HARM REDUCTION AND WOMEN: AN INTERNATIONAL HUMAN RIGHTS APPROACH

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I. Harm Reduction Background

Harm reduction first emerged in drug policy as a public health strategy in the 1980s.[1] Historically, the sole focus of substance abuse treatment was to eliminate or reduce drug use.[2] However, there has been increasing focus on not only the elimination or reduction of drug use, but also the minimization of harms to both people who use drugs, as well as their communities—an approach to drug policy known as harm reduction.[3] According to Harm Reduction International, "there is no universally accepted definition of harm reduction," but, "harm reduction encompasses a range of health and social services and practices that aim to minimise negative health and legal impacts associated with drug use, drug policies and drug laws. Harm reduction is grounded in justice and human rights – it focuses on positive change and working with people without judgment, coercion, discrimination, or requiring that they stop using drugs as a precondition of support."[4] Put another way by a report from Open Society Foundations, "While harm reduction approaches often serve as a bridge to drug dependence treatment or cessation of drug use, these outcomes are not preconditions or the only goals."[5]

Avoiding stigma is a central tenant of harm reduction. Ham Reduction International has stated that, "harm reduction practitioners accept people who use drugs as they are and are committed to meeting them 'where they are' in their lives without judgment…stigmatizing language perpetuates harmful stereo types, and creates barriers to health and social services."[6] Furthermore, "harm reduction is a nonjudgmental approach that meets substance abusers where they are at."[7] While regarding traditional drug treatment, "an exclusive focus on abstinence as the treatment goal can be problematic if it means that any drinking or drugging is deemed failure," the harm reduction approach celebrates all positive changes relating to drug consumption.[8] Women who use drugs face debilitating stigma and stereotypes—of being "unfit" to be mothers, or being less "pure," than women who do not use drugs. Thus, a harm reduction approach

[1] Canadian Pediatric Society, Pediatric Child Health, *Harm reduction: an approach to reducing risky health behaviours in adolescents*, (2008) https://www.cps.ca/en/documents/position/harm-reduction-risky-health-behaviours.
[2] United Nations Office on Drugs and Crime (UNODC), *Reducing the harm of drug use and dependence* at 1 https://www.unodc.org/ddt training/treatment/VOLUME%20D/Topic%204/1.VolD_Topic4_Harm_Reduction.pdf.
[3] *Id*.
[4] Harm Reduction International, *About HRI*, https://www.hri.global/about; Harm Reduction International, *What is harm reduction?* https://www.hri.global/what-is-harm-reduction
[5] Open Society Foundations, *Harm Reduction* (Sep. 2015) at 2, https://www.opensocietyfoundations.org/publications/harm-reduction.
[6] Harm Reduction International, *What is harm reduction?* https://www.hri.global/what-is-harm-reduction.
[7] Mignon, Sylvia I., *Substance abuse treatment: options, challenges, and effectiveness* (2015) at 27.
[8] *Id.* at 23.

is particularly important for women who use drugs because harm reduction approaches address this stigma, and encourage women to seek health services and treatment.[9]

There are several approaches to harm reduction for drug use, and harm reduction can come in a wide array of forms. Harm reduction initiatives set out by the United Nations Office on Drugs and Crime ("UNODC ") and the Health and Human Rights Research Guide, produced by Harvard University's François-Xavier Bagnoud Center for Health and Human Rights, include the following measures.[10]

- Reliable information and counseling on the physical and psycho-social risks of drug abuse
- Low-threshold pharmacological interventions for immediate health protection
- Adequate social assistance
- Vaccination programs against Hepatitis
- Medication and emergency kits for managing overdoses
- Needle/syringe exchange programs
- Voluntary HIV counseling and testing
- Prevention and services of the management of sexually transmitted infections
- Availability of measures to prevent acute consequences of stimulants abuse
- Interventions in emergency rooms
- Trained and equipped street-workers and peer outreach workers
- Opioid substitution therapy (OST) to reduce drug cravings
- Opioid medications to reduce pain
- Drug consumption rooms for facilitating access to health care
- Overdose prevention measures, such as naloxone to reverse opioid overdose
- Outreach and education programs
- Legal services
- Supportive public health policies

