



UKRAINE

Rhetoric and Risk

Human Rights Abuses Impeding Ukraine's
Fight against HIV/AIDS

HUMAN
RIGHTS
WATCH



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Glossary of Key Terms¹

Backloading/frontloading: “Backloading” and “frontloading” refer to a practice whereby one syringe is used to prepare the drug solution, which is then divided into one or more syringes for injection. The drug solution is shifted from one syringe into another with the needle (frontloading) or plunger (backloading) removed. HIV, hepatitis, and other infectious agents can be transmitted if the preparation syringe has been contaminated.

Buprenorphine: A medication used in opioid substitution therapy programs. It is included in the World Health Organization (WHO) Model List of Essential Medicines.

Harm reduction: Refers to a set of interventions designed to diminish the individual and societal harms associated with drug use, including the risk of HIV infection, without requiring the cessation of drug use. In practice, harm reduction programs include syringe exchange, drug substitution or replacement therapy using substances such as methadone, health and drug education, HIV and sexually transmitted disease screening, psychological counseling, and medical care.

Injection equipment: Items such as syringes, cottons, cookers, and water used in the process of preparing and injecting drugs. Each of these can be contaminated and transmit HIV or hepatitis. The broader term “drug paraphernalia” comprises injection equipment as well as items associated with noninjection drug use, such as crack pipes.

Methadone: A medication used in opioid substitution therapy programs. It is included in the WHO Model List of Essential Medicines.

Needle or syringe exchange points: Programs that provide sterile syringes in exchange for used ones. In addition to exchanging syringes, needle exchange points often provide HIV prevention information and screening, primary health care, and referrals to drug treatment and other health and social services.

Shirka: The popular name for one of the most commonly injected opiate derivatives used in Ukraine, a homemade preparation of acetylated or extracted opium. In the Odessa region, *shirka* refers to a homemade amphetamine derivative known elsewhere in the country as *vint* or *pervertin*.

Substitution or replacement therapy: Substitution therapy is the administration of a psychoactive substance pharmacologically related to the one creating substance dependence to substitute for that substance. Substitution therapy seeks to assist drug

¹ Information in this glossary is drawn from a number of sources, including United Nations Office of Drugs and Crime, “Glossary of Terms,” [online] http://www.unodc.org/pdf/report_2000-11-30_1.pdf (retrieved December 8, 2005); World Health Organization, United Nations Office of Drugs and Crime, Joint United Nations Programme on AIDS, “Position Paper: Substitution Maintenance Therapy in the Management of Opioid Dependence and HIV/AIDS Prevention” (Geneva: WHO, UNODC, UNAIDS, 2004); and E-mail communication from Konstantin Lezhentsev, M.D., program officer, International Harm Reduction Development Program, January 20, 2006.

users in switching from illicit drugs of unknown potency, quality, and purity to legal drugs obtained from health service providers or other legal channels, thus reducing the risk of overdose and HIV risk behaviors, as well as the need to commit crimes to obtain drugs.

Syringes or needles: The main components of a syringe are a needle, a tubular syringe barrel, and a plastic plunger. Graduated markings on the barrel of a syringe are used to measure the water or saline solution used to dissolve a solid substance into liquid form. Syringes and needles vary in size and do not always come as one piece; a syringe with the needle attached is often referred to as an “insulin syringe.” While disinfection of syringes is possible, public health authorities recommend a new sterile syringe for every injection.

Ties or tourniquets: Items used to enlarge or “plump up” veins to facilitate injection. Blood on a tie can also be a source of infection. Common ties include a piece of rope, a belt, a rubber hose, and a piece of bicycle inner tube.

Vint or Perventin: The popular names for an injected homemade amphetamine derivate.

Withdrawal: Clinical symptoms associated with ceasing or reducing use of a chemical agent that affects the mind or mental processes (i.e., a “psychoactive” substance). Withdrawal usually occurs when a psychoactive substance has been taken repeatedly and/or in high doses.

I. Summary

Ukraine stands at an important crossroads in its effort to contain its deadly HIV/AIDS epidemic. Ukraine is home to the worst HIV/AIDS epidemic in Europe and one of the fastest growing epidemics in the world. As many as 416,000 people—1.7 percent of all Ukrainian adults age fifteen to forty-nine—are estimated to be living with HIV/AIDS. Driven largely by injection drug use and sex work, the epidemic disproportionately affects people who live at the margins of society and who face a high risk of police violence and abusive treatment in the health care system. Unless immediate and concerted action is taken, these human rights abuses could undo many of the important and well-intentioned steps Ukraine has already taken to stop its HIV/AIDS epidemic.

This report is based on the direct testimony of 101 people living with, or at high risk of, HIV/AIDS in Ukraine. They represent a small fraction of those affected by HIV/AIDS in the country, yet their stories reveal a common theme: physical and psychological abuse and violations of due process by police, coupled with widespread discrimination by health care providers, leave already vulnerable individuals with no place to turn for HIV prevention and treatment services.

In interviews with Human Rights Watch, drug users and sex workers said that Ukrainian police subjected them to physical and psychological violence as a means to extort money or information from them. Drug users reported that police had planted drugs on their person, forced them to sign false confessions, or threatened them or their family members with violence, if they did not pay them or provide information to them.

Police abuse, sometimes rising to the level of torture, is a chronic and widespread problem in Ukraine extending beyond the context of HIV/AIDS. Yet drug users and sex workers are often the victims of such abuse, as their marginalized status makes them easy targets for police seeking to fulfill arrest quotas. Police use drug addiction as a tool to coerce testimony from drug users: when faced with painful withdrawal symptoms, drug users are especially vulnerable and more likely to submit to police pressure. And since drug users and sex workers are widely regarded as socially undesirable, police face little risk of censure for their actions.

Drug users said they were identified for arrest based on their efforts to obtain information and sterile needles from legal needle exchange sites, in direct contradiction to Ukrainian policies supporting needle exchange, and despite stated support for this from high-level police officials. Drug users and service providers gave accounts of police harassing, arresting, and severely beating drug users merely for possessing syringes

at or near the syringe exchange sites. Police interfered with outreach workers' efforts to provide HIV/AIDS information to drug users, sometimes by detaining or beating them. Where access to sterile syringes was impeded by police presence at the exchange, injection drug users would share and reuse syringes, placing themselves, their sex partners, and their children at significant risk of HIV infection.

Human Rights Watch also found that health care providers widely discriminated against people living with and at high risk of HIV/AIDS in Ukraine. People living with HIV/AIDS and injection drug users were turned away from hospitals, summarily discharged when their HIV status became known, or provided poor quality care that was both dehumanizing and debilitating to their already fragile health status. Ambulances refused to transport drug users and people living with HIV/AIDS. In some cases, care could be negotiated only through payment for services that should have been provided free of charge. Denial of care was identified by people living with HIV/AIDS, physicians specializing in AIDS care, and AIDS service workers as a particular problem for people seeking treatment at tuberculosis clinics. Tuberculosis is widespread in Ukraine, easily transmitted, and a major cause of death for people living with HIV/AIDS; refusal to treat people living with HIV/AIDS for tuberculosis threatens to jeopardize their lives and the health of thousands of other Ukrainians.

Access to health care for drug users was further impeded by official registration by health care and drug treatment providers, who provide drug user names to the police. Narcology centers, state facilities providing treatment for drug addiction, are required to record the names of drug users referred to them for treatment at the facility. Drug users said that they avoided seeking health care or drug treatment out of fear that health care workers would report their drug use to police or that information relayed to their employers would result in their dismissal.

Each of the abuses documented in this report threatens to be exacerbated by proposed changes in Ukraine's drug policies, which would criminalize possession of smaller amounts of narcotics than are currently prohibited. The fear of arrest for trace amounts of drugs threatens to accelerate HIV infection rates by driving those most vulnerable to HIV infection away from HIV prevention services and by increasing incarceration rates for drug users. Prisons, in turn, pose serious health risks for drug users. There, many continue drug use, and HIV prevention and effective drug treatment are limited, heightening the risk of contracting HIV, while exposure to other infectious diseases (such as tuberculosis) can aggravate existing HIV infection.

Ukraine has taken a number of positive steps against its HIV epidemic, chiefly in the area of legislative and policy reform. The country's national HIV/AIDS legislation, now recognized as a model in the region, was amended in 1998 and again in 2001 to incorporate human rights protections and evidence-based policies essential to an effective response to HIV/AIDS. These amendments include the abolition of mandatory HIV testing and guarantees of the right to HIV/AIDS information and to confidentiality of HIV/AIDS test results. Ukraine's national AIDS law provides an explicit commitment to provide HIV prevention services for drug users, including the establishment of syringe exchange programs. Its national HIV/AIDS program has identified the implementation of a substitution therapy program linked with HIV prevention, care, and treatment programs as one of its main goals. The Ukrainian parliament also has recommended implementing substitution therapy to prevent and treat HIV/AIDS among drug users. In September 2005, Ukraine began to implement substitution therapy programs with buprenorphine for HIV-positive drug users in seven cities, with the goal of enrolling 200 people by the end of 2005 and 6,000 people by 2008.

These steps draw on international experience showing that targeted interventions for injection drug users such as the provision of sterile injecting equipment and opiate substitution therapy (often referred to as "harm reduction") can be highly effective in preventing HIV transmission and other adverse consequences of drug use. It is a tragic and deadly irony that for most Ukrainians, these protections exist only on paper and are systematically undermined by chronic human rights abuse within the criminal justice and health systems.

As of January 2006, international donors had pledged more than U.S.\$100 million to support Ukraine's fight against HIV/AIDS. In 2004, with the support of the Global Fund to Fight AIDS, Tuberculosis and Malaria, and working closely with civil society, the nongovernmental organization (NGO) the International HIV/AIDS Alliance launched an antiretroviral program to treat people living with HIV/AIDS. Between April 2004 and December 1, 2005, more than 2,600 people began antiretroviral treatment under this program. While this program has been said to be the most rapid treatment expansion in all of Eastern Europe, it still reaches only a fraction of the 17,300 people in urgent need of antiretroviral therapy. The examples of widespread discrimination within the health care system documented by Human Rights Watch illustrate some of the obstacles that prevent Ukraine from realizing its goals of expanding antiretroviral treatment.

In pledging to provide harm reduction services to drug users, and in its efforts to expand access to antiretroviral therapy to people living with HIV/AIDS, the Ukrainian

government has shown an important commitment to protecting the human rights of those living with and at highest risk of HIV/AIDS. But the Ukrainian government's commitments at the policy level will be undermined without immediate measures to ensure that they are realized in practice.

For Ukraine's efforts to fight AIDS to be effective there must be political support to securing the rights to HIV/AIDS-related prevention and information from all parts of the government, not just the Ministry of Health. The Ministry of Interior, in particular, has a critical role to play. It must sanction or dismiss law enforcement officers whose abusive practices violate Ukrainian and international legal standards, and take immediate measures to ensure that law enforcement officers do not obstruct HIV prevention efforts. Ukrainian political leaders must speak out strongly in favor of HIV prevention, care, and treatment services for drug users and take urgent steps to hold accountable those responsible for committing abuses. They must also implement the broad protections already in Ukrainian law and policy, and thus give meaning to the range of human rights protections for people living with and at high risk of HIV/AIDS to which Ukraine has committed itself on paper. Donors who support HIV interventions in Ukraine should voice concern that their investments are being undermined by widespread human rights abuse against those living with and at highest risk of HIV.

II. Key Recommendations

To the Government of Ukraine

On HIV/AIDS

- End discrimination in health care services to drug users and people living with HIV/AIDS
- Respect the rights of people in Ukraine to complete, accurate information about HIV/AIDS and to obtain HIV/AIDS information and services without fear of punishment or discrimination.
- Provide training on HIV/AIDS, harm reduction, and drug use to all personnel in health care facilities.

On narcotic drugs and drug users

- Expand and enhance the scope of and support for humane treatment services for drug addiction, including in prison, according to international standards, which would include the prompt implementation of substitution therapy with methadone and buprenorphine.
- Reject the proposal by the Ministry of Health Committee on Narcotic Drugs Control to amend Ukraine's drug classification tables to criminalize possession of very small amounts of certain narcotics, which would exacerbate the problem of HIV/AIDS among drug users.

On law enforcement conduct

- Cease and publicly repudiate the unlawful use of force and other ill-treatment by police and other agents of the state against drug users and sex workers.
- Cease and publicly repudiate interference by police and other agents of the state with efforts to provide harm reduction services.

To the United Nations and Member States

- Affirm the rights of all individuals to access to the full range of HIV prevention services, including syringe exchange and opiate substitution therapy, without fear of arrest or punishment, as part of the right to the highest attainable standard of health.
- Support amendment of the international drug conventions to call explicitly for the legalization and promotion of the full range of strategies to reduce drug-related harm, and to encourage states parties to adopt public health approaches to drug use, including expanded access to syringe exchange services and opiate substitution therapy.

III. Methods

This report is based on a four-week field visit to Ukraine in June and July 2005. Two Human Rights Watch staff members conducted detailed interviews with one hundred and one people living with HIV/AIDS, injection drug users, and sex workers. These interviews took place in Odessa, Kherson, Mykolaiv, Dnipropetrovsk, and Kyiv regions, five of the regions hardest hit by HIV/AIDS.² Interviews were open-ended and covered many topics. Interviews were conducted in NGO, government, and donor agency offices, and at mobile HIV/AIDS and harm reduction worksites. One Human Rights Watch staffer was provided translation assistance for interviews conducted in Ukrainian and Russian. The second staffer conducted all interviews in Russian. No incentives were offered or provided to persons interviewed.

Interviewees were identified largely with the assistance of Ukrainian NGOs providing services to people living with and at high risk of HIV/AIDS. These interviewees may therefore have had greater access to harm reduction and HIV/AIDS services than the general population of people affected by HIV/AIDS. The identity of these interviewees has been disguised with pseudonyms, and in some cases certain other identifying information has been withheld, to protect their privacy and safety.

Human Rights Watch also interviewed seven national- and regional-level health, law enforcement, and human rights officials; two local police officers; and seventy-five representatives of international health organizations, NGOs specializing in HIV/AIDS or human rights, and health care workers and hospital administrators. Olena A. Alekseeva, head of the Committee on Narcotic Drugs Control in Ukraine, declined to meet with Human Rights Watch.³

All documents cited in the report are either publicly available or on file with Human Rights Watch.

² Ukraine is divided into twenty-seven administrative units: twenty-four oblasts (regions), two city authorities (Kyiv and Sevastopol), and the Crimean Autonomous Republic.

³ Letters from Olena A. Alekseeva to Human Rights Watch, July 15 and July 19, 2005.

IV. Background

HIV/AIDS in Ukraine

As many as 416,000 people—1.7 percent of the adult population age fifteen to forty-nine—were estimated to be living with HIV/AIDS in Ukraine in 2005.⁴ Ukraine had the highest HIV/AIDS prevalence rate in Europe in 2005, and was home to one of the fastest growing HIV/AIDS epidemics in the world.⁵ The spread of HIV/AIDS has been rapid and dramatic. Before 1994, fewer than eighty cases were diagnosed annually, mostly among foreigners infected through sexual contact, but within a few years the number of newly reported cases rose dramatically.⁶ In March and April 1995, more than 1,000 drug users were diagnosed with HIV in the southern cities of Mykolaiv and Odessa. By 1996, all twenty-five regional capitals reported HIV cases, and by 1997, Ukraine had more than 25,000 reported cases—more than one-half the cumulative total for Eastern Europe.⁷

An estimated 70 percent of all cases registered by the government between 1987 and 2004 were injection drug users.⁸ Studies have reported HIV prevalence among injection drug users in several cities in Ukraine ranging from 14 to 74 percent, and have estimated that 8.5 to 9.6 percent of injection drug users nationwide are HIV-positive.⁹ High rates of HIV also have been reported among sex workers and prisoners.¹⁰

⁴ World Health Organization, "Ukraine: Estimations of HIV/AIDS Prevalence and Treatment Needs," April 2005, [online] http://www.euro.who.int/aids/surveillance/20050419_1?PrinterFriendly=1&. (retrieved January 9, 2005). As of September 2005, 83,326 HIV cases had been officially registered in Ukraine since the beginning of the epidemic, including 11,321 AIDS cases and 6,643 AIDS deaths. World Health Organization, "HIV/AIDS Country Profiles for the WHO European Region," [online] http://www.euro.who.int/eprise/main/WHO/Progs/SHA/surveillance/20051114_1 (retrieved November 15, 2005). Official figures understate actual numbers, because they only include HIV infections among people who have been in direct contact with official testing facilities.

⁵ UNAIDS/WHO, *AIDS Epidemic Update: December 2005* (Geneva: UNAIDS, 2005), p. 48. Ukraine also reports the highest number of annual AIDS deaths in the European region; in most cases, the decedents had no access to antiretroviral therapy. World Health Organization Regional Office for Europe, "HIV/AIDS Country Profiles for the WHO European Region."

⁶ F. Hamers, "HIV Infection in Ukraine (1987-96)," *Revue d'Epidemiologie et de Santé Publique*, vol. 48 (supp. 1), 2002, pp. 1S3-15; Karl L. Dehne et al., "The HIV/AIDS epidemic in eastern Europe: recent patterns and trends and their implications for policy-making," *AIDS*, vol. 13 (1999), pp. 741-749.

⁷ Dehne et al., "The HIV/AIDS epidemic in eastern Europe," p. 744.

⁸ European Centre for the Epidemiological Monitoring of AIDS (EuroHIV) *HIV/AIDS Surveillance in Europe. End-year report 2004* (Saint-Maurice: Institut de Veille Sanitaire, 2005), pp. 13, 15.

⁹ UNAIDS, *AIDS Epidemic Update*, p. 50; Carmen Aceijas et al., "Global Overview of Injecting Drug Use and HIV Infection among Injecting Drug Users," *AIDS* vol. 18 (2004), pp. 2295-2303.

¹⁰ UNAIDS, *AIDS Epidemic Update*, p. 50.

Sex work in Ukraine increased with the social and economic upheaval resulting from the collapse of the Soviet Union, a phenomenon common throughout the region. Many sex workers inject drugs, or have clients or sex partners who are injection drug users. Many drug users exchange sex for drugs or money to support their habit. The overlap between sex work and injecting drugs heightens the risk of HIV transmission (through needle sharing as well as sexual transmission) and exposure to police violence and harassment. As many as 80 percent of street sex workers in Mykolaiv were estimated to be injection drug users, according to a 2000 report commissioned by the Joint United Nations Program on HIV/AIDS (UNAIDS).¹¹ In Odessa, HIV rates as high as 67 percent have been reported among sex workers who inject drugs, compared with 17 percent among non-injecting sex workers.¹²

According to official statistics, an increasing percentage of HIV cases in Ukraine is among women, and attributed to heterosexual transmission.¹³ Research by the Ukraine AIDS Centre and UNAIDS has found that these trends result from changed HIV testing practices. Beginning in 1996, with the introduction of prevention of mother-to-child transmission programs, the number of pregnant women tested for HIV steadily increased, while with the cessation of mandatory testing¹⁴ of injection drug users in 1998, the number of injection drug users tested decreased.¹⁵ World Health Organization

¹¹ Karl L. Dehne and Yuri Kobushche, "The HIV/AIDS Epidemic in Central and Eastern Europe. Update 2000," November 2000, p. 13. A 2005 study of street sex workers in Vinnitsa found that 71 percent had injected drugs at least once, and 59 percent were regular injectors. High rates of sharing syringes was also reported. See P. Kyrchenko and V. Polonets, "High HIV Risk Profile Among Female Commercial Sex Workers in Vinnitsa, Ukraine," *Sexually Transmitted Infections*, vol. 81, (2005) pp. 187-88.

¹² UNAIDS, *AIDS Epidemic Update*, p. 50.

¹³ According to official data, the percentage of injection drug users among newly diagnosed HIV cases has decreased significantly (from 84 percent in 1997 to 57 percent in 2004), while the corresponding percentage of cases attributed to heterosexual transmission has increased (from 11.2 percent in 1997 to 40 percent in 2004). EuroHIV, *HIV/AIDS Surveillance in Europe. End-year report 2001* (Saint-Maurice: Institut de Veille Sanitaire, 2002), pp. 27, 29, 30; *HIV/AIDS Surveillance in Europe. End-year report 2004*, pp. 12, 13, 15, 16. New cases among women have increased from 23 percent in 1996 to 42 percent in 2004. Alla Shcherbinskaya et al., "HIV/AIDS among children in Ukraine," XVth International AIDS Conference, Bangkok, Thailand, July 2004, conference abstract C12116; UNAIDS, *AIDS Epidemic Update*, p. 50.

¹⁴ Human Rights Watch opposes mandatory HIV testing as a threat to the rights to privacy and to health. Because of the environment of stigma, discrimination, and abuse surrounding HIV/AIDS, mandatory HIV testing risks driving individuals at high risk, or who believe themselves to be infected with HIV, "underground", or away from needed services which provide information on HIV prevention and care. Furthermore, testing without informed consent damages the credibility of health services, and injects distrust into the interaction between individuals and health care providers, jeopardizing the long-term relationship required for effective HIV therapy. WHO has recognized that "There are no benefits either to the individual or for public health arising from testing without informed consent that cannot be achieved by less intrusive means, such as voluntary testing and counselling"; and further that "public health experience demonstrates that programmes that do not respect the rights and dignity of individuals are not effective". World Health Organization, "Statement from the Consultation on Testing and Counselling for HIV Infection," 1992.

¹⁵ See Alla Shcherbinskaya et al., "Relation between the practice of HIV-testing and the officially registered HIV-cases," XVth International AIDS Conference, Bangkok, Thailand, July 2004, conference abstract C12356; and World Health Organization, "HIV/AIDS Country Profiles for the WHO European Region." In 2004, 97 percent of

experts argue that to interpret an increase in heterosexual and mother-to-child transmission rates as evidence of a more generalized epidemic is premature, given that most heterosexual cases are among female partners of drug users, and that a substantial proportion of HIV-positive pregnant women are either partners of injectors, or injectors themselves.¹⁶ Some evidence also exists that cases of HIV transmission among men who have sex with men are underreported, and that there has been a recent marked increase in HIV cases in this population.¹⁷

Ukraine has made important progress in the reduction of mother-to-child HIV transmission, with rates decreasing from 28 percent in 2001 to less than 10 percent in 2003, one of the lowest rates in Eastern Europe.¹⁸ Research suggests that HIV-positive women who inject drugs may not benefit equally from programs to prevent mother-to-child transmission, however.¹⁹

The rapid spread of HIV/AIDS in Ukraine has coincided with an explosion in tuberculosis (TB) rates.²⁰ Because of their compromised immune systems, people living with HIV/AIDS are at increased risk of developing active tuberculosis.²¹ Tuberculosis

all pregnant women were tested for HIV; 91.3 percent of 1,334 HIV-positive women who delivered in 2002 received antiretroviral drugs to prevent mother-to-child HIV transmission. Mother-to-child transmission rates were reduced from 30 percent to 10 percent in 2004. WHO Regional Office for Europe, "HIV/AIDS Country Profiles for the WHO European Region."

¹⁶ Martin C. Donoghoe, Srdan Matic, "HIV-1 in Eastern Europe," *The Lancet* (letter), vol. 361, no. 9372, May 31, 2003, pp. 1910-11. But see Murray Feshbach and Cristina M. Galvin, "HIV/AIDS in Ukraine. An Analysis of Statistics," January 2005, pp. 17-18 (arguing that the fact that Ukraine's prevalence rates are higher than elsewhere in Europe indicates that the epidemic is broadening).

¹⁷ Ministry of Health of Ukraine, "National Report on the Follow-up to the UNGASS Declaration of Commitment on HIV/AIDS," February 2005, p. 5; UNAIDS, *AIDS Epidemic Update*, pp. 50-51.

¹⁸ UNAIDS, *AIDS Epidemic Update*, p. 50.

