HUMAN RIGHTS WATCH

Submission to the Human Rights Committee regarding El Salvadors' Sixth Periodic Report

Introduction

This memorandum provides a brief overview of Human Rights Watch's concerns regarding the poor availability of adequate treatment for people who suffer from severe pain due to cancer, HIV/AIDS or other health conditions in El Salvador. Human Rights Watch is submitting this memorandum to the United Nations Human Rights Committee ("the Committee") in advance of the adoption of a list of issues for its review of El Salvador's Sixth Periodic Report ("report"), with the hope that it will inform the Committee's consideration of the El Salvadorian government's ("the government") compliance with article 7 of the International Covenant on Civil and Political Rights. Human Rights Watch is in the process of conducting additional research on barriers to pain treatment availability in El Salvador and intends to submit further information to the Committee prior to its consideration of El Salvador's report. We respectfully urge the Country Report Task Force to include access to pain medication on the list of issues that will guide the Committee's dialogue with El Salvador and its consideration of the government's compliance with its obligations under article 7 of the Covenant.

In El Salvador, there is a wide gap between the need for treatment for severe pain and its actual availability. Based on cancer and HIV/AIDS mortality figures and the consumption in the country of morphine - the mainstay medication for treatment of severe pain - an estimate can be made that thousands of terminal AIDS and cancer patients suffer from severe pain without access to adequate treatment. Thousands more are likely to suffer from severe pain due to injuries and other health conditions. While we recognize that resource limitations pose serious challenges to El Salvador's efforts to ensure adequate access to health services, the extremely poor availability of pain treatment suggests that the government has failed to take even basic steps, which have limited resource implications, to ensure that pain treatment is available for those who need it.

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Denial of access to pain treatment as cruel, inhuman or degrading treatment

Human Rights Watch firmly believes that UN human rights institutions, including the Committee, should consider the widespread denial of access to appropriate pain treatment as a violation, in particularly serious cases, of the prohibition of torture and other cruel, inhuman and degrading treatment or punishment. The World Health Organization estimates that tens of millions of people worldwide suffer from moderate to severe pain without access to treatment, including 5.5 million terminal cancer patients and 1 million end-stage AIDS patients, even though pain treatment medications are safe, effective and inexpensive.[i] A March 2009 Human Rights Watch report, entitled "Please, do not make us suffer anymore: Access to Pain Treatment as a Human Right," concluded that a "shocking willingness by many governments around the world to stand by passively as people suffer" was a chief reason for this situation.[ii]

As the Committee may be aware, in February 2009 Professor Manfred Nowak, the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, stated in his report to the Human Rights Council that "de facto denial of access to pain relief, when it causes severe pain and suffering, constitutes cruel, inhuman or degrading treatment or punishment."[iii]

Chronic pain has a profound physical and psychological impact. Chronic pain can cause depression, anxiety and reduced mobility resulting in loss of strength. It can compromise the immune system and interfere with a person's ability to eat, concentrate, sleep, or interact with others.[iv] Human Rights Watch has found that many people who experience severe pain express sentiments similar to those of victims of police torture: all they want is for the pain to stop. In interviews, these people told us that they had wanted to commit suicide to end the pain, or told doctors or relatives that they wanted to die.[v]

In its General Comment on article 7, the Committee stated that the aim of the provision is to "protect both the dignity and the physical and mental integrity of the individual" and that "it is not sufficient for the implementation of article 7 to prohibit [cruel, inhuman or degrading] treatment or punishment," States parties must take steps to prevent it.[vi] In addition, the Committee Against Torture has stated that cruel, inhuman or degrading treatment or punishment "may differ [from torture] in the severity of pain and suffering and does not require proof of impermissible purposes."[vii]

As all strong pain medications are narcotics regulated by international drug conventions, their production, distribution and dispensing is under exclusive government control.[viii] Without government action, including appropriate legislative measures, to ensure their

availability, severe pain and suffering is inevitable. Human Rights Watch firmly believes that where governments fail to take steps to make pain medications available, widespread denial of access to appropriate pain treatment should be considered a violation of the prohibition of cruel, inhuman and degrading treatment.

