Additional information to the
Report to the International Committee on Economic,
Social and Cultural Rights
on implementation by the Russian Federation of article 12 of the International Covenant on Economic, Social and Cultural Rights as it relates to access of people who inject drugs to drug treatment and HIV prevention, care and treatment programs.

(in response to the replies by the Government of the Russian Federation to the list of issues (E/C.12/RUS/Q/5) to be taken up in connection with the consideration of the fifth periodic report of the Russian Federation (E/C.12/RUS/5) of 9 February 2011)

Moscow

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This communication was prepared by the Andrey Rylkov Foundation for Health and Social Justice and the Canadian HIV/AIDS Legal Network in consultation with NGOs and experts involved in HIV/human rights in Russia and UNODC. This is a supplement to the Report, submitted by the Andrey Rylkov Foundation to the ICESCR on April 2, 2010 and the Additional information, submitted by the Andrey Rylkov Foundation to the ICESCR on March 14, 2011. *For contacts: Anya Sarang,* anyasarang@gmail.com*, tel: +79268708518*

Introduction

In replies by the Government of the Russian Federation to the list of issues (E/C.12/RUS/Q/5) to be taken up in connection with the consideration of the fifth periodic report of the Russian Federation (E/C.12/RUS/5) of 9 February 2011[1] the Russian Federation provided the following:

Reply to questions posed in part III, paragraph 37, of the list of issues

154. Government Decision No. 681 of 30 June 1998 approved a register of narcotic drugs, psychotropic substances and their precursors which are subject to control in the Russian Federation. Methadone is included in list I, which contains narcotic drugs whose circulation is prohibited in accordance with domestic law and international agreements to which the Russian Federation is a party. Buprenorphine is in list II, which enumerates narcotic drugs whose circulation in the Russian Federation is restricted and for which methods of control have been established in accordance with domestic law and international agreements to which the Russian Federation is a party. Article 31, paragraph 1, of Federal Act No. 3 of 8 January 1998 on narcotic drugs and psychotropic substances specifies that narcotic drugs and psychotropic substances in lists II and III may be used for medical purposes. However, article 31, paragraph 6, of Federal Act No. 3 stipulates that the treatment of drug addicts with the narcotic drugs and psychotropic substances set out in list II of the register is prohibited.

155. Thus, domestic legislation does not make provision for the use of replacement therapy for the treatment of drug addicts; this is not at variance with the Russian Federation's treaty obligations. The view in the Russian Federation is that replacement therapy programmes do not have a therapeutic effect on the drug addict and do not address problems of HIV-infection. Programmes to reduce the harm to users caused by intravenous drugs, which were carried out by the Global Fund in 2004–2009 in 10 constituent entities of the Russian Federation (Republics of Buryatia and Tatarstan, Krasnoyarsk Territory, Vologda, Nizhny Novgorod, Orenburg, Pskov, Tver and Tomsk Provinces, and the city of Saint Petersburg), amounted to nothing more than a distribution and exchange of clean syringes and needles and instruction on the safe use of narcotic drugs, and were promoted as an effective way of combating the spread of HIV among intravenous drug users. The programmes resulted in the level of HIV/AIDS and viral hepatitis morbidity in these regions increasing by a factor of three and more, compared to constituent entities which did not have these programmes. Consequently, for the time being, Russia is not planning any programmes aimed at minimizing risk through an exchange of syringes among intravenous drug users.

156. The Russian Federation has an overarching policy for the treatment of HIV/AIDS, viral hepatitis and tuberculosis. A holistic approach to combating drug addiction has been introduced. As part of the programme to promote a healthy lifestyle (which is the most important aspect of prevention), health-care centres for adults have been opened and equipped, and it is planned to create similar centres for children.

