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FISCAL POLICY IN THE REGULATION OF ADULT-USE CANNABIS IN COLOMBIA

Alejandro Rodríguez-Llach
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1. Introduction

Discussing a possible legal framework for marijuana in Colombia today is not a hypothetical matter, it is a real political possibility. In the 2018-2022 legislative period, two bills[1] were presented to regulate cannabis for adult use[2], and the legal market for marijuana is expanding on an international level as well, in what could be dubbed a regulatory boom. In fact, as of 2020, 11 states in the United States along with two countries (Uruguay and Canada) had approved a legal framework for adult-use marijuana (Bewley-Taylor et al., 2020). This marks a contrast to and significant change from the hardhanded laws that have shaped the war on drugs from the time of former U.S. President Richard Nixon to the present.

The possibility of regulating marijuana in Colombia poses many questions and offers few certainties. At least two factors make this process particularly sensitive for the country. The first

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1 See: Legislative bill. *Por medio del cual se modifica el artículo 49 de la Constitución Política de Colombia y se regulariza el uso recreativo del cannabis. [Uso recreativo del cannabis]*. Lodged on July 20, 2020. https://congresovisible.uniandes.edu.co/proyectos-de-ley/por-medio-del-cual-se/10588/; Regular consumo de marihuana recreativa para adultos, gran debate que llega al Congreso (2019, September 17). Senate of the Republic, https://www.senado.gov.co/index.php/component/content/article/13-noticias-actualidad/senadores/275-regular-consumo-de-marihuana-recreativa-para-adultos-gran-debate-que-llega-al-congreso

2 An initiative to regulate the coca leaf and cocaine market was also presented. See: Zuleta, P., Restrepo, D., Martínez, T., Ramos, B., & Sudarsky, J. (2021, August 29). Claves para entender el debate sobre la regulación del cannabis de uso adulto. *El Espectador*, https://www.elespectador.com/judicial/claves-para-entender-el-debate-sobre-el-cannabis-de-uso-adulto/

is that the areas that supply this illegal market significantly lag in terms of socioeconomic well-being and continue to experience the dynamics of conflict, which are partly associated with the substance's prohibition. Second, marijuana is the most highly consumed illicit substance in the country, which means that its regulation must address the protection of public health and the health of those who use it. In any event, legal cannabis would offer opportunities to improve the living situation of the peasant farmers who grow the plant, of the people who sell the substance informally or on a small scale, and of those who consume it.

These factors point to the particular history that illegal marijuana markets have in Colombia, their interaction with the armed conflict[3], and the urgent need for use to be addressed as a health matter. This cannot be approached as a simple bureaucratic process that would define the regulations and quotas for production and distribution, disregarding the expertise of growers, the deficiencies in their regions and the participation of stakeholders as a main thrust for improving public policy design. As Bewley-Taylor et al. affirm (2020), in the global north, the aggressive competition among cannabis companies to capture spaces in the new legal market endangers the possibility of small producers participating in these emerging markets, which serves to marginalize them and propel them once again into illegality.

At any rate, the majority of proposals for including small-scale producers are centered on the market's revenue potential and on allocation of those resources. If we agree that marijuana has played a central role in the origins of drug trafficking in Colombia (Britto, 2010), and that the regions where it is grown today lag significantly in socioeconomic terms, the transition to

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3 From the 1960s onward, Colombia experienced an internal armed conflict between the State and a number of insurgent guerrilla groups. The Revolutionary Armed Forces of Colombia (FARC) was the most prominent among them, and levels of violence increased between the 1990s and early 2000s. In 2016, after four years of negotiations, a Final Peace Agreement was signed between Colombia and the FARC. This guerrilla group as well as smaller illegal armed groups and paramilitaries were significantly involved in drug trafficking, which is why the Peace Agreement includes a chapter on illicit economies, mainly coca.

a legal market would be an opportunity to improve the indigenous and peasant farmer population's living conditions, while also protecting public health by controlling the quality and potency of the cannabis that is bought and sold. However, all of these public policy actions require resources. While those who promote business interests in marijuana regulation insist on stressing the economic benefits for the overall economy, and the amount of resources it would contribute to state coffers, they fail to mention specific measures the State should implement so the market can address the regional problems that predate the regulations or that gave rise to the illegal trade.

With the aim of illuminating this discussion, based on comparative experiences and on the Principles and Guidelines for Human Rights in Fiscal Policy, this document addresses three dimensions of the problem. First (i), it explains, based on available evidence and conceptual debates, why regulation is necessary and what role the fiscal framework plays in this policy. Second (ii), based on comparative experiences, it provides key elements for designing the regulation scheme's fiscal frameworks. And third (iii), it delineates the particularities of the Colombian context for a future regulatory process. Finally, contemplating these three elements, we present a proposal for cannabis fiscal principles.

We do not claim that marijuana regulation will be a panacea, bringing peace to Colombia and uprooting the problems of violence and corruption associated with drug trafficking. On the contrary, we start with sober expectations regarding what this regulation scheme can contribute in a context like Colombia's, with so many illicit economies that they overlap, coexist, collaborate and reinforce each other, and with the threat that this poses to peace, coexistence and public health. Marijuana is but a fragment of the illegal economies operating in the country; it has highly concentrated production hubs but a lucrative domestic market (Cruz & Pereira, 2021). We therefore maintain, based on well-considered expectations, that our proposals for regulation, if carried out correctly, would have the capacity to generate revenue for the State to benefit those who were most severely affected by the war on marijuana and, also, to create incentives for transitioning to the legal market.

This text offers elements for debate that are far removed from the illusory promises that would present regulation as a post-prohibition paradise, or from the catastrophic warnings that depict it as a chaotic scenario of violence and sickness. Between these two positions, we identify elements for proposing concrete measures that are realistic given the pacifying potential of regulations and that also put the health of people who use this substance at the center. With this, we hope that the debate on marijuana regulation in Colombia can move from sensationalist headlines to concrete and practical information.

We have written this text on the premise that cannabis for adult use will be regulated in Colombia, sooner or later – whether because of the accumulation of market pressures or the growing consensus about the harm that prohibition of this plant entails and the need to take control of the market, as occurred with alcohol in the United States in the 1930s and with tobacco through measures to safeguard public health (Uprimny et al., 2017b). This situation requires that we be prepared. Those of us who have criticized prohibition and the war on drugs have documented the damage that this erroneous policy has done to human rights, to the lives of people who are unfairly and disproportionately incarcerated, and to entire communities subject to fumigation. In addition, we have witnessed the resources wasted on a goal that will never be achieved, meaning the elimination of drugs from society[4]. Furthermore, we have insisted

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4 For an overview of the effects of the war on drugs in Latin America, a report by the Center for Legal and Social Studies (*Centro de Estudios Legales y Sociales*, CELS) from 2015 presents the consequences with regard to militarization, public health and incarceration. Also at a regional level, the Research Consortium on Drugs and the Law (*Colectivo de Estudios de Drogas y Derecho*, CEDD) (www.drogasyderecho.org) has widely documented the effects of drug law design and implementation on the region's criminal policy and on its prison systems. On matters related to the right to health, Dejusticia has documented barriers to accessing treatment and has also explored the war on drugs' differential impacts on women. This research is available for downloading at https://www.dejusticia.org/en/issues/drug-policy/

on the need to shift to a strict regulation scheme, in accordance with the characteristics of each market and substance (Cruz & Pereira, 2021, pp. 147-153). Now that the time is coming for marijuana, it is fitting to propose measures for that regulatory framework that would enable, to the extent possible, compensating for the damage caused and creating environments that protect public goods, such as health and security[5].

Our proposal consists of devising a fiscal framework based on collecting taxes in this market that is focused on mobilizing the maximum amount of resources available to finance the goals envisioned for cannabis regulation: reduction of the illegal market, public health, and attention to the populations affected by drug policy. That is to say, we maintain the regulation scheme must include principles such as the displacement of the illegal market, the protection of public health and harm reduction, along with a focus on reparation that would foster development and guarantee the rights of the people and communities most affected by decades of prohibition and the war waged under its banner.

Likewise, we believe that the regulatory role of taxes, to discourage the consumption of goods and services harmful to the protection and guarantee of rights, must also be prominent

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5 In the last two decades, political, public and scientific support for regulation has grown. An example of this is the Global Commission on Drug Policy, which was founded in 2011 and has featured the participation of high-level commissioners such as former UN Secretary-General Kofi Annan and various ex-presidents and prime ministers, including Juan Manuel Santos and César Gaviria of Colombia. The Commission has published various documents defending regulation and specifying the elements it must have to give primacy to human rights, and to those who were most affected by the war on drugs. See: *Taking Control: Pathways to Drug Policies That Work* (2014). https://www.globalcommissionondrugs.org/reports/taking-control-pathways-to-drug-policies-that-work; *Regulation: The Responsible Control of Drugs* (2018). http://www.globalcommissionondrugs.org/reports/regulation-the-responsible-control-of-drugs; *Time to End Prohibition* (2021). https://www.globalcommissionondrugs.org/reports/time-to-end-prohibition.
Also, public health experts have studied the harm that the current model has done to the right to health, and as a result, they have suggested contemplating the possibility of exploring regulated markets that would be based on scientific evidence (Csete et al., 2016, p. 1470).

in the regulation. This can be ensured through the use of "Pigouvian" taxes, which impose a higher tax burden on products with components that have a greater impact on the health of cannabis consumers and, ultimately, on public health in general. Meaning the greater the health risk, the greater the tax[6]. We propose that the Principles and Guidelines for Human Rights in Fiscal Policy be used as the blueprint for all these elements of the fiscal policy to be applied to the regulation scheme, so they can effectively strengthen its human rights approach.

With this in mind, the document is divided into five sections. The first is an introduction, where we describe the background of the regulatory debate and the goals we propose for marijuana regulation in Colombia. In the second section, we present the theoretical framework for explaining why it is necessary to create a legal space for marijuana and what fiscal policy and human rights principles would be applicable to that process. In the third section, we explore comparative experiences, focusing on measures to raise revenue and resource allocation, and analyze lessons learned for the Colombian case. After that, in the fourth section, we home in on the Colombian context, considering how marijuana production and use has evolved in the country, and describing the places where production takes place and their needs. Finally, in the fifth section, we unveil our proposal: the cannabis fiscal principles.

1.1 Background and Clarifications for Discussing the Regulations' Fiscal Framework

First of all, it is necessary to make two clarifications regarding terminology. The first is that we are talking about regulation and not legalization; legalization simply entails eliminating the criminal or administrative sanctions on pro-

6 The document *Fiscal Policy and Human Rights: Taxation and Market Regulation to Guarantee Health, Food, and Environmental Rights* (2021) explores and expands on the regulatory role that Pigouvian taxes have in protecting public health and the environment, such as taxes on alcohol, tobacco and sugary drinks or levies on carbon emissions and single-use plastics (Rodríguez Llach, 2021).

ducing, selling or consuming marijuana, whereas regulation is a state and bureaucratic effort to impose rules on the market. The second clarification is that we use the terms “marijuana” and “cannabis” interchangeably. We know they have different connotations and origins; marijuana is a term that arose under prohibition, while cannabis alludes to a sanitized version of the plant. However, we use the two terms interchangeably to refer generally to the plant and its psychoactive derivatives (Cruz & Pereira, 2021, p. 13).

Furthermore, there are three contextual and conceptual aspects that must be clarified before we enter into the regulatory and fiscal debate. First, it is necessary to explain the possible risks of marijuana use. First and foremost, this eventual transition to a legal framework involves a product that alters states of consciousness and proposes an individual search for pleasure, but also results in health risks, whether because of the substance itself or the way it is administered. Second, the Colombian experience with regulating medical marijuana, and some of the lessons learned from this recent process, must be taken into consideration. Finally, it is necessary to establish the content and scope of the concept of social justice and reparation as applied to a regulatory process such as this one, with reference to the evolution of regulatory models in different jurisdictions. These three elements, taken together, provide the setting in which we position ourselves today to build specific proposals.

Regarding the substance and its risks, we must focus on what the evidence indicates. Thus, we do not seek to minimize the risks of marijuana; any substance that alters states of consciousness or produces some kind of intoxication entails health risks. These risks not only arise from the substance itself but also its route of administration: in the case of marijuana, these risks are associated with the fact that it is mainly smoked. In a 2014 study (Hall & Degenhardt) on the adverse effects of chronic cannabis use (defined as daily or near-daily), it was concluded that the most probable adverse health effects include: dependence syndrome in one out of every ten consumers; deterioration of respiratory functions, mainly chronic bronchitis in regular smokers; psychotic symptoms, particularly in people with a family history of this kind of illness or a personal history of psychotic episodes; deterioration in educational progress, above all in adolescents who use intensively; and cognitive impairment, especially in those who start their marijuana use early (p. 43).

Among the less probable effects, there is evidence of cardiovascular illness, depressive or manic disorders, and use of other psychoactive substances in adolescents[7] (Hall & Degenhardt, 2014, p. 43). In light of all these factors, and to protect public health, the State must put clear limits on the minimum legal age for consumption, disseminate information so that people who have a history of mental health difficulties know the risks, and promote harm-reduction strategies for use, including less dangerous routes of administration.

On the second point, the process that has unfolded with medical marijuana offers some lessons for the future of other regulated markets. As of 2021, it is estimated that this market has generated exports worth $500 million U.S. dollars (USD). But more than five years since the regulation scheme was adopted, the national market for this substance's medical uses remains small, with the bulk of it concentrated in exports (*La República*, 2021; Torrado & Cota, 2021).

In addition, although there is not much research on this, all signs point to this market being captured by big capital, with little participation from the peasant farmers who have grown marijuana for decades and could benefit from the transition to a legal framework. Although the regulations included provisions for "small- and medium-scale growers," two significant challenges have hampered this process. First, because this is a pharmaceutical market, the costs and production standards are nearly impossible for this population to meet (Cruz & Pereira, 2021, pp. 126-140; Martínez, 2019, pp. 17-19, *MJBizDaily* Staff,

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7 The authors clarify that this relationship is highly debated in the literature and evidence, but indicate that it is mediated by contextual factors, and more specifically it is associated with illegal cannabis supply networks and the willingness to take risks of those who use cannabis at an early age (Hall & Degenhardt, 2014, p. 41).

2020). Second, there is opposition from some indigenous peoples living in the habitual growing areas, since marijuana is not part of their traditional medicine. Such is the case of the Misak people, some of whose members live in the Northern Cauca subregion (Sánchez Jaramillo, 2021).

Finally, within the latticework of adult-use cannabis regulations, we are particularly interested in the social justice possibilities of this process. The discussions around justice and social equity in the regulation of cannabis are relatively new, but they have become central to conversations about legal marijuana, as affirmed by Morris et al. (2021) and Adinoff & Reiman (2019). In the first referendums on regulation in the states of Colorado and Washington, in 2012, the idea of social justice barely appeared in the narrative; at the most, the goal of reducing incarceration in the future was discussed (Kilmer et al., 2021, p. 1007). Over time, that narrative has undergone a transformation. Now we know that this regulation must grapple with the weight of its past, which includes thinking about how those who experienced the violence of prohibition can reap the “benefits” of the regulation scheme, whether through social spending, licensing preferences or employment in the industry. In the case of Colombia, this also entails dealing (to the extent possible) with marijuana’s rural past, with the territorial conflicts this economy has left in its wake, and with the marginalization that these communities have experienced due to a drug policy that views this illicit plant not as a response to a rural development problem, but as a strictly criminal matter.

However, thinking about the regulations as an instrument of social justice hides deep tensions. The market-centered models, which are the majority of those documented, are instruments used, with the same logic as other industries, to generate consumers – not social justice (Kilmer et al., 2021, p. 1008). For that reason, there is skepticism and disbelief in affected communities about what cannabis regulation could truly offer, given that external players are the ones who will profit and seek to promote the use of a substance that is not harmless. In addition, if this model emulates the behavior of other industries (alcohol, tobacco), it will focus its advertising and marketing efforts precisely on vulnerable communities, with the health risks that this entails (Cruz & Pereira, 2021, chap. 5). Thus, a market-led regulatory scenario obscures the tensions between the regulations' reparative aspirations and the health risks of these same populations.

In this amalgamation of issues and approaches, a regulation scheme in Colombia must construct a framework to define the legal, economic and cultural situations of the communities that the scheme seeks to benefit – peasant farmer and indigenous populations in areas with cannabis crops, among other actors in what we call the gray market – while also pursuing the regulation's own goals. We do not disregard the fact that issues such as labor diversity in the industry or the expungement of criminal records are of the greatest relevance, and must be defined using human rights standards in any future regulatory regime. However, these issues are not the focus of the present document. Therefore, we concentrate on the discussion regarding the design of fiscal policy, its potential and its focus on reparation, in accordance with the very goals that drive this policy change, as we will explain in detail.

1.2 The Goals of Regulation and the Fiscal Framework's Functionality

The fiscal framework is contained within the regulation scheme's specific goals. We maintain that these regulations must pursue at least four objectives: *(i) to reduce marijuana's comparative impact in illegal economies and drug trafficking networks; (ii) to protect public health; (iii) to promote rural development in prioritized areas; and (iv) to promote reparation measures funded with the scheme's resources.*

With regard to the first goal, undoubtedly one of the objectives of a regulated market is to wrest users and clients away from the illegal market. Thus, the regulatory framework must feature a variety of tools, including a delicate balance between price, quality, strains and means of access to the substance, so the regulated market can be sufficiently competitive with the illegal one, without creating misguided incentives that would induce consumption. With this aim, measures must be forged to influence both demand – by preventing consumption – and production. In this sense, although we do not hold unrealistic expectations about the security benefits that could arise from regulating cannabis, it will have an impact on reducing the size of the illegal market, which will take resources away from a sector of organized crime. To achieve this goal, the regulatory market serves in itself as a tool for weakening the illegal trade. As we describe later, based on the amount of resources received by this market as calculated by Colombia's National Planning Department (*Departamento Nacional de Planeación*, DNP), a regulation scheme would mean that at least 2 trillion to 4 trillion Colombian pesos (COP)[8] per year could be included in the country's formal economy.

