

NGO statement from Instituto RIA, AC (México) for the Commission on Narcotic Drugs 2024 High Level Segment and Mid-term Review

Instituto RIA AC is a Mexican civil society organization that undertakes high quality research and advocacy within a social justice and peace building framework. We are pleased to provide this contribution to the 2024 CND Mid-Term Review.

Drug prohibition infringes upon the right to work and engage in commerce for communities involved in illegalized crop production by creating a cycle of economic marginalization and instability. For many of these communities, cultivating cannabis, coca or poppy crops may be their only viable means of livelihood due to limited economic opportunities. Prohibition makes these activities dangerous, subjecting cultivators to the constant threat of eradication efforts, violence from state and non-state actors, and legal repercussions.

This not only undermines their ability to sustain themselves and their families but also restricts their access to legal markets where they could potentially thrive. Violence related to prohibition policies and territorial disputes create forced displacement, with documentation of 356,792 people internally displaced in Mexico between 2006-2020 and more than 29,000 in 2021.¹ Displacement becomes normalized among these communities and the influx of synthetic substances means their livelihoods become greatly reduced. Drug prohibition perpetuates a cycle of poverty and disenfranchisement, denying these communities their fundamental right to participate freely in economic activities and pursue a dignified livelihood.

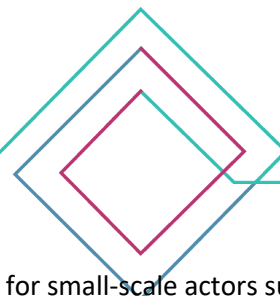
Despite the prevalence of poppy cultivation in Mexico, its criminalized status results in extensive control measures and associated harms. The General Health Law (LGS) and the Federal Criminal Code (FCC) in Mexico prohibit drug use, possession, and cultivation, outlining various drug-related offenses. Production and cultivation of drugs carry severe penalties, ranging from 10 to 25 years of imprisonment. Poppy cultivators recount how crop eradication adversely affects the environment, local food, and water supplies (Interview with poppy producer JM, 2020 by Instituto RIA).

Significant public funds and resources are allocated to seizures and eradication efforts, even as the price of opium gum has drastically declined from approximately \$1800 USD to \$440 USD over two years, after adjusting for currency exchange rates², greatly impacting cultivating communities³. Notably, there are stark revenue disparities between the groups that purchase poppy products for heroin production and the families engaged in cultivation (JM, 2020). From a development perspective, the devastating effects of criminalizing the entire production chain of illegal psychoactive substances, including cultivation,

¹UNHCR, Desplazamiento Interno en México, June 2021. <https://www.acnur.org/mx/sites/es-mx/files/legacy-pdf/62c3360b4.pdf>

² Aguilar, R. (2019). Cae el precio de la amapola. *Animal Político, El Plumaje*. Retrieved from <https://www.animalpolitico.com/lo-que-quiso-decir/cae-el-precio-de-la-amapola/>.

³ Le Cour, R., Morris, N., & Smith, B. (2019a). No More Opium for the Masses. *NORIA*. Retrieved from <https://www.noria-research.com/no-more-opium-for-the-masses/>.



production, manufacturing, distribution, and delivery, are evident, especially for small-scale actors such as cultivating communities.

The struggle for territorial control over cultivation zones exposes producers to risks posed by criminal groups, who are often their sole clients for these psychoactive plants (Interview with poppy producer OG, 2020 for Instituto RIA). Additionally, revenues for these communities have further declined due to the emergence of synthetic opioids, which are more cost-effective to produce, transport, and distribute compared to heroin.⁴ Interviews suggest that opium production in Mexico has decreased due to the increased presence of fentanyl in the illegal market which has clear economic impacts on communities that traditionally cultivated opium poppy (OG, 2020).

Not only are cultivating communities at risk of human rights violations, people who use drugs are continuously in threat of being persecuted and taken advantage of by authorities and organized criminal groups. Prohibition not only makes using psychoactive substances riskier, it also foments the use of discriminatory and discretionary practices that attempt to justify human rights violations, including torture.

