International Drug Policy Consortium
A global network promoting objective and open debate on drug policy

IDPC Advocacy Note

Compulsory rehabilitation in Latin America: An unethical, inhumane and ineffective practice

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Introduction

Forcing people who use drugs into compulsory drug treatment programmes has been a common policy response globally. In 1935, the US Bureau of Prisons and Public Health Service set up its first compulsory drug treatment centre in Lexington, Kentucky. While many countries around the world have now replaced compulsory drug treatment centres with community-based and voluntary systems, forcing people into compulsory rehabilitation centres remains common in South and South East Asia. In other regions, such as Latin America, Eastern Europe and Central Asia, compulsory rehabilitation has also been reported, although to a lesser extent.

Today despite a recent call by various United Nations (UN) bodies to immediately stop all forms of compulsory drug detention centres,[1] several countries in Latin America, including Brazil,[2] Ecuador, Guatemala, Peru, Uruguay and Mexico, use some form of compulsory rehabilitation or are considering adopting such an approach.

Increasingly, Latin American countries are pushing for drug consumption to be treated as a public health, not a criminal, issue. Yet, access to evidence-based treatment programmes remains woefully inadequate across the hemisphere and forcing people to undergo rehabilitation – often in therapeutic communities that use religion rather than science to "treat" drug dependency – is disturbingly common. In Guatemala, for example, police or "hunting parties" made up of detainees in evangelical treatment centres routinely pick up people who use drugs (whether they are dependent or not) and turn them over to compulsory rehabilitation centres.[3] In Mexico, where carrying very small amounts of drugs for personal use is decriminalised, if a person is caught more than twice with the permitted amount, they can be sent into compulsory rehabilitation programmes.[4] In Peru and Ecuador, those deemed drug dependent are involuntarily interned, or placed by their families in locked wards or religious "rehabilitation" centres.[5]

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[1] United Nations (2012), *Joint statement – Compulsory drug detention and rehabilitation centres*, http://dl.dropboxusercontent.com/u/64663568/alerts/Joint-Statement_Compulsory-drug-detention-and-rehabilitation-centres.pdf; United Nations Office on Drugs and Crime (2012), *From coercion to cohesion: Treating drug dependence through health care, not punishment – Discussion paper*, http://www.unodc.org/docs/treatment/Coercion_Ebook.pdf; Human Rights Council (2013), *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez*, A/HRC/22/53, http://dl.dropboxusercontent.com/u/64663568/library/UN_report_of_the_special_rapporteur_on_torture.pdf; Joint United Nations Programme on HIV and AIDS (2010), *Letter from Michel Sidibe to Human Rights Watch on compulsory detention centres in Cambodia*, http://dl.dropboxusercontent.com/u/64663568/misc/Sidibe%20drug%20detention%20Cambodia.pdf; United Nations Office on Drugs and Crime, Economic and Social Commission for Asia and the Pacific, & Joint United Nations Programme on HIV and AIDS (2011), *Report of the Regional Consultation on Compulsory Centres for Drug Users in Asia and the Pacific 14-16 December 2010* (Bangkok), http://www.unescap.org/sdd/meetings/CCDU-Dec2010/index.asp

[2] Agence France-Presse (26 December 2012), *Ex-president slams Brazil's tough anti-drug bill*, http://www.druglawreform.info/en/newsroom/latest-news/item/4233-ex-president-slams-brazils-tough-anti-drug-bill

[3] Study of Religion, University of Toronto (9 April 2013), *Guatemala's compulsory rehabilitation centers* (Submission to the United Nations Committee Against Torture), http://www2.ohchr.org/English/bodies/cat/docs/ngos/UniversityToronto1_Guatemala_CAT50.pdf; O'Neill, K.L. (forthcoming), *For Christ's sake: Crack, Christianity, and captivity* (in preparation)

[4] Open Society Foundations (2011), *Treated with cruelty: Abuses in the name of drug rehabilitation*, http://www.opensocietyfoundations.org/sites/default/files/treatedwithcruelty.pdf

[5] Wolfe, D. (14 February 2012), *Death, drug treatment, and Christ's love* (Open Society Foundations Voices Blog), http://www.opensocietyfoundations.org/voices/death-drug-treatment-and-christ-s-love

In the face of these developments, this advocacy note aims to discuss the ethics and effectiveness of this approach and addresses the question: can forcing a person who uses drugs to undergo treatment be justified?