While harm reduction is still a controversial subject, research indicates its efficacy. The executive director of UNODC, Antonio Maria Costa has remarked, "Harm reduction is often made an unnecessary controversial issue as if there was a contradiction between prevention and treatment on one hand and reducing the adverse health and social consequences of drug use on the other. This is a false dichotomy. They are complementary."[11] Extensive research from the United States (U.S.) Institute of Medicine has demonstrated that harm reduction measures reduce the use and injection of illegal drugs, as well as prevent other drug and sex-related risk behavior increasing the risk of HIV infection.[12] Moreover, there is, "strong and consistent evidence that harm reduction

[9] *See* Open Society Institute, *Making Harm Reduction Work for Women* https://www.opensocietyfoundations.org/uploads/ddc4d40f-c370-45c4-a56c-9b60aa91f84b/harm-reduction-women-ukraine_20100429.pdf.
[10] UNODC, *supra* note 2, at 3-8; *Health and Human Rights Resource Guide,* Chapter on Harm Reduction and Human Rights, https://www.hhrguide.org/2014/03/12/how-is-harm-reduction-a-human-rights-issue/.
[11] UNODC, *supra* note 2, at 1.
[12] International Harm Reduction Association & Human Rights Watch, *International Support for Harm Reduction: An Overview of multilateral endorsement of harm reduction policy and practice*,

interventions which include access to sterile injecting equipment, opioid substitution therapies, and community-based outreach, are the most effective and cost effective means of reducing HIV-related risk behaviours and therefore preventing transmission of HIV, hepatitis C and other blood borne viruses among people who inject drugs."[13] According to the World Health Organization ("WHO"), evidence indicates that increasing availability of sterile injecting equipment, "reduces HIV infection substantially," and research further suggests that needle syringe programmes can promote, "recruitment into drug treatment and possibly also into primary health care."[14] A report on syringe exchange programs ("SEPs") in New York demonstrated a "dramatic decline in HIV infection among drug users."[15] Additionally, the report established that, "the data signify that syringe exchange is one of the most successful HIV prevention initiatives of the New York State Department of Health AIDS Institute, based on the numbers of lives and health care dollars saved."[16] Research has further demonstrated no major unintended consequences of harm reduction measures.[17] Several studies have indicated that opioid substitution therapy, in which opioid dependence is treated with buprenorphine or methadone, is effective in reducing HIV transmission, improving family function and employment, reducing criminal activity, and increased self-efficacy.[18] A body of peer reviewed research on supervised injection sites indicates that supervised facilities for people who use drugs has been associated with, "reduced HIV transmission, prevention of death from overdose, reduced needle sharing, improved public order and reduced crime in the neighborhood of the facility, reduced injection-related injury and infection, and improved referral to drug dependence and treatment and other health services for people who use drugs."[19] Per the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health ("Special Rapporteur on the Right to Health"), if all states provided opioid substitution therapy, they could prevent an estimated 100,000 new cases of HIV.[20]

https://www.hrw.org/sites/default/files/related_material/IHRA%20HRW%20Book%20of%20Authorities%20Jan%202009.pdf (Jan. 2009) at para. 2.

[13] *Id.*

[14] World Health Organization, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users* (2004) at 28 https://www.who.int/hiv/pub/prev_care/effectivenesssterileneedle.pdf.

[15] New York State Department of Health AIDS Institute, *Comprehensive Harm Reduction Reverses the Trend in New HIV Infections*, (2014), at acknowledgements https://www.health.ny.gov/diseases/aids/providers/reports/docs/sep_report.pdf.

[16] *Id.* at 2.

[17] World Health Organization, *supra* note 14, at 28.

[18] Open Society Foundations, *supra* note 5, at 6, *citing* World Health Organization, UN Office on Drugs and Crime, Joint United Nations Programme on HIV/AIDS (UNAIDS), *Position paper: Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention*, (2004), http://www.unodc.org/ documents/hiv-aids/Position%20Paper%20sub.%20 maint.%20therapy.pdf at 13.