People who use drugs continue to be criminalized. In Mexico, simple possession of drugs falls under the General Health Law as a crime punishable with jail time between 10 months and 3 years.⁵ It typically involves possessing small amounts of illegal psychoactive substances for personal use. Penalties vary based on the type and quantity of the drug, but often include fines, mandatory drug education or rehabilitation programs, involuntary treatment, and jail terms. The low thresholds in the General Health Law mean that people can still be criminalized for carrying small quantities of substances.

The National Institute of Statistics and Geography (INEGI) provides compelling data on criminal offenses, which highlights that of 2,185,033 cases in 2020, 4.7% were drug related crimes, and 92.7% of these drug crimes were related to “small-scale dealing” which is most often simple possession above the established threshold, while only 7.3% were related to federal drug offenses.⁶

In 2018, there were 31,338 drug-related crimes and 84.7% were small-scale dealing or possession above the established thresholds.⁷ In 2020, of drug-related crimes committed by the population in penitentiary centers, 61.1% were due to drug addiction and 38.9% were due to crimes against health. The main offense was simple possession, followed by possession with intent to sell. In 2021 at state level, there were 34,396 crimes against health, with 9,120 of them due to simple possession (without sales or commercialization). The state of Baja California Norte has the highest number of cases with 3,262.⁸

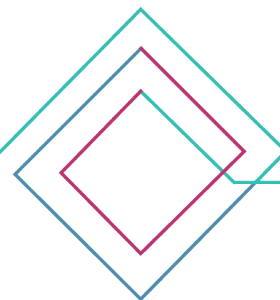
⁴ Tourliere, M. (2018). El fentanilo condena al hambre a los amapoleros de La Montaña. Retrieved from <https://www.proceso.com.mx/531974/el-fentanilo-condena-al-hambre-a-los-amapoleros-de-la-montana>.

⁵ General Health Law. Article 476. <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGS.pdf>

⁶ National Institute of Statistics and Geography (INEGI), Comunicado de Prensa, 2021. https://www.inegi.org.mx/contenidos/saladeprensa/aproposito/2021/EAP_VSDROGAS21.pdf

⁷ Instituto Nacional de Estadística y Geografía, comunicado de prensa Núm.282/20inegi.org.mx/contenidos/saladeprensa/aproposito/2020/LUCHAVSDROGAS20.pdf

⁸ Censo Nacional de Procuración de Justicia Estatal 2021, INEGI. <https://www.inegi.org.mx/programas/cnpje/2021/#:~:text=El%20Censo%20Nacional%20de%20Procuraci%C3%B3n,gobierno%2C%20procuraci%C3%B3n%20de%20justicia%2C%20justicia>



Costs of criminalization:

Prohibition sharply exposes situations of vulnerability among different populations, including people who use drugs. There are no concrete housing or social programs for people who use drugs in México. Violence carried out against women within the Mexican justice system has been evident, with problems such as discrimination and invisibility, as well as sexual abuse and rape. The criminalization of women for drug offenses has increased in recent years with 13% of women deprived of their freedom in 2010, rising to 26.0% in 2020.⁹

According to 2016 data, men experience greater violence during their arrest, with the important exception of sexual violence. Of the women who were arrested by the Marina, 40.9% reported having been victims of rape, in contrast to 5% of men. Of the women who were arrested by the Army, 20.9% reported having been victims of rape, compared with 5% of men).¹⁰

From 2016-2018, the number of women arrested for crimes against health (drug crimes) increased by 103%, and 91.4% of women deprived of liberty had not previously been sentenced for a crime, while 86.7% of women who have at least one child. Furthermore, 76.3% of them suffered some type of violence by the police or other authorities at the time of their arrest.¹¹

Young people are also being criminalized. According to official data, 80% of teenagers charged with drug crimes in 2018 were for possession of cannabis and 94% of them for possession of between 5 and 100 grams of the plant.¹² Detaining, arresting and incarcerating women and young people for minor drug offenses affects their entire family and community. The state has a responsibility to offer greater employment and educational opportunities, in addition to effective decriminalization, to avoid the economic need to resort to these activities.

