

**Submission from:**

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Canadian HIV/AIDS Legal Network<sup>1</sup>**

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**Executive Summary**

Taking into account that the Universal Periodic Review shall complement the work of treaty bodies<sup>2</sup>, this report is focused on the implementation of recommendations given to the Government of the Russian Federation by the Committee on Economic, Social and Cultural Rights (CESCR) regarding access to HIV prevention, drug treatment and overdose prevention among people who inject drugs in the Russian Federation.

Despite its declared commitment to prevention, care and treatment of HIV/AIDS, including among people who inject drugs, the Government of the Russian Federation opposes implementation of evidence based and internationally recognized interventions aimed at HIV/AIDS prevention and care for this highly affected and vulnerable population. In this submission, we propose a number of recommendations that the UPR Working Group should make to the Government of the Russian Federation.

**1. HIV/AIDS, hepatitis C and tuberculosis among people who inject drugs in Russia**

The Russian Federation is facing a series of inter-linked and mutually reinforcing public health crises, particularly among people with addictions or other problematic substance use and people in prisons – which two populations overlap considerably, given the high rates of incarceration of people under Russian drug laws.

- The number of people using illegal opiates in Russia is estimated at 1.7 million,<sup>3</sup> and the majority use opiates by way of injection.
- About 37% of people who injects drugs in Russia are living with HIV,<sup>4</sup> and in some regions HIV prevalence in this population has reached 75%.<sup>5</sup>
- Over the 20 year period 1987-2008, about 80% of cumulative HIV cases in Russia were related to injecting drug use.<sup>6</sup> In 2011 about 56% of new HIV infections were attributed to this source.<sup>7</sup>

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<sup>1</sup> Information about these organizations is annexed to this report.

<sup>2</sup> “Human Rights Council,” UN General Assembly Resolution 60/251 (3 April 2006), UN Doc. A/RES/60/251, para. 5(e).

<sup>3</sup> UN Office on Drugs and Crime, *World Drug Report 2011* (Vienna: 2011).

<sup>4</sup> UNODC, *World Drug Report 2009* (Vienna: 2009), p. 57.

<sup>5</sup> Federal Service on Customers' Rights and Human Well-being Surveillance of the Russian Federation, “Country Progress Report on the progress of implementing the Declaration of Commitment on HIV/AIDS adopted at the 26<sup>th</sup> United Nations General Assembly Special Session on HIV/AIDS – Reporting period: January 2008 – December 2009” (2010).

(«Национальный доклад Российской Федерации о ходе выполнения Декларации о приверженности делу борьбы с ВИЧ/СПИДом, принятой в ходе 26-ой специальной сессии Генеральной Ассамблеи ООН, июнь 2001 г. Отчетный период: январь 2008 года - декабрь 2009 года».)

<sup>6</sup> Federal Scientific and Methodological Centre for Prevention and Control of AIDS in the Russian Federation, Newsletter № 33 (Moscow: 2009), p. 13. (Федеральный научно-методический центр по профилактике и борьбе со СПИДом в

- In some cities, up to 90% of people injecting drugs are infected with hepatitis C virus (HCV).<sup>8</sup>
- About 75% of men and 54% of women living with HIV and co-infected with tuberculosis (TB) were infected with HIV through injecting drug use.<sup>9</sup>
- Up to 65% of drug users in Russia have been to prison at least once in their life.<sup>10</sup>
- During the past four years, a rapid and consistent increase in new HIV cases was observed in prisons (from 1194.5 per 100,000 tested in 2007 to 1638.8 in 2008 and 1712.6 in 2009).<sup>11</sup>
- At the end of 2009, 262,718 people with active TB were registered at Russian TB facilities, including 117,227 new cases.<sup>12</sup> Of all those people with active TB, 16% were in prisons.<sup>13</sup>
- According to the World Health Organization (WHO), the Russian Federation has become one of the three global leaders in incidence of multiple-drug resistant TB (MDR-TB),<sup>14</sup> with 43,000 cases identified in 2007.<sup>15</sup> In 2009, MDR-TB prevalence grew by 10.2% in one year.
- At the end of 2008, the total number of cases of TB-HIV co-infection reached 16,813, about 18% higher than in 2007. Progressive TB became the direct cause of death in 66.5% cases among deceased patients with HIV.<sup>16</sup>

