



India

Submission of Harm Reduction International, Indian Harm Reduction Network, Asian Network of People who Use Drugs

UN Universal Periodic Review

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Human rights violations associated with India's anti-drug laws

Executive Summary

Human rights violations committed in pursuit drug control include the unlawful application of the death penalty and the denial of the highest attainable standard of health and numerous concerns with respect to drug treatment and the prohibition on torture and cruel inhuman or degrading treatment.

The Death Penalty and the Right to Life

Section 31-A of the Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985 prescribes the death penalty for repeat offences involving quantities above specified thresholds.ⁱ

Previously this law prescribed the death penalty as a mandatory sanction. However, in June 2011, the Bombay High Court read down the mandatory death penalty for drugs, stating that 'the use of wise and beneficent discretion by the Court in a matter of life and death after reckoning the circumstances in which the offence was committed and that of the offender is indispensable; and divesting the Court of the use of such discretion and scrutiny before pronouncing the preordained death sentence cannot but be regarded as harsh, unjust and unfair'.ⁱⁱ

While such a move was an important step in the right direction it is regrettable that the death penalty for drugs as a discretionary sanction was retained. Capital punishment is significantly restricted under international law to those offences termed 'most serious crimes'.ⁱⁱⁱ For more than two decades UN human rights bodies have interpreted this article in a manner that limits the number and type of offences for which execution is allowable under international human rights law explicitly excluding drug offences.^{iv} This principle has been articulated in the International Covenant on Civil and Political Rights, to which India acceded in 1979^v and has been supported by the highest political bodies of the United Nations. The Economic and Social Council of the United Nations (ECOSOC) endorsed a resolution in 1984 upholding nine safeguards on the application of the death penalty, which affirmed that capital punishment should be used 'only for the most serious crimes'.^{vi} The 'most serious crimes' provision was specified to mean crimes that were limited to those 'with lethal or other extremely grave consequences'^{vii} and was also endorsed by the UN General Assembly.^{viii}

No one is believed to have ever been executed for a drug-related offence in India.^{ix} Nevertheless, the government must abolish its capital drug laws and commute the sentences of those on death row to bring its national policies in line with Article 6(2) of the International Covenant on Civil and Political Rights.

Drug Treatment

Section 39 of the NDPS contains provisions for 'treatment' of a person convicted of offences relating to a small quantity of any narcotic drug or psychotropic substance, which allows the court to 'with his consent, direct that he be released for undergoing medical treatment for de-toxification or de-addiction from a hospital or an institution maintained or recognised by Government'.^x

While the desire to divert people who use drugs from prosecution is laudable, the fact that such treatment is still 'routed through the criminal justice system'^{xi} raises concerns regarding coercion and whether this is consistent with a patient's right to choose their treatment or have input into their treatment plans.^{xii} This is contrary to an ethical requirement which improves treatment outcomes, according to the World Health Organization (WHO) and UNODC.^{xiii}

Drug dependence treatment is a form of medical care, and therefore must comply with the same standards as other forms of health care. In developing and implementing effective drug dependence treatment programs, human rights must be respected and protected. These rights include the right of people who use drugs to enjoy the highest attainable standard of physical and mental health; patient rights, including confidentiality and the right to receive information regarding one's state of health; the human rights principle of informed consent (including the ability to withdraw from treatment); and the right to non-discrimination in health care and to be free from torture or other cruel, inhuman or degrading treatment.

India acceded to the International Covenant on Economic Social and Cultural rights in 1979.^{xiv} According to the Committee on Economic Social and Cultural Rights, "The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body... and the right to be free from interference, such as the right to be free from torture, nonconsensual medical treatment and experimentation... obligations to respect [the right to health] include a State's obligation to refrain (...) from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness or the prevention and control of communicable diseases. Such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards, including the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care." UN agencies (including UNAIDS, WHO, UNICEF and UNDP), and the Global Fund for AIDS have called for the closure of compulsory drug detention centers and their replacement with community and evidence-based, voluntary drug treatment that respects human rights standards.^{xv}

