



WORKING TO DECRIMINALISE PEOPLE WHO USE DRUGS:

LEARNING FROM DECRIMINALISATION
EFFORTS IN 5 INTERNATIONAL
JURISDICTIONS
EXECUTIVE SUMMARY

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EXECUTIVE SUMMARY

BACKGROUND



There has been substantial progress in the direction of decriminalisation of drugs in the past 10 years. In particular, the acceptability of the discussion has become much greater, far less controversial, or marginal in policy discussions. Despite this progress, there are continued barriers to ending criminalisation and the subsequent harms on people who use drugs.

Scottish Drug Forum (SDF) was successful in the expressions of interest process and subsequently commissioned by Ana Liffey Drug Project, in Ireland, to conduct an evaluation of the recent decriminalisation and advocacy efforts in Scotland, Poland, Norway, Ireland and Maine (USA). These jurisdictions were selected due to recent decriminalisation advocacy projects which were funded by Open Society Foundation (OSF) with an aim to identify and share learning from their individual advocacy efforts.

METHODS



The project involved a mixed methods approach to data collection. This involved a desktop review of relevant literature, a media analysis in the 5 jurisdictions and 25 qualitative interviews with experts from each jurisdiction and including international experts.

INTERVIEW KEY FINDINGS



No jurisdiction involved in this evaluation had achieved full *de jure* decriminalisation (where drug possession is no longer a criminal offence).

However, all of the 5 jurisdictions had made some form of progress towards *de facto* decriminalisation, recently redefined as depenalisation, (where drug possession is still an offence, but there is a policy that allows for diversion or no sanctions, although this is not always followed).

Interview participants shared a variety of factors which had influence on progress towards decriminalisation.

The key factors were:

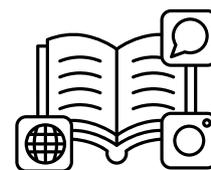
- **The wider social and cultural context:** Representing the issue of decriminalisation of drug use through the wider lens of decriminalisation for other health issues and human rights was seen as important strategy. This included areas such as LGBTQI+ rights, abortion and sex work.
- **Cannabis exceptionalism and medicinal use:** The rapid and substantial global progress on cannabis and in particular medicinal use was observed in often stark contrast to other drugs but progress in this area also provided an opportunity to display evidence for the benefits of decriminalisation and offered momentum for decriminalisation campaigns to build on.
- **The role of the media:** There was evidence that media coverage could be both supportive and oppositional to decriminalisation, depending on the political perspective of the media outlet. The general sense was that whilst media coverage was mixed, there was a trend of becoming more progressive over time. However, there were still issues with media stories that increased stigma towards people who use drugs or promoted misinformation. Engaging with media productively was an important strategy for decriminalisation advocates.
- **The role of law enforcement:** It was noted that law enforcement organisations had an important role in decriminalisation efforts, from their ability to influence policy and the media, to their role in practical implementation of measures such as diversion or *de facto* decriminalisation.
- **Political leadership:** Change in leadership and shifts in political will, perhaps resulting from perceptions of greater acceptability or unacceptability for reform within public opinion could have a dramatic effect on decriminalisation progress. This ranged from a complete block on legislation being implemented to loss of support for evidence based harm reduction measures.

Participants highlighted three key strategies that were effective when advocating for decriminalisation:

- **Advocacy:** It was important to have high profile and outspoken advocates for decriminalisation, particularly in influential political positions but also in related sectors such as healthcare. Advocates in the media were also important, as were advocates from living and lived experience organisations, families who had been directly affected by the harms of criminalisation, grassroots advocacy, and the support of non-governmental organisations..

- **Framing of decriminalisation:** It was important to frame the issue very carefully to maximise public acceptability and support. This may involve not using the term 'decriminalisation' but instead just referring to the actual legislative processes that would happen instead, for example emphasising that people would be offered health interventions, harm reduction and voluntary treatment instead of punishment.
- **Incremental change:** Rather than attempting to achieve decriminalisation through a major and rapid change of drug legislation, it may be more feasible to make small, gradual changes that eventually lead to decriminalisation. These incremental shifts in the direction of decriminalisation show people the positive benefits and gradually increase acceptability without creating too much resistance. For example, reframing from a criminal issue to a health issue may be the first step, which can progress through medication-assisted treatment, drug consumption rooms, depenalisation, and eventually towards *de jure* decriminalisation, which would involve the removal of all administrative sanctions, monitoring, punishment, quantity thresholds, policing operations, and criminal justice legislation that would criminalise people for the possession and use of drugs (INPUD, 2021).

