

Submission from: **Canadian HIV/AIDS Legal Network; Addiction Research Center,
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Section I. Introduction

From the outset, we would like to welcome the fact that the first lady of Georgia, Mrs. Sandra Roelofs, was among the first public figures who endorsed the AIDS 2010 Vienna Declaration, which calls for drug policies to be based on scientific evidence and pragmatism, rather than ideology. We fully endorse this recommendation and look forward to its application to reviewing and improving Georgian drug policy.

We also wish to acknowledge the importance and positive impact of the commitment of the Government of Georgia to co-fund the opioid substitution therapy programs which were introduced in Georgia with support from the Global Fund to Fight AIDS, Tuberculosis and Malaria. As of January 2010, there were 15 programs operating throughout the country, including one in prison, providing methadone treatment to more than 1,200 patients. Since January 2010, substitution treatment with Suboxone® (buprenorphine+naloxone) has been provided to about 60 patients in Tbilisi.

We also wish to commend the more than 15 non-governmental organizations (NGOs) that operate harm reduction programs offering different services to clients, including distribution of sterile injection equipment, dissemination of condoms, the provision of naloxone to deal with opioid overdoses, voluntary testing and counseling for HIV, HCV and HBV, as well as providing information and education aimed at preventing the spread of these infectious diseases and protecting the health of those with them and the public health generally. We commend the other international donors supporting said programs.

Having said this, we have grave concerns about the Georgian government's drug and HIV policies. It is against the backdrop of these concerns that the present report is framed. In summary, the report draws attention to several key human rights priorities and provides recommendations for the Georgian government to better respect, protect and fulfill human rights, consistent with its international legal obligations, in areas of particular relevance to effective response to illicit drug use and HIV/AIDS. The recommendations herein contribute to realizing enjoyment in Georgia of the right to the highest attainable standard of health, the prohibition of discrimination, the prohibition of inhuman or degrading treatment, respect for liberty and security of the person, and respect for private life pursuant to the *Universal Declaration of Human Rights*, *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*, to which Georgia has acceded.

HIV and drug use in Georgia

While Georgia has comparatively low HIV prevalence (less than 0.1%), the main mode of HIV transmission in Georgia is injecting drug use (58.6%) and HIV prevalence amongst people who inject drugs ranges from 1.5% to 4.5% depending on the locality.¹

Recommendations to the Government

In order to fulfill its international obligations the Government of Georgia should reconsider its current drug policy to focus on greater balance between public health and law enforcement. Drug use should be viewed primarily as a matter of public health, rather than as a law and order concern. In particular the Government is called upon to introduce as a matter of urgency the following measures:

1. Repeal the laws providing criminal/administrative liability for mere *use* of controlled drugs; Introduce amendments into the Criminal Code to distinguish between crimes of possession, acquisition, transportation or preparation of illicit drugs *for personal use* and these same offences committed with the intent to supply.

¹ Chikovani et al, HIV/AIDS Situation and National Response Analysis: Priorities for NSP 2011-2016, *Document for Country Coordination Mechanism*, Tbilisi, 2010

2. Introduce amendments to the Criminal Code and Criminal Procedural Codes to provide for treatment as an *alternative* to prosecution and to imprisonment, rather than imposing compulsory treatment as an additional penalty, as is currently the case; Repeal the laws providing for compulsory drug treatment.
3. Repeal the laws which allow the random drug testing of people from general public on the basis of mere suspicion that person used drugs with no connection to other offences (e.g., the offence of transporting drugs). Make sure that police personnel are well trained as to those limited circumstances in which drug testing may be justified, and that testing techniques are of high quality with little possibility of error.
4. Develop and implement training for law enforcement and criminal justice actors, including education as to how to enforce legislation in line with human rights standards and in ways that do not undermine public health, particularly with respect to efforts aimed at HIV prevention and care amongst people who use drugs and in prison settings; Develop legal and operational grounds to enable and encourage police to refer people with problematic drug use who have been charged with non-violent crimes to voluntary drug treatment and other medico-social services.
5. Provide budget support for evidence-based drug dependence treatment and rehabilitation services, without charge, for all those in need and without discrimination; Extend harm reduction services to meet internationally recommended levels of coverage, including introducing needle and syringe programs in prisons as an important measure for preventing HIV and other blood borne diseases.
6. Eliminate and protect against unjustified discrimination in employment and other settings. Repeal the current list of occupations or positions for which a past positive drug test is a bar to employment. Denial of employment is only justified in safety-sensitive positions where there are reasonable grounds to establish current drug dependence.
7. Develop mechanisms to evaluate and monitor the implementation and effectiveness of legislation, procedure or practice (based on the above-mentioned recommendations), to ensure these serve the purpose they are intended to, and to allow for reform if necessary; Ensure the meaningful participation of people who use drugs in decision-making and evaluation process on issues of drug policy and HIV prevention, care and treatment.

