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Follow-up to the special session of the General Assembly on the world drug problem held in 2016, including the seven thematic areas of the outcome document of the special session

Statement submitted by the Washington Office on Latin America (WOLA)**

The Secretary-General has received the following paper, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.

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Implementation of the UNGASS Outcome Document to Promote Gender-Sensitive Drug Policies

This submission provides input into the proceedings of the 62nd Session of the Commission on Narcotic Drugs – standing agenda item 11 “Follow-up to the special session of the General Assembly on the world drug problem held in 2016, including the seven thematic areas of the outcome document of the special session.”

The UNGASS Outcome Document stakes out new ground for the international drug control system in highlighting the importance of promoting gender-sensitive drug policies, recognizing both the particular vulnerabilities and specific needs of women in primary care and treatment programs, as well as within the criminal justice system.

Women who use drugs and human rights¹

Women who use drugs face significant stigma and are often unable to access harm reduction, drug dependence treatment or basic healthcare. Where drug use remains criminalized, women may face high levels of violence or harassment from law enforcement officers (e.g. in Central Asia).¹ Women with children or who are pregnant may also face losing child custody, forced/coerced sterilization, or forced abortion.² In certain jurisdictions, women who use drugs during pregnancy may be subject to detention³ or criminal liability for exposing the fetus to drugs.⁴ The Special Rapporteur on the right to health has found that the criminalization of drug use during pregnancy impedes access to healthcare, infringing on the right to health of pregnant women,⁵ and the UN Working Group on the issue of discrimination against women in law and in practice has considered such practices to be discriminatory.⁶

Women and criminal justice²

Punitive drug laws have had a disproportionate negative impact on women. Although women represent a small proportion of the general prison population, they are also the fastest growing prison population – and this is driven by repressive drug policies. More than 714,000 women and girls are currently held in penal institutions worldwide.⁷ The number of women and girls in prison has increased by 53 percent between 2000 and 2017 – while the worldwide male prison population increased by around 20 percent – with particularly sharp increases in Guatemala, El Salvador, Brazil, Colombia, Cambodia, Indonesia, and Brazil.⁸

The highest levels of incarceration of women can be found in East/Southeast Asia, where the mass incarceration of low-level, non-violent drug offenders has led to severe prison overcrowding. As of 2015, over 47,000 women were behind bars in Thailand, 80 percent of whom for drug offences.⁹

Most of these women are arrested for non-violent, low-level yet high-risk activities, such as small-scale drug dealing or transporting drugs. They are often first-time offenders. Their incarceration contributes little to reducing the overall scale of the illicit drug market or improving public security, as these women are easily replaced in the illicit drug trade. And yet, they often face disproportionate prison sentences. A 2013 report documents that the average maximum sentence for a drug offence in the seven Latin American countries studied rose from 34 years in prison in 1950 to 141 years in 2013.¹⁰

The “human face” of female incarceration³

Women deprived of their liberty or awaiting sentences for drug-related offences often have little or no schooling, live in conditions of poverty, and are heads of household responsible for young, elderly or disabled dependents.¹¹ They may also need harm

¹ Relevant OP: 4.b.

² Relevant OP: 4.d and 4.n.

³ Relevant OP: 4.d.

reduction or treatment for drug dependence and for mental or physical health problems. Most have suffered some form of sexual violence before and/or during incarceration.

Women become involved in the drug trade due to poverty and social exclusion, as they are unable to find licit employment. In some cases, women are coerced into drug dealing and trafficking by male relatives or intimate partners. Others become involved because it is a family business.

An astounding number are single mothers. In Colombia, of all women who entered prison for drug crimes between 2010 and 2014, 93.4 percent had children, compared to only 76.2 percent of their male counterparts. The incarceration of mothers can be devastating for their dependents. Prison further limits the chances of finding decent and legal employment, because of criminal records. These factors can perpetuate cycles of poverty, involvement in drug markets and incarceration.¹²

Alternatives to criminalization/incarceration⁴

The United Nations Special Rapporteur on violence against women¹³ and CEDAW¹⁴ have both called upon States to develop gender-sensitive alternatives to incarceration, and promote a paradigm shift away from incarceration and towards community-based sentencing. This will also require a review of national drug laws and policies to ensure proportionate penalties, including the consideration of mitigating factors such as socio-economic vulnerability, being the sole care provider of dependents, and drug dependence, among others.

