Canadian Drug Policy Coalition
Coalition canadienne des politiques sur les drogues

Canadian HIV/AIDS Legal Network | Réseau juridique canadien VIH/sida

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Promoting Smart Policy on Drugs: Brief to the Canadian delegation to the UN Commission on Narcotic Drugs

Canadian Drug Policy Coalition and the Canadian HIV/AIDS Legal Network

The Canadian Drug Policy Coalition and the Canadian HIV/AIDS Legal Network are participating in the civil society processes preparing for the upcoming 57th Session of the UN Commission on Narcotic Drugs (CND), and the High-Level Segment that will immediately precede it, in Vienna in March 2014. We urge the Canadian delegation to emphasize the following points in their discussions with other Member States before and during the High-Level Segment and the CND session.

1. Encourage all countries to adopt a comprehensive public health approach to substance use. A public health approach to substance use considers both the harms that flow from policies as well as the harms sometimes associated with substances themselves. The Vienna Declaration, the central policy position articulated at the XVIII International AIDS Conference in Vienna in 2010 and signed by the global medical and scientific leadership of the fight against HIV/AIDS, clearly presented the evidence that "over the last several decades, national and international drug surveillance systems have demonstrated a general pattern of falling drug prices and increasing drug purity—despite massive investments in drug law enforcement" and that "there is no evidence that increasing the ferocity of law enforcement meaningfully reduces the prevalence of drug use. Given the rise of injection drug use in many countries and its significant impact on the HIV epidemic, vigorously encouraging countries to shift their priorities towards comprehensive public health responses to drug use should be a high priority."[1]

As part of advocating a public health approach, we encourage the Canadian delegation to reconsider its opposition to harm reduction language in the Joint Ministerial Statement under negotiation. Given the position of UNAIDS that the goal of reducing HIV among people who inject drugs by 50% will not be reached,[2] it is imperative that Canada support the insertion of language on the need for implementation of harm reduction programs and services as part of national strategies to address the "world drug problem," as outlined in the WHO/UNODC/UNAIDS Technical Guide (2012 revision) for addressing HIV among people who inject drugs. This guide sets specific and achievable national targets for access to prevention and treatment of HIV. Among the nine key interventions that must form part of a comprehensive approach are harm reduction measures such as needle and syringe programs, opioid substitution therapies, and condom programs for people who use drugs and their sexual partners. As the Technical Guide from the three relevant specialized UN agencies notes, these initiatives are supported

[1] *Vienna Declaration*. Available at: http://www.viennadeclaration.com/the-declaration.
[2] 56CND Chair's Proposal for the Joint Ministerial Statement of the 2014 High-Level Review by the Commission on Narcotic Drugs. December 2013. Paragraph 31quat.

by comprehensive scientific evidence.[3] Harm reduction as a term, is well understood in the scientific literature and can be easily clarified as per the Guide mentioned above.

We are concerned that Canada has relinquished its traditional leadership role in facilitating dialogue and building consensus internationally towards comprehensive public health responses to substance use. We urge the Canadian delegation to the CND to resume its leadership role in the promotion of a public health approach to substance use in international negotiations and policy. A public health approach recognizes the human rights of people who use drugs and includes a comprehensive package of health-based interventions including harm reduction initiatives and the full implementation of drug treatment programs based on sound scientific review and evidence. It is of concern that Canada is at odds with traditional allies on public health language within the CND, including Switzerland, Germany, the Netherlands, the UK and the European Union in general, on the insertion of language to acknowledge harm reduction as an important component of a comprehensive response. Instead, Canada has aligned itself with countries such as Russia, China, Pakistan and Egypt on this matter – all countries with a longstanding hostility to effective, evidence-based interventions to address HIV and other harms among people who use drugs, and who support draconian laws and policies leading to well-documented and widespread human rights abuses against people who use drugs.

