

# Principles for the responsible legal regulation of cannabis

# 20 PRINCIPLES FOR THE RESPONSIBLE LEGAL REGULATION OF

# CANNABIS

## Health and human rights of people who use drugs

### 1. PROTECT RIGHTS

Regulated markets enable consumer protection and health regulations to uphold the rights of people who use drugs, while labor laws protect cannabis workers from exploitation and



### 2. PUBLIC HEALTH & HARM REDUCTION

Legal regulation can be a powerful harm reduction tool, reducing stigma against people who use drugs, enabling access to health services, and guaranteeing a safe supply of drugs.



### 3. AUTONOMY, LIBERTY & PRIVACY

Regulations should seek a fair balance between individual rights to autonomy and privacy, and the protection of public health. All restrictions must be based on evidence.



### 4. ACCESSIBLE & NEEDS-BASED

To become a viable alternative to the informal supply, regulated markets need to be accessible, and to respond to the needs of people who use drugs, including users of cannabis-based medical products.



## Social justice

### 5. COMMUNITY INVOLVEMENT

Legal systems should be informed by the wealth of knowledge accumulated by people involved in currently illegal markets, from cultivators to people who transport, sell and use cannabis.



### 6. TRANSIT TO LEGALITY

Legal markets must support the participation of people and communities involved in informal drug economies by removing existing legal, financial, technical, and bureaucratic barriers.



### 7. SMALLER-SCALE GROWERS

To guarantee sustainable livelihoods for traditional cannabis farmers, legal regulations should prioritise their participation in supply, and ensure they are not displaced by new private actors.



### 8. REPARATION, SATISFACTION & NON-REPETITION

Legal frameworks must include reparations for people who suffered prohibition, redress rights violations, and allocate resources to those unjustly targeted.



### 9. TRADITIONAL USES

Legal regulations must recognise the value of cannabis' rich history of traditional, cultural, religious and medical uses, and ensure their preservation.



## Inclusive & equitable trade

### 10. INCLUSIVE BUSINESS MODELS

Legal markets should seek to distribute power and value across the supply chain by enabling alternative business models that empower communities.



### 11. WORKERS RIGHTS

In a legal system, workers are entitled to labour rights and protections, which can be enforced through formal oversight mechanisms.



### 12. MAXIMISE VALUE

Regulators should work with producers and users to develop innovative certification schemes that bolster the competitiveness of small and medium-sized producers.



### 13. CHALLENGES TO INTERNATIONAL TRADE

Regulators should reflect on how to remove the legal barriers that impede the transnational trade of non-medical cannabis, while protecting traditional growers from the inflow of foreign capital.



### 14. ENVIRONMENTAL SUSTAINABILITY

To address potential environmental harms, legal frameworks must include strong regulations, as well as ecolabeling schemes, to promote sustainable practices throughout the supply chain.



## Responses to activities outside of the legal market

### 15. DECRIMINALISE ALL DRUG USE & ANCILLARY ACTIVITIES

A socially just legal framework is not compatible with any form of criminal or administrative punishment for the personal use of any drug.



### 16. PROPORTIONALITY

Where retained, criminal justice responses to drug-related activities, such as drug trafficking, must be strictly proportionate, consider personal circumstances, and accompanied by support.



## A gender-sensitive approach

### 17. WOMEN & CULTIVATION

In addressing the history of discrimination and harassment of women growers, legal regulations should establish gender-sensitive protections against exploitation and abuse.



### 17. ACCESS TO SERVICES

Legal regulations must promote gender-sensitive drug treatment and harm reduction services that respond to the specific needs of women.



### 17. EQUALITY

Regulators must take immediate action to address structural gender inequalities and power imbalances in legal cannabis markets.



## Monitoring and learning

### 20. DATA COLLECTION & COMMUNITY FEEDBACK

Legal frameworks must be constantly reviewed in light of objective data, lessons learnt, the evolution of the market, and feedback provided by affected communities and civil society.



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## Executive summary

In recent years, discussions on the legal regulation of drugs – and in particular of cannabis – have moved in from the margins of drug policy debates. As of today, over 50 countries have adopted regulatory frameworks for medical cannabis, while a growing number of jurisdictions have regulated adult non-medical use, with many more poised to follow. As these legal frameworks are put in place, it is essential that they are designed to advance social justice, inclusion and human rights.

The legal regulation of a scheduled drug is not a silver bullet that solves all the harmful outcomes of prohibition. Legal regulation has the potential to become a powerful tool to redress decades of criminalisation, economic exclusion, and lack of access to appropriate health care. However, legal markets can also be captured by corporate interests, fail to include comprehensive measures to redress the harms brought by the ‘war on drugs’, and further criminalise people that remain in the illegal spaces inevitably persisting outside any regulated market.

The more than 195 members of the IDPC network operate in a wide variety of legal, political, and cultural contexts around the world. As befits this diversity, some IDPC members do actively advocate for legal regulation, while others focus on different public health and social justice measures, such as harm reduction and decriminalisation. But the legal regulation of cannabis, either for medical or adult non-medical use, is fast becoming an unescapable debate.

To address this challenge, this Advocacy Note proposes twenty principles that should inform any regulatory framework for cannabis markets, whether for medical or for adult non-medical use. They are arranged in five categories:

- First, legal markets should protect the health and human rights of people who use drugs, providing them with comprehensive access to health services, and with the full range of rights and protections ordinarily granted to consumers in legal markets.

- Second, legal markets must advance social justice by seeking to repair the harms of punitive policies, and ensuring that communities most affected by prohibition, which in many cases have been oppressed on the basis of race, gender identity or sexual orientation, are able to transition into the legal market -if they want.
- Third, regulatory frameworks should promote business models and international trade policies that advance economic inclusion, sustainable development, and climate justice throughout local, regional and global supply chains.
- Fourth, legal reforms must remove punishments for personal drug use and ancillary activities, including for substances or activities that fall outside the scope of regulated markets. If sanctions are still imposed for traffic-related activities, punitive responses should be strictly proportionate, and accompanied by other interventions.
- Fifth, legal regulation must adopt a gender-sensitive approach, in order to redress the disproportionate harm and exclusion experienced by women under prohibition.

Finally, new regulatory frameworks should include mechanisms for collecting, analysing and disseminating comprehensive data on drug markets and drug use, as legal regulation is an ongoing iterative process that responds to the evolution of the market, and to lessons learnt.

Although this Advocacy Note only addresses the legal regulation of cannabis markets due to the currency and urgency of ongoing debates around the world, the twenty principles for responsible legal regulation and the underlying values of social justice, inclusion and human rights, can and should be extended to any proposal for legally regulating other scheduled drugs, with the appropriate adjustments. The IDPC network looks forward to expanding and updating these principles in view of the new initiatives, research, and regulatory experiences that are for sure to come in the near future.



## Introduction

The last few years has seen the legal regulation of drugs evolve from a theoretical possibility into a genuine reality. A growing number of diverse countries in all regions of the world have seen political initiatives, and in some cases legal changes, leading to the creation of regulated markets for the cultivation, sale or use of internationally scheduled drugs, from cannabis to coca leaf or psychedelics, for traditional, medical and adult-non medical use. This is now an irreversible trend.

As the debate moves beyond the critique of failed drug policies towards the conceptualisation and implementation of legally regulated markets, it is crucial to set out a framework that centres human rights and advances social justice. For drug policy reform this work is now urgent as corporate interests take hold. The IDPC network has come together to begin to articulate a set of principles for this next phase of drug policy reform and seek to ensure that this hard-fought reality of legal regulation will contribute to reducing inequality rather than further entrenching it.

