users in our community, we reached out to several journalists at our local city newspapers. Many of them are former users themselves. We encouraged them to do investigative articles about specific problems that drug users face, and the editors of the newspaper supported this work, since it has such relevance for our community. We also contacted one national television station that does in-depth reporting on certain themes and told them about the human rights situation for users in Ukraine. When the programs they plan intersect with our concerns, they contact us. We have provided them with advice, contacts, and have even taken them to clinics and other locations to allow them to capture relevant film clips or interview victims. It is really important that we publicize these violations and reach as many people as possible.”

—Kostyantyn Zverkov, Era Miloserdiya,
Odessa, Ukraine

Pushing for accountability

Identifying important actors in human rights violations and holding them accountable nationally or under UN and regional mechanisms is a critical and powerful endeavor in the process of realizing rights, and activists should explore options for doing so. Getting recognition

and redress through formal mechanisms, such as those of the UN, are not the only way that violators can be held accountable. However, when a violation is recognized by a UN official such as a “Special Rapporteur” (see *Appendix B*) or a favorable UN court decision is handed down, it resonates internationally.

During Thailand’s violent war on drugs, comments condemning Thailand’s behavior by Hina Jilani, the UN Secretary General’s Special Representative on Human Rights Defenders, and Paul Hunt, Special Rapporteur on the Right to Health, were circulated around the world. These continue to be a source of shame for the Thai government, continually invoked by Thai politicians as a warning against further abuse and recognition that human rights vigilance crosses borders.⁷

7 See “Commentary,” Bangkok Post, August 2, 2007: http://www.bangkokpost.com/Perspective/05Aug2007_perso03.php

Human Rights Accountability Mechanisms

State-State Mechanisms: Governments (or “states,” in UN parlance) can express concern about human rights abuses for which other states are responsible.

Individual-State:

Individuals may demand recognition of their rights from a government.

Group/Community-State:

A group of people may together demand recognition of their rights from a government.

Within and Between Groups:

Human rights can be a powerful rallying force for oppressed and marginalized groups, and may serve as a coalition-building tool connecting two separate groups who may face similar rights abuses (such as people who use drugs and sex workers).

Human rights advocacy works just as powerfully at the grassroots level, helping to build alliances across shared interests on certain rights issues between diverse groups.

State accountability within the UN

Individual governments are responsible for taking steps to prevent violations of human rights as well as for bringing perpetrators to justice. Therefore, governments must take practical measures to reduce the incidence of violations, through legal, educational, and other means. There are various ways that you can monitor your country's progress in respecting, protecting, fulfilling, and promoting the human rights of people who use drugs and hold your government accountable, not only via the UN mechanisms and courts but at the local level with potential allies, authorities, politicians, and other leaders. This guidebook will focus on giving you tools to develop a human rights advocacy plan through documentation of human rights abuses against people who use drugs.

Recently, drug user groups and allies including NGOs, lawyers, academics, and others have used various approaches to holding their governments accountable under international human rights law, both nationally and internationally. Campaigns focused not only on grand goals such as ensuring an independent investigation into extrajudicial killings, but on strategies closer to home to educate others about the human rights context for people who use drugs and confronting law enforcement officials with comprehensive documentation of police abuse of power and brutality. For example:

- The Thai Drug Users' Network (TDN) took its 2002 peer-to-peer human rights documentation project to a sympathetic senator in the Thai parliament, who interviewed a TDN representative on parliament radio and invited TDN to address the parliament on drug use and human rights issues;

- In Vancouver, Canada, Pivot Legal Society collected sworn legal statements from 50 people who use drugs, sex workers, and others about police abuses. The subsequent report⁸ led to a court-ordered independent investigation of the Vancouver Police Department, and recommendations for changes to how complaints are investigated, which are now under consideration.
- Russian groups such as FrontAIDS and ITPCru have used human rights arguments to push for greater access to medical care, and in documenting the denial of HIV and TB treatment for people who use drugs.

There is a universe of possibilities for educating and campaigning on the human rights situation in your country apart from documenting abuses, submitting shadow reports, or requesting direct support from UN special representatives, including: developing your own organization's capacity to work on these issues, identifying key national or international organizations that can help develop a strategic advocacy campaign, conducting workshops to educate allies and strengthen partnerships with key stakeholders, holding face-to-face lobbying meetings with officials, networking with NGOs and other relevant organizations, staging street-based actions including demonstrations, marches and vigils, holding public tribunals, launching letter-writing campaigns and media work including press conferences and interviews, putting on public forums and awareness campaigns, developing materials or websites to publicize the situation, and calling on governments to guarantee justice, protections, and reparations for victims of rights abuses.

8 Pivot Legal Society. 2002. To Serve and Protect. Online at <http://www.pivotlegal.org/Publications/reportstsap.htm>

In addition, consider proposing legal reform or model legislation⁹ (such as enacting anti-discrimination policies or repealing criminal laws), conducting or influencing others to conduct research on the legislative environment and its impact on the human rights of drug users, demanding your government ratify relevant treaties, obtaining commitments on user rights from public officials, and working with lawyers to document case studies or bring precedent-setting cases to court.

Let your imagination pave the way!

9 The Canadian HIV/AIDS Legal Network has published an eight-part series of model laws on various aspects of drug use and harm reduction, which is available in English and Russian online at <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=620>

How Can I Find Additional Resources on Harm Reduction and Human Rights?

General resources

There are several good, general resources online for learning more about human rights documentation. One excellent place to start is **Human Rights Information and Documentation Systems (HURIDOCS)**: www.huridocs.org. HURIDOCS provides a number of manuals and other tools—including free human rights documentation database software—and most have been translated to Russian, Spanish, French and Portuguese.

The Law and Health Initiative of the Open Society Institute and Equitas published the excellent *Health and Human Rights: A Resource Guide*, which includes chapters on HIV/AIDS, harm reduction, and other subjects: http://www.soros.org/initiatives/health/focus/law/articles_publications/publications/guide_20070630.

Major human rights organizations like **Human Rights Watch** (www.hrw.org), **Amnesty International** (www.amnesty.org) and **Physicians for Human Rights** (www.physiciansforhumanrights.org) have a wealth of information on their websites.

