

# Cannabis in Latin America and the Caribbean: From punishment to regulation

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## KEY POINTS

- The prohibitionist approach imposed on cannabis by the international drug control system still persists in nearly all of the Latin American and Caribbean countries examined. In almost all of them, possession falls under criminal law. Some countries' legislation establishes thresholds below which cannabis possession should not be considered a crime. Only in Uruguay does the law include regulation of the entire chain.
- Although cannabis organizations and other groups have managed to place the issue on the agenda, in most countries reforms are still pending or have been inadequate. The inclusion of relatives and users of cannabis for medicinal and therapeutic purposes has helped give impetus to the movement and to raise awareness among both political stakeholders and the public.
- Many of the reforms under way do not recognize the need to regulate the recreational and cultural use of cannabis and run the risk of perpetuating the current consequences, with the persistent impact on health, security, institutionality and human rights that the prohibition of cannabis and the lack of state regulation allow and encourage.
- The countries of Latin America and the Caribbean should prepare for future reform scenarios, instead of considering temporary measures that will perpetuate the same harmful consequences. Limiting reform solely to medicinal cannabis is only a partial, inadequate and temporary solution. If change is truly sought, it is necessary to move toward models of state regulation of cannabis for all purposes.

## Introduction

Cannabis (or marihuana) is one of the most widely consumed psychoactive substances in the world. According to the United Nations World Drug Report, 183 million people, or 3.8% of the world's population, used cannabis in 2014. Its cultivation was also reported by 129 countries.<sup>2</sup> Cannabis is subject to the United Nations System for International Control of Narcotic Drugs and Psychotropic Substances (hereafter “drugs”) and is the most widely consumed of all the drugs.

According to that control system, cannabis is among the substances with the strictest legal status; they are the most prohibited, supposedly because of the harm they cause and their lack of medical usefulness. Nevertheless, its medicinal, spiritual and social use has been recorded in different places and times in human history, without serious associated consequences.<sup>3</sup> Its prohibition began in the early 20th century,<sup>4</sup> even though there were—and are—no records of overdose deaths, and public health risks are relatively low, even compared to other psychoactive substances with less strict legal status, such as alcohol and tobacco.

Unlike other substances subject to control, which are produced in only certain regions of the world, cannabis is cultivated, produced and consumed worldwide. Some countries, however, have historically been regional producers or have a longer history or closer ties with the plant. On the American continent, this is true of Mexico in North America, Jamaica in the Caribbean, and Paraguay and Colombia in South America.

Proposals for regulation of the cannabis market have been on the table for a number of years. The movement of users and growers has placed the issue on the social, political and media agenda, and there have been some reforms. One example is Uruguay, where the decision was made to regulate the market for cannabis for any kind of use. In other countries, however, reforms have been limited to regulating systems of access to cannabis for medicinal or therapeutic use.

Although the international drug control system considers the possibility of “medical and scientific” use of cannabis, prejudices about the substance have hampered the development of regulations and acceptance by Western medicine. In fact, many “reforms” related to medicinal cannabis required only modification of low-level regulations. This means that a proposal being presented as novel is actually something that should always have existed.

These “limited” reforms, which do not acknowledge the need to regulate other uses of cannabis, such as recreational or cultural use, run the risk of perpetuating current consequences. The result is the persistence of impacts on health, security, institutional stability and human rights, which cannabis prohibition and the lack of state regulations permit and encourage.

This paper provides an overview of the status of cannabis in various countries of Latin America and the Caribbean, in three areas: the legal status of cannabis and its consequences, the existence and proliferation of cannabis movements, and the recent development of regulation of medicinal cannabis. We have based this overview on various secondary source and consultation of experts in the countries.<sup>5</sup>

## Brazil

Article 28 of Law 11.344 of 2006 establishes that acquiring, keeping, storing, transporting or carrying cannabis for personal consumption will not be punishable with prison. These acts are still considered crimes, however, subject to warnings, community service and attendance at educational programs. People who grow or harvest plants for personal use are in the same situation, according to the first section of that article.

Approval of this law not only represented progress in comparison to the previous law, of 1976, which established up to two years in prison for possession for personal use, but it also acknowledged autonomy and freedom as fundamental rights of the person and included a “risk-reduction” approach as a prevention strategy.<sup>6</sup>

A stricter approach to drug-trafficking crimes, however, with an increase in the minimum prison sentence from three years to five, also affected cannabis users. Between 2005 and 2012, the population in prison for drug crimes grew by 320%, far higher than the 51% increase in the overall prison population during that period. In 2012, there were 138,198 people imprisoned for this type of crime, which represented 25% of all people in prison.<sup>7</sup> Although it is impossible to know exactly how many users are incarcerated, there are records of cases in which users were sent to prison for possession or cultivation of cannabis because their actions were considered trafficking crimes.

In 2009, a 23-year-old father of three was arrested for possession of 26 grams of cannabis. He was sentenced to six years in prison, although he regained his freedom after later reviews.<sup>8</sup> In subsequent years, there were

two cases of musicians who were arrested for growing cannabis. In 2010, a member of a reggae band was found with 18 plants that he used for personal ritual consumption.<sup>9</sup> In 2015, a member of another band was arrested when four plants and cannabis were found in his house.<sup>10</sup>

On 16 June 2016, a 52-year-old cannabis activist (known as “*THC procê*,” founder of the Growers Cooperative of Brazil), was arrested and accused of drug trafficking crimes, because 72 cannabis plants were found in his home and he sold seeds.<sup>11</sup> <sup>12</sup> Seed distribution was one of the activities of the cooperative, whose web site has more than 1,500 followers, although only a small group supports it economically.<sup>13</sup> This was done in an effort to avoid illegal cannabis markets and to obtain quality seeds at lower prices than those of seed markets in developed countries.

Although cannabis was already being used as a substitute for users of smokable forms of cocaine, there has been a public debate about the medicinal use of cannabis since the 2014 case of a 5-year-old girl with epilepsy stemming from a rare disease. In March of that year, the case gained public attention, first because of the screening of the documentary “Illegal,” and a few days later because of a television program.<sup>14</sup> The next month, in a legal case initiated by the girl’s parents, a judge ordered the administrative authority responsible for controlling medications (ANVISA) to allow the entry of a cannabidiol-based oil for medicinal use by the child.<sup>15</sup>

In the months following that authorization, ANVISA received more than 100 requests and began making some administrative changes. In January 2015, it removed cannabidiol (CBD) from the list of prohibited substances and placed it on the list of controlled substances. Months later, it issued a resolution (N° 17 of 6 May 2015) establishing criteria and procedures for exceptional importing of CBD-based products by a person for that person’s own use, under prescription from a licensed health professional.<sup>16</sup> While other cannabinoids, such as tetrahydrocannabinol (THC), are accepted under the law to a lesser extent, it would have meant resorting to legal actions in order to import hybrid medications,<sup>17</sup> although a news item from March 2016 shows that the measures may be becoming more flexible.<sup>18</sup>

In recent years, even the movement of mothers, relatives and people who use cannabis for medical reasons has joined cannabis movements, which have existed for some time. Every year in the cities of Sao Paulo<sup>19</sup> and Rio de Janeiro<sup>20</sup> (as well as other cities, such as Recife<sup>21</sup>), a large number of people gather in May for a global event known as the Global Marihuana March (GMM), which has been held in the country for more than a decade, and which calls for an end to prohibition and demands a regulatory framework that would allow people to engage in their activities.

