

# DECRIMINALISATION

Building a future without punishment for people who use drugs



## INTRODUCTION

Over the past 60 years, governments have embarked on a global 'war on drugs' which has entirely failed to achieve its stated goal of a 'drug-free world'. Instead, these policies have only succeeded in **stimulating highly coercive state responses** that prioritise surveillance, punishment and criminalisation while increasing harms.

It is estimated that **one-fifth of the world's prison population is deprived of liberty for drug 'offences'**, while drug law enforcement leads to millions of stops and arrests annually.

**This punitive focus is costly and harmful** - for those criminalised, their families, and their communities.

Criminalisation is a driver of marginalisation, trauma and risks. **It disproportionately harms people already surviving multiple forms of oppression:** economic deprivation, patriarchal violence, racism, ableism, serophobia, just to name a few.

Moreover, **drug law enforcement is often weaponised** by governments as a means for social control, providing cover for repression against political dissidents, and others deemed 'undesirable' or 'expendable'.

Punitive responses also **syphon resources away from what our communities really need** and rightfully deserve: access to adequate healthcare, nourishing food, stable housing, sustainable livelihoods and caring environments.

# AIMING FOR 'THE GOLD STANDARD' OF DECRIMINALISATION

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A key avenue to reduce the violence of criminalisation on our communities is through decriminalisation.

In the context of drug policy and, in particular, people who use drugs, **decriminalisation refers to the removal of criminal penalties for drug use and related activities** (such as the possession of substances for one's own use, cultivation for personal use, and the possession of drug use materials, to name a few).

This briefing focuses on activities related to drug use. However, people who use drugs are also harmed by the criminalisation of survival economies (such as low-level drug supply or sex work), petty offences, HIV exposure, migration, gender identity and sexual orientation, just to name a few. Drug policy reform and harm reduction advocates must also engage in broader conversations on the harmful impacts of policing, criminalisation and incarceration in our communities.

IDPC's 'gold standard' of decriminalisation involves several key components:

1. The **removal of all sanctions** (whether criminal, civil or administrative) for drug use and related activities, and for all substances.

2. The promotion of **voluntary access** to evidence-based treatment, harm reduction and/or other relevant health and social services for people who use drugs.

3. The **meaningful involvement** of people who use drugs in each step of the development, implementation and evaluation of decriminalisation.

4. The **expungement of, and reparations for**, all previous convictions and criminal sanctions for the now-decriminalised acts.

5. Comprehensive **training, sensitisation and awareness raising** among relevant public authorities to ensure the effective implementation and adherence to the new decriminalisation policy.

6. The **redirection of resources** from criminal justice and law enforcement responses towards health- and rights-based services and programmes.

Decriminalisation is not an end-goal. Rather, it is a **means toward ensuring justice and protecting human rights**; a fundamental baseline upon which we can build non-stigmatising and health-orientated responses to drugs.

By removing sanctions related to drug use, decriminalisation creates an **enabling environment** to develop and foster access to systems of care and support. In this way, decriminalisation is an **essential part of the harm reduction response**.



## NORMATIVE BASIS FOR DECRIMINALISATION

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Despite their prohibitionist framework, the three international drug control conventions offer flexibility for every government to provide ‘an alternative to conviction or punishment’. Decriminalisation is one such alternative.

As the catastrophic impacts of the ‘war on drugs’ have been brought to the fore by decades of advocacy, community mobilisation and academic research, a growing consensus is forming around the urgent need to decriminalise drug use and related activities.

In 2018, the United Nations, through its [Common Position on drug policy](#), committed to promote alternatives to punishment, including the decriminalisation of drug possession for personal use.

Similarly, [UNAIDS’ Global AIDS Strategy 2021-2026](#) makes a bold and important commitment to ‘remov[e] punitive and discriminatory laws and policies, including laws that criminalise sex work, drug use or possession for personal use and consensual same-sex sexual relations, or that criminalise HIV exposure, nondisclosure or transmission.’

## UNDERSTANDING THE ELEMENTS OF DECRIMINALISATION

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A [growing number of jurisdictions](#) around the world have developed different models of decriminalisation. However, the ‘gold standard’ of decriminalisation is yet to be fully realised.

In advocating for decriminalisation, we can learn

from existing experiences, their merits and limitations.

To better understand existing and possible models, we can consider **key policy aspects, such as the following:**

## Legal basis

Depending on whether and how decriminalisation is formally included in the law, decriminalisation can be:

- **De facto:** Legal systems where criminalisation remains codified in law, but not implemented in practice.

**Note:** These models can pose challenges in terms of community involvement, legal uncertainty and police abuse.

- **De jure:** Decriminalisation through formal changes in the domestic legal order, either **by statute** (i.e., laws passed by parliament) or via a binding **court decision**.

**Note:** Depending on a country's legal order and institutional practices, court decisions may be partially or totally ignored by the state's legal system, which risks the effective implementation of decriminalisation.