2. Supporting countries' flexibility to experiment with alternative, health-oriented approaches to drug policy: According the UNODC's own data, the promised significant reduction in global supply of and demand for drugs, explicitly articulated in the Declarations from the 1998 UNGASS and the 2009 High-Level-Segment have not been achieved. There is little reason to think that more of the same strategies and approaches will somehow begin to produce a different result. Now is the time to consider alternative approaches to better protect human rights and public health. The UN Office on Drugs and Crime (UNODC) has repeatedly called for "a comprehensive approach to better coordination" among Member States, yet there has not been an appreciable improved outcome in terms of reduced supply and availability.[4] We urge the Canadian delegation to support open discussion and recognition of this lack of sustained success with respect to supply and demand reduction, and to support flexibility – including that found already within the existing drug control conventions – for Member States to experiment with and adopt different, evidence-informed policy and programmatic approaches to address the "world drug problem," including measures to reduce the harms associated with drugs.

3. Respect, Protect and Promote Human Rights: UNODC has acknowledged the role that human rights play in the implementation and enforcement of the three UN drug control treaties. This is in keeping with the clear, explicit directives already issued, by consensus, from Member States at the CND and the UN General Assembly that such implementation and enforcement must be in conformity with international human rights.[5] All of UNODC's programs, policies and technical advice must further the realization of human rights, and cooperation between the UNODC and Member States must have as an

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[3] United Nations. 2012. *WHO, UNODC, UNAIDS Technical Guide for Countries to Set Targets for HIV Prevention, Treatment and Care of Injecting Drug Users, 2012 Revision*. Geneva: WHO Press, World Health Organization. Available at: http://www.who.int/hiv/pub/idu/targets_universal_access/en/.

[4] Werb, D. et al. 2013. "The temporal relationship between drug supply indicators: an audit of international government surveillance systems." *BMJ Open*, 3:e003077. doi:10.1136/bmjopen-2013-003077.

[5] E.g., 1998 UNGASS Declaration, para. 8; CND, 53rd Session, Resolution 53/2, para 2, online: http://www.unodc.org/documents/commissions/CND-Res-2000-until-present/CND53_2e.pdf

outcome the development of states' capacities to meet their human rights obligations.[6] Two of the human rights violations of greatest concern when it comes to drug control policies are:

Torture and Drug Detention Centres: We urge the Canadian delegation to oppose, in the strongest possible terms, the use of drug detention centres, where persons who use or are suspected of using drugs are confined, regularly without any due process, and compelled to undergo diverse interventions such as forced labour and military style drills, as well as being subjected to involuntary medical interventions (often without scientific foundation), physical, sexual and psychological abuse, the denial of adequate medical care and nutrition, and other forms of torture and other cruel, inhuman or degrading treatment or punishment. These types of interventions disregard medical evidence.[7] As noted by the UN Special Rapporteur on Torture, these programs violate international law and are "illegitimate substitutes for evidence-based measures, such as substitution therapy, psycho-social interventions and other forms of treatment given with free and fully informed consent."[8]

Use of the Death Penalty for Drug Crimes: We also urge the Canadian delegation to lend its support to other countries seeking to end the use of the death penalty for drug crimes. The death penalty is not an appropriate measure for drug crimes and we urge the Canadian delegation to support the elimination of the death penalty for drug crimes. The use of the death penalty for punishment for drug offences is a practice that is in violation of international law.[9] This position has been asserted by the UN Human Rights Committee, the body of independent experts mandated with monitoring the implementation and interpretation of the International Covenant on Civil and Political Rights,[10] and by the UNODC.[11] It is profoundly troubling that, in the negotiations to date regarding the Joint Ministerial Statement, Canada has expressed concern about the inclusion of provisions addressing this egregious human rights abuse, thereby seemingly allying itself with states such as China, which regularly executes people convicted of drug offences, including in recent years an annual ceremony of executions to mark the UN's International Day Against Drug Abuse and International Trafficking – and has, not surprisingly, opposed the inclusion of any critical reference to the death penalty in the ministerial statement.

3. Ensure Full Access to Essential Medicines: We urge the Canadian delegation to press for more review of the approach taken by international drug control bodies to ensure access to essential medicines. Support for appropriate access to pain relief medications is strongly supported by Resolutions 53/4 and 54/6 adopted by the CND in 2010, and the WHO guidance document entitled

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[6] UNODC. 2012. *UNODC and the promotion and protection of human rights: Position Paper*. Vienna: UNODC.