Definitions, principles and clarifications

First of all, it is necessary to define drug treatment, as well as to specify the criteria in which effectiveness and ethics will be judged. For the purpose of this note, drug dependence treatment is defined as any evidence-based intervention conducted by medical staff, a therapist or other appropriately trained professional with the goal of improving the health and social functioning of the person in contact with the practitioner.

It is important to contrast this definition of drug treatment with "compulsory rehabilitation", which refers to a situation where a person is sent to a facility without adequate due process, medical evaluation or informed consent, in locked facilities, where the "treatment" or "rehabilitation" is not evidence-based, but emphasizes instead discipline, prayer or unpaid labour. While compulsory rehabilitation can sometimes occur in a community setting, it is generally provided in closed settings, commonly referred to as Compulsory Drug Detention Centres.

In order to compare the effectiveness of drug treatment with what is achieved by compulsory rehabilitation centres, we will compare the two methods on their ability to reduce or eliminate drug use, to reduce the health risks associated with drug use, and to reduce the harms that drug use causes to society (principally in the form of reducing drug-related crimes).

The paper uses international codes of medical ethics and human rights norms to provide a set of principles that can be used to distinguish between ethical and unethical treatment. These principles uphold a person's right to provide consent; that the person should not be subject to harm, inhuman and degrading treatment or punishment; and that his/her right to freedom from arbitrary detention be upheld. Applying these principles to the practice of compulsory rehabilitation provides a mechanism for assessing whether forcing a person who uses drugs to undergo treatment can be justified.

Arguments advanced in support for compulsory rehabilitation

In order to frame the debate, it is helpful to understand the arguments that have been put forward to support compulsory rehabilitation programmes. The utility of these arguments can then be tested against whether or not the same goals can be achieved in more effective, ethical and humane ways.

Support for compulsory rehabilitation falls into three main categories. The first argument focuses on **effectiveness** and suggests that compulsory rehabilitation is more effective than voluntary treatment. The second argument is based on the idea that compulsory rehabilitation performs a **public safety function** and is needed to compel people who use drugs into treatment. The third argument hinges on the idea that drug use impairs a person's **autonomy** and capacity to make informed decisions, giving the State responsibility to force people into rehabilitation. Before addressing these three arguments, we will discuss the ethics around compulsory rehabilitation.

Compulsory rehabilitation is unethical

Firstly, any form of compulsory treatment breaches a person's right to informed consent and therefore must be considered unethical,[6] except under specific conditions described later in this paper. Further, it is also important to note that most people who use drugs do so irregularly without showing any signs of drug dependence, and without causing harm to themselves or others. According to figures from the United Nations Office on Drugs and Crime (UNODC), it is estimated that only one in ten people who use drugs are dependent.[7] Therefore, because most people who use drugs do not have a medical condition associated with their drug use, forcing them into treatment is a waste of resources, and is a form of punishment as it breaches people's right to freedom. Although compulsory rehabilitation can occur in community settings, most instances occur in closed settings, where people are detained for periods of up to several years, without respect for due process, clearly breaching the right to be free from arbitrary detention.

While the principles outlined in the international codes of medical ethics and human right norms are considered universal, they are often subject to limitations as well as cultural interpretations. Central to the ethical debate about compulsory rehabilitation is balancing the potentially competing rights of the individual with the rights of the community. In a recent defence of compulsory rehabilitation in China, Wu argues that Eastern societies place a greater importance on the "rights of the collective" over Western societies that value the "rights of individuals".[8] The Siracusa Principles,[9] adopted by the UN Economic and Social Council (ECOSOC) in 1985, offer a useful framework for assessing the role of the State in limiting a person's freedom and can clearly be used to contest Wu's arguments. According to the Siracusa Principles, a person's rights can be limited by the State in circumstances where the State itself is put at risk. In such a case, the principles stipulate that the restrictions should be:

- Strictly necessary to achieve the stated (national) objective;
- Based on scientific evidence and not drafted or imposed arbitrarily; and
- Less intrusive and restrictive than the other means available to reach the same objective.