Information for the Committee's consideration

When considering the above mentioned replies of the Russian Federation, we kindly request the International Committee on Economic, Social and Cultural Rights (ICESCR) to take into account the following information:

The statements in paras. 154 and 155 that "*the domestic legislation does not make provision for the use of replacement therapy for the treatment of drug addicts; this is not at variance with the Russian Federation's*

[1] E/C.12/RUS/Q/5/Add.1

treaty obligations" shall be assessed in the light of Article 27 and Article 31 of the Vienna Convention on the Law of Treaties, 1969.

Article 27 Internal law and observance of treaties
A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Article 31 General rule of interpretation
1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
3(b). There shall be taken into account, together with the context:
Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.

Opioid Substitution Treatment is recommended by UN General Assembly and the Commission on Narcotic Drugs,[2] ECOSOC,[3] and the International Narcotics Control Board (INCB).[4] The International Narcotics Control Board *(*INCB*)* recognizes that OST does not constitute a breach of any treaty provisions, whatever substance may be used for such treatment.[5] World Health Organization (WHO) recognizes that of the all treatment options examined, opioid agonist maintenance treatment, combined with psychosocial therapy is the most effective treatment.[6] WHO, UNODC and UNAIDS recognize OST as an important part of the comprehensive package for the prevention, treatment and care of HIV among people who inject drugs.[7] UNODC recognizes OST as an effective intervention for reduction of crime.[8] OST is used successfully in more than 60 countries, including USA, Canada, China, Iran, and all European countries, except in Russia and Turkey.[9] Methadone and buprenorphine are listed by WHO as the essential medicines to be used in substance dependence programmes.[10] Availability of the essential medicines has been emphasized by the International Committee on Economic, Social and Cultural Rights (ICESCR) as one of the underlying determinants of health.[11] In its recent concluding observations the ICESCR (on Poland – 2009; on Kazakhstan and Mauritius - 2010) strongly highlighted the need for substitution treatment.

The OST is a globally recognized method of drug treatment, recommended by the profile UN bodies and found to be in line with international treaties to which Russia is a party. These facts, along with the recent ICESCR recommendations, are good grounds to believe that OST should be considered as a subsequent practice in the implementation of the treaties (such as the UN Drug Conventions and Human Rights treaties as relates to drug treatment) which establishes the agreement of the parties regarding their interpretation (Article 31 of the Vienna Convention on the Law of Treaties of 1969).

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2 See. Paragraph 20 of the Political Declaration on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem. Adopted on the 52nd session of CND and endorsed by the UNGA Resolution A/RES/64/182; see also Resolution 53/9 adopted by CND on the 53rd session in March 2010 where the nine core interventions for HIV prevention amongst IDUs were repeatedly endorsed by the Commission.

3 ECOSOC Resolution 2004/40.

4 Report of INCB for 2008, para 24, 25.

5 Report of INCB for 2003, para 222.

6 Guidelines for the psychosocially assisted pharmacological treatment of opioid dependence. WHO, 2009.

7 WHO, UNODC, UNAIDS. Technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users. 2009.

8 Opioid substitution therapy: Review of the effectiveness on reduction of crime. UNODC. 2007.

9 UNODC maps on interventions for HIV prevention among IDU. 2009.

10 WHO Model List of Essential Medicines, 16th list (updated), March 2010.
http://www.who.int/medicines/publications/essentialmedicines/Updated_sixteenth_adult_list_en.pdf

11 ICESCR General Comments № 14 (2000), paragraph 12(a).

Thus, by hampering access to OST the Russian Federation violates Article 12 of the Covenant on Economic, Social and Cultural rights which can not be justified by references to the internal law of the Russian Federation.

The statement in para 155 that harm reduction programs in 10 regions of the Russian Federation were ineffective and "resulted in the level of HIV/AIDS and viral hepatitis morbidity in these regions increasing by a factor of three and more, compared to constituent entities which did not have these programmes" is not supported by a single research and runs contrary to the official statistics of the Ministry of Health of the Russian Federation. The Government of the Russian Federation has not conducted any research and evaluation of the harm reduction projects in the Russian Federation. At the same time research and evaluations conducted by independent experts found only positive results of the implementation of harm reduction projects in 10 regions of the Russian Federation (project GLOBUS).