## Mexico

In 2009, Mexico implemented a series of reforms known as the “Small-Scale Narcotics Law” (“Ley de Narcomenudeo”). This reform not only modified the Federal Criminal Code and Criminal Procedure Code, it also modified the General Health Law, an administrative measure. With the conjunction of these laws, three separate categories were established, based on quantities for simple possession.<sup>22</sup>

In the case of cannabis, possession of up to five grams is not considered punishable under criminal law, but there is still an administrative prohibition punishable with a fine. If the amount is no more than five kilos, it is considered “small-scale drug dealing,” and states are responsible for prosecution. In these cases, if possession cannot be considered to have been for commercialization, the penalty is from 10 months to three years in prison; if the purpose is considered to have been commercialization, the penalty ranges from three to six years in prison. More than five kilos is considered a crime of trafficking (“wholesaler”), and penalties for possession range from four to seven and a half years in prison or five to 15 years in prison, depending on whether the end purpose of trafficking is proven. Beyond that, crimes of trafficking are punished with 10 to 25 years in prison.

Activities related to cultivation are also punished by prison in three categories, but without the distinction of amounts. If the crop cannot be proven to have been for trafficking, the penalty is two to eight years in prison. If the purpose is proven, the penalty ranges from two-thirds of 10 years to 25 years in prison. If the person has little education and is in extreme economic need, however, the penalty is from one to six years in prison.

Although the law establishes amounts for possession, criminal agencies still take action against cannabis users. That is because the limit is very low and does not take into account the way people obtain their supplies. As a result, users who exceed the thresholds are considered to have engaged in trafficking (“small-scale drug dealers”). Even when the amount does not exceed the established minimum, police can arrest a person, although the prosecutor may later decide not to press charges.

Even though criminal charges are not pursued, the arrest remains on the person’s record. Health authorities must be informed of the prosecutor’s decision, and the person must be cited “to provide them with orientation and encourage them to participate in programs for combating drug dependence.” Indeed, in cases of “drug dependence,” “upon the public ministry’s third report of non-exercise of criminal action, treatment will be mandatory.”

Although the reform established that states would begin to prosecute certain minor crimes, not all did so within the established time frame, and federal agencies continue to prosecute users. According to information from the Attorney General's Office, 140,860 people were detained in the country between 2009 and May 2013 for drug use. Federal data show that the main drug-related crime was "possession," even after 2009, and it is believed that this group could include cases of users in possession of amounts higher than those assumed to be for personal use, although it is impossible to determine what proportion of the group that could represent.<sup>23</sup> Although these figures are not broken down by type of substance, another study based on official data from 2008 estimated that in Mexico City, 92% of users of illegal drugs consumed marihuana, estimating the market at between 50,000 and 70,000 users.<sup>24</sup>

Mexico has a large cannabis movement that has gained visibility in the past decade. Besides the annual Global Marihuana March, which brings together a large number of people and organizations in Mexico City, its members have participated in and promoted various initiatives both to remain outside the reach of criminal law and to establish regulations for cultivation.

One of the initiatives with the greatest impact was promoted by the Mexican Society for Responsible and Tolerant Personal Consumption (*Sociedad Mexicana de Autoconsumo Responsable y Tolerante*, SMART). After the group's petition to the administrative authority in May 2013 for the right to personal consumption of marihuana (from planting to consumption, excluding commercialization) was rejected, SMART sought an injunction in a case that was resolved by the Supreme Court in 2015.<sup>25</sup> In early November, four of the five members of the court's First Chamber declared provisions of the General Health Law unconstitutional and ordered the administrative authority to grant four members of SMART permission to engage in the requested activities.<sup>26</sup>

After that decision, the government convened a National Debate on Marihuana Use, bringing together various actors to discuss the topic.<sup>27</sup> Toward the end of April 2016, President Enrique Peña Nieto signed a proposal for reform of the General Health Law and the Federal Criminal Code; among other things, it would permit the use of cannabis for medicinal purposes and increase the threshold assumed to be for personal use from five to 28 grams.<sup>28</sup> By June 2016, it appeared that the proposal related to cannabis for medical purposes was advancing, but not the proposal to increase the threshold for personal consumption.<sup>29</sup> The proposed measure was suspended, however, because of the contradiction it implied; it theoretically could come up for debate in the next legislative period.

The debate over medicinal cannabis gained impetus in Mexico because of an emblematic case of a 9-year-old girl who has a rare and serious type of

juvenile epilepsy called Lennox-Gastaut syndrome. Her parents asked the administrative authority for permission to import a CBD-based oil, which was denied. The parents took legal action (seeking an injunction), which was resolved in favor of acquiring the oil in August 2015. Although the ruling was appealed, another administrative body allowed the oil to be imported, based on regulations for medications that lack authorization in the country. On 20 October 2015, the girl received her first dose of CBD-based oil.<sup>30</sup> The case led to other similar requests, and the Health Ministry approved 48 import permits for these oils in 2016.<sup>31</sup>

## Argentina

Law 23.737 of 1989 does not penalize drug consumption directly; instead, it does so by sanctioning related activities, such as cultivation and possession. Drug-trafficking crimes carry a penalty of four to 15 years in prison. Simple possession is punished with one to six years in prison. If it is for personal use, the penalty is one month to two years in prison, although the process could be diverted to a curative or educational “security measure,” depending on whether the person is considered “dependent” or an “experimenter.” Cultivation for personal consumption carries the same penalty, but depending on the legal interpretation, it could be considered a crime of trafficking.

The law does not establish amounts (thresholds), and the distinction between activities related to trafficking and personal consumption is left to the discretion and arbitrariness of prosecutors and the courts. This was accentuated in 2005, with the so-called “de-federalization” law, which allowed provincial criminal justice agencies to prosecute certain crimes, mainly those related to users and small-scale dealing. That disparity in criteria also applied to people cultivating plants for personal consumption. Although some judges understand that this activity is not subject to punishment, others interpret it as a crime of trafficking.<sup>32</sup>

This was the case of a 25-year-old brick mason, the father of a young daughter, who had eight cannabis plants for personal use seized from his home in 2013. When police searched his home, they broke up the plants, and later said there were 18.<sup>33</sup> The man was sentenced to four years and nine months in prison on the grounds that it was a crime of trafficking, although his defenders asked that the sentence be reviewed.

