

**INPUT TO THE DRAFT ANNOTATED OUTLINE OF  
GENERAL COMMENT ON THE IMPACT OF DRUG  
POLICIES ON ECONOMIC, SOCIAL AND CULTURAL  
RIGHTS**

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Punitive drug policies in South Asia are ultimately a war on the poor, i.e. the criminalization of poverty. Poverty, particularly in a country like Sri Lanka that is grappling with a severe economic crisis, is driving persons to seek exploitative employment, such as being drawn into the supply side of the trade of narcotic drugs. Countries in South Asia tend to target drug users with punitive measures without addressing the root causes of trafficking. This is often because there is a link between large scale traffickers and persons in positions of power in the state, particularly law enforcement and the military.

In South Asia drug use related health issues are mainly addressed through the lens of HIV, since that is the only means legally available in many countries. However, this approach isn't necessarily human rights based and does not consider aspects other than health, such as the arbitrary arrest and detention of persons who use drugs.

## **1. Militarisation: linking the war on drugs with the war on terror**

In Sri Lanka, the government has linked the war against terror with the war against drugs to justify the militarization of drug control and treatment, and the militarization of law enforcement in general<sup>1</sup>. The involvement of the military in drug control is legalized through the Section 12 of the Public Security Ordinance, which allows the President to issue a gazette each month calling out the armed forces to maintain public order<sup>2</sup>.

The government entrenched compulsory drug treatment by enacting the Bureau of Rehabilitation Act in 2023, which to some extent legalises the military's involvement in compulsory drug treatment<sup>3</sup>. People detained in compulsory drug treatment centres – two (Kandakadu and Senapura) of which are managed by the Sri Lankan military - suffer physical and psychological violence, inhuman conditions of detention, and are not provided evidence-based treatment. One person was killed at Kandakadu in June 2022, for which two army sergeants and two air force sergeants were arrested<sup>4</sup>.

## **2. At the intersection of punitive drug policies and poverty**

Persons who use drugs that come into contact with the criminal justice system are primarily from poor and vulnerable groups. Most persons who deal in small quantities of drugs, often to finance their drug use, also report getting involved in the trade because of economic constraints and the lack of other means to earn a livelihood. A criminalised approach towards such persons, including their arrest and incarceration does not remove

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<sup>1</sup> "Army Ready to Deal with Drug Dealers, Distributors & Addicts" *Sri Lanka Army*. (March 2019)

<https://www.army.lk/news/%E2%80%9Carmy-ready-deal-drug-dealers-distributors-addicts%E2%80%9D-commander>

<sup>2</sup> 'Military placed on standby to maintain law and order' *Colombo Gazette*, 24 April 2023.

<https://colombogazette.com/2023/04/24/military-placed-on-standby-to-maintain-law-and-order/>

<sup>3</sup> Ambika Satkunanathan 'Arbitrary Detention and Torture by Another Name: The Proposed Bureau of Rehabilitation' *Groundviews*, 30 September 2022. <https://groundviews.org/2022/09/30/arbitrary-detention-and-torture-by-another-name-the-proposed-bureau-of-rehabilitation/>

<sup>4</sup> 'Kandakadu inmate's cause of death revealed' *Ada Derana*, 5 July 2022.

<https://www.adaderana.lk/news.php?nid=83444>

these constraints. Instead, time spent in prison and the lack of income during this period exacerbates their financial and social burdens, which often results in persons becoming involved in drug trafficking or the sale of drugs after leaving prison due to economic desperation.

Persons who are arrested for drug offences are largely from economically marginalized groups and poor neighbourhoods. For instance, the search operations during the ongoing Yukthiya operation in Sri Lanka, which began on 16 December 2023 are conducted mainly in poor neighbourhoods. Furthermore, in 2022, 64.1% of the prison population was in prison for the non-payment of fines<sup>5</sup>. A large portion of these persons were imprisoned as they were unable to pay fines imposed for the possession of small user quantities of drugs. For more information please see:

- Ambika Satkunanathan '[Broken System](#): Drug Control, Detention and Treatment of People who Use drugs in Sri Lanka' *Harm Reduction International* (2021).
- Ambika Satkunanathan, 'Sri Lanka continues to militarise the state, despite the Rajapaksas' fall (2023)' - an [article](#) on the connection between anti-terror laws and laws on drug control compulsory rehabilitation.

### 3. Demonization and dehumanization of persons who use drugs

Creating the public perception that people who use drugs are dangerous and volatile leads to the demonizing and marginalisation of people who use drugs. This in turn leads to them being stigmatised and ostracised and prevents them from accessing even the limited treatment options that are available in South Asia. The government and the media contribute to the portrayal of people who use drugs and those with drug dependence as “evil” and “a danger to society”. In Sri Lanka, it is common for news reports to refer to arrested persons as “drug addicts”, “addicts” or “drug traffickers”, conflating people who use drugs with those who engage in trafficking, as well as denying the presumption of innocence to arrested persons.

