

The Challenges of Medicinal Cannabis in Colombia

A look at small - and medium - scale growers

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In July 2016, the Colombian government enacted Law 1787, which regulates the use of medicinal cannabis and its trade in the country. With this decision and a series of subsequent resolutions, Colombia joined the more than a dozen countries that have put into practice different types of regulation to explore the advantages of this plant as an alternative pharmaceutical. Through the issuing of four types of licences (for the cultivation of psychoactive cannabis and non-psychoactive cannabis, for the use of seeds for planting and for the manufacture of by-products), the door was opened not just to scientific research but to a business that is going from strength to strength all over the world, and that some predict will be worth about \$54 billion (US dollars) by 2025.² More than 300 licences have been issued since the law entered into force and the country is experiencing a 'green gold' fever, which has attracted the attention of large investors who see cannabis as the business of the future. The country's geography and climate, the cost of labour and inputs, and a robust long-term legal framework have made Colombia an ideal place for growing cannabis and an appealing location for transnational corporations to do business.

The entry into force of this law signified a change in the country's drug policy. Colombia's recent history has been marked by the presence of drug trafficking and violence associated with social conditions in the country. During the 1960s and 70s Colombia was one of the world's main marijuana producers, and for the last 40 years it has been the leading producer of cocaine.³ This went hand in hand with a social and agrarian conflict that continued for more than half a century. The conflict led to a war between guerrilla organisations, who saw drugs as a way to finance their political project, and other drug trafficking groups, whose leaders set up their own armies to defend themselves against extortion and threats from these insurgents. Compounded by a prohibitionist national drug policy, this situation led to new outbreaks of violence, the infiltration of drug traffickers into pre-existing social conflicts, and clashes with state security forces, ultimately resulting in about 6 million casualties.⁴ For decades, the Colombian government's response to the problem of drug trafficking focused on prohibition and military attacks, causing even more negative effects rather than providing a real solution.

This is why this change in the law not only offers an alternative in terms of public health but also represents a key component in the rebuilding of a society that has suffered armed conflict for decades. In addition to this shift, in 2016 the Colombian government put an end to more than 50 years of armed conflict with the FARC guerrilla movement by signing a peace agreement. One section of this agreement focuses precisely on crop substitution and the need for a change in drug policy. Although the approach to cocaine is still punitive, Law 1787 was also designed to offer an alternative to families who were involved in drug trafficking, enabling them to move into a legal business by growing medicinal cannabis.

Although it is not clear how many people depend on this crop, the figures show that marijuana is the most commonly used drug in Colombia. The national market for medicinal cannabis is estimated to comprise some 5 million patients⁵ – a demand which small-scale growers can undoubtedly help to meet. However, this opportunity has been swiftly seized by large national investors, such as those formerly in the flower industry, and has attracted an influx of foreign capital. Due to the type of regulation introduced by the law, which aims to develop a pharmaceutical industry, small- and medium-scale growers have found it difficult to enter the market because they are unable to invest the millions that the business requires.

Even though the law stipulates that 10 per cent of production should come from small- and medium-scale growers, the reality is that most of the business has been dominated by large local and foreign investors. Although there are cases of associations of small-scale farmers who have come together to obtain a licence, the majority have only managed it by going into partnership with transnational corporations, most of them Canadian, which already have experience in the business. Because of

this, since the law was enacted the government has passed resolutions that seek to incentivise and promote local production. However, the situation is far from ideal for local producers and discontent has already arisen. This article analyses Law 1787's entry into force in 2016 and the challenges posed by implementing the arrangements for medicinal cannabis, especially with regard to the involvement of small- and medium-scale producers.

The first section of the paper briefly reviews the recent history of cannabis and its use in Colombia. It then focuses on the changes in the legislation that led to the approval of Law 1787 in 2016. The third section provides an in-depth analysis of the law's implications, the types of licence and subsequent resolutions. It goes on to present an overview of the current situation in the cannabis business, the companies involved and the role of small- and medium-scale rural producers. The final section offers suggestions for how this legislation could provide more benefits to the first links in the supply chain – the people who have not only suffered the most from the negative impacts of drug trafficking but also from problems related to land distribution.



Cannabis in a greenhouse, TNI/Martin Jelsma.

History

For several decades, the Colombian government fought alongside the international community to eradicate drug production and use, through prohibition and by force. These policies were scarcely effective, however. Now, the enactment of Law 1787 has opened the door to the medicinal cannabis business in Colombia and several other countries have been watching with interest, seeing Colombia as a future world leader in the production of cannabis for medical uses. However, it is not the first time the country has attracted international attention due to its cannabis production capacity. In the 1960s and 70s Colombia was the world's leading supplier of marijuana and colossal quantities of money circulated through drug trafficking, at a time known as the '*Bonanza Marimbera*'.

Although the exact date when cannabis cultivation began in Colombia is not clear, the history of this plant in Latin America goes back to the fifteenth century with the arrival of Spanish and Portuguese colonisers. To meet the need for labour, replacing indigenous people who had been killed or succumbed to diseases, they began trafficking slaves from West Africa to the coasts of Brazil, who brought cannabis with them. The practice of smoking marijuana was soon adopted by some of the region's indigenous communities who were already used to smoking tobacco, thus establishing traditions of growing cannabis and using it in recreational and religious activities.⁶

In Colombia, there are records of cannabis arriving in 1920 via the Atlantic Ocean. Cannabis use began in Barranquilla, where it was used mostly by marginalised groups and people who lived and worked near the ports as sailors, dockworkers and prostitutes. Other sources, however, suggest that cannabis, opiates and cocaine were already being used for medicinal purposes in Colombia in the nineteenth and early twentieth centuries.⁷ Even so, it was only in the mid-1920s that the government started to become concerned about the use of this substance, as it spread to other areas of the country such as Cartagena and Santa Marta.⁸ By then, Colombia had legislated against drug trafficking with Law 11 of 1920, in conformity with the Shanghai and The Hague conventions. This was later reinforced under the government of Alfonso López Pumarejo (1934-1938), when sanctions were introduced into the Criminal Code for narcotics trafficking, use and trade.

The Bonanza Marimbera

According to Eduardo Sáenz, author of '*La "prehistoria" de la marihuana en Colombia: consumo y cultivos entre los años 30 y 60*', before it started to meet international demand the country already had a considerable domestic cannabis market. Marijuana cigarettes were easy to obtain in the streets of marginal neighbourhoods on the Caribbean coast and there are reports of arrests for the possession, use and sale of cannabis.⁹ However, it was after the Second World War that the country began to emerge as an international supplier. Santa Marta, a city on the Caribbean coast in the north of Colombia, had become the centre of cannabis production and a report by Colombia's Ministry of Foreign Relations in 1952 mentioned that the city was sending shipments of marijuana to Florida in the United States, on boats carrying cargoes of bananas.¹⁰ Cannabis cultivation had also begun in Antioquia, Valle del Cauca and Caldas, according to a report presented by the Colombian delegation to the Inter-American Consultative Group in Rio de Janeiro in 1961. By 1967, cannabis crops had spread to almost every part of Colombia's territory. However, it was the Caribbean coast that saw the consolidation of the so-called '*Bonanza Marimbera*', referring to the boom in marijuana trafficking that brought enormous amounts of money to the region.



