

Impact case study (REF3)

Institution: University of Essex		
Unit of Assessment: 18. Law		
Title of case study: Closing Protection Gaps for Prisoners and Persons Affected by the Illicit Drug Trade through International Standard-Setting		
Period when the underpinning research was undertaken: 2009 - 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Julie Hannah	Lecturer	February 2014 - present
Lorna McGregor	Professor	October 2010 - present
Sir Nigel Rodley	Professor/Emeritus Professor	1990 - 2017
Period when the claimed impact occurred: 2013 - 2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>Our research has made a major contribution to closing protection gaps for prisoners and persons affected by the illicit drug trade through the development of new international human rights standards. It fed into the text of the updated UN Standard Minimum Rules on the Treatment of Prisoners (the 'blueprint' for prison management worldwide – "Mandela Rules", 2015) and the International Guidelines on Human Rights and Drug Policy ("Guidelines", March 2019). Both sets of standards have brought about a concrete difference to the lives of prisoners and persons affected by the illicit drug trade: they have triggered policy and law reform; have been relied upon by national courts; have been used by civil society organisations in their advocacy strategies nationally and internationally; and have enabled international monitoring and inspection bodies to more effectively carry out their mandates.</p>		
2. Underpinning research		
<p>Some scholars critique new international standard-setting as an over-expansion or 'endless' development of international human rights law (IHRL) [R1]. This criticism misunderstands international standard-setting: most activity characterised as 'expansion' is more accurately described as the articulation of how existing IHRL applies to new contexts or particular groups in marginalised positions who struggle to enjoy their rights in practice [R1]. We argue that international standard-setting - accompanied by strategies to operationalise these standards through the work of key actors that can bring about change - is critical to close protection gaps [R1, R5, R8]. Through two of our research projects at the Human Rights Centre (the Detention, Rights and Social Justice Project and the International Centre for Human Rights and Drug Policy), we identified two key areas in which a protection gap existed in IHRL because of (a) the outdated nature of existing dedicated standards on the treatment of prisoners and (b) the lack of dedicated standards on human rights and drug policy.</p>		
Closing Protection Gaps in IHRL on the Treatment of Prisoners		
<p>Our research has argued that the original 1955 UN Standard Minimum Rules on the Treatment of Prisoners (SMR) continue to provide a 'blueprint' for prison officials in their management of prisons and treatment of prisoners. However, they do not reflect many of the standards on the treatment of prisoners within the major international human rights treaties adopted in the 1980s and 1990s and the extensive jurisprudence issued by national, regional and international courts and tribunals interpreting and applying these provisions [R3]. The original SMR are therefore heavily outdated and lacking in sufficient human rights content [R3]. Our research identified critical gaps in the original SMR and articulated how existing IHRL rules on the treatment of prisoners could be applied to the revision of the SMR [R4]. We synthesised the extensive body of IHRL on the treatment of prisoners; and proposed revisions to the existing text as well as the introduction of new rules, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and the incorporation of the first international definition on solitary confinement [R2-4]. We also proposed a framework for the Mandela Rules emphasising the dignity and inherent humanity of prisoners as core principles and the obligations of prison management and officials to ensure the safety and personal security of prisoners as the prism connecting and rationalising specific rules [R4]. Our research also embedded conflict prevention and conflict resolution into</p>		

prison practice, which reflects a critical articulation of the overarching operating principles and ethos of prison management [R3-4].

Closing Protection Gaps in IHRL on Drug Policy

Although researchers and advocates have long established the human rights risks posed by the international drug control system and demonstrated the failure of the international human rights system to respond, our research was the first to analyse systematically how UN human rights bodies addressed the international drug control system [R5-8]. This original analysis provided a historical, legal and political narrative of UN human rights engagement with drug control, revealing positive normative developments as well as key IHRL gaps in need of investigation. Within this evolving body of work, we carried out two interconnected pieces of impact-oriented research.

First, we argued that the UN human rights machinery had scope to more robustly engage with drug control and importantly, needed to progressively develop and better articulate the relationship between international drug control law and IHRL to effectively address the widescale violations occurring as a result of highly punitive responses to drug control. Initially, our research targeted the mandates of several UN human rights mechanisms. Specifically, we presented a novel argument that compulsory detention for the purpose of drug “treatment” or “rehabilitation” is a form of arbitrary detention [R6]. We developed an original analysis of the mandate of the UN Working Group on Arbitrary Detention (WGAD) to argue there was scope to denounce compulsory drug detention as arbitrary - the first time a UN human rights mechanism would make such a finding [R6]. Similarly, we undertook an original analysis of the work of the UN Committee on Economic, Social, and Cultural Rights in relation to drug control. This analysis identified the need for more robust normative consideration of how *inter alia* decriminalisation, the abolition of aerial fumigation, and access to opioid substitution therapy were essential for supporting economic, social, and cultural rights [R7].

