

# NEPAL

Universal Periodic Review – Third cycle, 37<sup>th</sup> Session – January-February 2021

## Joint Submission by a Coalition of NGOs on Human Rights and Drug Policies for UPR- Nepal July 2020

### Reporting Organisations

1. **Recovering Nepal** 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 drugs-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.
2. **Recovering Nepal Women or RN Women** acts as the national network of women who use drugs in Nepal. RN Women is a registered organization and has been engaged in advocacy around the national strategic plan for HIV and harm reduction in order to amplify the voices and concerns of women who use drugs.
3. **Dristi Nepal** 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.
4. **Coalition of Drug Users in Nepal or CDUN** 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.
5. **Youth Rise International** 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.
6. **YKP (Young Key Affected People) LEAD Nepal** 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. It is 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.

7. **Sparsha Nepal** 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.
8. **Community Support Group Nepal or CSG** 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.
9. **International Drug Policy Consortium (IDPC)** 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

## **Introduction**

1. The Coalition of NGOs on Human Rights and Drug Policies for UPR welcomes the opportunity to report to the Working Group for the Universal Periodic Review on drug laws and policies in Nepal and their impact on the enjoyment of human rights. In particular, this report will examine how Nepal’s repressive and outmoded drug policies are implicated in the violation of several human rights including the right to health, the right not to be subjected to torture and other cruel, inhuman or degrading treatment, the right to equality and non-discrimination and the right to liberty and privacy of people who use drugs.

## **Promoting respect for the right to life regionally**

2. The adoption of the Constitution of Nepal in September 2015, which guarantees thirty one fundamental rights and freedoms and articulates the State’s commitment to human rights and international law,<sup>1</sup> is a welcome step.
3. 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 the abolition of the death penalty and more recently, through Article 16(2) of the Constitution of Nepal is commendable.

4. As promised in its voluntary pledges and commitment to the UN General Assembly<sup>2</sup> as well as a recommendation that the State accepted in the Universal Periodic Review in 2011,<sup>3</sup> Nepal must assume leadership in fostering respect for human rights in the South Asia region, where several countries retain the death penalty for drug offences,<sup>4</sup> in contravention of Article 6 of the International Covenant on Civil and Political Rights, which restricts the application of death penalty to the most serious crimes, which, as established by the Human Rights Council, do not include drug offences.<sup>5</sup>

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

5. 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’.<sup>6</sup> It also secures 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.<sup>7</sup>
6. A recent survey commissioned by the Ministry of Home Affairs, Government of Nepal estimates the number of persons who use drugs in the country to be 1,30,424, of which 76.2% are below the age of 30.<sup>8</sup>
7. As per the 2019 survey, 69.1% of the respondents, that is an estimated 90,000 persons inject drugs in Nepal,<sup>9</sup> though the figure reported by the Ministry of Health is much lower.<sup>10</sup> Persons who inject drugs are at risk of blood borne diseases like HIV, Hepatitis B and C as well as Tuberculosis. HIV prevalence among persons who inject drugs was 8.8% and is way higher than prevalence among the general population (0.2%).<sup>11</sup> The burden of HCV infection is also high; in one study, over 40% of people who inject drugs in three regions in Nepal were found to be infected with Hepatitis C.<sup>12</sup>
8. Over 63% of people who use drugs wanted to seek help but fewer had accessed any kind of treatment facility.<sup>13</sup> Persons who use drugs are heavily stigmatized and criminalized in Nepal.<sup>14</sup>
9. 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<sup>15</sup> while paying scant attention to the health needs of people who use drugs. The legislation has not kept pace with the rights and principles enunciated in Nepal’s Constitution of 2015.
10. 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.<sup>16</sup> The same intent is reflected in the Drug Control Strategy, 2010.<sup>17</sup>
11. At the UN General Assembly Special Session 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.*<sup>18</sup> UN agencies including those mandated with the task of drug control have encouraged States to design and implement drug policies, in accordance with their human rights obligations including ensuring respect for the dignity and human rights of people who use drugs.<sup>19</sup>

