

**Input on the Russian Federation for the report Accountability for
Torture and other Cruel, Inhuman or Degrading Treatment or
Punishment of the UN Special Rapporteur on torture and other cruel,
inhuman or degrading treatment or punishment**

This submission is prepared by Andrey Rylkov Foundation for Health and Social Justice in cooperation with the Eurasian Harm Reduction Association and the project "Hand-help.ru".¹

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This submission can be posted on the website of the Special Rapporteur for public information purposes.

This submission is devoted to the structural problem of Accountability Gap for Torture and Ill-Treatment due to criminalization of drug use behavior, and answers to Questionnaire from the Special Rapporteur.

1. Challenges to accountability: What are the most important legal, practical and other challenges that are conducive to the current worldwide accountability gap for torture and ill-treatment?

In order to eradicate the torture, in accordance with its international legal obligations the State should take preventive measures,² including abstinence from any other policy that contributes to torture and ill-treatment.³ However, the State policy of Russia in the field of counteraction to drug trafficking, as one of the most cruel examples of "war with drugs" in the world, leads to violence against a huge number of alleged or acting people who use drugs,⁴ and also entails accountability gap for torture and ill-treatment.

¹ Information about the organizations and contacts is provided in Annex I.

² Clause 1 of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, December 10, 1984

³ A/HRC/40/59, clause 71

⁴ According to a sociological study cited in the Strategy of the State Anti-Drug Policy of the Russian Federation for the period up to 2030, the number of drug users in Russia is 1.9 million people (1.3% of the population), and every fourth respondent (24.1%) communicates with drug users, URL: <http://kremlin.ru/catalog/keywords/78/events/64480>

Modern Russian drug policy is characterized by the predominance of police response to the problem of drugs and is based on intolerance to people who use drugs, and countering drug demand by the methods of criminal repression. Any actions related to drug use are prohibited under the threat of punishment in the form of imprisonment from 15 days for consumption up to 15 years for the storage of drugs, and the sale of drugs is punishable to life imprisonment.⁵ People who use drugs and involved in their turnover are demonized,⁶ and systematically exposed to stigma,⁷ moreover, stigmatization and discrimination against people who use drugs are moving and encouraged by the State.⁸ People committed a drug-related crime have been allocated in the Criminal Code to a separate category, along with accused of terrorism and crimes against sexual inviolability of children - more stringent consequences of criminal responsibility are established for them.⁹

The so-called "quota" system of police reporting¹⁰ leads to the fact that it is a person who use drugs, and not the one who deals with their distribution for commercial

⁵ Articles 6.8, 6.9 of the Code on Administrative Offenses of the Russian Federation, Articles 228, 228.1 of the Criminal Code of the Russian Federation

⁶ For example, on many official websites of state educational organizations there can be found the following information about people who use drugs: "Addict, in fact, a traitor, he betrays himself first, then the close ones. Over time, there is no longer anything more precious to him than drugs. The habit of betraying makes character deceitful" (site of the Moscow Institute of Electronic Technology, URL: <https://miet.ru/page/39854>); "A man walking along the path of the drug user gradually destroys his best moral qualities" (Site of the Kazan Innovation University, URL: <http://chl.ieml.ru/node/884>); "Each of us can become a victim of a drug user who is looking for money for a dose (theft, robbery on the street, in the house entrance)" (from the methodological recommendations for lecture on addiction, posted on the website of the Government of the Nizhny Novgorod region, URL: <https://admgor.nnov.ru/>). The report of the Global Drug Policy Commission in 2017 was devoted to prejudices to people who use drugs, URL: <https://www.globalcommissionondrugs.org/reports/changing-perceptions>

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⁸ The legislation prohibits the dissemination of information aimed at the creation of a "positive image" of the drug user (order of Roskomnadzor N 84, Ministry of Internal Affairs of Russia No. 292, Rospotrebnadzor N 351, FTS of Russia MMB-7-2 / 461 @ from 05/18/2017). It is allowed to deprive parental rights only due to the parent's diagnosis of "drug addiction" (Article 69 of the Family Code of the Russian Federation), which the European Court recognized the violation of Article 8 of the Convention in the case of Y.i. v. Russia. (application no. [68868/14](https://www.echr.coe.int/ViewDoc.aspx?id=68868/14)). There are also numerous prohibitions for work for people with a diagnosis of drug addiction, even in remission (Resolution of the Government of the Russian Federation of 05/18/2011 N 394), as well as lifelong prohibitions to work on any positions in educational organizations for persons who drug related crimes convictions (Articles 331, 351.1 Labor Code of the Russian Federation)

⁹ Part 3.1 of Article 72, paragraph "r" of part 3 of Article 79 of the Criminal Code of the Russian Federation

