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Statement submitted by National Advocates for Pregnant Women*

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.

* The present document is reproduced in the form in which it was received.



A. About National Advocates for Pregnant Women

National Advocates for Pregnant Women (NAPW) is a U.S. based non-profit organization that works to secure the human and civil rights, health and welfare of all people, focusing particularly on pregnant and parenting women, and those who are most likely to be targeted for state control and punishment - low income women, women of colour, and drug-using women. In order to maintain and reaffirm the human rights of women, as well as to advance the health of pregnant women and their families, NAPW works on legal cases and policy issues to ensure that pregnancy, drug dependency, and other health issues are addressed through public health and education systems; that women do not lose their civil and human rights because of pregnancy; and that families are not needlessly separated by child welfare policies.

NAPW actively participated in the 2016 United Nations General Assembly Special Session (UNGASS) focused on the world drug problem. NAPW elevated the issues and special concerns of women's human rights and how women and their families are affected by current drug policies. NAPW developed, organized, and disseminated the [UNGASS 2016 Women's Declaration](#)¹ signed by 145 U.S. and international organizations and calling for an end to punitive drug policies as dangerous to women, children, and families.

B. Introduction

In the last twenty years, hundreds of pregnant women or new mothers have been arrested and charged with drug related crimes. The majority of these cases involve allegations of pregnancy and drug use. In addition, evidence of pregnancy and drug use can be a violation of civil child neglect laws, and under those cases it is possible for a child to be removed a mother's care based on a single positive drug test². There is a consensus in the medical community that drug dependency is a public health issue, and barriers that deter women from seeking help and speaking openly with their doctors must be addressed. According to the American Medical Association (AMA), "Pregnant women will be likely to avoid seeking prenatal or open medical care for fear that their physician's knowledge of substance use or other potentially harmful behavior could result in a jail sentence rather than proper medical treatment."³ The AMA has also stated that "support is crucial for establishing and making broadly available specialized treatment programs for drug-addicted pregnant women wherever possible Pregnant substance abusers should be provided with rehabilitative treatment appropriate to their specific physiological and psychological needs."⁴

C. Drug Policies and Pregnant Women

Through existing drug laws as well as passage of additional laws specifically authorizing arrests of pregnant "narcotic" using women, there has been an increase in arrests and incarceration of pregnant women. For example, in 2006, Alabama passed the "Chemical Endangerment of Exposing a Child to an Environment in which Controlled Substances are Produced or Distributed." The stated legislative purpose was to deter people from bringing children to dangerous places where drugs were manufactured, such as methamphetamine labs. Pursuant to this law, more than 500 women who were pregnant and used some amount of a controlled substance have also been arrested. Because of this, it became a crime for a woman to become pregnant and use any amount of any controlled substance even one prescribed by a physician.⁵ These cases are brought for the stated purpose of advancing the rights of the "unborn" child, and the claim that unborn children are entitled to a healthy environment and healthy birth. There however continues to be a need to ensure that pregnant women are guaranteed health care, education, and a safe and healthy environment.

The Universal Declaration of Human Rights, Article 25, section 1 states – “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including medical care and necessary social services.” UDHR, Article 25, section 2 states “Motherhood and childhood are entitled to special care and assistance.” These goals must be considered when contemplating future drug policies.

NAPW firmly believes that affordable, accessible, voluntary and confidential health care, not punishment, is the most effective way of insuring healthy pregnancy outcomes for all pregnant women - including those who use controlled substance and those who have substance use disorders. According to the Association of Women’s Health, Obstetrics and Neonatal Nurses, “the threat of incarceration has been shown to be an ineffective strategy for reducing the incidence of substance abuse, while medication and behavioral therapies serve as important elements of an overall therapeutic process.”⁶ There is, however much evidence that involvement with or fear of a criminal and civil child welfare intervention deters pregnant women from obtaining care and consultation with doctors. These issues are addressed in the American College of Obstetricians and Gynecologists’ committee opinion Number 473 of the College’s Committee on Health Care for Underserved Women, which also states that “[s]eeking obstetric-gynecologic care should not expose a woman to criminal or civil penalties, such as incarceration, involuntary commitment, loss of custody of her children, or loss of housing.” Such policies may deter pregnant women from getting needed health care and treatment.

D. Recommendations

NAPW strongly supports a non-punitive, health care approach to addressing substance use and pregnancy.

- a. Women must have access to health care that includes comprehensive reproductive health care, health education, as well as non-punitive drug treatment. To achieve this goal, governments must ensure patient confidentiality in treatment, must ensure that treatment is affordable and effective, and that addiction and other health and welfare problems people face during pregnancy are addressed as health issues, not as crimes.

¹ See <http://www.ungasswomen2016.com/english>.

² Child Welfare Information Gateway, U.S. Department of Health and Human Services, Children’s Bureau, *Parental Drug Use as Child Abuse* (2016).

³ Report of American Medical Association Board of Trustees, Legal Interventions During Pregnancy, 264 JAMA 2663, 267 (1990).

⁴ American Medical Association, Policy Statement — H-420.962, Perinatal Addiction — Issues in care and Prevention (2009).

⁵ See <https://www.propublica.org/article/this-alabama-judge-has-figured-out-how-to-dismantle-roe-v-wade>.

⁶ Association of Women’s Health, Obstetrics And Neonatal Nurses, *Criminalization of Pregnant Women with Substance Use Disorders* (2015).