

# International Guidelines on Human Rights and Drug Control: A Tool for Securing Women's Rights in Drug Control Policy

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## Abstract

Discrimination and inequality shape women's experiences of drug use and in the drug trade and the impact of drug control efforts on them, with disproportionate burdens faced by poor and otherwise marginalized women. In recent years, UN member states and UN drug control and human rights entities have recognized this issue and made commitments to integrate a 'gender perspective' into drug control policies, with 'gender' limited to those conventionally deemed women. But the concept of gender in international law is broader, rooted in socially constructed and culturally determined norms and expectations around gender roles, sex, and sexuality. Also, drug control policies often fail to meaningfully address the specific needs and circumstances of women (inclusively defined), leaving them at risk of recurrent violations of their rights in the context of drugs. This article explores what it means to 'mainstream' this narrower version of gender into drug control efforts, using as examples various women's experiences as people who use drugs, in the drug trade, and in the criminal justice system. It points to international guidelines on human rights and drug control as an important tool to ensure attention to women's rights in drug control policy design and implementation.

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## Introduction

In recent years, United Nations (UN) human rights and drug control entities, UN member states, and civil society have begun to pay closer attention to women's drug use and participation in the drug trade and to the impact of international drug control efforts on women (here, conventionally defined).

At the international level, there is consensus among UN member states and UN drug control and human rights entities about the importance of integrating a 'gender perspective' into drug control efforts, with 'gender' limited to those conventionally deemed women. At the 2016 UN General Assembly on Drugs, UN member states committed to "mainstream 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 develop "gender-sensitive" measures that "take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem."<sup>1</sup> They also recommended that states address "the conditions that continue to make women and girls vulnerable to exploitation and participation" in the drug trade; take into account the specific needs and multiple vulnerabilities of "women drug offenders" in prison; and ensure non-discriminatory access to health care services, including in prison and for pregnancy.<sup>2</sup> In 2016, the Commission on Narcotic Drugs (CND) also called for states and the UN Office on Drugs and Crime (UNODC) to mainstream a gender perspective in drug-related policies and programs, enumerating steps to take to develop and implement drug policies and programs that take women's and girls' specific needs into account.<sup>3</sup>

These political commitments encompass some of the human rights obligations that most states have undertaken as parties to international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of People with Disabilities.

While these commitments have begun to align with established human rights obligations, they remain rhetorical. Meanwhile, there exists no systematic assessment that brings these two areas of international law and policy together. More importantly, national policymaking on drugs fails to meaningfully incorporate even this conventional gender dimension on a systemic scale, and all kinds of women remain particularly at risk of recurrent violations of their rights in the context of drugs. The elaboration of international guidelines on human rights and drug control is an important tool to ensure that all women's rights are respected, protected, and fulfilled in drug control policy design and implementation.

Gender is a relational concept that captures the operation of socially constructed identities, attributes, and role expectations for persons deemed male or female (based on their presumed biological sex).<sup>4</sup> These roles affirm and reestablish privilege in all spheres of life, including with respect to resources, employment, and personal autonomy.<sup>5</sup> A gender perspective may target people based on their identity as women, girls, lesbian, gay, bisexual, transgender, intersex, or gender-nonconforming persons, as well as men or boys. This article explores what it means to mainstream drug policy from the perspective of persons conventionally deemed female, using as examples these particular women's experiences as people who use drugs, in the drug trade, and with the criminal justice system. When we use the word 'women' here, we are primarily referencing those conventionally deemed women: this focus brings out important issues, while its limitation also suggests important areas for research and intervention on transwomen and other non-gender conforming persons to ensure their rights and health.

## Gender and human rights

The right to non-discrimination and equality on the basis of sex was first enshrined in the UN Charter and later in all main human rights treaties.<sup>6</sup> Several UN treaty bodies have acknowledged the existence of intersecting discrimination, defined as distinct discrimination resulting from multiple,

intersecting factors of disadvantage.<sup>7</sup> Women may experience discrimination due to the intersection of sex with other factors, such as race, ethnicity, religion, health status, age, or class.<sup>8</sup> These factors combine to produce distinct forms of discrimination, such as the denial of reproductive health services to women based on race and economic status.<sup>9</sup> Intersecting discrimination may express itself as the stereotyping of subgroups of women, such as the stereotype of women who use drugs as immoral, sexually promiscuous, and unfit to be mothers, caregivers, or partners.

