



CANNABIS
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ISSN 2054-1910

Fair(er) Trade Options for the Cannabis Market

Martin Jelsma, Sylvia Kay and David Bewley-Taylor

Policy Report 1 | March 2019



Swansea University
Prifysgol Abertawe

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Fair(er) Trade Options for the Cannabis Market

Martin Jelsma^{*}, Sylvia Kay^P and David Bewley-Taylor^a

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KEY POINTS

- Policy changes over the past five years or so have dramatically reshaped the global cannabis market - both medical and non-medical - and look set to bring a clear range of benefits in terms of health and human rights.
- Serious concerns, however, are growing about the unfolding market dynamics, particularly the activities of many for-profit cannabis companies from the Global North and the threatened exclusion of small-scale and marginalised farmers from traditional cannabis producer countries in the Global South.
- Despite some efforts to assist small-scale cannabis farmers to transition out of illegality, many barriers still exist to entering the licit market
- A fair(er) trade cannabis model, built around a rights-based, inclusive and environmentally sustainable approach to market engagement, offers a promising way forward.
- Carefully designed regulatory frameworks would not only allow small-scale farmers to work in mutually beneficial partnership or alongside large companies but could also contribute to achieving the UN's Sustainable Development Goals in those parts of the world where ending poverty remains a pressing concern and to fulfilment of the promise to 'leave no one behind'.
- The development of fair(er) trade cannabis markets requires a different approach and the consideration of a range of interconnected producer, quality and standards, consumer/end-user and market, finance and trade policy frameworks.
- While the rapidly expanding legal cannabis market and associated political, legislative and commercial landscapes remain complex and fluid, it is possible to develop a set of guiding principles on which a fair(er) trade cannabis model can be built. These include:
 1. Demonstrate a commitment to solidarity and social justice, with initiatives going beyond pure profit and business making opportunities to integrate ethical concerns as a foundational part of the operation. This includes granting preferential access to small producers who have been involved in supplying the illicit market and the expungement of their criminal records.
 2. Centre on producer empowerment and community benefit sharing through more equitable terms of trade. In this model, producers are not just seen as providers of raw materials but as value creators.
 3. Use production methods that adhere to strong environmental sustainability standards in relation to the use of energy, water, and agricultural inputs.
 4. Put in place proper labour protections to ensure worker safety, health, and satisfaction.
 5. Encourage more democratic control, participation and decision-making processes, through inclusive business models and systems of worker driven social responsibility.
 6. Generate transparency and traceability in the operation of the cannabis market and supply chain.
 7. Focus on longer-term strategies, opening up access for cannabis producers from marginalised communities who are transitioning out of illegality and considering restorative justice for those previously excluded or criminalised.
 8. Resonate with the social history of a particular place, foregrounding traditional growing communities and the role of cannabis in their cultural and religious identities and practices.

^{*} Director, Drugs & Democracy programme, Transnational Institute and Senior Research Associate, Global Drug Policy Observatory, Swansea University, UK

^P Project Officer, Agrarian & Environmental Justice project, Transnational Institute

^a Director, Global Drug Policy Observatory, Swansea University, UK

INTRODUCTION

Policy changes over the past five years or so have dramatically reshaped the global cannabis market.¹ Not only has there been an unprecedented boom in medical markets, but following policy shifts in several jurisdictions a growing number of countries are also preparing for legal regulation of non-medical use. Such moves are triggered by a recognition that decades of repressive policies have proved ineffective and have had grave negative consequences, and look set to bring a clear range of benefits in terms of health and human rights. There are also serious concerns, however, about the unfolding market dynamics. Many for-profit cannabis companies from the Global North² are aggressively competing to capture the licit spaces now rapidly opening in the multi-billion-dollar global cannabis market. This threatens to push small-scale and marginalised traditional farmers from countries like Colombia, Mexico, Jamaica, St Vincent and the Grenadines, Morocco, South Africa, India, Nepal or Thailand – those who have supplied the illicit market for decades – out of the emerging market.

It is, therefore, vital amongst important and timely discussions surrounding both patient access to medical cannabis and the emerging structure of regulated markets for recreational use, particularly within the Global North, that the socio-economic plight of traditional cannabis producers in the Global South is not overlooked. There should be no reason why, using carefully designed regulatory frameworks, small-scale farmers cannot work in mutually beneficial partnership with or alongside large companies. Such an approach would move beyond standard Corporate Social Responsibility (CSR) to help ensure not only an appropriate Triple Bottom Line³ approach to the fast-emerging cannabis industry, but also that it contributes to achieving the UN's Sustainable Development Goals (SDGs) in those parts of the world where ending poverty and other related deprivations remains a pressing concern. The 2016 UN General Assembly Special Session on the world drug problem (UNGASS) reaffirmed a spirit of 'shared responsibility' in that regard.⁴

This Policy Report argues that policy-makers at a range of governance levels should grasp the opportunities afforded by the dramatic shifts in the cannabis market to help shape its growth and to ensure that it will enable cannabis producers in the Global South to transition out of illegality. From a sustainable development perspective, this would mean putting in place standards and charting a course that triggers a race to the top, not to the bottom. Moving beyond a set of minimum legal standards would pave the way for an approach that is more fair and equitable than is currently the case within the nascent licit cannabis market; what we call a fair(er) trade cannabis model. Conscious of the definitional complexities associated with the terms "'Fairtrade", "Fair Trade", "Fairly Traded" or other variations of spelling' and the 'contest for meaning between these terms',⁵ yet drawing on many of the high-order principles developed by what might be called the 'Fair Trade Movement', such a model would, put simply, be built around a rights-based, inclusive and environmentally sustainable approach to market engagement.

The notion of fair(er) trade cannabis is not as far-fetched as it might at first appear. A 2018 review of the cannabis market in the United States, for example, found about a dozen nationwide voluntary cannabis specific standards-setting organizations that claim to certify cannabis as 'ethical'.⁶ What this means in practice, however, varies considerably. It also highlights problems surrounding voluntary codes; challenges in (inter)national standard setting that are not unique to the cannabis market.⁷ Indeed, where appropriate this Report uses examples from other commodity sectors and, although not its core focus, also looks to what can be learned from the experiences with introducing social justice principles in the licit cannabis market within North America.

Engaging with a mix of academic, 'grey' literature and official documents on fair trade and drug policy as well as business news reports on the highly dynamic cannabis industry, this Report also draws on the outcomes of a series of workshops with a range of stakeholders, including representatives of cannabis grower associations. Events were held in Jamaica and

Colombia (August 2018), Morocco (November 2018) and London (February 2019). Building upon issues raised during discussions at the workshops in the traditional producer states, the London seminar 'Fair Trade Options for the Cannabis Market', brought together about 25 academics and practitioners from the fields of international drugs policy, fair trade, and agrarian justice. Beginning with an overview of the current situation relating to both medical and recreational cannabis, the report moves on to discuss some of the key issues pertaining to the transition from illegality for small-scale cannabis farmers. It then focuses on some of the key considerations surrounding the development of fair(er) trade cannabis markets and explores interconnected issues regarding producer, quality and standards, consumer/end-user and market, finance and trade policy frameworks. The Report concludes by highlighting a number of key issues for consideration and offers a set of key principles to help guide the promotion and development of fair(er) trade cannabis.

1. SETTING THE SCENE

The Medical Cannabis Boom

Historical records of medicinal uses of the cannabis plant go back 5,000 years in China and 3,500 years in India and Egypt. From there, it spread to the ancient Mediterranean

civilizations and to Northern Africa and gradually into Europe where it became firmly established in Western medicine halfway through the 19th century.⁸ However, over the course of the 20th century, the use of medicinal cannabis decreased substantially as more restrictive laws on the plant became commonplace in the Western world and its medicinal use was stigmatised in mainstream medicine.

Widespread and longstanding practices came under particular pressure with the passage of the United Nations 1961 Single Convention on Narcotic Drugs. This required that all traditional uses of cannabis had to be abolished within 25 years, and lists 'cannabis' ('the flowering or fruiting tops of the cannabis plant') and 'cannabis resin' under its Schedules I and IV; the latter reserved for substances with 'particularly dangerous properties' and little or no recognised therapeutic value. This stringent classification was made without a proper assessment by the World Health Organisation (WHO), the body mandated by the convention to recommend on the scheduling of substances.⁹ The WHO's Expert Committee on Drug Dependence (ECDD) recently undertook a long-overdue review of the scientific evidence relating to cannabis and its compound substances, recommending a series of changes in their current scheduling (Box 1).