The demonisation of persons who use drugs is used to justify the abuse of these persons by the state and society, thereby increasing the stigma suffered by people who use drugs. For instance, in Sri Lanka in May 2021, a national newspaper reported that the police cautioned the public to safeguard their belongings in public spaces “as around 8,000 drug addicts are roaming in the busy areas of Colombo city”.<sup>6</sup> In another news report, the Ministry of Public Security is quoted saying that “individuals who are engaged in drug use are responsible for 40% of all criminal activities in Sri Lanka, with most of the drug addicts becoming criminals while in prison”<sup>7</sup>. This creates an environment in which discrimination against an already stigmatised group becomes normalised.

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<sup>5</sup> Prison Statistics 2022 (2023), *Department of Prisons*. <http://prisons.gov.lk/web/wp-content/uploads/2023/05/prison-statistics-2023.pdf>

<sup>6</sup> 'Public cautioned; Colombo Witnesses nearly 8,000 Drug Addicts roaming: Police', Daily News, 16 March 2021, [http://www.dailymirror.lk/breaking\\_news/Public-cautioned-Colombo-witnesses-nearly-8-000-drug-addicts-roaming-Po-lice/108-208666](http://www.dailymirror.lk/breaking_news/Public-cautioned-Colombo-witnesses-nearly-8-000-drug-addicts-roaming-Po-lice/108-208666).

<sup>7</sup> 'Drug Users Responsible for 40% of Criminal activities', The Morning, 10 May 2021, <https://www.themorning.lk/drug-users-responsible-for-40-of-criminal-activities/>.

A report by the National Dangerous Drugs Control Board (NDDCB) and National STD/AIDS Control Program describes the stigma faced by people who use drugs as follows:

“(A) Significant amount of stigma and discrimination is faced by persons who use drugs in Sri Lanka. This begins from the family and involves the neighbourhood and the entire society. Persons who use drugs reported their own families “treating them like thieves and not looking after them”. Spouses of persons who use drugs reported facing embarrassment in the neighbourhood. The wife of a person who uses drugs reported that she “doesn’t like to attend any wedding or funeral (sic) because of her husband’s drug use”. Even children of PWUD [persons who use drugs] were reported to face discrimination in the society on account of their father’s drug use.”<sup>8</sup>

In Bangladesh<sup>9</sup>, the Rohingya have been scapegoated and blamed for the proliferation and use of drugs, leading to Rohingya refugees being subjected to persecution and ostracization.

Persons who use drugs often highlight that the biggest obstacle to rehabilitation and reintegration is the labelling of someone as an ‘addict’ and the stigma and poor treatment by society that comes with such a label, thereby rendering even the most well-planned treatment model ineffective<sup>10</sup>. Those who had received treatment for drug dependency pointed out that stigma and harassment are key reasons that lead to relapse.

Particular social groups, such as LGBTIQ persons that use drugs, are at heightened risk in countries, such as Sri Lanka, where same sex relations are criminalised, because they already are subject to discrimination, stigma, marginalisation and violence due to their sexual orientation and gender identity. Hence, if they use drugs, they experience multiple forms of discrimination and violence.

#### **4. Prison overcrowding and drug-offences**

The arrest and imprisonment of drug users is one of the main causes of prison overcrowding. In Sri Lanka over 60% of incarcerated persons are in prison for drug offences. Since December 16, 2023, when the government’s Yukthiya (justice) operation escalated the war on drugs, prison overcrowding has increased to nearly 200%. Similarly,

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<sup>8</sup> ‘Rapid Assessment of Drug Use Patterns (RADUP) In Sri Lanka to Inform Risk Reduction Interventions for People Who Use / Inject Drugs (PWUD/PWID)’ (National Dangerous Drugs Control Board and the National STD/AIDS Control Programme, 2018), [https://www.aidscontrol.gov.lk/images/pdfs/publications/research\\_documents/Rapid-Assessment-of-Drug-Use-Patterns-in-Sri-Lanka.pdf](https://www.aidscontrol.gov.lk/images/pdfs/publications/research_documents/Rapid-Assessment-of-Drug-Use-Patterns-in-Sri-Lanka.pdf).

<sup>9</sup> ‘Global State of Harm Reduction - Regional Overview: Asia’ (2022) *Harm Reduction International*. [https://hri.global/wp-content/uploads/2022/11/GSHR-2022\\_Asia.pdf](https://hri.global/wp-content/uploads/2022/11/GSHR-2022_Asia.pdf)

<sup>10</sup> For narratives of persons who have been sent to compulsory treatment centres please see ‘A collection of personal narratives of persons who use drugs in Sri Lanka (2024)’ compiled by Ambika Satkunanathan at <https://drive.google.com/file/d/1WJdgrObqMd62aGdXchG7y5lcvl0zINeP/view>

Bangladesh has seen mass arrests of persons who use drugs resulting in prison overcrowding<sup>11</sup>.