¹⁹ See, e.g., N. Aryaev et al., "Drug Addiction and Mother-to-Child HIV Transmission Programs in the South Ukraine," presentation at XVth International AIDS Conference, Bangkok, Thailand, July 2005 (finding that in medical institutions without specially designed programs for HIV-positive injection drug user pregnant women in Mykolaiv, Simferopol, and Odessa, HIV-positive active injection drug user pregnant women had a low usage rate of antiretroviral drugs to prevent mother-to-child transmission compared to non injection drug user HIV-positive counterparts).

²⁰ Tuberculosis incidence in Ukraine has almost tripled since independence, from 32.2 cases per 100,000 in 1991 to 91.3 per 100,000 in 2002. Valeria Lekhan et al., *Health Care Systems in Transition. Ukraine* (Copenhagen: WHO Regional Office for Europe on Behalf of the European Observatory on Health Systems and Policies, 2004), p. 9.

²¹ HIV and TB form a lethal combination, each speeding the other's progress. People who are HIV-positive and infected with TB are up to 50 times more likely to progress to active TB disease from latent infection in a given year than those infected with TB who are HIV-negative. Without proper treatment, about 90 percent of people living with HIV/AIDS die within months of contracting TB. See World Health Organization, Frequently asked questions about TB and HIV, [online] <http://www.who.int/tb/hiv/faq/en/> (retrieved February 3, 2006).

is a leading cause of death for people living with HIV/AIDS.²² The situation is particularly critical in prisons: 7 percent (14,000) of Ukraine's 200,000 inmates have active TB, and more than 40 percent of prison deaths are attributed to TB.²³ Multi-drug resistant tuberculosis (MDR-TB), which can result from inconsistent or partial treatment of TB, is also a serious problem and a challenge for the health system, as it is more difficult and more expensive to treat, and much more likely to be fatal.²⁴

Widespread ignorance about the basic facts of HIV/AIDS is a serious problem in Ukraine, an issue that the government itself has acknowledged. The government reported that in 2004, only 14 percent of young people had a comprehensive understanding of HIV/AIDS.²⁵ According to a 2002 study by UNICEF and UNAIDS, only 9 percent of young women could identify three methods of HIV prevention, and 79 percent harbored at least one major misconception about the disease, such as that a healthy-looking person cannot have HIV.²⁶

Lack of knowledge also contributes to widespread stigma and discrimination faced by people living with HIV/AIDS. A 2004 survey of 692 people living with HIV/AIDS in sixteen cities throughout Ukraine found that 42 percent of respondents reported violations of their rights related to employment, education, health care, or privacy because of their HIV status. More than 10 percent of respondents said that they had lost a job because of HIV, and 9 percent had had to change jobs. Seventy percent said that rights to confidentiality of HIV diagnosis had been violated, and more than one-third reported having been tested for HIV without their consent. Sixty percent of respondents reported that they were either unaware of their legal right to receive free medicines, or that this benefit was unavailable to them.²⁷

²² UNAIDS, "Eastern Europe and Central Asia Fact Sheet," *AIDS Epidemic Update: December 2004* (Geneva: UNAIDS, 2004).

²³ Valeria Lekhan et al., *Health Care Systems in Transition: Ukraine*, p. 9.

²⁴ See World Health Organization, *Frequently asked questions about TB and HIV*. An estimated 10 to 15 percent of cases are multi-drug resistant. UNAIDS, "Eastern Europe and Central Asia Fact Sheet."

²⁵ Ukraine, "National Report on the Follow-up to the UNGASS Declaration of Commitment on HIV/AIDS. Reporting Period: 2003-2004," February 2005, p. 3.

²⁶ UNICEF, UNAIDS, WHO, "Young People and HIV/AIDS: An Opportunity in Crisis," Geneva, 2002, pp. 16-17.

²⁷ All-Ukrainian Network of People Living with HIV/AIDS and International HIV/AIDS Alliance, "Access to Rights and Services of People Living with HIV in Ukraine: Social Research Results," 2004; see also Katerina Barcal et al., "A Situational Picture of HIV/AIDS and Injection Drug Use in Vinnitsya, Ukraine," *Harm Reduction Journal* vol. 2, no. 16, (September 15, 2005), pp. 1-11 (people living with HIV isolated in hospital and narcodispensary wards, and HIV-status not kept confidential; some health care workers reluctant to treat people living with HIV/AIDS).

A 2004 study of forty previously pregnant HIV-positive women and fifteen health care providers found that nearly half of HIV-positive women said that they had been strongly encouraged to have an abortion by a health care provider; several women reported that they were not given a choice but told they must have an abortion. More than one-third of women reported that they were treated worse than HIV-negative women in labor and delivery settings; and more than half reported that health care providers assumed that they were injection drug users because of their HIV status.²⁸

Injection Drug Use and HIV/AIDS in Ukraine

It is estimated that there are 397,000 injection drug users (1.6 percent of the population between fifteen and forty-nine years old) in Ukraine.²⁹ Nationally, the number of newly reported HIV cases among injection drug users continues to grow. Most injectors are young males. However, a significant proportion—23 percent—of injection drug users diagnosed with HIV in 2004 were females.³⁰

Risky injection practices, including the sharing and reusing of needles and other drug paraphernalia; the sharing of drug solution from a common container; and front- and backloading (squirting drug solution from one syringe into another with the needle or plunger removed), are also widespread.³¹ The use of blood in the preparation of injected drugs also has been reported.³² Homemade preparations of liquid poppy straw—an

²⁸ Ukrainian Institute for Social Research et al., "Analytical Report: Access of HIV-positive Women to Quality Reproductive Health and Maternity Services," 2004, pp. 37, 49, 68.

²⁹ Carmen Aceijas et al., "Global Overview of Injecting Drug Use and HIV Infection among Injecting Drug Users," *AIDS* vol. 18, (2004), pp. 2295-2303 (low-estimate of injection drug user population at 200,000; mid-range, 397,000; high range, 595,000. There were 83,868 officially registered drug users (cases of drug addiction) by end 2002. Katerina Barcal et al., "A Situational Picture of HIV/AIDS and Injection Drug Use in Vinnitsya, Ukraine," (citing Ukrainian Center for AIDS Prevention/Ministry of Health of Ukraine, "The Problem of HIV Infection, Drug Addiction, and Sexually Transmitted Diseases," *Informational Bulletin*, Kyiv 2003).

³⁰ UNAIDS, *AIDS Epidemic Update*, p. 50 (citing Ukrainian AIDS Centre, 2005).

³¹ See, e.g., Don C. Des Jarlais et al., "HIV Risk Behaviour Among Participants of Syringe Exchange Programmes in Central/Eastern Europe and Russia," *International Journal of Drug Policy*, vol. 13 (2002), pp. 165-174; Robert E. Booth et al., "Predictors of Self-Reported HIV Infection among Drug Users in Ukraine," *Journal of Acquired Immune Deficiency Syndrome*, vol. 35, no. 1 (January 1, 2004), pp. 82-88; Ministry of Health of Ukraine, "National Report on the Follow-up to the UNGASS Declaration of Commitment on HIV/AIDS," February 2005, pp. 3, 22, 39. Reusing syringes leads to bruising and scarring, and contaminates other drug paraphernalia and shared drug solute. Stephen Koester, "Following the Blood: Syringe Reuse Leads to Blood-Borne Virus Transmission Among Injection Drug Users," *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology*, vol. 18 (1998), Suppl. 1, p. S139.

³² Blood is used in the preparation of the opiate solution *shirka* to assist in filtering the drug solution, usually after the use of anhydride. During the last stage of preparation, a few drops of blood are added to the *shirka* mixture and warmed up. The blood coagulates and absorbs particles of dirt. The solution is then filtered, and the clear solution is ready for use. Because the *shirka* solution usually is not boiled, HIV-positive blood in the solution can remain infectious. Some drug users use albumen from eggs instead of blood to assist in the

injected opiate solution commonly known as *shirka*—is the main drug used, but methamphetamines, including a homemade preparation of ephedrine called *vin*, are also injected and have become increasingly popular among drug users. Researchers report that the use of drugs in groups is common in Ukraine, and that a significant number of drug users acquire drugs through exchange of services, such as drug preparation, drug purchase and delivery, or sex.³³ Research also suggests that women injection drug users are more likely than men to share injection equipment, inject drugs in a group, and exchange sex for drugs.³⁴

Targeted interventions for injection drug users such as the provision of sterile injecting equipment and opiate substitution therapy have proved effective in preventing HIV transmission and other adverse consequences of drug use. Often referred to as “harm reduction,” these approaches have been endorsed by the World Health Organization and UNAIDS as an integral part of HIV prevention and care strategies for drug users.³⁵ Countries that have implemented harm reduction measures on a sufficiently large scale have successfully controlled large-scale HIV epidemics among injection drug users and in the non-injecting population.³⁶ In Poland, for example, a strong national response, including syringe exchange and other targeted interventions for injection drug users, successfully contained the epidemic among injection drug users, and averted a more widespread epidemic in non-injecting populations.³⁷

Public health authorities recommend that for people who cannot or will not stop injecting drugs, using a sterile syringe for each injection is the safest and most effective way to prevent HIV and other blood-borne viruses.³⁸ Ukraine’s national AIDS law

filtering process. E-mail communication from Leonid Vlasenko, narcologist, research division, All-Ukrainian Narcological Association, to Human Rights Watch, December 16, 2005.

³³ WHO, *The Practices and Context of Pharmacotherapy of Opioid Dependence in Central and Eastern Europe*, pp. 108-109; E-mail communication from Konstantin Lezhentsev, M.D., program officer, International Harm Reduction Development Program, to Human Rights Watch, January 19, 2006.

³⁴ P. Kyrychenko, “Predictors of Sharing Injection Paraphernalia Among Users of the Syringe Exchange Program: Implications for HIV Intervention,” XVth International AIDS Conference, Bangkok, Thailand, July 2004, conference abstract Thailand AIDS Conference Abstract No. WePeC5983.

³⁵ See also “WHO, Evidence for Action for HIV Prevention, Treatment and Care among Injection Drug Users,” *International Journal of Drug Policy*, vol 16, S1 (December 2005), pp. 1-76.

³⁶ Martin Donoghoe, “Injecting Drug Use, Harm Reduction, and HIV/AIDS,” in *HIV/AIDS in Europe*, pp. 43-66 (reviewing evidence).

³⁷ *Ibid.*, p. 60. Well-designed national programs in the Czech Republic, Slovakia, and Slovenia have also been credited with contributing to low HIV prevalence among injection drug users and low incidence among noninjecting populations.

³⁸ See, e.g. United States Public Health Service, “HIV Prevention Bulletin: Medical Advice for Persons Who Inject Illicit Drugs,” May 9, 1997, [online] http://www.cdc.gov/idu/pubs/hiv_prev.htm (retrieved October 16, 2005).

recognizes this fact, providing an explicit commitment to provide HIV prevention services for drug users, including by supporting the establishment of syringe exchange programs.³⁹

As of mid-2005, there were more than 250 NGO-run syringe exchange sites or points operating in Ukraine, reaching more than 70,000 injection drug users (almost a fifth of the estimated total of injection drug users in Ukraine).⁴⁰ In addition to providing sterile syringes, many sites also provide counseling and information, condoms, and referrals to other health and social services for drug users. There were also fifty-five government-run consultation points for injection drug users and other vulnerable groups, some of which also distribute syringes.⁴¹ Some sites also provide medical care for drug users. Pharmacies, which can legally sell syringes to adults in unrestricted numbers, are also an important source of syringes for many drug users.

Access to effective drug addiction treatment is critical both to prevent HIV among injection drug users, and to support adherence to antiretroviral treatment for HIV-positive drug users. But drug users in Ukraine have limited options for effective drug addiction treatment and encounter significant barriers in their attempts to obtain it.

Substitution or replacement therapy, for example with methadone, is one of the most effective treatment options for opiate dependence. It has been proved to reduce drug use as well as criminal activity, overdose deaths, and behaviors such as syringe sharing, and to improve uptake and adherence to antiretroviral treatment for HIV-positive opiate users.⁴² In light of this evidence, the World Health Organization (WHO), the United Nations Office on Drugs and Crime (UNODC), and UNAIDS have jointly recommended that substitution maintenance therapy, including with methadone and buprenorphine, be integrated into national HIV/AIDS programs, both as an

³⁹ Law of Ukraine on Prevention of Acquired Immune Deficiency Syndrome (AIDS) and Social Protection of the Population (Vedomosti Verkhovnoy Rady of Ukraine, 1992, No. 11, Art. 152; 1998, No. 35, Art. 235; 2002, No. 6, Art.41), article 4.

⁴⁰ Two hundred and fifty-six syringe exchange points were established in Ukraine with Global Fund money, and 4,284,665 syringes were distributed between April 1, 2004, and June 30, 2005. E-mail communication from Pavel Skala, major of police (in reserve since November 2004) and policy and advocacy manager, International HIV/AIDS Alliance, Ukraine, to Human Rights Watch, October 4, 2005; International HIV/AIDS Alliance, *Information Bulletin*, December 2005.

⁴¹ These consultation points were established by the Ministry of Youth, Family, and Sport. In 2004 these points distributed 105,509 syringes. E-mail communication from Pavel Skala to Human Rights Watch, October 6, 2005, and chart from Ministry of Youth, Family, and Sport.

⁴² See WHO, UNAIDS, UNODC, "Joint WHO/UNAIDS/UNODC Mission on Opioid Substitution Therapy in Ukraine," pp. 11, 14-20; WHO, UNODC, UNAIDS, "Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention: Position paper," p. 2; Thomas Kerr et al., "Opioid Substitution and HIV/AIDS Treatment and Prevention," *The Lancet*, vol. 364 (November 27, 2004), pp. 1918-19.

HIV/AIDS prevention measure and to support adherence to antiretroviral treatment and medical follow up for opiate dependent drug users.⁴³

Ukraine's national HIV/AIDS program has identified the implementation of a substitution therapy program linked with HIV prevention, care, and treatment programs as one of its main goals.⁴⁴ The Ukrainian parliament also has recommended implementing substitution therapy to prevent and treat HIV/AIDS among drug users.⁴⁵ But because of significant opposition in some parts of government—most notably, the Committee on Narcotic Drugs Control, Ministry of Interior, and the Security Services of Ukraine—substitution therapy is largely unavailable in Ukraine.⁴⁶

Ukraine's efforts to introduce substitution therapy with buprenorphine to 200 drug users by the end of 2005 have been criticized by the WHO, UNODC, and UNAIDS as grossly insufficient to address the needs of opiate-dependent drug users in Ukraine. These agencies recommended in a joint June 2005 report that Ukraine “do everything in its power to simplify the introduction and scale up” of substitution therapy with methadone and buprenorphine to between 60,000 and 238,000 people.⁴⁷

Other factors inhibit access to drug treatment. These include official registration requirements that expose drug users to police and undermine employment prospects; ineffectiveness of treatment that is provided; and poor attitudes of medical professionals toward drug users.⁴⁸ Drug users and service providers interviewed for this report told

⁴³ WHO, UNODC, UNAIDS, “Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention: Position paper,” p. 2 (noting that “substitution maintenance therapy is one of the most effective treatment options for opioid dependence,” and a “critical element of community-based approaches in the management of opioid dependence and the prevention of HIV infection among injecting drug users.”).

⁴⁴ See “National Program to Ensure HIV Prevention, Care, and Treatment for HIV-infected and AIDS Patients for 2004-2008,” and “Strategy Concept of the Government Actions Aimed at Preventing the Spread of HIV/AIDS up to Year 2011,” both approved by Resolution of the Cabinet of Ministers of Ukraine, March 4, 2004, No. 264.

⁴⁵ Decree of Verkhovna Rada of Ukraine No. 1426, “On the Recommendations of parliament hearings on the subject of Socio-economic problems of HIV/AIDS, drug use and alcoholism in Ukraine and ways to overcome them,” March 2, 2004.

⁴⁶ See “Preliminary conclusions of Security Service of Ukraine (SBU) on methadone substitution therapy. Methadone Cons and Pros;” Statement of Vladislav Bukhrahayev, deputy head of service to combat international drug trafficking, Central Directorate to Fight Corruption and Organized Crime, in Minutes of the Working Meeting on Substitution Therapy in Ukraine, April 16, 2004; WHO, UNAIDS, UNODC, “Joint WHO/UNAIDS/UNODC Mission on Opioid Substitution Therapy in Ukraine,” pp. 46-47; Alena Voskresenskaia, “Methadone: Panacea or Ruin,” *Kievljanin*, no. 22 (140), 2004, p. 4.; Vera Valerko, “Poison for Free,” *Kievskie Vedomosti*, May 28, 2004.

⁴⁷ WHO, UNAIDS, UNODC, “Joint WHO/UNAIDS/UNODC Mission on Opioid Substitution Therapy in Ukraine,” p. 7. See also Sophie Pachoud and Martin C. Donoghue, “Opioid Substitution Therapy Scaling Up Plan for Ukraine,” WHO Regional Office for Europe, January 2006.

⁴⁸ See, e.g., Katerina Barcal et al., “A Situational Picture of HIV/AIDS and Injection Drug Use in Vinnitsya, Ukraine,” *Harm Reduction Journal*, vol. 2, no. 16 (September 15, 2005); World Health Organization, *The*

Human Rights Watch that drug users avoided seeking drug treatment out of concern about registration with narcologists and by police. They also said that drug users avoided seeking health care for injuries related to their drug use, such as abscesses, out of fear that health care workers would report their drug use to the police, or that their employers would fire them if they discovered that their injuries were related to drug use.⁴⁹

The lack of effective drug treatment, coupled with health care provider discrimination against drug users, is also contributing to Ukraine's tuberculosis epidemic, and to mortality among drug users living with TB and HIV. A 2005 study of HIV/AIDS, tuberculosis, and drug addiction treatment in 13 regions of Ukraine found that 2,540 tuberculosis patients terminated treatment because they were expelled from the hospital due to drug use. Of these, 420 patients were co-infected with TB and HIV.⁵⁰

A large percentage of drug users in Ukraine find themselves incarcerated in state custody at some point in their lives. Incarceration, in turn, is itself a critical risk factor for HIV. Injection drug use is widespread in Ukrainian prisons, with many drug users continuing to inject while in prison, while access to HIV prevention and effective drug treatment services in prison is limited.⁵¹ HIV prevalence in prison has been reported to be several times that of the population at large: according to the WHO, in 2000, 7 percent of prisoners were HIV-positive.⁵² There is also increased risk of exposure in prison to other infectious diseases (such as tuberculosis), which heightens HIV and other health risks.⁵³

Practices and Context of Pharmacotherapy of Opioid Dependence in Central And Eastern Europe, (Geneva: WHO, 2004), p. 115.

⁴⁹ Human Rights Watch interview with Viktor M., Dnipropetrovsk, July 12, 2005; Human Rights Watch interview with Elena Kuleshova, Way Home, Odessa, July 4, 2005.

⁵⁰ Artur Ovsepyan, All-Ukrainian Network of People Living with HIV/AIDS, Assessment of TB and HIV/AIDS Service Infrastructure, 2005.

⁵¹ See Ukraine Helsinki Human Rights Union, "Human Rights in Ukraine – 2004. Human Rights Organizations' Report," 2005, pp. 286-287. The State Department for the Execution of Punishments, recognizing that unsafe injection use takes place in prison, has taken steps to launch pilot needle exchange programs in two prison colonies in 2006; and the Ministry of Health has also issued an order permitting the distribution of antiretroviral drugs to thirty patients in a Kherson prison. Presentation by Andriy Klepikov, executive director, International HIV/AIDS Alliance in Ukraine, at stakeholders meeting, Kyiv, February 14, 2006.

⁵² WHO, "HIV/AIDS in Prisons," [online] http://www.euro.who.int/aids/prevention/20040115_2 (retrieved November 16, 2005). By end 2004, approximately 12,700 prisoners had been diagnosed with HIV, of whom more than 3,500 were still incarcerated. UNAIDS/WHO, *AIDS Epidemic Update*, p. 50.

⁵³ Significant outbreaks of HIV and multidrug resistant TB have been reported in prisons in Ukraine and Russia. See Burris et al., "Addressing the 'Risk Environment' for Injection Drug Users" p. 132 (citing studies). Huge increases in HIV prevalence in Thailand in the 1980s have been attributed to drug users moving in and out of prisons. See Paola Bollini, ed., *HIV in Prisons: A Reader with Particular Relevance to Newly Independent States* (Geneva: WHO, 2001), p. 24.

Policing and HIV Risk

Police have a legitimate interest in controlling illicit drug possession and prostitution, to the extent that both are proscribed by Ukrainian law. But Ukraine's law enforcement practices are undermining government efforts to provide HIV information and services to drug users and sex workers, the very people whom the government has identified as at highest risk of HIV/AIDS. Indeed, police practices drive people at risk away from services that prevent HIV/AIDS.

Ill-treatment by police, sometimes reaching the level of torture, has been acknowledged as a widespread problem in Ukraine by domestic and international human rights bodies.⁵⁴ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in December 2004 published its findings from a late-2002 visit to Ukraine, including that "persons deprived of their liberty by the Militia [Ukraine's domestic law enforcement body] run a significant risk of being physically ill-treated at the time of their apprehension and/or while in custody of the Militia (particularly when being questioned), and that on occasion resort may be had to severe ill-treatment/torture."⁵⁵ According to a July 2005 report on human rights violations in Ukraine by Nina Karpachova, Ukraine's parliamentary ombudsperson on human rights, the ombudsperson's office received 1,518 reports of torture and ill-treatment by police in 2003, while the Ministry of Internal Affairs received 32,296 such reports in 2002 and 2003.⁵⁶

There are a number of systemic reasons why police abuse continues unabated in Ukraine. Police reportedly must fulfill periodic "work plans," or arrest quotas. The expectation that police will solve a high number of criminal cases, and that this is a

⁵⁴ See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Ukrainian Government on the Visit to the Ukraine Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 24 November to 6 December 2002," December 2004, paras. 18-20. The CPT, a body of independent experts established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, is empowered to visit places of detention to examine the treatment of detainees and to recommend necessary improvements to States. See also Amnesty International, "Ukraine: Time for Action: Torture and Ill-Treatment in Police Detention" (AI Index: EUR 50/004/2005), September 2005.

⁵⁵ CPT, "Report to the Ukrainian Government on the Visit to the Ukraine Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 24 November to 6 December 2002," para. 20. Generally, CPT reports of country visits are published only with the agreement of the State concerned, and accompanied by the State's response.

⁵⁶ See Amnesty International, "Ukraine: Time for Action: Torture and Ill-Treatment in Police Detention." In July 2006, Karpachova reported to parliament that a poll of senior members of Ukraine's criminal investigations bureaus found that "about 97 percent of those polled confirmed that torture is used either frequently or periodically in Ukraine." See "On the situation regarding observance of human rights and freedoms in Ukraine," July 6, 2005, [online] http://www.ombudsman.kiev.ua/pres/releases/rel_05_07_06.htm (Ukrainian); http://www.ombudsman.kiev.ua/pres/releases/rel_05_07_07.htm (Russian) (retrieved January 11, 2006)

measure of police success, encourages police to seek out easy targets for arrest.⁵⁷ In its response to the CPT's report, Ukraine acknowledged police detectives' "wrong understanding of crime disclosure rate as the main criteria of the efficiency of their work," as a factor in police abuse, stating that this "wrong understanding" was "why some officers try to achieve the high crime disclosure by any means."⁵⁸ In addition, the need to fulfill arrest quotas or achieve convictions may encourage police to engage in torture or other abusive tactics to extract confessions from criminal suspects. The U.N. Committee against Torture has expressed concern about "the numerous convictions based on confessions" in Ukraine, as well as the fact that the "number of solved crimes" is among the "criteria for the promotion of investigators." According to the Committee, this "can lead to torture and ill-treatment of detainees or suspects to force them to 'confess.'"⁵⁹ Domestic and international human rights bodies have also expressed concern that Ukraine's failure adequately to investigate, prosecute, or punish cases of police abuse created a climate of impunity that has permitted abusive policing practices to persist.⁶⁰

As Human Rights Watch has documented in previous reports on Russia and Kazakhstan, drug users and sex workers make especially easy targets for arrest or ill-treatment by police needing to fulfill arrest quotas.⁶¹ In Ukraine, drug users can be arrested and convicted for possession of very small amounts of drugs, often less than one dose.⁶² Ukrainian law also provides that a person charged with the possession of

⁵⁷ See United Nations Committee Against Torture, Conclusions and Recommendations: Ukraine, 25/09/2002, A/57/44, paras. 54-58.

