



Amnesty International members only

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Circular 11: Drugs and Human Rights

AI Index: ORG 10/6311/2017
To: Sections and structures
ICM Session: Human Rights Working Party
From: Law & Policy Programme, Amnesty International, International Secretariat
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PURPOSE STATEMENT

This paper presents the main arguments contained in the study "Amnesty International and drug control: a human rights perspective", as requested by Decision 3 of the 2015 ICM. The study is intended to open a conversation about the human rights impact of drug control policies, and reflects on the necessity for Amnesty International to develop a fully-fledged policy on drugs, including an analysis of the challenges that the criminalization of drug-related conduct poses from a human rights perspective. Given that some Sections have been involved in drug-related human rights work over a period, this paper also brings together the key human rights issues that arise in this area.

DISTRIBUTION

- The paper is for section/structure delegates to the ICM.
- Delegates should talk to their section/structure management and board; law and policy focal points; advocacy leads; media officers; and campaigners.

Papers List


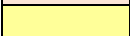
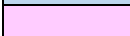
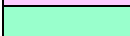
All ICM papers and background papers are available on the ICM website: password 2017_ICMRome (o = zero) [2017 ICM website](#)

Release date	Circular No.	Paper title (Circulars 1, 3 and 4 have been removed from this table, but are available on the ICM website)	Session	AI index number
Oct 2016	2	Call for internationally elected positions	N/A	ORG 50 4954 2016
June 2017	5	Section and structure voting entitlements	S26 & S27	ORG 10/6318/2017
June 2017	6	Second version resolutions, preliminary costings and draft agenda	Full ICM	ORG 10/6316/2017
June 2017	7	Governance Reform: The new Governance Model explained	Governance Reform working party	ORG 10 6247 2017
June 2017	8	Governance Reform: Frequently asked questions		ORG 10 6248 2017
June 2017	9	Development of a Policy on State Obligations on Elections	HR Pol working party	ORG 10/6310/2017
June 2017	10	Human Rights aspects of climate change		ORG 10/6302/2017
June 2017	11	Drugs and Human Rights		ORG 10/6311/2017
June 2017	12	Military Occupation as an Amnesty Policy Issue		ORG 10/6312/2017
June 2017	13	Civil disobedience and boycotts		ORG 10/6181/2017
July 2017	14	Update on implementation of 2015 ICM decisions and International Board and International Treasurer's Report	S6	TBC
July 2017	15	Secretary General's report to the ICM	S6	TBC
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July 2017	18	Nominations to internationally elected positions	S7	TBC
Post ICM papers				
Aug 2017	N/A	2017 ICM Decisions Report	N/A	TBC
Sep 2017	N/A	Report of the 2017 ICM	N/A	TBC

Background papers

Release date	Paper title	Sessions	AI index number
June 2017	Discussion framework for Governance Reform Working Parties	Governance Reform working party	ORG 10/6313/2017

Session key

	ICM plenary session		HR Policy working party
	ICM plenary: HR context		Workshop
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Background papers

Paper title	AI index number
Amnesty International and drug control: A human rights perspective (May 2017)	POL 30/6087/2017
Risk Analysis (December 2016)	POL 30/6088/2017

Internal Q&A on Drug Control and Human Rights (December 2016)

POL 30/6089/2017

Executive summary

Decision 3 of the 2015 ICM requested the development of a study exploring the impact of drug control policies on human rights. In December 2016, the Law and Policy Programme presented the study "Amnesty International and drug control: A human rights perspective" with the intention to open a conversation about the subject and reflect on the necessity to develop a specific policy on drug control and human rights that supplements those aspects of drug control that are addressed by our existing policies. Based on received feedback, the study has been revised and circulated in May 2017.

States have an obligation to protect individuals from the potential harmful effects of drugs. Nonetheless, Amnesty International, unlike some of the other human rights organizations, remains neutral on whether and to what extent States may utilize prohibition and criminalization for this purpose. It is clear, however, that such methods have led to numerous violations of rights enshrined in international human rights law, including the rights to health, liberty and private life. As AI has documented over the years in its work on issues such as the death penalty, policing, conditions of detention and economic, social and cultural rights, human rights abuses are taking place across the world as a direct consequence of the implementation of drug control policies and counter-narcotic operations.

