

THE UN CHIEF EXECUTIVES BOARD UNANIMOUSLY ENDORSES DECRIMINALISATION OF PEOPLE WHO USE DRUGS.

The Chief Executives Board of the UN, representing 31 UN agencies, has adopted a common position on drug policy that endorses decriminalisation of possession and use. This comes just days before a key meeting of the Commission on Narcotic Drugs in Vienna, which will review, the UN's 10-year Global Drug Strategy, and plan for the next one.

KEY POINTS.

A new position statement on drug policy from the the United Nations Chief Executives Board (CEB), chaired by the UN Secretary General and representing 31 UN agencies, has expressed strong and unanimous support for the decriminalisation of possession and use of drugs. The statement calls on member states to “promote alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use,”¹

While a number of UN agencies have made similar calls in the past, this CEB statement means it is now the common position for the entire UN family of agencies. Crucially, the UN Office on Drugs and Crime - the lead UN agency on drug policy - has also endorsed the position; finally clarifying their previously ambiguous position on decriminalisation.

The statement also positions drug policy clearly within public health, human rights, and sustainable development agendas. It represents a welcome and significant step towards ‘system wide coherence’ within the UN system on drug policy. This has been a key call of civil society groups long frustrated by the lack of coherence across the UN and the marginalisation of health, rights and development agendas by UN drug agencies whose historic orientation has been towards punishment, law enforcement and eradication. The statement is especially important as it comes in the run-up to a ministerial-level meeting of the UN Commission on Narcotic Drugs this week, which will review the 10-year UN global drug strategy and agree plans for the next one. The CEB’s call for decriminalization goes beyond the existing member state consensus positions, which call only for ‘alternatives to punishment and incarceration’.

Transform welcome this new development. The statement makes it makes clear that attempting to eradicate drug use through criminalisation of people who use drugs is neither effective nor humane - and it must end. It recognises that human rights, public health and development are better served by adopting a more compassionate approach to substance use. It represents an effort by the entire UN leadership to point the way to more effective and humane drug policies.

What is the UN System Chief Executives Board for Coordination (CEB)?

From <https://www.unsystem.org/content/about> :

“The UN System Chief Executives Board for Coordination (CEB) is the longest-standing and highest-level coordination forum of the United Nations system. It meets biannually and is chaired by the UN Secretary-General.”

“The UN System Chief Executives Board for Coordination (CEB) comprises 31 Executive Heads of the United Nations and its Funds and Programmes, the Specialized Agencies, including the Bretton Woods Institutions (The World Bank and IMF), and Related Organizations - the WTO, the UNOPS and the IAEA.”

“The CEB provides broad guidance, coordination and strategic direction for the system as a whole in the areas under the responsibility of executive heads. Focus is placed on inter-agency priorities and initiatives while ensuring that the independent mandates of organizations are maintained.”²

What is decriminalisation?

It has usefully been defined by the UNODC³:

“Decriminalisation of drug use for non-medical purposes and possession for personal consumption can be as a matter of law (“de jure”) and as a matter of practice or policy (“de facto”). De jure decriminalisation is the removal of criminal sanctions with the optional use of civil or administrative sanctions, such as fines or education. De facto decriminalisation (sometimes called depenalisation) is the decision in practice or as policy to not apply criminal or administrative penalties for certain offenses. In de jure decriminalisation models, personal possession and use remain unlawful, but are not criminal. In de facto decriminalisation models, personal possession and use remain criminal but may be addressed with alternative sanctions for offenders who are drug dependent or have committed minor crimes”

What is the CEB position statement on drug policy?

It is called the: ‘United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration’⁴

Its stated scope and purpose is:

- To guide approaches across the United Nations system, stepping up efforts to ensure that no one is left behind;
- To inspire the planning and implementation of United Nations activities, including joint inter-agency activities;
- To speak with one voice and raise awareness of the multifaceted nature of the world drug problem.

All 31 CEB members, including UNODC, have ‘expressed their full support’ for the position statement.

What does the CEB statement say about drug policy?