According to the rights to equality and non-discrimination, States are obliged to ensure equal rights to men and women in all respects, including equal access to health care services.¹⁵ Similarly, the Bangkok Rules require States to address the specific challenges confronted by women in the criminal justice and prison systems with alternatives to incarceration, and access to harm reduction and treatment services.¹⁶ WHO, UNAIDS and UNODC guidelines have also emphasized the need to ensure comprehensive health and reproductive services for women who use drugs, including HIV-related services.¹⁷

Recommendations

In order to comply with the gender-related components of the UNGASS Outcome Document, we recommend that member states implement these recommendations:

- Commit to a rights- and gender-based harm reduction approach to women who use drugs, and end the criminalization, stigmatization, forced treatment and incarceration of women who use or have used drugs.
- Review drug laws and policies to ensure more proportionate sentencing for drug offences, in order to avoid the imposition of lengthy sentences for women who have committed non-violent drug offences such as possession of small quantities of drugs, small-scale dealing or engagement in the drug trade as drug couriers – the objective being that incarceration is used only as a last resort.¹⁸
- Implement alternatives to incarceration for women incarcerated for drug offences, in particular for those who are pregnant or in charge of dependents.¹⁹
- Ensure that in cases where women have young children in their custody, the best interest of the child is the guiding principle in processing her sentence.
- Encourage and ensure women's participation in the development, implementation, evaluation and monitoring of drug policies and programs, especially those women who are directly impacted by drug use, the drug trade or drug policies. This should include drug users, formerly incarcerated women,

⁴ Relevant OP: 4d, 4n, 4.j, and 4.l.

mothers, wives or partners of persons who are incarcerated, and members of communities that have been impacted.

- Commit to generating and gathering comprehensive data from prison authorities that details the nature and extent of global incarceration for both women and men in order to design more effective policies to meet the needs of vulnerable and underrepresented groups.²⁰
- Recognize that persons from certain sectors of the population –Afrodescendants, indigenous peoples, ethnic minorities, migrants, foreigners, people with disabilities and the LGBTI community – are disproportionately impacted by current drug policies, and ensure that representatives of these groups participate in the debate and in developing these policies.

Supporting the statement:

International Drug Policy Consortium (IDPC), EQUIS: Justicia para las Mujeres, Dejusticia

¹ <http://www.harm-reduction.org/library/law-enforcement-and-women-who-use-drugs>.

² Office of the High Commissioner on Human Rights, “Study on the impact of the world drug problem on the enjoyment of human rights”, 2015, UN Doc. A/HRC/30/65, para. 53.

³ Ibid.

⁴ Alabama Code Section 26-15-3.2: Chemical Endangerment of Exposing A Child to an Environment in Which Controlled Substances are Produced or Distributed; Amnesty International, “Tennessee ‘fetal assault’ law a threat to women's health and human rights” (AMR51/3623/2016), 2016.

⁵ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2011, UN Doc. A/66/254, para 41.

⁶ Report of the Working Group on the issue of discrimination against women in law and in practice, 2016, UN Doc. A/HRC/32/44, para. 39.

⁷ <http://www.prisonstudies.org/news/world-female-imprisonment-list-fourth-edition>.

⁸ <http://www.prisonstudies.org/news/world-female-imprisonment-list-fourth-edition>.

⁹ <http://www.bangkokpost.com/opinion/opinion/586901/for-female-offenders-jail-often-no-solution>.

¹⁰ [http://www.drogasyderecho.org/publicaciones/pub-col/proportionality-colombia-\(addicted-punishment\).pdf](http://www.drogasyderecho.org/publicaciones/pub-col/proportionality-colombia-(addicted-punishment).pdf); www.drogasyderecho.org.

¹¹ <https://www.oas.org/en/cim/docs/WomenDrugsAmericas-EN.pdf>; **Error! Hyperlink reference not valid.** <http://idpc.net/publications/2013/11/idpc-briefing-paper-women-drug-offenses-and-penitentiary-systems-in-latin-america>.

¹² <https://www.wola.org/analysis/women-drug-policies-and-incarceration/>.

¹³ Report of the Special Rapporteur on violence against women, ‘Pathways to, conditions and consequences of incarceration for women’, 2013, UN Doc. A/68/340, para. 85.

¹⁴ Committee on the Elimination of Discrimination against Women, General Recommendation 33 on women’s access to justice, 2015, UN Doc. CEDAW/C/GC/33, para. 48.

¹⁵ Convention on the Elimination of all forms of Discrimination Against Women, articles 12 and 2.

¹⁶ UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders. ECOSOC resolution 2010/16, 2010.

¹⁷ http://www.who.int/hiv/pub/idu/idu_target_setting_guide.pdf http://www.who.int/hiv/pub/idu/idu_target_setting_guide.pdf.

¹⁸ <https://www.wola.org/analysis/women-drug-policies-and-incarceration>.

¹⁹ https://www.wola.org/sites/default/files/Alternatives%20to%20Incarceration_English_Final_0.pdf.

²⁰ https://www.wola.org/sites/default/files/Data%20English_FINAL.pdf.