Briefing 4

Human Rights and Drug Policy

Compulsory Drug Treatment

"Informed consent, as an integral part of the right to health, must be guaranteed with every protection against stigmatization or discrimination on any grounds…"

—Anand Grover[1]

UN Special Rapporteur on the right to the highest attainable standard of health

"With respect to drug treatment, in line with the right to informed consent to medical treatment (and its "logical corollary", the right to refuse treatment), drug dependence treatment should not be forced on patients."

—Antonio Maria Costa

Executive Director, UN Office on Drugs and Crime[2]

Context: drug dependence and compulsory drug treatment

The World Health Organization (WHO) describes drug dependence as the strong desire to consume psychoactive substances, difficulty controlling substance use, the continued use of psychoactive substances despite physical, mental and social problems associated with that use, increased tolerance over time, and sometimes withdrawal symptoms if the substance is abruptly unavailable.[3] Research has shown that drug dependence is not a failure of will or of strength of character, but a chronic, relapsing medical condition with a physiological and genetic basis.[4]

In many countries, people identified as drug users are consigned for extended periods of time to locked "treatment" facilities for months, or even years. This may occur without trial or any semblance of due process. Often run by military or public security forces and staffed by people with no medical training, these centers rarely provide treatment based on scientific evidence.

Compulsory drug treatment in policy and practice: reports from the field

In states that enforce policies of compulsory drug treatment for drug users wide scale incidents of arbitrary arrest and detention with no due process protections are frequently reported. Facilities where detainees are held often fail to meet basic medical and human rights standards.

In Cambodia, people who use drugs – dependent or not - are routinely rounded up by police and sent to government-run drug detention centers, where arduous physical exercises and forced labor are the mainstays of their "treatment". In these centers, they face torture and extreme physical cruelty – including sexual violence, and being shocked with electric batons and beaten with twisted electrical wire. People are detained in such centers regardless of entry assessments that they are not dependent on drugs. There is no access to legal counsel while in police custody or during subsequent detention in the centers, no judicial authorization of detention, nor any opportunity for its review. In 2008, nearly one-quarter of detainees in Cambodia's compulsory drug detention centers were aged 18 or below. They were detained alongside adults, forced to work, and physically abused.[5]

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Abusive conditions are prevalent in many of China's compulsory drug detention centers, notwithstanding its 2008 Anti-Drug Law that referred to drug users as "patients" and promised legal protections for them. In fact, China's 2008 Anti-Drug Law gives government officials and security forces widespread discretion to incarcerate individuals suspected of drug use for up to six years –without trial or judicial oversight. Individuals detained in Chinese drug detention centers are routinely beaten, denied medical treatment, and forced to work up to 18 hours a day without pay. Although sentenced to "rehabilitation," they are denied access to effective drug dependency treatment and provided no opportunity to learn skills to reintegrate into the community.[6] According to UNAIDS, half a million people are confined in drug detention centers at any given time.

In Vietnam, there are 109 detention centers for drug treatment (also known as "06 centers") detaining up to 60,000 people who use drugs. Terms of detention are as long as five years: two of "treatment" and three of labor in facilities built near the detention centers. Detainees have no access to lawyers, no trial and no means of challenging their detention. Detainees are frequently denied evidence-based treatment for drug dependence, including during acute withdrawal from drug use. They are sometimes forced to work long hours for below-market wages, with deductions for food and lodging taken from their wages. Those who fail to meet work quotas are isolated and punished.

Since 2003, thousands of people in Thailand have been coerced into "drug treatment" centers run by security forces. Before "treatment" even begins, people are held for "assessment" for extended periods in prison. In the centers, military drills on the orders of security personnel are a mainstay of so-called "treatment." Thailand's coerced treatment and rehabilitation policy has had long-term consequences on the health and human rights of drug users, as many continue to avoid drug treatment or any government-sponsored health services out of fear of arrest or police action.[7]

People who use drugs in some facilities in Russia have been subjected to "flogging therapy," handcuffed to beds during detoxification and denied medication to alleviate painful withdrawal symptoms. Those who enter treatment voluntarily in Russia are consigned to locked wards, in some cases with fatal consequences.[8] In 2006, 46 young women died in a fire in a Moscow substance abuse hospital, where staff had abandoned residents to struggle against locked windows and doors.[9]

In Singapore, according to a government report distributed in March 2009, people who use drugs can be arbitrarily detained for extended periods of time and caned if they relapse, even though relapse is a common milepost on the road to recovery.[10]

