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### **The problem of arbitrary detention in Norway and by extension**

The Alliance for rights-oriented drug policies (AROD) welcome the decision to study the impact of arbitrary detention in the area of drug policy. Being devoted to a system of principled law, we have been working for a solution to this problem for years, but the response from government and international bodies has been weak.

As you can tell from appendices,<sup>1</sup> the problem of arbitrary imprisonment has a long history in Norway. It was evident before 2010, but it was at that time members of the persecuted population had had enough and sought an effective remedy in the justice system.<sup>2</sup>

This arm of the Norwegian state, however, failed its responsibility and denied Norwegian drug law violators basic human rights protection. Since then, the state has continued its persecution outside the perimeters of law. Not only have hundreds of thousands been unduly harassed and fined by the police, but tens of thousands have been arbitrarily imprisoned, many serving harsh sentences.<sup>3</sup>

To remedy this problem, NGOs have contacted politicians across the board. All policy-making bodies have received documentation detailing how drug prohibition is incompatible with the human rights paradigm and how the state has failed its responsibility to the persecuted

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<sup>1</sup> List of appendices: (1) Mikalsen, *Human Rising: The Prohibitionist Psychosis and its Constitutional Implications* (2019); (2) Mikalsen, *To Right a Wrong: A Transpersonal Framework for Constitutional Construction* (2016); (3) Letter to Norwegian Minister of Health (January 30, 2020); (4) Decision of the European Court of Human Rights (Application no. 67078/10, Mikalsen v. Norway); (5) Letter to European Court of Human Rights (May 9, 2019); (6) Letter to the Working Group on Arbitrary Detention (May 13, 2019); (7) Letter to UN Human Rights Committee (September 24, 2018); (8) Letter to Secretary General Thorbjørn Jagland (June 4, 2012); (9) Letter to Secretary General Thorbjørn Jagland (December 21, 2018)

<sup>2</sup> Appendix (5) Letter to European Court of Human Rights (May 9, 2019)

<sup>3</sup> Human rights principles are systematically ignored in drug cases. For this reason, medical cannabis consumers are harassed by customs and law enforcement, patients who grow their own medicine because they cannot otherwise afford pain relief are imprisoned for years; and expecting mothers with a receipt for medical cannabis or narcotics are deprived of liberty. Like any other imprisoned drug law violator, they and their loved ones are separated, their lives torn apart, and those involved with the trafficking of drugs (including cannabis) get up to 21 years in prison.



groups. Ministers of justice, health, and other heads of state have been informed of the need for human rights review but failed to provide any effective response.<sup>4</sup>

*As a result, the rule of law in Norway has suffered more than many other places. In no other country have human rights and drug reform organizations to a greater degree united to confront policymakers on constitutional responsibilities,<sup>5</sup> and in no other country have public officials to a greater degree come up short of expectations.*

Even after the recently released report of a royal commission, which included a chapter on human rights responsibilities and careful reasoning as to why criminalization was considered problematic, politicians continue to ignore constitutional obligations. Public opposition to the premise that drug prohibition is a worthwhile endeavor is increasing. But while several organizations await the response from the Minister of Health on a call for reparations,<sup>6</sup> moral panic carries enough sway to ensure many more years of arbitrary persecution.

### ***Moral panic, exaggerated enemy images, and wanton persecution***

On backdrop of the above, we appeal to the Working Group on Arbitrary Detention.

As you can see from our documentation, the problem of arbitrary detention in the area of drug policy is much bigger and goes much deeper than supposed. After the European Court failed to address this issue,<sup>7</sup> some 40 million Europeans have been left without basic human rights protection, and while the Pompidou group and the COE Parliament lament its absence, these people have rights that remain obscure and unrealized.

*It is important to note that they remain so not for lack of argument, but for the failure of states and human rights institutions to provide basic constitutional guarantees. As documented by Human Rising, the premises of prohibition have long been refuted and drug policy continues as a result of the scapegoating mechanism.<sup>8</sup>*

This explains the taboo on principled thinking. It is psychologically difficult to realize that modern drug policy has the same problem with principles of justice as Jim Crow laws and other wanton persecutions. There is also much at stake for profiteers of war, and so those in authority continue to negate constitutional obligations for unconsciousness to prevail.

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<sup>4</sup> For our correspondence, see <https://www.arodpolicies.org/norwegian-authorities>

<sup>5</sup> Appendix (3) Letter to Norwegian Minister of Health (January 30, 2020)

<sup>6</sup> Ibid.

<sup>7</sup> The rule of law suffered terribly when the European Court in 2012 failed to provide Norwegian drug law violators an effective remedy. For more on this, see appendix (4) Decision of the European Court of Human Rights (Application no. 67078/10, Mikalsen v. Norway); (5) Letter to European Court of Human Rights (May 9, 2019); (8) Letter to Secretary General Thorbjørn Jagland (June 4, 2012); (9) Letter to Secretary General Thorbjørn Jagland (December 21, 2018);

<sup>8</sup> Drug prohibition is historically similar to other mass-movements gone wrong in that it is the result of scapegoating, our tendency to blame others for problems that are a collective responsibility. As shown in Human Rising, this mechanism has kept us from fulfilling the spirit of the UN Charter and other Human Rights Covenants, and as humanity matures, we must do away with this great force of injustice.



Consequently, no state has followed up on the human rights guidelines as defined by the UN<sup>9</sup> and COE.<sup>10</sup> While these international bodies are waking up to human rights responsibilities,<sup>11</sup> no state has allowed a principled review of drug policy. Instead, those in positions of authority continue to define human rights law on prohibitionist terms, overlooking the evidence that we are dealing with a crisis of magnitude.

