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Access to health care in women's prisons

Communication to the Commission on the Status of Women by Eurasian Harm Reduction Network, Georgian Harm Reduction Network on Georgia

With this submission, EHRN aims to provide information to the Commission on the Status of Women on the state of the right to health in Georgia for women who use drugs. This submission focuses on the right to health for women who use drugs and are in places of detention.

BACKGROUND: In relation to women's rights in Georgia, the UN Committee on the Elimination of Discrimination against Women expressed concern over "the lack of information and data on women's health" and access to health services. The Committee also stated that it was "concerned that the State party lacks a comprehensive approach to eliminating discrimination against women in the area of health."¹

Georgia is one of the few countries in Eastern Europe and Central Asia to criminalize possession of drugs in any quantity, along with drug consumption. Changes were recently introduced to the Law on Narcotics, Psychotropic Substances, Precursors and drug assistance,² setting the threshold for criminal possession. Under the new law, any amount up to 0.2 grams will still be considered a basis for criminal liability, leading to imprisonment for up to 11 years (art. 260, par.1 of Criminal Code of the Republic of Georgia). One gram of heroin (which may be less than a daily dose for a person with heroin dependency) is considered by the law to be a "very large" quantity, and those convicted of possession can be imprisoned for 8 to 20 years, or even for life. Sentencing for non-violent drug crimes is thus vastly disproportionate in comparison with violent offences; for example, murder is punishable by imprisonment for a term of 7 to 15 years. According to data from the Supreme Court of Georgia, a total of 3,543 people were convicted of drug-related offences in 2011, with the absolute majority (95%) convicted of illegal consumption and possession of drugs.³ Such sentencing is not only disproportionate, but also a violation of human rights; with no access to drug treatment and care in women's prisons, incarcerated women are deprived of the right to health, including drug treatment. Moreover, women who are imprisoned while undergoing drug treatment in the community are deprived of the right to continued health care.

ISSUE: In Georgia, the drug quantities for which women spend 7-10 years in prisons often do not exceed 0.5 grams of heroin.⁴ As a result there are 386 women in prison for drug-related offences, comprising a full *one-third* of the total female prison population of 1,169 (the highest in Caucasus region).¹ Georgia incarcerates almost four times as many women for drugs as Azerbaijan, which has

¹ Committee on the Elimination of Discrimination against Women (2006) Concluding comments of the Committee on the Elimination of Discrimination against Women: Georgia, UN Doc. No. CEDAW/C/GEO/CO/3., para. 29.

² Adopted on 22 May, 2012, Law No. 6245-Ib).

³ Javakhishvili DJ, Balanchivadze N, Kirtadze, I. et al. (2012) Overview of the Drug Situation in Georgia, 2012, Georgian Country Situation Summary, 2012.

⁴ Iakobishvili, E. 2012. *Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia, and the need for Legislative and Sentencing Reform*. Harm Reduction International.

a female population nearly twice as large.⁵ Drug offences committed by women are usually related to drug use and possession of small amounts of drugs, with no intent to sell; most of the women incarcerated have not committed any violent crime.

The UN Committee on the Elimination of Discrimination against Women has expressed its concern about the incarceration of women for petty offences, including drug offences. In relation to the United Kingdom, the Committee expressed concern at the number of women “imprisoned for drug offences or because of the criminalization of minor infringements, which in some instances seem indicative of women’s poverty.”⁶ The Committee recommended “that the Government intensify its efforts to understand the causes for the apparent increase in women’s criminality and to seek alternative sentencing and custodial strategies for minor infringements.”⁷ This indicates that laws that criminalize drug use lead to high levels of imprisonment.

