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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**SPECIFIC GROUPS AND INDIVIDUALS: OTHER VULNERABLE
GROUPS AND INDIVIDUALS**

**Written statement* submitted by the Open Society Institute (OSI),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

DRUG USERS, LAW ENFORCEMENT AND HUMAN RIGHTS VIOLATIONS

Drug users are routinely denied rights and protections that are taken for granted for other populations, largely due to prevailing attitudes about illicit drug use. Those targeted by law enforcement in the name of drug interdiction are frequently treated less like humans with rights and more like objects to be controlled and contained. The stigma of being a drug user can rob many of the political capacity to protest against the human rights abuses they suffer, contributing to further abuse and impunity. In recent documented cases, these abuses have included restrictions on the right to the highest attainable standard of health (including the right to protect oneself from the harms caused by drugs and to receive treatment for the consequences of drug use), discrimination and inequality under the law, infringements of the right to privacy, cruel, inhuman or degrading treatment by the state, and limitations on freedom of expression.

Abuses in the criminal justice system

Drug users regularly face false arrest, arbitrary search and seizure, entrapment, and other violations of due process in the criminal justice system. In countries where drug use is associated (often wrongly) with certain minority populations, racial profiling in drug enforcement has been documented. It is also common for law enforcement officials to violate drug users' right to privacy, from the abuse of medical records to searches of body cavities without reasonable justification. Where law enforcement officials and agencies receive professional incentives for appearing successful in the "war on drugs," widespread corruption results as authorities seek to fill arrest quotas or convey an image of progress.

In some countries, drug laws violate substantive due process by criminalizing the mere status of being a drug user. In Burma, simply being a drug user is *per se* a crime. In other countries, such as Malaysia and Thailand, suspected drug users may be subject to mandatory urine testing to determine whether they have used drugs in the recent past, and punishments may follow. Even in many places where the status of being a drug user is not explicitly prohibited by law, the imposition of harsh penalties for simple possession of narcotics for personal use, including lengthy periods of incarceration, amounts to a form of disproportionate punishment.

In an age of HIV/AIDS, such legal abuses endanger the lives not only of drug users but also of large segments of the rest of the population. HIV epidemics may begin with drug users, but they cannot be confined to them. Individuals at high risk of HIV, including drug users, require HIV prevention, counseling, testing, treatment, and support services. Provision of these services is made difficult or impossible by the stigma, discrimination, lack of privacy and confidentiality, and threat of incarceration or forced institutionalization faced by many drug users on a regular basis. Further barriers are created by coercive public health measures, such as compulsory HIV testing, that are often imposed on drug users. It has been demonstrated in numerous studies that enforcement of anti-drug laws and policies without due attention to public health can have the effect of driving drug users underground and away from HIV/AIDS services that could save their lives.

Anti-drug efforts have also led to restrictions on effective means of halting the spread of HIV, such as the provision of sterile injection equipment. Outside sub-Saharan Africa, an estimated one-third of all new HIV infections annually are linked to the sharing of blood-contaminated syringes by injection drug users; of these, an alarming number involve young people. Globally, an estimated ten percent of HIV cases are attributed to injecting drug use. Despite abundant

evidence documenting the effectiveness of needle exchange in preventing the spread of the HIV/AIDS pandemic, in many places, such programs are often unavailable or restricted by law. Even where syringe exchange programs exist legally, interference with programs by law enforcement officials is common. Tactics include confiscation of legally-obtained syringes as “drug paraphernalia,” arrest of outreach workers, and roundups of all individuals in the vicinity of needle exchange facilities in the expectation that drug users will be among them. The consequence is that drug users are frightened away from HIV prevention programs that might save their lives or those of their sex partners and families.

Increasingly, governments portray drug users and drug use as threats to national security, a charge used to justify rampant human rights abuses. In February 2003, for example, Thailand’s Prime Minister Thaksin Shinawatra announced a “war on drugs” in which he claimed that any drug offender would be treated as “a dangerous person who is threatening social and national security.” The most sweeping and violent such campaign in Thailand’s history, the campaign caused more than fifty thousand people to be arrested in the first three months alone. More than 2,200 people— primarily ethnic minorities who had appeared on government-controlled “black lists”—were assassinated. Often, victims were shot point-blank after being summoned to local police stations for an interview. False arrests, wrongful seizure of assets, arbitrary blacklisting, and lack of due process were also common. As drug users fled their homes in fear, HIV prevention providers and other health professionals reported that they could no longer reach their clients. This increased the risk of HIV transmission in a country where at least half of all injecting drug users are HIV-positive, and where injecting drug users account for the fastest-growing share of new infections. Thailand is not the only such example. Recently in Russia, after the Beslan massacre, President Putin stated that the perpetrators were heroin addicts.

Any analysis of why drug users are so vulnerable to human rights abuses and HIV infection must examine the role played by international drug policy. International treaties and laws addressing illicit drugs were conceived either before the HIV pandemic or without regard to HIV. The three UN drug control conventions – the Single Convention on Narcotic Drugs (1961), the Convention on Psychotropic Substances (1971), and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) – have often been used to justify a “zero-tolerance” approach that has been associated with a range of human rights violations. UN-inspired drug policies that prize prohibition above all other considerations do not reverse drug use, but often divert resources away from the health and safety needs of drug users. In Russia, for example, authorities have cited UN conventions to justify a ban on methadone—an oral opiate substitution treatment proven to reduce risks and social costs associated with drug injection. With an estimated million and a half cases of HIV – the vast majority attributable to injecting drug use – this prohibition on methadone greatly exacerbates what has become the world’s fastest growing HIV epidemic.

It is important to focus on positive examples, such as the human rights-based approach to health care practiced in Brazil. A country that experienced an explosion of injection-related HIV, Brazil instituted a comprehensive response for drug users’ health, including guarantees of the right to sterile injection equipment and inclusion of drug users among those entitled to receive treatment for HIV and hepatitis B and C. The Brazilian government estimates that needle exchange services contributed to the remarkable 20 percent drop in HIV incidence among injecting drug users between 1998 and 2000.

Drug use and the attendant spread of HIV should, like all policy challenges, be addressed within the framework of internationally recognized human rights. Those who use drugs should not be subject to indiscriminate and wholesale incarceration, forced institutionalization, marginalization, and deprivation of human rights. Such actions not only fail to advance the goals of drug suppression, but also increase the detrimental impact of drug use on drug users and on society at large.

Recommendations to the Commission:

- Review anti-discrimination conventions and laws to ensure that persons affected by HIV/AIDS and members of vulnerable groups, including drug users, are protected against discrimination;
- Ensure available and accessible prevention, treatment and rehabilitation services for drug users, together with appropriate HIV-related information, education, treatment and support;
- Review drug control legislation and practices, to ensure that they do not hinder HIV prevention efforts by perpetuating the stigmatization and marginalization of drug users; and
- Ensure the participation of injecting drug use communities in the development and implementation of public policy, consistent with the human right to participate.