The open access international journal *Health and Human Rights* is published by the Harvard University School of Public Health: www.hhrjournal.org

Publications mentioned in the Manual

Amnesty International Campaigning Manual:
<http://web.amnesty.org/pages/campaigning-manual-eng>

Nancy Flowers, ed., “Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights” <http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Default.htm>

“Human Rights Principles and Advocacy” (International Gay and Lesbian Human Rights Commission): http://www.iglhrc.org/files/iglhrc/program_docs/1.%20Intro_to_HR.pdf

“Documenting Human Rights Violations” (International Gay and Lesbian Human Rights Commission): http://www.iglhrc.org/files/iglhrc/program_docs/4.%20Documenting_violations.pdf

“Making the Mountain Move: An Activist’s Guide to How International Human Rights Mechanisms Can Work for You,” <http://www.iglhrc.org/files/iglhrc/reports/unguide.pdf>

Elliott, R., “Regime Change?: Drug Control, Users’ Human Rights and Harm Reduction in the Age of AIDS,” draft background paper for *Human Rights at the Margins: HIV/AIDS, Prisoners, Drug Users and the Law*, Satellite of the XV International AIDS Conference, July 9, 2004, Bangkok, Thailand.

Wodak, A., “Health, HIV Infection, Human Rights, and Injecting Drug Use,” *Health and Human Rights*, vol. 2, No. 4, FXB Center, Harvard School of Public Health.

“Health and Human Rights: A Resource Guide for the Open Society Institute and Soros Foundations Network,” (Open Society Institute/ Equitas, June 2007).

PIVOT Legal Center “Affidavit Program Training Session” sheet (Vancouver ICRDRH, 2006).

International and regional declarations and resolutions

Declaration of Commitment on HIV/AIDS (2001) by the United Nations General Assembly Special Session on HIV/AIDS, Resolution A/RES/S-26/2, June 27, 2001 (see references to human rights at pp. 58–61, 66, 96; see also, references to harm reduction at p. 24 in the follow-up declaration to the UNGASS in 2006).

Source: data.unaids.org/pub/Report/2006/20060615_HLM_PoliticalDeclaration_ARES60262_en.pdf

Dublin Declaration of Action (2004)

The declaration on HIV and AIDS in prisons in Europe and Central Asia focuses on the magnitude of the HIV and AIDS problem in prisons and the rights of prisoners to an environment free of excess risk of infection. This includes policies and programs aimed at reducing spread and impact of disease as well as health care equal to that available outside of prisons.

Source: www.eu2004.ie/templates/document_file.asp?id=7000 especially principle 6, articles 1, 10, 11

Vancouver Declaration on Drug Users’ Human Rights (2006)

Following the International Conference on the Reduction of Drug Related Harm, an advocacy group wrote and released a declaration describing the prejudice they face as drug users around the world. They also documented their collective goals

to overcome this prejudice. The Declaration is available in 18 languages.

Source: hardcoreharmreducer.be/VancouverDeclaration.html

The GIPA Principles (2004)

The *Principles of Greater Involvement of People with HIV/AIDS* were derived from a principle embedded in the Paris AIDS Summit Declaration of 1994. This Declaration acknowledged the central role of people living with HIV in education and care, and in the design and implementation of national and international policies and programs in order to successfully tackle HIV/AIDS. It also acknowledged that, for positive people to take on a greater role in the response, they need increased support.

Source: www.gnplusplus.net/cms/filemgmt/visit.php?lid=114

International Manifesto of People Who Use Drugs (2008)

This Manifesto is included in the booklet “Nothing About Us Without Us—Greater, Meaningful Involvement of People Who Use Illegal Drugs: A public health, ethical, and human rights imperative”. Originally published in Canada in 2006, new international (in English) and Russian editions were published in 2008 with content developed by and in consultation with drug user activists from around the world.

Source: http://www.soros.org/initiatives/health/focus/ihrd/articles_publications/publications/nothingaboutus_20080603

Reports, key articles, and other documents

Betteridge, G. Prisoners' Health and Human Rights in the HIV/AIDS Epidemic. *HIV/AIDS Policy and Law Review* 9(3), December 2004.

Source: www.aidslaw.ca/publications/publicationsdocEN.php?ref=177)

Canadian HIV/AIDS Legal Network (2006). Legislating for Health and Human Rights: Model Law on Drug Use and HIV/AIDS.

Source: www.aidslaw.ca/publications/publicationsdocEN.php?ref=620
8 modules

Elliott, R. Harm Reduction, HIV/AIDS, and the Human Rights Challenge to Global Drug Control Policy — *Health and Human Rights: An International Journal*, Vol. 8, No. 2, 2005.

Source: www.aidslaw.ca/publications/publicationsdocEN.php?ref=78

“50 Best” Collections Overview from the International Harm Reduction Association. These collections highlight around 50 papers in each area of harm reduction which best summarize the evidence-base, reasoning and justification for harm reduction interventions and approaches.

Source: www.ihra.net/50BestCollectionsOverview

Jurgens, R. and Betteridge, B. (2005) Prisoners Who Inject Drugs: A Public Health and Human Rights Imperative, 8(2) *Health and Human Rights*.

Source: www.aidslaw.ca/publications/publicationsdocEN.php?ref=81

Lines, Rick. (2006). 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*. 2(4): pp. 269–280.

Cohen, J. and Csete, J. (2006) As Strong as the Weakest Pillar: Harm Reduction, Law Enforcement and Human Rights. *International Journal of Drug Policy*. 17(2): pp. 101–103.

Cohen, J. and Wolfe, D. (2008) Harm Reduction and Human Rights: Finding Common Cause. *AIDS*, 22 Suppl 2: pp. S93–S94

Human Rights Watch reports

Abusing the User: Police Misconduct, Harm Reduction, and HIV/AIDS in Vancouver.

Source: www.hrw.org/reports/2003/canada/

Fanning the Flames: How Human Rights Abuses are Fuelling the AIDS Epidemic in Kazakhstan.

Source: hrw.org/reports/2003/kazako603/

Injecting Reason: Human Rights and HIV Prevention for Injection Drug Users— California: A Case Study.

Source: www.hrw.org/reports/2003/usa0903/

Locked Doors: The Human Rights of People Living with HIV/AIDS in China.