¹⁰ Reporting based on the requirement to disclose a certain number of crimes in a certain period of time

purposes, becomes the main object of the police,¹¹ and torture and ill-treatment - the main way of investigation. It's also contributed by the absence of effective mechanisms and sufficient qualifications of the police to curb crimes in the field of organized forms of drug business, majorly moved to DarkNet.¹²

In order to identify drug addicts, police officers usually resort to arbitrary detentions, inspections, directions for examination and arrests on suspicion of drug use or storing drugs.¹³

During detention and holding in police torture and ill-treatment or the threat to their application are used to extort the bribes, obtaining evidence of guilt, confessions, coercion to failure of the procedural rights and guarantees.¹⁴

Another structural problem is the detention for drug use and coercion (including through torture)¹⁵ to cooperate and denunciation on a 'dealer', which is then provoked to

¹¹ According to the Judicial department at the Supreme Court of the Russian Federation in 2020 53,000 people were convicted of actions not related to the sale of drugs, and about 14,000 people were convicted for the sale of drugs. That is, 3.7 times more people were punished for storing drugs for personal use than for their sales, URL: <http://www.cdep.ru/index.php?id=79&item=5669>. At the same time, among the sellers, a significant proportion is convicted for the low level distribution of drugs.

¹² Speaking about the problem of drug distribution through DarkNet the President of Russia pointed out that "we need to look for new, more efficient methods of combating such latent crimes" (transcript of the meeting of the Security Council of the Russian Federation, 2020, URL:

<http://kremlin.ru/events/president/transcripts/64424>). These words indicate the absence of such methods nowadays. In addition, the lack of sufficient qualification of the police to curb organized form of drug business is confirmed by the study of judicial practice and statistics - in 2020, from all cases of distribution of drugs, a truly large amount of drugs was only in 9% of cases (cases under Part 5 of Article 228.1 of the Criminal Code), URL: <http://www.cdep.ru/index.php?id=79&item=5669>

¹³ See Shadow Report to the Committee Against Torture for adoption of list of issues for the Russian Federation on its 70th session, URL:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fICS%2fRUS%2f44611&Lang=en. The prevalence of these practices is also confirmed by numerous letters to legal assistance site Hand-Help.ru, URL: <http://hand-help.ru/>.

¹⁴ "... In May 2018, unknown people grabbed two residents of Rostov-on-Don, waiting for a bus at the bus stop, put them in a car with toned windows and took them to the police department No. 4. The building had a basement, where the operatives Khalimov and Serdyuchenko checked the pockets of the detainees and, not finding anything, ordered them to sign the protocols on the storage of drugs, proposing to choose from a bag with different types of prohibited substances. After those refused, the operatives undressed them, and then chained with handcuffs to the crossbar under the ceiling and began to beat them..."

(Lenta.ru, 2019, URL: https://lenta.ru/news/2019/02/15/drugs_police/), "According to Bagaev, at first he was hit by a metal tube along the back. Then he was being kicked. After that, asking "where drugs?", he was beaten by the tube", (Znak, 2020, URL: https://www.znak.com/2020-12-01/v_ekaterinburge_protiv_narkopoliceyskih_rassleduyut_delo_o_pytkah_zaderzhannyh)

¹⁵ "And the fact that the purchaser did not for purchase, maybe I threatened him a little, so that he would go and bought. So, I revealed a particularly serious crime. And I did it like any operative," - from an interview with the defendant in the case of torture and falsification of the evidence of the former operational officer of OP No. 9 of the Ministry of Internal Affairs for Samara Sergey Khranovsky (important stories, 2021, URL: <https://istories.media/investigations/2021/03/31/raskhodnii-material-palochnoi-sistemi/>)

make a sale of drugs. This practice has repeatedly condemned by the European Court of Human Rights.¹⁶

As a result of such police actions, the declared goal of countering drug trafficking is not achieved, and all the severity of the State criminal repression mechanism is condensed to the least protected and most marginalized people who use drugs and and people with drug addiction, as well as people involved in the low level distribution of drugs.¹⁷

However, the State policy of zero tolerance to drugs and solid criminalization lead not only to the extremely high vulnerability of people who use drugs, to the use of torture, but also the impossibility of bringing to the responsibility of persons involved in torture due to the following facts and reasons.

Both the police and the courts consider people who use drugs as "obviously guilty". In part, it corresponds to reality, since in the absence of access to effective treatment (including opioid substitution therapy, recommended by the UN system, but forbidden in Russia), rehabilitation and measures of social support, people who have problems with drug use are forced to illegally acquire and store drugs. And the permanent commitment entails in turn a periodic prosecution. In such conditions, a person who admits non-medical drug use is condemned not for a particular action, but for the use as a whole. In full compliance with the dominant anti-drug policy, the punishment in the form of imprisonment is used as a method of "re-education" in order to force drug use refusal, despite the proven inefficiency of such measures.¹⁸

In addition ignoring complaints on torture of the accused in drug crimes also occurs due to the combination of the following two factors.