The review of UNAIDS, 2009 has found that

> *"[P]revention activities by GLOBUS partners have been effective to contain the epidemic wherever they were conducted at a significant scale. In regions where programmes of harm reduction among injecting drug users reached more than 30% of the estimated population of IDU, the number of new registered cases has increased very slowly (by 15% over 5 years). In regions where the programmes reached less than 15% of the estimated population of IDU, the increase has been markedly higher (105% over 5 years)"*[12].

The final evaluation of the GLOBUS project reported that

> *"[T]he GLOBUS project has played an important role in the HIV response in the Russian Federation. The project has demonstrated a comprehensive approach and addressed the need of both high risk groups and the general population. The data on new and total cases of HIV suggest that the project has been effective in containing the growth of the HIV epidemic. Although an increase in the annual rate of new HIV cases and cumulative HIV prevalence took place, the pace of the increase was slower and steadier than in many comparator regions"*[13].

The following table represents the official data of the Russian Federal AIDS Center on registered HIV cases in the ten regions of the GLOBUS project in comparison with the data from the regions not included into the GLOBUS project.

Regions	**Total number of registered HIV Infections**		**Percent increase**
	as of December 31, 2003	as of December 31, 2008	
Tver region	3,943	6,729	70.7
Vologda region	636	1,260	98.1
Pskov region	191	423	121.5

[12] UNADIS: Situational Analysis of the State of GFATM HIV Prevention Programs on Most-at Risk Populations in the Russian Federation, 2009.

13 Final Evaluation of the Project "Stimulating an effective national response to HIV/AIDS in the Russian Federation" (GLOBUS Project). *Evaluation question: What is the GLOBUS impact on HIV epidemic? Donation of the Global Fund to fight* AIDS, TB and malaria, RUS-304-G01-H, October, 2010.

City of St. Petersburg	21,818	39,806	82.4
Republic of Tatarstan	5,754	9,636	67.5
Nizhny Novgorod region	2,904	5,550	91.1
Orenburg region	11,266	18,506	64.3
Republic of Buryatia	1,847	3,319	79.7
Krasnoyarsk Krai	4,937	8,968	81.6
Tomsk region	667	1,050	57.4
All regions included in the GLOBUS Project (Round 3)	53,963	95,247	76.5
All Russian regions *not* included in the GLOBUS Project	209,897	376,431	79.3
The Russian Federation overall	263,860	471,678	78.8

These figures explicitly show that the level of HIV/AIDS morbidity in GLOBUS regions is actually lower than in the regions which did not have these programmes.

Even more evident the positive impact of the GLOBUS projects is when the cumulative number of HIV infections and percentage increase between 2004 and 2009 in GLOBUS and comparator regions[14] are compared[15].

Region	Cumulative number of infections in 2004	Cumulative number of infections in 2009	% increase
Globus regions			
Tver oblast	4426	7367	66
St. Petersburg	25262	43261	71
Pskov oblast	230	457	99
Vologda oblast	749	1401	87
Tatarstan republic	6350	10620	67
Nizhny Novgorod oblast	3340	6430	93
Orenburg oblast	12506	20397	63
Buryatia republic	2076	3683	77

[14] The comparator regions have been identified in order to match the project regions in terms of geographic, socio-economic, epidemiological and urbanization.

15 Final Evaluation of the Project "Stimulating an effective national response to HIV/AIDS in the Russian Federation" (GLOBUS Project). *Evaluation question: What is the GLOBUS impact on HIV epidemic? Donation of the Global Fund to fight* AIDS, TB and malaria, RUS-304-G01-H, October, 2010.