Section II. Drug laws, policies and practices in Georgia

Georgia remains one of a few post-Soviet Union countries where merely the non-medical use of prohibited drugs constitutes an offence, even in the absence of being found in possession of any narcotics. Being under the influence of drugs or having a trace of drugs in the body leads to either administrative or criminal liability. Drug use without medical prescription leads to a fine of GEL 500 (approximately USD 280) for a first offence, while the same offence committed a second time within a year will consequently lead to criminal charges, with penalties ranging from fines of GEL 2000 (approximately USD 1200) to imprisonment for up to one year. Each year, more than 1500 people are imprisoned merely for drug use.

Indirect criminalization of drug use also arises from the strict penalties applicable for the illicit preparation, purchase, possession or transportation of drugs *for personal use*. The Criminal Code of Georgia does not distinguish between preparation, purchase, possession or transportation of illegal substances for personal use or the same offences committed with the intent to sell; it imposes the same high penalties for both.

Quantities of illegal substances taken into consideration in determining penalties are defined poorly and are very low, not corresponding to daily doses regularly used by those with drug dependence. In addition, Georgian law does not define “small” amounts for a number of psychoactive substances. For example, according to the Criminal Code, possession of any amount up to one gram of heroin is punishable with up to 11 years’ imprisonment. Furthermore, anything more than 1 gram of heroin is considered by law a “large” quantity, and possession of a “large” quantity of drugs is punishable with a term of imprisonment from a minimum of seven to a maximum of fourteen years in length. There are good grounds to believe that many of those who are currently in prisons have been sentenced for minor drug-related offences².

The Criminal Code also provides that in addition to penalty the court may award a coercive drug treatment along with the sentence. Currently, there are no alternatives to criminal prosecution or any arrest referral schemes for non-violent drug-related offences in Georgia.

² European Center for Monitoring of Drugs and Drug Addiction, Country overview: Georgia. Last updated on 29 July 2010. <http://www.emcdda.europa.eu/publications/country-overviews/ge>

Under ministerial order, police have a wide discretion to detain a person for drug testing based on a police officer's "grounded suspicion", which opens the door for abuse and humiliating treatment of citizens.³ Each year, more than 30,000 people all over the country are subject to drug testing; 40% of them test negative for illegal substances, but are still subjected to a humiliating and lengthy procedure without any real grounds.⁴ Drug testing is conducted either by clinical or laboratory examination. Urine tests for drugs are conducted with rapid strip tests, with low accuracy of results, yet strip test results are considered by the courts as evidence in cases of prosecutions for drug use. During a clinical examination, a finding of intoxication is based solely on visual observation by a doctor without any tests; this, too, is considered as reliable evidence by courts. Data shows that more money is spent on forced drug testing than on HIV prevention and treatment or drug prevention and treatment.⁵

People who use drugs are subject to different restrictions in their job opportunities as well as other civil and political rights. Those who have been convicted for drug use offences (being under influence of drugs) are restricted for three years from working as lawyers, teachers, doctors, from participating in elections as candidates, from driving vehicles and from working in public entities. Every single positive drug test is registered and kept at the National Forensics Bureau indefinitely. Employers often require the candidate to prove that the person has never tested positive for drugs. This is especially the case for application to public work or judicial sector; any past positive test for drug use operates as a barrier to this new employment. To overcome this barrier a person must submit to an extremely costly two-week dynamic examination to prove that he/she does not use illicit drugs.

