

**Report on AIUSA's Consultation on Drug Policy and Human Rights**  
**By the Priorities Subcommittee**  
Approved June 19, 2017

**KEY CONCLUSIONS AND RECOMMENDATIONS**

1. AIUSA recognizes that the current international drug control regime, its mandating of criminal charges for many drug related behaviors, and its near complete disregard of states' human rights obligations is the source of grave human rights violations. At the same time, we found the emphasis in the IS discussion paper on criminalization v. decriminalization of personal use and possession of illegal drugs to be limiting.
2. AIUSA would like to see the development of any new AI policy framed clearly in human rights terms and focused on protecting and advancing the human rights of drug users **and** non-violent, low-level actors "caught up" in the drug trade. States must respect privacy rights. States must recognize that many people engage in low-level drug production and sales through lack of economic opportunity or coercion. AIUSA believes addressing the human rights of both groups will require significant, additional, movement-wide discussion of what Amnesty should support as its position on a global drug control policy. We are pleased that the new policy on contentious policies will guide the development of any new AI position.
3. AIUSA would like to see Amnesty forcefully articulate its opposition to the current international drug control regime, calling for:
  - Revisions to the international drug control conventions to specify related human rights obligations.
  - Recognition that drug control policy cannot derogate states' human rights obligations under other international conventions.
  - Explicit clarification that states are permitted to implement alternatives to criminal sanctions for personal drug use/possession and low-level drug activities.
4. Many AIUSA staff and member leaders with whom the Priorities Subcommittee consulted favor decriminalization or regulation as the preferred public policy for drug control. Indeed, some of those we heard from argued strongly that the rights to privacy and personal autonomy are an ample human rights basis for supporting decriminalization of personal use and possession of drugs. However, there was also a strong sense among those we consulted that the rights to privacy and personal autonomy would not be a compelling argument globally. The PSC found most arguments in favor of decriminalization to be instrumental or aimed at harm reduction and we feel that movement needs to reach clear consensus on whether as a human rights organization AI should adopt a position that extends beyond our human rights expertise.
5. AIUSA is concerned that our global movement has not yet fully discussed how support for decriminalization in the absence of effective state regulation of drugs could have potentially disastrous unintended consequences by empowering violent drug cartels and traffickers. We trust this complex issue will be rigorously studied in accordance with AI's policy on contentious policies.
6. Recognizing that significant shifts are taking place in global drug policy – in public discourse, scientific evidence, and policy implementation – we feel AI could and should support:
  - Prioritization of health-based approaches to drug control over criminal sanctions.

- States' efforts to explore and implement decriminalization and/or legal regulation of drug possession and use.
  - States' efforts to explore diversion away from the criminal justice system, for low-level, non-violent drug producers and suppliers.
7. The Priorities Subcommittee recommends that careful consideration be given to Amnesty's supporting a "one-size-fits-all" policy at this time. We heard clearly from members of AIUSA's Advocacy staff and some of our country specialists that AI must carefully consider the impacts and risks that calling for decriminalization globally might have on Amnesty's Global Transition Program, staff in our hub offices, and some of our country specific work (particularly in parts of Asia, the Middle East, Africa, and other places where criminalization is widely accepted and decriminalization could be viewed as imposing Western values).
  8. AIUSA believes that AI's policy on drug control should be targeted toward having maximum human rights impact at the 2019 United Nations General Assembly Special Session [UNGASS] which will develop a new "Political Declaration and Plan of Action" on drugs.

Members of the Priorities Subcommittee,

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## **PART ONE: Overview of the challenges addressed by the Priorities Subcommittee**

As the Priorities Subcommittee [PSC] digested the lengthy consultation paper prepared by the IS and began to discuss the issues among ourselves, we wrestled with a number of issues that may be challenging for other AI members. We summarize here the main issues, and how we resolved them.