Since the beginning, cannabis has been at the heart of this discussion. As of 2020, over fifty countries have moved to regulate the cultivation, production or sale of cannabis or cannabis derivatives for medical purposes, while a growing number of jurisdictions have established legal frameworks for adult non-medical use, including for social, cultural and religious purposes. At the international plane, in 2019 the World Health Organisation presented a proposal for the rescheduling

of cannabis and some components and derivatives, thus acknowledging for the first time their therapeutic value, and the overstatement of their health-related harms under the international drug control system;<sup>1</sup> after several postponements, the recommendation is expected to be put to vote by the Commission on Narcotic Drugs in December 2020. The questions surrounding the legal regulation of cannabis have become central, and urgent.

### Cannabis: a paradigmatic example of the origins and failures of prohibition

Since early history, cannabis has been used by communities in the Global South for cultural, medicinal, and spiritual purposes -especially in the regions of the planet where the plant originates. Despite this long and rich history, the 1961 Single Convention scheduled cannabis as one of the most harmful and addictive substances in the world with very limited therapeutic value,<sup>2</sup> a decision rooted in colonial prejudices and racist hysteria that lacked any scientific basis.<sup>3</sup> The main psychoactive component of cannabis, THC, was also scheduled in the 1971 Convention on Psychotropic Substances.

Cannabis is the most popular drug in the world, with over 192 million users globally or 3.9% of the total population aged 15 to 64.<sup>4</sup> As such, cannabis exemplifies the abyssal failure of the prohibitionist approaches to drug use. With over 660,000 arrests for cannabis offences in 2018 in the United States of America (USA) alone,<sup>5</sup> Cannabis also showcases the



Credit: Jasper Harmann

Cannabis fields in the Rif region of Morocco

## Box 1 Glossary of key concepts around the legal regulation of cannabis

Debates around the legal regulation of cannabis are dominated by three key policy options that are frequently conflated, but have different meanings and implications – decriminalisation, legalisation, and regulation.

- Decriminalisation means removing criminal penalties, such as prison, for certain drug activities –normally personal drug use and ancillary activities like possession and cultivation for personal use. Decriminalisation can and is frequently enacted independently from legalisation and legal regulation. Decriminalisation is a necessary step to end punitive drug policies, and to ensure access to health. As of today, approximately 30 countries have adopted some model of formal or informal decriminalisation of personal drug use and ancillary activities.
- Legalisation is the process of making certain drug activities – normally related to drug

supply, such as production, cultivation and sale of drugs– legal. Legalisation is a one-off intervention that does not describe how drug markets will operate once it has taken place.

- Legal regulation refers to the framework of rules established by a state to control markets of risky legalised products and behaviours, from driving cars to alcohol or scheduled drugs. While legalisation highlights the novelty of creating a legal market for drugs, legal regulation emphasises that states have successfully engaged for centuries in the control of risky behaviours; in that regard, the difference between the legal regulation of tobacco and cannabis, or other scheduled drugs, is minimal. In opposition to legalisation, legal regulation is a continuous and iterative process that makes explicit the whole array of policy options available at the moment of creating a legal market for scheduled drugs.

harm, oppression and stigma brought by punitive policies on communities involved in the cultivation, sale and use of drugs—especially on the basis of race, gender identity, and sexual orientation. Exclusion and oppression also take place against communities that have traditionally cultivated and used cannabis in the Global South; for instance, approximately 48,000 cannabis growers were facing arrest warrants in 2018 in Morocco alone.<sup>6</sup>

### Legal regulation: a powerful tool for change, but not a silver bullet

Legal regulation can be a powerful tool to end and redress the harms arising from prohibition. However, the creation of a legal market is not a silver bullet that will automatically address these issues by itself. Legal regulation is not a binary, black-and-white development that has exclusively positive outcomes. Just as any other regulated market, from alcohol to pharmaceutical products, regulated drugs markets can fail to live up to values of inclusiveness, equity, and social justice. In some cases, legal markets can be captured by private interest, and can contribute to the exclusion and further criminalisation of the communities historically involved in the informal market, who have also borne the brunt of prohibition.

When engaging with legal regulation debates, reform-minded organisation should bear in mind that regulation goes far beyond the mere legalisation of a substance. Regulatory frameworks are complex set of norms that define who can access the legal markets and in what conditions; they also establish the penalties—if any- for those operating outside legality. Because of this, regulations have consequential implications for the health, rights, livelihood and natural environment of the individuals and communities involved in the cultivation, sale and use of the regulated substance; because drug markets are global, these implications will frequently reach beyond the country where regulation is enacted.

This Advocacy Notes offers a comprehensive vision for upholding the core values of the IDPC network in a regulated framework. The 20 principles for the responsible legal regulation of cannabis are arranged around five clusters: protecting the health and rights of people who use drugs; advancing social justice; promoting fair, sustainable and equitable trade policies; reforming criminal justice responses to drug-related activities that remain illegal; and adopting a gender-sensitive approach. While the creation of regulated markets might require compromises on some of these counts, this Advocacy Note proposes a vision of how an ambitious regulatory framework would look like.



## Crafting the IDPC principles: a member-led and iterative process

The IDPC principles for the responsible legal regulation of cannabis responds to repeated demands from our membership to engage in this issue. The principles are the result of a member-led process that started with a first draft produced by several IDPC members from Latin America, and included the first ever global meeting of IDPC members focusing on one single policy topic. In that regard, this Advocacy Note is just the beginning of an ongoing and iterative process through which the IDPC network will reflect and work on the legal regulation of drugs. As new initiatives, evidence-based research, and regulatory experiences emerge and evolve, the principles will be updated to reflect the lessons learnt along the way.

Crucially, while the principles are limited to cannabis due to the origins of the Advocacy Note and the currency and urgency of the cannabis debates, the underlying values of social justice, equity, and human rights should extend to the regulation of other scheduled drugs. Thus, the IDPC network looks forward to adapting these principles to other substances, integrating the knowledge and experience of the communities and organisations involved in these markets.

The over 195 members of the IDPC network operate in extremely diverse social, political, and legal contexts. Some members regard the public debate on regulation as timely and necessary, while others can see legal regulation as counterproductive to more

immediate advocacy goals, such as harm reduction, decriminalisation or criminal justice reforms. For those who advocate legal regulation there is not one single regulatory model to adopt, as regulations need to respond to the realities of different societies and communities. To support and empower this diversity, the IDPC principles for legal regulation propose a coherent, but also versatile, vision of the values of the IDPC network in these debates.

## Health and human rights of people who use drugs

### 1 Use legal regulation to protect the rights of people who use drugs

When a legally regulated market is established, the relevant legal system should recognise and protect the rights of people who use cannabis, just as it does for any consumer of any other legal product that presents similar health risks. Unlike illegal markets, in which there are no guarantees of quality control, in a regulated system people who use drugs can be entitled to the full range of consumer rights and protections provided by the relevant jurisdiction. These include the right to receive complete information, with a labelling and packaging system that describes accurately the product, and the certainty that sanitary and other safety measures have been complied with during production.

Furthermore, the formalisation of cultivation, production, and trade related activities under a legally



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regulated market would contribute to reducing the stigma, discrimination, exclusion, and extortion that characterise illegal markets. This is of course very relevant to the right to health, as eliminating stigma, discrimination, and the fear of criminalisation and judgement will facilitate access to information, voluntary treatment, and harm reduction. However, it also applies to a whole range of other rights, such as protection from extortion, labour laws, and access to justice, from which actors in the illegal market are normally barred.