Despite the development of harm reduction measures in Georgia, and significant progress achieved in recent years, coverage of these services still remains very low, ranging from 5% to 10% of persons in need of services, depending on location.⁶ In some settings, key harm reduction programs are not available at all: for example, needle and syringe programs are not available in prisons.

Georgian Government has made a noteworthy progress ensuring OST is available in the country. At the same time, there is no comprehensive drug dependence treatment and rehabilitation system in Georgia. In many cases treatment availability is limited to short-term detoxification which is very expensive and not affordable to many of those in need. Apart from high prices, detoxification procedures are not usually followed by services aimed at rehabilitation or any form of social support.

Section III. Human rights considerations

Crime prevention, law enforcement, and ensuring public order and security are obligations of the state determined by the public interests and interests of individuals, which may sacrifice part of their rights, freedoms and liberties in exchange of state's protection provided in good faith. While exercising its authority, the state shall respect and protect universally recognized human rights and freedoms as eternal and supreme human values which state is bound by as directly acting law (Article 7 of the Constitution of Georgia, 1995). Both the Georgian Constitution and major international treaties to which Georgia is a party recognize the right to life; the right to respect for person's liberty and security of the person; the right to enjoy the highest attainable standard of health; the right to be free from inhuman or degrading treatment; and the right to respect for private life. Furthermore, the rights enunciated in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) shall be guaranteed to every person without discrimination of any kind. Government "may not invoke the provisions of its internal law as justification for its failure to perform a treaty," according to the *Vienna Convention of the Law of Treaties* (Article 27), to which Georgia has been a party since 1995.

The state should establish a balance that ensures both the freedom and the protection of the individual as well as public safety and well-being. "For the criminal justice system, this balance can be considered with respect to what should, or should not, be a criminal offence; with respect to criminal justice penalties; and in the criminal justice process.... International Human Rights law provides an agreed framework, against which criminalization and

³ The Ministries of Internal Affairs and of Labor, Health and Social Affairs of Georgia issued joint Decree No 1049-233/n in 2006.

⁴ The Beckley Foundation Drug Policy Programme, *Drug Control in Georgia: drug testing and the reduction of drug use?* May 2008.

⁵ *Ibid.*

⁶ UN agencies consider any coverage level of 20% or below as "low" coverage. See WHO, UNODC, UNAIDS, *Technical Guide for to set up targets for universal access to HIV prevention, treatment and care for injecting drug users* (2009).

penalties are to be assessed”⁷. Modern challenges call for a "balanced and comprehensive approach" with emphasize on health as the basis for international drugs policy⁸.

Decriminalizing drug use per se

None of the UN Drug Conventions⁹ requires drug consumption *per se* to be recognized by the State Parties as an offence. Whilst states are entitled to adopt stricter measures than those mandated in the Convention, it is an obligation of the states to remain consistent with the norms of international public law, in particular their human rights obligations.¹⁰ Drug dependence is internationally recognized as a health condition.¹¹ By providing punishment for mere drug use, the state inevitably subjects those who suffer drug addiction for discrimination on the basis of their health status.¹² For those who are yet to develop drug dependence, criminalization of drug use does little to reduce drug use: research shows no meaningful reduction of drug use as a result of vigorous law enforcement.¹³ However, the criminalization of drug use does create a significant disincentive for people who use drugs, including those addicted, to seek assistance from public health facilities, out of fear of prosecution by law enforcement authorities. This fuels the spread of infections among people who use drugs, in particular HIV and hepatitis C virus (HCV). The *International Guidelines on HIV and Human Rights* emphasize that criminal law should not be an impediment to reducing the risk of HIV transmission among injecting drug users, or to provision of HIV-related care and treatment for injecting drug users.¹⁴ Drug use/addiction causes much financial loss for those who are using and their families. In cases where people using drugs are from poor communities, subjecting them to fines causes more harm and leads some to commit more crimes,¹⁵ and thus more harm for society in general and marginalized groups in particular.¹⁶