- **Fixing drug policy or protecting human rights?** At the outset of our discussions, we found ourselves repeating a mantra that “the current drug policy has not worked.” While this may be true, this is not the driver of AI’s concern and as an opener to the conversation it invites AI to enter a more general political discussion (rather than one focused on human rights). We moved beyond this point by focusing on the human rights abuses directly or indirectly caused by the current drug control regime itself – as documented by AI but also as reported by the [Global Commission on Drug Policy](#).
- **Which drugs, what quantities, what aspect(s) of the supply chain?** These were the first questions the PSC tackled, because we imagined that if AI were to develop a position on drug policy, we needed to have clear answers to these questions. Eventually, though, we realized that the UN drug control treaties explicitly cover a wide range of activities associated with the drug supply chain, and the UN drug control regime ([UN Commission on Narcotic Drugs](#)) has categorized known drugs into several published schedules. While this discovery did not fully answer our questions about how AI might position itself, it did help us realize that whatever AI did, it would have to be related to the existing drug control framework. (For example, it would not be up to AI to differentiate between marijuana and prescribed opioids or cocaine: there is already a very complex schema to differentiate these and other drugs.) To engage in the international conversation at the 2019 UNGASS with greater ability to influence human rights impacts of drug control policy, AI would need to develop its position with the existing framework in mind.
- **Whose rights?** PSC discussions at first focused mainly on users – and the possession of drugs for personal consumption. For the sake of possible AI policy, we found it useful to focus on the rights of those who may use drugs but in the process cause no harm to others. However, as we explored the statements and arguments of other organizations concerned with human rights and international drug policy we felt that Amnesty has not yet engaged sufficiently in discussion of how we can advocate for the human rights of non-violent, low-level producers and suppliers who often have few alternatives due to poverty, and are frequently victims of coercion.
- **Not just a US concern.** As the PSC deliberated, we became aware of how natural it was to focus on drug policy as it plays out in the US, including incarceration and racial discrimination. We had to remind ourselves that if AI develops a position, it will have worldwide application. We speculated about how AI members in non-Western parts of the world might react to various potential positions but we feel we do not yet have an adequate sense of concerns in other sections.
- **Clearly identifying the human rights issue at hand.** What, in a nutshell, are the human rights concerns animating this discussion? Presumably AI is not considering a “right to consume drugs,” but if not, what exactly is the human rights problem, or the human rights angle on the problem? As succinctly as we can put it, the conclusion the PSC has come to is: *An international drug control regime that criminalizes possession of low levels of drugs for personal consumption has itself produced a wide range of serious human rights abuses, from*

*discrimination in matters of civil and political rights to deprivation of health rights and imposition of the death penalty.*

- **Defining “decriminalization”** Caveat emptor: the term is understood differently in different contexts. Moreover, states have also adopted depenalization or legalization of various aspects of the drug trade and these different approaches are not always clearly distinguished.
- **Human rights policy or Drug control policy?** The PSC found that several of the questions posed at the end of the IS consultation paper invited AI to go well beyond its human rights expertise and consider alternative drug control policy models. On the whole, we are not comfortable with AI going beyond its expertise as a human rights organization.

## **PART TWO: Timeliness and opportunity**

Current international drug control policy is based on a prohibitionist philosophy regarding production, sale, possession, and use of a wide range of substances, but tremendous shifts are taking place in the US and globally. At present, Amnesty does not have an explicit position on global drug control policy. This may limit our ability to partner with organizations advocating for human rights if an organization partners only with entities that share its preferences about drug control policy. AI’s development of either a position on specific drug control policy or an explicit human rights framework concerning drug control could make AI more effective in high-level international discussions on the future of the international drug control regime and individual states’ implementation of drug control policy.

AIUSA member leaders would like to be better informed about whether and how our current lack of a position concerning criminalization/decriminalization is a serious obstacle to our being effective in advocating for human rights as integral to drug control policy at the UN, in other international forums, and within the US and other countries. AIUSA staff and members want to see human rights considerations forcefully injected into these discussions. Our Field Organizers saw opportunities to take state-level action in the US and our member leaders saw opportunities to address long-standing issues of discrimination and mass incarceration. Our Campaigns and Program staff argued that it is always advantageous to have a clear position. Our External Affairs staff felt a position on drug control policy would further AIUSA’s being able to respond authoritatively to news and events.

In 2016, at the UNGASS on international drug control policy, Amnesty International, along with other human rights organizations, tried to ensure consideration of human rights concerns as integral to the international drug control regime. This effort largely failed. However, the 2019 UNGASS presents another opportunity for impact. If AI adopts a position or human rights framework on drug control, we will be better positioned to affect on these discussions and negotiations.