## 2. Jurisprudence of the Committee on Economic, Social and Cultural Rights

2.1 In 2011, the Committee on Economic, Social and Cultural Rights issued the following Concluding Observations regarding HIV prevention among people who inject drugs in the Russian Federation include the following:<sup>17</sup>

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Российской Федерации (2009). Информационный бюллетень № 33, Москва С. 13.

[http://www.hivrussia.ru/files/bul\\_33.pdf](http://www.hivrussia.ru/files/bul_33.pdf).)

<sup>7</sup> Information note “HIV in Russia in 2012” of the Specialized HIV/AIDS Scientific Research Laboratory of the Federal Central Scientific Research Institute of Epidemiology, online via <http://www.hivrussia.ru/stat/2012.shtml> (last accessed on October 5, 2012).

<sup>8</sup> Stellit, “Research among people who use street drugs in St. Petersburg” (2010). (Стеллит, (2010). Исследование, среди уличных потребителей наркотиков в г. Санкт-Петербурге.)

<sup>9</sup> O. Frolova, “The epidemiological situation of tuberculosis concomitant with HIV infection,” 2009 Presentation at the Moscow Medical Academy. (Фролова О. (2009). “Эпидемиологическая ситуация по туберкулезу, сочетанному с ВИЧ-инфекцией”. Презентация. Московская медицинская академия им. И.М. Сеченова <http://www.tbpolicy.ru/news/?id=227>.)

<sup>10</sup> A. Sarang, et al., “Drug injecting and syringe use in the HIV risk environment of Russian penitentiary institutions,” *Addiction* 2006, 101:1787–1796.

<sup>11</sup> Federal Scientific and Methodological Centre for Prevention and Control of AIDS in the Russian Federation, Newsletter № 34. (Moscow: 2009). (Федеральный научно-методический центр по профилактике и борьбе со СПИДом в Российской Федерации (2010). Информационный бюллетень № 34, Москва. <http://www.hivrussia.ru/stat/bulletin.shtml#34>.)

<sup>12</sup> Federal Research Institute for Health Organization and Informatics of Ministry of Health and Social Development of the Russian Federation (FRIHOI of MoH&SD of the RF), “The epidemiological situation of tuberculosis in the Russian Federation of December 31, 2009,” (2010). (ФГУ ЦНИИ ОИЗ МЗСР РФ (2010) Эпидемическая ситуация по туберкулезу в Российской Федерации на 31 декабря 2009 года. [http://duma.hivpolicy.ru/assets/files/15\\_04\\_2010/TB.pdf](http://duma.hivpolicy.ru/assets/files/15_04_2010/TB.pdf).)

<sup>13</sup> FRIHOI of MoH&SD of the RF., “The epidemiological situation of tuberculosis in the Russian Federation of December 31, 2009,” (2010). (ФГУ ЦНИИ ОИЗ МЗСР РФ (2010) Эпидемическая ситуация по туберкулезу в Российской Федерации на 31 декабря 2009 года. [http://duma.hivpolicy.ru/assets/files/15\\_04\\_2010/TB.pdf](http://duma.hivpolicy.ru/assets/files/15_04_2010/TB.pdf).)

<sup>14</sup> MDR-TB is a form of TB which cannot be treated with a standard six-month therapy using first line drugs. MDR-TB develops as a result of an infection with resistant bacteria or as a result of unsuccessful treatment.

<sup>15</sup> WHO, “Multidrug and extensively drug-resistant TB (M/XDR-TB): 2010 global report on surveillance and response,” (2010), [http://whqlibdoc.who.int/publications/2009/9789241598866\\_eng.pdf](http://whqlibdoc.who.int/publications/2009/9789241598866_eng.pdf).