[19] Open Society Foundations, *supra* note 5, at 6-7, *citing* Urban Health Research Initiative, University of British Columbia, *Insight into Insite*, https://www.bccsu.ca/wpcontent/uploads/2016/10/insight_into_insite.pdf.

[20] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2010) para. 52 (citing WHO, Briefing Note 2007: *Access to Controlled Medications Programme* (Geneva, 2007) at 1).

A harm reduction approach is especially important for incarcerated populations. According to the UNODC, "[a]pproximately one in three people held in prison have used drugs at least once while incarcerated, with approximately one in eight reporting use in the past month."[21] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment ("Special Rapporteur on Torture") has also encouraged States to provide opioid substitution treatment and all harm reduction measures to people who are incarcerated.[22]

II. Harm Reduction and Human Rights

While the rights of people who use drugs to harm reduction services are frequently violated around the world,[23] UN bodies have affirmed their commitment to harm reduction measures as part of the international human rights framework. The General Assembly stated in 2001 that governments were committed to, "reduce harm related to drug use; and expand access to male and female condoms, clean injecting equipment, safe blood supplies, treatment for sexually transmitted infections, and voluntary and confidential counseling and testing."[24] Additionally, the General Assembly's Political Declaration on HIV/AIDS reaffirmed that, "prevention of HIV infection must be the mainstay of national, regional and international responses to the pandemic…including male and female condoms and sterile injecting equipment; harm reduction efforts related to drug use; expanded access to voluntary and confidential counseling and testing; safe blood supplies; and early and effective treatment of sexually transmitted infections."[25]

Access to harm reduction services is required under international human rights law.[26] Specifically, harm reduction services implicate the rights to health, the right to freedom from cruel, inhuman and degrading treatment, and the right to non-discrimination. Harm reduction is a necessary alternative to punitive drug policies under a human rights

[21] United Nations Office on Drugs and Crime, World Drug Report, *Status and Trend Analysis of Elicit Drug Markets* (2015), at 3 https://www.unodc.org/documents/wdr2015/WDR15_Drug_use_health_consequences.pdf.
[22] Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (Feb. 1, 2013), para. 87 https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf.
[23] For instance, several states in the U.S., as well as countries around the world, have banned needle syringe programmes. German Lopez, *Needle exchanges have been proved to work against opioid addiction. They're banned in 15 states*, Vox (Jun. 22, 2018) https://www.vox.com/science-and-health/2018/6/22/17493030/needle-exchanges-ban-state-map; Harm Reduction International, *The Global State of Harm Reduction* https://www.hri.global/files/2015/02/16/GSHR2014.pdf. Many countries also do not offer opioid substitution services or drug consumption rooms. Harm Reduction International, *The Global State of Harm Reduction* https://www.hri.global/files/2015/02/16/GSHR2014.pdf at 16. Countries such as Sweden that offer very few harm reduction services have some of the highest rates of overdoses in the world. *Id.* at 16.
[24] United Nations General Assembly Special Session on HIV/AIDS 25-27 June 2001, New York at 9 https://www.unaids.org/sites/default/files/sub_landing/files/jc668-keepingpromise_en.pdf.
[25] General Assembly, *Resolution adopted by the General Assembly, Political Declaration on HIV/AIDS* (87th plenary meeting 2 June 2006) at para. 22 http://data.unaids.org/pub/report/2006/20060615_hlm_politicaldeclaration_ares60262_en.pdf.
[26] Open Society Foundations, *supra note* 5, at 3.

framework. As one scholar has explained, "Prohibitionist policies threaten the freedom of users, damage their health and constitute them as marginal and stigmatized subjects excluded from normative categories of citizenship, such as the 'general public.'"[27]