In its General Recommendation, the Committee on the Elimination of Discrimination against Women re-affirmed access to health care as a basic right under the Convention on the Elimination of Discrimination against Women, determined at its 20th session, pursuant to Article 21, to elaborate a general recommendation on article 12 of the Convention.⁸ In its Concluding Observation on Mexico this year, the Committee also expressed concern over lack of adequate health facilities and services for female inmates.⁹

The incarceration of women for petty drug-related offences suggests that many of these women need health care, including access to drug treatment, which is not available in prison setting. Imprisonment of women who use drugs leads to violations of women’s right to health and to worsening health conditions, as no drug treatment options are provided to imprisoned women.

Opioid substitution treatment (OST) is the most effective and most thoroughly researched form of treatment for opiate dependence and prevention of HIV and other blood borne viruses.¹⁰ Methadone and buprenorphine, the substances commonly used for OST, have a strong evidence

⁵ Iakobishvili, E. 2012. *Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia, and the need for Legislative and Sentencing Reform*. Harm Reduction International.

⁶ UN Committee on the Elimination of Discrimination against Women, ‘State Party Report, United Kingdom of Great Britain and Northern Ireland’ (1999) UN Doc. No. CEDAW/C/UK/3 and Add.1 and 2, and CEDAW/C/UK/4 and Add.1, para. 312.

⁷ *ibid*, para. 313.

⁸ General recommendations made by the Committee on the Elimination of Discrimination against Women, No 2 (sixth session, 1987).

⁹ CEDAW (2012) Concluding observations of the Committee on the Elimination of Discrimination against Women. Brazil. UN Doc. CEDAW/C/BRA/CO/7.

¹⁰ See for example: U.S. Institute of Medicine (2006), “Preventing HIV Infection among Injecting Drug Users in High Risk Countries: An Assessment of the Evidence,” September 2006; World Health Organization (2004) Evidence for Action Technical Papers: “Effectiveness of drug dependence treatment in HIV prevention,” Geneva, World Health Organization 2004; World Health Organization, Evidence for Action Technical Papers, “Interventions to Address HIV in Prisons: Drug Dependence Treatments,” WHO/UNODC/UNAIDS, 2007; “OST in prisons: Reviewing the evidence” – Canadian HIV/AIDS Legal Network (2008): <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=1293>; Farrel M, Gowing L, Marsden J, Ling W, Ali R. “Effectiveness of drug dependence treatment in HIV prevention,” *International Journal of Drug Policy* 2005; 16: 67-75; Stallwitz A. and Stover H, “The impact of substitution treatment in prisons – a literature review,” *International Journal of Drug Policy* 18 (2007) 464–474.

base for their use, and have been placed on the WHO model list of essential medicines.¹¹ International conventions support equal access to medical care for people in prisons. In his report, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health stated that “failure to provide effective /.../ treatment for drug dependence in correctional settings is an infringement of the right to health.”¹² The Committee on Economic, Social and Cultural Rights recently recommended in its Concluding Observations on the Ukraine that the State Party “make drug substitution therapy and other HIV prevention services more accessible for drug users” as part of its obligations under article 12 of the Covenant.¹³ Many studies have demonstrated the successful application of OST in prison populations, with regard to prisoner-centered and non-prisoner-centered outcomes, including reduction in risky behaviors, improved health conditions and reduction of risk for blood-borne infections and possible overdose upon release.¹⁴

OST in Georgia is available only for short-term detoxification¹⁵ in pre-trial detention units in two men’s prisons: high security prison no. 8 in Tbilisi and, since December 2011, in Kutaisi penitentiary institution no. 2. OST detoxification programs are not available in any of Georgia’s women’s prisons.¹⁶ As a result, both male and female detainees suffer drug withdrawal and often continue using illegal substances in prisons in extremely risky conditions. However, detained women do not even have access to OST detoxification. States are obligated to take measures to eliminate violence against girls and women, to ensure that the law protects them equally, and to provide them with access to health and social services without discrimination.¹⁷

As the case described below shows, women in Georgian prisons are neglected in terms of provision of health care services. Most of them are stigmatized and discriminated against, which results in a

¹¹ World Health Organization (2007). WHO Model List of Essential Medicines. Geneva, World Health Organization. Available from: <http://www.who.int/medicines>.

