






# Submission to the United Nations Human Rights Committee ahead of the third periodic review of Nepal (adoption of List Of Issues Prior to Reporting)

*131<sup>st</sup> Session (1 – 26 March 2021)*

4 January 2021

## Reporting Organisations:

	<p><b>Harm Reduction International (HRI)</b> is a leading NGO dedicated to reducing the negative health, social, and legal impacts of drug use and drug policy. HRI promotes the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.</p> <p>The organisation is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.</p> <p><a href="http://www.hri.global">www.hri.global</a></p>
	<p><b>Recovering Nepal</b> is a national federation of people who use drugs and organisations providing services to people who use drugs in Nepal. Founded in 2001 as a support group for drug users and persons living with HIV, Recovering Nepal was formally registered in 2003 with the aim of improving the quality of life of people who use drugs through the delivery of HIV and harm reduction services, addressing stigma and discrimination, mobilizing communities and advocating human rights and policy reform. Its current membership includes 85 drug-related service organizations from the Central Region (Mid-Terai), Eastern Region, Kathmandu Valley, mid-far Western Region (Nepalgunj), South West Region (Butwal) and Western Region (Pokhara) of Nepal.</p> <p><a href="http://www.recoveringnepal.org.np/home/index.php">http://www.recoveringnepal.org.np/home/index.php</a></p>
	<p><b>Recovering Nepal Women (RN Women)</b> acts as the national network of women who use drugs in Nepal. RN Women is a registered organization and has been engaged in advocacy on national policies on HIV and harm reduction with the objective of amplifying the voices and concerns of women who use drugs in Nepal.</p>
	<p><b>Dristi Nepal</b> is a registered organization that seeks to create a stigma and discrimination-free society for female drug users in Nepal and prevent HIV infection through the provision of education, outreach, counseling and healthcare services and advocacy for the rights and empowerment of women who use drugs.</p> <p><a href="https://www.dristinepal.com/index.html">https://www.dristinepal.com/index.html</a></p>

	<p><b>Coalition of Drug Users in Nepal (CDUN)</b> is an alliance of people who use drugs with members drawn from all the five development regions of Nepal. Initiated in April 2016, CDUN seeks to advocate for health, human rights, harm reduction, prevention of drug addiction among youth, social demarginalisation and drug policy reform in Nepal by consolidating and strengthening the voices of people who use drugs.</p> <p><a href="http://cdunepal.org/">http://cdunepal.org/</a></p>
	<p><b>Youth Rise International</b> is an organization which mobilizes youth to be engaged in the full spectrum of harm reduction and drug policy reform in order to promote health and human rights. Youth Rise Nepal is a loose network of young people who use drugs in Nepal, who engage and empower their peers in community, national and regional drug programming processes through various interventions.</p> <p><a href="https://youthrise.org/">https://youthrise.org/</a></p>
	<p><b>YKP (Young Key Affected People) LEAD Nepal</b> is an organization that engages with young people who use drugs, young men who have sex with men, young people living with HIV/AIDS and Hepatitis C, young transgender people, migrant workers and young sex workers to strengthen their leadership abilities and impart knowledge and training on human rights issues affecting them. YKP Lead is a registered organization and led by young people from drug use, sex work and HIV backgrounds and communities of gay and transgender people, thus bringing diversity of voices for advocacy and empowerment.</p> <p><a href="https://www.facebook.com/YKPLEADNepal/">https://www.facebook.com/YKPLEADNepal/</a></p>
	<p><b>Sparsha Nepal</b> began as a support group for people living with HIV in Nepal and was registered as an NGO in 2004 to work with 'most at risk populations' of people who use and inject drugs and female sex workers in Nepal. It is currently implementing community based programmes that offer the UN recommended core interventions for HIV prevention, treatment and care among people who inject drugs in six districts in Nepal. The services include needle and syringe provision, opioid substitution therapy, HIV testing and counseling, anti-retroviral treatment, distribution of condoms, screening and treatment for tuberculosis and referral care for viral hepatitis. Sparsha Nepal associates with the Ministry of Home Affairs and the Ministry of Health of the Government of Nepal in order to support the National HIV Strategic Plan 2016-2021.</p> <p><a href="https://www.facebook.com/oursparsha/">https://www.facebook.com/oursparsha/</a></p>
	<p><b>Community Support Group Nepal (CSG)</b> is an NGO established in 2002 for providing support to people who inject drugs in Nepal. Started as an informal group at the initiative of young people affected by drug use and HIV, CSG is currently implementing a range of harm reduction and HIV prevention, care, treatment programmes in Kaski, Tanahun, Baglung, Syangja, Myagdi and Parbat Districts in Nepal. CSG mobilises men, women and children living with HIV to speak up against stigma and discrimination and make positive contributions to society.</p> <p><a href="http://www.csgnepal.org.np/">http://www.csgnepal.org.np/</a></p>
	<p><b>International Drug Policy Consortium (IDPC)</b> is a global network of 198 non-government organizations that advocate for drug policies based on evidence, and on principles of public health, human rights, human security, development and civil society participation.</p> <p><a href="https://idpc.net/">https://idpc.net/</a></p>