As Fabio Castillo mentions in his book *Los Jinetes de la Cocaína*,¹¹ in the early days the drug trafficking business was run by just a few families or clans on the Caribbean coast, who had the significant amounts of capital required to hire boats and buy shipments of marijuana. Others attribute its beginnings to emerald traders and people who were already involved in the contraband trade that was very common in the Guajira peninsula and saw marijuana as a more lucrative business. According to still other authors, it was the Alliance for Progress programme's Peace Corps volunteers who took charge of promoting the product and setting up the trafficking networks. Francisco Thoumi argues, however, that there is no evidence to support the involvement of Peace Corps volunteers in exporting marijuana. Instead, he explains that the boom was a result of the eradication programmes promoted by the United States in Mexico and Jamaica, two of the main marijuana suppliers at the time.¹² The growing demand in the United States and the anti-narcotics campaigns in Mexico and Jamaica created an incentive to look for somewhere else to grow the crop and the Caribbean coast of Colombia seemed like the ideal trafficking site. La Guajira and the Sierra Nevada were the first to get involved in the business, not just because of their history of contraband but also because they were regions historically neglected by the Colombian state. This, together with their populations' precarious living conditions, meant that they saw illicit activities as an opportunity for progress.¹³

In the 1960s, the countercultural movements such as the hippies, together with the crisis in the coffee and cotton sectors, boosted the illegal economy to the point where, at the height of the bonanza, 80 per cent of small-scale farmers on the Atlantic coast were growing cannabis. By the 1970s, Colombia was

known worldwide as the leading exporter of marijuana and in 1978, the drug accounted for 40 per cent of the country's exports. According to figures from the National Association of Financial Institutions, ANIF, 'marijuana represented 7.5% of the country's Gross Domestic Product (GDP), 3.2% of its domestic farm output and 29% of its trade'.¹⁴ Such was the boom in the business that in 1979 Time magazine ran a cover story entitled 'The Colombian Connection: How a billion-dollar network smuggles pot and coke into the U.S.' Colombia's predominance as a marijuana supplier began to hit the headlines in media around the world, provoking a crackdown by the government of Julio César Turbay, which designed policies to combat drug trafficking and subversion in its Security Statute.¹⁵

Bad press, the government crackdown, and the appearance of similar crops in California in the United States put an end to the *Bonanza Marimbera*, which was rapidly replaced by the cocaine cartels.

Changing legislation

Since the start of the *Bonanza Marimbera* until today, Colombia has been one of the epicentres of the 'war on drugs' and – paradoxically – one of their major producers. According to Carlos Medina Gallego, National University professor and member of the Security and Defence Research Group, Colombia's prominence as a drug producing country is due to the combination of five factors: 'the crisis in farm production, the crisis in textile production, the development of contraband, political violence, and the demand-prohibition-addiction-use logic'.¹⁶ However, for Medina the main reason why drug trafficking started to become a significant part of the country's economy was the declaration of drug use as illegal.

This declaration arose mainly from the prohibitionist policies of the United States and an international legal framework that strongly influenced policy in Colombia. As mentioned above, Colombia already had a drug policy in the early twentieth century, with Law 11 of 1920, but this relied more on levying fines or sanctions than on sending people to prison. However, as drug use increased and trafficking started to cross borders, the country made its legislation harsher and began to sign on to international treaties and conventions which, under the influence of the United States, declared an outright war on drugs through repressive policies and zero tolerance measures.¹⁷ In the view of some academics, Colombia's transformation into a drug trafficking mecca was precipitated by a government project in which the country was chosen by the United States as a laboratory for drug policies in the region.¹⁸ Uprimny and Guzmán call this phenomenon 'globalised localism,' referring to domestic policies of the United States that were adopted as binding international treaties, which were in turn adopted as local policies elsewhere. Thus, throughout the twentieth century Colombia signed on to most international drug control conventions¹⁹ and enacted laws that sought to coordinate efforts and make repressive policies even harsher (see table). However, it was not until 1986 that the country introduced comprehensive legislation with Law 30,²⁰ the National Narcotics Statute. This law includes certain definitions; launches prevention campaigns; introduces controls on the import, manufacture and distribution of substances that may lead to dependence; and establishes procedures for seizure and destruction of drugs. Since then, the country has swung back and forth between alternately prohibiting and decriminalising drug use.²¹

The path to regulation

After several decades of to-ing and fro-ing in the law on the cultivation, manufacture, possession, use and sale of illicit drugs in Colombia, the arrival of the Juan Manuel Santos government in 2010 led to a change in drug policy. On repeated occasions, the president spoke of the need to design an evidence-

Legislative timeline

| | |
|-------------|---|
| 1920 | Law 11 of 1920 punishes drug trafficking and use by levying fines |
| 1928 | Law 128 of 1928 introduces restrictive measures and allows the confiscation of certain substances |
| 1936 | President Alfonso López introduces the Criminal Code, which establishes short sentences in low security prisons for people involved in the preparation, distribution, sale or supply of controlled substances |
| 1946 | Law 45 of 1946 introduces harsher penalties and longer sentences in medium security prisons |
| 1964 | Decree 1669 of 1964 criminalises the use of any drug for the first time |
| 1971 | Decree 522 introduces punishments for the trafficking and production of marijuana, morphine, cocaine and any other proscribed substance, and punishes their use in a public space with a three-month prison sentence. However, it decriminalises possession and use in private. |
| 1974 | Decree 1188 increases penalties for trafficking and re-criminalises drug use in private. Law 13 of the same year also approves the 1961 Single Convention on Narcotic Drugs. |
| 1986 | This is the year of approval of Law 30, which in the opinion of Uprimny and Guzmán is an instrument of control and repression without any focus on prevention or rehabilitation. Even so, in conformity with the 1961 Convention, the law allows the production, manufacture, export, import, distribution, sale, use and possession of narcotics solely for medical and scientific purposes. |
| 1993 | As a measure taken by the government to demonstrate its commitment to the fight against drug trafficking, Law 67 was enacted in 1993 to approve the 1988 Convention |
| 1994 | Ruling C-221 of 1994 implied a considerable change in the law by declaring unconstitutional the articles of Law 30 that made it an offence to carry or use minimum permitted doses of drugs. This ruling represented a milestone by establishing a legal framework alternative to prohibition and decriminalising possession of a 'personal dose'. |
| 2009 | This year saw another constitutional reform with Legislative Act 02 of 2009, which prohibits drug use but does not impose sanctions or compulsory treatment for users. The reform abolished the 'personal dose' provisions established in 1994, so that carrying even small amounts of narcotics without a medical prescription was once again prohibited. |
| 2011 | Enactment of the citizen security law reforms the Criminal Code and upholds the ruling waiving punishment for possession of a minimum dose |
| 2012 | Through ruling C-491, the Constitutional Court once again makes clear that possession of the personal dose is not a criminal offence and that drug use is an activity protected by the right to the free development of personality |

Source: Based on information from www.druglawreform.info

based policy, not just in Colombia but also at the international level.²² Although it was not the first time that different groups had pressed for a shift away from the punitive approach,²³ it was the first time that this drive was accompanied by a turn towards regulation at the global level, and specifically in some countries in the Americas such as Uruguay and Canada and several US states.²⁴ During a phone interview conducted on May 2019 with Andrés López²⁵, former director of the National Narcotics Fund, he explains that the government took advantage of this international wave of regulation of medicinal

cannabis and saw an opportunity to put an end to a grey area in Colombian legislation. Since the passage of Law 30 in the 1980s, the law had allowed home growing of up to 20 coca, poppy or cannabis plants, but had established no regulatory framework for this to operate. Likewise, legislative act 02 of 2009 had created a legal vacuum by prohibiting the use of narcotic substances unless prescribed by a doctor without, however, establishing regulations surrounding prescription, or production of new medical products. At a press conference, Alejandro Gaviria, the Minister of Health at the time, declared 'A cultural shift is taking place that means laws need to be changed, and Colombia is keeping pace.'²⁶ Accordingly, teams of experts evaluated the experience of other countries that had already regulated the use of cannabis for medicinal purposes. They chose to focus solely on cannabis because it meant that a domestic market could be envisaged together with an opportunity to export cannabis by-products to countries with similar legislation.

