



Alejandro Maldonado Aguirre  
President of Guatemala

September 16, 2015

## **AN OPEN LETTER REGARDING HUMAN RIGHTS AND DRUG POLICY.**

**Dear Sir.**

We, members of the Alliance for Rights-oriented Drug Policies (AROD), write to thank you for your contribution to more effective and just drug policies. Together with leaders of other Latin American countries you were instrumental in putting together the UN General Assembly's Special Session on Drugs in 2016, and in this regard we would like to inform you of a matter of some urgency.

The thing is that an ever-increasing load of evidence strongly indicates that drug prohibition is irreconcilable with key human rights standards and principles, and that it therefore violates the United Nations International Bill of Human Rights.

You are perhaps wondering how such a deeply rooted social practice could be in violation of human rights, so let us explain:

The purpose of human rights law is to protect the individual against disproportional, arbitrary, and discriminatory practices. It therefore defines certain criteria that all laws must comply with, but when it comes to the drug law there is a lot to suggest that it falls short compared to these. This is an issue that public officials have never looked into before, because when they first swore allegiance to punitive drug policies, they didn't know enough about drugs or drug prohibition to see the problem from a human rights perspective.



Now, fifty years later, things have changed. We have learned that whether we are talking about licit or illicit drugs, there are the same supply and demand mechanisms in effect and the same varying patterns of use, and we have learned that alcohol and tobacco, each in their own way, are the worst of all drugs for society and users alike. Not only that, but we have also discovered that the degree of criminalization has little to no influence on the user population; that the evils generated by prohibition (organized crime, corruption, violence, disease, deaths by overdose, etc.) are worse than the evils caused by the drugs themselves; and that a health-oriented approach, like the one we have for alcohol, is a much more sensible solution to the drug problem.

In other words, as we have wised up, we have learned that the idea of prohibition is built on a series of faulty premises. And when we take into account that (1) the separation between licit and illicit drugs is nonsensical and (2) that less invasive—and more prudent—means than the law-and-order approach are available, we also have a sound basis for arguing that today's policies are incompatible with key human rights principles, such as that of equality (non-discrimination) and proportionality.

This being the case, as a civil servant you have certain obligations not only to your electorate but humanity at large, and to further clarify the situation you hereby receive a copy of *To End a War*, as well as a letter we have sent the CND as our contribution to the UNGASS 2016 preparatory process.

While the CND letter will expand on the situation as it relates to UNGASS, *To End a War* will tell you everything you need to know about the human rights issue; (1) it elaborates on why our drug policies are incompatible with human rights; (2) it specifies which articles in the UN International Bill of Human Rights that proves a violation; and (3) it also enlarges on our civil servants' duties in this situation. You can also, if you want to learn more about all this, visit our website at [www.arodpolicies.org](http://www.arodpolicies.org). In the reading room section you will find an abundance of scholarly works that support the factual picture as summarized by *To End a War*, and as you can see there are many drug policy experts and professors of law who will conclude that drug prohibition represents a discriminatory, arbitrary, and disproportional practice.

We would like to emphasize that if this is so, then there can be *no doubt* that we are dealing with a gross violation of human rights. The purpose of human rights law is to protect us from such practices, and so we ask that you, a leader of one of the countries who have suffered the most due to prohibition, do what you can to ensure that our drug policies' relationship to the human rights conventions is properly reviewed.



So far, no government has been forthcoming in accepting this challenge. Nevertheless, the pressure for reform is growing stronger each day, and as further explained by the conclusion of a recent report:

*“The question appearing on the international policy agenda is now no longer whether or not there is a need to reassess and modernize the UN drug control system, but rather when and how. The question is if a mechanism can be found soon enough to deal with the growing tensions and to transform the current system in an orderly fashion into one more adaptable to local concerns and priorities, and one that is more compatible with basic scientific norms and UN standards of today”<sup>1</sup>*

This report is not unique. Indeed, you are hard pressed to find any report on the subject which does not conclude that drug prohibition has failed and that radical reform is needed, and now that the rights-oriented debate has been brought to your attention, you have also been provided with the mechanism hitherto looked for to solve the increasing tension referred to above.

The simple reason for this is that there is a conventional hierarchy in the world in which human rights law rules supreme, and if the UN drug control conventions should be found to be incompatible with the human rights conventions, then the drug control conventions must yield.

This is a most straightforward matter which is not open to discussion. The rule of law demands that our public officials ensure that the relationship between the drug law and human rights law is resolved once and for all, and by bringing this issue to your attention, we provide you with a timely opportunity to prove your qualities. As you know, the UN General Assembly shall have a Special Session on Drugs in 2016, and this being an unprecedented opportunity to review and redirect the future of the global drug control regime, we suggest that you do everything in your power to get the relationship between the drug control conventions and the human rights conventions put on the agenda of this meeting.

