

## 9. RACIAL JUSTICE

# THE LEGAL REGULATION OF DRUGS: The potential to deliver racial justice



The so called ‘war on drugs’ has long been recognised as a war on people – especially people of colour. Across the globe, drug prohibition has inflicted widespread harm, from mass arrests and family separations to systemic police violence and the denial of housing, employment, and healthcare. These harms have disproportionately affected racialised communities, embedding inequality into social, health, economic, and legal systems, resulting in unequal equal access to opportunities, resources and power.

Systemic racism, originating from the histories of enslavement, the transatlantic slave trade and colonialism, continues today through stereotypes, prejudice, and deep-rooted structural inequalities. The “war on drugs” exemplifies these legacies, marginalising people of African descent and other racialised communities through discriminatory enforcement.

- In the USA, Black people are almost **six times** more likely to be imprisoned for drug offences than white people<sup>1</sup>

Prohibition deeply harms individual and community health and exacerbates racial health inequities. It disrupts key social determinants of health, including housing, education, income, and employment and access to land, disproportionately impacting marginalised communities.



HEALTH  
POVERTY  
ACTION

DRUG  
POLICY  
ALLIANCE.

For example, racial discrimination and structural inequalities have hindered access to harm reduction services for Black, Brown, and Indigenous people who use drugs; including access to opioid agonist therapy, needle and syringe programmes, and viral hepatitis treatment.<sup>2</sup> Meanwhile, prohibition has been used as an excuse for the appropriation of Indigenous crops and displacing people from their lands.

**“Globally, people of African descent experience discrimination at every stage of the criminal justice system and are more likely to be stopped, searched, arrested, convicted, and harshly sentenced, including the use of the death penalty, for drug crimes. Higher arrest and incarceration rates are not reflective of increased prevalence of drug use, but rather law enforcement’s focus on urban areas, lower income communities and communities of colour.**

**UN Working Group of Experts on People of African Descent, 14 March 2019**

Prohibition, with its deep roots in racism, further exacerbates economic inequity by diverting resources away from communities, prioritising law enforcement, and widening the racial wealth gap. Prohibition also fuels global inequality. Whilst many of the greatest harms from prohibition occur in the global Majority world or global South, most of the demand for drugs is driven from the global Minority world, or global North. Whilst data quality varies between countries, from 1990–2019 the number of reported drug use disorders per 100 people were 1.6 percent in high income countries vs 0.4 percent in low income.<sup>3</sup> Research from the UN Office on Drugs and Crime (UNODC) in Colombia, Brazil, Peru and Bolivia showed that almost half (44 percent) of all documented cocaine trafficking routes were destined for Western or Eastern Europe.<sup>4</sup>

As we witness the beginning of the end of prohibition, with alternatives such as harm reduction, decriminalisation and legal regulation of cannabis, cocaine and psychedelics on the agendas of governments across the world, it is vital that emergent reforms have global racial

justice at their core. We must design these new markets in ways that acknowledge, end and repair past harms and racial disparities, and affirmatively seek to prevent racial disparities in all areas that are affected – from legal access, to housing, enforcement, economic opportunity and healthcare. The above is possible but requires strong and sustained advocacy for racial justice.

## Definitions

**Race** is a social construct used to group people. Race was constructed as a hierarchal human-grouping system, generating racial classifications to identify, distinguish and marginalise some groups across nations, regions and the world. Racial classifications have long been used to justify the extraction of property, land dispossession, and the devaluation of human labour.

**Systemic racism:** A complex, interrelated system of laws, policies and societal norms that perpetuate racial inequities through both direct and indirect mechanisms.

**Health equity:** The assurance that all individuals have fair access to health services, outcomes, and social determinants of health, free from systemic barriers or discrimination.

**Intersectionality:** The interconnected nature of social categorisations such as race, gender, and class, which create overlapping systems of disadvantage.

**“The systemic racism experienced by Africans and people of African descent is shaped by intersectionality or the combination of several identities, including sex, gender, sexual orientation, gender identity, nationality, migration status, disability, religion, socioeconomic and other status.**

**Report of the United Nations High Commissioner for Human Rights, June 2021<sup>5</sup>**

## Links between prohibition and racism – examples

**USA:** Black people are almost six times more likely to be imprisoned for drug offences than white people.<sup>6</sup>

**Brazil:** In Rio de Janeiro, 80 percent of those killed by police are Black.<sup>7</sup> Data published in 2019 shows that, across the country, 64 percent of all people incarcerated were Black, while 26 percent of men in prison and 62 percent of women in prison were incarcerated for a drug offence.<sup>8</sup>