Enforcement of laws prohibiting drug use raises further concerns around human rights of individuals suspected of drug use. The fact that around 40% of people tested actually test negative for drug use shows that many are stopped on the street randomly with no probable cause for being apprehended. This calls into question respect for personal liberty and security, the right to freedom from arbitrary detention or arrest and the right to due process, all to be enjoyed without discrimination. Those apprehended by police under suspicion of using drugs are forced to undergo the humiliating process of urine test, waiting for hours in a queue with an accusation and public shame hanging over their heads. Subjecting a person to treatment or testing without their consent may constitute a violation of their right to physical integrity.¹⁷

Strip urine tests are highly unreliable. Admitting results of such tests into evidence is at odds with the right to fair trial. In many cases, drug tests show only the fact that the person has used drugs in the past, even days ago; they do not establish intoxication at the time of detention or of testing. The European Court of Human Rights has established that requiring a person to provide a urine sample for a drug test constituted an interference with the right to respect for private life and therefore must be lawful and necessary in a democratic society if it is to comply with

⁷ “Drug Control, crime prevention and criminal justice: a Human Rights perspective.” Note by the Executive Director of the United Nations Office on Drugs and Crime for the UN Commission on Narcotic Drugs, 53rd Session, UN Doc. E/CN.7/2010/CRP.6. International Narcotic Control Board (INCB) holds up the same approach. See the Annual report of INCB 2007, chapter 1, para 38.

⁸ UN Commission on Narcotic Drugs, 52nd Session, *Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to counter world drug problem*. March 2009.

⁹ *Single Convention on Narcotic Drugs*, 1954; *Convention on Psychotropic Substances*, 1971; *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1988.

¹⁰ *Commentary on the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances, 1988* (New York: United Nations, 1998), p. 49.

¹¹ World Health Organization, *International Statistical Classification of Diseases and Related Health Problems. 10th Revision*. 2007.

¹² For example, the issue of punishment for drug addiction was under consideration of the US Supreme Court in *Robinson v. California*, 370 U.S. 660 (1962), in which the Court held that the legal construction that made drug addiction an offence is considered unconstitutional as “cruel and unusual punishment.”

¹³ L. Degenhardt, W-T Chiu, N. Sampson et al., “Toward a global view of alcohol, tobacco, cannabis, and cocaine use: Findings from the WHO World Mental Health Surveys,” *PLOS Medicine* 2008;5:1053-67.

¹⁴ OHCHR, UNAIDS, *International Guidelines on HIV and Human Rights*. 2006, on-line: http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf.

¹⁵ Drug Control in Georgia (supra)..

¹⁶ See *Report by the Executive Director of the United Nations Office on Drugs and Crime at 20th UNGASS*, 7 May 2008. E/CN.7/2008/CRP.17.

¹⁷ Report of the Special Rapporteur on torture or other cruel, inhuman or degrading treatment or punishment to the Human Rights Council, 14 January 2009. A/HRC/10/44

Article 8 of the European *Convention for the Protection of Human Rights and Fundamental Freedoms*¹⁸. While clearly Georgian law provides for random drug testing of those in public, there can be little basis to any claim that such testing is necessary in a democratic society.

Similarly, this same standard applies in relation to the other non-absolute rights listed above. Street drug testing as a mean for enforcing a prohibition on drug use imposes extraordinary and unreasonable requirements on members of wider public. Such requirements might be justified as a condition of maintaining order in prison or as condition of ensuring safety in sensitive occupations.¹⁹ But it is hardly justifiable for street drug testing in the normal day-to-day life in a free and democratic society. In its implementation, street drug testing is very susceptible to unreasonable interference with the rights to liberty and to security of the person, the right to be free from inhuman or degrading treatment, and the right to fair trial. Over-reliance on street drug testing and practices, which are unreliable and create the potential for routine abuse of police power, contributes to the erosion of the public's trust in public authorities, which is crucial to the ongoing success of democratic governance. Street drug testing, as well as the enforcement of prohibitions on mere drug use in general, diverts law enforcement resources away from needed operational capacity in other fields, and requires more public funds which otherwise could be used for important purposes, including public health.²⁰

