The challenges to achieve cannabis regulation in Mexico

My presentation will approach the challenges for cannabis regulation in Mexico, focusing on the two main fronts where it is being decided: The judicial and legislative power.

In 2015, the Mexican Supreme Court (SCJN) declared that the absolute prohibition of adult consumption of cannabis was unconstitutional for disproportionately violating the free development of the personality. After this historic decision, new cases reached the Supreme Court. They generated the necessary jurisprudence so that all judges in the country were forced to abide by our highest tribunal's ruling. At the same time, the SCJN ordered Congress to establish systems to regulate the market for adult access to cannabis. Afterward, because Congress failed to implement such regulation on the time established by the Court/ the Supreme Court had to issue a General Declaratory of Unconstitutionality in 2021. This declaration eliminated the prohibition on administrative authorities from issuing permits for personal cannabis use.

In theory, people who wanted authorization for the personal use of cannabis would no longer have to go to court with the Declaration. However, inequalities remain since the "strategic bureaucracy" of the administrative authorities continues, still refusing to grant authorizations, even though there is no legal justification for such refusal. Thus, in Mexico, even with the recognition of a right by the highest constitutional court, people continue to be subjected to the dilatory practices of the administrative authorities, and most people remain under threat of criminalization because the regulatory framework has not yet been implemented.

What explains the severe delay of Congress?

The first thing is to understand that the main drivers for regulation in Mexico are not addressing the crisis of violence generated by prohibition and the so-called war on drugs or ensuring the rights of people who use drugs, as already recognized by the highest court. Unfortunately, the main driver has been creating a new cannabis market that can serve large international trading partners. This is where the factors that have made it impossible to regulate the cannabis market with a real focus on social justice come from.

Although this government's National Development Plan aimed to reformulate the fight against drugs, the current strategy follows the same prohibitionist inertia that the Mexican government once branded as unsustainable due to its poor public health results and the violence it has generated. On the specific issue of cannabis regulation, the contradictions within the government itself are revealed. Congress has organized forums where legislators

speak about the importance of regulating cannabis and celebrate the opportunity it represents to reduce drug trafficking. At the same time, the speeches made by the executive branch contradict the supposed will of the government on this issue and reveal that the consensus required to finalize the regulation does not exist yet.

The discussion in Congress is under threat from two key forces; corporate capture and culture of punitiveness. Corporate capture began even before the legislative process started when Congress held forums where priority was given to participants from the cannabis industry in Canada and the United States, who sought to present their business models. The result was a bias towards the industry's interests in the opinions presented in the Senate and the Chamber of Deputies.

The proposal initially presented in the Senate contained locks to prevent vertical integration of the market: it established a system of exclusive licenses to prohibit a person or their partners, shareholders, and relatives from obtaining more than one type of license. It also included social justice measures for indigenous and peasant communities most affected by criminalization or marginalization, requiring that they have access to 40% of the licenses to cultivate cannabis. However, the national, American, and Canadian industry lobby managed to get another project approved in the Senate Plenary on November 19, 2020, which eliminated the system of exclusive licenses and allowed for the transformation and commercialization of edible and drinkable products containing cannabis.

Even though the Chamber of Deputies approved a new version on March 11, 2021, it gave new concessions for the industry, such as the requirement of seed legality and traceability for participants in the licensing system, which represents an obstacle for low-income peasants to enter the market; and the elimination of the percentage of cultivation licenses for peasant communities, and the incorporation of comprehensive permits that allow their holders to participate in the entire production chain.

On the other hand, the culture of punitiveness in Mexico has resulted in none of the projects presented in Congress contemplating removing the substance from the penal sphere by eliminating the crime of simple possession and the crime of cultivation. Instead, the projects under discussion propose modifying the amounts of possession tolerated for personal consumption. This system of expanded thresholds does not solve the problem of wasting police, administrative and criminal resources in the persecution of users, growers, and minor drug dealers.

In addition, the rulings created a parallel system of excessive administrative sanctions that punish possession for personal use with fines of up to 15,000 pesos, when the average salary in Mexico is around 7,000 pesos per month. Cultivation is also still penalized, even if people carry out this activity for their subsistence. Finally, none of the opinions presented provides key elements of a more socially just cannabis policy demanded by civil society advocates, including expungement of criminal records, mechanisms for release or amnesty, or measures to repair the damage to the populations most affected by prohibition and the war on drugs.

There is a real risk that Mexico will suffer from a segmentation in its market that will exclude small producers from participating, will protect the large transnational industry from national competition, and will keep the most vulnerable population subject to the criminal regime, which is, for the most part, economically marginalized peasants and users. So even if cannabis regulation becomes a reality, there is a risk of creating an elitist and expensive market where most people will continue to be detained and criminalized.

However, it is still possible to prevent the new regulation from being captured by large corporations and reproducing or entrenching the structural inequalities caused by prohibition. It will be more difficult -although not impossible- to reverse the capture of the market when the system is already functioning, as happened in the case of markets such as alcohol or tobacco.

On the one hand, the lessons learned from the regulation process in Mexico t**o avoid over-regulation and the unjustified use of criminal law** show that restrictions must be few and effective, and they must avoid overloading the State for its enforcement, so only the riskiest activities must be controlled. Whether of an administrative or criminal nature, sanctions must always be proportionate. The criminal justice system's use should be limited as much as possible, being the last option and intended only for the most serious misconduct, such as producing to finance criminal activities. On the other hand, **to avoid market capture,** regulation must include social justice models and mitigation mechanisms to avoid the emergence of oligopolies and monopolies. The model can only be successful if the participants start from an equitable base.

The terrible negative consequences caused by prohibition always make regulation preferable. However, I recognize that not just any type of regulation is enough, we need one that focuses on public health, social justice, and human rights above economic interest. That is why I believe that Mexico offers essential lessons on how to address each of the

factors that prevent good regulation from being implemented, which will be very useful for the growing number of countries choosing to embark on this path in the future.