## 2 Protect public health and adopt a harm reduction approach

Protecting public health should be one of the main reasons for establishing legally regulated drug markets. The health of people who use drugs and the general population can be better protected with the creation of a legal framework guaranteeing safe access to substances, health services to prevent harmful impacts, and accessible, comprehensive information. Furthermore, regulation allows for the introduction of safeguards to protect people for whom cannabis use poses supplementary health risks, such as children and other young people, and allows for the adoption of evidence-based safety regulations, such as drug driving tests that measure the impairment effects of cannabis, rather than just the presence of the drug.<sup>7</sup>

The example of tobacco is particularly relevant. Before the adoption of the Framework Convention on Tobacco Control and other recent market reforms,<sup>8</sup> smoke-free zones were not compulsory, second-hand smoking affected non-smokers; smokers did not benefit from the same level of information that is now available on packaging, and the potential market seemed endless, with loosely-regulated advertising. Instead of prohibiting tobacco, in recent years countries have established increasingly stricter regulations to ensure that smokers use tobacco in an informed and responsible manner, and to protect the health of both non-smokers and potential smokers.

In that sense, regulated drug markets are in themselves a harm reduction mechanism. They can protect people who decide to use a substance, create measures that would make use safer by limiting impacts on individual and public health, provide evidence-based information, and facilitate the implementation of specific harm reduction measures. These measures could include limits to the potency of substances, traceability measures to ensure quality standards for products, compulsory labelling with detailed information on each product, and information campaigns on use (which could include the effects of the use of different products and forms of intake), amongst others.

Regulation can also create safer alternatives to illegal markets dominated by products of unpredictable content and high toxicity. In North America, the ‘contamination’ of the opioid supply with high-potency synthetic opioids has been directly linked to a sharp, tragic and continued rise in overdose fatalities.<sup>9</sup> Community mobilisation has sounded the alarm and led calls for non-commercial models of legal access, such as heroin compassion clubs and prescription vending machines. These models would ensure access to pharmaceutical-grade opioids for people at high risk of death by overdose, thus reducing the use of adulterated opioids.

## 3. Promote individual autonomy, liberty, and privacy

In a state governed by the rule of law, the autonomy of each individual is protected, and any interference from the state needs to be fully justified. This protection bestows upon individuals a number of rights, ensuring that each person is able to make decisions about their own life. Generally, these freedoms are limited by the rights of others or the protection of public goods. In the case of drug use, various arguments have been used to justify government interventions through prohibitionist and repressive measures.<sup>10</sup> However, in recent years, various governments around the world<sup>11</sup> have questioned these justifications, concluding that prohibition is an excessive measure that violates individual freedoms, and ultimately people’s autonomy.

In countries such as Mexico and South Africa, various court decisions recognising the unconstitutionality of cannabis prohibition were constructed around the rights that protect the individual sphere. Within the frame of protecting individual freedoms, dignity has been recognised as the normative basis for protecting an individual’s right to use drugs and activities associated with drug use, within certain limits. Various rights stem from the concept of dignity, including the right to privacy, self-determination, and the right to the free development of personality. State interference should therefore find a balance between establishing the least restrictive limits possible for individual autonomy, and prevent possible intrusions outside of that individual sphere. In the case of legally regulated cannabis markets, the regulatory measures are justified by the possible impacts on the rights of other individuals, public order, and public health.

To ensure that both elements – autonomy and rights, versus limiting those rights – are protected, governments have various regulatory tools at their disposal,<sup>12</sup> as well as a number of guidelines established in international treaties, especially in the area of human

rights. With regard to health, most countries in the world have signed on to international treaties which protect, respect, guarantee, and promote this right. Therefore, any government regulation should abide by these rules and establish regulated markets that are more or less restrictive (for instance on price, availability, and marketing), as is the case for substances like tobacco, alcohol, and medicines.

To protect privacy, regulatory frameworks should avoid establishing a registry of people who use drugs, as the current legislation in Uruguay, and some legislative proposals in Mexico, do.<sup>13</sup> A registry of users, be it compulsory or voluntary, is an unnecessary restriction of the right to privacy that does not exist in other legal drug markets – such as coffee, tobacco, or alcohol – and that can have harmful effects: from acting as a barrier to entering the legal market to perpetuating stigma, discrimination, and inequality.<sup>14</sup>

#### 4 Create accessible and needs-based legal markets

To fully protect the rights and health of people who use drugs and mitigate the harms caused by prohibition, regulated markets need to be viable, accessible alternatives to the illegal market, while preserving appropriate regulations and health safeguards. If this is

not the case, illegal markets may continue to thrive after legal regulation – as they are to a certain degree in Canada.<sup>15</sup> While illegal markets will inevitably appear in any scenario, legal regulation loses a significant part of its potential as a mechanism for redressing the harms of prohibition, criminalisation, and stigma, when illegal markets remain large.

Some of the factors that might have slowed user buy-in for the Canadian legal market are an insufficient number of retail stores in some provinces, due to complex approval processes;<sup>16</sup> lack of good-quality products in comparison with the illegal market;<sup>17</sup> production and supply bottlenecks;<sup>18</sup> and higher prices than the illegal market.<sup>19</sup> On the other hand, this trend might also be driven by the simple fact that consumers are satisfied with their existing illegal supply.<sup>20</sup>

When attempting to design an attractive legal market, policy-makers need to strike a balance between facilitating access to the market and protecting public health,<sup>21</sup> and should avoid loosening regulations excessively to the detriment of the latter. As the cases of Uruguay and Canada show, a fully-regulated, functional retail market is a complex environment that takes time to establish,<sup>22</sup> especially when there is already a robust illegal space. Though in a very different setting, in the state of Oregon (USA), initially high prices in the legal market have reduced to a

### Box 2 Challenges in accessing medical cannabis in regulated markets

Even in countries that have regulated cannabis for medical use, patients can face serious barriers to accessing cannabis-based products for medicinal purposes (commonly known as ‘CBMPs’), as their availability is in many cases restricted. Given that cannabis has been recognised to have potential therapeutic value for neurological diseases such as multiple sclerosis or epilepsy, amongst many others,<sup>25</sup> this restriction can impinge on the enjoyment of the right to health, which includes access to controlled medicines.<sup>26</sup>

Under these restrictions, the demand for CBMPs greatly outstrips the supply.<sup>27</sup> Therefore, policy-makers that want to ensure that people do not resort to the illegal market should address the following areas of concern:

- The overall lack of approved CBMPs, which is due to the dearth of clinical trial data on the effects of cannabis, caused by the historical obstacles of conducting clinical trials with cannabis.<sup>28</sup>

In fact, studies shows that more funding is allocated to researching cannabis’ harmful effects than its potential therapeutic value.<sup>29</sup>

- Even where CBMPs have been approved and exist in the market, some practitioners are reluctant to prescribe them, as they lack the specialised knowledge to make fully informed prescribing decisions.<sup>31, 31</sup>
- Even where CBMPs exist in the market and can be prescribed, they can be prohibitively expensive. In the United Kingdom, parents of children with epilepsy have reported that they are unable to afford the cost of Full Extract Cannabis Oil, while the medicine is not available through public channels.<sup>32</sup>
- In some countries like Argentina, Colombia, and Mexico, detailed regulatory frameworks for the introduction of CBMPs in the market are significantly delayed, even after the adoption of laws regulating medical cannabis.<sup>33</sup>





The Mexican army eradicating illegal crops in 2003

more sustainable level through increased competition, contributing to the waning of the illegal sector.<sup>23</sup>

Beyond price, legally regulated markets can also be designed so that they can add value for consumers in comparison to illegal markets— such as guarantees of consistency, safety, and quality; a wider range of products available; geographical indications; and a friendly venue in which to use -as evidenced by Dutch “coffee shops”).<sup>24</sup> Online sales should be allowed to ensure access to the legal market for people with reduced mobility, or in geographical isolation.