¹² Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. No. A/65/255.

¹³ UN Doc No E/C.12/UKR/CO/5 paras 28 and 51.

¹⁴ Stöver H, Michels I. “Drug use and opioid substitution treatment for prisoners,” *Harm Reduction Journal* 2010, 7:17.

¹⁵ Opioid substitution treatment can be provided in two forms. Opioid maintenance treatment is defined as the administration of opioid agonists, by accredited professionals, to people with opioid dependence to treat opioid addiction. Both methadone and buprenorphine are sufficiently long acting to be taken once daily for as long as needed. When taken on a daily basis they do not produce the cycles of intoxication and withdrawal seen with shorter acting opioids, such as heroin. Opioid detoxification programs use opioid agonists to ease withdrawal symptoms when a person stops using illicit opiates. For more: WHO (2009) Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence. World Health Organization.

¹⁶ At the same time, because more men than women use illicit drugs, many treatment programs do not provide for the drug treatment needs of women. In Georgia, this is evident in the treatment numbers in the community as well as in the absence of treatment programs in women’s prisons. Currently there are 6 OST sites run with the support of international donors, out of which four are implemented in medical institutions (two sites in Tbilisi, one in Gori and one in Batumi) with the capacity to serve 350 clients at the same time; the overall number of their clients in 2011 made up 470 persons, 5 women among them. The State-sponsored program is reported to be expanding, with 11 OST sites operating in different regions of Georgia: in 2011, 1878 beneficiaries received services in the framework of the State OST program, but only 17 of them were women. Javakhishvili DJ, Balanchivadze N, Kirtadze, I. et al. “Overview of the Drug Situation in Georgia, 2012,” Georgian Country Situation Summary, 2012.

¹⁷ For example, art. 26 of the ICCPR and art 12 of CEDAW. The *Declaration on the Elimination of Violence Against Women* urges states, in art. 4(c), to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”: *Declaration on the Elimination of Violence Against Women*, 20 December 1993, UN General Assembly resolution 48/104, UN Doc. A/48/49 (1993).

reluctance to speak out about their experiences, but since the majority of women imprisoned for drug offences are convicted of possession of small amounts of drugs, it is safe to assume that there are more women who suffer from lack of access to health care, specifically drug treatment.

E.G.¹⁸ was sentenced to 25 years in prison by the criminal court of Tbilisi and placed in women's prison Number 5 on August 7, 2006 in accordance with parts 1, 2, 3 of Article 260, parts 1 and 2 of Article 265 and part 1 of Article 236 Criminal Code of Georgia. At the time of imprisonment E.G. had a history of various health problems, as a result of which she had received disability status of the first degree in 2004, and she was in need of constant medical care.

The doctor treating her wrote a letter to the Court, explaining that since 2005 E.G. underwent opioid substitution treatment with methadone at the Center of the Institute of Drug Addiction in Tbilisi.

E.G. was put into pre-trial detention without access to OST. She started experiencing withdrawal. Despite her somatic and psychological distress, the management of the corrections facility did not take any steps to provide her with the OST medications she needed, or even to help relieve her suffering. Further neglect from the prison staff, including the medical staff, caused permanent damage to E.G.'s health.

Before the arrest, in 2005 E.G. had undergone a court-ordered medical examination, which confirmed that her critical medical condition (post-thrombophlebitic syndrome, occlusion of veins in both legs, occlusion of arteries in both legs, chronic sepsis), required constant medical care.

In July 2008 E.G. was brought to the medical clinic in critical condition. She was diagnosed with a coma, complications of post-thrombophlebitic syndrome, severe lack of oxygen, and chronic hepatitis C. The medical staff insisted that she needed medical treatment, but as soon as E.G. was brought out of her coma the representatives of the department of corrections insisted on her transfer back to prison. She was transferred on the second day after her arrival to the medical center.