⁵⁸ Response of the Ukrainian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its first visit to Ukraine from 24 November to 6 December 2002, p. 7.

⁵⁹ United Nations Committee Against Torture, Conclusions and Recommendations: Ukraine, 25/09/2002, A/57/44, paras. 54-58.

⁶⁰ See, e.g., CPT, "Report to the Ukrainian Government on the Visit to the Ukraine Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 24 November to 6 December 2002," paras. 22, 23; U.S. Department of State, *Country Report on Human Rights Practices: Ukraine 2004* (February 2004); Amnesty International, "Ukraine. Time for Action: Torture and Ill-Treatment in Police Detention."

⁶¹ Human Rights Watch, "Lessons Not Learned: Human Rights Abuses and HIV/AIDS in the Russian Federation," *A Human Rights Watch Report*, Vol. 16, No. 5(D), April 2004; Human Rights Watch, "Fanning the Flames: How Human Rights Abuses Are Fueling the AIDS Epidemic in Kazakhstan," *A Human Rights Watch Report*, Vol. 15, No. 4(D), June 2003.

⁶² Article 309, para. 1 of the Criminal Code of Ukraine imposes penalties for drug possession. Individuals possessing any amount of heroin up to 1 gram; 0.15-1.5 grams of amphetamine or MDMA; or 0.1-10 grams of acetylated opium are subject to three years in prison. See "Table of Small, Large and Especially Large Amounts of Narcotic Drugs in Illegal Circulation," [online] <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0512-00>; "Table of Small, Large and Especially Large Amounts of Psychotropic Substances in Illegal Circulation," <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0513-00>. A typical dose of shirka varies from 0.1 gram to 0.5 grams. E-mail communication from Konstantin Lezhentsev, M.D., program officer, International Harm Reduction Development Program, January 20, 2006.

illegal drugs can escape criminal responsibility if he or she “actively participates in the investigation of drug-related offenses”—a requirement that can lead police to take extreme measures to extract information from drug users.⁶³ Drug users suffering from withdrawal may be especially vulnerable and thus more likely to submit to police pressure. And since drug users and sex workers are widely regarded as socially undesirable, police face little risk of censure for their actions.

People interviewed by Human Rights Watch explained that police sometimes justified their arrest of drug users and sex workers by explaining that they were under pressure to fulfill a quota. In one case, an outreach worker said that a police officer told her as she attempted to intervene to stop the arrest of a drug user suffering from a high fever: “Well, she’ll die soon anyway, and I have to fulfill the plan. Well, what? They’ll kick me out if I don’t close two cases this month.”⁶⁴

Research on sex workers in Central and Eastern Europe and Central Asia has identified police abuse, including rape and other forms of physical violence, as a significant factor contributing to sex workers’ vulnerability to HIV/AIDS and other health risks.⁶⁵ The practice of *subbotnik*, in which police demand free sexual services (often without condoms) as a condition of limiting police harassment or in lieu of arrest, has also been reported in several countries of the former Soviet Union.⁶⁶

Research in several countries has established that criminal laws proscribing drug possession and associated policing practices targeting drug users increase the risk of HIV and other adverse health outcomes in both direct and indirect ways.⁶⁷ The fear of arrest or police abuse creates a climate of fear for drug users, driving them away from lifesaving HIV prevention and other health services, and fostering risky practices. In some countries, many injection drug users do not carry sterile syringes or other injection equipment, even though it is legal to do so, because possession of injection equipment can mark an individual as a drug user, and expose him or her to punishment on other

⁶³ Criminal Code, art. 307, para. 4. In certain circumstances, such as for first time drug offenses for small amounts of drugs, a person can also escape criminal responsibility if he or she voluntarily starts drug treatment. Criminal Code, art. 309, para. 4.

⁶⁴ Human Rights Watch interview with Larissa Borisenko, social worker, Dnipropetrovsk, July 11, 2005.

⁶⁵ See Central and Eastern European Harm Reduction Network (CEEHRN), *Sex Work, HIV/AIDS, and Human Rights* (Vilnius, Lithuania: CEEHRN, 2005), pp. 41-45, and studies cited therein.

⁶⁶ *Ibid.*, pp. 22, 43; Human Rights Watch, “Fanning the Flames,” pp. 21, 25. During the Soviet period, a *subbotnik*, from *subбота* (Saturday), was unpaid community service work. As now colloquially applied to sex workers, it means providing free sex.

⁶⁷ See Scott Burris et al., “Addressing the ‘Risk Environment’ for Injection Drug Users: The Mysterious Case of the Missing Cop,” *The Milbank Quarterly*, vol. 82, no. 1 (2004), pp. 131-35 (reviewing studies).

grounds.⁶⁸ Police presence at or near government sanctioned harm reduction programs (such as legal needle exchange sites) drives drug users away from these services out of fear of arrest or other punishment.⁶⁹

Many countries have taken measures to protect drug users' right to the highest attainable standards of health by instituting structural changes in policing practices to ensure drug users' access to HIV prevention and other health services. In the United States, some jurisdictions have protected drug users' access to harm reduction services through court orders barring police from arresting or punishing needle exchange participants for drug possession based on residue in used syringes, or through police department orders directing police not to patrol areas near syringe exchange sites.⁷⁰ At least twenty-seven cities worldwide, including in Switzerland, Germany, Australia, and Canada, have established supervised injection sites that permit drug users to inject in a safe, hygienic environment without risk of arrest or prosecution for onsite possession of illegal drugs.⁷¹ As of this writing, Ukraine is finalizing plans to implement prison-based needle exchange

⁶⁸ A survey of drug users in five Russian cities found that 40 percent routinely did not carry injection equipment, in part out of fear of attracting police attention. Jean-Paul C. Grund, "Central and Eastern Europe," in *HIV and AIDS: A Global View*, Karen McElrath, editor (Westport, Connecticut: Greenwood Press, 2002), pp. 41-67. See also studies cited in Burris et al., "Addressing the 'Risk Environment' for Injection Drug Users," pp. 131-35; Human Rights Watch, "Lessons Not Learned"; Human Rights Watch, "Fanning the Flames"; and Human Rights Watch, "Not Enough Graves: The War on Drugs, HIV/AIDS, and Violations of Human Rights," *A Human Rights Watch Report*, Vol. 16, No. 8(C) (June 2004).

⁶⁹ Ibid. See also Human Rights Watch "Injecting Reason: Human Rights and HIV Prevention for Injection Drug Users; California: A Case Study," *A Human Rights Watch Report*, Vol. 15, No. 2(G), September 2003. The case of Thailand is also illustrative: Studies reported a significant decline in the number of drug users seeking substance abuse treatment during Thailand's 2003 "war on drugs," and that a significant percentage of drug users who had formerly attended drug treatment centers went into hiding, in some cases sharing syringes because sterile syringes were difficult to obtain. Human Rights Watch, "Not Enough Graves," pp. 36-37; and E-mail communication from Swarap Sarkar, regional director, UNAIDS-South Asia to Human Rights Watch, May 18, 2004. Researchers have also found that the government crackdown on drug users was likely to discourage drug users from obtaining HIV testing and other medical services. Tassanai Vongchak et al., "The influence of Thailand's 2003 'war on drugs' policy on self-reported drug use among injection drug users in Chiang Mai, Thailand," *International Journal of Drug Policy*, No. 16 (2005), pp. 115-121.

⁷⁰ See, for example, *Roe v. City of New York*, 232 F. Supp.2d 240 (U.S. DCt, SDNY, 2002); *Doe v. Bridgeport Police Department*, 198 F.R.D. 325 (U.S. DCt., SDCT, 2001); Los Angeles County Police Order (directing police to refrain from targeting or conducting observation in syringe exchange locations to identify, detain, or arrest persons for narcotics-related offenses).

⁷¹ In Vancouver, Canada, for example, drug users are covered by a provision of the federal Controlled Drugs and Substances Act that exempts any person or class of persons from the application of the Act if, in the opinion of the Minister of Health, "the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest." Controlled Drugs and Substances Act, Section 56. For further information on safe injection sites, see Richard Elliott et al., *Establishing Safe Injection Facilities in Canada: Legal and Ethical Issues* (Canadian HIV/AIDS Legal Network, 2002), [online] <http://www.aidslaw.ca/Maincontent/issues/druglaws/safeinjectionfacilities/safeinjectionfacilities.pdf>; and City of Vancouver, "Supervised Injection Sites (SISs): Frequently Asked Questions," [online] www.city.vancouver.bc.ca/fourpillars (retrieved January 4, 2006).

programs,⁷² following the example of neighbors in both Western and Eastern Europe and Central Asia, including Belarus, Moldova and Kyrgyzstan.⁷³

Health Care Delivery in Ukraine

The structure of Ukraine's health system has changed little since it became independent upon the demise of the Soviet Union in 1991. Public health services are administratively centralized and vertically organized, with specialized and distinctly separate health services for HIV/AIDS, tuberculosis, sexually transmitted infections, and substance abuse treatment. Each of these diseases has its own specialists, and patients are referred to different facilities for specialized care and treatment. Prison health care is provided by a parallel health system under the State Department for the Penitentiary System.⁷⁴ Inadequate coordination among parallel systems providing civilian public health services, and between civilian and prison health care services, mean that people in need of comprehensive health care services often fall between the gaps.

The Ministry of Health of Ukraine is responsible for setting national health care policies, and for directly managing and funding certain health care institutions. Each of Ukraine's twenty-seven administrative units has its own health administration, which in turn owns and manages a range of health care facilities. Primary health care facilities are owned by local governments.⁷⁵

As of July 2005, there were twenty-five regional HIV/AIDS centers throughout Ukraine; HIV/AIDS centers in the cities of Kyiv and Sevastopol; and an additional five city HIV/AIDS centers in areas with high rates of HIV/AIDS. Antiretroviral therapy was available at fifteen of the regional centers, while people living with HIV/AIDS outside of those regions have the option to seek antiretroviral therapy at the Gromashevskiy National Institute of Infectious Diseases Clinic (Lavra AIDS Clinic) in Kyiv.⁷⁶

⁷² The State Department for the Execution of Punishments, with the support of the International HIV/AIDS Alliance in Ukraine, has taken steps to launch pilot needle exchange programs in prison colonies in Lviv and Mykolaiv, planned to begin in 2006. Presentation by Andriy Klepikov, executive director, International HIV/AIDS Alliance in Ukraine, at stakeholders meeting, Kyiv, February 14, 2006.

⁷³ See Glenn Betteridge, "Prisoners' Health and Human Rights in the HIV/AIDS Epidemic," draft background paper for "Human Rights at the Margins: HIV/AIDS, Prisoners, Drug Users, and the Law. Satellite of the XVth International AIDS Conference, Bangkok, Thailand," June 2004, pp. 11-12.

⁷⁴ Valeria Lekhan et al., *Health Care Systems in Transition: Ukraine*, pp. 17-19.

⁷⁵ Ibid.

⁷⁶ Human Rights Watch interview with Alla Scherbinska, director, Ukraine National AIDS Centre, July 18, 2005.

Specialized HIV/AIDS centers do not provide comprehensive care, but rather a limited range of services for people living with HIV/AIDS. People living with HIV/AIDS in need of other services should be provided care either at specialized clinics, where appropriate (such as for tuberculosis or substance abuse treatment, for example) or at neighborhood clinics on the same basis as other people. Although their work often overlaps, AIDS specialists typically do not get involved in the work of narcologists, nor with that of tuberculosis specialists.

Ukraine's constitution guarantees health care free of charge in state institutions.⁷⁷ Ukraine's post-independence economic crisis and the resulting decline in state income have led to a significant decline in state health care expenditures. Budget shortfalls, in turn, have led government health care facilities to levy official fees for public health care services, sometimes disguised as "donations" or "voluntary cost recovery." It is not unusual for state health care providers also to demand "informal user fees" or bribes as a condition of receiving services.⁷⁸

In 2002, Ukraine's Constitutional Court ruled that health care in state and community facilities should be provided "without preliminary, current or subsequent payments," but stipulated that fees could be sought for health services considered beyond the limits of health care. The government subsequently approved a list of health care services to be provided free of charge by state and community health care facilities, including emergency care and inpatient care for pregnant women and women in labor. Certain populations considered socially vulnerable (such as people with disabilities, children under six, and retired persons receiving minimum pension) are exempted from user charges, or are eligible for free or reduced cost medication or other services.⁷⁹ People living with HIV/AIDS are guaranteed the right to free medication necessary to treat existing diseases, under Ukraine's national HIV/AIDS law.⁸⁰

The imposition of fees for health care services has created serious barriers to access to necessary care for many Ukrainians. A 2002 survey of 9,478 households by the State Statistics Committee found that more than 25 percent of households were unable to

⁷⁷ Constitution of Ukraine, article 49 ("The State creates conditions for effective medical service accessible to all citizens. State and communal health protection institutions provide medical care free of charge; the existing network of such institutions shall not be reduced.").

⁷⁸ Valeria Lekhan et al., *Health Care Systems in Transition. Ukraine*, p. 41; Rebecca Weaver, "RFE/RL Profiles Ukraine's Fight against Corruption," *East West Institute News*, January 20, 2003.

⁷⁹ Valeria Lekhan et al., *Health Care Systems in Transition. Ukraine*, p. 34-40.

⁸⁰ Law of Ukraine on Prevention of Acquired Immune Deficiency Syndrome (AIDS) and Social Protection of the Population, article 4 (guaranteeing "free-of-charge supply of medicines necessary for treatment of disease, means of personal prevention and psycho-social support" to people living with HIV/AIDS).

obtain necessary medical care for any family members, the vast majority due to exceptionally high costs of drugs, homecare devices, and health services. The study also found that a substantial number of patients were charged for services that the state health system was required by law to provide.⁸¹ A 2003 poll by Ukraine's Social Monitoring Center and the Institute for Social Studies found that 78 percent of respondents believed that all or most government officials collected bribes, identifying Ukraine's state health care services as the biggest bribe takers. This figure is consistent with a 2002 survey by the Ukrainian NGO Partnership for a Transparent Society, which reported that more than half of respondents had paid a bribe to receive medical services.⁸²

⁸¹ Valeria Lekhan et al., *Health Care Systems in Transition. Ukraine*, p. 37.

⁸² Rebecca Weaver, "RFE/RL Profiles Ukraine's Fight against Corruption."

V. Police Abuse

As a drug user, police don't consider me a person. As a drug user, I have no rights. The police can do anything to me.

— Sasha T., injection drug user, Kherson, July 9, 2005

Some people don't come to the needle exchange point at all. The police were here yesterday. They beat up one man, quite cruelly. They asked the young man for money. He said that he didn't have any. They planted shirka on him and then said, 'Now you will pay.' But he didn't have any money at all, really. So then they beat him up.

— Outreach worker, Dnipropetrovsk, July 12, 2005

Human Rights Watch documented police actions that violated fundamental human rights protections against torture and other forms of ill-treatment, and due process. Numerous drug users, sex workers, and service providers reported that police had extorted money and information from drug users by applying physical and psychological pressure, including severe beatings, electroshock, partial suffocation with gas masks,⁸³ and threats of rape, both at the time of arrest and during detention, and had directly interfered with the provision of HIV prevention information and services for drug users and sex workers. Drug users and service providers reported that police planted drugs in their homes or on their person, and used this as evidence to arrest or abuse them.

International law unequivocally forbids the use of torture and other cruel, inhuman or degrading treatment or punishment by officials or persons acting in an official capacity.⁸⁴ These prohibitions apply “not only to acts that cause physical pain but also to acts that

⁸³ Partial suffocation with gas masks is a common form of torture in countries in the former Soviet Union, and its use against drug users and other detainees has been documented in recent investigations of police abuse in Ukraine. See Amnesty International, *Ukraine: Time for Action: Torture and Ill-Treatment in Police Detention*, September 2005; Andriy Tolopilo, “Reforming Drug Policy of the NIS to Prevent the Spread of AIDS,” 2004 (Russian). This type of torture is called “slonik” (“little elephant”) in Russian, a reference to the resemblance of the gas mask’s hose to an elephant’s trunk.

⁸⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), articles 1, 2 (Ukraine ratified the Convention against Torture in 1987); International Covenant on Civil and Political Rights (ICCPR), article 7 (Ukraine ratified the ICCPR in 1973). The European Convention for the Protection of Human Rights and Fundamental Freedoms contains a similar provision in article 3 (Ukraine ratified the European Convention in 1997). These prohibitions are reaffirmed in the Constitution of Ukraine, article 28, which states that “no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity.”

cause mental suffering to the victim,”⁸⁵ including intimidation and other forms of threats.⁸⁶ International law also bars the use of statements obtained through torture as evidence, except against the person accused of torture.⁸⁷ This prevents law enforcement officials from being rewarded for using torture to extract information. It is also a way to ensure against self-incrimination, a right protected under international law.⁸⁸ International law also guarantees the right to liberty and security of the person and protection from arbitrary detention.⁸⁹

When police rape or otherwise physically assault drug users and sex workers, whether as punishment, to intimidate or coerce information, or otherwise, they violate basic protections against torture and ill-treatment, and rights to liberty and security of the person. When police use drug addiction as a tool to coerce testimony or extort money from drug users suffering from withdrawal, and deny medical assistance to drug users in withdrawal, they similarly violate basic provisions against torture and cruel, inhuman, and degrading treatment or punishment.

Police Abuse of Injection Drug Users

Severe violence and ill-treatment

Volodymyr D., twenty-seven, said that during the six years that he used drugs, Kherson police had detained him for extended periods of time and subjected him to serious physical and psychological abuse to extort money and information from him. “It’s a terror campaign against drug users,” he said. “They only know how to use harsh measures.”

In 2002, Volodymyr was held in a pre-trial detention facility for a total of twenty-seven days. He said that during this period:

⁸⁵ Human Rights Committee, *General Comment 20*, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HR/GEN/1/Rev.1 at 30 (1994). The Human Rights Committee is the United Nations body charged with monitoring implementation of the ICCPR. See also Convention against Torture, article 1 (defining torture to include intentional acts that cause severe physical pain or mental suffering).

⁸⁶ Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, U.N. General Assembly, U.N. Doc. A/56/156, July 3, 2001, Section IIA (finding that fear of physical torture may constitute mental torture, and that serious and credible threats to the physical integrity of the victim or a third person can amount to cruel, inhuman or degrading treatment, or even to torture, especially when the victim is in the hands of law enforcement officials).

⁸⁷ Convention against Torture, article 15. See also Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, principle 21.

⁸⁸ ICCPR, article 14(3)(g).

⁸⁹ ICCPR, article 9.

The investigators and others would have ‘discussions’ with me. They would bring in big guys, ‘sportsmen,’ to do the real punishing. . . . They detained me for ten days, then they released me, took me in a car to ‘take me home’ but then suddenly there was a new sanction for my arrest. And I was detained for ten more days. They repeated this procedure and again I was detained for seven days.

For some seven days they used physical measures to try to coerce me. They beat me to unconsciousness. They worked to physically and morally humiliate me. . . . They tortured me. They used the *lastochka* method.⁹⁰ They put a gas mask over my head and handcuffed my hands to my legs. Then they put a stick underneath my underarms and suspended me from two large safes. They beat me in the stomach until I lost consciousness. They beat me on the bottom of my feet with nightsticks. This is very painful and it doesn’t leave many traces.

What’s even worse though is the mental torture. They beat me until I was in so much pain and barely conscious. Then they threatened to rape me. They threatened to have another inmate rape me. This is probably one of the worst things imaginable. People kill themselves after something like this happens.⁹¹

Olga G., thirty, said that she faced constant harassment by police, who knew her to be a drug user. In 2001 and 2004, Mykolaiv police entered her home and attempted to coerce information from her to assist in criminal investigations. In the 2001 episode, she said that police entered her apartment through a window, placed a hand over her seven-year-old daughter’s mouth to muffle her screams and took Olga to the police station, leaving her daughter home alone.

They took me through a side door, not the main entrance. No one knew that I had come in. [At the police station], they put a gas mask on me, over my head. The gas mask has a long tube that comes off of the front. They covered up the air vent so that I couldn’t breathe. My

⁹⁰ The *lastochka* (swallow) position is a form of body suspension in which the victim's hands are cuffed behind his or her back and attached to an iron bar or pipe, from which he or she hangs without the legs touching the ground. In a variation on *lastochka*, the detainee is forced face down on the ground and his or her legs are tied tightly with a rope to the handcuffed hands. These positions cause acute pain in the joints, cut off the blood supply to the wrists and can dislocate arms or shoulders.

⁹¹ Human Rights Watch interview, Kherson, July 9, 2005.

hands were handcuffed together under my knees, so I was forced to bend over. I was kept in this position for more than an hour. They would turn off the air in the gas mask and beat me in the back, in the kidneys with a nightstick. I couldn't breathe at all when they did this. They also threatened me, saying, 'You'll dance naked for us on this table.' They swore at me. They would pull up the gas mask sometimes a bit off my face so that the tube hung down over my face. They would laugh at me and mock me. Then they'd pull the mask down and turn off the air again. They took me in at eleven a.m. or so and then let me go only at eight p.m. They kept asking me, 'where is this guy?' and I kept telling them that I didn't know.⁹²

Sasha T., forty-four, stopped using drugs in the summer of 2004, after twenty-five years of injecting opiates. Though he no longer used drugs, he still frequently had problems with the police. In the summer of 2004, Sasha was stopped and searched by police, who checked his pockets for syringes and for money. He told Human Rights Watch, "The police pushed me on the ground and put handcuffs on me, and dragged me about 300 meters on the ground. I was beaten so much that they had to call for medical help. I was at the police station for the night and I was physically beaten all night."⁹³

Human Rights Watch met Yosep L., forty-six, at a needle exchange point in Mykolaiv. Yosep said that he had been detained by the police several times. He described a three-day detention in 2004:

[Police] put me in the *lastochka* position. They put my hands in handcuffs and then suspended me from a hook in the wall. . . . They left me there like that for hours. For four months afterwards I didn't have any feeling in the top of my hands and in the top of my wrist. They also beat me with their fists and with night sticks. They kicked me too. All over. In the abdomen, back, anywhere. They also put a telephone cord around my penis and wound it tightly. It cut off the circulation. Then they plugged the telephone cord into the wall and there was an electric current. It wasn't a high voltage but still it was really painful, there was still a strong current.⁹⁴

⁹² Human Rights Watch interview, Mykolaiv, July 7, 2005.

⁹³ Human Rights Watch interview, Kherson, July 9, 2005.

⁹⁴ Human Rights Watch interview, Mykolaiv, July 7, 2005.

Konstantin A., thirty, said that Dnipropetrovsk police often stopped him and asked for money and information about drug users. In 2001, he was tortured while in police detention. He told Human Rights Watch:

They handcuffed my arms to my ankles and then hung me up on a pole put under my armpits. They beat me on the back and in the kidneys until I loss consciousness. I admitted to committing a robbery. They wanted to convict me for four [robberies] if I didn't admit to this one.

