

WOMEN AND POLICIES ON DRUGS

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Women, almost half of the population of the world, make up one third of the drug users¹ and one fifth of those estimated numbers of people who inject drugs globally.² The prohibitory and punitive policies and laws as a response to the world drug issues pose a heavy burden on the women who use drugs, making them vulnerable and their empowerment critical. Paul Hunt³, has described “the coexistence of human rights law and drug control laws as being situated in parallel universes”.⁴ In other words, the application of drug control laws breaches and conflicts the standards and norms set by human rights laws. Though there are evidences reporting the negative un-intended consequences of penal drug laws and policies on health, development and human rights⁵, but less attention has been paid on particular impact of drug control on women, their rights and gender equality.⁶

United Nations Policies and Women Drug Use:

Gender equality, development and human rights are universally agreed objectives that form the foundations of the Charter of United Nations.⁷ These basic affirmations unequivocally confirm the rights of women⁸ which are supplemented and specifically protected and confirmed in a number of other international commitments, including “The Convention on

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¹ World Drug Report 2018, UNODC, Key Findings, page 6.

² ibid

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⁴ Hunt Paul, Human Rights, Health and Harm Reduction – States’ Amnesia and Parallel Universes, International Harm Reduction Association, London, 2008.

⁵ Report by the Executive Director of the United Nations Office on Drugs and Crime as a Contribution to the Review of the Twentieth Special Session of the General Assembly (2008), *Making Drug Control ‘fit for purpose’: Building on the UNGASS Decade* (E/CN.7/2008/CRP.17), <http://www.unodc.org/documents/commissions/CND-Session51/CND-UNGASS-CRPs/ECN72008CRP17.pdf>)1

⁶ Only 2% of all resolutions adopted since 2009 address the issues faced by women who use drugs. See Nougier M, Taking Stock, a Decade of Drug Policy , A Civil Society Shadow Report, International Drug Policy Consortium (IDPC), http://fileservr.idpc.net/library/shadow_Report_FINAL_ENGLISH.pdf

⁷ Barrett, D, Security, Development and Human Rights: Normative, Legal and Policy Challenges for the International Drug Control System, *International Journal of Drug Policy*, 2010, **21**(2): 140-144.

⁸ Women must have access to health care services equivalent to the access enjoyed by men (Article :12) and must enjoy equality with men under the law in all respects (Article: 2) of International Convention on The Elimination of all Forms of Discrimination against Women.1979

the Elimination of Discrimination against Women” (CEDAW) of 1979⁹, and “The Beijing Declaration” of 1995, aiming at promoting peace, development and equality for all women.¹⁰ “The United Nations Economic and Social Council (ECOSOC)” in 1997 also approved for incorporation of gender perspectives by United Nations Commissions while formulating and implementing policies.¹¹

These international commitments to synchronise with established human rights obligation, remained rhetorical, with no systematic approach to meaningfully incorporate gender perspectives in drug context, thus keeping women who struggle with drugs at the risk of recurrent violation of their rights¹².

The international drug control system is based upon three conventions, “The 1961 Single Convention”, “The 1971 Convention on Psychotropic Substances” and “The Convention against Illicit Traffic in Narcotic and Psychotropic Substances, 1988”. None of these conventions mentioned gender equity, despite the fact that “gender architecture” in the United Nation system, “The Convention on Elimination of Discrimination against Women (CEDAW), 1979” preceded “The Convention on Illicit Traffic in Narcotic and Psychotropic Substances, 1988”.¹³

Over the years, drug control agencies tasked with management and control of drug issues under these conventions have pursued tough law enforcement and penal policies without taking women’s rights into consideration. To add to this, the Commission on Narcotic Drugs (CND)¹⁴, considers drug use as an ‘evil’¹⁵ and INCB,¹⁶ encourages strict and punitive

⁹ International Convention on the Elimination of All Forms of Discrimination against Women. G.A. Res. 1979, 34(180).

¹⁰ United Nations Fourth World Conference on Women Beijing Declaration (1995), <http://www.un.org/womenwatch/daw/Beijing/platform/declar.htm>

¹¹ UN Economic and Social Council. Agreed Conclusions. UN Doc. A/52/3. 1997 ch. IV.

¹² UNODC, INPUD, UN Women, WHO Policy Brief: Women Who Inject Drugs and HIV: Addressing Specific Needs, <http://www.unodc.org/documents/hiv-aids/publications/WOMENPOLICYBRIEF2014.pdf>.

¹³ On “gender architecture,” see A. Miller, “Fighting over the Figure of Gender,” *Pace Law Review* 31/3 (2011), pp. 837–872.

¹⁴ The policy making body in the United Nations Drug Control System.

¹⁵ <http://www.un.org/en/ecosoc/about/pdf/cnd&ccpcj.pdf>.

¹⁶ The UN Agency in charge of Monitoring the Implementation of the UN Drug Conventions.

approaches towards drug issues notwithstanding the preamble to the Convention of 1961 that upholds “health and welfare of mankind”.¹⁷

The outlook and attitude has gradually started to evolve with the UN agencies recognising the challenges faced by women with respect to use of drugs, access to health services and interactions with the criminal justice system, thus, importance of women’s rights in drug policy.

