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SANDRA DAY O’CONNOR COLLEGE OF LAW
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EDITOR INTRODUCTION

The 2015 Law Journal for Social Justice Symposium, “Contemporary Discrimination” focused on current concerns regarding civil rights and civil liberty. Discussions ranged from the political legislative process, resistance in enforcement of civil rights judgments, and sexual orientation employment discrimination. Panelists included politicians, scholars from diverse backgrounds, practicing attorneys and community organizers.

Drawing on broader considerations, this issue features articles analyzing an array of concerns in the criminal, civil and international tribunals. The first article, *You Have Your Whole Life in Front of You...Behind Bars*, written by Rachel Forman, begins this issue by discussing a need to ban life without parole sentences for juvenile non-homicide offenders. Inalvis M. Zubiaur, in *Death Row: Mentally Impaired Inmates and the Appeal Process*, continues the focus on sentencing by engaging concerns regarding capital punishment. Next, in *Injection and the Right of Access*, Timothy F. Brown argues for increased access to lethal injection procedures to understand its constitutionality. Shifting consideration to the civil sphere, Victor D. Lopez & Eugene T. Maccarrone raise issues about privacy, due process, public policy and the basic fairness of traffic enforcement by camera, in *Traffic Enforcement by Camera*. Beginning the focus on international concerns, *Fictitious Labeling*, by Efe Ukala, discusses “recommendations that may help curb constitutional issues resulting from deportation.” Brittany Fink, in *Increase Quota, Invite Opportunities, Improve Economy*, proposes amendments to the DREAM Act that extend the path to citizenship.” Katharine Villalobos then focuses on the sociology of immigration in *The Crucible*, using historical examples to discuss the War on Terror. *Falling Through the Cracks* by Marissa N. Goldberg changes the focus to international law and unique considerations of women in the drug trade industry. Finally, *Seeking Truth in the Balkans* by Erin K. Lovall and June E. Vutrano concludes the issue by discussing the role of international law in seeking justice following the wars in the Balkans. Together these articles analyze issues that raise important questions about fairness and civil rights in the domestic and international contexts.

Special thanks to the entire staff of the Law Journal for Social Justice, who helped create this edition.

Kristyne Schaaf-Olson
2014-2015 Editor-in-Chief
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FALLING THROUGH THE CRACKS: THE TREATMENT OF FEMALE DRUG TRAFFICKERS

By Marissa N. Goldberg*

Introduction

In 2011, the New York Times published an article about Nancy Lilia Núñez, a twenty-two year-old mother of three.¹ Núñez, wearing jeans and makeup, like any ordinary twenty-two year-old, proceeded to explain to the reporter, from behind prison walls, that she is currently serving a twenty-five year sentence for kidnapping a young girl in connection with Mexico's drug economy.²

A year later, across the globe in India, the Times of India reported the rise of female arrests for the second year in a row.³ In three districts, the number of women arrested increased from 147 to 159 during the first five months of the year.⁴ Police disclosed that most of these arrests were related to smuggling narcotics, with women working either as participants in gang activity or as independent agents.⁵

Although men have traditionally dominated the drug trafficking market, women are slowly but surely becoming more involved in this underground economy throughout the world.⁶ Instead of participating passively, women are more often taking active roles in drug trafficking.⁷ Despite this increase, few studies specifically address this issue and its intricacies.⁸ Rather, the majority of research seems to focus on women as

* Marissa Goldberg is a 2013 graduate from William and Mary Law School. She is currently serving as a Deputy Assistant State's Attorney for Windham County, Connecticut. The views expressed in this article are those of the author and do not necessarily reflect the views of the Windham State's Attorney's Office or of the Connecticut Division of Criminal Justice.

¹ Damien Cave, *Mexico's Drug War, Feminized*, N.Y. TIMES (August 13, 2011), http://www.nytimes.com/2011/08/14/sunday-review/mexicos-drug-war-draws-in-women.html?_r=0.

² *Id.*

³ Mukesh Tandon, *Number of Women Drug Smugglers on the Rise in Malwa*, TIMES OF INDIA (June 25, 2012), http://articles.timesofindia.indiatimes.com/2012-06-25/india/32408523_1_drug-peddlers-mansa-police-punjab-police.

⁴ *Id.*

⁵ *Id.*

⁶ Andrea Mares, *The Rise of Femicide and Women in Drug Trafficking*, COUNCIL ON HEMISPHERIC AFFAIRS (October 28, 2011), <http://www.coha.org/the-rise-of-femicide-and-women-in-drug-trafficking/>.

⁷ *Id.* ("Women today are acting as equal partners in all aspects of drug trafficking, from running crews to laundering funds, . . .").

⁸ Barbara Denton & Pat O'Malley, *Gender, Trust and Business: Women Drug*

drug users, and the non-violent offenses that regularly accompany drug use.⁹ With little research on the topic, it is not surprising that there is an overall lack of provisions in international drug trafficking agreements that address gendered motivations for involvement. This gap is disconcerting and ultimately leaves women extremely vulnerable, even as they begin to account for a greater number of drug trafficking arrests.

This paper will analyze women as drug dealers and active players in the drug market itself. Specifically, this paper will begin by briefly presenting the current involvement of women as drug traffickers. Then, this paper will examine a number of human rights considerations that are particularly pertinent with relation to women's involvement in drug trading. Next, this paper will review the current legal framework, focusing on international conventions to demonstrate that the framework is inadequate in addressing the needs of female drug traffickers. Finally, this paper will suggest several concrete improvements to the legal regime that will better protect and address women in the drug trade industry, and will also provide increased protection for men facing similar challenges.