12. In the Universal Periodic Review of 2011, Nepal agreed to recommendations to bring its laws in line with international human rights standards.<sup>20</sup> 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 rights<sup>21</sup> and acknowledged this to be its foremost priority.<sup>22</sup>
13. 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 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 addiction violates human rights**

14. The World Health Organisation considers drug dependence as: *“a multi-factorial health disorder that often follows the course of a relapsing and remitting chronic disease.”*<sup>23</sup>
15. Article 12 of 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. It cannot possibly be the basis for criminalization.
16. Yet, the Narcotic Drugs (Control) Act, 2033 (1976) criminalises anyone who is ‘addicted’ to any narcotic drug or psychotropic substance<sup>24</sup>, thereby treating illness as a crime and patients as criminals. One of the basic principles of criminal jurisprudence is that no one can be penalised for a medical condition. International drug conventions do not mandate this either - on the contrary they require States to provide measures of education, treatment, after-care and support to persons who are dependent on drugs.
17. Criminalization of drug use and drug dependence violates the right to health under international human rights law<sup>25</sup> as also the Nepalese Constitution. Criminalization of drug dependence, which is a medical condition, also infringes 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 drug dependent patients as criminals 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 health status.
18. The Narcotic Drugs (Control) Act, 2033 (1976) proscribes ‘consumption’ of drugs, contrary to the mandate of international drug conventions,<sup>26</sup> to which Nepal is a signatory. As per the Nepal Drug Users’ Survey, 2076 (2019) commissioned by the Ministry of Home Affairs, (hereinafter “Nepal Drug Users’ Survey, 2076 (2019)), nearly

half the respondents had faced arrest for drug use or related crimes.<sup>27</sup> Other surveys among people who inject drugs show even higher rates of incarceration for drug offences (nearly 63% of all Respondents).<sup>28</sup>

19. 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.<sup>29</sup>
20. Criminalization of drug use has exacerbated stigma and negative attitudes towards people who use drugs in healthcare. 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.<sup>30</sup>
21. The Special Rapporteur on the right to health has considered the pernicious effects of criminalization of drugs on the right to health of people who use drugs and recommended the decriminalization of use and possession of drugs for personal use.<sup>31</sup> Similar recommendations have been made by the UN High Commissioner on Human Rights<sup>32</sup> and other UN entities.<sup>33</sup>
22. 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.<sup>34</sup>
23. However, the Government of Nepal continues to criminalise drug use and dependence, which impairs the dignity and rights of persons who use drugs.

### **III-treatment, arbitrary arrests and detention**

24. Though the Narcotic Drugs (Control) Act, 2033 (1976) 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, Police in Nepal arrest and detain people who use drugs - for use as well as supply offences.<sup>36</sup>
25. Under the Narcotic Drugs (Control) Act, 2033 (1976), the power to search and arrest without warrant can be exercised in exigent situations, after recording reasons in writing.<sup>37</sup> However, people who use drugs report being subjected to such measures routinely without warrant.<sup>38</sup> 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>39</sup>
26. Over 83% respondents in a study conducted among people who use drugs enrolled in opioid substitution treatment (OST) in Nepal reported that the attitude of the Police was either ‘bad’ or ‘very bad’ and that violence in custody was commonplace.<sup>40</sup>