To ensure the right to health, states must implement harm reduction measures. The right to health is enshrined in the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), Article 12, which recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[28] ICESCR further provides that, "The steps . . . to achieve the full realization of this right shall include those necessary for: . . . The prevention, treatment and control of epidemic, endemic, occupational and other diseases."[29] Treaty bodies have interpreted these provisions to obligate states to provide harm reduction services. The Committee on Economic, Social and Cultural Rights ("CESCR"), charged with monitoring implementation of ICESCR, has recommended a human rights and harm reduction based approach in a number of other Concluding Observations, emphasizing the importance of ensuring measures such as opioid substitution therapy,[30] needle and syringe programs,[31] hepatitis C treatment,[32] HIV treatment,[33] and harm reduction measures in prison[34] are more readily available. For Estonia, CESCR recommended that the State, "intensify its efforts with regard to preventing drug use, including through education and awareness raising programmes, and expansion of the provision of drug substitution therapy. Furthermore, the committee encourages the state party to continue expanding the needle exchange programme."[35] Similarly, in its Concluding Observations to the Russian Federation, the Committee on the Elimination of Discrimination against Women ("CEDAW Committee") noted with concern the, "absence of substitution therapy programmes for women who use drugs, which also contributes to the spread of HIV/AIDS," and recommended that Russia,

[27] Helen Keane, *Critiques of harm reduction, morality and the promise of human rights*, International Journal of Drug Policy Vol. 14, Issue 13, at 227-232, (June, 2003) https://www.sciencedirect.com/science/article/pii/S0955395902001512.
[28] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 12(1), adopted Dec. 16, 1966, 993 U.N.T.S. 3.
[29] *Id.* at Art. 12(2).
[30] CESCR, *Concluding Observations on the Russian Federation, Considerations of reports submitted by States parties under articles 16 and 17 of the Covenant*, E/C.12/RUS/CO/5 (June 1, 2011) at para. 29 https://www.refworld.org/docid/4efb0e492.html; CESCR, *Concluding Observations on Kazakhstan, Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant*, E/C.12/KAZ/CO/1 (2010) at para. 34 https://www.refworld.org/publisher,CESCR,,KAZ,4c1734da2,0.html.
[31] CESCR, *Concluding Observations on Mauritius, Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant* E/C.12/MUS/CO/4 (2010) at para. 27(a), 27(b).
[32] *Id.* at para. 27(e).
[33] CESCR, *Concluding Observations of the Committee on Economic, Social and Cultural Rights on Ukraine, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant,* E/C.12/UKR/CO/5 (CESCR, 2008) at para. 51 https://www.refworld.org/publisher,CESCR,,UKR,478632472,0.html; CESCR, *Concluding Observations on Tajikistan, Consideration of Reports Submitted by States Under articles 16 and 17 of the Covenant* (2006) at para. 70 https://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.TJK.CO.1.pdf.
[34] CESCR, *Concluding Observations of the Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant*, E/C.12/POL/CO/5 (2009) at para. 26 https://www.refworld.org/publisher,CESCR,,POL,52e38a004,0.html.
[35] *Id.*

"develop programmes of substitution therapy, in line with the recommendations of the World Health Organization, for women drug users."[36] Per the International Guidelines on Human Rights and Drug Policy from the World Health Organization, International Centre on Human Rights and Drug Policy, UNAIDS,[37] and UNDP,[38] "the right to health as applied to drug policy includes access, on a voluntary basis, to harm reduction services, goods, facilities, and information." [39]

The Special Rapporteur on the Right to Health further underscores states' obligation to implement harm reduction measures. According to the Special Rapporteur, "laws enabling harm reduction programs, as opposed to laws criminalizing drug use and drug possession, promote the right to health…respecting the autonomy of the individual, being evidence-based and reducing the stigma."[40] Harm reduction programmes should thus, "be considered as an evidence-based and rights-based approach to drug use and drug dependence."[41]

To ensure the right to be free from cruel, inhuman, and degrading treatment, states must implement harm reduction measures. The International Covenant on Civil and Political Rights ("ICCPR") establishes that, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[42] The Special Rapporteur on Torture has linked this provision to the denial of harm reduction and use of drug withdrawal to elicit confessions.[43] He noted, *"*A particular form of ill-treatment and possibly torture of drug users is the denial of opiate substitution treatment, including as a way of eliciting criminal confessions through inducing painful withdrawal symptoms.*"*[44] The Human Rights Committee ("HRC") has likewise interpreted the ICCPR's prohibition on torture and cruel, inhuman, and degrading treatment in the context of drug withdrawal.[45] In its

[36] CEDAW, *Concluding Observations on the eighth periodic report of the Russian Federation*, adopted by the Committee at its sixty-second session (26 October-20 November 2015), at para. 35(d), para 36(c) http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsnINnqKYBbHCTOaqVs8CBP2%2FEJgS2uWhk7nuL22CY5Q6EygEUW%2BboviXGrJ6B4KEJr4JalKJZyYib0P1wYeg13mjbxpuvgBQIHs8SaZvXdjX.