## **PART THREE: Framing AI’s human rights position**

As AI continues this discussion, we should focus on human rights standards and human rights abuses rather than particular drug policy provisions. Our principal human rights concerns include:

**The Right to Privacy and Private Life:** Viewed as the “cornerstone of respect for personal autonomy and human dignity” these rights mandate that states only interfere in an individual’s

private life if they can demonstrate that the interference is for a legitimate aim, is proportional, and necessary. AIUSA member leaders are divided over how to speak about these rights. Some viewed it as pointing directly to a need to support decriminalization of possession and use; others expressed concern that public opinion would not accept this argument as it could appear that Amnesty was defending a “right to use drugs.” The PSC discussed the rights to privacy and private life extensively, including their importance in other areas that AI works on. The PSC believes this must be further discussed within the movement.

**The Human Rights of Drug Users:** AIUSA staff and members leaders were overwhelmingly supportive of AI clearly defending the human rights of drug users and specifically of addressing the human rights violations that arise directly from the current, prohibitionist model of drug control. From member leaders and staff the PSC heard significant concern about:

- **The Rights to Life, Liberty and Security of Person, and the Right to be Free from Discrimination:** Use of the death penalty, mass incarceration, racial profiling and disproportionate drug sentencing for communities of color, the militarization of state police, and extra-judicial state-sponsored killings were human rights issues frequently addressed during our consultation. Members were especially concerned with the significant increase in the prison population worldwide, where according to the UNODC, 20% of the global prison population is imprisoned for a drug-related offense, of which 83% have been convicted only for drug possession.
- **The Right to Health:** Members expressed concern that criminal sanctions on drug use have hindered drug users’ access to treatment and increased high-risk drug use behavior, including needle sharing and rushed injections. The PSC was also concerned by studies it read detailing how punitive health laws relating to child abuse are employed to target pregnant women and girls who use drugs, such as the Tennessee “Fetal Assault Law,” which deters women from accessing vital pre-natal care and seeking treatment.

Opponents of criminalization also raise more utilitarian health concerns, including that prohibition has not, after decades, reduced drug consumption, while countries that replaced incarceration with treatment programs successfully reduced addiction and HIV/AIDS transmission.

- **The Rights of Children:** AIUSA members, especially our youth leaders, were deeply concerned about the negative effects of the current drug control regime on children. While the total number of incarcerated children is unknown, UNICEF estimates the number could be as many as one million worldwide. Additionally, the Inter-American Commission on Human Rights has reported that children are frequently recruited by armed groups involved in drug trafficking. Young girls hired as drug couriers are often raped, sexually trafficked, or forced to marry members of drug gangs. As a result of harsh counter-narcotic operations in countries like Mexico, Brazil, and Colombia, children and young people have been directly affected, leading to thousands of deaths. The PSC believes these rights violations and how to counter them require further movement-wide discussion, as AI considers developing a policy concerning drug control.

**The Human Rights of Individuals “Caught Up” in the Drug Trade:** Some member leaders raised questions about how decriminalization of drug use would address the human rights violations committed against those “caught up” in the drug trade. The PSC tried to delve into this concern more deeply. According to the Global Commission on Drug Policy’s 2016 report, individuals

engage in the lower levels of drug production, transport and sales for a variety of reasons, including economic marginalization, lack of other opportunities, and for some, coercion. Most states' criminal justice systems, however, view them as offenders and do not allow for flexibility in sentencing; some mandate minimum sentences for those caught possessing drugs and even employ the death penalty for those caught transporting drugs.

While the PSC does not have a specific recommendation for addressing these issues, we do want to argue strongly that AI as a movement should be as concerned for the rights of those "caught up" in the drug trade as for the rights of drug users when considering how to challenge the current international drug control regime.

#### **PART FOUR: Decriminalization**

AIUSA members and staff overwhelmingly agree that **criminalization** of possession, use, and participation in the lower levels of illegal drug markets has directly led to human rights abuses and additionally has prevented states from pursuing alternative policies that could improve human rights and opportunities for those abusing drugs and for the individuals caught up in the lower levels of drug production and sales. Because AIUSA believes it is important to develop a policy on drug control that defends and advances the human rights of drug users **and** low-level producers and sellers, we do not feel that we currently have sufficient research and information to support **decriminalization** of use and possession **as a global policy**. We do not feel that there has been sufficient discussion of whether AI might support decriminalization/depenalization of low-level participation in illegal drug markets, or how the rights of individuals caught up in those activities can be advanced.