With respect to drug treatment, there are many additional concerns regarding the State's positive obligation to ensure the right to life and the prohibition on cruel and inhuman treatment are respected. There have been many troubling incidents of abuse, many even resulting in death, at drug treatment centres around the country. These include reports of people being beaten to death within these centres of after attempting to flee^{xvi}. One treatment centre was run on the motto "changed when chained," and reportedly shackled patients legs together and only loosened links the longer these residents remained drug free.^{xvii}

NGO's have raised these concerns with the government and highlighted the fact that most of these centres function without official approval, in contravention of legal provisions for the establishment, and management of drug treatment centres at Sections 71 and 78 of the Narcotics Drugs and Psychotropic Substances Act, 1985.^{xviii} These organisations wrote, 'India's robust constitutional and legal framework is clearly failing drug users.'^{xix}

The Human Rights Committee has stated that, 'Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.'^{xx} This positive obligation requires State parties to 'to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.'^{xxi}

The government must ensure that the right to life and the prohibition on cruel inhuman and degrading treatment is respected and protected in the provision of drug treatment and incidents of violence against people who use drugs are prevented, punished, investigated or redressed.

Injecting Drug Use, HIV/AIDS, and the Right to Health

There are more than 164,000 people who inject drugs in India.^{xxii} HIV prevalence among people who inject drugs reaches over 11 percent.^{xxiii} Yet as stated in a report of the UNODC South Asia office and the Lawyers Collective, 'The Government of India has unambiguously and undisputedly accepted harm reduction among vulnerable groups as a core strategy in its anti-AIDS efforts.'^{xxiv} The government has included harm reduction in its national HIV strategy and/or drug policy – and identifies people who inject drugs as a target population in its HIV response.^{xxv} These are generally commendable steps.

Guidelines from the World Health Organization, UNAIDS and the United Nations Office on Drugs and Crime emphasise the importance of harm reduction within a comprehensive package for people who inject drugs.^{xxvi} The commitment of UN member states to key harm reduction interventions such as HIV prevention measures is enshrined in political declarations on HIV/AIDS adopted by the General Assembly in 2001 and 2006,^{xxvii} as well as most recently in the Millennium Development Goals summit outcome document.^{xxviii} In late 2009, the General Assembly also adopted a Political Declaration on drug control which yet again reaffirmed the importance of measures to address injection driven HIV epidemics.^{xxix} Current and former UN Special Rapporteurs on the right to health have stated that harm reduction is essential in realising the right to the highest attainable standard of health for people who use drugs.^{xxx} Two of the core HIV-related harm reduction interventions are needle and syringe programmes and opioid substitution therapy (e.g. with methadone or buprenorphine).^{xxxi}

However, there are concerns regarding availability and access to services in India. The demands of drug dependent populations vary, but often include residential services. Moreover, stigma has been identified as a serious issue of concern in India.

A recent survey of 343 injecting drug users in Delhi revealed that many reported various forms of abuse and denial of services. Eighty-five percent reported that they had been arrested for carrying

needles – despite that possession of such paraphernalia is not illegal. Furthermore, 38.5 percent said they were denied admission into hospital and 20 percent reported they were denied clean needles and syringes.^{xxxii} In addition, the report identifies a lack of funding for needle and syringe programmes.^{xxxiii}

These factors risk putting health services to drug users in conflict with the normative content of Article 12 of the Covenant, which requires that health facilities be available, accessible and acceptable.^{xxxiv}

Furthermore there are several laws that could serve as a barrier to providing evidence-based services that are essential to realising the right to the highest attainable standard of health for people who use drugs.^{xxxv} There are concerns with regard to abetment of a criminal offence where harbouring and offender is almost as severely punishable as the offence itself. This can have dramatic implications where spouses and partners of alleged offenders can be exploited or unjustly punished, leaving dramatic social impact.