[37] The Join United Nations Programme on HIV/AIDS (UNAIDS), https://www.unaids.org/en.

[38] United Nations Development Programme (UNDP), https://www.undp.org/content/undp/en/home.html.

[39] International Centre on Human Rights and Drug Policy, UNAIDS, the World Health Organization, UNDP, *International Guidelines on Human Rights and Drug Policy* (March 2019) at 8 https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/international-guidelines-on-human-rights-and-drug-policy.html.

[40] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, *Submission to the Committee against Torture regarding drug control laws* (Oct. 19, 2012) at 3 https://www.ohchr.org/Documents/Issues/Health/drugPolicyLaw.pdf.

[41] *Id.* at 4.

[42] International Covenant on Civil and Political Rights ("ICCPR") art. 7, adopted Dec. 16, 1966, 999 U.N.T.S. 171.

[43] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Feb. 1, 2013) at para. 73 https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf.

[44] *Id.*

[45] *See* Human Rights Committee, *Concluding Observations on the seventh periodic report of the Russian Federation* (April 28, 2015) http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhstWB5OJfD

Concluding Observations to the Russian Federation, the HRC expressed concern, "about allegations that the police sometimes deliberately cause arrested drug users to suffer withdrawal symptoms in order to elicit forced confessions or coerce them into cooperating with the police" and noted that, "such physical and mental pain and suffering associated with withdrawal symptoms may amount to torture or ill-treatment."[46] The Committee recommended that Russia ensure its policies "effectively protect" people who use drugs against "the pain and suffering associated with the withdrawal syndrome and that timely, adequate and scientifically based medical assistance to counter withdrawal symptoms is available." The Committee also recommended that Russia provide "adequate legal safeguards" to prevent interrogations during a person's withdrawal.[47]

Additionally, a harm reduction approach for detainees helps to ensure their right to be free from cruel, inhuman, or degrading treatment or punishment. In its review of Ukraine, the HRC provided that, "The high incidence of HIV/AIDS and tuberculosis among detainees in facilities of the State party is also a cause for concern, along with the absence of specialized care for pre-trial detainees." There, the HRC recommended that Ukraine should, "guarantee the right of detainees to be treated humanely and with respect for their dignity," specifically by providing adequate hygienic facilities, access to health care, nutrition, and to reduce the prison population more generally. [48]

The European Court of Human Rights has similarly interpreted the right to be free from cruel, inhuman, and degrading treatment under Article 3 of the European Convention on Human Rights to implicate the implementation of harm reduction measures. In *Khudobin v. Russia*, the court held that refusing medical treatment to an HIV-positive detainee violated his/her right to be free from torture or inhuman or degrading treatment or punishment.[49] Such medical care is implicit under a harm reduction approach, because instead of ignoring or condemning drug use altogether, harm reduction attempts to minimize the harmful health effects of drug use.[50] Additionally, in *McGlinchey and others v. UK*, the court held that failing to provide necessary medical care to a heroin dependent women who died in a UK prison violated her right to be free from torture, inhuman or degrading treatment or punishment.[51]

Harm reduction measures further enable states to ensure the right to non-discrimination. The ICCPR, ICESCR, International Convention on the Elimination of All Forms of Discrimination ("ICERD"), and the Convention on the Elimination of all Forms of

OQhMEkiX20XNhIfwS44vVjDCG9yOfCaGgJ%2B4aMVruPFpyUaMYJvfEOEBQCPHWJdUArBGlBJo5DzI4ZqOZa12FMGUZJqFSjwcIYP.