Most striking of the 'directions for action' is an unambiguous call to decriminalize people who use drugs:

"To promote alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use, and to promote the principle of proportionality, to address prison overcrowding and over incarceration by people accused of drug crimes, to support implementation of effective criminal justice responses that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings and ensure timely access to legal aid and the right to a fair trial, and to support practical measures to prohibit arbitrary arrest and detention and torture;"

This is immediately followed by

"To call for changes in laws, policies and practices that threaten the health and human rights of people;"

But these clear calls for reform come as part of a wider, and very welcome, series of calls to position drug policy far more clearly as an issue of evidence-based public health, human rights, and the wider 2030 sustainable development goals (see the complete directions for action - copied below).

How has the UN position on decriminalisation evolved?

This clear pan-UN support for decriminalization of personal possession and use does not come from nowhere. Indeed, multiple UN agencies, have made similar call previously. Most prominently the World Health Organisation called for decriminalisation in 2014⁵, in the context of the HIV response, echoing similar calls from UNAIDS. Since then the calls have come from a range of agencies including (in their submissions to the UN General Assembly Special Session on Drugs 2016) from UN Women⁶, the UN Development Program⁷ and The UN Office of the High Commissioner for Human Rights⁸. In 2005, UN Secretary General Ban Ki Moon said "We must consider alternatives to criminalization and incarceration of people who use drugs"⁹, and the current SG, António Guterres, was president of Portugal when they implemented their pioneering decriminalisation policy - which he has spoken of in a number of high level UN forums since his appointment.

There have also been a series of significant joint statements from a broader range of agencies that make an explicit decriminalisation call including the 2015 'Technical brief: HIV and young people who inject drugs', co-badged by 10 UN agencies (including the WHO, UNFPA, UNHCR, the World Bank, UNDP, UNESCO, UNAIDS, the ILO, UNICEF, and for the first time, the UN Office on Drugs and Crime)¹⁰. This report - like the previous years WHO call, was framed in terms of the HIV response, called for member states to "Work for the decriminalization of drug use" on the basis that "Laws criminalizing use or possession of drugs or of injecting equipment can deter people from seeking services because of their fear of arrest and prosecution. These laws may deter harm-reduction service-providers from offering assistance including because of concerns about their own legal liability. Criminalization of drug use also reduces the future employment prospects of those who have been convicted and can lead to financial instability."

More recently a 2017 'Joint United Nations statement on ending discrimination in health care settings' called upon '...all stakeholders to join us in committing to taking targeted, coordinated, time-bound, multisectoral actions...supporting States to put in place guarantees against discrimination in law, policies, and regulations by...reviewing and repealing punitive laws that have been proven to have negative health outcomes and that counter established public health evidence¹¹. These include laws

that criminalize or otherwise prohibit.....drug use or possession of drugs for personal use'. This statement was signed by 12 UN agencies, although not UNODC.



How has the position of the UNODC evolved?

Historically the UNODC's position on decriminalisation has been more complex and ambiguous. While other UN agencies have taken clear and principled leadership positions on the importance of decriminalisation in positively impacting on their respective areas of competence (health & HIV, gender, human rights and stigma, development etc) the agency with the lead role on drug policy itself has equivocated.

While the UNODC position has evolved, if reluctantly, over the past few years, they have generally given every impression of trying their best to avoid clarity and commitment, let alone proactive advocacy - rarely stepping beyond the 'alternatives to punishment and incarceration' narrative (see below) and only once, in 2015, putting their name to a decriminalisation call (see above). This anomaly has, in fact, been a long standing and widespread source of frustration in the UN and beyond - with the painfully apparent leadership void from UNODC on this urgent issue being filled by other non-drug policy specialist UN agencies, and civil society.

The UNODC did briefly attempt to commit to decriminalisation in 2015 when their HIV/AIDS Section, a bastion of public health pragmatism within the more traditional enforcement orientated UNODC structures, prepared a public health and human rights based analysis on decriminalisation¹². Clearly billed as 'the position of UNODC' on 'Decriminalisation of Drug Use and Possession for Personal Consumption', it brought together analysis from multiple agencies - concluding not only that decriminalisation was allowed under the UN drugs treaties, but that criminalisation was harmful on multiple fronts, and a violation of the right to health - recommending that Members States 'should' (not could) 'consider implementing decriminalisation.

