

# The rights of people who use drugs, or the right to use drugs

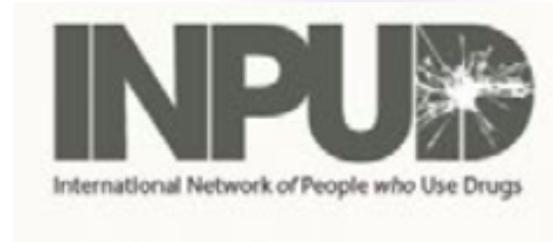
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AUGUST 14, 2018

# Topics for today

- ▶ Positions of human rights organizations
- ▶ Rights vs freedoms
- ▶ The limits of law and the concept of 'harm'
- ▶ Discrimination
- ▶ Human rights analysis – on the example of CEDAW

# INPUD



- ▶ Right to make choices about drugs
- ▶ Prohibition leads to 'crime to exists': "Everyone has the right to life, liberty and security of person" (*Universal Declaration of Human Rights*), but it's illegal to be a 'drug user'
- ▶ "We think that the war on drugs has reached a point that it fundamentally interferes with people's rights to make choices about what drugs they choose to use and that for us is a violation of people's rights to privacy".
- ▶ Interview with Eliot Albers, [https://www.vice.com/en\\_us/article/4w7w79/is-the-choice-to-use-drugs-a-human-right](https://www.vice.com/en_us/article/4w7w79/is-the-choice-to-use-drugs-a-human-right)

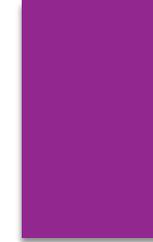
# Human Rights Watch



HUMAN  
RIGHTS  
WATCH

- ▶ Criminalization of the use of drugs:
  - ▶ Undermining the rights to health and privacy
  - ▶ Serving as an excuse for grossly disproportionate punishment, torture, and extrajudicial killings
  - ▶ Fueling the operations of organized criminal groups that commit abuses, corrupt authorities, and undermine the rule of law
- ▶ Calls to decriminalize drugs and explore alternative policies
- ▶ <https://www.hrw.org/tag/drugs-and-human-rights>

# Amnesty International



- ▶ Position on drug policy only in 2018
- ▶ Death penalty (drug-related offences do not meet the threshold of the “most serious crimes”)
- ▶ Compulsory/coerced drug treatment
- ▶ *Decriminalize use, possession and cultivation of drugs*
- ▶ *Decriminalize other minor, non-violent offences*

# American Civil Liberties Union

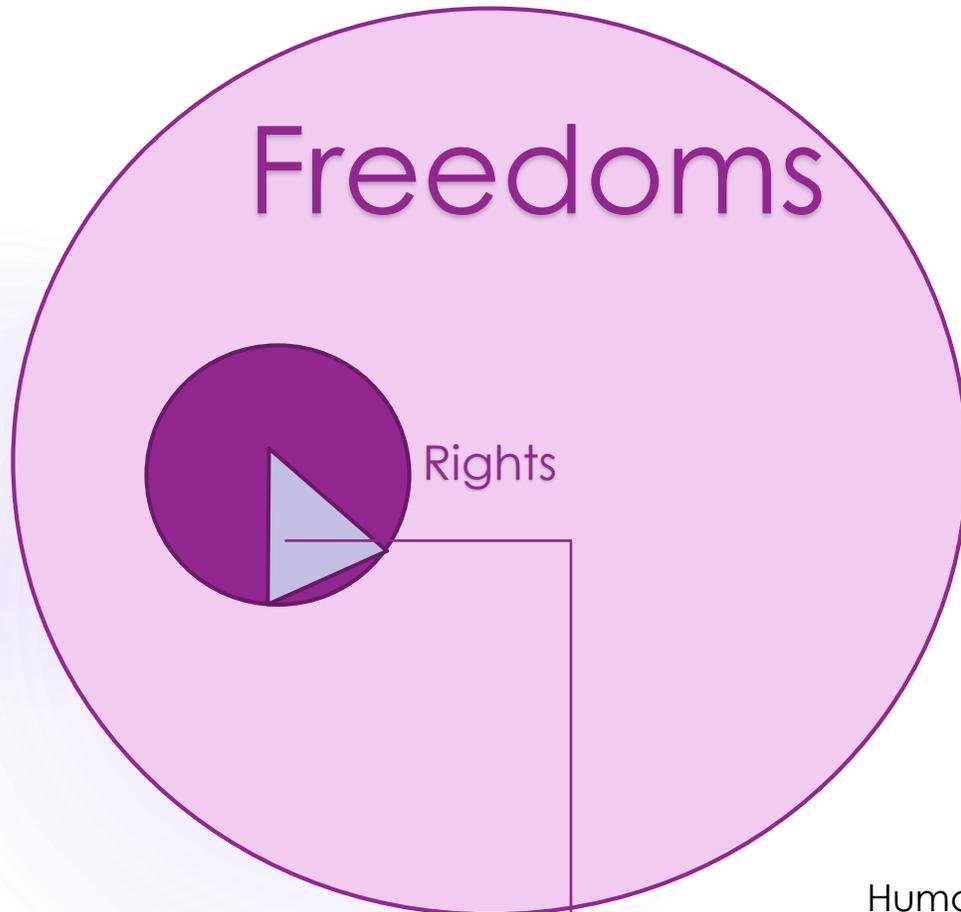


- ▶ “This is Your Bill of Rights, On Drugs”
- ▶ ‘Drug exception’ to the Constitution
  - ▶ Freedom from Unreasonable Search and Seizure ([Fourth Amendment](#), which limits the power of the government to enter and search one's private property)
  - ▶ Freedom of Speech
  - ▶ Freedom of Religion (peyote, ayuhausca, marijuana)
  - ▶ Right to Vote