In terms of the second goal, this regulatory regime is also a public health measure, since it centers on ensuring standards for production, commercialization and consumption that would put limits on age and the places involved, along with other restrictions normally applied to a regulated psychoactive substance. Thus, this public health effort seeks to move from a substance with unknown content and potency – which is freely available to children and adolescents and puts its consumers in contact with drug trafficking networks or police officers – to a substance with certified channels of access and adequate information regarding its potency, content and the effects of its use. In this sense, the fiscal framework must establish the precise taxes that would ensure the substance's availability for legitimate uses, but also have a dissuasive effect on the consumption of products that entail greater harm to health (based on THC levels, for example).

For its third goal, we contend that cannabis regulation in Colombia must strive to promote rural development in certain regions, particularly those with a history of being negatively affected by illegal marijuana trafficking, as we will explain further in the fourth section. This goal is based on recognizing that in

8 This is equivalent to between USD $500 million and $1 billion, at an exchange rate of 4,000 COP per USD.

Colombia, marijuana has a specific historical significance: the *bonanza marimbera*[9] in the 1970s was the precursor to what we know today as drug trafficking (Cruz & Pereira, 2021, pp. 50-56). But that national experience with the plant has also meant there are rural communities that, due to their state of marginalization and poverty, found marijuana to be the only crop that allowed them to make a decent living – and those regions and communities must be prioritized under any future regulations. We understand that in the Colombian context, cannabis regulation must devise strategies for closing rural development gaps and provide the conditions for the integration of peasant farmer and indigenous populations in the legal market. To achieve this goal, the fiscal framework is crucial: in a transparent and participatory process, proposals tailored to local contexts can be conceived that would enable allocating resources to meet the needs of these prioritized areas.

Finally, the regulations must have a focus on reparation, and revenue must therefore be raised to finance such measures. When we talk about reparation in a regulatory framework, we take as our starting point a relatively open debate that is based on experiences in the United States, where market models are discovering in this process a mechanism to make amends for the harm caused under prohibition (Morris et al., 2021). In that sense, this goal requires identifying with precision the victims of prohibition, along with those who have operated in a kind of limbo, offering their know-how to others who wanted to experiment with this plant (Cruz & Pereira, 2021, p. 110). We are referring to people incarcerated, sanctioned and criminalized who saw their life plans disrupted due to a marijuana trafficking penalty, as well as peasant farmers whose territories were militarized amid violence between armed groups, to mention a few cases. Although it is virtually impossible for this harm to be repaired through regulation, the process does offer reparative

9 "Marimbera" is an adjective used to describe things related to marijuana, which is known in local slang as "marimba." The *bonanza marimbera* refers to the boom period for this economy in Colombia between the 1960s and 1980s.

options: for example, guarantees to enable entry into markets, and revenue allocation that would prioritize precisely this type of spending. This is where fiscal justice and human rights principles provide the necessary guideposts.

2. Theoretical Framework: Why Regulate and Why Does the Fiscal Framework Matter?

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2.1 Current Drug Policy: A Costly Failure and the Need to Regulate

The drug policy currently in place is a strategy designed to eliminate the use of certain substances, selected arbitrarily and with no basis in evidence, through States' use of repressive tools: criminal and/or administrative sanctions (Jelsma & Armenta, 2015). Based on the imposition of penalties and public stigmatization, anti-drug strategies[10] have sought to eradicate crops, prohibit the trafficking of illicit drugs and hinder people's access to them. All of this with the aim of safeguarding humanity's well-being and public health, especially among children and adolescents.

However, it has been demonstrated that this drug policy has not only failed on its own terms, it has also produced more harm than what it sought to "save" humanity from. While the utopia of a "drug-free world" had a price tag of at least USD $100 billion globally as of 2012, the size of the international drug market totaled USD $330 billion (Rolles et al., 2012, p. 22). Thus it can be seen that this public policy is *ineffective* vis-à-vis its own stated goals and *costly* in terms of its consequences; in other words, it is *a costly failure* (Global Commission on Drug Policy, 2021, pp. 14-15).

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10 Within the international drug control system, the term "narcotics" is used imprecisely because it is used to refer in general to all the substances classified in the drug control treaties but, for example, cocaine is a stimulant, not a narcotic substance. In this section of the text, we use the terms as they are employed under prohibition, but we alert readers to their lack of precision.

But spending on anti-drug strategies to reach the unattainable goal of a "drug-free world" is not the only issue. The policy of prohibition is linked to creating lucrative illegal markets that have given economic, political and military power to criminal organizations, with the capacity to erode the Rule of Law, the social fabric of communities, and human rights. In Latin America, drug policies have given rise to human rights violations, the militarization of public security, the escalation of violence, the weakening of due process, the disruption of proportionality in the use of criminal law, the mass incarceration of economically marginalized populations, and severe deficiencies in the enjoyment of the right to health (Centro de Estudios Legales y Sociales [CELS], 2015). Furthermore, States have used anti-drug strategies to justify the human rights violations committed in the name of fighting for a "drug-free world."

This failure is not only evident in drug producer or transit countries. In the United States, between 1980 and 2000, the number of people incarcerated for drug offenses increased nearly ninefold, while in the same period the price of cocaine dropped from approximately USD $750 to just over USD $100 (Bewley-Taylor et al., 2014, p. 6). Thus, as in the majority of States that have implemented drug prohibition, the figures show that after years of toughened anti-drug measures and mass incarceration, the price of these substances has not risen; paradoxically, prices have fallen to much lower levels. What did rise dramatically was the persecution of people who use drugs and the human rights cost of prohibition.

In the case of Colombia, one of the most visible consequences of prohibition was the relationship between the existence of the illegal market and the increase in homicidal violence and strengthening of armed groups. In the period between 1994 and 2008, Mejía and Restrepo (2013) estimated that if coca crops had not taken root in the country, or if this were a legal, nonviolent business, the homicide rate in Colombia would have been 25% lower, which means that during the period studied, there would have been an average of 5,700 fewer homicides per year (p. 6). In other words, without the cocaine economy and the war on drugs, the homicide rate would have been 27 for every 100,000 inhabitants, and not 36. In addition, the participants in the armed conflict fed off the income generated by the illegal drug market, turning the war on drugs into an extension of the conflict between guerrilla groups and the Colombian State. According to Ramírez et al. (2005), the Revolutionary Armed Forces of Colombia (FARC) collected taxes on the cocaine economy of between USD $200 million and $400 million per year (p. 141), or about half their annual budget from 1993 to 2008.

Another consequence of drug policy in Colombia was the growth of the incarcerated population during the 2000-2015 period. By 2015, the country had the region's sharpest increase in the population deprived of liberty for drug offenses. While the country's population grew 19%, the prison population grew by 141.8% and those deprived of liberty due to drugs ballooned by 289.2% (Uprimny et al., 2017b, p. 48). In fact, Colombia had the highest growth rate of the prison population and of people detained for drugs of the nine countries studied by the Research Consortium on Drugs and the Law (CEDD) (Chaparro Hernández & Pérez Correa, 2017, p. 72). As of 2015, 20 out of every 100 people deprived of their liberty in Colombia were being held on drug offenses (Uprimny et al., 2017b, p. 50). This increase in the incarcerated population sparked a crisis in the prison system, which led the country's Constitutional Court to declare an "unconstitutional state of affairs"[11]. In addition, it is calculated that in the 2000-2014 period, the country spent USD $1.184 billion (2.37 trillion Colombian pesos at 2014 prices) to keep the population detained for drug offenses in prison (Uprimny et al., 2017a, p. 69).

Furthermore, this drug policy created tension in the institutional relations between the police and people who use substances that have been declared illicit. Uprimny et al. (2017b) showed that during the 2005-2014 period, the police made more than 2 million arrests, of which 29.3% were for presumed possession, trafficking or manufacture of drugs (p. 34). This means

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11 Constitutional Court of Colombia, Judgment T-388 of 2013 (Presiding Justice María Victoria Calle Correa; June 28, 2013).

that, on average, the police arrested 80,787 people per year for drug-related conduct, which is equivalent to 221 arrests per day or 9 arrests each hour (Uprimny et al., 2017b, p. 34).

Although the figures on the arrest and prosecution of people for drug trafficking are not disaggregated by substance, the war on drugs has had a more pronounced impact on people who use cannabis. The use of marijuana is visible and easy to detect, in contrast to what occurs with other substances. This, on top of the constant stigmatization of its use in the media, facilitates public support for legislative reforms that toughen prohibition measures. In fact, the National Code for Policing and Coexistence (*Código Nacional de Policía y Convivencia*), approved in 2016, sanctioned 16 conducts related to the use or possession of drugs in public areas and spaces open to the public, or where children or adolescents are present. Although it is not easy to disaggregate how many of these corrective measures are applied to people who possess or use cannabis, the larger number of people who use this substance as opposed to others indicates that they are affected in greater proportion (Cruz & Pereira, 2021, p. 104).

According to the database on the results of seizures kept by the National Police's Criminality Information Group (*Grupo Información de Criminalidad*), Cruz and Pereira (2021) concluded that a significant number of the operations carried out to confiscate psychoactive substances take place in public areas and result in the seizure of small amounts of marijuana. In the 2015-2019 period, 46.36% of all narcotics seizure operations were focused on cannabis users who had less than 100 grams in their possession (Cruz & Pereira, 2021, p. 105). It was also found that approximately 507 tonnes of marijuana were confiscated in public areas[12], accounting for 87.77% of the operations.

12 The database included places such as alleyways, highways, sidewalks in front of pedestrian walkways, bridges, footbridges, the urban perimeter, paths, etc.

Table 1. Records of Marijuana Seizures from 2015 to April 30, 2019, Grouped by Weight

	Records of Seizures	Quantity (kg)	Percentage
Marijuana (total records)	193 817	871 519	100.00 %
Records < 100 gr	44 891	867 616	23.16 %
Records > 100 gr	148 926	3904	76.84 %
Records > 20 gr	86 831	992	44.80 %

Source: Prepared by the authors based on data from GICRI, 2017

All these figures show that the current drug policy prioritizes small-scale actions affecting cannabis users, which accentuates the human rights impact of profiling by the National Police. According to data from the *Survey on Police and Inequality* (*Encuesta de Policía y Desigualdad)*, 42% of people with urban appearances "related to substance use" were approached by the police, versus 20% among those who have no such appearance traits (Lalinde Ordóñez, 2015, p. 92).

The current model is based on the premise that the greater the use of punishment and sanctions, the faster drug markets will be fully eliminated from society. However, it has been proven – after 60 years of deep commitment by governments – that this is not the case. Today there are more people using marijuana than at the time the treaties were adopted. It is clear that prison, police sanctions, stigma and fines have not managed to dissuade the nearly one million Colombians who use marijuana (Ministerio de Justicia & DANE, 2020), or the estimated 200 million people in the world who used cannabis in 2019 (United Nations Office on Drugs and Crime [UNODC], 2021, p. 19).

All these elements enable us to identify which communities or types of people are targeted under these wrongful policies, in addition to having their fundamental rights infringed upon in numerous ways. It is these same people and groups who could benefit from a change in drug policy. In addition, it can be concluded that current drug policy is the source of the violation of multiple human rights: to personal autonomy, to life, to health, to an adequate standard of living, and the right to benefit from scientific developments, to name a few. Therefore, in the name of complying with international drug treaties, States violate their populations' human rights. That is why it is urgently necessary to move to a different drug policy model that would prioritize life, health and the dignity of the people who interact with these substances. In unregulated criminal markets, users must resort to illegal networks to obtain the substance, which means they are exposed to unsafe scenarios. Furthermore, the illegal nature of this market dictates that these substances are of uncertain quality, increasing health risks. Finally, under prohibition, people who consume face the risk of criminal or administrative prosecution.

The shift to a cannabis regulation scheme would eliminate these three risks: the products would be supplied in authorized scenarios, free of violence between criminal groups; the quality and potency of the marijuana would be made known, enabling better management of the pleasure and risk involved; and police sanctions would be eliminated. As a collateral effect, the freed-up police resources could be focused on more apt and urgent tasks related to citizen security and peaceful coexistence.

2.2 How Can Drugs be Regulated and What Models Can Better Protect Human Rights?

For all the reasons mentioned in the previous section, it is necessary to replace today's prohibition regime with a new drug policy. And building a regulatory framework for drugs is the public policy that can be both more efficient and protect human rights. But it is worth noting that not all models that regulate substances or related activities are the same, nor do they have the same potential and benefits. In this section, we explain which regulation model we base ourselves on in order to propose the application of the principles on fiscal policy and human rights.

Drug regulation models, as they are known under the current system of drug control treaties[13], are defined by having prohibition as the only tool available. Societies have taken very little time to envision a regulatory model for consciousness-altering substances that would include testing, approval and regulation measures, with constant, evidence-based evaluation mechanisms. Our perspective on drugs is contaminated by prohibition itself. It seems "normal" to us that a drug like cigarettes has regulatory mechanisms, including taxes, even though it is a substance that reduces life expectancy and is associated with developing severe illness. It also seems "normal" that prohibition is the only "regulatory" tool available for marijuana or cocaine.

To inject some common sense into the debate, it is important to put the goals that public policies should pursue with regard to consciousness-altering substances back at the center: *problematic use should be reduced*[14] *along with the harm associated with substance use*. Both goals can be achieved through a regulatory framework, and fiscal policy is a tool capable of generating the precise incentives needed to reduce harm and finance public health strategies.

Monopolies on appealing but risky substances or activities – such as monopolies on alcohol, for example – originated as an alternative to prohibition, and they seek to generate revenue from these activities while, at the same time, achieving better health outcomes. The general premise of this kind of policy must strike a balance between *"permitting, but dissuading,"* so

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13 We refer to the international drug control system made up of the following international treaties: the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. See: https://www.unodc.org/unodc/en/commissions/CND/Mandate_Functions/Mandate-and-Functions_Scheduling.html

14 Not all substance use is problematic, and not even all reiterative use is problematic. There are people who regularly use a psychoactive substance – alcohol, tobacco, marijuana – and have high levels of functionality, without endangering the integrity of third parties. Although there is no consensus regarding what constitutes problematic use, it tends to be deemed so when it affects the person's health and functionality and threatens others' integrity. See: Pereira & Ramírez, 2019, pp. 26-27; Uprimny et al., 2017b, pp. 75-76.

that the danger associated with the activity or substance (such as excessive use or collateral effects on health and on third parties) can be reduced.

According to Room and Cisneros Örnberg (2019), these monopolistic policies, which began in some jurisdictions of Europe in the mid-19th century, were driven by diverse motives. Initially, the main motivation was to generate revenue for the State. At other times, they were used as a mechanism to limit certain populations' access to the substances, as occurred with the Afro-American population in the United States and in South Africa under British rule. After 1850, a new motivation emerges: using such policies as a state instrument to control public order and public health. The first of these monopoly models took root in Falun (Sweden) after a mining boom, and the second in Gothenburg. Thereafter, it was known as the "Gothenburg system," and it was adopted by different jurisdictions for various substances. In particular, these models were adopted as an alternative to alcohol prohibition, which had numerous advocates at that time (Room & Cisneros Örnberg, 2019, p. 224).

Despite the enormous international consensus expressed in the ratification of the international drug control treaties, drug prohibition is not the only public policy model possible for addressing the use of psychoactive substances. Uprimny et al. (2017a) described three policy models that States could adopt in response to drug production, trafficking and use (p. 56). The first is *harm reduction*, and it is based on the use of public health strategies to reduce the potential risks of these substances and the harm caused by drug control policies themselves. This proposal arose from a pragmatic stance taken by various European States, particularly the Netherlands, which defended the notion of making prohibition more flexible on the basis of public health. This led to the decriminalization of marijuana use, to allowing people to possess up to a certain quantity as determined by law, and to reduced police pressure on its users.

This kind of modification to the strict prohibition approach established in the international drug regime gave rise to what has been called a "soft defection" from the treaties with regard to marijuana. This refers to a policy of accepting domestic consumption (which some people considered to go against the treaties), while upholding international obligations to criminalize drug trafficking and production. Since the 1970s, the Netherlands' authorities have applied this soft defection with regard to cannabis prohibition. Such soft defections blazed the trail for the changes that cannabis policy has undergone (and continues to undergo) in countries like Uruguay and Canada and in numerous states of the United States, which go beyond soft defection and constitute a violation of the international drug treaties. Under this model, criminal law is not applied to the user but instead focuses on the phases of production and trafficking.

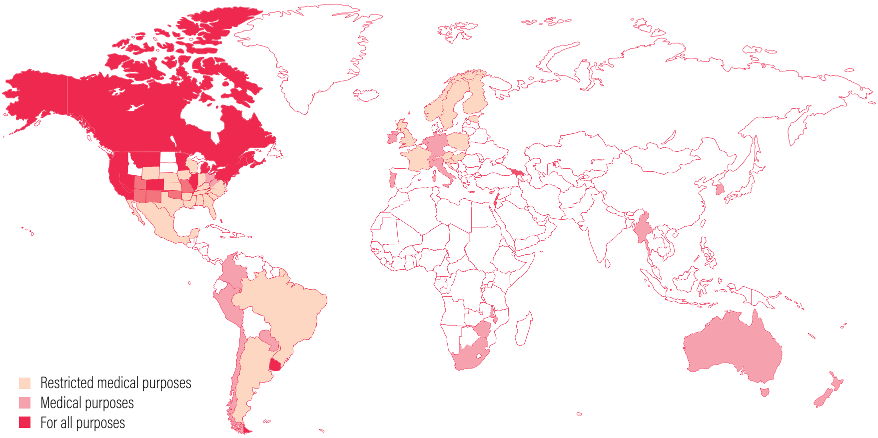
The second model is *market regulation*, which seeks to protect public health within a human rights framework in addition to extending harm reduction to all the phases of the drug economy. Under this approach, it is contended that, in virtue of freedom and autonomy, consumption cannot be prohibited, but it should be discouraged due to its potential harm. In addition, this proposal seeks to control substance availability for certain populations, while maintaining respect for human rights and averting the creation of risky illegal markets. In other words, this strategy does not seek to give free reign to the free market. The idea is to avoid what happened with tobacco, where advertising and the promotion of use drove an increase in the number of cigarettes being smoked and in the number of consumers, which in turn negatively affected health systems.