MEDIA ANALYSIS FINDINGS



The media analysis outlined a variety of themes, many of which echoed with interview findings. The key themes were:

Hierarchy of drugs: Media coverage is often based on a hierarchy of drugs which reflects, somewhat, the hierarchy observed in drug legislation. There is some media support for the decriminalisation of possession of some drugs and not others. Most often cannabis is the focus of more sympathetic media coverage.

Hierarchy of uses: Media coverage also reflects a hierarchy of public acceptability of different forms of uses, as outlined below from most to least acceptable:

- medical use for a medical condition where pharmaceuticals are unavailable, ineffective or inadequate
- medical use as an 'alternative' therapy
- self-medication for mental health or physical pain
- use without problems or dependence
- problem/dependent drug use

Hierarchy of people who use drugs: Media coverage is often based on a hierarchy of people who use drugs:

- people who do not otherwise break the law
- people who use without significant problems or dependence
- people who have a drug problem

People, especially young people, who are criminalised for drug possession but who are otherwise not breaking the law often receive sympathetic media coverage. There is some evidence that people who use drugs without health harms or dependence are still judged morally for using drugs in the media. Ethnicity and social class are other key aspects which are apparent in unsympathetic and at times, stigmatising media coverage in some jurisdictions.

Conflation and confusion of terminology: Generally, media coverage does not distinguish between decriminalisation, depenalisation and legalisation. This may reinforce misunderstanding and opposition to decriminalisation. The term decriminalisation is not always contextualised as 'decriminalisation of drug possession for personal use', but, if it were to be, support for decriminalisation measures may increase.

Framing as a public health issue: A public health perspective is generally useful in improving media coverage of decriminalisation. Public health discourse emphasises harms. The prevention of harm may be accepted as a reasonable aim of drug policy. Conversely, a criminal justice perspective which defines people who use drugs as criminal is generally unhelpful. However, questions about the effectiveness and efficiency of a criminal justice approach is a common 'starting off point' for a discussion on decriminalisation.

Stigma: An anti-stigma agenda can contextualise drug law as part of a societal stigmatisation of people who use drugs.

Media quality and diversity:

- Media may more readily and accurately report advocacy for decriminalisation of widely used drugs like cannabis on the grounds that they are seen to cause little harm or are regarded as acceptable by a substantial portion of the population and their readership. However, advocacy of decriminalisation is less likely for drugs which may be less widely used and perceived as more likely to cause harm e.g., heroin.
- Media coverage supportive of decriminalisation is most likely to exist in countries where there is a full range and a diversity of media ownership. Even then, decriminalisation may not receive thorough or entirely balanced coverage.

- There is little media coverage of libertarian perspectives and much of the media remains paternalistic or judgemental. However, there is great potential for destigmatisation of drug use and the people who use them in media which supports individual freedom and / or a reduction of state control or interference in the private lives of citizens.

Media and the police:

- Media coverage can offer support to decriminalisation by framing policing of drug use as a waste of resources whilst also stigmatising, criminalising and antagonising people who are otherwise law abiding. However, media portrayals can also reinforce perceived benefits of criminalisation by presenting paternalistic narratives, such as saving people from organised crime or from themselves.
- Media coverage of the attitude and opinion of police officers, specifically retired officers may be important. There are examples of retired officers who feel free to voice their opinions supportive of decriminalisation and these opinions are respected and reported positively in the media.

Political discourse: A nationalist, regionalist or exceptionalist political perspective can support decriminalisation if punitive drug laws and policy are portrayed as being foreign or alien, inappropriate or dated. The case for change is assisted where policy is seen to be imposed by 'outsiders', is inappropriate for the local situation or belonging to an outdated constitutional context and is therefore irrelevant.

Harm reduction: There is some media coverage on harm reduction service provision that lends itself to discussion of decriminalisation. The provision of a safer drug consumption service is an example where the question of the legality of the service has been raised in the media and the law more generally has been questioned.

CONCLUSIONS



Key points from the findings included: making the case for change by framing decriminalisation as part of a public health approach, defining the model of decriminalisation being suggested, clarifying terminology and centering communication about decriminalisation on the specifics of policy changes being proposed and the benefits. Equally important in achieving change was garnering support and knowledge, achieved by collaborating with a range of stakeholders including political advocates, police, health representatives and those with lived and living experience of drug use. Media depiction and public opinion were closely linked with the political will needed to implement drug policy reform. There was an evident need to challenge unhelpful hierarchies of drugs, their use and the people who use them, which are based in stigma, in order to end the criminalisation of people who use drugs.