According to the statistics issued by the Sri Lankan Department of Prisons, in 2022, of the total number of convicted persons, 63% were convicted for drug related offences. Of these persons, nearly 53% had never been to prison before. 72% of persons convicted for drug-related offences were sentenced to six months in prison. These factors indicate that the majority of persons imprisoned for drug offences were not repeat offenders and were incarcerated because they were found in possession of small quantities of drugs and sentenced for their inability to pay fines, rather than the drug charge.

These facts are consistent with the HRCSL prison study, which found that persons were held in prison due to their inability to afford fines as little as Rs. 3,000. The report noted that persons held in prison for drug-related offences are a vulnerable group because they may suffer withdrawal symptoms while being in prison, and denied the medical care and treatment they require.

It must be highlighted that in cases where the person is imprisoned in lieu of payment of the fine, Section 291(4) of the Code of Criminal Procedure allows the court to:

- 'Allow time for the payment of the said fine;
- Direct payment to be made of the said fine by instalments; or
- Direct that the person liable to pay the said fine shall be at liberty to give to the satisfaction of the court a bond, with or without a surety or sureties, for the payment of the said fine or any instalment thereof, and such bond may be given and enforced in a manner provided by this Code.'

Despite this provision that allows persons who cannot afford the value of the fine to pay it in instalments, as indicated by the prison statistics, such provisions are not utilized by the criminal justice system and persons are imprisoned for their inability to pay fines. In 2022, 64.1% of all convicted persons were imprisoned for the non-payment of fines<sup>12</sup>. This indicates that prison overcrowding can be significantly reduced if persons are not imprisoned for inability to pay fines, and instead allowed to pay in instalments.

The HRCSL prison study states that judges may be 'disinclined to use the abovementioned provisions as that would result in the case file being kept open for longer, whereas imprisoning an offender in lieu of the fine would result in a swift conclusion of the case'. This approach effectively results in the criminalization of poverty, whereby persons are detained due to their socio-economic status, rather than culpability. Such incarceration policies have wide-ranging consequences, including depriving the person of earning an income while in detention and adversely impacts on their familial relationships and exposes them to the social stigma of imprisonment. This in turn sustains a cycle of imprisonment and poverty for the most discriminated and vulnerable in society<sup>13</sup>.

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<sup>11</sup> UN Experts communication to Bangladesh (2018).

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23888>

<sup>12</sup> <http://prisons.gov.lk/web/wp-content/uploads/2023/05/prison-statistics-2023.pdf>

<sup>13</sup> <https://www.hrsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>

In Nepal<sup>14</sup> too the prison population has been increasing – as of May 2020 there were 5176 persons incarcerated for drug offences in Nepal, around 21% of the total prison population. Forty per cent of all those detained for drug offences are held in pre-trial detention. According to the Criminal Procedure Code a person can be held in remand for maximum 25 days. The Narcotic Drugs (Control) Act, 2033 (1976), however, allows the extension of the remand period of persons arrested for drug offences for up to three months. In reality, the average length of stay in pre-trial detention for drug related offence is anywhere between 12 and 18 months.

In India, the Mental Health Care (Rights of Persons with Mental Illness) Rules, 2018 (MHC Rules) issued under the Mental Healthcare Act include ‘Minimum Standards and Procedures for Mental Health Care Services in Prisons<sup>15</sup>. However, with regard to drug use, mandatory urine testing is allowed.

#### 4.1. Costs of incarceration

Prison facilities are old and dilapidated and HRCSL reports widespread use of violence in prison, which can be inflicted for reasons such as possession of contraband to seemingly inconsequential and trivial reasons, such as not tucking the shirt in properly during the morning count or not standing in line.

Persons held in prison for drug offences are particularly vulnerable in such a setting as they are often targeted for violence. As reported by HRCSL, in some prisons persons who are imprisoned for drug related offences would be subject to assault which is called a “welcome slap”, upon admission to prison, particularly if they were previously imprisoned for drug offences.

Persons in prison for drug-related offences stated that their access to medical care was restricted due to the offence for which they were imprisoned. For instance, when they sought medical treatment, the doctor would ask them what their offence is and when they learnt it was a drug offence, they would make abusive remarks or treat them in a discriminatory manner.

The HRCSL study of prisons also found a pattern of deaths of persons who were remanded for drug-related offences. These persons would reportedly become distressed, agitated or violent due to withdrawal symptoms they were likely experiencing. Instead of providing them access to medical treatment to deal with withdrawal symptoms, prison officers, who are accustomed to using violence to maintain order and discipline in prison, would subject the person to physical assault or even tie them up or use restraints and isolate them to subdue them. The HRCSL prison study reports of such action resulting in death.