## Social justice

Whereas access to justice in its most traditional sense tends to focus on an individual level, social justice seeks to better distribute fundamental rights and responsibilities across communities, and mandates institutions to address the structural inequalities generated by various factors. In commercial markets, there is a clear tension between the goal of using regulation to promote social inclusion and the interests of large corporations, which seek to achieve minimal regulatory constraints, low tax rates, protection against competition, and the maximisation of profits.<sup>34</sup> As a result, many policy discussions around legal regulation have increasingly focused on how to integrate social justice mechanisms rather than simply moving towards regulation at any cost. A social justice framework around cannabis regulation would recognise historically marginalised and oppressed groups, often on the basis of race, gender identity or sexual orientation, and

would generate reparation, redress and affirmative action initiatives, from the inclusion of small and medium-scale farmers within the regulated markets, to the release and expungement of criminal records for people imprisoned for cannabis-related offences.

## 5 Involve affected communities in the policy-making process

The conceptualisation, development, implementation and evaluation of drug policies need to abide by the democratic imperative of participation and social inclusion. People who are currently involved in illegal markets, including growers and people who use drugs, as well as experts from academia and civil society, have a wealth of experience and knowledge that policy makers cannot afford to side-line. In some cases, communities have developed codes of good practice that function as proto-regulatory frameworks. These can, and should, inform nascent legal systems.<sup>35</sup>

Moreover, people already involved in illegal markets, from cultivators to transporters and sellers, can shed light on the potential administrative, regulatory, financial, and socio-cultural barriers that might create obstacles to formalisation. For instance, by engaging with traditional cannabis growers through consultations and long-term partnerships based on mutual respect, decision makers can develop schemes that ensure smoother transitions to formality and encourage a sense of ownership that increases the probability of participation and compliance. The Bolivian model of coca ‘social control’ offers an illuminating example in this regard.<sup>36</sup>

Cannabis markets throughout the supply chain are very diverse, and involve many different communities. When designing the regulatory process for a particular market, policy makers should carry out an assessment of the communities involved and establish credible mechanisms to reach out and engage with formal or informal community-led organisations, ensuring that as many voices as possible are represented. This process is also an opportunity to increase public and political awareness of the experiences of people that have been involved in the illegal market for decades, thereby reducing misinformation and stigma.

## 6 Ensure that actors involved in the informal markets can transition into legality

The regulation of historically illegal drugs can result in the creation of new legal markets that co-exist side by side with the old illegal markets, but that are populated by new actors that are not representative of the communities affected by prohibition. This has certainly been the case of most states in the USA that regulated cannabis for adult non-medical use, as white people own from 80% to 90% of the multi-billion cannabis industry, while people of colour remain in informal and criminalised spaces.<sup>37</sup> In Colombia, an estimated 70% of the cannabis cultivation companies are controlled by foreign investors.<sup>38</sup>

To respond to basic values of fairness and justice, regulatory frameworks should be designed to avoid this outcome, by actively facilitating transitions into the

legal market for people and communities involved in and affected by the illegal drug trade.<sup>39</sup> This principle should extend to actors involved in all segments of the drug economy, from people who cultivate to those who transport and sell drugs.

In that regard, the obligations of policy-makers are two-fold. First, legal regulation frameworks should make sure that prior involvement in any illegal drug activity is not by itself a legal or administrative barrier to be an actor in the legal market. Thus, policy-makers should provide for automatic expungement provisions that fully erase criminal records for some people convicted for offences related to the legalised substance,<sup>40</sup> and consider adopting amnesties for those still serving their punishment.<sup>41</sup> (In contrast with this, Canadian legislators opted for the sealing of criminal records, which differs from expungement in that it still enables some public officials to consult the records). Regulations that automatically bar all people with a prior drug conviction from entering the market must be avoided.

Secondly, authorities should proactively support people who wish to engage in the process of formalisation, as the economic, technical, bureaucratic, language, cultural, and knowledge barriers to entering the market can be formidable. This can be done through a wide variety of mechanisms, from affirmative action creating preferential access to licenses or easing technical requirements for members of affected communities,<sup>42</sup> to establishing an obligation for corporations to facilitate knowledge transfer to communities.<sup>43</sup> States should also provide financial support to people from affected



Credit: Ernesten Jensema

A farmer carries the cannabis harvest uphill in India



communities, for instance through the waiver of license fees and through loans, as does Illinois, USA.<sup>44</sup>

## 7 Prioritise the participation of small- and medium-scale cultivating communities

The historical marginalisation and criminalisation of communities cultivating crops destined for the illegal drug market are well documented. These communities have been affected by forced crop eradication perpetrated primarily by militarised forces, while at the same time commonly extorted by criminal groups threatening their safety if they refuse to cultivate or accept the price offered to them (which is generally low).<sup>45</sup> Both experiences often result in the forced displacement of cultivating communities<sup>46</sup> either to urban environments or to more remote rural areas, further away from public services.

Cannabis regulation with a social justice focus requires the provision of adequate and sustainable livelihoods for these communities. Regulations should develop mechanisms to ensure that they can actively participate in the market, with a fairer distribution of resources along the production chain, as well as land redistribution and agrarian reforms when necessary, and to make sure that the interests of large corporations do not undermine those of small- and medium-scale cultivators. State intervention is therefore essential.

Several jurisdictions have adopted policies that prioritise the participation of small/medium-scale or traditional cannabis cultivators into the newly regulated market – with varied results. Jamaica has attempted to place a focus on incorporating traditional farmers into the emerging medicinal cannabis market; this has taken the form of partnerships between traditional growers (or cooperatives) and investors from countries with more developed cannabis industries such as Canada.<sup>47</sup> While these deals are hailed as a positive outcome for both parties, it remains to be seen how revenues are distributed and whether this marks a true and long-term investment in traditional farmers. Another example is Colombia, where regulations require that cannabis companies purchase 10% of their raw material from small- or medium-sized cultivating communities, defined as those holding less than half a hectare (or an acre).<sup>48</sup> However, this approach has not delivered the expected outcome either (see **Box 3**).

Other jurisdictions have defined emerging cannabis markets as ‘strategic’ or ‘priority’ areas that require special treatment. For example, civil society groups in Mexico have proposed that, under a regulated cannabis market, cultivation and harvesting permits should

### Box 3 International market capture: Canadian corporations

A significant risk to the participation of cultivating communities in newly regulated markets is the inflow of investors from abroad – typically from the Global North –, with the economic, technological, and knowledge resources necessary to push traditional growers out of the market.

Because Canada has been the first large-scale market to regulate cannabis for both medical and non-medical uses, Canadian corporations have positioned themselves as lead global investors, intervening in medical and non-medical markets as diverse as Colombia, France, Mexico, or the United States (USA).<sup>51</sup> In Latin America, Canadian companies have been estimated to control over 70% of both the Colombian<sup>52</sup> and the Uruguayan<sup>53</sup> markets.

In order to prevent precisely this from happening, the Colombian legislation had required that a percentage of all licences for cultivating cannabis for medical purposes was granted to traditional or small/medium-scale cultivators. However, this policy has not had the desired effect. Instead of investing in communities so that they can cultivate at the level of quality required by building their capacity through exchanging knowledge or sharing seed varieties, companies simply purchase the amount required and dispose of it.<sup>54</sup> By doing so, they still comply with their legal obligations, but avoid any meaningful partnership with small-scale cultivators.

To tackle this problem, some states might consider establishing restrictions on foreign investment in the companies operating in the legal cannabis market.<sup>55</sup> However, policymakers that want to establish such a restriction should reflect on how it can be compatible with – or established as an exception to – principles of non-discrimination against foreign actors in certain international trade agreements, which can protect the access to Global South markets by investors from abroad.

be exclusively granted to communities identified as pertaining to the social sector (*ejidos*,<sup>49</sup> communal properties, cooperatives, and small land owners).<sup>50</sup> Should this type of mechanism be enforced, companies that enter the market at other points of the production chain would have to purchase raw material at



Cannabis plantation in Jamaica

a fair price from the cultivating communities.