Krasnoyarsk krai	5417	10315	90
Tomsk oblast	739	1115	51
Total Globus	***61095***	***105046***	***72***
Comparator oblast			
Tula oblast	3261	5652	73
Ivanovo oblast	2881	5035	75
Ulyanovsk oblast	6129	9951	62
Kaliningrad oblast	4472	6737	51
Leningrad oblast	8271	17039	106
Samara oblast	21325	40093	88
Sverdlovsk oblast	24128	44094	83
Karelia republic	243	704	190
Smolensk oblast	434	1048	141
Komi republic	586	1250	113
Novgorod oblast	631	1295	105
Yaroslavl oblast	831	1435	73
Perm krai	5519	10807	96
Bashkortostan republic	5166	9055	75
Chelyabinsk oblast	13985	22010	57
Kemerovo oblast	6677	15979	139
Primorsky krai	5108	8570	68
Altai rai	3297	9748	196
Khabarovsk krai	744	1415	90
Total comparator	***113688***	***211917***	***86***

The harm reduction approach has been assessed by the Expert Working Group (EWG) which consisted of members of the Federal Parliament, experts from public health authorities and civil society. The EWG found that harm reduction is an effective approach for HIV/AIDS prevention among injecting drug users.

> *"In the Russian Federation harm reduction programs have been implemented primarily as pilot projects financed mainly by the Global Fund and other international donors. The impact of these programs has been largely dependent on the attitude and cooperation of regional executive authorities. Even regional and local officials who support harm reduction find themselves unable to maximize the effectiveness of such programs in an environment in which federal authorities do not consider harm reduction to be a relevant public health approach and little proper coordination*

therefore exists between various departments and relevant services. As a result, the ongoing projects have not always produced performance indicators consistent with international standards. Nevertheless, even under these conditions pilot programs have achieved positive outcomes in regions: many, for example, have gained access to vulnerable groups with whom it was extremely difficult to establish contacts through traditional channels, promoted less risky behaviors, and, as a consequence, reduced the risk of infection"[16].

Professor Vadim Pokrovsky, the head of the Federal Scientific AIDS Center, emphasized, that insufficient effect of harm reduction programs in Russia had stemmed from low coverage of at-risk groups in cities where programs were carried out[17] due to low funding, and lack of adequate support from federal and regional authorities[18].

The reply in para. 156 about the "overarching policy for the treatment of HIV/AIDS, viral hepatitis and tuberculosis" could be assessed with help of the information submitted by the Andrey Rylkov Foundation in its previous reports of April 2, 2010 and March 14, 2011.

A valuable account on the "healthy life style", mentioned in para. 156 can be found in the Report of the EWG.

"In an environment characterized by widespread illicit drug use and an extensive sex-service industry, the Russian Ministry of Health and Social Development is seeking to improve its HIV prevention strategies, focusing first of all on young people and then the overall population. The priority efforts are advocacy of healthy lifestyle and developing a responsible attitude to personal health. This approach, however, is not necessarily effective in reaching out to the most vulnerable population groups, in particular injecting drug users (IDUs) and sex workers. Many of them are living with HIV and/or viral hepatitis and have had a range of other health issues, such as negative repercussions from drug use and sexually transmitted infections (STIs). They also are more likely to be poor, unemployed, and estranged from family members—factors that also hinder behavior change. At the same time, current drug-treatment and -rehabilitation methods are relatively ineffective, which limits the likelihood that the majority of drug users are able to stay clean over time. Members of these social groups thus are the main "generators" of demand for drugs even as, for various reasons, they are unable or unwilling to seek out health and social services that they might need. The prevalence of HIV and other socially significant diseases continues to increase in these groups. Given this reality in Russia, it is necessary to identify and promote supplementary measures aimed at preventing the spread of HIV and other diseases among IDUs and other vulnerable groups. It is important that such measures are not only effective in reducing rates of infection across society, but also do not violate fundamental human rights. Harm reduction, which does not require immediate and unconditional cessation of drug use, is one such approach"[19].

Misleading the Russian public on the public health matters has become a common pattern in the public statements of the Russian authorities. On April 11, 2011 the Federal State Anti-drug Committee[20] has

[16] «Evidence-based medicine and harm reduction programs for HIV prevention among vulnerable groups». Report of the working group on comprehensive analysis and studying of effectiveness of HIV prevention and public health based on harm reduction approach, 2010. p. 25 on-line: esvero.ru/files/doklad2010.pdf

[17] Letter dated 02/16/2010 ref. N 33/10 Re: N MG-86/1111 of November 17, 2009.