I. BACKGROUND

Although the majority of drug traffickers are men, the number of women drug traffickers is increasing.¹⁰ Current estimates place the percentage of female drug traffickers between fifteen and twenty percent of all detected traffickers.¹¹ Note, however, that this number is based on "detected" traffickers, meaning that it includes only women who are caught and arrested. This is an important consideration in calculating the

Dealers in the Illicit Economy, 39 BRIT. J. CRIMINOLOGY 513, 513 (1999). For articles that address human rights concerns and drug control, but fail to incorporate any discussion on women's role, see Daniel Heilmann, *The International Control of Illegal Drugs and the U.N. Treaty Regime: Preventing or Causing Human Rights Violations?*, 19 CARDOZO J. INT'L & COMP. L. 237, 265 (2011); Saul Takahashi, *Drug Control, Human Rights, and the Right to the Highest Attainable Standard of Health: By No Means Straightforward Issues*, 31 HUM. RTS. Q. 748 (2009).

⁹ See, e.g., NANCY RODRIGUEZ & MARIE L. GRIFFIN, GENDER DIFFERENCES IN DRUG MARKET ACTIVITIES: A COMPARATIVE ASSESSMENT OF MEN AND WOMEN'S PARTICIPATION IN THE DRUG MARKET (2005), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/211974.pdf> ("Researchers have described a highly sexist and segregated [drug] culture, where street-level drug markets often are characterized by well-structured distribution systems operated by men, with women existing only at the lower ranks").

¹⁰ Mares, *supra* note 6.

¹¹ U.N. Office on Drugs and Crime, *World Drug Report 2010*, June 2010, at 134, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

number of women actually participating in the drug trade industry because women are “less likely to be associated with drug trafficking and, therefore, could sneak past security.”¹² This caveat likely results in skewed statistics, with women underrepresented, because, presumably, fewer women will be “detected” than men.

In addition to the overall statistical increase in women trafficking drugs, in recent years, individual countries have also been reporting an increase in female arrests specifically related to drug trafficking.¹³ For example, in the Philippines, statistics show that 927 women were arrested in 2011 on drug-related charges, a six percent increase from the 872 arrests in 2010.¹⁴ Further, of the 927 women arrested, seventy-six percent were classified as “pushers” or dealers.¹⁵

Women are also becoming more actively involved in Mexico’s infamous drug wars.¹⁶ The rise of women in the drug cartels has been gradual: “Women were initially recruited into the business to extract juice from poppy, a delicate process requiring gentle handling. ‘After that, they started transporting drugs, laundering money and engaging in so-called narco-diplomacy Later, they started getting involved in operations.’”¹⁷ Regardless of how they came to be involved, statistics reveal that in the United States, 2,143 Mexican women have been arrested in the last ten years for drug trafficking charges.¹⁸ In Mexico, a total of forty-six female cartel leaders have been arrested.¹⁹

Without a doubt, the number of female drug traffickers is steadily increasing throughout the world. International bodies, therefore, need to turn their attention to this increase, in order to protect and assist the women who often become involved in this black market economy involuntarily.

¹² Mares, *supra* note 6.

¹³ Tracy Huling, *Women Drug Couriers: Sentencing Reform Needed for Prisoners of War*, 9 CRIM. JUST. 15, 15 (1995) (“There are reports of a significant increase in the number of women arrested and receiving lengthy prison sentences for acting as drug couriers, or mules—that is, smuggling drugs across an international border.”).

¹⁴ DJ Yap, *More Women Joining Illegal Drugs Trade*, INQUIRER NEWS (February 9, 2012, 2:28 PM), <http://newsinfo.inquirer.net/142479/more-women-joining-illegal-drugs-trade>.

¹⁵ *Id.* The classification of the arrestees as “pushers” is relevant because it indicates involvement in the sale and traffic of drugs, not just personal consumption of drugs.

¹⁶ Pablo Perez, *Women on the Rise in Mexican Drug Cartels*, STARAFRICA (May 27, 2012), <http://en.starafrika.com/news/women-on-the-rise-in-mexican-drug-cartel-234663.html>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

II. PARTICULARS OF WOMEN'S INVOLVEMENT IN DRUG TRAFFICKING

As demonstrated, women have recently become more involved in the drug trafficking market. In order to effectively and thoroughly reform the legal framework used to address this industry, one must first appreciate the circumstances surrounding the industry. The motivating factors causing women to become active in this market are quite complex. Although women become involved in the drug market for a variety of reasons, this section will examine two of the major motivations: economic desperation and threats of violence from drug trafficking organizations. This section will also briefly discuss men that are affected by similar circumstances. Ultimately, however, this paper argues that women experience these motivating pressures more strongly, which is why the international system should provide support designed to address the needs of female traffickers.

A. Economic Desperation

The majority of women become engaged in drug trade because of economic pressures.²⁰ In the United Kingdom, where nearly sixty percent of the female prison population is incarcerated for drug-related crimes, including drug trafficking, these women tend to be “single mothers [with] a number of dependent family members to support.”²¹ This concern is emphasized by academics who recognize that women become involved in the drug trafficking market as a “survival strategy during [times] when there are more opportunities for illegal employment than for legal work.”²²

Some scholars have argued that the trend of more women joining the drug trade signals an “emancipation” of women.²³ The basic contention is that women are starting to gain equality in their ability to choose any occupation they wish.²⁴ However, when a woman is forced into the trade because of economic necessity, she is not choosing the occupation. Rather, she is being overwhelmingly manipulated by her external circumstances, and is therefore not emancipated in any sense of the term.

²⁰ Grundy49, *The Lost Women of the Drug Trade*, TALKING DRUGS (April 27, 2010, 1:53 PM), <http://talkingdrugs.org/the-lost-women-of-the-drug-trade> (“Despite the extreme dangers they face, the reason young women become drug mules is a relatively simple one. It is almost always due to situations of extreme desperation and poverty.”).

²¹ *Id.*

²² Huling, *supra* note 13, at 59.

²³ Denton & O'Malley, *supra* note 8, at 514; *see also*, NANCY D. CAMPBELL, USING WOMEN 201 (2000) (“Women distributors obtained a sense of autonomy and occupational mobility that they had never before experienced . . .”).

²⁴ CAMPBELL, *supra* note 23, at 201.