[46] *Id.*

[47] *Id.*

[48] Concluding Observations of the Human Rights Committee, Ukraine, UN Doc. CCPR/C/UKR/CO/6 (2006) at para. 11 http://hrlibrary.umn.edu/hrcommittee/Ukraine2006.html.

[49] *Khudobin v. Russia*, Application no. 59696/00 (Oct. 26, 2006), http://hudoc.echr.coe.int/eng?i=001-77692.

[50] Harm Reduction Coalition, *Principles of Harm Reduction* https://harmreduction.org/about-us/principles-of-harm-reduction/.

[51] *McGlinchey and Others v. UK*, Application no. 50390/99 (April 3, 2003) http://hudoc.echr.coe.int/eng-press?i=003-741378-753326.

Discrimination Against Women ("CEDAW") prohibit discrimination with regards to the rights they establish.[52] ICERD provides in Article 2(1), "State Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races…"[53] According to CEDAW Article 2, "State parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women…"[54] The Committee on the Elimination of Racial Discrimination ("CERD") has interpreted the convention's commitment to condemn discrimination to establish that governments, "should pay the greatest attention to the following possible indicators of racial discrimination:. . . The proportionately higher crime rates attributed to persons belonging to those groups, particularly as regards to petty street crimes and offences related to drugs and prostitution, as indicators of the exclusion or the non-integration of such persons into society."[55] Thus, the stigma associated with traditional, punitive drug policies violate the international human right to nondiscrimination, whereas a harm reduction approach to drug policy fulfills state obligations to prevent discrimination. For instance, the Special Rapporteur on the Right to Health stated regarding Romania, "the stigma associated with commercial sex work and injecting drug use, for example, affects how people engaged in these activities are often treated by health-care workers, especially when requesting services such as tests for sexually transmitted infections," and further encouraged the government to address the discrimination creating a barrier to healthcare services.[56] As UN Secretary-General Ban Ki-moon stated on the International Day against Drug Abuse and Illicit Trafficking, "No one should be stigmatized or discriminated against because of their dependence on drugs."[57]

[52] ICESCR, Art. 2; ICCPR, Art. 26; Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, adopted Dec. 18, 1979, 1249 U.N.T.S. 13; International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") art. 2, 660 U.N.T.S. 195, 212.

[53] ICERD, Art. 2(1). Furthermore, ICERD in Article 2(2) further establishes that, "State Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms." *Id.* at Art. 2(2).

[54] CEDAW, Art. 2. Specifically, CEDAW articulates that, "States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men." *Id.* at Art. 3.

[55] CERD, *General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system* (2005) at para. 1 https://www.refworld.org/docid/48abd56dd.html.

[56] Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical and Mental Health, *Addendum Mission to Romania*, U.N. Doc. E/CN.4/2005/51/Add.4 (Feb. 21, 2005) at para. 42 https://www.refworld.org/pdfid/42d66e800.pdf.

[57] UNIS Vienna, *Press Release* (June 24, 2008) http://www.unis.unvienna.org/unis/en/pressrels/2008/unissgsm053.html.

III. Harm Reduction and Women

Worldwide, the vast majority of harm reduction services are at best, gender blind, and at worst, male-centered. Furthermore, there is limited access for women to harm reduction services. Yet research indicates that a gender sensitive approach to harm reduction can increase both the uptake and the outcomes of harm reduction interventions.[58]

Moreover, the international human rights framework requires the availability and accessibility of gender sensitive harm reduction. The CEDAW Committee specifically recognizes the importance of harm reduction services for incarcerated women. It its Concluding Observations on Georgia, it urged the State to provide "gender-sensitive and evidence-based treatment services to reduce harmful effects for women in detention."[59] The CESCR Committee likewise acknowledges the importance of gender sensitive drug policy. CESCR's General Comment 14 recognizes the importance of a gender-sensitive approach as a core element of the right to health and a critical component of the accessibility and acceptability of care.[60] General Comment 14 provides that, "health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population…"[61] CESCR further provided that central to acceptability under the right to health are policies that are "sensitive to gender."[62] CESCR recommended in its Concluding Observations on Estonia that the state, "Remove barriers to accessing treatment for women drug users, particularly those who are pregnant or have children, and develop a gender-sensitive drug policy."[63] Furthermore, the UNODC stipulates, "measures to reduce adverse health and social consequences should be offered in a non-discriminatory and comprehensive programme.[64]

