



UPR Submission Guatemala April 2012

This submission highlights the serious concerns of our organizations regarding Guatemala's drug regulations, which interfere directly with proper medical treatment and condemn thousands of patients with moderate to severe cancer pain to unnecessary suffering every year. The submission is based on research and observations by international palliative care organizations and Human Rights Watch.

Many thousands of patients in Guatemala suffer from moderate to severe pain every year due to cancer and other health conditions. At least three-quarters of these patients cannot get access to effective, safe and inexpensive medications that could relieve their suffering, in violation of the right of access to health care. The suffering of these patients is often so severe that they want to die rather than live with their pain. Article 12 of the International Covenant on Economic, Social and Cultural Rights specifically says that states shall take steps to create conditions which would assure to all medical service and attention in the event of illness.

Guatemala's drug regulations are a primary reason for this suffering. Research has found that Guatemala has among the worst accessibility of morphine in healthcare settings of countries in Latin America, as well as among the lowest opioid consumption and the most restrictive regulatory policies.¹ A 2011 International Narcotics Control Board (INCB) report found that the amount of opioid analgesics Guatemala uses per year is "very inadequate."²

No recommendation on health and human rights was addressed to Guatemala in the context of the first UPR cycle in 2008.

International Standards on Access to Palliative Care and Human Rights

Under the International Covenant on Economic, Social and Cultural Rights, "States are under the obligation to respect the right to health by . . . refraining from denying or limiting equal access for all persons . . . to preventive, curative and palliative health services."³ States must provide "attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity."⁴

Palliative care is a health service that focuses on improving the quality of life for patients with incurable or life-threatening illnesses. The World Health Organization (WHO) considers it an integral and essential part

¹ Human Rights Watch, *Global State of Pain Treatment: Access to Palliative Care as a Human Rights*, March 2011, <http://www.hrw.org/sites/default/files/reports/hhr0511W.pdf>.

² International Narcotics Control Board, "Availability of Internationally Controlled Drugs: Ensuring Adequate Access for Medical and Scientific Purposes," 2010, http://incb.org/pdf/annual-report/2010/en/supp/AR10_Supp_E.pdf (accessed March 29, 2011).

³ Committee on Economic, Social and Cultural Rights (ESCR) General Comment 14, The right to the highest attainable standard of health, E/C.12/2000/4, August 11, 2000, para. 34.

⁴ Committee on Economic, Social and Cultural Rights (ESCR) General Comment 14, *ibid.*, para. 25.

of comprehensive care for cancer, HIV, and other health conditions. With respect to cancer, for example, it has noted that, despite improvements in survival rates,

the majority of cancer patients will need palliative care sooner or later. In developing countries, the proportion requiring palliative care is at least 80 percent. Worldwide, most cancers are diagnosed when already advanced and incurable ... [For these patients] the only realistic treatment option is pain relief and palliative care.⁵

Therefore, governments should ensure that patients who require palliative care and pain treatment can get access to these health services. In particular, they should formulate a plan for the development and implementation of these services, ensure the availability and accessibility of morphine and other medications identified as essential by the WHO, and ensure that healthcare providers receive training in palliative care. Failure to do so violates the right to health.

Under international law, governments have an obligation to take measures to protect people under their jurisdiction from inhuman or degrading treatment such as unnecessarily suffering from extreme pain. As the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted, “failure of governments to take reasonable measures to ensure accessibility of pain treatment ... raises questions whether they have adequately discharged this obligation.”⁶

Concerns about Guatemala

This submission focuses on Guatemala’s drug regulations. The Guatemalan government has recently taken some steps to improve the availability of palliative care. It set up a National Palliative Care Commission to develop public palliative care policies in December 2011. In January 2012, it registered immediate release oral morphine, which is now available at the pharmacy of the National Cancer Institute though not in any other hospitals or pharmacies. But the government has not responded to repeated requests from local and international palliative care experts to reform its unduly restrictive drug regulations.