<sup>16</sup> Russian Health Care Foundation (RHCF), “Experience of cooperation among regional tuberculosis services and AIDS centers in surveying people with TB and HIV co-infection,” 2010 Round Table. (ФРЗ (2010) Круглый стол «Опыт взаимодействия региональных противотуберкулезных служб и центров СПИД по привлечению к обследованию больных туберкулезом в сочетании с ВИЧ-инфекцией»: <http://hivpolicy.ru/news/?id=3917&word=7387&logic=OR>.)

<sup>17</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations: Russian Federation* (20 May 2011), UN Doc. E/C.12/RUS/CO/5.

[Paragraph] 29. The Committee remains concerned about the spread of drug addiction, including by way of injection, which is the main factor for the growing epidemic of HIV/AIDS, hepatitis C and tuberculosis in the Russian Federation. The Committee also remains concerned about the continued ban on the medical use of methadone and buprenorphine for treatment of drug dependence and the fact that the Government does not support opioid substitution therapy (OST)<sup>18</sup> and needle and syringe programs which are strongly recommended by WHO/UNAIDS, UNODC, and other international organizations, as effective measures for prevention of HIV/AIDS among injecting drug users (art. 12).

**The Committee urges the State party to apply a human rights-based approach to drug users so that they do not forfeit their basic right to health. The Committee strongly recommends the State party to provide clear legal grounds and other support for the internationally recognized measures for HIV prevention among injecting drug users, in particular the opioid substitution therapy (OST) with use of methadone and buprenorphine, as well as needle and syringe programs and overdose prevention programs.**

[Paragraph] 38. The Committee requests the State party to disseminate the present concluding observations, widely among all levels of society, in particular among State officials, the judiciary and civil society organizations, to translate into the main minority languages spoken in the Russian Federation, and publicize them as far as possible, and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging national human rights institution, non-governmental institutions and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

2.2 In addition, the Committee on Economic, Social and Cultural Rights has previously identified the range of measures to be taken by States Parties to the *International Covenant on Economic, Social and Cultural Rights* so as to realize progressively the full achievement of the rights protected by the treaty:

[Paragraph] 5. Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable.<sup>19</sup>

### **3. The law of the Russian Federation: applicability of international human rights norms**

3.1 The *Constitution of the Russian Federation, 1993* states as follows:

Article 15(4) The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules that those envisaged by law, the rules of the international agreement shall be applied<sup>20</sup>.

3.2 The Supreme Court of the Russian Federation has also affirmed the applicability of international human rights norms with the following directive to lower courts:

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<sup>18</sup> Please see an information note about OST in Annex II of this submission.

<sup>19</sup> Committee on *Economic, Social and Cultural Rights, General comment No. 3: The nature of States parties' obligations* (Art. 2, par.1) (14 December 1990), para. 5.

<sup>20</sup> The text in English is taken from the website <http://www.constitution.ru/en/10003000-01.htm>

“In case of difficulties in interpretation of universally recognized principles and norms of international laws, international treaties of the Russian Federation, it shall be recommended to the courts to use acts and decisions of international organizations, including the UN bodies and specialized agencies...”<sup>21</sup>

#### **4. Implementation of recommendations of the CESC: continued inaction by the Russian Federation**

4.1 The Government of the Russian Federation has taken no steps to implement the CESC’s recommendations. Opioid substitution therapy (OST) with methadone and buprenorphine continues to be legally banned. Needle and syringe programs (NSPs) and overdose prevention programs remain in a legal grey zone and without any political or financial support by the Government.

4.2 On June 21, 2011, the Andrey Rylkov Foundation (ARF) submitted a letter to the President of the Russian Federation requesting him, as a guarantor of the rights stated in the Russian Constitution, to implement the recommendations of the CESC to bring Russian laws in line with its international treaty obligations, as required by Article 15 of the Constitution.