27. Police abuses against people who use drugs in Nepal take other egregious forms. Young users are searched with no probable cause and if the Police don't find drugs, they forcibly take their personal money and if the person protests, then they are slapped. Drug users are routinely beaten while in custody and coerced into 'confessing' their 'guilt' and disclosing names and contacts of peers.<sup>41</sup> Juveniles and young drug users (below the age of 15 years) are charged with drug-related offences and not offered diversion measures under the law.<sup>42</sup>
28. Police in uniform or plainclothes congregate around needle-syringe programmes (NSP) and stop and search clients visiting the facility. 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, Ministry of Health, Government of Nepal,<sup>43</sup> Police apprehend persons accessing NSPs on suspicion of drug use.<sup>44</sup> Outreach workers delivering needle and syringes to women who inject drugs in Nepal have also reported being stopped, searched and arrested.<sup>45</sup> Criminalisation of drug use and possession has fuelled such arbitrary and unlawful practices among law enforcement officers in Nepal.
29. Police visit NGO sites providing OST 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 or first time clients are particularly vulnerable and stop using OST services on account of the harassment by the Police.<sup>46</sup> This, apart from violating the right to liberty and privacy, directly infringes the right to health as is evident from data below.
30. Police apprehending clients from NSP and OST sites is contrary to the National Policy for Drug Control, 2063 (2006) and the Drugs Control Strategy, 2010, which endorse these programmes.<sup>47</sup> Arrests and intimidation of drug users by the Police has resulted in 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 recommendation of 200 needles and syringes per person per year. Access to OST is a mere 2% in Nepal as against the WHO recommended target of 40% of the population of injecting drug users.<sup>48</sup> The Special Rapporteur on Health has noted the negative impact of arrests and repression by law enforcement on the realization of the right to health of people who use drugs.<sup>49</sup>
31. Police in Nepal act in complicity with private rehabilitation centres and forcibly bring persons who use drugs to such centres to suffer inhuman treatment, torture and abuse.<sup>50</sup>
32. The prohibition against torture during arrest and detention is incorporated in Nepal's Constitution<sup>51</sup> but there is no law defining and criminalizing 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 places of police custody as well as the practice of arbitrary detention in Nepal and desired that this be addressed through appropriate legislation.<sup>52</sup>
33. 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 sensitization.<sup>53</sup> No such pedagogical exercises have

however, been undertaken.

34. 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 prevention of torture and ill-treatment as well as on addressing torture through appropriate legislation.<sup>54</sup>
35. Notwithstanding its commitments, the Government of Nepal has failed to prevent police abuses and ill-treatment of people who use drugs and has thus, violated the right to liberty, privacy, freedom from torture and arbitrary detention under international human rights law.

### **Inflicting ‘torture’ as ‘treatment’**

36. 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>55</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>56</sup>
37. 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.<sup>57</sup>
38. The Government of Nepal has however, not 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, without authorization or approval.
39. The Government has also failed to impart any training in the treatment, after-care, rehabilitation and social reintegration of persons with drug use disorders to personnel employed at such centres,<sup>58</sup> contrary to the requirements under the UN Drug Conventions.<sup>59</sup>
40. Nearly 11% of the respondents surveyed in the Nepal Drug Users’ Survey, 2076 (2019) reported experiencing violence during treatment<sup>60</sup> – the extent and severity of which has been documented in independent reports.
41. 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’.<sup>61</sup> 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’ drug users.<sup>62</sup> Several cases of attempted suicide and even deaths of inmates have been reported from such centres.<sup>63</sup> Complaints of torture and brutality are rarely investigated by the authorities, on the

contrary, it is the victims i.e. persons who use drugs, who are deemed to be morally debased and blameworthy.<sup>64</sup>

42. In 2018, the Ministry of Home Affairs announced Operational Guidelines for Drug Treatment Rehabilitation Centre - 2075 to regulate and monitor private rehabilitation centres.<sup>65</sup> While the Ministry of Home Affairs has started maintaining a portal of rehabilitation centres in the country,<sup>66</sup> surveillance or inspection have not been carried out, consequently, torture and ill-treatment continue unabated.<sup>67</sup>
43. The Nepal 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.<sup>68</sup> 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.<sup>69</sup> The Human Rights Committee 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>70</sup>
44. In the absence of medically sound treatment protocols for private centres, drug users in Nepal are subjected to non-consensual medical or scientific experimentation, which amounts to a violation of Article 7 of the International Covenant on Civil and Political Rights. The Committee against Torture has expressed concern over poor conditions in private drug rehabilitation centres and ill-treatment inflicted upon persons admitted to them and called upon the concerned State party to conduct a survey of existing centres in the country and ensure that each is duly accredited by the competent authority and is subject to regular inspection.<sup>71</sup>
45. The 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;*"<sup>72</sup> The UN Human Rights Commissioner has also urged States to undertake rigorous and independent monitoring of treatment centres to ensure treatment takes place on a voluntary basis with informed consent and individuals are not confined there against their will.<sup>73</sup> The UN Working Group on Arbitrary Detention has urged countries to investigate and remedy human rights abuses in so-called drug treatment and rehabilitation centers established and run by private individuals or organizations.<sup>74</sup>
46. The Government of Nepal has an obligation to prevent, investigate, prosecute and punish acts of torture committed by private actors.<sup>75</sup> When public officials fail to do so, they are considered to be authors, complicit or otherwise responsible for these acts.<sup>76</sup> As a consequence, the Government of Nepal has an obligation to ensure that persons who use drugs, who receive treatment at private centres, have their human rights protected including the right to health and the right not to be subjected to torture through appropriate legislative and administrative measures.
47. The Government of Nepal has thus, systematically failed to protect the rights of people who use drugs from being infringed by third-parties.