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<sup>14</sup> Submission to the United Nations Human Rights Committee ahead of the third periodic review of Nepal (January 2021). [https://www.hri.global/files/2021/01/18/Nepal\\_LOIPR\\_-\\_Submission\\_to\\_Human\\_Rights\\_Committee\\_on\\_drug\\_policy\\_FINAL.PDF](https://www.hri.global/files/2021/01/18/Nepal_LOIPR_-_Submission_to_Human_Rights_Committee_on_drug_policy_FINAL.PDF)

<sup>15</sup> ‘The Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018’ *Ministry of Health and Family Welfare*. [https://main.mohfw.gov.in/sites/default/files/Rights%20of%20Persons%20with%20Mental%20Illness\\_0.pdf](https://main.mohfw.gov.in/sites/default/files/Rights%20of%20Persons%20with%20Mental%20Illness_0.pdf)

Others hidden social costs of incarceration of drug users include the disruption of family life and livelihood of these persons, as well as the stigma of imprisonment, the impact on mental health of persons and the trauma of suffering inhuman conditions in prison. Incarcerated persons have limited opportunities to spend their time in detention in a useful and proactive manner due to the vocational training programs available for persons in prison being limited to outdated, labour-based skills workshops that hold little value in the present job market.

Prison officers are one of the key groups that bear the burden of overcrowded prisons. As highlighted by the HRCSL prison study, prison officers reported suffering high levels of burnout and dissatisfaction with their conditions of work. Officers and high-ranking supervisors affirmed that due to the large number of vacancies within the system, most prison officers are required to complete multiple, subsequent shifts without a break. Being stationed at locations away from their hometown and the lack of family quarters to accommodate family members of prison officers means that officers spend prolonged periods of time without seeing their families<sup>16</sup>.

## 5. Compulsory drug treatment

In Bangladesh<sup>17</sup>, Article 16 of the Narcotics Control Act allows the compulsory detention and treatment of persons dependent on drugs. Treatment is not evidence based, often amounts to ill-treatment, and in some cases has led to death. Persons are subject to inhuman conditions at these centres which are overcrowded and have no access to medical care.

Sri Lanka too has compulsory drug treatment. Until 2022 compulsory drug treatment was mandated by only one law, the Drug Dependent Persons (Treatment and Rehabilitation) Act 2007, but since 2022 it has been included in two other laws, the amendment to the Poisons, Opium and Dangerous Drugs Ordinance and the Bureau of Rehabilitation Act.

In June 2022<sup>18</sup>, two Sergeant grade officers of the Sri Lanka Army and Sri Lanka Air Force were arrested in connection with the death of a detainee at the Kandakadu Rehabilitation Centre which is managed by the military, and a thick electric cable and two bamboo sticks, which were alleged to have been used to attack the deceased were taken into custody. Nearly 500 persons attempted to escape from the centre, and in video footage of the incident, persons claimed the centre was 'worse than prison' and begged not to be taken back<sup>19</sup>. All persons who escaped were re-arrested by police. There is also little post-release support or after-care to support effective reintegration into society offered by state-administered centres in Sri Lanka.

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<sup>16</sup> Human Rights Commission of Sri Lanka, 'Women', in Prison Study by the Human Rights Commission of Sri Lanka, 2020, <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>.

<sup>17</sup> Submission to The Committee Against Torture - 67th Session (2019), *Harm Reduction International and World Coalition Against Death Penalty*. <https://www.hri.global/files/2019/06/24/submission-committee-torture-bangladesh-drug-policy.pdf>

<sup>18</sup> 'Two soldiers, two Airmen arrested over Kandakadu inmate's death' *Daily Mirror*, 2 July 2022

<sup>19</sup> <https://twitter.com/ambikasat/status/1542211536378548224?s=20>

In Sri Lanka, persons who use drugs also report that because of suffering inhuman conditions in state institutions, such as prison or the Kandakadu Rehabilitation Centre, they relapsed and began using drugs soon after being released. This renders the anticipated deterrence effect of incarceration futile because the root causes are not addressed<sup>20</sup>. For more information, please see:

- Ambika Satkunanathan '[The sledgehammer approach](#)' (2022) *The Morning*.
- '[Broken System](#): Drug Control, Detention and Treatment of People who Use drugs in Sri Lanka'(2021).
- Ambika Satkunanathan '[Bureau of Rehabilitation](#): Not new, just part of a continuum' (2022) *The Morning*.
- Ambika Satkunanathan '[Only A Temporary Reprieve](#): The Supreme Court Determination on the Bureau of Rehabilitation Bill' (2022) *Groundviews*.

In India, the Narcotic Drugs and Psychotropic Substances Act 1985 states that if a person is in possession of small quantities, and if the person volunteers to go for treatment, then they will not be prosecuted. However, if the person does not complete treatment, then immunity from prosecution will be withdrawn<sup>21</sup>. India does have out-patient treatment centres and certain states have begun to focus on non-punitive community based measures. For example, in 2018 Punjab established Outpatient Opioid Assisted Treatment Centres.<sup>22</sup>

In Nepal<sup>23</sup>, legal provisions grant immunity from prosecution to those who enter drug treatment, which government has outsourced to private actors. Although it is supposed to be 'voluntary', police bring drug users to the centres for a payment. Sometimes this is initiated by family. Services in border areas are scarce, though the prevalence of drug use is higher near the Nepal-India border. Nearly 11% of the respondents surveyed in the 2019 Nepal Drug Users' Survey reported experiencing violence during treatment, and cases of torture and ill-treatment.<sup>24</sup> Deaths have also been reported.