Recommendations:

- The government must abolish its capital drug laws and commute the sentences of those on death row to bring its national policies in line with Article 6(2) of the International Covenant on Civil and Political Rights.
- Provisions of the NDPS should be reviewed in order to ensure that drug treatment services are voluntary, community and evidence-based, and respect human rights standards. Moreover, the government must ensure that the right to life and the prohibition on cruel inhuman and degrading treatment is respected and protected in the provision of drug treatment.
- The threshold of services needs to be lowered to allow for treatment of severe co-morbidity and prevention of mortality, and averting unnecessary death related to denial of access to treatment, which is contrary to the stated intent of the revised NDPS.
- The government's commitment to harm reduction is a critical step in realising Article 12 of the International Covenant on Economic Social and Cultural Rights. The State party must also ensure that these services are now available, accessible and acceptable and reform laws that could act as a barrier to treatment.

ⁱ Narcotics and Psychotropic Substances Act; available at India's Narcotics Control Bureau: <http://narcoticsindia.nic.in/NDPSACT.htm> (last accessed 1 March 2011);

ⁱⁱ Indian Harm Reduction Network v. The Union of India, in the High Court of Judicature at Bombay in its criminal jurisdiction under article 226 of the Constitution of India, criminal writ petition no. 1784 of 2010, June 2010.para. 57. As of this writing, it was expected that there would be an appeal to this ruling.

ⁱⁱⁱ Article 6(2), International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; ECOSOC (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty Resolution 1984/50; UN General Assembly (14 December 1984) Human rights in the administration of justice. Resolution A/RES/39/118.

^{iv} See for example, UN Human Rights Committee (8 July 2005), Concluding observations: Thailand. CCPR/CO/84/THA, para. 14; UN Human Rights Committee (29 August 2007) Concluding observations: Sudan. CCPR/C/SDN/CO/3, para. 19; UN Commission on Human Rights, Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur, submitted pursuant to Commission on Human Rights resolution 1996/74, 24 December 1996, E/CN.4/1997/60; UN Human Rights Council (29 January 2007) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. A/HRC/4/20, para. 51-52; UN Human Rights Council (14 January 2009) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/HRC/10/44, para. 66.