Box 1: The ECDD cannabis review

With 'cannabis' and 'cannabis resin' listed under Schedule I and IV of the Single Convention, varieties of the isolated cannabinoid tetrahydrocannabinol (THC), the primary psychoactive compound of cannabis, are currently included in Schedules I and II under the 1971 Convention on Psychotropic Substances, while cannabidiol (CBD) is not listed under either the 1961 or the 1971 convention. The WHO Expert Committee on Drug Dependence (ECDD) dedicated two meetings to review scientific evidence of cannabis and its component substances in June and November 2018.¹⁰ Much anticipated, the Committee's recommendations issued in January 2019 contain some clearly positive points.¹¹ Key among these is acknowledgment of the medicinal usefulness of cannabis and recommendation for its removal from Schedule IV of the Single Convention, clarification on the exclusion of CBD from international control and the ECDD's efforts to address some long-standing inconsistencies concerning the place of cannabis, resin, extracts and (stereo)isomers in the international scheduling system. Given the active opposition of the ECDD against the medical use of cannabis in its early days, recommended deletion from Schedule IV in particular represents a long overdue correction of an historical error.

Yet, the Committee’s recommendations also reveal problematic underlying evaluation methods and scheduling procedures along with a very questionable rationale for keeping cannabis in Schedule I. Furthermore, they leave many questions unanswered regarding levels of control for different types of medical cannabis preparations. Of note within the context of this Policy Report is the Committee’s apparent preference for a limited number of very specific products patented by pharmaceutical companies over a wide array of more natural cannabis extracts with similar medicinal properties; a position recently reinforced by the International Narcotics Control Board in its latest Annual Report.¹² The potential repercussions of those more questionable aspects of the ECDD recommendations trigger legitimate concerns that merit close examination.

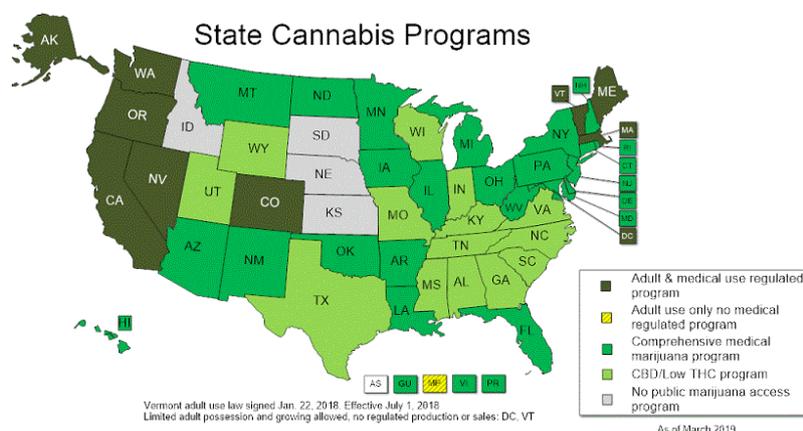
These concerns are heightened precisely because the recommendations result from the first-ever WHO critical review of cannabis and will thus set an important precedent. Permitting the questionable aspects of the recommendations to escape closer scrutiny risks not only accepting dubious scheduling recommendations now, but also acquiescing to problematic underlying evaluation methods and procedures.¹³ Opportunities for appropriate scrutiny may yet be available. It was initially expected that the ECDD recommendations would be voted on by the Commission on Narcotic Drugs (CND), the UN’s central policy-making body on the drug issue, at its March 2019 session. However, with some agreement among member states that more time was needed to consider ‘the complex domestic’ implications, consideration has been postponed.¹⁴



The 1961 Single Convention (as amended by the 1972 protocol) does ‘not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes’ and allows cannabis to be produced and used for medical and research purposes under certain conditions. The required controls include that a government agency designates the area where cannabis can be cultivated, licenses specific farmers or companies to grow it, and has the exclusive right of importing, exporting, wholesale trading and maintaining stocks.¹⁵

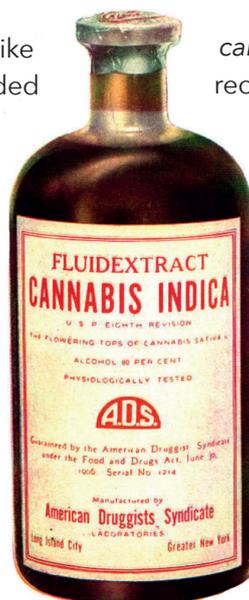
The International Narcotics Control Board (INCB), the watchdog of the UN drug control

conventions, administers an international system of estimates of required amounts of all controlled drugs for medicinal purposes, including cannabis.¹⁶ The licit use of cannabis, according to the INCB, has been increasing considerably: ‘Since 2000, more and more countries have started to use cannabis and cannabis extracts for medical purposes, as well as for scientific research. In 2000, total licit production was 1.4 tons; by 2016 it had increased to 211.3 tons.’¹⁷ Such an increase has much to do with the substantial increase in recent years in research into the use of cannabis for medical purposes and its growing acceptance beyond traditional contexts.¹⁸



Beginning with California in 1996, the medicinal use of cannabis has been legal for some time in numerous US states, with – as of January 2019 – 33 states and the District of Columbia permitting patient access. Elsewhere at the national level, the medical cannabis market has been booming in recent years; almost every month another country

joins the trend.¹⁹ Although countries like Israel and Canada might be regarded as early adopters, with cannabis for medical use permitted since 1992 and 1999 respectively, rapid expansion has been taking place across Europe (Germany, Greece, Czech Republic, Poland, Slovenia, Luxembourg, Switzerland), Oceania (Australia and New Zealand) and Latin America (Uruguay, Colombia, Chile, Argentina, Mexico, Peru, Paraguay), in spite of many shortcomings in the regulatory frameworks in place in most of these countries. This trend is now also beginning to become visible in the Caribbean, Africa²⁰ and Asia, in countries such as Jamaica, St Vincent and the Grenadines, Barbados, Trinidad and Tobago, the US Virgin Islands, India, South Africa, Lesotho, Ghana, Zambia, Zimbabwe, Swaziland, the Philippines and Thailand.²¹



American Druggists
Syndicate Cannabis
Fluidextract, 1906

cannabis/marijuana is not fit for purpose”, recommending “significant changes to the laws of the region to enable the dismantling of this regime [...] that has proven to be ineffective, unjust and caused more harm than it sought to prevent’.²³ Following in the footsteps of Jamaica, in December 2018, St Vincent and the Grenadines as well as Antigua and Barbados adopted legislation regulating medical use and decriminalizing possession and cultivation for any personal use.²⁴

This policy trend towards legal regulation is likely to consolidate and spread to more jurisdictions. However, while the medical cannabis boom is justifiable under the existing UN drug control regime, there can be no doubt that the legal regulation of non-medical markets is out of compliance with provisions of the UN drug treaties. As more jurisdictions move in this direction, treaty tensions will increase, and states will be obliged to explore options to reconcile such policy changes with their obligations under international law (Box 3).

Emerging recreational markets

Moving beyond medicinal uses, beginning with policy shifts in 2012, ten U.S. states plus the District of Columbia have now approved ballot initiatives or passed laws to regulate cannabis,²² with Uruguay (2013) and Canada (2018) implementing laws at the national level. These new regimes that legally regulate the whole cannabis market, including non-medical or ‘recreational’ uses, are contributing to fresh debate elsewhere in the world. For example, cannabis regulation is on the agenda of the new governments of Mexico and Luxembourg, and in New Zealand the governing coalition has committed to a ballot initiative by 2020 on whether to legalize non-medical cannabis. The Dutch government will be permitting local experiments in regulated cannabis production to supply the ‘coffeeshops’ where purchase and use is tolerated (Box 2), and similar experiments are also to take place in Switzerland. Within the United States, additional state ballot initiatives are being planned, and more state legislatures are considering cannabis regulation bills. In the Caribbean region, the CARICOM Regional Commission on Marijuana recently concluded that the ‘prohibitionist regime on

Enter ‘medical’ cannabis companies and investors: Colombia and Jamaica

Shifts in attitudes and subsequently in policies have generated considerable interest from the business community and pharmaceutical industry. This is especially so regarding investment opportunities within the Global South and traditional cannabis producing countries. Here a combination of lower production costs, suitable cannabis plant varieties, possible medical cannabis export opportunities and potential in-region consumer markets, for both medical and recreational purposes, has resulted in what has been referred to as a ‘Green Rush’ of investors and medical cannabis companies. Attracted to places like Latin America and the Caribbean, these are mostly Canadian. Some are well-established, many are less so. All, however, are seeking to connect actual and potential demand in emerging consumer states within the western hemisphere with

