India
Submission of Harm Reduction International, Indian Harm Reduction Network, Asian Network of People who Use Drugs
UN Universal Periodic Review
Thirteenth session of the UPR Working Group of the Human Rights Council
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.\(^1\)

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’.\(^2\)

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’.\(^3\) 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.\(^4\) This principle has been articulated in the International Covenant on Civil and Political Rights, to which India acceded in 1979\(^5\) 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’.\(^6\) The ‘most serious crimes’ provision was specified to mean crimes that were limited to those ‘with lethal or other extremely grave consequences’\(^7\) and was also endorsed by the UN General Assembly.\(^8\)
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’.Ix

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. These organisations wrote, ‘India’s robust constitutional and legal framework is clearly failing drug users.’

The Human Rights Committee has stated, ‘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.’ 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.’

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. HIV prevalence among people who inject drugs reaches over 11 percent. 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.’ 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. 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. 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, as well as most recently in the Millennium Development Goals summit outcome document. 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. 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. Two of the core HIV-related harm reduction interventions are needle and syringe programmes and opioid substitution therapy (e.g. with methadone or buprenorphine).

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. In addition, the report identifies a lack of funding for needle and syringe programmes.

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.

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. 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.

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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.


vii ibid
xi Section 39, Narcotics and Psychotropic Substances Act, 1985
xii 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


xvii Open Society Institute (OSI), Human Rights Abuses in the Name of Drug Treatment: Reports from the Field, March 2009


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


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


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.


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