

1. TRADE

THE LEGAL REGULATION OF DRUGS: The potential to deliver trade justice



Under prohibition, small scale farmers who cultivate and produce drug crops, and low-level traders – often people living in poverty – face systematic persecution and criminalisation.

Communities risk having their crops or products eradicated which can be harmful to individual and community health and the environment. They risk violence towards themselves or their families, and the possibility of incarceration and death (34 countries maintain the death penalty for drug offences).¹ Since most economic gains are accrued further down the production chain, cultivating communities often make very little income from the crops they produce.

As we witness the beginning of the end of prohibition, with alternatives such as harm reduction, decriminalisation and legal regulation of cannabis, cocaine, psychedelics, ketamine and MDMA/ecstasy on the agenda of governments across the world, it is vital that the emergent reform of the global drug trade has trade justice at its heart.

Due to its illicit nature, the value of the drug trade is difficult to assess. It is, however, significant. In 2017 Global Financial Integrity estimated the value between US\$426 billion to US\$652 billion.² We must design this new market to serve the needs of people; create fair and legal income for small scale farmers and traders; generate resources for vital public services; and enable fair growth while respecting planetary boundaries. The above is possible but requires strong advocacy for transitional justice.



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Licensing for social equity

Recognising the racist history of prohibition, various US states have implemented social equity clauses that support disproportionately impacted communities into legal cannabis markets. Strong advocacy in the City of Detroit ensured that its reforms reflected the city's history of race and inequity. 50 percent of business licences went to longtime residents who qualify for redacted fees and can buy city owned premises at substantially reduced rates.³

A legal drug trade – risks for trade justice

Whilst illicit markets are by nature entirely absent of protections for small scale farmers and producers, markets for licit goods are also often unjust. Global trade rules favour big businesses and wealthy nations at the expense of producers and countries in the global Majority World. Emergent drug reforms have the opportunity to explicitly learn from the failings of other trades and build in provisions to address these from the outset.

Advocates for social and economic justice must seize this opportunity before big business does. The graphic below explores what could happen if advocates for economic justice fail to engage with drug reforms. For example, when the government of Lesotho began issuing licences for cannabis farming in 2017, the cost of a licence for production was US\$23,000. Meanwhile, the per capita income was just US\$2,925.⁴

A legal drug trade: The risks we must avoid



The opportunity for trade justice

If constructed using principles of transitional justice, a legal market could give people the opportunity to produce and trade crops without fear of criminalisation, stigma and incarceration. They could earn decent wages in safe conditions. Their activities could support the economic growth of their countries within planetary boundaries and provide an example to other trades of what is possible.

This will only be possible with the deliberate development of new markets that **rectify the injustices of both prohibition and global trade**. These markets must recognise the cultural and religious significance of drug crops, be carefully crafted to ensure meaningful participation of small-scale farmers and traders, uphold labour rights and safeguard local businesses. They must be designed to mitigate against inequities in global trade, ensure economic benefits to producer countries, minimise the risk of corporate domination, and promote sustainable economic growth within ecological limits. There is a precious window of opportunity in which to do these things whilst the drugs trade remains outside of international trade rules. It may be possible to set positive precedents that over time might be used to support wider trade reforms.

Working for just reforms in the Caribbean

In the Caribbean, the Fair-Trade Cannabis Working Group⁶ brings together traditional cannabis cultivators, policymakers, civil society and academics, to advocate for regulation that will allow small and traditional cannabis growers to benefit from the emerging licit cannabis market and avoid free market, export-oriented strategies. Priorities identified include a regional harmonised approach to development of the cannabis industry; a focus on diverse markets rather than export-oriented growth; using nationalised banks to bypass current international banking restrictions; and a focus on cooperative structures.

Bolivia: Putting Indigenous farmers in control

Bolivia's Community Coca Control policy allows small farmers to grow small amounts of coca for local markets. Coca has also been decriminalised whilst the country has requested the WHO reassess the classification of coca under drug control treaties.⁵ These policies recognise the importance of coca for Indigenous communities and the need to prioritise local leadership and protection for the environment.

Trade justice in a legal drug trade – key principles

Transitional justice for drug producers and traders:

- **People first.** The input of current farmers, small scale traders and those currently persecuted under prohibition must be central to the development of emerging regulations. Lessons from the injustices of other trades must be shared and explicitly addressed.
- **Repair the harms of prohibition.** This includes recognising the important cultural and religious significance of drugs for some communities, expungement for those who have been criminalised and the reinvestment of tax revenue for public services.
- **Remove barriers to and provide support for small farmers, traders and traditional herbalists.** Reforms could include: affirmative licensing; reducing or exempting small farmers from fees and bureaucracy; reducing requirements for capital outlay or timing payments until after harvests; establishing quotas for numbers of small local growers; supporting traditional herbalists to function as medical suppliers; and proactive support to enable small operators to meet the required processes and standards to enter the market.
- **Implement an anti-poverty and environmentally sustainable industrial development strategy** for the new trading sector. For example, subsidising poor farmers and small producers, targeting new jobs in areas experiencing poverty, developing local processing capacity (e.g. edibles) and protecting smaller and emerging domestic traders from international competition.

