



Commission on Unalienable Rights
U.S. State Department

August 11, 2020

Comments on draft report and the distance between theory and practice

Thank you for the opportunity to submit comments to the Commission on unalienable rights.

In [previous](#) communication, we have presented our material and preliminary remarks. We documented not only the extent to which drug prohibition is incompatible with principles of autonomy, equality, proportionality, and a presumption of liberty, but [how](#) the US justice and political system has failed address this problem, denying violators an effective remedy.

In short, therefore, human rights are continuously [ignored](#). As the Commissioners stated, they “are misunderstood by many, manipulated by some, rejected by the world’s worst violators, and subject to ominous new threats”. And as the mandate was to rise to these challenges, it is unfortunate that no real mention of this problem is made.

That said, we understand your reasons not “to enter into debates about the application of human rights principles to current controversies”. Focusing on those principles inherent in the American constitution and international human rights conventions is a good starting point when they have long been neglected, and we hope that Commissioners succeed in the mission “to assist those who bear the heavy responsibility for making principled and prudent policy decisions”. We also hope that your aim to “stimulate discussion among fellow citizens and friends of freedom around the world about securing human rights” is achieved, but we fear that Americans will go back to sleep.

The problem of unprincipled justice

As [shown](#), the problem of arbitrary persecution and imprisonment continues to plague not only dictatorships, but western civilization. Speaking internationally, some 300 million drug users are left without an effective remedy; this involves some 80 million Americans, and it would be a great opportunity missed if the report does not mention the need to resolve this issue. As the Commissioners declare:

“With freedom, human equality, and democracy facing strong ideological opposition from powerful states, this is not the moment for the liberal democracies of the world to falter in defending the principles that have enabled them to achieve ‘better standards of life in larger freedom.’ America must rise to today’s challenges with the same energy and spirit that she brought to the building of a new international order in the wake of two world wars. At the same time, we are keenly aware that America can only be an effective



advocate for human rights abroad if she demonstrates her commitment to those same rights at home. The credibility of U.S. advocacy for human rights abroad depends on the nation’s vigilance in assuring that all its own citizens enjoy the full range of fundamental human rights. With the eyes of the world upon her, America must show the same honest self-examination and efforts at improvement that she expects of others.”

As noted, this is empirically [not](#) the case. Evidence suggests that the US government has failed its drug using population more than any other nation. The commission only confirms the gulf that exists between theory and practice in this area of policy—and so, in grounding advice in “both the distinctive rights tradition of the United States and the principles of the Universal Declaration”, you have elevated the moral ground of reform activists against those committed to regimes of prohibition.

As observed, it is categorically untrue that “since its ratification almost 250 years ago, the Constitution continues to secure the rights that enable the American people to address enduring controversies about how to assess new rights claims, and how to manage tensions among and competing interpretations of existing rights that mark a free and self-governing people”. Our organization has done a [case study](#) which documents how the US justice system has mishandled constitutional challenges to the drug law. You have received this information, and as the US Justice Department continues to disregard evidence that drug policy is based on totalitarian premises—and that every constitutional challenge has [failed](#) due to systemic errors—it is more important than ever that America provides her persecuted with an effective remedy.

This is key to any covenant on human rights. As it stands, therefore, the authority of state is in serious jeopardy and the system must recognize evidence detailing the extent to which drug prohibition is incompatible with basic principles of law. The legitimacy of the state depends upon no less and the US government, to resolve this matter, must support the creation of independent, impartial, and competent tribunals, both nationally and internationally.

This is what it takes to be serious about human rights. This is the duty of public officials.

You also know that the preamble of the ICCPR puts responsibility on the individual to strive for the promotion and observance of the rights recognized. Hence, if serious about the rule of law, Commissioners should recommend a greater recalibration of law, one that ensures the success of their mandate.

Crisis of Civilization and rebuilding

Indeed, ours is a crisis of civilization. There are more people imprisoned than at any point in history and the increasing polarity is a sign that the old system is giving way. Issues of drug policy may appear entirely unrelated, but if we look at America, where the left/right paradigm is tearing society apart, the current tension could have been avoided if *only one* of the constitutional [challenges](#) to the drug law had been handled correctly. Rather than maintaining criminal policies that are principally unsound, then, Americans could have dealt with the cognitive dissonance that comes with prohibitionist regimes. They could have recalibrated



systems of law to conform with the demands of constitutional principles and the nation would have not been scarred by 40 more years of needless and unjust suffering.

If we look closer, it is this needless and unjust suffering that has forced mistrust and sown the seeds of riot. Only scapegoatism and moral panic explains the popularity of the modern drug prohibition experiment—and if the US government wants to bring health to the country, first on its agenda should be to consider the drug war from a constitutional perspective.

We have already provided the documents needed in this regard. While [Human Rising](#) provides a basis for constitutional critique, one to which prohibitionists have yet to respond, [To Right a Wrong](#) lays out the greater terrain and the structuring that must be done to support utopian society building. Building on this material, you can not only restore the American dream, but ensure that the state completes the founders' vision, becoming a full platform for constructive social engineering. The latter document expands on this bit, and should state representatives take their constitutional oath seriously, America can quickly become a very different place.

Once again, she may become the light of the world. She may become a place where principle, not prejudice, defines policy, and where values like autonomy, human dignity, equality, proportionality, and the presumption of liberty are respected and promoted, not disparaged.

As an organization dedicated to the rule of law, we look forward to that point in time—and we hope that the Commission on Unalienable Rights will elevate principled reasoning to its proper position.

Yours sincerely,

A handwritten signature in black ink that reads 'Roar Mikalsen'. The signature is written in a cursive, flowing style.

Roar Mikalsen
President of AROD
The Alliance for Rights-oriented Drug Policies