While our existing policies allow us to criticise human rights violations and abuses that flow from the manner in which punitive drug control policies are implemented, including prohibition and criminalization, Amnesty International is currently not able to address the underlying questions posed by these policies and issue specific recommendations that go to the very roots of the identified problems.

This policy would allow AI to contribute to end laws and practices that have for years been used to repress and oppress the most disadvantaged. Moreover, it would provide additional tools to the organization to improve the work in other issues relevant to the Strategic Goals, including in longstanding areas of our work such as economic, social and cultural rights, discrimination, privacy, policing, criminal justice and the death penalty.

It is therefore recommended to adopt a policy on drug control and human rights supplementing those aspects that are addressed by our existing policies.

Introduction

Amnesty International and other civil society organizations have for decades documented a wide range of human rights abuses that arise from and are facilitated by the implementation of drug control policies worldwide. However, pointing to the many abuses taking place at a national level without having a comprehensive analysis of the international drug control regime and its human rights implications has, at times, been shown to be insufficient, particularly when domestic laws and policies of so many countries are developed as a consequence of the UN Drug Conventions.

States have an obligation to protect individuals from the potential harmful effects of drugs. However, the heavy reliance on criminal law and repressive policies has not resulted in a decrease of drug use over the years. Instead, its associated risks and harms have risen and human rights violations increased. Strict enforcement of prohibition has often resulted in greater harms than drug use itself.

The international drug control regime is currently at a crossroads, at a time when drug control policies are being increasingly challenged. Human rights law is a critical lens through which to scrutinise the impacts of drug laws and policies, and the international regime that sustains them. The study "Amnesty International and drug control: A human rights perspective" describes several human rights violations and discusses the obligations of States under international human rights law to respond to and address such issues. The study then analyses the international drug control system through a human rights perspective and discusses its implications for the rights to health, liberty, and privacy, among others. It also provides analysis of different existing regulatory models in place as well as the position of international organizations on decriminalizing drug-related conduct.

The impacts of drug control policies on human rights: how Amnesty International's existing policies apply to state responses to drug-related issues

Amnesty International has recorded hundreds of executions carried out each year for drug-related offences, despite the fact that such offences do not meet the threshold of the "most serious crimes" to which the use of the death penalty must be restricted under international law. Currently, drug-related offences are still punished by death in more than 30 countries and some offences are mandatorily punished by death in several countries. Nearly 40% of all executions documented by Amnesty International in 2015 were for drug-related offences.

Additionally, several countries have relied on the armed forces to undertake tasks relating to public safety or have adopted military techniques for drug control, leading to human rights violations such as arbitrary detentions, torture, enforced disappearances and extrajudicial executions¹ in some cases amounting to crimes against humanity. Counter-narcotic operations have favoured the use of force by law enforcement officials based on the premise that national security or public order is at stake.

States' powers to detain people have also been expanded globally in an effort to curb drug trafficking. Fair trial guarantees, including the right to presumption of innocence, are often weakened for alleged drug offenders. In some countries, military tribunals have competence over drug-related offences. Mandatory pre-trial detention and mandatory minimum sentencing are frequently enforced for drug-related offences.² Prison conditions globally have been reported to be dire, and have worsened due to the over-incarceration of drug offenders.

Drug control policies have further exacerbated the risks and harms associated with drug use, while

¹ The Philippines is a case in point

² And death sentences for drug offences in countries such as Malaysia and Indonesia have been a persistent and major human rights issue.

harm reduction programmes remain limited or even prohibited. Often, people who use drugs are deterred from seeking medical assistance for fear of facing criminal sanctions, even in situations of overdose and risks to life, or are denied access to other medical treatments on the grounds of their prior or current drug use. Restrictive regulations have also obstructed access to controlled substances for medical purposes, including for pain relief, resulting in further harm and suffering for millions of patients.