Furthermore, the national mood also demanded a change in drug policies on cannabis. Scientific evidence was showing the plant's therapeutic potential for treating cases of epilepsy, and chronic pain or nausea caused by chemotherapy. This increased public support for greater flexibility regarding its use and the abolition of repressive policies. In a 2014 survey conducted by the Ideas for Peace Foundation, 63.7 per cent of respondents throughout the country supported regulating cannabis for medicinal uses. In addition, 74 per cent were aware of the medicinal uses of cannabis and nearly 80 per cent felt that drug policies in the country were bad or very bad.²⁷

In response, on 22 December 2015 President Juan Manuel Santos signed Decree 2467, for the purpose of 'regulating the cultivation of cannabis plants, authorisation of the possession of seeds for planting cannabis, the control of cultivation areas, and the processes of production and manufacture, export, import and use of cannabis and its by-products, strictly for medical and scientific purposes'.²⁸ Among other things, the decree set out a series of definitions related to cannabis and the production process, as well as rules for agroindustrial businesses and health policies. It also established the requirements for obtaining licences for cultivation, for the possession of seeds, for the production and manufacture of by-products, and for export. It identified the agencies in charge of awarding these licences: the National Narcotics Council (*Consejo Nacional de Estupefacientes - CNE*) for the first two and the Ministry of Health and Social Protection for the manufacturing and export licences. The decree also provided for the establishment of a technical committee responsible for studying requests for licences for cultivation and the possession of seeds, as well as security, verification, control and monitoring mechanisms. As President Santos stated at the time, 'Colombia is now leading the fight against diseases. This decree seeks to take advantage of the positive qualities of cannabis to improve people's lives.'²⁹

The 'Galán' Law

As Andrés López explains, 'Decree 2467 had important legal effects at the time, so it can be said that from that date onwards medicinal cannabis has been regulated in Colombia.'³⁰ However, the signing of the decree caused controversy because the executive branch of the government was not the only player that intended to regulate medicinal cannabis. Since 2014, Congress had been discussing a bill proposed by Liberal Senator Juan Manuel Galán, which sought to allow safe and informed access to cannabis and its by-products for medical and scientific uses. Insufficient support in the Senate obliged the Liberals to postpone the debate, and this was seen by the government as an opportunity to move forward with Decree 2467 and thus demonstrate that Santos' discourse about changing drug policy was accompanied by real measures on the ground.³¹ The parties in Congress, who saw the executive branch's initiative as undermining the bill they were seeking to pass, received this decision with suspicion. Health Minister Alejandro Gaviria clarified that the decree did not seek to replace the work taken forward in Congress,

but was 'simply a first step, while the definitive step will be achieved with the bill.'³² The Minister of Justice, Yesid Reyes, said that the regulatory decree issued by the government had 'limitations in three fundamental aspects: the institutional architecture, taxes, and the sanctions regime – which cannot be modified by decree'. He stated that it was necessary to pass legislation with the ranking of a law in order to regulate all the legal vacuums that remained after the signing of the decree.³³

In the midst of this controversy, and following several debates in Congress, on 6 July 2016 the president finally signed Law 1787,³⁴ or the Galán Law, as it was commonly known in honour of Senator Juan Manuel Galán, the main promoter of the bill. At the time, Senator Galán celebrated the enactment of the law and explained:

We are not talking about marijuana or about legalisation. We are talking about medicinal cannabis and regulation. We have to be strict about the definition because marijuana contains a lot of other substances, most of which have not been studied. But within it there are medicinal cannabinoids that have been identified as having a positive effect in treatment for various chronic and terminal illnesses, due to their analgesic and anxiolytic properties. We are talking about regulation because legalisation is a term that is undefined and is associated with permissiveness.³⁵

Indeed, the law clarified certain matters and introduced elements that were lacking in the decree, such as reallocating roles to institutions in order to speed up the process of obtaining licences (see table). López points out, for example, that under Decree 2467, the National Narcotics Council was responsible for assessing and awarding licences for cultivation, but the issuing of these licences would have been complicated because the council's members were officials from different ministries and institutions, making it difficult to reach a consensus.³⁶ Law 1787 reallocated the power to issue cultivation licences to the Ministry of Justice, put a price on the licences (under the original decree they were free), and established taxes, as well as mechanisms for sanctions and fines. One important element introduced by the law is what López calls the 'social component': Article 3 makes the government responsible for designing mechanisms to implement business initiatives for rural and indigenous communities to make cannabis by-products. This article also mentions the state's duty to protect small- and medium-scale growers, as well as local labour and national industries and initiatives. López says:

To begin with, the law did not take into account small- and medium-scale growers because its focus was more on public health. But the debates coincided with the whole atmosphere around the peace process between the government and the FARC guerrillas, and that's why they started to introduce new elements in the law related to conflict, crop substitution and medicinal cannabis as an alternative livelihood for medium- and small-scale growers.³⁷

The law was accompanied by Decree 613³⁸ of 2017, which established a regulatory framework for Law 1787. This repealed the previous decree, but was also based on it. Among other things, the new decree introduced definitions such as the difference between psychoactive and non-psychoactive cannabis (the latter has less than 1% THC content). This led to the redefinition of four types of licences: for the manufacture of cannabis by-products, the use of seeds for planting, growing psychoactive cannabis plants and growing non-psychoactive cannabis plants (see table of licences and modalities). The robust legislation also makes it compulsory to comply with certain conditions and standards. The licences for seeds and for growing non-psychoactive cannabis, for example, require a description of equipment and areas of land to be used, as well as safety protocols. Those for cultivation also require prior approval involving an inspection visit. Licences for growing non-psychoactive cannabis require a manufacturing permit or a contract with the buyer of the harvest, a description of the equipment and areas of land to be used, and a cultivation plan that covers all the years for which the licence is requested. If the purpose

Types of Licence

| Type of licence | Modality | Activity | Issuing authority |
|--|--|--|--|
| Manufacturing licence | Manufacture of by-products for use within Colombia | Manufacture, acquisition in any form, import, export, storage, transport, sale and distribution of psychoactive and non-psychoactive by-products that contain cannabis for medicinal and scientific purposes | Ministry of Health and Social Protection |
| | Manufacture of by-products for scientific research | | |
| | Manufacture of psychoactive cannabis by-products | | |
| | Manufacture of by-products for export | | |
| Licence to use seeds for planting | For sale or supply | Acquisition in any form, import, storage, sale, distribution, possession and final disposal as well as export and use for scientific purposes | Ministry of Justice and the Law |
| | For scientific purposes | | |
| Licence to grow psychoactive cannabis plants | To produce seeds for planting | Planting and acquisition of seeds, storage, sale, distribution and final disposal as well as export and use for scientific purposes | Ministry of Justice and the Law |
| | To produce buds | | |
| | To manufacture by-products | | |
| | For scientific purposes | | |
| | For storage | | |
| | For final disposal | | |
| Licence to grow non-psychoactive cannabis plants | To produce seeds for planting | Activities involved in growing cannabis plants whose THC content is lower than 1% in dry weight | Ministry of Justice and the Law |
| | To produce buds | | |
| | To manufacture by-products | | |
| | For scientific purposes | | |
| | For storage | | |
| | For final disposal | | |

Source: Ministry of Justice and the Law

Institutional roles

| Institution | Office | Activity |
|---|---|--|
| Ministry of Health and Social Protection | Medicines and Health Technologies Division | Issue the licence to manufacture cannabis by-products, conduct supervision and assessment visits. |
| Min. of Health and National Narcotics Fund | National Narcotics Fund | Administrative and operational control of activities related to the use of cannabis and its by-products, conduct supervision and assessment visits. |
| National Food and Drug Surveillance Institute, INVIMA | Board | Control of finished products made from psychoactive cannabis once the licence is issued, without affecting their powers on sanitary and phytosanitary matters. |
| Colombian Agricultural Institute – ICA | | |
| Ministry of Justice and the Law | Subdivision for the Control and Supervision of Chemical Substances and Narcotic Drugs | Issue licences to use seeds for planting and to grow cannabis plants, and exercise administrative and operational control of activities related to the use of seeds for planting and the growing of cannabis plants. |
| National Police | Support administrative and operational control activities | |

Source: National Police – Anti-Narcotics Division

is scientific research, regardless of the type of licence, documentation is required accrediting the research project to be conducted by a university or an established company that proposes to engage in scientific research.