In 2014, a 71-year-old retiree who was growing five cannabis plants for medicinal use also was subjected to a search of his home, and the activity initially was considered a crime of trafficking. After two years of court



cases, and possibly because of support he received from various social organizations, his case was reviewed.<sup>34</sup> He was freed, but the case is ongoing.<sup>35</sup>

Perhaps the most serious case in recent years was that of a 29-year old man from a poor family, whom police in the province of Buenos Aires stopped on a public street for alleged possession of cannabis for personal consumption. On his first night in detention in a police station, he was found hanged with an electrical cord.<sup>36</sup> A legal investigation is under way to determine possible institutional responsibility for the death.

These events have occurred despite a Supreme Court ruling that declared the criminal punishment of possession for personal consumption to be unconstitutional, in the famous “Arriola” case in 2009, which reiterated a precedent from the mid-1980s. But the decision does not modify the law, the text of which is still in effect.

Although the decision resulted in changes in actions by judges, who have applied the precedent successively to declare the unconstitutionality of criminal punishment for both possession for personal use and cultivation for personal use, that did not have a major impact on police practices, which are upheld by the law that is currently in effect.

The Attorney General’s Office reported that in 2012, there were 9,414 cases nationwide—not counting the Province of Buenos Aires—involving possession of drugs for personal consumption, representing 40% of cases involving violation of Law 23.737. Although many of these cases may have been dismissed, the criminal justice system’s treatment of users remains significant.<sup>37</sup>

Since “Arriola,” some 20 pieces of proposed legislation have been introduced by most of the political groups with parliamentary representation, mainly calling for an end to sanctions for activities such as personal consumption and cultivation for personal consumption; some even propose regulating cannabis.<sup>38</sup> In mid-2012, a draft was circulated that combined several of the proposals, and observers thought a reform was imminent. But the national Congress has yet to debate and approve a measure that would decriminalize activities related to personal consumption of drugs, ignoring the decisions of the country’s highest court.

With regard to medicinal cannabis, some legal precedents and the movement of users and relatives of children who suffer from illnesses and pathologies that are treatable with the substance<sup>39</sup> have given considerable impetus to discussion of regulation, and various pieces of draft legislation are currently being debated in congressional commissions.<sup>40</sup> Particularly important is the



parents' organization that is currently promoting debate in institutions, the media and society by organizing informative discussions in various provinces, a strong mass media presence, meetings with public officials, advocacy on parliamentary policy and active participation in congressional debates.<sup>41</sup>

The most emblematic case, which has placed the issue on the public agenda, is that of a girl who suffers from a type of epilepsy known as West syndrome, which causes some 700 seizures a day. Since she began to use cannabis oil, her life has improved significantly and the convulsions have decreased to fewer than 20 a day.<sup>42</sup> In 2015, the National Administration of Medications, Food and Medical Technology (*Administración Nacional de Medicamentos, Alimentos y Tecnología Médica*, ANMAT), authorized her family to import cannabis oil from the United States as an exceptional measure.

That case joins others involving imports of CBD- and THC-based compounds authorized in 2014, such as that of the drug known as Sativex. To date, approximately 85 imports of cannabis-based substances have been authorized in the country.<sup>43</sup>

ANMAT, the top national agency responsible in this area, recently published a report in which it acknowledged the therapeutic medical usefulness of cannabis for various illnesses and pathologies.<sup>44</sup> Its administrator also testified before national congressional commissions that *"this law should have been approved yesterday; there is no reason to wait any longer. We are totally in favor of these treatments, which are not a panacea, but which also are not a placebo; they notably improve patients' quality of life. In Argentina, there is a solid base of laboratories for public production of medications. What better production strategy than to produce these types of products?"* Cannabis, however, remains



Global Marihuana March, Buenos Aires, May 2016. (Photograph Alejandro Sierra)

included in ANMAT lists of plant-based drugs that cannot be included in phytotherapy medications or dietary supplements. In an August 2016 media interview, even the president of Argentina did not dismiss the possibility of moving toward the regulation of medicinal cannabis, although with caution.<sup>45</sup>

The cannabis movement in Argentina is one of the largest and most organized in the region. It promotes a variety of events and prepares materials to publicize its demands at the federal level (publications, radio, conferences, cannabis cups, encounters of women cannabis users, etc.), and it organizes two marches a year to promote cultivation for personal use, legalization, decriminalization and medicinal use, among other things. The most recent marches, organized as part of the Global Marihuana March, drew some 200,000 people from throughout the country, according to the organizers, making it one of the largest in the region.

An ongoing series of thematic conferences has also been organized, focusing on the uses of cannabis, legislation and techniques for cultivation for personal use. The cannabis movement is also present in legislative debates, in which it tends to play an active role in demanding its rights. For the past five years, a group of cannabis activists has met once a week near the national Congress, calling for legislative reform to decriminalize acts related to consumption and to regulate the uses of cannabis.

## Uruguay

In June 2012, the government of Uruguay presented a series of legislative, regulatory and public policy measures known as the “Strategy for life and peaceful coexistence,” which aimed to guarantee the human rights and security of the country’s inhabitants. The initiative combined measures for integral assistance for problem use (particularly tied to consumption of smokable forms of cocaine), with others that stiffened penalties for trafficking in those substances or created special legal provisions for small-scale drug dealing. One of the initiatives mentioned involved the possibility of regulating the cannabis market.<sup>46</sup> It was triggered by a robbery that occurred in mid-May in a well-known Montevideo restaurant, in which an employee was killed. The case sparked spontaneous demands for public safety, and some police explained the events as a conjunction of “youth-drugs-alcohol.”<sup>47 48</sup>

The idea of regulating cannabis, however, may have arisen from the 2007 Global Marihuana March, when some young leaders of the governing coalition approached the activists involved in the event. The work of civil society organizations was aided by political activity that led to debate in Congress, where a special commission on addictions was created in 2010,

with voices both pro and con.<sup>49</sup> It should be noted that although Uruguayan legislation did not punish possession of drugs for personal consumption, it was left to the judge to establish the amount constituting personal use. This created a gray area that facilitated the continued criminalization of users. The case of a cannabis activist and a local craftsman who were imprisoned for growing cannabis plants in 2011 also exemplified the risks run by people who opted for cultivation for personal consumption, who be punished by 20 months to 10 years in prison.

In late 2010, one of the traditional opposition parties introduced draft legislation to decriminalize cultivation for personal use, although it left it to the judge's discretion to make a determination based on quantity.<sup>50</sup> Months later, in April 2011, the governing front, along with other political forces, presented another piece of draft legislation that allowed the planting, cultivation and harvesting, as well as the industrialization and commercialization, of up to eight cannabis plants and possession of up to 25 grams. It also included regulation of cannabis clubs.<sup>51</sup>

While these initiatives were under way, civil society organizations contributed to the debate in various ways. In August 2011, civil society organizations held the first National Debate on Drugs, with support from government agencies and international organizations. In July 2012, 13 organizations formed the National Coordinating Committee for the Legalization of Marihuana (*Coordinadora Nacional por la Legalización de la Marihuana*). The government also created a commission within the National Secretariat on Drugs, with the participation of various stakeholders. Finally, in August 2012, the executive branch submitted to Congress draft legislation for regulation of the cannabis market.<sup>52</sup>

This initiative did not create as much political consensus. Allies on earlier proposals did not agree, and even members of the political group promoting the proposal differed about how it should be implemented. Drafting lasted until November 2012. Despite the significant social movement, which launched a campaign using the slogan "Responsible Regulation," most people opposed the measure. A survey in May 2013 found that 66% of respondents rejected the initiative and only 25% supported it.<sup>53</sup> Nevertheless, leaders of the governing party forged ahead with it.

