

HUMAN RIGHTS AND DRUG POLICIES IN NEPAL

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Credit: Dristi Nepal

Executive summary

- According to official data, an estimated 1,30,000 people use drugs in Nepal, while approximately 29% of them, or 38,000 people, inject drugs. In 2019, HIV prevalence amongst people who inject drugs was at 8.8% – a much higher rate than that of the general population in Nepal, which is 0.2%.
- On several occasions, the authorities of Nepal have committed to bring domestic policies in line with international human rights laws and

standards. The 2006 National Policy for Drug Control and the 2010 Drug Control Strategy underscore the need to protect the rights of people who use drugs. However, the laws and policies adopted by Nepalese authorities have fallen dramatically short of these commitments.

- The 1976 Narcotic Drugs (Control) Act, still in force, criminalises the use, possession for personal use, and ‘addiction’ to drugs. As such, Nepal criminalises drug dependence itself – a medical condition. According to a 2019 survey of people who use drugs, nearly half of the

Box 1 Mobilising communities and civil society through the Universal Periodic Review

At the occasion of the 3rd Universal Periodic Review (UPR) of Nepal's human rights record at the Human Rights Council, a coalition of national and international civil society and community organisations, coordinated by Recovering Nepal and the International Drug Policy Consortium, came together in order to ensure that people who use drugs in Nepal had a strong voice in the process, and to test whether the UPR can be an effective tool to support rights-based drug policy reform. This briefing paper is one of the outputs of that effort.

In order to draft a submission for the UPR of Nepal, the NGO coalition organised a national consultation with 56 representatives of communities and civil society from across the country. The consultation was held on 26th June 2020 virtually, to ensure the participation of people who would not have been otherwise able to travel to Kathmandu. Furthermore, focus group discussions were held with representatives of women and youth-led organisations. Ahead of Nepal's review at the Human Rights Council in January 2021, the coalition also produced a short summary of recommendations, and members of the coalition met virtually several delegations of Member States in Geneva and in Kathmandu.

The 2021 UPR resulted in no recommendations explicitly mentioning drug policies. This was in line with research² showing that, during the 1st and 2nd UPR cycles, only 0.15% of Member State recommendations concerned drug

policies, and many of these recommendations were prohibitionist in nature.

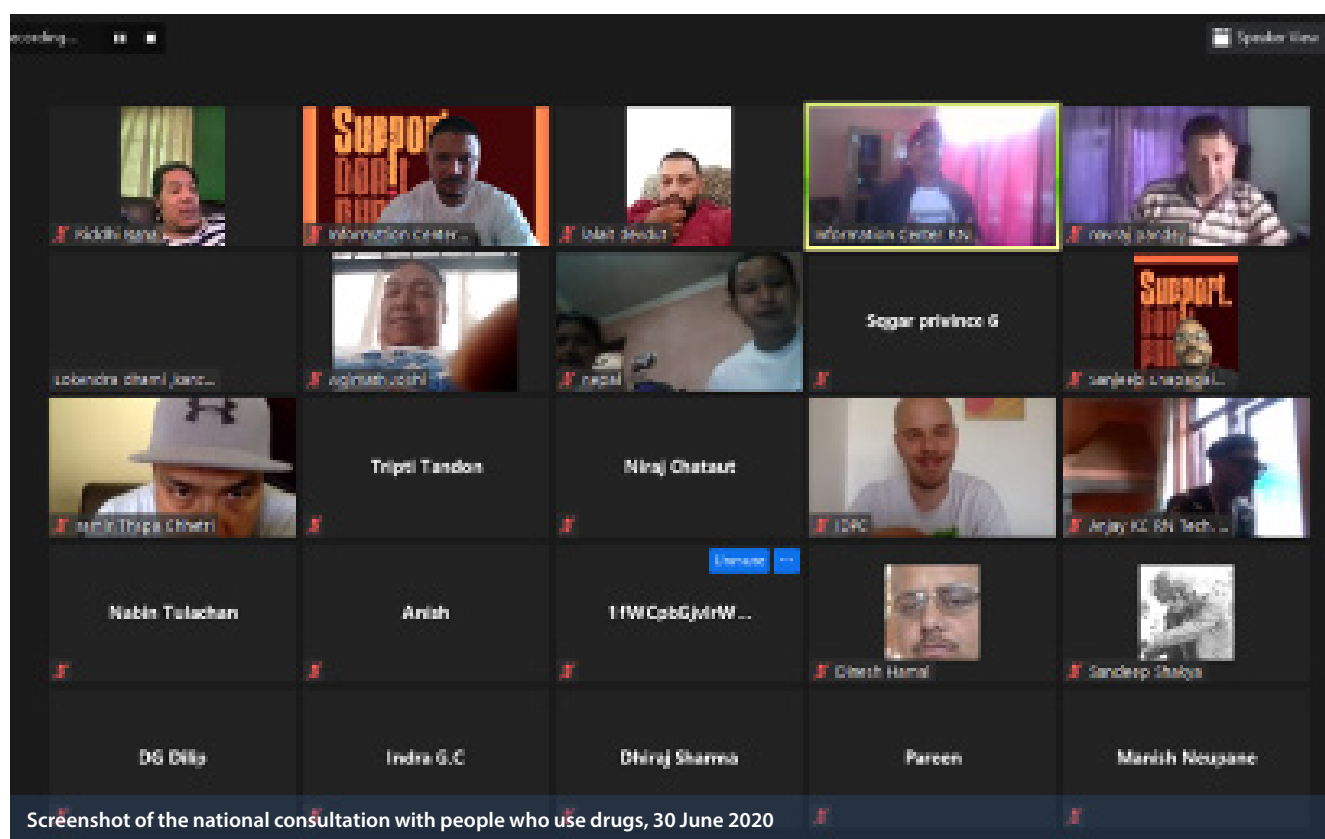
However, a number of recommendations provided by Member States in the 2021 UPR are highly relevant to drug policies. These include the recommendations to adopt anti-discrimination policies, with a focus on gender and intersecting forms of discrimination (Recommended by Guyana, India, Italy, or Lebanon, amongst others); to fight impunity for acts of torture (Recommended by Ireland and France); to ensure access to justice for people in vulnerable situations (Recommended by Nigeria); or to combat violence against women (Recommended by Chile, Canada, China, Cyprus, or Estonia, amongst many others).³

