

Response of the Government of Nepal
on
the questionnaire on arbitrary detention relating to drug policies

1. Please provide information concerning the number of people held in pre-trial detention as well as the number of those who are imprisoned pursuant to a conviction for drug-related offences. Please indicate what percentage of the total pre-trial detention population are being held for drug-related offences. Please identify the percentage of the total prison population who have been convicted and imprisoned for drug-related offences. For those convicted of drug-related offences, what percentage of this group have been imprisoned for acquisition, use or possession of drugs for personal use? How many people convicted of drug use belong to disadvantaged group (e.g. women, pregnant women, children and youth, indigenous people, sex workers, lesbian, gay, bisexual, transgender (LGBT) persons, homeless people, people with HIV/AIDS, persons with disabilities, ethnic minorities, migrant communities)?

The following details are provided in relations to the questions mentioned above: (Data as of 15 May 2020)

Details		No.	Percentage of total Prisoner	Percentage of Drug Related Offences	Remarks
Total Prisoner		24227	100	-	
Prisoner for Drug related offences	Female	287	1.18	5.54	
	Male	4889	20.18	94.46	
	Indigenous people	2708	11.18	52.32	
	People with HIV	29	0.12	0.56	
	Pregnant women	0	0	0	
	Person with Disabilities	25	0.10	0.48	
	Other Castes	2414	9.96	46.63	
Total		5176	21.36	100	

The tentative number of convicted prisoners and pre-trial prisoners are in the ratio of 60:40.

2. Does your State consider the acquisition, use or possession of drugs for personal use a minor offence within the meaning of this term as set out in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1998 (Article 3, Para. 4(c)? If so, what percentage of people arrested for the acquisition, use or possession for personal use of drugs are diverted out of the criminal justice system, and what alternative measures, if any, are such, people subjected to?

All kinds of activities and transactions (use, store, cultivation, trafficking, purchase, sell etc) related to drugs are illegal according to the law of Nepal. Pursuant to Section 4 of the Narcotic Drug (Control) Act, 1976 the following activities are prohibited:

- (a) Cultivate, produce, prepare, purchase, sell, distribute, export or import, conduct any trafficking, store, or consume cannabis/Marijuana,
- (b) Cultivate opium or coca or produce opium or coca leaves or other narcotic drugs,
- (c) Manufacture or prepare narcotic drugs,
- (d) Sell or distribute narcotic drugs,
- (e) Export or import narcotic drugs,
- (f) Purchase, store, possess, or conduct any trafficking narcotic drugs,
- (g) Consume narcotic drugs other than cannabis/ marijuana.

Section 18C. of the Narcotic Drugs (Control) Act, 1976 provides that notwithstanding anything contained in prevailing laws, any person who helps in finding the principal offender and assists by providing the information and clue about gang in which he/she, him/herself engaged or other gang involved in the transaction of narcotic drug punishable under this Act, if there is a demand for full or partial remission of punishment in the charge-sheet, the judicial authority also may remit in punishment accordingly.

Section 19 of Narcotic Drugs (Control) Act, 1976 provides that if a person is found to have purchased or possessed cannabis/marijuana or medical opium, without commercial motive and in small quantity, or has consumed only small dose of such drug and if he/she has committed such offence for the first time, the Narcotic Drugs Control Officer may, after keeping a record of such person, make him/her sign a bond undertaking not to commit such offence again and release him/her after recording the reasons for withholding the prosecutions. Even where the prosecution has already been started, the court may if it deems the offence to be of petty nature and if the accused has committed such offence for the first time, after keeping a record of such person, make him/her sign a bond undertaking not to commit such offence again and release him/her without awarding any punishment.

3. Has your State decriminalized the acquisition, use or possession of illegal drugs for personal use? If so, to what drugs does this apply and what are the amounts considered to be for personal use? What is the legislative or judicial basis for such decriminalization? If decriminalization has not taken place, what penalties apply to the acquisition, use or possession of illegal drugs for personal use?

Prevailing Nepalese legislation has not decriminalized the acquisition, use or possession of illegal drugs for personal use. Please above no. 2.