International human rights law establishes a state obligation to take all necessary steps to give effect to rights enshrined in treaties, including women's rights to non-discrimination and equality.<sup>10</sup> It also requires states to adopt and pursue policies to address intersecting forms of discrimination and their compounded negative impacts.<sup>11</sup> The obligation to ensure women's right to health, for example, requires removing legal and other obstacles that prevent women from accessing and benefiting from health care on a basis of equality, including by addressing traditional, historical, religious, and cultural attitudes that affect access to determinants of health and health goods and services.<sup>12</sup>

### *Gender mainstreaming*

The Beijing Platform for Action of 1995 established gender mainstreaming in all policies and programs as a global strategy to promote gender equality.<sup>13</sup> In 1997, the UN Economic and Social Council approved guidelines requesting that UN functional commissions incorporate a gender perspective in their work.<sup>14</sup>

Historically, women's rights have not been considered by UN drug control entities tasked with the oversight of the three UN drug conventions. None of the drug conventions mention discrimination based on sex or other issues faced by women, despite the fact that CEDAW preceded the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and notwithstanding the significant gender architecture in the UN system by the time the convention was being negotiated.<sup>15</sup>

In recent years, this has begun to change. In

1995, the CND adopted its first resolution directed at women, urging member states to "recognize, assess and take into account in their national policies and programmes the problems that drug abuse poses for women."<sup>16</sup> The Political Declaration adopted in 1998 by the UN General Assembly called on member states to "ensure that women and men benefit equally, and without any discrimination, from strategies directed against the world drug problem, through their involvement in all stages of programmes and policy making."<sup>17</sup> CND resolutions adopted in 2005, 2009, and 2012 elaborated on structural problems faced by women in relation to drugs and drug policies; urged states to take action to eliminate gender-specific barriers limiting women's access to drug treatment and to address social and economic factors driving women to work in drug cultivation and trafficking; and raised concerns about sexual violence and other trauma experienced by women who use drugs.<sup>18</sup> As noted above, a 2016 CND resolution called for mainstreaming a gender perspective in drug-related policies and programs, with particular attention to women in custody for drug-related offenses.<sup>19</sup>

UNODC has also worked with UN health and human rights bodies, as well as networks of people who use drugs, to develop technical guidance on gender-specific harm reduction interventions and health services, including for women in prison.<sup>20</sup> The International Narcotics Control Board's 2016 annual report opened with a chapter on women and drugs, focusing primarily on women who use drugs.<sup>21</sup>

Engagement by the CND, UNODC, and International Narcotics Control Board to address the gender dimensions of drugs issues is important, but these commitments are hortatory. International guidelines on human rights and drug control would help expose the distinct, often disproportionate impact of drug control efforts on certain populations of women and provide guidance on how to systematically integrate a gender perspective within a human rights framework for international drug control, as well as strengthen accountability and assist with implementation at the national level.

## Drug control efforts from a gender perspective

This section applies a gender perspective to explore the experiences of women who use drugs, women who are incarcerated, and women who cultivate drugs or live in communities where drugs are cultivated or traded. It then points to state obligations to address the distinct experiences of women in order to meet their international legal obligations to ensure gender equality.

### *Women who use drugs*

Gender stereotypes around women's domestic roles and their socially and morally prescribed responsibilities for reproduction and parenting contribute to high levels of stigma and discrimination against women who use drugs.<sup>22</sup> These factors, often compounded by poverty, race, and other categories of social inequality, impede access to health and social services for women who use drugs, threaten family ties, and put women at risk of incarceration and involuntary detention and treatment.<sup>23</sup>

While health care and social services are scarce for most people who use drugs, women's specific needs are particularly ignored. Harm reduction services, generally developed with male drug users in mind, rarely acknowledge or address women's unique needs, such as for sexual and reproductive health care, child care, and gender-specific health information.<sup>24</sup>

Women who use drugs more commonly experience physical and sexual intimate partner violence than non-drug-using women—three to five times higher, according to some studies.<sup>25</sup> In many countries, they also face high rates of sexual and physical violence from police and law enforcement agencies.<sup>26</sup>

Many women cite pregnancy as a reason to seek drug treatment, and some countries do give pregnant women (effectively, the fetus) priority in drug treatment services.<sup>27</sup> Yet punitive policies that separate women who use drugs from their children, together with shaming and hostility when accessing services, deter pregnant women and mothers from seeking drug treatment, prenatal care, and other health services.<sup>28</sup> In many countries, women

with a history of drug use are considered unfit to parent, and pregnant women who use drugs may be pressured to have abortions or to give up their newborn infants.<sup>29</sup>

In some countries, pregnant women who use drugs (including legal drugs that have been prescribed) face civil or criminal detention for extended periods of time—sometimes for the length of the pregnancy.<sup>30</sup> In several US states, pregnant women suspected of drug or alcohol use can be involuntarily detained without due process and forced to undergo medical treatment, often without sound medical evidence that they have a drug dependency or that the health of the fetus was jeopardized.<sup>31</sup> These laws, as well as laws criminalizing drug use or requiring government officials and health care and social workers to report women who use drugs to child protective services, may deter women from seeking prenatal care or speaking openly with their doctors about their drug use and the best course of treatment for them.