We therefore encourage the Committee to examine El Salvador's record on providing access to treatment for severe pain as part of its review of the government's compliance with its obligations under article 7 of the Covenant.

Background: pain and pain management

Prevalence of pain

Chronic, moderate and severe pain is a common symptom of cancer and HIV/AIDS, as well as of various other health conditions. A recent review of studies of pain among cancer patients found that more than 50 percent of cancer patients experience pain symptoms,[ix] and research consistently finds that 60 to 90 percent of patients with advanced cancer experience moderate to severe pain.[x] Although no population-based studies of HIV/AIDS related pain have been published, multiple studies report that 60 to 80 percent of patients in the last phases of the illness experience significant pain.[xi] One authoritative study estimates that 80 percent of terminal cancer patients and 50 percent of terminal HIV/AIDS patients will develop moderate to severe pain symptoms, on average for a period of about 90 days.[xii]

Pain management: elements, effectiveness, cost

The basis for modern pain management is the WHO's Pain Relief Ladder, which recommends the administration of different types of pain medications according to the severity of the pain. With the use of the Pain Relief Ladder, WHO estimates that most, if not all, pain due to cancer could be relieved.[xiii] While originally developed for treating cancer pain, the Pain Relief Ladder has been applied successfully to other types of pain.

The mainstay medication for treating moderate to severe pain is morphine, an opioid that is made of an extract of the poppy plant. Oral morphine is the drug of choice for chronic pain, and can be taken in institutional settings and at home. Due to the potential for its abuse, morphine is a controlled medication, meaning that its manufacture, distribution and dispensing is strictly controlled both at the international and national levels.

Basic oral morphine in powder or tablet form is not protected by any patent and can be produced for as little as US$0.01 per milligram.[xiv] A typical daily dose in low and middle

income countries ranges, according to one estimate, from 60 to 75 milligrams per day.[xv] Because oral morphine can be produced cheaply, providing pain management should be possible at the community level even in developing countries.

Chronic pain management is often a part of broader palliative care services, which aim to improve the quality of life of patients and their families facing problems associated with life-limiting illnesses.[xvi]

Widespread consensus: pain relief medications must be available

There is a decades-old and widespread consensus that states must make opioid pain medications, including morphine, available for people facing severe pain. The 1961 Single Convention on Narcotic Drugs ("Narcotic Drugs Convention") recognized that narcotic drugs continue to be "indispensible for the relief of pain and suffering" and that states must make "adequate provision…to ensure" their availability.[xvii] The International Narcotics Control Board, the body charged with overseeing the implementation of the UN drug conventions, clarified in 1995 that the Narcotic Drugs Convention establishes an obligation "to ensure adequate availability of narcotic drugs, including opiates, for medical and scientific purposes…"[xviii]

WHO has included opioid pain relievers, including morphine, in its Model List of Essential Medicines, a list of the minimum essential medications that should be available to all persons who need them. WHO has also repeatedly emphasized that palliative care and pain treatment are an essential—not optional—component of care for cancer and HIV/AIDS.[xix] Professor Manfred Nowak, the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, recommended in his February 2009 report to the Human Rights Council that "all measures should be taken to…overcome current regulatory, educational and attitudinal obstacles to ensure full access to palliative care."[xx]

The Situation in El Salvador

In El Salvador, each year thousands of people face moderate to severe pain due to a wide range of illness and injuries. [xxi] It is estimated that more than 6800 people die of cancer, and more than 2400 die from HIV/AIDS, each year.[xxii] As noted above, research suggests that about 80 percent of terminal cancer patients and 50 percent of terminal HIV/AIDS patients will suffer from moderate to severe pain for an average of about three months before their death.[xxiii]