Furthermore, in July 2021 a representative of Recovering Nepal delivered an oral statement on behalf of civil society and community organisations at the 47th session of the UN Human Rights Council, in the agenda item concerning the adoption of UPR recommendations to Nepal.⁴

Ultimately, the UPR of Nepal was an opportunity to bring together civil society and communities from across the country, and to gather the information that serves as basis for this briefing paper. The resulting document shows the extent to which authorities in Nepal fail to respect, protect and fulfil the rights people who use drugs, and can serve as a basis for future advocacy for drug policy reform in the country.

respondents, including 63% of respondents who injected drugs, had been arrested for drug use or a related offence.

- Treatment for drug dependence is available only in private facilities, and at a cost that is beyond reach for most people. Legal provisions granting immunity from prosecution to those who enter drug treatment are denied to people who cannot afford it. Services in border areas are scarce, though the prevalence of drug use is higher near the Nepal-India border.
- The government of Nepal has not established any public drug treatment facility. Instead, it has outsourced this responsibility to private actors, who operate so-called drug treatment and rehabilitation centres without training, authorisation or approval. Nearly 11% of the respondents surveyed in the 2019 Nepal Drug Users' Survey reported experiencing violence during treatment, and cases of torture and ill-treatment. Cases of death have also been reported.



- Although the government of Nepal supports harm reduction programmes, the police frequently harass and detain people visiting needle and syringe programmes (NSP) and opioid agonist therapy (OAT) services. This has contributed to the poor uptake of harm reduction in the country. People who use drugs are routinely stopped and searched without a warrant. Women are searched by male police officers, and are verbally and physically abused in detention. People who use drugs are routinely beaten while in custody and coerced into 'confessing' their 'guilt'.
- Women who use drugs are disproportionately impacted by the stigma and criminalisation against people who use drugs, amplified by patriarchal norms and gender stereotypes. Drug policies and programmes are neither informed by gender-based considerations, nor do they address the concerns of women. Over 54% women who use drugs have faced arrest, compared to 45.2% of men. Women are disproportionately detained for drug offences, and are incarcerated in alarming conditions, especially in relation to nutrition and sexual and reproductive healthcare. Women who use drugs report severe forms of domestic violence, but do not have access to remedy.

Introduction

In many countries and jurisdictions, people who use drugs are using mechanisms under international human rights law to question repressive policies and practices for the control of drugs and demand policies that respect, promote and fulfil the human rights of people who use drugs.⁵

This paper, which is based on a submission prepared by the author for the Coalition of NGOs on Human Rights and Drug Policies on Nepal⁶ to the UN Working Group on Nepal's Universal Periodic Review Third cycle, 37th Session – January-February 2021, is a part of such efforts.

Developed on the basis of a desk review of literature, focused group discussions with women and young people who use drugs, and inputs from a national stakeholder consultation on human rights and drug policy in Nepal (held virtually on 26 June 2020), the paper examines how Nepal's repressive and outmoded drug policies are contributing to the violation of several human rights recognised under international and domestic law, including the right to health, the right not to be subjected to torture or ill-treatment, the right to equality and non-discrimination and the rights to liberty and privacy.