We therefore encourage the UN to show leadership in this quest for justice. As documented by the Norwegian royal commission, the UN drug control conventions have gone from being interpreted in light of a drug free ideal, and prohibition a necessary venue, towards prioritizing realities on the ground and the intent to protect the health and welfare of mankind. Prohibition has proved inept in this regard and this is why human rights obligations are moving in the direction of decriminalization.

The royal commission was clear on this and how much further these commitments extend have yet to be determined. As prohibitionists have had the power to control debate, they have evaded the burden of proving that their ideology of persecution is necessary in a democratic society. Thus, their truisms have been left largely intact, untouched by the impact of scrutiny.

Even so, moral panic is well documented. The Norwegian royal commission itself detailed its influence on the evolution of drug policy,<sup>12</sup> and there is an axiomatic relationship between this phenomenon and human rights violations.

The reason for this is that during times of moral panic, society will be in the grip of exaggerated enemy images. These images inform our logic, ensuring a weakening of moral sensibility, and to the extent that panic is present the persecuted population will be treated without regard for human rights principles. Hence, there will be a prevalence of arbitrary imprisonment, only unnoticed, and just a principled review of policy can reveal the extent to which policy deviates from human rights obligations.

### ***Principled review and effective remedy***

Human rights principles, then, provide a compass towards constitutional ground, and applied to drug policy they reveal a deep-seated problem of arbitrary imprisonment. Indeed, according to any meaningful definition, some 30 percent of the Norwegian prison population remain troubled by this affliction—and by extension all other incarcerated drug law offenders in Europe.

Had the European Court abided by its conventional obligations, drug prohibition would have been found incompatible with principles of autonomy, proportionality, equality, and the

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<sup>9</sup> WHO, UNDP, UNAIDS, International Guidelines on Human Rights and Drug Policy (Mar 14, 2019)

<https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/international-guidelines-on-human-rights-and-drug-policy.html>

<sup>10</sup> Committee on Legal Affairs and Human Rights, *Drug policy and human rights in Europe: a baseline study* (2019): <http://www.assembly.coe.int/LifeRay/JUR/Pdf/TextesProvisoires/2019/20191115-DrugPolicyHumanRights-EN.pdf>

<sup>11</sup> Pompidou Group, statement on bringing human rights into drug policy development, implementation, monitoring and evaluation: <https://rm.coe.int/pompidou-group-statement-on-bringing-human-rights-into-drug-policy-dev/1680770b40>

<sup>12</sup> NOU 2019: 26 Rusreform – fra straff til hjelp (Drug Law Reform – from punishment to help). See Chapter 3.2. and 3.3. Words such as "public panic", "unbalanced views", "misleading perceptions", "misapplication of punishment", and "reality-resistant iniquity" summarize the development of drug policy. We are dealing with a debate characterized by "stereotypical representations", "moral indignation and revenge urges", one in which "scientific understanding of the drug problem has played a minor role". "Panic" is used several times.



presumption of liberty eight years ago. The state would have had to begin the process of reparations, and the persecution of not only drug users but other violators would have had to stop. This, however, did not happen, and so those currently under imprisonment for drug law violations deserve special attention.

*This is the only way to provide due process. This is the only way to deal with the problem of arbitrary detention in the area of drug policy. If the UN shall bridge the growing gap between prohibition policies and human rights obligations, it must not only ask by what right society imprisons drug users, but also producers, traffickers and dealers. It must honor its Charter and the rights of the persecuted population and prepare an independent, impartial, and competent tribunal consisting of capable judges solemnly sworn to a principled review of drug prohibition.*<sup>13</sup>

Our documentation alone puts the bar very high for a successful response from the state. There is a reason why judges will not give us a fair hearing and why Norwegian authorities have set aside the rule of law to continue its campaign of oppression. Even so, the law puts the burden of evidence on the state. Thus, it must face this burden, and unless the state can show good reasons for persecuting these populations, we are dealing with a human rights travesty, and the problem of arbitrary imprisonment must be dealt with swiftly.

As is well known, a culture of impunity is a formidable threat to the advancement of human rights. For the UN to live up to its ideals, values, and principles, the cognitive dissonance behind drug prohibition must be overcome, and we recommend the formation of a truth and reconciliation commission.

This is, after all, the proper way forward when moral panic is observed and systems of law must be recalibrated into alignment with a greater, more wholesome morality. The UN and the world are in the midst of this process; the increasing polarity is a sign that a paradigm shift is upon us, and we look to the Working Group on Arbitrary Detention to help humanity onwards.

Yours Sincerely,

A handwritten signature in black ink that reads 'Roar Mikalsen'. The signature is fluid and cursive, with a long, sweeping tail on the 'n'.

President of AROD  
Alliance for Rights-Oriented Drug Policies

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<sup>13</sup> As evidence of the situation surrounding arbitrary detention in Norway and elsewhere, we provide a copy of our report *Human Rising: The Prohibitionist Psychosis and its Constitutional Implications* (2019), as well as Mikalsen, *To Right a Wrong: A Transpersonal Framework for Constitutional Construction* (2016). The former documents the parallels between the War on Drugs and other mass-movements gone wrong, while the latter contains a case study of constitutional challenges to the drug law, documenting how the US Justice system has denied citizens a fair hearing. This means that millions remain arbitrary detained, in need of an effective remedy.