Arbitrary detentions:

Under punitive policies, it is easy to criminalize a person who uses drugs for simple possession. According to the National Census of State Justice Prosecution in 2019, 61% of detentions for drug-related offenses were directly related to simple possession, as opposed to possession with intent to sell which stood at only 12%. In 2019, 20% of people who were arrested (as compared with arbitrarily detained) for drug offenses in Mexico were arrested for simple possession. Among the psychoactive substances identified in the investigation records, cannabis accounted for the majority of cases (50.1%).¹³

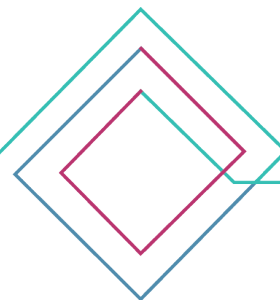
⁹ García, Carina. 2022. El ejército en las calles hasta 2028: ¿qué implica la reforma aprobada?. Expansión. En línea: <https://politica.expansion.mx/congreso/2022/10/05/que-implica-aprobacion-ejercito-calles-mexico>

¹⁰ Torreblanca y Vela, 2019. ¿ Qué podemos esperar de la Guardia Nacional?. Animal Político. En línea: <https://www.animalpolitico.com/analisis/organizaciones/el-foco/que-podemos-esperar-de-la-guardia-nacional>

¹¹ Equis Justicia para las Mujeres, 2022. #LiberarlasEsJusticia: Más de 3 mil mujeres están presas en México por delitos menores contra la salud - Animal Político. (2022, 29 diciembre). <https://www.animalpolitico.com/sociedad/campana-liberar-mujeres-presas-droga>

¹² INEGI, 2020. Instituto Nacional de Estadística y Geografía, comunicado de prensa Núm.282/20inegi.org.mx/contenidos/saladeprensa/aproposito/2020/LUCHAVSDROGAS20.pdf

¹³ Censo Nacional de Procuración de Justicia Estatal 2019, INEGI. <https://www.inegi.org.mx/programas/cnpjje/2019>



Arrests for drug offenses can be categorized in the following way in Mexico:

1. Authorities “plant” drugs

A large number of users have reported to have been arrested, despite the fact that they carried smaller amounts within the limit established in the Mexican General Health Law table of personal use.¹⁴ This is because the same authorities that plant the drugs among a person's belongings are used either to show “results” in criminalizing people who use drugs and can carry out an arrest or use it as a means to extort the person or their families.

2. Police violence during arrests

Research shows that when it comes to arrests for drug offenses, human rights violations are generally involved. People often spend months or years in unofficial preventive prison awaiting sentences. A survey undertaken in 2020 found that 80% of people who responded who had been detained had experienced some type of violence in their detention.¹⁵

3. Bribery and extortion

Low thresholds on the personal allowance for substances, unofficial preventive prison, and criminalization and stigma have generated incentives for the judicial authorities to use prohibition and discrimination against people who use drugs to extort and receive bribes. According to a 2012 study, 2 out of every 3 respondents had been arrested for using drugs (67.8%) and 66.7% had been extorted by the police or other authorities.¹⁶ This practice continues with the 2020 investigation which showed that 90% of people arrested and detained had been extorted by the authorities.¹⁷ Many detentions in Mexico (77% of detainees) are never presented to the Public Ministry because of irregularities and human rights violations during the detention.

Impacts of legal regulation on social justice:

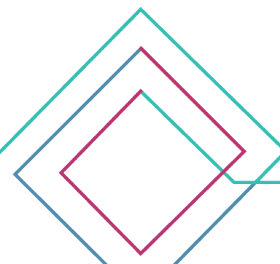
Only two national governments have fully established regulated cannabis markets for adult, personal use: Uruguay (since 2013) and Canada (since 2018). Additionally, 21 states within the United States have implemented similar regulations. Meanwhile, Malta and Luxembourg allow home cultivation and cannabis associations. Notably, numerous U.S. states that have regulated cannabis for personal use have subsequently enacted reforms, including social equity programs aimed at fostering minority ownership in the cannabis industry, fair distribution of licenses, and the expungement of criminal records, thereby