[58] Sophie Pinkham, Browyn Myers, Claudia Stoicescu, *Harm Reduction Services for Women Who Inject Drugs*, https://www.hri.global/files/2012/09/04/Chapter_3.1_women_.pdf; Harm Reduction International, *Women and harm reduction*, Global State of Harm Reduction 2018 Briefing (2018) https://www.hri.global/files/2019/03/06/women-harm-reduction-2018.pdf.

[59] CEDAW Concluding Observations on the combined fourth and fifth periodic reports of Georgia (2014) at para. 31, http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsldCrOlUTvLRFDjh6%2Fx1pWDqKYdAsZCi%2FpTG5mONu7rLEgGDzc4uYj4EX9q0OwgEtztAerYJ0NdpVEHSESZXwGVYxjsz8OaUw6uLeEqhG0qBpr7G2F1eAhw8U9lp5arMXA%3D%3D.

[60] Office of the High Commissioner for Human Rights, *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)* Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, (Aug. 11, 2000) at para. 12 https://www.refworld.org/pdfid/4538838d0.pdf.

[61] *Id.*

[62] *Id.*

[63] Committee on Economic, Social and Cultural Rights, *Observations on the third periodic report of Estonia*, (March 27, 2019) at para. 45(d) http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1SKyxvprlxEitT1iPv5tsGoOiIeUbYK%2FAGvhE93KLAxM4z30cuUy4UFO6QpIsZDcil3ru4bJJOV1bQqfTumayrWAHmbmL8hJ8qa%2FeIa%2BbxB.

[64] United Nations Office on Drugs and Crime (UNODC), *Reducing the adverse health and social consequences of drug abuse: A comprehensive approach*, https://www.unodc.org/documents/prevention/Reducing-adverse-consequences-drug-abuse.pdf

Harm reduction services that integrate sexual and reproductive rights into their strategies are especially effective. Substitution therapy in particular has important implications for women's sexual and reproductive health. Opioid substitution therapy is the "internationally recognized gold standard" treatment for pregnant opioid users because it reduces financial pressures and illicit drug use, promoting a healthier lifestyle for mother and child.[65] Substitution therapy also helps women to stabilize their lives and reduce risky behavior relating to transactional sex—such as unprotected sex in exchange for shelter.[66] Successful harm reduction programs in Ukraine work to identify pregnant women who use drugs and provide them with pregnancy tests, as some women who use drugs cannot afford to buy tests to determine whether or not they are pregnant.[67] Once pregnant women who use drugs are identified, the organizations educate women on the benefits of opioid substitution therapy and connect them with treatment.[68] A harm reduction approach is also psychologically beneficial for pregnant women who use drugs, as one psychologist stated, "When they're pregnant, they're very worried about how drug use will affect the child…they feel guilty, they feel responsible. These women need to be supported, given help. Since the project started, the clients are calmer, more trusting. Now they finally have something positive, a chance to be more confident."[69]

On the other hand, criminalization of pregnant women's drug use prevents women from accessing treatment and perpetuates policies that are inadequate to address their needs. Criminalization of women who use drugs' pregnancies has an invisibilizing effect, driving women underground such that they cannot access support care services.[70]A report from the International Drug Policy Consortium ("IDPC") noted that, "a recent study in the USA found that arresting, detaining, prosecuting and taking other legal actions against pregnant women who use drugs draws attention away from existing inadequacies in health care…the study also found that current measures undertaken in the criminal justice system and family and drug courts that attempt to 'protect the foetus' in fact undermine foetal and maternal health and are not conducive to producing effective strategies for addressing the needs of pregnant women who use drugs and their families."[71] Thus, the most effective policy approach for pregnant women who use drugs is a harm reduction approach.

