

Human Rights of People who Use Drugs: Recommendations for the UPR of Nepal

Background: People who use drugs in Nepal

According to a June 2020 survey commissioned by the Ministry of Home Affairs, approximately 130,424 people in Nepal use drugs, of which 76.2% are below the age of 30.¹ Over 63% of people who use drugs wanted to seek help, but few had access to any treatment facility,² since people who use drugs are heavily stigmatized and criminalized in Nepal.

The Government has agreed to ensure that national drug policies fully respect human rights and fundamental freedom, as a UN member state during the UN General Assembly Special Session on the world drug problem in April 2016.³ But despite repeated calls from Nepalese civil society, the Narcotics Drug Control Act 2033 (1976) has not been revised in line with the obligations under international human rights treaties and the national constitution.

With the Drug Control Act of 2006 and the Drug Control Strategy of 2013, Nepal committed to place health and human rights at the center of its drug policies. However, the Drug Control Act 1976 has not been amended in line with these commitments, and evidence-based treatment is still sorely lacking across the country.

Issue 1. Criminalization of drug “addiction” and drug use

UPR recommendation: Review and reform the Narcotic Drugs (Control) Act, 2033 (1976) in line with international human rights law and standards, the 2015 Constitution, the 2006 National Policy for Drug Control and the 2010 Drugs Control Strategy, and repeal laws that criminalize drug use and drug dependence.

The Narcotic Drugs Control Act, 2033 (1976) criminalizes anyone ‘addicted’ to narcotic drug or psychotropic substances⁴, thus treating a health condition, namely drug dependence, as a crime, and people with drug dependence as criminals. The Narcotic Drugs (Control) Act, 2033 (1976) also forbids the mere ‘consumption’ of drugs, contrary to the mandate of international drug conventions.⁵ Criminalization devastates the lives of people who use drugs, impairs their dignity and rights, and puts up barriers for them to access health and treatment.⁶

The Special Rapporteur on the right to health, the Committee on Economic, Social, and Cultural Rights, and UNAIDS have recommended the decriminalization of use and possession of drugs for personal use.⁷

As per the Nepal Drug Users’ Survey, 2076 (2019) commissioned by the Ministry of Home Affairs, nearly half the respondents had faced arrest for drug use or related crimes.⁸ Other surveys show even higher rates of incarceration for drug offences (nearly 63% of all Respondents).⁹ Despite having significant health-related problems, people who inject drugs in Nepal are afraid to visit medical facilities as they are either neglected or shunned or subjected to callous behavior by staff.¹⁰

Issue 2: Inflicting torture as ‘treatment’ in Nepal’s private ‘rehabilitation’ centres

UPR recommendation: Ensure that private drug treatment centres provide evidence-informed, rights-compliant treatment on a voluntary basis, and include acts of torture committed by private actors, including those operating drug treatment centres, in legislation to criminalize torture.

The Narcotic Drugs (Control) Act, 2033 (1976) allows people who use drugs, to be diverted from the criminal justice system to a treatment or rehabilitation centre ‘established’ or ‘recognized’ by the Government of Nepal, where they undergo treatment for three months.¹¹

However, the Government of Nepal has not established any centre for the care and reintegration of people who use drugs. Instead, it has outsourced this responsibility to private actors, who operate so-called drug treatment and “rehabilitation” facilities, without authorization or approval. The Government has also failed to impart any training to the centres’ personnel.¹²

The result of this is that nearly 11% of the respondents surveyed in the Nepal Drug Users Survey, 2076 (2019) reported experiencing violence during treatment.¹³ With little or no oversight, supervision and training, some private rehabilitation centres, practice inhuman and degrading “punishments” to “discipline” and “cure” their patients,¹⁴ and blatantly violate the rights of people who use drugs by inflicting “torture” as “treatment” and “violence” as “therapy”.¹⁵ The cases of attempted suicide and even deaths of patients that have been reported from such centres,¹⁶ but they are rarely investigated by the authorities. On the contrary, it is the victims who are blamed.¹⁷

The Nepal Government’s failure to monitor private drug rehabilitation centres and enforce human rights compliant norms for treatment of drug dependence, has fueled human rights violations against people who use drugs.¹⁸ Subjecting persons who use drugs to non-consensual interventions and depriving them of medically proven therapies for substance use disorders violates their right to health.¹⁹ The denial of medical assistance during withdrawal and the suffering inflicted as a result of such denial amounts to torture or ill-treatment.²⁰

Issue 3: Discrimination in access to health services

UPR Recommendation: Expand drug treatment and harm reduction programmes throughout the country so that services are accessible across all geographies and populations, without any discrimination.