As a leader of a country you have several means at your disposal to get his done, and we hope that the Guatemalan government will not shy away from making the most out of the opportunity provided by UNGASS 2016. The purpose of this special session is to address all organizational and substantive matters in an open-ended manner, and as Guatemala is one of the countries who have called for this opportunity to reinterpret the drug control conventions in light of changed facts, circumstances, norms, and social conditions, it would

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<sup>1</sup> *The Rise and Decline of Cannabis Prohibition: The History of Cannabis in the UN Drug Control System and Options for Reform*, Transnational Institute/Global Drug Policy Observatory (2014), p. 15.



clearly fail its purpose as an opportunity to engage in an open and transparent, evidence-based discussion on achievements and remaining challenges if the failures of prohibition weren't readily admitted and reviewed in the context of human rights law.

We therefore hope that you will use this occasion to work towards the creation of an international, independent, impartial, and competent commission whereby the issue can be satisfactorily addressed.

When it comes to this, there are four questions that must be answered to the satisfaction of such a commission in order for drug prohibition to be found compatible with human rights law. Provided that our civil servants recognize the rights-oriented debate, these questions are basically the same, and can, using marijuana as an example, be stated like this:

- Whereas all comparisons of the problems associated with marijuana and legal drugs like alcohol and tobacco demonstrate that the legal ones are more harmful to users' health and more destructive to us as a society: *How will you defend present policies? How can you, without building your drug policy on a discriminatory practice—and thus violate the principle of equality—argue in favor of a health-oriented approach toward alcohol users and a continued criminalization of marijuana users?*
- Whereas there is the same supply and demand factors involved when it comes to marijuana and other drugs like alcohol and tobacco, and whereas the different groups of drugs also have the same varying patterns of use associated with them: *How will you justify the persecution and the demonization of the drug law violators? What sort of crimes against his fellowmen has a marijuana producer, transporter or seller committed that an alcohol producer, transporter or seller has not?*
- Whereas virtually all of the world's leading drug policy scholars are in agreement that the drug laws have had worse consequences for society in general and users in particular than the drug use itself would have had, and whereas more and more organizations and commissions publish reports that confirm the same: *How will you, from the growing evidence base that suggests the cure (marijuana prohibition) is worse than the disease (marijuana use) defend current policies as measured against the principle of proportionality?*
- Whereas a majority of drug policy experts agree that there was a moral panic behind the outlawing of marijuana; whereas these professionals acknowledge that its current classification makes no sense; whereas scholarly works such as James Ostrowski's *Answering the Critics of Drug Legalization*, Douglas Husak's *Drugs and Rights*, and David A.J. Richards' *Sex, Drugs, Death, and the Law* have thoroughly



refuted the traditional arguments in favor of criminalization; whereas scholars such as Eva Bertram, Morris Blachman, Kenneth Sharpe and Peter Andreas have documented fatal flaws in the strategy of prohibition that cannot possibly be remedied; whereas an independent, impartial, and competent tribunal (the Cannabistribunal in the Hague, 2008) has already qualified the prohibitionist argument as “based on fallacies” and “absolutely worthless”, and whereas the drug laws thus seem to build their credibility on a series of faulty premises: Considering the fact that the enemy image of marijuana has proven vastly exaggerated; considering that the separation between the licit and illicit substances has proven an arbitrary divide; considering that that the evidence is increasingly clear that the drug laws have failed in reducing their supply and demand; considering that American, as well as European decriminalization experiments have shown a health-oriented approach to be more successful in dealing with the harms caused by drug use; considering that the cure has proven worse than the disease to the degree that the harms caused by prohibition now have become so enormous that they threaten to undermine the very fabric of our society; considering that paternalistic and moralistic arguments have failed, and considering that you can no longer justify prohibition on the basis that (1) it suppresses different types of crime, (2) that it protects our youth and the wellbeing of society, (3) that drug abuse has substantial economic and social costs, (4) that marijuana use is intrinsically immoral and degrading in nature, (5) that its use is self-destructive, dangerous and may cause a variety of harms, including physical injury, addiction and death, (6) that it is a gateway drug, (7) that its use is not a victimless crime since it causes harm to others, and (8) that we do not know the consequences of legalization: *All this considered, what compelling reasons can there be for prohibition, and in what way are its means tailored towards its explicitly stated ends?*<sup>2</sup>

These questions summarize the essence of the rights-oriented debate, and if drug prohibition really is compatible with human rights law, then it should be easy enough for a prohibitionist to answer them.

So far, however, no one has been interested in doing so. As a matter of fact, prohibitionists in government and elsewhere have gone out of their way to ignore the implications of the rights-oriented debate; some have even gone so far as to suggest that drug users are exempt from the human rights conventions, and those among our civil servants who wish to continue this trend must invalidate this chain of reasoning and answer the following question:

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<sup>2</sup> Source references and documentation for these allegations can be found in *To End a War*. For a comprehensive overview of the scientific research refuting the usual claims made about cannabis, see also International Centre for Science in Drug Policy, *State of the Evidence: Cannabis Use and Regulation*, 2015.