This approach is compatible with a human rights perspective since, while some people may not agree with others' decision to use drugs, conduct that does not affect other people's rights cannot be prohibited in a democratic State that is respectful of pluralism. A State that respects human dignity, personal autonomy and the free development of personality must not renounce the use of public policy measures, nor replace them with repression as a way to control the consumption of substances that have been declared psychoactive.

It is worth stressing that these two models are not abstractions, nor are they "exceptions" in just a handful of countries.

Worldwide, more and more countries are joining the growing transformation that is cannabis regulation. This can be observed in the following map:

Map 1. Cannabis Regulation in the World as of 2020



Source: Global Commission on Drug Policy, 2021

The final model is an *overall liberalization*, based on the maximum protection of individual freedom and little state intervention. This model consists of legalizing, decriminalizing and liberalizing substances, in such a way that the market would regulate access to drugs based on the laws of supply and demand. It therefore entails trusting in the self-regulating role of the market and of individuals in their contact with drugs. Under the liberalization model, the State's intervention in the drug market is minimal. Criminal law is not used (except to protect certain property rights associated with free enterprise), and public health strategies to discourage use are reduced to the greatest possible extent. The clearest example of this model's application is what occurred with cigarettes before the approval of the World Health Organization (WHO) Framework Convention on Tobacco Control. At that time, the substance was under market control and, as such, there were no bounds on the promotion of consumption, or even on the impacts on third parties (secondhand smokers), which had terrible public health effects.

Drugs are not the devil, but nor are they child's play. A drug policy that can be respectful of human rights and safeguard public health must position itself at an intermediate point between complete liberalization and the prohibition that is in place today. Thus, if one of the greatest costs of prohibition has been the creation of a market outside state control, the most reasonable solution seems to be a regulation model that would incorporate harm reduction principles. We believe that this alternative is capable of progressively reducing the potential harm of drugs and of the policies implemented to date.

Harm reduction as a concept is useful and pertinent for debating regulation models. This approach is based on the premise that not everyone is willing or wants to stop consuming, and that instead of wasting resources on punishing consumption, we should create conditions conducive to reducing risks and harm – and even to maximizing pleasure, which is ultimately what motivates the use of consciousness-altering substances. In any case, a central aspect of harm reduction is the notion that such harm does not take place in isolation but rather in social and cultural contexts that determine the means of administration and supply, potency, combination with other substances, prices, and cultural beliefs around use (Szalavitz, 2016, p. 244).

Regulations deem that public policy can be used to actively influence these elements. Recognizing that marijuana is a psychoactive substance that is not harmless from a public health perspective, any regulation scheme must consider establishing rules and mechanisms to limit its availability and control its promotion, in order to avoid this substance's intensive use or other risk dynamics related to consumption. This is the logic guiding the regulation of alcohol and tobacco, for example, and activities such as gambling.

However, achieving this balance through public policy poses a challenge when it conflicts with the interests that move the market. Such a balance between allowing an activity but also dissuading it has the ultimate goal of reducing harm.

However, the nature of these activities or substances must be acknowledged: they are highly profitable, with market costs that are much lower than what consumers are willing to pay. That tends to mean that private actors want to expand the size of the market, whether through direct pressure on consumers – through aggressive advertising – or by pressuring lawmakers to eliminate any barriers limiting the substance's availability (Room & Cisneros Örnberg, 2019, p. 223). Therefore, when defending the concept of regulation, not just any regulation model will do. It must be one that attributes sufficient responsibilities, obligations and limits to the State and to the market, in a delicate balance between availability and dissuasion.

Pursuing a regulation scheme based on human rights – and even more so, with a fiscal policy that would incorporate human rights principles – entails committing to a specific vision and model. For the current analysis, the authors of this text defend a model featuring state participation to establish the rules on revenue, spending, public health and fiscal justice, as well as market participation to facilitate availability, research and competitiveness.

The decision to shift to a regulation model involves anticipating a series of collateral effects and making decisions to address them: for example, the coexistence of legal and illegal markets, the creation of similar, non-regulated substances, health effects and the response of health professionals, among others. These elements must be anticipated within the fiscal policy model, since if an activity is going to exact a cost on public social systems and/or health systems, it should be included in the taxation of that activity.

The regulation scheme must also address legitimate concerns about the risk of problematic use, and so it is important to remember what elements determine the risks for that behavior. The dosage and pattern of use are one element that any regulated market should contemplate. In addition, the age of initiation of consumption is another risk factor, so there must be strict enforcement ensuring that legal marijuana is only sold to adults. In addition, for people with histories of mental disorders or psychological trauma, the risk is higher yet, which means that regulations must be designed to prevent these kinds of risks – above all, through information.

Finally, reforming cannabis policies offers some opportunities to address inequities, precisely by recognizing that there are systematic barriers ensuring that entire populations do not have equal access to opportunities and resources. In this sense, an equitable policy must be focused on eliminating or managing these structural barriers, seeking to produce better outcomes for those communities. According to Kilmer et al. (2021), there are six areas that offer opportunities for promoting equity: (i) arrests and sanctions; (ii) addressing previous cannabis-related offenses; (iii) preferences in licensing; (iv) fomenting diversity in the industry's workforce; (v) government revenue; and (vi) health (p. 1009). Meanwhile, researchers at the Brookings Institution define what they call the "Cannabis Opportunity Agenda," with five key goals: (i) expunging criminal records; (ii) defining the beneficiaries in a precise way; (iii) protecting the communities most affected by the war on drugs; (iv) enabling minorities to enter and successfully persist in the emerging economy; and (v) generating transformative interventions to reduce structural and systemic barriers (Henry-Nickie & Hudak, 2020, p. 2).

What is clear is that the challenge posed by the complexity of regulation will always be a better scenario than the tragedy of prohibition. But to do it well, officials must remain aware of what is at stake – which is health – and of the legacy left by decades of the war on drugs.

2.3 Regulations with a Human Rights-Based Fiscal Policy

Fiscal policy is one of the various mechanisms used by States to regulate markets. Taxes and public expenditures can be a useful tool for regulatory pursuits, especially when market failures are detected that produce negative effects on public health and environmental protection, among other socially desirable goals (Initiative for Human Rights Principles in Fiscal Policy, 2021, p. 5).

In the transformation of cannabis rules, fiscal policy becomes key, both to avoid repeating the errors of the current control system as well as to repair the harm done to communities affected by the prohibition model. In this regard, it is imperative that the components of the new model's fiscal policy be based, along with the entire regulation model, on human rights principles.

In that sense, fiscal policy – in addition to being a key instrument for guaranteeing rights by providing resources to finance them – is also subject to States' human rights commitments and obligations. This is understandable since human rights norms are recognized as a legal framework with which all state actions, including taxation and public spending, must comply (Initiative for Human Rights Principles in Fiscal Policy, 2021, p. 4).

For that reason, international human rights law has multiple bodies of norms that establish obligations for States and private actors in relation to fiscal matters. The distinct rules and clauses that can be found in these normative instruments point to the intrinsic relationship between fiscal policies and human rights guarantees.

Taking this into account, a group of civil society organizations from the Americas region came together more than three years ago to formulate the first human rights principles for fiscal policy, derived from the numerous human rights sources that refer to managing the State's public resources. In addition, they paired this series of principles with clear guidelines that can serve as a road map for their implementation upon designing or reforming the fiscal system. To achieve this goal, the coalition of organizations that acts as the initiative's Steering Committee[15] convened a group of experts on human rights and fiscal policy

15 The organizations that make up the Steering Committee are the Civil Association for Equality and Justice (ACIJ) (Argentina); the Center for Legal and Social Studies (CELS) (Argentina); the Center for Law, Justice and Society Studies (Dejusticia) (Colombia); Fundar - Centro de Análisis e Investigación (Mexico); Instituto de Estudos Socioeconômicos (INESC) (Brazil); the Center for Economic and Social Rights (CESR) (United States); and the Latin American and Caribbean Tax Justice Network.

from the region so that, by bringing together their knowledge of these two fields, they could develop and present this series of principles and guidelines. Ultimately, it was published in May 2021 in the framework of Fiscal Justice and Human Rights Week.

Thus, the Principles and Guidelines for Human Rights in Fiscal Policy are very useful for designing a fiscal policy that gathers the main human rights standards applicable to various areas of public policy. This set of norms "offers a clear framework, based on normative sources and other complementary documents, to design, implement and monitor fiscal policy" so that "public and private economic actors can comply with their obligations and responsibilities in this area" (Initiative for Human Rights Principles in Fiscal Policy, 2021, p. 6). This instrument presents 15 principles that refer to general principles, cross-cutting principles, and principles pertaining to specific human rights obligations and extraterritorial obligations.

These general principles have potential applications in a future regulatory process. When the adult use of cannabis has a regulatory structure akin to that of other psychoactive substances, like alcohol, we propose that these principles serve as a guide to define the minimum standards of that regulatory structure and that they also help fulfill the regulations' own goals.

The principles that can be applied to designing fiscal policy in a scenario of Colombia's regulation of the adult-use cannabis market are presented in Table 2. A priori, five principles related to regulatory policies can serve as a road map, along with their guidelines, for designing the fiscal policy affecting this market. At first glance, these five principles are the most relevant to this kind of policy. However, that does not preclude the possibility of applying other principles at a later stage of the regulation process, depending on the context in which it is being carried out.

Table 2. Principles for Human Rights in Fiscal Policy Applicable to Regulating the Adult-Use Cannabis Market in Colombia

Principle 3. States must ensure that their fiscal policy is *socially just.*
Principle 5. States must use fiscal policy to eradicate structural discrimination and promote substantive equality, integrating in a cross-cutting manner the perspectives of populations who suffer from discrimination in the design and implementation of such policies, and adopting *affirmative action when necessary.*
Principle 7. Fiscal policy must be *transparent, participatory and accountable.* People have a right to fiscal information.
Principle 10. States must mobilize the maximum of available resources to progressively achieve the *full realization of economic, social, cultural and environmental rights.*
Principle 12. States are empowered, and on occasions obligated, to *encourage or discourage certain conducts and correct externalities* through specific fiscal policy instruments, and to adopt priority fiscal measures in order to guarantee human rights.

Source: Principles and Guidelines for Human Rights in Fiscal Policy

Principle 3 indicates that the components of fiscal policy – meaning the different kinds of taxes and public expenditures – must be designed in accordance with the principles of equality, equity, legality and non-discrimination, in order to be socially just. Therefore, taxes and spending that originate from cannabis regulation must take these conditions into account to contribute to closing socioeconomic gaps. As a result, they should prioritize spending to fight discrimination and ensure that the rights of marginalized populations are guaranteed, while also contributing to rectifying inequalities between subnational entities. In that sense, the regulated market's taxes and the resulting resources must be used to remedy the social discrimination and injustices stemming from prohibition, such as the stigmatization and criminalization of cannabis users or the socioeconomic marginalization of the peasant farmer and grower population in the country's distinct regions of production.

Principle 5 – in the same vein as Principle 3 – refers to the State's responsibility to use fiscal measures that would contribute to eliminating structural inequalities and discrimination in all its forms, using a differentiated approach. One way in which fiscal policy can achieve this is by using the tax revenue generated in this market. These funds can be used to make budgetary allocations for groups in situations of vulnerability that have traditionally been neglected and excluded. In this way, such groups can be prioritized and receive additional resources, with the goal of eliminating the various kinds of disparities that have been caused by prohibition, the war on drugs, and the context of violence and armed conflict where marijuana cultivation and trafficking have traditionally taken root.

Principle 7 is centered on the availability and quality of fiscal information, as well as on the importance of civic participation in designing the entire budgetary cycle, so they can serve as tools for greater accountability on how tax revenue is collected and how it is distributed in society. Furthermore, easy-to-access fiscal information allows for greater civic oversight of public resources, limiting the possibility of discrimination and increasing the likelihood of detecting abnormalities. It is also critical to incorporate a participatory procedure into budget formulation that would offer civil society, and especially those populations facing structural discrimination, the opportunity to provide their perspective on the use that should be given to the resources raised through tax policy. A fiscal system with the highest standards of transparency and participation facilitates public deliberation and strengthens democracy.

In a scenario of regulating adult-use cannabis, this principle must be applied to all the fiscal information associated with this market. In other words, the State must provide information, with the highest degree of disaggregation possible, on the tax revenue coming from the adult-use marijuana market, along with disaggregated, pertinent and accessible information on the specific allocation of the resources raised through direct and indirect taxes in that market. This is key, since greater transparency on the collection and use of this revenue creates more citizen trust and, therefore, greater support for the regulation policies. Similarly, the budgets designed to achieve public health and reparation-related objectives should feature the active participation of the people and communities that will directly benefit from these resources, so their allocation can meet these populations' expectations and needs.

Meanwhile, Principle 10 is necessary for fulfilling Principle 5. If States are able to mobilize all available resources, they will have the fiscal capacity to make significant budgetary allocations to achieving the goals set with regard to guaranteeing the rights of marginalized groups and reducing socioeconomic and territorial inequalities. In the framework of cannabis regulation, this principle must be applied ensuring that the revenue from taxes on this market can be fully utilized. This entails applying taxes of different types (direct and indirect levies, fees, etc.) that would generate sufficient resources for designing budgetary allocations focused on achieving the regulations' goals – such as the protection of consumers' health and of public health more generally, and the rural development of communities affected by drug trafficking and the armed conflict.

Finally, Principle 12 refers to the regulatory role that taxes and public spending play in markets. This regulatory function influences the conduct of market agents with the aim of fostering conditions that would further access to rights. In the regulated market for adult-use cannabis, this regulatory function should be carried out through taxes. This can be done by taxing cannabis products in such a way as to encourage consumption habits that would reduce risks and harm to consumers' health, while at the same time offering resources to offset the possible harm to third parties that could arise from consumption.

Based on a public health approach, these taxes can act as price signals to consumers so they confront the full cost of using products that are harmful to their health (Rogeberg, 2018, p. 155). Individuals often have biases when they make consumption decisions, whether because of their inability to recognize the negative long-term implications of the consumption of certain goods and services (Thaler & Sunstein, 2008) – such as the health impacts of problematic cannabis use – or because of what is known as "intertemporal preferences," which occur when consumers give greater utility to the current benefit of consuming than to the benefit of being healthy in the future (Allcott et al., 2019, p. 207). Thus, such a tax benefits public health by correcting the *internalities*[16] of cannabis users.

In addition, from a strictly economic perspective, these levies[17] serve to offset the negative externalities of the adult-use cannabis market, meaning the negative effects that consumption has on third parties. These effects are related to the fiscal cost imposed by the health system's expanded treatment of the physical and mental illnesses associated with marijuana consumption (Campeny et al., 2020), as well as the road safety risks that can affect third parties (Huestis, 2015; Rogeberg & Elvik, 2016a, 2016b). For these reasons, this type of tax is used in other regulated markets that have the same public health approach, such as the tobacco and alcohol markets (Pacula et al., 2014; Rodríguez Llach, 2021).

We use these principles as a road map to evaluate the fiscal policies that have been designed for regulated markets around the world. They will also be useful for proposing an adult-use cannabis regulation model in Colombia that would incorporate a fiscal policy with a human rights approach, suited to the country's particular context in which the war on drugs and the internal armed conflict converged.

Nonetheless, it is very important to emphasize that given the varied objectives of cannabis regulation, tension can arise between these principles and the regulations' own goals. For example, one of the goals of regulation is to displace the illegal market and reduce its negative social and economic impacts. To achieve this goal, it is desirable for the products in the legal

16 Internalities are future costs that we impose on ourselves by making decisions that go against our own interests (Allcott & Sunstein, 2015).

17 This type of tax is known as a Pigouvian tax, and it is used to correct market failures generated by externalities (Pigou, 1951).

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market to be able to compete with those in the illegal market in terms of pricing, meaning that they should have similar and competitive prices. If the price of cannabis in the regulated market is much higher, it is unlikely that demand will be reduced in the illegal marketplace. This creates a clear tension with public health and social justice goals, since the use of taxes to mobilize resources and to discourage the use of cannabis products would tend to increase the price of marijuana in the legal market. Although there are options for striking a balance to be able to achieve the regulations' distinct goals, as we explain further along, it is very important to be aware of these tensions so they can be openly discussed in the debates around adult-use cannabis regulation, and the best policy options can be found.

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As we have presented in this section, the costly failure of prohibition, the evidence available on the need to reform current drug policies, and the weight of fiscal policy in a regulatory framework are the three elements that anchor our analysis and proposals. These elements will guide us – along with the identification of successful international experiences with adult-use cannabis regulation and comprehension of the Colombian context's particularities – in formulating some cannabis fiscal principles that would contribute to achieving the regulations' goals in Colombia.

3. Comparative Experiences

In this section, we present and analyze the relevant fiscal policy aspects of the distinct regulation models for adult-use cannabis that have been implemented in some of the world's countries. Our aim in doing so is to: (i) identify the different types of regulation models; (ii) point up their differences, and analyze the overall advantages and disadvantages of each; and (iii) study these models' goals and partial results on different issues related to guaranteeing rights, along with the role that taxes and public spending play in these models.

Using this analysis, we seek to learn from the positive and negative experiences of the models under study. We can thereby extract key aspects that can be adapted to the national context and thus propose the most suitable regulation scheme – based on other countries' experiences and the evidence gathered there – without losing sight of the particular facets that must be considered in a regulated market for Colombia. The variables of analysis that we used were: (i) the market models and goals of the regulations; (ii) the application, design and types of taxes in the regulated market; and (iii) the use of the tax revenue generated by the regulated market. Upon analyzing these aspects, crucial issues will be addressed for devising regulations with a rights- and public health-based approach, such as cannabis production, the price of products and their potency, licensing systems and stakeholder participation (Kilmer, 2019). Taking into account that the information on the results of each type of scheme is still incipient, this analysis is centered mainly on their design rather than outcomes. At any rate, some relevant results (in cases where they currently exist) are presented to be able to offer better decision-making tools regarding the different models' suitability.