Box 2 The abolition of the death penalty in Nepal

Nepal's decision to abolish the death penalty for all crimes, through its ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to abolish the death penalty, and more recently through Article 16(2) of the Constitution of Nepal, is a welcome step. This decision assumes greater significance in a region where other countries including Bangladesh, India and Pakistan retain the death penalty for drug offences⁷ and Sri Lanka is threatening to resume executions of people convicted of drug trafficking⁸ in contravention of Article 6 of the International Covenant on Civil and Political Rights, which restricts the application of the death penalty to the most serious crimes, which, as enunciated by the Human Rights Council, do not include drug offences.⁹

Background

Drug use in Nepal

Located in South Asia, Nepal is a land-locked country and shares its borders with China to the north and India to the east, west and south. In Nepal, cannabis has been used for social, cultural, religious and medicinal purposes for centuries.¹⁰ In fact, the cultural use of psychoactive substances like alcohol and cannabis in Nepalese society is acknowledged by the government, which notes that historically, such use has not created major social problems.¹¹

The government of Nepal has been conducting periodic surveys to estimate the number and profile of people who use drugs in the country. The surveys – published in 2008,¹² 2012¹³ and most recently in 2019, reveal that cannabis is the most widely used psychoactive substance in the country after alcohol and remains easily accessible, despite prohibition.¹⁴

The Nepal Drug Users' Survey, 2076 (2019) commissioned by the Ministry of Home Affairs estimates the number of persons who use drugs in the country to be 130,424, of whom 76.2% are

below the age of 30.¹⁵

Legal framework for the protection of human rights

The Government of Nepal Act, 1958 is considered to be the first constitution of the country. Thereafter, different constitutions were promulgated under different political regimes. The 'Constitution of the Kingdom of Nepal, 1990' and the 'Treaty Act, 1990' are regarded as important milestones in the modernisation of the legal system by introducing provisions for judicial review of laws and adoption of international human rights law in Nepal.¹⁶

The Treaty Act, 1990 lays down the procedure relating to the signing, ratification, accession, acceptance, or approval of treaties or agreements to which Nepal is a party, as well as their implementation.¹⁷ In terms of the status of international human rights law, section 9(1) of the Treaty Act, 1990 states that provisions of a treaty that the government of Nepal has ratified are enforceable, and in case of any inconsistency between treaty provisions and existing laws in Nepal, the treaty provisions shall apply.¹⁸

After a decade-long civil conflict that saw the overthrow of the monarchy, Nepal embarked on a peace process in 2006 and adopted an Interim Constitution in 2007.¹⁹

In 2007, the Supreme Court of Nepal relied on provisions of the Interim Constitution as well as the Treaty Act, 1990 to hold that the state must comply with obligations under international treaties including the International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights in order to protect the fundamental human rights of lesbian, gay, bisexual and transgender citizens.²⁰

A Constituent Assembly was elected in 2008 to draft a constitution for the Republic of Nepal. The resulting Constitution of Nepal, which guarantees 31 fundamental rights and freedoms and articulates the State's commitment to human rights and international law,²¹ was adopted on 20 September 2015²² (hereinafter referred to as 'The Constitution of Nepal').



Distribution of harm reduction materials in Nepal

Despite progress, people who use drugs have been left behind by outdated legislation

The Constitution of Nepal protects the right to equality and forbids discrimination in the application of laws, amongst others, on the grounds of any ‘physical’ or ‘health condition’.²³ It also guarantees the right to health of citizens and entitles them to receive free basic health services from the State as well as enjoy equal access to such services.²⁴

As per the Nepal Drug Users’ Survey, 2076 (2019), 29.3% of the respondents – i.e. an estimated 38,000 people – inject drugs.²⁵ Although the figure reported by the Ministry of Health is much lower,²⁶ the Survey is roughly close to UNAIDS’ own estimate of 30,900 people who inject drugs. The lack of availability of harm reduction services for people who inject drugs can place them at risk of blood-borne diseases like HIV, hepatitis B and C, as well as tuberculosis.