## Background and Introduction

According to a recent survey commissioned by the Ministry of Home Affairs (hereinafter *Nepal Drug Users' Survey 2019*), there are at least 130,424 people who use drugs in Nepal, of which 76.2% are below the age of 30.<sup>1</sup> The *Survey* estimates that around 8,732 women use drugs in Nepal, although the Government itself acknowledges this figure as underreported on account of the stigma associated with drug use among women.<sup>2</sup> An estimated 90,000 persons inject drugs in Nepal.<sup>3</sup>

Reported HIV prevalence among persons who inject drugs is 8.8%, significantly higher than prevalence among the general population (0.2%),<sup>4</sup> and HIV prevalence among women who inject drugs is higher than among men who inject drugs.<sup>5</sup> The burden of HCV infection is also high: one study found over 40% of people who inject drugs in three regions in Nepal to be infected with Hepatitis C.<sup>6</sup>

The reporting organisations welcome the opportunity of submitting information to the Human Rights Committee ahead of its adoption of the List of Issues Prior to Reporting for the review of Nepal, at its 131<sup>st</sup> Session. This submission will assess the performance of Nepal regarding its obligations under the International Covenant on Civil and Political Rights (ICCPR), with a focus on the country's drug policy. Accordingly, it will cover developments since the last review, also building upon the recent report submitted by a coalition of nine local and international NGOs ahead of the Universal Periodic Review of Nepal.<sup>7</sup> Information is provided regarding the following violations against people who use drugs:

1. Disproportionate punishment of drug offences, and incarceration (Art. 7, 9, 10, 14, 26);
2. Targeting and ill-treatment by law enforcement, and arbitrary arrest and detention (Art. 7, 9, 10, 26);
3. Ill-treatment in private drug detention centres and lack of monitoring (Art. 2, 7, 9, 10);
4. Arbitrary interference with the right to privacy (Art. 17); and
5. Stigma and discrimination (Art. 26).

### 1. Disproportionate punishment of drug offences, and incarceration (Art. 7, 9, 10, 14, 26)

International human rights law requires that deprivation of liberty be lawful, necessary, imposed as a measure of last resort, and reasonable. This Committee has reiterated that "arbitrariness is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law".<sup>8</sup> The prohibition of arbitrariness implies that the underlying rationale for detention cannot be discrimination,<sup>9</sup> and various UN human rights mechanisms have concluded that drug consumption or dependence are not sufficient justification for detention.<sup>10</sup> The Working Group on Arbitrary Detention in particular expressed concern at "the use of criminal detention as a measure of drug control following charges for drug use, possession, production and trafficking", and its incompatibility with the central principles of legality, proportionality, necessity, and appropriateness.<sup>11</sup>

<sup>1</sup> Government of Nepal, Ministry of Home Affairs, Narcotic Drug Control Section, *Nepal Drug Users' Survey*, 2076, Singhadurbar, Kathmandu, pp. 3 and 21. Available at <http://www.drugportal.gov.np/assets/uploads/publications/5f060729b42711594145700.pdf>.

<sup>2</sup> *Nepal Drug Users' Survey*, 2076 (2019)", pp. 21-22.

<sup>3</sup> *Nepal Drug Users' Survey*, 2076 (2019), p. 50.

<sup>4</sup> See UNAIDS Data 2019, pp. 186-187. Available at [https://www.unaids.org/sites/default/files/media\\_asset/2019-UNAIDS-data\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/2019-UNAIDS-data_en.pdf)

<sup>5</sup> 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.

<sup>6</sup> Kinkel H-T, Karmacharya D, Shakya J, Manandhar S, Panthi S, Karmacharya P, et al. (2015) Prevalence of HIV, Hepatitis B and C Infections and an Assessment of HCV-Genotypes and Two IL28B SNPs among People Who Inject Drugs in Three Regions of Nepal. *PLoS ONE* 10(8): e0134455. doi:10.1371/journal.pone.0134455.

<sup>7</sup> Submission available at [http://files.server.idpc.net/library/UPR-Submission-People-Who-Use-Drugs-in-Nepal\(1\).pdf](http://files.server.idpc.net/library/UPR-Submission-People-Who-Use-Drugs-in-Nepal(1).pdf).

<sup>8</sup> *Mukong v Cameroon*, Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991 (1994) para. 9.8.

<sup>9</sup> See for example *Fongum Gorji-Dinka v. Cameroon*, Communication No. 1134/2002, U.N. Doc. CCPR/C/83/D/1134/2002 (2005), para. 5.1

<sup>10</sup> Among others, see Human Rights Council, Report of the Working Group on Arbitrary Detention. Un Doc. A/HRC/30/36 (2015), Para. 60.

<sup>11</sup> *Ibid.*, Para. 61.

Nepal has adopted a punitive approach to drugs. The Narcotic Drugs (Control) Act, 2033 (1976), last amended in 1993, prohibits the use, possession, manufacturing, cultivation, storing, distribution, purchase, importing, and exporting of illicit substances.<sup>12</sup> Cannabis use is punished with imprisonment up to one month or a fine, while the use of other illicit substances can be punished with imprisonment up to one year. Imprisonment can be avoided by agreeing to submitting to drug treatment.<sup>13</sup> The Narcotic Drugs (Control) Act, 2033 (1976) also criminalises anyone who is ‘addicted’ to any narcotic drug or psychotropic substance,<sup>14</sup> thereby treating a medical condition - drug dependence - as a crime.