Unfortunately, before this groundbreaking document was formally launched (at the HRI harm reduction conference in Malaysia) - advance media copies had reached some member states, who apparently then pressured the UNODC to withdraw it¹³. Rather than stand their ground on principle - UNODC immediately disowned and withdrew the document, inadvertently making a potentially big story into a huge one - attracting headlines across the globe. The whole saga is explored in more

detail here - <https://transformdrugs.org/the-truth-behind-the-unodcs-leaked-decriminalisation-paper/>

Following the retraction and attendant media fuss, the UNODC promised a document clarifying their position on decriminalisation would be produced imminently. But rather than re-issue the 2 page document with amendments, two months later, in February 2016, the UNODC produced its submission to the 2016 UN General Assembly Special Session (UNGASS) on drug (to avoid any confusion – this time credited to the UNODC executive director Yury Fedotov), and made it known that the entirely new discussion on the subject in this new document was their ‘official’ position on decriminalisation.

However, while the retracted UNODC document specifically addressed the issue of ‘decriminalisation’, with the term being defined and appearing in the title, the recommendations and throughout the document (12 times in 2 pages)– it did not appear in the new UNODC document at all, instead referred only to ‘alternatives to conviction or punishment’. The analysis linking criminalisation to violation of the right to health was also notably absent. ‘Alternatives to conviction or punishment’ is the term used in the 1988 UN drug convention (article 3.4) which is widely cited as providing the flexibility for countries to decriminalise, and also appeared in the US submission to the UNGASS process, and indeed the UNGASS outcome document itself¹⁴.

The problem here is that whilst decriminalisation of possession and use can certainly be seen as one of the potential ‘alternatives to conviction or punishment’, there are a number of others; the term also includes the wider debate on alternatives to incarceration, and ‘drug courts’ for example. The original retracted UNODC document had a specific function of providing a clarification on a specific legal reform. Indeed it had been produced for this express purpose at the request of civil society groups, including IDPC, INPUD and HRI for such a clarification. Yet this specificity around decriminalisation was entirely lost in the new document through the use of the much broader term. Worse, the new document listed examples of ‘alternatives to conviction and punishment’ making no mention of de-jure decriminalisation - putting it substantially out of step with the of the WHO, UNDP, UN OHCHR, and the SG.

Why is this CEB position statement important?

It represents the long overdue unambiguous commitment from the UN’s lead drug policy agency, the UNODC, to decriminalisation. For those member states opposed to decriminalisation, the UNODC’s deliberate intransigence on the question provided them with some political cover. It was easy enough to ignore the non specialist UN agencies making the call, or the UNODC saying decriminalisation was permitted but not required. But when The UNODC, and indeed all the UN agencies stand together and state that decriminalisation is not only allowed but positively advocated as part of a wider health, human rights and development oriented drug policy position - it becomes impossible to ignore.

The reason certain Member States retaliated when the 2015 UNODC was made public, is the same reason they may retaliate now. They simply do not like critical public health and human rights scrutiny of their repressive drug policies.

The CEB position statement will be an invaluable tool for reform advocates - highlighting the gap between many domestic policies/laws and UN-defined best practice. It will doubtless help accelerate the trend towards less repressive approaches towards people who use drugs, and in doing so help reduce the clearly documented harms associated with such approaches.

The wider discourse captured in the statement - emphasising public health, human rights, evidence based policy, and sustainable development is also enormously significant, representing a clear divergence from the more punitive enforcement oriented narratives that more commonly emerge from member state consensus UN statements. Such consensus document are inevitably watered down,

lowest common denominator outcomes that represent compromise between often the polarised positions of pragmatic reformers and more conservative status quo advocates. The CEB position statement reflects something all too rarely seen in UN drug policy; actual leadership; challenging member states to the right thing on a historically challenging issue.