I was tortured for one day, and then they transferred me to the investigator. When the beating was happening, I couldn't control myself, I was hysterical. I lost strength to go on talking. I had some broken ribs, I had trouble breathing and coughing after they beat me. I had some bruises and some swelling too. Maybe now one could complain, but at that time I didn't complain. It would only bring more trouble. I know cases in which people made a complaint and there were bad consequences."⁹⁵

Street children who use drugs may be especially vulnerable to abuse, as there are few people who can or will intervene to protect them. Larissa Borisenko, a social worker with the NGO Virtus in Dnipropetrovsk, worked with a teenage drug user charged in 2005 with murder of a fifteen-year-old girl. She told Human Rights Watch that there were witnesses who could support the teenager's claim of innocence. But when police arrested him, they tortured him. She said, "And when they put electroshock to his head, he confessed to murder."⁹⁶

Planting evidence

Numerous drug users, advocates, and service providers to them said that police planted drugs in people's homes or on their person as a basis to arrest and to extort money and information from them. Andriy, an attorney with Way Home, a harm reduction program in Ilyochovsk, told Human Rights Watch, "Police here know all the drug users by face and know where they can plant drugs. They do this to recruit informers. They plant drugs and then arrest you and then say you have to work for us as informers."⁹⁷

⁹⁵ Human Rights Watch interview, Dnipropetrovsk, July 12, 2005.

⁹⁶ Human Rights Watch interview, Dnipropetrovsk, July 12, 2005.

⁹⁷ Human Rights Watch interview, Ilyochovsk, July 6, 2005.

Kherson police planted drugs on Volodomyr D., and presented him with a choice: “They told me that I had to agree to the crime of possession of *shirka*. They said if I brought U.S.\$3000 I would be released from the charges.” Volodomyr also said that police warned him not to complain about this abuse.

They warned me right away: ‘if you complain, we’ll bring a bunch of witnesses to show that we didn’t do this, and that you actually did it to one of our guys.’ They play a lot of psychological games. They threatened to hurt my relatives, friends. They said, ‘We’ll tell your friends that you gave us information about them.’ It’s easy for police to prove someone guilty. No one will be able to endure the physical and moral torture that they inflict.⁹⁸

Drug users as informants and official “witnesses”

Law enforcement officials interviewed by Human Rights Watch said that law enforcement agencies conducted periodic raids to identify drug users and to register them with the police and narcological dispensaries (specialized state facilities under the Ministry of Health that provide treatment for drug and alcohol addiction; also known as narcology centers).⁹⁹ They also said that drug users were relied on as important sources of information about drug trafficking and other crimes. Targeting drug users for registration and as informants may heighten HIV risk for drug users, who may fear seeking HIV prevention services, or taking measures to prevent HIV (such as carrying clean needles) that would expose them to arrest.

Valeriy Milnechenko, head of the drug enforcement agency, Kherson region, explained that police raids served both drug use prevention and police investigation functions. He told Human Rights Watch, “We conduct raids in conjunction with other agencies. These raids have a preventive character, to put people on the registry in the police facility.” He explained that arresting drug users for drug possession would deter people

⁹⁸ Human Rights Watch interview, Kherson, July 9, 2005.

⁹⁹ Drug treatment clinics (narcodispensaries) are required to officially register drug users referred to them for assistance, although in practice, they do not always do so. Police also maintain official drug user registries, which they routinely compare with those kept by state narcologists. Human Rights Watch interview with Anatoliy Vievskiy, head narcologist, Ukrainian Ministry of Health, July 18, 2005 (narcologists are physicians—usually psychiatrists—specializing in the treatment of drug and alcohol addiction). People registered for drug addiction at narcology clinics must report regularly for up to five years to clinics that can demand urine tests to prove that they are not using drugs. Ukrainian law bars registered drug users from holding drivers’ licenses and from a number of occupations. Human Rights Watch interview with Yuriy Chumachenko, physician, Ilyochovsk narcology center, Ilyochovsk, July 6, 2005. Registration requirements are online at: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0534-97>

from using drugs in the first instance, and would facilitate the prosecution of drug dealers. Milnechenko said that drug users “participate in information for the detention of drug dealers We can get information about drug dealers from people who have been convicted.”¹⁰⁰

Human Rights Watch interviewed police officer Andriy B. at a needle exchange point in Mykolaiv, where he and his partner were conducting an “intervention” to identify drug users and gather information from them about criminal activity (see also sub-section “Harassment of drug users at needle exchange points and at pharmacies,” below).¹⁰¹ Andriy B. told Human Rights Watch, “twice a year we conduct interventions to reveal drug users, like this one. The interventions are one month long.” Andriy B. said that drug users were good informants: “In order not to be taken to the police department, a drug user will tell you everything. . . . Pretty often drug users give you information. They know it’s important to help us fight crime and to find criminals.” Vasily S., Andriy B.’s partner, said that there was a 100 percent conviction rate for detainees. “We detain about ten people a week. . . . Of ten people a week who are brought in, all of them are sentenced. Once you are brought in, there is no way back out.”¹⁰²

Ukraine law requires that at least two witnesses be present during police searches of an individual’s person or his accommodations,¹⁰³ but police often do not follow this procedure. Attorneys who represented drug users, as well as social workers and drug users, themselves, reported that police often conducted searches without the required witnesses, or appointed witnesses who were not present at the search to testify in support of police actions.¹⁰⁴ Viktoria Belova, a Dnipropetrovsk attorney, told Human Rights Watch that drug users who had been convicted of drug offences were used as informants and as official witnesses by police. According to Belova, “Police use the same witnesses for every drug case. They take a few witnesses, and they give nonobjective testimony in favor of the police. [During the court proceedings], I ask the

¹⁰⁰ Human Rights Watch interview, Kherson, July 8, 2005.

¹⁰¹ Andriy B. and Vasily S. are pseudonyms.

¹⁰² Human Rights Watch interview, Mykolaiv, July 7, 2005.

¹⁰³ Code of Criminal Procedure, sections 181 (requiring that “A search and confiscation are to be undertaken in the presence of two witnesses and the person occupying the space; if this person is absent, a representative from the building authorities or the local government must also be present.”); 191 (“A search must be performed in the presence of two witnesses, and, as a rule, in the daytime.”).

¹⁰⁴ See, e.g., Human Rights Watch interview with Volodymyr D., Kherson, July 9, 2005; Human Rights Watch interview with Vova Zackipny, legal assistant, Life Plus, Odessa, July 5, 2005; Human Rights Watch interview with Olga G., Mykolaiv, July 7, 2005; Human Rights Watch interview with Viktoria Belova, attorney, Virtus, July 12, 2005.

witnesses whether they've ever been a witness at a trial before, and they usually say yes. . . I see the same people for many years, always there as witnesses."¹⁰⁵

Using drug addiction to coerce testimony

Police use drug addiction as a tool to coerce testimony from drug users, who may succumb to pressure to admit to false charges when faced with painful withdrawal symptoms in custody. According to Pavel Skala, who worked as a senior detective specializing in drug enforcement cases in Ukraine, "unfortunately, it is still common police investigation practice" to conduct questioning while drug users are suffering from withdrawal.¹⁰⁶ Attorneys and social workers working with drug users in Ukraine have also reported that police intentionally use withdrawal as part of investigative measures to coerce incriminating testimony from drug users; extort money from drug users by threatening to detain them, forcing them to suffer withdrawal; and deny medical assistance to drug users going through withdrawal.¹⁰⁷

Bogdan S., an outreach worker with the NGO Club Eney in Kyiv, explained, "The drug users that come to our exchange points are drug addicted. Even if at that moment he doesn't have drugs, only clean syringes, under Ukrainian law he can be arrested for seventy-two hours to identify who he is."¹⁰⁸ For a drug user, in the days of detention he will sign practically anything, say practically anything. For this not to happen, people try to bribe police, even if there are no drugs with them."¹⁰⁹ Yevgeniy Kryvosheyev, Club Eney's president, said that "If a drug user is locked up for some time without drugs, it's not difficult to break his mentality. He'll sign anything."¹¹⁰

¹⁰⁵ Human Rights Watch interview, Dnipropetrovsk, July 12, 2005.

¹⁰⁶ E-mail communications from Pavel Skala, major of police (in reserve since November 2004) and policy and advocacy manager, International HIV/AIDS Alliance, Ukraine, to Human Rights Watch, December 2, 2005, and January 29, 2006. Skala worked as a senior detective officer in charge of special cases for the drug enforcement department, Ministry of Internal Affairs of Ukraine, from July 1998 to June 2004.

¹⁰⁷ Andriy Tolopilo, "Reforming Drug Policy of the NIS to Prevent the Spread of AIDS," 2004 (Russian).

¹⁰⁸ In fact, Ukrainian law permits investigating bodies, on their own authority, to hold a person suspected of a criminal offense for up to seventy-two hours. If police wish to detain the suspect further, within the initial seventy-two hours they must bring the suspect before a judge. Otherwise, the suspect must be freed or released on bail. Constitution of Ukraine, section 29; Ukraine Code of Criminal Procedure, sections 106, 165-2.

¹⁰⁹ Human Rights Watch interview, Kyiv, July 8, 2005.

¹¹⁰ Human Rights Watch interview, Kyiv, July 8, 2005.

Direct Police Interference with HIV Prevention Information and Services for Drug Users

Police are around this needle exchange point frequently. They have stopped me a few times. They look in my shopping bag . . . They ask me, 'Where are you going? Why?' They gave me warnings: 'Don't come around here. We don't want to see you around here.'

— Marta V., injection drug user, twenty-three, Dnipropetrovsk, July 12, 2005

Staff at harm reduction programs in Odessa, Kherson, and Kyiv said that they had agreements with law enforcement officials recognizing their needle exchange services as part of legal HIV prevention programs.¹¹¹ Some high-level police also expressed support for needle exchange. Valeriy Milnechenko, head of the drug enforcement agency for Kherson region, told Human Rights Watch that his agency had an agreement supporting needle exchange services provided by the Kherson-based NGO Mongoose.¹¹² Oleg Sakalov, head of the drug enforcement agency, Dnipropetrovsk region, said that “in principle, I regard [needle exchange services] positively,” but that they “absolutely need to be done under the control of law enforcement authorities.”¹¹³

In practice, however, local police often interfered with the delivery of HIV prevention information and services, including the provision of sterile syringes, to injection drug users. Human Rights Watch documented numerous cases of injection drug users reporting being harassed, arrested, and sometimes severely beaten for possessing syringes, both sterile and used, at or near the site of needle exchange points.

Many injectors interviewed by Human Rights Watch expressed reluctance to use syringe exchange services because they feared that they would be detained or beaten by the police. Many injectors also reported that police interference with syringe exchange sites led them to engage in high-risk injecting practices, such as sharing and reusing syringes. Human Rights Watch also documented several cases of police harassment of outreach workers providing HIV/AIDS prevention services to injection drug users.

¹¹¹ Staff at harm reduction programs in Odessa, Kyiv, and Kherson said that their programs were supported by law enforcement. Human Rights Watch interview with Elena Kuleshova, harm reduction services coordinator, Way Home, Odessa, July 4, 2005; Human Rights Watch interview with Bogdan S., outreach worker, Club Eney, Kyiv, July 14, 2005; Human Rights Watch interview with Yevheniya Lysak, director, Mongoose, Kherson, July 8, 2005.

¹¹² Human Rights Watch interview with Valery Milnechenko, Kherson, July 8, 2005.

¹¹³ Human Rights Watch interview with Oleg Sakalov, Dnipropetrovsk, July 13, 2005.

Harassment of drug users at needle exchange points and at pharmacies

We give people booklets, 'Know your rights!' But the police beat people with the books, tear up the books in front of them.

— Outreach worker, Dnipropetrovsk needle exchange point, July 12, 2005

The goal of a needle exchange program is to reduce the risk of spreading HIV and other blood-borne diseases by ensuring that drug users always use sterile syringes to inject. Recovery or exchange of used needles for sterile ones serves an important health function by removing contaminated needles from circulation, thus reducing their chances of reuse, and helping to ensure their safe disposal. Needle exchange programs can also provide a bridge to drug treatment programs by providing clients with information, counseling, and referrals.

Human Rights Watch found that Ukrainian police frequently stopped syringe exchange clients in the immediate vicinity of—and sometimes at—syringe exchange sites, and confiscated their syringes, using them both as a basis to charge drug users with drug possession and to extort money and information from them.

When Human Rights Watch arrived at a needle exchange point in Mykolaiv, only outreach workers were there. An outreach worker at the exchange said that ten minutes earlier, two policemen had come to the exchange, arrested a client, and beaten him up. She added, “The police have been here two times already today. The police are basically always around here. They come here every day. There are regular neighborhood police and drug enforcement agents as well. They stand around in plain clothes trying to look like drug users themselves.”¹¹⁴ According to the outreach worker, police detained people at the needle exchange points and also took clean needles from them. As a result, drug users were “afraid of hanging around too long at the point, since the police are always close by. . . . The social workers around here warn the clients if the police are around or not.”¹¹⁵

During the time that Human Rights Watch was at the needle exchange point, several drug users came to get clean syringes, but made clear that regular police presence at the exchange point had sometimes deterred them from coming to the point, and made them

¹¹⁴ Human Rights Watch interview, Mykolaiv, July 7, 2005.

¹¹⁵ Human Rights Watch interview, Mykolaiv, July 7, 2005.

nervous about remaining there any longer than necessary. Oleg K. told Human Rights Watch, “there have been at least three or four times when I saw police standing near the needle exchange point and I didn’t come near it because the police were standing around.” He continued, “Can I go now? I really don’t like standing here too long.”¹¹⁶

Regina S., twenty-nine, had been arrested twice at the needle exchange, most recently one week before Human Rights Watch spoke with her. She told Human Rights Watch:

I’m very nervous about staying near the needle exchange point because police stopped me on Friday. . . I have been arrested before at this spot [the needle exchange point], last summer. The same thing happened. I was leaving another spot and there were drug users there and there were syringes on the ground. The policeman came and picked up the syringe and said, ‘It’s yours,’ and charged me. I was convicted under Article 14 and sent to the narcology center for a month. I am afraid to carry syringes because of police.¹¹⁷

Shortly after Regina left the exchange point, Vasiliy S. and Andriy B., whom outreach workers identified as the two policemen who had been there earlier, returned. They confirmed that they detained drug users at the needle exchange point, and rejected the idea that providing sterile syringes would prevent HIV among drug users. The officers said that they would like to kill drug users, whom they considered inhuman. Andriy B. explained how police prevented drug abuse, including by detaining drug users at the needle exchange point:

With the beginners, people who aren’t in the system, we try to explain and show the consequences of drug use and that people are killed because of drug use. One-and-a-half weeks ago, we picked up a sixteen-year-old boy here [at the needle exchange point]. We put him in the car and we showed him drug users, how they look, what they look like. He was just a beginner. His friends treated him to drugs one or two times, and he came here to get information.¹¹⁸

¹¹⁶ Human Rights Watch interview, Mykolaiv, July 7, 2005.

¹¹⁷ Human Rights Watch interview, Mykolaiv, July 7, 2005.

¹¹⁸ Human Rights Watch interview with Vasiliy S. and Andriy B. [pseudonyms], police officers, Mikolaev, July 7, 2005.

In his efforts to teach the teenager the consequences of drug use, Andriy B. detained the teenager in the car for an extended period of time, and effectively barred him from obtaining harm reduction information and services for which he had come to the needle exchange point.

Oleg Sakalov, head of the drug enforcement agency, Dnipropetrovsk region, conceded that local police had interfered with drug users' access to needle exchange points, but said that such problems were small and had been resolved. He denied that police interfered with harm reduction efforts by targeting drug users present at needle exchange points, claiming that "the idea that they [police] are sitting and waiting for people just does not exist."¹¹⁹ But outreach workers and clients of Dnipropetrovsk syringe exchange points said that police were frequently at syringe exchange points, and that police presence and abuse there deterred users from using these services. As a result, many drug users who avoided syringe exchange points reused or shared syringes with other injectors.

Denis P., thirty-three, who had been injecting opiates for twelve years, said that he had been detained by the police at the exchange point more than once, most recently the week prior to his interview with Human Rights Watch. He understood that sharing needles posed a risk of HIV infection, but said that he sometimes avoided the needle exchange out of fear of arrest, and that he could not safely carry sterile syringes without being identified by police as a drug user. He told Human Rights Watch:

Police take syringes and they throw them away. The last time this happened was maybe a month ago. I was without documents, and they searched me and found a syringe and money. They threw away the syringe and took the money. They beat me on the forehead and let me go. Maybe this has happened three times, usually in the evening. The patrol services are out in the evening. This was a new syringe that they threw away. Police stop me and check my arms for tracks. . . It's better to walk in the street without a syringe because police can always stop you. . . . If you have a used syringe, it's obvious you are a drug addict. If it's clean, you can say it's for a normal injection, but even then they can look at your arms and see you're a drug addict.¹²⁰

¹¹⁹ Human Rights Watch interview, July 13, 2005.

¹²⁰ Human Rights Watch interview, Dnipropetrovsk, July 12, 2005.

In Kherson, Andriy T., twenty-seven, told Human Rights Watch that he preferred to get his needles from the needle exchange, but police presence near the exchange kept him from coming there. He told Human Rights Watch, “I try to come here infrequently, two or three times a week. I know that police are around here, looking out for me, and so I try to avoid coming around here.” Two weeks prior to speaking with Human Rights Watch, Andriy had been stopped by the police. “It was the kind of incident that would make me not want to come here. I came here and got needles and police stopped me about two blocks away. Police do whatever they want and humiliate you. What am I supposed to do? I could write a complaint against them and that complaint wouldn’t go anywhere.”¹²¹

Grigory V., thirty-seven, who did outreach work in a village outside of Mykolaiv city, told Human Rights Watch that drug users refused to bring their used syringes to the exchange. He said that when he explained the exchange to drug users, they said, “We’re afraid. We’re not going to do that.” According to Grigory, drug users “don’t want to gather all syringes waiting for me to exchange them. They’re afraid of police because there’s blood on the syringes and they could be convicted.”¹²² Leaving used needles in circulation partly defeats the object of a syringe exchange.

Pharmacies, which can legally sell syringes to adults in unrestricted numbers, are an important source of sterile syringes for drug users. Human Rights Watch found, however, that in some cities, police patrolled pharmacies and targeted those who purchased syringes for arrest or other abuse, using possession of sterile syringes as justification to arrest drug users, and to extort money or information from them.

Mikhail S., thirty-two, said that in Odessa, “police often patrol outside pharmacies and arrest drug users who have syringes.” He said that “even yesterday I saw a police raid near a pharmacy,” and that he had been arrested and beaten by police outside a pharmacy in May 2004. “These policemen simply walk in the area close to the pharmacy and they can pick out the drug users. I had a brand new syringe in my back pocket and one policeman grabbed my hand and the other tried to pull the syringe from my pocket.” Mikhail added, “I think these patrols [of pharmacies] encourage dangerous drug use. Many times, I saw situations where drug users took syringes from the ground and cleaned them with rainwater and urine and then used them. I personally saw clients

¹²¹ Human Rights Watch interview, Kherson, July 1, 2005.

¹²² Human Rights Watch interview, with Grigory V. Mykolaiv, July 6, 2005.

come and select used syringes from the bucket [where people discarded contaminated needles].”¹²³

Harassment of outreach workers

Ukraine government policy recognizes that the most effective and in some cases the only possible AIDS educators for members of marginalized groups, such as injection drug users, are their peers.¹²⁴ But peer educators and others who reach out to marginalized groups are often held in the same contempt as the individuals with whom they work, and subjected to discrimination and violence at the hands of the government. Several NGOs that work with drug users said that police abuse of outreach workers had abated in recent months as a result of concerted efforts on their part to educate police about their work. But problems still remain: Human Rights Watch documented several cases of police abuse of outreach workers providing services to drug users.

Outreach workers with Club Eney, a harm reduction program in Kyiv, said that they were often arrested, one as recently as two hours prior to meeting with Human Rights Watch. Daniela Y. said that she had been arrested twice for having used syringes that had been exchanged. “I had a whole bag, about one hundred of them,” she said. “The police came to the needle exchange point and arrested drug users . . . and then they took the outreach workers with them. They didn’t let us make a call. They were very abusive. We had no chance to tell them who we were. We were detained for about four hours.”¹²⁵ Tomas L. told Human Rights Watch, “The police know us. They may come say hello. In other cases, they arrest our people. Earlier, it was harder, but police bother us less now.” When asked when he was last harassed while working at the needle exchange point, Tomas L. replied, “this morning.”¹²⁶

Club Eney outreach workers said that they had an agreement with police and the mayor to distribute syringes, but local officials abused these agreements. One outreach worker explained, “the situation with the police is very bipolar. Higher officials are not a problem any more. They understand the situation. But minor officials can’t collect bribes if they cooperate with us.”¹²⁷

¹²³ Human Rights Watch interview, Odessa, July 4, 2005.

¹²⁴ See, e.g., “National Program to Ensure HIV Prevention, Care, and Treatment for HIV-infected and AIDS Patients for 2004-2008,” and “Strategy Concept of the Government Actions Aimed at Preventing the Spread of HIV/AIDS up to Year 2011,” both approved by Resolution of the Cabinet of Ministers of Ukraine, March 4, 2004, No. 264.

¹²⁵ Human Rights Watch interview, Kyiv, July 14, 2005.

¹²⁶ Human Rights Watch interview, Kyiv, July 18, 2005.

¹²⁷ Human Rights Watch interview with Boris K., Kyiv, July 14, 2005.

Club Eney also had an agreement with each police district in Kyiv permitting syringe distribution during certain times. Outreach workers acknowledged that in some districts, police did not come by during syringe exchange hours, crediting training by local authorities on harm reduction.¹²⁸ Not all districts respected this agreement, however. Bogdan S., an outreach worker with Club Eney, said that “very often, a police car comes and parks about twenty meters from us. The duty shift basically know all the drug users, so they can simply watch and follow them. It’s a really big obstacle. There’s no direct pressure, but it destabilizes the situation.”¹²⁹

Outreach workers with Way Home in Odessa said that they usually carried a copy of an agreement signed by the head of police stating that the police would cooperate with Way Home’s harm reduction efforts, and an identification card stating that they were working with Way Home’s harm reduction program. This agreement did not stop all police abuse of outreach workers, however. Way Home staff said that although police “hinder our work much less” than they had in the past, there were still problems. According to one staff member, the month prior to Human Rights Watch’s visit to Odessa, “police tried to beat up one of our outreach workers. Outreach workers are all ex-drug users themselves, so they look like drug users. Police tried to beat up the outreach worker, but he showed his identification documents and was released.”¹³⁰

Harm reduction program staff in Mykolaiv likewise said that their efforts to educate police about harm reduction had helped reduce police abuse and arrest of outreach workers, but that police did still detain outreach workers. The outreach coordinator for the NGO Exit, a harm reduction program in Mykolaiv, recalled that “there have been four incidents in the past six months where the police searched or detained outreach workers.”¹³¹

Police Abuse of Sex Workers

Sex workers interviewed by Human Rights Watch reported being harassed and sometimes detained by police, who demanded money, information about drug users and other criminal suspects, and sex in exchange for release. Sex workers also reported that police beat them and forced them to engage in degrading acts, such as sitting naked in the police station. As a practical matter, because sex workers are easy targets for

¹²⁸ Human Rights Watch interviews, Kyiv, July 14, 2005.

¹²⁹ Human Rights Watch interview, Kyiv, July 14, 2005.

¹³⁰ Human Rights Watch interview, Odessa, July 4, 2005.

¹³¹ Human Rights Watch interview, Mykolaiv, July 6, 2005.

prosecution as prostitution is illegal, police face little risk of censure for these actions.¹³² Many sex workers migrate to Ukraine's cities from villages in Ukraine or other countries in the region;¹³³ their lack of official registration and identity documents required for legal residence and access to city services makes these sex workers more vulnerable to police abuse than their counterparts with registered residency.