Box 2: Moroccan hashish in Dutch coffeeshops

The Netherlands has tolerated for decades small-scale cannabis sales through the well-known Dutch *coffeeshops* under strict conditions, but the so-called ‘back door’ problem—coffeeshops are supplied from the illegal market—remained an unresolved inconsistency.²⁵ Under increasing pressure from local authorities and the judiciary, the government decided to initiate a four-year ‘experiment with a closed cannabis chain’ in six to ten cities with a limited number of licensed growers under state control, meant to start in 2019. One of the difficulties the project faces is the fact that 20–25 per cent of cannabis sold in coffeeshops is imported hashish, primarily from Morocco and to a much lesser extent from Afghanistan, Nepal and Lebanon. According to the cannabis sector itself, it *‘takes years to develop a comparable product in the Netherlands that meets the wishes of the consumer’*.²⁶ Attempts to make *nederhasj* from domestic cannabis cultivation have thus far attracted few buyers and it may well be impossible to mimic the special characteristics of Moroccan hash. A recent survey also revealed that only imported hashish has a significant CBD content, on average 8.4 per cent, while local products contained less than 1 per cent CBD; the ratio THC/CBD plays an important role in reducing the risks of dependence and psychosis-like symptoms.²⁷

Excluding imported hash from the experiments and from a likely future nation-wide regulation model will thus push the comparatively least harmful product out of the coffeeshops into a parallel illegal market and will alienate a significant part of cannabis entrepreneurs and consumers, particularly within the Dutch-Moroccan community. A closed national system whereby small producers in the Rif who are now economically dependent on cannabis exports are excluded from the Dutch market is also at odds with basic principles of fair trade and development cooperation, which the Netherlands often claims to defend. The government advisory commission acknowledged the problem but reported it could *‘not discuss possible imports of cannabis from abroad, given the international legal obstacles to the production and distribution of cannabis at international and EU level’*.²⁸ The commission suggests, however, that the government could *‘develop—in cooperation with other countries—an international-diplomatic strategy, aimed at reviewing international treaties and agreements where necessary’*.²⁹ In response to questions raised in Parliament, the government responded that the *‘necessary supervision of the closedness of the chain requires that this experiment be limited to Dutch territory. This does not allow the import of cannabis and hashish produced outside the closed system. This therefore also applies to cannabis products from countries where the production is tolerated, regulated or legalised (such as Canada)’*.³⁰

supply from traditional producer states and reap the enormous profits that potentially go with it. The attraction of the what is known within the cannabis industry as LATAM is clear. An oft cited investment-oriented report noted in October 2018 that *‘The Latin American cannabis industry is developing at a rapid pace, emerging as a key region in the global cannabis market place.’* Although likely to be overblown, combining the estimated value of medicinal and recreational markets within the region, it goes on to note that *‘the market is expected to exceed US\$12 billion by 2020,*

*offering serious growth potential to global cannabis companies and investors.’*³¹ Echoing this view, a cannabis industry executive recently pointed out, perhaps optimistically, that with *‘over 500 million Spanish-speakers about to be turned on to some form of either medical or lifestyle cannabis’* the Latin American market is *‘bigger than the US and Canada combined.’*³² Around 40 licenced producers are currently operating in Latin America,³³ and especially Colombia and Jamaica make useful case studies that allow the identification of some common practices.

Having issued a law to regulate cultivation and production of cannabis for medical and scientific purposes in 2015, Colombia allows for the *'domestic distribution and global exportation of cannabis based products like oils, creams, and inhalers.'* This was part of then President Juan Manuel Santo's *'effort to reinvigorate a country still healing from decades of internal war.'*³⁴ Since then the country has grown into a key player within the fast emerging medical market, with the *Washington Post* printing a story in March 2018 titled *'Colombia looks set to become the world's leading supplier of legal pot.'*³⁵ Offering four types of licences (manufacture of cannabis derivatives, psychoactive cannabis cultivation, non-psychoactive hemp cultivation, and seeds), the country has the most advanced legal-commercial framework. By February 2019, a total of 193 licenses have been granted by the Ministry of Justice for seeds (21), psychoactive cannabis cultivation (71) and hemp cultivation (101);³⁶ additionally, the Ministry of Health has issued 91 licences for the manufacture of derivatives.³⁷ Among the many national and foreign companies, according to one September 2018 analysis of company filings, *'At least seven licenced Canadian cannabis producers have set up shop in Colombia.'*³⁸

Notable among these are Canopy Growth (which launched its Latin American division in July 2018), Alphria, which acquired all Scythin Biosciences network of cannabis businesses across Jamaica, Argentina and Colombia,³⁹ Aurora Cannabis Inc. and PharmaCielo. Other significant companies within the country include CannaVida, which is Colombian based with a Canadian Executive Management team, FoliuMed,⁴⁰ and Khiron Life Sciences. The latter, a vertically integrated set-up, was the first to be licenced for cultivation, production and distribution in Colombia and has former Mexican President Vincente Fox on its Board of Directors; a fact that helps explain the company's interest in the emerging Mexican market. Although it is currently dominated by large companies, there appears some intention among some parts of the Colombia government to encourage smaller local groups to enter the market.

One of the first cooperatives of small farmers to obtain a cultivation license was Caucannabis, an association of 63 families, based in Cauca – one of the traditional centres of illegal crops in Colombia. A news story in May 2018 reported that *'officials hope that more of the existing illegal cultivators will apply to become small or medium-sized growers in the new legal industry.'*⁴¹ And indeed, by February 2019, almost 3,000 small and medium farmers, producers and traders have been formally registered.⁴² Most of them, however, do not own their own licenses and many of them are in fact contracted to work on large company-owned plantations. As we shall see, in reality autonomous participation of small farmers in the market continues to be undermined by a range of complex factors.

Currently under-developed relative to Colombia, Jamaica is nonetheless also the home of a fast growing number of medical cannabis companies with production permitted through licences issued by the Cannabis Licencing Authority. With the current market opportunities expanding through the passage of legislation decriminalizing possession and legalising cultivation for personal use for medical and spiritual purposes in 2015, commercial enthusiasm for Jamaica is largely based upon the remarkable variety of autochthonous cannabis strains; many of which appear well suited for medical products.⁴³ Again, many cannabis businesses on the island are linked with Canadian companies and investors. Notable among these is Jamaican Medical Cannabis Corporation (JMCC), a Canadian-Jamaican medical cannabis 'provider' which, following the investment model of other companies in Latin American and the Caribbean, recently acquired a 49 per cent stake in a local company, 250-acre Kirkpatrick Farms. Located on the outskirts of Montego Bay, JMCC's involvement will result in the introduction of greenhouses ranging in size from 3,000 to 9,000 square feet and with the location becoming its largest single cultivation site.⁴⁴ Another local company, Herbs Holdings Ltd, recently received investment from the Canadian based Cannabis Growth Opportunity Corporation;

its first investment in the Caribbean.⁴⁵ Also of note is Kingston based Timeless Herbal Care (THC), which brands itself as 'Jamaica's leading medical marijuana company'. Timeless currently specialises in pain relief through its topical rub product, although it is, like other companies, engaging in clinical trials.⁴⁶ And herein lies a fundamental challenge. While companies like Timeless and JMCC may produce and export cannabis derived products, and in the case of the latter extend partnerships to expand global distribution potential,⁴⁷ the development of medical grade products suitable for widespread export remains an ongoing project. It also represents one part of an emerging - and highly complex - international trading system in medical cannabis; a nascent system that also highlights the increasing tensions around regulated markets for recreational cannabis use.

The emerging international cannabis trade: Opportunities and legal barriers

Trading relationships between traditional producer countries like Jamaica and large medical cannabis markets in nations such as Canada are already being developed. Providing companies can secure the appropriate import and export permits and national authorities adhere to the stipulations laid down in the UN treaties and overseen by the INCB, international trade for medical cannabis 'products' (a definition that ultimately relies on the individual requirements of importing states, including as discussed below in relation to Good Manufacturing and Agricultural Practice) is perfectly permissible.⁴⁸ For example, while perhaps an overestimation on the part of Colombian authorities, Colombia's production-export quota for 2018 as submitted to and agreed by the INCB would see the country supplying 44 per cent of the world's authorized



Illicit cannabis cultivation, Jamaica. TNI/Martin Jelsma August 2018

use; a figure that equates to 40.5 metric tons of dried flower for conversion into derivatives. While by May 2018 ten companies within Colombia had been given cultivation quotas in relation to production for this export target,⁴⁹ few managed to start up production that year and hardly anything was actually exported. The underused Colombian quota for 2018 in the INCB administrative system was therefore transferred to the following year.