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- ^v United Nations Treaty Collection (date of last access: 27 January 2011) available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&lang=en
- ^{vi} ECOSOC (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Resolution 1984/50.
- ^{vii} *ibid*
- ^{viii} UN General Assembly (14 December 1984) Human rights in the administration of justice. Resolution A/RES/39/118.
- ^{ix} US Department of State (March 2007) *2007 International Narcotics Control Strategy Report*, available at: www.state.gov/p/inl/rls/nrcrpt/2007/vol1/html/80859.htm (last accessed 16 April 2010).
- ^x Section 39, Narcotics and Psychotropic Substances Act, 1985
- ^{xi} United Nations Office on Drugs and Crime, Regional Office for South Asia RASH13, 'Legal and Policy Concerns Related to IDU Harm Reduction in SAARC Countries, 2007, p. 63
- ^{xii} Richard Pearshouse, Canadian HIV/AIDS Legal Network "Patients, not criminals? An assessment of Thailand's compulsory drug dependence treatment system" (1 May 2009) 14 HIV/AIDS Policy & Law Review 1, p. 12
- ^{xiii} UNODC, WHO, Principles of Drug Dependence Treatment: Discussion Paper, pp. 5, 9. See also: [U.S.] National Institute of Drug Abuse, Principles of Drug Addiction Treatment: A Research-Based Guide, 1999, online at www.nida.nih.gov/PODAT/PODATIndex.html
- ^{xiv} UN Treaty Series [available: http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4&lang=en] Last accessed: 18 October 2011
- ^{xv} Letter from Michel Sidibé, Executive Director, UNAIDS, to Rebecca Schleifer, Human Rights Watch, March 30, 2010; Email from Gottfried Hirsenschall, Director of HIV/AIDS, Department Cluster on HIV/AIDS, TB, Malaria and Neglected Tropical Diseases, World Health Organization, May 6, 2010; UNICEF East Asia & Pacific Regional Office, Statement on the care and protection of children in institutions in Cambodia, June 8, 2010, http://www.unicef.org/eapro/UNICEF_Statement_on_HRW.pdf (accessed June 14, 2010); Mandeep Dhaliwal, Cluster Leader: Human Rights, Gender & Sexual Diversities, HIV/AIDS Practice, Bureau for Development Policy, United Nations Development Programme, "Harm Reduction 2010 The Next Generation: Addressing the Development Dimensions," presentation at the International Harm Reduction Association Annual Conference, April 29, 2010; Michel Kazatchkine, Executive Director, The Global Fund to Fight AIDS, TB and Malaria, "From Evidence and Principle to Policy and Practice," Keynote address, Canadian HIV/AIDS Legal Network 2nd Annual Symposium on HIV, Law and Human Rights, Toronto, 11 June 2010.
- ^{xvi} See for example: Indian Express (17 February 2009) 'Youth flees de-addiction centre, 'killed''; Hueiyen News Service (25 July 2011) 'Drug user beaten to death'; The Hindu (21 June 2011) 'Four held on murder charge'; The Times of India (23 June 2011) 'Habits die with death at this rehab clinic'; The Hindu (13 November 2008) 'Rehabilitation centres under scanner'
- ^{xvii} Open Society Institute (OSI), Human Rights Abuses in the Name of Drug Treatment: Reports from the Field, March 2009
- ^{xviii} Letter from Luke Samson, Executive Director of SHARAN, and Anand Grover, Project Director of the Lawyer's Collective HIV/AIDS Unit, to the Ministry of Social Justice and Empowerment and the Ministry of Health and Family Welfare of the Government of India. September 19, 2008, New Delhi.
- ^{xix} Letter from Luke Samson, Executive Director of SHARAN, and Anand Grover, Project Director of the Lawyer's Collective HIV/AIDS Unit, to the Ministry of Social Justice and Empowerment and the Ministry of Health and Family Welfare of the Government of India. September 19, 2008, New Delhi.
- ^{xx} UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 8
- ^{xxi} UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 8
- ^{xxii} Cook C (2010) Global State of Harm Reduction 2010
- ^{xxiii} Thai AIDS Treatment Action Group, Projects: Harm Reduction, available at: <http://www.ttag.info/harmreduction.php#> (last accessed 9 February 2011)
- ^{xxiv} United Nations Office on Drugs and Crime, Regional Office for South Asia RASH13, 'Legal and Policy Concerns Related to IDU Harm Reduction in SAARC Countries, 2007, p. 63
- ^{xxv} Thai AIDS Treatment Action Group, Projects: Harm Reduction, available at: <http://www.ttag.info/harmreduction.php#> (last accessed 9 February 2011)
- ^{xxvi} Cook C (2010) Global State of Harm Reduction 2010
- ^{xxvii} See GA Special Session on AIDS Res S-26/2, adopting the Declaration of Commitment on HIV/AIDS (2001) A/RES/S-26/2 Para. 52, and GA Res 60/262, Political Declaration on HIV/AIDS, A/RES/60/262 (2006) Para. 22
- ^{xxviii} United Nations Development Programme, 2010 MDG Summit Outcome, A/65/L.1 (17 September 2010)
- ^{xxix} UNGA res 64/182, 30 March 2010.
- ^{xxx} Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report to the General Assembly (main focus: the right to health and international drug control, compulsory treatment for drug dependence and access to controlled medicines), UN doc. A/65/255; Foreword, "Harm Reduction and Human Rights: The Global Response to Drug Related HIV Epidemics," <http://www.ihra.net/GlobalResponse>.
- ^{xxxi} <http://www.unaids.org/en/PolicyAndPractice/KeyPopulations/InjectDrugUsers/default.asp>

^{xxxii} E Sarin, L Samson, M Sweat, C Beyer, 'Human rights abuses and suicidal ideation among male injecting drug users in Delhi, India,' (2002) *International Journal of Drug Policy* 22, 161-166

^{xxxiii} *ibid*

^{xxxiv} UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, para. 12

^{xxxv} Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report to the General Assembly (main focus: the right to health and international drug control, compulsory treatment for drug dependence and access to controlled medicines), UN doc. A/65/255; Foreword, "Harm Reduction and Human Rights: The Global Response to Drug Related HIV Epidemics," <http://www.ihra.net/GlobalResponse>.