Anastasia P., twenty-three, said, "Police use their position to get sex for free." She told Human Rights Watch that in 2004, two policemen threatened to kill her if she refused to have sex with them.¹³⁴ Tanya K., twenty-seven, said that she had been detained by police three times since she had begun working as a sex worker in 2004. "The first time, I was forced to perform oral sex on three police officers. They didn't wear condoms."¹³⁵

Alexandra R., thirty-two, said that she paid police not to arrest her for prostitution. She told Human Rights Watch, "I have constant interactions with police. We have a money-based relationship."¹³⁶ Maria B., thirty-two, said, "The police detain me very often. They take me to the police station. They want money. They want at least ten hryvna [U.S.\$2], although it depends on the person asking."¹³⁷

Sex workers said that police targeted them to fulfill their periodic "work plans." Oksana M., thirty-one, told Human Rights Watch, "If it's a low-level police officer, maybe we'll have to pay a little bribe. But if it's a head guy, he'll write you up. You can't bribe him because they have a work plan and will detain you."¹³⁸

Sex workers also said that police extorted false witness statements, and forced them to provide information about drug users and other crimes. "Since police know us and who and where we are, they sometimes come to us and force us to sign witness statements,"

¹³² Individual prostitution with adults was criminalized in September 2001 and then decriminalized in January 2006. Prior to 2001, individual prostitution with adults was covered only under the Administrative Code, violation of which incurred a small fine. The 2001 amendments increased the penalties for prostitution, including by increasing fines, subjecting those convicted of individual prostitution to correctional labor, and subjecting those convicted of certain prostitution-related offences to prison sentences. See Code of Ukraine on Administrative Offences, article 181-1; Criminal Code of Ukraine, article 303. The U.S. Agency for International Development (USAID) has observed that the 2001 amendments increased sex workers' fear of contact with police as well as service providers, and made it more difficult to conduct outreach work with sex workers. USAID, *USAID/Ukraine HIV/AIDS Strategy 2003-2008*, October 2003, p. 17.

¹³³ CEEHRN, *Sex Work, HIV/AIDS, and Human Rights in Central and Eastern Europe and Central Asia*, p. 102.

¹³⁴ Human Rights Watch interview, Kherson, July 5, 2006.

¹³⁵ Human Rights Watch interview, Kherson, July 8, 2005.

¹³⁶ Human Rights Watch interview, Odessa, July 5, 2005.

¹³⁷ Human Rights Watch interview, Odessa, July 5, 2005.

¹³⁸ Human Rights Watch interview, Kherson, July 1, 2005.

said Victoria F. “For example, yesterday, when I was detained and I saw they [police] were beating those guys, I was forced to sign a statement. Other girls were also forced to sign. We didn’t even have time to read the document.”¹³⁹ Maria told Human Rights Watch that police “demand information from us, information on drug users, who is stealing. They are constantly demanding ‘cooperation.’”¹⁴⁰

Sex workers said that the law on prostitution, as well as police disregard for sex workers more generally, made it impossible for them to file complaints about violence or abuse against them.¹⁴¹ Ivana S., twenty-eight, said that after she was anally raped by a client, “I told the other girls who work at this location about him. I didn’t complain to police because I would just be arrested for prostitution.”¹⁴² Larisa A. said she had been gang raped by five men two months prior to meeting with Human Rights Watch in July 2005. “After that, I went to the police station. They brought the guys in. When they told the police that I had been bought [had been paid to have sex], the police told me, ‘get out of here.’”¹⁴³ Evgenia R., forty-three, said that when she tried to file a report with police after having been gang raped at gunpoint, the police told her, “You’re just upset because when they raped you, they didn’t pay you.”¹⁴⁴

When she was pregnant in 2001, Larisa was detained for six days without police registering her presence or informing her family of her whereabouts, in plain violation of Ukrainian law.¹⁴⁵ She said that police beat her severely with night sticks and with fists, and that she lost a lot of blood. “My husband came and asked for me. The police said that no one was registered by that name. I could hear police saying that we can do whatever we want because she is not even registered. . . . The procuracy official told the police, ‘She’s just a prostitute. Why don’t you just take her in the yard because I bet she knows how to do a lot of good things.’”¹⁴⁶

¹³⁹ Human Rights Watch interview, Kherson, July 8, 2005.

¹⁴⁰ Human Rights Watch interview, Odessa, July 5, 2005.

¹⁴¹ See also CEEHRN, *Sex Work, HIV/AIDS, and Human Rights in Central and Eastern Europe and Central Asia* (finding that sex workers in region have limited or nonexistent legal protection from consistent violence they face).

¹⁴² Human Rights Watch interview, Kherson, July 8, 2005.

¹⁴³ Human Rights Watch interview, Kherson, July 8, 2005.

¹⁴⁴ Human Rights Watch interview, Kherson, July 1, 2005.

¹⁴⁵ Human Rights Watch interview, Kherson, July 8, 2005. Ukrainian law requires that a detainee’s relatives be informed immediately of his or her detention. Constitution of Ukraine, article 29; Ukraine Code of Criminal Procedure, section 106.

¹⁴⁶ Human Rights Watch interview, Kherson, July 8, 2005.

The kinds of police abuse described above increases sex workers' vulnerability to HIV in a number of ways. First, forced or coerced sex creates a risk of physical trauma. When the vagina or anus is dry and force is used, genital or anal injury are more likely, increasing the risk of transmission. Forced oral sex may cause tears in the skin, also increasing the risk of HIV transmission. Sex workers who face violence or abuse have limited capacity to negotiate condom use or safer sex. And as the testimony above illustrates, in the face of violence and abuse from police, sex workers have little reason to expect that police will provide protection against rape or other violence committed against them.

VI. Abuses in the Health Care System

Injection drug users, people living with HIV/AIDS, doctors specializing in AIDS care, and AIDS service workers recounted consistent and numerous accounts of discrimination and abuse in the health care system of individuals related to their HIV status. Injection drug users and people living with HIV/AIDS were often denied emergency medical treatment, including by ambulances that refused to pick them up; were kicked out of hospitals; and were provided inadequate treatment by doctors who refused even to touch them. Others were forced to pay for treatment that should have been free of charge. Health workers also often violated the privacy of people living with HIV/AIDS by disclosing confidential information about HIV status.

Human Rights Watch found that the threat of abusive treatment, and the fear of being identified and registered as a drug user, kept drug users from seeking health care treatment for injuries that might reveal injection drug use, and inhibited drug users from seeking treatment for drug dependency or information about HIV/AIDS prevention and care. Discrimination and stigma also kept people living with HIV/AIDS away from health care and other HIV/AIDS related services.

Health Care Services Denied

Ukraine's national AIDS law specifically forbids health care institutions from refusing admission or medical aid to people living with HIV/AIDS based on their HIV status.¹⁴⁷ Legal experts have interpreted Ukraine's constitution to further protect against discrimination based on HIV status.¹⁴⁸ Human Rights Watch found that many people living with HIV/AIDS were denied health care, in violation of these guarantees.

The experiences of Olga G., a thirty-year-old social worker with Exit, in Mykolaiv, were typical of the accounts collected by Human Rights Watch. According to Olga:

The doctors in the AIDS center are okay. They aren't so good in the hospitals and polyclinics [general clinics]. In November 2004 I was

¹⁴⁷ Law of Ukraine on Prevention of Acquired Immune Deficiency Syndrome (AIDS) and Social Protection of the Population, article 18.

¹⁴⁸ The analysis of Ukraine's HIV/AIDS legislation by Volodymyr Rudyi, then head of the secretariat of the Supreme Rada on health care, motherhood, and childhood, argues that anti-discrimination provisions of Article 24 of Ukraine's constitution prohibiting privileges or restrictions based on "other signs" embraces a proscription on discrimination based on HIV status. Volodymyr Rudyi, *Ukrainian Anti-HIV/AIDS Legislation. Current State and Ways of Improvement* (Kyiv: Ukrainian Harm Reduction Association, International Renaissance Foundation, and International Harm Reduction Development Program, 2004), p. 82.

brought to the third city hospital once by an ambulance when I was feeling really sick—my blood pressure was really high. The doctor said to the paramedics, ‘Why did you bring me an AIDS patient? Why didn’t you take her where she actually should go.’ He meant to the AIDS hospital. He refused to treat me.¹⁴⁹

Artur Z., thirty-six, said that in late 2004, he was forced to leave an Odessa hospital after having disclosed his HIV status to a doctor there, and that doctors in Odessa had also refused to provide him with necessary medical care. “After I confessed my HIV status, the information spread and they wanted me out of the hospital. My mother came and had to pay fifty Euros [U.S.\$60] so that I could stay overnight until they found me another hospital. They said, ‘We have no right to keep people with AIDS here. You better hurry and get him out of here because he could infect other people.’ So I was taken to a TB hospital. At that time, I had candidiasis pneumonia.¹⁵⁰ I had some spots on my X-ray. It was not TB, but they wrote TB because I had to be taken to another place.”

Doctors in Odessa refused to perform a biopsy, forcing Artur to pursue medical care elsewhere. Artur said that he was able to have a biopsy performed in Kyiv because he did not disclose his HIV status, following the advice of doctors at the Odessa AIDS Center. “I had no problems because I did not reveal my HIV status. I did it in an unofficial way.”¹⁵¹

Tatiana Bordunis, an attorney with the All-Ukrainian Network of People Living with HIV/AIDS, represented several people living with HIV/AIDS who had been denied medical treatment. In February 2005, one of Bordunis’s clients, a man living with HIV/AIDS, was denied treatment for an abscess in his lung by health care facilities in his native Chernihiv. The pulmonary institute in Kyiv confirmed that he needed surgery, but after they found out that he was HIV-positive, they released him, as did a second

¹⁴⁹ Human Rights Watch interview, Mykolaiv, July 7, 2005.

¹⁵⁰ Candidiasis is a fungal infection that commonly affects the skin, oral mucosa, respiratory tract, and vagina. Candidiasis of the oesophagus, trachea, bronchi, or lungs is an indicator disease for AIDS. Oral or recurrent vaginal candida infection is an early sign of immune system deterioration. UNAIDS, “Glossary of HIV- and AIDS-related Terms,” [online] <http://www.google.com/search?sourceid=navclient&ie=UTF-8&rls=RNWE,RNWE:2004-27,RNWE:en&q=%22Candida+infections+often+occur+early+in+the+course+of+HIV+disease+and+may+mark+the+onset+of+clinically+apparent+immunodeficiency%22> (retrieved January 18, 2006). Candidiasis pneumonia is pneumonia caused by a fungal infection of the lungs. E-mail communication from Konstantin Lezhentsev, M.D., program officer, International Harm Reduction Development Program, January 19, 2006.

¹⁵¹ Human Rights Watch interview, Kyiv, July 19, 2005.

hospital, without performing it. “Two hospitals in Kyiv refused surgery,” said Bordunis. “Can you imagine what happens outside of Kyiv?”¹⁵²

Doctors working with people living with HIV/AIDS acknowledged that health care professionals’ refusal to provide medical care to people they knew or suspected to be HIV-positive severely compromised the lives and health of people living with HIV/AIDS. Yaroslava Lapatina, an AIDS specialist at Lavra AIDS Clinic, Ukraine’s leading HIV/AIDS hospital, identified doctors’ refusal to provide even basic care to people living with HIV/AIDS as the main health care problem faced by people living with HIV/AIDS, and the reason that patients arrived at Lavra AIDS Clinic in such poor health. Lapatina told Human Rights Watch:

I had a case recently where one of our [AIDS] patients had a stomach problem. Some part of his stomach was very tight and he couldn’t eat because food wouldn’t pass through. He needed a special procedure. Doctors at the regional hospital said, ‘We don’t think it’s necessary. He has got space for food to pass.’ It took immense effort to pressure doctors to do this procedure. I don’t know how much money his mother had to pay to get the doctor to do this procedure. There was a three-week delay. The patient couldn’t eat this whole time. He was dying from hunger. He got dystrophy. He was injected with substitute food, but it was an expensive treatment and it didn’t work so well. Two things helped solve this problem: the patient’s mother was very upset and very demanding; and she paid money.¹⁵³

Discriminatory and Degrading Health Care Provision

Katrina M., twenty-four, said that after she told doctors in Lviv that she was HIV-positive: “some [doctors] refused even to talk with me. At one point last winter, about seven or eight months ago, I had pneumonia in both lungs, with a related heart complication. I had a very high fever. When the nurse came to give me shots, he told me to roll over and face away from him and not breathe on him. A doctor told other patients not to come close to me. He said that I have lots of diseases, like HIV and hepatitis C, and that I can contaminate other people if they come close.”

¹⁵² Human Rights Watch interview, Kyiv, July 21, 2005.

¹⁵³ Human Rights Watch interview, Kyiv, July 19, 2005.

At one point a nurse came in to change my catheter. I told her to put on gloves. I was tired of telling everyone that I have HIV, and so I just told her to put on gloves, without explaining anything. She said, 'It's more comfortable for me this way.' I said, "Please, I'm sick. Use gloves." She said, 'What do you have?' And I told her. And she said 'What!?' and looked at me terrified and then fainted right on the floor. She lost consciousness.

Some months before that, I had gone to the gynecologist. She put on a heavy glove, like a winter glove or a gardening glove, I don't know exactly. And then she put on a plastic glove over that before she would examine me. I really don't understand this. It's really unpleasant for me. I understand that people are afraid, but I am also a person!¹⁵⁴

Yaroslav R. said that the month prior to meeting with Human Rights Watch, hospital staff, including doctors, had chastised him for being a drug user, and denied him a hospital room and access to the hospital cafeteria because of his HIV status. At the trauma hospital where he had sought treatment, Yaroslav had been placed in a corridor, even though there were rooms available. He told us, "One doctor said to me, 'Why do you come here and make more problems for us? You are guilty yourself for this. You are dragging yourself to your own destruction.'" Summing up his experience, Yaroslav said, "This was all really unpleasant for me. I mean, I'm a human being and I was in pain. Isn't it their job to treat me?"¹⁵⁵

Sergei Soltyk, head of medical services at Odessa regional AIDS center, acknowledged that health care workers' prejudice against drug users and sex workers contributed to their fear of people living with HIV/AIDS. Soltyk said that doctors feared people living with HIV/AIDS because they were afraid of drug users and sex workers. He told Human Rights Watch:

Now we have here all those patients who got infected in the first wave, in 1993. Most got infected through blood—drug users, low-level prostitutes. At that time, it was mainly drug users, sex workers, bad elements of society that got infected and now they are coming to hospital. All those people who go to hospital are dirty, smelly, very

¹⁵⁴ Human Rights Watch interview, Odessa, July 4, 2005. Katrina also told Human Rights Watch that she had been twice refused emergency transportation to hospital after her mother told the ambulance crew that Katrina was HIV-positive.

¹⁵⁵ Human Rights Watch interview, Mykolaiv, July 7, 2005.

cheap prostitutes. This also contributes to the fear, that people are afraid of people like them.¹⁵⁶

Svitlana Antoniuk, head doctor at Lavra AIDS Clinic in Kyiv, said that even doctors themselves faced AIDS-related discrimination. She told Human Rights Watch:

Yesterday, I received a phone call from a surgeon from [town name withheld] who was fired a month ago when it became known that he had HIV. No confidentiality—his parents were told. He thinks he might have been infected while performing surgery. He never had a chance to use PEP.¹⁵⁷ He didn't even know about it. He was fired, and there's not even a confirming diagnosis yet. They just shook his hand and told him to go [seek care at] the polyclinic.¹⁵⁸

Specific Obstacles to Care for Drug Users

Discrimination and abuse against drug users is persistent in health care settings, regardless of their HIV status. Drug users and service providers working with them said that some medical facilities refused altogether to provide care to drug users, and that treatment, when provided, was inadequate, and provided in an abusive manner.

Larissa Borisenko, a social worker with the NGO Virtus in Dnipropetrovsk, told Human Rights Watch:

Medical facilities do not take active drug users. When I was working here I knew the story of one guy, Sergei M.¹⁵⁹ They wanted to put him in the oblast AIDS center. He was HIV-positive. He had serious swelling in the glands in his neck—this candidiasis is a typical infection for HIV-positive people.¹⁶⁰ But the oblast AIDS center refused to take

¹⁵⁶ Human Rights Watch interview, Odessa, July 5, 2005.

¹⁵⁷ Prompt administration of a short course of antiretroviral drugs following a potential HIV exposure—post-exposure prophylaxis or PEP—reduces the risk of HIV transmission following exposure to HIV. World Health Organization, "Post Exposure Prophylaxis," [online] <http://www.who.int/hiv/topics/prophylaxis/en/> (retrieved January 18, 2005).

¹⁵⁸ Human Rights Watch interview, Kyiv, July 22, 2005.

¹⁵⁹ Sergei M. is a pseudonym.

¹⁶⁰ Oral candidiasis is strongly associated with HIV infection and can predict progression of HIV disease. Maeve M. Coogan et al., "Oral lesions in infection with human immunodeficiency virus," *Bulletin of the World Health Organization*, vol.83, no.9 (September 2005), pp. 700-706. Oesophageal, tracheal, and bronchial candidiasis are all indicator diseases for AIDS. See note 150, above.

him because he was an active drug user. Several other hospitals also refused to take him. The ambulance services also refused to take him. He is on the registry as a drug user. All the medical personnel knew that he used drugs, so they refused to pick him up.¹⁶¹

Jakob T., an outreach worker with Way Home, in Odessa, said that medical workers “don’t look at drug users as ill people, but like criminals, like bandits. Our clients are often refused treatment.”¹⁶²

When Human Rights Watch met Anton D., forty-one, he had large purple abscesses on his lower legs and he said that his right leg had been swollen for some time. Anton said that a doctor at the local polyclinic had refused to treat these ailments, and rebuked him for seeking treatment for them. Anton told Human Rights Watch that at the hospital, “the doctor said, ‘How dare you shoot up and expect me to treat you?’ They didn’t treat me.” Anton said that when he suffered an abscess or was otherwise sick, he took care of himself.¹⁶³

Bogdan S., an outreach worker with Club Eney in Kyiv, said that in his experience, drug users “bribe the doctor not to call police about abscesses. . . . If the doctor sees someone has an abscess, this identifies him as an injection drug user. There’s a huge possibility that he will call the police.”¹⁶⁴ Maksim G., another Club Eney outreach worker, said that when he and his colleagues called emergency services because of an overdose, “we say the person had a heart attack. Otherwise, we’re concerned that the ambulance won’t come and the police will be called.”¹⁶⁵

Viktor M., a twenty-eight-year-old drug user in Dnipropetrovsk, showed Human Rights Watch three scars from abscesses that he had treated himself. He told Human Rights Watch that he treated his own abscesses because he feared that if he were treated at the hospital, the hospital would share information with his employer that would disclose his drug use, and he would lose his job. He said, “There is a special sheet at the hospital

¹⁶¹ Human Rights Watch interview, July 11, 2005.

¹⁶² Human Rights Watch interview, July 4, 2005.

¹⁶³ Human Rights Watch interview, Kherson, July 1, 2005.

¹⁶⁴ Human Rights Watch interview, Kyiv, July 14, 2005.

¹⁶⁵ Human Rights Watch interview, Kyiv, July 14, 2005. See also Anna Alexandrova et al., “Reforming Drug Policy for HIV/AIDS Prevention. Focus Countries: Georgia, Kyrgyzstan, Russia, Tajikistan and Ukraine,” 2005, p. 10.

that they have to fill out if you miss work. If they put the disease as abscess, they would know I was a drug user.”¹⁶⁶

Illegal Demand for Payment for Medication and Services

People living with HIV/AIDS said that health care workers sometimes requested payment as a condition of receiving services, or to protect against immediate removal from the hospital. This is in stark violation both of Ukrainian constitutional provisions, noted above, guaranteeing free health care for all in state institutions, and national legislation guaranteeing free medicines to treat existing disease, as well as psycho-social support, for people living with HIV/AIDS.¹⁶⁷ While many Ukrainians must pay for treatment to which they are entitled by law, such payments are particularly burdensome for people living with HIV/AIDS, for whom obstacles to care threaten to compromise already fragile health status.

Yaroslav R., an HIV-positive drug user, met with Human Rights Watch in July 2005, eight days after his wife had died of AIDS. One month before her death, Yaroslav had to pay 90 hryvna (U.S.\$18) for his own medication when he sought treatment for himself, mentioned above. In January 2005, his wife had been denied treatment at the Mykolaiv regional AIDS center when she could not meet their demand for payment.

Yaroslav told Human Rights Watch, “We went to the oblast AIDS center on 18 January 2005 to get treatment for her.” Yaroslav continued, “It’s about forty-two kilometers from where we live. I don’t know what was wrong with my wife, but her system just started shutting down. She had diarrhea and then didn’t go to the toilet for four days. She couldn’t eat. She was really kind of going crazy.”

Yaroslav described how he and his wife were greeted at the AIDS center:

There were two people sitting at the front desk. One young woman and one young man. They were sort of laughing at us. They said, ‘Oh, your wife has AIDS? Should we give you some condoms or is it already too late?’ They told us that it would cost 600 hryvna [U.S.\$120] for

¹⁶⁶ Human Rights Watch interview, Dnipropetrovsk, July 12, 2005.

¹⁶⁷ Ukrainian Constitution, Article 49; Law of Ukraine on Prevention of Acquired Immune Deficiency Syndrome (AIDS) and Social Protection of the Population, articles 4, 17. According to a 2004 survey of people living with HIV/AIDS in sixteen cities throughout Ukraine, 23 percent of respondents did not know about these benefits, and only 40 percent had ever used them. All-Ukrainian Network of People Living with HIV/AIDS, “Access to Rights and Services of People Living with HIV in Ukraine: Social Research Results,” 2004.

treatment. We didn't see a doctor. We didn't see anyone except these people at the front desk.

I mean she was really so very sick. I came with her and I was ready to leave her for some treatment. I came with all the bags packed and everything. And then they said 600 hryvna. I only had about 120 hryvna [U.S.\$24] with me and so we went home. . . . After that we didn't go anywhere else for medical treatment. We felt that there was nothing else that we could do.¹⁶⁸

Inna B., an HIV-positive social worker from Dnipropetrovsk, said that when she was seven months pregnant, she sought emergency treatment at a maternity hospital because of a threat of miscarriage.

I came to get some emergency treatment, but the first hospital refused me. I was sent from one birthing hospital to another. No one wanted to take me because I had used drugs and I was HIV-positive. I had to make an agreement with the head doctor and I had to pay. I was in the hospital for two weeks. When I was ready to give birth I came to the central birthing hospital No. 1 at 11 a.m. My water had already broken. They didn't want to admit me. Several people refused to admit me. It was only when I said, 'How much?' that they took me in. I paid 1,100 hryvna [U.S.\$220] and my daughter was born a few minutes later. If I hadn't paid, I would have given birth in the waiting room.¹⁶⁹

(See also below, sub-section "Abuses against Women with HIV/AIDS in Reproductive Health Care Provision.")

Barriers to Tuberculosis Treatment for People Living with HIV/AIDS

Tuberculosis is a leading cause of death for people living with HIV/AIDS, and a major problem overall in Ukraine.¹⁷⁰ Government failure to link tuberculosis and HIV/AIDS treatment, as well as health care professionals' refusal to treat people living with

¹⁶⁸ Human Rights Watch interview, Mykolaiv, July 7, 2005.

¹⁶⁹ Human Rights Watch interview, Dnipropetrovsk, July 11, 2005.

¹⁷⁰ See UNAIDS, "Eastern Europe and Central Asia Fact Sheet," *AIDS Epidemic Update: December 2004* (Geneva: UNAIDS, 2004); World Health Organization, "Treating Tuberculosis in Ukraine," May 2004, [online] http://www.who.int/features/2004/tb_ukraine/en/print.html (retrieved February 11, 2006).