The decree also stipulates the terms for applications and oversight mechanisms. Section 6 established a Technical Group on Quotas (Grupo Técnico de Cupos - GTC), whose role is to analyse, evaluate and monitor all matters related to the allocation of quotas (the maximum number of psychoactive cannabis plants each licence-holder is allowed to grow) in conformity with the 1961 Single Convention on Narcotic Drugs. The GTC is also obliged to draw up a guide to quantify the legitimate need for psychoactive cannabis and determine the quota that the country will register with the International Narcotics Control Board, INCB.

Small- and medium-scale growers

In keeping with the ‘social component’, Chapter 10 of Decree 613 concentrates on establishing the conditions for small- and medium-scale growers. For example, it mentions the need to define the criteria for being considered a small- or medium-scale grower (see box) and to design alternative

Small- and medium-scale growers

Chapter 10 of Decree 613 of 2016 mentioned the need to establish criteria to define small- and medium-scale growers. Accordingly, Resolution 0579 was issued on 8 August 2017. It states that this category not only includes growers but also medicinal cannabis producers and traders who, acting as individuals, cultivate the plant on a total area not exceeding half a hectare, or 5,000 square metres. The legislation also allows for cannabis licences to be awarded to associations of small- and medium-scale growers, providing all their members meet the requirements to be considered as such. In these cases, the authorities will assess each of the members separately and will withdraw the licence from any growers whose crop area exceeds the established limits while the licence is valid.

There are currently 3,614 people registered as small- and medium-scale growers, producers and traders of medicinal cannabis. However, under Law 1787 of 2016, until they obtain the relevant licence they are not allowed to start growing or engage in any form of acquisition, storage, transport, trade, distribution or use of seeds to plant cannabis.

mechanisms for the safety checks that will ensure effective access to the licensing system with a differentiated approach. This is essential, particularly for applicants in indigenous communities or minority groups who operate with a certain degree of legal autonomy. In addition, as a protection measure, the decree obliges anyone who holds a licence to manufacture cannabis by-products to source at least 10 per cent of their assigned quota of cannabis from small- or medium-scale growers with licences to grow cannabis. It also gives these smaller growers priority in the allocation of quotas and the advantage of being able to apply for a licence to grow cannabis for scientific purposes without the need to have a licence to manufacture by-products or links with someone who holds such a licence – an otherwise compulsory requirement for individuals wishing to engage in cultivation. Finally, the decree mentions the importance of promoting the development of legal medicinal cannabis projects as a means to replace illicit crops.

The decree was followed by a series of resolutions that strengthened the legal framework. As a result, Colombia is now considered one of the countries with the most comprehensive legislation on medicinal cannabis (see table on the Colombian legal framework).

The boom in ‘green gold’

The robust legal framework has attracted the attention of companies, both local and foreign, who have seen that Colombia has not only ideal land for growing cannabis but also the necessary guarantees for developing a million-dollar business. According to Andrés López, since the government drafted its decree some companies, especially Canadian ones, started to lobby Colombian partners, as they already ‘knew about the moves afoot to change the law’ and the opportunities that this represented.³⁹ Meanwhile, in

National Legal Framework

| Legislation | Effects | Institution |
|-------------------------|---|---|
| Law 1787 of 2016 | Creates a regulatory framework that permits safe and informed access to cannabis and its by-products for medical and scientific uses in Colombia | Congress of the Republic – Office of the President |
| Decree 613 of 2017 | Regulates Law 1787 of 2016, introduces definitions and conditions for obtaining licences | |
| Decree 631 of 2018 | Introduces modifications and instructions concerning the source of seeds | |
| Resolution 577 of 2017 | Establishes technical regulations governing the assessment and monitoring of licences for the use of seeds for planting and for growing psychoactive and non-psychoactive cannabis plants | Ministry of Justice and the Law |
| Resolution 578 of 2017 | Establishes the tariff schedule for the assessment and monitoring services that must be paid for by individuals and companies applying for licences | |
| Resolution 579 of 2017 | Establishes criteria for defining small- and medium-scale growers, producers and traders of medicinal cannabis in Colombia | Joint resolution by the Ministries of Justice, Health and Agriculture |
| Resolution 2891 of 2017 | Establishes the tariff schedule for assessment, monitoring and control services applicable to licences to manufacture cannabis by-products for medical and scientific uses | Ministry of Health and Social Protection |
| Resolution 2892 of 2017 | Establishes technical regulations governing the award of licences for the production and manufacture of cannabis by-products | |

Source: Colombian Observatory on Drugs⁴⁰

order to expand their markets, Colombian companies engaged in the flower-growing industry forged alliances with foreign companies that already had a track record in the cannabis by-products. The first beneficiaries of the new regulation were three companies: the Colombian firm Labfarve-Ecomedics and two Canadian companies – PharmaCielo and Cannavida – who were awarded licences by the government under Decree 2467, prior to the enactment of Law 1787. However, with the entry into force of Law 1787 and Decree 613, the government allowed a transition period so that the companies who had already been awarded licences could adapt to the new rules. Companies were able to apply for a licence for one or five years. Since then, the flood of applications has increased considerably: 27 licences were awarded in 2017, 163 in 2018, and, as of 4 June 2019, 344 licences had been issued for the different modalities.

The country's favourable climate conditions, low production costs, export possibilities and legislation increased this frenzy to get involved in the business. According to the consultancy firm Crop America, while a gram of cannabis buds is worth between \$0.5 (US dollars) and \$0.8 in Colombia, in Canada it can cost \$2.1.⁴¹ Another of Colombia's attractions is the range of trade agreements that are in force with different countries, especially those where medicinal cannabis has also been regulated, such as Canada, the European Union and the United States. Colombia currently has 16 trade treaties, including free trade

| Type of licence | Number of licences issued since approval of Decree 613 (as of 4 June 2019) |
|--|--|
| Use of seeds for planting | 35 |
| Cultivation of psychoactive cannabis | 83 |
| Cultivation of non-psychoactive cannabis | 129 |
| Manufacture of by-products | 97 |
| Total | 344 |

agreements and partial agreements.⁴² All these comparative advantages also attracted the interest of local producers, who registered as small- and medium-scale growers as the first step in the process of applying for a licence and entering the market in the future.⁴³ While some people decided to apply for a single licence, others opted for an across-the-board approach, applying for the whole package of four licences in order to control seeds, cultivation and the manufacture of by-products, and thus guarantee the quality of their products.