In Laos, people who use drugs are arbitrarily detained in boot camp-like centers, where they receive neither evidence-based drug treatment nor appropriate medical care. Detainees – among them hundreds of children, many housed alongside adults -- are subjected to routine physical and sexual abuse.[11]

Human rights principles and compulsory drug treatment

Drug dependence treatment is a form of medical care, and therefore must comply with the same standards as other forms of health care. In developing and implementing effective drug dependence treatment programs, human rights must be respected and protected. These rights include the right of people who use drugs to enjoy the highest attainable standard of physical and mental health; patient rights, including confidentiality and the right to receive information regarding one's state of health; the human rights principle of informed consent (including the ability to withdraw from

treatment); and the right to non-discrimination in health care and to be free from torture or other cruel, inhuman or degrading treatment.

Medically inappropriate treatment

States that are parties to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* have recognized the right of every person to enjoy "the highest attainable standard of physical and mental health" (Article 12). The Committee on Economic, Social and Cultural Rights (CESCR) has stated that a state's health facilities, goods and services should be available, acceptable, accessible and of good quality.[12] Forms of supposed "treatment" and "rehabilitation" such as detention, forced labor, forced physical exercises and military drills do not meet the requirement under international law that drug dependence treatment be culturally and ethically acceptable, scientifically and medically appropriate, and of good quality.

Elements of supposed "treatment" and "rehabilitation" may also constitute torture or cruel, inhuman or degrading treatment or punishment. The Convention Against Torture establishes a clear legal obligation on state parties to investigate credible allegations of torture and cruel and inhuman treatment or punishment and to hold perpetrators accountable.

Compulsory treatment as a matter of course and 'en masse'

International human rights standards require that medical treatment be based on free and informed consent, which includes the right to refuse medical treatment. The right to informed consent to treatment is integral to the rights to health, to privacy and bodily integrity, and freedom from torture and cruel, inhuman and degrading treatment or punishment.

According to the CESCR, "The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body… and the right to be free from interference, such as the right to be free from torture, nonconsensual medical treatment and experimentation… obligations to respect [the right to health] include a State's obligation to refrain (…) from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness or the prevention and control of communicable diseases. Such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards, including the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care."[13]

The presumption that people who use drugs lack capacity to consent to treatment is dangerous because it ignores relevant legal safeguards regarding competence to make treatment decisions, and widens the scope of potential abuse.

UN agencies (including UNAIDS, WHO, UNICEF and UNDP), and the Global Fund for AIDS, Tuberculosis and Malaria have acknowledged reports of illegal detention and human rights abuses (including torture) in several countries. They have called for the closure of compulsory drug detention centers and their replacement with community and evidence-based, voluntary drug treatment that respects human rights standards.[14]

The UN Office on Drugs and Crime has also recognized that where systems of supposed drug "treatment" and "rehabilitation" force people into treatment as a matter of course and en masse, such systems violate international human rights standards. According to UNODC, "With respect to drug treatment, in line with the right to informed consent to medical treatment (and its "logical corollary", the right to refuse treatment), drug dependence treatment

should not be forced on patients. Only in exceptional crisis situations of high risk to self or others can compulsory treatment be mandated for specific conditions and for short periods that are no longer than strictly clinically necessary. Such treatment must be specified by law and subject to judicial review. . . . Under no circumstances should anyone subject to compulsory treatment be given experimental forms of treatment, or punitive interventions under the guise of drug-dependence treatment."[15]

Many systems force people to undergo supposed "treatment" and "rehabilitation" regardless of whether there is an actual lack of capacity on the part of the person to consent to treatment, a threat to themselves or others, or, indeed, a need for treatment established by a trained health care professional. Often people are forced to undergo treatment not because they need it, but because they broke the law relating to drug use and/or possession. When such a system ignores an individual's treatment needs (if any), it cannot be justified by a demonstrable benefit from the proposed intervention. Such a system will often deny an individual the opportunity to cease or modify his or her treatment plan or to review the ongoing necessity of treatment. Such systems also fail to provide procedural guarantees that the compulsory intervention will not be provided for longer than strictly necessary. Each individual should be clinically assessed based on their treatment needs and compulsory treatment should only be allowed when an individual lacks the capacity to consent to treatment and procedural safeguards have been ensured.