[7] World Health Organization (WHO), *Assessment of Compulsory Treatment of People Who Use Drugs in Cambodia, China, Malaysia and Viet Nam (2009*); Human Rights Watch (HRW). *Torture in the Name of Treatment: Human Rights Abuses in Vietnam, China, Cambodia, and LAO PDR* (2012), p. 4.

[8] United Nations General Assembly. February 2013. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez*. UN Doc. A/HRC/22/53. New York: Human Rights Council. See also: Elliott, R et al. 2011. *Treatment or Torture?: Applying International Human Rights Standards to Drug Detention Centers*. New York: Open Society Foundations, online: http://www.opensocietyfoundations.org/sites/default/files/treatment-or-torture-20110624.pdf.

[9] R. Lines. 2007. *The Death Penalty for Drug Offences: A Violation of International Human Rights Law*. London: International Harm Reduction Association, online: http://www.ihra.net/files/2010/07/01/DeathPenaltyReport2007.pdf.

[10] Human Rights Committee, Concluding Observations: Thailand, CCPR/CO/84/THA, 8 July 2005, para. 14; Human Rights Committee, Concluding Observations: Sudan, CCPR/C/SDN/ CO/3, 29 August 2007, para. 19.

[11] United Nations Office on Drugs and Crime, Drug Control, Crime Prevention and Criminal Justice: a Human Rights Perspective, 2010, 'Note by the Executive Director' (Commission on Narcotic Drugs, Fifty-third Session, Vienna, 8–12 March 2010) E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1*.

"Ensuring balance in national policies on controlled substances: guidelines for the availability and accessibility of controlled medicines," as well as the recent resolution of the WHO Executive Board entitled, "Strengthening of palliative care as a component of integrated treatment within the continuum of care." Given broad-based support by the WHO for access of opioid analgesics for the treatment of pain, it is vital that the efforts of UNODC and the International Narcotics Control Board (INCB), in their efforts to prevent the diversion of narcotic drugs and psychotropic substances, do not result create inappropriate regulatory barriers to the medical access to such medicines.[12]

4. **Promote the full engagement of civil society in drug policy discussions**: The participation of civil society organizations in drug control policy debates is vital to the success of efforts to address drug issues. Civil society organizations have unique and valuable contributions to make to these debates. The CND has still to fully realize the commitments it made to civil society participation in paragraph 10 of the 2009 *Political Declaration and Plan of Action*.[13] Civil society participation is particularly important in the preparations for the UNGASS on the world drug problem in 2016. We are very troubled that Canada has, in the inter-sessional discussions, identified civil society participation as controversial; this only encourages countries such as Russia in their attempts to delete important language on the role of civil society and to challenge the engagement of civil society in CND deliberations and processes.

5. Concerns about the language of a "drug-free world": We urge Canadian representatives to the CND to oppose insertion of "drug-free world" language within CND documents. This language is not consistent with the current legal regulation of alcohol, tobacco and pharmaceutical products in most parts of the world. It does not acknowledge the reality of drug use and reiterates an objective increasingly recognized as unrealistic. Such a simplistic declaration also undermines efforts to address the harms of drug use through a range of evidence-based programs and services, and instead emphasizes abstinence-based approaches that do not work for all people – and is even sometimes used as an excuse to deny or impede a comprehensive range of evidence-based programs and services.

6. **Role of the World Health Organization**: The WHO is a core part of the international drug control system, with a clear treaty-based mandate, yet so far remains side-lined in the draft Joint Ministerial Statement in relation to the UNODC and the INCB. The unique mandate given to the WHO under the 1961 and 1971 Conventions to provide recommendations for scheduling needs to be clearly recognized. This is particularly the case for new psychoactive substances, which remain over-emphasized in the document – despite being outside of the drug control schedules, and with no acknowledgement of the innovation of the approach taken by New Zealand.

7. Other Issues: Among the other issues that the Canadian delegation should support is the monitoring and evaluation of innovations in drug policy, including harm reduction measures and new legal approaches. Keeping to the status quo, as advocated by China and Russia, is no longer a defensible position given the increasing amount of evidence that current approaches have failed to achieve their objectives.