LEARNING AND RECOMMENDATIONS

The findings suggest a number of learning points and recommendations for jurisdictions that wish to move towards decriminalisation.

TERMINOLOGY



The term decriminalisation is not consistently defined and understood in the context of drug policy. Rather than measuring successful implementation of decriminalisation against a single definition which may be interpreted differently in each jurisdiction, it may be more effective to offer a criterion for what components can be implemented within decriminalisation. For example, the criterion could include guidance about diversionary, depenalisation and non-enforcement measures. Jurisdiction experts expressed caution on the potential problems with defining criterion such as thresholds for possession and how this may distract from the broader political goals of full decriminalisation.

A clear description of what the policy changes being proposed are, and what the implications would be, especially within correspondence intended for a broader audience such as media, should be provided.

EDUCATION



It is vitally important institutions and individuals are fully and accurately informed on issues around drugs and decriminalisation. This is particularly pertinent for those within criminal justice, the police, government, and prosecution, who influence and implement policies. Relevant organisations and experts in the field should work to inform and “myth-bust” on issues including, but not limited to, challenges of defining threshold amounts of drugs for the ranges of personal use; the lack of impact prosecution for possession charges has on organised crime; and the negative impact of criminalisation measures on individuals and communities.

To establish the argument for decriminalisation and the individual model at jurisdiction level, it is key that a range of expert stakeholders, including people who use drugs, are involved in the development of the evidence base for decriminalisation and the likely consequences. It is also important that the available evidence supporting decriminalisation is disseminated to influential stakeholders within individual jurisdictions in order to inform practice.

SHARED UNDERSTANDING AND COMMUNICATION



The various relevant parties involved in drug policy often come to the table with differing opinions and vested interests in the issue. For example, police may have specific concerns over the implications of drug law reform that differs from staff working in health settings to those within the political arena. It is therefore important that there is clarity and consistency with communication from drug policy reform advocates to other stakeholders; for example, amongst campaigners and advocating organisations as well as between different relevant fields, such as criminal justice, police, health, and government. Each sector may respond to particular arguments that address their concerns. Advocates can clarify and agree upon messaging and messengers best positioned to influence each field. It is important there is transparency on the implications of movement towards decriminalisation, such as changes to funding and budget allocation and ensuring there is, for example, sufficient capacity in treatment to be offered as voluntary diversions.

It is key that those advocating for legislative change work towards a common goal and shared understanding of decriminalisation as far as possible, and, are united on messages provided to policy makers in order to engage them in progressing decriminalisation.

INCREMENTAL CHANGE



Each jurisdiction has its own set of unique circumstances and most are some stages away from having full decriminalisation. While some jurisdictions may benefit from advocates pushing for *de jure* decriminalisation, policymakers and the public are not ready for this in some jurisdictions. Where there is resistance to *de jure* decriminalisation, it may be beneficial to focus efforts on achievement of incremental changes focused on reducing the range of harms to people who use drug. Such incremental changes may ultimately achieve decriminalisation and indeed, may achieve even broader goals, such as legalisation and regulation of substances.

Those advocating for change in this area should work directly with politicians, police, and other professionals to push for smaller, but crucial, changes, such as implementation of diversionary measures to voluntary treatment/support, decriminalisation and provision of drug-related paraphernalia and legislation for safer injection facilities/drug consumption rooms. It is important to monitor such diversionary initiatives to ensure they are reducing harms, rather than continuing to reinforce prohibitionist ideals e.g., non-voluntary, coercive treatment measures.

However, there are limitations to incremental change and it can be argued that some incremental reform has resulted in little or no practical change. In addition, some incremental changes had been implemented following wider decriminalisation advocacy efforts. Equally, some incremental change is only seen favourably by policy makers and other stakeholders where it is clearly separate and distinct from *de jure* decriminalisation.

Whether to focus efforts purely on incremental changes or to arrive at them as part of a wider decriminalisation campaign is likely to be jurisdiction dependent. Overall, incremental changes that shift power from policing and carceral logic and places greater emphasis on public health, may be most effective in achieving the attitudinal shift required for greater law reform.