As reported in 2019, HIV prevalence among people who inject drugs was 8.8%, and was much higher than the prevalence among the general population (0.2%) in Nepal.²⁷ The risk of multi-drug resistant tuberculosis was 5.13 times higher among people who inject drugs.²⁸ The burden of hepatitis C infection is also high; in one study published in 2015, over 40% of people who inject drugs in three regions in Nepal were found to be infected with the virus.²⁹

Over 63% of people who use drugs wanted to seek help, but fewer accessed any kind of treatment facility.³⁰ This may be explained by the fact that people who use drugs are heavily stigmatised and criminalised in Nepal.³¹

The Narcotic Drugs (Control) Act, 2033 (1976) was enacted over four decades ago and was last amended in 1993. The law criminalises the use and possession of drugs while paying scant attention to the health needs of people who use drugs. According to the Ministry of Home Affairs, more than 10,156 people were arrested for drug offences between 2013 and 2016.³²

At the UN General Assembly Special Session (UNGASS) on the world drug problem in April 2016 in New York, Member States agreed to: ‘ensure that national drug policies...fully respect human rights and fundamental freedoms’.³³ The 2018 UN system Common Position on drugs commits UN entities to place ‘people, health and human rights at the centre’ of drug policies, and to promote alternatives to conviction and punishment, ‘including the decriminalisation of drug possession for personal use’.³⁴

In its Universal Period Review of 2011, Nepal agreed to recommendations to bring its laws in line with international human rights standards.³⁵ Further, in the last Universal Periodic Review of 2015, the Nepalese government accepted several recommendations to implement the new Constitution consistent with the protection of human

rights³⁶ and acknowledged this to be its foremost priority.³⁷

The National Policy for Drug Control, 2063 (2006) underscores the need to revise existing drug policies in a manner that protects the human rights of people who use drugs. It also expresses the government's commitment to reform the existing drug law in light of Nepal's commitment to the UN General Assembly.³⁸ The same intent is reflected in the Drug Control Strategy, 2010.³⁹

Despite international commitments and repeated calls from Nepalese civil society for rights-based drug policies, the Narcotic Drugs (Control) Act, 2033 (1976) has not been reformed or revised in line with the State's obligations under the international human rights treaties and the national constitution. As a result, people who use drugs have been left behind in the enjoyment of human rights and freedoms in Nepal.

Criminalising drug use and dependence violates human rights

The Narcotic Drugs (Control) Act, 2033 (1976) criminalises anyone who is 'addicted' to any narcotic drug or psychotropic substance,⁴⁰ thereby treating a health issue as a crime, and patients as criminals.

One of the basic principles of criminal jurisprudence is that no one can be criminalised for a medical condition. The World Health Organisation (WHO) considers drug dependence as "*a multi-factorial health disorder that often follows the course of a relapsing and remitting chronic disease*".⁴¹ Even at the height of drug prohibition, the US Supreme Court ruled that criminalisation of drug addiction, which is a disease, a status or a medical condition is unconstitutional and amounts to inflicting cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the Constitution of the United States.⁴²

The Narcotic Drugs (Control) Act, 2033 (1976) also proscribes the 'consumption' of drugs,⁴³ contrary to the mandate of the international drug conventions,⁴⁴ to which Nepal is a signatory. On the contrary they encourage States to provide education, treatment, after-care and support measures to people who are dependent on drugs.

The criminalisation of drug use and drug dependence violates the right to health both under the Constitution of Nepal, and under international human rights law.⁴⁵ The International Covenant on Economic, Social and Cultural Rights, which guarantees the right to the highest attainable standard of health, requires the State to provide treatment for a medical condition or disease, and explains that this cannot possibly be the basis for criminalisation. In fact, the UN Committee on Economic, Social and Cultural Rights has called on many occasions for the decriminalisation of people who use drugs.⁴⁶ The criminalisation of drug dependence also infringes upon Article 2 of the International Covenant on Economic, Social and Cultural Rights, as persons with substance use disorders are subjected to discrimination, i.e. treated as criminals on the grounds of their health status. Treating people dependent on drugs as criminals also violates Article 26 of the International Covenant on Civil and Political Rights, which requires all persons to enjoy equal protection of the law, without discrimination on the basis of any of the enumerated grounds, which includes their health status.

Punitive drug policies in Nepal have engendered a culture of violence and brutality by the police, which has in turn increased risk and compromised the health and safety of people who use drugs.⁴⁷

According to the Nepal Drug Users' Survey, 2076 (2019), nearly half the respondents had faced arrest for drug use or related activities.⁴⁸ Other surveys among people who inject drugs show even higher rates of incarceration for drug offences (nearly 63% of all respondents).⁴⁹

Furthermore, the criminalisation of drug use has exacerbated stigma and negative attitudes towards people who use drugs in healthcare. Community consultations carried out for Nepal's 2021 UPR showed that, despite facing significant health-related problems, people who inject drugs are afraid to visit medical facilities as they are either neglected or shunned or subjected to callous behaviour by staff.⁵⁰

The UN Special Rapporteur on the right to health has considered the pernicious effects of criminalisation on the right to health of people who use drugs and recommended the decriminalisation of drug use and possession for personal use.⁵¹



Credit: Recovering Nepal

Similar recommendations have been made by the UN High Commissioner for Human Rights⁵² and other UN entities.⁵³

The International Guidelines on Human Rights and Drug Policy encourage countries to: 'Utilise the available flexibilities in the UN drug control conventions to decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption' in order to protect the right to health, respect the right to privacy as well as ensure the freedom of thought, conscience and religion guaranteed under international law.⁵⁴

However, ignoring the growing body of international and comparative law, Nepal continues to criminalise drug use and dependence, which impairs the dignity and rights of people who use drugs.