## **Discrimination in access to health services**

48. Despite the constitutional guarantee of equality and the right to health, people with drug use disorders face systemic barriers in accessing treatment and harm reduction services in Nepal.
49. Treatment for drug dependence is available in private facilities and 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.<sup>77</sup> 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.<sup>78</sup>
50. There are currently 12 OST sites, of which 5 are situated in the Kathmandu valley region in Central Nepal.<sup>79</sup> Services in border areas are scarce, though drugs are widely available and consumed in places near the Nepal-India border.<sup>80</sup> The Ministry of Health has mapped injecting drug use and HIV-related risks in border districts,<sup>81</sup> yet people who use drugs living in these areas lack access to harm reduction services.<sup>82</sup>
51. The Constitution of Nepal prohibits discrimination, *inter alia*, on the grounds of citizens' 'economic condition' and the 'region' where they reside/belong.<sup>83</sup> The Constitution also guarantees that every citizen shall have the right to equal access to health services.<sup>84</sup>
52. Nepal's National Health Policy - 2071 (2014) seeks to provide quality health services for all including marginalized and at risk communities, free of cost towards the realization of the fundamental right to health.<sup>85</sup>
53. Economic and geographical barriers however, continue to impede the realization of the right to health of people who use drugs in Nepal. At international human rights law, physical and economic accessibility is an integral part of the right to health, as is the right to non-discrimination.<sup>86</sup> Despite its obligations in domestic and international law, the Government of Nepal has failed to protect the right to health of people who use drugs.

## **Women who use drugs – severe and multiple rights violations**

54. 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 as underreported on account of the stigma associated with drug use among women.<sup>87</sup> The Ministry of Health estimates that there are around 4,000 women who inject drugs in Nepal.<sup>88</sup> HIV prevalence among women who inject drugs is higher than among men who inject drugs in Nepal,<sup>89</sup> revealing greater vulnerability and poorer access to health services. According to a study conducted by UNODC in 2010-11 at seven sites, only 14% of women drug users in Nepal had ever accessed treatment.<sup>90</sup>

55. The stigma, discrimination and marginalization experienced by women who use drugs is amplified by patriarchal norms and gender stereotypes, which underpin laws and policies in Nepal.<sup>91</sup>
56. The Nepal Drug Users' Survey, 2076 (2019) discloses higher levels of unemployment among women who use drugs as compared to their male counterparts.<sup>92</sup> 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.<sup>93</sup>
57. In its concluding observations to the State in 2018, the Committee on the Elimination of Discrimination against Women (CEDAW), encouraged the Government of Nepal to recognize 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’.<sup>94</sup>
58. The Committee on 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>95</sup>
59. One-third of women who use drugs in the UNODC study had faced arrest on account of drug-related crimes.<sup>96</sup> Over 54.5% women who use drugs have faced arrest, as compared to 45.2% men who use drugs.<sup>97</sup> During a recent mission to Nepal, the 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 are drug users, or they may have been victims of serious forms of gender-based violence and resorted to drugs as a way out.<sup>98</sup> Women who use drugs who have suffered imprisonment, report appalling conditions especially in relation to nutrition and sexual and reproductive healthcare.<sup>99</sup>
60. Nepal’s Drug Control Strategy, 2010 sought to introduce programmes related to drug use in prisons;<sup>100</sup> none, however, have taken off. The Special Rapporteur on violence urged Nepal to improve prison conditions for women and ensure adequate facilities for health-care including facilities for obstetric and gynaecological care, adequate bedding and access to nutritious food.<sup>101</sup> In its last Universal Periodic Review in 2015, the Government of Nepal also accepted a recommendation in relation to safety of men and women in prisons.<sup>102</sup>
61. The more marginalized and stigmatized 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.<sup>103</sup> Drug policies and programmes in Nepal are neither informed by gender-based considerations nor address the concerns of women who use drugs.<sup>104</sup> This denies them their right to health services.