The first women specific resolution was adopted in 1995 by the Commission on Narcotic drugs (CND), urging the signatory states to “recognise, assess and take into account in their national policies and programmes the problems that drug abuse poses for women”.¹⁸ In 1998, the Political declaration by the UN General Assembly asked the member states to “ensure that women and men benefit equally, and without any discrimination, from strategies directed against the world drug problem”¹⁹.

The UN Commission on Narcotic Drugs, in a resolution in 2005, recognized the “adverse impact of drug use on women’s health, including the effects of fatal exposure” and called on signatories to implement “broad-based prevention and treatment programmes for young girls and women” and further asked them to “consider giving priority to the provision of treatment for pregnant women who use illicit drugs.”²⁰ It also directed the UNODC to include in its drug reports the gender disintegrated information.

In 2009, “Commission on Narcotic Drugs (CND)” in its Resolution 52/1 while addressing socio-economic issues that push women in drug cultivation and trafficking, raised concern for “Promoting international cooperation in addressing the involvement of women and girls in

¹⁷Harm Reduction International (2012), *Commanding General confidence? Human Rights, International Law and the INCB Annual Report for 2011*, <http://idpc.net/publications/2012/04/commanding-general-confidence-human-rights-international-law-and-the-incb-annual-report-for-2011>.

¹⁸CND, Women and Drug Abuse, Res. 3 (XXXVIII) (1995), para. 1.

¹⁹UN General Assembly, Res. S-20/2, UN Doc. A/RES/S-20/2 (1998), para. 4

²⁰ UN Commission on Narcotic Drugs. “Women and Substance Use.” Res. 48/6, 48th Session, Vienna, March 2005.

drug trafficking, especially as couriers”²¹The resolution urged for “more evidence-based research on women’s involvement in the drug trade”, and stressed on the “need of education to reduce women’s participation in drug-related crime”.²² This resolution though a step towards incorporating gender issues into the drug policy focuses mainly on drug trade, while ignoring negative impact of drug control strategies on women²³.

In 2010, “The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)”²⁴, expressly stated that apart from the duty to frame laws aimed towards protecting women, the states should also take responsibility for the harm that may be inflicted by these laws even unintendedly.²⁵

To ensure that the obligations of removing obstacles, legal or others; to pursue policies in order to give effect to right to non-discrimination and equality²⁶, and access to health care services on the basis of equality²⁷, the General Assembly in its 2012 resolution, noted that “women with substance abuse problems are often deprived of or limited in their access to effective treatment that takes into account their specific needs and circumstances.” It called the parties to “Promote strategies and measures addressing specific needs of women in the context of comprehensive and integrated drug demand reduction programmes and strategies”.²⁸

²¹Resolution 52/1, ‘Promoting International Cooperation in Addressing the Involvement of Women and Girls in Drug Trafficking, Especially as Couriers’, http://www.unodc.org/documents/commissions/CND-Res-2000-until-present/CND-2009-Session52/CNDResolution_52_1.pdf

²² Ibid.

²³Fleetwood, J, Haas, N.U, ‘Gendering the Agenda: Women Drug Mules in Resolution 52/1 of the Commission of Narcotic Drugs at the United Nations’, 2010, *Drugs and Alcohol Today*, **11** (4): 194.

²⁴ The United Nations General Assembly Created the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) in July 2010.

²⁵UN Women website, <http://www.unwomen.org/about-us/about-un-women>.

²⁶International Convention on the Elimination of All Forms of Discrimination against Women. G.A. Res. 1979; 34 (180), International Covenant on Civil and Political Rights. G.A. Res. 2200A.1966; XXI, Covenant on Economic, Social and Cultural Rights. G.A. Res. 2200A.1966; XXI, Convention on the Rights of Persons with Disabilities. G.A. Res. 2006; 61(106).

²⁷UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. UN Doc. CEDAW/C/2010/47/GC.2. 2010 para. 5, para. 18. International Covenant on Economic, Social and Cultural Rights CESCR. G.A. Res. 2200A. 2005; XXI Art. 2(2), para. 29. UN Human Rights Committee. Equality of Rights between Men and Women (Article 3) UN Doc. CCPR/C/21/Rev.1/Add.10. 2000 General Comment No. 28. paras. 3, 5. International Convention on the Elimination of All Forms of Discrimination against Women. G.A. Res. 1979; 34(180) Art. 2(f)

²⁸CND Resolution 55/5, ‘Promoting Strategies and Measures Addressing Specific Needs of Women in the Context of Comprehensive and Integrated Drug Demand Reduction Programmes and Strategies’, Vienna, March 2012. http://www.unodc.org/documents/commissions/CND-Res-2011to2019/CND-Res-2012/resolution_55_5.pdf.