The prison population has been increasing since the last review. Government figures indicate that as of May 2020 there were 5176 prisoners detained for drug offences in Nepal, roughly 21% of the total prison population. Of these, 287 are women, and 25 are persons living with HIV. Forty per cent of all those detained for drug offences are held in pre-trial detention.<sup>15</sup> Nearly half the respondents to the *Nepal Drug Users’ Survey 2019* had faced arrest for drug use or related crimes.<sup>16</sup> Other surveys among people who inject drugs show even higher rates of incarceration for drug offences (nearly 63% of respondents).<sup>17</sup>

The Criminal Procedure Code allows to detain a person on remand for maximum 25 days. The Narcotic Drugs (Control) Act, 2033 (1976), however, empowers the judicial authority to extend the detention on remand of persons arrested for a drug offence for up to three months.<sup>18</sup> This constitutes a form of disadvantageous treatment on account of engagement with drugs, which cannot be deemed reasonable nor necessary. This possibility of imposing lengthy (and disproportionate) detention on remand, coupled with the criminalisation of drug use and possession and pervasive law-enforcement, have led to a significant percentage of the prison population in Nepal (around 40%) being detained while having to be presumed innocent. Currently, the average length of stay in pre-trial detention for drug related offence is anywhere between 12 and 18 months. In this phase, detainees have to personally cover all their personal and legal expenses.<sup>19</sup>

Nepalese prisons suffer from high rates of overcrowding,<sup>20</sup> and prisoners live in cramped cells with little personal space, and with a lack of adequate water, sanitation, bedding, lighting, and common areas for recreation.<sup>21</sup> This is particularly problematic since the global outbreak of COVID-19, as detention settings are high-risk environments for the spread of the virus. Although Nepalese authorities took some steps to decongest prisons (also in line with recommendations by the High Commissioner for Human Rights, the Special Rapporteur on the right to health, and other UN agencies)<sup>22</sup> as of July 2020 only 409 people had been released,<sup>23</sup> a figure that is not at all sufficient to protect the health and life of people in prison.<sup>24</sup>

---

<sup>12</sup> Section 4, Narcotic Drugs (Control) Act, 2033 (1976).

<sup>13</sup> Section 14 (h), Narcotic Drugs (Control) Act, 2033 (1976).

<sup>14</sup> Section 14 (h), Narcotic Drugs (Control) Act, 2033 (1976).

<sup>15</sup> <https://www.ohchr.org/Documents/Issues/Detention/Call/Country/Nepal.pdf>.

<sup>16</sup> *Nepal Drug Users’ Survey, 2019* (2019) pp. 60-61.

<sup>17</sup> 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.

<sup>18</sup> Sec 14 CPC, Sec 22(c) Narcotic Drugs (Control) Act, 2033 (1976).

<sup>19</sup> Sanjaya Thapa, *Drug Law Expenditure in Nepal* (2020). Research commissioned by HRI, findings available upon request.

<sup>20</sup> Mahendra Nath Upadhyaya, ‘Overcrowding of Prison Populations: The Nepalese Perspective’. Available at:

[https://www.unafei.or.jp/publications/pdf/RS\\_No80/No80\\_13PA\\_Upadhyaya.pdf](https://www.unafei.or.jp/publications/pdf/RS_No80/No80_13PA_Upadhyaya.pdf)

<sup>21</sup> Sanjaya Thapa, *Drug Law Expenditure in Nepal* (2020). Research commissioned by HRI, findings available upon request.

<sup>22</sup> UN High Commissioner for Human Rights (25 March 2020), *Urgent action needed to prevent COVID-19 “rampaging through places of detention*, OHCHR. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E> (accessed 18 September 2020); UNODC, WHO UNAIDS and OHCHR (13 May 2020), *Joint Statement on COVID-19 in prisons and other closed settings*. Available at: <https://www.who.int/news-room/detail/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings> (accessed 17 September 2020).

<sup>23</sup> Harm Reduction International, ‘COVID-19, Prisons and Drug Policy: Global Scan March-June 2020’. Available at:

<https://www.hri.global/covid-19-prison-diversion-measures>.

<sup>24</sup> *Ibid.*

In its 2014 Concluding Observations on Nepal, this Committee had expressed concerns over the widespread use of torture and ill-treatment in places of police custody as well as the practice of arbitrary detention in Nepal, and recommended that this be addressed through appropriate legislation.<sup>25</sup>

### 1.1. The impact of criminalisation on women who use drugs

Women are severely impacted by criminalisation. Figures from 2017 indicate that drug offences are the main type of crimes for which women are incarcerated for drugs;<sup>26</sup> while according to the *Nepal Drug Users' Survey 2019*, over 54.5% women who use drugs have faced arrest, as compared to 45.2% men who use drugs.<sup>27</sup> During a recent mission to Nepal, the Special Rapporteur on violence against women noted with concern that a significant number of women incarcerated in prison had been convicted on drug-related charges, that many women get involved in such crimes owing to gender-related factors - such as pressure or coercion by an intimate partner - and that they may have been victims of serious forms of gender-based violence.<sup>28</sup> Women who use drugs who have been incarcerated report appalling conditions especially in relation to nutrition and sexual and reproductive healthcare.<sup>29</sup>