3.1 Uruguay: The Cautiousness of Latin America's Pioneer

General Aspects

In July 2017, Uruguay became the first country in the world to legally regulate the market for adult-use cannabis production, distribution and commercialization nationwide. The Uruguayan government's main motivation for regulating this market was to reduce the violence and criminality associated with drug trafficking and micro-trafficking in the country. Another motivation was to separate cannabis from more hazardous drugs and thus reduce the health risks and harm associated with the consumption of psychoactive substances (Transform Drug Policy Foundation, 2018).

By regulating the cannabis market, Uruguay became the first country in Latin America and the Caribbean to adopt a drug policy that diverged from prohibition, seeking to reduce the power of the illegal market and of the criminal gangs that control it. Despite persistent criticism from the United Nations' International Narcotics Control Board (INCB)[18] that the Uruguayan State was breaching its obligations (under the Single Convention on Narcotic Drugs of 1961), the government's solid arguments that the regulations help fulfill its obligations under broader international treaties in the universal system have allowed it to resist international pressure and implement the regulation scheme without any major obstacles (Hudak et al., 2018, pp. 9-10).

The policy makers that designed the regulations for this market conceived of a "strict and responsible" regime, which aimed to reduce problematic use to the greatest extent possible (Hudak et al., 2018, p. 17; Romo, 2014) through various mechanisms. First, it established three ways for adults to access cannabis: by growing for their own use (home-growing)[19], through cannabis clubs[20] or via direct sales outlets. The consumers who want to access the plant by one of these three means must register with the Institute for the Regulation and Control of Cannabis (*Instituto de Regulación y Control de Cannabis*, IRCCA), which is the government entity in charge of the regulations nationwide.

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18 The INCB is an independent and quasi-judicial body created by virtue of the Single Convention on Narcotic Drugs of 1961, which fulfills the functions of ensuring that there is no manufacture, trade or use of illicit drugs, except for medical and scientific purposes, and that no drugs are diverted to illicit channels. It also oversees the illicit drug control efforts of States from around the world and identifies the weaknesses in such oversight (IDPC, n.d.).

19 The legislation allows users with a license to engage in home-growing, with the possession of up to six plants per household being permitted (Transform Drug Policy Foundation, 2018).

20 The cannabis users licensed to home-grow can partner to create cannabis clubs, which supply themselves with the homegrown plants allowed by law. These clubs must have a minimum of 15 members and maximum of 45, and they have a ceiling of 99 plants per club. This quantity allows the members to be able to access 480 grams per year, which is the maximum amount that the regulations allow for retail sales (Transform Drug Policy Foundation, 2018).

Second, the regulation scheme ensured the State's primary participation through a monopsonist market[21] model in the phase of production and a monopoly in the phase of distribution and commercialization. Currently, just two private companies have a license (which they obtained through a bidding process) to cultivate the plant and its derivatives, with the Uruguayan State acting as the sole buyer. For retail sales, the State distributes production through private pharmaceutical establishments, which serve as the main network for supplying medicine in the country, under the strict oversight of the Ministry of Public Health. Similarly, commercialization takes place under stringent rules related to distribution[22], strains, types of products and potency[23], advertising, and storage conditions.

The State also sets the price in the retail market, striving for competitiveness vis-à-vis the illegal market. As of 2018, the average price per gram of the three strains available was USD $1.40, which was just below the price in the illegal market (Hudak et al., 2018). By 2021, the average price per gram was set at USD $1.57, which is still relatively low compared with other jurisdictions that have regulated markets (*Deutsche Welle*, 2021).

Taxes and Revenue Use

With the goal of keeping the price of cannabis competitive with the illegal market, this regulation model opted to exempt the regulated market for adult use from paying indirect taxes. Hence, levies such as the Value-Added Tax (VAT) for agricultural products, sales taxes, and the Specific Internal Tax (*Impuesto*

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21 A monopsony is a market structure in which a single market player acts as the buyer. This means that demand is concentrated in a single agent.

22 The legislation prohibits sales to and consumption by people under 18 years of age, and the maximum amount of consumption is 10 grams per week. This is equivalent to 40 grams per month and 480 grams per year (Transform Drug Policy Foundation, 2018).

23 Initially, there were only two cannabis varieties available for sale, which had levels of THC of 2% and between 6% and 7% of CBD. Later, two new strains were introduced with levels of THC of 9% and 3% of CBD (Hudak et al., 2018, p. 8).

Específico Interno, Imesi) – which are applied to products like tobacco and alcohol – are not applied to the production and commercialization of adult-use cannabis. Similarly, neither income taxes nor the VAT are applied to the logistical operations carried out in Uruguayan customs deposits that involve cannabis-based products, cannabis derivatives and cannabinoids that are destined for distribution to other countries in the region (Pereira, 2020). That said, the legislation does establish that a small margin of the cost of each gram (10%) will go to state coffers (*CincoDías*, 2017). But there are no publicly available official figures on how much revenue this tax raises each year.

The small amount of revenue generated by this provision is used primarily to finance the operations of the regulatory body, the IRCCA (Blen Font, 2018; *CincoDías*, 2017; Parkinson, 2014). In addition to this, there are resources coming from the fixed and variable quotas that producers must pay for the licenses they have obtained. Now, taking into account that a tax benefit (like the VAT exemption in this market) can be interpreted as an indirect expenditure[24], it could be said that the resources generated by this regulation scheme are mainly serving to finance a market price that contributes to more effectively displacing illegal supply.

3.2 The United States: The Big Laboratory for Regulation

Before analyzing the regulatory process in the United States in detail, it is worth pausing to emphasize an issue that is not minor. Without resorting to hyperbole, this country has been the architect of the war on drugs as we know it today. The stigma on marijuana was, in part, created by fears surround-

24 The concept of tax benefits as a form of indirect public spending is attributed to Stanley Surrey, who in 1967 argued that there was no substantial difference between a subsidy and a tax benefit (Surrey, 1973). Renouncing the collection of taxes from a group or specific activity translates into the same economic effect as subsidizing a form of direct public spending. Therefore, tax expenditures can be understood as public spending that is implicit in taxation rules and regulations.

ing Mexican immigrants at around the start of the 20th century (Hari, 2015). Drug laws were later used as another instrument of racial segregation in the United States. Furthermore, the criminalization of all type of drug-related conduct – including the possession of the smallest quantities – was more severely enforced against Afro-American and Latino people, even though drug use is generally similar across all populations. According to the American Civil Liberties Union (ACLU) (2020, pp. 5-6), an Afro-American person is 3.64 times more likely than a non-Latino white person to be arrested for marijuana possession and, although marijuana arrests fell by 18% between 2010 and 2018 (due to the regulatory wave), arrest patterns show that this population group continues to be the main target.

Being arrested and subsequently incarcerated involves the stripping of numerous fundamental rights. People in this situation are denied access to housing benefits, they have a harder time finding work after spending time in prison, and the effects of this deprivation of liberty can be felt among future generations (Kilmer et al., 2021, p. 1005). Due to these historical factors and to marijuana prohibition's devastating legacy in the United States, some of the state-level regulation schemes have sought mechanisms to create opportunities for these same communities and to compensate for the harm done. We stop to explain this because in some ways, it is similar to the process we have lived through in Colombia in our own (albeit imported) war on marijuana and on poor people.

General Aspects

Regulation of the adult-use cannabis market in the United States has taken place in stages. Although many states in the country have regulated the cannabis market within their jurisdictions, the cultivation, possession and sale of marijuana continue to be illegal under federal law. In 2012, Colorado and Washington became the first states to make the leap in regulating the cannabis market for uses beyond medical ones. At the time this document was being written, 17 other states had followed suit, the last of which was New Mexico in 2021 (Sardiña, 2021).

What has occurred in the United States in the last decade could be dubbed "the big laboratory for regulation," since 19 states (to date) have designed models that differ on a number of factors: accessibility to cannabis; licensing modalities; restrictions on sales, promotion and advertising; product potency; the type of taxes applied; and use of tax revenue, among others.

Although implementation is still recent in the majority of these markets and there is no systematic evaluation to assess the best model along its various dimensions, an analysis of the characteristics of these regulation schemes – and the preliminary results available so far – can help guide the establishment of best practices in terms of protecting human rights.

Although different states do take different approaches to regulation, it is possible to identify a common economic model. If we compare the regulation model of these North American states with that of Uruguay, it can be seen that the model implemented in the United States leans toward the capitalist position of liberalization. This means that while the State actively participates in regulating this market – which is much more pronounced in some cases than others – in very few cases does this role extend to becoming the sole buyer and distributor, or to setting prices and restricting modes of access to cannabis, as it does in Uruguay. Under the U.S. model, the price of cannabis products is determined exclusively by the market and taxes – not by the State's direct regulatory intervention.

Hence, the market model in general strives to foster competition, where the State grants licenses to private actors so they can carry out the cultivation, transformation and wholesale and retail sale of cannabis products for recreational use. Clearly, the granting of these licenses is subject to a series of requirements – which are often strict – regarding the product's quality, quantity and content, as well as its storage and distribution, among other regulations.

For example, in relation to the licensing system, some states (such as Washington) prohibit the holding of production licenses and retail sales licenses at the same time, thereby trying to avert vertical integration in the market (Slade, 2020a). In some cases, the granting of licenses involves social justice criteria. For instance, Massachusetts prioritizes awarding licenses to communities that have been the most affected by cannabis prohibition, such as black communities (Slade, 2020a).

In addition, the regulation schemes include numerous restrictions and prohibitions related to the characteristics of the distinct products in the market, the sales establishments, and the consumers themselves. All the schemes have rules associated with the THC and CBD content of the products (their potency), with product content information that must be visible on the packaging, and with the maximum quantities for sale. Other prohibitions shared by all the states refer to the minimum permitted age for sale and possession.

Taxes and Revenue Use

All the regulation models in the United States apply some kind of tax to some phase or phases of the marijuana market's value chain. In some instances, levies were specifically created to tax cannabis, and they were combined with other taxes in the tax code that apply to the sale and consumption of any good or service.

The vast majority of these taxes are indirect, which is to say that they are applied to the sale or consumption of the products, and there are three types of them:

i. as a percentage of the price, whether the retail price charged to the consumer or the wholesale price for distribution;
ii. based on the weight of the product (for example, by ounces or pounds);
iii. based on potency (for example, THC content).

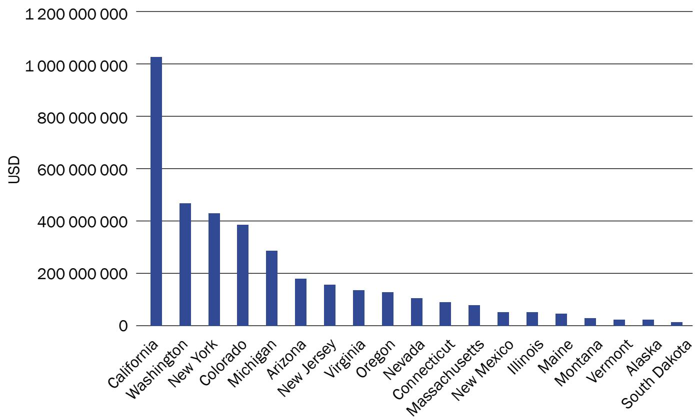
The first type of taxes (i) are categorized as ad valorem taxes, while the other two types (ii and iii) are classified as specific taxes. Some regulations use a combination of the two, and some states combine local taxes with state levies.

As Table A1 of the Annex indicates, of the 19 jurisdictions analyzed, 14 have ad valorem taxes, 4 use a combination of specific and ad valorem taxes, and only the state of Alaska makes exclusive use of specific taxes. Furthermore, some states apply local taxes (the majority making them optional), while others expressly prohibit the application of additional taxes to those contemplated in the legislation establishing the cannabis regulations.

Now, in addition to analyzing the kind of taxes that states have used in their regulatory regimes, it is nearly as important to study the use they make (or plan to make) of the tax revenue gleaned. The different types of taxes described in Table A1 generate a not-at-all-insignificant amount of new resources each year. As Graph 1 shows, the state with the highest tax revenue is California, where around USD $1 billion was collected last year. That is to be expected given the state's size and population, which makes it the biggest regulated cannabis market in the world. It is followed by the states of Washington, Colorado and Michigan, which have also been able to consolidate their markets due to their lengthier experience with regulation and their size. Meanwhile, among the states that have approved regulation schemes but have not yet implemented them, projections by the Tax Foundation think-tank point to New York becoming the third-largest jurisdiction for the adult-use cannabis market in the United States.

The spending generated with these resources can determine the philosophy of the regulation scheme. For example, if the resources are not earmarked for any particular purpose, an opportunity is wasted to achieve the goals specified when the scheme was established, such as protecting public health, productive inclusion, or human rights. On this point, both taxes and expenditures are very useful tools for creating suitable regulations. As mentioned before, in the case of Uruguay, the resources that the market generates serve to finance the entity in charge of the regulatory process and to maintain a competitive price for the product vis-à-vis the illegal market (through tax benefits on the VAT, for example). As we will see shortly, the use of these resources in the United States varies depending on the state as well as on the focus of their regulations.

Graph 1. Fiscal Revenue from the Regulated Adult-Use Cannabis Market, 2020 or estimates



Source: Prepared by the authors based on data from the Tax Foundation[25]

The information available on how tax revenue from the adult-use cannabis market is utilized allows for identifying some shared elements. For example, the majority of the states have created specific funds that administer these resources. In some cases, general funds are created that serve as financial vehicles for managing all the resources coming from the regulated market, while in others thematic funds related to health and education are created or funded with these resources. Another common factor we identified is that the tax revenue from cannabis is used to bankroll the administrative costs of regulation. That is where the cost of running the government entities that oversee this process comes in, along with the training of law enforcement agencies to implement the legislation.

25 Available at: https://www.fool.com/research/marijuana-tax-revenue-by-state/

Some states have used part of this revenue to finance public health policies, including prevention strategies – like strategies for risk and harm reduction – and programs for treating consumers with problematic use. For example, in Massachusetts the resources are invested in policies for prevention and treatment, as well as in services for early intervention in substance use. These programs are aimed at school districts or community coalitions that operate within the strategic prevention framework or a similar structure for youth substance-use education and prevention (Massachusetts Cannabis Advisory Board, n.d.). Meanwhile, in Oregon, 25% of the revenue raised is specifically earmarked for investing in mental health and treatment programs for the problematic use of alcohol and other psychoactive substances (Oregon Department of Revenue, 2018).

Other states have also used these resources for projects geared toward social inclusion and reparation for the people who were most affected by prohibition policies and the war on drugs. In the specific context of the United States, the victims of this war have been, primarily, the Afro-American and immigrant populations, which for many years have suffered the stigma, persecution and criminalization resulting from prohibition more than any other group of people in the country, with deep socioeconomic consequences (Clifford, 1992; Cooper, 2015; Finzen, 2005; Moore & Elkavich, 2008). In this regard, many states have earmarked some of this tax revenue for programs and policies focused on the most marginalized communities in their jurisdictions. For example, the state of California spends up to USD $50 million annually to finance employment and substance-use treatment programs for those most affected by the drug policies of the past (Legislative Analyst's Office, 2017, p. 4). Similarly, Illinois established the Restore, Reinvest and Renew (R3) program, which allocates resources to the communities that suffered most under the war on drugs in order to address the impact of low levels of economic investment, violence, and the excessive use of the criminal justice system to deal with the social problems stemming from the criminalization of drug use (Government of Illinois, n.d.).

Finally, there are cases where states put the resources into education or into training law enforcement to put the regulation scheme into practice. For example, Colorado channels all of its resources into funds that address educational issues, such as the Public School Capital Construction Assistance Fund (PSCCAF) and the Colorado Department of Education's Building Excellent Schools Today (BEST) (Colorado's Department of Revenue, 2021). Maine, meanwhile, allocates a sizeable share of its resources to financing programs to train local, county and state law enforcement officers for compliance with the law in terms of adult-use marijuana sale and use (Marihuana Legalization Act, 2016, sec. 1101). A breakdown of how each state uses these resources is available in Table A2 of the Annex.

3.3 Canada: The Hybrid that is Conquering the Global Cannabis Market

General Aspects

In October 2018, Canada became the second country in the world to regulate the production, distribution and consumption of cannabis for adult use throughout its national territory. Unlike the United States, the regulation of the marijuana market – enshrined in the Cannabis Act – was promoted by the Canadian government, rather than via ballot initiatives. The main reasons prompting Canadian authorities to opt for regulation are the same as those motivating other States and jurisdictions: the protection of public health, protection of the youth population, and reduction of the criminality associated with illicit drug markets (Slade, 2020b).

The economic model of the Canadian regulation scheme can be interpreted as a "hybrid" model between the regulations adopted in Uruguay and those seen in the United States. First, there is a mixed model between regulations tending toward the market economy and those in which state monopolies and monopsonies are present. The cultivation and production phase is carried out by private entities, which obtain licenses from the federal government that are contingent on compliance with strict requirements in terms of infrastructure and production techniques (Government of Canada, 2018a). Meanwhile, the provincial governments serve as the only wholesalers (they have a monopoly on supply), which has allowed them to control the products circulating in the market as well as their prices. With regard to direct sales, while some provinces have opted for a system of licenses (granted by the federal government), others have limited retail sales to state-run establishments (Kilmer, 2019).

In addition, although marijuana legalization and regulation are of a federal nature, the provinces and municipalities have the power to adjust the regulation scheme in the local arena. This model has allowed Canada to set national standards that provide its drug policy with a certain coherence while also ensuring that they are flexible, given each region's particular context and interests. Thus, the federal government's responsibility is centered on establishing all of the requirements and standards for cultivation and processing, while provincial and municipal governments are in charge of developing, implementing and enforcing the regulations' norms in the distribution and sales phases (Government of Canada, 2018b). In other words, while federal authorities oversee who grows cannabis for the regulated market and how they do so, the provinces control who, how and where it is sold.