4.3 In response, the Administration of the President forwarded the ARF letter to the Ministry of Health, which replied on December 5, 2011 with a letter in which the Ministry declared that OST is not effective for drug dependence treatment and therefore shall remain legally prohibited. Such a statement runs contrary to the extensive body of scientific evidence establishing the effectiveness and therapeutic benefits of OST for treatment of drug dependence and its importance as an HIV prevention measure particularly among people who inject opioids, and to the recommendations of specialized UN health agencies based on that evidence.<sup>22</sup> Neither the Administration of the President nor the Ministry of Health made any reference to the implementation of the CESC’s recommendations.

4.4 On January 11, 2012, the ARF again submitted a letter to the President of the Russian Federation, again requesting a reply on the matter raised in its earlier correspondence of June 21, 2011 and requesting that the government provide ARF with information regarding steps taken to implement the recommendations of the CESC and thereby fulfil Russia’s international obligations under Article 12 of the *International Covenant on Economic, Social and Cultural Rights*. The Administration of the President once again forwarded the statement to the Ministry of Health, which replied on February 2, 2012 with a short letter simply referring to its previous letter of December 5, 2011.

4.5 Rather than address the substance of ARF’s concerns regarding implementation of the CESC recommendations, the police and General Prosecutor’s Office initiated an investigation between December 2011 and February 2012 into ARF on the basis of allegations that ARF is engaged in “drug propaganda” for advocating access to OST in Russia. On February 3, 2012, the ARF website was shut down by its internet service provider following an order by the Federal Drug Control Service alleging “propaganda of OST”.<sup>23</sup> Subsequently, ARF received evidence that the investigation was instigated by the Chief Drug Treatment Doctor of the Ministry of Health.<sup>24</sup> The ARF website consisted of information

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<sup>21</sup> Supreme Court of the Russian Federation, Plenary Resolution No. 5 of 10 October 2003: “On implementation by the courts of general jurisprudence of universally accepted principles and norms of international law and international treaties of the Russian Federation,” para. 16.

<sup>22</sup> E.g., WHO/UNODC/UNAIDS position paper: Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention (2004).

<sup>23</sup> Human Rights Watch. Russia: Government Shuts HIV-Prevention Group’s Website. February 8, 2012. Available via <http://www.hrw.org/news/2012/02/08/russia-government-shuts-hiv-prevention-group-s-website> Last time accessed on October 5, 2012

<sup>24</sup> Communication to the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the UN Independent Expert in the Field of Cultural Rights regarding violation by the Government of the Russian Federation of the

about ARF's activities to promote the health and human rights of people who use drugs, including public interest litigation before national and international bodies, as well as information about ARF's advocacy with UN bodies such as the CESC. The CESC's recommendations were also posted on the website. The ARF also posted scientific literature, research reports and best practices about the implementation of OST in different countries.

4.6 On April 27, 2011, Irina Adbusheva (Teplinskaya), a woman with drug dependence and almost 30 years of heroin use, applied to the court in Russia requesting an exemption from the federal legal ban on OST, stating that her multiple desperate attempts at drug treatment with methods permitted in Russia brought no relief to her. As a result of those ineffective methods, she continued her illicit use of heroin and consequently spent 16 years in Russian prisons, and also contracted HIV, hepatitis C and tuberculosis. She claimed that the blanket legal ban on access to OST in Russia puts her in a position of pain, suffering and humiliation, affects her private life and thereby violates her right to be free from inhuman or degrading treatment, her right to respect for her private life, her right to health and her right to be free from discrimination. In particular, Ms. Adbusheva (Teplinskaya) referred to the CESC recommendations given to the Russian Federation with regards to OST. Yet, contrary to both the Russian Constitution and the directive of the Supreme Court of the Russian Federation, both the trial court and the court of appeal in their judgments refused Ms. Adbusheva (Teplinskaya) an exemption and proclaimed CESC recommendations as "irrelevant to the merits of the case."