The main obstacle lay in the Chamber of Deputies, which consisted of 99 representatives, 50 of whom belonged to the governing party; among the 50, however, were two who opposed the initiative. One later agreed to support the proposed law out of party discipline, while the other continued to oppose it. This deputy won the inclusion of additional provisions and was able to delay the vote until 31 July 2013, when the measure was barely approved by a vote of 50 to 46. On 10 December, 17 senators from the governing party

voted in favor, approving Law 19.172, which regulates the market of cannabis for any purpose.<sup>54</sup>

Among the principles and objectives, the promotion of public health “through a policy aimed at minimizing risks and reducing harm from cannabis use” was mentioned. This was done through the state’s takeover of the entire chain of production and commercialization of cannabis and its derivatives through the creation of the Institute for Regulation and Control of Cannabis (*Instituto de Regulación y Control del Cannabis*, IRCCA). By separating markets, it seeks to “protect the country’s inhabitants from the risks of the link with illegal commerce and drug trafficking,” so as to safeguard health to the highest degree possible. In May 2014, the measure took effect, along with its enabling regulations, which were drafted with the participation of more than 50 people from various ministries.

These regulations gave people over age 18 access to cannabis in three ways: by domestic production for personal consumption, through Membership Clubs, and by sale in pharmacies. Although the number of plants permitted for household cultivation was reduced to six, the decree containing the regulations clarifies that this involves “the female plant that shows flowering buds.” Annual production by this means is limited to 480 grams, and there can be no more than one planting per household.

Membership Clubs must be legally established as civic associations, include in their name the words “Cannabis Club,” and have at least 15 and no more than 45 members, who must be citizens or have permanent residency. Besides growing cannabis, their objectives include dissemination of information and education about responsible use for their members. The clubs can have up to 99 female plants that show flowering buds, and their production and storage are limited to 480 grams per person per year. That is the maximum amount that they can give their members, and it must be reported monthly to the IRCCA. If there is a surplus, the IRCCA decides what to do with it.

Dispensing in pharmacies is subject to similar conditions. A maximum of 10 grams a week or 40 grams a month can be sold only to citizens or permanent residents over age 18. Both this and the preceding forms of access to cannabis must be registered with the IRCCA to be considered licensed.

Users must also register with the IRCCA to choose one of the three means of access described above, and they are prohibited from obtaining cannabis through more than one. The registration requirement drew opposition from users and people who cultivated plans for personal consumption, but the regulations clarified that the information is confidential and can be used only with the express written consent of the person involved. According to the

IRCCA web site, 4,970 people who cultivated cannabis for personal use and 17 Membership Clubs were registered as of July 2016.

These regulations prohibit all forms of publicity, smoking in public places, and driving or working with abilities impaired due to cannabis consumption. People in that state can be barred from entry to schools or public events.

For cannabis dispensed by pharmacies, the regulations establish that IRCCA grants licenses for cultivation and production. In October 2015, the companies Simbiosys and Iccorp were granted licenses to produce and distribute cannabis for sale in pharmacies, up to two tons each on three hectares of state property,<sup>55</sup> although it might be possible to increase production in the future to supply 160,000 habitual consumers.<sup>56</sup> Although some people expected cannabis to be available in pharmacies by August 2016, that had not occurred by the end of the month, and of the 200 pharmacies estimated initially, about 20 might be willing to comply with the system.

Uruguay is also making progress with the cultivation of cannabis for industrial and medicinal purposes. In the latter case, Israeli, Canadian and Australian companies expressed interest in producing for the local and international market; the decision was therefore made to dedicate 10 times more area to cultivation.<sup>57</sup> The decrees regulating cannabis for industrial and medicinal purposes were signed into law in December 2014 and February 2015, respectively.

Some people say the club model is expensive, although the cannabis improves in quality and psychoactive effect. Some observers say that to lower the price, it would be necessary to increase the number of members allowed. Once pharmacies begin dispensing cannabis, however, access at more affordable prices is expected.

In late 2015, joining a club meant paying a membership fee of US\$500, plus a monthly fee of US\$100, a significant amount for a Latin American country.<sup>58</sup> By that means, a gram cost about US\$2.50, while once pharmacies started dispensing, it was estimated that they could offer quality cannabis at half that price. Although the illegal market still exists, users increasingly appear to prefer quality cannabis, a trend that is expected to intensify when there is a greater supply of cannabis in quantity and at a better price. This, however, is not expected to have a major impact on people who want to grow their own or who prefer a more artisanal product.

Despite regulation, police practices still run counter to the reform. In November 2014, a case came to light of a registered grower whose nine plants, only one of which was female, were seized.<sup>59</sup> Police also continue

to commit abuses on the erroneous grounds that smoking in public is prohibited, even though a protocol on police action was drafted in August 2015 to avoid such abuses.<sup>60</sup> Resistance to the reform is also reflected in the way in which courts uphold the law.

A survey of the general population in the second half of 2014 shows that cannabis consumption has increased at a lower rate than in earlier surveys. While 9.3% of respondents said they had consumed cannabis in the past year, that figure was 8.3% in 2011, 5.5% in 2006 and 1.4% in 2001.<sup>61</sup>

## Chile

Law 20.000 of 2005, allows drug consumption in private places, but sanctions certain aspects, such as cultivation, carrying or possession. Article 50 of the law establishes penalties of fines, attendance at prevention or rehabilitation programs, and participation in community service activities when consumption occurs in public places (ostentatious consumption). The same sanction is established for carrying substances in order to consume them in public places and for group consumption in private places, except for carrying, possession and/or consumption for medicinal purposes. The same types of penalties are established for cultivation for personal use.

The law does not establish amounts (thresholds), and the distinction between activities related to trafficking and personal use is left to the discretion and arbitrary decision of prosecutors and the courts. The legislative technique used to avoid sanctioning personal consumption opens the door to discretionary decisions and, in practice, facilitates the criminalization of mere consumers.

According to official figures from the first quarter of 2016, there were 13,728 detentions for violations of the Drugs Law.<sup>62</sup> The largest number was for carrying (38.1%), small-scale dealing (22.5%), cultivation (15.0%) and consumption (14.7%). The detentions showing the greatest percentage increase compared to the same quarter of the previous year were cultivation, at 68.4%, representing the detention of 2,061 people, probably including many who were growing plants for personal use. A total of 2,013 people were detained for consumption and 5,227 for carrying. These figures show a percentage increase in the criminalization of these actions in the past two years (2014-2016).