1 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2009). A/64/272, para 43.
2 Antonio Maria Costa, Executive Director, UNODC, "Drug Control, Crime Prevention, and Criminal Justice: A Human Rights Perspective," March 3, 2010, E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1, http://www.unodc.org/documents/commissions/CND-Uploads/CND-53-RelatedFiles/ECN152010_CRP1-6eV1051605.pdf (accessed June 14, 2010);
3 WHO, Neuroscience of Psychoactive Substance Use and Dependence, 2004. www.who.int/substance_abuse/publications/en/Neuroscience_E.pdf. See, also, WHO, Management of substance dependence (Fact Sheet), 2003, www.who.int/substance_abuse.
4 See ICD-10 diagnostic guidelines, www.who.int/substance_abuse/terminology/definition1/en/; The DSM-IV definition of drug dependence is provided in American Psychiatric Association, DSM-IV, Diagnostic and Statistical Manual of Mental Disorders, ed. 4, 1994 http://allpsych.com/disorders/substance/substancedependence.html.
5 "Skin on the Cable" The Illegal Arrest, Arbitrary Detention and Torture of People Who Use Drugs in Cambodia, Human Rights Watch, January 2010, http://www.hrw.org/en/reports/2010/01/25/skin-cable.
6 Human Rights Watch, "Where Darkness Knows No Limits: Incarceration, Ill-treatment, and Forced Labor as Drug Treatment in China," January 2010, http://www.hrw.org/en/reports/2010/01/07/where-darkness-knows-no-limits-0; see also Human Rights Watch, "An Unbreakable Cycle: Drug Dependency Treatment, Mandatory Confinement, and HIV/AIDS in China's Guangxi Province," December 2008, http://www.hrw.org/en/reports/2008/12/09/unbreakable-cycle-0; The UN Special Rapporteur on Torture has stated that this system "can also be considered as a form of inhuman or degrading treatment or punishment, if not mental torture," UN Commission on Human Rights, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: mission to China," E/CN.4/2006/6/Add.6, March 10, 2006, paras 64, 82 (u).
7 Human Rights Watch, "Deadly Denial: Barriers to HIV/AIDS Treatment for People Who Use Drugs in Thailand," November 2007, http://hrw.org/reports/2007/thailand1107/ ; Thai: http://hrw.org/reports/2007/thailand1107/thailand1107thweb.pdf; "Not Enough Graves: The War on Drugs, HIV/AIDS, and Violations of Human Rights in Thailand" (July 2004), http://www.hrw.org/campaigns/aids/2004/thai.htm; R. Pearshouse, "Compulsory Drug Treatment in Thailand: Observations on the Narcotic Addict Rehabilitation Act B.E. 2545 (2002)," Canadian HIV/AIDS Legal Network, January 2009.
8 Wolfe D, Saucier R.. In rehabilitation's name? Ending institutionalised cruelty and degrading treatment of people who use drugs. International Journal of Drug Policy 2010 (In Press)
9 See "Russian Federation: Inhumane conditions in drug treatment facilities lead to tragedy" in Canadian HIV/AIDS Legal Network, "HIV/AIDS Policy & Law Review," vol. 12(1), May 2007, pp. 32-33.
10 Singapore Central Narcotics Bureau, Annual Bulletin 2007, pp. 16-19; see also Singapore Central Narcotics Bureau, Treatment and Rehabilitation Regime and Long-Term Imprisonment for Abusers of Cannabis and Cocaine, http://www.cnb.gov.sg/Newsroom/index.asp?name=TmV3c3Jvb20gLSBQb2xpY3k&year=MjAwNw&page=ODEy&type=Q3VycmVudA
11 Nick Thomson, Detention as Treatment, Detention of Methamphetamine Users in Cambodia, Laos and Thailand (Open Society Institute and the Nossal Institute for Global Health: New York, 2010).
12 U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, November 8, 2000, para. 12.
13 Ibid., paras 8 and 34.
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15 Antonio Maria Costa, Executive Director, UNODC, "Drug Control, Crime Prevention, and Criminal Justice: A Human Rights Perspective," March 3, 2010, E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1, http://www.unodc.org/documents/commissions/CND-Uploads/CND-53-RelatedFiles/ECN152010_CRP1-6eV1051605.pdf (accessed June 14, 2010);; see also, UNODC, "From Coercion to Cohesion: Treating Drug Dependence Through Healthcare, Not Punishment. Discussion Paper," Draft, March 2, 2010, http://www.unodc.org/docs/treatment/Coercion_FULL_doc.pdf, pp. 10-11 (accessed June 14, 2010).