In contrast to the regulatory models adopted in other countries, where the protocols are not so strict and rely more on the decriminalisation of cannabis use for medicinal purposes, Colombia sought to create a pharmaceutical industry and encourage scientific development, which implies the investment of large amounts of capital. These demands have led several Colombian companies to forge alliances with foreign partners or seek private sources of funding, usually in the form of foreign capital. This 'green gold' fever has been driven by expectations that a global market will emerge for this new industry. According to BDS Analytics,⁴⁴ a data services firm specialising in the cannabis industry, global spending on cannabis-based products is forecast to rise to \$32 billion (US dollars) by 2020, while a report by Grand View Research predicts that this market could be worth as much as \$63 billion (US dollars) by 2025.⁴⁵ In Colombia itself, a recent study by the firm Econcept - which has the backing of former ministers Juan Carlos Echeverry, Mauricio Santamaría and Tomás González - stated that this sector could achieve future exports worth more than \$17.7 billion (US dollars), even more than the oil industry. The authors also argued that it has the potential to create 101,964 jobs in Colombia, more than the number in the flower industry (83,225) or the cocoa sector (62,000).⁴⁶

The speculative bubble

The thing that perhaps raised expectations the most was the news that circulated in the media in early 2018, reporting that the International Narcotics Control Board, INCB, had accepted Colombia's estimate that it required 40.5 tons of psychoactive cannabis, while the total global estimate for required production was just 91.9 tons. A report in the newspaper *El Tiempo* emphasised that Colombia's estimated quantity required was higher than those of the United States, Israel and Australia, and asserted that by officially recognising Colombia's production of such a quantity the INCB was recognising the country's potential in the medicinal cannabis market.⁴⁷ Other media soon started to repeat this message and elevated Colombia to the status of a world power in medicinal cannabis production, having obtained 44 per cent of the global quota. This information led to a bubble of speculation about the market's true potential at both the national and the global level.

INCB member Francisco Thoumi has refuted these statements about the quotas, saying:

...it is true that the Colombian government has followed the INCB's guidelines and presented the estimated quantity of cannabis required to meet the country's needs, which was accepted by the INCB. However, the INCB's guidelines have not yet been implemented by every country that has medicinal cannabis, and therefore it cannot be stated that Colombia is the country producing the most cannabis for medicinal uses in the world.⁴⁸

Similarly, Andrés López explains that one advantage of the international conventions is that they enable statistics to be compiled about the legal production, use and expected use of drugs, thus preventing overproduction and diversion into the illegal market. This expected use is referred to as a quota, and countries send in estimates of the amount that they envisage will be sold in the following year. However, countries do not always send these figures to the INCB. According to López, Canada and the UK did not send in their expected quantities for medicinal uses in 2018 and this meant that two of the largest producers of medicinal cannabis were not included in the global production estimates for that year.



Cannabis,
TNI/Martin Jelsma.

This rumour started that Colombia had 40 per cent of the world production quota. But it was not 40 per cent of world production and neither was it a figure that reflected the reality. It was more a question of misuse of information by the media, and the information was repeated by one media outlet after the other⁴⁹

This speculation, however, attracted the attention of investors still further. López also mentions the proliferation of firms of lawyers specialising in applying for licences, who would obtain the whole set and then sell them to foreign or national investors. 'The licences as such can't be sold but companies can. They turned into a kind of asset-backed security,' López notes.⁵⁰ A report by the BBC under the headline 'Colombia: el millonario negocio de empresas de Canadá para cultivar y procesar marihuana a gran escala a este país'⁵¹ mentions the huge investments coming from abroad. Canopy Growth, one of the world's largest medicinal cannabis companies, invested some \$60 million (US dollars) when it bought up the Colombian company Spectrum. La Finca Interactiva, a Colombian company was taken over last year by the Canadian firm Chemesis International, with an investment of more than \$10 million (US dollars). Other Colombian companies have gone into partnership with foreign investors. One is Santa Marta Golden Hemp, a Colombian company with the full set of licences, which in August 2018 sold 60 per cent of its shares to the Canadian firm Avicanna.

The Colombian Association of Cannabis Industries, Asocolcanna,⁵² reports that most of the investment comes from Canada, followed by the United States and the European Union. They estimate that, taken together, the medicinal cannabis companies in Colombia are 70 per cent owned by foreign capital and 30 per cent by national investors.⁵³ Some figures show that between January 2018 and June 2019, these companies' investments exceeded \$600 million (US dollars). There are currently 160 companies with licences, operating in 22 of Colombia's 32 departments. The Ministry of Justice has reported that more than 1,500 applications for licences have been received since 2017 by this ministry alone.⁵⁴ However, obtaining a licence is not a guarantee of being able to engage in the business, as López explains: 'It's like holding a passport. You may have the document, but having the money to use it and travel is a very different matter.'⁵⁵

The market today

As López points out, this boom and speculation around 'green gold' has not yet taken concrete form in real businesses.⁵⁶ Although there are forecasts that income will begin coming in in the last quarter of 2019, only a few companies have started to receive a return on their investments. The Colombian-Canadian company Khiron has been selling cannabis-based cosmetics since December 2018, as of September 2019 it had not yet sold any medication – except for Sativex, a cannabis-based medicine initially licenced in the United Kingdom. Only 74 seed plants or cultivars have been registered with the ICA, by nine companies.

Furthermore, the avalanche of requests for licences has meant that the authorisation processes are taking longer than expected. Compared to 2018, when about 10 requests for licences were received per month, today the government is receiving about 30 applications per month, requiring new staff to assess them.⁵⁷ Although both the government and the business community are aware that this is a newly emerging industry and that the development of a pharmaceutical industry takes years, today Clever Leaves is the only company to have been certified by the National Food and Drug Surveillance Institute, INVIMA. It is also the first company to be authorised to export cannabis to Canada⁵⁸ and the United Kingdom, and sent its first shipment of non-psychoactive cannabis to the UK in July. Clever Leaves is also one of few companies that have the quality certification required for the industry. Manufacturers

of products for human use or consumption must comply with a series of rules and procedures to guarantee the high quality standards that will prevent harm to consumers. These procedures are called Good Manufacturing Practices (GMP) and they are an essential condition for meeting the standards recommended by the agencies that control authorisation and licencing for the manufacture and sale of products such as food, drinks, dietary supplements, medicinal products, active pharmaceutical ingredients and medical devices.⁵⁹

Access to credit from financial institutions has been another difficulty in taking the medical cannabis business forward. Because several Colombian banks hold securities in the United States, where the trade and distribution of cannabis is still prohibited, they fear that the US federal government will take reprisals, and this has brought several corporate investment initiatives to a halt. Asocolcanna is currently working on an agreement with Banco Agrario to launch a portfolio of services devoted exclusively to this emerging industry, including opening accounts, awarding credit and monetizing funds. 'Without decisive support from the banking system for any sector of the economy, competitiveness is lost. The medicinal and scientific cannabis industry is at the point where the government needs to give it as much attention and support as possible', Asocolcanna representatives said.⁶⁰

Finally, a feeling of uncertainty has arisen in the industry due to the INCB's announcement that Colombia's official estimated production for psychoactive cannabis next year is just 1.95 tons – considerably less than the previous year's 40.1 tons. In response to this announcement, the media once again created false expectations by pronouncing the end of the medicinal cannabis business in Colombia. Press reports focused on the failure of diplomatic representatives to argue Colombia's case strongly enough with the INCB, citing this as the main reason why it registered such a low quota for the country, and affirming that this was 'a death blow' for the emerging medicinal cannabis industry.⁶¹ However, Asocolcanna representatives and industry members again urged calm and clarified that this figure was based precisely on market estimates and because the market is still developing, the quota correlates with production and consumption capacities that are only just starting to be put in place, in line with the adjustments to the regulations that are still pending. Because of this, Asocolcanna president Rodrigo Arcila affirmed that the news does not affect the industry's development. On the contrary, it provides an incentive to change burdensome requirements and thus be able to have genuine production capacities in place.⁶²

The industry's challenges for small- and medium-scale growers

In Rodrigo Arcila's opinion, the arrival of foreign capital has been welcomed, especially the investments from Canada, a country that already has a lengthy track record in cannabis cultivation and processing, and 'these investments seek to cover every stage in the production chain, from start to end',⁶³ which could give the industry a boost. However, the arrival of large corporations has led to uncertainty among small-and medium-scale growers, who see the transnationals as a threat to their local businesses. Despite the enthusiasm that greeted the regulation of medicinal cannabis and the inclusion of small-and medium-scale growers as a measure to bring those who were already growing the crop illegally into the licit market, the regulation model's particular conditions have left out an important sector that also wishes to benefit from the booming medicinal cannabis market.