Ill-treatment, arbitrary arrests and detention

Though the Narcotic Drugs (Control) Act, 2033 (1976) allows people who are found to have either consumed or purchased or be in possession of small amounts of drug (without a commercial motive) for the first-time, to be released on signing a bond,⁵⁵ in practice, police in Nepal arrest and detain people who use drugs, for use as well as supply offences.⁵⁶

Under the Narcotic Drugs (Control) Act, 2033 (1976), the power to search and arrest without a warrant can be exercised in exigent situations,

after recording reasons in writing.⁵⁷ However, in the consultation and focus group that took place in order to compile the UPR submission, people who use drugs reported being subject to such measures routinely without warrant.⁵⁸ Women who use drugs complained about being stopped and searched by male police officers as well as being verbally and physically abused in detention.⁵⁹

Over 83% of respondents in a study conducted among people who use drugs enrolled in OAT reported that the attitude of the police was either 'bad' or 'very bad', and that violence in custody was commonplace.⁶⁰

Police abuses against people who use drugs take other egregious forms. Young people who use drugs reported being searched with no credible cause and if the police did not find drugs, they forcibly took their personal money and if the person protested, then the police would slap them. People who use drugs are routinely beaten while in custody and coerced into 'confessing' their 'guilt' and disclosing names and contacts of peers.⁶¹ Juveniles and young people who use drugs (below the age of 15 years) are charged with drug-related offences and not offered diversion measures under the law.⁶²

The police in Nepal act in complicity with private rehabilitation centres and forcibly bring people who use drugs to such centres where they suffer inhuman treatment, torture and abuse.⁶³

The prohibition against torture during arrest and detention is incorporated in Nepal's Constitution,⁶⁴ but there is no law defining and criminalising torture. In its Concluding Observations to the State in 2014, the Human Rights Committee had expressed concerns over the widespread use of torture and ill-treatment in police custody as well as the practice of arbitrary detention in Nepal and desired that this be addressed through appropriate legislation.⁶⁵

In its last Universal Periodic Review in 2015, the government of Nepal accepted a number of recommendations in relation to education and training of law enforcement on human rights, including on the prevention of torture and ill-treatment as well as on addressing torture through appropriate legislation.⁶⁶

Notwithstanding its commitments, the government of Nepal has failed to prevent police abuses and ill-treatment of people who use drugs and is thus in violation of the right to liberty, privacy, freedom from torture and arbitrary detention under international human rights law.

Interference and disruption of harm reduction services

Under international human rights law, the state has an obligation to respect the right to health, which means that the state itself cannot be an obstacle in its realisation. While the Nepalese government supports harm reduction programmes, law enforcement agencies disrupt the delivery of health services to people who inject drugs.

Police in uniform or plain clothes congregate around NSPs and stop and search the clients visiting the facilities. Though possession of syringes or injecting equipment is not a crime and NSPs operate under the aegis of the National Centre for AIDS and STD Control, under the Ministry of Health,⁶⁷ police apprehend people accessing NSPs on suspicion of drug use.⁶⁸ Outreach workers delivering sterile needles and syringes to women who inject drugs in Nepal have also reported being stopped, searched and arrested.⁶⁹

Police visit NGO sites providing OAT and arbitrarily stop and question clients about their drug use. Identity cards issued by the programme are seized and torn. Police extort money from people using the service by instilling fear of arrest. New or first-time clients are particularly vulnerable and stop using OAT services on account of harassment by the police.⁷⁰ This, apart from violating the right to liberty and privacy, directly infringes the right to health as is evident from the data below.

Police apprehending clients from NSP and OAT sites is contrary to the National Policy for Drug Control, 2063 (2006) and the Drugs Control Strategy, 2010, which endorse these programmes.⁷¹

Arrests and intimidation of people who use drugs by the police have contributed to the poor uptake of harm reduction services in Nepal. The number of needles and syringes provided per person per year is only 25 and falls far below the

recommendation⁷² of 200 needles and syringes per person per year. Access to OAT is a mere 2% in Nepal, compared to the WHO recommended target of 40% of people who inject drugs.⁷³ The Special Rapporteur on the right to health has noted the negative impact of arrests and repression by law enforcement on the realisation of the right to health of people who use drugs.⁷⁴

Nepal's Drug Control Strategy, 2010 talks about the government's plans to change negative attitudes among law enforcement agencies towards harm reduction programmes through training and sensitisation.⁷⁵ However, no such pedagogical exercises have so far been undertaken.