4.7 The above facts leave no doubt that, despite a desperate situation with HIV and other public health crises among people who inject drugs, not only has the Government of the Russian Federation failed to take any steps to implement the CESC recommendations, it actually has undertaken steps in opposite direction and actively prevented the dissemination of scientific and legal information about interventions recommended by the CESC. The Government's inaction in implementing of the CESC recommendations, as well as its steps to stifle public discussion and sharing of information regarding OST and human rights, are at odds with its human rights obligations under the *Universal Declaration of Human Rights*, specifically Articles 5 (freedom from torture and other cruel, inhuman or degrading treatment or punishment), 12 (arbitrary interference with privacy), 19 (freedom of opinion and expression, and to seek, receive and impart information and ideas) and 25 (adequate standard of living, including medical care). Such conduct by the Russian government also contravenes its binding treaty obligations under the *International Covenant on Civil and Political Rights*, specifically Articles 7 (freedom from torture and other cruel, inhuman or degrading treatment or punishment), 17 (arbitrary interference with privacy) and 19 (freedom of expression and to seek, receive and impart information) and the *International Covenant on Economic, Social and Cultural Rights*, specifically Articles 12 (right to the highest attainable standard of health, and corresponding obligation on States Parties to take necessary measures to prevent, treat and control epidemic diseases and assure access to medical service and attention) and 15 (right to enjoy the benefits of scientific progress and its applications).

## 5. Recommendations to the Russian Federation

In order to fulfill the recommendations given by the CESC in its Concluding Observations on the Russian Federation of 20 May 2011 (paragraphs 29 and 38, as reproduced above), the following steps are needed:

- The Russian Federation should repeal its legal ban on the medical use of narcotic drugs in the treatment of drug dependence and introduce opioid substitution treatment (OST) programs. While the process of lifting the ban and preparing all relevant protocols for the use of OST (in

accordance with internationally accepted standards of medical practice) is underway, the Ministry of Health should immediately start piloting these programmes with the range of drugs available (methadone, buprenorphine, slow-release oral morphine, etc.) and in consultation with WHO, UNODC and UNAIDS. Russia should ensure that OST is provided as soon as possible in tuberculosis clinics and AIDS centers, and to pregnant women with drug-dependence.

- The Government of the Russian Federation should, in consultation with civil society organizations and international experts, develop and adopt legislation or regulations removing the uncertainty regarding the legal status of needle and syringe programmes, as well as overdose prevention programs, so as to allow these vital health services to operate most effectively. In addition, the Government should provide funds to scale up such programs in order to ensure at least 60% coverage of such services among the population of people who inject drugs [by when?].<sup>25</sup>
- The Government of the Russian Federation should ensure that “drug propaganda” laws are not used to stifle discussion of substitution treatment and drug policy reforms or to suppress harm reduction interventions such as needle and syringe programs and overdose prevention programs.
- The Russian Federation should ensure that state authorities, including law enforcement and the judiciary, respect recommendations of the UN human rights treaty bodies and interpret national laws in accord with Russia’s international treaty obligations.

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<sup>25</sup> WHO, UNODC and UNAIDS, *Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users* (Geneva: WHO, 2009).

## ANNEX I



The Andrey Rylkov Foundation for Health and Social Justice (ARF) is a grass-roots organization in Russia whose mission is to promote and develop humane drug policy based on tolerance, protection of health, dignity and human rights. The Foundation engages in four key strategies: advocacy, human rights watchdog, service provision and capacity-building of affected communities and individuals. The ARF leads efforts in Russia to advocate for the introduction of opioid substitution treatment (OST) and continues to provide harm reduction services to people who use drugs in Moscow.