In summary, the criminalization of simple drug use, and the enforcement of this prohibition, bring very little, if any, good results in terms of drug demand reduction, public safety and health, but do put at great risk of violation many fundamental human rights and freedoms, protected by the Constitution of Georgia and the international treaties to which Georgia is a party.²¹ The balance of arguments provides for the conclusion that the **current policy of criminalization of drug use and its enforcement are not necessary and reasonable in the democratic society and therefore should be reconsidered.**

Decriminalizing offences involving small amounts of drugs for personal use and providing alternatives to prosecution and incarceration

By establishing that *any* intentional possession, purchasing or cultivation of drugs is a crime, regardless of circumstances, the state indirectly recognizes drug use as a punishable offence.²² Therefore, all the above listed arguments **against criminalization of drug use** and the enforcement of this law are **equally applicable to criminalization** and enforcement of possession, purchasing, transportation, cultivation of illicit **drugs in small amounts for personal consumption.**

The requirement to establish as a criminal offence the possession, purchase or cultivation of drugs even for personal consumption is embodied in the *UN Convention Against Illicit traffic in Narcotic drugs and Psychotropic Substances, 1988*, to which Georgia is a party. At the same time, the Convention calls on the parties to provide *alternatives* to convictions and punishment, in particular measures for the treatment, education, aftercare, rehabilitation and social reintegration of the person who has committed offences of a minor nature. Under Georgian law, the court shall award a fair sentence taking into account the circumstances of the case (Article 53 of the Criminal Code of Georgia). One of Georgia's top external relations priorities is to become closer to the European Union, which means proximity in policies on the rule of law, security and justice.²³ The Charter of Fundamental Rights of the European Union proclaims that the severity of penalties must not be disproportionate to the criminal offence (Article 49). The European Court of Human rights has observed that the severity of punishment must be proportionate to its aim.²⁴ In addition to proportionality, the European Court considers that the right not to be

¹⁸ See the cases of the European Court of Human Rights: *Galloway v. the United Kingdom*, Application No. 34199/96, 9 September 1998; *Young v. the United Kingdom*, Application no. 60682/00, 11 October 2005; *Madsen v. Denmark*, Application no. 58341/00, 7 November 2002.

¹⁹ *Ibid.*

²⁰ D. Otiashvili, "How effective is drug testing? Urban Drug Policies in the Global World," International workshop conference, Prague 2010, on-line: <http://www.urbandrugpolicy.com/en/catalogue/detail/7/105/>.

²¹ As an example of the assessment of the concurrence of prohibition of possession of illicit drugs and use of illicit drugs, see consideration of merits in Communication No. 1474/2006 of the Human Rights Committee, *Prince v. South Africa* (Views adopted on 31 October 2007, ninety-first session). In particular, the Committee assessed the prohibition against its aim to protect public safety, order, health, morals or the fundamental rights and freedoms of others.

²² *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*. United Nations, New York, 1998.

²³ European Union – Georgia Action Plan. Endorsed by the EU-Georgia Cooperation Council on 14 November 2006, on-line: http://ec.europa.eu/delegations/georgia/documents/eu_georgia/booklet_a4_2_en.pdf.

²⁴ Case of the European Court of Human Rights: *Ülke v. Turkey*, Application no. 39437/98, 24 January 2006.

discriminated against in the enjoyment of the rights guaranteed under the Convention (Article 14) is violated when, without an objective and reasonable justification, a state fails to treat differently persons whose situations are significantly different.²⁵ The *1988 Convention* distinguishes offences of “illicit traffic” and offences of possession, purchase or cultivation for personal use, with the latter recognized as being less serious in nature.²⁶ **The Georgian law providing the same punishment for both drug trafficking and possession for personal consumption is discriminatory and should be reconsidered in order to differentiate drug-related offences linked to personal drug consumption and offences of drug trafficking.**