**Cambodia:** Ethnic Vietnamese persons are reported to have particularly suffered as a consequence of the state's anti-drug campaign.<sup>9</sup>

**United Kingdom:** Black people are more than eight times more likely to be stopped and searched than white people.<sup>10</sup> In 2016–17, Black and Asian people in England and Wales were convicted of cannabis possession at 11.8 and 2.4 times the rate of white people.<sup>11</sup>

**Italy:** A 2024 report found that Italy's "punitive approach to drug enforcement" disproportionately affects Africans and people of African descent.<sup>12</sup>

**Indonesia:** In its three rounds of execution in 2015–2016, nine of eighteen people executed for drug offences were all African nationals.<sup>13</sup>

**“The war on drugs has operated more effectively as a system of racial control than as a mechanism for combating the use and trafficking of narcotics.**

**UN Working Group of Experts on People of African Descent, 14 March 2019**

The **Global Drug Policy Index** assesses the implementation of drug policy in 30 countries against the standards set in the UN Common Position on drugs. In 2021 it found ethnic disparities in the implementation of criminal legal responses to drugs in 27 out of the 30 countries surveyed. In six of these countries – Brazil, Canada, Mexico, Nepal, South Africa, and the UK – the disparities were found “to a very large extent.”<sup>14</sup>

## Race, inequality and social control

People engaged at a low level in the drug trade in urban areas of Brazil are often driven into these activities by inequality. Brazil is one of the most unequal countries in the world – in 2017 the joint wealth of the country's six richest billionaires was equivalent to that of the poorest half of the population.<sup>15</sup> White families own on average between 1.5 and 2 times more wealth than Black families.

**“We can say that poverty has the face of a woman and the colour of a Black woman. And these Black women are those who are behind bars.**

**Luciana Boiteux**, drug policy expert, Rio de Janeiro<sup>18</sup>

Health Poverty Action's research in favelas in Rio de Janeiro and São Paulo<sup>17</sup> evidenced numerous examples of police repression and highly punitive penal measures targeted predominantly at Black youth engaged in low levels of the drug trade. This, combined with the fact that police commanders openly admitted to policing wealthy and poor communities differently meant that both community members and drug policy analysts viewed drug control as an excuse to exert social control over poor and predominantly Black communities.

**“The problem is being Black and poor. That's the problem. Because that's a threat. To hell with the rest, it's all an excuse.**

**Community leader, São Paulo<sup>16</sup>**

## Racism, the USA and the global drug control framework

The United States has played a leading role in shaping the global drug control framework, a system that often reinforces racial and economic inequities. Domestically in the United States, the so called 'war on drugs' has been a powerful tool of racial control, as revealed by those at the helm of early prohibitionist policies.

“ *There are 100,000 total marijuana smokers in the US, and most are Negroes, Hispanics, Filipinos, and entertainers. Their Satanic music, jazz and swing, results from marijuana use. This marijuana causes white women to seek sexual relations with Negroes, entertainers, and others.*

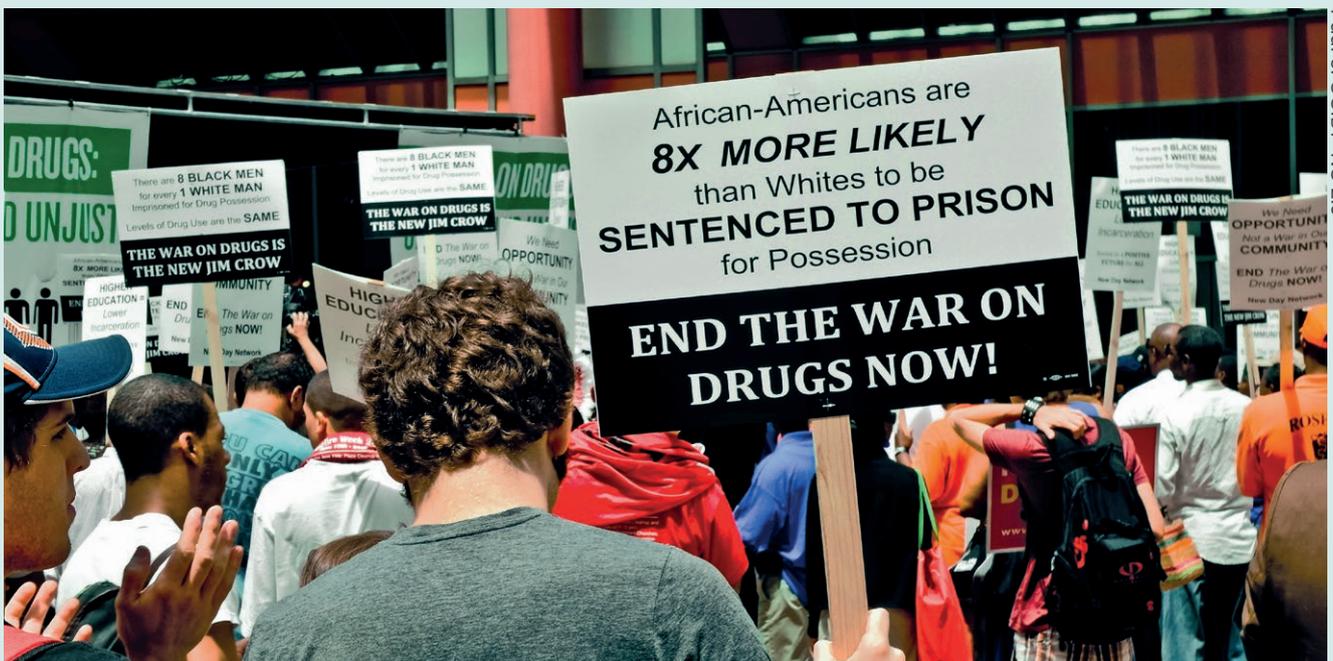
**Harry Anslinger**, Commissioner, US Federal Bureau of Narcotics (1930–1962)<sup>19</sup>