POLITICAL ADVOCATES



In order to bring decriminalisation to the forefront of discussions within government bodies, who ultimately make decisions on policy and legislation, it is important to build relationships with a broad range of dedicated political advocates. It is important for those advocating for decriminalisation to engage politicians and decision makers in the debate. Mapping and then targeting those with a vested interest in the field, perhaps who have come from social work, health, or other relevant backgrounds and/or shown engagement before may be useful.

Equally, connecting with politicians who are not antithetical but are still in need of lobbying to move from soft support to full support of a decriminalisation agenda is an important part of developing political allies and reducing fears of a political backlash for supporting decriminalisation. Ensuring political advocates hear the voices of public opinion through their constituents is an important part of encouraging political advocates to take action. Working closely with individuals and parties at local as well as state/national level is important in creating an appetite and opportunity for change. The limitation of political advocacy is that changes in leadership roles can be fatal for reforms, therefore cross-party engagement and seeking to engage a wide range of political advocates is key.

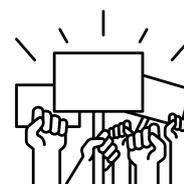
FRAMING AND NARRATIVE



A person-centred frame that highlights the benefits of decriminalisation – or the specific components of the reform, such as referral to voluntary treatment instead of prison – can move decision makers and the public more than depersonalised and technical arguments for reform. Any framing and narrative effort should have a clear understanding of the target audience, the key messages to communicate and what action is required for them to take. The voice and stories of lived and living experience should be incorporated into decriminalisation campaigns and media coverage where possible and appropriate, as this can help to alleviate stigma around drug use and inform people about the arguments for decriminalisation. Problem drug use should be framed as a public health issue due to the impacts it has on individuals and communities.

While decriminalisation often seeks to remove low-level violations (e.g., personal possession and use) from criminal penalty, advocates should be careful to avoid a framing that encourages a focus on more serious crime or suggests all drug supply is exploitative. Although this frame resonates with many in the public, police, and political establishment, it does a disservice to our allies working to reduce and end incarceration for these complex issues and alienates drug policy reformers from creating interdependent strategies with others seeking to end injustice. Framing that focuses on decriminalisation of people is likely to be more compelling to a broader audience.

CIVIL SOCIETY AND ACTIVISM



Activists and advocates at a ground/local level are key to achieving any social change and the same is true for decriminalisation. Equally advocacy takes many different forms, both direct action and more indirect work which can include creation of publications or media opinion pieces.

Work should aim to reach different groups of individuals, including policymakers, police, health professionals, journalists, and the general public. It is true each group will have different opinions and vested interest in the topic so approaches should be flexible and varied to reflect this. Activists, groups, and campaigners must have sufficient resources/funding to be able to reach more people, often via one-to-one work and key relationship building, which is more effective in gaining support. Funding is necessary to sustain advocacy over the long term, to conduct public opinion research, and outreach to key interlocutors, and to effectively utilise traditional and social media outlets. Amplifying the voice of voters who are in support of policy change around drug use will influence politicians to see it as a pertinent issue.

Sharing learning from other advocacy efforts is crucial. These insights from the field offer opportunity for learning from other jurisdictions who may share similar challenges. More indirection action such as multidisciplinary meetings and producing publications can have large impacts and may help engage a broader range of stakeholders.

MEDICINAL USE



Certain substances, most often cannabis, are legalised for medical purposes in some jurisdictions. Medicinal use in these contexts, particularly where it is prescribed in traditional healthcare settings, is often considered more acceptable to the general public than use for recreational purposes. Whilst there is clear rationale to keep the issue of medicinal and therapeutic use of substances as a separate issue, discussions around medicinal use and the benefits of such substances can provide a platform to open conversations about other legislative changes such as decriminalisation of all drugs.

Organisations involved in wider drug decriminalisation can benefit from connecting with those who campaign for medical use of substances as they may provide learning and networking to those who are responsive to health-based approaches. However, decriminalisation advocacy and legal medicinal use advocacy movements may not be well integrated. Cannabis exceptionalism has meant in practice that successes with cannabis decriminalisation and legalisation have not led to drug law reform with other drugs.

The relationship between cannabis legalisation and all drug decriminalisation is complex and is likely to become more of an issue to understand and articulate as more jurisdictions progress medicinal cannabis legalisation. Equally, with greater emergence of medicinal psychedelic use, it is key to challenge the unhelpful hierarchies that can occur between different drugs. It is therefore important that advocates seek to address this complexity at jurisdiction level by considering medicinal use, and, how it should be best included when looking at the terminology, framing and narrative of the decriminalisation of all drugs.

