ISSUE PAPER FOR DISCUSSION PURPOSES ONLY:

Upcoming opportunities to promote rights-based approaches to universal access to HIV prevention, treatment, care and support for people who use drugs

Defining the Issue

1. People who use drugs are being left far behind in efforts to achieve universal access to HIV prevention, treatment, care and support. Evidence-informed programmes that meet the health needs and human rights of drug users, including a reduction in HIV incidence among them, are lacking in many countries.

2. In this context, there are two upcoming processes which offer opportunities to stimulate increased attention to the health and human rights of people who use drugs in the context of HIV. First is the AIDS Review in 2008, which will involve a comprehensive review in the UN General Assembly sometime in June, 2008 of steps taken by governments to honour their commitments under the Declaration of Commitment on HIV/AIDS (2001). UNAIDS is working in close collaboration with the Office of the President of the General Assembly in preparation for this review, and the Secretariat and the Cosponsors are working hard to gather data to inform the review, including the Global Report on AIDS (2008) and the Secretary-General's Report to the General Assembly. UNAIDS is also supporting the full involvement of civil society in this review process, including the production of shadow reports.

3. Secondly, there will be a 2008/2009 review on drugs. In June 1998, the UN General Assembly met for the first time in a Special Session to address drug issues. The Session culminated in the adoption of a Political Declaration committing States to the achievement of significant and measurable results in reduction of illicit supply and demand for drugs by 2008. A review of progress against these objectives has been initiated, and will be delivered to the 2008 Commission on Narcotic Drugs (CND). This review will be based primarily on data officially submitted by governments to UNODC.

4. At the 2007 meeting of the CND, delegates agreed that following the 2008 CND meeting, a period of global reflection will begin that will lead to a political meeting at the 2009 CND to draw conclusions and plan for the future. This 2008/09 process represents an significant opportunity for stakeholders to engage with issues surrounding the current international drugs control regime, and advocate for essential reforms, including in the areas of HIV, public health and human rights, such as greater emphasis on policies and programmes that focus on issues of health, human rights and social consequences in the context of drug use. Thus, there may be opportunity to influence international drug policy in ways to enhance efforts to effectively address HIV prevention, treatment, care and support among drug users.

Background

5. Worldwide, HIV-infection related to the use of contaminated equipment in the context of injecting drug use is a growing problem. It now accounts for one-third
of new infections outside sub-Saharan Africa. In Eastern Europe and Central Asia, use of contaminated injecting equipment during drug use accounts for more than 80% of all HIV cases. It is also the entry point for HIV epidemics in a wide range of countries in the Middle East, North Africa, South and South-East Asia and Latin America. Alarmingly, new epidemics of injecting drug use are being witnessed in sub-Saharan Africa. People who use drugs by injecting are at particularly high risk of contracting HIV, but certain other forms of drug use also expose people to the risk of HIV.

6. Once HIV enters a community of people who inject drugs, progress of the infection into the rest of the population can be very rapid if appropriate measures are not taken early. Yet in spite of the importance of addressing the needs of people who inject drugs, estimates from 94 reporting low- and middle-income countries suggest that only 8% of people who inject drugs receive some type of prevention service. Even fewer have access to comprehensive services, including opioid substitution therapy and needle and syringe programmes. People who inject drugs also continue to have poor and inequitable access to anti-retroviral therapy (ART), and have been left behind as ART coverage has expanded – despite the fact that, when offered proper support, they can achieve the same levels of adherence to and clinical benefits from ART as other patients with HIV. In Central Asia and Eastern Europe, where nearly 83% of HIV cases are attributed to injecting drug use, former or current injecting drug users only represented 24% of the people on ART at the end of 2004. In China, where approximately 50% of all HIV cases are related to injecting drug use, people who inject drugs represent less than 2% of people on ART.