AIUSA believes the movement needs additional research and further discussion by sections and structures about decriminalization/depenalization/legalization that leads to a clear theory of change, which is shared across the movement. Issues to address include:

- Are all the human rights abuses of the current system inherently bound up with the fact that drug use is mandated to be a criminal offense? Are there some rights that cannot be guaranteed without decriminalization?
- When does criminalization inherently violate the rights to privacy and a private life?
- Where rights violations are the result of criminalization, what would AI support decriminalizing? Initial discussion within AIUSA viewed decriminalization of use and possession as addressing some of the needs of drug users, but not of the equally abused low-level producers and sellers, or those communities and individuals who are victims of the violence of drug cartels or law enforcement.
- AIUSA would like more detailed information on exactly how our current lack of a policy on decriminalization constrains our efforts to effectively advocate for promoting human rights as a fundamental part of any drug control policy.
- If AI does ultimately support decriminalization as part of a human rights approach to drug control policy, AIUSA does not believe it is either necessary or desirable for AI to specify details of how drugs are categorized, amounts that constitute personal use, etc.
- Similarly, AI should be able to support states' efforts to regulate/legalize drugs, calling for such regulation not to violate human rights, without specifying the details of such regulation/legalization.

**Decriminalization in practice:** AIUSA members and staff, based on what we heard in our initial section-wide consultation, view decriminalization as a trend that is leading to greater respect for human rights and better outcomes for drug users who need treatment or other support. However, some of the countries where this has been demonstrated, for example Uruguay, quickly recognized that decriminalization was not enough and opted for legalization because law enforcement ended up arresting and detaining many people suspected of having larger than personal amounts of drugs, even when this wasn't the case. Southern Australia found that instituting a fine for personal drug possession led incarceration rates to increase because many people couldn't afford to pay their fines. In some cases, for example Portugal, decriminalization/depenalization was accompanied by significant investment in harm reduction, treatment, and prevention programs; thus the human rights improvements, especially in the right to health, were due to more than decriminalization.

Given the variety of drug control policies worldwide:

- AIUSA would like to see further research and analysis of the risks a global policy may pose for AI in Asia, the Middle East, Africa, and other places where criminalization is particularly harshly enforced, but may nonetheless be widely supported. (Members of our Advocacy staff acknowledged, for example, that the devastating and abusive drug policies in the Philippines are nonetheless quite popular because people believe they make them safer.)
- AIUSA believes it is very important that sections and structures in places where criminalization is harshly enforced are robustly engaged in the development of any global AI drug policy.
- AIUSA believes it is also important to consider the impacts and risks of calling for decriminalization on our hub offices and staff in cities such as Johannesburg and Nairobi where there are major problems with drugs.

AIUSA believes it is of the utmost importance that any global policy the movement adopts recognizes the complexities of transitioning to decriminalization/depenalization/legalization and allows states flexibility to take local needs and opportunities into account when devising alternatives to the current prohibitionist model. If further discussion of decriminalization takes place within AI, AIUSA would like to discuss the possibility of the movement taking a position similar to the Global Commission on Drug Policy: “Ensure that the international conventions are interpreted and/or revised to accommodate robust experimentation with harm reduction, decriminalization and legal regulatory policies.”

## **PART FIVE: Possible AI actions**

If we want to reduce or end the human rights violations associated with the enforcement of drug laws, AI has to be able to argue for a different approach to drug laws themselves, to the enforcement of these laws, or both. AI needs a policy to guide our participation in international discussions leading up to and including the anticipated Political Declaration and Plan of Action on drug control by the UNGASS in 2019 and to guide our activists in different countries regarding their state's approach to drug control. Ultimately, the PSC – on the basis of our consultation and extensive internal discussion – agreed that effective drug control policies need to be based on both human rights and harm reduction. However, we reached no consensus on how to apply harm reduction principles in framing an Amnesty human rights position.

The ICM resolutions advanced by AI Mexico and AI Greece both call for AI to develop a position on drug control policy that explicitly addresses the issue of criminalization/decriminalization and takes into account the policy alternatives discussed in the IS paper. Other options that could be considered in addition to, or in lieu of, an explicit drug control policy include:

- AI joining (or leading) efforts to develop a [set of human rights principles](#) to guide and interpret drug control policy, as recently called for by six advocacy organizations/think tanks.
- Focusing on the international treaties that govern international drug policy by joining the [Global Commission on Drug Policy](#) in its call for removal of the penalization of drug possession as a treaty obligation under the international drug control system (because such penalization has led directly to serious and systematic human rights violations).