Source: www.hrw.org/reports/2003/china0803/

Not Enough Graves: The War on Drugs, HIV/AIDS, and Violations of Human Rights.

Source: hrw.org/reports/2004/thailando704/

Rhetoric and Risk: Human Rights Abuses Impeding Ukraine's Fight Against HIV/AIDS.

Source: hrw.org/reports/2006/ukraine0306/

Rehabilitation Required: Russia's Human Rights Obligation to Provide Evidence-based Drug Dependence Treatment

Source: <http://hrw.org/reports/2007/russia1107/>

Deadly Denial: Barriers to HIV/AIDS Treatment for People Who Use Drugs in Thailand

Source: <http://hrw.org/reports/2007/thailand1107/>

Appendix A: Classes of International Rights

Classes of rights¹⁰

The classes of rights recognized in human rights treaties have historically been split into two categories: 1) civil and political rights and 2) economic, social, and cultural rights. Cold War politics revealed how the United States gave primacy to civil and political rights, and the Soviet Union to economic, social, and cultural rights, though the Universal Declaration of Human Rights (UDHR) contains both sets.

The Eastern side of the Iron Curtain emphasized the supremacy of economic, social, and cultural rights, following a Marxist argument that saw civil and political rights as bourgeois constructs that focused too heavily on the individual's place in society. These governments saw collective rights as validating state dominance of economic and social life, often at the expense of the individual. This often led to the undermining of civil and political rights of individuals, such as the

¹⁰ Reproduced from "Human Rights Education and Advocacy," IGLHRC (2002).

right to vote and the right to due process. The state, then, entrusted with ensuring collective rights, could see itself as legitimately restricting civil and political rights.

The West, on the other hand, held the view that the state has no inherent responsibility to guarantee or advance economic, social, and cultural rights. Here, the basic role of government is to ensure the protection of individual rights so there would be a free, orderly, and secure society for each individual to pursue her or his individual interests. These states view the pursuit of collective goals as allowing each person to make their own pursuit according to individual talent and capacity. Yet the emphasis by Western governments on the state refraining from specific actions—such as not restricting the right to vote or right to due process, or avoidance of torture and arbitrary arrest—is a different matter from guaranteeing basic conditions of health or housing. This perspective fails to account for the vast inequalities evident within free market domestic economies and between developed and developing countries.

Since the fall of the Iron Curtain, there has been growing recognition that all rights are interdependent: it is impossible to enjoy some if others are lacking (for example, if a person does not have one's basic needs satisfied—food, dwelling, etc.—the right to vote is not guaranteed as the person may have to sell her vote for food or may be so focused on survival that voting is not a priority in her hierarchy of needs).

Rights included in the International Bill of Rights
 (The rights indicated in *italics* are considered absolute or
 “non-derogable” (ICCPR, Article 4))

Civil and Political Rights

Self-determination (to decide political status; to seek cultural, social, and economic development)

Freedom from discrimination

Equal enjoyment of rights by men and women

Life

Freedom from torture and cruel, inhuman, or degrading treatment of punishment

Freedom from slavery or involuntary servitude

Liberty and security of person

Humane and dignified conditions of confinement (for those deprived of liberty)

Freedom from imprisonment for failure to fulfill a contractual obligation

Freedom of movement

Equal treatment before the law

Freedom from retroactive criminal prosecution

Recognition as a person before the law

Freedom from arbitrary or unlawful interference with privacy

Freedom of thought, conscience, and religion

Freedom of opinion, expression, and information

Peaceful assembly

Freedom of association

Protection of the family

Freedom to marry and found a family

Protection as a minor, to a name and a nationality (for children)

Freedom to participate in public life, vote, and stand for election in free and fair elections

Equal protection of the law

Freedom to enjoy or use one’s own culture, religion, and language (for ethnic, religious, or linguistic minorities)

Economic, Social, and Cultural Rights

Self-determination

Freedom from discrimination

Equal enjoyment of rights by men and women

Work

Just and favorable working conditions

Freedom to form trade unions

Social security

Protection and assistance for the family, mothers, children and young people

An adequate standard of living

The highest attainable standard of physical and mental health

Education

Share in cultural life and enjoy the benefits of scientific progress

Human rights are evolving to fulfill the initial promise of universality expressed in the Universal Declaration of Human Rights, as these protections expand to embrace the most vulnerable groups and prevent the most easily overlooked or concealed abuses. Integral to this progress is the recognition of the claims of different groups that organize around the world. During the past few decades, women, indigenous groups, disabled persons, human rights defenders, and other groups including people who use drugs have produced their own statements and articulations of their rights.

The process by which human rights become incorporated into the laws of individual countries and enter into force as international human rights law is as follows:

1. The countries, gathered in the United Nations, come to an agreement and sign a convention that recognizes and describes specific rights. This is adopted by majority vote in the UN General Assembly.

2. Each country **ratifies** it, or declares publicly its agreement with the convention. By ratifying the convention, countries agree to refrain from acts that would violate its objectives.
3. The rights recognized in the convention are incorporated into the laws of the country. By being a **state party** to a convention, the government takes responsibility to:
 - a) Abide by the provisions of that document;
 - b) Change any laws in the country that violate the convention;
 - c) Submit regular reports to the United Nations on how it is meeting its treaty obligations;
 - d) Agree to be monitored by the United Nations on how it complies with the convention.

In some cases, a government will agree to the intent of a convention but will object to one or more of its articles. It may then ratify the convention but make specific **reservations** about these articles.

4. When a pre-determined number of member states ratify a convention, it **enters into force**, becoming part of the body of international human rights law that may be used to claim and protect human rights. Unlike the UDHR, these conventions are legally binding for states that sign them.