When well implemented, these policy options can help reduce the risks of corporate capture of the market. Additional measures include improved access to state programmes for cultivating communities, providing economic support to increase their production capacity and quality, capacity building to ensure that they are able to navigate the regulatory structures and licensing system, tax incentives and other economic stimulus for production, as well as better access to services such as public healthcare, schools, and security.

## 8 Develop reparation, satisfaction and non-repetition measures to address the impact of prohibition

Considering the costs of prohibition under a human rights lens implies introducing the concept of *comprehensive reparation* towards the victims of prohibition, both individually and collectively, in regulatory frameworks. The comprehensive character of reparation includes restoring the rights that have been violated and, if this is not possible, applying compensation, satisfaction and non-repetition measures.<sup>61</sup>

In the context of human rights violations resulting from prohibitionist drug policies, designing and implementing a policy for the responsible regulation of drugs constitutes a guarantee of no repetition: a legal market reduces the punitive focus of the state on people involved in drug cultivation, production, traffic, and use.

Within the regulatory framework, satisfaction measures could include the allocation of resources collected

through the tax system towards institutions or public policies that benefit both those who were unjustly incarcerated for drug offences, and victims and families of victims of serious human rights violations caused by repressive drug policies. This could take the form of social reintegration programmes, or, in countries where this would be applicable, searching for people who have disappeared as a result of the war on drugs and compensating their families, amongst others. In some contexts, reparation measures should also include protecting, promoting, and raising awareness on traditional, cultural, and sacramental drug uses that predate colonialism.

## 9 Protect the traditional, cultural, medicinal, and sacramental uses of cannabis

For centuries, cannabis has been used for cultural, religious, and medicinal purposes, especially in the regions of the planet where the plant originates. Cannabis has been traditionally used for its therapeutic properties in Asia, and from there spreading to the Middle East, Africa, and Western countries;<sup>62</sup> for religious and sacramental ends by the Hindu, Rastafarian, and Sufi communities; and for social and recreational purposes in the Mediterranean, amongst others. A regulatory framework that seeks to advance social justice must create spaces for the preservation and flourishing of these practices.

With few exceptions, most traditional uses were banned – or were mandated to phase out– under the 1961 Single Convention on Narcotic Drugs,<sup>63</sup> a



## Box 4 Reparation in action: Massachusetts' Social Equity Program

In the USA, Afro-American and Latino communities have been disproportionately impacted by repressive drug policies<sup>56</sup> and some emerging legal cannabis markets have sought to revert those harms through various policy options. The Cannabis Control Commission of the state of Massachusetts defined a set of criteria to participate in the 'Social Equity Program', including being a resident for the past five to 10 years of specific zones that have been disproportionately impacted; being a Massachusetts resident and having received a drug conviction in the past 12 months; or being married to or being the child of someone convicted of a drug offence in the past 12 months.

In this way, the Commission identified the most marginalised communities and established affirmative and reparative actions that seek to encourage and support their participation in the now legal cannabis market. The goals of the 'Social Equity Program' include support to these groups to reduce barriers to entry; provide training, technical services, and mentoring; and promote "economically reparative practices".<sup>57</sup> Oklahoma is also an interesting example, with the creation of 'low-threshold' licencing schemes to ensure that people from poorer backgrounds have access to the legal market.<sup>58</sup>

provision with clear colonial roots that is in clear contradiction with the 2007 United Nations Declarations on the Rights of Indigenous Peoples, which recognises indigenous people's right to maintain their traditional medicines and cultural heritage.<sup>64</sup> However, countries like India, Pakistan, Morocco, or even Egypt, have resorted to different means of informal non-enforcement regarding their harsh drug laws against traditional uses -at least in part.<sup>65</sup>

In order to address this, regulatory frameworks should recognise traditional uses of cannabis as part of their cultural heritage, as the Bolivian constitution does for the coca leaf,<sup>66</sup> and allow for traditional communities to cultivate and use cannabis for sacramental purposes, as Jamaica did for the Rastafarian community in its 2015 drug law reform.<sup>67</sup> Regulations should also recognise the therapeutic value of herbal and traditional preparations made on the basis of cannabis,<sup>68</sup> in line

## Box 5 Redressing the harms of criminalisation

Various communities have been affected differently by prohibitionist drug policies, depending on the jurisdiction's legal framework and how punitive policies have been implemented. Regulating cannabis through a legal framework does not only offer the possibility of accepting its use and marketing. It is an opportunity to make amends for the harms caused by decades of repressive drug policies on populations suffering from inequality. Various reparation measures can be applied in support of affected people. In the case of restitution measures, prison release through amnesties or preferential treatment in the criminal justice system ensures that groups in situation of vulnerability can gain their freedom. Social reintegration processes in favour of the beneficiaries, as well as measures such as the expungement of criminal records in specific cases, are equally important.<sup>59</sup>

For instance, the Californian legislation incorporates various reparation measures which include the expungement of criminal records or the elimination of penalties for people condemned for cannabis-related offences.<sup>60</sup> In addition, the legislation called for the investment of at least USD 50 million per year in community reintegration projects, starting with USD 10 million in 2018 and increasing by an additional USD 10 million each year until stabilising on the fifth year (2022).

with the WHO's efforts to foster the integration of traditional medicine.<sup>69</sup> In all cases, preserving traditional uses means creating the conditions for the relevant communities to operate within the legal frameworks, through affirmative action as well as technical and financial support.

## Inclusive and equitable trade policies throughout global supply chains

The development of legally regulated markets does not take place in a vacuum. Decision-makers can leverage this opportunity to favour the formalisation of existing economies and the emergence of business and trade models that promote a more equitable distribution of value along the supply chain. In this way, legally regulated markets can contribute



## Box 6 Cannabis social clubs: from grassroots movement to alternative business model

Cannabis social clubs stand out as an interesting alternative business model for both supply and demand markets. Cannabis social clubs are non-profit associations of adult cannabis users that collectively produce and distribute cannabis amongst themselves.<sup>71</sup> Grounded in Spanish grassroots activism and counterculture, these organisations were conceived to organise shared consumption and cultivation in a private place, and only on a non-profit basis.<sup>72</sup> Though for-profit variants have appeared in certain contexts (normally in contravention of the law),<sup>73</sup> this has been a successful alternative to the cannabis industry that has existed for more than twenty years. At the moment there are hundreds of cannabis social clubs in at least thirteen European countries, sometimes with as many as 5,000 members,<sup>74</sup> and they are one of the legal avenues for acquiring cannabis in Uruguay.<sup>75</sup>

to, rather than undermine, progress towards the Sustainable Development Goals (SDGs),<sup>70</sup> both nationally and internationally.

## 10 Prioritise inclusive business models that focus on the least privileged

The emergence of a multi-billion dollar cannabis industry dominated by large corporations poses significant challenges to public health, governance, and sustainability. Lessons from the alcohol and tobacco industries offer stark warnings against regulatory capture by private interests. With this in mind, a sustainable cannabis industry requires not only to adopt product and trading controls that limit the potentially negative impact on the health and wellbeing of consumers, but also favour the distribution of power and value across the supply chain. So far, projects in 'alternative development' for cannabis growers have been largely unsuccessful in doing so.<sup>76</sup>

Policy-makers designing regulated drug markets have a wide range of tools to control the harms of corporate influence. These measures range from government monopolies to fair trade schemes, cooperative association models, or tax justice measures that ensure that corporations pay their fair share of taxes where they operate, instead of syphoning them to tax havens. On the supply side, inclusive business models take different forms but tend to take the shape of growers' associations or agricultural cooperatives, owned and

governed by growers themselves. These structures allow growers to collectivise resources, risks, and benefits, thus lowering market entry barriers (for instance, by facilitating the navigation of complex normative frameworks), boosting resilience and maximising negotiating power.<sup>77</sup>

The success of these initiatives will largely depend on state authorities' commitment to embedding the formalisation of cannabis markets in a broader strategy of sustainable development, and on whether local laws and policies facilitate the formation and functioning of organisations like unions or cooperatives. As such, ensuring the meaningful participation of growers in a legally regulated market will require facilitating access to markets by investing in adequate infrastructure, credit facilities, and technical assistance.