Inflicting torture as 'treatment'

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.⁷⁶ Under the law, a treatment centre is a facility which is 'approved' by the government for the treatment and rehabilitation of persons with a dependence on narcotic drugs.⁷⁷ Unauthorised private centres would not qualify as a treatment facility by this definition.

The Drug Control Strategy of 2010 recognised that the success of rehabilitation programmes depends on whether people who use drugs receive humane and quality treatment with full respect for their rights, and proposed to set up at least one model centre for the treatment and rehabilitation in every region.⁷⁸

However, the government of Nepal has not established any such centres for the care and reintegration of people who use drugs. Instead, it has outsourced this responsibility to private actors, which operate so-called drug treatment and rehabilitation facilities, without authorisation or approval.

The government has also failed to impart any training on the treatment, after-care, rehabilitation and social reintegration of people with drug dependence to personnel employed at such centres,⁷⁹ contrary to the requirements under the UN drug conventions.⁸⁰



Community support during the COVID-19 pandemic

Nearly 11% of the respondents surveyed in the Nepal Drug Users' Survey, 2076 (2019) reported experiencing violence during treatment⁸¹ – the extent and severity of which has been documented in independent reports. With little or no oversight, supervision and training, some private rehabilitation centres blatantly violate the rights of people who use drugs by inflicting 'torture' as 'treatment' and 'violence' as 'therapy'.⁸² Practices documented at such centres include forcible detention and involuntary admission, denial of medical care and management of withdrawal, solitary confinement, forced labour, flogging, beating and other inhuman and degrading 'punishments' to 'discipline' and 'cure' people who use drugs.⁸³ Several cases of attempted suicide and even deaths of inmates have been reported from such centres.⁸⁴ Complaints of torture and brutality are rarely investigated by the authorities; on the contrary, it is the victims (i.e. people who use drugs) who are deemed to be morally debased and blameworthy.⁸⁵

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has concluded that the Nepalese government's failure to monitor private drug rehabilitation centres and enforce human rights compliant norms for treatment of drug dependence has fuelled human rights violations against people who use drugs.⁸⁶ According to the Special Rapporteur on the right to health, subjecting people who use drugs to non-consensual interventions and depriving them of medically proven

therapies for drug dependence violates their right to health.⁸⁷ The UN Human Rights Committee has noted that the denial of medical assistance during withdrawal and the suffering inflicted on people dependent on drugs as a result of such denial amounts to torture or ill-treatment.⁸⁸

In the absence of medically sound treatment protocols for private centres, people who use drugs in Nepal are subjected to non-consensual experimentation, which amounts to a violation of Article 7 of the International Covenant on Civil and Political Rights. The UN Committee against Torture has expressed concern over poor conditions in private drug rehabilitation centres and ill-treatment inflicted upon people admitted to them and called upon the concerned State (in that case Guatemala) to conduct a survey of existing centres in the country, and to ensure that each is duly accredited by the competent authority and is subject to regular inspection.⁸⁹

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has called upon States to 'Undertake investigations to ensure that abuses, including torture or cruel, inhuman and degrading treatment, are not taking place in privately-run centres for the treatment of drug dependence'⁹⁰ The UN High Commissioner for Human Rights has also urged States to undertake rigorous and independent monitoring of treatment centres to ensure that treatment takes place on a voluntary basis, with informed consent, and that



Mobilisation of the Women who Use Drugs Network

individuals are not detained against their will.⁹¹ The UN Working Group on Arbitrary Detention has urged countries to investigate and remedy human rights abuses in so-called drug treatment and rehabilitation centres established and run by private individuals or organisations.⁹²

In 2018, the Ministry of Home Affairs announced Operational Guidelines for Drug Treatment Rehabilitation Centre - 2075 to regulate and monitor private rehabilitation centres.⁹³ While the Ministry of Home Affairs has started maintaining a portal of rehabilitation centres in the country,⁹⁴ surveillance or inspection have not been carried out. Consequently, torture and ill-treatment continue unabated.⁹⁵

The government of Nepal also has an obligation to prevent, investigate, prosecute and punish acts of torture committed by private actors,⁹⁶ and this obligation applies to people receiving treatment in private rehabilitation centres. When public officials fail to do so, they are considered to be authors, complicit or otherwise responsible for these acts.⁹⁷

Discrimination in access to health services

Despite the constitutional guarantee of equality and the right to health, and overarching principles of non-discrimination in the enjoyment of the right to health under the International Covenant on Economic, Social and Cultural Rights,

which the government of Nepal is bound by, people with drug dependence face systemic barriers in accessing treatment and harm reduction services in Nepal.