Lawyers face serious doubts about whether to defend people accused under the drugs law, because it can bar them from certain professional positions. Under the current law, lawyers who defend cases related to the law are disqualified from holding government jobs; they cannot be considered for



such positions, and if they currently hold such a job, they are dismissed. Only 2,240 lawyers defended these cases between 2010 and 2014, according to official data from the government Controller's Office.<sup>63</sup>

Enabling regulations for Law 20.000, issued by Ministry of Interior Decree N° 867/2007, establish that certain drugs, plants and substances are illicit. This decree places cannabis and its derivatives within Title I, which lists *"narcotic or psychotropic substances or drugs that produce physical or psychological dependence, and are capable of provoking serious toxic effects or considerable harm to health..."*

Current Chilean President Michelle Bachelet's government program (2014-2018)<sup>64</sup> specifically proposed reviewing *"Law 20.000, advising not just the criminal justice system, but local police courts of the problems with the law. We will leave it to those drafting the enabling regulations to set the levels or amounts of drug that constitute small-scale dealing, and, therefore, the amount that a person can carry for immediate personal consumption. We will review the enabling regulations that place marihuana in the list 1) of the most hazardous drugs."*

Once elected, President Bachelet stated: *"It is my decision to thoroughly review Law 20.000 and the classification of marihuana as a hard drug. I believe the drug problem in Chile is not individual consumption or medicinal use, but the drug-trafficking networks that devastate the streets of our country, and that is where we are going to focus our main effort."*<sup>65</sup>

The possibility of returning cannabis sativa to List II, the list of psychoactive substances with the potential for causing dependence, but which do not cause serious harm to public health, could be accompanied by a considerable decrease in penalties for those who have been convicted for marihuana under Law 20.000.<sup>66</sup>

In January 2016, Decree N° 1524 was issued, theoretically in an effort to remove cannabis from List I and move it to List II. Analysis of the decree, however, shows that in Article 1, cannabis is "incorporated" into List 1, while Article 2 says cannabis is "removed" from that list. Local experts were unable to explain the reason for this apparent contradiction.

The Chilean Parliament is currently debating a proposed law that would decriminalize cultivation of cannabis for personal use and clear the way for its medicinal use. The draft legislation would allow carrying up to 10 grams of cannabis in public, cultivation of six plants outdoors or one square meter indoors per person, and the corresponding storage in the home of up to 500 grams. The law would also allow cannabis social clubs and would open the possibility of cultivating a larger amount, with special authorization, for purposes such as medicinal or scientific use, and consumption by minors



under age 18 with a doctor's prescription or a guardian's permission. Since 2012, the Chamber of Deputies has been discussing other initiatives related to regulation of the medicinal use of cannabis.

The debate has gained ground on Chile's political agenda since 2012, with a strong public opinion campaign by a heterogeneous group of stakeholders: members of the medical community, patient organizations, cannabis activists and leaders of various parties from across the political spectrum.

The process is strongly associated with growing familiarity with cannabis consumption among young people. According to a survey by the National Youth Institute (*Instituto Nacional de la Juventud*, INJUV), 63% of young people are in favor of decriminalizing cannabis consumption. When asked if they considered marijuana harmful, 32% said yes, a smaller percentage than those who said the same about alcohol (60%) and tobacco (83%).<sup>67</sup>

Civil society organizations have been promoting the issue for the past 10 years, with marches throughout the country that highlight users' civil rights. The organizations estimate that 150,000 people participated in the march in 2016.

Another key player in the discussion is the Chilean Supreme Court, which in recent years has successively acquitted people who grow cannabis for personal use<sup>68</sup> and established that seeing cannabis plants from the street does not give security forces the right to enter a building, search a home or detain the owner.<sup>69</sup>

In one recent case, three police officers entered, without permission, the property of a couple who cultivated cannabis to treat their son, who has West syndrome. They uprooted the plants and detained the father. The Supreme Court dismissed the case because there was no court order, rejecting the argument of flagrancy.<sup>70</sup>

There has also been notable progress in the debate over medicinal use of cannabis, mainly driven by health professionals committed to its study and implementation, medicinal users and relatives of children with illnesses and pathologies that could be aided by cannabis. Civil society organizations have played an important political and media role, promoting the importing of cannabis-based pharmaceuticals, local cannabis plantations for manufacturing oils, and cultivation for personal and social use for medicinal purposes.

In 2014, the government authorized cannabis cultivation in the Municipality of La Florida,<sup>71</sup> and in 2015, a two-hectare plantation of cannabidiol-rich cannabis was authorized in the region of Bío-Bío. The former was a project

involving cultivation, production and administration of cannabis-based pharmaceuticals for cancer patients suffering from chronic pain. The latter was a plantation to supply the international medical industry.<sup>72</sup>

Local activists and their organizations call for drug policy reform that goes beyond medicinal use, and which eliminates the criminalization of users and people who grow cannabis for personal use for any purpose, as well as comprehensive regulation of the substance. Major activities aimed at raising awareness about these issues include ExpoWeed, conferences, informative events, publications and workshops on cultivation for personal use, which have been held around the country.

## Colombia

Colombia's Constitution, which was reformed in 2009, establishes that "the carrying and consumption of narcotic and psychotropic substances *is prohibited, except by medical prescription.*" The law establishes no criminal sanctions, but provides for administrative measures and treatment with the informed consent of the "addict."

Law 30, which took effect in 1986 and is known as the National Narcotics Statute (*Estatuto Nacional de Estupefacientes, ENE*), establishes that carrying drugs in quantities permitted for personal use is not punishable. For cannabis, the quantity permitted is 20 grams, or five grams in resin form. But the Criminal Code punishes carrying to different degrees depending on the amount. For up to one kilo of cannabis (or 200 grams of resin), the penalty is 64 to 108 months in prison; for up to 10 kilos, or two kilos of resin, the penalty is 96 to 144 months in prison; and above that amount, the penalty is 128 to 360 months in prison.<sup>73</sup>

The country's high courts have played a key role in the debate and efforts to make the legislation consistent, providing copious jurisprudence aimed at guaranteeing the rights of those who consume or carry cannabis or cultivate it for personal use. In 1994, the Constitutional Court overturned articles of Law 30 that punished carrying and consuming a personal dose. That court clarified in 2012 that the 2009 constitutional reform did not imply punishment of carrying cannabis for personal use, upholding its 1994 ruling.

Cultivation of more than 20 plants (and up to 100) is also punishable by 64 to 108 months in prison. Above that number, the prison sentence is 96 to 216 months. The Supreme Court's Chamber of Criminal Cassation ruled in June 2015 that having an amount less than or equal to 20 plants is not punishable, as long as the purpose is not trafficking, commercialization or distribution.<sup>74</sup>

That case involved the seizure of a single plant from a private home, for which the person was convicted of “keeping and financing a plantation.” When the ruling was issued, the person was still under house arrest.