## 6. Death penalty for drug offences and poverty

In South Asia drug offences attract the death penalty. It is also not uncommon for South Asians to function as drug mules to traffic drugs to other South Asian countries. For instance, most of those arrested for drug trafficking while trying to enter Sri Lanka, are

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<sup>20</sup> Ambika Satkunanathan (2021) 'A Broken System: Drug Control, Detention and Treatment of People Who Use Drugs in Sri Lanka' *Harm Reduction International*.

[https://www.hri.global/files/2021/08/03/HRI\\_Report\\_-\\_Sri\\_Lanka\\_Drug\\_Control.pdf](https://www.hri.global/files/2021/08/03/HRI_Report_-_Sri_Lanka_Drug_Control.pdf)

<sup>21</sup> Section 64 A of the Narcotic Drugs and Psychotropic Substances Act, 1985.

[https://www.indiacode.nic.in/show-](https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_2_00029_198561_1517807326222&sectionId=25181&sectionno=64A&orderno=83)

[data?actid=AC\\_CEN\\_2\\_2\\_00029\\_198561\\_1517807326222&sectionId=25181&sectionno=64A&orderno=83](https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_2_00029_198561_1517807326222&sectionId=25181&sectionno=64A&orderno=83)

<sup>22</sup> 'A template to fight addiction in Punjab' (2018) *International Drug Policy Consortium*.

<https://idpc.net/news/2018/01/a-template-to-fight-addiction>

<sup>23</sup> 'Human rights and drug policies in Nepal' (2021) *International Drug Policy Consortium*.

<https://idpc.net/news/2018/01/a-template-to-fight-addiction>

<sup>24</sup> Ibid



from India, Pakistan and Afghanistan<sup>25</sup>. In Pakistan many persons sentenced to death are ‘drug mules’ transporting drugs under coercion and are from backgrounds of extreme poverty.

Many persons on death row cannot afford a lawyer and are assigned a lawyer by the state. According to the prison study conducted by the Human Rights Commission of Sri Lanka, incarcerated persons felt their state-appointed counsels were young, inexperienced and didn’t mount a vigorous defense against the charges. Although the state provides a lawyer to appeal to the Court of Appeal, no free legal representation is provided to appeal to the Supreme Court, due to which many persons on death row stated they had not appealed to the Supreme Court. It is such persons that would be executed if the death penalty were to be implemented<sup>26</sup>.

	2018	2019	2020	2021	2022	2023
Total sentenced to death	168	144	93	33	47	(2023 statistics not issued yet)
From rural areas	137	96	30	17	22	
Income of under Rs 300 per month	8	13	8	2	32	
No income	5	6	1	-	-	
Illiterate	3	24	5	2	3	
Studied until grade 8	49	57	29	10	24	

Source: Department of Prison Statistics

The table above, which illustrates that most persons on death row are from economically disadvantaged backgrounds and engaged in unskilled, informal sector occupations or low pay occupations in the formal sector, corroborates the narratives of many persons on death row about their inability to meet the costs of legal representation.

## 7. Access to health services and harm reduction

In Sri Lanka, programmes are not evidence-based nor health-focused, with ‘treatment’ being limited to group and individual discussions or counselling, often carried out by inexperienced officers of the military, or physical labour such as agricultural activities and vocational training programs. All rehabilitation programmes at both state and private centres are abstinence-based and no harm reduction services are provided.

<sup>25</sup> National Study of Prisons (2020) *Human Rights Commission of Sri Lanka*; Prison Statistics 2022 (2023), *Department of Prisons*. <http://prisons.gov.lk/web/wp-content/uploads/2023/05/prison-statistics-2023.pdf>

<sup>26</sup> National Study of Prisons (2020) *Human Rights Commission of Sri Lanka*. <https://www.hrsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>

In Bangladesh,<sup>27</sup> centers providing health services to drug users, including Drop in Centers, are being hampered or even stopped due to requests from the security services, and drug users are not accessing the Drop in Centers due to fear. This is undermining HIV prevention and treatment efforts and increasing health risks for people already in vulnerable situations.

In India,<sup>28</sup> a nationwide study by the Ministry of Social Justice and Empowerment in 2019 found a treatment gap of 75% for drug use disorders, revealing that among those who need treatment for substance use disorders, very few receive it. India's Mental Healthcare Act 2017 defines drug dependence as mental illness, which is problematic, robs the person of autonomy and agency and is disempowering.

Drug treatment is offered by private centres for a fee in Pakistan<sup>29</sup>, but these are too costly for the majority of people who use drugs, especially those who have been abandoned by their families, experience homelessness or are street-based. The inability to pay is the most common reason for not seeking treatment for drug dependence. Inhumane treatment, violence etc are common at these centres.

Nepal<sup>30</sup> has made progress around the provision of harm reduction services including needle and syringe programmes and opiate agonist therapy (OAT). However, there are allegations that police frequently harass and detain people visiting these facilities. Accessing available drug treatment is also a problem as treatment for drug dependence is available only in private facilities, and at a cost that is beyond reach for most people who use drugs.