The Public Health Service Act, 2075 (2018) secures citizens' right to obtain free basic health services for certain conditions, including services relating to non-communicable diseases, mental health conditions, and other conditions that may be notified by the government.⁹⁸

Treatment for drug dependence is, however, only available in private facilities and at a cost, which is beyond reach for most people who use drugs. As per the Nepal Drug Users' Survey, 2076 (2019), a mere 3.9% of people who use drugs received free treatment for drug dependence.⁹⁹ Legal provisions granting immunity from prosecution to those who enter drug treatment are denied to persons who cannot afford to pay for admission. This includes women who use drugs, who typically are without means and end up in jail on account of their poverty and drug dependence.¹⁰⁰

There are currently 14 OAT sites, of which five are situated in the Kathmandu valley region in Central Nepal.¹⁰¹ People who use drugs report that services in border areas are scarce, though drugs are widely available and consumed in places near the Nepal-India border.¹⁰² The Ministry of Health has mapped injecting drug use and HIV-related risks in border districts,¹⁰³ yet people who use drugs living in these areas lack access to harm

reduction services.¹⁰⁴

The Constitution of Nepal prohibits discrimination, *inter alia*, on the grounds of citizens' 'economic condition' and the 'region' where they reside.¹⁰⁵ The Constitution also guarantees that every citizen shall have the right to equal access to health services.¹⁰⁶ Nepal's National Health Policy - 2071 (2014) seeks to provide quality health services for all, including marginalised and at-risk communities, free of charge, to ensure the realisation of the fundamental right to health.¹⁰⁷

Economic and geographical barriers, however, continue to impede the realisation of the right to health of people who use drugs in Nepal. Under international human rights law, physical and economic accessibility is an integral part of the right to health, as is the right to non-discrimination.¹⁰⁸

Women who use drugs – Severe and multiple rights violations

According to the Nepal Drug Users' Survey, 2076 (2019), there are an estimated 8,732 women who use drugs in Nepal, a figure that the government itself acknowledges to be an underestimate, on account of the stigma associated with drug use among women.¹⁰⁹ The Ministry of Health estimates that there are around 4,000 women who inject drugs in Nepal.¹¹⁰ HIV prevalence among women who inject drugs is higher than among men who inject drugs in Nepal,¹¹¹ revealing greater vulnerability and poorer access to health services. According to a study conducted by UNODC in 2010-2011 at seven sites, only 14% of women who use drugs in Nepal had ever accessed treatment.¹¹²

The stigma, discrimination and marginalisation experienced by women who use drugs is amplified by patriarchal norms and gender stereotypes, which underpin laws and policies in Nepal.¹¹³

The Nepal Drug Users' Survey, 2076 (2019) discloses higher levels of unemployment among women who use drugs as compared to their male counterparts.¹¹⁴ Many women who use drugs engage in sex work and experience the intersecting nature of discrimination on account of their gender, nature of work, as well as drug-using status. Data collected by UNODC reveal that Nepalese women who use drugs and engage in sex work are more likely

to have not completed primary school education and be living alone, without family.¹¹⁵

In its concluding observations to the periodic review of Nepal, in 2018, the Committee on the Elimination of Discrimination against Women (CEDAW), encouraged the government of Nepal to recognise the specific needs of all women and girls facing intersectional and multiple forms of discrimination in the constitutional provisions granting 'special opportunities' to 'socially and culturally backward women'.¹¹⁶ CEDAW expressed concern over the arrest and extortion faced by women in sex work under Nepal's Human Trafficking and Transportation (Control) Act, 2064 (2008) and advised the government to ensure that women engaged in sex work are not harassed or prosecuted.¹¹⁷

One-third of women who use drugs in the UNODC study had faced arrest on account of drug-related crimes.¹¹⁸ Over 54.5% women who use drugs have faced arrest, as compared to 45.2% men who use drugs.¹¹⁹ Punitive drug laws are known to be a leading cause of incarceration of women around the world¹²⁰ – Nepal being no different. During a recent mission to Nepal, the UN Special Rapporteur on violence against women noted with concern that a number of women incarcerated in prison had been convicted on drug-related charges and that women get involved in such crimes owing to gender-related factors, such as pressure or coercion by an intimate partner, or because they use drugs, or they may have been victims of serious forms of gender-based violence and resorted to drugs.¹²¹ Women who use drugs who have suffered imprisonment report appalling conditions, especially in relation to nutrition and sexual and reproductive healthcare.¹²²