This deliberate criminalisation of Black communities and anti-war activists highlights the racially motivated roots of United States drug policy and its enduring impact. Outside of the United States, its drug enforcement efforts have significantly contributed to the militarisation of foreign law enforcement, increased violence, economic instability, human rights abuses, and forced migration in affected countries, disproportionately impacting racially marginalised communities.

“ *The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the anti-war left and black people ... We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalising both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.*

**John Ehrlichman**, Advisor to US President Richard Nixon.<sup>20</sup>

The United State's 'war on drugs' has justified a range of military and geopolitical interventions in the Majority world. These include the invasion of Panama, 'Plan Colombia' a range of anti-Sandinista policies in Central America, and military interventions in Bolivia and Honduras. The neo-colonial nature of drug policy continues to be perpetuated through 'certification' a process whereby the United States imposes financial sanctions, such as suspending aid or opposing loans from international financial institutions, to countries that fail to demonstrate "full cooperation" with its counter narcotics policies,<sup>21</sup> despite having contravened its own policies.<sup>22</sup>



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## A legal drug trade – risks for racial justice

By transitioning from punitive approaches to regulated frameworks and incorporating lessons learned and best practices,<sup>23</sup> governments can design policies that prioritise racial equity. However, without intentionality around equity, legal regulation also presents significant risks. Poorly designed policies could recreate or even exacerbate existing racial disparities or create new forms of exclusion, such as barriers to public health, legal access, participation in legal markets or heighten global inequalities.

Advocates for social and economic justice must seize this opportunity before new drug markets get captured by corporations. The graphic below explores what could happen to new legal drug markets if advocates for racial justice fail to engage with drug reforms.

**“It would be a travesty if these developments further entrenched post-colonial power imbalances and privilege.**

**Ann Fordham, Executive Director  
International Drug Policy Coalition<sup>24</sup>**

To mitigate these risks, governments must work closely with affected communities, incorporate robust equity measures into policy and market design, and establish mechanisms for accountability to ensure reforms actively reduce disparities rather than perpetuate them.

### A legal drug trade: The risks we must avoid



## The opportunity for racial justice

Governments have a moral and practical responsibility to acknowledge and address racial disparities when reforming drug policies. Decisions about drug regulation, including who has access to drugs, where they can be obtained, and under what conditions, profoundly shape opportunities and barriers across health, economic, and legal systems.

Recent shifts in United States state-level cannabis legalisation have offered pathways for reform, particularly through the development of policies and programs designed to acknowledge and repair the harms caused by marijuana criminalisation, often referred to as social equity programs. While many of these policies are race neutral, they model how governments can

design policies intended to advance equity for marginalised communities. They also highlight how additional and comprehensive reforms are necessary to end and address harms and disparities caused by drug prohibition and prevent harms and disparities within future drug regulation frameworks. Taking a comprehensive approach to racial equity means that in all decisions regarding drug policy and regulation – like decisions regarding public health, taxes, trade and labour – governments should consider the following:

- What are the racial equity impacts of this particular decision?
- Who will benefit from or be burdened by the particular decision?
- Are there strategies to mitigate the unintended consequences?<sup>25</sup>