#### Suggestions for List of Issues Prior to Reporting

In light of the above, we respectfully suggest that the Committee raises the following issues with the Government of Nepal:

- 1) Which steps is the Government taking to review its drug control legislation, to ensure that penalties meet the standards of proportionality, reasonableness, and necessity of punishment; and with an eye to reducing prison overcrowding?
- 2) What measures has the Government adopted to prevent and control the spread of COVID-19 in prisons? Please provide updated and disaggregated information on the number of persons released (including disaggregation by gender, pre-trial status, and crime for which they are charged or convicted), and alternatives to imprisonment.
- 3) What measures has the Government adopted to reduce the incarceration of women and to align their national policies with the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules)?
- 4) How does the Government justify the more disadvantageous legislation on pre-trial detention for persons charged with drug offences vis-à-vis other categories of crime?

## **2. Targeting and ill-treatment by law enforcement, and arbitrary arrest and detention of people who use drugs (Art. 7, 9, 10, 26)**

Punitive drug policies in Nepal have engendered a culture of violence and abuse by the police, which has in turn increased risk and compromised the health and safety of people who use drugs.<sup>30</sup>

People who use drugs consistently report being subject to violence, ill-treatment, intimidation and denigration by the part of law enforcement. For example, over 83% respondents in a study conducted

<sup>25</sup> Human Rights Committee, Concluding observations on the second periodic report of Nepal, 15 April 2014, CCPR/C/NPL/CO/2, Para 10.

<sup>26</sup> <http://southasiacheck.org/in-public-interest/women-in-jail/>.

<sup>27</sup> Nepal Drug Users' Survey, 2076 (2019), p. 60.

<sup>28</sup> 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.

<sup>29</sup> Focussed Group Discussion with women who use drugs, organized by RN Women, 19 March 2020.

<sup>30</sup> Gurung B, Xenos P. "In the name of creating drug free society": a qualitative investigation on implications of drug law enforcement on harm reduction programs and people who inject drugs in Kathmandu valley, Nepal." J Health Res. 2016; 30(Suppl.2): S129-38. DOI: 10.14456/jhr.2016.76.

among people who use drugs enrolled in opioid agonist therapy (OAT) in Nepal reported that the attitude of the police was either ‘bad’ or ‘very bad’, and that violence in custody was commonplace.<sup>31</sup> Young people who use drugs report being searched with no probable cause, stripped of their personal belongings, and beaten. Beatings are also commonly reported upon arrest, with people in custody being coerced into ‘confessing’ and disclosing names and contacts of peers.<sup>32</sup>

Police in Nepal also have a record of abusing their powers under the Narcotic Drugs (Control) Act, 2033 (1976). For example, people who use drugs denounce being subjected to stop and search measures routinely without warrant,<sup>33</sup> despite the law specifying that the power to search and arrest without warrant can be exercised only in exigent situations, after recording reasons in writing.<sup>34</sup> Similarly, although the drug control legislation allows ‘first-time users’ or persons arrested for purchase or possession of small amounts of drugs for personal use to be released on signing a bond,<sup>35</sup> in practice people who are found with drugs are overwhelmingly detained following arrest, for use as well as supply offences.<sup>36</sup> In the same fashion, although the law does not prohibit the possession and distribution of sterile needles or syringes, people who inject drugs have been arrested upon mere possession of paraphernalia and charged with drug trafficking offenses.<sup>37</sup>

Women who use drugs are particularly vulnerable to law enforcement, particularly if they engage in sex work. Women who use drugs in Nepal have complained of being stopped and searched by male police officers as well as being verbally and physically abused in detention,<sup>38</sup> and of being forced to comply with demands for sex while in custody.<sup>39</sup> The Committee on Elimination of Discrimination Against Women (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.<sup>40</sup>

### 2. 1. Targeting of harm reduction services by law enforcement

Reports by people who use drugs and civil society organisations suggest a pattern of police abuse targeting people accessing, or trying to access, harm reduction services. This is despite fact that these programmes are legal in Nepal, endorsed by the 2010 Drugs Control Strategy,<sup>41</sup> and recognised by WHO, UNAIDS, OHCHR and UNODC as essential health services.<sup>42</sup> This violates not only the right to health of people who use drugs, but also their rights to liberty and privacy, and their right to life. Notably, availability and accessibility of harm reduction services, such as needle and syringe programs (NSPs) and Anti-Retroviral Therapy, are to be understood as integrating not only the right to health, but

<sup>31</sup> Youth Vision and Mainline, Impact of Buprenorphine Opioid Substitution Therapy Program in Nepal, December 2014, p. 42.

<sup>32</sup> Focused Group Discussion with young key affected population, organized by YKP Lead Nepal, Lalitpur, 18 March 2020.

<sup>33</sup> National Consultation on UPR Submissions, organized by Recovering Nepal, 26 June 2020 (virtual).

<sup>34</sup> Section 8, Narcotic Drugs (Control) Act, 2033 (1976)

<sup>35</sup> Section 19, Narcotic Drugs (Control) Act, 2033 (1976)

<sup>36</sup> Youth Vision and Mainline, Impact of Buprenorphine Opioid Substitution Therapy Program in Nepal, December 2014, pp. 41-42.