62. Women who use drugs in Nepal are particularly disadvantaged in their claims to citizenship and suffer 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 – cases where the identity and whereabouts of the husband becomes suspect. 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>105</sup>
63. Both the Committee on 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>106</sup>
64. Nepalese women who use drugs report severe forms of domestic and partner violence, but do not have access to legal remedies.<sup>107</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>108</sup>
65. Women who use drugs experience severe and intersecting forms of discrimination even as Nepal has made progress in introducing gender-just laws and policies, thereby infringing their right to equality.

## **Recommendations**

66. In light of the above findings, Recovering Nepal, RN Women, Dristi Nepal, CDUN, Youth Rise, YKP Lead Nepal, Sparsha Nepal, CSG and IDPC call upon Member States to recommend that the Government of Nepal:-
  - a. Assume leadership internationally and regionally in efforts towards the abolition of the death penalty, particularly for drug offences.
  - b. 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.
  - c. Repeal laws criminalizing drug use and drug addiction, remove penalties for the possession of drugs for personal use and ensure that drug dependence is treated as a health condition and not crime.
  - d. 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 authorization, training, cost price setting and oversight over such centres.
  - e. Ensure that acts of torture committed by private actors such as drug rehabilitation centers are included in legislation to criminalize torture, in independent procedures to ensure that all allegations of torture are investigated promptly, thoroughly, impartially and independently, and in remedy and reparation

mechanisms for victims.

- f. Expand drug treatment and harm reduction programmes throughout the country so that services are accessible across all geographies, without any discrimination.
- g. 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.

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<sup>1</sup> Article 51(b), The Constitution of Nepal.

<sup>2</sup> UN General Assembly, seventy second session, Note verbale dated 16 August 2017 from the Permanent Mission of Nepal to the United Nations addressed to the President of the General Assembly, Candidature of Nepal to the Human Rights Council, 2018-2020, A/72/347 at paras 9 and 11.

<sup>3</sup> United Nations General Assembly, Human Rights Council, Seventeenth session, Report of the Working Group on the Universal Periodic Review, Nepal, A/HRC/17/5, Recommendation 106.15 (Lao People's Democratic Republic)

<sup>4</sup> Girelli, G., *The Death Penalty for Drug Offences: Global Overview 2018*. London, Harm Reduction International, February 2019. [https://www.hri.global/files/2019/02/22/HRI\\_DeathPenaltyReport\\_2019.pdf](https://www.hri.global/files/2019/02/22/HRI_DeathPenaltyReport_2019.pdf)

<sup>5</sup> UN General Assembly, Human Rights Council, Forty-second session, 9–27 September 2019, Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 42/... The question of the death penalty, 23 September 2019, A/HRC/42/L.37. Available at <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/281/45/PDF/G1928145.pdf?OpenElement>

<sup>6</sup> Article 18, The Constitution of Nepal.

<sup>7</sup> Article 35, The Constitution of Nepal.

<sup>8</sup> 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>

<sup>9</sup> Nepal Drug Users' Survey, 2076 (2019), p. 50.

<sup>10</sup> See

<http://ncasc.gov.np/index1.php?option=zfc2BfCuXaeK6QJUyOEo60fVL5kyqSbZZk3IQtMb00&nid=7LfxiMzZaaK6lap4JQolpQ-sfLTvP0umLMA6wLaWzEQ>

<sup>11</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)

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