### Examples of initiatives from cannabis reforms in the USA

- **Pardons and Expungement:** Several states, such as California, Maryland, and Massachusetts have implemented policies to clear records or forgive cannabis-related offenses.<sup>26</sup> However, when relief is limited to certain offenses or is not automated, many individuals are unable to benefit.
- **Community Reinvestment:** Many states like New York, Illinois and New Jersey have established community reinvestment programs, dedicating hundreds of millions of dollars to communities disproportionately harmed by the ‘war on drugs’.<sup>27</sup> However, in many jurisdictions a significant portion of cannabis tax revenue continues to fund law enforcement activities, which can undermine equity goals if governments prioritise funding enforcement instead of investing in communities.<sup>28</sup>
- **Business Licensing:** Governments in states such as Michigan, Nevada and Colorado have policies purportedly designed to help individuals arrested and convicted of cannabis offenses participate in the legal market – like priority or special licensing, education, technical assistance, and financial support.<sup>29</sup> Without a license, participation in the cannabis industry is illegal. Yet, the United States commercial cannabis market remains dominated by large corporations, primarily owned by white, male entrepreneurs, limiting opportunities for marginalised communities.<sup>30</sup>

**“Because of the social, economic, and health effects of drug policies, the work of ending the drug war cannot be situated within criminal legal reform efforts alone.**

**Drug Policy Alliance, USA<sup>31</sup>**

While these reforms demonstrate what is possible, the United States and other colonial powers and governments have an obligation to take comprehensive action to dismantle the systemic racism embedded in today’s drug policies.

# Racial justice in a legal drug trade – key principles

- **Repair:** Recognise the racialised impacts of past drug policies and their roots in slavery, colonialism, systemic racism and ongoing disparities. Expungement for those who have been criminalised or incarcerated. Respect the spiritual and cultural relationships that communities have with certain plants. Return appropriated lands including compensation for loss of livelihoods. Establish land rehabilitation programmes for lands that have been damaged, financial support for affected individuals and communities and reinvest tax revenue into public services for all.
- **Government accountability:** Establish mechanisms to hold law enforcement, regulators, and policymakers accountable for meeting racial equity goals, ensuring new inequities are not introduced and that the benefits from legal markets are used to strengthen equity. Conduct regular reviews and make adjustments as needed.
- **Whole-of system-response:** Address broader determinants of health and opportunity, including housing, education, employment (including alternative employment opportunities for those currently in the trade who want to pursue other options) and criminal justice reform, as part of a comprehensive approach to equity.
- **Data collection and transparency:** Collect and disaggregate data by race and ethnicity to monitor racial disparities in drug policy outcomes. Publicly share data to ensure transparency and accountability for equity goals.
- **Inclusive Policy Development:** Engage affected communities in policymaking to ensure their needs and priorities are reflected. Centre equity goals in the design and implementation of drug policies.
- **Remove barriers to and provide support for small farmers, traders and traditional herbalists:** Reforms could include affirmative licensing, reduce or exempting small farmers from fees and taxes, requirements for capital outlay and bureaucracy or timing payments until after harvests; quotas for numbers of small local growers; supporting traditional herbalists to function as medical suppliers and proactive support to enable them to meet the required processes and standards to enter the market.
- **Protect against corporate capture:** Protect small and local operators against corporate monopolies. Support and strengthen Indigenous and marginalised communities' agency to retain land tenure and reduce corporate capture. Champion agroecological practices.
- **Support public health:** Shift the focus from punishment to harm reduction, ensure public health education, equitable access to treatment, harm reduction services, and social support for all communities.
- **Alternatives to commercial access:** Allow for individuals to access cannabis through personal (home grow) and community-based cultivation and sharing (social clubs) to commercialised cannabis products.
- **Preventing future inequities:** Proactively design policies to avoid perpetuating or creating new racial disparities (health, legal, economic, social etc). Conduct equity impact assessments to identify potential barriers and address them before implementation.
- **Sustainable change through education and policy evolution:** Build public awareness about the legacies of racism in drug policy and the need for systemic reform. Ensure policies are adaptable and responsive to evolving community needs.

## What comes next? Let's shape it.

Are emerging drug reforms on your agenda? Advocacy for drug reforms that support racial justice must happen *now*.

Contact [c.james@healthpovertyaction.org](mailto:c.james@healthpovertyaction.org) to contribute to the ongoing conversation to ensure drug reforms deliver justice.

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Photo: Clay Banks on Unsplash

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## Endnotes

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