Another emblematic sentence from the same court involved a soldier who was found with 50 grams of cannabis on a military base. Lower courts sentenced him to nine years and 10 months in prison for the trafficking, manufacturing or carrying of narcotic drugs. In March 2016, the Supreme Court ruled that although the amount exceeded the threshold (20 grams for cannabis), it was for personal use with no demonstrated intention to commercialize.<sup>75</sup>

The legislative debate attempted to provide greater protection for consumers’ rights, despite opposition from conservative politicians and sectors of society.<sup>76</sup> Legislative measures have been proposed that would tend to decriminalize the cultivation of cannabis, coca and opium poppies, with the goal of providing greater protection to the weakest links in the drug chain. A Drug Policy Advisory Commission was created; from the outset, it proposed that consumers not be criminalized. Its analysis coincided with OAS proposals for decriminalization of drug use.<sup>77</sup>

Colombia’s penalties remain disproportionate, which has led to severe prison overpopulation. According to one report, trafficking in prohibited substances can be punished more harshly than rape.<sup>78</sup> Most people imprisoned for drug-related activities did not play a significant role in drug-trafficking networks; only 2% were tried on other charges as well, such as conspiring to commit a crime or carrying weapons illegally.

According to the Research Consortium on Drugs and the Law (*Colectivo de Estudios Drogas y Derecho*, CEDD), 20% of the people imprisoned in the country in 2014—a total of 23,141—were being held for drug crimes.<sup>79</sup>

Although the country’s high courts have made it clear that the minimum dose is not punishable, security forces continue to crack down on people who carry a minimum amount of prohibited substances in public places, particularly singling out people who are poor.

Colombia is in the vanguard in the region regarding cannabis for medicinal use. Medicinal users, especially cases involving children with illnesses and pathologies treatable with cannabis, have driven the public and political debate in the country.<sup>80</sup>

In late 2015, the Ministry of Health and Social Protection regulated medicinal and scientific uses of cannabis<sup>81</sup> under a presidential decree signed by President Santos. The measure was modified and received legal backing

when Congress approved Law 1787 of July 2016, which regulates the entire medicinal cannabis value chain, with special emphasis on licenses for production and the protection of small-scale local producers under crop-substitution programs.<sup>82</sup> The measure was approved by a wide majority of legislators.<sup>83</sup> In late June 2016, before the law was approved, the government issued the first license for pharmaceutical manufacturing of medicinal cannabis, for export, to a foreign company.<sup>84</sup> Licenses for small-scale producers are still awaiting enabling legislation for a new law.

A pilot project called “Integral and Alternative Management of Cannabis Crops in Five Municipalities of North Cauca” was recently presented. The goal is to plant cannabis in that region for medicinal use. The Ministry of Justice has stated that when used properly, marihuana has great potential, as it can generate projects that legally benefit small farmers and indigenous communities in Cauca. One example is the Caucannabis Cooperative, which consists of 52 families, and which will manufacture medicinal products with marihuana.<sup>85</sup> Under Colombian law, these products are considered phytotherapeutic medicines, of plant origin, and are classified as alternative medicine.

The cannabis community and social groups working on drug policy reform play an important role in the country. The Global Marihuana March is held in various parts of the country, drawing thousands of people.<sup>86</sup> Many participatory events are also organized to provide information about the uses of cannabis, along with workshops on cultivation for personal use and discussions of new approaches to drug policy. Colombia’s history of violence, which led to the rise of cartels and armed groups, has also led to views that interrelate new approaches to drug policy with the quest for peace in the country.<sup>87</sup> Activism is closely tied to these circumstances and to the peace accords that were signed in 2016.

Both civil society organizations and government agencies play an important role in international discussions, as Colombia is one of the countries that promoted the recent UNGASS 2016, where it advocated greater flexibility in the understanding and interpretation of current international drug control agreements.

## Jamaica

The Dangerous Drugs Act of 1948 (with its reforms) punished cannabis possession and related activities with up to 5 years in prison and a fine.<sup>88</sup> On 24 February 2015, the Jamaican House of Representatives approved an amendment to the law.<sup>89</sup> The reform took effect on 15 April 2015, but

implementation of some aspects was delayed until regulations were in place.<sup>90</sup>

Under the new law, possession of 2 ounces (56.6 grams) of cannabis or less is no longer grounds for arrest, charges or a court appearance, and it does not go on a person's criminal record. Nevertheless, police can issue a ticket, similar to a traffic fine, for possession of 2 ounces or less.<sup>91</sup>

So although possession for personal consumption is not criminalized, there is the possibility of administrative penalties, which implies that possession of cannabis is still illegal. The possession of more than two ounces of marijuana is still a crime, and the person can be detained, charged, tried in court and fined, sentenced to prison, or both; the case also goes onto the person's criminal record. The legal reform makes an exception for possession of cannabis for religious purposes, as a sacrament for followers of Rastafarianism.<sup>92</sup>

Other exceptions allowed by the law are possession of marijuana for medical or therapeutic purposes recommended or prescribed by a licensed physician or other health professional or a professional approved by the Health Ministry; possession of cannabis for scientific research conducted by an accredited institution of higher education or when approved by the Research Council Scientific Committee; and possession of marijuana by license, authorization or permit issued within the framework of the most recent reform.

Although smoking cannabis in a public place or within five meters of a public place is prohibited, a person who smokes in public cannot be arrested or detained, although they can be fined.

The law allows up to five plants per household to be cultivated for personal consumption, and permission can be requested for cultivation for scientific or religious purposes. The law makes no reference to cultivation of cannabis for medicinal purposes, although it allows the importing of medicinal or therapeutic products derived from cannabis for people who suffer from cancer or other chronic or terminal illnesses.

The decriminalization of cannabis apparently has had positive effects, and the judicial system shows a decrease in the number of cases before the courts. In 2014, cannabis-related cases represented 25% of all cases, according to data from the Corporate Area Resident Magistrates Court. Since the decriminalization of possession for personal consumption in April 2015, cases related to possession or consumption of cannabis that reached that court decreased by more than 3,096, or 90%. According to Justice Minister Peter Bunting, since the law changed, 14,000 fewer people were detained

for possession of marihuana, while thousands had their criminal records expunged.<sup>93</sup>

In 2014, the Ganja Future Growers and Producers Association was established to contribute to the development of laws to relax prohibitions on the use of the herb.<sup>94</sup> After its founding in April 2014, similar organizations were established in parishes such as Santa Isabel, Westmoreland, Manchester, St. Catherine, St. Thomas and St. Ann. Currently, 14 parishes in Jamaica have at least one ganja association.<sup>95</sup>

In September 2015, the First National Congress of Ganja Producers and Producers Association was held. At that event, a majority of the members voted to accept a resolution to elect a president and two vice presidents to represent growers' interests on the island. The association also presented and approved a position paper asking the Jamaican government to establish two new laws, the Cannabis Industry Development Law and the Sacramental Rights of Rastafarians Law, to govern the new approach to the cannabis industry.