Available at <https://youthvision.org.np/research/3/impact-of-buprenorphine-opioid-substitution-therapy-program-in-nepal>

<sup>37</sup> [https://hivlawcommission.org/wp-content/uploads/2019/10/Reports-LegalReview\\_Nepal.pdf](https://hivlawcommission.org/wp-content/uploads/2019/10/Reports-LegalReview_Nepal.pdf). Also Gurung B, Xenos P. “In the name of creating drug free society”: a qualitative investigation on implications of drug law enforcement on harm reduction programs and people who inject drugs in Kathmandu valley, Nepal.” J Health Res. 2016; 30(Suppl.2): S129-38. DOI: 10.14456/jhr.2016.76.

<sup>38</sup> Focused Group Discussion with Women who use drugs, organized by Recovering Nepal in coordination with Dristi Nepal, 17 March 2020; Focused Group Discussion with Women who use drugs, organized by RN Women, 19 March 2020.

<sup>39</sup> Gurung B, Xenos P. “In the name of creating drug free society”: a qualitative investigation on implications of drug law enforcement on harm reduction programs and people who inject drugs in Kathmandu valley, Nepal.” J Health Res. 2016; 30(Suppl.2): S129-38. DOI: 10.14456/jhr.2016.76.

<sup>40</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Nepal, 14 November 2018, CEDAW/C/NPL/CO/6, paras 26-27.

<sup>41</sup> National Policy for Drug Control, 2063 (2006), para 5.3 and Drug Control Strategy, 2010, paras 4.1 and 4.2.

<sup>42</sup> Among others, see: Paul Hunt, ‘Human rights, health, and harm reduction’, 8; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover(2010) A/65/255, para. 55; CESCR, Concluding Observations on the combined initial and second periodic reports of Thailand, UN Doc. E/C.12/THA/CO/1-2; CEDAW, Concluding Observations on the combined fourth and fifth periodic reports of Georgia (2014), UN Doc. CEDAW/C/GEO/CO/4-5, para. 31(e); Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Mission to Poland (2010) A/HRC/14/20/Add.3, para. 86; CESCR, 2016, Concluding Observations on the sixth periodic report of Sweden. UN Doc. E/C.12/SWE/CO/6. For more information, see: International Centre on Human Rights and Drug Policy/UNDP, International Guidelines on Human Rights and Drug Policy.

also the right to life recognised by Article 6 of the ICCPR. Among others, this can be inferred by General Comment no. 36 of this Committee, which stresses that the “duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity”; including the prevalence of life-threatening diseases such as AIDS and tuberculosis.<sup>43</sup> This builds upon previous jurisprudence, including the 2005 Concluding Observations on Kenya, in which this Committee pointed out that under Article 6 ICCPR states are obliged to ensure equal access to adequate HIV treatment.<sup>44</sup> In the subsequent 2012 periodic review on Kenya, this Committee further clarified that ensuring equal access entails state action to tackle criminalisation and societal stigmatisation of traditionally marginalised groups.<sup>45</sup>

Police in uniform or plainclothes are consistently reported to congregate around NSPs and stop and search clients visiting the facility, although possession of injecting equipment is not a crime and NSPs operate under the aegis of the National Centre for AIDS and STD Control, Ministry of Health, Government of Nepal.<sup>46</sup> Police apprehend persons accessing NSPs on suspicion of drug use.<sup>47</sup> Outreach workers delivering needle and syringes to women who inject drugs in Nepal have also reported being stopped, searched and arrested.<sup>48</sup> 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 users by instilling fear of arrest. New clients are particularly vulnerable to abuse, and stop using OAT services on account of the harassment by law enforcement.<sup>49</sup>

Although Nepal’s 2010 Drug Control Strategy mentions Government’s plans to change negative attitudes among law enforcement agencies towards harm reduction programmes through training and sensitisation,<sup>50</sup> no such exercises appear to have been undertaken.

#### *Suggestions for List of Issues Prior to Reporting*

In light of the above, we respectfully suggest that the Committee raises the following issues with the Government of Nepal:

- 1) What measures has the Government taken to ensure that law enforcement agencies and officers do not target, abuse, or otherwise discriminate against people suspected of using or engaging with drugs?
- 2) What steps has the Government taken to investigate allegations violence and ill-treatment against people who using or engaging with drugs? Please provide updated and disaggregated information on the numbers of investigations, prosecutions and convictions for police violence and ill-treatment that have taken place in the reporting period;
- 3) What measures has the Government introduce to sensitize law enforcement towards harm reduction programmes, and reduce the targeting by law enforcement of these essential health services?

<sup>43</sup> Human Rights Committee, "General Comment No. 36 (2018), Para. 26.

<sup>44</sup> Human Rights Committee, 'Concluding Observations on the Second Periodic Report Submitted by Kenya', 29 April 2005, 15, <https://undocs.org/CCPR/CO/83/KEN>.

<sup>45</sup> Human Rights Committee, 'Concluding Observations on the Third Periodic Report Submitted by Kenya', 31 August 2012, 9, [https://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-KEN-CO-3\\_en.pdf](https://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-KEN-CO-3_en.pdf).