Adequate pain treatment for El Salvadorians with terminal cancer and HIV/AIDS would require consumption of an estimated 40 kg of morphine per year.[xxiv] Yet, El Salvador reported that it consumed less than half a kilogram of morphine in 2007.[xxv] This is sufficient to treat less than 100 terminal cancer or HIV/AIDS patients, approximately 1 percent of those requiring pain treatment in El Salvador.[xxvi]

According to the Pain and Policy Studies Group, a WHO Collaborating Center, in 2007 consumption of morphine in El Salvador was about 0.03 mg per capita. This placed El Salvador last of 31 countries in the WHO's Americas region that reported consumption of morphine.[xxvii]

States are required to submit estimates of their need for opioids for medical and scientific purposes annually to the International Narcotics Control Board and may not import opioids in excess of the estimates approved by the Board.[xxviii] Despite the finding of a mission of the International Narcotics Control Board to El Salvador in 2006 that the availability of controlled substances for medical purposes was very low,[xxix] El Salvador continues to submit significant underestimates of its need for morphine. For 2009, El Salvador submitted an estimate of 2.16 kg, enough to treat just 356 terminal cancer or HIV/AIDS patients - about 4 percent of those in need of pain relief.[xxx]

Information gathered by Human Rights Watch suggests that this situation is due, in large part, to the failure by the government of El Salvador to take reasonable steps to ensure that people who face severe pain have access to appropriate treatment. Our research to date suggests that the reasons for El Salvador's low consumption of morphine include the government's failure to: put in place a functioning supply system for morphine; enact policies that would promote pain treatment access; ensure that healthcare workers receive adequate training on pain management and palliative care; and ensure that drug control regulations do not unnecessarily restrict access to opioids for medical use.[xxxi]

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[i] WHO, "WHO Briefing Note: Access to Controlled Medications Programme," February, 2009, https://intranet.hrw.org/Program%20Central%20Style%20Guide%20Documents/citationstyle.pdf (accessed August 24, 2009), p.1.

[ii] Human Rights Watch, "Please Do Not Make Us Suffer Any More…" March, 2009.

[iii] Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, "Promotion and Protection of All Human Rights, Civil Political, Economic, Social and Cultural Rights, including the Right to Development," A/HRC/10/44, January 14, 2009, para. 72.

[iv] One WHO study found that people who live with chronic pain are four times more likely to suffer from anxiety and depression: O. Gureje, et al., "Persistent pain and well-being: a World Health

Organization study in primary care," *Journal of the American Medical Association,* vol. 80, 1998, pp. 147-51; see also F. Brennan, D.B. Carr, M.J. Cousins, "Pain Management: A Fundamental Human Right," *Anesthesia & Analgesia*, vol. 105, no. 1, July 2007, pp. 205-221; B. Rosenfeld, et al., "Pain in Ambulatory AIDS Patients II: Impact of Pain on Psychological Functioning and Quality of Life," *Pain,* vol. 68, 1996, pp. 2-3, 323 – 28.

[v] Human Rights Watch interviews in the Indian states of Kerala, Andhra Pradesh, West Bengal, and Rajasthan; March and April 2008

[vi] UN Human Rights Committee, General Comment No. 20, Article 7, U.N. Doc A/47/40(Supp), Annex VI, A, paras. 2 and 8.

[vii] UN Committee Against Torture, General Comment No. 2, Implementation of article 2 by States parties, U.N. Doc. CAT/C/GC/2 (2008), para. 10.

[viii] The six strong opioids commonly used for pain relief, morphine, fentanyl, oxcodone, hydromorphone, pethidine and methadone, are all regulated by the Single Convention on Narcotic Drugs, 1961, adopted March 30, 1961, 520 U.N.T.S. 151, entered into force December 13, 1964. Of these, morphine is the gold standard for the treatment of moderate to severe pain.

[ix] M. van den Beuken-van Everdingen, et al., "Prevalence of pain in patients with cancer: a systematic review of the past 40 years," *Annals of Oncology*, vol. 18, no.9, March 12, 2007, pp. 1437-1449.