Further, compared with other types of “last resort” income sources, such as prostitution, drug trafficking provides an arguably safer option.²⁵ Prostitution carries a variety of physical risks: the risk of being battered, the risk of contracting a sexually transmitted disease, and the risk of unwanted pregnancy, to name just a few.²⁶ In contrast, income from drug sales may “buffer” women from health concerns associated with prostitution, making drug trafficking the more desirable and safer option of the two.²⁷ This provides further support for the contention that women are not “choosing” this occupation in the sense that they are freely deciding to make their living through drug trafficking. Rather, drug trafficking is the better option for women who have no options left for lawfully supporting their families.

If women are joining the drug trade industry out of economic necessity, the question arises as to whether the legal system should reflect this complexity in the way it regulates and punishes drug traffickers. Put differently, women can be characterized as victims of circumstance. When women are unable to support their families, they turn to dealing drugs as a last resort source of income. Ideally, the legal framework, both domestically and internationally, should attempt to first prevent drug trafficking before outright criminalizing it. To do this, the system needs to account for the economic pressures that face many drug traffickers.

B. Threats of Violence From Drug Trafficking Organizations

The second reason women enter the drug trafficking market is due to threats of violence from drug trafficking organizations (DTOs). DTOs need women in order to continue the enterprise.²⁸ The DTOs are therefore more likely to use threats of violence to manipulate women into joining their ranks or to keep them involved.

Specifically, Andrea Mares of the Council on Hemispheric Affairs explains that “[g]overnment efforts to impede drug smuggling have only increased the level of women’s participation in the business because women [are] less likely to be associated with drug trafficking, and, therefore, [can] sneak past security.”²⁹ DTOs are able to either lure women into the business with promises of a lucrative income or force women into

²⁵ *Id.*

²⁶ Janice G. Raymond, *Health Effects of Prostitution*, MAKING THE HARM VISIBLE (Feb. 1999), <http://www.uri.edu/artsci/wms/hughes/mhvhealth.htm>.

²⁷ CAMPBELL, *supra* note 23, at 201.

²⁸ Mares, *supra* note 6.

²⁹ *Id.*

it with threats of violence.³⁰ Women then end up staying and continuing to participate in the organizations as a result of manipulation.³¹ Concerned that they might be imprisoned or punished by the DTO, women stay and complete their assignments dutifully.³²

The experience of Goldie Coats illustrates this point.³³ Coats was arrested by authorities at Heathrow Airport in London as she returned from a trip to Jamaica.³⁴ Her suitcase contained a large amount of pure cocaine, worth an estimated £64,000 on the street (equivalent to about \$100,000 U.S. dollars).³⁵ Coats was convicted and sentenced to prison for ten years.³⁶ Coats, however, maintained her innocence and appealed on the grounds that she suffered from battered woman's syndrome, arguing that she was "persuaded by violent men to bring drugs into the country" because of "fear of the consequences of not participating."³⁷

It is important to note that many of these motivating factors for involvement in the drug trade industry ring true for both men and women. For example, with regard to economic hardship as a motivator, in general, "poverty makes people vulnerable to involvement in illegal activity."³⁸ Similarly, men likely experience coercion from DTOs to participate in their enterprises, or, at the very least, they experience coercion to stay involved.³⁹ However, women arguably feel these pressures more strongly than men, which is why it is important to address these concerns with regards to females in particular.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Duncan Campbell, *Courts to Test "Battered Woman Defence" in Drug Cases*, GUARDIAN (May 29, 2012, 8:01 AM), <http://www.guardian.co.uk/uk/2012/may/29/battered-woman-defence-drugs>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Duncan Campbell, *Court of Appeal Rejects Drug Smuggler's Battered Woman Defence*, GUARDIAN (July 25, 2013, 7:28 AM), <http://www.theguardian.com/uk-news/2013/jul/25/court-appeal-rejects-drug-smuggler-battered-woman-defence>.

³⁷ Campbell, *supra* note 33. Coats' appeal has since been denied, with the court citing Coats' credibility as the driving factor. Campbell, *supra* note 36.

³⁸ SCOTT H. DECKER, DRUG SMUGGLERS ON DRUG SMUGGLING: LESSONS FROM THE INSIDE 97 (2008).

³⁹ *Id.* (Decker interviewed a number of drug smugglers, one who recounted a story about drug traffickers in Colombia who told a man that he would be paid \$10,000.00 upfront for smuggling marijuana, and that his family would continue to receive support even if he ended up imprisoned. *Id.* Decker explains that this acts not only as an economic motivator for involvement in drug trafficking, but also as protection for the DTO against the man acting as a government witness in the future. The man is, through the system set up by the DTO, coerced into staying involved and not acting as a snitch against the DTO).

Addressing the economic motivations first, studies demonstrate that “drug dealing is far less of an all-encompassing economic pursuit than many have speculated,” and that “very few dealers spend all of their working time selling drugs.”⁴⁰ Although men might appreciate this flexibility, for women, flexibility is often necessary in light of the fact that women are often the primary caregivers for their children.⁴¹ This need is intensified by the institution of criminal provisions that require parents to “bestow the ‘necessaries of life’ on their children.”⁴² Women are then faced with a choice: take care of their children and risk being arrested for drug-related charges, or let their children suffer and risk being arrested for failing to properly provide for their children.⁴³ Similarly, with regards to the needs of DTOs, DTOs are targeting women in particular not just because they are less likely to be flagged by drug enforcement agencies as traffickers, but also because women tend to be more vulnerable to threats and coercion.⁴⁴ Women are therefore doubly attractive to DTOs, as compared to men.

Although the policy changes suggested herein are tailored toward the plight of women in particular, the modifications will certainly assist the men who face similar challenges. Although this paper argues women are more affected by their economic circumstances and their vulnerability to DTOs and, as a result, are less culpable in their involvement in drug trafficking, the recommended framework will provide a great deal of

⁴⁰ RYAN KING, THE SENTENCING PROJECT, THE ECONOMICS OF DRUG SELLING: A REVIEW OF THE RESEARCH 3 (April 2003), available at <http://www.prisonpolicy.org/scans/sp/5049.pdf>.