Second, as our targeted research expanded, we determined that a mandate-specific approach to normative strengthening was insufficient and a more holistic approach was needed to capture the protection gaps reflected in the diverse human experience of drug prohibition. Our research established the case for an international set of standards to consolidate the broad spectrum of rights engaged by drug control and since 2016, we integrated this research as part of the drafting team of the International Guidelines on Human Rights and Drug Policy - a landmark document published in 2019 [R8].

3. References to the research [can be supplied by the HEI on request]

R1 McGregor, L. “Looking to the Future: The Scope, Value and Operationalization of International Human Rights Law”, *Vanderbilt Journal of Transnational Law* 1281, Vol 52 (5) (2019).

<https://www.transnat.org/post/looking-to-the-future-the-scope-value-and-operationalization-of-international-human-rights-law>

R2 Rodley, N., and Pollard, M. *The Treatment of Prisoners under International Law* (3rd edition) Oxford University Press, (2009). ISBN: 9780199215072

R3 Rodley, N., Huber, A., and McGregor, L. “Updating the Standard Minimum Rules for the Treatment of Prisoners” in *For the Sake of Present and Future Generations Essays on International Law, Crime and Justice in Honour of Roger S. Clark* (eds) Suzannah Linton, Gerry Simpson and William Schabas, (2015), pp133 – 152. ISBN: 978-90-04-27071-8

R4 McGregor, L., and Huber, A. Essex Papers: “Essex Paper I” Expert Meeting at the University of Essex on the Standard Minimum Rules for the Treatment of Prisoners Review: Summary (presented on 20 November 2012) and “Essex Paper II” Second Report of Essex Expert Group on the Review of the Standard Minimum Rules for the Treatment of Prisoners (presented March 2014) (available from HEI on request).

R5 Hannah, J., and Lines, R. “Drug Control and Human Rights: From Parallel Universes to Universal Parallels” *Research Handbook on International Drug Policy* (eds) D. Bewley Taylor and K. Tinasti (2020), pp. 225-248 ISBN-10- 1788117050

R6 Hannah, J., de le Silva, N., and Melkonyan, A. Briefing Paper Series 1-3: Human Rights, Drug Control and the UN Special Procedures (2015) <https://www.hr-dp.org/hrdp-briefing-papers>

R7 The Promotion and Protection of Economic, Social, and Cultural Rights & International Drug Control: *Compilation of joint submissions by the International Centre on Human Rights and Drug*

Policy to the United Nations Committee on Economic, Social, and Cultural Rights (2016-2018)

<https://www.hr-dp.org/contents/1623>

R8 International Guidelines on Human Rights and Drug Policy (2019) www.humanrights-drugpolicy.org

G1 Hannah, J., (Co-I) and Lubell, N (PI), International Guidelines on Human Rights and Drug Control, United Nations Development Program, Dec 2016 – Dec 2018, £111,327.

G2 Hannah, J., (Co-I) and Lubell, N (PI), Strengthening the development dimensions, expanding political support, and laying the foundations for dissemination of the international guidelines on human rights and drug policy, Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ) GmbH, Dec 2017 - Jan 2019, £80,000.

G3 Hannah, J., (Co-I) and Lubell, N (PI), Cooperation between the University Essex (via the International Centre on Human Rights and Drug Policy (HRDP)) and the GIZ programme Global Partnership on Drug Policies and Development (GPDPD) to roll-out the International Guidelines on Human Rights and Drug Policy, Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ) GmbH, Nov 2019 – Mar 2021, £96,462.

G4 Hannah, J., (Co-I) and Lubell, N (PI), Developing International Guidelines on Human Rights and Drug Policy (Phase 1), Swiss Department of Foreign Affairs, Jul 2017 – Oct 2018, £35,500.

4. Details of the impact

As part of both our research methodology and strategy to achieve impact, we engaged UN human rights mechanisms and convened meetings of experts on prisons and drug policy, to inform our research findings and recommendations on the development of new international standards. The organisation of expert meetings ensured stakeholder input and buy-in to the research produced and its uptake in implementation strategies as well as the final standards adopted.

1. Shaping the Mandela Rules: Closing the Gaps in IHRL on the Treatment of Prisoners

Building on our existing research [R2-4], in 2012 we formed a partnership with Penal Reform International (PRI), the leading NGO globally on promoting human rights protection in criminal justice. Together we convened a series of expert meetings in 2012 and 2013 bringing together academia, representatives of the UN and the International Committee of the Red Cross (as observers) and key NGOs to examine the protection gaps in the 1955 UN Standard Minimum Rules on the Treatment of Prisoners (SMR) to contribute to a UN process considering the revision of the SMR. Through this process, McGregor and Huber [the then Policy Director at PRI] produced two research papers [R4 which became known as the “Essex papers”]. They were endorsed by the participants at the expert group meeting [R4].