Clause (a) of sub-section (1) of Section 14 of the Narcotic Drugs (Control) Act, 1976 provides that anyone who consumes cannabis/marijuana shall be punished with an imprisonment for a term up to one month or with a fine up to two thousand rupees.

However, in case of a person who is in the responsibility of a person or institution who have made bond for doing treatment up to one month in the treatment center, the judicial authority may not punish the person, on the condition of submitting the reports of treatment fortnightly from the treatment center.

In Nepal, drug offenses are considered as crime. As per the provisions of the Narcotic Drugs(Control)Act,1976penalties applicable to acquisition, use or possessions of illegal drugs for personal use are as follows:

Penalties:

The person, acting in violation of the prohibitions laid down in clause (a) of Section (4), shall be punished according to the gravity of offence as follows:

(a) Anyone who consumes cannabis/ marijuana shall be punished with an imprisonment for a term up to one month or with a fine up to two thousand rupees.

Provided that, in case of a person who is in the responsibility of a person or institution who have made bond for doing treatment up to one month in the treatment centre, the judicial authority may not punish such person, on the condition of submitting the reports of treatment fortnightly from the treatment centre.

(b) Anyone who cultivates up to twenty five cannabis/ marijuana plants shall be punished with an imprisonment for a term upto three months or with a fine upto three thousand rupees.

(c) Anyone who cultivates more than twenty five cannabis/marijuana plants shall be punished with an imprisonment for a term of three year or with a fine from five thousand to twenty five thousand rupees.

(d) Anyone who produces, prepares, purchases, sells and distributes, exports or imports, traffics and stores, cannabis/ marijuana shall be punished as follows:

(1) With an imprisonment for a term upto three months or with a fine up to three thousand rupees, if it is up to fifty grams.

(2) With an imprisonment for a term from one month to one year and with a fine from one thousand to five thousand rupees, if it is within fifty grams to five hundred grams.

(3) With an imprisonment for a term from six months to two years and with a fine from two thousands rupeesto ten thousands rupees, if it is within five hundred grams to two kilograms.

(4) With an imprisonment for a term from one year to three years and with a fine from five thousands rupeesto twenty five thousands rupees, if it is within two kilograms to ten kilograms.

(5) With an imprisonment for a term from two years to ten years and with a fine from fifteen thousand rupees to one hundred thousand rupees, if it is ten kilograms or more than this.

(e) Anyone who consumes opium, coca or any other narcotic drugs made there from shall be punished with an imprisonment for a term of up to one year or with a fine up to ten thousand rupees.

Provided that, in case of a person who is in the responsibility of a person or institution, who have made bond for doing treatment up to three months, in the treatment centre, the judicial authority may not punish such person on the condition of submitting the information of treatment fortnightly from the treatment centre.

(f) Anyone who cultivates opium poppy or coca bush shall be punished as follows:

(1) With an imprisonment for a term of one year to three years or with a fine of five thousand rupees to twenty five thousand rupees, in case of the cultivation of twenty five plants.

(2) With an imprisonment for a term from three years to ten years and with a fine from twenty five thousand rupees to two hundred thousand rupees in case of cultivation of more than twenty five plants.

(g) Anyone who commits any other prohibited acts other than consumption of opium, coca, or any other narcotic drugs made there from and cultivation of such plants shall be punished as follows:

(1) With an imprisonment for a term from five years to ten years and with a fine from five thousand rupees to twenty five thousand rupees for anyone doing transaction up to twenty five grams.

(2) With an imprisonment for a term from ten years to fifteen years and with a fine from seventy thousand rupees to two hundred thousand rupees for anyone doing transaction from twenty five grams to hundred grams.

(3) With an imprisonment for a term from fifteen years to life imprisonment and with a fine from five hundred thousand rupees to twenty five hundred thousand rupees for anyone doing transaction of any quantity more than one hundred grams.

(h) Anyone who addicts any natural or synthetic narcotic drugs and psychotropic substances and their salt and other substances, as specified by Government of Nepal by a notification published in the Nepal Gazette, from time to time, shall be punished with an imprisonment for a term up to two months and with a fine up to two thousand rupees or both.

Provided that, in case of a person who is in the responsibility of any person or institution who have made bond for doing treatment upto three months in the treatment

centre, the judicial authority may not punish such person on the condition of submitting the information of treatment forthrightly from the treatment centre.