⁴¹ *The Way Women Work*, NEW AMERICA FOUNDATION: WORK & FAMILY PROGRAM (March 2004), available at http://www.newamerica.net/files/archive/Doc_File_1504_1.pdf (explaining that most women take greater responsibility for routine childcare than their male partners, and that these women struggle with their work schedules and have been unable to take days off to care for their children).

⁴² Gayle MacDonald & Josephine Savarese, *Drug Mules, Drug Moms and Criminal Justice: Mothering and Redemption in Film and in Law*, 60 UNIV. NEW BRUNSWICK L.J. 230, 236 (2010).

⁴³ *Id.*

⁴⁴ See, e.g., Mares, *supra* note 6; Charles Maggs, *British Grandmother ‘Coerced Into Drug Smuggling,’* POLITICS.CO.UK (Dec. 6, 2012, 11:46AM), <http://www.politics.co.uk/news/2012/12/06/british-grandmother-coerced-into-drug-smuggling> (“Lindsay was exploited by drug barons, who preyed on her vulnerability and her fear for the safety of her children.”); U.N. President of the G.A., *Thematic Debate of the 66th Session of the United Nations General Assembly on Drugs and Crime as Threat to Development on the Occasion of the UN International Day Against Drug Abuse and Illicit Trafficking* (June 26, 2012), <http://www.un.org/en/ga/president/66/Issues/drugs/drugs-crime.shtml> (describing how state parties need to consider that certain factors, such as poverty, underdevelopment, and lack of equal opportunity, make women and children vulnerable to trafficking).

additional coverage and support for men who find themselves in similar positions.

III. THE CURRENT LEGAL FRAMEWORK

International governing bodies need to take further action to address the inherent gender concerns in the drug trafficking market. There are currently three major international drug control treaties: the Single Convention on Narcotic Drugs of 1961; the Convention on Psychotropic Substances of 1971; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.⁴⁵ This paper will discuss each of these treaties individually and demonstrate that all three fall short of addressing the realities of a female drug trafficker's experience.

A. The Single Convention on Narcotic Drugs of 1961

The Single Convention on Narcotic Drugs of 1961 (Single Convention) was signed on March 30, 1961, after several months of debate regarding how to best “lay a new solid foundation for drug control,” and was amended by a protocol in the 1970s.⁴⁶ The Single Convention took the place of several existing multilateral treaties and reduced the number of international bodies that would interact with narcotic drug control efforts.⁴⁷ The treaty had two overarching goals: “First, it [sought] to limit the possession, use, trade in, distribution, import, export, manufacture and production of drugs exclusively to medical and scientific purposes. Second, it combat[ed] drug trafficking through international cooperation to deter and discourage drug traffickers.”⁴⁸ The second of these goals—to combat drug trafficking—is primarily dealt with

⁴⁵ *Legal Framework for Drug Trafficking*, U.N. OFFICE ON DRUGS AND CRIME, <http://www.unodc.org/unodc/en/drug-trafficking/legal-framework.html> (last visited May 31, 2015).

⁴⁶ David Bewley-Taylor & Martin Jelsma, *Fifty Years of the 1961 Single Convention on Narcotic Drugs: A Reinterpretation*, 12 SERIES ON LEGIS. REFORM OF DRUG POLICIES 1 (2011), available at <http://www.druglawreform.info/images/stories/documents/dlr12.pdf>; Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961, August 8, 1975, 976 U.N.T.S. 105, available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-18&chapter=6&lang=en [hereinafter Single Convention].

⁴⁷ *Id.*

⁴⁸ *Single Convention on Narcotic Drugs, 1961*, U.N. OFFICE ON DRUGS AND CRIME, <http://www.unodc.org/unodc/en/treaties/single-convention.html> (last visited May 31, 2015).

in Article 35 of the treaty.⁴⁹ Article 35, “Action Against the Illicit Traffic,” includes a number of provisions designed to encourage the international community to work in concert to prevent illicit drug trafficking.⁵⁰ For instance, section (c) states that signatories shall “[c]o-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a co-ordinated campaign against the illicit traffic,” and section (e) requires signatories to transmit legal documents associated with prosecution of illicit trafficking in an “expeditious manner.”⁵¹ Although these provisions certainly encourage and assist with the deterrence of drug trafficking, they do not address any underlying human rights considerations associated with women’s role in the market.

Of all the sections of the Single Convention, Article 36, “Penal Provisions,” is the most considerate to individual circumstances that may affect a person’s involvement in drug distribution or use.⁵² After laying out the obligation that each party to the treaty adopt criminal measures for offenses in violation of the treaty, section (b) of Article 36 specifies that “[n]otwithstanding the preceding subparagraph, when abusers of drugs have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers undergo measures of treatment, education, after-care, rehabilitation and social reintegration.”⁵³ The rationale behind the inclusion of this provision is found in the Preamble of the treaty, where the signatory parties recognize “that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind” and states that they were “conscious of their duty to prevent and combat this evil.”⁵⁴

Unfortunately, this exception represents only a “minimal reorientation of the regime towards considerations for problematic drug users.”⁵⁵ It does not provide mandatory consideration of drug use as a mitigating factor, nor does it go beyond drug use as a consideration.⁵⁶ This does not take into account other factors that may be as socially and economically dangerous to mankind, or may constitute as great an “evil” that the

⁴⁹ Single Convention, *supra* note 46, at 127.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 128.

⁵³ *Id.*

⁵⁴ *Id.* at 106.

⁵⁵ Bewley-Taylor & Jelsma, *supra* note 46, at 14.

⁵⁶ Single Convention, *supra* note 46, at 128 (The Single Convention specifies that parties “may” provide drug treatment options instead of or in addition to criminal sanctions).

international community must address. In the same vein, the provisions of the Single Convention do not make any distinction between the needs of men and women as players in the drug industry.