There are also aspects of the regulations in which both the federal and provincial governments have faculties, such as the controls related to cannabis use and possession. The limit on purchases under federal law is 30 grams of dried flower, and according to the federal regulatory framework, without needing a license, people 18 years and older can:

i. possess up to 30 grams of dried cannabis flower in public spaces;
ii. grow up to 4 cannabis plants per residence;
iii. share up to 30 grams of dried cannabis flower with other people 18 years and older;
iv. buy dried or fresh cannabis flower, edibles or cannabis oils in retail establishments and online shops that have sales licenses.

The licensing system established by the federal government provides different types, whether for cultivation, processing, testing, sales, research or the manufacture of medicine. This system delineates what the distinct actors in the market chain can and cannot do, which allows the Canadian government to ensure the focus on public health, the protection of children and adolescents, and the reduction of criminality (Slade, 2020b). As we indicated earlier, the sales phase for adult-use cannabis in Canada is managed by the provinces and municipalities. Each of the provincial regulatory agencies acts as a wholesale distributor that supplies cannabis products to the establishments making direct sales, whether state-owned or private. The processes for providing sales licenses and the various restrictions on private actors also differ, depending on the province's own regulations. In Ontario, for example, the licenses are granted on the basis of a lottery system, which focuses the selection on the most comprehensive business models and limits the number of licenses that any one person can have (Cannabis Control Act, 2017). In Alberta, meanwhile, an individual or group of people cannot hold more than 15% of the licenses for direct sales (Gaming, Liquor and Cannabis Act, 2018, sec. 106).

With regard to the quantity produced and the characteristics and content of the products, the federal regulation scheme establishes some guidelines. Although there are no limits on production, there are limits on the THC content of certain types of products. For example, cannabis edibles have a limit of 10 mg of THC per unit; cannabis topicals cannot exceed 1,000 mg of THC per unit and must not contain more than 90 ml of cannabis extract (Cannabis Regulations, 2020, secs. 101.2 and 102.7). Although other types of products do not have limits on the quantity of THC, it is important to note that Canada's Legalization Task Force – which was in charge of producing a report that would serve as the basis of the regulation scheme – recommended that lawmakers "develop strategies to encourage consumption of less potent cannabis, including a price and tax scheme based on potency" (Health Canada, 2016, p. 3).

Although the federal legislation establishes these guidelines and restrictions, provincial governments can also tighten the restrictions. For example, the government of Quebec prohibited any type of cannabis edible that could be attractive to the under-age population, such as brownies, chocolates or gummies (Forster, 2019).

Currently, a reduced number of Canadian companies that produce cannabis have been the regulations' major beneficiaries, and they are in a privileged position to shape not only the Canadian marijuana market but also the international market, since more and more countries in the world are seeking to regulate this substance. The largest share of the money in this market is made by the biggest producing companies, such as Canopy Growth. Thus, as important actors in the first significant legally regulated market in the world, Canadian companies have been able to lay a solid foundation for international expansion.

Because few countries thus far have regulated cannabis for uses other than medical ones, and as a result no significant industry has been developed elsewhere, Canadian companies have been able to capture the international market. Today, these corporations have a presence in many places outside Canada, such as France, the Netherlands, Uruguay and Colombia. This positioning on other continents has given Canadian cannabis companies a huge edge in terms of taking advantage of possible future regulation schemes for medical and recreational purposes in other countries and jurisdictions (Slade, 2020b, pp. 43-44).

Taxes and Revenue Use

Taxation in the adult-use cannabis market is carried out mainly via indirect taxes on consumption and sales. The Canadian regulations created an excise tax for the cannabis market that mixes an ad valorem tax and a specific one. This is paid to the federal government and to provincial governments, and it falls on the license holders who package cannabis products. Along with additional provincial taxes, this tax is also paid when products are delivered to a buyer, and it is differentiated based on the type of product. For dried leaves, fresh leaves, cannabis plants or seeds, the tax that is paid is whatever is greater between the specific tax and the ad valorem tax. For processed products (oils, edibles, topical products and extracts), the only excise duty that is applied is the specific tax, which is linked to THC content.

Table 3. Cannabis Excise Duty Schemes in Canada

Type of Product	Federal Excise Duty		Additional Provincial Excise Duty*	
	Specific	Ad Valorem	Specific	Ad Valorem
Dried/fresh cannabis	- CAD $0.25 per gram of flowering material - CAD $0.075 per gram of non-flowering material	2.5% of the dutiable amount for the cannabis product	- CAD $0.75 per gram of flowering material - CAD $0.225 per gram of non-flowering material	7.5% of the dutiable amount for the cannabis product
Cannabis plants and seeds	- CAD $0.25 per plant - CAD $0.25 per seed	2.5% of the dutiable amount for the cannabis product	- CAD $0.75 per plant - CAD $0.75 per seed	7.5% of the dutiable amount for the cannabis product
Cannabis oils, edibles, extracts and topicals	CAD $0.0025 per milligram of THC	Not applicable	CAD $0.0075 per milligram of THC	Not applicable

Source: Prepared by the authors based on information from the Canada Revenue Agency[26]

* There are different adjustment rates for the additional cannabis duty in certain jurisdictions. In the province of Alberta, the adjustment rate is 16.8%; in Nunavut, 19.3%; in Ontario, 3.9%, and in Saskatchewan, 6.45%.

26 Available at: https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/excise-duties-levies/collecting-cannabis.html

It is important to add that all of Canada's provinces and territories signed the Coordinated Cannabis Taxation Agreement (CCTA) with the federal government. This agreement ensures that the combined rate of all federal, provincial and territorial cannabis-specific taxes not exceed $1 Canadian dollar (CAD) per gram, or 10% of a producer's selling price (Department of Finance of Canada, 2017). This is done with the aim of maintaining a relatively low price in the legal market. Table 3 summarizes information on the federal and provincial excise taxes, according to the type of product.

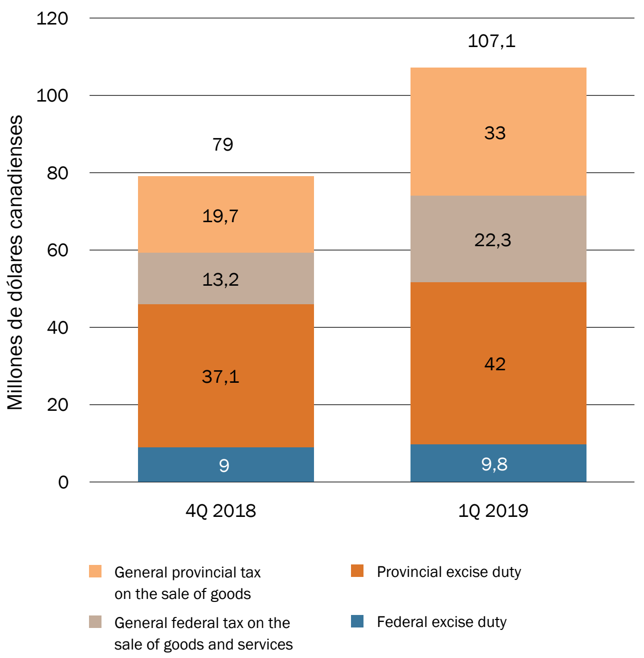
Table 4. Sales Taxes by Canadian Province or Territory

Province/Territory	Type of Tax	Rate
Alberta	GST	5 %
British Columbia	GST/PST	12 %
Prince Edward Island	HST	15 %
Manitoba	GST	5 %
New Brunswick	HST	15 %
Nova Scotia	HST	15 %
Nunavut	GST	5 %
Ontario	HST	13 %
Quebec	GST/QST	14,98 %
Saskatchewan	GST/PST	11 %
Newfoundland and Labrador	HST	15 %
Northwest Territories	GST	5 %
Yukon	GST	5 %

Source: Prepared by the authors based on information from the Canada Revenue Agency

In addition to the cannabis excise taxes, general levies on the sale of goods and services in Canada also apply to this market. When consumers buy cannabis products, they must pay the Goods and Services Tax (GST), Canada's Harmonized Sales Tax (HST), Provincial Sales Tax (PST) or some combination of these[27] (Canada Revenue Agency, 2003). These sales taxes range from between 5% and 15% and, as Table 4 indicates above, a different tax applies in each province.

Graph 2. Tax Revenue from Cannabis Sales in Canada in the First 6 Months



Source: Prepared by the authors based on information from Statistics Canada[28]

Regarding tax collection levels and the use of these resources, it must be noted that official public information on the

27 In the province of Quebec, the *Quebec Sales Tax* exists.

28 Available at: https://www150.statcan.gc.ca/n1/daily-quotidien/190619/dq190619e-eng.pdf

tax revenue coming from the cannabis market in Canada is only available up to March 2019. According to the data, this revenue increased by 35.6% between the last quarter of 2018 and the first quarter of 2019, rising from CAD $79 million to CAD $107.1 million. It is worth emphasizing that the tax that generates the most revenue is the provincial excise tax on cannabis.

It is also critical to note that Canada's regulation scheme did not design a specific allocation for the revenue from taxes on the cannabis market. The only agreement pertaining to the use of these resources relates to the distribution between the federal government and the provinces. According to this, 25% of the total revenue raised with the excise taxes goes to the federal government while the remaining 75% stays at the provinces' disposal. In turn, the resources earmarked for the provinces must be transferred to the municipalities and other local governments that are implementing the regulation scheme in their territories (Department of Finance of Canada, 2017; Harris & Cochrane, 2017).

Although no specific allocation or use of this tax revenue is stipulated in the federal legislation or in the majority of provincial laws, some provinces – taking cues from experiences in some U.S. jurisdictions that have regulated adult-use cannabis markets – have used these resources to improve public health and fund the costs of implementing the regulation scheme. Although information on the use of this revenue by province is limited and is not centralized, we were able to identify some examples of this. For instance, in the province of Quebec, all the resources go to the Cannabis Sales Revenue Fund and the Cannabis Prevention and Research Fund, which finance monitoring and research related to the health effects of cannabis consumption, as well as programs to prevent and treat the problematic use of psychoactive substances (Cannabis Regulation Act, 2018, sec. 58). Furthermore, we learned that the municipalities of British Columbia seek revenue from these taxes to finance the cost of implementation in their localities (Brown, 2020).

3.4 Lessons Learned: The Best Paths for Devising the Regulations' Fiscal Model

As we described earlier, although the different countries and jurisdictions in the world that have moved to regulate adult-use cannabis have relatively similar goals – to protect public health, reduce the criminality associated with the illegal market, and (in some cases) promote vulnerable communities' social inclusion and reparation – each has chosen a different design to achieve them.

Uruguay was the pioneer in this shift in the drug policy paradigm, having proposed a different approach to that of prohibition. It has carried this out through a strict regulation scheme, with a planned market that is fully intervened by the State. In this way, the country strives for its cannabis regulation to have a public health orientation (by controlling consumption) while also combating the criminality associated with the illegal market (by firmly controlling production levels and prices). These elements are aligned with a human rights approach. However, there is nothing in publicly available information or in the reports on the scheme indicating that it seeks to achieve greater social inclusion and more economic opportunities for marginalized communities (Hudak et al., 2018). We infer that this is because the regulation scheme does not have many mechanisms for raising revenue (taxes), and what is raised is earmarked exclusively for financing the regulations' own functioning.

Perhaps the "original sin" committed in Uruguay's regulations has been the aim of safeguarding public health as much as possible and fighting against the illegal market. Its "strict and responsible" regulatory approach has meant that the model has many controls and restrictions, to the point of producing undesired effects and incentives among consumers and in the illegal market itself.

Some of these undesired effects can be seen in the access to cannabis, the planning of production, and its limitations in terms of variety and potency. As mentioned before, the regulation scheme establishes three methods of access. However, these three methods are mutually exclusive, meaning that consumers must choose one of these means to obtain the plant and cannot make use of more than one at any given time. This has ended up being problematic, since from the start of implementation there have been constant difficulties with a lack of supply and scarcity in the pharmacies – produced, in part, by the regulations themselves[29] – which, in some cases, has led consumers to buy cannabis on the illegal market. In addition, the limited number of participating pharmacies also limits access. Currently, 14 pharmacies engage in cannabis sales, and although their locations correspond to the country's population distribution, this tiny number means that users must travel for up to 100 kilometers in some cases to reach one (Arenales, 2019). An indication of these access problems can be found in the data provided by the Uruguayan Drug Observatory (*Observatorio Uruguayo de Drogas*) regarding adhesion to the legal market. This shows that in practice, just 14% of cannabis users have been registered with one of the regulated market's means of access in the last 12 months (Observatorio Uruguayo de Drogas, 2019, p. 132), although the IRCCA's official data indicates that 28% of users are registered (Instituto de Regulación y Control del Cannabis, 2018, p. 4).

Limits on variety and potency have also led to demand being diverted to the illegal market. The regulations debuted with only a few, scarce strains, prompting many consumers to access more potent products (with higher THC concentration) in the illegal market. This, in turn, led Uruguayan authorities to authorize more varieties with higher THC levels to meet demand (*Cannabis Magazine*, 2021). Finally, restrictions on sales to tourists (those who are neither citizens nor residents) have generated an informal market that concerns Uruguayan officials. Up to now, the IRCCA has responded by enforcing compliance with

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29 In its effort to establish a strict regulation, limit the size of the cannabis market and limit the product's diversion, while also ensuring the plant's quality and user safety, Uruguay authorized just two growers to supply the market. And at the same time, it set high standards of quality. Due to these barriers, one of the grower companies (Simbiosis) took time to get production going, which meant that just one provider was supplying the market. This caused several days of shortages throughout the country (Hudak et al., 2018, p. 15).

the regulation scheme and imposing fines and sanctions. Nonetheless, as a report by the Washington Office on Latin America (WOLA) on cannabis regulation in Uruguay makes clear, “this response is unlikely to eliminate the market, in the same way that prohibition of cannabis has been ineffective at stemming its use” (Hudak et al., 2018, p. 19).

Elsewhere, within the United States, some states have opted for a rigorous regulation scheme but one that is more liberal and market oriented. Upon studying the first regulations put into place (Colorado, Washington, Oregon and Alaska), it is clear that there is a dominant public health logic underlying the regulations. These approaches embrace many of the legislative parameters used to control alcohol and tobacco. They include market-based licensing systems that regulate private commercial activity, they establish a minimum age for legal purchases, and they implement tracking systems to monitor distribution and thereby minimize the diversion of resources to illegal circles.

The predominant influence of alcohol legislation has become apparent since three of these states have regulated marijuana through state liquor control boards, with the support of interest groups, taking existing policies on alcohol as the starting point for shaping cannabis guidelines. However, this entails some risks to the marijuana regulations’ public health focus. The interests of the cannabis sector, like those of tobacco and alcohol, must be excluded from public health policy design and/or orientation. In fact, the regulations in Colorado and Oregon have replicated the codes for self-regulation on advertising and marketing that characterize the alcohol and tobacco industries, which have had a limited effect on reducing consumption (Barry & Glantz, 2018).

The social justice focus, however, is one of the most interesting elements of some regulation schemes in the United States. Whether by granting preferences in the provision of licenses, eliminating prior convictions related to cannabis offenses, or making marginalized communities the beneficiaries of the resources generated by the market, these communities are benefiting from regulation in various states (Adinoff & Reiman, 2019). This is a demonstration of how regulations can serve as an opportunity for reparation and social and productive inclusion. However, these efforts have come up against obstacles created by players with powerful interests in the market. In states such as Maine, Illinois and California, lawsuits alleging unconstitutionality have been filed against the measures for licensing preferences, due to the purported violation of the rules of competition and commerce (Malyshev & Ganley, 2021). In addition, in California, the state bureaucracy's delays and requirements to approve the licenses of social equity programs are doing more to hurt beneficiaries than to help them (Alpert Reyes, 2021).

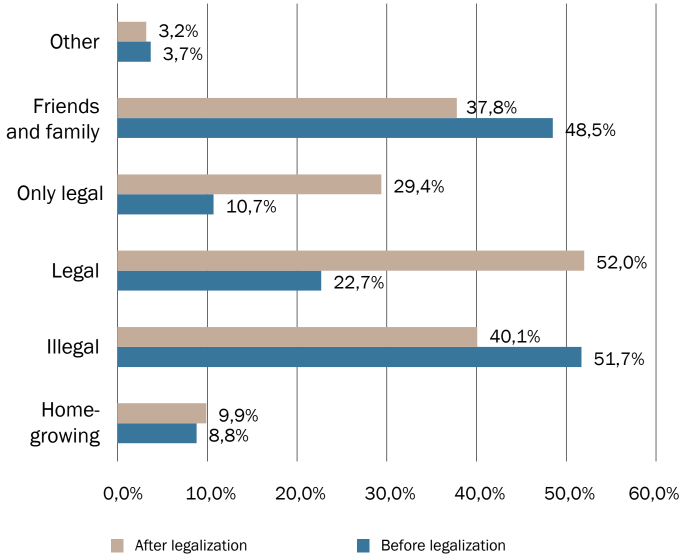
Finally, the lack of access to financial products (given the federal prohibition) has harmed the owners of small cannabis businesses while favoring big companies, which have more capital and financial leverage (Krane, 2018). This shows that, even with good intentions, the governments that decide to regulate this market must pay great attention to the details of implementation in order to have a significant impact on the communities and populations affected by prohibition.

Canada, meanwhile, has tried to take advantage of the potential of the Uruguayan and U.S. models at the same time, adopting a regulatory framework with heavy state intervention in distribution, but leaving room for the market to take the lead on production. However, although this approach is aimed at protecting public health with monitoring and control of direct sales to consumers, it has weakened the goals of displacing the illegal market and of seeking greater social inclusion for affected communities.

First, in none of Canada's provinces or territories is there a licensing system that involves social justice criteria (Slade, 2020b). In fact, the lack of a specific allocation for the tax revenue generated means that there is no real commitment to this ideal. On another point, one of the biggest challenges of Canada's regulation scheme has been displacing the illegal market. Although official statistics on access to cannabis show an increase in the use of legal sources – the percentage of consumers who said they had obtained cannabis from a legal source increased by nearly

30 percentage points after legalization – the reduction in illegal sources has not been as notable, with a reported decline of around just 10 percentage points.