## **8. Impact of punitive drug policies on women**

Women are largely absent from the discourse on drug policies although they are amongst the groups most affected by punitive drug laws. According to the statistics from the Sri Lankan Department of Prisons, of the 390 women convicted during the year 2022, 160 were convicted for drug related offences. It is not known how many women are detained for personal drug use as opposed to those involved in trafficking.

Women who use drugs are subject to stereotyped, discriminatory, and demeaning portrayals in the media, which mirrors the discrimination they are subject to in society and the legal process. This has been documented in the HRCSL national study of prisons. When women are arrested for drug-related offences during raids, news reports

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<sup>27</sup> UN Experts communication to Bangladesh (2018).

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=2388>

<sup>28</sup> 'Why India's Drug Policy Should Pivot Towards Public Health And Harm Reduction' *The Wire*, 24 January 2022. <https://thewire.in/government/india-drug-policy-public-health-harm-reduction>

<sup>29</sup> Universal Periodic Review (UPR) – Fourth Cycle, 42nd Session, Submission by *DUNE – Drug User Network in Pakistan* (July 2022). [https://www.upr-info.org/sites/default/files/country-document/2023-03/DUNE\\_UPR42\\_PAK\\_E\\_Main.pdf](https://www.upr-info.org/sites/default/files/country-document/2023-03/DUNE_UPR42_PAK_E_Main.pdf)

<sup>30</sup> 'Demanding more options for young people who use drugs in Nepal' *UNAIDS*. (2023).

[https://www.unaids.org/en/resources/presscentre/featurestories/2023/june/20230626\\_young-people-who-use-drugs-nepal](https://www.unaids.org/en/resources/presscentre/featurestories/2023/june/20230626_young-people-who-use-drugs-nepal)

specifically mention that women were arrested<sup>31</sup>. Further, articles describing the use of drugs by women are replete with judgmental statements unsubstantiated by evidence, which increases the stigmatisation of women who use drugs. As reported in an article titled “The disturbing new trend of female drug users”, the former Chairman of NDDCB is quoted stating<sup>32</sup>:

“Women face unique issues when it comes to substance use, in part influenced by firstly sex (differences based on biology) and secondly, gender (differences based on culturally defined roles for men and women). According to scientists who study substance use, women who use drugs can have issues related to hormones, menstrual cycle, fertility, pregnancy, breastfeeding, and menopause. Most women we have seen have revealed that the reasons for using drugs, included controlling weight, fighting exhaustion, coping with pain, and attempts to self-treat mental health problems, reasons which are unique to women.”

The HRCSL prison study noted discernible socio-economic patterns that led to women becoming involved in the drug trade. In the case of women who had lower literacy levels and were from impoverished backgrounds, the absence of a male livelihood earner drew them to selling drugs. Due to the lack of employable skills or qualifications and limited access to employment opportunities, they were drawn into selling narcotics as a relatively accessible means of earning money. Several women reported that they took control of the business after their husbands were imprisoned on drug trafficking charges. Although the offence of drug trafficking carries the death penalty in Sri Lanka, “due to the severity of the socio-economic difficulties they face, women appeared to be unaware of or unconcerned about the penalty”, indicating the limited efficiency of the death penalty as a deterrent.

A number of women reported being falsely implicated in drug cases by the police, simply due to their proximity to a male family member who was involved in the drug trade, while the women themselves had never engaged in drug related activities. They stated that the law enforcement authorities were not inclined to believe their claims, as they were judged by the actions of their family members. Women who were previously charged with drug offences stated they were arrested again, despite the absence of reasonable suspicion or evidence of their continued involvement only because law enforcement authorities seemingly hold the assumption that such women cannot be presumed innocent owing to their past record. Women who were arrested for drug related charges also stated they were subjected to violence in police custody during interrogation and were forced to undergo invasive and painful body cavity searches by female police officers.

Incarceration, particularly for drug offences, results in women losing access to their children, being subject to social stigma and upon release facing innumerable challenges reintegrating. This has the effect of continuing a cycle of violence and poverty – disruption of family life and the associated impact on the upbringing and protection of children when

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<sup>31</sup> ‘Three Including a Woman Arrested with over Rs. 1.5 Million Worth Drugs’, Colombo Page, 09 August 2020, [http://www.colombopage.com/archive\\_20B/Aug09\\_1596955387CH.php](http://www.colombopage.com/archive_20B/Aug09_1596955387CH.php).

<sup>32</sup> ‘Female Drug Users, a Disturbing New Trend in Sri Lanka’, Sunday Observer, 13 September 2020, <http://www.sundayobserver.lk/2020/09/13/health/female-drug-users-disturbing-new-trend-sri-lanka>.

their mothers are incarcerated may lead to the children themselves becoming financially and emotionally vulnerable, thereby creating the room for unsocial behaviours to set in.