HIV/AIDS suffering from tuberculosis or pulmonary ailments, may be contributing to fatality rates for people living with HIV/AIDS.

Nino Chelidze, project coordinator for Médecins Sans Frontières, which has been providing HIV/AIDS services in Odessa since 2000, said that tuberculosis was the main opportunistic infection among HIV/AIDS patients in Odessa. Chelidze said that “a lot of people are dying from tuberculosis,” identifying the “very weak link between the national tuberculosis program and the HIV program” as a major problem.¹⁷¹ Zahed Islam, head of the Ukraine mission for Médecins Sans Frontières, also said that tuberculosis centers’ refusal to treat people living with HIV/AIDS was a common problem:

This kind of discrimination happens all the time. For example, if a person has clinical indications of extrapulmonary TB, the person is sent to the hospital. Any doctor could identify this as TB, but the patient returns with a note saying there’s no TB. There are many cases like this. More than forty patients who died in the inpatient department of the AIDS center had TB. I hear these stories every day. Sometimes our doctors, nurses say that we suspect this patient has TB. Sometimes we get results if we accompany the person. People end up dying even where they could be treated.¹⁷²

Sergei Soltyk, head of medical services at Odessa regional AIDS center, told Human Rights Watch, “We always have problems referring people to TB clinics. We have more serious problems sending clients there than sending them to other hospitals. [TB clinics] just refuse to accept people with AIDS. It’s like an endless fight. After a lot of fighting, finally they’ll take patients.” When asked why TB hospitals denied care to people living with HIV/AIDS, Soltyk replied, “They’re afraid because of their ignorance. There’s not enough information about HIV.”¹⁷³

Human Rights Watch met Pavel N., twenty-seven, at Lavra AIDS Clinic in Kyiv. Pavel had been diagnosed with tuberculosis, and was in the advanced stages of AIDS, in desperate need of antiretroviral therapy. Pavel said that he had been diagnosed with

¹⁷¹ Human Rights Watch interview with Nino Chelidze, project coordinator, Médecins Sans Frontières, Odessa, July 5, 2005.

¹⁷² Human Rights Watch interview with Zahed Islam, head of mission, Médecins Sans Frontières-Ukraine, July 14, 2005.

¹⁷³ Human Rights Watch interview with Sergey Soltyk, head of medical services chief doctor at Odessa regional AIDS center, July 5, 2005.

tuberculosis in 2002. Two weeks prior to coming to Lavra, Pavel had been forcibly discharged from a hospital in Simferopol immediately after his HIV-positive test result had been confirmed. He told Human Rights Watch, “I was getting treatment in the hospital for pneumonia until the test results became known. I was kicked out of the hospital the same day the results became known. The doctor stopped in and invited me to his office. He mentioned my positive test result and said that I had to go to the AIDS center.” Pavel left Simferopol, and was taken by a friend to Lavra AIDS clinic.¹⁷⁴

In December 2004, Misha G., forty-one, was refused treatment at both Dnipropetrovsk regional and city tuberculosis clinics. He told Human Rights Watch:

There’s a diagnosis common among people who are HIV-positive, lymph node tuberculosis. You need a test for this. For one year they refused to give me this test because I was HIV-positive. The oblast TB center turned me away. When I was refused there, the doctor even dropped the papers when she saw that I was HIV-positive. They said, ‘You need to be treated by an HIV specialist infectionist. They have special medication for this. This just isn’t our priority.’¹⁷⁵

Niko L., forty-six, said that he had been refused treatment on three occasions when he was suffering from TB, both at the TB hospital and at the infection hospital in Odessa. In 1997, he had been refused assistance by the TB hospital after disclosing his HIV status. In 2004, a nurse refused to take his blood, claiming that she did not know how to take blood from a drug user.¹⁷⁶

Abuses against Women with HIV/AIDS in Reproductive Health Care Provision

All women, regardless of their HIV status, have the right to make decisions about whether to continue or terminate a pregnancy, without coercion or other interference from the state, and to have access to information and means to exercise this right.¹⁷⁷

¹⁷⁴ Human Rights Watch interview with Pavel N., Kyiv, July 20, 2005. Pavel’s CD4 count was thirty-three. He was being treated for tuberculosis, and was scheduled to begin antiretroviral treatment once his tuberculosis had been treated, which he understood to be within a month’s time.

¹⁷⁵ Human Rights Watch interview, Dnipropetrovsk, July 13, 2005.

¹⁷⁶ Human Rights Watch interview, Odessa, July 4, 2005.

¹⁷⁷ With one exception, current international treaties neither forbid nor expressly permit abortion as a human right (the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa provides a limited right to abortion). Nonetheless, international standards on the link between access to abortion and women’s exercise of their human rights have undergone significant

For women living with HIV/AIDS, access to complete and accurate information about mother-to-child HIV transmission and its prevention is essential to secure these rights.¹⁷⁸ International law also obliges states to meet their obligations under the right to health, to take measures to improve access to sexual and reproductive health services, access to information, and resources to act on that information.¹⁷⁹

Ukraine's public health system fails to adequately protect the rights of pregnant women living with HIV/AIDS. Women and AIDS service providers interviewed by Human Rights Watch reported that health care professionals tested pregnant women for HIV and released their test results to spouses or family members without the women's knowledge or consent. In some cases, doctors failed to inform pregnant women living with HIV about prevention of mother-to-child HIV transmission, exaggerated the risk of HIV transmission to the fetus, or attempted to unduly influence HIV-positive women's independent decision regarding having children. Human Rights Watch spoke to women and their spouses who said they had chosen to terminate their pregnancies because of their HIV status, without having received full information about their options.¹⁸⁰

development. Evidence of this development is clear in the work of U.N. treaty bodies, some regional human rights instruments, and consensus documents from international conferences on women's rights and reproductive rights and health. See, e.g. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), art. 16(e) (States Parties shall ensure the "same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights"); CEDAW Committee, General Recommendation 19 (advising states parties to ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and noting that compulsory sterilization or abortion adversely affects women's mental and physical health, and infringes on the right to decide on number and spacing of children); and Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, November 8, 2000, para. 14 (requiring states to take measures to improve access to sexual and reproductive health services, access to information, and resources to act on that information). The Committee on Economic, Social and Cultural Rights is the U.N. body responsible for monitoring compliance with the International Covenant on Economic, Social and Cultural Rights.

¹⁷⁸ See CEDAW Committee, General Recommendation 24, "Women and Health" (calling on states parties to ensure rights to sexual health information, education, and services).

¹⁷⁹ Committee on Economic, Social and Cultural Rights, General Comment 14, para. 14; see also *ibid.*, para. 24 (stating that "the realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health."); CEDAW Committee, General Comment 24 (calling on states parties to ensure women's right to sexual health information, education, and services).

¹⁸⁰ Research conducted in conjunction with the Ukrainian AIDS Center has reported similar findings. See Ukrainian Institute for Social Research, Ukrainian AIDS Center, Ministry of Health of Ukraine, Youth NGO "Life Plus," and POLICY Project, "Access of HIV-Positive Women to Quality Reproductive Health and Maternity Services," Kyiv, 2004.

Lada Bulah Dekhtyarenko, director of a Kyiv community center for people living with HIV/AIDS that works with HIV-positive women and their children, told Human Rights Watch, “When a woman is two months pregnant, they have to do an HIV test. The AIDS law says it’s voluntary, but pregnant women are made to do this.” Dekhtyarenko said that the chief doctor at the city AIDS center had told her, “despite the fact that the test should be voluntary, and the doctors are supposed to say, ‘I strongly recommend that you undergo HIV testing,’ it’s next to impossible that the doctor actually says this.”¹⁸¹

In a recent case described by Dekhtyarenko, a woman learned her HIV status just after giving birth. When her husband came to the hospital to see her, the nurse disclosed her status to him, without prior consent by the woman. Dekhtyarenko said that in this case, the husband took his wife and child home with him. But other women had been thrown out of their home in such circumstances: “Some women say that after they give birth to their children, they have no home. The husband leaves them, and parents say you are not our daughter any more, don’t come home any more.”¹⁸²

Olga G. said that she found out that she was HIV-positive in 2004, when she was pregnant. She said, “I was so afraid when I found out that I had HIV that I aborted the child. I was in the second month of pregnancy. No one told me about any kind of therapy. I didn’t know you could prevent vertical transmission.”¹⁸³

Staff at AIDS service organizations in Kherson and Odessa also said that their clients had complained that doctors had told them to get abortions. According to Nina M., a social worker with the All-Ukrainian Network of People Living with HIV/AIDS in Kherson:

Some doctors tell pregnant women they should not have children. About a half a year ago, a client told me this story: She went to the doctor and took an HIV test, and when the doctor learned the results, he recommended that she get an abortion. He did not give her any information about treatment to prevent mother-to-child transmission.

¹⁸¹ Human Rights Watch interview, Kyiv, July 14, 2005.

¹⁸² *Ibid.*

¹⁸³ Human Rights Watch interview, Mykolaiv, July 7, 2005. “Vertical transmission” refers to the transmission of HIV from an HIV-infected mother to her child during pregnancy, labor and delivery, or through breastfeeding. The administration of a short course of antiretroviral drugs to HIV-positive pregnant women and their newborn children greatly reduces the risk of mother-to-child HIV transmission. See World Health Organization, *Antiretroviral drugs for treating pregnant women and preventing HIV infection in infants: guidelines on care, treatment and support for women living with HIV/AIDS and their children in resource-constrained settings* (Geneva: WHO, 2004), pp. 6-14 (reviewing studies).

The doctor told the woman that her child would also be born HIV-positive. He didn't tell her anything about the possibility that the child would not be born with HIV. She came to a consultation with me at the All-Ukrainian Network of People Living with HIV/AIDS and learned that the child could be born healthy. I have heard several stories like this. Maybe doctors know about the chances the child could be born healthy but still say it's better that HIV-positive women get abortions.¹⁸⁴

Similarly, Nataliya, a volunteer with Life Plus in Odessa, said that "doctors very often recommend that HIV-positive women get abortions. I hear this complaint quite frequently from other people."¹⁸⁵

Women who are offered antiretroviral drugs to prevent mother-to-child transmission received inadequate information about it, and were sometimes required to pay for it, again a violation of Ukrainian law that these medications be provided free of charge.¹⁸⁶ Inna B., the HIV-positive social worker in Dnipropetrovsk, charged that the "law stating that HIV-positive people should get free treatment is a joke, especially if we consider the city AIDS center." She said when she was pregnant, a doctor at her local polyclinic told her that HIV-positive pregnant mothers and their babies should be provided with medicines free of charge. She said that after hearing this:

I went directly to the city AIDS center. . . I demanded that they give me this medicine. They said, 'When you need this, we'll call you.' I told them, 'I know that I am entitled to some medicine, but I don't know what.' I called every day asking them, 'Please give me the medicine.' Finally one doctor said that I could come in and get it. When I arrived she threw the tablets on the floor and said, 'sign here.' She didn't tell me how to take it. I had to call her again and all she said was, 'two times per day.' I waited for two months to get the therapy. I didn't even know what it was. No one told me that I couldn't skip a dose.

As described above, Inna B. was admitted to the hospital to give birth only after paying 1,100 hryvna for admission.¹⁸⁷

¹⁸⁴ Human Rights Watch interview, Kherson, July 8, 2005.

¹⁸⁵ Human Rights Watch interview, Odessa, July 4, 2005.

¹⁸⁶ Law of Ukraine on Prevention of Acquired Immune Deficiency Syndrome (AIDS) and Social Protection of the Population, article 4.

¹⁸⁷ Human Rights Watch interview, Dnipropetrovsk, July 11, 2005.

Doctors at some AIDS Centers did intervene to correct misperceptions about mother-to-child HIV transmission. Klara Z., thirty-nine, said that when she learned that she was HIV-positive, the local doctor “told everyone,” and she wanted an abortion. At the Odessa AIDS center, however, doctors explained to her how to prevent HIV transmission to her fetus, and provided her with antiretroviral drugs to prevent transmission.¹⁸⁸

Discrimination against HIV-positive mothers can extend to their children. Klara said that her son suffered medical problems at birth. But “when they found out that I was HIV-positive, they refused to give him medication. They made him leave the hospital and he never got any treatment.”¹⁸⁹

Inadequate Protection of Confidential Information

Ukraine’s national HIV/AIDS law protects the medical confidentiality of HIV test results, and includes specific limits on the transfer of these data. The law further instructs that information related to, and medical supervision of, people living with HIV/AIDS be carried out consistent with respect for rights to confidentiality, and personal rights and freedoms guaranteed by Ukrainian law and relevant international treaties.¹⁹⁰ A 2004 survey of people living with HIV/AIDS in sixteen cities throughout Ukraine found that these rights were mostly honored more in the breach than the observance, however: 70 percent of respondents reported that their rights to confidentiality of HIV diagnosis had been violated.¹⁹¹

Several people living with HIV/AIDS told Human Rights Watch that health workers had disclosed confidential information about their HIV status without their authorization. Katya N., twenty-eight, found out that she was HIV-positive when she was pregnant. Soon, this information was public. “When I came to the obstetrician, only one doctor and the chief of the department knew about my HIV status. After a while, even the cleaner at the hospital knew about it. The cleaner’s daughter was my friend. The cleaner told her daughter not to be friends with me. After that, I lost my friend.”¹⁹² As mentioned above, Klara Z. had a similar experience also when she was pregnant. “The doctor told me that I was HIV-positive and didn’t behave very well.

¹⁸⁸ Human Rights Watch interview, Odessa, July 3, 2005.

¹⁸⁹ Human Rights Watch interview, Odessa, July 3, 2005.

¹⁹⁰ Law of Ukraine on Prevention of Acquired Immune Deficiency Syndrome (AIDS) and Social Protection of the Population, articles 8, 9, 12.

¹⁹¹ All-Ukrainian Network of People Living with HIV/AIDS, “Access to Rights and Services of People Living with HIV in Ukraine: Social Research Results,” 2004.

¹⁹² Human Rights Watch interview, Kyiv, July 15, 2005.

She told everyone. This was a very big shock for me. My friend took me to the doctor and the doctor told my friend and other doctors that I was HIV-positive. My friend then became very cautious and distanced herself from me.”¹⁹³

Leonid S., thirty-seven, lived with his parents in their Kyiv apartment. In April 2005, a doctor at a Kyiv polyclinic disclosed his HIV-positive status to his mother without his consent; since then, his parents have asked him to leave home. “My mother says, ‘You are a shame to our family. Go away from our home. You are contagious. We can all become sick.’”¹⁹⁴

Ruminta T., thirty-nine, said that a narcologist in Dnipropetrovsk had disclosed her HIV status to other drug users, supposedly as a “warning” to them.¹⁹⁵

Elena Goryacheva, director of Exit, said that health care providers’ failure to maintain confidentiality of patients’ HIV status kept people from being tested for HIV, noting that this was a particular problem in small towns. “Especially in small towns, people don’t want to get tested because they fear disclosure. They’re afraid of taking the test. We have even proposed taking a specialist from Mykolaiv who doesn’t know them to do the testing so as to keep things anonymous.”¹⁹⁶

A further risk of divulging confidential information about HIV status arises from the singling out of HIV-positive patients for disparate treatment absent medical justification, such as limiting substitution therapy to people receiving antiretroviral treatment. This is discussed in Section VII, below.

Preserving the confidentiality of information about HIV status is protected by international law¹⁹⁷, as well as Ukrainian national law.¹⁹⁸ Such actions also threaten other

¹⁹³ Human Rights Watch interview, Odessa, July 3, 2005.

¹⁹⁴ Human Rights Watch interview, Kyiv, July 19, 2005.

¹⁹⁵ Human Rights Watch interview, July 12, 2005.

¹⁹⁶ Human Rights Watch interview, Mykolaiv, July 6, 2005.

¹⁹⁷ The Economic, Social and Cultural Committee in its general comment 14 on the right to health, recognized “the right to have personal health data treated with confidentiality.” Para. 12. More broadly, the committee noted that the “right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the right to ... privacy.” *Ibid.* Para. 3. In citing to the right to privacy under article 19 of the International Covenant on Civil and Political Rights (ICCPR), the Committee stated that it gave “particular emphasis to access to information because of the special importance of this issue in relation to health.” Para. 12 fn. 8. According to Manfred Nowak in his treatise on the ICCPR, the right to privacy includes a right of intimacy, that is, “to secrecy from the public of private characteristics, actions or data.” This intimacy is ensured by institutional protections, but also includes generally recognized obligations of confidentiality, such as that of physicians or priests. Moreover, “protection of intimacy goes beyond publication. Every invasion or even mere exploration of the intimacy sphere against the will of the person concerned may

rights. As described above, people living with HIV/AIDS may be denied health care, threatened with eviction or unemployment, or subjected to other forms of discrimination and stigma when state and private actors discover that they are HIV-positive.

constitute unjustified interference” [emphasis in the original]. Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (Kehl am Rein: N.P. Engel, 1993), p. 296. The right to respect for a person’s private life is also recognized in the European Convention on Human Rights and Fundamental Freedoms, article 8.

¹⁹⁸ ICCPR, 999 U.N.T.S. 171, entered into force March 23, 1976, art. 17; European Convention for Human Rights, art. 8. Ukrainian law provides extensive protections against the disclosure of confidential information. See Ukrainian Constitution, Article 32; Law of Ukraine on Information (Vedomosti Verkhovnoy Rady of Ukraine, 1992, No. 48, Art.650; 2000, No. 27, Art.213; 2000, No. 29, Art.194; 2003, No. 28, Art.214), articles 23,30, 31, 37, 46, 47; Basics of the Health Legislation of Ukraine, (Vedomosti Verkhovnoy Rady of Ukraine, 1993, No. 4, Art.19; 1993, No. 11, Art. 93; 1993, No. 15, Art.132; 1994, No. 28, Art.235; 1994, No. 41, Art.376; 1994, No. 45, Art.404; 1997, No. 15, Art.115; 2000, No. 19, Art.143; 2003, No. 10-11, Art.86), articles 40, 78; Law of Ukraine on Prevention of Acquired Immune Deficiency Syndrome (AIDS) and Social Protection of the Population, articles 8, 12.

VII. Barriers to Drug Treatment and Antiretroviral Therapy for Injection Drug Users

In 2005 Ukraine made important progress in its efforts to provide substitution therapy for drug users, and antiretroviral therapy for people living with HIV/AIDS. Human Rights Watch research found, however, that significant obstacles remain that threaten to impede the implementation of substitution therapy and antiretroviral treatment programs.

Barriers to Substitution Therapy

Without [substitution] therapy, the only things waiting for drug users are overdose, prison, HIV, other diseases, homelessness and the grave.

— Volodymyr D., participant in substitution therapy program, Kherson, July 9, 2005

Since 2001, the government has issued a number of official government documents (including parliamentary hearing recommendations, Cabinet of Ministers resolutions, and Ministry of Health orders) recommending the introduction of substitution therapy programs as part of national efforts to treat drug dependency and to control the spread of HIV/AIDS.¹⁹⁹ But opposition by drug and law enforcement agencies, particularly to methadone, has created significant barriers to the implementation of these programs.

Ukraine is party to U.N. drug control conventions obliging it to establish rehabilitation and social reintegration services for drug users according to international standards, and to make provisions for treatment systems.²⁰⁰ U.N. bodies monitoring these treaties have made clear that methadone substitution therapy does not breach these conventions.²⁰¹ Ukrainian officials have wrongly cited these conventions to oppose methadone, while

¹⁹⁹ See, for example, "National Program of HIV/AIDS Prevention for 2001-2003," Approved by the Resolution of the Cabinet of Ministers, July 11, 2001, No 790 (directing health authorities to start substitution therapy programs), and documents cited in notes 44 and 45 above.

²⁰⁰ See Single Convention on Narcotic Drugs of 1961, as amended by the protocol of March 25, 1972, article 38; Convention on Psychotropic Substances of 1971, article 20; Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, article 3.

²⁰¹ See United Nations International Narcotics Control Board, "Flexibility of Treaty Provisions as Regards Harm Reduction Approaches," E/INCB/2002.W.13/SS.5, para. 17; United Nations, *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* (Vienna, 1988).

ignoring the substantial body of evidence establishing methadone substitution as an effective treatment for opiate addiction.

Maj. Gen. Anatoliy Naumenko, the chief of the drug enforcement department of the Ministry of Interior from September 2003 to July 2005, vigorously opposed the use of methadone on several grounds, asserting that Ukrainian and Russian studies had proved methadone to be ineffective in treating opiate addiction, and that its use contravened United Nations drug conventions. Naumenko also expressed concern about the illegal sale of methadone by underpaid health professionals and drug users.²⁰² The Security Service of Ukraine has similarly opposed methadone, dismissing its use in HIV prevention as “propaganda,” and claiming that it did not address opiate drug addiction, but instead created a new form of drug addiction (“methadone mania”) as well as demand for the illegal manufacture and marketing of methadone.²⁰³

In mid-2005, the Cabinet of Ministers proposed to ban methadone altogether.²⁰⁴ In November 2005, following significant protest by domestic and international human rights, HIV/AIDS, and harm reduction advocates, Ukraine agreed to partner with the Clinton Foundation HIV/AIDS Initiative to “pilot and then scale up methadone-based drug substitution therapy.”²⁰⁵ At this writing, methadone remains unavailable, and the government has not announced plans for its use in substitution therapy programs.

Injectable buprenorphine has been used to treat opiate addiction in Ukraine for some years, both in drug detoxification, and on a more limited basis, for short-term substitution therapy.²⁰⁶ In 2004, pilot programs with sublingual buprenorphine were

²⁰² WHO, UNAIDS, UNODC, “Joint WHO/UNAIDS/UNODC Mission on Opioid Substitution Therapy in Ukraine,” pp. 46-47; and Human Rights Watch interview with Anatoliy Viyevskiy, head narcologist, Ukraine Ministry of Health, July 18, 2005.

²⁰³ See “Preliminary conclusions of Security Service of Ukraine (SBU) on methadone substitution therapy. Methadone Cons and Pros;” Statement of Vladislav Bukrahyev, deputy head of service to combat international drug trafficking, Central Directorate to Fight Corruption and Organized Crime, in Minutes of the Working Meeting on Substitution Therapy in Ukraine, April 16, 2004.

²⁰⁴ Minutes, Meeting of the Committee concerned with the protection of the rights of PLWH and groups at risk of the National Coordination Committee, Kyiv, June 29, 2005.

²⁰⁵ “Addendum to the Memorandum of Understanding Between the Government of Ukraine and the Clinton Foundation HIV/AIDS Initiative,” November 27, 2005.

²⁰⁶ Injectable buprenorphine has been used for detoxification since 2001. Although treatment was typically given for ten days, in some cases drug users were administered injectable buprenorphine in small doses for up to six months. According to Anatoliy Viyevskiy, head narcologist at Ukraine’s Ministry of Health, in 2003, “no fewer than 3500” clients were involved in buprenorphine detoxification programs, and “more than 300” involved in six month “substitution therapy” programs with small doses of injectable buprenorphine. World Health Organization, *The Practices And Context of Pharmacotherapy of Opioid Dependence in Central And Eastern Europe* (Geneva: WHO, 2004), pp. 115-16; see also WHO, UNAIDS, UNODC, “Joint WHO/UNAIDS/UNODC Mission on Opioid Substitution Therapy in Ukraine” (November 2004) Final Report June 2005,” pp. 31-32.

begun in Kyiv and Kherson, initially designed to treat thirty patients in Kherson and one hundred in Kyiv for six months.²⁰⁷ In September 2005, with support from the Global Fund to Fight AIDS, Tuberculosis and Malaria, Ukraine began to implement a pilot substitution therapy program with sublingual buprenorphine, with the goal of providing treatment to 200 drug users in seven cities by the end of the year.²⁰⁸ Methadone is significantly less expensive than buprenorphine, and at least as effective. But the NGO the International HIV/AIDS Alliance in Ukraine, which is charged with implementing Ukraine's substitution therapy program, chose to use buprenorphine for substitution therapy in part because of law enforcement opposition to methadone.²⁰⁹

Narcologists interviewed by Human Rights Watch were encouraged by Ukraine's efforts to provide substitution therapy with buprenorphine, but some worried that state drug and law enforcement services would interfere with these programs. A narcologist who had used buprenorphine to treat drug users in 2002 and 2003 expressed serious concern that state drug control authorities' interference with the buprenorphine substitution therapy program would drive people away from services and might force health care workers to stop providing buprenorphine altogether.