## 11 Uphold workers' rights and promote fair labour practices

Illegal economic sectors can be a hostile environment for workers' rights, as employees frequently live in situations of vulnerability, and employers are subject to no regulation.<sup>78</sup> For example, forced labour has been abundantly reported by human trafficking survivors working in illegal cannabis growing sites in countries such as Ireland and the United Kingdom,<sup>79</sup> while serious abuse and exploitation are often found in plantations of illegal crops in countries such as Brazil.<sup>80</sup>

The legal regulation of markets can contribute to better working conditions, as it provides the opportunity for formalised, enforceable legal rights and oversight mechanisms. However, legal regulation by itself does not guarantee that labour rights will be upheld. Even in countries with relatively strong labour laws and guarantees, such as Spain<sup>81</sup> or Italy,<sup>82</sup> a wide range of labour rights violations are frequently recorded in the legal agricultural sector – from the denial of minimum wage to a lack of access to basic services and modern slavery, in great part due to informal and temporary employment practices.<sup>83</sup> Similarly, there have been some reports of labour rights violations in legal cannabis farms in the USA.<sup>84</sup>

Legal regulations need to address this reality. For domestic industries, legal regulations should include measures that strengthen and enforce existing worker rights, taking into account the track record of abuse and power imbalance between employers and workers in the agricultural sector. For instance, several states in the USA have included 'labour peace agreements' in their cannabis regulations,<sup>85</sup> which means that employers are required to facilitate the unionisation of their workforce.<sup>86</sup> In the legal cannabis markets where international trade is possible, regulations should promote fair labour practices by supporting



Farmers drying the cannabis harvest in the Rif region of Morocco

and facilitating initiatives such as worker-driven social responsibility, which aim to transfer power to workers in exploitative industries throughout the global supply chain.<sup>87</sup>

## 12 Maximise value and protect rights across the supply chain through certification schemes

The participation and competitiveness of cannabis products from smaller growers could be bolstered by schemes that highlight sustainable and rights-compliant production standards (i.e. energy efficiency, labour protection, gender equity, etc.), and that leverage local value. While existing schemes proposed within the frame of the “Fair Trade Movement”<sup>88</sup> offer an interesting blueprint, state authorities could proactively work with producers to favour the development of innovative certification schemes.

Anchored in ‘peer review, mutual trust and producer empowerment’,<sup>89</sup> participatory guarantee systems (PGS) are quality assurance systems that certify producers on the basis of stakeholder participation. They offer the benefit of flexibility, community-orientation and local focus, contrary to third party certification schemes that might not be accessible for smaller growing communities due to capacity limitations (e.g. onerous audit processes) and the continued stigma associated with the illegal drugs market. PGS can also operate as a mechanism to promote fair labour practices across different countries, including in jurisdictions and sector where labour rights and their enforcement have been historically weak.

Smaller producers could also be supported in leveraging and deriving value from the uniqueness of their products and their conditions of production. In California (USA), for instance, the state government sponsors the CalCannabis Appellations Project, which seeks to develop a framework for a state-wide appellation system in collaboration with growing communities to ‘promote regional products and local businesses’.<sup>90</sup> An appellation system is a geographical indication that identifies products coming from a certain region and/or produced following certain parameters, and certifies them in a recognisable way for consumers.<sup>91</sup>

## 13 Address the challenges to international trade posed by the global drug control regime

The international prohibition of scheduled drugs for non-medical and non-scientific use introduced by the global drug conventions, the almost universal ratification of these treaties, and a pervasive resistance to change within the multilateral system pose significant challenges for the establishment of conditions that support sustainable and equitable regional and global trade of cannabis.

One key obstacle concerns access to banking and other financial services, which is crucial to reduce market entry barriers for smaller businesses with limited capital. In the USA, for instance, the federal prohibition of cannabis has made it virtually impossible for smaller businesses at the State level to access such services, forcing them instead to ‘operate as “cash



## Box 7 An inter se modification of the UN drug conventions to facilitate international trade

The growing momentum for the legal regulation of cannabis markets for adult non-medical use has intensified the existing tensions within the international drug control regime, as the regulation of cannabis is not permitted under the UN framework. Acknowledging that it is unlikely that UN member states will agree to modify the existing conventions by consensus, some authors are proposing the figure of an inter se modification of the UN drug treaties by countries that have regulated non-medical cannabis domestically.

An inter se modification is an agreement between several like-minded parties within a multilateral treaty, through which they modify their common understanding of certain sections of such treaty, with effects between themselves only. In the case of cannabis, this would mean creating a special regime that would align the existing domestic legally regulated markets with international law. In doing so, an inter se modification might permit international trade in cannabis amongst signatories of the modification, thus allowing small and medium-scale cultivators from the Global South to access the markets for non-medical adult use in Global North countries, from which they are currently barred.

For more information see: Jelsma, M. et al. (2018), Balancing treaty stability and change: Inter se modification of the UN drug conventions to facilitate cannabis regulation (Washington Office on Latin America, Transnational Institute, and the Global Drug Policy Observatory). Available at: [https://www.wola.org/wp-content/uploads/2018/04/FINAL\\_Updated.pdf](https://www.wola.org/wp-content/uploads/2018/04/FINAL_Updated.pdf)

only”, increasing security risks and operating costs’.<sup>92</sup> Even in countries that have implemented nationwide regulations, such as Uruguay, banking multinationals (and national operators that depend on them) have alluded to international anti-money laundering regulations to refuse service to legal cannabis businesses – a contradiction in terms, according to local authorities.<sup>93</sup> Therefore, cannabis legal regulation initiatives should include domestic strategies that pre-empt potential obstacles to access financial services by market actors.<sup>94</sup>

International prohibition also hinders transnational trade, limiting the development potential that nascent

markets could suppose for growing communities and potentially entrenching global inequalities. The development of legally regulated markets in countries that have provided an outlet for cannabis products from poorer growing communities abroad will certainly disrupt supply chains in ways that could prove deleterious for those communities.<sup>95</sup> For many traditional growing communities, cannabis represents an important cash crop, offering a safety net from state neglect and lack of alternative livelihoods.<sup>96</sup> For wealthier countries developing legally regulated markets, international solidarity and a commitment to sustainable and equitable trade should translate into the development of strategies<sup>97</sup> that seek to remove barriers within the UN drug control conventions that impede transnational cannabis trade, while protecting traditional growers from the inflow of foreign capital. This new context would pave the way for the deployment of strategies such as preferential arrangements to favour market access for products from growing communities in developing countries.