## **9. Space for civil society working on these issues**

Civic space is shrinking in South Asia and civil society organisations and activists working on human rights issues are targeted for punitive action, including imprisonment by the state using repressive laws, particularly counter-terrorism laws. Since the war on drugs demonizes persons who use drugs, there is reluctance amongst civil society to work on the issue. This is the case especially in contexts where anti-terror and anti- drug efforts are linked, such as Sri Lanka.

## **10. A cost/benefit analysis of a criminalised approach to drugs**

A cost/benefit analysis of the funding reserved for law enforcement and armed forces as well as the prison sector to tackle the 'drug problem' provides useful insight and questions whether such funds are being put to the most effective use.

In Sri Lanka, in 2023, the Ministry of Public Security was allocated 138 billion rupees, of which 116 billion rupees was allocated to the Police and twelve billion rupees allocated to the STF. The Ministry of Defence was allocated roughly 410 billion rupees, with the army receiving 209 billion rupees, the Navy receiving 75 billion rupees and the Air Force receiving 66 billion rupees. In Sri Lanka, the defence sector claims nearly half of public sector salaries, while the health sector claims 17%. Yet, in 2023, the Ministry of Health received a budget allocation of only 322 billion rupees.

Despite the large amounts of funds being invested in public security, the police and armed forces are not able to 'tackle' the drug problem: they typically arrest persons at the bottom of the supply chain rather than persons involved in large scale drug trafficking, who often enjoy association with political power and therefore immunity and corruption and malpractice in the police department is widespread, which prevents drug-related investigations from being effective.

With regards to the prison system, according to the 2023 prison statistics issued by the Department of Prisons, nearly 60% of persons in prison are convicted for drug related offences.

According to a report tabled in parliament, on a specific day, 10,470 persons were held in pre-trial detention for drug offences and 3,569 were convicted for drug related offences, which is around, 14,000 persons in prison for drug offences on one day (out of a per day population of 26,791 persons). The prison statistics of 2023 affirm that the average cost per person in prison per day in 2022 was around 1,227 rupees. Therefore, on average, around 17,225,853 rupees is spent on persons held in prison in one day for drug-related offences. It must also be highlighted that, as per the prison statistics, the average length of sentence of persons convicted for drug related offences is one to six months, and majority of these persons were arrested for possession of small amounts of drugs and

were eligible to be released upon the payment of a fine, but were imprisoned as they could not afford the fine.

The Bureau of the Commissioner General for Rehabilitation (BCGR) is under the purview of the Ministry of Justice. In 2023, a sum of 1,025 million rupees was allocated in the national budget for the BCGR. Contrastingly, the National Dangerous Drugs Control Board which also undertakes rehabilitation and prevention activities without the involvement of the military, was allocated only 372 million rupees in the national budget.

Comparative studies from different countries within the region<sup>33</sup> overwhelmingly indicate that it is far more effective for public funds to be divested from a criminalised approach to drug treatment to a community-based public health-centred approach, with prevention mechanisms involving the education. It must also be highlighted that the majority of persons who consume and trade drugs do so due to the lack access to key social services, such as liveable housing, mental healthcare, employment opportunities, etc. There is a strong case to make for increased spending of public funds on welfare schemes that will reduce the pipeline to drug use, particularly among vulnerable groups and communities, rather than investing in a carceral approach that has proved to be ineffective and a waste of funds.

**Military, police, prisons and compulsory drug rehab cost 537,864,000,000 LKR, which is 6.8% of the national budget.**

Patterns of national funding are consistent across as the region, as confirmed by Harm Reduction International<sup>34</sup>, which demonstrates that national budgetary allocations for drug law enforcement and security forces is several times the funds allocated for public health, and harm reduction services in particular. Examples highlighted by HRI:

- ‘The Indian Government’s investment in harm reduction is strikingly small when compared with its annual expenditure on policing related to drug laws, which jumped from USD 1.04 billion in 2016 to USD 1.2 billion in 2018. Domestic spending on harm reduction represents just 1% of the estimated spending on policing related to drug laws in the country.’<sup>35</sup>
- ‘In 2019, harm reduction funding in Thailand was reported to be USD 3.8 million, with around one-third coming from domestic sources. Since 2015, domestic investment has increased but was reported to have dropped sharply in 2020 and is set to continue at levels below USD 200,000 for subsequent years. In contrast, the Thai Government’s allocation for drug law enforcement activities is around 1,500 times its highest contribution to harm reduction.’<sup>36</sup>

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<sup>33</sup> <https://hri.global/publications/divest-redirect-invest-the-case-for-redirecting-funds-from-ineffective-drug-law-enforcement-to-harm-reduction-spotlight-on-six-countries-in-asia/>

<sup>34</sup> ‘Redirection: HRI Briefing Note’ (2021) *Harm Reduction International*. [https://hri.global/wp-content/uploads/2022/10/HRI\\_Briefing\\_Redirection\\_Oct\\_2021-1.pdf](https://hri.global/wp-content/uploads/2022/10/HRI_Briefing_Redirection_Oct_2021-1.pdf)