That said, as with other producer/exporter states, investor enthusiasm⁵⁰ should also be accompanied by an appreciation of the uncertainties that still surround the nature of the market, particularly in relation to the regulations of importing countries. For instance, precisely how Health Canada - currently a key target 'customer' for medical cannabis - will regulate imports remains unclear. Furthermore, other potentially important export destinations like Germany and Australia have not yet announced if they will open their markets to Colombian exports.⁵¹ With trade in medical cannabis products to the US highly restricted,⁵² it also seems likely that countries like Colombia

will look to markets in Latin America, particularly Mexico, Peru and Argentina as well others in Europe, including Italy and Croatia.⁵³ Indeed, while some industry insiders see the recent WHO recommendations (see Box 1) as a trigger to increase global demand for cannabidiol (CBD),⁵⁴ an ongoing barrier to export remains importing states' legitimate concerns around necessary medical grade quality.

Recent months have seen a burgeoning export trade to Canada in products for analytical testing; 'a move meant to show that the cannabis grown in South America is "top quality"'. For example, in September 2018 the first shipment of medical cannabis oil, cultivated and extracted in Jamaica, to Canada was made by Timeless having been awarded import and export permits by Health Canada and the Jamaican Ministry of Health respectively.⁵⁵ A few months later in Colombia, Ecomedics S.A.S., who operates Clever Leaves and is backed by U.S.-based investment firm Northern Swan, has also obtained all the necessary approvals to, for the first time, legally ship cannabis - in this case dried cannabis flowers - to Canada.⁵⁶ A similar arrangement has been brokered in Africa by a Lesotho based producer.⁵⁷

Amidst the often excited discussion of an emerging, albeit gradual but potentially

extremely lucrative, international trading system for medical cannabis, there remains an assumption that profits will soon jump dramatically with the inevitable opening of cross-border trade with existing and future regulated recreational cannabis markets. Indeed, as alluded to earlier, this expectation is fuelled by the tendency of market analysts to conflate the potential of medical and recreational ('lifestyle') markets. Nevertheless, without some form of accommodation under international law, international trade in cannabis between regulated jurisdictions for non-medical purposes will be very difficult to legally justify. And to chart a way forward that is line with international law discussion is currently underway to explore the option of an '*inter se modification*' agreement between several like-minded countries (Box 3). While perhaps still sometime away, this would not only resolve the legal conflict of their domestic cannabis regulation frameworks within the parameters of the UN treaties, but would also legitimize international trade in cannabis products for non-medical purposes between parties to the *inter se* agreement. Until such a mechanism is put in place, however, legal trade in cannabis for recreational purposes will be impossible and states are highly unlikely to engage in any form of transnational commerce.

Box 3: *Inter se* treaty modification

Several possible routes are available for states with regulated markets for recreational cannabis use to reconcile domestic legislation with their commitments under the UN drug control treaties. With treaty tensions mounting, one option stands out as a legally legitimate and politically feasible way forward: the '*inter se*' procedure provided for by the Vienna Convention on the Law of Treaties. Under an *inter se* agreement, a group of like-minded countries could collectively create a new sub-treaty framework just for cannabis and modify their obligations under the drug control conventions with effect among themselves alone. This approach would allow pioneering countries to build a platform for regulated cannabis that more countries could join over time. This would enable progressive reforms on the country level, while not undermining international law. Crucially, an *inter se* agreement could also open the possibility of international trade between regulated licit markets, enabling small-scale farmers in traditional cannabis producing countries in the Global South to participate in transnational commerce at both global and regional levels.⁵⁸

2. TRANSITIONING OUT OF ILLEGALITY

The policy trend towards regulation, both in terms of medical cannabis and further down the line more widespread recreational use in a range of jurisdictions, potentially opens opportunities for small farmers to shift towards the rapidly expanding legal market. Moreover, it would only seem fair that those who endured supplying the illicit cannabis market, those who were most affected by the ‘war on drugs’, and those who in many ways paved the way for these policy changes, should be first in line to benefit from the emergence of licit spaces in the market. Those trying to transition out of illegality, however, face huge difficulties due to a combination of the legacy of criminalisation and legal and administrative barriers to entry. Conquering and protecting spaces for small-scale farmers in traditional producing countries within the current overheated and highly competitive global cannabis market dynamics will require affirmative action and well-designed legislative and market strategies. And, while not the core focus of this policy brief, the same holds true for black and Latino communities in the U.S. or for ethnic minorities elsewhere that have been disproportionately affected by drug law enforcement.

Such a dynamic is summed up well by the CARICOM Marijuana Commission when noting, ‘*Embracing cannabis/marijuana as a means of economic development is not without its challenges.*’ Adding more detail, it continues by stressing, ‘*A serious concern is that a new system could place economic power and benefit too much in the hands of large, foreign business concerns, to the detriment of several stakeholders, including small farmers [...] cannabis has fuelled important economic gains and livelihoods for small farmers and traders, who now fear that liberalisation and legalisation might dis-empower them*’.⁵⁹ Those concerns have been echoed by others, especially in the Caribbean. Opening the 2018/19 State of the Nation Debate in the Jamaican Senate, for example, Government Senator Kerensia Morrison said:

Our small farmers, the little man, must not be left behind on this lucrative ganja ship.

*It is very important that ordinary Jamaicans are not marginalised as we capitalise on the benefits of the ‘Green Gold’ that is the emerging medicinal ganja industry. Small traditional ganja farmers, the same ones who were persecuted and who bore the full brunt of the law, the same ones who first believed in the power of the herb, the same ones who were seen as worthless and as criminals, must not be pushed aside by those who never believed in it, but who today have the big bucks to get into the industry. [...] The small farmer, the bushman, the Maroons, the Kumina practitioners, the Rastas who have long considered the holy herb as sacrament, must not be alienated now that the world has embraced it. They too must be the face of the reward from cannabis. We ought to create a niche for them, include them in the discussions, include them in a regulated framework where they can be trained in standards and monitored as per the requirements of the law and licensing authority.*⁶⁰

Traditional and subsistence cannabis cultivation

Ancestral traditions of medical, cultural and ceremonial uses of cannabis were widespread across Asia, Africa and the Middle East and were brought over to the Americas by the Spanish conquest,⁶¹ the massive slave trade from Africa and migration from India, China and the Middle East. Cannabis preparations also became firmly established in Western medicine halfway through the 19th century.⁶² As noted earlier, all these practices came under pressure after the 1961 Single Convention on Narcotic Drugs. In several countries, like Morocco, India and Pakistan, in spite of the introduction of harsh drug laws, cultural traditions and religious uses managed to survive until today due to a combination of broad social acceptance, informal tolerance and non-enforcement practices.

In the 1960s and 1970s, cultural revolutions in North America and Europe increased northern demand and illicit cannabis cultivation to supply those new markets rapidly expanded in the traditional production areas as well as in new

export countries like Mexico, Colombia, South Africa, Jamaica and some other Caribbean countries. This trend accelerated in part due to the impact of neo-liberal economic adjustment and free trade policies. The expansion of extractive industries and the end of commodity agreements that regulated international trade in raw materials through an export quotas system - with the aim of preventing excessive price fluctuations and stabilizing international commodity markets - had dramatic impacts that in some cases directly contributed to significant increases in illicit cultivation.⁶³

In Jamaica, for example, what might be regarded as the invasion of multinational bauxite companies displaced many small farmers from their lands; over 300,000 Jamaicans emigrated in the 1960s and 1970s to the UK, U.S. and Canada.⁶⁴ Many others 'migrated into illegality', squatting plots of lands to grow *ganja*, as it is known on the island. Subsequently, the dismantling of the EU-Caribbean preferential trade agreement for bananas led to a further increase of cannabis cultivation in Jamaica and on the Windward Islands, especially Saint Vincent and the Grenadines and Saint Lucia. The Eastern Caribbean banana industry has historically been dominated by small-scale, family-run banana farms, unable to compete in a free market with the giant plantations in Central and South America.⁶⁵ A European Commission memo warned in 1997 that such a shift 'would lead directly to the destruction of the Caribbean banana industry and would consequently provoke severe economic hardship and political instability in a region already struggling against considerable difficulty and deprivation', and that the 25,000 banana producers in the Windward Islands 'will look for alternative sources of income.' 'Unfortunately,' it concluded, 'the most obvious replacement for bananas is drugs.'⁶⁶ Over the following decade, the preferential banana regime was gradually dismantled and—as predicted—many banana growers shifted to cannabis. 'Marijuana is the new 21st century banana,' St. Vincent Foreign Minister Camillo Gonsalves said in 2014, and local growers confirmed that *ganja* 'has schooled children, built homes and allowed residents to survive the economic fallout from the once profitable banana industry.'⁶⁷

With such an environment, the expanding global cannabis market has served for many as a safety net in the face of shrinking other viable economic livelihood options. It is impossible to estimate how many small-scale farmers in the Global South nowadays depend on illicit cannabis cultivation to make ends meet. The United Nations Office on Drugs and Crime (UNODC) does publish annual estimates on opium poppy and coca cultivation based on its crop monitoring programme, but has been cautious to provide estimates for cannabis due to a lack of reliable data. An early attempt in 1999, estimated that the 'total global areas where cannabis plant is cultivated and/or grows wild may range from 670,000 ha to 1,800,000 ha'.⁶⁸ Primary sources in the Global South have been Afghanistan, Albania, Cambodia, Colombia, Jamaica, Kazakhstan, Lebanon, Morocco, Mexico, Nepal, Nigeria, Pakistan, Paraguay, South Africa and Thailand. Over time, import-substitution domestic cultivation and home-growing for personal use expanded in the U.S., Canada, the Netherlands, Spain and others.

