

## **Application of the international drug control treaties in countries with federal structures**

1. The objectives of the three international drug control conventions are manifold including: the regulation of licit trade in narcotic drugs and psychotropic substances and of precursors used in the illicit manufacture of drugs and the prevention of diversion into illicit channels; the adoption of measures to ensure adequate access to medicines containing controlled substances; establishing treatment, rehabilitation, after-care and social reintegration structures to address drug use and addiction; addressing drug-related criminality including by individuals affected by drug use or addiction; strengthening mutual legal assistance and extradition and combating money-laundering.
2. The implementation of the drug control conventions requires States to act in good faith to adopt legislative, policy and regulatory measures in order to comply with the international obligations to which they have agreed to be bound. Given their different political, legal and constitutional structures, the nature of the measures taken varies from one State party to the next.
3. In seeking to comply with their international legal obligations, States with federal structures face unique challenges, related to the fact that the implementation measures may fall within the jurisdiction of the federal government, a sub-national constituent government, such as that of a state, province or territory or may be a matter of shared jurisdiction. In this context, it is important to recall that the drug control conventions, like all international treaties, are binding in respect of the entire territory of a State party, “unless a different intention appears from the treaty or is otherwise established” and that, as a general rule, States cannot invoke their internal law as justification for their failure to perform a treaty.<sup>1</sup>
4. Through its dialogue with States, the Board has identified areas in which challenges in implementation are particularly prevalent in States having federal structures owing to the need for coordination among various stakeholders at different levels of government. One of these is in the collection of data for preparation and submission to the Board, which may need to be collected from state or provincial governments for consolidation by the federal authorities. This may include data related to estimates/assessments, consumption, seizure data, and prevalence information. The Board recommends that States develop coordinated data collection mechanisms and standardised indicators to produce data which can be easily compiled, analysed and used for timely reporting to the Board as well as for the elaboration of evidenced-based drug policies.
5. Other challenges stem from the elaboration of drug policies at the sub-national level, which conflict with the international obligations to which the country is bound by virtue of its status as a State party to the international drug control conventions. In recent years, the most prevalent examples have been related to the control of cannabis.
6. Article 4(c) of the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, restricts the use of narcotic drugs subject to international control (including cannabis) to medical and scientific purposes.
7. While the 1961 Convention permits the use of cannabis for medical purposes, this use is subject to a variety of additional measures of control, aimed at ensuring rational medical use and at preventing diversion, which are contained at articles 23 and 28 of the Convention. The Board has noted with concern, the development of regulatory frameworks at the sub-national level, which do not meet the control requirements set out in the Single Convention. The Board has reminded the Federal Government of the States concerned of their obligation to take the necessary measures to ensure compliance with their treaty obligations on the entirety of their national territory. In many cases, the sub-national Governments in question have taken measures to reform their medical cannabis programmes in order to bring them into compliance with those mandated by the Single Convention.

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<sup>1</sup> Vienna Convention on the law of treaties, United Nations, *Treaty Series*, vol. 1155, No. 18232; Articles 26, 27, 29.

8. In some instances, sub-national Governments have taken measures towards legalizing and regulating the non-medical use of cannabis, despite federal law to the contrary and the strict prohibition of non-medical use set out in the 1961 Convention. Here again, the Board has engaged with the Governments of the State parties concerned in order to reiterate that these developments are in violation of the international drug control legal framework. Accordingly, the Board has requested that remedial action be taken in order for the national Government to honour the country's international obligations. The Board has repeatedly expressed that these developments have jeopardised the integrity of the international drug control system as a whole by undermining one of its fundamental principles.

9. The Board calls upon all levels of Government in Federal States to work together to ensure greater coordination in the adoption of drug control measures which respect the international legal drug control framework. The Board reminds the Governments of all State parties to the international drug control conventions with federal structures, of their obligation to take whatever action at their disposal to address incompatibilities of State/Provincial drug control measures to align them with the provisions of the international drug control conventions, including through positive engagement and negotiation.

10. Finally, the Board wishes to remind the Governments of all State parties that they are responsible for ensuring the respect of their international obligations and that the effectiveness of the international drug control system depends upon their comprehensive implementation by all members of the international community.

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INCB is the independent, quasi-judicial body charged with promoting and monitoring Government compliance with the three international drug control conventions: the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

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