Graph 3. Sources of Access to Cannabis in Canada



Source: Prepared by the authors based on information from Statistics Canada[30]

It has been found that this difficulty in displacing the illegal market is related mainly to the price of cannabis in the legal market (Kilmer, 2019; Slade, 2020b), which has remained much higher in comparative terms. According to official figures from the national statistical office, Statistics Canada, the price of a gram of cannabis in the illegal market in 2019 was CAD $5.96 while in the legal, regulated market it was CAD $10.29, or nearly double (Statistics Canada, 2020a). Moreover, upon analyzing the evolution of prices in both markets, it can be seen that while the price in the legal market has remained relatively stable, it

30 Available at: https://www150.statcan.gc.ca/n1/pub/82-003-x/2020002/article/00002/tbl/tbl03-eng.htm

systematically declined in the illegal market between 2018 and 2019, which were the first two years of the regulation's implementation (Brown, 2020). This has led various provinces in the country to request that the federal government reevaluate the taxes on the legal market (Lamers, 2022).

Another of the more problematic aspects of the Canadian regulation model has to do with the vertical integration and corporate capture permitted by the "free market" that occurs in the production phase. Despite the introduction of "micro-cultivation" licenses aimed at opening the market to small producers, this goal has yet to be achieved due to the regulations' very requirements. For example, in 2018, the federal government announced that in order to request a cultivation license, potential beneficiaries were required to already have production facilities (Canada Revenue Agency, 2018a). This represented a significant entry barrier for producers who did not have the financial muscle and therefore could not bear the risk of funding an initial investment. This phenomenon has contributed to creating an emerging market dominated by a relatively small number of big corporate actors, while also increasing the risk of monopolization. This market power has enabled producers' interest groups to use political pressure to shift the regulation scheme toward their own interests. One indication of this lies with the Cannabis Council of Canada and the position that major producers, such as Cronos Group and Aurora Cannabis, hold within its board of directors[31] (Slade, 2020b, pp. 42-44). This has further undermined the possibility of the regulations having social and economic benefits for the populations most affected by prohibition in that country.

These aspects of the Canadian experience illustrate the risks of a regulation scheme that allows for accumulating market power to the point that it can be captured by the interests of major corporate players. Likewise, Canada and the other cases studied show how tensions can arise between the regulations' various goals and the human rights principles used in the associated fiscal policy.

31 See: https://cannabis-council.ca/about

The use of fiscal policy in the regulated markets of the United States and Canada largely contrasts to the approach in Uruguay. This South American country opted for a model in which control of production and cannabis sales is the strategy for regulating consumption levels, health effects and competition with the illegal market, renouncing fiscal policy instruments to pursue these goals. Meanwhile, some states in the United States and Canada decided to use the regulatory role of taxes to (i) discourage consumption and (ii) obtain fresh resources for implementing strategies for prevention, health-risk and harm reduction, and reparation with a social justice approach (thereby fulfilling Principles 3, 5, 10 and 12). However, while Uruguay has managed to maintain a competitive price in its regulated market, Canada and the United States have had difficulty displacing the illegal market due to the high price of their regulated products. For example, in California – the biggest adult-use cannabis market in the United States – the illegal market is still bigger than the legal one and shows no sign of having been debilitated. This has occurred, in part, due to the use of indirect taxes in that state's regulation scheme (McGreevy, 2019).

But the taxation model in some jurisdictions of the United States is also the object of criticism, since it has focused on raising revenue without paying much attention to the aspects of tax design that can discourage consumption. That is the case because (with the exception of Alaska) the indirect taxes on cannabis products do not take THC content levels into account. The evidence on health taxes indicates that levies seeking to disincentivize the consumption of products harmful to people's health must include in their taxable base the component that negatively affects health (Sassi et al., 2013). In this case, linking the tax to THC levels would be a way for governments to induce consumers to buy less potent products, which would entail fewer health risks. In this sense, the literature has already shown that the price of products, especially in relation to their potency, is the most important factor in purchasing patterns (Slade, 2020a).

Currently, the majority of states have few controls on the maximum potency of the cannabis products in the market, and this has led to producers developing crops with greater potency to increase demand and their profits. For example, in the state of Washington, the proportion of strains with a concentration of THC above 15% grew by 93% just a few years after regulation began (European Monitoring Centre for Drugs and Drug Addiction, 2020). Thus, a tax that incorporates THC content into its taxable base can contain the emergence of more potent products and be more effective in achieving the desired public health outcomes[32].

The previous information would suggest, then, that Uruguay's strategy to not levy taxes is the best option. However, the decision to not apply indirect taxes to products in the cannabis market is a lost opportunity for the State to wield useful tools for contributing to rights guarantees. For example, the State is not using taxes to discourage cannabis consumption via prices (Principle 12). At the same time, the exemption from indirect taxes prevents the State from being able to mobilize resources and use them to pursue the goals of guaranteeing the rights of marginalized populations and of users (Principles 3, 5 and 10). In addition, having a low price does not guarantee the total or immediate displacement of the illegal market; as we mentioned before, the regulatory structure has other aspects that work in favor of the black market.

Finally, Uruguay differs from Canada and the United States in its application of Principle 7, which is centered on the transparency of the regulated market's fiscal information. In Canada, the Statistics Canada office has public information about the types of taxes that are applied to the regulated adult-use cannabis market, along with data on the revenue they raise. In addition, the majority of Canada's provincial governments have relevant information on their own websites regarding the taxes in their province and the use of resources. The scenario is similar in the United States. There, the governments of the states and cities

32 There is evidence regarding the tax on sugary drinks, in some jurisdictions of the United States, that indicates that designing the taxes based on the sugar content and not on the price (ad valorem) improves results by up to 30% (Grummon et al., 2019).

that have implemented regulations present public information and data related to the regulated market's taxes and revenue on their official webpages[33]. This information is vital for public debate and accountability regarding the use of the resources being generated by the regulations. Likewise, making this information transparent can also be key to increasing support for cannabis regulation, by disseminating its benefits with regard to public resources. Uruguay, in contrast, has very little public fiscal information regarding taxes and the expenditures generated by the country's regulation scheme. Although its regulatory model makes little use of taxes, it is not possible for the general public to access official figures on the magnitude of tax collection and the revenue that comes from the regulated market. In addition, no detailed information on the use of these resources is made available either.

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Throughout this section, we have presented and analyzed the distinct goals, general aspects and fiscal models of existing cannabis regulations in jurisdictions around the world that have moved toward a new drug policy. While Uruguay has opted for a regulatory model with greater state participation in the market, to have more control over the entire chain of production, distribution and consumption, the United States has chosen a model with greater market freedom but with state participation via regulatory measures affecting consumption, production and advertising, among other areas. Canada, meanwhile, adopted a "mixed" regulation model, which combines predominant market elements in production with strict regulatory measures on distribution and consumption.

With regard to the fiscal instruments used and their characteristics, the United States and Canada make use of (mainly) indirect taxes to discourage consumption and raise revenue to

33 See, for example, the case of Denver, Colorado: https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Marijuana-Information/Marijuana-Annual-Report-Data-and-Statistics

fund (some of) the regulations' goals. Uruguay, meanwhile, has opted to exempt cannabis products from indirect taxes to be able to keep a low price in the legal market that can compete with the illegal trade. Although this is a legitimate strategy, as we argue in this section, the use of taxes and expenditures with specific allocations can strengthen the regulations' human rights and public health approach. To that end, an analysis through the lens of the Principles and Guidelines for Human Rights in Fiscal Policy is crucial.

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Studying the good practices presented in this section is of vital importance for informing the decisions that may be made on adult-use cannabis regulation in Colombia. However, it is imperative that the particularities of the Colombian context be taken into account, so that these good practices can distill the characteristics of the national context and be effective for ensuring the goals of the country's regulation scheme. Therefore, the next chapter offers an overview of these particularities.

4. Marijuana Production, Use and Markets in Colombia

In this section, we describe the use of cannabis in Colombia, we estimate the size of the illegal market and we describe the Northern Cauca subregion, which has experienced a cannabis bonanza since 2010. We refer to a bonanza or boom because this is a profitable business with constant demand, which is the only source of resources allowing many families in the region to sustain themselves in their territories, exhibiting a similar dynamic to that of coca leaf cultivation in other parts of the country. In general, these are places with little institutional presence, which have been marked by the war and have enormous deficiencies in terms of economic and social rights.

In Colombia, cannabis is the most widely used substance that has been declared illicit. According to the National Survey of Psychoactive Substance Use (*Encuesta Nacional de Consumo de Sustancias Psicoactivas*), published in 2019 by the Ministry of Justice and the National Administrative Department of Statistics (*Departamento Administrativo Nacional de Estadística*, DANE), more than 637,000 people used marijuana within the last year[34] (2019, p. 66), which corresponds to 2.7% of the population between 12 and 65 years of age[35]. More specifically, 72% of these people were between the ages of 18 and 34, and lived in Bogotá, Cali, the coffee belt, or Medellín (Ministerio de Justicia & DANE, 2019, p. 68).

According to the National Planning Department (DNP), the geographical distribution of marijuana use tends to be concentrated in urban areas, which are attractive for selling the cannabis that is produced in Northern Cauca (DNP, 2017, p. 105). Although that is not the only region with marijuana crops, the country is currently experiencing a boom in so-called "creepy" marijuana[36] (as a result of the extent of this substance and dependence on the income from it), which is produced in five Northern Cauca municipalities.

On another note, to estimate the size of the domestic marijuana market in 2015, the DNP multiplied the 216 tonnes seized by the average price of around 1,000 Colombian pesos (COP) per gram, which yielded more than 220 billion pesos. From there, it projected two scenarios in which the cost of the seized goods represented respectively 5% or 10% of the total market (DNP, 2017, p. 116). In the first scenario (5%), the size of the cannabis market in Colombia that year amounted to 4.4 trillion pesos, while in the second scenario (10%), the value was 2.2 trillion pesos. To contextualize the magnitude of this, the tax reform advocated by the current government aims to raise between 2 and 4 trillion pesos.

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34 "Use in the last year" refers to 2018.

35 According to the survey, in the last year, nearly 800,000 people had used some substance that had been declared illegal, or 3.36% of the country's population (Ministerio de Justicia & DANE, 2019, p. 57).

36 "Creepy" marijuana is not a strain itself; it is a generic term used for the indica strains that tend to have higher THC concentration. While the "Colombian" strains that conquered U.S. markets in the 1970s and 1980s had 7% or 8% of THC, creepy marijuana is distinguished by having between 15% and 25% of that component, which produces a much greater, but shorter, psychoactive effect (Robbins, 2019).

It was believed that all of this marijuana mainly supplied the Colombian market; however, there is evidence that it is being exported to various countries in Central and South America, and even to the United States (Cruz & Pereira, 2021, p. 92). Although the profitability of marijuana production and distribution inside Colombia is not comparable to the international cocaine trade, the National Police reports that the destination countries for marijuana exports are the United States, Ecuador, Peru and Argentina (CIENA, 2017, p. 4). This information was replicated in the UNODC's World Drug Report, which indicates that between 2010 and 2015 the countries most frequently mentioned as the places of origin of cannabis for South America and Central America, are Colombia, Paraguay and Jamaica (UNODC & Government of Colombia, p. 37).

Colombia's extensive experience with the illegal cannabis market allows for the country to be viewed as one of the most strategic places in Latin America for low-cost production. Whereas in Canada as of 2015, producing a gram of cannabis cost the equivalent of 10,914 Colombian pesos[37], in Colombia a full kilogram could be produced at nearly the same cost (11,000 pesos). This calculation utilizes the data presented by Conway (2021), which indicates that the average cost of producing a gram of marijuana in 2015 was $5.10 Canadian dollars.

According to the National Police's International Center for Strategic Studies against Drug Trafficking (*Centro Internacional de Estudios Estratégicos Contra el Narcotráfico*, CIENA) (2017), one hectare of marijuana crops can contain between 12,000 and 15,000 plants and can produce 2,000 kilos of flowers on average (p. 4). The average regional price of a kilogram within Colombia is 250,000 pesos, and up to 500 doses (of 2 grams each) can be extracted from that quantity, with each dose costing anywhere from roughly 2,000 to 5,000 Colombian pesos as of 2016. Similarly, the DNP (2017) estimated that producing a kilo of marijuana is 215 times cheaper than what it costs to produce a kilo of cocaine (p. 83). In addition, the quality of the soil,

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37 The figure in pesos was calculated using the average exchange rate in 2015 of one Canadian dollar (CAD) to 2,140 Colombian pesos (COP).

climate conditions, and the number of strains that can be grown all serve to increase the country's allure.

Currently, there is no systematic record kept of cannabis crops in Colombia, in contrast to coca and opium poppy crops[38]. Nonetheless, the pilot programs using light emission alerts as part of the Integrated Illicit Crops Monitoring System (*Sistema Integrado de Monitoreo de Cultivos Ilícitos*, SIMCI) – which use the emissions to detect the presence of greenhouses for marijuana production – have revealed that 55% of cannabis production in Colombia's rural areas is being carried out in five municipalities in the north of the Cauca department: Caloto, Corinto, Miranda, Toribío and Santander de Quilichao (UNODC & Government of Colombia, 2017, p. 116). The municipality with the greatest concentration of cannabis crops in this part of the country is Toribío (21%), followed by Corinto (14%), Caloto (9%) and Santander de Quilichao (8%). Considering this distribution, we believe it is pertinent to present some characteristics of these municipalities found in Northern Cauca, so as to better understand their socioeconomic and institutional conditions.

In these five municipalities, there is a high concentration of indigenous populations and reservations. In fact, 41% of the area covered by the municipalities corresponds to reservations, while 36% of the population identifies themselves as indigenous (Cruz & Pereira, 2021, p. 89). In the municipality accounting for the largest share of light emission alerts – Toribío, with 21% – 86% of the population is indigenous and is divided into three reservations. This is not an issue that is discussed much, but Northern Cauca has developed an economic dependence on marijuana crops, and the government has not paid enough attention to this fact. The consequences for the subregion's socioeconomic conditions must be studied more in depth. Cruz and Pereira (2021) reported that in December 2017, marijuana prices

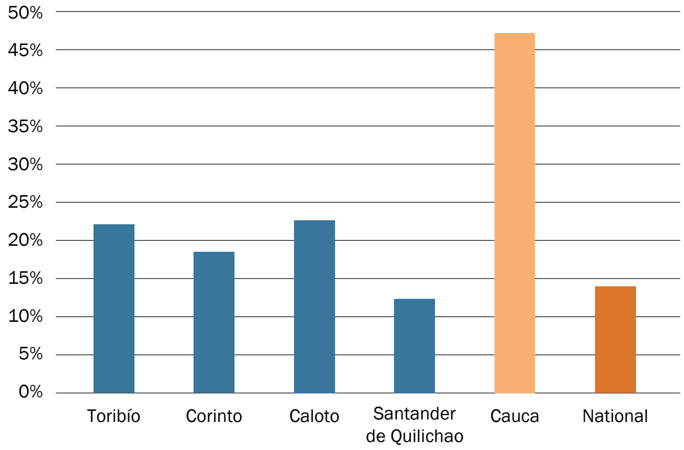
38 The SIMCI project has been financed by the Colombian government since 1999. It was designed for the purpose of measuring the extension of coca and opium poppy crops, which has meant that over the course of its implementation, cannabis crops have not been prioritized, nor have resources been allocated to survey the number of hectares planted in the country.

fell to 18,000 Colombian pesos per pound (0.45 kilos), which ended up causing economic problems throughout the area (p. 87). In early 2018, although the prices remained low, no other agricultural product was able to substitute for cannabis in terms of income generation.

The socioeconomic indicators in these areas, as occurs in the places where people depend on the coca leaf economy, reveal a clearly better situation than what is seen in other municipalities where crops that have been declared illicit are not present. Indicators such as family income and educational levels are around the departmental average, or sometimes higher. However, these municipalities tend to have indicators of multidimensional poverty, weak institutions and high rates of violence (Chaparro & Cruz, 2017, p. 60). One issue that must be taken into account is that the municipalities where people cultivate crops that have been declared illicit – in this case, marijuana – are administered from the perspective of the problems that they represent for the country, and not with a rights-based view or one focused on their inhabitants' needs. In Northern Cauca, the ethnic composition of the population constitutes an additional nuance. The presence of reservations and the proportion of indigenous peoples in this subregion has allowed the State to pass responsibility for the provision of public services over to indigenous authorities, without properly allocating resources.

Upon comparing the proportion of people living in situations of "unmet basic needs" (known as NBI in Spanish) in these municipalities versus the average for the Cauca department as a whole, it can be concluded that more people have their basic needs met in these municipalities. The municipalities with a larger proportion of people living with unmet basic needs are Caloto (22.6 %) and Toribío (21.6 %), but that compares with an average of 46.6% in the department of Cauca overall. This means that the highest levels of unmet basic needs in the department are found in other municipalities, such as Guapí, Timbiquí, López de Micay or Santa Rosa. However, if these figures are compared with the national average, it can be seen that in general these municipalities still have a greater proportion of people living with unmet basic needs.