¹⁴ Presentation to the Working Group on Arbitrary Detentions, Instituto RIA and Elementa, <https://elementaddhh.org/wp-content/uploads/2021/04/Presentacio%CC%81n-para-el-estudio-del-Grupo-de-Trabajo-sobre-la-Detencio%CC%81n-Arbitraria-en-relacio%CC%81n-con-las-poli%CC%81ticas-de-drogas.pdf>

¹⁵ Historias de detención por posesión simple, violaciones a derechos humanos en contra de la población usuaria de sustancias en México. Elementa and ReverdeSer Colectivo. <https://elementaddhh.org/wp-content/uploads/2021/06/informe-resultados-narcomenudeo.pdf>

¹⁶ Primera Encuesta de usuarios de drogas ilegales en la Ciudad de México, Colectivo por una Política Integral hacia las Drogas, A. C. <https://www.tni.org/files/publication-downloads/encuesta-usuarios-cupidh.pdf>

¹⁷ Historias de detención por posesión simple, violaciones a derechos humanos en contra de la población usuaria de sustancias en México. Elementa y ReverdeSer Colectivo. <https://elementaddhh.org/wp-content/uploads/2021/06/informe-resultados-narcomenudeo.pdf>



integrating elements of criminal justice and economic opportunity into comprehensive social justice initiatives. In countries like Mexico, discussions revolve around how to involve traditional cultivating communities in policy dialogues and the transition to a legal market, particularly considering the nation's status as one of the leading illegal cannabis producers globally.

A public health approach represents an initial but insufficient step, especially in nations where the cultivation and production of psychoactive plants are intertwined with complex issues of poverty and inequality, resulting in profound judicial, economic, social, and cultural repercussions. In such contexts, integrating social equity or social justice mechanisms into newly legalized markets becomes imperative. However, addressing barriers to entry, such as access to capital, licenses, and institutional support, is essential. Cannabis reform should encompass judicial reforms, including expungement of cannabis-related criminal convictions, prisoner releases for those incarcerated on cannabis charges, and effective decriminalization of possession for personal use, all explicitly integrated into regulatory policies. The primary concern in cannabis regulation lies in the risk of corporate capture, potentially leading to harmful economic practices that exacerbate rather than alleviate community issues.

Social equity programs aim to provide resources proportional to the needs of everyone, often as a means of increasing their opportunities in a given situation.¹⁸ In the United States and elsewhere, a drug arrest and conviction can result in the loss of various rights and social services, including access to government assistance, voting rights, public housing, or deportation for undocumented individuals.

Black, Indigenous and people of color have been disproportionately impacted by criminalization and prohibition.¹⁹ The impacts of drug convictions have created intergenerational cycles of poverty and reduced opportunities as people, primarily men, are taken from their communities and incarcerated for low-level drug offenses. Numerous studies, along with seminal works such as *The New Jim Crow*,²⁰ demonstrate that the criminalization of drug offenses have been disproportionately leveraged against people of color, even though white people consume illegal substances at the same rate.²¹ Incorporating social equity, such as facilitating access to capital to enhance the involvement of communities adversely affected by prohibition, in the burgeoning cannabis industry has emerged as both a valuable lesson and an ongoing imperative. While advancements have been gradual, notable examples underscore the feasibility of this approach when jurisdictions display flexibility and steadfast dedication to integrating social equity into their policy frameworks.²²

When states like Colorado and Washington regulated cannabis for adult use in 2012, considerations of industry social equity were notably absent. Colorado initially barred individuals with prior criminalization from engaging in the market, a policy that has since been addressed. While there were talks about

¹⁸ Massachusetts Cannabis Control Commission, 'Equity Programs' <https://masscannabiscontrol.com/equity-programs/>.

¹⁹ Drug Policy Alliance, 'The Drug War, Mass Incarceration and Race' (25 January 2018) <https://idpc.net/publications/2014/03/the-drug-war-mass-incarceration-and-race>

²⁰ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. (New Press, 2010).

²¹ Drug Policy Alliance, 'The Drug War, Mass Incarceration and Race' (25 January 2018) <https://idpc.net/publications/2014/03/the-drug-war-mass-incarceration-and-race>

²² Shaleen Title, 'Fair and Square: How to Effectively Incorporate Social Equity into Cannabis Laws and Regulations' (6 December 2021) Ohio State University Drug Enforcement and Policy Center.



preventing continued criminalization for now-legal activities and reducing cannabis-related arrests overall, the issue of ensuring equitable participation in the industry was not initially prioritized.²³ However, clarity was lacking regarding how to incorporate effective social justice principles.