Discriminatory practices against people who use drugs have also been enacted under current drug control policies, including in the fields of health, housing, education and employment. Prohibition has promoted a stigmatized approach towards people who use drugs, who are usually considered to be ill or criminals. Access to medical care, in particular treatment for HIV and hepatitis C, can be severely restricted due to unjustified restrictions or misconceptions about drugs. Often, people who use or who are suspected of using drugs are arbitrarily detained, mandatorily confined in drug-detention facilities and forcibly subjected to rehabilitation. Frequently, people who use drugs are sent to such centres even when they may not need drug treatment, which often takes the form of punishment rather than of therapy. Several instances of torture and other ill-treatment have been documented in such facilities.

Overall, drug laws and policies have produced profoundly unequal outcomes. Racial and ethnic minorities, as well as the poorest and most marginalised sectors of society, have been disproportionately impacted by drug laws and discriminated against as a result. Women have been disproportionately affected and are facing increased risks as their participation in the drug trade is on the rise worldwide, taking more visible and risky positions in criminal organizations. Globally, women are imprisoned for drug-related offences more than for any other crime, and the number of women in detention is increasing at an alarming rate due to the more visible and risky positions women often take in criminal organizations, whereas those profiting from the illicit trade, usually men, are rarely detained. Women who use drugs are at particular risk of criminalization if they become pregnant. There are also other specific impacts that criminalisation approaches have had on women, including the loss of custody of children, and second-order effects of the drug-related criminalization of men, such as the experience by women of poverty and eviction when male family members are imprisoned or killed.

Young people, including children and adolescents, have faced particular risks due to their engagement at different stages of the drugs supply chain. Indigenous Peoples have seen their right to traditional use and cultivation of drugs for cultural, spiritual or medicinal purposes impinged as part of the implementation of the UN Drug Conventions.

However, beyond some particular concerns that AI has been able to raise in specific contexts, the organization has been unable to address the underlying questions posed by criminalization and issue specific recommendations that go to the very roots of the identified problems to directly address the structural conditions that allow for such violations to arise. Under our current policies, for example, AI cannot comment on the mass incarceration, often from minority groups, stemming from minor and non-violent drug offences or the disproportionate impact of drug law enforcement and counter-narcotic operations that have a discriminatory effect on marginalized communities. Nor can it comment on the State's failure to provide treatment to people with drug dependence due to their fear of criminal prosecution or the increased harms to health driven by illicit markets.

Our existing recommendations currently imply that prohibitionist approaches to drug control are legitimate, even if their effective implementation is questionable in a context of criminalization. This may be seen as reinforcing such approaches, at a time when some civil society groups are challenging

prohibition and promoting alternative models of regulation"?

The international drug control system through a human rights perspective

Current drug policies worldwide are based on an international legal framework embedded in three different UN Conventions to which almost all States are party. Requirements set out in these conventions were then implemented by many States in their respective national frameworks primarily using a criminal justice approach.

The international drug control system relies on the underlying assumption that drugs and drug addiction should be prevented and eradicated for the protection of humankind. The requirement to adopt domestic legislation to enforce the provisions contained in the UN Drug Conventions has in many cases led to draconian national laws and highly invasive mechanisms of control given that human rights safeguards are absent from the Conventions. So far, there has been little or no political will to introduce the necessary safeguards to ensure that drug laws, policies and its enforcement comply with State's obligations under international human rights law.

The drug policy spectrum: existing regulatory models for drug control

Various drug policy models that entail different degrees of interaction between health and law enforcement are already being implemented around the world, from those applying strict measures to enforce prohibition or incorporating a health perspective into a criminal justice approach, to decriminalization of non-violent drug-related conduct and legal regulation of drug markets.