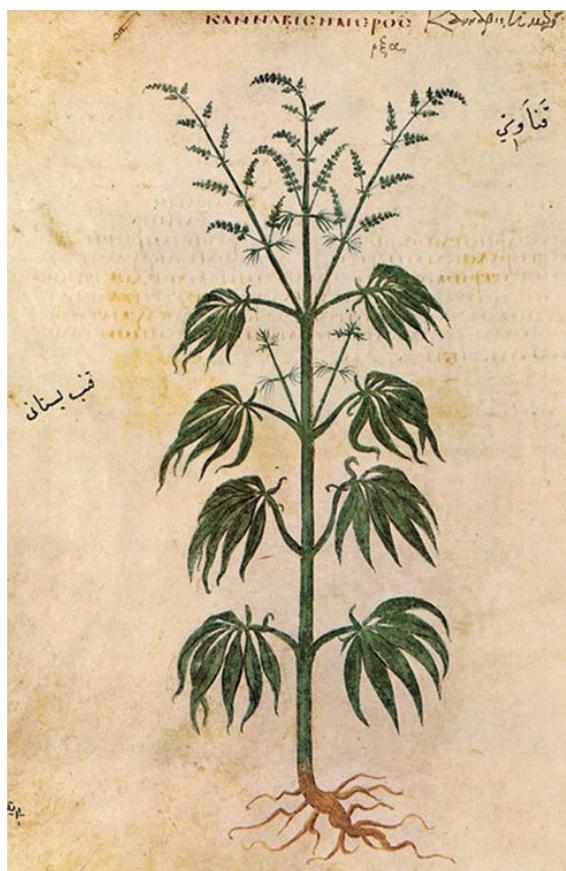


Illustration from the 512 AD Vienna edition of *De Materia Medica* by Pedanius Dioscorides (40–90 AD). Collection Hash, Marihuana & Hemp Museum Amsterdam/Barcelona



Drying of harvested cannabis, Rif, Morocco. TNI/Pien Metaal July 2009

In response to UN General Assembly resolution 59/160 requesting a global cannabis market survey, UNODC published its best guesstimates in a special chapter of the 2006 *World Drug Report* (WDR), arriving at global production figures for 2004 of 45,000 metric tons of cannabis herb and 7,500 metric tons of cannabis resin. But the main conclusion was that *'few Governments can confidently give an estimate of the scale of cultivation in their own countries. [...] Even if the number of hectares under cannabis were documented, there has been little study of how much drug product these fields would yield. As a result, global production estimates remain highly tentative.'*⁶⁹ The 2009 *World Drug Report* mentioned a range of 200,000–641,800 hectares, based on global production estimates of cannabis herb in the range of 13,300–66,100 metric tons and of cannabis resin from 2,200–9,900 metric tons.⁷⁰

Since then, UNODC has avoided global production estimates and merely points out the high levels of uncertainty as cannabis can be grown – indoors or outdoors – in almost every country in the world, and only provides selected examples of cultivation estimates and data on eradication and seizures to illustrate the magnitude of the market. Examples given in the WDR about widely varying national estimates include the U.S., where official estimates vary by more than a factor of six, underscoring the fact that even well-resourced countries with sophisticated monitoring systems struggle to come up with credible estimates of the

extent of domestic cannabis cultivation.⁷¹ Big unknowns are also major countries like Russia (which claims that 70 per cent of cannabis consumption is from local cultivation), India (with widespread surviving ancient cannabis traditions in several States) and China.

A rarely-reported case is Kazakhstan, the alleged Central Asian birthplace of cannabis more than 10,000 years ago, where a local cannabis culture including the use of fibre in textiles and traditional medicinal and social uses is still vibrant today. Data collected in a 1999 UNODC survey indicated the presence of 330,000 hectares of largely wild-growing cannabis across the country mostly with a low THC-content of up to three per cent.⁷² Government authorities more recently estimated the amount of wild and cultivated cannabis in the Chui valley, the country's main production area, at 140,000 hectares.⁷³ Up to two-thirds of the valley's inhabitants may be involved in harvesting cannabis herb or resin for local uses and export to the rest of Central Asia and Russia. Dariga Nazarbayeva, former deputy Prime Minister, Member of Parliament and daughter of President Nursultan Nazarbayeva, called for changing the attitude to cannabis: *'How many years have our law enforcement agencies been fighting against cannabis growing in the Chui Valley, how much budget money has been spent on these efforts, is it at all effective, shall we ask? Today, maybe it is time to actually use this cannabis growing in the wild for good purposes, for medical purposes, with a view to develop the national economy?'*⁷⁴

In Morocco alone, despite declining cultivation from an all-time high of 134,000 hectares in 2003 to around 47,000 by 2013, an estimated 90,000 households (or 760,000 people) depend for their livelihoods on cannabis cultivation, according to figures cited by the interior ministry; other observers have estimated figures of around 140,000 households.⁷⁵ According to an earlier UNODC survey, *'the total gross farmers income from cannabis cultivation is estimated at about US\$325 million. Based on an estimate of some 804,000 persons benefiting from cannabis cultivation in the Rif region, this represents a gross per capita income of US\$400, well below the country's overall 2003 GDP per capita of US\$ 1,478.'* *'Clearly,'* the survey notes, *'cannabis production in Morocco is the recourse of poor farmers, who do not make a great deal off the trade.'*⁷⁶

From extrapolating the estimates of farming households in Morocco to considering the wild guesstimates of global production, as well as adding in day labourers involved in harvesting and so on, it is safe to say that illicit cannabis cultivation represents an essential survival economy for many millions of people in the Global South.

Barriers to entering the licit market

As the market continues to emerge and find its shape in the Global South, portents of the future can already be identified in the Global North. Difficulties encountered in overcoming the legacy of prohibition are being documented in the U.S. and even in states that - engaging with the concept of social justice - intended to give preferential access to those who had been involved in supplying the illicit market. For example, protecting small-scale farmers was part of the campaign for Proposition 64, which was approved by 57 per cent of Californian voters in November 2016. The measure called for no cultivation sites larger than one acre until 2023; a measure intended to *'ensure the non-medical marijuana industry in California will be built around small and medium sized businesses by prohibiting large-scale cultivation licenses for the first five years.'* The implementation of regulations, however,

allowed operators to receive an unlimited number of licenses for smaller grows, creating a loophole in which they could bundle licenses to set up large farms.⁷⁷ The *California Growers Association* has called attention to the many barriers to entry to the legal market, estimating that in February 2018 only 0.78 per cent of the existing 68,150 small growers in the state had been able to obtain a license.⁷⁸

The fact that many state regulations ban people with drug-related felony convictions from working in the cannabis industry, which mainly affects people from black and Latino communities, has triggered calls for affirmative licensing laws *'that prioritize frontline communities and communities that are most impacted'*.⁷⁹ At present, however, only a very small percentage of cannabis businesses in the U.S. are owned by minorities, and it has been persuasively argued that *'there should definitely be social equity opportunities that allow those hit hardest by the war on drugs to be first in line to benefit.'*⁸⁰ A case is even made for 'drug war reparations', because *'It's a cruel footnote to the story of the plant's legalization that punishment for past involvement with cannabis can remain a bar to entry in the lucrative newly legal industry.'*⁸¹ With this in mind, San Francisco, Los Angeles, Oakland and Sacramento are now pioneering social equity programmes that prioritize licenses for people with low incomes who have lived in an area ravaged by the 'drug war', and that help them expunge the records of past drug crime convictions.⁸²

Some within the medical cannabis industry are also beginning to adopt a similar perspective and are highlighting a complete lack of engagement with the topic by the sector. *'You can go to a cannabis investment conference and no one is talking about the fact that just down the road there are people who are incarcerated for smoking or dealing or growing this very same product,'* said investor Ryan Ansin in 2017. *'To entirely leave that out of an investment conversation is fundamentally wrong,'*⁸³ he stressed. Writing a year later about the greedy attitude he witnessed around him in the emerging commercial sector, Ansin put forth a 'Cautionary Tale for the Cannabis Industry' and

recounted how the ‘frenzy’ around potential profits leads big players to build a “war chest”... to defend their companies’ dominance on the path to becoming the gorilla to dismantle early movers.” With this in mind, he appeals to his co-investors in the industry by saying: “I certainly did not light the spark that allowed me to monetize cannabis legally, and I’d bet most of you reading this did not either. Someone did. Carry the torch with intention to thrive, but not to set flame to others.”⁸⁴