Lack of investment in drug treatment and harm reduction centres, and economic and geographical barriers continue to impede the access to harm reduction services to people who use drugs in Nepal,²¹ despite the guarantee of equality and right to health by the constitution.

Treatment for drug dependence is available in private facilities at a cost which is beyond reach for most drug users. As per the Nepal Drug Users’ Survey, 2076 (2019), a mere 3.9% of people who use drugs received free treatment for drug dependence.²² There are currently 12 Opioid Agonist Therapy (OAT) sites, of which 5 are situated in the Kathmandu valley region in Central Nepal.²³ Services in border areas are scarce, though drugs are widely available and consumed in places near the Nepal-India border.²⁴

Issue 4. Exclusion and discrimination against women who use drugs

UPR Recommendation: Adopt a national strategy to ensure that marginalized women, such as women who use drugs and sex workers, have access to appropriate health care, and are not subject to stigma and discrimination by police and health workers.

Drug policies and programmes in Nepal are neither informed by gender-based considerations, nor address the specific needs of women.²⁵ As a consequence, women who use drugs face intersecting exclusion and discrimination, making it harder for them to seek health or social services. Most prevention or care programmes are designed for men,¹⁹ and deny in practice the right to health services of women.²¹ The Ministry of Health estimates that there are around 4,000 women who inject drugs in Nepal.²⁶ HIV prevalence among women who inject drugs is higher than among men who inject drugs in Nepal.²⁷ According to a study conducted by UNODC in 2010-11 at seven sites, only 14% of women who use drugs in Nepal had ever accessed treatment

The Nepal Drug Users' Survey, 2076 (2019) discloses higher levels of unemployment among women who use drugs as compared to their male counterparts.²⁸ Many women who use drugs engage in sex work and experience intersecting nature of discrimination on account of their gender, nature of work as well as drug-using status. Data collected by UNODC revealed that Nepalese women who use drugs and engage in sex work were more likely to have not completed primary school education and be living alone, without family.²⁹

Furthermore, prejudices against women who use drugs by law enforcement agencies,²⁰ can result in violence, and further criminalisation. The same UNODC study reports that a third of women who use drugs had faced arrest on account of drug-related crimes.³⁰ Over 54.5% women who use drugs in Nepal have faced arrest, as compared to 45.2% men who use drugs.³¹ The Special Rapporteur on violence against women noted with concern that a number of women in Nepalese prisons had been convicted on drug-related charges, but got involved in such activities owing to gender-related factors, such as coercion by a partner, because they are drug users, or because they may have resorted to drug use as a way to manage trauma related to gender violence.³²

Consultations organised before the UPR of Nepal show that women who use drugs in Nepal report severe forms of domestic and partner violence, but do not have access to legal remedies.³³ While there are a number of organisations working with victims of domestic violence in Nepal, few extend support to women who use drugs. Police too, display prejudice towards women who use drugs and do not take their complaints seriously.³⁴