It is also a reflection on the dedicated work of civil society over the past decade, particularly around the 2016 UNGASS, and now the 2019 High level Segment of the CND. One of the key asks of civil society has been for 'system wide coherence' within the UN; bringing the thematic expertise of other agencies to bear on the drugs issue - those for whom drug policy had profound impacts but that had rarely been actively engaged - to develop a common leadership position¹⁵. The UNODC has often seemed to exist in a bunker, insulated from wider UN thinking on human rights, public health and development. The system wide coherence push that the CEB document represents has forced them to engage and modernise many of their old-school drug war narratives. In this respect, and in the power of a pan-UN narrative the statement represents a huge step forward for the global drug policy discourse.

From the CEB statement¹⁶:

Directions for action

In addition to ongoing efforts, we commit to harnessing synergies and strengthening inter-agency cooperation, making best use of the expertise within the United Nations system, to further enhance consistent sharing of information and lessons learned and the production of more comprehensive data on the impact of drug policies, including with a view to supporting the implementation of the 2030 Agenda.

We, therefore, commit to stepping up our joint efforts and supporting each other, inter alia:

- To support the development and implementation of policies that put people, health and human rights at the centre, by providing a scientific evidence-based, available, accessible and affordable recovery-oriented continuum of care based upon prevention, treatment and support, and to promote a rebalancing of drug policies and interventions towards public health approaches;
- To promote the increased investment in measures aimed at minimizing the adverse public health consequences of drug abuse, sometimes referred to as harm reduction, which reduce new HIV infections, improve health outcomes and deliver broader social benefits by reducing pressure on health-care and criminal justice systems;
- To ensure the provision of drug prevention, treatment, rehabilitation and general support services, including health care and social protection in prison settings, ensuring that they are equivalent to and that they provide continuity of care with those in the community;
- To ensure the respect for the dignity and human rights of people who use drugs in all aspects of drug and social policies, including providing equal access for people who use drugs to public services, including housing, health care and education;
- To call for universal health coverage for people with drug use disorders and for the positioning of drug use disorders as with other health conditions that should be included in the overall universal health coverage framework in national health systems;
- To enhance access to controlled medicines for legitimate medical and scientific purposes, including the relief of pain and treatment of drug dependence;
- To enhance international support for effective capacity-building in developing countries to support the implementation of all Sustainable Development Goals, including through North-South, South-South and triangular cooperation;
- To support the identification of prevalent, persistent

and harmful psychoactive drugs, including new psychoactive substances, and their associated health risks, using global and regional agencies' early warning and alert systems;

- To provide guidance and technical assistance to strengthen cross-border law enforcement and judicial cooperation;
- To promote sustainable livelihoods through adequately-sequenced, well-funded and long-term development-oriented drug policies in rural and urban areas affected by illicit drug activities, including cultivation, production and trafficking, bearing in mind environmental protection and sustainability;
- To promote alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use, and to promote the principle of proportionality, to address prison overcrowding and over incarceration by people accused of drug crimes, to support implementation of effective criminal justice responses that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings and ensure timely access to legal aid and the right to a fair trial, and to support practical measures to prohibit arbitrary arrest and detention and torture;
- To call for changes in laws, policies and practices that threaten the health and human rights of people;
- To promote measures aimed at reducing stigma and eliminating discrimination and achieving universal coverage of evidence-based prevention, treatment and rehabilitation;
- To cooperate to ensure human rights-based drug control and address impunity for serious human rights violations in the context of drug control efforts;
- To assist Member States in implementing non-discriminatory policies, including with regard to ethnicity, race, sex, language, religion or other status;
- To promote the active involvement and participation of civil society and local communities, including people who use drugs, as well as women and young people;
- To provide Member States with the evidence base necessary to make informed policy decisions and to better understand the risks and benefits of new approaches to drug control, including those relating to cannabis;
- To compile, analyse and produce data reflecting United Nations system-wide practices and lessons-learned in drug-related matters, and to produce system-wide data and analysis, including in the light of the 2019 ministerial segment of the Commission on Narcotic Drugs and the advancement of the implementation of the 2030 Agenda.

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2. <https://www.unsystem.org/content/about>
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