The narcologist told Human Rights Watch that in the program he ran in 2002-2003, regional authorities "created conditions under which it was impossible for me to work. They inspected me every week. My name was discussed at meetings. They said that I was giving out drugs to drug users. . . . [The] Department for Combating Illegal Drug Circulation told me not to play tricks. They said if they had found any violations, they would have put me in jail." The narcologist said that a representative from the Committee for Inspection of Narcotic Drug Control had interrogated patients receiving buprenorphine about their treatment by him, driving several of them away from treatment altogether and forcing the program to shut down. The narcologist told Human Rights Watch, "After being questioned by the Committee, several patients quit buprenorphine treatment. Some returned to opiate use."

²⁰⁷ The Kherson program began in May and the Kyiv program in November 2004. Human Rights Watch interview with Irina Blizhevskaya, narcologist, Kherson Regional Narcology Center, July 8, 2005; Human Rights Watch interview with Anatoliy Vievskiy, head narcologist, Ukraine Ministry of Health, July 18, 2005. Both programs were funded by the United Nations Development Programme.

²⁰⁸ As of December 31, 2005, buprenorphine substitution therapy had been provided to 160 patients in Dnipropetrovsk, Donetsk, Kyiv, Kherson, Mykolaiv, Odessa, and Simferopol. E-mail communication from Pavel Skala to Human Rights Watch, January 28, 2005.

²⁰⁹ Telephone interview with Pavel Skala, January 10, 2005; WHO, UNAIDS, UNODC, "Joint WHO/UNAIDS/UNODC Mission on Opioid Substitution Therapy in Ukraine (November 2004) Final Report June 2005," p. 52.

Although this narcologist has agreed to provide buprenorphine as part of the new government program, he remains concerned about interference by state drug control authorities, fearing that “it is inevitable that they will come.” “I’m very concerned that law enforcement bodies will interfere with buprenorphine,” he said. “I don’t know how, but there’s an article in the criminal code about distribution of illegal drugs, and if on the government level, they don’t approve of substitution therapy, they can incriminate me.”²¹⁰

Ukraine’s buprenorphine programs are also being implemented in ways that threaten the privacy of HIV-positive drug users. Under Ministry of Health guidelines, only people who are HIV-positive are eligible to receive buprenorphine, which means that participation in the program itself advertises a person’s HIV status.²¹¹ As of January 2006, enrollment in substitution therapy programs was limited to individuals who have been registered and listed as drug users with narcology clinics;²¹² in most cases, narcology clinics officially register drug users who seek assistance from them.²¹³ Anatoliy Viyevskiy, head narcologist at Ukraine’s Ministry of Health, expressed concern that procedures were inadequate to ensure that this information remained protected both within and between medical institutions participating in substitution therapy programs, and from police. Viyevskiy said that many narcology hospitals and clinics routinely shared information with police about registered drug users, and where this was the case, police would have ready access to confidential information about drug users on substitution therapy. According to Viyevskiy, “It would be easy for police to say [to the narcology hospital] ‘we want this information,’ and they’ll hand it over.”²¹⁴

²¹⁰ Human Rights Watch interview, July 2005.

²¹¹ Ministry of Health of Ukraine, “On the Development and Improvement of Substitution Therapy for Prophylaxis of HIV/AIDS Among Drug Users,” Order no. 161, April 13, 2005.

²¹² Sophie Pachoud and Martin C. Donoghue, “Opioid Substitution Therapy Scaling Up Plan for Ukraine,” WHO Regional Office for Europe, January 2006, p. 7.

²¹³ In theory, individuals who present voluntarily for drug treatment may, at their request, receive anonymous treatment, records of which may be shared with law enforcement in case of prosecution. Law of Ukraine on Counteraction Measures against Illegal Circulation of Narcotic Drugs, Psychotropic Substances, and Precursors and Abuse of Them,” (1995), article 14. Narcologists and drug users interviewed by Human Rights Watch said that in practice, most drug users are officially registered at narcology clinics, as few drug users are informed that anonymous treatment is an option; and their treatment is “confidential,” not anonymous. Human Rights Watch telephone interview with Leonid Vlasenko, narcologist, research division, All-Ukrainian Narcological Association, Dnipropetrovsk, February 10, 2006; Human Rights Watch telephone interview with Andriy Korshun, head doctor, Cherkasi regional narcology center, February 10, 2006; Human Rights Watch telephone interview with Olexander O., injection drug user, Dnipropetrovsk, February 10, 2006. With respect to buprenorphine, registration practices differ among programs. In Kyiv, patients can receive confidential treatment, while in Donetsk, Dnipropetrovsk, and Crimea, patients are officially registered with the narcology center. Human Rights Watch interview with Sergey Dvoryak, narcologist, Ukraine Institute for Public Health Policy, Kyiv, February 14, 2006; Human Rights Watch interview with Crimea narcologist, Kyiv, February 16, 2006. Human Rights Watch interview with Leonid Vlasenko, Kyiv, February 17, 2006.

²¹⁴ Human Rights Watch interview, Kyiv, July 18, 2005.

Given that, as noted above, many drug users reportedly do not seek treatment at narcology clinics out of concern with registration requirements and their consequences,²¹⁵ the same concerns may also deter drug users from enrolling in the substitution therapy program. Viktor M., who told Human Rights Watch that he would not go to the narcology clinic because of the registration requirement and for fear that his employer would consequently find out and he would lose his job, recommended a solution to this dilemma: ensuring anonymous drug treatment.²¹⁶ This recommendation has been made by the World Health Organization in its January 2006 report on substitution therapy in Ukraine as an important factor to be considered to facilitate rapid scale up of Ukraine's substitution therapy programs, and to ensure the confidentiality of patient information for drug users enrolled in the programs.²¹⁷

Restricting buprenorphine to HIV-positive drug users also fails to take into account guidance by Ukraine's national HIV/AIDS strategy, as well as recommendations of international health organizations, which recognize the critical importance of substitution therapy in preventing HIV infection among drug users.²¹⁸ It also fails to take into account Ukraine's own recent successful experience with substitution therapy. According to Irina Blizhevskaya, the director of the buprenorphine substitution program at Kherson regional narcology center, of fifty people who had attended Kherson's substitution therapy program, only five or six had returned to drugs; and fifteen of nineteen patients remaining in Kherson's substitution therapy program in July 2005 were working. Blizhevskaya noted that this was a "big accomplishment, particularly considering that some of these people spent a large portion of their lives in and out of prison," and never before held a steady job. And, as Blizhevskaya pointed out, only five of the nineteen patients in the Kherson pilot buprenorphine program were HIV-positive.²¹⁹

²¹⁵ Human Rights Watch interview with Yuriy Chumachenko, narcologist, Ilyochovsk narcology center, Ilyochovsk, July 6, 2005; Human Rights Watch interview with Elena Kuleshova, harm reduction services coordinator, Way Home, Odessa, July 4, 2005; Human Rights Watch interview with Niko L., Odessa, July 4, 2005; Human Rights Watch interview with Viktor M., Dnipropetrovsk, July 12, 2005.

²¹⁶ Human Rights Watch interview, Dnipropetrovsk, July 12, 2005

²¹⁷ World Health Organization Regional Office for Europe, "Opioid Substitution Therapy Scaling Up Plan for Ukraine," January 2006, p. 4.

²¹⁸ See "National Program to Ensure HIV Prevention, Care, and Treatment for HIV-infected and AIDS Patients for 2004-2008," and "Strategy Concept of the Government Actions Aimed at Preventing the Spread of HIV/AIDS up to Year 2011," both approved by Resolution of the Cabinet of Ministers of Ukraine, March 4, 2004, No. 264. See also WHO, UNODC, UNAIDS, "Position Paper: Substitution Maintenance Therapy in the Management of Opioid Dependence and HIV/AIDS Prevention."

²¹⁹ Human Rights Watch interview, Kherson, July 8, 2005. As of that date, fifty people had participated in the substitution therapy program. Of the nineteen remaining in the program, fifteen were working, some for the first time in their lives. Human Rights Watch interview, Kherson, July 8, 2005.

Narcologists interviewed by Human Rights Watch also expressed concern that government efforts to provide substitution therapy were insufficient to address the needs of opiate-dependent drug users in Ukraine. In Dnipropetrovsk city, for example, according to official statistics, in June 2005 more than 4,000 registered drug users were classified as opiate addicted.²²⁰ A narcologist at the Dnipropetrovsk city narcodispensary told Human Rights Watch that there were only thirty slots for substitution therapy patients, which was plainly inadequate to treat those who needed it.²²¹ According to international drug control and health organizations, 30 to 40 percent of the opiate-addicted drug users in a given population should have access to substitution therapy on a daily basis to have an impact on drug dependency and HIV/AIDS.²²² For Ukraine, with an estimated 200,000 to 590,000 drug users, this would mean providing between 60,000 and 238,000 treatment slots.²²³

Some narcologists also raised practical problems with coordinating substitution therapy with doctors from AIDS centers. A narcologist at the Dnipropetrovsk city narcodispensary told Human Rights Watch, “Substitution therapy is a very politicized thing in our country. AIDS doctors will take part in the substitution therapy but they refuse to have it on their premises. There are lots of technical questions—storage, transportation, licensing—and they don’t want to deal with it.”²²⁴

²²⁰ Human Rights Watch interview, with Dnipropetrovsk city narcologist, Dnipropetrovsk, July 11, 2005. Oleg Sakalov, head of the drug enforcement agency for Dnipropetrovsk oblast, said that Dnipropetrovsk had 22,500 registered drug users “within the field of vision of police and narcologists. The real number of drug users is five to seven times this large.” Human Rights Watch interview, Dnipropetrovsk, July 13, 2005.

²²¹ Human Rights Watch interview, Dnipropetrovsk, July 11, 2005.

²²² See WHO, UNAIDS, UNODC, “Joint WHO/UNAIDS/UNODC Mission on Opioid Substitution Therapy in Ukraine,” p. 7.

²²³ *Ibid.*

²²⁴ Human Rights Watch interview, Dnipropetrovsk, July 11, 2005.

In Kherson, Ukraine, the first participants in the buprenorphine substitution treatment program founded an NGO, “Awake!”, to educate people about substitution therapy and rally support for the program. In its first year, Kherson’s buprenorphine program, one of two such pilot projects in Ukraine, was successful in helping long-term drug users quit street drugs and to find jobs, some for the first time in their lives. Awake! members became peer educators to support other drug users seeking substitution therapy and traveled nationwide to speak publicly about its benefits. Government officials visited Kherson’s program, looking to it as a model. Kherson’s buprenorphine program experienced a crisis in the summer of 2005. The program’s sponsor, the United Nations Development Programme, announced that by September it would have no more medicine to provide. Doctors were forced to sharply cut doses to patients, and expressed concern that their patients would return to injecting drugs if the program ended. Awake! members launched a concerted campaign to secure support for the program. Awake! enlisted international HIV/AIDS and harm reduction advocates, including the European AIDS Treatment Group, the International HIV/AIDS Alliance in Ukraine, and the International Harm Reduction Development Program, to join the fight. Awake!’s efforts helped ensure that the Kherson program would be supported by Ukraine’s Global Fund grant and could therefore continue offering services. Awake! members and other patients in Kherson’s program experienced no interruption in their buprenorphine treatment. Dozens more opiate-dependent people and their family members have contacted Awake! to learn more about how to get treatment with buprenorphine.²²⁵

²²⁵ Human Rights Watch interview with Volodymr D., Kherson, July 9, 2005; Human Rights Watch interview, Vilnius, Lithuania, November 5, 2005; E-mail communication from Daniel Wolfe, deputy director, International Harm Reduction Development Program, December 30, 2005.

Barriers to Antiretroviral Therapy

The World Health Organization in April 2005 estimated that 17,300 people in Ukraine were in immediate need of antiretroviral therapy.²²⁶ Between April 2004 and November 2005, 2,644 people living with HIV/AIDS were enrolled in antiretroviral treatment programs, a significant increase from the 255 people under treatment as of April 2004.²²⁷

In January 2004, the Global Fund to Fight AIDS, Tuberculosis, and Malaria suspended payments of U.S.\$25 million to three HIV/AIDS programs in Ukraine, citing concerns with the slow progress of implementation of HIV/AIDS prevention and treatment programs, and management and governance problems.²²⁸ A spokesman for the Global Fund charged that the Ministry of Health's failure to increase the number of people on antiretroviral treatment from about one hundred was "completely unacceptable."²²⁹ In February 2004, the Global Fund handed over the administration of the grant to the International HIV/AIDS Alliance in Ukraine, which had been involved in the Ukraine HIV/AIDS program.²³⁰

In June 2005, the Global Fund to Fight AIDS, Tuberculosis, and Malaria raised the concern that "IDUs (injection drug users) remain a group of people significantly unable to access treatment in Ukraine."²³¹ Alla Shcherbinska, director of the Ukraine National AIDS Center, said that 46 percent of the 2,200 people receiving antiretroviral treatment as of July 2005 were drug users.²³² This percentage was low given that according to Ukraine government statistics, as of July 2005, injection drug users represented 68

²²⁶ World Health Organization Regional Office for Europe, "Ukraine: Estimations of HIV/AIDS Prevalence and Treatment Needs," [online] http://www.euro.who.int/aids/surveillance/20050419_1?PrinterFriendly=1& (retrieved November 21, 2005).

²²⁷ International HIV/AIDS Alliance, *Information Bulletin*, December 2005; Global Fund to Fight AIDS, Tuberculosis and Malaria, *Grant Performance Report*, June 2005, p. 3.

²²⁸ Global Fund to Fight AIDS, Tuberculosis, and Malaria, "The Global Fund Acts to Secure Release Results for Its Programs in Ukraine," (press release), January 30, 2004; Global Fund to Fight AIDS, Tuberculosis, and Malaria, "Global Fund Signs Letter of Intent to Relaunch Ukraine HIV/AIDS Grant," (press release), February 24, 2004. Payments were suspended to the Ukrainian Ministry of Health; the United Nations Development Programme; and the Ukrainian Fund to Fight HIV Infection and AIDS.

²²⁹ Tom Parfitt, "Global Fund Suspends Payments to Ukraine," *The Lancet*, vol. 363, Feb. 14, 2004, p. 540.

²³⁰ Global Fund, "Global Fund Signs Letter of Intent to Relaunch Ukraine HIV/AIDS Grant." In September 2005, the initial twelve-month grant term was extended through at least March 2006, and the grant amount increased from U.S.\$15 million to U.S.\$23.3 million. *Stewardship Agreement between the Global Fund for AIDS, Tuberculosis, and Malaria and the International HIV/AIDS Alliance*, September 29, 2005.

²³¹ Global Fund to Fight AIDS, Tuberculosis and Malaria, *Grant Performance Report*, June 2005, p. 24. According to the International HIV/AIDS Alliance, 1,116 (of 2,104) people receiving ARVs through its program were drug users, but the data did not indicate how many of them were active drug users.

²³² Human Rights Watch interview, Kyiv, July 18, 2005.

percent of all people living with HIV/AIDS.²³³ Moreover, Shcherbinska cautioned that these statistics likely underestimated the actual number of HIV-positive drug users, because official government statistics included only HIV infections among people who have been in direct contact with testing facilities, and many injection drug users avoided getting tested. Shcherbinska acknowledged that “[m]any drug users are not getting tested for HIV because they are afraid that their status as a drug user would be disclosed.”²³⁴

Human Rights Watch’s research suggests that many drug users living with HIV/AIDS who were eligible for antiretroviral therapy may not have been receiving it for many of the same reasons that keep them from receiving HIV/AIDS information and support, and other health services more generally. Many people living with HIV/AIDS learn about antiretroviral therapy from their regular doctors, and regularly visiting a doctor is sometimes an informal criterion for eligibility for antiretroviral therapy. With many drug users facing the kind of discriminatory treatment by doctors and health workers described above, and thus being unlikely to seek any health care except in extreme emergencies, they are likely being deprived of information as well as access to antiretroviral therapy. As Alla Shcherbinska recognized, it was “very difficult” for drug users to come to the health system.²³⁵

Ukraine’s policy is to provide antiretroviral therapy to people living with AIDS according to clinical criteria.²³⁶ In practice, the application of informal and highly subjective criteria, such as patient “commitment” or “motivation,” can serve to exclude active drug users from enrolling in some antiretroviral therapy programs. Antonina Dyadik, head of the inpatient department, Dnipropetrovsk regional AIDS center, told Human Rights Watch, “We have no active drug users in our program. We’re taking patients that are committed. There is no commitment from drug users to antiretroviral therapy. . . . When given the choice between taking antiretroviral therapy and taking drugs, they choose drugs.”²³⁷ Irina Petrovskaya and Ludmila Ostrovskaya, doctors at Mykolaiv regional AIDS Center, told Human Rights Watch that they had not enrolled active drug users in the antiretroviral therapy program because active drug users were

²³³ Statistics on HIV/AIDS in Ukraine, [online] <http://www.aidsalliance.kiev.ua/cgi-bin/index.cgi?url=/en/library/statistics/index.htm> (retrieved February 11, 2006).

²³⁴ Human Rights Watch interview, Kyiv, July 18, 2005.

²³⁵ *Ibid.*

²³⁶ Ukraine evaluates eligibility for ART based on CD4 count and WHO staging criteria. Human Rights Watch interview with Alla Shcherbinska, July 18, 2005.

²³⁷ Human Rights Watch interview, Dnipropetrovsk, July 12, 2005.

not “motivated for life,” and therefore unable to adhere to treatment.²³⁸ These practices contradict World Health Organization principles of antiretroviral treatment delivery, reflected in Ukrainian national clinical standards, which state:

Access to HIV treatment should not be artificially restricted due to political or social constraints.

Specifically there should be no categorical exclusion of injection drug users from any level of care. All patients who meet eligibility criteria and want treatment should receive it, including ID-users, sex-business workers and other populations.²³⁹

They also contradict the experience of active drug users in Ukraine, many of whom have successfully enrolled in antiretroviral treatment programs in Ukraine, as well as in other parts of the world.²⁴⁰

When asked how doctors measured “patient commitment,” Alla Shcherbinska, head of Ukraine’s national AIDS centers, told Human Rights Watch, “Before the doctor prescribes antiretroviral therapy, the doctor sees that person for three years. The doctor has information on how that person follows instruction. The doctor has an opinion of that person.”²⁴¹ As described above, invitations to start treatment are only extended to

²³⁸ Human Rights Watch interview with Irina Petrovskaya, Mykolaiv, July 7, 2005; Human Rights Watch interview with Ludmila Ostrovskaya, Mykolaiv, July 7, 2005. Doctors at the Odessa inpatient AIDS Center and in Kherson regional AIDS center also told Human Rights Watch that they had no active drug users in their antiretroviral program.

²³⁹ World Health Organization, *HIV/AIDS Treatment and Care. WHO Protocols for CIS Countries* (Copenhagen: WHO Regional Office for Europe, 2004), p. 20.

²⁴⁰ Active drug users in Ukraine have shown good adherence to antiretroviral therapy (ART) regimens, and have trained other people living with HIV/AIDS about ART adherence. Telephone conversation with Konstantin Lezhentsev, M.D., program officer, International Harm Reduction Development Program, February 9, 2006. Research suggests that stereotypical assumptions about drug users’ capacity to adhere to ART may distract attention from non-drug-use related impediments, and also away from possibilities for adherence success for drug users. Norma C. Ware et al., “Adherence, Stereotyping and Unequal HIV treatment for Active Users of Illegal Drugs,” *Social Science and Medicine*, vol. 51, 2005, pp. 565-76. Research also confirms that active drug users face some challenges in compliance with antiretroviral therapy regimens not faced by other patients, but that simple and low-cost measures to tailor programs to drug users can make compliance equivalent to that of non-drug users. The best results on compliance of opiate dependent drug users to antiretroviral treatment regimens have been reported in settings where methadone or other opiate substitution therapy is readily available. See, for example, J.P. Moatti et al., “Adherence to HAART in French HIV-infected injecting drug users: The contribution of buprenorphine drug maintenance treatment,” *AIDS*, vol. 14, no. 2, January 28, 2000, pp. 151-155; Amanda Mocroft et al., “A comparison of exposure groups in the EuroSIDA study: Starting highly active antiretroviral therapy (HAART), response to HAART and survival,” *Journal of Acquired Immune Deficiency Syndromes*, vol. 22, no. 4, 1999, pp. 369-378.

²⁴¹ Human Rights Watch interview with Alla Shcherbinska, Kyiv, July 18, 2005.

those patients who are “committed.” This requirement appears to impede many drug users’ access to antiretroviral therapy: even if a drug user goes against the widespread inclination to shun health care services because of abusive treatment, and presents for treatment, it suggests that many doctors are likely to believe that as a drug user, he or she would have no commitment to treatment.

Sergei Soltyk, head of medical services at Odessa regional AIDS center, expressed his interest in establishing a clear policy denying antiretroviral therapy for active drug users, following what he understood to be the law in Russia: “Unfortunately, until now we provide antiretroviral therapy to current drug users. I think we should stop it soon, as it happened in Russia. If a person still takes drugs, he shouldn’t get therapy.”²⁴²

Elena Goryacheva, the director of the NGO Exit in Mykolaiv, told Human Rights Watch:

There are no official documents stating that active drug users can’t get antiretroviral drugs. It’s just the conviction of doctors that drug users can’t adhere to treatment and the myth that drug users are just searching for drugs. . . . I’ve spoken with doctors at the AIDS center about active drug users and antiretroviral drugs. Doctors say that active drug users can’t adhere to treatment. They may not say this openly but somehow there’s these really expensive medications and why waste them.²⁴³

Aspects of the government’s punitive approach to drug addiction also interfere with antiretroviral treatment. Drug users and outreach workers told Human Rights Watch that police had confiscated antiretroviral drugs from people living with HIV/AIDS in Dnipropetrovsk, Odessa, and Mykolaiv. In early 2005, Odessa police stopped Vitaliy M., thirty-eight, and questioned him about drug possession. Vitaliy said that after he showed police his antiretroviral drugs, and explained that they had been prescribed by the doctor, “They [police] detained me right away. They didn’t give me the possibility to explain. They put me in a cell and they sent the medicines for analysis. They didn’t believe me at all when I told them that I needed these medicines. They thought it was

²⁴² Human Rights Watch interview, Odessa, July 5, 2005. In fact, Russian law and federal policy do not exclude active drug users from antiretroviral treatment provision, though as a matter of practice, many city and regional AIDS centers have done so. See Federal Law of March 30, 1995 No. 38-ФЗ, “On Prevention of Dissemination in the Russian Federation of the Disease Caused by Human Immunodeficiency Virus (HIV-Infection),” (1995) (edition of 22.08.2004), articles 4, 14 (guaranteeing necessary free of charge medical care and treatment and medication to all HIV-positive Russian citizens and rights to health protections for people living with HIV on equal basis with others). See also Human Rights Watch, “Lessons Not Learned,” pp. 45-46 (on exclusion of injection drug users from antiretroviral treatment).

²⁴³ Human Rights Watch interview, Mykolaiv, July 6, 2005.

‘ecstasy.’” The director of the NGO Time for Life, which works with people living with HIV/AIDS in Mykolaiv, said that police had confiscated antiretroviral drugs from people living with HIV/AIDS in Mykolaiv.²⁴⁴ To address this problem, Time for Life had developed cards with pictures and information about antiretroviral drugs for people to show police in case of arrest.