Officials, including judges, on the one hand, may be sincerely convinced of the good for the defendant through a forced isolation, in view of which they do not consider torture complaints seriously, regarding them as a way to avoid responsibility in order to return to drug use.

On the other hand, civil servants, as well as the population as a whole, mostly are tolerant to torture and ill-treatment in relation to the accused in drug crimes, which is a consequence of the policy of demonization and stigmatization of people who use drugs. Due to the violent and discriminatory State rhetoric, people who use drugs are considered

¹⁶ In the court decision in *Kuzmina and Others v. Russia* case dated April 21, 2021, ECHR pointed to the systemic problem and called for general measures in accordance with Article 46 of the Convention on the Protection of Human Rights and Fundamental Freedoms

¹⁷ Distribution of drugs (typically among peers) with no intention of systemic commercial profit (social sharing)

¹⁸ UN system coordination Task Team on the Implementation of the UN System Common Position on drug-related matters, "What we have learned over the last ten years: A summary of knowledge acquired and produced by the UN system on drug-related matters", p. 2.3

as representatives of "drug threat", requiring their isolation due to their danger to the society¹⁹ and not deserving the right to defense against torture.

It is also necessary to note the overload of courts with drug crimes cases,²⁰ due to which their consideration is conducted formally, including in terms of the arguments on the use of torture and evidence falsification. Under such circumstances, the burden of torture proof falls on the accused person who doesn't not have sufficient resources for it.²¹

Ultimately, the accused of drug crimes are deprived of the opportunity to achieve recognition of torture against them and are often sentenced to long-term sentences in improper conditions and in the absence of necessary medical care, which may also be considered as cruel treatment.²²

Even if torture was not followed by a drug criminal case, due to the previous experience of criminalization, stigmatization and distrust to the State as a whole, a person who uses drugs will not apply to law enforcement agencies with a statement of torture.²³

Thus, in connection with the prejudice and social alienation of people who use drugs, they are actually deprived of any rights, including protection against torture and ill-treatment. Arbitrary detentions, arrests, searches, extortion, planting drugs, falsification of evidence, torture and ill-treatment are widespread in relation to drug users, but may also affect other citizens, which negatively affects the security from the police violence in society in general. Criminal liability for drugs becomes a pressure instrument on public activists, human rights defenders, journalists.²⁴

¹⁹ "Almost 30% of Russians believe that drug addicts need to be isolated from society" (2014, URL: <https://informpskov.ru/news/148261.html>)

²⁰ According to the Judicial Department of the Supreme Court of the Russian Federation, about 20% of the total number of criminal cases considered in the district courts - affairs on drugs (mainly storage and purchase for personal use), URL: <http://www.cdep.ru/index.php?id=80>

²¹ A/HRC/25/60, clause 67

²² The European Court of Human Rights has repeatedly recognized the conditions of detention (see, for example, the decision of 10.01.2012 in the case of "Ananiev and Others Against Russia" (complaints No. 42525/07 and 60800/08) and serving the sentence (see, for example, a resolution of 21.12.2010 in the case "Gladky against the Russian Federation" (Complaint No. 3242/03) in the Russian Federation contradictory to the right not being subject to ill-treatment, which is a separate system problem of Russian places of imprisonment

²³ "Among the reasons why the girls did not apply for help, the surveyed call the following: "I'm afraid of the police, because the drug addict for them is a signal that you can do anything: rape, blackmail, make work under cover" (Takiy dela, 2021, URL: https://takiedela.ru/news/2021/03/08/nasilie-k-zhenshinam/?utm_source=twitter.com&utm_medium=social&utm_campaign=narkozavisimye-lyudi--eto--po-mneniyu-b&utm_content=48700293)

²⁴ For example, in cases regarding human rights activist Oyub Titiev (Memorial, URL: <https://memohrc.org/ru/defendants/titiev-oyub-salmanovich>), lawyer Serget Makarov (Kavkaz Uzel, 2021, URL: <https://www.kavkaz-uzel.eu/articles/359696/>), journalist Ivan Golunov (Wikipedia, URL: https://en.wikipedia.org/wiki/Ivan_Golunov).

Excessive punitive policy in relation to small-scale non-violent drug crimes inevitably creates conditions for the use of torture and ill-treatment and leads to impunity of those who commit them.

Considering that the prohibition of torture is absolute and cannot be acquitted by security requirements,²⁵ including the need to protect society from negative consequences of drug use, the State must take measures to change the current drug policy and its alignment with the concept of human rights.