B. The Convention on Psychotropic Substances

In 1971 the Convention on Psychotropic Substances supplemented the Single Convention.⁵⁷ The supplement “establish[ed] an international control system for psychotropic substances” and “responded to the diversification and expansion of the spectrum of drugs of abuse and introduced controls over a number of synthetic drugs according to their abuse potential on the one hand and their therapeutic value on the other.”⁵⁸

The major difference between the Single Convention and the Convention on Psychotropic Substances is the types of drugs being regulated. Whereas the Single Convention focused entirely on narcotic drugs (hence the name “Single Convention on Narcotic Drugs”),⁵⁹ the Convention on Psychotropic Substances controls psychotropic substances.⁶⁰ Psychotropic drugs are drugs that “have effects on psychological function and include the antidepressants, hallucinogens, and tranquilizers.”⁶¹ Comparatively, a narcotic drug is a painkiller and sleep-inducing drug that works on the central nervous system to relieve pain.⁶² Thus, the Convention on Psychotropic Substances applies the international regulatory scheme to a much broader range of drugs.

Despite this positive shift to a more comprehensive system, the Convention on Psychotropic Substances does little to address trafficking of drugs generally, nor specifically as applied to the needs of women. The Convention on Psychotropic Substances discusses illicit traffic in psychotropic substances only a handful of times.⁶³ The convention requires signatories to report “significant developments in the abuse of and the illicit traffic in psychotropic substances within their territories,” and to

⁵⁷ Schedules of the Convention on Psychotropic Substances of 1971, Vienna, Jan. 11-Feb. 21, 1971, U.N. Doc. ST/CND/1/Add.2 (Sept. 25, 2013), *available at* http://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/1971_Schedules/ST-CND-1-Add2_E.pdf.

⁵⁸ *Id.*

⁵⁹ Single Convention, *supra* note 46, at 106.

⁶⁰ Convention on Psychotropic Substances, Feb. 21-Dec. 30, 1971, 1019 U.N.T.S. 175, 176, *available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-16&chapter=6&lang=en [hereinafter Convention on Psychotropic Substances].

⁶¹ Judyth Sassoon, ENCYCLOPEDIA OF ESPIONAGE, INTELLIGENCE, AND SECURITY (2004), *available at* http://www.encyclopedia.com/topic/Psychotropic_drugs.aspx.

⁶² AM. MED. ASS'N COMPLETE MED. ENCYCLOPEDIA 884 (2003).

⁶³ Convention on Psychotropic Substances, *supra* note 60.

report on the “methods employed by illicit traffickers.”⁶⁴ In Article 21, “Action Against the Illicit Traffic,” the Convention on Psychotropic Substances nearly mimics Article 35 of the Single Convention, with only some minor adjustments.⁶⁵ Further, like the Single Convention, the Convention on Psychotropic Substances gives states the option to provide treatment, education, after-care, rehabilitation, and social reintegration instead of, or as a supplement to, criminal sanctions for drug addicts.⁶⁶

Thus, although the Convention on Psychotropic Substances moves the international legal framework addressing drugs forward by expanding the number of drugs that it encompasses, it fails to make any headway in the area of trafficking. Specifically, like the Single Convention, the Convention on Psychotropic Substances does not acknowledge factors other than drug abuse that might affect a person’s involvement in drug trafficking, nor does it acknowledge that the circumstances surrounding women’s involvement are particularly important.

C. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

In 1988, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Convention against Illicit Traffic) became the first convention to specifically address drug trafficking as a unique and complex problem.⁶⁷ The Convention against Illicit Traffic “provides comprehensive measures against drug trafficking, including provisions against money laundering and the diversion of precursor chemicals” and “provides for international cooperation” between signatory states.⁶⁸

In particular, the Convention against Illicit Traffic expands upon prior treaties by attempting to address the modes of trafficking. For instance, Article 17 addresses “Illicit Traffic by Sea,” and states that, “parties shall co-operate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea.”⁶⁹ Similarly, Article 19

⁶⁴ *Id.* at 188.

⁶⁵ *Id.* at 191; Single Convention, *supra* note 46, at 127.

⁶⁶ Convention on Psychotropic Substances, *supra* note 60, at 192.

⁶⁷ Diane Leduc and James Lee, *Illegal Drugs and Drug Trafficking*, PARLIAMENT OF CAN. (Nov. 1996), <http://www.parl.gc.ca/Content/LOP/ResearchPublications/bp435-e.htm>.

⁶⁸ *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*, UNODC, <http://www.unodc.org/unodc/en/treaties/illicit-traffic.html> (last visited May 31, 2015).

⁶⁹ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Dec. 19, 1988, 1582 U.N.T.S. 165, 197, *available at*

covers “The Use of the Mails” and encourages parties to coordinate efforts to repress the use of mail systems for drug trafficking.⁷⁰

In addition to improving regulation over the movement of illicit drugs, the Convention against Illicit Traffic also aims to “deprive persons engaged in illicit traffic of the proceeds of their criminal activities” to “eliminate their main incentive for so doing.”⁷¹ Together with the provisions addressing the modes of trafficking, the Convention against Illicit Traffic cuts off trafficking from two crucial angles, reducing profits and eliminating incentives.

Although the Convention against Illicit Traffic may be more successful at dealing with the overarching problem of trafficking, the convention does not include any enhancements with regards to the traffickers themselves. Specifically, the convention contains the same baseline provision as the prior two treaties which allows authorities to offer treatment, education, and rehabilitation for those arrested on drug-related charges, but does little more to address the plight of these individuals.⁷²

The Convention against Illicit Traffic does incorporate one major change with regard to this provision. The Convention against Illicit Traffic, as compared with the original provision in the Single Convention, is written in broader terms.⁷³ Rather than specifying that “abusers” be offered treatment, education, and the like instead of, or as a supplement to, drug charges,⁷⁴ the Convention against Illicit Traffic states that, “the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation, or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.”⁷⁵ The difference is subtle, but important. Instead of providing alternatives to conviction and punishment for just those who abuse drugs, the Convention against Illicit Traffic enlarges the population of people who can be offered these options.⁷⁶ This is a welcome expansion in addressing the plight of drug traffickers, but still does not succeed in fully accounting for the unique circumstances of female traffickers.

Two interesting additions to the Convention against Illicit Traffic are provisions briefly addressing human rights, and a provision allowing

https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=vi-19&chapter=6&lang=en [hereinafter Convention against Illicit Traffic].