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The Canadian HIV/AIDS Legal Network ([www.aidslaw.ca](http://www.aidslaw.ca)) promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research and analysis, advocacy and litigation, public education and community mobilization. The organization is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

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## ANNEX II: OPIOID SUBSTITUTION THERAPY (OST)

Opioid substitution therapy, especially with use of methadone and buprenorphine, is a highly researched intervention and the focus of thousands of scientific studies, many of which were reviewed under the auspices of WHO by a large group of technical experts – international scientists with expertise in opioid dependence and the development of clinical guidelines. The result of the review was published in the WHO's 2009 Guidelines in which OST was defined as the administration of thoroughly evaluated opioid agonists by accredited professionals, in the framework of recognized medical practice, to people with opioid dependence, for achieving defined treatment aims. When combined with psychosocial assistance, it was considered by the WHO as the most effective method of treatment of opioid dependence.<sup>26</sup>

Cochrane reviews confirm that OST with methadone can keep people who are dependent on heroin in treatment programs and reduce their use of heroin,<sup>27</sup> and that oral substitution treatment for injecting opioid users reduces drug-related behaviours that have a high risk of HIV transmission.<sup>28</sup>

OST is endorsed by the UN General Assembly and the Commission on Narcotic Drugs,<sup>29</sup> the Economic and Social Council (ECOSOC) of the United Nations,<sup>30</sup> and the International Narcotics Control Board (INCB).<sup>31</sup> The World Health Organization (WHO), the UN Office on Drugs and Crime (UNODC) and the United Nations Joint Program on HIV/AIDS (UNAIDS) strongly recommend OST as a core intervention for HIV/AIDS prevention among people who inject drugs.<sup>32</sup> Methadone and buprenorphine are listed by WHO as essential medicines to be used in substance dependence programmes.<sup>33</sup> Availability of essential medicines has been emphasized by the Committee on Economic, Social and Cultural Rights (CESCR) as one of the underlying determinants of health.<sup>34</sup> OST has been successfully implemented in over 60 countries, including the USA, Australia, Canada, China, Iran, India and all 45 countries of the Council of Europe except Russia and Monaco. This is a good indication of a strong international scientific and policy consensus regarding the application of OST.

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<sup>26</sup> World Health Organization, *Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence* (2009), pp. X, XI.

<sup>27</sup> R.P. Mattick, C. Breen, J. Kimber and M. Davoli, "Methadone maintenance therapy versus no opioid replacement therapy for opioid dependence," *Cochrane Database of Systematic Reviews* 2009, Issue 3, Art. No.: CD002209, doi: 10.1002/14651858.CD002209.pub2.

<sup>28</sup> L. Gowing, M.F. Farrell, R. Bornemann, L.E. Sullivan and R. Ali, "Oral substitution treatment of injecting opioid users for prevention of HIV infection," *Cochrane Database of Systematic Reviews* 2011, Issue 8, Art. No.: CD004145, doi: 10.1002/14651858.CD004145.pub4.

<sup>29</sup> High Level Segment of the UN Commission on Narcotic Drugs, "Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem," para 20, March 2009, adopted by the UN General Assembly's Resolution 64/182 of December 18, 2009.

<sup>30</sup> ECOSOC Resolution 2004/40.

<sup>31</sup> International Narcotics Control Board, *Report of the International Narcotics Control Board for 2008* (New York: INCB, 2009), E/INCB/2008/1, paras 24 and 25, 6, [http://www.incb.org/pdf/annual-report/2008/en/AR\\_08\\_English.pdf](http://www.incb.org/pdf/annual-report/2008/en/AR_08_English.pdf).

<sup>32</sup> WHO, UNODC and UNAIDS, *Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users* (Geneva: WHO, 2009).

<sup>33</sup> WHO *Model List of Essential Medicines, 17th list (updated March 2011)* (Geneva: WHO, 2011), online: [http://whqlibdoc.who.int/hq/2011/a95053\\_eng.pdf](http://whqlibdoc.who.int/hq/2011/a95053_eng.pdf).

<sup>34</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000), The right to the highest attainable standard of health* UN Doc. E/C.12/2000/4 (August 11, 2000), para 12(a), online: <http://www.unhcr.ch/tbs/doc.nsf/%28symbol%29/E.C.12.2000.4.En>.