

'Drug Mules': Developing International Human Rights Law arguments to challenge the over-incarceration of women

Project Partners: Open Society Justice Initiative / International Centre on Human Rights and Drug Policy

Project Overview:

Countries across Latin America have adopted harsh drug policies – frequently in response to US pressures – that criminalize the entire chain of the narcotics industry from cultivation, production, trafficking and personal use of illegal drugs. Increasing drug consumption in Latin America has fed a pattern of law enforcement that focuses on drug users and “micro-traffickers,” including human couriers (“drug mules”) – many of them women. This has led to an increase in the number of women incarcerated in many countries, with the overwhelming majority of them in pre-trial detention or serving sentences for minor non-violent drug offences.

Studies have examined the impacts of harsh prison sentences, including separation of families and/or the incarceration of babies and young children, or the abandonment of the incarcerated women by their families outside (women receive family visits less frequently than men). This gender-differentiated experience is suggested through the acknowledgement that long term incarceration not only creates an economic burden but “this suggests serious, far-reaching consequences not only for individual offenders and their families, but for society as a whole.”

This project will examine issues relating to incarceration for drug trafficking, in particular pre-trial detention and policing standards, from the perspective of international human rights law, and in light of the UN Drug Control Conventions. The unique experience of women in Latin America entering the criminal justice system for low-level trafficking offenses will be the focus, including the impact of current practice on indigenous women.

The Clinic team will develop international human rights law based arguments to challenge the over-incarceration of women, setting out legal theories of rights violated that could be the basis for either advocacy or strategic litigation. The focus will be on issues of proportionality, non-discrimination, tests on harm done and their applications, and the principle that punishment should have a rehabilitative aim. The work of the regional human rights systems will be of particular relevance.



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A second component of this project will apply the developed analysis and argumentation to the specific context of Latin America.

The [Open Society Justice Initiative](#) uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, The Hague, Cape Town, London, Mexico City, New York, Paris, Santo Domingo, and Washington, D.C.

Established in 2009, the [International Centre on Human Rights and Drug Policy](#) (HRDP) is dedicated to developing and promoting innovative and high quality legal and human rights [research](#) and [teaching](#) on issues related to drug laws, policy and enforcement. Since 2011, the HRDP has made its home at the [Human Rights Centre](#) at the University of Essex. The HRDP's work supports policy development that reconciles the international narcotics control conventions with international human rights law. The HRDP fosters research on drug policy issues among postgraduate law and human rights students through its engagement with [universities](#) around the world.

Project Output:

The Clinic Team will produce a 20 page memorandum assessing drug trafficking-related detention from the perspective of international human rights law, as described above. This memorandum will apply this analysis to specific country contexts in Latin America.

This project will contribute to OSF's efforts to build greater support for sensible regulation (rather than criminalization) of drugs, harm reduction, and related policies. It forms part of the Open Society Foundation's contribution to the global debate on drug policy and intends to ensure that international human rights law analysis forms a cornerstone of the debate at the UN General Assembly Special Session on drugs in 2016.

To ensure sustainability of project outcomes and access to future litigators and advocates, the resources and case law identified throughout this research project will be uploaded and stored at the HRDP's e-library. The memorandum produced will also be published in the HRDP's flagship journal publication.

Project Outline:

- It might be appropriate to divide this into two (or more) phases. For example,
- Phase 1: (November-December)
 - Conduct initial background research and gain broader understanding of the issues.
 - Attend an introductory lecture on why human rights matters in drug control.
 - Develop a skeleton project outline.
- Phase 2: (January-June)
 - Attend a two-day intensive course on human rights and drug policy hosted by the HRDP and delivered by leading UN and civil society experts on human rights and drug policy.
 - Conduct focused research on the basis of skeleton outline, adapting outline and research as appropriate.
 - Begin drafting 20 page memorandum. Initial draft to be sent to OSJI & HRDP for review end of April 2014.
 - Finalise project deliverable, for delivery end of June.

Project Bibliography:

- The Research Consortium on Drugs and the Law (Colectivo de Estudios Drogas y Derecho, CEDD) "[In Search of Rights: Drug Users and State Responses in Latin America](#)".
- CEDD, "Addicted to Punishment" at [http://drogasyderecho.org/assets/proportionality-colombia-\(addicted-punishment\).pdf](http://drogasyderecho.org/assets/proportionality-colombia-(addicted-punishment).pdf)
- Organization of American States (OAS), Women and Drugs in the Americas; A Working Policy Paper, OAS January 2014, useful overview of issues and work that's been done. <http://www.oas.org/en/cim/docs/WomenDrugsAmericas-EN.pdf>
- Washington Office on Latin America (WOLA) and The Transnational Institute, *Systems Overload: Drug Laws and Prisons in Latin America on the impact of the "war on drugs" on justice and prison systems in Latin America* (Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Peru, and Uruguay).
- Trans-National Institute Expert Seminar on Proportionality in Sentencing of Drug Mules at http://www.tni.org/sites/www.tni.org/files/download/idpc-tni_proportionality_report_final.pdf

- International Drug Policy Consortium (IDPC), *Women, drug offenses and penitentiary systems in Latin America*. Washington, D.C.: International Drug Policy Consortium, 2013, <http://idpc.net/publications/2013/11/idpc-briefing-paper-women-drug-offenses-and-penitentiary-systems-in-latin-america>
- Comisión Inter-Americana para el Control del Abuso de Drogas / CICAD. “Drugs and Development” in *The Drug Problem in the Americas: Studies*. Washington, D.C.: Inter-American Drug Abuse Control Commission, Organization of American States, 2013, http://www.cicad.oas.org/main/policy/informeDrogas2013/drugsDevelopment_ENG.pdf
- Harm Reduction International (HRI), “Drug offences, access to justice and the penalisation of vulnerability” (Submission to the UN Committee on the Elimination of Discrimination against Women General Discussion on “Access to Justice,” 18 February 2013), <http://www2.ohchr.org/english/bodies/cedaw/docs/Discussion2013/HarmReductionInternational.pdf>
- Harm Reduction International (HRI) has conducted work on women and drugs that includes a study on the incarceration of women for drug offences in the Europe and Central Asia region.