The prison staff told E.G. that, as she stated in an interview with the Eurasian Harm Reduction Network, "it is safe for me to remain in a prison setting, where I am getting all the appropriate care I need." In the course of five years of imprisonment, E.G.'s health has severely deteriorated: "I tried to get as much help and medical care as was covered by my family members. Even then, the prison administration wouldn't deliver me to the hospital in a timely manner, every time my condition would get worse. It wasn't treatment, it was torture," E.G. recalls. At her own expense, E.G. underwent two court-supervised medical examinations, one in 2007 and one in 2010. The conclusion of the head medical doctor of Women's colony No. 5: E.G.'s condition had worsened.

"Neither the colony nor an insurance company, Aldagi, would create the basic conditions for treatment of a patient like me. Such attitudes could lead to my death in a short period of time, I was treated with neglect, I wasn't given the prescribed medication, I did not get any special medical attention, despite the fact that I had a condition that needs constant 24-hour care."

¹⁸ Throughout the submission the initials of the women are used. The translation of the documents, such as doctor's letters and court decisions, can be provided upon request.

In 2011, on May 2, E.G. appealed to the European Court of Human Rights, in order to restore her violated right to obtain medical care. Finally, the judge in the criminal case dismissed the charges and on July 12, 2011 and she was released from prison with permanent damage to her health, both physical and psychological.

The papers filled in to the European Court of Human Rights on behalf of E.G. indicate that she suffered several periods of ill health and had to be brought to the hospital, the prison staff failed to provide her care in prison, including prescribed medication. At times she felt so sick, she would just lie for several days with no care, unwilling to take care of herself.¹⁹

At the time of E.G.'s imprisonment, Decree No. 302 of Ministry of Health, Labor and Social Affairs did not allow OST in prison settings. At the same time, Georgia's Law on the Rights of Patients (Article 45, Paragraph 1) unequivocally and clearly explains that "Access to medical services for persons in pre-trial detention or a penal establishment shall be provided through state medical programs." Hence such failure to provide the prescribed drug addiction treatment (treatment with methadone) in pre-trial detention and prisons is a violation of the right to treatment as established in national law as well as international agreements.

The example of E.G. is a case of torture and inhuman treatment in the context of the lack of drug treatment in prisons for women. The prisoners have no access to effective drug treatment or other health care services, which often threatens their lives and results in worsening health conditions. Women who are imprisoned, especially those on drug-related charges, do not receive any specialized care. E.G. is an example of the State's neglect of women and failure to guarantee basic conditions to protect human dignity during imprisonment, since such treatment interruptions result in physical and mental suffering.

The State failed to:

- Ensure women timely and affordable access to drug treatment and other health care services;
- Take measures to ensure access to quality health care services, including continuation of drug treatment available (even if to a limited extent) in the community setting, and to ensure that the health care is acceptable as defined by the Committee on the Elimination of Discrimination against Women.²⁰

Recommendations:

- Harsh drug laws contribute to overcrowding in prisons, damaging psychological and physical health in prisons²¹. Hence, the Georgian Government should be advised to review existing drug laws and remove penalties for personal drug use and drug possession.

¹⁹ Submission can be provided to the Committee upon request.

²⁰ Acceptable services are those which are delivered in a way that ensures that a woman gives her fully informed consent, that respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives. General recommendations made by the Committee on the Elimination of Discrimination against Women, No 2 (sixth session, 1987). Article 12(22).

²¹ Poor living conditions and ill treatment in prisons in Georgia is well documented, for example see "Human rights violations in Georgia. Alternative report to the UN Human Rights Committee. 90th session." Especially section 8.2 Living conditions in penitentiary institutions, including deaths in custody. Available at:

- The Commission on the Status of Women, along with the Committee on the Elimination of Discrimination against Women should provide a general recommendation on special issues related to women's right to health, including equal access to services in prisons;
- The State should expanded OST programs, include more women, and should be made more gender-sensitive;
- The State should make drug treatment services and other health care services available in the community should be available to prisoners, in order to ensure the continuity of care.

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