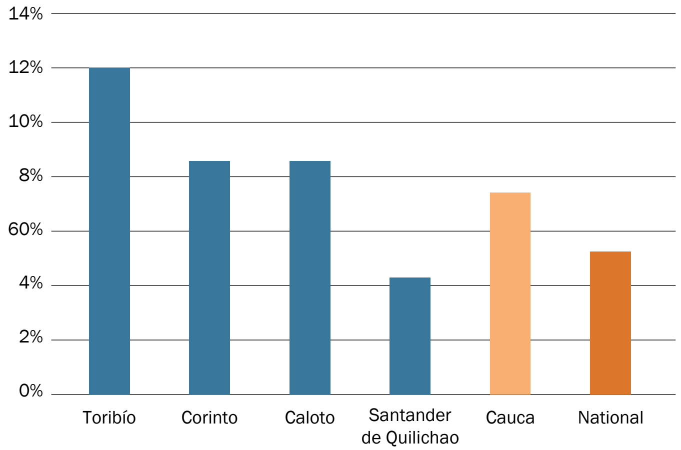
Graph 4. Proportion of People Living in Situations of Unmet Basic Needs (NBI) by Municipality, Departmental Average and National Average



Source: Prepared by the authors based on data from the National Population and Housing Census, 2018

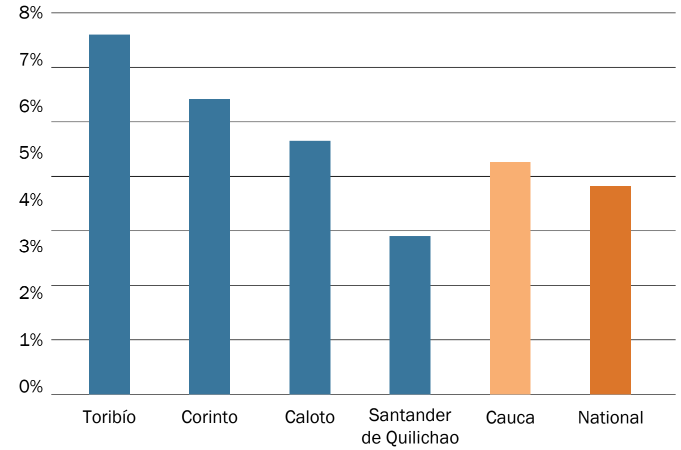
That said, other socioeconomic indicators point to these municipalities lagging behind others elsewhere in the department. For example, illiteracy rates in people aged 15 and older (Graph 5) are higher than the departmental and national averages in the municipalities of Toribío, Corinto and Caloto, with Toribío having the highest rate (12%). At the same time, the percentage of people with no formal education is also greater than the departmental average in the municipalities of Toribío, Caloto and Corinto (Graph 6).

Graph 5. Illiteracy in People Aged 15 and Older by Municipality, Departmental Average and National Average



Source: Prepared by the authors based on data from the National Population and Housing Census, 2018.

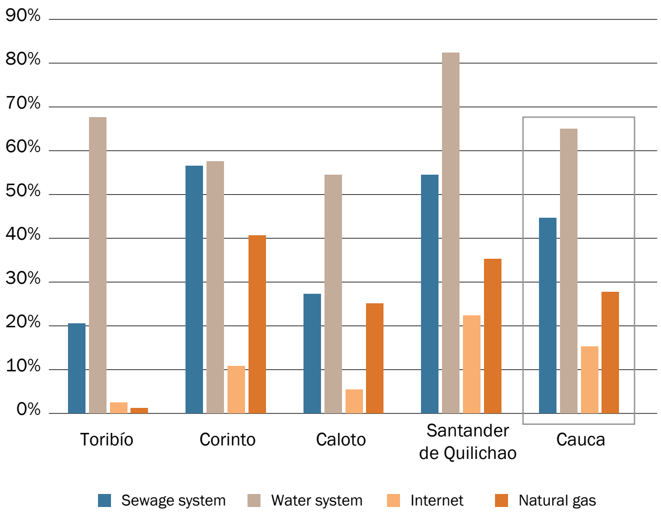
Graph 6. Proportion of People with No Formal Education by Municipality, Departmental Average and National Average



Source: Prepared by the authors based on data from the National Population and Housing Census, 2018

Similarly, the coverage of public services is below the departmental average in the municipalities that have a high concentration of cannabis crops, such as Toribío (Graph 7). It seems the provision of services such as Internet and natural gas is nearly nonexistent there.

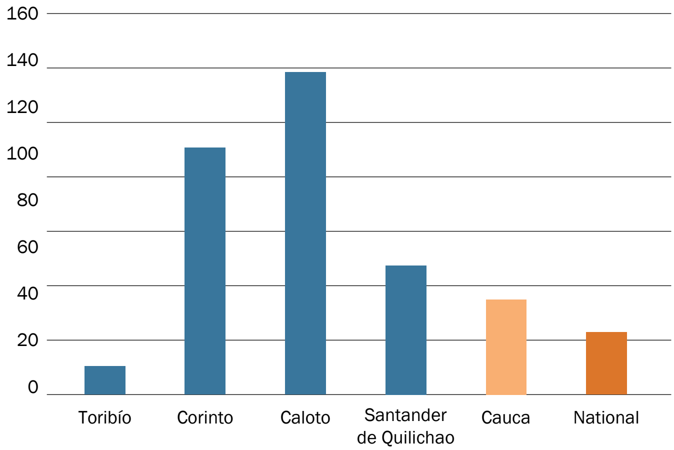
Graph 7. Public Service Coverage of Households by Municipality and Departmental Average



Source: Prepared by the authors based on data from the National Population and Housing Census, 2018

Historically, the Northern Cauca subregion has been affected by the armed conflict. Disputes over territorial control have emerged since it became an important marijuana producer, although this was not the only factor driving that phenomenon. The arrival of the National Liberation Army (ELN), and even *Los Pelusos* and dissident residual groups of the FARC, led to a reactivation of the armed conflict in the region as of 2018 (Garzón & Silva, 2019), with the ensuing increase in violence. DNP data for 2017 shows that the municipalities in Northern Cauca where cannabis crops are grown are generally more violent than the average levels in the department and nation. In fact, the municipalities of Caloto and Corinto have the highest homicide rates per 100,000 inhabitants in the nation (Graph 8). Oddly enough, the rates in the municipality of Toribío, which accounts for 21% of the cannabis crops, are lower than the departmental, and even the national, average.

Graph 8. Homicide Rate (per 100,000 Inhabitants) by Municipality, Departmental Average and National Average

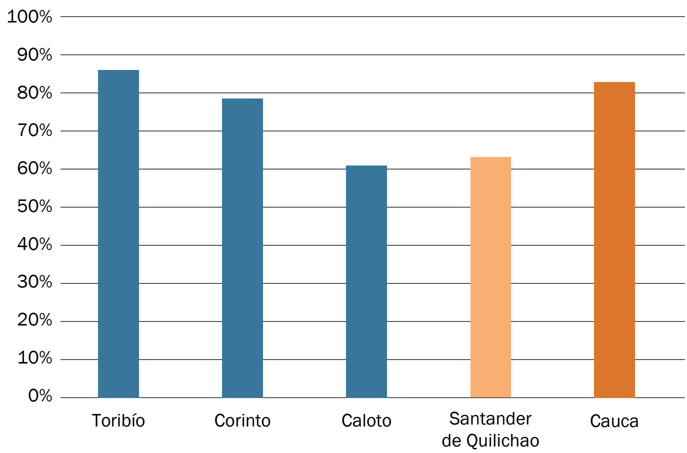


Source: Prepared by the authors based on data from the National Planning Department, 2017

With regard to the institutional capacity of these municipalities, according to the groups established in the Municipal Performance Measurement (*Medición de Desempeño Municipal*, MDM), Toribío is in the group of municipalities with low initial capacities (G5), and Corinto is in the group with medium-low capacities (G4). Meanwhile, the municipalities of Caloto and Santander de Quilichao are classified in the groups with medium-high (G2) and medium (G3) capacities, respectively (DNP, 2021, p. 21).

Finally, in addition to the MDM, there are other indicators that shed light on the State's strength, efficiency and efficacy in these territories. One of them is the percentage of municipal revenue that corresponds to transfers from the central government. As Graph 9 indicates, the percentage of municipal revenue that corresponds to State transfers (*Sistema General de Participaciones*, *Sistema General de Regalías*, etc.) is significant for all the municipalities analyzed, especially in Toribío, where 86% of its revenue comes from such transfers. Although these figures are similar to, or even lower than, the proportion of transfers that the Cauca department receives overall, it is still very illustrative that these municipalities are so dependent on the central government. This demonstrates the scant capacity they have to generate their own resources to ensure greater fiscal solidity and territorial autonomy.

Graph 9. Proportion of Municipal Revenue that Corresponds to Central Government Transfers, by Municipality and Departmental Average



Source: Prepared by the authors based on data from the National Planning Department, 2017

In addition to interpreting this data on socioeconomic and institutional indicators in the subregion, it is necessary to explore how economic dependence on marijuana is affecting

Northern Cauca. This not only involves price fluctuations, which have a negative impact on the region's families, but also the cost they must bear for participating in illegal activities. For example, a lack of access to land use and credit or subsidies for strengthening and upgrading production, and subjection to the violence of armed groups.

In general terms, a more robust regional assessment is needed regarding the consequences that the cannabis crop and prohibition policy have had for the quality of life of the Northern Cauca's inhabitants. However, despite these gaps, the available contextual information suggests that a future regulation scenario would be an opportunity for this region's residents to use their expertise and the favorable conditions for cultivation and production to supply the legal market. This possibility depends on how the regulated market ensures spaces for small- and medium-scale producers, as well as sufficient resources to finance their inclusion in the market and the rural development needed for this inclusion to be sustainable.

On this last point, although this text does not aim to calculate how much revenue the Colombian State could obtain from marijuana regulation, since that would require a specific approach, the issue is still worth exploring. Based on the methodology used by Teixeira (2016) in Brazil (p. 49), we can affirm that in the Colombian case, public coffers are failing to receive up to USD $352 million per year from the VAT alone that would stem from the decriminalization of adult-use marijuana (Table 5).

Table 5. Exercise Projecting Annual Revenue from the VAT and a 55% Excise Tax on Cannabis in Colombia as of 2018, in U.S. dollars (USD)

Quantity and Interval of Consumption	Revenue from the VAT (19 %)	Revenue from Excise Tax (55 %)
One gram per month	$2.9 million	$8.5 million
40 grams per month	$117 million	$340 million
120 grams per month	$352 million	$1 billion

Source: Prepared by the authors based on Teixeira, 2016, p. 49

To do this calculation, we used the price of a gram of marijuana in Uruguay as of 2016 (USD $1.20) as our base, since that is the regulated price in a legal market, and we assumed the collection of taxes such as the VAT, which is equivalent to a 19% fiscal burden on the consumer. If the total cannabis-using population in Colombia is 1,072,728 people, as calculated by the DNP (2017, p. 105), and they consumed one gram of marijuana per month (which in Colombia is equivalent to the quantity used in a marijuana cigarette), around USD $2.9 million of revenue would be raised annually. If the total cannabis-using population were to consume the maximum allowed in the case of Uruguay, which is around 40 grams per month, about USD $117 million per year would be raised. Now, if regular marijuana users are calculated to consume from 3 to 4 grams per day, which is equivalent to monthly consumption of approximately 120 grams, that level of use would represent around USD $352 million per year (Cruz & Pereira, 2021, p. 98).

However, this calculation only contemplates a consumption tax with a percentage equivalent to the one used for everyday products. If we assume a final tax collection rate equivalent to that of cigarettes (55%) for the monthly consumption of one gram of marijuana by the entire user population, the gains would total USD $8.5 million per year. In the case of monthly consumption equivalent to the maximum permitted in Uruguay, or 40 grams, the revenue raised would be approximately USD $340 million per year. And if the user population were entirely made up of regular marijuana consumers, the revenue raised would total about USD $1 billion per year, or 4 trillion Colombian pesos[39] (Cruz & Pereira, 2021, p. 98). This last figure is nearly as much as what could be raised via a tax reform, which helps explain the magnitude of the potential revenue from this market.

Despite the imprecision of these figures (since calculating demand is more complex than simply considering the number of people who used marijuana in the last year), they do indicate that a regulated cannabis market has the potential to contribute

39 Again, this uses an exchange rate of 4,000 Colombian pesos (COP) per U.S. dollar (USD).

to public coffers. It must be noted, finally, that the fiscal regime of any future regulation scheme should be focused on financing its main goals, such as rural development, the protection of public health, and reparation for victims of the war on drugs.

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Despite being fragmented, these elements provide enough context to envisage the possibilities that cannabis regulation brings to Colombia. Since it is the illicit substance that is most widely used today, its transition to a regulatory regime represents an undeniable opportunity to generate resources for the State. In addition, since the crop is concentrated in a specific region, that revenue can be partially earmarked for reducing the socioeconomic and institutional gaps that afflict Northern Cauca.

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That said, and as we have insisted throughout this text, the fiscal framework must also be designed to protect the health of people who use cannabis and to prevent prices from creating incentives for consumption, or from not creating enough incentives to participate in the legal market. The Colombian situation, with its low-cost production, makes these tensions particularly acute. To help shape the regulatory debates that the country may well engage in, we offer in the following section a series of proposals based on lessons learned from the incipient markets analyzed.

5. Cannabis Fiscal Principles

Up to this point, we have described the national and international context with the aim of understanding the past and present circumstances that any regulation scheme will have to address. Furthermore, we have analyzed experiences in other latitudes, which can shed light on what to do and what *not* to do in a regulation scenario, particularly with regard to sources and ways of raising revenue as well as the allocation of funds. We also explored the human rights principles that are applicable to the regulations' fiscal policy, so it may be underpinned by international human rights norms and thus be fair and contribute resources that could help guarantee the rights of populations criminalized and made vulnerable by the war on drugs.

We covered all this ground while remaining aware, as we stressed in the introduction, that the regulation of adult-use cannabis in Colombia must pursue four goals: (i) reducing the size of the illegal market; (ii) protecting public health; (iii) promoting differentiated rural development; and (iv) promoting reparation measures. In addition, we have contended that fiscal policy and its design are an essential instrument for achieving these goals, whether through taxes that discourage more potent strains of marijuana or that allocate funds to promoting rural development in marginalized areas, to name a few examples.

Thus, combining a comparative analysis of human rights principles in fiscal policy with one anchored in Colombia's national reality has enabled us to propose a series of fiscal principles for a future regulatory framework. This framework must be geared toward the market and built on a licensing scheme, with all of its aspects based on fiscal justice and human rights principles.

Taking into account the goals that we just reiterated for cannabis regulation in Colombia, it is very important to align human rights principles with the regulations' fiscal policy, so they can achieve these goals without losing sight of the tensions that could arise between the goals (and between the principles themselves). Therefore, we propose some elements for a fiscal policy on cannabis, envisioned both in terms of raising revenue and allocating it.

5.1 Fiscal Policy for Mobilizing Resources

The first principle that this regulation scheme's fiscal policy must comply with is that of mobilizing resources via the various types of taxes that can be applied in this market. This corresponds directly to Principle 10: "States must mobilize the maximum of available resources to progressively achieve the full realization of economic, social, cultural and environmental rights" (Initiative for Human Rights Principles in Fiscal Policy, 2021). As we saw in Section 3, the United States and Canada apply taxes to their regulated markets that have enabled them to generate new fiscal resources for spending on programs, policies or strategies related to attaining the regulation scheme's stated goals. In contrast, Uruguay decided to exempt cannabis products from indirect taxes as a way of subsidizing their price in the regulated market (indirect spending via tax benefits). Although this is a legitimate strategy, by opting for indirect spending via tax benefits, the Uruguayan State is losing the opportunity to orient this spending toward specific aims beyond the goal of reducing the illegal market. These projects could become equally important, such as allocating resources to programs for prevention and risk and harm reduction that would protect the health of users, among other strategies. For this reason, we believe that the best option for Colombia is to make allocations through direct expenditures. However, if policy makers were to choose the path taken by Uruguay (via tax benefits), they should take into account Guideline 6 of Principle 10 with regard to this type of instrument. For example, the obligation to publish all the differential treatments established in tax systems and to quantify their fiscal cost, ensuring the availability of information (in open formats) on their effective dates, evaluations and reasonableness, as well as on the people and companies who benefit (Initiative for Human Rights Principles in Fiscal Policy, 2021).

We propose, then, that the taxes to be applied to a future regulated market in Colombia should be direct (corporate income tax on companies that operate in any phase of the value chain), or they could be indirect taxes on the sale or consumption of cannabis products. The indirect taxes contemplated in the Colombian Tax Statute that could be applied to these products are the VAT and the excise tax. The latter levy taxes the consumption of goods that are not considered to be part of the standard family's basket of goods, and the rate is in addition to the VAT and varies between 4%, 8% and 16%[40].

40 Presidency of the Republic. Decree 624 of 1989. Estatuto Tributario Nacional. Art. 512-1.

Furthermore, the application of indirect taxes serves to mobilize fiscal resources while also fulfilling the human rights principle in fiscal policy of using the regulatory role of taxes as a way to promote scenarios conducive to guaranteeing rights. In the case of the adult-use cannabis market, the products should have a specific tax or a surcharge on the excise tax that would seek to protect consumers' health. This goal can be achieved by discouraging consumption of these products via the price or by ensuring that the effects on third parties (negative externalities) be offset with the resources contributed by the tax. This type of tax is already used in Colombia for products such as alcohol and tobacco, and in recent years there has been wide discussion of the possibility of adopting this kind of levy for sugary drinks. This is in line with the human rights guidelines, which recommend disincentives for activities or substances that are harmful or damaging to health. In addition, they indicate that the revenue raised by these taxes should be used to strengthen health systems and fund media campaigns that would serve to reduce harm (Initiative for Human Rights Principles in Fiscal Policy, 2021).

However, as mentioned in the previous sections, the design of these taxes is critical for obtaining better public health outcomes. While the rate of an ad valorem tax is calculated on the basis of a product's price, the rate of specific taxes is calculated based on the quantity of a specific component in that product, usually the one that causes the negative health impacts driving the imposition of a tax. In a scenario of adult-use cannabis regulation in Colombia, it is key that the lessons learned in other countries be contemplated – especially in the distinct jurisdictions of the United States that did not choose to tax the THC content of products. There it was seen how the market, in the absence of incentives to offer less potent cannabis products, increased the concentration of THC in their products to boost demand for them (European Monitoring Centre for Drugs and Drug Addiction, 2020). Therefore – following the literature on health taxes that recommends using specific levies to discourage the consumption of more harmful products, via higher prices (Sassi et al., 2013) – a specific tax on cannabis products should be designed that takes THC content into account when formulating its rate. In addition, it is necessary to keep in mind that the tax must be charged in the final phase of the value chain, meaning when the product is sold to the final consumer, so this tax may be passed along to that person and be reflected in the product's final price.