<sup>46</sup> National HIV Strategic Plan 2016-2021, Nepal HIVision 2020, Ending the AIDS epidemic as a public health threat by 2030, Government of Nepal, Ministry of Health, National Centre for AIDS and STD Control.

<sup>47</sup> Focused Group Discussion with young key affected population, organized by YKP Lead Nepal, Lalitpur, 18 March 2020.

<sup>48</sup> Consultation on women who use drugs, organized by Recovering Nepal and Dristi Nepal, 18 March 2020.

<sup>49</sup> Focused Group Discussion with young key affected population, organized by YKP Lead Nepal, Lalitpur, 18 March 2020.

<sup>50</sup> Drug Control Strategy, 2010, para 5.1.1.

### 3. Ill-treatment in private drug detention centres and lack of monitoring (Art. 2, 7, 9, 10)

When drug treatment is provided by private institutions, governments retain obligations to regulate and monitor such institutions, ensuring that patients are treated with dignity and in conformity with their fundamental rights, and hold perpetrators of abuses accountable. This obligation is particularly relevant in the context of the absolute prohibition of torture and ill-treatment, which also implies the prohibition to subject persons to non-consensual medical or scientific experimentation. Further, this Committee (in line with other human rights mechanisms) has noted that the denial of medical assistance during withdrawal and the suffering inflicted on drug-dependent persons as a result of such denial amounts to torture or ill-treatment.<sup>51</sup>

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.<sup>52</sup> Under the law, a treatment centre is one which is ‘approved’ by the Government for the treatment and rehabilitation of ‘narcotic drug addicts’.<sup>53</sup> The Government of Nepal has not itself established any centres 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.

According to official figures there are over 200 drug treatment centres operated by non-governmental institutions or private actors.<sup>54</sup> While drug treatment in these centres is ostensibly on a voluntary basis, many end up in treatment centres upon ‘referral’ by the police, which forcibly bring persons who use drugs to such centres, often in exchange for money.<sup>55</sup> Once people are admitted they are not free to leave. Also, admission to drug treatment is envisaged by the law as an alternative to imprisonment for drug use and drug possession; imposing people this false choice between incarceration and drug treatment essentially forces people to agree to drug treatment against their will – and regardless of whether the person considers her/himself to be in need of treatment.

Since the last review, civil society organisations and people who use drugs have consistently denounced widespread ill-treatment in drug treatment centres, including physical and mental abuse, denial of treatment and/or lack of adequate and evidence-based medical treatment, and detention in inhumane conditions. Nearly 11% of respondents surveyed in the *Nepal Drug Users’ Survey 2019* reported experiencing violence during treatment,<sup>56</sup> the extent and severity of which has been documented in independent reports. In several of these centres people who use drugs are inflicted ‘torture’ as ‘treatment’, and ‘violence’ as ‘therapy’.<sup>57</sup> Abusive practices documented at such centres include not only forcible detention and involuntary admission, but also: denial of medical care for management of withdrawal, for HIV treatment, or for other pre-existing conditions;<sup>58</sup> solitary confinement; forced labour; flogging and beatings; and other inhuman and degrading treatment as a part of treatment and/or as a form of punishment.<sup>59</sup> Women detained in private rehabs denounce having suffered from

---

<sup>51</sup> 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.

<sup>52</sup> Sections 14 and 19A, Narcotic Drugs (Control) Act, 2033 (1976).

<sup>53</sup> Section 3(j3), Narcotic Drugs (Control) Act, 2033 (1976).

<sup>54</sup> Response of Government of Nepal on the questionnaire on arbitrary detention relating to drug policies. Available at: <https://www.ohchr.org/Documents/Issues/Detention/Call/Country/Nepal.pdf>

<sup>55</sup> Focused Group Discussion with young key affected population, organized by YKP Lead Nepal, Lalitpur, 18 March 2020. See also, 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](https://scholarspace.manoa.hawaii.edu/bitstream/10125/63136/Zeller_hawii_00850_10234.pdf). Also Gurung B, Xenos P. “In the name of creating drug free society”: a qualitative investigation on implications of drug law enforcement on harm reduction programs and people who inject drugs in Kathmandu valley, Nepal.” *J Health Res.* 2016; 30(Suppl.2): S129-38. DOI: 10.14456/jhr.2016.76.

<sup>56</sup> Nepal Drug Users’ Survey, 2076 (2019), p. 69.

<sup>57</sup> 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/>

<sup>58</sup> [https://www.inpud.net/sites/default/files/INPUD.RecoveringNepal.IDUF%20joint%20submission%20to%20the%20Working%20Group%20on%20Arbitrary%20Detention\\_FINAL\\_0.pdf](https://www.inpud.net/sites/default/files/INPUD.RecoveringNepal.IDUF%20joint%20submission%20to%20the%20Working%20Group%20on%20Arbitrary%20Detention_FINAL_0.pdf).

