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United Nations
Human Rights Committee

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Regarding Drug Law and Human Rights Law; on the Matter of Admissibility.

Dear Sir/Madam.

I refer to our previous correspondence and in particular your letter of 21 October 2014. In this communication you inform me that a letter was sent on 5 April 2013 informing me that my complaint was inadmissible because the matter raised is outside the scope of the International Covenant on Civil and Political Rights.

I have not received this letter. Hence, I do not know whether this decision was reached by the Committee in session, a Special Rapporteur, a member of the Secretariat, or someone else.

As your letter of 21 October does not elaborate on your reasons for the verdict, it also remains unclear whether this decision was a kneejerk response motivated by ignorance and/or political expediency or if indeed it was the result of more carefully reasoned judicial analysis.

Pardon me for speaking so freely, but it must be one or the other and considering that I've been in contact with more than 300 professors of law, considering that none of them have pointed out any weaknesses in the chain of reasoning, and considering that their response has been overwhelmingly supportive of the argument as delivered to the Committee, it seems to me that the former most likely is the case.

After all, I have not seen any evidence to the contrary, and as I am led to believe that the Committee most likely has fallen victim to what Mill referred to as the "despotism of custom" I must ask that you reconsider your position and re-evaluate the question of admissibility in light of the information provided to you.

Considering the implications of your decision as well as the exceptional nature of the case, it is imperative that you do so. As it stands up to 300 million people are outside the protection of the Covenant, the legal principles upon which our system of law is built are rendered void and worthless in the area of drug policy, and the drug laws positively trump human rights law as they are allowed to continue their growing devastation unrestrained by checks and balances.

It is of utmost importance that you address this situation. In this regard the communication of 21 December 2012 elaborates on our drug policies' fundamental incompatibility with the principles of human rights law. Before you jump to conclusions, however, you should meticulously review also the information provided to you *after* 5 April 2013. This will give you an even better overview of the rights-oriented debate; it will give you an idea of the degree to which officials hitherto have shied away from their responsibilities; it will give you an overview of recent trends; and as you can see from this communication, there are many jurists who have pointed to our drug laws' incompatibility with human rights law. Twenty of them are named in the correspondence of 1 October 2014 and you have also received several law reviews in which, after careful consideration, these legal scholars conclude as I have.

As a matter of fact, *every jurist who has looked seriously into this issue* has concluded that the drug laws represent a grave violation of human rights law. This fact alone speaks volumes about the admissibility of the case. *Indeed, it is prima facie evidence that it meets all admissibility criteria*, and when it comes down to its merits our drug laws' destructive function and consequence, as well as the moral panic behind them, has also been thoroughly documented.

As you can see from the 1 October communication, the factual picture concerning our drug laws' societal function and consequence is pretty much undisputed; all the leading scholars and experts are in agreement, and so it makes no sense to claim that the Covenant has no bearing on these issues. Indeed, to anyone familiar with human rights law and the effects of drugs and drug policies, it is obvious that ICCPR articles 2 (1), 2 (3a), 2 (3b), 5 (1), 5 (2), 6 (1), 7, 9 (1), 9 (5), 14 (1), 17 (1), 17 (2), 18 (1), 18 (3), 19 (2), 19 (3), 20 (1), 20 (2), 23 (1), 26, 46 and 47 are of relevance, as they all touch upon a problematic aspect of the status quo. If this is difficult to appreciate, it is only because you are ignorant of the effects of drugs and drug policies—and if this is the case I would be happy to specify *exactly how* each and every one of these articles are applicable to the matter raised as well as provide you with more supporting documentation and/or expert testimony.

I ask that the Committee conscientiously reconsider its position in light of this information. And should you find that the principles of non-discrimination, proportionality, fairness, and justice apply to our drug policies, the October communication also specifies four questions that must be answered to the satisfaction of an impartial, independent and tribunal.

No matter how controversial the issue may be, no matter how uncomfortable prohibitionists are in reconsidering the righteousness of their crusade, no matter how much money, power, and prestige they have vested in the status quo: These questions should be addressed sooner rather than later and the members of the Committee have a certain responsibility in this regard.

Like it or not, you have already received all relevant evidence; *every assertion made* has been corroborated by experts, documented by facts, and referenced for your convenience. In this situation

your obligations are clear, and even if it might be tempting to close your eyes to current trends and the implications of the rights-oriented debate, you would do wisely to look a few years ahead.

Indeed, the rights-oriented debate cannot be delayed indefinitely.

A quick glance at US trends will tell you that the legalization argument has steadily gained ground over the last 24 years. As of today roughly 60 percent of the population is in favor of legalizing cannabis, and if these trends continue some 80 percent of the population will have joined the movement towards legalization within a couple more years. In other words, there is little doubt that the age of prohibition is nearing its end, and just as the antislavery movement conquered international society in the nineteenth century so the antiprohibition movement will conquer the world in this century.

Already several states have legalized cannabis, and as more and more people wake up to see the discrepancy between the human rights conventions and the drug control conventions for what it is, the legitimacy of the UN drug control conventions is increasingly being contested. Here you have an important role to play. Prohibitionists in UN and elsewhere see the trend towards legalization as a violation of State parties' obligations to the drug control conventions; legalization activists, on the other hand, see *current policies* as a violation of the human rights conventions, and as the tension between prohibitionists and the legalization movement grows stronger the problematic relationship between the drug control conventions and the human rights conventions will have to be resolved.

Considering the principal importance of the issue to be determined, the practical implications for billions of people, as well as the fact that the corruption of the UN legal system will become evident if you fail to comply, you will save both yourselves and the world a lot of trouble if you act on this matter now. And so, to recapitulate, what I want you to reconsider is this:

- 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 Covenant 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 Covenant 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 the Covenant 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 the Committee therefore is to secure *also to them* the rights and protections recognized in the Covenant: Considering that you undertake to strive for the advancement

and observance of the rights and protections recognized in the Covenant; considering that the principles you have a duty to promote establish certain criteria that our system of law must be in accordance with in order to be lawful; considering that you have received 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 you have received hundreds of pages of 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 detailed this factual picture for you; considering that you have been presented with four questions that prohibitionists must answer 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 confronted with the matter, both at the Norwegian and European level, has flouted his duties and denied us our right to an effective remedy; considering that some 30 million European drug users therefore are without the protection of human rights law and considering that the UN legal system is our last refuge; considering that the credibility of the UN system 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 UN Charter, the rule of law, and the Covenant you have affirmed to protect and promote is clear; considering that objectively speaking there is no doubt that the legalization activists' concerns are valid and that in order to protect the integrity of the principles at the heart of the Covenant 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 the Committee itself is part of the problem, that it is misusing its authority in an attempt to arrest the development of human rights law rather than advance it, and that in doing so you are standing shoulder to shoulder with gangsters and war profiteers against the rule of law and the interests of humanity: *All this considered, will you please reconsider your position? And if you refuse to do so, will you care to explain your reasons for maintaining that the principles of human rights law do not apply to our drug laws, how this decision was brought about, and who participated in its deliberations?*

The situation being what it is—and you having sworn to discharge your duties as members of the Human Rights Committee impartially and conscientiously—I expect you to come back to me with a thoughtful response. Whether or not you agree with my legal reasoning, therefore, I expect a principled and consistent legal analysis from your end, one that recognizes the influence of the natural rights tradition on the framers of our constitutions and conventions, and that a proper interpretation of the Covenant therefore must take into account the basic precepts of this tradition.

In this regard I look forward to hearing from you, and should you need further substantiation, I will be happy to oblige.

Yours sincerely,

Roar Mikalsen