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[12] See: WHO Executive Board. 2014. *Strengthening of palliative care as a component of integrated treatment within the continuum of care. Resolution EB134.R7; United Nations MDG Gap Task Force.* 2013. Millennium Development Goal 8: The global partnership for development: making rhetoric a reality. Available at: http://www.who.int/medicines/mdg/en/index.html.

[13] United Nations. 2009. *Political Declaration and Plan of Action on International Cooperation Towards an Integrated and Balanced Strategy to Counter the World Drug Problem. High Level Segment Commission on Narcotic Drugs*, 2009. Available at: http://www.unodc.org/unodc/en/commissions/CND/political-declaration-2009.html.

The continued criminalization of people who use drugs undermines efforts to address the public health needs of people struggling with drug problems. It prevents people from seeking services; it blocks the development of services because needed resources are diverted to the criminal justice system (including correctional facilities); it undermines human rights and supports discrimination against people who use drugs. As the Vienna Declaration notes, the evidence that law enforcement has failed to prevent the availability of illegal drugs, in communities where there is demand, is now unambiguous. As noted above, over the last several decades, national and international drug surveillance systems have demonstrated a general pattern of falling drug prices and increasing drug purity—despite massive investments in drug law enforcement. Furthermore, there is no evidence that increasing the ferocity of law enforcement meaningfully reduces the prevalence of drug use. The data also clearly demonstrate that the number of countries in which people inject illegal drugs is growing, with women and children becoming increasingly affected. Outside of sub-Saharan Africa, injection drug use accounts for approximately one in three new cases of HIV. In some areas where HIV is spreading most rapidly, such as Eastern Europe and Central Asia, HIV prevalence can be as high as 70% among people who inject drugs, and in some areas more than 80% of all HIV cases are among this group.[14]

Several states throughout the world have addressed these concerns by decriminalizing drug possession for personal use. Portugal, Uruguay, Guatemala, Colombia, the Czech Republic, as well as over 20 U.S. states, are among the jurisdictions experimenting with either decriminalization or legal regulation of some drugs. Portugal decriminalized the possession of all illegal drugs in 2001, leading to a subsequent decrease in the number of people injecting drugs, a reduction in the number of people using drugs problematically, and decreasing overall drug use trends among 15 to 24 year olds.[15]

The Czech Republic decided to decriminalize the possession of all drugs in 2010 after undertaking a cost-benefit analysis of their policies that found that, despite drug prohibition: the penalization of drug use had not affected the availability of illegal drugs; increases in the levels of drug use had occurred; the social costs of illicit drugs had increased considerably. After this decriminalization, and similar to the experience in Portugal, drug use has not increased significantly in the Czech Republic, but the social harms of drug use have declined. In Portugal, decriminalization has had the effect of decreasing the numbers of people injecting drugs, decreasing the number of people using drugs problematically, and decreasing trends of drug use among 15 to 24 year olds.[16]

We urge the Canadian delegation to support efforts to decriminalize the possession of drugs for personal use. Based on efforts to-date in this regard, such decriminalization is a permissible option under the current drug control treaties to address the harms of substance use. Forgoing the enforcement of laws prohibiting the personal possession of drugs also allows for states to redirect limited public budgets towards efforts to address the social determinants of harmful substance use.

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[14] See Vienna Declaration. Available at: http://www.viennadeclaration.com/the-declaration; Many of the failures of prohibition are outlined by the Executive Director of the United Nations Office on Drugs and Crime. See Costa, A.M. 2008. "Making drug control 'fit for purpose': building on the UNGASS decade." Available at: http://www.countthecosts.org/resource-library/making-drug-control-fit-purpose-building-ungass-decade; see also Hughes, C. and Stevens, A. 2010."What Can We Learn From the Portuguese Decriminalization of Illicit Drugs?" *British Journal of Criminology*, 50(6), 999-1022.

[15] Rosmarin, A., Eastwood, N. 2012. *A Quiet Revolution: Drug Decriminalization Policies in Practice Across the Globe*. London: Release. Available at: http://www.release.org.uk/publications/drug-decriminalisation-policies-in-practice-across-the-globe.

[16] Ibid.

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