Strict measures to enforce prohibition are based on the presumption that a criminal justice approach that imposes harsh punishments is an effective deterrent for drug use and other drug-related activities by limiting the availability and driving up prices, thus suppressing the demand and significantly reducing the use of drugs. Other countries are incorporating a health perspective in addition to criminal justice efforts to reduce the most harmful effects of illicit markets, expanding harm reduction services and increasing prevention and treatment programmes.

Several countries are reorienting³ drug policies towards a health-based approach away from the criminal justice system, mainly through the decriminalization of use and possession of some or all drugs. These policies are aimed at reducing the harms caused by punitive drug policies and diminishing the budgetary burdens of drug control enforcement. Decriminalization has also been applied to other less serious drug offences, including cultivation, small scale-supply or drug sharing.

A few countries and jurisdictions around the world have moved towards the establishment of legally regulated markets, based on the premise of bringing illicit drug markets under the control of the State through strict enforcement measures. Legally regulated markets are established by a set of rules to control certain types of products and conducts, while sanctions for activities that take place beyond the established parameters still remain in place, such as selling drugs to children.

Human rights and the debate on decriminalization of drug-related conduct

The criminalization of drug-related conduct, in particular the use and possession for personal use,

³ These policy orientations present various complex outcomes. Some have not necessarily been combined with measures to deal with those already impacted by the criminal laws, eg. early release from prison, pardons, wiping criminal records), and have sometimes been designed in a way that benefits more privileged groups while continuing to penalize more marginalized groups. Yet in some cases marginalized groups have benefited from these policies. For example, Portugal's move to decriminalize all drugs appears to have had a positive impact on poor people and people living with HIV, granting them more access to health, housing and employment services. In Ecuador, a process to reform drug laws prohibited in law the criminalization of the use of drugs and included a pardon for women couriers that released more than 1,500 women from prison (although unfortunately in 2015 there was a counter-reform that again revamped criminalization).

raises several questions when analyzed from a human rights perspective. However, Amnesty International has not been able so far to assess and address multiple human rights violations arising in the context of the international drug control regime, mainly due to the lack of a clear position around the criminalization of drug-related conduct.

The right to health

Studies by academics and different UN agencies, including UNODC, WHO and UNAIDS, have shown how the heavy reliance on criminal laws and repressive policies has not led to a decrease in the use of drugs and, in contrast, has hindered the development of appropriate, evidence-based policies for the prevention and treatment of drug dependence. These studies have shown that the criminalization of drug-related conduct encourages and perpetuates high-risk drug use behaviours and leads to more harmful practices, including rushed consumption and sharing injection or other equipment. The prohibition of drugs has also been linked with the use of more potent and risky substances.

Furthermore, repressive drug laws and policies have contributed to the transmission of blood-borne viruses, including HIV and hepatitis C, by encouraging unsafe behaviours such as needle sharing. They have also deterred people from accessing health care, and restricted the availability of harm reduction and other health services that are seen in many countries as an encouragement for drug use.

The UN Special Rapporteur on the right to health has concluded that the criminalization of drug use and possession is a disproportionate measure that impedes the achievement of the right to health and has explicitly called for less restrictive approaches to drug control, including decriminalization and legal regulation. Similarly, the UN Committee on Economic, Social and Cultural Rights has recommended States reconsider the criminalization of people who use drugs and instead adopt a right-to-health approach to drug use with harm reduction strategies.

The right to liberty

All three UN Drug Conventions require States to criminalize all drug-related conduct other than for medical and scientific use, and allow for States to impose more strict or severe measures of control than those set forth in the treaties if deemed necessary.

The right to liberty imposes an obligation on States to restrict measures of deprivation of liberty only to the extent that is necessary and proportionate to a legitimate aim. The criminal justice system should be used in a subsidiary manner once the remaining legal and procedural options have proven not to work, and it is only to be used as a last resort.

International human rights mechanisms, including the UN Human Rights Committee and the Special Rapporteur on torture, have expressed their concern over the unnecessary and disproportionate use of the criminal justice system to deal with drug-related conduct.

The right to privacy and private life

The characterization in the UN Drug Conventions of drugs as an 'evil' that threatens the moral and social fabric of societies has imposed a predetermined model of life that impinges on the right to privacy and private life of those who autonomously decide to use drugs.