In late 2015, the Cannabis Licensing Authority (CLA) issued a declaration of eight guiding principles. The year ended with a very important meeting between the president of the CLA and executive members of the Ganja Growers and Producers Association (GGPA). At the 19 December meeting, some GGPA members expressed concern about the slow pace of regulation and the licensing system for the cannabis industry, while the president emphasized the importance of doing the regulation properly in order to prevent any violation of international obligations.<sup>96</sup>

After the establishment of the Cannabis Licensing Authority (CLA), interested parties eagerly awaited the development of licensing regulations. Those regulations were issued recently as Dangerous Drugs Regulations 2016, but they are only "temporary regulations," completing the legal and regulatory infrastructure needed to facilitate a local cannabis industry for medical, scientific and therapeutic purposes.<sup>97</sup>

## Puerto Rico

The Controlled Substances Law of the Free Associated State of Puerto Rico punishes the possession of marihuana with a single prison term of three years (which can vary from two to five years, depending on attenuating or aggravating circumstances) and a fine of up to US\$5,000 for a first offense. There is also the possibility of suspending the proceedings, and if certain rules are followed, of dismissing the case. The law punishes

various trafficking-related activities with a set penalty of 12 years (which can vary from five to 20 years depending on attenuating or aggravating circumstances) and a fine of up to US\$25,000. Under a reclassification by the Health Department in July 2015, however, by Declarative Order N° 32, trafficking-related activities connected with cannabis became punishable with a set penalty of seven years (ranging from five to 10 years, depending on attenuating or aggravating circumstances) and a fine of up to US\$15,000.

The Department of Corrections and Rehabilitation revealed in a 2012 report that 88% of prisoners in Puerto Rico had been sentenced in cases related to problem drug use. Nearly half were first-time offenders, and more than 75% were drug users.<sup>98</sup> The report also notes that Puerto Rico is the place with the fifth-highest rate of drug-related arrests and has one of the highest incarceration rates in the world.

In November 2013, two youths were detained with a joint and three small bags of cannabis each. They were sharing a marihuana cigarette outside of a classroom, and to the charge of possession was therefore added the aggravating factor of being in a recreation area. After a plea bargain, the older was sentenced to four years in prison. The other was held under house arrest for 22 months and was acquitted in September 2015, possibly because of a campaign by civil society organizations with the slogan, "Not one more day in prison for Melvin."<sup>99 100</sup> As a result of the campaign, after serving one year and three months in prison, the other student was pardoned by the governor in January 2016.<sup>101</sup> Information from 2016 shows that the detention of adolescents who consume marihuana has continued.<sup>102</sup>

Besides the reclassification of cannabis, which stemmed from an executive order issued by the governor in May 2015, another executive order, in September 2015, established that possession of up to six grams of cannabis would not be a priority for prosecution. Although it would still be a crime, the idea would be to reach an agreement about treatment or community service for those involved, rather than criminal proceedings. When the measure was announced, the governor said that "as of December 2014, the Department of Corrections had incurred costs amounting to US\$2.28 million for incarceration for marihuana users or people caught with marihuana in their possession."<sup>103</sup>

Proposed legislation before Parliament would make the possession of 14 grams of marihuana or less punishable by a fine of no more than US\$100. The proposed law was approved by the Senate in 2013, but in mid-2016 it was still pending in the House of Representatives.<sup>104 105</sup>

In early 2016, Reglamento 155/2015 took effect; this norm regulates cannabis for medical use and scientific research. Besides ratifying the reclassification



mentioned above, this extensive enabling legislation allows physicians to prescribe cannabis for a maximum of 30 days, in amounts that cannot exceed 2.5 ounces (approximately 70 grams) per day. It also establishes the cultivation and production of cannabis with a system of licenses granted to private individuals; cultivation for personal use is prohibited. Both doctors and patients must be registered and the latter will have identification showing that they are registered. In July 2016, however, this measure was replaced by Reglamento 8766, which reduced the amount to 1.5 ounces (42 grams) per day and, among other modifications, includes the possibility that tourists can acquire the substance.<sup>106</sup>

In Puerto Rico, there are civil society organizations and cannabis movements that fight for a rollback of criminal law and for regulation of access to the substance. Since 2013, the event “4/20” has been held in April, but in 2016, more than 20 participants were detained during or after the event.<sup>107</sup>

## Other countries

**Costa Rica’s** legislation never penalized consumption of drugs or possession for personal consumption with prison sentences. Nevertheless, users are still subject to the criminal justice system, especially through police action. Their activities run the risk of being considered crimes of trafficking, which carry a penalty of eight to 15 years in prison under Law 8.204<sup>108</sup>.

A survey of 58 cannabis users conducted in 2013 by the Costa Rican Association for Drug Studies and Interventions (*Asociación Costarricense para el Estudio e Intervención en Drogas, ACEID*) found that 79.3% had been detained and searched by police, 22.4% had been arrested, 12.1% had been jailed and about one-third had suffered threats, insults or aggression on some occasion.<sup>109</sup> In 2010 and 2011, the Attorney General’s Office issued orders to stop pursuing users, but the impact on police procedures is unclear. In the judicial system, there were cases in which carrying up to 200 grams of cannabis did not lead to prosecution or a prison sentence.

The case of a 58-year-old lawyer and cannabis activist, made public in 2015, demonstrates the risks to which cannabis growers are exposed. Although preliminary investigations indicated that the cultivation was for his personal use, his plants were confiscated four times. And although he was acquitted in early 2016, he was imprisoned for four months and faced a possible sentence of 24 years in prison (eight years on each charge).<sup>110</sup> The case led civil society organizations to call attention to the need to regulate cannabis-related activities.<sup>111</sup>

In August 2014, draft legislation was introduced to regulate cannabis for medicinal and industrial purposes.<sup>112</sup> Under the measure a government oversight agency would be created and would grant 42 licenses for cultivation for medicinal purposes (in three categories, depending on their economic capacity). The growers would sell their production to the agency. The measure would also establish licenses for dispensaries and for industrial cannabis. If the law is passed, users will have to register and will have identification.

Although the draft legislation appeared to be moving ahead in early 2016, some legislators oppose it, as do some evangelical groups and civil society groups involved in treating addictions.<sup>113</sup>

Although the draft measure was not well received by public health and safety agencies consulted by the Legislative Assembly, the Health Ministry clarified that *"there currently is no prohibition against registering and commercializing cannabis-based medications, foods and cosmetics, as long as they comply with existing regulations that guarantee their identity, safety, quality and efficiency for the uses for which they are prescribed and used, according to scientific evidence and best manufacturing, agricultural, clinical, medical or other relevant practices."*<sup>114</sup>

Costa Rica has some cannabis groups, but they appear not to be well organized. This is reflected in the Global Marijuana March, which, although organized three times between 2013 and 2016, was never held. Meanwhile, the business sector has made great strides in recent years, as indicated by the CannaCosta conference<sup>115</sup> in 2015 and the Latin American Conference on Medicinal Cannabis in 2016.<sup>116</sup>

Both **Ecuador** and **Peru**, in their criminal codes, establish that possession of certain amounts of cannabis is not a crime; nevertheless, activities of users (including growers) are still among the crimes classified as trafficking, especially those related to possession. In Ecuador, possession of up to 10 grams of marijuana is not considered a crime; in Peru, the amount permitted without penalty is eight grams.<sup>117 118</sup>

In Peru, possession for trafficking is punishable by six to 12 years in prison, but if the act is considered "small-scale dealing," the penalty is three to seven years in prison. Cultivation is punishable by eight to 15 years in prison, but if the number of plants does not exceed 100, the penalty is two to six years in prison. Despite flagrant cases of police corruption associated with the massive and constant detention of cannabis users, whose legal status must be defined by the prosecutor's office, successive governments have avoided changing this problem of misinterpretation of the law by the police, despite repeated demands by local civil society organizations.