7. There is evidence that harm reduction measures (such as access to sterile injecting equipment, opioid substitution therapies with methadone and buprenorphine, and community-based outreach) are feasible, effective as public health measures, cost-effective, and do not lead to increased drug use. Yet legal and social barriers often impede access to needle and syringe programmes and opioid substitution therapy:
   - While reusing needles is dangerous, some countries have laws in place that hamper access to clean injecting equipment. In some countries, syringes cannot be obtained at a pharmacy without a prescription. Additionally, in many countries, drug paraphernalia laws make possessing syringes for drug use unlawful. WHO has found that such legislation is a barrier to effective HIV prevention. In fact, there is evidence that restricting access to injecting equipment inadvertently increases the incidence of HIV infection.
   - Methadone and other opioid substitutes continue to be classified as illegal in many countries, making the administration of the most effective form of treatment for opioid users impossible.

8. Many countries take an approach to injecting drug use that is overwhelmingly focused on criminalization and the imposition of penalties and exclude from consideration a number of evidence-informed interventions which have been shown to reduce the harms associated with injecting drug use. There is increasing evidence from many settings that heavy-handed penalization approaches can increase the harms associated with problematic drug use rather than helping to address the problem.
In some situations, violations of the human rights of people who use drugs have been demonstrably linked to law enforcement-based approaches to drug use. For example, there are documented cases of illegal police searches, arbitrary arrests, prolonged pre-trial detention, as well as unwarranted use of force, harassment and extortion on the part of police and border guards towards people who use drugs. Other reports document cases of detainees who are interrogated while they are in drug withdrawal and experiencing pain and confusion, or who are denied the right to a lawyer. Such human rights abuses drive people who use drugs further underground, thus preventing a vulnerable population from seeking and using health and social services.

State registration of people who use drugs, as required in some countries, also creates disincentives to accessing services and, in particular, to seeking treatment for drug dependence.

Some law-enforcement practices may also reinforce stigma against people who use drugs and may impede access to essential health-care services among people who use drugs. Criminal sanctions may make it difficult for health professionals to reach people who use drugs with essential health information and services; may make people who use drugs afraid to seek health or social services on their own initiative; may make service providers shy away from providing essential education on safer use of drugs or materials for the safer use of drugs (e.g. distributing sterile injecting equipment), for fear of being seen to condone or promote drug use; and may foster prejudicial attitudes towards people who use drugs, directing action only towards punishment of the ‘offender’, rather than fostering understanding and assistance.

9. Beyond their treatment under the law, people who use drugs may be ostracized by their families and communities, and some countries have undertaken public campaigns against drug use and users, including stigmatizing media coverage, public beatings of people who use drugs, and sometimes public executions. Such actions do not have a cause-and-effect relation to HIV rates, per se, but they stigmatize people who use drugs, deterring them from coming forward for help, and hampering prevention programmes. In short, the stigma associated with people who use illegal drugs has led to their often not being recognized by law or society as equal human beings who also enjoy full human rights, including within the legal and health systems.

10. In legislating in the area of controlled drugs and substances, countries must necessarily have regard for their obligations under applicable international law. This includes the UN’s three major drug control conventions: the 1961 Single Convention on Narcotic Drugs; the 1971 Convention on Psychotropic Substances; and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It has sometimes been argued that these conventions make it difficult for States to implement evidence-informed HIV prevention measures for people who use drugs. However, there is an increasing consensus on the interpretation of these conventions clarifying that they permit approaches that treat drug use as a health concern. In particular, the conventions may be correctly interpreted to support the implementation of measures such as opioid substitution therapy and needle and syringe programmes. The UN Drug Control Programme (UNDCP), located within the UN Office on Drugs and Crime
UNAIDS Reference Group on HIV and Human Rights

Eighth meeting | 3-5 December 2007

Tuesday, 4 December 2007
10.45 – 12.30

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(UNODC), issued a legal opinion to the International Narcotics Control Board (INCB), concluding that these measures can be seen as consistent with the UN drug control conventions. The conventions also allow States some flexibility in the extent to which they criminalize possession and use of controlled substances.