Many states across the United States have enacted progressive legislation incorporating social equity measures. However, simultaneously, companies have challenged state governments over the implementation of these affirmative action strategies.²⁴ This tug-of-war between individual rights and reparative justice has taken center stage in discussions surrounding legal regulation.

At the forefront of discussions on legal regulation, Massachusetts stands out for its innovative social equity program. Prior to implementation, the policy design included the appointment of one of the five Commissioners of the Cannabis Control Commission to specifically address equity issues. This ensured continuous advocacy and integration of discussions around social equity, emphasizing affirmative actions to achieve defined objectives. The Social Equity program offers technical assistance, training, expedited license application review, and reduced licensing fees. Eligibility for the program requires applicants to meet criteria such as residing in designated areas, meeting income and residency requirements, having a previous drug-related criminal record, or having a family member with such a record, or demonstrating relevant experience. Social consumption and delivery-only licenses are reserved exclusively for social equity participants for a minimum of three years. These license types offer lower barriers to entry, requiring minimal investment, and can serve as economic avenues for communities disproportionately impacted by past prohibitionist policies.

In September 2021, New York enacted regulations for adult cannabis use after extensive debate, incorporating a robust social equity framework. The emphasis has been placed on social equity licensing, aiming for 50% of cannabis business licenses in the state to be allocated to social equity participants. Additionally, a funded incubator program is anticipated to offer grants, access to capital, and technical support to communities disproportionately affected by past policies and small-scale farmers.²⁵ Housing Works made history by becoming the inaugural dispensary operator in New York City, generating over \$12 million in revenue within the initial six months. These funds directly support their mission of delivering essential healthcare, housing, sexual health, and harm reduction services, along with advocating for health equity, social justice initiatives, LGBTQ+ youth programs, and job training for New Yorkers.²⁶

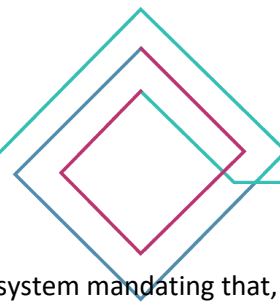
Across the globe, nations are exploring avenues to incorporate social justice measures into cannabis legislation. In Mexico, spurred by the Supreme Court's ruling declaring absolute cannabis prohibition unconstitutional, both the Senate and Congress have propelled discussions on cannabis reform with a

²³ Beau Kilmer, et al, 'Cannabis Legalization and Social Equity: Some Opportunities, Puzzles and Trade-offs' (2021) 101 *Boston University Law Review* 1003.

²⁴ John Schroyer, 'More California Marijuana Companies Sue State over Revoked Licenses', *Marijuana Business Daily* (17 September 2021).

²⁵ New York State Office of Cannabis Management and Social Equity, 'Adult-Use Cannabis for New Yorkers Ages 21 and over' <https://cannabis.ny.gov/adult-use>.

²⁶ Cision PR Newswire, Nonprofit Housing Works Cannabis Co Earns \$12 Million in Sales During First Six Months of Operation in New York (Housing Works Cannabis Co) www.prnewswire.com/news-releases/nonprofit-housing-works-cannabis-co-earns-12-million-in-sales-during-first-six-months-of-operation-in-new-york-301888677.html



focus on social justice. The Senate's proposed legislation introduces a quota system mandating that, for the initial five years of implementation, a minimum of 40% of cultivation licenses be exclusively allocated to the social sector. This sector encompasses ejidos (agricultural lands collectively cultivated under state support), cooperatives, communal properties, or communities previously impacted by prohibition through crop eradication efforts.²⁷ Per the unapproved proposal, following the initial five-year period, a minimum of 20% of cultivation licenses should be allocated to communities. As a nation with a significant cannabis production, this mechanism aims to facilitate the transition of individuals and communities from the illicit to the legal market by minimizing entry barriers and implementing affirmative measures. Furthermore, limitations are imposed on the number of retail outlets permitted per company to mitigate the risk of corporate dominance.²⁸

The widespread criminalization and prohibition of cannabis have led to the incarceration of millions of individuals globally for minor offenses like possession or sale.²⁹ Studies and academics have shown that punitive drug policies have been and continue to be used to justify social control, oppression and criminalization.³⁰ While the United States showcases some of the most severe instances of mass incarceration and overcriminalization, other countries also witness certain populations being disproportionately impacted by punitive policies concerning both supply and demand.