That said, when thinking about which taxes should be shouldered by the regulated cannabis market, it is very important to consider the tensions that exist between establishing taxes that would increase the price of products, as a strategy for protecting public health, and the displacement of the illegal market – which is one of the regulations' main goals. As we explained based on the experiences in Canada and the United States, the adoption of multiple indirect taxes, and their effect on product prices, have limited their regulations' capacity to displace the illegal cannabis market. This is logical given that the most effective way of displacing the illegal market is by ensuring a competitive price for the legal market's cannabis products. In Canada, for example, the price of cannabis per gram in the regulated market is double the price in the black market (Government of Canada, 2018c).

In the Colombian context, the situation seems even more complex. In contrast to these other countries, Colombia has produced cannabis illegally for many years. This means that the cost of production in the illegal market is much lower than it is in Canada or the United States, which means that the difference between the price in the regulated market (with taxes) and that of the illicit market would be even greater than it is in those North American countries. This requires striking a balance to foster a price that is low enough to displace the illicit market, but also high enough to retain the power of discouraging cannabis consumption.

Experiences in other jurisdictions can also provide some answers to this dilemma. One key aspect is that in some of the U.S. cannabis markets that have been operating for a longer time (Colorado and Oregon), the price of the regulated market's products has declined over the medium term (Kilmer, 2019, p. 1;

Slade, 2020a, p. 10). In addition, research on the medical marijuana market in Colombia has shown that local production costs for the legal market would also be favorable (Ramírez, 2019, p. 38), which would allow for establishing a more competitive initial price in this market. These two elements are very important, since if this downward trend in production costs is a common phenomenon in cannabis market regulation (more time is needed to be able to establish this), and if there is a good initial outlook for costs, the Colombian regulation scheme could adopt a gradual tax regime that is applied as the regulations advance and prices begin to fall. In fact, the state of New Mexico, in its recent legislation on adult-use cannabis, adopted a tax scheme like the one we are proposing, in which the tax rate on the sale of cannabis products starts at 12% and will increase each year starting in 2025 until reaching 18%. Considering the particularities of the Colombian context, officials could contemplate indirect taxes for cannabis products in which the rate would be very low during the initial years of implementation – so that a significant market share could be captured in those first few years – and would gradually increase, as production costs and the final price of products in the regulated market are seen to decline.

5.2 Fiscal Policy for Allocating Resources

The revenue generated by the regulation scheme can be allocated in multiple ways to contribute to achieving the goals of reducing the illegal market, protecting public health and providing reparation to the victims of prohibitionist drug policy. However, while planning these allocations, it is important to take the Principles and Guidelines for Human Rights in Fiscal Policy into account. Principle 3 – “States must ensure that their fiscal policy is socially just” – and Principle 5 – “States must use fiscal policy to eradicate structural discrimination and promote substantive equality, integrating in a cross-cutting manner the perspectives of populations who suffer from discrimination in the design and implementation of such policies, and adopting affirmative action when necessary” – (Initiative for Human

Rights Principles in Fiscal Policy, 2021) are especially relevant when contemplating how to use the tax revenue that could be generated by the legal market.

In this section, we will concentrate on addressing some aspects of the allocations that would contribute to achieving the goals we have outlined for building a regulation scheme with a focus on reparation.

The Functioning of the Regulations' National Institutional Framework

The power to regulate, and the agency or agencies in charge, will determine the nature of the regulations (Kilmer, 2019, p. 3). If the agencies are more geared toward the private sector, they could be inclined to prioritize industry interests. If the agencies are from the health or medicine sector, there will be more interest in controlling, or perhaps even overregulating, processes and procedures. Many of the agencies in charge of "drugs" in Colombia bear the burden of prohibition: they have expertise in oversight, but not in creating regulatory processes for the controlled commercial use of substances. For these reasons, and following the logic of Kilmer (2019), we propose putting a centralized entity in charge of all aspects of the cannabis regulation. It should have sufficient rank to engage in interagency coordination with whatever sectors are needed (agriculture, justice, finance, health, trade, etc.) and must have, without fail, autonomy and a regulatory purpose.

Following the example of Uruguay, this agency could be akin to the Institute for the Regulation and Control of Cannabis (IRCCA), an entity that was created along with the Uruguayan regulations and works in coordination with other state institutions on everything related to the regulated cannabis market. This agency would also be responsible for producing and providing the broadest possible access to related fiscal information, such as all aspects of the taxes on cannabis products and detailed information on revenue and resource allocation. As Guideline 1 of Principle 7 states, officials must "publish disaggregated information and data (regarding taxation, budget, and debt) that is reliable, timely, accessible, and comprehensive in open and reusable formats. This should be done with the highest level of disaggregation possible and through all available means" (Initiative for Human Rights Principles in Fiscal Policy, 2021).

We propose that the spending needed to set up this institutional framework come from the resources generated by the regulation scheme in its early years, with a gradual reduction of this source of financing until the expenditure becomes yet another operating cost of the State.

Protecting Public Health

As mentioned in Section 2, marijuana is the most widely used illicit substance in Colombia, particularly by segments of the youth population. It is important to emphasize, in this regard, that chronic or continuous cannabis use has adverse health effects, which are aggravated when people start using at an early age and when there is a history of mental health disorder. Therefore, a critical goal of the regulations must be to delay, as much as possible, the age of initiation of those who will use the substance. That is the case with alcohol and its regulatory system: legal age limits seek to ensure that no one under 18 tries or develops a constant habit of using that substance. We propose the same rule be applied to cannabis.

In addition, while adverse health events should be prevented, it is impossible to eliminate them entirely since there are adverse reactions and processes related to psychoactive substances that cannot be prevented completely (which is true of all such substances). The health care system, in collaboration with the Drug Observatory of Colombia (*Observatorio de Drogas de Colombia*, ODC), should produce information on trends regarding use, age, sex, socioeconomic stratum, modalities, consumption patterns and adverse events. This information should be produced using the resources generated by the regulation scheme and allocated to the bureaucratic apparatus administering it. In addition, this public policy must be geared toward prevention and harm reduction, reporting on key populations, populations that are more susceptible to risk, and measures that could reduce exposure to dangerous situations. These actions must be articulated with national mental health policies, taking into account the proven interaction between mental health backgrounds and marijuana use. Furthermore, all these efforts must be carried out on a territorial level, where different dynamics may exist and where differentiated actions may therefore be needed.

Now, when considering the various options for targeting this spending, the guidelines of Principle 3 are useful, especially that of "reducing economic inequalities through overall fiscal policy. Promoting the reduction of inequality by implementing progressive fiscal policies that produce a significant redistributive impact" (Initiative for Human Rights Principles in Fiscal Policy, 2021). This means that with regard to public expenditures, the progressivity of spending must serve as the guiding principle, with the aim of reducing socioeconomic inequalities or others that, due to intersectionality, affect marginalized or historically discriminated groups, such as the LGBTI population, ethnic communities and women in situations of poverty and vulnerability, among others.

Focus on reparation

Cannabis regulation must take a reparative approach to the communities and people who have been harmed by prohibition. This is not about simply handing over the funds raised by collecting taxes in the nascent adult-use marijuana industry. On the contrary, this approach entails a paradigm shift in Colombia's relationship to cannabis and other drugs that have been declared illicit – and therefore in the relationship between the State and the regions where this plant is grown. We must close the chapter of the "war on drugs" and move toward a different relationship to these substances. The actions to help achieve this shift must be seen as a symbolic reparation and as recognition of the mistakes and harmful deeds committed by the State while implementing prohibitionist policy.

The cannabis regulations' focus on reparation should contemplate the difficulty of repairing damage, depending on the scope of drug policy impact – whether personal, community-wide, regional or collective. Therefore, we recommend that the State, in conjunction with civil society, identify the potential beneficiaries of these reparation measures (whether communities, collectives or individuals), transferring the resources raised via taxes to the Drug Observatory of Colombia to carry out socioeconomic studies on this issue. In line with Principle 5, this work must be based on the differential impacts for specific populations.

To further develop this focus on reparation – and without disregarding the possible results of the Observatory's studies – we propose, based on the guidelines of Principle 3, financing rural development efforts in the areas that produce cannabis, and even in those where the coca economy is present, to deepen territorial transformation and support progress on implementation of Chapters 1 and 4 of the Final Peace Agreement. This also points to implementing productive projects related to the adult-use cannabis and medical marijuana industries, as a development alternative in the framework of coca-crop substitution programs.

We also recommend that the resources obtained from the regulations be used to finance technical assistance for cannabis production in rural areas, through support for associative schemes and investment subsidies for small-scale producers. In addition, the inclusion of cannabis growers with small plots should entail differentiated fees for licenses of any kind, financed with the revenue raised under the regulation scheme. And among the reparation measures devised for urban contexts, officials should consider the possibility of granting dispensary licenses to people who were sent to prison for drug offenses.

Principle 7 should be contemplated with regard to these allocations, such as those related to investment and expenditure in public health, in terms of the State's duty to design participatory and accountable fiscal policies. Given this, and following Guideline 2 of that principle, the regulation scheme must:

> Ensure a participatory budget formulation process, appropriately disseminated, that allows for meaningful inputs of

stakeholders, including civil society, and particularly from populations that face structural discrimination. This can be achieved through education and awareness initiatives regarding budget decision-making processes and their impacts, at the subnational and national levels, and in institutions such as public universities. Peasants and other rural communities have the right to be involved in the planning, formulation, and approval of local and national agricultural budgets (Initiative for Human Rights Principles in Fiscal Policy, 2021).

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Far from being conceived as a straightjacket, the elements proposed in this text would be subject to a continual process of construction and revision. Just as prohibition took years to be consolidated as a model to follow, the same will occur with these regulations. There will be years of testing, of trial and error, of observing and understanding what happens when a substance is moved into the legal realm, and how this interacts with particular contexts of the "war" that we are trying to leave behind. But even amid this laboratory of regulation that we will experience in real time, people's health and their dignity constitute the critical minimum elements that can orient a fiscal framework for regulated marijuana markets. We believe that these cannabis principles – sustained by a regulatory vision framed within human rights and fiscal justice, with multiple goals and lessons gleaned from successful international experiences – are a useful and powerful tool for the debates taking place, now and in the future, around the regulation of this plant for adult consumption.

6. Annex

Table A1. Taxes on Cannabis in the United States by State

State	Date of Entry into Force	Tax Category	Types, Rates and Taxable Bases
Alaska	2016	Specific	* Excise tax of USD $50 per ounce for mature flowers. * Excise tax of USD $15 per ounce for stems and leaves. * Excise tax of USD $25 per ounce of immature flowers/buds.
Arizona	Licensing began in 2021	Ad Valorem	* Excise tax of 16% on the sales value. * State sales tax of 5.6%.
California	2018	Ad Valorem and specific	* Cultivation tax of USD $9.65 per ounce for flowers. * Cultivation tax of USD $2.87 per ounce for leaves. * Cultivation tax of USD $1.35 per ounce for fresh plant material. * Excise tax of 15% of retail sales. * Local retail sales tax of 7.25%.
Colorado	2014	Ad Valorem	*Excise tax of 15% on sales to retail stores. *Retail tax of 15%. *Local retail tax of up to 8% (optional).
Connecticut	2022	Ad Valorem and specific	* Excise tax of USD 0.625 cents per milligram of THC for flower. * Excise tax of USD 0.9 cents per milligram of THC for other product types. * Excise tax of USD 2.75 cents per milligram of THC for edibles. *Retail sales tax of 6.35% + 3% municipal sales tax.

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State	Date of Entry into Force	Tax Category	Types, Rates and Taxable Bases
Illinois	2020	Ad Valorem	* Tax of 7% on sales to dispensaries. * Retail excise tax of 10% on products with THC levels of 35% or less. * Retail excise tax of 25% on products with THC levels above 35%. * Retail excise tax of 20% on cannabis-infused products. *Local sales tax of up to 3% (optional).
Maine	2020	Ad Valorem and specific	* Excise tax of USD $335 per pound of flower. * Excise tax of USD $94 per pound of trim. * Excise tax of USD $1.50 per seedling. * Excise tax of USD $0.35 per seed. * Retail sales tax of 10%.
Massachusetts	2018	Ad Valorem	* Excise tax of 10.75% on retail sales. * State retail sales tax of 6.25%. * Local excise tax of up to 3% (optional).
Michigan	2019	Ad Valorem	* Retail excise tax of 10%. * State sales tax of 6%.
Montana	2022	Ad Valorem	* Sales tax of 20% on the retail price of marijuana and marijuana-infused products. * Local tax of up to 3% (optional).
Nevada	2017	Ad Valorem	* Wholesale excise tax of 15%. * Retail sales tax of 10%. * Additional sales tax of 6.85%. * Local taxes are also permitted.

State	Date of Entry into Force	Tax Category	Types, Rates and Taxable Bases
New Mexico	2022	Ad Valorem	* Excise tax of 12% of retail sales (the rate will increase annually beginning in 2025 to 18%). * State and local sales taxes also apply to cannabis products.
New Jersey	2021	Ad Valorem	* The state sales tax of 6.625% is applied and the legislation prohibits additional state sales taxes. * Local sales tax of up to 2% (optional).
New York	2022	Ad Valorem and specific	* Tax of USD 0.5 cents per milligram of THC in flower. * Tax of USD 0.8 cents per milligram of THC in concentrate. * Tax of USD 0.3 cents per milligram of THC in edibles. * Retail tax of 9%. * Local sales tax of 4%.
Oregon	2016	Ad Valorem	* Retail sales tax of 17%. * Local sales tax of up to 3% (optional).
South Dakota	2022	Ad Valorem	* Sales tax of 15%.
Vermont	2022	Ad Valorem	* Cannabis excise tax of 14% on retail price. * State sales tax is applied.
Virginia	2024	Ad Valorem	* Retail sales tax of 21% for all products sold through marijuana stores. * Local sales tax of 3% (optional).
Washington	2014	Ad Valorem	* Tax of 37% on retail sales. * Retail sales tax of 6.5% + local taxes.

Source: Prepared by the authors based on official sources[41]

41 Available at: http://m.taxadmin.org/marijuana/

Table A2. Description of How Resources are Used by State

State	Use of Resources
Alaska	Half of the resources are sent to a general fund and the other half to programs aimed at reducing recidivism for drug-related offenses.
Arizona	After financing the regulatory agency's operations, the resources will be divided in the following way: 33% goes to community college districts; 31.4% to municipal police and fire departments; 25.4% to highways and road safety; 10% to the Justice Reinvestment Fund, which puts the resources into community public health programs; and 0.2% to the Attorney General's Office to finance the regulations' enforcement.
California	The revenue covers the administrative costs associated with the regulation scheme, and what is left over is earmarked for programs related to drug use, economic development programs, scientific research on the plant and programs for youth.
Colorado	The revenue is used to fund public education programs.
Connecticut	Starting in the fiscal year ending in June 2024, 25% of the resources will go to programs to prevent and treat problematic use of psychoactive substances (PAS) and 60% of the resources will finance the Social Equity and Innovation Fund, which seeks to provide capital and technical assistance for starting up business operations, workforce education and investment in the communities most affected by the war on drugs. By the fiscal year ending in June 2029, 75% of the revenue will be allocated to that Fund.
Illinois	The revenue is used to cover the administrative costs associated with the regulation scheme. What is left over is divided between the general fund, programs that support criminal justice reform efforts, substance abuse programs and transfers to local governments.
Maine	This state will divide its revenue in equal parts between security and public health programs associated with marijuana legalization and law enforcement training programs for compliance with the law.
Massachusetts	The revenue is distributed among various security and public health programs.

State	Use of Resources
Michigan	In the first two years, the legislation provides USD $20 million for researching medical marijuana. The rest is divided among local governments, the School Aid Fund and the Michigan Transportation Fund.
Montana	A small share of the resources will be earmarked for programs to treat the problematic use of PAS and to finance health services for the indigenous population. The rest of the revenue will go to the state's general fund.
Nevada	The revenue is allocated to education programs and the state's rainy-day fund.
New Mexico*	The revenue generated by cannabis legalization will not be earmarked for specific programs, which will leave it up to legislators to decide how to spend the marijuana windfall in the coming years.
New Jersey*	This state uses 70% of the revenue – along with all of the resources generated by a variable social justice tax on producers – for legal aid, medical care and other social programs for marginalized communities disproportionately affected by the war on drugs.
New York	40% of the revenue will go to the State Lottery Fund, to invest in public education. Another 40% will go to the Community Grants Reinvestment Fund, which finances civil society organizations and local governments that carry out programs focused on marginalized communities on issues such as health, education, employment and housing. The remaining 20% will go to the Drug Treatment and Public Education Fund, which will implement strategies for preventing and treating problematic use of PAS.
Oregon	The resources are earmarked for educational programs, programs to prevent and treat problematic use of PAS, and transfers to local governments.
South Dakota*	After using the tax revenue to cover the costs associated with the regulations' implementation, 50% of the remaining revenue is allocated to financing the state's public schools. The other 50% should be deposited in the state's general fund.
Vermont	The resources will be earmarked for afterschool learning programs and summer programs, focused on increasing access to education in the state's most vulnerable areas.

State	Use of Resources
Virginia*	It is expected that 30% of the revenue will go to financing social programs focused on communities affected by the criminalization of cannabis; another 25% to prevent and treat the problematic use of PAS; and 5% to public health programs.
Washington	This state uses the resources to fund health care programs.

Source: Prepared by the authors based on official sources
* The use of these resources will be specified in a more detailed way as the regulations' legislation and implementation takes place and goes forward.

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The debate about regulating cannabis for adult use is on the public agenda. In our view, the best policy on marijuana that a State can develop is the regulation of its cultivation, manufacture and use, focused on reducing marijuana's comparative impact in illegal economies and drug trafficking networks; protecting public health; promoting rural development in prioritized areas; and promoting reparation measures financed with the resources arising from regulation. Drugs are not the devil, but nor are they child's play. A drug policy that would be respectful of human rights and safeguard public health must lie at an intermediate point between full liberalization and the prohibition currently in place.

In this document, based on a comparative analysis of the regulations issued in Uruguay, Canada and the United States and by applying the Principles and Guidelines for Human Rights in Fiscal Policy, we argue for the importance of a fiscal framework based on collecting taxes in the cannabis market and focused on mobilizing the maximum amount of available resources to finance the goals of reducing the illegal market, preserving public health and assisting the populations affected by drug policy, as set forth in the cannabis regulations.