In Ecuador, activities understood as being related to trafficking—including possession—are punished using four scales: minimum, from two to six months in prison; moderate, from one to three years in prison; high, from five to seven years; and very high, from 10 to 13 years in prison. The amounts corresponding to these categories were changed in 2015, and the quantities of cannabis established were up to 20 grams, 300 grams, 10 kilos and more than 10 kilos, respectively. Cultivation is punishable by one to three years in prison.<sup>119</sup>

Peru has an active cannabis movement, which has participated in the Global Marihuana March every May since 2010.<sup>120</sup> The 2016 march, however, was marked by incidents with the police and arrests.<sup>121</sup> Ecuador also has various cannabis organizations, and at least since 2011 they have held marches calling for regulation.

In both countries, movements of parents and patients that promote the use of cannabis for medicinal and therapeutic purposes are beginning to emerge. In Ecuador, draft legislation was presented in March 2016 to regulate the use of cannabis for “medicinal, therapeutic and research” purposes.<sup>122</sup> The measure proposes a system of licenses for laboratories and pharmaceutical distributors, with the goal of producing and commercializing cannabis, but it does not include cultivation for personal use. Patients would be able to acquire it in pharmacies, with a medical certificate.

## Conclusions

The prohibitionist approach imposed on cannabis by the international drug control system persists in nearly all the Latin American and Caribbean countries examined here. In almost all, possession is addressed under criminal law. In some countries, legislation sets thresholds below which possession of cannabis should not be considered a crime.

The amounts tend to be small, however, and do not correspond to patterns of consumption and supply, and the criminal justice system does not always enforce the law uniformly. Above those quantities, users generally have to prove that the purpose was personal consumption, so as not to be charged with trafficking, which may lead to prison, thereby illegitimately and unconstitutionally inverting the principle of innocence that should predominate in criminal justice.

Although some countries have backed off of imposing prison sentences, users’ practices still fall under the criminal justice system or other regimes that mete out punishment, through fines, treatment or mandatory

community labor, which tends to be accepted in order to avoid prison. In practice, the use of punitive regimes such as these relativizes the criminal-justice response to consumption-related activities. Reforms should lead to a total absence of sanctions and/or threats of criminal punishment.

Lack of knowledge about users' practices sometimes also results in their activities being interpreted as crimes of trafficking. It is ironic that activities that tend to avoid or decrease contact with illicit markets (such as cultivation for personal use or larger purchases) put users at greater risk, including the risk of ending up in prison. A criminal justice response only adds another problem to any problem that might—or might not—be caused by consumption. It is therefore important to emphasize, once again, the urgent need to ensure that these activities are not included in regimes of punishment.

Although there is some movement away from criminalization, the lack of regulated access to cannabis remains a contradiction and perpetuates the consequences mentioned above. Only Uruguay is implementing a comprehensive model for regulated access, and although the reform is relatively recent, no catastrophe appears to have resulted. Meanwhile, reducing the criminal justice response appears to have decreased negative consequences for users and growers and led to the development of other, less harmful responses by the state. Although cannabis groups and social organizations have placed the issue on the agenda, however, reforms are still pending or have been inadequate in most countries.

Cannabis users are shaking off the stereotypes usually associated with them and have become key political stakeholders in reform efforts. The cannabis movement in the region has been growing for a number of years, and although the degree of organization differs from country to country, it has succeeded in placing the issue on the agenda and promoting reviews of public policy.

The inclusion of people who use cannabis for medicinal and therapeutic purposes, and their relatives, has given the movement new impetus in recent years and has helped raise awareness among political stakeholders and society as a whole. It should be noted that cannabis growers are usually the ones who provide cannabis to those families or medicinal users; some relatives have even begun growing cannabis themselves.

Small-scale cannabis farmers have also begun to emerge as political stakeholders. Although this is a relatively unknown group, in some places, such as Jamaica and Colombia, its presence is becoming noticeable.

Despite this activism, in most parts of the region, the criminal justice response still takes precedence over new approaches. The reforms being

tried take some steps regarding medicinal or therapeutic cannabis, which the international drug control system permits, but their development to date has been limited by prejudices about the substance or by disinformation.

Regulations regarding medicinal use emphasize the medical-commercial model over the cultural-cooperative model (cultivation for personal use, social clubs for cultivation, solidarity cultivation, etc.). The need to develop the former model should not cause policy makers to lose sight of the fact that the other model was pre-existing and is a necessary element of any reform.

Limiting the reform to medicinal cannabis is a partial, inadequate and temporary solution. The larger problems related to cannabis stem not from its consumption, but from the (repressive) state responses that persist. It is therefore necessary to move ahead with regulatory systems for all uses of the substance. In that process, it is crucial that those involved (small farmers, users and people who grow cannabis for personal use) have a voice and participate. And although a regulatory system may still include prohibitions, it is important to ensure that they do not result in consequences that are worse than the ones they aim to avoid.

A reform limited to medicinal cannabis appears to ignore the changes that are occurring in countries in the northern part of the continent, which were mentors of the prohibitionist approach 70 years ago and which are now gradually changing their policies. In the United States of America, the states of Washington, Colorado, Alaska and Oregon, and the District of Columbia have regulated systems for access to cannabis for any use, and in the 2016 elections, several states, including California, will put such initiatives to a vote. Canada also announced that it will present draft legislation in 2017 for regulation of cannabis for any purpose, fulfilling a campaign promise made by Prime Minister Justin Trudeau.

Latin American and Caribbean countries must therefore be prepared for future reform scenarios, instead of focusing on temporary solutions that will perpetuate the same harmful consequences. These consequences are well known to the people in the region who suffer them, especially those in more disadvantaged social situations. If there is a real desire for change, it is necessary to move toward models of state regulation of cannabis for all purposes. That is the only way to face the situation honestly.

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This policy briefing provides an overview of the status of cannabis in various countries of Latin America and the Caribbean, in three areas: the legal status of cannabis and its consequences, the existence and proliferation of cannabis movements, and the recent development of regulation of medicinal cannabis.

Proposals for regulation of the cannabis market have been on the table for a number of years. The movement of users and growers has placed the issue on the social, political and media agenda, and this has resulted in reforms in some situations.

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## PUBLICATION DETAILS

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