11. Importantly, in enacting and implementing domestic legislation and policy in the area of controlled drugs and substances, governments must not only have regard for drug control treaties, but also consider their obligations under international law to respect, protect and fulfil human rights. Under the Charter of the United Nations, all Member States have a binding treaty obligation “to take joint and separate action” to achieve the purpose of the UN, including promoting “solutions of international … health problems” and “universal respect for, and observance of, human rights and fundamental freedoms for all”. The UN Charter also expressly states that, in the event of a conflict between a country’s obligations under the Charter and their obligations under any other international agreement, their obligations under the former prevail. This means that countries cannot validly implement international drug control treaties in ways that contradict their obligations to solve health problems and respect human rights.

12. In one of the strongest ever statements in support of harm reduction from the United Nation’s human rights mechanisms, Paul Hunt, the UN Special Rapporteur on the Right to Health, stated in a report from a mission to Sweden that harm reduction is not only an essential public health intervention, but crucially, that it “enhances the right to health” of people who inject drugs. Recent legal reforms in Sweden now allow local governments to implement needle and syringe programmes, but Professor Hunt states that “such an important human rights issue cannot be left to the discretion of local government” and that “the Government has a responsibility to ensure the implementation, throughout Sweden and as a matter of priority, of a comprehensive harm reduction policy, including counselling, advice on sexual and reproductive health, and clean needles and syringes.”

Links with other issues on the agenda of the Reference Group

13. There are many links between the issue of protecting and promoting the rights of people who use drugs in the context of HIV and other human rights issues:

- HIV testing and counselling for people who use drugs (and for prisoners): UNODC, WHO, and UNAIDS are preparing policy statements on HIV testing and counselling for people who use drugs and for prisoners, in order to ensure that that the WHO/UNAIDS Guidance on Provider-Initiated HIV Testing and Counselling in Health Facilities is not misinterpreted and used to justify routine (or even coerced) forms of HIV testing.

- Criminalization of HIV transmission: Although this issue was not discussed in detail at the October/November, 2007, consultation on criminalization of HIV transmission, there is concern that any laws criminalizing HIV transmission or exposure could disproportionately and selectively be applied to people who inject drugs.

- Monitoring universal access: As mentioned above, efforts to increase access to HIV prevention, treatment, care and support among people who use drugs lag far behind general scale-up efforts, and many countries continue to reject evidence-informed approaches. In addition, little monitoring is undertaken of
scale-up efforts among prisoners, many of whom are drug users or former drug users.

- Rights-based approaches to sex work and HIV: In many parts of the world, sex work and injecting drug use are intricately linked: people who are dependent on drugs resort to sex work in order to purchase drugs and avoid the pain of physical withdrawal from drugs, while sex workers turn to injecting drugs to escape the pressures of their work. Sex workers who also inject drugs are at further risk; the combination of their work and drug-taking puts them beyond the protection of the law, making them particularly vulnerable to exploitation and abuse, such as sexual violence and harm, and leaving them disempowered in negotiating condom use.

- Model legislation on HIV: Many countries have laws and policies restricting access to evidence-informed prevention and treatment, care and support for people who use drugs. There are models developed which would eliminate such barriers, for example the model legislation developed by the Canadian HIV/AIDS Legal Network.

Questions for discussion

a) How can the Reference Group advise UNAIDS to best use the opportunities of the upcoming AIDS Review in 2008 and 2008/2009 Review on Drugs to promote rights-based, including public health, approaches by national governments to drug users in context of HIV prevention, treatment, care and support?

b) What is the Reference Group advice concerning how the UNAIDS programme can promote an intensified, more coordinated and clearer commitment of the UN system to a rights-based, including public health, approach to drug users in the context of HIV prevention, treatment, care and support?

c) How can the Reference Group advise UNAIDS to best deal with human rights violations related to drug use and HIV, including where national policies and programmes might expose people who use drugs to increased risk of HIV?

References


UNDCP (Legal Affairs Section), *Flexibility of treaty provisions as regards harm reduction approaches, Decision 74/10, UN Doc. E/INCB/2002/W.13/SS.5, 30 September 2002.*