(i) With an imprisonment for a term from two years to ten years and with a fine from one hundred thousand rupees to twenty hundred thousand rupees for anyone who commits any other prohibited acts other than those mentioned in clause (h).

Explanation: For the purpose of this section the term “gravity of offence” shall mean the gravity of offence which shall be determined on the basis of the nature of the narcotic drugs and its quantity, store, purchase and sell, objective of the traffic in or export-import, the organization or gang of the accused, weapons used by the accused or use of force, involvement of minor made in the offence, transaction done through the medium of institution like education, social and cultural organization and the transaction made at the basis of abuse of post by a person holding a public position.

4. What types of circumstances have led to unlawful and arbitrary arrest of people in your State for drug-related offences? What structures/institutions are in place so that people who are arrested for a drug-related offence can make a complaint about unlawful and arbitrary arrest and detention, or the threat thereof?

The unlawful and arbitrary arrest and detention is prohibited in Nepal. Article 20 of the Constitution of Nepal provides that no person shall be detained in custody without informing him or her of the ground for his or her arrest; any person who is arrested shall have the right to consult a legal practitioner of his or her choice from the time of such arrest and to be defended by such legal practitioner; any person who is arrested shall be produced before the adjudicating authority within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to such authority; and any such person shall be detained in custody except on the order of such authority.

Pursuant to Section 14 of the Criminal Procedures Code, 2017, after a person has been arrested for investigation into any offence, the person shall be produced before the adjudicating authority as soon as possible within twenty-four hours.

Similarly, the Constitution of Nepal under Article 21 (Right of Victim of Crime) guarantees that a victim of crime shall have the right to get information about the investigation and proceedings of a case in which he or she is the victim.

For the enforcement of the fundamental rights conferred by the Constitution or any other legal rights for which no other remedy has been provided or for which no other remedy even though provided appears to be inadequate or ineffective, the Supreme Court has the extraordinary power to issue necessary and appropriate orders, provide appropriate remedies, enforce such right or settle such dispute. Under the extra-ordinary jurisdiction, the Supreme Court may issue appropriate orders and writs including the writs of habeas

corpus. The High Courts and District Courts also have power to issue the writ of habeas corpus or other appropriate orders.

The Government of Nepal provides free legal aid and pays to the lawyers for providing legal advice, filing cases and advocating on behalf of the poor and weaker sections of population. The persons arrested in the cases related to narcotic drugs are not deprived of the right to consult a legal pro. The Attorney General has been entrusted with responsibility to ensure that the inmates have been treated well in the detention centers and prisons all across the country. The National Human Rights Commission as a constitutional body monitor such way the cases of unlawful and arbitrary detentions.

5. Does your State differentiate in its criminal procedures for persons alleged to have committed drug-related offences compared to those who have been arrested for other types of criminal offences? For example, are persons arrested for drug-related offences held in custody longer than persons arrested for other offences before being charged or before being brought before a judge to determine the legality of their arrest? Are persons charged with drug-related offences automatically held in pre-trial detention until trial? Is legal aid available for persons charged with drug-related offences to be considered for suspended sentence, sentence reduction, parole, release on compassionate grounds, pardon or amnesty that are available to those who are convicted of other crimes? Are legal presumptions used so that persons found with amounts of drugs above specified thresholds, or in possession of keys to a building or vehicle where drugs are found, are presumed to have committed an offence?

The Criminal Procedures Code, 2017 provides that after a person has been arrested for investigation into any offence, the person shall be produced before the adjudicating authority as soon as possible within twenty-four hours.

Sub-section (6) of Section 14 of the Criminal Procedures Code, 2017 provides that if the investigating authority requests for a remand for detention of a person pursuant to sub-section (3), the adjudicating authority may remand such person in detention for a maximum period of twenty-five days at one time or several times if, upon studying the relevant documents and also upon hearing the pleadings of the legal practitioner concerned, if considered necessary, the adjudicating authority thinks that it is necessary to keep on detaining such person for investigation. However, Section 22C of the Narcotic Drugs (Control) Act, 1976 provides that the judicial authority may grant extension of time up to three months, not exceeding one month at a time, for keeping the persons in police custody, who have been arrested in course of investigation of narcotic drugs.