[x] C. S. Cleeland, et al., "Multidimensional Measurement of Cancer Pain: Comparisons of U.S. and Vietnamese Patients," *Journal of Pain and Symptom Management,* vol. 3, 1988, pp. 1, 23 - 27; C. S. Cleeland, et al., "Dimensions of the Impact of Cancer Pain in a Four Country Sample: New Information from Multidimensional Scaling," *Pain*, vol. 67, 1996, pp. 2-3, 267 - 73; R.L. Daut and C.S. Cleeland, "The prevalence and severity of pain in cancer," *Cancer*, vol. 50, 1982, pp. 1913-8; K. M. Foley, "Pain Syndromes in Patients with Cancer," in K. M. Foley, J. J. Bonica and V. Ventafridda, eds., *Advances in Pain Research and Therapy,* (New York: Raven Press, 1979), pp.59-75; K. M. Foley, "Pain Assessment and Cancer Pain Syndromes," in D. Doyle, G. Hank and N. MacDonald, eds., *Oxford Textbook of Palliative Medicine,* 2nd ed., (New York: Oxford University Press, 1999), pp. 310-31; J. Stjernsward and D. Clark, "Palliative Medicine: A Global Perspective," in D. Doyle et al. eds., *Oxford Textbook of Palliative Medicine*, 3rd ed., (New York: Oxford University Press, 2003), pp. 1199-222.

[xi] K. Green, "Evaluating the delivery of HIV palliative care services in out-patient clinics in Viet Nam, upgrading document," London School of Hygiene and Tropical Medicine, 2008; K. M. Foley, et al., "Pain Control for People with Cancer and AIDS," in *Disease Control Priorities in Developing Countries*, 2nd ed., (New York: Oxford University Press, 2003), pp. 981-994; F. Larue, et al., "Underestimation and under-treatment of pain in HIV disease: a multicentre study," *British Medical Journal*, vol.314, 1997, p.23; J. Schofferman and R. Brody, "Pain in Far Advanced AIDS," in K. M. Foley, J. J. Bonica and V. Ventafridda, eds., *Advances in Pain Research and Therapy*, pp. 379-86; E. J. Singer, et al., "Painful Symptoms Reported by Ambulatory HIV-Infected Men in a Longitudinal Study," *Pain*, vol. 54, 1993, pp. 1 15 – 19.

[xii] K. M. Foley et al., "Pain Control for People with Cancer and AIDS" in *Disease Control Priorities in Developing Countries*, 981-994.

[xiii] WHO, "Achieving Balance in National Opioids Control Policy: Guidelines for Assessment," WHO/EDM/QSM/2000.4, 2000, http://apps.who.int/medicinedocs/collect/medicinedocs/pdf/whozip39e/whozip39e.pdf, (accessed August 7, 2009), p. 1.

[xiv] K.M. Foley, et al., "Pain Control for People with Cancer and AIDS" in *Disease Control Priorities in Developing Countries*, 981-994.

[xv] Ibid. This is an estimate for low and middle income countries. The average daily dose in industrialized countries tends to be higher. This is due, among others, to longer survival of patients

and the development among patients of tolerance to opioid analgesics: email communication with K. M. Foley, January 23, 2009.

[xvi] WHO, *National Cancer Control Programmes: Policies and Managerial Guidelines*, 2nd ed., (Geneva: WHO, 2002), pp. xv, xvi.

[xvii] Preamble to the Single Convention on Narcotic Drugs.

[xviii] International Narcotics Control Board, "Availability of Opiates for Medical Needs: Report of the International Narcotics Control Board for 1995," 1996, http://www.incb.org/pdf/e/ar/1995/suppl1en.pdf (accessed January 15, 2009), p.1.

[xix] WHO, *National Cancer Control Programmes: Policies and Managerial Guidelines*, 2nd ed., pp. 83-91; WHO, "A Community Health Approach to Palliative Care for HIV/AIDS and Cancer Patients in Sub-Saharan Africa," August 15, 2004, http://www.who.int/hiv/pub/prev_care/en/palliative.pdf (accessed August 7, 2009), p 6-7.