Alternative Development with cannabis

Small cannabis growers in the Global South face very similar, if not worse, obstacles to conquer a place in the licit market. Several countries have expressed their interest in using the rapidly opening licit spaces in the global market as an ‘alternative development’ opportunity for small farmers currently producing for the illicit market, as a more viable alternative compared to failed ‘crop substitution’ projects in the past. In fact, during the negotiations during the late 1950s for the 1961 Single Convention, there was some recognition that the treaty obligation to eliminate illicit cultivation required the provision of alternative livelihood options for the involved communities. Morocco for example, having just gained independence, drew attention to the problem ‘that thousands of people had for years been living on the cultivation of kif, and it was their main source of livelihood’ and requested the international community for development assistance.⁸⁵

While ‘alternative development’ became a major issue for debate at the UN level for coca and opium poppy, only a handful of such projects have been set up for cannabis farmers. These have been in Lebanon, Morocco (see below), Indonesia and the Philippines, although none have been successful. Repeated calls, especially from African countries, to the international donor community for more development investment in this area have fallen on deaf ears: no-one really believes it could work in the case of cannabis nor does it rank high on the political agenda. The recent regulation trend, however,

offers a whole new perspective on providing licit alternative livelihood options for farmers currently involved in the illicit cannabis economy.

For instance, a pilot project with rural communities has recently been initiated in Jamaica, representing an important first attempt to utilize the opening of licit spaces in the global cannabis market as an economic opportunity for small-scale farmers currently producing for the illicit market. The Cannabis Licencing Authority (CLA) introduced in May 2016 a tiered licensing system for medical ganja, meant to ‘enfranchise the small farmers who had previously been subject to significant punitive action by law enforcement agencies’.⁸⁶ Jamaican Prime Minister Andrew Holness announced that the government will in the first quarter of 2019, ‘unveil a development programme for farmers in the ganja sector [...] to ensure the small farmers in the sector are protected as the global marijuana industry expands. [...] because it is a real fear that as that industry emerges, becomes more corporatized, that the original ganja man, the original farmer, could very well be left out of the gains and the benefits.’⁸⁷ The CLA ‘Alternative Development’ project is being developed in collaboration with the Westmoreland Hemp & Ganja Farmers Association and the St Elizabeth Maroon community and is ‘geared towards transitioning current illicit ganja farmers into the legal regulated industry.’⁸⁸



Banner of Jamaican farmers association. TNI/Martin Jelsma August 2018

Box 4: SVG Amnesty Law

On December 11, 2018, the parliament of Saint Vincent and the Grenadines approved two pieces of legislation around cannabis: the *Medicinal Cannabis Industry Bill 2018* and the *Cannabis Cultivation (Amnesty) Bill 2018*, establishing a legal medical cannabis industry. The Amnesty Bill is designed to help transit small farmers who have been illegally cultivating and trading cannabis to a legal status as licensed growers of medicinal cannabis:

'AN ACT to provide for the grant of an amnesty, for the period commencing on August 01, 2018 and ending on July 31st, 2019 or such further period as the House of Assembly may determine by resolution, to persons engaged in the cultivation of cannabis, contrary to section 8 of the Drugs (Prevention of Misuse) Act and any other relevant enactment, who may otherwise be liable to criminal prosecution for certain criminal offences and other proceedings under that Act or any other relevant enactment in force'⁸⁹

During this period farmers can hand in their cannabis harvests to a government agency, the Cannabis Authority, or sell it to a foreign or local company licensed to produce and market end products for medicinal purposes. According to Junior Spirit Cottle, a traditional grower and longstanding advocate of law reform on the island, the amnesty bill *'is intended to put some well needed monies in the hands of the traditional cultivator by allowing him/her to legally sell his existing crop and to cultivate cannabis for one year to sell to exporting investors for the extraction of oils for medicines'*.⁹⁰ Those who surrender or sell their crops will not be prosecuted, and they can apply for a license to start producing for the newly created licit medical cannabis market.

The estimated 2,000 farmers can all qualify for a license with or without cannabis in their possession during the amnesty period, as all others that were previously involved in the illicit trade, as long as they register and provide all the information to the Cannabis Authority. Once a person enters this legal market, growing ganja on a maximum of 5 acres, they themselves have to sell their ganja to medicinal cannabis companies, and all will depend on their success or failure to establish these business links. The government will facilitate practical assistance and advice, but not be responsible for the individual success. The new legislation intends to comply with the provisions of the UN treaties and the government is aware that the illegal recreational market will not disappear. Licensed farmers who also produce for the recreational market will not just lose their license, but will also be criminally prosecuted.

The possession of land to qualify as a licensed grower is one of the biggest challenges to this cultivation act, because most cannabis is actually grown on so-called crown land. As Spirit has said, *'the playing field is not a level one, because foreigners, the investors, have the money [and] the growers, they don't have lands'*.⁹¹ To address the issue, the government has announced its intention to repossess and distribute up to 3,500 acres estimated to be suitable for this purpose. At the same time, Prime Minister Ralph Gonsalves underscored that stakeholders should manage their expectations: *'there is not a pot of gold at the end of the metaphoric medical cannabis rainbow. You have to work hard and smart, in this competitive business'*.⁹²

Several other countries that recently allow the use of cannabis for medicinal purposes, attempt to introduce preferential access schemes for existing small farmers. The medical cannabis regulation introduced in Colombia in 2017, for example, requires licensed companies to acquire, in the first five years, at least 10 per cent of their raw

cannabis material from small farmers.⁹³ In Thailand, legislative changes adopted in December 2018 legalise medical uses of the cannabis and kratom plants - including traditional uses - and intend to *'sustainably improve the quality of life for Thailand's highland communities'*.⁹⁴ Referring to the medical cannabis programme, Justice

Minister Prajin Juntong assured that *'all benefits will go to the Thai people and the country'*.⁹⁵ In February 2019, a limited amnesty law was approved to pardon patients and researchers convicted of cannabis possession.⁹⁶ The *Medical Cannabis Industry Bill* approved in Saint Vincent and the Grenadines in December 2018 specifically aims to *'also promote the development of medical cannabis projects with traditional cultivators who may require such assistance as a substitute mechanism for the growth of illicit cannabis'*.⁹⁷ The bill was accompanied by an amnesty law, specifically designed for traditional farmers (Box 4).

None of these initial attempts, unfortunately, have yet proven to enable local small farmers to genuinely overcome the difficult hurdles to enter the competitive global medical cannabis market, while private foreign companies – sometimes with the assistance of local politicians with business interests – stand ready to invade and capture these market spaces with millions of dollars to invest.⁹⁸ Despite perhaps good intentions and public facing protestations concerning engagement with local communities,⁹⁹ the track record of many medical cannabis companies currently operating in places like Jamaica and Colombia has fallen far short of commitments made (Box 5).

Box 5: The Green Gold Rush in Colombia

Medical cannabis became legal in Colombia with the adoption of Law 1787 in July 2016, and several decrees were published the following year describing in detail the requirements for obtaining the different types of licenses for research, cultivation, processing and export.¹⁰⁰ It coincided with the peace accords with the FARC which included agreements on agrarian reform and development assistance to conflict areas with high presence of illicit cultivation. The special substitution programme that was established, however, was only applied to coca cultivation, leaving the opening of the medical cannabis market as the only available opportunity for communities involved in illicit cannabis cultivation. A special provision was included in the regulation that required medical cannabis companies to obtain at least 10 per cent of their raw material from small growers. High expectations regarding market forecasts, political changes, the ideal climatic conditions for cultivation and comparatively very low production costs, triggered a Green Gold Rush attracting foreign investments. It has been called the second *'Bonanza Marimbera'*, referring to the period 1975–85 when cannabis cultivation first exploded and illegal exports to the U.S. gave birth to the first organised drug trafficking gangs in Colombia.

Incoming foreign companies speculating on the export potential of Colombian medical cannabis production struggled to connect with the local reality of the illicit cannabis survival economy that had developed in the midst of an armed conflict, which had obviously not provided favourable conditions for creating a culture of sustainable organic production or strong community organisation. Early big movers like Canadian companies PharmaCielo and Khiron applauded the principles of including small farmers and contributing to the peace process, promising to uphold high ethical standards for their Colombian investments. But confronted with the complexities on the ground, most companies opted for setting up their own cultivation sites and simply contracting some local farmers as day labourers to 'comply' with the 10%-rule the government regulation required, instead of investing in partnerships aimed to strengthen the capacity of local farmers to transition to the licit market on their own terms. Also, many of the local initiatives that initially emerged and obtained licenses have been bought up by foreign companies to get a foot in the door and to profit from local knowledge, contacts and license agreements. In the midst of these difficult and highly competitive circumstances, attempts are still ongoing to establish genuine partnerships and profit-sharing arrangements with local cannabis growing communities.