## Activities

Existing decriminalisation models often include the removal of sanctions for:

- Use of drugs
- Possession of drugs for personal use
- Possession of drug use equipment, such as needles and syringes
- Cultivation of drugs for personal use
- Purchase of drugs for personal use
- Low-level sharing/gifting of drugs

Some jurisdictions adopt forms of decriminalisation that retain criminal penalties depending on where these activities take place. Approaches that continue to criminalise activities that take place in the public space disproportionately affect street-based people, increasing vulnerability and inequalities.



## Scope

Existing models take a few different, often concurrent, routes:

- **Case-by-case considerations:** Criminal justice system operators can take into account the specific circumstances of a situation to guide their response.

**Example:** Police intervention only takes place when there is evidence of harmful large-scale illegal commercial activity.

- **Threshold quantities:** Predetermined amounts of substances can serve as standards for criminal legal system operators (ex. police officers, prosecutors, judges) to consider whether an activity falls under the scope of decriminalisation.

**Note:** Where utilised, threshold quantities should always be considered an indicator among many others and developed in close collaboration with drug-using communities.

The intervention of law enforcement agencies in the lives of people who use drugs often leads to harm. Unfortunately, many jurisdictions have adopted forms of decriminalisation that retain ample powers to intervene and, in some cases, impose administrative sanctions (such as the confiscation of the substances, imposition of fines, coerced treatment). These responses perpetuate a counterproductive culture of punishment that prioritises retribution over the health and rights of people who use drugs. They may also lead to 'net-widening' where, contrary to the goals of decriminalisation, more people end up in contact with law enforcement agencies than before. As such, these policy options must be challenged.

## Substances

- **All substances**
- **Single-substances** (whether it be cannabis, coca leaf, psychedelic mushrooms).  
**Note:** The decriminalisation of specific substances has no basis in evidence and risks creating hierarchies of drug use that promote stigma (such as arbitrary distinctions between 'hard drugs' and 'soft drugs'). Decriminalisation should not be motivated by perceived, and often unfounded, levels of risk associated with specific drugs, but rather a commitment to rights-affirming and health-oriented responses to drug use overall.

## Monitoring and evaluation

Even before the system of decriminalisation is in place, there should be clarity on its intended goals and how progress towards them will be assessed. The meaningful involvement of communities who are specifically and disproportionately affected by criminalisation in these processes is crucial.

Key metrics to consider could be:

- **Funding for and voluntary access to health and social programmes.**
- **Prevalence of HIV, hepatitis and other communicable diseases.**
- **Drug-related deaths.**
- **Incarceration rates.**
- **Contact with the police and instances of police abuse.**
- **Incidence of human rights violations.**

# MOBILISING FOR DECRIMINALISATION

Successfully mobilising and advocating for the 'gold standard' of decriminalisation calls for centring the voices of people targeted by criminalisation, working with partners and allies, and developing clear messages that speak to your audience.

## Centring the voices of affected communities

People who use drugs and other communities directly targeted by drug policing and criminalisation (such as racialised communities, sex workers, street-based people, etc.) have a wealth of expertise that enriches our collective mobilisation. Their knowledge and lived experiences, and that of their peers, kin and communities should be at the forefront of efforts towards decriminalisation.

## Building partnerships & alliances

Building a common front against criminalisation requires us to consider what other groups are likely to join our movement, as well as who has the ability to influence key audiences. Networks

of marginalised groups also targeted by discrimination and criminalisation could be 'natural' allies (such as sex workers, LGBTQI+ people, migrants, racialised communities, controlled medicines patients). Civil society organisations advocating on related issues, such as human rights, women's rights and harm reduction organisations, are also likely to stand in solidarity. Moreover, faith communities, trade unions, academia, teachers, judges, the media, as well as medical and other professional associations should all be acutely aware of the harms caused by criminalisation and may be willing to build connections.

## Collaborative relationships

Organising and growing people power to demand and effect change is a long-term commitment. Meet regularly with your allies and potential collaborators. Take the time to discuss with them the impacts of existing drug policies and develop common understandings on how best to address them. Be present in their struggles too, and cultivate caring, sustainable and mutually-enriching relationships.



As a grassroots-centred initiative to support harm reduction and build sustainable alternatives to the 'war on drugs', you can leverage the **Support. Don't Punish campaign** to organise workshops, trainings and other activities that promote change and connect you with a global community of like-minded campaigners. Join the conversation online using the hashtag **#SupportDontPunish**.

## RESOURCES

### **IDPC decriminalisation portal**

Resources on decriminalisation including an E-course and Guide.

### **Support. Don't Punish website**

A global campaign harnessing people power to build sustainable alternatives to the 'war on drugs'.

### **Drug decriminalisation: Progress or political red herring?**

A must-read report by the International Network of People who Use Drugs (INPUD).

### **Drug decriminalisation across the world**

Map-based web-tool inventorying existing models of decriminalisation worldwide.

### **How to decriminalize drugs: the design features of a non-criminal response to the personal possession of drugs**

Enlightening article published by the International Journal of Drug Policy (IJDP).

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