⁷⁰ *Id.* at 199.

⁷¹ *Id.* at 166.

⁷² *Id.* at 173.

⁷³ Single Convention, *supra* note 46, at 128.

⁷⁴ *Id.*

⁷⁵ Convention against Illicit Traffic, *supra* note 69, at 173.

⁷⁶ *Id.*

courts the authority to consider facts and circumstances that make crimes of traffickers more serious. In addressing human rights concerns, the convention states that, “measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses,” and that “the parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering.”⁷⁷ Both of these provisions seem to be limited to persons that use drugs. The first is modified by the context of “traditional licit uses,” likely meaning that the convention is not meant to infringe upon a person’s ability to access drugs they are legally entitled to have.⁷⁸ The second provision follows a phrase intended to reduce demand, which suggests that the human suffering the Convention against Illicit Traffic is concerned with regards the drug user, rather than the drug trafficker.⁷⁹

The other notable provision that the Convention against Illicit Traffic includes states that “parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences . . . particularly serious.”⁸⁰ When someone is having his or her drug trafficking case adjudicated, this provision suggests eight factors that should encourage more harsh treatment.⁸¹ The first several of these items include:

- (a) The involvement in the offence of an organized criminal group to which the offender belongs;
- (b) The involvement of the offender in other international organized criminal activities;
- (c) The involvement of the offender in other illegal activities facilitated by commission of the offence;
- (d) The use of violence or arms by the offender;
- (e) The fact that the offender holds a public office and that the offence is connected with the office in question; [and]
- (f) The victimization or use of minors.⁸²

Although these factors are certainly important considerations for why a drug trafficker should be treated more harshly, there is no mirroring provision that offers considerations for why a drug trafficker should be treated more leniently. Overall, the Convention against Illicit Traffic, like

⁷⁷ *Id.* at 194.

⁷⁸ *Id.*

⁷⁹ *Id.* at 194.

⁸⁰ *Id.* at 173.

⁸¹ Convention against Illicit Traffic, *supra* note 69, at 173.

⁸² *Id.*

the Single Convention and the Convention on Psychotropic Substances, falls short of providing any real support for women involved in drug trade.

IV. SUGGESTED IMPROVEMENTS

There are two conflicting views on the goals of the international framework for dealing with the drug trafficking industry. The first is codified by the treaties discussed above. According to this specific approach, the “ultimate goal of the international drug control system with respect to both narcotic drugs and psychotropic substances is to limit the production, manufacture, export, import, distribution of, trade in, use and possession of the controlled drugs to exclusively medical and scientific purposes.”⁸³ This approach focuses on a variety of practical regulations the international community hopes to implement, in order to control the drug market, and is often termed the “war on drugs.”⁸⁴ As demonstrated, this approach fails at addressing the needs of women who are involved in the drug trafficking market. By focusing on stopping the movement and use of drugs, the women (and men) who are actors within this market are merely punished, without any consideration of the circumstances that led them to become involved.

Comparatively, the second approach to addressing the international drug industry is much broader and idealistic. Rather than focusing on specific concerns of drug trafficking, this broad approach emphasizes the “preservation of the health and welfare of mankind.”⁸⁵ Arguably, the first, more specific approach is actually included within this second approach. However, this second, broader approach, is much more likely to have a positive effect on the human rights of women who are involved in drug trafficking. A primary goal of the international framework under this perspective will include addressing the needs of these women, rather than simply trying to stop drugs from negatively effecting society.

There are a number of improvements that must be implemented into the regime in order to better protect the human rights of women, using the goal of preserving the health and welfare of mankind as the driving force behind the laws governing drug trafficking. “While the drug control conventions contain very limited provisions relating to human rights—despite a stated concern for the health and well-being of mankind—this does not mean that the system is free from oversight to ensure the

⁸³ Alfons Noll, *International Treaties and the Control of Drug Use and Abuse*, 6 CONTEMP. DRUG. PROBS. 17, 19 (1977).

⁸⁴ Heilmann, *supra* note 8, at 265.

⁸⁵ *Id.* at 238.

protection of human rights.”⁸⁶ Instead of taking a drug-centered approach in drafting laws, the international legal framework should focus on a “‘human rights framework’ in drug control.”⁸⁷ The question becomes, however, what types of reform need to be implemented to comprehensively address these human rights obligations. Although there are certainly a wide range of options that would fit the need, this paper will focus on four possibilities that reflect the concerns previously outlined. Specifically, the legal framework should: (a) allow the appropriate prosecuting authorities to consider a wide range of mitigating factors when adjudicating drug traffickers; (b) accept “battered woman syndrome” as a viable defense in drug trafficking cases; (c) provide traffickers support to facilitate their exit from the drug market; and (d) generally recognize a broader human rights theme that extends to drug traffickers.

A. Mitigating Factors

As demonstrated, under the three international treaties, drug abuse is currently the only named mitigating factor that authorities can consider with relation to drug trafficking charges.⁸⁸ This limitation fails to account for additional circumstances that may affect why a person has turned to drug trafficking. In particular, the current framework does not acknowledge the economic plight female traffickers often face, nor does it acknowledge the role that DTOs play in recruiting these women to their cause.⁸⁹ Notably, the Convention against Illicit Drugs offers a list of factors that increase the severity of trafficking crimes, and therefore increase the severity of the punishment, but does not provide a list of mitigating factors to decrease the severity of the crime or the punishment received if convicted of the charge(s).⁹⁰ The following questions are examples of the type of mitigating factors that will fill this void and that should be considered when prosecuting a drug trafficker. Although this list is by no means exhaustive, it provides a reasonable starting point that individual states can build off of:

- (a) Does the trafficker have children and, if so, is the trafficker a single parent?
- (b) What is the trafficker’s annual household income?

⁸⁶ *Id.* at 272.

⁸⁷ Takahashi, *supra* note 8, at 749.

⁸⁸ *See, e.g.*, Convention against Illicit Traffic, *supra* note 69, at 173.

⁸⁹ *See supra* Part I.