3. DEVELOPING FAIR(ER) TRADE CANNABIS MARKETS

Mindful of the intricate, cross-cutting and complex nature of the commercial and legal environment, some of the key areas of consideration for the development of fair(er) trade markets can be organised in terms of a set of interconnecting frameworks.

Producer framework

a) Empowering producers through inclusive business models

Key to developing fair(er) trade options for the cannabis market will be to find ways in which growers of cannabis, particularly those from traditional growing communities, those who have grown cannabis within illicit economies largely as a survival strategy and those who have suffered most from repression, criminalisation and social stigma, can take advantage of the opening up of the legal cannabis market. Despite the formal shift away from illegality in those countries that have undergone cannabis policy reform, both in relation to medical and recreational markets,

as we have seen it can remain difficult for the voices of cannabis growers to be heard. A focus on empowering cannabis growers and workers within the market, however, can be a powerful step towards overcoming these barriers.

In this respect, both positive and negative lessons can be learned from other sectors. In the food and agricultural sector, for example, much attention has focussed on the development of 'inclusive business models.'¹⁰¹ These can span a range of different structures from joint ventures, to farmer/producer owned enterprises, to Fair Trade initiatives, amongst others (Box 6). They stand in contrast to general commodity markets where farmers/producers are simply seen as the providers of raw materials in a linear input-output process. Rather than producers automatically occupying the lowest end of the supply chain where the least value is captured and where terms and conditions are dictated by those higher up, inclusive business models focus on how producers can become engaged in processes of value addition, have greater democratic control and decision making power, and become advocates for themselves.

Box 6: Inclusive business models

Inclusive business models differentiate themselves from more standard business practice according to the ways in which ownership, voice, risk and reward are shared between the business partners.¹⁰² As a general principle, ownership is more broadly distributed across partners, with business partners having a greater say in decision-making structures, while risks and rewards are also more evenly shared. The exact form this takes can vary enormously. A few examples of more specific types include:

- **Joint ventures:** involve the establishment of a business venture by two independent market actors who enjoy co-ownership of the venture through a shareholding agreement. These can allow producers to influence price policy, access corporate information, receive dividends and generally exercise greater decision-making authority.
- **Producer owned enterprises:** involve the setting up of a licensed company in the name of the members which is used for trading, making joint purchases, holding assets, and for representing the interests of their members. Often this means registration as a cooperative, although this can also be complemented by other structures through the formation of Trusts and Associations.
- **Fair Trade initiatives:** involve a guaranteed minimum price for producers and a social premium which is paid by the consumer in order to be invested in community development projects, education, and training. Official Fair Trade initiatives are certified by a third party auditor in order to receive and be marketed under the Fair Trade label.



Banner indigenous cannabis cooperative, Cauca, Colombia. TNI/Martin Jelsma June 2017

An essential element of empowering producers is encouraging the formation of cannabis cooperatives and growers' associations. By pooling together resources, technology, and knowledge, it is possible for producers to retain a degree of independence and have greater influence within the market. It can allow them to make joint purchases of land, buildings and equipment that would otherwise be too expensive for any single producer, or to navigate complex regulations and standards collectively.

There are already various examples of such cannabis cooperatives having formed, operating according to different models, depending also on the legal context. In Uruguay, for example, user cooperatives that collectively grow cannabis for personal consumption are fully recognised, with between 15–45 users allowed to group together to grow up to 99 plants together. By February 2019, 114 cannabis clubs with a total of 3,450 members have been officially registered.¹⁰³ As noted above, in Colombia's complicated Cauca department, a

group of indigenous Nasa has formed a cultivation and production cooperative 'Caucannabis'. While not without its problems, they recently obtained the support of the community elders and the cooperative is now integrated in the long-term development plans of the indigenous community. Also in Canada, a cannabis co-op has been formed in the province of British Columbia following concerns that Canada's new cannabis legalization framework is excluding small producers with established know-how.¹⁰⁴

Empowerment strategies do not however begin and end with cooperatives. There are many growers for whom accessing land or meeting the high standards required for supplying the legal market are still far beyond reach, even when grouped together as a cooperative. They will need supportive public policies, investments and technical assistance in order to succeed (see below). And there are also plenty of examples of cooperatives that have failed or that have employed top-down decision-making structures, making it important not to fetishise them as a panacea to deeper rooted social, cultural and economic problems.

b) Cannabis workers and the need to guard against forms of labour and sexual exploitation

An often overlooked - but crucial - aspect if one wishes to develop fair(er) trade options for the cannabis market is that of the status of cannabis workers and the role of women. Yet cannabis workers are in fact often amongst those most at risk of abuse and exploitation. In examples from the illicit market, cannabis workers report '*pervasive wage theft, sexual harassment and assault, discrimination, unsafe housing and exploitative working conditions*' while cannabis '*farm owners use threats and acts of violence to improve productivity, silence dissent and even hold workers hostage*'.¹⁰⁵ This is not surprising given that farm and agricultural work is one of the most exploited, unsafe and least protected labour sectors in general, and risks of exploitation and harm are arguably higher in the cannabis sector given its largely illegal nature and the involvement of criminal groups.

The scale of the challenge is not to be underestimated. Drawing on official government sources, a 2004 study in Brazil estimated that there are 40,000 rural workers labouring on illicit marijuana plantations in the Submédio São Francisco region. Of these, around 10,000 are children and young people. Repression, subordination, exploitation and precarity are the norm:

*Working conditions for these workers, including children, youth and adults, are precarious. Workers eat in the field, heating up their food with whatever means are available, or providing food by hunting. Water is quite rare in the region, and is consumed in unhealthy conditions. These workers live in a situation of insecurity: at any time, another group might want to occupy the plantation area, or there could be a police operation and they could run the risk of going to jail, or worse. Under these conditions and over many years, these people produced the biggest marijuana plantations in Brazil.*¹⁰⁶

Dealing with these profound inequalities and conditions of marginalisation will require much deeper-seated interventions than can be discussed here. It points, however, to the urgent need to address class and racial divisions and the position of different groups within society. This will include also examining seriously the gendered division of labour within cannabis production that has been observed. Case studies have found that generally speaking, men perform more heavy labour manual tasks as well as more visible parts of the business, such as upfront sales, while women, for the most part, are more 'behind the scenes', working in the garden, trimming, or preparing other types of cannabis related products.¹⁰⁷ Being sensitive to these differences is essential when developing adequate protections against labour and sexual exploitation.

It is important to be aware here that simply legalising the market does not make these issues go away and that a deeper commitment to ensuring workers' rights – such as would be expected from a fair(er) trade cannabis market

– will require actors to seek out successful examples of fair labour practices, such as worker driven social responsibility as opposed to only corporate social responsibility models.¹⁰⁸

c) Supporting producers through development assistance, training and investment

Many cannabis producers, especially those living in the Global South, come from marginalized communities or live in drug producing regions characterised by a number of development deficits; deficits that themselves often lead to engagement with the illicit market due to a lack of other viable – and legal – alternatives. Developing fair(er) trade options for the cannabis market will therefore require, as part of building a resilient producer framework, prior investment and a longer-term commitment to supporting regions and communities that have been previously marginalised or even repressed. This will include things such as:

- *Securing access to land:* This should involve not just individual land titling programmes but also, where appropriate, recognition of customary, collective, and other legitimate land tenure rights. In contexts with a high degree of land concentration and rural poverty, access to land should be facilitated through processes of (re) distributive land and agrarian reform.
- *Investing in infrastructure and public goods and services:* Given that many producers live in remote areas that lack good transport connections and essential public goods such as water and electricity, it is important that investment targets these areas for sustainable development.
- *Providing technical assistance and training:* Producers should be supported in capacity building and skill development programmes in, for example, appropriate growing techniques, environmental conservation, preserving unique local strains of cannabis, marketing opportunities and so on.

Quality and standards framework

The possibility to develop fair(er) trade options for the cannabis market will rely, in part, on the setting up of an appropriate quality and standards framework that can meet the needs of the medical and non-medical market as well as grant opportunities for growers and growers' communities. This is not an easy task given that quality and standards framework for the medical market (which differ according to the country or region of import) are complex and rigorous, with requirements for production to align with Good Manufacturing Practices and the needs of the pharmaceutical industry and ultimately medical authorities within 'consumer' states. Consideration must also be taken in relation to the less onerous, but still in some ways challenging standards relating to Good Agricultural Practices.

a) An overview of GMP and GAP standards

Good Manufacturing Practices (GMP) are the practices required to adhere to guidelines recommended by agencies that control the authorization and licencing of the manufacture and sale of a range of products for human consumption or use, including food and beverages, dietary supplements, Active Pharmaceutical Ingredients (API), drug products and medical devices. The guidelines system provides minimum requirements that a manufacturer must meet to ensure that products are of a consistently high standard across production runs with the aim of preventing harm to the end user.