Appendix B:

UN Committees and Treaties

Treaty-based mechanisms

“Treaty-based mechanisms” are UN committees. When a state ratifies one of the UN’s human rights treaties, it agrees to be investigated periodically to see how it is obeying the treaty’s terms. The committees—also called “treaty bodies”—do this investigating. The UN has produced seven human rights treaties, so there are seven committees:

1. The Human Rights Committee (HRC) monitors implementation of the International Covenant on Civil and Political Rights (ICCPR) and its optional protocols
2. The Committee on Economic, Social, and Cultural Rights monitors implementation of the International Covenant on Economic, Social, and Cultural Rights (ICESCR)
3. The Committee on the Elimination of Discrimination Against Women (CEDAW) monitors implementation of the Convention on the Elimination of Discrimination Against Women
4. The Committee Against Torture (CAT) monitors implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment

5. The Committee on the Elimination of Racial Discrimination (CERD) monitors implementation of the International Convention on the Elimination of Racial Discrimination
6. The Committee on the Rights of the Child monitors implementation of the Convention on the Rights of the Child
7. The Committee on Migrant Workers monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

These committees are composed of experts, usually lawyers experienced in human rights work. The seats on the committee are usually rotated among member countries of the UN. Each expert is nominated by his or her government; but she sits on the committee as an independent person, and is not meant to take further instructions from her government.

See UN human rights system organizational structure: <http://www.unhcr.ch/hrostr.htm>

See treaty body overview chart: <http://www.ohchr.org/english/bodies/docs/UNHRTS.gif>

See treaty body reporting cycle: <http://www.ohchr.org/english/bodies/docs/ReportingCycle.gif>

How do the committees work?

- *First:* They can only report on states which have ratified the relevant treaty. If your government has not ratified a particular treaty, the relevant committee can do nothing. To find out whether your country has ratified a particular treaty, you can go to: <http://www.ohchr.org/english/bodies/docs/RatificationStatus.pdf>.

- **Second:** Each state that has ratified a treaty has its record reviewed by the relevant committee at periodic intervals, or approximately every four years. Each committee meets two or three times per year; some time in advance, it releases a list of the countries it will be reviewing during the upcoming year. You can find out which states are coming up for review by a committee, by clicking on the committee (or treaty body) name at: <http://www.ohchr.org/english/bodies/treaty/index.htm#complaints> and then, when the page opens, click on “sessions” to learn when that treaty body is meeting to review which countries.

- **Third:** When a state is up for review by a committee, it is expected to produce a report showing how it has complied with the provisions of that treaty since the time it was last reviewed. If the state refuses to produce a report when it is reviewed, there is little the committee can do: it has nothing to respond to. Most states do report, however: not to do so would seem like admitting failure.

- **Fourth:** The committee reviews the state’s report, questions the state’s representatives, and issues its own comments. These comments are the committee’s “judgment” on the state’s compliance. They become part of the UN’s permanent record.

How can human rights activists get involved?

Here is the opportunity for activists like you to intervene. While a committee is considering a state’s record and preparing its own judgment, it welcomes comments by NGOs on whether the state has complied with the treaty. *Any* NGO can submit such comments. These comments are called “shadow reports” because they “shadow” the report that the state itself submits to the committee.

These reports can be very simple, such as a one- or two-page letter detailing a specific complaint. Or they can be longer reports pointing to a pattern of violations. They should be addressed to the chairperson of the relevant committee, at the office of the UN High Commissioner for Human Rights in Geneva:

Office of the High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10, Switzerland
Tel. +41 22 917 9000

OHCHR also has an NGO Liaison Officer:
Telephone: +41 22 917 9656
Mail: civilsocietyunit@ohchr.org

Information can be sent to the UN in any language.

Individual complaints can also be made to committees, and according to the UN website, “several bodies dealing with communications have developed model questionnaires to facilitate their examination of reported violations of human rights and these have been made available to persons wishing to report cases of alleged violations. It should, however, be noted that communications are considered even when they are not submitted in the form of a questionnaire.” To obtain further information and to download the model complaint forms, you can visit: <http://www.ohchr.org/english/bodies/question.htm>.

In addition to treaty-based mechanisms, there are other mechanisms that move more quickly when urgent action is needed. When someone faces immediate violence or danger, and when you need to put quick pressure on a state to act, the “**extra-conventional**

mechanisms” are the place to turn (see below). These mechanisms, as their name reflects, are not tied to treaties, or conventions. They operate independently.

The Human Rights Council (HRC) is the central UN forum for discussing human rights, and during its annual meeting, testimony is heard from NGOs, deals and resolutions are made, and countries are condemned and praised. The commission also sets out priority areas for the UN’s work on human rights, and work to propose or draft new treaties or declarations usually begins in the commission. It tries to ensure the UN gets information about urgent as well as long-standing abuses around the world, and to make sure that the UN can respond to these abuses. The principal ways the commission has devised for getting information, and for responding, are the *Special Rapporteurs* and *Working Groups*.

“Special Rapporteurs” are individuals appointed by the Human Rights Council (HRC) to investigate human rights violations, and present an annual report including recommendations for action. They communicate constantly with governments and conduct fact-finding missions where possible. They can write to relevant governments directly in the case that they hear about an urgent situation, and whatever they learn in the process becomes part of their annual report.

Special Rapporteurs investigate the human rights situation of a *country*, when there is reason to believe that serious abuses are taking place there, or investigate a *theme*, such as extrajudicial killings in Thailand or violence against women in Tanzania. A “thematic” Special Rapporteur is appointed when a majority of the commission’s members agree that a subject merits special attention, and investigation. These Rapporteurs are among the most accessible parts of the UN’s human rights structure, and some of them deal with issues closely connected to the human rights of people who use drugs, for example: violence against women, arbitrary arrest and detention, and extrajudicial executions.

You can write to a Special Rapporteur (in care of the UN High Commissioner for Human Rights in Geneva) at any time to tell her/him about abuses which you believe fall within her/his mandate. You can also ask the Rapporteur to communicate with the government in question, either to get more information or to request a specific action. Many of the Rapporteurs perform fact-finding missions to various countries. If a Special Rapporteur is coming to your country, try to arrange a meeting (by contacting the High Commissioner's office in Geneva) to raise your concerns with her/him directly.

Wikipedia lists the current Special Rapporteurs, special representatives and independent experts who investigate, monitor, and provide recommendations and solutions to human rights problems in certain countries and related to certain themes (in English only): http://en.wikipedia.org/wiki/United_Nations_Special_Rapporteur.

“Working Groups” are small committees appointed by the Human Rights Council (HRC), to look into a particular issue, such as enforced or involuntary disappearances, arbitrary detention or minorities. Their job is to write to governments about urgent cases and help states prevent future violations by developing criteria to clarify what constitutes a certain violation. Working Groups will send out letters almost immediately, for example to the minister of foreign affairs, in hope of getting quick answers, and possibly saving lives. For example, the Working Group on Arbitrary Detention has developed an “urgent action” procedure,

“...for cases in which there are sufficiently reliable allegations that a person may be detained arbitrarily and that the continuation of the detention may constitute a serious danger to that person's health or life” or other circumstances warranting such an appeal.