There is no discrimination to the persons convicted of narcotic drugs related offences in treatment regarding suspended sentence, sentence reduction, parole and release on compassionate grounds which are available similar to those who are convicted of other crimes.

In case any narcotic drug is found to be in possession of any person or if any evidence is found that cannabis/marijuana, opium or coca is being cultivated or had been cultivated in any farm of a person or if any substance that has been partly processed for the manufacture or production of any narcotic drug or any residue left after such production is found to be in possession of any person, such person shall have to furnish proof to the effect that he/she has obtained or possessed such substance.

6. Have there been cases of torture or other cruel, inhuman or degrading treatment or punishment for persons arrested and detained or drug-related offences, with the objective, for example, to elicit a confession or to learn information about other alleged criminal actors or networks? Have there been cases where opioid substitution therapy has been withheld from drug dependent detainees in order to elicit a confession, or obtain information concerning other alleged criminal or networks? What procedures exist to prevent torture and other forms of ill-treatment of people detained for drug-related offences, and to bring to justice those responsible when it does occur? What monitoring measures are in place to ensure that torture or other cruel, inhuman or degrading treatment or punishment does not take place? What avenues do detainees have for making a formal complaint to an independent authority if such practices occur?

Article 22 of the Constitution of Nepal provides that no person who is arrested or detained shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment and any act mentioned under the Article shall be punishable by law, and any person who is the victim of such treatment shall have the right to obtain compensation in accordance with law.

Sub-section (1) of Section 167 of the National Penal Code, 2017 provides that no authority who is competent under the law in force to investigate or prosecute any offence, implement law, take any one into control, or hold any one in custody or detention in accordance with law shall subject, or cause to be subjected, any one to physical or mental torture or to cruel, brutal, inhuman or degrading treatment.

No inhuman activities have been reported during the investigation or treatment of drug addicts. If it is found to be the case, legal remedies are available.

The Guideline for the Operation of Treatment and Rehabilitation Centers for Drug users 2019 and Oral Substitution Treatment Operating Guideline, 2014 have provision of central and district level monitoring committees. These committees have the duties and responsibilities to monitor such activities involving cruel, inhuman or degrading treatments.

Similarly, Section 4(1)(a) of the National Human Rights Commission Act, 2012 provides the functions, duties and powers of the Commission as to conduct or to cause to conduct

inspections and monitoring of prisons, other agencies of the Government of Nepal, public institutions or private institutions or any other place for the protection of human rights, and to provide necessary suggestions or directives to the agency concerned with regard to the improvement to be made in such agency, institution or place for the protection of human rights.

7. Does your State operate compulsory drug treatment centres? If so, what is the legislative basis for such deprivation of liberty? What procedures exist to ensure procedural guarantees are respected prior to confinement in such centres, including whether the detainee has the right to be represented by legal counsel and the right to appeal the decision on compulsory treatment. Is there a medical evaluation of the person's drug dependency prior to confinement? Is treatment in such centres individualized (as opposed to en masse treatment), evidence-based and in conformity with generally accepted medical practices for drug treatment as articulated by World Health Organization (WHO). Is a person detained in such a facility for a specific amount of time, or indefinitely until treatment has been determined to be successful? Can a person, or by way of his or her legal representative, or a family member, file a petition either with an administrative or criminal court for a hearing on his or her release while detained?

The Government of Nepal does not operate any compulsory drug treatment centers. However, treatment centers are being operated by non-government and private sectors. These centers must comply with the guidelines adopted by the Ministry of Home Affairs while carrying out the operation of treatment and rehabilitation centers for drug users.

8. Do private drug treatment centers exist in your State? What steps does your State take to ensure that treatment in such facilities is voluntary and not a result of coercion? How is the informed consent for treatment obtained? How regularly do independent inspections of private drug treatment facilities take place to ensure that practices that constitute torture or other cruel, inhuman or degrading treatment or punishment do not occur? Do inspections of such facilities include a determination whether treatment is individualized (as opposed to treatment en masse), evidence-based and in conformity with generally accepted medical practices for drug treatment as elaborated by WHO? What guarantees exist that a person who has either voluntarily sought treatment or who has been coercively confined in a private drug treatment center can freely leave if he or she so wishes? Can such persons make a complaint to inspectors who monitor such facilities or a competent authority if a person who is seeking to leave drug treatment centre is prevented from doing so? Are there any criminal or other penalties for failure to complete the treatment?