In 2015, the revised Rules were adopted (renamed the Mandela Rules). PRI commissioned an independent evaluation of the SMR revision process, which found that *“77% of the changes proposed in the Essex papers ... were achieved in whole or part. In most cases the proposed amendment includes the exact wording proposed in the Essex Paper: an indication of attribution but also evidence of the high calibre of the advice that was given, that was in many cases already the ‘finished article’* [S1]. [Text removed for publication] [S2].

In a hearing before the US Congress, a representative of the UN Office on Drugs and Crime (UNODC) called the Mandela Rules, *“the single most important ‘normative compass’ for prison management at the international level, endorsed by the international community as a whole”* [S3]. The Mandela Rules are used by prison monitoring bodies such as the Council of Europe, Committee on the Prevention of Torture and [Text removed for publication] and are therefore key operational rules to ensure that prison staff adhere to the Rules and that prisoners’ human rights are not violated [S4]. [Text removed for publication]

The Mandela Rules have formed the basis for advocacy campaigns against the use of solitary confinement which some states have used routinely despite the extreme and long-lasting harm it causes. The Rules prohibit indefinite or prolonged use of solitary confinement (over 15 days); prohibit its imposition in relation to children and people with ‘mental or physical disabilities;’ and require that it is only used in the *‘most exceptional cases as a last resort, for as short a time as possible’*. Examples of advocacy campaigns include the national campaign, “Unlock the Box”, which is a *“coalition of organizations and movement leaders who partner with state and local campaigns across the United States”* with the aim to *“end solitary confinement ... and bring the*

United States into full compliance with the UN's Mandela Rules within 10 years" [S5]. The American Civil Liberties Union has noted that as a result of these types of campaigns, 2019 was "record-setting" with the introduction of 'HALT Solitary Bill' in New York, which if adopted, would mean New York was the "first state in the nation to incorporate the Mandela Rules into its laws". It also noted that a further "[t]wenty-eight states introduced legislation to ban or restrict solitary confinement, and twelve states passed reform legislation ... most represent significant reforms to existing practices that promise to facilitate more humane and effective prisons, jails, and juvenile detention centers" [S5].

In Canada, the British Columbia Supreme Court used the definition of solitary confinement in the Mandela Rules to find that the practice of administrative segregation' by Canadian federal prisons constituted solitary confinement [S6 at para 137] and violated multiple provisions of the Charter of Rights and Freedoms [S6 at para 609]. The Government of Canada initially appealed the decision but withdrew it in 2020 [S6], meaning that the decision should lead to law reform and an end to the practice.

2. Closing the Gaps in IHRL on Drug Policy

Our research directly contributed to closing protection gaps for persons affected by the illicit drug trade in two key ways:

Securing International Guidelines on Human Rights and Drug Policy: In 2015, the International Centre on Human Rights and Drug Policy (HRDP) entered into a partnership with the United Nations Development Programme (UNDP) to build on our research and operationalise our proposal to draft international guidelines on human rights and drug policy [R5, R10] UNDP noted that the *"research generated by Ms Hannah and the HRDP was central to our early engagement on the issue of international drug policy...Ms Hannah's leadership was foundational to our decision to engage in a three-year partnership with HRDP... As a member of the core drafting team, Ms Hannah played an important role in how the Guidelines were shaped and developed."* [S7].

The Guidelines [R8], launched in 2019, are co-sponsored by UNDP, the World Health Organisation, UNAIDS, and the Office of the High Commissioner for Human Rights. They reflect a commitment by the lead global entities responsible for development, health, HIV/AIDS and human rights to integrate the Guidelines into their work to support governments and other stakeholders around the world on issues related to drug policy reform. The Guidelines are available in English, Spanish, Portuguese, and Russian.

In less than two years, the Guidelines have already influenced policy reform and advocacy globally and nationally, an achievement that UNDP notes as *"extraordinary given the short time frame"* since they were launched [S7]. The Guidelines have been used by UN human rights mechanisms such as the Working Group on Discrimination against Women and Girls and the Committee on Economic, Social, and Cultural Rights [S7]. A 2020 Council of Europe Resolution welcoming the Guidelines, created the political space for the Council's Pompidou Group - the intergovernmental drug policy cooperation platform of 41 Member States - to draft a national assessment tool, using the Guidelines as its foundation [S8]. A draft national assessment tool is already in development. As UNDP notes, *"It's clear the Guidelines are starting to serve as a catalyst for meaningful debate around the future of reform and are helping to foreground this debate within a human rights framework."* [S7].