[xx] Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, "Promotion and Protection of All Human Rights, Civil Political, Economic, Social and Cultural Rights, including the Right to Development," A/HRC/10/44, January 14, 2009, para. 74(e).

[xxi] Non-lethal cancer, HIV/AIDS, lethal and non-lethal injuries, and various other health conditions can cause moderate to severe pain requiring opioid pain medications. An estimated 35,000 people are living with HIV/AIDS in El Salvador (WHO, UNAIDS, *2008 Report on the Global AIDS epidemic* [Switzerland: UNAIDS, 2008], Appendix 1: "HIV and AIDS estimates and data, 2007 and 2001", p. 229) tens of thousands of people die of injuries each year (WHOSIS, accessed July 20, 2009), and thousands more suffer from non-lethal injuries and non-terminal cancer.

[xxii] Calculated using statistics from the World Health Organization Statistical Information System (WHOSIS) http://www.who.int/whosis/en/index.html (accessed July 15, 2009). El Salvador's population is approximately 6,762,000 (2006), its cancer mortality rate is 102 per 100,000 (2002). And its HIV/AIDS mortality rate is 36 per 100,000 (2005).

[xxiii] K. M. Foley et al., "Pain Control for People with Cancer and AIDS" in *Disease Control Priorities in Developing Countries*, 981-994.

[xxiv] The calculation is based on an estimate by K. M. Foley and others that 80% of terminal cancer patients and 50% of terminal AIDS patients will require an average of 90 days of pain treatment with 60 to 75 mg of morphine per day: K. M. Foley, et al., "Pain Control for People with Cancer and AIDS" in *Disease Control Priorities in Developing Countries*, 981-994.

[xxv] International Narcotics Control Board, *Narcotic Drugs: Estimated World Requirements for 2009 – Statistics for 2007*, E/F/S.09.XI.02 (New York: United Nations, 2009), p. 227.

[xxvi] The calculation is based on an estimate by K. M. Foley and others that 80% of terminal cancer patients and 50% of terminal AIDS patients will require an average of 90 days of pain treatment with 60 to 75 mg of morphine per day. K. M. Foley, et al., "Pain Control for People with Cancer and AIDS" in *Disease Control Priorities in Developing Countries*, 981-994.

[xxvii] Pain and Policies Studies Group, "AMRO Consumption of Morphine, 2007," http://www.painpolicy.wisc.edu/internat/AMRO/morphine.pdf (accessed August 20, 2009).

[xxviii] Single Convention on Narcotic Drugs, arts. 21 and 31; International Narcotics Control Board, "Training Material: 1961 Single Convention on Narcotic Drugs, Part 1 – The International Control System for Narcotic Drugs", UN Doc. E/INCB/2005/NAR_1, 2005, http://www.incb.org/pdf/e/estim/trainmat/NAR_1%20English%202005.pdf (accessed July 16, 2009), pp. 11-14.

[xxix] International Narcotics Control Board, *Report of the International Narcotics Control Board for 2006* (New York: United Nations, 2007), p 45.

[xxx] International Narcotics Control Board, *Narcotic Drugs: Estimated World Requirements for 2009 – Statistics for 2007*, p. 49; The calculation is based on an estimate by K. M. Foley and others that 80% of terminal cancer patients and 50% of terminal AIDS patients will require an average of 90 days of pain treatment with 60 to 75 mg of morphine per day. K. M. Foley, et al., "Pain Control for People with Cancer and AIDS" in *Disease Control Priorities in Developing Countries*, 981-994.

[xxxi] Human Rights Watch interview with Dr Carlos Rivas, Medical Director, Divina Providencia Hospital, El Salvador, August 17, 2009; D. Clark and M. Wright, "The International Observatory on End of Life Care: A Global View of Palliative Care Development," *Journal of Pain and Symptom Management*, vol. 33 no. 5, 2007, p. 544; M. Wright et al., "Mapping Levels of Palliative Care Development: A Global View," vol. 35 no. 5, 2008, p. 472-474.