There are more than two hundred drug treatment centers listed under the Government's drug portal (www.drugportal.gov.np). The Federation of Drug Demand Reduction (FDDR) is an umbrella organization of private drug treatment centers having more than 160 drug treatment centers as members.

There is a Narcotic Drug Control Branch under the Ministry of Home Affairs. It has the mandate to monitor those centers and report to the Government. The Narcotic Drugs Control Branch has been monitoring such centers to ascertain whether they have been operating as per the Drug Treatment and Rehabilitation Centers Operation Directive, 2019. Prior to the operation of the treatment center, permission has to be obtained from the District Administration Office under the Ministry of Home Affairs. While granting permission, the ministry checks whether all the arrangements have been made or not as per the guidelines. If the legally prescribed criteria are not completed, permission may not be granted.

9. Do drug courts which seek to use treatment as an alternative to imprisonment exist in your State? Please describe their operations, including applicable procedural guarantees for the accused. Does the accused have to plead guilty to the drug-related offences prior to being diverted into treatment? Are only accused persons who are drug dependent on opioids diverted into treatment, or are people who use other drugs that do not cause drug dependence diverted? Can treatment exist for a period that is longer than the period of imprisonment provided for in the offence for which the accused has been charged? Does the accused still have to serve a period of imprisonment if the treatment is not successful? What constitutes successful treatment and does the person in treatment have the right to a hearing before an independent authority and to be represented by legal counsel and present expert medical testimony on the evolution of his or her treatment?

There is no separate drug court for adjudication. However, there is a legal provision, in cases related to marijuana, opium and coca, on seeking to use treatment as an alternative to imprisonment. Proviso of Section 14 (a) provides, in case of a person who is in the responsibility of a person or institution who have made bond for doing treatment up to one month in the treatment centre, the judicial authority may not punish such person, on the condition of submitting the reports of treatment fortnightly from the treatment centre. Proviso of the Section 14 (e) provides, in case of a person who is in the responsibility of a person or institution, who have made bond for doing treatment upto three months, in the treatment centre, the judicial authority may not punish such person on the condition of submitting the information of treatment fortnightly from the treatment centre. Section 14(h) of the Narcotic Drugs (Control) Act, 1976 provides that in case of a person who is in the responsibility of any person or institution who have made bond for doing treatment upto three months in the treatment centre, the judicial authority may not punish such person on the condition of submitting the information of treatment fortnightly from the treatment centre.

10. Does your State have specialized criminal courts for people accused of drug-related offences that do not have as their focus diversion for drug treatment, but rather operate as specialized criminal courts and normally sentence those charged to prison after conviction? What differences exist between specialized criminal drug courts and regular criminal courts? What is the legislative justification for having specialized criminal courts for drug-related offences? Please describe how such specialized courts conform to the procedural guarantees for detention and fair trial under international norms.

There is no specialized criminal court for the persons accused of drug-related offences. Such cases are presented in regular criminal Courts.

11. Does your State use military courts to try people for drug-related offences? Please describe how such military courts conform to the procedural guarantees for detention and fair trial under international norms. Are military personnel involved in law enforcement operations against individuals or groups suspected of drug-related crimes? If so, are these regular military forces or the military police? Have they received training in human rights standards for law enforcement and the use of force? How is coordination undertaken with civilian law enforcement?

The Military Courts do not have jurisdiction to try the cases relating to drugs.

12. Does your State have legislation that provides for administrative detention for people who use drugs who are considered a danger to themselves or others? If so, can you please describe the legislative basis for such detention, applicable procedural safeguards, including the right to be represented by legal counsel and to present expert medical testimony, and a right of appeal? Can other legislation such as that aimed at individuals with psycho-social disabilities be used in relation to those who use drugs and are considered a danger to themselves or others? If so, can you describe the legislative basis for such detention, applicable procedural safeguards, including the right to be represented by legal counsel and to present expert medical testimony, and a right of appeal?