The WHO considers opioid medications essential for the treatment of moderate to severe pain related to cancer and other illnesses. Morphine, one such medication, has been on the WHO’s Model List of Essential Medicines since 1977 and is the cornerstone of the WHO’s guidelines for treatment of cancer pain.⁷ The 1961 Single Convention on Narcotic Drugs, the international treaty that regulates so-called narcotic drugs, including opioids, requires countries to regulate access to opioid medications, preventing their diversion and misuse while making “adequate provision” to ensure their availability for medical and scientific purposes. Under the Convention, countries must ensure that opioid medications can only be dispensed upon a medical prescription and by an authorized individual; that these medications can only be moved between institutions or individuals authorized to do so; and that records of their use are kept. Stricter requirements are permitted if deemed necessary to prevent misuse and diversion of controlled medications but, as WHO has observed, “must be continually balanced against the responsibility to ensure opioid availability for medical purposes.”⁸

⁵World Health Organization (WHO), “National Cancer Control Programmes: Policies and Managerial Guidelines, second edition,” 2002, pp. 86-87.

⁶ Joint letter by the UN special rapporteur on the prevention of torture and cruel, inhuman or degrading treatment or punishment, Manfred Nowak, and the UN special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, to the Commission on Narcotic Drugs, December 2008. A copy of the letter is available at <http://www.ihra.net/Assets/1384/1/SpecialRapporteursLettertoCND012009.pdf> (accessed January 16, 2009).

⁷ World Health Organization, *Cancer Pain Relief: A Guide to Opioid Availability* (2nd ed. 1996).

⁸ WHO, *Cancer Pain Relief: a Guide To Opioid Availability*, 1996, p.56.

Guatemala's drug regulations go far beyond the requirements of the Single Convention and severely interfere with the responsibility to ensure medical availability. Most problematically, they require patients who receive prescriptions for opioid medications to obtain a special identification card and registration number that permits them to take opioid medications for more than eight days." With this card, they must seek government authorization for each opioid prescription before they can fill them at a pharmacy. This authorization is available only in the National Competent Authority office which is located in the suburbs of Guatemala City. The office is open only during business hours and authorization must be obtained in person by the patient or a family member.

This system of prescription authorization creates an insurmountable obstacle for many patients and families who require prescriptions for opioid medications. It means people who live outside of Guatemala City must travel to the capital for each opioid prescription, a trip that can take many hours and is costly, especially for the poor. Indeed, such patients or families will spend more money on travel than on the medications they require. Moreover, care-givers must leave their often very sick or dying relatives at home while traveling to the capital. The special identification card classifying patients as "opioid users" is stigmatizing and deters patients from accessing essential medical treatment.

Theoretically, pharmacies may fill a prescription that is made outside of the NCA office's business hours if patients proceed to obtain authorization within 24 hours. In practice, however, healthcare providers report that few pharmacies agree to fill opioid prescriptions that have not yet been authorized. In any case, patients or their families would still need to make the trip to Guatemala City to authenticate the prescriptions, only post-factum.

This kind of control is neither required under the Single Convention nor necessary to prevent misuse of opioid medications. It is routine practice in the vast majority of countries around the world that a doctor's prescription for an opioid medication can be filled at the pharmacy without any government authorization. Indeed, the requirement is inconsistent with WHO's recommendations on controlled substances policies.⁹ A 40-country survey Human Rights Watch in 2010 found that out of the 40 countries only Guatemala maintained this kind of requirement. No other countries surveyed required patients to obtain a special identification card or registration number for being able to obtain opioid medications.

Officers of Guatemala's national drug agency have also conducted home visits to patients receiving controlled medications, apparently to verify that these patients are actually alive and check that the amount of medication in their possession coincides with their prescription information. These types of checks stigmatize patients and their families, are a deterrent to appropriate use of these medications and are not required by the Single Convention. Again, none of the 40 countries surveyed in Human Rights Watch's study, except Guatemala, conduct such home visits. While healthcare providers in Guatemala report that such visits have decreased in the last eighteen months, the government has not announced plans to abandon the practice.

Finally, physicians must buy special prescription forms in order to be able to prescribe strong opioid medications. These forms are sold only in Guatemala City and in quantities of no more than 25 at a time. This means that doctors would have to travel frequently to Guatemala City to obtain new prescription forms. The vast majority of doctors in Guatemala, especially those outside the capital, simply do not obtain the forms, resulting in suffering for their patients.

Recommendations

⁹ WHO, *Cancer Pain Relief: a Guide To Opioid Availability*, 1996.

Guatemala's drug regulations result in severe suffering from treatable pain for thousands of patients and their families every year, a fact that the government has long been aware of. We recommend that in the context of the UPR review, the Guatemalan government should be recommended to:

- Reform its drug regulations in accordance with recommendations of the World Health Organization, as formulated in WHO Policy Guidelines Ensuring Balance in National Policies on Controlled Substances: Guidance for Availability and Accessibility for Controlled Medicines.