⁹⁰ Convention against Illicit Traffic, *supra* note 69, at 173.

- (c) Is there evidence that the trafficker has attempted to acquire lawful employment?
- (d) Is the trafficker involved with a DTO and, if so, how did the trafficker come to be involved?
- (e) Is there evidence that the trafficker has attempted to leave the DTO, or, if the trafficker works individually, is there evidence that the trafficker attempted to leave the trafficking industry in general?
- (f) Does the trafficker have prior convictions for crimes relating to drugs or drug trafficking?
- (g) Did the trafficker use violence or weapons in committing his or her crimes?
- (h) Is there evidence that the trafficker suffers from battered woman syndrome?⁹¹

Although acceptance of these mitigating factors will result in judicial officers exercising wide discretion in sentencing drug traffickers, the benefits that will result far outweigh the risks that accompany the exercise of discretion. A system that accounts for these types of mitigating factors will more accurately consider a trafficker's motivation for being involved, and will encourage people to leave the drug trafficking industry by rewarding their efforts. Consideration of these factors will also help prosecutors distinguish between those who are fully and voluntarily entrenched in the drug market from those who have ended up there as victims of circumstance. These are all essential benefits that will better account for and address women's human rights. Additionally, although these factors will result in the protection of women, they are phrased in gender neutral terms in order to assist men who face similar issues.

B. Battered Women Syndrome Defense

As briefly mentioned in section III, there is at least one case where a woman has attempted to use "battered woman syndrome" as a defense to her drug trafficking charges.⁹² For the purposes of this paper, a "battered woman" is defined as "a woman who is repeatedly subjected to any

⁹¹ Battered woman syndrome is discussed more thoroughly below as a defense to drug trafficking charges. I have included the syndrome in the list of mitigating factors to emphasize the fact that if the defense is not accepted as a stand-alone option, it should at the very least be considered as a mitigating factor. The term "battered woman syndrome" can also be broadened to "battered person syndrome" to provide coverage for men, as well.

⁹² See *supra* Part II.B (describing the case of Goldie Coats, a British woman claiming that she suffers from battered woman's syndrome and therefore should not be held liable for the cocaine found in her suitcase when she returned to London from Jamaica).

forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her right.”⁹³ Battered woman syndrome provides a battered woman with a defense against criminal charges that result from her experience as a battered woman.⁹⁴

Since the definition of a battered woman emphasizes a man coercing a woman to do something by using physical and psychological force, applying battered woman syndrome to drug trafficking cases is arguably a logical extension of the defense, which ordinarily provides protection in cases where a woman murders or assaults her batterer.⁹⁵ Goldie Coats, for instance, fits extremely well into this description.⁹⁶ Coats claims that she was coerced to smuggle drugs because threats were made against her children.⁹⁷ Allowing Coats to use a battered woman syndrome defense would account for the fact that she did not commit the crime willingly. Comparatively, convicting Coats for trafficking drugs under coercive circumstances allows the truly guilty individual, the person who masterminded the operation and forced Coats to act as a pawn, to walk free. Although Coats was ultimately convicted of her offense, the court did not reject her battered woman syndrome claim.⁹⁸ Rather, the court’s concerns were with her credibility as a witness.⁹⁹

Battered woman syndrome has been considered by a few United States courts as a mitigating factor in drug trafficking cases.¹⁰⁰ In *U.S. v. Ramos-Oseguera*, Maria Reyes-Sandoval raised a duress defense to charges related to her husband’s heroin distribution operation.¹⁰¹ Reyes-Sandoval claimed that her husband “physically and psychologically abused her and forced her to participate.”¹⁰² The Ninth Circuit ultimately remanded the case to determine if battered woman syndrome affected

⁹³ LENORE E. WALKER, *COATS THE BATTERED WOMAN* xv (1979). Although more recent research emphasizes a gender-neutral version of this syndrome known as “battered person syndrome,” because the focus of this paper is on the plight of female drug traffickers, the more traditional “battered woman syndrome” will be used. *See, e.g.* Gena Rachel Hatcher, *The Gendered Nature of the Battered Woman Syndrome: Why Gender Neutrality Does Not Mean Equality*, 59 N.Y.U. ANN. SURV. AM. L. 21, 23 (2003).

⁹⁴ Marybeth H. Lenkevich, *Admitting Expert Testimony on Battered Woman Syndrome in Virginia Courts: How Peoples Changed Virginia Self-Defense Law*, 6 WM. & MARY J. WOMEN & L. 297, 298-99 (1999).

⁹⁵ *Id.* at 297.

⁹⁶ Campbell, *supra* note 33.

⁹⁷ *Id.*

⁹⁸ Campbell, *supra* note 36.

⁹⁹ *Id.*

¹⁰⁰ *See U.S. v. Ramos-Oseguera*, 120 F.3d 1028 (9th Cir. 1997).

¹⁰¹ *Id.* at 1031.

¹⁰² *Id.*

whether Reyes-Sandoval was under duress or had a diminished capacity at the time she committed her crimes.¹⁰³

Although the Ninth Circuit was willing to consider battered woman syndrome as a defense to drug trafficking, the Fifth Circuit was unwilling to allow the defense.¹⁰⁴ In that case, *U.S. v. Willis*, Kathy Evelyn Willis was convicted for “carrying a firearm during, and in relation to, the commission of a drug trafficking crime.”¹⁰⁵ Willis argued that she participated in the crime out of fear of her co-defendant, who regularly beat her prior to the commission of the crime.¹⁰⁶ The court determined that because the defense of duress requires that “the coercive force of the threat be sufficient such that a person of *ordinary* firmness would succumb,” evidence of battered woman syndrome would impermissibly transform the objective standard into a subjective standard.¹⁰⁷ The Fifth Circuit concluded that although battered woman syndrome evidence “provoke[d their] sympathy,” it was irrelevant in the case.¹⁰⁸ This result is unacceptable.