Governments have been active beneficiaries of the Guidelines including in Brazil, where the Guidelines were *"an important reference to the development of National Guidelines on social protection for pre-trial detention"* [S9]. National civil society organisations have also integrated the Guidelines into their litigation strategies. Dejusticia, a leading human rights think tank in Colombia cited the Guidelines in an *amicus curiae* brief to the Constitutional Court on the practice of aerial fumigation with glyphosate on illicitly cultivated coca crops [S9]. In the judgment, the Court referred to the Guidelines in their decision to place a moratorium on aerial spraying [S9]. In another judgement, on the public use of psychoactive substances, the same Court cited the Guidelines 29 times, using them as a *"supportive argument to its findings"* [S9].

Progressive Development of International Human Rights Standards through UN Human Rights Mechanisms: Our research was applied by UN human rights mechanisms to progressively develop IHRL [R6, R7]. According to the former Chair of the Working Group on Arbitrary Detention, Hannah's research on compulsory drug detention as inherently arbitrary *"played a key role*

informing our 2015 thematic work on drug policy and detention” [S7]. The UN Committee on Economic, Social and Cultural Rights used Hannah’s research [R7] during several periodic reviews of Governments. A Committee member noted that Hannah’s research has: “supported the development of our position on decriminalisation of drug use and possession and challenging the legality of aerial fumigation.” [S7]. Using Hannah’s research, the Committee called on the South African government to end aerial fumigation of drug crops [S7]. Civil society groups continue to use this finding in their national efforts to remedy the harms done to small-scale cannabis farmers [S9].

5. Sources to corroborate the impact

1. Closing the Gaps in IHRL on the Treatment of Prisoners

S1 Letter from Penal Reform International dated 21 November 2019 with independent evaluation annexed (also available at: <https://tinyurl.com/4etkwe35> pp. 7, 8, 10, 11, 12, 14, 15, 18, 23).

S2 [Text removed for publication]

S3 Mr. Philipp Meissner, Tom Lantos Human Rights Commission Hearing, Advancing Human Rights through International Prison Reform, Crime Prevention and Criminal Justice Officer, Justice Section, United Nations Office on Drugs and Crime (2018). <https://tinyurl.com/ux8vy2d3> pp.1 – 2.

S4 Council of Europe, Committee on the Prevention of Torture, uses of the Mandela Rules (2015) report on Germany, introduction and page 36, para 70 <https://rm.coe.int/168071803e>; UK/Northern Ireland report 2017, para 56 and footnote 24.

S5 Unlock the Box Campaign: <https://www.unlocktheboxcampaign.org/> and <https://tinyurl.com/36rph39b>

S6 *British Columbia Civil Liberties Association v Canada (Attorney General)* 2018 BCSC 62 and <https://tinyurl.com/ct5kuyav>

2. Closing the Gaps in IHRL on Drug Policy

S7 UN Evidence of Impact:

- Letter from the United Nations Development (January 2021);
- Report of the Working Group on Arbitrary Detention, (July 2015) pp 17-19;
- Testimonial from the Former Chairperson of the Working Group on Arbitrary Detention (January 2021);
- Concluding Observations of the Committee on Economic Social Cultural Rights on South Africa (November 2018), paras 68-69;
- Concluding Observations of the Committee on Economic, Social, and Cultural Rights on Benin (March 2020), para 42;
- Letter from Member of the Committee on Economic, Social, and Cultural Rights (January 2021);
- Report of the Working Group on Discrimination Against Women and Girls on Deprivation of Liberty (May 2019) para 84(f)

S8 Regional Evidence of Impact: Resolution of the Parliamentary Assembly of Council of Europe: Drug policy and human rights in Europe: a baseline study, Resolution 2335 (2020) para 3 <https://tinyurl.com/4sdk5pd2>

S9 National Evidence of Impact:

- Glyphosate: Auto 387-19, Corte Constitucional (Colombia), (July 2019) <https://tinyurl.com/u6m6xzp8>
- Sentencia C-253/2019, Corte Constitucional (Colombia), (June 2019) <https://tinyurl.com/4fkfdz3m>
- Video testimony on national impact of the Guidelines in Latin America including from United Nations Office on Drugs and Crime on Brazil’s National Guidelines on Social Protection (November 2020) <https://tinyurl.com/n5rnak6s>
- Letter from Umzimvumbu Farmer’s Support Network (January 2021)
- Amicus Curiae submission from Dejusticia (March 2019) <https://tinyurl.com/8nn7xnar>