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Petter F. Wille  
Norwegian National  
Human Rights Institution

August 24, 2017.

## **REGARDING FAILURE TO ADRESS HUMAN RIGHTS CONCERNS**

Thanks for responding to our correspondence. As you know, we complained about the institute's longtime disregard of Norwegian drug users' human rights, as exemplified by NIM's annual report which omits any mention of their plight.

When it comes to this, we believe the situation is quite dreadful. As NGO, we have documented how the Norwegian state's persecution of drug users/distributors is in violation of international human rights law. Among other things, you have received *To End a War*, a book that applies principled and long-recognized human rights analysis to the situation, and also *Constitutional Challenges to the Drug Law*, a case study on the US drug laws and their constitutionality. These books contain the most advanced legal analysis available and show how the drug laws, whether they be Norwegian, German, or American, violate the same constitutional/Human rights principles.

Your organization should know these principles well, and we therefore find your response puzzling. After all, you agree that you have a responsibility to ensure proper human rights protection, but because the International human rights framework "does not outright ban a prohibition on drugs", NIM considers this "a political issue", one beyond your concerns.



We find this puzzling, because this position betrays, on your part, either (1) ignorance of the principled framework from which the treaty documents draw legitimacy, or (2) unfounded animosity towards drug law violators.

It is after all, uncontroversial that the human rights apparatus rests on first principles; it is, for instance, the principles of dignity and autonomy that breathe life to different articles such as the right to privacy, and this means an *across the board* freedom from arbitrary state persecution. The criteria for arbitrariness is further defined by treaty bodies such as the UN Human Rights Council, EMD, and different constitutional courts, and there is no doubt that the persecution of drug law violators satisfy these criteria.

You have received this documentation. You should know this. If you have done your research, you know that, when it comes to the equality/non-discriminatory principle, the drug law finds itself in the exact same unconstitutional position as commonly frowned-upon race legislation, and when it comes to the proportionality principle, there is no serious dispute as to the destructive impact of our drug policies.

To put it shortly, from the documentation received, you have seen that, globally, every year prohibition continues another 400,000 die needlessly; another 5 million are wrongfully deprived of liberty; another \$400 Billion in profits are given to organized crime syndicates (and laundered in Western banks); another staggering but unimaginable amount of pain and misery is inflicted on individual human beings; and another ridiculous amount—we are talking hundreds of billions—is spent on law-enforcement and bureaucratic maneuvering that has had little impact on drug use or supply, but whose only effective function is restricting a people's free will.

In other words, clearly, we have a violation of the proportionality principle. Most experts on drug policy agree that the cure is far worse than the disease, and this is also why any sincere review, like the South African High Court's recent treatment, concludes the same.<sup>1</sup>

Based on such evidence, we find your reply unpersuasive. Not only do you have an obligation towards the nation's 200 000 drug users, but also to the rule of law, and we now question both your competence and impartiality.

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<sup>1</sup> As it held in its ruling the 31 of March 2017: "The evidence, holistically read together with the arguments presented to this court, suggests that the blunt instrument of the criminal law as employed in the impugned legislation is disproportionate to the harms that the legislation seeks to curb insofar as the personal use and consumption of cannabis is concerned. This conclusion is supported by the importance of the core component of the right to privacy and, further, by the cautious approach that must be taken to the evaluation of the criminalisation of cannabis which, as indicated earlier in this judgment, is certainly characterised by the racist footprints of a disgraceful past." *Prince v Minister of Justice and Constitutional Development and Others; Rubin v National Director of Public Prosecutions and Others; Acton and Others v National Director of Public Prosecutions and Others* (4153/2012) [2017] ZAWCHC 30; [2017] 2 All SA 864 (WCC); 2017 (4) SA 299 (WCC) (31 March 2017) [90]



In fact, as it stands, NIM has done the worst thing a human rights defender can do: You have chosen to represent the judicial tradition that has arrested the development of human rights law to this day, for to start from the premise that “whatever is not expressly permitted in the human rights catalogue is up to the state to prohibit”, is the kind of legal reasoning we normally find amongst human rights *aggressors*, not defenders.

For this reason, we ask NIM to rethink its position. No human rights institution should get away with positing premises that are clearly flawed, and we expect NIM to clarify its view, should there be a mistake. As defenders of human rights, we can tell you that if you do not, we will move forward to ensure that your A status is revoked, for it is nothing in your letter that suggest you take it seriously.

Furthermore, you say that NIM’s primary mandate is to ensure that the Norwegian government’s legal obligations are fulfilled.

We agree. But we also note that more specifically, this means that you are “expected to be the ‘key elements’ of a strong and effective national human rights protection system, helping to ensure the compliance of national laws and practices with all international human rights norms; supporting Governments to ensure implementation; monitoring and addressing at the national level core human rights concerns such as torture, arbitrary detention, human trafficking and the human rights of migrants; supporting the work of human rights defenders; and contributing to eradicating all forms of discrimination.”<sup>2</sup>

When it comes to this, we remind NIM that you have received information showing the persecution of drug law violators to be both arbitrary and in violation of the prohibition of discriminatory practices. You therefore have a duty to take action,<sup>3</sup> and this is especially true considering that the only reason why the Norwegian drug law has escaped scrutiny is that our officials have shirked constitutional responsibilities.

If you have checked out our website, you will know that our organization has been in contact with most of them and that they continuously ignore our call for evidence-based review of policy. Indeed, the taboo against exposing the failures of prohibition is so great that even the justice system has failed to honor constitutional obligations; whenever violators have gone to the courts, seeking an effective remedy, they have been denied this, and the Minister of Justice, with others, have ensured a cover-up.

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<sup>2</sup> *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, UNITED NATIONS New York and Geneva, 2010, 3

<sup>3</sup> “National human rights institutions should systematically review existing law, policy and practice ‘to preserve and extend the protection of human rights’. This responsibility extends to all laws and situations and not just those specifically intended to preserve and protect human rights.” Id. 105



One can therefore safely say that your mandate to investigate is clear. In Norway, more than any other Western country, the rule of law has been effectively waysided by irresponsible officials, and NIM is uniquely positioned to help pave the way for an effective remedy.

If you honor your commitment to protect and promote human rights, this is what you will do, and in this regard we look forward to assist in any way possible.

Yours Sincerely,

A handwritten signature in black ink that reads 'Roar Mikalsen'. The signature is fluid and cursive, with the first name 'Roar' and last name 'Mikalsen' clearly legible.

Roar Mikalsen,  
President of AROD