The special rapporteur of United Nations on Violence against Women, reported in 2013, to the General Assembly that anti-drug laws and policies, domestic and international, are a major cause of increasing women incarceration.²⁹ In the year 2014, “The Commission on Elimination of Discrimination against Women (CEDAW)”, expressed its concern on increasing women prison population for drug related offences.³⁰ It was also emphasised that “Women’s involvement in drug use and trade” reflects “decreased economic opportunities and lower political status that women face in everyday life”.³¹ It is evidenced that women’s experiences with criminal justice system bare more harm on them than it does on men, thereby worsening their economic vulnerability and social exclusion.³² Meanwhile, the United Nations Development Programme (UNDP) in 2015 noted that “corruption, violence and instability fuelled by war on drugs generate large scale human rights abuses, discrimination and marginalisation of people who use drugs, indigenous people, women and youth”.³³

The consensus regarding effects that international drug policies have on Women has gained momentum in recent years. The United Nations, its agencies, the member states and civil society has realised the importance to focus their attention to women drug use and their participation in traffic to attain gender equity and non-discrimination in drug control efforts. At its 2016 meeting, CND resolved for “mainstreaming a gender perspective into and ensure the involvement of women in all stages of the development, implementation, monitoring and evaluation of drug policies and programmes” and to expand “gender-sensitive” measures that “take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem.”³⁴

²⁹Rashida Manjoo, UN Special Rapporteur on Violence Against Women, Pathways to, Conditions and consequences of Incarceration for Women, UN Doc. A/68/340 (2013), para. 23.

³⁰CEDAW Committee, Concluding Observations on Brazil, UN Doc. CEDAW/C/BRA/CO/7 (2012), para. 32; CEDAW Committee, Concluding Observations on the UK, UN Doc. A/54/38 (1999), para. 312.

³¹ *ibid*

³² Stephanie S. Govington and Barbara E Bloom, Gendered Justice: Women in Criminal Justice System, In Gendered Justice: Addressing Female Offenders, Barbara E Bloom, ed. Durham, North Carolina, Carolina Academic press, 2003.

³³Sempruch Kasia Malinowska and Rychkova Olga, Measuring the Impact of Repressive Drug Policies on Women, After the Drug Wars: Report of the LSE expert Group of the Economics of Drug Policy, London School of Economics and Political Science, Feb 2016, p110.

³⁴UN General Assembly. UN Doc. A/RES/S-30/1. Res. S-30/1. 2016 para. 4(g). CND. Mainstreaming a Gender Perspective in Drug-Related Policies and Programmes. Res. 2016/59(5)

“United Nations General Assembly Special Session (UNGASS)” in 2016, took place soon after “The Sustainable Development Goals: Agenda 2030”³⁵ was adopted, addressing issues related to both women and drug use problems. To promote a balanced and comprehensive approach in consonance with the Conventions on control of drugs, human rights laws and the Agenda: 2030, UNODC in its world drug report of 2018 highlighted the importance of gender sensitive drug policies.³⁶

United Nations and its agencies have from time to time acknowledged the inconsistencies in the drug control systems that disproportionately affect women. Women who use drugs are more stigmatised in most of the societies because of sexist stereotypes that hold women at different standards³⁷, resulting in them being a more hidden population than their counterparts. The structural, social, cultural and personal norms may make it even more onerous for women to concede their drug problem and seek treatment³⁸. The stigma and discrimination leads to human rights violation of the users by perpetuating existing vulnerabilities and discrimination which rarely is being questioned.

The most significant structural barriers are the punitive norms and policies towards women drug users.³⁹ Some studies also suggest that at the sentencing level, differentiated needs, gender inequalities and circumstances are not considered because of the misconception that “principle of equality before law” does not permit to consider differential needs of women so as to accomplish gender equality.⁴⁰ These conditions disproportionately affect women and inhibit women empowerment and thus becoming a tool for further oppression.

Thus in order to ensure women’s rights are protected, respected, and executed in drug control policy, needs commitment and momentum at national and international levels, to strengthen

³⁵ Agenda 2030 SDG related to women are: Goal: 3 aims at ensuring healthy lives and promoting wellbeing of all ages; Goal: 5 is aimed at achieving gender equality and empowering women and girls; Goal: 8 is aimed at promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all; Goal: 10 is aimed at reducing inequality within and among countries; and Goal: 16 is aimed at promoting peaceful and inclusive societies for sustainable development.

³⁶ UNODC, Global Overview of Drug Demand and Supply, World Drug Report 2018, Booklet: 5.

³⁷ Patricia O’Brien, *Making it in the Free World: Women in Transition from Prison*, Albany, New York, State University of New York Press, 2001.

³⁸ Stephanie S. Govington and Barbara E Bloom, *Gendered Justice: Women in Criminal Justice System*, in *Gendered Justice: Addressing Female Offenders*, Barbara E bloom, ed. Durham, North Carolina, Carolina Academic Press, 2003.

³⁹ Erick G. Guerrero and others, *Barriers to Accessing Substance Abuse Treatment in Mexico: National Comparative Analysis by Migration Status, Substance Abuse Treatment, Prevention and Policy*, vol 9, no 30 July 2014.

⁴⁰ UNODC, *Personas privadas de libertad por delitos de drogas en panama: Enfoque socio-juridico del diferencial por genero en la Administracion de la justicia penal 2017*.

accountability, assist implementation, remove gender inequalities and last but not the least swiftly and decisively respond to the world drug challenge.