In accordance with the principle of proportionality, the UN Conventions call on State Parties to provide **alternatives to convictions and punishment**, in particular, measures for treatment, education, aftercare, rehabilitation or social reintegration of the person who has committed offences of a minor nature. The International Narcotic Control Board (INCB) has stated that because the UN Conventions differentiate sharply between offences related to trafficking and offences related to personal use of illicit drugs, states can provide for the measures for the latter that completely avoid criminal conviction and punishment. For the effective implementation of the Conventions, the state’s response must address both the offences and the abuse of drugs (the underlying cause).²⁷ It is also important to provide different alternatives to imprisonment for drug-related crimes of different seriousness.

Over-reliance on imprisonment for drug-related offences leads to significant growth in prison populations and consequent expenditure of more public resources. In many cases, drugs continue to be available in prisons. In a survey held by the Georgian Research Institute on Addiction (GRIA) in 2004, 70% of interviewed prisoners admitted lifetime use of different drugs. More than 41% of respondents said they have been using drugs while in prison. From those using drugs 37% undertook withdrawal in prison and 23% experienced overdose at least once while imprisoned.²⁸ Prisons have many of the conditions to become incubators for HIV, hepatitis C, other bloodborne diseases and TB. By unreasonable use of imprisonment for minor offences and thereby contributing to unnecessary and avoidable morbidity and mortality, the state violates the right to health as a result of *de jure* or *de facto* discrimination (i.e., the disproportionate use of punishment).²⁹ In order to comply with the international drug control standards and international human rights obligations, the Government of **Georgia should introduce measures for treatment, education, aftercare, rehabilitation or social reintegration of persons, committed drug offences of a minor nature as alternatives to prosecution and/or punishment. This is especially applicable to cases where the underlying cause of offence is drug use or addiction. For the same reasons Government of Georgia should introduce alternatives to imprisonment for drug related offences. No compulsory treatment should be considered as an option.**³⁰

Ensuring access to evidence-based medical services, including in criminal justice sector

Apart from the importance of drug treatment *per se*, treatment for drug dependence is one of the most cost effective methods of crime reduction³¹ and one of the most important parts of a comprehensive package for HIV prevention amongst people who inject drugs.³² It is within the remit of the right to health that the **state bears a positive obligation to make scientifically based drug treatment and rehabilitation available and accessible for all in need.**³³

The above figures on prisons show that drugs are available in prisons and therefore drug use is not rare in places of detention. Prison environment may exaggerate the risk for HIV and other blood born deceases since the injecting equipment is prohibited and drug users have to share needles and syringes.³⁴ It is within the state’s margin of

²⁵ Case of the European Court of Human Rights: *Thlimmenos v. Greece*, Application no. 34369/97, 6 April 2000.

²⁶ Commentary on the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (supra).

²⁷ International Narcotic Control Board. *Annual report 2007*. E/INCB/2007/1.

²⁸ Drug Control in Georgia (supra). We should acknowledge that, for the last several years, the Government of Georgia has implemented a penitentiary reform that led to improving of the situation in prisons, in particular the reduced availability of drugs in prisons.

²⁹ International Committee on Economic, Social and Cultural Rights, General Comments # 14: The right to the highest attainable standard of health: Art 12, E/C.12/2000/4. August 11, 2000..

³⁰ Concerning the distinction between compulsory and coercive treatment, see “From coercion to cohesion: treating drug dependence through health care, not punishment. Discussion paper,” UNODC. New York, 2010, on-line:

http://www.unodc.org/docs/treatment/Coercion_Ebook.pdf

³¹ See European Monitoring Center for Drugs and Drug Addiction, *Prevention of drug-related crime*, on-line:

<http://www.emcdda.europa.eu/html.cfm/index1574EN.html>. As an example of a country law enforcement strategies for crime reduction

through drug treatment please, see information on the site of Home Office of the United Kingdom, on-line:

<http://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/drugs/drugs-misuse/treatment/>.