As states in the United States progress towards the legal regulation of cannabis, there's been a concurrent effort to exarcerate, expunge criminal records, and decriminalize activities once deemed illegal. Entanglement with the justice system, regardless of duration, significantly hampers life opportunities, including employment, education, and social capital acquisition.

Extensive documentation indicates that the criminalization of cannabis use has disproportionately impacted Black, Indigenous, and people of color, despite usage rates being relatively similar across racial lines.³¹ Statistics indicate that drug enforcement in the United States has exhibited a racial and ethnic bias, disproportionately impacting Black and Latino communities. According to the Drug Policy Alliance, as of 2018, approximately 80% of individuals in federal prison and nearly 60% in state prison for drug offenses are Black or Latino/Hispanic.³² If achieving social justice is an objective in regulating cannabis, then judicial reform becomes a vital element in remedying the damages as jurisdictions progress towards legally regulating cannabis or any psychoactive substance.

²⁷ Senado de la República, Dictamen de las comisiones unidas de justicia, de salud, y de estudios legislativos segunda, con opinión de la comisión de seguridad pública por el que se expide la ley federal para la regulación del cannabis y se reforman y adicionan diversas disposiciones de la ley general de salud y del código penal federal. (2020).

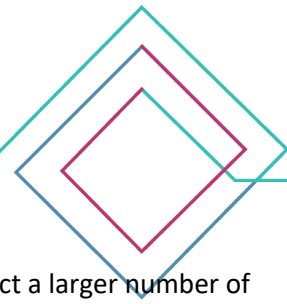
²⁸ Adrián Jiménez, et al, 'Hacia una Regulación Por La Paz' (Friedrich-Ebert-Stiftung, 2022).

²⁹ Drug Policy Alliance. 'The Drug War, Mass Incarceration and Race' (25 January 2018) <https://idpc.net/publications/2014/03/the-drug-war-mass-incarceration-and-race>

³⁰ Louise Arbour, et al, 'Are We Addicted to Prison?', *The Daily Star* (26 September 2020).

³¹ See: Akiva Liberman and Jocelyn Fontaine, 'Reducing Harms to Boys and Young Men of Color from Criminal Justice System Involvement' (Urban Institute, February 2015), American Civil Liberties Union, 'A Tale of Two Countries: Racially Targeted Arrests in the Era Marijuana Reform' (American Civil Liberties Union, 2020).

³² Drug Policy Alliance. 'The Drug War, Mass Incarceration and Race' (25 January 2018) <https://idpc.net/publications/2014/03/the-drug-war-mass-incarceration-and-race>



Sealing or expunging cannabis-related criminal records could potentially affect a larger number of individuals compared to the economic development and social equity opportunities. Expungements also have a broader effect if done automatically.³³ The optimal approach involves integrating both social equity programs and judicial reform into the policy design and subsequent implementation simultaneously. A recent and extensive example of judicial reform is seen in New York, where records are automatically expunged, and consideration is given to releasing individuals currently imprisoned for such offenses.

Member states, academics, civil society and other interested stakeholders must work together to meet the challenges of providing high quality education around psychoactive substances, both legal and illegal, harm reduction interventions, including drug checking programs should be low-threshold and accessible to anyone who already consumes both legal and illegal substances, legal regulation mechanisms should seek to put social justice and reparations at the center, with cultivating communities participating in the design and implementation, and voluntary treatment options that don't require abstinence should be amplified across regions. Only then can we align drug control with health, harm reduction and development goals. It is possible, but it will take considerable political will and courage.

³³ Beau Kilmer, et al, 'Cannabis Legalization and Social Equity: Some Opportunities, Puzzles and Trade-offs' (2021) 101 *Boston University Law Review* 1003.