There is no separate administrative detention centre for drug users.

13. Does your State provide for the involuntary detention of pregnant women who use drugs in circumstances where such drug use has been deemed to constitute a danger to the foetus, and where voluntary attempts by health professional to work with the pregnant woman have failed? Please describe the legislative basis and applicable procedural guarantees in case of such an involuntary detention.

Pregnant women are also legally arrested if they are found to be involved in drug-related offences. There is no legal provisions under current legislation for involuntary detention of pregnant women.

14. Does your State provide drug treatment to people in custodial or pre-trial detention, or who have been imprisoned following a conviction? Do these drug treatment services include harm reduction services? Please describe what types of drug treatment and harm reduction services are available to detainees and imprisoned people. Please also indicate if such services are available to those in administrative detention such as undocumented migrants

or those subject to a deportation order. If no such services are available, does this result in forced confessions or people not being able to participate in their defence?

Treatment services are provided to those in custody, depending on the condition of the drug user and other harm reduction measures are also adopted. In Nepal, oral substitution therapy method is adopted for harm reduction.

15. Are juveniles (those under the age of 18) subject to arrest, detention and imprisonment for drug-related crimes? For crimes relating to the acquisition, use or possession for personal use of drugs? If so, are they detained or imprisoned in facilities for children in conflict with the law who are under 18, or are they detained or imprisoned in facilities for adults? Can such juveniles be subjected to compulsory drug treatment or treatment with the consent of their families/legal guardians?

The Act relating to Children, 2018 has provisions relating juvenile justice. If a child is less than ten years of age at the time of commission of the offence, no case be filed and punishment of any kind shall be imposed against him or her. If a child of ten years of age or above but below fourteen years of age commits an offence that is punishable by a fine, the child shall be released after counseling him or her and if such a child commits an offence that is punishable by imprisonment, the child shall be punished with imprisonment for up to six months or be sent to the child reform home for a period not exceeding one year without subjecting him or her to imprisonment. If a child of fourteen years of age or above but below sixteen years of age commits an offence, the child shall be punished with half the punishment that is imposable on the person having attained majority pursuant to the prevailing law. If a child of sixteen years of age or above but below eighteen years of age commits an offence, the child shall be punished with two-thirds of the punishment that is imposable on the person of legal age pursuant to the prevailing law.

The Juvenile Court may, having related to the age, sex, maturity of the child, nature of the offence and also the circumstances of the commission of the offence, postpone his or her punishment or make any of following appropriate decisions as punishment, with or without specifying the terms and conditions:

- (a) To Counsel or advise the child about good human behaviors by any family member or guardian,
- (b) To give orientation to the child through any institution or person that provides the service,
- (c) To provide single, group or family psycho-social counselling service,
- (d) To keep the child under the observation of any family member, guardian, school, person or institution that provides service for a fixed period subject to the observance of the specified terms and conditions,
- (e) To send the child for community service that is suitable to his or her age, by specifying the nature and period of service,
- (f) To make the child stay in the child reform home for a period not exceeding that of the punishment imposed on him or her.

If any person has caused a child to commit an offence, by teaching, giving pressure, ordering, luring or in any other manner, that person who has taught so, given pressure, ordered, lured or made to commit it shall be punished pursuant to law as if that person committed the offence on his or her own.

16. What provision is in place for those drug users and their dependents who are detained in the context of migration in your State?

There is no separate legislation for those drug users and their dependents who are detained in the context of migration and their dependents.

17. Are there any good practices being developed or implemented in your State in relation to drug-related detention and drug policies? If so, please provide examples.

The treatment centers are operated by non-government organizations and the private sector and these centers collaborate with the government institutions in their functioning. Narcotics Drugs Control National Policy, 2006; Narcotic Drugs Control Strategy, 2010 and Narcotics Drugs Control and Prevention program execution Guideline for Local Level, 2019 are the major policy frameworks related to drugs in Nepal.

18. Are there any new emerging trends in drug-related detention and drug policies that could be addressed by this study?

There is no such matter to be addressed by this study.