Your communications to the Special Rapporteurs and to the Working Groups should contain all the information that you have on hand

about a case—but you should write to them even if you do not have all the details you would like! If possible, provide:

- Your own name and address
- As much information as possible about the victim or victims (if you are writing about a law or government action that affects a larger group, explain the way it affects them)
- Description of the violation: if it is a particular incident, give dates and locations; if you are writing about a law or policy, cite it and explain how it is employed
- Any information you have about the persons who committed the violation
- Information about any steps the victims or their representatives may have taken to obtain a remedy
- Information about whether any official response or investigation has taken place
- Your own recommendation for a response, or for measures to prevent future violations
- What you want the Rapporteur or Working Group to do, and why. Remember, Rapporteurs can communicate with the government, but can also visit countries to investigate serious situations directly. Working Groups generally just ask governments—quickly and urgently—for information, or for the release of detained persons.

There are other ways that have been utilized by drug user advocates in approaching and influencing the Human Rights Council (HRC), such as by testifying at its annual meeting in Geneva, when specific time is allotted by the commission to NGOs with “official ECOSOC consultative status.” Any NGO can apply for ECOSOC status, but

the process is time-consuming. On the other hand, NGOs with current ECOSOC consulting status—such as the Eurasian Harm Reduction Network, the Open Society Institute, or the International Harm Reduction Association—often “sponsor” activists to speak to the commission, and lobby its members, on drug user concerns.

Many channels for seeking redress through the UN and other mechanisms require that you have exhausted all legal remedies in the state where the violation happened first, with some exceptions. Therefore, it is important to emphasize the importance of seeking local avenues of redress and reparation first—often these can lead to the most meaningful decisions and positive changes for the individuals or group on whose behalf you are advocating.

Appendix C: History of Human Rights¹¹

The belief that everyone, by virtue of her or his humanity, is entitled to certain human rights is fairly new. Its roots, however, lie in earlier tradition and documents of many cultures; it took the catalyst of World War II to propel human rights onto the global stage and into the global conscience.

Throughout much of history, people acquired rights and responsibilities through their membership in a group—a family, indigenous nation, religion, class, community, or state. Most societies have had traditions similar to the “golden rule” of “Do unto others as you would have them do unto you.” The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the Analects of Confucius are five of the oldest written sources which address questions of people’s duties, rights, and responsibilities. In addition, the Inca and Aztec codes of conduct and justice and an Iroquois Constitution were Native American sources that existed well before the 18th century. In fact, all societies, whether in oral or written tradition, have had systems of propriety and justice as well as ways of tending to the health and welfare of their members.

11 Section reproduced from “Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights,” HREA, Amnesty International (1998).

Precursors of 20th century human rights documents

Documents asserting individual rights, such as the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of Man and Citizen (1789), and the US Constitution and Bill of Rights (1791) are the written precursors to many of today's human rights documents. Yet many of these documents, when originally translated into policy, excluded women, people of color, and members of certain social, religious, economic, and political groups. Nevertheless, oppressed people throughout the world have drawn on the principles these documents express to support revolutions that assert the right to self-determination.

Contemporary international human rights law and the establishment of the United Nations (UN) have important historical antecedents. Efforts in the 19th century to prohibit the slave trade and to limit the horrors of war are prime examples. In 1919, countries established the *International Labor Organization (ILO)* to oversee treaties protecting workers with respect to their rights, including their health and safety. Concern over the protection of certain minority groups was raised by the League of Nations at the end of the First World War. However, this organization for international peace and cooperation, created by the victorious European allies, never achieved its goals. The League floundered because the United States refused to join and because the League failed to prevent Japan's invasion of China and Manchuria (1931) and Italy's attack on Ethiopia (1935). It finally died with the onset of the Second World War (1939).

The birth of the United Nations

The idea of human rights emerged stronger after World War II. The extermination by Nazi Germany of over six million Jews, Sinti and Romani (gypsies), homosexuals, and persons with disabilities horrified the world. Trials were held in Nuremberg and Tokyo

after World War II, and officials from the defeated countries were punished for committing war crimes, “crimes against peace,” and “crimes against humanity.”

Governments then committed themselves to establishing the United Nations, with the primary goal of bolstering international peace and preventing conflict. People wanted to ensure that never again would anyone be unjustly denied life, freedom, food, shelter, and nationality. The essence of these emerging human rights principles was captured in President Franklin Delano Roosevelt’s 1941 State of the Union Address when he spoke of a world founded on four essential freedoms: freedom of speech and religion and freedom from want and fear. The calls came from across the globe for human rights standards to protect citizens from abuses by their governments, standards against which nations could be held accountable for the treatment of those living within their borders. These voices played a critical role in the San Francisco meeting that drafted the *United Nations Charter* in 1945.

The Universal Declaration of Human Rights

Member states of the United Nations pledged to promote respect for the human rights of all. To advance this goal, the UN established a *Human Rights Council (HRC)* and charged it with the task of drafting a document spelling out the meaning of the fundamental rights and freedoms proclaimed in the Charter. The Commission, guided by Eleanor Roosevelt’s forceful leadership, captured the world’s attention.

On December 10, 1948, the *Universal Declaration of Human Rights (UDHR)* was adopted by the 56 members of the United Nations. The vote was unanimous, although eight nations chose to abstain.

The UDHR, commonly referred to as the international Magna Carta, extended the revolution in international law ushered in by the United

Nations Charter—namely, that how a government treats its own citizens is now a matter of legitimate international concern, and not simply a domestic issue. It claims that all rights are *interdependent* and *indivisible*. Its Preamble eloquently asserts that:

[R]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.

The influence of the UDHR has been substantial. Its principles have been incorporated into the constitutions of most of the more than 185 nations now in the UN. Although a declaration is not a legally binding document, the Universal Declaration has achieved the status of customary international law because people regard it “as a common standard of achievement for all people and all nations.”