[18] As quoted in the Report «Evidence-based medicine and harm reduction programs for HIV prevention among vulnerable groups». Report of the working group on comprehensive analysis and studying of effectiveness of HIV prevention and public health based on harm reduction approach, 2010. p. 26 on-line: esvero.ru/files/doklad2010.pdf

[19] Ibid. p. 5.

[20] The State Antidrug Committee has been created by the Decree of the President of the Russian Federation of October 18, 2007 No 1374 in order to coordinate activities of the authorities in the area of counteracting drug trafficking.

submitted an official letter to the Public Chamber of the Russian Federation[21] stating inter alia that there is no HIV epidemic in the Russian Federation:

> *"From the medical point of view the term epidemic is a category of intensity of the development of the epidemiologic process when the level of morbidity of a certain infectious decease* ***significantly exceeds*** *the level of morbidity routinely registered on a certain territory in a certain period. The statistical data* [44 761 new HIV cases in 2007; 54 563 new HIV cases in 2008; 58 527 new cases in 2009; and 58 633 cases in 2010*] suggest the* ***significant reduction*** *in the pace of increase of HIV from 9802 new cases in 2008 to 3964 new cases in 2009 and 106 new cases in 2010, i.e. the reduction is 92,5 folds which obviously does not correspond to the above mentioned definition of epidemic…"*[22].

Conclusions and the request for recommendations:

The response of the Russian Federation to questions posed in part III, paragraph 37, of the list of issues shall not be considered as an adequate justification for the authorities of the Russian Federation not to provide necessary access to harm reduction measures, including needle and syringe programs and opioid substitution therapy with use of methadone and buprenorphine. Information provided in the Reply demonstrates that the authorities often use misleading information to justify important, and not evidence based policy decisions. With this in mind and taking into account the earlier submissions of the Andrey Rylkov Foundation of April 2, 2010 and March 14, 2011 we ask the ICESCR to recommend to the Russian Federation:

1. In partnership with representatives of people who use drugs and non-governmental organizations, develop clear legal grounds for and provide funding for scaled up introduction of all nine interventions as recommended in WHO/UNODC/UNAIDS Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users (2009)[23] with due attention to human rights of people who use drugs. In particular lift the ban on the medical use of narcotic drugs in the treatment of drug dependence and introduce opioid substitution treatment (OST) with the range of drugs available (methadone, buprenorphine) and low threshold access to such programs for patients of tuberculosis clinics and AIDS centers; adopt the legal mechanism addressing uncertainty around needle and syringe programs and overdose prevention programs and provide funds for such programs to ensure availability, accessibility and quality of thereof.
2. Ensure that drug propaganda laws are not used to restrict freedom of information and stifle public debates on drug treatment and harm reduction as well as to suppress harm reduction programs such as needle and syringe and overdose prevention and provide law enforcement and criminal justice agencies with clear instructions on their role in scientifically-based and human rights-oriented programs of HIV prevention, care and treatment among most at-risk populations such as injecting drug users, prisoners and sex workers; make sure that state officials are aware of their responsibility to provide the public with accurate information regarding health matters, such as HIV prevention and harm reduction and opioids substitution treatment, in good faith and without deception.

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[21] Public Chamber of the Russian Federation has been created by the Federal Law No. 32-FZ of 4 April 2005 with the mandate to ensure cooperation between people of the Russian Federation, civil society organizations and the authorities of the Russian Federation with the aim to make sure that the interests and needs of people as well as human rights are taken into account when the state policy is formulated and implemented as well as to ensure the public control over the authorities.

[22] Letter No 11/1/1233 of 11.04.2011 signed by Mr. E.U. Manyatkin, the first deputy head of the State Antidrug Committee.

[23] WHO/UNODC/UNAIDS technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users (2009)