## 14 Protect the climate and promote environmentally sustainable practices

Cannabis is a water-hungry, nutrient-intensive crop, and its large-scale commercial cultivation can result in environmental harm. In climates that allow for the outdoor cultivation of cannabis, this harm can manifest through the clearing of wild lands, the diversion and intensive use of water, waste disposal, and agrochemical pollution such as pesticides, poisoning wildlife and contaminating watersheds.<sup>98</sup> When it comes to the indoor cultivation of cannabis, cultivation facilities engage in highly intensive energy use, thus creating a disproportionate carbon footprint. In that regard, it has been estimated that the power density of indoors cultivation facilities is equal to that of data centres;<sup>99</sup> in 2012 alone, the energy consumed by cannabis cultivators in the USA was estimated to amount to a 1% of the total national electricity use.<sup>100</sup>

Studies have found that, unless a formalised legal market is put in place, growers are unlikely to follow environmental regulations, while public officials can be inconsistent in enforcing environmental norms on illegal or semi-legal plantations.<sup>101</sup> Therefore, legal regulation is essential to establish and enforce environmental standards that are unlikely to exist outside a formalised framework.<sup>102</sup> Furthermore, indoors cultivation is driven, at least in part, by the need to hide away from law enforcement, and would be far less prevalent in legally regulated markets, thus bringing down the carbon footprint of the industry.<sup>103</sup>

That said, the creation of regulated markets also has the potential to increase the scale of production, thus driving more environmental harm.<sup>104</sup> (For instance, the total area under cultivation in California was es-



Patio of the prison El Inca in Quito, Ecuador

timated to have increased by 91% between 2012 and 2016 alone).<sup>105</sup> Furthermore, in some cases cultivation takes place in areas that are environmentally fragile, like the Rif in Morocco.<sup>106</sup> Because of this, new legal frameworks should not only include strong regulations to protect environmental resources from the harms associated with the cultivation of cannabis, but also provide financial resources to producers that want to transition into sustainable practices.<sup>107</sup>

Schemes that identify and promote environmentally sustainable practices are especially important, as they could contribute to extending these practices across regional and global supply chains, including in cultivating countries where environmental regulations can be lighter. However, in the past producers have faced barriers in accessing existing ecolabeling schemes, as these do not want to be associated with the cannabis industry.<sup>108</sup> A responsible regulatory framework would seek to address this problem by facilitating certifications that allow engagement with consumers interested in environmentally sustainable standards and good agricultural practices led by small and medium-scale producers.

## Legal responses to drug activities outside the regulated market

### 15 End all punishments for offences relating to personal drug use

For decades, activities related to personal drug use have been severely criminalised and punished across the world. At a global level, it is estimated that one in five people are incarcerated for drug offences, of whom 21% are in prison only for possession for per-

sonal use.<sup>109</sup> The criminalisation of personal drug use and possession for personal use is a global phenomenon - In Argentina, possession for personal use is punished with penalties ranging from one to six years in prison; in Mexico this can reach 10 months to three years;<sup>110</sup> in Japan the sanction for possession can go up to five years;<sup>111</sup> and in Nigeria it can range between 15 and 25 years.<sup>112</sup> Even where legislation does not criminalise possession for personal use, in practice the police continues to arrest people who use drugs – for example, in Costa Rica, Mexico and Russia.<sup>113</sup> Other countries, though they have removed drug use and ancillary activities from the criminal books, still retain administrative punishments that are punitive in nature, such as fines (with imprisonment for non-payment), and administrative detention centres masquerading as treatment programmes.

This is especially troubling given that people living in poverty, homelessness, and oppression on the basis of race, ethnicity or gender identity and sexual orientation, amongst many other factors, experience discrimination at every stage of the criminal justice process, and are more likely to be stopped, arrested, and sentenced for drug offences.<sup>114</sup>

Legally regulated markets would address the ongoing criminalisation of people who use cannabis by allowing them to obtain and use the plant legally. However, even with a regulated market in place, some behaviours and activities related to cannabis use could continue to be a criminal offence, such as the possession of cannabis obtained in the illegal market, the use of cannabis in public spaces, or the possession or use of drugs by young people, among others. In addition to that, the personal use of substances other than cannabis can continue to be criminalised, with

## Box 8 Disproportionate punishments for drug offences

Across the world, the penalties imposed for production and trafficking offences are often disproportionate to the harm these offences cause, and to the involvement and personal circumstances of the person charged with the offence. These penalties can often be as severe as those imposed for offences such as homicide and sexual violence – right up to the death penalty in 35 countries, predominantly in Asia and the Middle East.<sup>115</sup> Furthermore, most of those charged with drug offences already experience situations of vulnerability, which leads to the entrenchment of economic and power inequalities. For instance, in countries such as Argentina, Brazil, Colombia and Costa Rica, a high percentage of incarcerated people had not completed school or did not have a job when they entered prison.<sup>116</sup>

Although available information on the number of people incarcerated for cannabis-related offences is limited, the UNODC has reported that cannabis is the most common used drug worldwide,<sup>117</sup> so it is safe to assume that a significant share of those entering the criminal justice system for drug offences are primarily prosecuted for cannabis-related offenses.

disastrous consequences. It is therefore essential that legal regulation is accompanied by the total decriminalisation of personal drug use, possession for personal use, and ancillary activities, from cultivation to consumption, for any illegal substance.

Such an approach would avoid perpetuating the harms associated with prohibition, especially for the communities that have traditionally been disproportionately impacted by punitive drug policies. A salient example here is the District of Columbia (USA). When the District of Columbia legalised cannabis in 2015, smoking cannabis outdoors remained a criminal offence. This effectively led to an increase in the criminalisation of those living in public housing where smoking indoors is prohibited, with black residents being disproportionately punished.<sup>118</sup> Positively, other jurisdictions in the USA, including Alaska, California, Colorado and others have decriminalised various cannabis use activities even when they take place outside the regulated market,<sup>119</sup> while in Uruguay the possession of any drug for personal use is decriminalised.<sup>120</sup>

## 16 Ensure that criminal justice responses to other drug-related activities are strictly proportionate

One of the key expected outcomes of legal regulation is a reduction in the number of people entering the criminal justice system for offences associated with the illegal market, as a result of bringing those activities within a legal framework. Nevertheless, many drug-related activities such as drug trafficking are likely to remain within the sphere of the criminal justice system, not least all activities associated with substances other than cannabis. For this reason, it is critical that a broader review of drug laws is conducted to consider the decriminalisation of low-level drug offenses, and in all cases to ensure more proportionate penalties.

When carrying out this review, states should follow three basic principles. First, they should remove mandatory pretrial detention and mandatory minimum sentences from criminal law books, as they automatically impose harsh prison sentences to drug offenders without consideration of their particular circumstances. Secondly, they should allow for the consideration of mitigating factors in sentencing, from being responsible for children and other dependents, to being in a situation of vulnerability, having a history of drug dependence or being coerced, as this is essential to ensure proportionate sentencing for those living in poverty and experiencing social exclusion and marginalisation. Lastly, states should introduce in all stages of the criminal process alternatives to arrest, detention, prosecution and incarceration, in order to provide comprehensive support –rather than punishment – before and after sentencing.

The combination of excessive penalties and a lack of alternatives to punishment often leads to prison overcrowding. In view of that, states should also consider schemes that facilitate the early release of people detained for low-level drug offences, such as reserving remand prison for extraordinary circumstances, enabling early releases under parole, or adopting amnesty schemes, as has been done successfully in response to the COVID-19 pandemic.<sup>121</sup>

## A gender-sensitive approach

### 17 Address women's needs in cultivation areas

The cultivation of crops for the illegal market is reported in most countries in the world, but only minimal data is available on the different roles played by men and women in cultivation areas.<sup>122</sup> There is, however, anecdotal research on the gender-related elements





Feminist demonstration against prohibition in Rio de Janeiro, Brasil.

of involvement in cultivation. In areas of Southern Africa, research has shown that many older women and housewives in rural settings engage in cannabis cultivation to sustain their household, replacing male family members who may have gone to the city in search of employment or who may have passed away, often as a result of HIV;<sup>123</sup> similarly, a significant share of the cannabis cultivation work in the Rif region of Morocco is done by women, without them profiting proportionally from the income created.<sup>124</sup> Additional research conducted in the USA has highlighted the gender divisions of labour within cannabis production, with men generally involved in heavy labour manual tasks and more visible parts of the business (such as upfront sales), while women take up behind-the-scenes roles, working in the garden, trimming or preparing other types of cannabis-related products.<sup>125</sup> The women involved in running cannabis businesses themselves generally operate as a small family business rather than as an extensive industrial complex.<sup>126</sup>