The Human Rights Covenants

With the goal of establishing mechanisms for enforcing the UDHR, the UN Human Rights Council (HRC) (formerly the Commission on Human Rights, or CHR) proceeded to draft two treaties: the International Covenant on Civil and Political Rights (ICCPR) and its optional *Protocol* and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the Universal Declaration, they are commonly referred to as the *International Bill of Human Rights*. The ICCPR focuses on such issues as the right to life, freedom of speech, religion, and voting. The ICESCR focuses on such issues as food, education, health, and shelter. Both **covenants** trumpet the extension of rights to all persons and prohibit discrimination.

Subsequent human rights documents

In addition to the covenants in the International Bill of Human Rights, the United Nations has adopted more than 20 principal treaties further elaborating human rights. These include conventions to prevent and prohibit specific abuses like torture and genocide and to protect especially vulnerable populations, such as refugees (*Convention Relating to the Status of Refugees*, 1951), women (*Convention on the Elimination of All Forms of Discrimination against Women*, 1979), and children (*Convention on the Rights of the Child*, 1989). As of 1997 the United States has ratified only these conventions:

- The Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Prevention and Punishment of the Crime of Genocide
- The Convention on the Political Rights of Women
- The Slavery Convention of 1926
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

In Europe, the Americas, and Africa, regional documents for the protection and promotion of human rights extend the International Bill of Human Rights. For example, African states have created their own Charter of Human and People's Rights (1981), and Muslim states have created the Cairo Declaration on Human Rights in Islam (1990). The dramatic changes in Eastern Europe, Africa, and Latin America since 1989 have powerfully demonstrated a surge in demand for respect of human rights. Popular movements in China, Korea, and other Asian nations reveal a similar commitment to these principles.

Appendix D: Which Are the Most Relevant International and Regional Human Rights Standards Related to Harm Reduction?

Overview

A variety of human rights standards at the international and regional levels apply to harm reduction. These standards can be used for many purposes:

- **To document** violations of the rights of people who use drugs;
- **To advocate** for the cessation of these violations;
- **To sue** governments for violations of national human rights laws;
- **To complain** to regional and international human rights bodies.

In the tables on the following pages, **examples** of human rights violations related to harm reduction are provided. Relevant human rights **standards** are then cited, along with examples of legal **precedents** interpreting each standard.

How to read the tables

As you read through each table, ask yourself the following questions about the **violations**, **standards**, and **precedents and interpretations** that are cited:

Examples of Human Rights Violations

Do any of these violations occur in your country? Are there other violations of this human right that exist in your country?

Human Rights Standards

Are these violations prohibited by the “human rights standards”? Can the standards be interpreted to apply to this violation?

Precedents and Interpretations

Do any of the “examples of precedents and interpretations” apply to this issue? Can they be interpreted to apply to this issue?

Remember that human rights law is an evolving field, and that many human rights violations are not directly addressed by existing legal standards and precedents. Through ongoing documentation and advocacy, advocates can build a stronger body of jurisprudence on harm reduction and human rights.

Abbreviations

In the tables, the seven treaties and their corresponding enforcement mechanisms are referred to with the following abbreviations:

Treaty	Enforcement Mechanism
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (HRC)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights (CESCR)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee)
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC Committee)
African Charter on Human and People's Rights (ACHPR) & Protocols	African Commission on Human and People's Rights (ACHPR Commission)
[European] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	European Court of Human Rights (ECtHR)
European Social Charter (ESC)	European Committee of Social Rights (ECSR)

Also cited are the former Commission on Human Rights (**CHR**) and various UN Special Rapporteurs (**SR**) and Working Groups (**WG**).

Table 1: Harm reduction and the right to life

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ➤ A government authorizes or fails to investigate the murder of suspected drug traffickers as part of a crackdown on drugs. ➤ An ambulance refuses to respond to a drug overdose because the underlying activity is “illegal”. ➤ A government imposes the death penalty for drug-related offenses. ➤ Drug users die in locked hospital wards, such as the Moscow fire incident in December 2006. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 6(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p>(2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.</p>	<p>HRC: Expressed concern over the extrajudicial killing of people who use drugs. Also stated definitively that capital punishment for drug offences is in violation of the ICCPR (Thailand, 2005).</p> <p>SR Health: Expressed concern that the Anti-Narcotics Campaign [in Thailand], coupled with limited access to harm reduction services, had inadvertently created the conditions for a more extensive spread of [HIV] in Thailand” (2005).</p>

ACHPR 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

ECHR 2(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Table 2: Harm reduction and freedom from torture and cruel, inhuman and degrading treatment, including in prisons

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ➤ Police or security officials beat and injure people suspected of using drugs. ➤ Investigators force drug suspects into unmedicated withdrawal in order to extract confessions. ➤ A government imposes lengthy mandatory prison sentences for minor drug-related offenses. ➤ Persons convicted of drug offenses are detained, imprisoned, or committed to treatment in overcrowded and unsanitary facilities, without access to medical services. ➤ Drug users are denied mental health treatment while in prison, jail, or drug treatment. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 7 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.</p> <p>ICCPR 10(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.</p>	<p>HRC: Expressed concern about high rates of HIV and TB in Ukraine, and recommended that Ukraine provide hygienic facilities, assure access to health care and adequate food, and reduce the prison population, including by using alternative sanctions (2006).</p>

<p>ACHPR 5 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.</p> <p>ECHR 3 No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (1987) • European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1989) • Code of Conduct for Law Enforcement Officials (1979) • Standard Minimum Rules for the Treatment of Prisoners (1955) 	<p>SR Violence Against Women: Expressed concern that the U.S. was “criminalizing a large segment of its population” through drug charges, increasingly women, and that many of these offenses “may be more appropriately handled by a community-based system of welfare and social support, as is presently the case in certain European countries.” (1999).</p>
	<p>ECtHR: Held that refusal of medical treatment to an HIV-positive detainee held on drug charges violated article 3 {Khudobin v. Russia, 2007}; that forcing a drug suspect to regurgitate to retrieve a balloon of heroin violated article 3 {Jalloh v. Germany, 2006}; and that the UK government breached article 3 by failing to provide necessary medical care to a heroin dependent woman who died in a UK prison while serving a four-month sentence for theft {McGlinchey and others v. UK, 2003}.</p>