In some countries in Eastern Europe and Central Asia, registration as a drug user—required by law for those seeking state-sponsored drug treatment—can trigger termination of parental rights, which strongly deters women from seeking treatment and other medical services, including prenatal care.<sup>32</sup>

States have positive obligations to ensure women's equal access to health care services and "appropriate services in connection with pregnancy."<sup>33</sup> Laws, policies, and practices that impede women's access to these services infringe women's fundamental right to health.<sup>34</sup> Detention and forced medical treatment on the grounds of pregnancy likewise constitute gender-based discrimination and also violate fundamental protections against arbitrary detention and ill treatment. The Working Group on Arbitrary Detention has raised concerns that deprivation of liberty because of drug use during pregnancy "is obviously gendered and discriminatory in its reach and application" and deters women from seeking needed health care.<sup>35</sup>

### *Women and the criminal justice system*

Women comprise a small minority (6.8%) of the

global prison population, but their numbers are increasing, and at a rate faster than for men.<sup>36</sup> And while men are more likely than women to be involved in drug possession, sale, and use, in most countries where data are available, a significantly higher proportion of women than men are imprisoned for drug-related offenses.<sup>37</sup> This imbalance has caught the attention of UN human rights mechanisms. Rashida Manjoo, former UN Special Rapporteur on violence against women, noted in 2013 that “domestic and international anti-drug policies are a leading cause of rising rates of incarceration of women around the world.”<sup>38</sup> The CEDAW Committee has also expressed concern about the significant increase in women imprisoned for drug-related offenses.<sup>39</sup>

Research from Latin America shows that women often become involved in the drug trade because poverty and discrimination limit their opportunities for education and employment. Many are single heads of households with multiple children and other dependents, pressured by family members or subject to violent coercion by recruiters linked with organized crime.<sup>40</sup>

Most women incarcerated for drug offenses are non-violent and first-time offenders.<sup>41</sup> Despite working at the lowest levels of the drug chain, they are subjected to the same or worse penalties as those with more substantial involvement in the trade, frequently lacking either information or representation to plea-bargain in exchange for reduced sentences or to avoid imprisonment altogether. In some countries, criminal laws and sentencing guidelines impose more severe penalties for drug-related offenses than for crimes such as rape and murder.<sup>42</sup>

The transnational nature of drug trafficking means that many women are detained or incarcerated in foreign countries, with devastating consequences for their lives and the lives of their children and dependents.<sup>43</sup> The UN Bangkok Rules encourage the use of gender-specific and non-custodial measures and sanctions that take into account the accused’s history, the circumstances of the offense, and her care responsibilities and urge the use of alternatives to incarceration for non-vio-

lent offenses.<sup>44</sup> Yet awareness of the Bangkok Rules appears lacking.<sup>45</sup>

Racial disparities in drug law enforcement have been documented in many countries, with laws criminalizing the possession, sale, and use of drugs aggressively enforced in low income-neighborhoods and among racial minorities. The intersecting discrimination has not been properly addressed in drug control entities’ resolutions and recommendations.

In the United States, for example, although black and white women sell and use drugs at comparable rates, black women are arrested and incarcerated on drug charges at rates that greatly exceed their proportion in the population and that are many times greater than for white women.<sup>46</sup> In many countries, women from racial minorities, including indigenous women, represent the fastest-growing segment of the prison population. A 2005 report noted that in the United States, for example, the imprisonment rate for black women for all offenses, a large proportion of which are drug-related, increased by 800%—twice the rate for all other groupings.<sup>47</sup> Latina and black women also receive harsher punishment—incarceration—than white offenders, who are more regularly offered community supervision.<sup>48</sup>

Several countries have enacted legislative or policy reforms to address the harmful consequences of drug control efforts on women, taking into account their age, economic status, caretaking responsibility, and pregnancy.<sup>49</sup> Guidelines on drug control and human rights could assist in evaluating such efforts to highlight the gender dimensions of law enforcement and guide the development of drug control policies that protect women’s health and human rights.