2. Functions, forms and levels of accountability: Please identify, explain, distinguish or compare the different functions (e.g. punitive/reparative, or proactive/preventative etc.), forms (e.g. legal, political, economic or social etc.) and levels (e.g. individual, collective, institutional, State etc.) of accountability for torture and ill-treatment.

Indicated in the answer to Question No. 1 problem of accountability gap for torture and ill-treatment is structural, naturally following out of the State policy and the relevant practices of behavior and attitude of officials. Under such circumstances, episodically applied measures of individual responsibility of persons guilty of torture will not sufficiently contribute to the goal of the elimination of torture in Russia.²⁶ Russian government authorities should take responsibility for torture and their impunity due to drug policy and take measures aimed at their revision.

3. Rights of victims: Who should be recognised as a victim of torture and ill-treatment, and what are – or ought to be – victims’ procedural and substantive rights within accountability processes? Who else, if anyone, should be entitled to have access to and/or participate in accountability processes and mechanisms?

The problem of torture impunity due to the criminalization of the behavior associated with drug use, affects both people who use drugs and anyone who faced lawlessness in suspected drug use. Therefore, any affected by police violence due to the criminalization of the behavior associated with drug use should be recognized as a victim of torture or ill-treatment.

²⁵ Committee against Torture. General Comment No. 2. CAT/C/GC/2. 24 January, 2008. Para 5

²⁶ "In Samara, the former police and " full-time" witnesses who fabricated cases of drug sales against 17 people, are convicted. The study of "important stories" shows that this is only a small part of a large-scale scheme for the falsification of "narcotic" criminal cases in the region: we revealed 86 false witnesses that participated in 269 cases"(Novaya Gazeta, 2021, URL: <https://novayagazeta.ru/articles/2021/03/31/libo-my-sotrudnichaem-libo-ty-poedesh-v-tiurmu>)

4. Recommendations: Based on your experience and/or analysis of accountability in (2) and (3) above, what are the most effective mechanisms / measures and/or good practices that can or should be taken to respond to the challenges you identified in (1) so as to ensure accountability for torture and ill-treatment worldwide?

In 2009, the UN High Commissioner on Human Rights Navaneetham Pillai called on the states to refuse to criminalize people who use drugs by paying attention to the problem of cruel attitude to them of law enforcement. However, to date, the practice of decriminalization related to drug use has not received sufficient dissemination, and therefore need additional support from the UN human rights mechanisms as measures that are most promoting observance of human rights.

The key problem of punitive drug policy is the excessive criminalization of the behavior associated with drug use, as declaring a huge number of people outside the law, only because of drug use and entailing a systemic violation of their rights, including the rights to protection against torture and ill-treatment. It is precisely criminalization, and related stigmatization that allows law enforcement agencies and courts to ignore complaints of the accused on torture and prevent the treatment of people who use drugs, for help in colliding with torture, creating the accountability gap.

Considering the ineffectiveness of coercion to refusal from drug use by criminal justice repression methods, there are no reasons for the preservation of criminalization and cause pain and suffering to people only because of drug use.

Therefore, in order to eliminate accountability gap for torture and ill-treatment and implement the human rights approach to people who use drugs, the authorities must take measures to decriminalize the small-scale non-violent drug crimes associated with personal use, namely: to decriminalize drug use, storage, purchase for personal use, and their low-level sales, redirecting resources for social and medical support measures.

Annex I. Information about the applicants



Andrey Rylkov Foundation for Health and Social Justice (www.rylkov-fond.org) is a grass-roots organization from Moscow, Russia with the mission to promote and develop humane drug policy based on tolerance, protection of health, dignity and human rights. The Foundation engages in 4 key strategies to advance its mission: advocacy, watchdog, service provision and capacity building of affected communities and individuals.

Address: 17-82 Marshala Biryzova street, Moscow, Russia, 123060



Eurasian Harm Reduction Association (EHRA) (<http://harmreductioneurasia.org>) is a non-profit public organization, uniting 322 organizational and individual members from 29 countries of the Central and Eastern Europe and Central Asia region (CEECA). EHRA's mission is to actively unite and support communities and civil societies to ensure the rights and freedoms, health, and well-being of people who use psychoactive substances in the CEECA region.

Address: Verkių g. 34B, office 701 LT – 04111, Vilnius, Lithuania



Project Hand-help.ru (<http://hand-help.ru/>) – Russian human rights initiative to provide legal help to people affected by repressive drug policy. Since 2007, more than 14,000 publicly available online consultations on all legal problems associated with drugs have been published. The website was created by Lev Levinson, head of the New Drug Policy program. Website consultants - more than 15 lawyers, experts, chemists and narcologists.

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