Table 3: Harm reduction and freedom from arbitrary arrest and detention

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ➤ Drug users are arrested or detained based on planted evidence or evidence obtained through an illegal search or seizure. ➤ Drug users are imprisoned on criminal charges without a fair trial. ➤ Drug users are committed to forced treatment or detoxification without their consent. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 9(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</p> <p>ACHPR 6 Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.</p>	<p>HRC: Has held that protections under art. 9 apply to all forms of detention, including for “drug addiction” {General Comment 8, paragraph #1}; has expressed concern in Mauritius that bail is not allowed for persons arrested or held in custody for the sale of drugs, urging the government to “review the Dangerous Drugs Act in order to enable judges to make a case-by-case assessment on the basis of the offence committed” (2005); has expressed concern in Ireland about the 7-day period of detention without charge under the Drug Trafficking Act (2005).</p>

ECHR 5(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

See also:

- Code of Conduct for Law Enforcement Officials (1979)
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)
- Reports of the UN Commission on Human Rights Working Group on Arbitrary Detention (2003–2005)

CRC: Has expressed concern in **Brunei Darussalem** “that children abusing drugs may be placed in a closed institution for a period of up to three years” and recommended that the government “develop non-institutional forms of treatment of children who abuse drugs and make the placement of children in an institution a measure of last resort.” (2003).

WG Arbitrary Detention: From 2003–2005, has expressed concern about arbitrary detention of “drug addicts” and “people suffering from AIDS;” recommended that persons deprived of their liberty on health grounds “have judicial means of challenging their detention;” concluded that bail conditions can be difficult to meet for people who use drugs; and recommended that states prevent over-incarceration of vulnerable groups.

ECtHR: held that unjustified pre-trial detention of an HIV-positive detainee for one year and 23 days breached article 5(3) {**Khudobin v. Russia**, 2007}.

Table 4: Harm reduction and the right to a fair trial

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ➤ An individual is convicted of drug charges after having been lured into committing a drug offense by an undercover police officer. ➤ A detainee is kept in pre-trial detention for drug charges for an unreasonable length of time. ➤ An individual is convicted on a drug offense without trial. ➤ An individual is convicted of a drug charge based on evidence obtained during an illegal police search of his or her home. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 9(3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release...</p> <p>(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.</p>	<p>ECtHR: Held that where the activity of undercover agents instigates a drug offence and there is nothing to suggest the offence would have been committed without the police's intervention, this constitutes "incitement," and evidence obtained as a result cannot be used against a defendant. {<i>Yanyan v. Russia</i>, 2005, <i>Teixeira de Castro v. Portugal</i>, 1998}.</p>

ACHPR 7 1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.

ECHR 6(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Applying these cases in 2007, the **ECtHR** held that a Russian trial court should have considered evidence that a defendant facing drug charges had been entrapped by the police, especially considering that he did not have a criminal record and the only allegations of his involvement in drug dealing came from a police informant. {*Khudobin v. Russia*, 2007}.

Table 5: Harm reduction and the right to privacy

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ➤ Police are authorized to arrest or detain people based on suspected drug use, without having to prove possession or trafficking of drugs. ➤ Police are authorized to test the urine of anyone suspected of using drugs. ➤ Doctor discloses a patient's history of drug use or addiction without consent. ➤ Clinic shares lists of registered drug users with law enforcement. ➤ Police raid the home of a suspected drug user without evidence or judicial authorization. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 17(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.</p> <p>ECHR 8(1) Everyone has the right to respect for his private and family life, his home and his correspondence.</p>	<p>CRC: expressed concern in Armenia at the criminalization of young drug users, and urged the government “to ensure that child drug abusers are not criminalized, but treated as victims in need of assistance towards recovery and reintegration.” (2004).</p> <p>ECTHR: Held that strip searching and examination of a mother and her mentally disabled son who were attempting to visit another brother in prison constituted a violation of article 8 {Wainwright v. United Kingdom, 2006}.</p>

Table 6: Harm reduction and the right to bodily integrity

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ➤ A suspected drug user is abused by police. ➤ Police fail to investigate a case of domestic violence against a drug-using woman. ➤ Doctors compel a drug-using pregnant woman to undergo an abortion. ➤ Police fail to investigate the assault or murder of a person suspected of using drugs, blaming it on “gang violence”. 	
Human Rights Standards	Precedents and Interpretations
<p>ACHPR 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p> <p>Note: The right to bodily integrity is not specifically recognized under the ICCPR or ICESCR, but has been interpreted to be part of the right to security of the person, to freedom from torture and cruel, inhuman, and degrading treatment, and the right to the highest attainable standard of health.</p> <p>Similarly, the right to bodily integrity is not specifically recognized in CEDAW, although CEDAW has been widely interpreted to include the right to protection from violence against women.</p>	<p>WG Enforced or Involuntary Disappearances: has noted that, “An aspect of disappearances that has been underreported in the past and continues at the present time relates to the way in which acts of disappearance are perpetrated in conjunction with other gross violations, with targets drawn from among the most vulnerable groups in society.... Common examples brought to our notice were: disappearances, combined with “social cleansing,” the urban poor, the unemployed, and the so-called “undesirables,” including <i>prostitutes, petty thieves, vagabonds, gamblers and homosexuals as the victims</i>” [emphasis added].</p>

Table 7: Harm reduction and freedom of expression and information

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ➤ Drug users are denied information about HIV prevention, harm reduction, and safer drug use. ➤ Government bans publications about drug use or harm reduction, claiming they represent propaganda for illegal activity. ➤ Government officials harass or detain individuals who speak publicly in favor of needle exchange, methadone, or other harm reduction measures. ➤ NGOs are compelled to oppose harm reduction as a condition of government funding for work on HIV prevention. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 19(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p> <p>ACHPR 9 (1) Every individual shall have the right to receive information.</p>	<p>CRC: has concluded that adolescent’s right to information about HIV and AIDS is part of the right to information {General Comment 3, paragraph #4}; has called on Panama to “provide children with accurate and objective information about substance use, including hard drugs and tobacco, and protect children from harmful misinformation,” as well as to “strengthen its efforts to address adolescent health issues...”</p>

ECHR 10(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) Every individual shall have the right to express and disseminate his opinions within the law.