The main obstacle that small-and medium-scale producers have come up against is in fact the legislation itself. As Andrés López explains, the type of regulation adopted by Colombia aims to create a pharmaceutical industry, which necessarily implies complying with certain production standards and protocols, and this in turn requires investing considerable sums. López explains the difference between

what he calls the 'North American model' of regulation and the 'pharmaceutical model'. The former is based on decriminalising cannabis use for medical purposes and legalises cannabis cultivation and sale, and home growing. It does not make a doctor's prescription an obligatory requirement; sales can be made in dispensaries, using apps or by home growers; and the implementation time is shorter because existing products are legalised and a legal supply chain is created. The second model, in contrast, is based on the use of cannabis and cannabinoids as active ingredients to be used in the pharmaceutical industry, which must meet certain standards before a medication can be put on sale. Furthermore, the sale of these products requires health certification that is based on tests of their safety and efficacy (in Colombia's case this certification is awarded by INVIMA), and they can only be sold with a doctor's prescription in pharmacies or health centres. The quality control tests and scientific research required mean that the implementation of this model of regulation takes much longer, and the investments required are unaffordable for small businesses.⁶⁴ López argues that under this model of regulation it is very difficult for small- and medium-scale growers to compete on an equal footing.⁶⁵

In response to this situation, forming cooperatives seems to be one of the few options for this sector of the population to be able to enter the competitive market for medicinal cannabis. One example of this is *Caucannabis*, a cooperative set up by families in the Nasa indigenous community in the department of Cauca, an area where marijuana has traditionally been grown for the illegal market. During a phone interview conducted for this research, Luis Alfredo Muelas, *Caucannabis* member and one of its founders, explains that local people began to grow marijuana 50 years ago, but since 2010 the activity began to be stigmatised when the crops increased considerably due to the planting of *Creepy*, a type of marijuana much sought after in the illegal market. When Decree 613 was enacted, they saw an opportunity to shift from the illegal market into a legal business, and today about 400 families are members of the cooperative, which has obtained a licence to grow psychoactive cannabis. The case of *Caucannabis* serves to illustrate several of the challenges faced by small- and medium-scale growers. Muelas explains, for example, that one of the requirements to become a member of the cooperative is to have no involvement whatsoever in illegal crops. 'We want to do things properly and abide by the rules', says Muelas. 'If at one time we may have contributed to the conflict, now is our opportunity to help in the post-conflict period.' The legislation clearly states that 'under no circumstances may cannabis for medicinal purposes projects endorsed by the voluntary programme to replace crops for illicit use be used to legalise plantations already in existence prior to the application.'^{66,67}

Although at first glance this requirement seems understandable, it may be counter-productive because these crops were a source of income for these families for years, and many of them are unable to take the risk of destroying their crops from one day to the next. Although one of the reasons for including small-scale growers was to abide by point four of the Peace Accord with the FARC guerrillas, which seeks to solve the problem of illicit drugs in Colombia through voluntary crop substitution, no links were made with the Comprehensive National Programme for the Substitution of Crops Used for Illicit Purposes, PNIS. While this programme focuses mainly on replacing coca crops, and has records of the number of families who depend on these crops and the number of hectares planted with coca countrywide, the figures on families who depend on cannabis crops are very patchy. There is no mechanism to determine precisely the total quantity of cannabis crops being grown everywhere in the country.⁶⁸

Another challenge is for small-scale producers to have the possibility of developing an industry as well. Luis Alfredo Muelas says that although they welcome the measure requiring 10 per cent of production to come from small- or medium-scale growers, they do not want to be just growers but also to access licences for seeds, for example, in order to have autonomy over their production. This requires investment and specific knowledge. In the absence of state funding, they have had to look for allies and

foreign investors to finance the genetics process and thus be able to register seeds with the Colombian Agricultural Institute, ICA, which is responsible for certification.⁶⁹ As well as the need for investment, quality standards have also represented an obstacle for those who have neither the training nor the resources to comply with the Good Manufacturing Practices (GMP) that the pharmaceutical industry demands, especially for exporting finished products. Large companies that have the necessary capital to invest in verification and monitoring processes can meet these standards, but not the small- and medium-scale growers, who have agricultural knowledge and experience but lack the resources required to make the transition from growers to producers.

Even for those who only want to be involved in cultivation, however, some standards are hampering their entry into this competitive market. Growers are required to abide by Good Agricultural Practices (GAP). Although these are less strict and require less investment than the GMP standards, they still set a series of conditions that need to be met. In Colombia, the ICA is also the institution responsible for registering farmers who implement a series of preventive measures on their farms with the aim of ensuring that their produce does not harm the health of consumers. This is undoubtedly a challenge for some families, many of whom use traditional planting methods that are not acceptable under international standards, placing them at a disadvantage. After Decree 2467 was approved by the government, Pedro Arenas, director of the Observatory of Crops and Growers Declared Illicit (OCCDI), referred to this issue when he said that the GMP have long been the subject of debate:

...the rationale for the regulation of plants that used to be prohibited is driven by the market and particularly the interests of the large-scale chemical and pharmaceutical industry, which is controlled by transnationals that seek to deprive communities of their right to use their plants in traditional ways.⁷⁰

The members of Cannalivio, one of the companies with a licence, expressed this same concern in an opinion piece that was published in response to Decree 2467 but also applies to the current regulations. In this paper they reiterated

'...the importance of ensuring that the regulations on the medicinal use of cannabis products do not lead to financial and administrative requirements that are excessively onerous for national producers and service providers, to the detriment of the right to health of the people who can benefit from cannabis therapy, now and in the future.'⁷¹

Another general challenge to be resolved is that, despite the apparently promising outlook for medicinal cannabis in Colombia, there are still several doubts about the real outcomes of this 'green gold' fever, especially for patients, and the scope of the market, especially at the domestic level. Procolombia, the institution responsible for promoting tourism and foreign investment in Colombia, as well as exports and the country's international image, mentions Canada, Australia, Mexico and Germany as potential export markets, but does not give specific figures. As far as the domestic market is concerned, some companies, such as the Colombian-Canadian firm Khiron, have stated that there are 6 million potential patients in Colombia, but there are no official figures to support such estimates. The data that the government used to implement cannabis regulation combines recreational and medicinal uses of cannabis.⁷² Asocolcanna has expressed its concern about the speculation that has arisen around this.

This is indeed an issue we are starting to study with a lot of information and responsibility. We want to get away from speculation and be well informed with data from the business community. This means moving away from speculative desk work and requesting data from the producers,

says Mariam Laudith Pimentel, assistant to the Asocolcanna president.⁷³ Accordingly, Asocolcanna representatives announced that they would be presenting a descriptive study of the cannabis agroindustry conducted by Fedesarrollo, a well-known Colombian research centre. Although an increasing number of countries support the use of cannabis for medical purposes and there is evidence of the plant's beneficial properties, there is still a lack of clarity about the patients that these medications would reach.

Some observers argue that the reason for the lack of information about patients is that, although the initial spirit of the law was based on a public health approach and sought to make it easier for patients to access medications derived from cannabis, that objective has become diluted in the face of the business opportunities that have suddenly opened up. A paper produced by the Institute of Studies for Development and Peace, Indepaz, mentions the failure to refer to patients anywhere in the legislation, and notes:

...it is worrying that nowhere are patients considered the subject of this legislation. What we have here is a type of regulation that is only concerned with the conditions for companies to develop a business and at no point considers patients as key stakeholders in how this sector operates.