Government failure adequately to coordinate links among drug treatment, HIV/AIDS, tuberculosis, and outreach services to people living with and at high risk of HIV/AIDS, also creates significant barriers to obtaining information about, and in turn, access to, antiretroviral drugs. HIV-positive drug users, for example, may receive little or no information about antiretroviral therapy from clinics where they receive drug addiction treatment. Yuriy Chumachenko, narcologist at the Ilyochovsk narcology center, said that not all narcologists discussed antiretroviral therapy with their patients, and that narcologists in Ilyochovsk had “recently stopped asking questions about HIV status,” believing that they were “not allowed to ask such questions.”²⁴⁵ When Human Rights Watch interviewed Anatoliy B., nineteen, he was an outpatient at the Odessa narcology center for the second time in 2005. Anatoliy told Human Rights Watch that he had found out in 2004 that he was HIV-positive. He said, “I can probably get treatment for this, but I don’t know. I don’t know where to get care or what the treatment is.”²⁴⁶

Svitlana Antoniak, chief doctor at Lavra AIDS Clinic in Kyiv, said that the lack of information among people living with HIV/AIDS about antiretroviral therapy, and the shortage of people trained to provide it, posed major barriers to obtaining it.²⁴⁷ The NGO Exit surveyed drug users in Mykolaiv, and found that only one (of twenty-five) had any knowledge of antiretroviral drugs. Olga Sokolova of Exit said that drug users interested in seeking HIV testing often lacked information about where to get it: “And they know that medical workers have negative attitudes toward drug users and don’t want to go to them.”²⁴⁸ To address this lack of knowledge, Exit has developed materials for injection drug users on antiretroviral drugs and other HIV/AIDS-related services for distribution to injection drug users in Mykolaiv.

²⁴⁴ Human Rights Watch interview, Mykolaiv, July 7, 2005.

²⁴⁵ Human Rights Watch interview, Ilyochovsk, July 6, 2005.

²⁴⁶ Human Rights Watch interview, Odessa, July 3, 2005.

²⁴⁷ Human Rights Watch interview, Kyiv, July 22, 2005.

²⁴⁸ Human Rights Watch interview, Mykolaiv, July 7, 2005.

VIII. HIV/AIDS, Injection Drug Use, and the Human Right to Health

The Ukrainian Constitution provides that international treaties that are in force are part of the national legislation of Ukraine.²⁴⁹ Ukraine is a party to international and regional treaties requiring it to protect the human right to health without fear of punishment and discrimination. These treaties include the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the Convention on the Elimination of all forms of Discrimination against Women; and the European Convention for the Protection of Human Rights and Fundamental Freedoms. As a party to these treaties, Ukraine has committed itself to take positive measures to ensure equal access to HIV/AIDS-related information and prevention services for all people living with and at risk of the disease.

The Right to Obtain Health Services without Fear of Punishment

International law recognizes the human right to obtain lifesaving health services without fear of punishment or discrimination. The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the right to the highest attainable standard of health without discrimination on certain prohibited grounds (including physical or mental disability and HIV status).²⁵⁰ Article 12(c) of the ICESCR specifically obliges states to take all steps necessary for “the prevention, treatment and control of epidemic . . . diseases,” which include “the establishment of prevention and education programmes for behaviour-related health concerns such as sexually-transmitted diseases, in particular HIV/AIDS.”²⁵¹ Realization of the highest attainable standard of health requires that the state ensure equality of access to a system of health care and provide health information and services without discrimination, and protect confidential information.²⁵² It also, according to the U.N. Committee on Economic, Social and Cultural Rights, requires states to take affirmative steps to promote health and to refrain from conduct that limits people’s abilities to safeguard their health.²⁵³ Laws and policies that “are likely to result in . . . unnecessary morbidity and preventable mortality” constitute specific breaches of the obligation to respect the right to health.²⁵⁴

²⁴⁹ Constitution of Ukraine, article 9.

²⁵⁰ ICESCR, art. 12(2)(c); Committee on Economic, Social and Cultural Rights, General Comment 14, para. 18.

²⁵¹ Committee on Economic, Social and Cultural Rights, General Comment 14, para. 16.

²⁵² ICESCR article 2(2); Committee on Economic, Social and Cultural Rights, General Comment No. 14, paras. 12, 16, 18, 19, and note 8 (citing the right to information under article 19(2) of the ICCPR). See also Human Rights Watch, “Ignorance Only: HIV/AIDS, Human Rights and Federally Funded Abstinence-Only Programs in the United States. Texas: A Case Study,” *A Human Rights Watch Report*, vol. 15, no. 5(g), September 2002, pp. 41-42.

²⁵³ Committee on Economic, Social and Cultural Rights, General Comment No. 14,, paras. 30-37.

²⁵⁴ *Ibid.*, para. 50.

Programs such as syringe exchange and opiate substitution therapy are among the most well-researched HIV prevention strategies in the world. Studies consistently show that access to sterile syringes dramatically reduces HIV transmission without increasing rates of drug use or drug-related crime.²⁵⁵ The World Health Organization states that “[needle exchange programs’] ability to break the chain of transmission of HIV is well established.”²⁵⁶ In reality, the scarcity of treatment programs and the very nature of drug use guarantee that there will always be people who either cannot or will not stop using drugs. Impeding this population from obtaining or using sterile syringes amounts to prescribing death as a punishment for illicit drug use. Research supporting the establishment of substitution therapy programs, particularly with methadone, is equally compelling.²⁵⁷

In the face of this scientific consensus, and in the absence of equally effective alternatives, state-imposed barriers to harm reduction programs for injection drug users constitute interference with the human right to health. To the extent that drug users suffer from addiction-related disabilities, restricting these programs may also constitute a form of discrimination in access to health care.²⁵⁸

The Right to Nondiscrimination in Access to Health Care and Health Services

The U.N. Commission on Human Rights, the main body within the U.N. system charged with human rights matters, interprets article 26 of the International Covenant on Civil and Political Rights (ICCPR), which “prohibit[s] any discrimination and guarantee[s] 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,” as prohibiting discrimination based on HIV/AIDS.²⁵⁹

²⁵⁵ See, e.g., evidence cited in Human Rights Watch, “Injecting Reason,” pp. 12-17.

²⁵⁶ World Health Organization, “Harm Reduction Approaches to Injecting Drug Use,” [online] <http://www.who.int/hiv/topics/harm/reduction/en/> (retrieved November 27, 2005); see also WHO, “Policy Brief: Provision of Sterile Injecting Equipment to Reduce HIV Transmission,” 2004.

²⁵⁷ WHO, “Policy Brief: Reduction of HIV Transmission through Drug Dependence Treatment to Reduce HIV Transmission,” 2004.

²⁵⁸ International law prohibits discrimination on the basis of disability. See, e.g., Committee on Economic, Social and Cultural Rights, General Comment No. 5: *Persons with Disabilities*, para. 5.

²⁵⁹ ICCPR, article 26; Commission on Human Rights, “The Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS),” Resolution 1995/44, adopted without a vote, March 3, 1995.

According to the Committee on Economic, Social and Cultural Rights, states have a “special obligation . . . to prevent discrimination in the provision of health care and health services, especially with respect to core obligations of the right to health.”²⁶⁰ These core obligations include ensuring nondiscriminatory access to health facilities, especially for vulnerable or marginalized groups; providing essential drugs; ensuring equitable distribution of all health facilities, goods and services; adopting and implementing a national public health strategy and plan of action with clear benchmarks and deadlines; ensuring reproductive, maternal and child care; taking measures to prevent, treat and control epidemic and endemic diseases; and providing education and access to information for important health problems.²⁶¹ To justify the failure to meet at least minimum core obligations as based on a lack of available resources, a state party “must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”²⁶²

The Committee on Economic, Social and Cultural Rights has stated that “information accessibility” is an essential element of the human right to health, noting that “education and access to information concerning the main health problems in the community, including methods of preventing and controlling them” are of “comparable priority” to the core obligations of the ICESCR.²⁶³ Article 19 of the ICCPR, which guarantees the “freedom to seek, receive and impart information of all kinds,”²⁶⁴ encapsulates access to complete and accurate information about HIV/AIDS.²⁶⁵ Parties to the ICCPR are obliged not only to refrain from censoring information, but to take active measures to give effect to this right.²⁶⁶

Access to HIV prevention services saves lives. Access to health care prevents people living with HIV/AIDS from unnecessary suffering and early death. The right to life is recognized by all major human rights treaties and, as interpreted by the U.N. Human Rights Committee, requires governments to take “positive measures” to increase life

²⁶⁰ Committee on Economic, Social and Cultural Rights, General Comment 14, para. 19.

²⁶¹ *Ibid.*, paras. 43 and 44; see also *ibid.*, para. 12.

²⁶² Committee on Economic, Social and Cultural Rights, General Comment 3: *The Nature of States Parties Obligations* (Art. 2)(1), UN Doc. E/1991/23., para. 10.

²⁶³ Committee on Economic, Social and Cultural Rights, General Comment 14: *The right to the highest attainable standard of health*, para. 44(d).

²⁶⁴ ICCPR, article 19(2). The European Convention on Human Rights also protects the right to information. ECHR, art. 10.

²⁶⁵ See Committee on Economic, Social and Cultural Rights, General Comment 14, paras. 12(b), 16, 36, and n. 8.

²⁶⁶ See ICCPR, article 2(2), providing that “each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” State responsibility to give effect to the right to information is further elaborated in S. Coliver, ed., *The Right to Know: Human Rights and access to reproductive health information* (Article 19 and University of Pennsylvania Press, 1995), pp. 45-47.

expectancy.²⁶⁷ These should include taking adequate steps to provide accessible information and services for HIV prevention, and ensuring access to medical treatment for people living with HIV/AIDS.

²⁶⁷ Human Rights Committee, General Comment 6: *The Right to Life* (16th Sess., 1982), para. 5.

IX. Recommendations

To the Government of Ukraine

On HIV/AIDS

- ***End discrimination in health care services to people living with HIV/AIDS.*** Monitor efforts to provide antiretroviral treatment to people living with HIV/AIDS to ensure that access to such treatment is provided on a nondiscriminatory basis.
- ***Respect the rights of people in Ukraine to complete, accurate information about HIV/AIDS and to obtain HIV/AIDS information and services without fear of punishment or discrimination.*** Ensure that large-scale, sufficiently resourced information campaigns provide complete, factual, and unbiased information about HIV/AIDS, including the facts of transmission, the importance of reducing stigma related to HIV/AIDS, and the role of harm reduction measures in HIV prevention. Ensure that information campaigns are tailored to meet the needs of drug users and their sex partners, street children, sex workers, and other marginalized persons at high risk of HIV. Enhance government support for peer education among young people, drug users, sex workers, and others at risk, building on the lessons of government and nongovernmental experts in Ukraine and in other countries.
- ***Take a leadership role in educational campaigns focusing on improving human rights protections and reducing stigma and discrimination against people living with and at high risk of HIV/AIDS, including drug users and sex workers.*** Government officials at all levels, including the president and cabinet officials, should engage in a concerted educational campaign including by using public events and media contacts to condemn police persecution and other human rights abuses against high-risk groups and HIV/AIDS outreach workers, and to reiterate the crucial importance of HIV prevention services for persons at high risk.
- ***Ensure that the national HIV/AIDS program, in consultation with the Ministry of the Interior, develops and implements a formal plan for a budgeted program of monitoring of and regular police reporting on violence and abuse against marginalized groups at risk of HIV/AIDS.***

- ***Provide training on HIV/AIDS, harm reduction, and drug use to all personnel in health care facilities.*** This should include instruction on the right to privacy and protection of confidential information about HIV status, and specific guidance on how to guard against negligent and intentional disclosure. Ensure that legal remedies are accessible to individuals whose privacy has been infringed or who have experienced discrimination or harassment in the health system based on their HIV status.
- ***Reform the health care system infrastructure to ensure better coordination among health care facilities managing related diseases, including HIV/AIDS, tuberculosis and drug addiction, and to ensure further integration of HIV treatment into the overall health care system.*** Collaborate with peer-based care projects, harm reduction organizations, HIV/AIDS organizations, and the community of people living with HIV/AIDS to prepare health care workers to coordinate and support services to link HIV/AIDS, tuberculosis, and drug treatment services.
- ***Protect the sexual and reproductive health rights of women living with HIV/AIDS.*** Ensure that HIV-positive women are provided complete, unbiased information about pregnancy and the prevention of mother-to-child HIV transmission, and that health care providers and women recognize that all women, regardless of HIV status, have the right to independently decide on number, timing, and spacing of children, and information and means for doing that.

On narcotic drugs and drug users

- ***Expand and enhance the scope of humane treatment services for drug addiction, including in prison, according to international standards, which would include the prompt implementation of substitution therapy with methadone and buprenorphine.*** These measures are in accordance with Ukraine's commitment as a state party to the Single Convention on Narcotic Drugs of 1961 and its additional protocol of 1972, the Convention on Psychotropic Substances of 1971, and the United Nations (U.N.) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.
- ***Reject the proposal by the Ministry of Health Committee on Narcotic Drugs Control to amend Ukraine's drug classification tables to***

criminalize possession of very small amounts of certain narcotics, which would exacerbate the problem of HIV/AIDS among drug users. Repeal mandatory imprisonment for possession of small amounts of illicit drugs, which also serves to accelerate HIV infection.

- *Ensure that implementation of a full-scale substitution treatment program, including with methadone and buprenorphine, has the full support of the Ministry of Interior, the Committee on Narcotic Drugs Control, and the Security Services of Ukraine.*
- *Ensure that substitution therapy is available to all opiate drug users, regardless of HIV status or previous enrollment in state-sponsored drug treatment programs, on a confidential and anonymous basis.*
- *Increase government support for all harm reduction services for drug users.* Ensure that the Ministry of Interior, the Committee on Narcotic Drugs Control, and the Security Services of Ukraine give full support to these efforts. Establish and increase support for harm reduction services for all at-risk populations, including sex workers and men who have sex with men. Evaluate the existence of any legal barriers to harm reduction services, such as criminalization of very small amounts of narcotic drugs, or the use of syringe possession as evidence to arrest drug suspects, and eliminate these barriers.
- *Discontinue the registration of drug users by government offices,* and any other practice that violates an individual's right to privacy about his or her use of drugs, including the sharing with law enforcement and other government agencies of information gained through provision of medical care about HIV status or drug use.

On law enforcement conduct

- *Cease and publicly repudiate the unlawful use of force and other ill-treatment by police and other agents of the state against drug users and sex workers.* Ukrainian law enforcement officers must conduct arrests of criminal suspects with the minimum force necessary, as called for in the U.N. Code of Conduct for Law Enforcement Officials and U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The Ukrainian government should ensure that Ukraine's parliamentary ombudsperson on

human rights has the necessary resources and authority to fully investigate torture and other serious offenses committed in the context of the government's antidrug efforts.

- ***Cease and publicly repudiate interference by police and other agents of the state with efforts to provide harm reduction services.*** Establish and maintain appropriate training programs for police at all levels on HIV/AIDS, harm reduction services, and related human rights issues. All new officers should be trained, and a refresher course should be provided for veteran officers. As part of the training, reinforce harm reduction services' role as a legal and central part of Ukraine's efforts to fight HIV/AIDS, and include information on referring drug users to appropriate drug treatment, HIV prevention, and other related health services.
- ***Cease arbitrary arrests and due process violations by Ukrainian law enforcement officers.*** Cease all practices of false arrest, planting of narcotics on drug suspects, and use of threats or physical or psychological force or intimidation to coerce testimony regarding drug or other criminal activity. Cease harassment and arrest of persons on the sole basis of known or suspected history of prior drug use.
- ***Conduct independent, impartial investigations of allegations of unlawful use of force, extortion, and other abuses by Ukrainian law enforcement officers.*** Discipline, discharge, or prosecute officers who engage in or condone unlawful use of force, extortion, torture, and other abuses.
- ***Reform evaluation of police performance,*** so that the evaluation standard for effectiveness is not a simple counting of criminal cases including those connected to ordinary drug possession for personal use, but is based on impact of law enforcement activities on combating major crimes. Repeal any policy that encourages officers to stop or arrest suspected drug users or sex workers without legal basis in order to meet arrest, detention, or crime disclosure targets.
- ***Ensure due process protections for people arrested or held in detention*** including by ensuring full and unimpeded access to counsel at all phases of investigation; that the practice of mistreatment of people arrested or in detention is stopped; and that confessions coerced under duress cease to be admitted as

evidence in any law enforcement proceedings, except against a person accused of causing such duress.

- ***Take concrete steps to reduce drug users' fear of seeking health services.*** Immediately and publicly declare that drug users seeking health services will not be reported to police or forced into drug treatment based solely on their status as drug users.
- ***Reaffirm the Ukrainian government's commitment to human rights by extending a standing invitation to all thematic special procedures,*** in particular to the U.N. Special Rapporteur on Torture, the U.N. Special Rapporteur on the Right to Health, and the U.N. Working Group on Arbitrary Detention.
- ***Implement fully the recommendations of the European Committee for the Prevention of Torture in its 2004 report on protections against torture and other forms of ill-treatment by law enforcement officials.***

To United Nations Bodies

- ***Relevant United Nations Officials and offices—such as the Joint United Nations Programme on HIV/AIDS (UNAIDS), the U.N. Special Rapporteur on the Right to Health, United Nations Office on Drugs and Crime (UNODC), and the Commission on Narcotic Drugs (CND)—should affirm the right of all individuals, including drug users, to the full range of HIV prevention services,*** including access to harm reduction measures without fear of arrest or punishment, as part of the right to the highest attainable standard of health.
- ***The United Nations Commission on Narcotic Drugs (CND), in cooperation with the United Nations Office on Drugs and Crime (UNODC), should support the amendment of international drug conventions to call explicitly for the legalization and promotion of the full range of strategies to reduce drug-related harm.*** These amendments should state that harm reduction measures, including syringe exchange services, substitution therapy, and peer outreach and education are compatible with drug demand reduction and essential to HIV prevention.

- *The World Health Organization and the Joint United Nations Programme on HIV/AIDS (UNAIDS) should work with the CND and the UNODC to include in international drug conventions guarantees of access to the full range of harm reduction services.* These organizations should, with active input from public health experts and nongovernmental organizations, issue specific recommendations on the deregulation of syringes, including the legalization of syringe exchange services, the legalization of nonprescription pharmacy sales of syringes, the repeal of drug paraphernalia laws, and the development of safe syringe disposal policies and protocols.
- *UNAIDS and its co-sponsor organizations, in particular the United Nations Office on Drugs and Crime (UNODC) and the World Health Organization, and UN bodies charged with issues related to illicit drug use, should support measures in Ukraine that contribute to an evidence-based public health approach to HIV and related health care services for drug users, especially by strengthening syringe exchange, substitution therapy, and other harm reduction measures.*
- *UNAIDS and its co-sponsor organizations, in particular the United Nations Office on Drugs and Crime (UNODC) and the World Health Organization, and UN bodies charged with issues related to illicit drug use, should encourage Ukraine to provide alternatives to incarceration for individual possession of very small amounts of narcotic and other illicit drugs, and to reject proposals to amend Ukraine's drug classification tables to criminalize possession of very small amounts of certain narcotics.*

To all State Parties to International Drug Conventions

- *Support amendment of the international drug conventions to encourage states parties to adopt public health approaches to drug use, including expanded access to sterile syringe interventions and substitution therapy with methadone.*
- *Adopt domestic public health approaches that affirm the right of drug users to the full range of HIV prevention services, including access to harm reduction measures without fear of arrest or punishment, as part of the right to the highest attainable standard of health.*

To the European Union

- *Use the Partnership and Cooperation Agreement (PCA), the framework that regulates the European Union's relationship with Ukraine, and contains a human rights clause, to urge the government of Ukraine to bring its laws and practices into compliance with international standards, with particular attention to the violations documented in this report. Make a public statement about Ukraine's compliance with international standards and make clear that continuation of the PCA is contingent on specific and measurable progress in observation of these standards.*
- *Further develop the European Neighbourhood Policy Action Plan for Ukraine to ensure that protection and promotion of human rights is a central part of its response to HIV/AIDS, with particular attention to the violations documented in this report. Urge Ukraine to elaborate specific benchmarks to address these violations, and clear timelines for their implementation.*

To Other European Intergovernmental Bodies

To the Council of Europe Secretary General, Committee of Ministers and Parliamentary Assembly (PACE)

- *Use all available means to ensure that Ukraine, as a member state, fulfills its obligations to guarantee the full protection of all human rights to all individuals within its jurisdiction, including drug users and people living with HIV/AIDS. To this end, continue to assist the Ukrainian government in its efforts to reform and develop legislation to conform with human rights standards.*

To the PACE

- *In ongoing initiatives on HIV/AIDS and promotion of public health policy on drug control, take into account the concerns raised in this report, and formulate specific recommendations for measures to address these concerns in Ukraine and other member states as relevant.*

To the Organization for Security and Co-operation in Europe (OSCE)

- *Make human rights abuses against people living with and at high risk of HIV/AIDS, including drug users and sex workers, an integral part of the overall work of the OSCE Project Coordinator in Ukraine on the promotion and protection of human rights in Ukraine.*
- *Include people with HIV/AIDS as a category of persons explicitly and actively covered by the work of the Tolerance and Non-Discrimination Programme of the OSCE Office for Democratic Institutions and Human Rights.*

To the United States Government

- *Make HIV/AIDS-related concerns discussed in this report an integral part of bilateral dialogues with the Ukrainian government on human rights concerns.* Press for the Ukrainian government to enact and enforce sanctions for human rights violations against people living with and at high-risk of HIV/AIDS.

To International Financial Institutions

- In pursuing its project on tuberculosis and HIV/AIDS control in Ukraine, the World Bank should take into account the concerns raised in this report, and promote elimination of human rights abuses against drug users and people living with HIV/AIDS as a key component of Ukraine's HIV/AIDS prevention, treatment, and care efforts.
- The European Bank for Reconstruction and Development should incorporate language reflecting the concerns expressed in this report in its next country strategy for Ukraine, and overall encourage the Ukrainian authorities to pursue a human rights-friendly HIV/AIDS policy as part of its engagement with Ukraine.

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Rhetoric and Risk

Human Rights Abuses Impeding Ukraine's Fight against HIV/AIDS

Ukraine is home to the worst HIV/AIDS epidemic in Europe, and one of the fastest-growing in the world. Driven largely by drug use and sex work, the epidemic disproportionately affects people at the margins, who face a high risk of police violence and abusive treatment in the health care system.

Yet Ukraine has an HIV/AIDS program that is, in many ways, a model for the region. National legislation, amended in 1998 and again in 2001, incorporates human rights protections—such as guarantees of the right to HIV/AIDS information, to confidentiality of HIV/AIDS test results, to free medical care for people living with HIV/AIDS—and endorses progressive, evidence-based approaches—such as syringe exchange programs. These laws and programs however are sometimes little more than empty protections.

Rhetoric and Risk is based on the testimony of dozens of people living with and at high risk of HIV/AIDS, who recount a common theme of physical and psychological abuse, violations of due process by police and discriminatory and dehumanizing treatment by health care workers. These human rights abuses are undermining Ukraine's efforts to combat the AIDS epidemic, to increase access to HIV prevention information and treatment, and to reduce the vulnerability of its population to infection.

Ukraine is at a crossroads in confronting the AIDS epidemic, and must choose between pursuing AIDS programs based upon effective, evidence-based and human rights principles, or allowing repressive law enforcement policies, widespread stigma and discrimination, and corrupt and poorly integrated health infrastructure to drive the epidemic further, imperiling more Ukrainian lives and squandering the promises and investments made to date.

A patient living with HIV/AIDS opens the window for fresh air. Odessa Regional Infectious Disease Hospital, HIV ward. February 2005.

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