In various contexts, cannabis workers reported cases of sexual harassment and assault, discrimination, unsafe housing and exploitative working conditions, as well as threats and acts of violence to improve productivity – with women being particularly vulnerable.<sup>127</sup> In Northern California, for instance, women hired as trimmers have denounced a significant number of sexual assaults.<sup>128</sup> In many cases, women rely on other men to sell their products in order to avoid being intimidated or cheated, making them more vulnerable to men's demands.<sup>129</sup>

The situation of vulnerability faced by women in the cannabis cultivation industry is further complicated

by their limited access to land, highlighting an urgent need for land redistribution and agrarian reform through a gender lens. Being sensitive to these differences is essential when developing adequate protections against labour and sexual exploitation in legally regulated markets. Ensuring equal access to education and training for both men and women in cultivation areas would also ensure equal opportunities to upskill their capacities in growing techniques, environmental conservation, marketing opportunities, and ensuring good quality standards for products.<sup>130</sup>

## 18. Ensure access to health services for women who use drugs

Traditionally, women have used cannabis for medicinal purposes to treat a number of ailments, including irregular menstruation, menorrhagia, childbirth, post-partum haemorrhage, toxæmic convulsions, urine retention, menopause symptoms, etc.<sup>131</sup> As for drug use for non-medical purposes, although the prevalence of cannabis use among women is generally reported to be lower than for men, global evidence shows that women who are dependent on drugs are less likely to access treatment than their male counterparts.<sup>132</sup> This is due to a number of issues, including the additional social stigma faced by women who use drugs (especially when they are pregnant and/or mothers), legal issues (such as the criminalisation of drug use during pregnancy, and the threat of removal of parental rights), the lack of childcare facilities or provisions, and other barriers such as impractical opening hours which may make it difficult for women to fulfil expected family responsibilities.

## Box 9 Women mobilising to claim their rights

The mobilisation of women calling for drug policy reform has consolidated over the past decade with the creation of NGOs such as the Women and Harm Reduction International Network (WHRIN) or the International Network of Women Who Use Drugs (INWUD), and the increased engagement of established feminist organisations in the drug policy debate. However, few have so far had a specific focus on legal regulation.

There are a few notable exceptions, however. For instance, the Asociación REMA (State Network of Anti-Prohibitionist Women) in Spain has sought to facilitate meetings, networking and discussions among women interested in, or affected by, cannabis policies, and their involvement in decision-making processes.<sup>135</sup> In Chile, MamáCultiva stands out as another example of women calling for cannabis policy reform, this time for medicinal purposes, and through the mobilisation of mothers seeking to provide medical cannabis to their children.<sup>136</sup> In South-east Asian countries like the Philippines and Indonesia, women have had a significant role as advocates for medical cannabis reform.

As it has been shown above, communities that have been affected by prohibitionist policies should be included in the policymaking process leading to the establishment of legally regulated markets. It is essential that women organisations are engaged in the process, as a group that has been disproportionately harmed by repressive drug policies, and historically rendered invisible. In that regard, involving parliamentary committees on women in the legislative processes should also be considered.

Treatment services may also be either unavailable (for both men and women), may be unappealing to women (i.e. they may be heavily male-dominated environments) and may not provide support such as pregnancy care, sexual and reproductive health, mental health services, or measures aiming to address gender-based violence.<sup>133</sup> These barriers also hold true for harm reduction services, few of which are focusing on addressing women's specific needs.<sup>134</sup> This situation makes the availability of gender-sensitive harm reduction and drug treatment services all the more necessary.

## 19 Address gender inequality in a legally regulated regime

The role of women in the legal economy is hampered by structural gender inequalities across the world, as reflected by Sustainable Development Goal 5. Yet little discussion has so far taken place on the need to adopt a gender-sensitive approaches to legal regulation. As a result, the underlying gender inequalities entrenched in the legal economy more broadly are now being reflected within the regulatory market models established for cannabis.

In order to avoid falling into the trap of further gender inequality within a regulated cannabis market, it is critical that the structural failures of both the illegal drug market and other regulated markets are not replicated, and that positive actions are undertaken to provide more opportunities for women to operate on a level playing field as men.

## Learning and improving regulation

### 20 Collect data, monitor the market, and gather feedback from communities

Legal regulation is an iterative process, as public officials review and update the framework in light of lessons learnt and the evolution of the market.<sup>137</sup> In order to carry out this continuous evaluation, policy-makers, civil society and communities need access to reliable and valid data that is consistently gathered by neutral bodies and academics, and that reflects all the aspects of the regulated markets.

Public authorities are in a unique position to gather information on the multiple dimensions of legal regulation and its impact on people who use drugs, affected communities, and people living in vulnerable situations. Building on the example of Uruguay,<sup>138</sup> governments should ensure that neutral, independent and well-funded research agencies carry out a continuous and long-term evaluation of legal cannabis market on the basis of a scientific approach, also integrating knowledge and experiences from communities and civil society. For instance, existing agencies that monitor trends in drug use and illegal drug markets, such as the European Monitoring Centre on Drugs and Drug Addiction, could have their mandate expanded to include a continued assessment of innovative regulatory approaches, and their impacts on drug markets and people who use drugs. Where relevant, the authorities should collect information on the use and benefits of cannabis in traditional medicines. Insofar as possible, data should be collected through research





## Box 10 Women excluded from executive power in the cannabis industry

The rate of inclusion of women in senior-level executive positions within cannabis companies is an interesting indicator. According to a survey conducted in June 2019 among USA cannabis companies, women represented 37% of senior-level executives.<sup>140</sup> Another report surveying the role of women in the cannabis industry in the USA, however, found that 38.5% of the total surveyed employees in 166 cannabis businesses across 17 USA states identified as women, but only 17.6% of them held a director or executive role.<sup>141</sup> A closer look at major cannabis corporations show a similar picture. As of February 2020, out of the eight executives of the Biopharmaceutical Research Company (which was one of the additional companies selected to grow cannabis in Uruguay in October 2019),<sup>142</sup> only one was a woman, responsible for quality control.<sup>143</sup> At the same time, the Aurora Cannabis Inc. (Canada) had ten executives, only two of whom were women and responsible for human resources and corporate law.<sup>144</sup> Finally, Hexo Corp., one of the largest cannabis companies in the world, only had one woman within its five executives, in the post of 'Chief People Officer'.<sup>145</sup> In all these cases, it is well worth noting that none of these women are holding Chief Executive or Chief Operating Officer positions.

methods that allow for the active participation of affected communities themselves. The information gathered should be made public and available to civil society, as it is key to advocacy.

Historically, international data-gathering on drug policies has focused on supply markets, thus offering limited and poor-quality data on drug use and demand services, which is a reflection of the global system's emphasis on prohibition and control.<sup>139</sup> The failure to gather, analyse and present data in a fair and comprehensive manner is an important barrier to achieving a balanced, integrated, and multidisciplinary approach to drug policies, to which states have committed.<sup>146</sup> Legal regulation offers an opportunity to re-assess this narrow approach, as it allows countries to gain a clearer picture of the diverse ramifications of drug markets, from economic indicators to access to health services and protecting human rights.

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## About this Advocacy Note

This Advocacy Note contains the first edition of the IDPC Principles for the Responsible Legal Regulation of Cannabis. Through these principles, the IDPC network proposes a bold and comprehensive vision for advancing social justice, equity and human rights through the legal regulation of cannabis. New editions of the Principles will be prepared as new initiatives, research, and regulatory experiences emerge.

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## About IDPC

The International Drug Policy Consortium is a global network of non-government organisations that specialise in issues related to illegal drug production and use. The Consortium aims to promote objective and open debate on the effectiveness, direction and content of drug policies at national and international level and supports evidence-based policies that are effective in reducing drug-related harm. It produces briefing papers, disseminates the reports of its member organisations, and offers expert advice to policy makers and officials around the world.

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