In addition, the medical community was rarely contacted and there are still doubts about whether health professionals will be able to prescribe cannabis-based medications. The new regulations were shared by the companies themselves rather than the government. In early 2019, Aphria, a Canadian-owned company, announced an agreement with the Colombian Medical Federation to run courses and training and discuss scientific studies, in order to publicise the uses and scope of cannabis-based products.⁷⁴ Khiron, a company listed on the Toronto Stock Exchange, has been working since 2018 with about 3,200 doctors from the Colombian Association of Neurology, the Colombian Internal Medicine Association and the Association for the Study of Pain, to change the collective perception of cannabis.⁷⁵ Although such work is necessary to raise people's awareness of medicinal cannabis and to demystify the use of cannabis-based products, the fact that this information sharing is being done by the companies themselves means that it could be seen as a marketing strategy rather than an educational endeavour.

A fairer market

In response to the many challenges facing the industry, changes are now being introduced through a new decree, still at the discussion stage, which aims among other things to make it easier to work with small-scale growers. One of the reforms proposed in the decree is the introduction of an obligation for large companies to transfer knowledge and technology to small- and medium-scale growers – something that would bring these two sectors closer together. Many small-scale producers do not have the financial knowledge required to start a business that could keep pace with the transnationals. This is why it is important to give them the tools they need, both to compete and to collaborate with transnational companies. In an interview with Colombian Cannabis Investor, Steven DeAngelo,⁷⁶ one of the founding fathers of the cannabis industry, says that cannabis companies achieve success by combining ancestral knowledge with sophisticated modern knowledge. Article 3 paragraph 4 of the law states that the Colombian government will promote the transfer of the technology needed for national cannabis production through the Administrative Department of Science, Technology and Innovation (Colciencias). However, large transnationals, especially the Canadian ones, already have knowledge of the subject and may be better positioned to facilitate this transfer of knowledge that artisanal growers lack.

Likewise, a mechanism needs to be created to ensure that 10 per cent of cannabis production really does come from small- and medium-scale local growers and to prevent companies from evading this obligation by contracting farmers as day labourers on new plantations. This requirement stipulated by the law should be monitored constantly, because it is the essential mechanism for including small- and medium-scale growers in the medicinal cannabis business. Another solution to avoid the takeover of the market by large corporations would be to establish a series of restrictions on foreign companies buying up local enterprises that have been granted licences. According to Law 1787, the state is responsible for protecting and strengthening medium-scale Colombian growers, producers and traders. The government therefore has a duty to establish limits on the number of foreign companies that have the right to exploit the medicinal cannabis market in Colombia to prevent them from affecting domestic production.

One of the measures in the legislation intended to safeguard Colombian producers is a commitment to take forward 'initiatives that aim to set up, formalise and promote association arrangements among small- and medium-scale growers' as part of the crop substitution programme. However, as Andrés López explains, the problem is that this measure was included without having clear information about the number of families who depend on illegal marijuana cultivation or about the plantations that exist in different regions of the country.⁷⁷ This is in contrast to coca, for which information is available on the hectares, regions and families whose livelihood depends on this crop. Because of this, the first thing that needs to be done is a census to estimate the extent of cannabis crops and the number of families who depend on them, in order to include them in the Comprehensive National Programme for the Substitution of Crops Used for Illicit Purposes, PNIS. Along the same lines, it will also be important to loosen the restriction that currently prohibits small- and medium-scale farmers from legalising pre-existing plantations. As mentioned earlier, for many families it is not easy to destroy crops that have been their livelihood for years. DeAngelo points out that this requirement shuts small-scale growers out of the market and perpetuates the illegal market. 'Legislators need to understand the difficult situation small-scale growers find themselves in and propose safe, legal solutions for these families.'⁷⁸

One action that could solve this would be to re-open the debate on differentiated treatment in the criminal justice system (Trato Penal Diferenciado - TPD), a measure provided for in point 4 of the 2016 Peace Accord which aims to solve the problem of drugs in Colombia. TPD was proposed as an initiative to place small-scale growers of plants considered illicit in a separate category, and thus offer them an alternative to criminal prosecution. The goal was not only to avoid clogging the courts with thousands of cases against small-scale growers, but also to increase the justice system's efficiency in prosecuting those in the higher and middle echelons of drug trafficking networks. However, due to pressure from both the Attorney General at the time and political forces that opposed the Peace Accord, the initiative failed in congress.⁷⁹ Nevertheless, as DeJusticia researcher Lucía Ramírez⁸⁰ mentions, this is a necessary measure because it allows small- and medium-scale growers to move away from illegal activities without fear criminal prosecution. This differentiated treatment should include a transition period during which small-scale farmers can legalise their crops as part of an alternative development programme.⁸¹

Even if these measures were introduced, Andrés López sees it as very difficult for small- and medium-scale growers to be included because of the specific requirements of the pharmaceutical model Colombia has adopted. For this to happen, it would be necessary to question the current business model, which only allows the production of cannabis oils and by-products, and open up spaces for herbal medicines.⁸² Colombia already has a category for products of this type, known as phytotherapeutic products,⁸³ and they were regulated as part of Decree 1156 in 2018. As a result of this measure, since July 2018 the manufacture of what are commonly known as herbal medicines has been allowed in Colombia, not just based on cannabis but also coca and poppy. According to López,

this could be a good alternative for small- and medium-scale growers, because although they would still have to register with INVIMA, the procedure is easier for small businesses and sales are not restricted to pharmacies only, so they would have a wider range of sales outlets. In addition, production costs are lower and it is therefore more feasible for them to finance such projects.

With regard to financing, which is perhaps one of the aspects that most excludes small- and medium-scale growers from participating in new licit cannabis markets, one idea would be to set up a fund for local companies with money from all the foreign investment that is pouring in.

A further option that could be developed in the future is to open up a regulated market for non-medicinal cannabis use by adults. Indeed, a group of parliamentarians from various political parties, led by Senator Gustavo Bolívar, is currently backing a bill that seeks to regulate the production and use of marijuana for adults.⁸⁴ The bill's provisions include, for example, that 35 per cent of the licences issued for this potential market should be awarded to small-scale producers and that they should be given priority, especially victims of the armed conflict who live in regions where illicit crops are grown. In contrast to the market for medicinal cannabis, where 10 per cent of production should come from small-scale growers (those with a maximum cultivation area of 0.5 hectares), the Bolívar bill requires licence holders with more than a hectare to obtain 25 per cent of their buds from small-scale growers. Luis Alfredo Muelas from Caucannabis argues that the government should take this step, not just as a logical measure to remove the stigma that surrounds cannabis plants but as a market option in which small-scale producers can contribute directly without needing to meet the large number of requirements that the pharmaceutical market demands.

Finally, it is essential to conceive of the new regulated cannabis market under a fair or fairer trade model. This business approach involves developing trade that is inclusive, environmentally sustainable and prioritises human rights, and requires a commitment from the government for it to be fully achieved. The box below presents some of the principles that can secure a fairer trade model.⁸⁵

In an article on drug trafficking in Colombia, the researcher Carlos Medina Gallego shows how the country's social problems, especially those faced by small-scale farmers and low-income groups, can be understood by studying the history of marijuana.⁸⁶ The medicinal cannabis market may provide the opportunity for introducing reforms that improve conditions for the country's small-scale farmers.