<sup>35</sup> Ibid

<sup>36</sup> Ibid

- According to a 2016 article on Indonesia, “Less than one percent of dependent users got treatment in 2014. Indonesian law mandates rehabilitation for people caught with small quantities of drugs. But many end up in crowded jails. The rehabilitation ministry aims to rehabilitate 15,000 drug users this year on a budget of 87 billion rupiah (\$6.6 million). Next year, it will only get funds to help 9,000. While rehabilitation funding has been cut, the president has tripled the budget of the national counter-narcotics agency, known as the BNN, to 2.1 trillion rupiah (\$160 million). It also draws on the police budget.’<sup>37</sup>

## 11. Policy contradictions

India has punitive drug laws but at the same time also has the National Action Plan for Drug Demand Reduction (NAPDDR) (2018 – 2025). The implementation of the Action Plan will be patchy and difficult due to existing punitive drug laws. In 2014 India amended the NDPS to improve access to opioids and in 2015 drugs, including methadone and morphine, were categorized as essential narcotic drugs but access remains limited. Diversion to treatment is often carried out via the criminal justice process. Harm reduction treatments are available and outlined as necessary for treatment in the national policy but implementation is lacking<sup>38</sup>.

In Pakistan, the Narcotic Policy states, “improve the availability of controlled drugs for illicit medical and scientific use, while preventing their diversion, consistent with the relevant international obligations under the UN drug control conventions” and “Develop, by the end of 2019, a unified/standardized protocols and evidence-based treatment guidelines for Treatment and Rehabilitation Centres in the country to adopt and practice”<sup>39</sup>. Yet, harm reduction mechanisms are not available in Pakistan and drug “treatment” is largely abstinence based.

In Nepal, the 1976 Narcotic Drugs (Control) Act, which is still in force, criminalises the use, possession for personal use, and ‘addiction’ to drugs. As such, Nepal criminalises drug dependence itself<sup>40</sup>.

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<sup>37</sup> ‘Corrected - Indonesia wages war on drugs but cuts funding for rehabilitation’ (2016) *Reuters*.

<https://www.reuters.com/article/cnews-us-indonesia-drugs-idCAKCN10D034>

<sup>38</sup> Statement by civil society member Dr Kawal Deep Kour, SADARC India at the Commission for Narcotic Drugs. (2022). <https://cndblog.org/2022/03/side-event-introducing-the-asia-pacific-civil-society-common-position-on-drugs/>

<sup>39</sup> Anti-Narcotic Policy (2019). Government of Pakistan. <http://anf.gov.pk/library/acts/nap2019.pdf>

<sup>40</sup> ‘Demanding more options for young people who use drugs in Nepal’ UNAIDS. (2023).

[https://www.unaids.org/en/resources/presscentre/featurestories/2023/june/20230626\\_young-people-who-use-drugs-nepal](https://www.unaids.org/en/resources/presscentre/featurestories/2023/june/20230626_young-people-who-use-drugs-nepal)

## **12. Funding by international donors for punitive policies**

International donors, both bilateral and multilateral, funding punitive measures of governments in Asia, enable these governments expand punitive and militarized measures and exacerbate the problem. For instance, UNODC, while maintaining the need to offer rehabilitation and treatment that is consistent with international human rights standards, often provides resources, training and funding to security agencies in the region that go on to undertake drug-operations and arrests of persons who use drugs<sup>41</sup>.

### **12.1. Recommendations to the UN**

- a) The UN system should adopt a human-rights centered approach in their programmes in line with the UN Secretary-General's Rights Up Front initiative and more recently the Call to Action for Human Rights.
- b) The role of OHCHR as the lead UN entity on human rights in the UN system must be respected and strengthened, including OHCHR's duty to conduct human rights due diligence of UN agency programmes to ensure they adhere to international human rights standards and the UN Common Position on Drugs. In this regard, means to ensure internal accountability of UN agencies must be formulated and institutionalized at the UNCT level.
- c) Recognise the critical role of the Resident Coordinator system in the implementation of the UN Common Position on drug related matters as it can be the catalyst to create a common platform for multi-agency coordinated action and facilitate better coordination between the office of the Resident Coordinator and the in-country OHCHR presence.
- d) To encourage member states to adopt a health centred approach, WHO in-country offices must be included in the UN system's engagement on the issue with the respective national government and should take the lead in advocating for a health and human rights centered approach. In addition, WHO support to the government via provision of expertise, training etc should be explored.
- e) Action should be taken to support the member state to undertake reform of laws related to drug control and treatment through UNDP's in-country Access to Justice programme.
- f) The UNCT should reiterate the UN Common Position on Drugs and other UN standards on drug policies to development partners that channel their funds to national entities via the UN at the national level, to ensure the funds channeled/re-granted via the UN adhere to human rights standards.

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<sup>41</sup> ' Promoting the Rule of Law and Countering Drugs and Crime in South Asia' *UNODC* (2018)  
[https://www.unodc.org/documents/southasia/Promoting\\_the\\_Rule\\_of\\_Law\\_Final\\_Rev.pdf](https://www.unodc.org/documents/southasia/Promoting_the_Rule_of_Law_Final_Rev.pdf)