▶ <https://www.aclu.org/blog/national-security/your-bill-rightson-drugs>

*Is there is a right to use drugs?*

# Rights versus Freedoms



- ▶ Freedom (or *liberty rights*) is absence of constraints and limitations
- ▶ Freedom has not increased but decreased with the passing of time
- ▶ Right as a common privilege given to its citizens by government (state is a debtor of all rights)
- ▶ Right is more related to democracy and constitution and follows same timeline and history

Human behaviors with special protections: expressing oneself, believing (or not believing) in God, gathering together, having privacy, living with one's family, etc.- called 'freedoms'

# The Limits of Law

- ▶ Means-ends (practical limits):
  - ▶ *Does the law reach its goal?*
  - ▶ *Is it counterproductive?*
  - ▶ *What are the costs? Does the law divert resources from other social needs?*
  - ▶ Means-ends limits can justify evil regimes just as legitimate ones
- ▶ Principled limits
  - ▶ 'Harm principles' (John Stuart Mill)
  - ▶ Interference with liberty of action, especially by the use of power or coercion, required a special sort of justification: that it was needed to prevent *harm* to others
  - ▶ And no other moral ground is enough

# Harm Principle

- ▶ *The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can rightfully be exercised over any member of a civilised community against his will is to prevent harm to others. His own good, whether physical or moral, is not a sufficient warrant.*

(Mill 1993, ch. 1, para 9)



# Harm Principle

- ▶ Yet no consensus

## Liberal Accounts of potentially legitimating grounds for legal coercion

Legitimate basis for coercion?	Harm to Others?	Offence to Others?	Harm to Self?	Legal Moralism?
Mill	Yes	No	No	No
Feinberg	Yes	Yes	No	No
Hart	Yes	Yes, sometimes	Yes, sometimes	No
Raz	Yes	No <sup>[4]</sup>	Yes, sometimes	No

# Justification of the War on Drugs

- ▶ President Richard Nixon linked drug use to crime:
  - ▶ Drug use is no harmless personal choice or a function of capitalism: it is pure danger for both the user and the society in which he lives
  - ▶ Drug use as less a threat to the user and more a risk to innocent others who, because of drug use, would be put in harm's way
  - ▶ A nation which allowed drug use was the diametric opposite of a nation where citizens lived free from violence and fear
- ▶ *Drug use not as an act of personal choice, but as a dangerous action that impinged upon the rights of non-users*



*“I believe in civil rights, but the first civil right of every American is to be free from violence, and we are going to have an administration that restores that right in the U.S. of America” (R. Nixon, 1968)*

# Personal Autonomy and Drug Laws

- ▶ Personal autonomy is of great moral weight
- ▶ Person acts autonomously when she acts in accordance with her values
- ▶ "Hard paternalism" - laws that interfere with the voluntary action of mentally competent adults for their own good
- ▶ Addiction – person acts on her desire to use drugs even when it conflicts with her values
- ▶ So should not the state protect personal autonomy through drug prohibition?

# Summary of the Endless Debate

- ▶ Drug use (or nonuse) may be a choice, a right, or a function of a free-market economy
- ▶ There is no consensus on it among human rights defenders
- ▶ The only reason to limit the freedom to use drugs can be to prevent 'harm for others'
- ▶ When people who use drugs are seen as 'ill', the idea of freedom of choice gets lost

# Consensus on Discrimination

- ▶ **“All human beings are born free and equal in dignity and rights”**  
(Universal Declaration of Human Rights)
- ▶ *“All persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled without any discrimination to equal protection of the law”* (Declaration of the High-Level Meeting on the Rule of Law, para. 2)
- ▶ Limitation in rights or non-protection from the violation of rights based solely on the fact of drug use or drug dependence is discrimination

# NGO Guide to CEDAW



- ▶ **Article 1: Definition of discrimination:** Are there any laws or policies that exclude women who use drugs from healthcare, social security or welfare benefits? Is there any law that can protect women who use drugs against disclosure of status of drug use or dependence status?
- ▶ **Article 4: Temporary special measures to achieve equality:** Are there laws or policies recognising the specific needs of women who use drugs, particularly in instances of pregnancies or motherhood? Are there government policies or schemes to ensure that women who use drugs are able to access social welfare schemes on a priority basis?

# NGO Guide to CEDAW



- ▶ **Article 5: Sex role stereotyping and prejudice:** Do public education campaigns on prevention of drug use stigmatise or dehumanise women who use drugs—for example, suggesting that people who use drugs are dangerous and that women who use drugs are ‘bad’ mothers?
- ▶ **Article 9: Nationality:** Are there legal, policy or administrative barriers that women who use drugs face in claiming their citizenship rights? For example, does having a criminal record for drug offences bar women from voting or preclude them from applying for citizenship?

# NGO Guide to CEDAW



- ▶ **Article 10: Education:** Are there legal, policy or administrative barriers that women who use drugs face in accessing education in school or in university?
- ▶ **Article 11: Employment:** Are there laws, policies or administrative practices that allow mandatory or random testing for drug use at the workplace? What is the impact of such laws, policies or practices on women who use drugs, including those who are on opiate substitution treatment (OST)?
- ▶ **Article 12:** Healthcare and Family Planning

# Drug Use and Child Custody

- ▶ EHRA, CHALN and LUNEST study in Estonia (2017)
- ▶ Drug use, drug dependence or drug treatment is used as key reason to limit or withdraw parental rights
- ▶ Complexity of interplay between social factors
- ▶ Rhetoric of child removal as a motivation to improve mother's health (start drug treatment)
- ▶ Rights of a woman versus rights of a child