<sup>59</sup> 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.gnplus.net/assets/wbb\\_file\\_updown/5666/Human%20Rights%20Count\\_KPLHIV\\_Nepal.pdf](https://www.gnplus.net/assets/wbb_file_updown/5666/Human%20Rights%20Count_KPLHIV_Nepal.pdf).



sexual abuse from guards and other staff.<sup>60</sup> Conditions of detention are inhuman, with clients reporting sleeping “on the floor of insect-infested rooms perpetually covered in urine”.<sup>61</sup> Some clients were threatened with physical retaliation if what was happening was ever revealed during family visits, and reported of having been forced to take staged photos to misrepresent their living conditions.<sup>62</sup> Multiple cases of attempted suicide and even deaths have been reported from such centres.<sup>63</sup>

A key issue raised by civil society is the lack of adequate monitoring and supervision by the part of the government, which essentially allows the abuses to continue unsanctioned.<sup>64</sup> Further, complaints of torture and brutality are rarely investigated by the authorities, on the contrary, it is the victims who are deemed to be morally debased and blameworthy.<sup>65</sup>

Equally problematic is the failure by the Government to impart any evidence-based training on treatment, after-care, rehabilitation and social reintegration of persons with a drug dependence to personnel employed at such centres,<sup>66</sup> leading to a lack of adequately skilled and trained staff at the majority of drug treatment centres.<sup>67</sup> This conflicts not only with the state obligations under international law, but also with its own Drug Control Strategy.<sup>68</sup>

In 2018, the Ministry of Home Affairs announced Operational Guidelines for Drug Treatment Rehabilitation Centre - 2075 to regulate and monitor private rehabilitation centres.<sup>69</sup> While the Ministry of Home Affairs has started maintaining a portal of rehabilitation centres in the country,<sup>70</sup> surveillance or inspection have reportedly not been carried out, consequently, torture and ill-treatment continue unabated.<sup>71</sup>

#### Suggestions for List of Issues Prior to Reporting

In light of the above, we respectfully suggest that the Committee raises the following with the Government of Nepal:

1) What steps has the Government taken to investigate allegations of torture, ill-treatment, and arbitrary and involuntary detention in private drug rehabilitation centres? Please provide updated and disaggregated information on the numbers of investigations, prosecutions, and convictions for all cases of ill-treatment in private drug rehabilitation centres that have taken place in the reporting period, as well as other measures taken to monitor the operation of private drug rehabilitation centres.

<sup>60</sup> INPUD, Indian Drug Users’ Forum, and Recovering Nepal, ‘Joint Submission to the UN Working Group on Arbitrary Detention’ (2020). Available at:

[https://www.inpud.net/sites/default/files/INPUD.RecoveringNepal.IDUF%20joint%20submission%20to%20the%20Working%20Group%20on%20Arbitrary%20Detention\\_FINAL\\_0.pdf](https://www.inpud.net/sites/default/files/INPUD.RecoveringNepal.IDUF%20joint%20submission%20to%20the%20Working%20Group%20on%20Arbitrary%20Detention_FINAL_0.pdf).

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> 13 patients escape, 21 rescued from rehab centre, Kathmandu, December 08, 2018, The Himalayan Times.

<https://thehimalayantimes.com/kathmandu/13-patients-escape-21-rescued-from-rehab-centre/>.

<sup>64</sup> Sanjaya Thapa, Drug Law Expenditure in Nepal (2020). Research commissioned by Harm Reduction International, findings available upon request. Also 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>.

<sup>65</sup> 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\\_0085O\\_10234.pdf](https://scholarspace.manoa.hawaii.edu/bitstream/10125/63136/Zeller_hawii_0085O_10234.pdf).

<sup>66</sup> National Consultation on UPR Submissions, organized by Recovering Nepal, 26 June 2020 (virtual).

<sup>67</sup> NAP+N, DUNA, GNP+, ‘Speaking Out: Personal testimonies of rights violations experienced by people who use drugs in Nepal’, 2016. Available at [https://www.gnppplus.net/assets/wbb\\_file\\_updown/5666/Human%20Rights%20Count\\_KPLHIV\\_Nepal.pdf](https://www.gnppplus.net/assets/wbb_file_updown/5666/Human%20Rights%20Count_KPLHIV_Nepal.pdf).

<sup>68</sup> Drug Control Strategy, 2010, paras 2 and 3.2.1.

<sup>69</sup> Operational Guidelines for Drug Treatment Rehabilitation Centre – 2075 (unofficial translation of title).

<sup>70</sup> <http://www.drugportal.gov.np/report/organizations>.

<sup>71</sup> See ANPUD, Human Rights Day 2018 – “They Made Me Lick My Urine”: Private Drug Rehab Center Raided & Rescued Everyone, 10 December 2018. <http://www.anpud.org/human-rights-day-2018-they-forced-me-to-lick-my-urine-private-rehab-center-raided-and-everyone-rescued/>.

#### 4. Arbitrary interference with the right to privacy (Art. 17)

Article 17 of the ICCPR recognizes the right of everyone to privacy. The International Guidelines on Human Rights and Drug Policy specify that, among others, states should “adopt legislative and other measures to prevent the disclosure of individuals’ personal health data, including drug test results and drug dependence treatment histories, without their free and informed consent.”<sup>72</sup>

Nevertheless, people who use drugs in Nepal report infringements of their right to privacy, particularly if they are living with HIV. Specifically, they denounce the their HIV status as well as drug dependence is disclosed to their parents, peers and relatives without their consent – often by the part of law enforcement or medical personnel.<sup>73</sup>

This not only causes further isolation and marginalisation, but also prevents people who use drugs from accessing essential, potentially life-saving services.