Nepal's Drug Control Strategy, 2010 sought to introduce programmes related to drug use in prisons;¹²³ none, however, have taken off. The Special Rapporteur on violence against women urged Nepal to improve prison conditions for women and ensure adequate facilities for healthcare including facilities for obstetric and gynaecological care, adequate bedding and access to nutritious food.¹²⁴ In its Universal Periodic Review in 2015, the government of Nepal also accepted a recommendation in relation to the safety of men and women in prisons.¹²⁵

The more marginalised and stigmatised a population is, the harder it is for them to seek health or social services. Most prevention and care programmes for people who use drugs are not reaching women because the services are designed for men.¹²⁶ The focus groups conducted for this report reveals that drug policies and programmes in Nepal are neither informed by gender-based considerations nor address the concerns of women who use drugs.¹²⁷ This denies them their right to health.

Women who use drugs in Nepal are particularly disadvantaged in their claims to citizenship and suffer on account of discriminatory laws and practices that privilege men. Women who use drugs are largely dependent on their partners for decision-making and do not possess vital documents, such as certificates of registration of marriage and birth of their children. Some are in abusive marriages or relationships that are not recognised by law, or they are single mothers – cases where the identity or whereabouts of the husband are unknown. Women who use drugs often suffer abandonment and neglect at the hands of their family, which under Nepali law can weaken their claims to citizenship for themselves and their children.¹²⁸

Both CEDAW and the Special Rapporteur on violence against women have called upon the

government of Nepal to amend discriminatory provisions in relation to citizenship, and to ensure that women can exercise their right to nationality and citizenship on an equal basis with men.¹²⁹

Nepalese women who use drugs report severe forms of domestic and partner violence, but do not have access to legal remedies.¹³⁰ While there are a number of organisations working with victims of domestic violence in Nepal, few extend support to women who use drugs. Police also display prejudice towards women who use drugs and do not take their complaints seriously.¹³¹

Women who use drugs experience severe and intersecting forms of discrimination even as Nepal has made progress in strengthening gender-equality in domestic laws and policies, thereby infringing their right to equality.

Recommendations

In order to protect, promote and fulfil the human rights of people who use drugs:

The **government of Nepal** may 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



Credit: Youth RISE Nepal

Support. Don't Punish action organised by Youth RISE Nepal in 2020

Strategy, in order to:

- Repeal laws criminalising drug use and drug dependence, as well as the possession of drugs for personal use, and ensure that drug dependence is treated as a health condition and not crime.
- Ensure that private drug treatment centres provide evidence-based treatment on a voluntary basis, through the adoption and implementation of a regulatory framework that provides authorisation, training, price setting and quality control oversight over such centres.
- Outlaw any act of torture and ill-treatment committed by private actors such as drug rehabilitation centres, and ensure that all allegations of torture and ill-treatment are investigated promptly, thoroughly, impartially and independently, with access to remedy and reparation for victims.
- Expand access to drug treatment and harm reduction programmes throughout the country so that services are available across all geographies, without any discrimination, and are tailored to the specific needs of women.
- Adopt a national strategy to ensure that all women, including women who use drugs and sex workers, have access to appropriate healthcare, and are not subject to stigma and discrimination by police and health workers.

Civil society organisations working on human rights and drug policies in Nepal may:

- Use Nepal's robust legal framework including the Constitution and the Treaty Act, 1990 to draw attention of the Courts to the human rights violations faced by persons who use drugs, including women – whose vulnerability has been documented in several surveys and policy documents.
- Continue engaging with the international human rights system to draw attention to, and seek remedy for, the human rights violations committed in the name of drug control; and use international standards, such as the UN system Common Position or the International Guidelines on Human Rights and Drug Policy, to further align of drug policies and human rights in Nepal.
- Seek legal/judicial remedies in individual cases of persons who use drugs, where the

authorities have failed to act in accordance with law.

- Continue to advocate for rights-based reforms to the Narcotic Drugs (Control) Act, 2033 (1976) with law makers in Nepal
- Continue coordinating messaging across all drug reform organisations in Nepal, so that advocacy asks are consistently aligned with human rights standards, and take into consideration the needs, circumstances and rights of people who are part of oppressed and marginalised populations.
- Ensure the meaningful representation and participation of community-led organisations, including of people who use drugs, in all engagements with national and international bodies, and make sure their voice and experience is represented at all stages of policy-making.

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About this Briefing Paper

Drawing on community consultations, focus groups and desk research, this briefing provides an outline of the key human rights challenges faced by people who use drugs in Nepal.

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About IDPC

The International Drug Policy Consortium is a global network of non-government organisations 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 advice to policy makers and officials around the world.

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