See also:

- CRC 13

[including those] to prevent and combat HIV/AIDS and the harmful effects of drugs” (2003); has expressed concern in **Estonia** at “the increasing number of HIV-infections among injecting drug users” and encouraged the government to continue its efforts to provide children with accurate and objective information about substance use” (2003).

Table 8: Harm reduction and freedom of assembly and association

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ➤ Public authorities refuse to register a drug user association. ➤ Police break up a peaceful demonstration against drug laws. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 21 The right of peaceful assembly shall be recognized.</p> <p>22 The right of peaceful assembly shall be recognized.</p> <p>No restrictions may be placed on the exercise of [these rights] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (<i>ordre public</i>), the protection of public health or morals or the protection of the rights and freedoms of others.</p> <p>ACHPR 10 Every individual shall have the right to free association provided that he abides by the law</p>	<p><i>According to research conducted for this Table, no regional or international human rights body has applied the protection of freedom of assembly and association to the context of harm reduction.</i></p>

11 Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

ECHR 11 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

Table 9: Harm reduction and the right to non-discrimination

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ➤ A person is denied work, housing, health care, education, or access to goods and services due to actual or suspected drug use. ➤ Police disproportionately arrest migrants and racial minorities for drug offenses. ➤ People who use drugs are underrepresented in HIV treatment programs despite accounting for a majority of people living with HIV. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 2(f) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p>	<p>Committee on the Elimination of Racial Discrimination: has recommended that governments “should pay the greatest attention to the following possible indicators of racial discrimination: ... The proportionately higher crime rates attributed to persons belonging to those groups, particularly as regards petty street crime and offences related to drugs and prostitution, as indicators of the exclusion or the non-integration of such persons into society” (2005).</p>

ICCPR 26 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ACHPR 2 Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

ECHR 14 The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

SR Health: expressed concern in Romania that “the stigma associated with commercial sex work and injecting drug use, for example, affects how people engaged in these activities are often treated by health-care workers, especially when requesting services such as tests for sexually transmitted infections” and encouraged the government to combat discrimination that creates barrier to services (2005).

Table 10: Harm reduction and the right to the highest attainable standard of health

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ➤ Drug users or suspected drug users are turned away from hospitals or treated with stigma and judgmental attitudes in the health system. ➤ Government officials ban needle exchange programs or confiscate syringes from drug users, claiming they promote illegal activity. ➤ Government bans substitution therapy with methadone. 	
Human Rights Standards	Precedents and Interpretations
<p>ICESCR 12(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>12(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: ... (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases.</p>	<p>CESCR: has noted that non-discrimination is an “underlying determinant of health,” including non-discrimination on the basis of “health status,” which should include drug addiction.</p>

ACHPR 16 (1) Every individual shall have the right to enjoy the best attainable state of physical and mental health.

(2) States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

See also:

- CEDAW 12(1)
- CRC 24(1)

CESCR: expressed concern in **Tajikistan** with “the rapid spread of HIV...in particular among drug users, prisoners, sex workers,” and recommended that the government “establish time-bound targets for extending the provision of free testing services, free treatment for HIV and harm reduction services to all parts of the country” (2006).

CRC: has commented that governments “are obligated to ensure the implementation of programs which aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances” (General Comment 3).

SR Health: expressed concern in **Romania** that “the stigma associated with commercial sex work and injecting drug use, for example, affects how people engaged in these activities are often treated by health-care workers, especially when requesting services such as tests for sexually transmitted infections” and encouraged the government to combat discrimination that creates barriers to services (2005).

Table 11: Harm reduction and the rights of women and children

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ➤ Women are denied access to harm reduction services on an equal basis with men. ➤ Pregnant women who use drugs are forced to undergo abortions or sterilization, or are penalized for attempting to injure their child. ➤ Young people who use drugs are denied factual information and services about safer injection and harm reduction. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 3 The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.</p> <p>24 (1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.</p>	<p>CRC: has identified that, “Children who use drugs are at high risk [of HIV]” and that “injecting practices using unsterilized instruments further increase the risk of HIV transmission;” has also stated that governments “are obligated to ensure the implementation of programmes which aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances” (General Comment 3, paragraph #39); has made country-specific recommendations on children who use drugs in Armenia (2004), El Salvador (2004), Sao Tome and Principe (2004), Indonesia (2004), Brunei Darussalem (2003), Panama (2003), Estonia (2003), Ukraine (2002), and St. Vincent and the Grenadines (2002).</p>

ACHPR 18 (3) The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

(4) The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

See also:

- CEDAW 12(1)
- CRC 24(1)

SR Violence Against Women: expressed concern that the U.S. was “criminalizing a large segment of its population” through drug charges, increasingly women, and that many of these offenses “may be more appropriately handled by a community-based system of welfare and social support, as is presently the case in certain European countries” (1999).

Public Health Program

The Open Society Institute's Public Health Program (PHP) works to advance the health and human rights of marginalized persons by building the capacity of civil society leaders and organizations and advocating for accountability and a strong civil society role in health policy and practice. To advance its mission, the program supports the development and implementation of health-related laws, policies, and practices that are grounded in human rights and evidence. PHP utilizes five core strategies to advance its mission and goals: grantmaking, capacity building, advocacy, strategic convening, and mobilizing and leveraging other funding. PHP's project areas include harm reduction, sexual health and rights, access to essential medicines, mental health, health policy and budget monitoring, palliative care, Roma health, law and health, health media, and engagement with the Global Fund to Fight AIDS, Tuberculosis and Malaria. As of 2008, PHP worked in Central and Eastern Europe, Southern and Eastern Africa, certain countries of South East Asia, and China.

International Harm Reduction Development Program

The International Harm Reduction Development Program (IHRD), part of the Open Society Institute's Public Health Program, works to reduce HIV and other harms related to injecting drug use and to press for policies that reduce stigmatization of illicit drug users and protect their human rights. Since 1995 IHRD has supported more than 200 programs in Central and Eastern Europe and Asia, and bases its activities on the philosophy that people unable or unwilling to abstain from drug use can make positive changes to protect their health and the health of others. Since 2001, IHRD has prioritized advocacy to expand availability and quality of needle exchange, drug dependence treatment, and treatment for HIV; to reform discriminatory policies and practices; and to increase the participation of people who use drugs and those living with HIV in shaping policies that affect their lives.

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