• Whereas the fundamental principle from which our system of law follows is that the individual is to have as much freedom, responsibility, and self-determination as absolutely possible (that is, as compatible with a similar right and freedom of others); whereas to whatever degree our rights and freedoms shall be restricted weighty societal considerations must necessitate such actions (that is, they must be required for the protection of the general welfare and the purpose of securing due recognition and respect for the rights and freedoms of others); whereas the purpose of human rights law is to see to it that this is so and to protect the individual from undue, unjust, and arbitrary interferences; whereas at the core of the human rights conventions we therefore find certain legal principles, principles that are derived from the Wholeness concept, are mirrored in all humanitarian values, and bring together constitutional law, social contractarian thought and moral theory; whereas the articles of the conventions are the result of these principles and established to promote them so that their light can shine forth as we mature as a society towards greater levels of understanding; whereas these conventions thus is established to ensure to all people, *without distinction of any kind*, protection against discriminatory, unjust, arbitrary and disproportional practices; whereas this obviously includes the world's 200-300 million drug users, and whereas the objective of human rights law therefore is to secure *also to them* the rights and protections recognized in the human rights conventions: Considering that you undertake to strive for the advancement and observance of the rights and protections recognized in these conventions; considering that the principles you have a duty to promote and protect establish certain criteria that our system of law must be in accordance with in order to be lawful; considering that the abolitionists have assembled overwhelming evidence that the drug laws, as measured against these criteria, are found wanting; considering that these laws' societal function and consequence has been so devastating that they fulfill the criteria as gross human rights violations and crimes against humanity; considering that abolitionists have presented documentation that legal scholars and drug policy experts around the world have concluded the same; considering that former officials of such stature as UN Secretary General and High Commissioner for Human Rights are among the people who have attested to this factual picture; considering that you have been presented with four questions that must be answered to the satisfaction of an independent, impartial and competent tribunal if these scholars' and experts' conclusions are to be refuted; considering that the prohibitionist regime has never been submitted to the test of reason and that our officials hitherto have refused to respond to these questions; considering that *the rule of law demands that they be answered*, but that every official so far confronted with the matter has flouted his duties and denied us our right to an effective remedy; considering that up to 300 million drug users therefore are without the protection of



human rights law and considering that the validity of the social contract and your credibility as civil servants now depends on the degree to which you take the promotion and observance of human rights law seriously; considering that your responsibility not only to the world's drug users, but humanity at large, the rule of law, and the human rights conventions you have a duty to protect and promote is clear; considering that objectively speaking there is no doubt that the abolitionists' concerns are valid and that in order to protect the integrity of the principles at the heart of the conventions you therefore need to see to it that human rights law rules supreme, that the matter is properly reviewed, and that these questions are satisfactorily answered; considering that if you fail to do so without adequately addressing the issues raised herein—that is, explaining *wherein* this chain of reasoning you disagree and/or *what more* corroboration we need to substantiate our contentions—it will become evident that your opposition to drug reform is blind; that it is motivated by ignorance and ignoble ambitions and that you are misusing your authority in an attempt to arrest the development of human rights rather than advance it; considering that in doing so you are, in effect, an enemy of all things good and decent, standing shoulder to shoulder with gangsters and war profiteers against the rule of law and the interests of the human race, and that you rightfully can be persecuted as a willful participant in crimes against humanity: *All this considered, how will you explain your reasons for maintaining that the principles of human rights law do not apply to our drug laws? How will you explain your position and your rationale that the drug users somehow are exempt from a catalogue of rights that is inherent to every human being and that we are all supposed to enjoy?*

*This is the great challenge facing prohibitionists, and should you find any civil servant, in the UN or elsewhere, insistent upon maintaining the status quo, then they must confront the rights-oriented debate head-on and answer these questions to the satisfaction of an independent, impartial, and competent tribunal. The importance that they do cannot be overstated, for only by answering these questions can they stand their ground; only by doing so can they show us that current policies are compatible with human rights; only by doing so can they assure the world's drug users that their rights are respected; and only by doing so can the State present itself as an adherent to the rule of law.*

Now that you are informed of this matter, your duties to international law are incontrovertible; *To End a War* expands on this bit, and as a representative of the world's drug users and human rights defenders we count on nothing less than that you take our catalogue of rights seriously.

We therefore ask that you act in accordance with your obligations to human rights, the rule of law, and humanity at large and assist us having the relationship between the UN drug



control conventions and the human rights conventions properly reviewed at the UNGASS 2016.

On behalf of the world's drug users and human rights defenders we look forward to hearing from you regarding this.

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