Principles of Fair Trade

- Demonstrate a commitment to solidarity and social justice, with initiatives that go beyond financial benefits and businesses that create opportunities to include ethical concerns as a fundamental component of their operations. This includes guaranteeing preferential access for small-scale producers who have been involved in supplying the illegal market, and expunging their criminal records.
- Focus on empowering producers and benefiting the community as a whole through fairer terms of trade. In this model, producers are seen not merely as suppliers of raw materials but as valued creators.
- Adopt production methods that strongly adhere to standards of environmental sustainability with regard to the use of energy, water and agricultural inputs.
- Provide for adequate labour protection measures to ensure workers' safety, health and satisfaction.
- Encourage more democratic and participatory control over decision-making processes through inclusive business models and social responsibility systems led by workers.
- Ensure transparency and traceability in how the cannabis market and supply chain operates.
- Focus on long-term strategies, providing access to cannabis producers from marginalised communities who are making the transition to legality, and consider restorative justice for those previously excluded or criminalised.
- Resonate with the social history of a particular place, focusing on communities of traditional growers and the role of cannabis in their cultural and religious identities and practices.

Endnotes

1. Nicolás Martínez Rivera is a journalist and political scientist with a Masters in Public Policy from Erasmus University and the University of York. He is a TNI researcher and contributor.
2. There is no clear information about the potential of the medicinal cannabis market worldwide. While the Colombian Cannabis Association, Asocolcanna, predicts that it will be worth \$54 billion by 2025, other consultants mention a figure of \$43 billion for the same year.
3. According to the 2019 World Drug Report, Colombia produces 70 per cent of the world's cocaine. UNODC (2019), World Drug Report 2019, Chapter 1, Executive summary, conclusions and policy implications, p. 8. <https://www.unodc.org/wdr2019/>
4. Basta Ya! Colombia: memorias de Guerra y dignidad. Resumen Ejecutivo del Centro Nacional de Memoria Histórica, Bogotá, 2013.
5. See further details at: <https://www.minsalud.gov.co/sites/rid/lists/bibliotecadigital/ride/de/marihuana%20con%20uso%20terapeutico-contexto%20colombiano.pdf>
6. Jerí, F.R., (1999). Recreational and Medical Uses of Marihuana in Latin America. In *Marihuana and Medicine*, Humana Press, Totowa, NJ, P. 639-40
7. Medina Gallego, C., (2012), 'Mafia y narcotráfico en Colombia', *CL Sociales, El Prisma de las seguridades en América Latina. Escenarios regionales y locales*. Olmo, R. *Drogas: Distorsiones y Realidades. Nueva Sociedad (102)*, P. 139-170.
8. Sáenz, E., (2007), 'La" Prehistoria" de la marihuana en Colombia: consumo y cultivos entre los años 30 y 60', *Cuadernos de Economía*, 26(47), P. 205-222.
9. Ibid. According to Sáenz, 60 cases of marijuana possession, sale and cultivation were documented between 1940 and 1944, especially in Barranquilla and the surrounding region. In time, the sale and use of the drug spread to the departments of Atlántico, Magdalena and Bolívar, and by the end of the decade the authorities were reporting cases of marijuana trafficking in Antioquia and other departments in the country's interior.
10. Ibid
11. Castillo, F. (1987). 'Los jinetes de la cocaína', Editorial Documentos Periodísticos, Bogotá, P. 8.
12. Thoumi, F. (2001), 'Drogas ilegales, economía y sociedad en los Andes', Centro de Estudios y Observatorio de Drogas y Delito-CEODD-, P. 81
13. Medina Gallego, C., (2012), Op. Cit. P.150
14. Ibid
15. Camacho-Guizado, Á., (1981). *Droga, corrupción y poder. Marihuana y cocaína en la sociedad colombiana*. Cali: CIDSE, Universidad del Valle.
16. Medina Gallego, C., (2012), Op. Cit. P.146
17. Metaal, P., & Youngers, C. (2011). Systems overload: Drug laws and prisons in Latin America, P. 39
18. Britto, L., (2013). 'The Marihuana Axis: A Regional History of Colombia's First Narcotics Boom, 1935–1985', Doctoral dissertation, New York University.
19. Colombia has reiterated its global commitment to combatting drugs and has adopted legislative measures to comply with the Single Convention on Narcotic Drugs of 1961 as well as the 1972 Protocol.
20. See the National Narcotics Statute here: <http://www.descentralizadrogas.gov.co/project/ley-30-de-1986-estatuto-nacional-de-estupefacientes/>
21. See also 'Hitos de la reforma legislativa en materia de drogas Colombia': http://www.druglawreform.info/images/stories/Documento_Ref_Leg_Drogas.pdf
22. At the 6th Summit of the Americas held in Cartagena in 2012, for example, President Juan Manuel Santos urged the Organization of American States (OAS) to conduct an appraisal of the results of drug policies in the region and insisted on the need to 'explore new approaches to strengthen this effort and make it more effective'. A year later, during the World Economic Forum in Davos, Santos pointed to the disastrous results of the fight against drugs in Latin America. As a result of an evaluation of the strategies adopted by Colombia to address the problem of drugs, the Drug Policy Advisory Commission mentioned, among other things, the need to develop a more efficient, less costly drug policy that prioritised prevention and comprehensive rather than punitive responses. See the Commission's report: http://www.odc.gov.co/Portals/1/comision_asesora/docs/comunicado_prensa_comision_asesora_13mayo2015.pdf
23. Already in 1979 ANIF was recommending to the government of the day that it should implement regulation to address the problem of drugs. In its view, the repressive approach was costly and inefficient, encouraged guerrilla war and represented a lost business opportunity. Camacho-Guizado, Á., (1981). *Droga, corrupción*

y poder. Marihuana y cocaína en la sociedad colombiana. Cali: CIDSE, Universidad del Valle.

24. Countries in Latin America and the Caribbean that have adopted different forms of medicinal cannabis regulation include Argentina, Chile, Jamaica, Mexico, Puerto Rico and Peru, and the move is under discussion in Paraguay. In Europe, the countries that have moved towards regulation include Austria, Belgium, the UK, Spain, Finland, the Czech Republic, Portugal and Italy. http://www.cicad.oas.org/Main/AboutCICAD/Reference/ROMANI_Modelos%20de%20Regulacion%20de%20Cannabis-SPA.PDF

25. López, A. (2019), personal communication: telephone interview with Nicolás Martínez, ## May 2019.

26. See the press conference given by the Health Minister, Alejandro Gaviria: <https://www.youtube.com/watch?v=vcUiCuBqnR8>

27. According to the survey, agreement with the idea of regulating cannabis for medicinal uses is higher in medium-sized towns (70 per cent), where the presence of crops predominates, compared to large cities such as Bogotá and Medellín, where there was less support (61 and 62 per cent respectively). The survey also revealed that young people aged 18-24 are the group most likely to support the initiative, with 71 per cent in favour, compared to 55 per cent among people over the age of 55. The survey is available at: <http://www.ideaspaz.org/publications/posts/1106>

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52. Asocolcanna is responsible for promoting, protecting and guiding the development of agro-industrial activities related to the use of cannabis plants. 30 companies are currently members of the association.
53. In a review of the nearly 160 registered companies or individuals with a licence, 14 are Canadian-owned companies, 7 are from the United States and 12 are mergers or joint ventures with foreign investment. As far as the Colombian companies are concerned, 21 are wholly Colombian-owned and for 97 there is no information available to identify the country of origin.
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69. Resolution 3168 of 2015 stipulates that in order to register a seed or cultivar, agronomic

assessment tests must be conducted in the environmental sub-regions in which it is proposed to be grown and/or sold. This assessment must be carried out by an Agronomic Assessment Unit or a Research Centre on Phyto-improvement duly registered with the Institute for work on the cannabis species. The National Register of Cultivars can be consulted at: <https://www.ica.gov.co/getattachment/Areas/Agricola/Servicios/Certificacion-de-Semillas/REGISTROS-CANNABIS-06-09-2019.xlsx.aspx?lang=es-CO>

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