ENDNOTES

- ¹ Government of Nepal, Ministry of Home Affairs, Narcotic Drug Control Section, Nepal Drug Users' Survey, 2076, Singhadurbar, Kathmandu, pp. 21-22. (hereinafter "Nepal Drug Users' Survey, 2076 (2019)") Available at: <http://www.drugportal.gov.np/assets/uploads/publications/5f060729b42711594145700.pdf>
- ² Section 14 (h), Narcotic Drugs (Control) Act, 2033 (1976)
- ³ Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem, Paragraph 4(a). Available at: www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf
- ⁴ National Consultation on UPR Submissions, organized by Recovering Nepal), 26 June 2020 (virtual)
- ⁵ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24369&LangID=E>
- ⁶ Youth Vision and Mainline, Impact of Buprenorphine Opioid Substitution Therapy Program in Nepal, December 2014, p. 42
- ⁷ Report to the General Assembly. UN Special Rapporteur on Health, Anand Grover. In: Sixty-fifth session, New York, 6 August 2010, A/65/255, paras 62, 63, 66 and 76. Available at <https://undocs.org/en/A/65/255>
- ⁸ Nepal Drug Users' Survey, 2076 (2019) pp. 60-61.
- ⁹ Integrated Biological and Behavioral Surveillance (IBBS) Survey among People Who Inject Drugs (PWID) in Kathmandu Valley, 2015, Round VI, FINAL REPORT, December 2015, Government of Nepal, Ministry of Health and Population, National Centre for AIDS and STD Control, pp.17-18.
- ¹⁰ National Consultation on UPR Submissions, organized by Recovering Nepal), 26 June 2020 (virtual).
- ¹¹ Sections 14 and 19A, Narcotic Drugs (Control) Act, 2033 (1976)
- ¹² National Consultation on UPR Submissions, organized by Recovering Nepal), 26 June 2020 (virtual).
- ¹³ Nepal Drug Users' Survey, 2076 (2019), p. 69.
- ¹⁴ NAP+N, DUNA, GNP+, 'Speaking Out: Personal testimonies of rights violations experienced by people who use drugs in Nepal', 2016, p.9. Available at https://www.gnpplus.net/assets/wbb_file_updown/5666/Human%20Rights%20Count_KPLHIV_Nepal.pdf
- ¹⁵ Kamal Pariyar, 'Rehabilitation centres remain rampant in lack of effective monitoring', Kathmandu, July 23, 2016, My Republica. <https://myrepublica.nagariknetwork.com/news/rehabilitation-centers-remain-rampant-in-lack-of-effective-monitoring/>
- ¹⁶ 13 patients escaped, 21 rescued from rehab centre, Kathmandu, December 08, 2018, The Himalayan Times. <https://thehimalayantimes.com/kathmandu/13-patients-escape-21-rescued-from-rehab-centre/>
- ¹⁷ For more information, please see, Thomas Robert Zeller, 'When Treatment Is Violence: Making, Treating, And Regulating Addiction In Nepali Private Rehabilitation Centers', A Thesis submitted to The Graduate Division Of The University Of Hawai'i At Mānoa in partial fulfillment of the requirements for the Degree of Master of the Arts in Anthropology, May 2019. Available at https://scholarspace.manoa.hawaii.edu/bitstream/10125/63136/Zeller_hawii_00850_10234.pdf
- ¹⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez. In: Sixty-eighth session, New York, 9 August 2013, A/68/295, para 42. Available at <https://undocs.org/A/68/295>
- ¹⁹ Report to the General Assembly. UN Special Rapporteur on Health, Anand Grover. In: Sixty-fifth session, New York, 6 August 2010, A/65/255, paras 30-34. Available at <https://undocs.org/en/A/65/255>
- ²⁰ Human Rights Committee, Concluding observations on the seventh periodic report of the Russian Federation, 28 April 2015, CCPR/C/RUS/CO/7 at para 16.
- ²¹ The Nepal Drug Users' Survey, 2076 (2019), p.26
- ²² Nepal Drug Users' Survey, 2076 (2019), p. 67.
- ²³ <http://www.ncasc.gov.np/map/>
- ²⁴ Central Bureau of Statistics, Government of Nepal, 'Survey Report on Current Hard Drug Users in Nepal - 2069' (2013), published by the Drug Control Programme, Ministry of Home Affairs, Government of Nepal, pp.20 and 26.
- ²⁵ Focused Group Discussion with women who use drugs, organized by Recovering Nepal in coordination with Dristi Nepal, 17 March 2020

²⁶ Mapping and size estimation of FSW, MSM, MSW, TG and PWID in Nepal, March 2017, Government of Nepal, Ministry of Health, National Centre for AIDS and STD Control, p. 26.

²⁷ Mapping and size estimation of FSW, MSM, MSW, TG and PWID in Nepal, March 2017, Government of Nepal, Ministry of Health, National Centre for AIDS and STD Control, p.2.

²⁸ The Nepal Drug Users' Survey, 2076 (2019), p.26.

²⁹ Ministry of Home Affairs and UNODC, Profile, Drug Use Pattern, Risk Behaviour and Selected Biomarkers of Women Drug Users from Seven Sites in Nepal, Government of Nepal, (2011), pp. 25 and 55.

³⁰ Ministry of Home Affairs and UNODC, Profile, Drug Use Pattern, Risk Behaviour and Selected Biomarkers of Women Drug Users from Seven Sites in Nepal, Government of Nepal, (2011), p. 40

³¹ Nepal Drug Users' Survey, 2076 (2019), p. 60.

³² Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, Visit to Nepal, 19 June 2019, A/HRC/41/42/Add.2, para 54.

³³ Consultation with women who use drugs, organized by Dristi Nepal, 16 March 2020.

³⁴ Focus Group Discussion with women who use drugs, organized by Recovering Nepal in coordination with Dristi Nepal, 17 March 2020