##### Suggestions for List of Issues Prior to Reporting

In light of the above, we respectfully suggest that the Committee raises the following issues with the Government of Nepal:

- 1) What measures has the Government adopted to ensure that law enforcement personnel as well as healthcare staff are adequately trained and sensitized on the right to privacy of people who use drugs and people living with HIV?
- 2) Which complaints mechanisms are in place for suspected violations of the right to privacy by law enforcement and healthcare staff?

#### 5. Stigma and discrimination against people who use drugs (Art. 26)

Article 26 of the ICCPR recognizes that all persons should enjoy equal protection of the law, without discrimination on the basis of any of the enumerated grounds - including health status. Accordingly, the International Guidelines on Human Rights and Drug Policy clarify that states shall “take all appropriate measures to prevent, identify, and remedy unjust discrimination in drug laws, policies, and practices on any prohibited grounds, including drug dependence”, as well as “provide equal and effective protection against such discrimination, ensuring that particularly marginalised or vulnerable groups can effectively exercise and realise their human rights.”<sup>74</sup>

Some forms of discrimination against people who use drugs, including in the criminal justice system, have been described in previous paragraphs. In addition to those, it is worth highlighting that persons who use drugs are heavily stigmatized in all aspects of their lives.<sup>75</sup> Discrimination against people who use drugs is particularly visible in healthcare settings, where people who inject drugs report being either neglected or shunned, or subjected to callous behaviour by staff.<sup>76</sup>

<sup>72</sup> International Centre on Human Rights and Drug Policy/UNDP, International Guidelines on Human Rights and Drug Policy, Guideline 9(iii).

<sup>73</sup> Gurung B, Xenos P. “In the name of creating drug free society”: a qualitative investigation on implications of drug law enforcement on harm reduction programs and people who inject drugs in Kathmandu valley, Nepal.” J Health Res. 2016; 30(Suppl.2): S129-38. DOI: 10.14456/jhr.2016.76; Dristi Nepal, Watch What Matters, and ITPC, ‘Impacts of COVID-19 on Women Living with HIV who Use Drugs in Nepal. Results from community-based, participatory rapid assessment’ (October 2020). Available at: <https://itpcglobal.org/resource/impacts-of-covid-19-on-women-living-with-hiv-who-use-drugs-in-nepal/>.

<sup>74</sup> International Centre on Human Rights and Drug Policy/UNDP, International Guidelines on Human Rights and Drug Policy, Guidelines 3(i) and 3(ii).

<sup>75</sup> Focussed Group Discussion with women who use drugs, Kathmandu, Nepal, 17 March 2020.

<sup>76</sup> National Consultation on UPR Submissions, organized by Recovering Nepal, 26 June 2020 (virtual).

Women who use drugs endure heightened stigma, discrimination and marginalization, because of the interplay of drug-related criminalisation and stigmatisation, and gender stereotypes.<sup>77</sup> For example, women who use drugs in Nepal are particularly disadvantaged in their claims to citizenship on account of discriminatory laws and practices. Women who use drugs are largely dependent on their partners for decision-making and do not possess vital certificates of registration of marriage and birth of their children. Some are in abusive marriages or relationships that are not recognized by law or single mothers. Women who use drugs suffer abandonment and neglect at the hands of the family, thus weakening their claims to citizenship for themselves and their children under Nepali law.<sup>78</sup> Both CEDAW and the Special Rapporteur on violence against women have called upon the Government of Nepal to amend discriminatory provisions in relationship to citizenship and ensure that women can exercise their right to nationality and citizenship on an equal basis with men.<sup>79</sup>

Nepalese women who use drugs report severe forms of domestic and partner violence, but do not have access to legal remedies.<sup>80</sup> 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.<sup>81</sup>

Finally, women who use drugs in Nepal also reported discrimination from maternal and reproductive healthcare workers, particularly if they disclose their HIV status.<sup>82</sup>

#### *Suggestions for List of Issues Prior to Reporting*

In light of the above, we respectfully suggest that the Committee raises the following with the Government of Nepal:

1) What measures has the Government adopted to combat stigma and discrimination against people who use drugs and people with HIV? And if any, how is gender mainstreamed into such initiatives?

---

<sup>77</sup> Women drug users in eastern Nepal: A silent story, 13 January 2018, The Kathmandu Post.

<https://kathmandupost.com/miscellaneous/2018/01/13/women-drug-users-in-eastern-nepal-a-silent-story>.

<sup>78</sup> Consultation with women who use drugs, organized by Dristi Nepal, 16 March 2020; Focused Group Discussion with women who use drugs, organized by Recovering Nepal in coordination with Dristi Nepal, 17 March 2020.

<sup>79</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Nepal, 14 November 2018, CEDAW/C/NPL/CO/6, paras 30-31; 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 78(a).

<sup>80</sup> Consultation with women who use drugs, organized by Dristi Nepal, 16 March 2020.

<sup>81</sup> Focused Group Discussion with women who use drugs, organized by Recovering Nepal in coordination with Dristi Nepal, 17 March 2020

<sup>82</sup> [https://hivlawcommission.org/wp-content/uploads/2019/10/Reports-LegalReview\\_Nepal.pdf](https://hivlawcommission.org/wp-content/uploads/2019/10/Reports-LegalReview_Nepal.pdf).