³² UNODC/UNAIDS/WHO, *Technical Guide to set up targets for universal access to HIV prevention, treatment and care for injecting drug users*. 2009.

³³ General Comments # 14 (2000) (supra).

³⁴ For a thorough review on this topic, see *Needle and Syringe Programs and Bleach in Prisons: Reviewing the Evidence*, Canadian HIV/AIDS Legal Network, 2008.

appreciation whether or not to introduce needle and syringe in prisons if alternative effective HIV prevention measures targeting drug users are in place.³⁵ It is not the case of Georgia though that there are any targeted HIV prevention programs in prisons. Therefore **there is a strong need for urgent considerations on introduction of needle and syringe programs in prisons as suggested by many researches and endorsed by the UN agencies**³⁶.

Eliminating unjustified discrimination in employment

Georgia is a party to the Convention concerning Discrimination in Respect of Employment and Occupation, 1960 (Convention 111). The survey of the International Labor Organization suggests that while the original Convention does not specifically mention health as an inappropriate reason for discrimination, there is a tendency by a growing number of states to legislate against discrimination on health grounds. Unless there is a very close link between a worker's current state of health and the normal occupational requirements of a particular job, using state of health as a reason to deny of continue employment contravenes the spirit of the Convention.³⁷ In order for drug use as such to be a valid ground of discrimination and interference with the right to respect for private life, it must constitute a barrier to performing particular jobs, usually limited to safety-sensitive positions.³⁸ Records of past positive drug tests only show that drugs have been consumed, but not what effect they may have on a worker's current performance. In view of this, **laws should be very carefully worded to ensure that it is only a limited number of safety-sensitive positions in which it may be justified to deny employment on the basis of established drug use.**

Involvement of people who use drugs

UN General Assembly Declaration of Commitment on HIV/AIDS, 2001 and Political Declaration on HIV/AIDS, 2006 call for greater involvement and partnership of state with civil society and the full participation of people living or affected with HIV/AIDS. This involvement is crucial for making balanced decisions on sensitive issues such as a drug policy.

Educational measures regarding human rights of people who use drugs

As evident from the above discussion, respecting, protecting and promoting human rights in the context of drug policy require states not only to adopt appropriate legislative and judicial measures, but also administrative and educative measures in order to fulfill their legal obligations³⁹. With this in mind, we urge the Government of Georgia to introduce the topic of drug policy and its relationship to human rights into the mandatory curriculum of criminal justice officials, in particular law enforcement personnel. **The role of law enforcement and criminal justice actors in HIV prevention should be recognized, such as police undertaking to refer people with problematic drug use to health services in order to bridge a gap between law enforcement and public health.**⁴⁰

Section IV. Conclusions

In light of the considerations above, there is a strong case for Georgia to reform its current drug policy with a greater public health emphasis based on scientific evidence of effective measures and due respect to human rights. Georgia's commitment to the internationally recognized human rights standards and principles calls for such reforms to be implemented urgently.

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³⁵ See European Court of Human Rights, *Shelley v. the United Kingdom*, Application no. 23800/06, 4 January 2008.

³⁶ UNODC/UNAIDS/WHO, *HIV and AIDS in places of detention. A toolkit for policy makers, programme managers, prison officers and health care providers in prison settings*. 2008.

³⁷ The ILO General Survey on Convention 111, performed in 1996, paragraphs 239, 255 and 264, on-line: http://training.itcilo.it/ils/CD_Use_Int_Law_web/Additional/Library/English/ILO_S_B/96frset.htm.

³⁸ *Madsen v. Denmark* (supra).

³⁹ International Committee on Civil and Political Rights, General Comment # 3: The Nature of the Legal Obligation Imposed on the State Parties to the Covenant: CCPR/C/21/Rev.1/Add.13; International Committee on Economic, Social and Cultural Rights, General Comment # 3: The Nature of States Parties Obligations (*Fifth session, 1990*).

⁴⁰ For example, see the Home Office of the United Kingdom, *Research Report 2 on Drug Interventions Programme*, on-line: <http://rds.homeoffice.gov.uk/rds/pdfs07/horr02c.pdf>.