The Siracusa Principles offer a useful framework for assessing whether or not the benefits associated such programmes are justifiable and will be used to assess the three arguments forwarded to support this practice.

Compulsory rehabilitation is ineffective

First is the claim that compulsory rehabilitation is more effective than voluntary treatment to "manage" people who use drugs. This is not the case. If one looks at actual effectiveness, the therapeutic outcomes associated with compulsory rehabilitation centres are poor, with relapse rates of up to 90 per cent reported in some circumstances.[10] As discussed above, compulsory rehabilitation normally occurs in closed settings and relies on discipline, isolation and – in some instances – compulsory labour as a form of "therapy". These

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[6] See: Grover, A. (6 August 2010), *Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/65/255 (United Nations General Assembly), http://dl.dropboxusercontent.com/u/64663568/library/Right%20to%20highest%20standard%20of%20health.pdf

[7] United Nations Office on Drugs and Crime (2012), World Drug Report 2012, http://www.unodc.org/unodc/en/data-and-analysis/WDR-2012.html

[8] Wu, Z. (2013), 'Arguments in favour of compulsory treatment of opioid dependence', *Bulletin of the World Health Organization,* **91**(2): 142-145. doi: 10.2471/BLT.12.108860

[9] For a more detailed discussion of the Siracusa Principles and how they relate to issues relating to drug control, please see: Flacks, S. (2011), 'Drug Control, human rights, and the right to the highest attainable standard of health: A Reply to Saul Takahashi', *Human Rights Quarterly,* **33**(3): 856-877; Stevens, A. (2011), *The ethics and effectiveness of coerced treatment of drug users*. Paper presented at the EU-China Human Rights Dialogue, Beijing

[10] See, for example: World Health Organization Western Pacific Regional Office (2009), *Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia and Vietnam: An application of selected human rights principles* (Manila: WPRO), http://dl.dropboxusercontent.com/u/64663568/library/WHO_Asia_Compulsory_Treatment.pdf; Open Society Foundations (2011), *Treatment or torture – Applying international human rights standards to drug detention centres,* http://dl.dropboxusercontent.com/u/64663568/library/Treatment-or-torture.pdf; Human Rights Watch (2012), *Torture in the name of treatment: Human rights abuses in Vietnam, China, Cambodia and Lao PDR*, http://idpc.net/publications/2012/07/torture-in-the-name-of-treatment-human-rights-abuses-in-vietnam-china-cambodia-and-lao-pdr

centres function more as extrajudicial prisons and provide little in the way of evidence-based treatment.[11] The compulsory rehabilitation of people who use drugs has also had devastating impacts on HIV, hepatitis C and tuberculosis, with an expansion of these epidemics in the centres.[12]

Compulsory rehabilitation does not perform a public safety function

Some have suggested that compulsory rehabilitation can be justified for people who commit crimes to service their drug use because their behaviour causes greater harm to society. While this argument may have a certain utilitarian appeal (as it appears to target the more antisocial problems associated with drug use), because of the ineffectiveness of compulsory rehabilitation centres discussed above, the short-term benefits associated with incarceration are not sustainable and therefore fail to satisfy the Siracusa Principles.

However, because evidence-based drug treatment is more effective than punishment in reducing crime, it is feasible – under certain circumstances – to offer people who commit crimes to service their drug use a choice between treatment and a criminal sanction. Several Latin American countries are now considering to adopt drug courts based on the model promoted by the United States – a mechanism through which people arrested for drug offences can be sent to specialised courts and be offered treatment instead of a criminal sanction. Evidence so far has shown that many problems have been associated with such a system, for example the fact that occasional users sent to the courts may choose drug dependence treatment when they do not need it to avoid a criminal sanction, or the practice of imposing a higher penalty on a person who fails treatment than they would have received if they had gone through a "normal" justice process.[13] As Latin American governments are seriously considering adopting referrals mechanisms away from prison, it is essential that these are in line with the following criteria[14]:

- Coercion should focus on cases involving crimes that support drug use, and not on people caught for simple drug use or possession for personal use
- It remains unethical to coerce a person into treatment if they are not dependent on drugs. However referral to education sessions and harm reduction services can be considered when the person is not dependent
- A person should be offered a choice of different types of treatment that are evidence based, adequate and humane, and are tailored to his or her individual needs and wishes
- The constraint on the person should always be subject to due process
- The treatment should take place in a setting that is the least restrictive of liberty than is necessary for the objectives of treatment (and therefore not with an objective of imposing punishment)
- Any sentence provided (either to treatment or a punishment) should be proportional to the crime that has been committed
- According to the UN, drug dependence is recognised as a "multi-factorial health disorder that often follows the course of a relapsing and remitting chronic disease".[15] It is therefore likely that people

[11] See, for example: Saucier, R. & Wolfe, D. (forthcoming), *Privatizing cruelty – Torture, inhumane and degrading treatment in non-governmental drug rehabilitation centers*

[12] See, for example: World Health Organization Western Pacific Regional Office (2009), *Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia and Vietnam: An application of selected human rights principles* (Manila: WPRO), http://dl.dropboxusercontent.com/u/64663568/library/WHO_Asia_Compulsory_Treatment.pdf; Open Society Foundations (2011), *Treatment or torture – Applying international human rights standards to drug detention centres,* http://dl.dropboxusercontent.com/u/64663568/library/Treatment-or-torture.pdf; Human Rights Watch (2012), *Torture in the name of treatment: Human rights abuses in Vietnam, China, Cambodia and Lao PDR*, http://idpc.net/publications/2012/07/torture-in-the-name-of-treatment-human-rights-abuses-in-vietnam-china-cambodia-and-lao-pdr

[13] For a discussion on drug courts, please read: Guzman, D. (2012), *IDPC Briefing Paper – Drug courts: Scope and challenges of an alternative to incarceration* (London: International Drug Policy Consortium), http://idpc.net/publications/2012/07/idpc-briefing-paper-drug-courts

[14] These criteria were developed by IDPC, based on: Stevens, A. (2011), *The ethics and effectiveness of coerced treatment of drug users*. Paper presented at the EU-China Human Rights Dialogue, Beijin; United Nations Office on Drugs and Crime (2012), *From coercion to cohesion: Treating drug dependence through health care, not punishment – Discussion paper*, http://www.unodc.org/docs/treatment/Coercion_Ebook.pdf; and evidence inclued in: International Drug Policy Consortium (March 2012), *IDPC Drug Policy Guide, 2nd edition*, http://idpc.net/publications/2012/03/idpc-drug-policy-guide-2nd-edition

[15] United Nations Office on Drugs and Crime & world Health Organization (March 2008), Discussion paper - Principles of drug dependence treatment, http://www.unodc.org/documents/drug-treatment/UNODC-WHO-Principles-of-Drug-Dependence-Treatment-March08.pdf

entering treatment for the first time may not become abstinent. This should be taken into account in any referral scheme system.[16] Such systems should also ensure that failure or relapse from treatment does not lead to the person receiving greater punishment than they would originally have been imposed.

Drug use does not cause people to lose autonomy

The final claim is that compulsory rehabilitation is necessary because people who use drugs no longer have autonomy or the capacity to make informed decisions and therefore the State has a duty to intervene and force them into treatment. The ability for drugs to hijack a person's autonomy has long been put forward as a justification for these practices. However, consensus within the medical, legal and philosophical literature is that drug use rarely renders a person incapable of being held accountable for their actions. Nevertheless, in cases where a person poses an immediate threat to themselves or to others, short-term involuntary care could be justified, provided strict limitations are adhered to. UNODC states that in such circumstances any involuntary care:

- Is intensive and should not exceed a maximum of some hours or days
- Should be applied under strict legal supervision only
- Can only be justified in case of emergency, as a means to protect affected people or the community
- Is only justified when the person cannot be responsible for his/her own safety (both for dependence and other issues related to drug use)
- Should consist of brief compulsory hospitalisation in cases of drug intoxication, overdose or psychiatric symptoms, until the person has recovered their capacity to decide.[17]