Human rights mechanisms have considered that the individual decision to engage in a particular conduct, even if considered immoral by a majority, is protected by the right to private life, and have called on States to refrain from imposing any kind of model or moral standard upon the individual. International human rights mechanisms are also increasingly recognizing that morality alone, in the

absence of harm to others, no longer qualifies as a legitimate purpose for criminalizing particular conduct.

The rights of children

While the Convention on the Rights of the Child imposes on States an obligation to take all appropriate measures to protect children from the illicit use of drugs and to prevent the use of children in the illicit production and trafficking of such substances, many abuses of the rights of children have been documented in the context of prohibition.

Evidence suggests that the criminalization of use and possession of drugs does not deter children and adolescents from using drugs nor does it significantly restrict their access to illicit substances. The impact on the right to health of children and young people is increased due to the unknown quality of drugs and riskier methods that they rely upon, and the lack of accurate information about drugs and safer use of drugs. Children have also been impacted by the incarceration of their parents for drug-related offenses.

The Special Rapporteur on the right to health has stressed the importance of States providing prevention, harm reduction and dependence treatment services specifically tailored to the needs of children and adolescents and has recommended States to seek alternatives to punitive or repressive drug control policies, including decriminalization and legal regulation, as a means to protect adolescents' right to health.

State's obligations and armed violence or transnational organized crime

A prohibitionist approach towards drugs has led to the creation of an unregulated illegal market dominated by criminal groups. Illicit trade in drugs has become one of the biggest sources of revenue for organized crime in which armed violence and intimidation are the primary forms of control over markets. Such factors have directly contributed to increasing levels of violence and corruption.

Organized criminal groups have expanded into other types of crimes and have targeted State institutions and other groups, such as the media and human rights defenders, in order to increase their control over territory and routes. Organized criminal groups have weakened and penetrated State institutions blurring the distinction between the State and criminality.

Several studies have suggested that shifts away from the current prohibitionist approach could contribute to a reduction of violence and corruption.

Risk analysis

A risk analysis elaborated by the IS considered the possible risks of adopting or not a policy on drug control and human rights, and proposes specific mitigating actions that could be taken in each situation. The document is being reviewed after consultations with Sections, and will be circulated before the ICM.

There are internal and external risks associated with adopting a policy. Firstly, there is a risk of divisions within the movement. Disagreement over the substance of the policy could also lead to adopting a compromise position that undercuts policy developments achieved by other civil society organizations and international mechanisms. Externally, there is a risk of increasing a perception of AI as being "too liberal" and/or "drifting from its original mission", thereby damaging our reputation. Negative reactions from members, potential supporters, the media, donors and others could end up in membership and/or income loss.

The risks associated with not adopting a policy are related to the inability of AI to have a comprehensive analysis of the root causes of human rights violations, thereby losing opportunities to better address and keep pace with the evolution of long-standing areas of work, as well as to effectively influence a global debate with broad implications for human rights. The lack of a policy could also undermine AI's leadership role within the human rights movement, and damage our reputation if we are seen as remaining silent so as to avoid a complex or controversial issue. Also, it could reduce our appeal to younger generations and to minority and marginalized groups, leading to the loss of potential partnerships, failure to attract new supporters and weakening of our relations with partner organizations.

Conclusions

The current approach to drugs based on prohibition and criminalization raises several questions from a human rights perspective, and the many violations documented as a direct consequence of the implementation of drug control policies cut across a wide variety of concerns that are reflected in Amnesty International's Strategic Goals. Developing a policy on drug control and human rights would allow the organization to make appropriate recommendations in the context of our existing work that is related to drug control. Developing such a policy will not create new areas of work for the organisation. Rather, it aims to ensure that our existing work related to economic, social and cultural rights, discrimination, privacy, policing, criminal justice and the death penalty, is able to address root causes of violations and avoids appearing to supporting one model of drug control (criminal prohibition) over others.