In order to better address the coercion experienced by women like Goldie Coats, the legal framework needs to incorporate battered woman syndrome as a viable defense to drug trafficking. The Ninth Circuit’s acceptance of the defense should be replicated by courts elsewhere, in order to reflect the reality of the situation. Further, such a defense, if expanded to a “battered person syndrome,” would likely assist many men who are coerced into joining or continuing to be involved in the drug market. Ultimately, this type of defense will, like many of the mitigating factors discussed above, allow authorities to differentiate between those who actually have control over the drug trafficking system, and those who are pressured into participating through threats of violence or psychological manipulation.

C. Provide Support for Traffickers Attempting to Exit the Drug Market

Under the current system, the Convention against Illicit Traffic provides the most thorough support for drug traffickers who are charged with crimes.¹⁰⁹ As previously discussed, this convention allows parties to

¹⁰³ *Id.* at 1041.

¹⁰⁴ *See* *U.S. v. Willis*, 38 F.3d 170 (5th Cir. 1994).

¹⁰⁵ *Id.* at 173.

¹⁰⁶ *Id.* at 174.

¹⁰⁷ *Id.* at 176.

¹⁰⁸ *Id.* at 177.

¹⁰⁹ Convention against Illicit Traffic, *supra* note 69, at 173.

provide education, rehabilitation, and social reintegration, to those charged with a drug crime and to provide treatment and aftercare to those who also have drug abuse problems.¹¹⁰ Although these are certainly crucial to facilitate a drug trafficker's exit from the drug market, there is potentially more that can, and should, be done to encourage their exit.

Specifically, support for traffickers should seek to address the mitigating factors that are indicative of deeper issues, especially for women. For example, several of the mitigating factors seek to address the trafficker's financial situation.¹¹¹ Exit support should reflect the financial challenges facing traffickers by offering opportunities to learn a job skill, by providing job placement services, and perhaps by providing financial counseling. Although the drafters of the Convention against Illicit Traffic may have intended these types of services to be included in their provision for "education, rehabilitation, and social reintegration,"¹¹² explicitly listing suggestions for what those provisions include will emphasize the importance of these services and provide a more concrete starting point for implementing these programs.

In addition to including clear lists on the types of services that should be offered to drug traffickers, the provision in the Convention against Illicit Traffic should be further revised to provide these resources for traffickers who have not yet been detected and arrested.¹¹³ As it currently stands, the provision allows authorities to offer services either in addition to or instead of conviction for their crimes.¹¹⁴ This assumes that the trafficker has been detected, despite the reality that many traffickers are never detected.¹¹⁵ By expanding the language in the provision to include all traffickers, more drug traffickers can be reached and positively affected by the international system.

Providing support for drug traffickers attempting to leave the occupation accomplishes two important goals. First, exit support will encourage people to stop trafficking altogether. This should be a key goal of the international framework addressing drug trafficking. Second, and equally as important, exit support will ensure that fewer people reenter the drug market. Both of these goals are vital to the success of any system designed to combat drug trafficking.

¹¹⁰ *Id.*; See also *supra* Part III.C.

¹¹¹ See *supra* Part IV.A.

¹¹² Convention against Illicit Traffic, *supra* note 69, at 173.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See *supra* Part II (citing the number of female traffickers, but noting that women are less likely to be detected by authorities).

D. Institution of a Broader Human Rights Corpus

The final suggested reform to the international drug trafficking framework focuses on a generally increased emphasis on human rights. The Convention against Illicit Traffic has begun to shift towards this reform with its inclusion of provisions that mention human rights.¹¹⁶ The concern with the approach taken by this convention, however, is that the provisions are far too narrow in scope.¹¹⁷ Rather than recognizing that human rights concerns undercut the entire regime, the Convention against Illicit Traffic limits the human rights discussion to drug use and drug users.¹¹⁸ This is more reflective of the view that the drug control system should be dealt with through practical, hands-on regulations.¹¹⁹ It ignores the perspective that argues that the drug control system needs to be approached as an attempt to preserve the “health and welfare of mankind.”¹²⁰

By including, perhaps in the preamble or opening paragraphs of the conventions, a detailed provision devoted to human rights considerations, human rights will be recognized as a broader theme that should undercut every attempt to address the current problems of drug trafficking. Although this will not, in and of itself, solve the problems that women and men face as part of their experiences trafficking drugs, it will hopefully open lines of communication on the issue and allow future improvements to be made. It will also serve as a constant and necessary reminder that international law should be concerned with drug trafficking both because of the practical concerns *and* because drug trafficking has broad human rights implications.¹²¹

CONCLUSION

As demonstrated, women present a unique case when studying the plight of drug traffickers. Although the circumstances surrounding men and women are similar when it comes to involvement in the drug market, women undoubtedly experience stronger pressures, both economically and from DTOs seeking to successfully continue their endeavors. Because women are uniquely affected by these pressures, the international legal framework that addresses drug trafficking needs to be specially tailored to

¹¹⁶ See *supra* Part III.C.

¹¹⁷ Convention against Illicit Traffic, *supra* note 69, at 194.

¹¹⁸ *Id.*

¹¹⁹ See Noll, *supra* note 83, at 19.

¹²⁰ Heilman, *supra* note 8, at 238.

¹²¹ *Id.* at 272.

account for women's needs. Currently, the three major international treaties, the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, all fall short of addressing the needs of female traffickers.

To reform the system, this paper has recommended four changes to the current regime. First, the authorities prosecuting drug trafficking should be encouraged, if not required, to take into account mitigating factors that may excuse or lessen the severity of the crime or the punishment associated with the crime. Second, legal systems should allow a "battered woman syndrome" defense to emphasize the innocence of women who participate in drug traffic because of violence or abuse. Third, the framework needs to encourage or require states to provide services and support for those wishing to exit the drug market, either at the time of their arrest or preferably at any time. Finally, the general body of material addressing drug trafficking needs to incorporate human rights as a primary goal of ending trafficking.

These recommended additions to the legal framework tackling drug trafficking represent merely a starting point to better address the needs of female drug traffickers. The implementation of these changes will improve the circumstances of both female and male drug traffickers, and will ultimately help to realize multiple goals of the drug trafficking control system.