### *Women and crop cultivation*

Many small-scale farmers in drug-producing countries are pushed to cultivate drug crops due to poverty and a lack of viable legal alternatives. In these communities, women typically take care of activities such as planting, harvesting, and transporting small amount of plants and products, usually to attend to the family’s basic needs.<sup>50</sup>

The 1961 Single Convention on Narcotic Drugs prohibits the production, manufacture, export, import, distribution, trade in, use, and possession of coca leaf, opium poppy, and cannabis outside of medical or scientific purposes and requires states to adopt measures to ensure that such actions be punishable offenses.<sup>51</sup> The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances requires states to criminalize cultivation of these crops for illicit purposes (with leeway for states to opt out of criminalizing cultivation for personal consumption if this is unconstitutional or otherwise contrary to their legal systems).<sup>52</sup> It also requires states to prevent illicit cultivation and eradicate illicit crops, respecting traditions, human rights, and environmental standards.<sup>53</sup> This safeguard provision is limited, however, by the requirement that any measures must not be less stringent than those set out in the 1961 convention.<sup>54</sup>

These requirements conflict with state obligations to protect women's economic, social, and cultural rights and especially burden rural, indigenous, and Afro-descendant women. Development experts have raised concerns about alternative development programs' limited ability to reach those who rely exclusively on illicit crops for livelihoods, leaving the most vulnerable outside these programs' scope and reinforcing existing inequalities.<sup>55</sup>

Crop eradication efforts and the enforcement of opium, coca, and cannabis bans have eliminated the principal source of income for thousands of families. Eradication campaigns have also threatened food security, contaminated water supplies, and degraded land, displacing populations dependent on drug crops, as well as those who are not.<sup>56</sup> Displacement exacerbates the poverty and insecurity of poor farmers, with disproportionate impacts on rural, indigenous, and ethnic minority women. Eradication efforts also affect women in distinct ways. In Colombia, aerial spraying of coca crops with the herbicide glyphosate has been associated with dermatological and respiratory-related illnesses and miscarriage.<sup>57</sup> Exposure to glyphosate has also been associated with breast cancer.<sup>58</sup>

Women's health and economic circumstances are often ignored in efforts to provide alternative

livelihoods in rural communities dependent on illicit crops. Alternative livelihoods programs that foster the cultivation of alternative crops usually target landowning farmers. UN Women has observed that "[i]n Colombia, women in rural areas are mainly responsible for the food safety of their families, but the fumigation of coca crops affects other crops and water sources, while crop substitution programmes mainly benefit men, who are traditional title holders and often the sole beneficiaries of agricultural extension services, training, credit, and tools."<sup>59</sup> These programs further inscribe gender inequality, as women are barred by law or practice from holding title to land in many crop-cultivating areas.<sup>60</sup>

States have positive obligations under CEDAW to take account of problems faced by rural women and the significant roles women play in their families' economic survival. They are also obligated to take action to ensure women's rights to access agricultural credit and loans, markets, marketing facilities, and their right to equal treatment in land and agrarian reforms and resettlement schemes and to enjoy adequate living conditions, particularly with regard to housing, sanitation, electricity, water supply, transport, and communications.<sup>61</sup> Yet as the CEDAW Committee has noted, rural women often have limited rights over land and natural resources and face discrimination in land rights.<sup>62</sup>

The CEDAW Committee has highlighted how gender stereotypes regarding women's and men's roles, such as laws giving preference to male heirs over female heirs and practices that authorize only heads of household to sign official documentation (such as land ownership certificates) and to receive parcels of land from the government, perpetuate discrimination against women and negatively affect their access to land. The committee has called for the abolition of these stereotypical concepts in administrative practice and law and for the legal recognition of women's rights to own and inherit land.<sup>63</sup>

UNODC technical guidance recognizes that addressing the gendered division of labor, access to and control over resources (such as land, labor, and technology) and benefits, participation in decision making, and gender norms and cultural

expectations that influence these factors is key to mainstreaming gender in alternative development programs.<sup>64</sup> In practice, however, their implementation has been inadequate, as UNODC has itself acknowledged.<sup>65</sup>

## Conclusion

UN member states and UN drug control and human rights entities have recognized that gender inequality and gender power relations shape women's experience of drug use and in the drug trade and the impact of drug control policy on them in ways that are often distinct from their impact on men. They have called attention to the harsh impact of drug control efforts on poor and marginalized women and agreed on the importance of integrating a gender perspective in efforts to address discrimination and ensure women's equality. They have also recognized the Sustainable Development Goals as a framework for the implementation of drug control efforts. The development of new and better metrics to effectively describe, measure, and quantify the impacts of drug control on women are critical to designing new strategies for intervention. More broadly, the elaboration of international guidelines on human rights and drug control would be an important tool to assist states in meeting their international obligations to ensure women's rights in drug control policy design and implementation and in achieving Sustainable Development Goal 5 on gender equality.

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