- **Labour rights and gender justice.** Ensuring adequate labour law including the right to unionise, prevention of child labour, use of cooperative laws to enable growers to register as cooperative bodies, health and safety regulations, protections for migrant labourers, and removing barriers for women including the provision of childcare. Rights must be monitored and enforced through robust, independent auditing of the supply chain to ensure adequate protection for workers.

Transitional justice for a global equitable drug trade:

- **Global trade justice.** Explore options that could enable drugs to remain outside of unjust WTO rules including TRIPS, as well as other trade agreements and pressures applied through mechanisms like IFI conditionalities. This could include regional inter se modifications of drug control conventions (agreements between specific countries that enable them to modify global agreements creating mini treaties between themselves without undermining global agreements⁷) and development of regional agreements, approaches and standards. It also requires mechanisms to prevent negative consequences of global imbalances resulting from increased production in the Minority World (for example, the potential impact on Afghanistan, which currently produces 93 percent of the world's illicit opium). Policies could include pricing boards, tariff-free access to Minority World markets, support in accessing markets, and compensation for losses incurred by farmers in producer countries.
- **Bilateral trade justice.** Options include: ensuring agreements allow drug producers in the global Majority World duty-free and quota-free access to the international market; exemption of drug seeds from harmful conventions such as The International Union for the Protection of New Varieties of Plants Convention 91 (UPOV); enabling unilateral measures to support greater fairness in supply chains; and unilateral Directives on unfair trade practices and the introduction of regulators for fair purchasing.
- **Small scale, sustainable production over export.** This could include employing the principles of support for infant industries, such as protection, subsidies, grants, training and skill building, and technical assistance. This would help ensure that lucrative added value stages (such as processing) are retained in producing Majority World countries. Policies could also include: support for small traders in getting their products to market; minimum price guarantees; protecting land rights and indigenous knowledge from expropriation; and safeguarding local seeds and strains from corporate imports.

Developing Ghana's cannabis policy

In 2023 Health Poverty Action, the West Africa Drug Policy Network, Ghana's POS Foundation and the International Drug Policy Consortium brought together cannabis farmers, drug policy reform and economic justice advocates together with policymakers to design their priorities for Ghana's new cannabis markets. Key priorities included: regulation to prevent corporate capture of the market; ensuring market regulations support women and right the wrongs they currently experience under prohibition including the reinvestment of tax revenue into childcare provision in order for women to build sustainable livelihoods and deliver gender justice.

- **Regulate big corporations.** Ensure they cannot dominate the market and new opportunities benefit the poorest. This may include limits on the size of grow sites, moratoriums, full transparency and caps or strict limits on foreign ownership and investment, requiring big companies to share knowledge and technology with small businesses, restrictions on the import of seeds, and requirement to source inputs locally.
- **Fair intellectual property rights.** Protect indigenous plants and seeds and knowledge, for example through ensuring trade deals do not include The International Union for the Protection of New Varieties of Plants (UPOV 91) Convention and

exemptions from WTO TRIPS agreements (above). Recognise the objectives of the UN Convention on Biodiversity. Provide publicly funded and publicly accessible research and development to further knowledge and development of seeds, growing conditions and uses, and make this available to all.

- **Environmental justice.** Ensure production is based on sustainable use of land, energy and water, and that it does not replace food crops. Prioritise small scale growing over industrial scale resource intense indoor grow sites.

What comes next? Let's shape it.

Are emerging drug trade reforms on your agenda? Advocacy for a trade justice approach to drug reforms must happen now.

Contact c.james@healthpovertyaction.org to contribute to the ongoing conversation to ensure drug reforms deliver for trade justice.

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Endnotes

1. <https://hri.global/topics/drugs-and-human-rights/death-penalty-for-drugs/>
2. [Transnational Crime-final_exec-summary.pdf \(gfintegrity.org\)](#)
3. "Bounded Equity: The Limits of Economic Models of Social Justice in Cannabis Legislation" – Katherine Hendy, Amanda I. Mauri, Melissa Creary, 2023 (sagepub.com)
4. [Why is Lesotho's cannabis boom failing to deliver the prosperity it promised? The Guardian](#)
5. [Coca Chronicles: Bolivia Challenges UN Coca Leaf Ban – WOLA](#)
6. [Position Paper of the Fair-Trade Cannabis Working Group in the Caribbean, Transnational Institute \(tni.org\)](#)
7. This would enable countries to enter inter se agreements on different drug products. For more information see TNI [The elegant way to end global cannabis prohibition: Inter se modification](#) [The elegant way to end global cannabis prohibition: Inter se modification](#), Transnational Institute (tni.org)



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