Additional problems related to compulsory rehabilitation

Further, in addition to the challenges noted previously, it is also important to note three additional problems associated with compulsory rehabilitation. First, and perhaps the most significant problem with compulsory rehabilitation, is that it conflates punishment and treatment. Conflating the goals of treatment with those of punishment means that many people who use drugs are reluctant to attend health-related services for fear of being forced into compulsory programmes.[18] The second problem with compulsory rehabilitation is that it diverts resources away from evidence-based drug dependence treatment alternatives, as well as harm reduction services. Some studies have shown that forcing people into compulsory centres can overburden an already under-resourced sector, making it harder to provide services for people who want to attend voluntarily. The third problem with compulsory rehabilitation is that it perpetuates stigma and discrimination against people who use drugs and sets up systems that encourage practices such as police quotas for filling compulsory centres.

Conclusion and recommendations

Long-term compulsory rehabilitation cannot be justified on the grounds of effectiveness or ethics. The practice has also been associated with a number of human rights violations. It is absolutely essential that any treatment system is developed and used in full respect with human rights principles, medical ethics and

[16] In practice, some drug courts only allow a person to undergo treatment once or twice. If rearrested, they would then become ineligible to undergo treatment.

[17] United Nations Office on Drugs and Crime (2012), *From coercion to cohesion: Treating drug dependence through health care, not punishment – Discussion paper*, http://www.unodc.org/docs/treatment/Coercion_Ebook.pdf

[18] See, for example, in Thailand: Kerr, T., Hayashi, K., Ti, L., Kaplan, K., Suwannawong, P. & Wood, E. (15 July 2013), 'The impact of compulsory drug detention exposure on the avoidance of heathcare among injecting drug users in Thailand', *International Journal of Drug Policy*, **25**(1): 171-174, http://www.ijdp.org/article/S0955-3959%2813%2900091-1/abstract

global evidence, within the framework of a public health approach. Evidence also shows that, when a crime[19] is committed to support drug dependence, it is feasible to offer the offender a choice between treatment and a sanction, but this should happen under strict judicial oversight, and only if a number of criteria (highlighted above) are met.[20] It is also possible for the State to mandate short-term compulsory care in exceptional situations where drug use creates an immediate and real threat to the person or society.

In light of these conclusions, the paper strongly recommends the following:

- Compulsory rehabilitation centres that rely on locked wards, where treatment is not evidence-based, and where people are sent without due process and medical evaluation of drug dependence are unacceptable and should be closed down.
- Governments should invest their resources in establishing evidence-based (such as opioid substitution treatment) and community-located services that attract patients to attend voluntarily. Even today, few countries provide adequate treatment programmes (both in terms of quality and quantity) to meet the needs of voluntary patients.
- Strict rules, including respect for due process, solid medical opinion, use of available evidence, etc., should be applied to the use of legal apparatuses that divert people dependent on drugs into evidence-based treatment or are used to mandate short-term care under exceptional, crisis situations.

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The International Drug Policy Consortium is a global network of non-government organisations and professional networks that specialise in issues related to illegal drug production and use. The Consortium aims to promote objective and open debate on the effectiveness, direction and content of drug policies at national and international level, and supports evidence-based policies that are effective in reducing drug-related harm. It produces briefing papers, disseminates the reports of its member organisations, and offers expert consultancy services to policy makers and officials around the world.

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[19] Drug use and possession of drugs for personal use should not be considered as a crime

[20] For a discussion on referral schemes to treatment, in particular drug courts, please read: Guzman, D. (2012), *IDPC Briefing Paper – Drug courts: Scope and challenges of an alternative to incarceration* (London: International Drug Policy Consortium), http://idpc.net/publications/2012/07/idpc-briefing-paper-drug-courts. For examples of successful referral schemes to treatment, please read: International Drug Policy Consortium (March 2012), 'Chapter 2.3: Reducing incarceration', In *IDPC Drug Policy Guide, 2nd edition*, http://idpc.net/publications/2012/03/idpc-drug-policy-guide-2nd-edition