The AIUSA Board and ICM delegation might also find it useful to review the [policy statement](#) adopted by Human Rights Watch: “Human Rights Watch calls on governments to decriminalize all personal use and possession of drugs. We also urge governments to adopt alternative policies concerning the drug trade to reduce the enormous human rights costs of current approaches, including by reducing the use of the criminal law to regulate drug production and distribution. And we call for reform to global drug treaties and policies that impede exploration of these alternatives.”

## **PART SIX: Process and operational concerns going forward**

The documents furnished by the IS at the beginning of our consultation were extremely helpful. Going forward, however, AIUSA recognizes a need for additional research and discussion – specifically on defending the human rights of non-violent participants in low levels of the drug trade and on how decriminalization may inadvertently empower violent drug traffickers and cartels. AIUSA also hopes to see rigorous discussion with members of our movement living and working in Asia, the Middle East, and Africa, where drug control regimes are particularly harsh and support for decriminalization is not widespread. Our policy on contentious policies will, we feel, help guide our process if AI moves forward to develop a position on these very complex issues. AIUSA looks forward to another round of consultation with sections and structures and urges that consultation on an important topic like this not be scheduled for December-January.

Assuming that the movement does proceed with developing a policy, AI must be well prepared in advance of announcing a policy to explain and defend its position. We will need unified, global messaging based on solid evidence-based research and a well-developed public relations plan that lines up allies and partners in advance. AIUSA staff particularly emphasized that it is vital that AI is clear about just how much we can invest in actually campaigning to further any policy we ultimately adopt, as distinct from adopting a policy that allows us partner with other NGOs and speak out at important international forums.

In preparation for any systemic work by AI on international drug control, AI members will need significant education: including a brief history of drug control, the international conventions related to drug control, a briefing on the human rights violations that have resulted in various states as a result of their attempts to control drugs, and an overview of the current international discussions by other organizations engaged in these debates.

We will face challenges from the public and from within our Movement: people saying, “there goes Amnesty getting involved in issues beyond its sphere of expertise.” Amnesty International began working for the “forgotten prisoners.” The “war on drugs” is unfairly and disproportionately directed against the poor and disadvantaged, who are modern-day, forgotten prisoners of a system that causes severe human rights abuses. We view the 2019 UNGASS and a new “Political Declaration and Plan of Action” on drugs an opportunity to reframe the debate. Also, to consider is that the Sustainable Development Goals – which include eliminating poverty, good health and well being, reducing inequalities – will be very difficult to achieve without addressing the effects of drugs and drug policy.

### **Appendix: The Priorities Subcommittee’s Consultation on Drug Control and Human Rights**

AIUSA began its consultation with members and staff on drug control and human rights policy too late to give feedback for the final version of the IS consultation paper on AI and Drug Control, because the Priorities Subcommittee [PSC] was completing an earlier consultation on Elections and Democracy. As a result the PSC focused on collecting feedback – both opinions and questions – that we felt could help guide our ICM delegation in addressing these issues, and could also help structure AI’s development of a policy should the ICM decide to go forward.

The PSC’s consultation process was designed to reach out as broadly as possible within the section. There was a 90-minute session on drug control and human rights policy at AIUSA’s AGM. The issues were also discussed and debated during resolutions working parties and in the voting plenary where AIUSA members voted overwhelming to support AI Mexico’s ICM resolution on developing a drug control policy. [AIUSA has since joined this resolution.]

Following the AGM the PSC initiated a round of consultations with member leaders, staff, and general members. We had six conference calls with member leaders (our Country Specialists, Area Coordinators, Legislative Coordinators, and the National Youth Action Committee members). We also sought specific input from Country Specialists with experience regarding countries with particularly harsh drug control laws and enforcement, and those that have moved towards depenalization/decriminalization/legalization.

Staff was consulted department by department – Campaigns and Programs; Development; External Affairs; Finance and Administration; Membership; and Advocacy. These calls were conducted by AIUSA’s Director of Policy, Vienna Colucci, and attended by one or more PSC member.

The PSC created an interactive webinar to educate members about drug control and human rights. Twenty members viewed the presentation live, participating in discussion at the time. A recorded version was then posted online for additional viewing.

Finally, PSC members did significant additional reading on drug control policy and extensively debated the issues among themselves in order to formulate our final report. We found the reports of the Global Commission on Drug Policy particularly informative and helpful.