IV. Harm Reduction in the United States

65 Open Society Institute, *supra* note 9, at 6.
66 *Id.* at 18.
67 *Id.*
68 *Id.* at 19.
69 *Id.* at 20.
70 *See* Amnesty International, Criminalizing Pregnancy Policing Pregnant Women Who Use Drugs in the USA (2015) at 34 https://www.amnesty.org/download/Documents/AMR5162032017ENGLISH.pdf. 25; National Commission on Correctional Health Care, Women's Health Care in Correctional Facilities https://www.ncchc.org/womens-health-care.
71 IDPC Briefing Paper, Julia Kensy, Camille Stengel, Marie Nougier & Ruth Birgin, *Drug Policy and women: addressing the negative consequences of harmful drug control* at 13 https://www.federationaddiction.fr/app/uploads/2012/12/drug-policy-and-women-addressing-the-consequences-of-control.pdf.

The history of harm reduction in the U.S. is complex. On the one hand, with respect to research, the U.S. has contributed significantly to developing aspects of harm reduction treatment—including methadone and buprenorphine-assisted treatment for people with opiate use disorders.[72] However, on the other hand, the U.S. also has long been a "fierce opponent of harm reduction both domestically and internationally."[73] These attitudes against harm reduction have historical roots—there has been a long tradition of moralistic condemnation of psychoactive drugs and alcohol.[74] Much of the stigma associated with psychoactive drug use also relates to racial stereotypes, ranging from the use of opium by Chinese immigrants to the use of cocaine by African-Americans to the use of marijuana by Mexican-Americans.[75] This moral condemnation and racial stigmatization of substances has engrained a strong fear of drugs and alcohol within U.S. culture, causing people to believe that criminalization of substances is the best means to deter drug use.[76] And although individual states have been receptive to a harm reduction approach, the federal government has been quite resistant to the harm reduction movement, delaying implementation of harm reduction programs for several years.[77]

Harm Reduction approaches in the U.S. were sparked by the HIV/AIDS epidemic. For two decades, the federal government refused to fund research on syringe exchange programs (SEPs), however private foundations, local pilot programs, and other research organizations contributed significant evidentiary support in favor of SEPs.[78] By 1988, scientific evidence was sufficiently compelling such that the Secretary of Health and Human Services found that syringe exchange programs were "safe and effective."[79] However, in Congress the opposition to harm reduction was so strong that the Clinton administration did not attempt to allocate federal funding for syringe exchange programs.[80] Only in 2009, the Consolidated Appropriation Act lifted the ban on federal funds to support syringe exchange programs.[81] The law, "formalized the federal government's recognition of SEP's roll in community-based disease prevention, allowed federal public health agencies to research and provide technical assistance to these programs, and provided a new source of SEP funding..."[82] The ban on the federal funds for SEPs was reinstated in 2012, and repealed again in 2016. As of May 2019, 28 states

[72] Don C. Des Jarlais, *Harm reduction in the USA: the research perspective and an archive to David Purchase*, Harm Reduction Journal 14, 51 (2017) https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-017-0178-6.
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] Traci C. Green, Erika G. Martin, Sarah E. Bowman, Marita R. Mann, Leo Beletsky, *Life After the Ban: An Assessment of US Syringe Exchange Programs' Attitudes About and Early Experiences With Federal Funding,* Am J Public Health (May 2012) https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2011.300595.
[82] *Id.*

and the District of Columbia permit needle exchanges.[83] There has been no comprehensive harm reduction response in prisons in the United States, with NSP entirely unavailable to the prison population and opioid substitution therapy rarely accessible in prisons.[84]

V. Conclusion

As demonstrated above, laws which criminalize drug use pose a major obstacle to the human rights of people who use drugs, including the rights to health; to freedom from cruel, inhuman, or degrading treatment; and to equality and nondiscrimination. A harm reduction approach, by contrast, respects the fundamental dignity and human rights of people who use drugs, as well as supports their health and well-being.

[83] Victoria Knight, *Needle exchanges find champions among Republicans*, USA Today (May 8, 2019) https://www.usatoday.com/story/news/nation/2019/05/08/needle-exchange-programs-more-accepted-republican-states/1139672001/.
[84] Harm Reduction International, *North America- Harm Reduction Programmes* https://www.hri.global/north-america-harm-reduction-programmes.