In many countries GMP guidelines correspond with specific pieces of legislation and national regulatory agencies enforce domestic requirements. In Canada, for example, medical cannabis is overseen by Health Canada's Health Products and Food Branch Inspectorate and in Australia by the Department of Health, Therapeutic Goods Administration.¹⁰⁹ However, many countries follow comparable approaches because they have modelled their standards on those set by the WHO. For example, the European Union's GMP (EU-GMP) standards are comparable to those in Canada and Australia.

While jurisdictional variations remain, some common high order GMP principles apply to the manufacture, testing and quality assurance of both medical and – although currently within a more complex legal setting – recreational cannabis. In general, the GMP regulations have the following core objectives:

- Consistent product quality
- Avoidance of any kind of contamination
- Traceability and diligent record keeping

The broad parameters of GMP further contain a range of specific standards relating to herbal processing, cannabis extraction, production of API and final product manufacture.

With GMP certification essential for market access in the EU, medical cannabis producers from The Netherlands and Canada have made compliance with EU-GMP a priority.¹¹⁰ In a classic example of a multiplier effect, the GMP consulting industry has also grown to help navigate the bureaucracy around the securing of certificates.¹¹¹ Indeed, the production processes and associated administrative frameworks required for GMP standards present a major challenge for small-scale growers in the Global South who hope to compete in the legal international markets.

Regarding GMP for recreational cannabis, in Canada permissions once again come from Health Canada. To the south, however, the situation remains somewhat unclear. This is particularly so in the U.S. where, as with medical cannabis, prohibition by the federal government has made the safeguarding of safety and quality a state matter. GMP export certification is currently not an issue due to the limitations imposed by the international legal environment.

Essentially a precursor to GMP, Good Agricultural Practice (GAP) is a set of voluntary standards designed to ensure quality agricultural production of foods and non-food products (such as fibre and medicines). Adherence reduces the risk of contamination of agricultural products with disease-causing microbes or other harmful materials because the standards target potential sources of

contamination across the whole production chain, including water, soil, animals, people and equipment. The GAP framework integrates agricultural operation and production activities up to packing. Beyond this, additional sets of standards come into play. These include Good Handling Practices and Good Distribution Practices. Good Agricultural Practice also incorporates ecological and human rights elements and certification is essential for international trade in food to countries where GAP frameworks are used. Key high-order GAP fields include security of farms, safety of food, the environment and farming system. More particularly in relation to cannabis, among the issues of note are:

- Energy (total energy use, e.g. indoor/outdoor; energy sources e.g. hydropower/fossil fuels; CO₂ emissions in grow houses or improper disposing of bulbs)
- Water (intensity of use; techniques for water collection, storage, disposal). Water usage is a particular issue of concern in relation to both licit markets in places like California¹¹² and the illicit market in the northern Rif region of Morocco.¹¹³
- Agricultural inputs (use of prohibited chemicals or unlawful volumes, inconsistent testing)
- Land use (clearing land, building terraces, diverting streams, constructing roads, deforestation, erosion)
- Appropriate support services for male and female workers

As with GMP, there are different versions of GAP and related certification levels, from international (GLOBALGAP), to regional (for example ASEANGAP) and national (for example, Thailand and India) as well as crop type/end product specificity.¹¹⁴ For instance, GAP standards for medical cannabis in Canada draw on well documented guidelines for herbal medicines. While often necessitating a change in cultivation practices within traditional cannabis producer states, the barriers to market entry are less onerous for GAP than GMP. This may encourage small-scale farmers to produce GAP certified plant products for companies

better equipped and able to absorb the costs associated with GMP requirements. Although a practical solution, such an approach does much to remove the value uplift generated through processing and manufacturing of final products.

b) From GMP and GAP towards social responsibility standards

To be sure, adhering to GMP and GAP and translating these towards systems of accreditation, certification, guarantees, licencing and potentially also trademarking and intellectual property rights is likely to be a major challenge for cannabis growers and cooperative type entities in countries in the Global South; a situation more easily dealt with by the bigger players. Even in a relatively affluent country such as the U.S., cannabis growers can experience significant obstacles. The California Growers Association, for example, estimates that at the time of writing in February 2018, just 0.78 per cent of all growers in the state are licensed.¹¹⁵ By way of explanation, they point to the extraordinary high barriers to market entry, especially for small businesses and cannabis growers, who face a litany of regulatory controls, compliance costs, and other bureaucratic measures.

A further hurdle has been the reticence of particular regulators to certify cannabis products. In the U.S. for example, several cannabis producers have pursued organic certification only to be rebuffed, with the United States Department of Agriculture National Organic Program stating that organic standards cannot be applied to Schedule I drugs, including cannabis.¹¹⁶ In Canada, a handful of organic certifications have been handed out to commercial cannabis farms that have qualified for organic labeling.

The difficulties in obtaining official organic certification could make seeking out other means by which to make organic claims more attractive. An interesting example coming out of the organic movement is that of participatory guarantee systems (PGS) which, in addition to bolstering the organic credentials of producers, offers them several other advantages given its focus on peer review, mutual trust, and producer empowerment (Box 7).

Box 7: Participatory Guarantee Systems

Participatory guarantee systems (PGS) have been pioneered by the International Federation of Organic Agriculture Movements (IFOAM) to empower producers to make organic claims.¹¹⁷ They emerged as a response to international organic regulations based on third party certification which can prove cumbersome, expensive and out of reach for smaller businesses and producers. PGS operate through the collective identification, monitoring and evaluation of standards to be sustained by a process of peer review, community interaction and continuous learning. Over time, this allows for locally focussed quality assurance systems to emerge. Furthermore, by putting producers and local communities in charge, PGS ensures that organic labeling and certification do not simply become a corporate branding exercise but an open mechanism through which to build a different kind of food system. There are challenges: currently only about a dozen governments officially recognize PGS in their organic regulations. However, there is a growing awareness of the benefits of PGS and as momentum builds, PGS is increasingly also proposed as a complement, if not a substitute, to third party certification.

Promoting fair(er) trade cannabis markets will, however, involve going beyond just complying with GMP and GAP – important as this is – towards meeting a higher set of ethical and social responsibility standards. While there are many worthwhile sustainability standards to pursue in relation to fair trade, workers' rights, agrarian, food and environmental justice, these are not always easy for cannabis producers to engage with. U.S. cannabis producers have for example, thus far, not been successful in identifying an existing sustainable labelling initiative willing to apply standards and extend labelling to cannabis products. Reportedly, this is due to the fear on behalf of the labelling initiatives that certifying cannabis would harm their image and/or lead to the withdrawal of donor support.¹¹⁸

Nonetheless, it is critical that a path to compliance be open for good faith cannabis growers if fair(er) trade options for the cannabis market are to be seriously examined. This may require a certain degree of flexibility and pro-activeness on behalf of policymakers, regulatory agencies, and investors in order to be willing to work with cannabis growers to help them meet official standards and validate their practices where they are in line with fair(er) trade principles. This could, as is already happening in some places, involve such things as affirmative licensing laws that prioritise front line communities and communities that were

most impacted by previous prohibitionist policies. It could also mean utilising the stewardship ethic of cannabis growers who can help reverse environmental damage and restore ecological balance. That said, care must be taken to ensure that there is not a gap between good intentions and implementation on the ground.

Consumer/end-user framework

a) Is there a demand for fair(er) trade cannabis?

Investing in market strategies for fair(er) trade cannabis is based on the premise that there already is or will be a (burgeoning) demand for more environmentally friendly and sustainably sourced cannabis products. But what evidence is there to suggest this is true?

While market research on consumer demand for fair(er) trade cannabis is still very limited, there are signs which point in a positive direction. A 2016 study of cannabis dispensaries in the city of Portland, Oregon in the United States – where the growth, possession, sale and use of medical cannabis has been legalised since 1998 and the licensed sale of recreational cannabis since 2015 – shows promise.¹¹⁹ Recent research reveals that of the 64 cannabis dispensaries (roughly half the total number of dispensaries in the city at the time of the fieldwork) interviewed for the study, 28 per cent reported that customers frequently



Illicit cannabis cultivation, Jamaica. TNI/Martin Jelsma August 2018

request 'organic or socially responsible' cannabis, while another 53 per cent say they experience this request occasionally. While the author notes that understandings of what organic or socially responsible mean may vary considerably and no actual follow-up work was done to examine this further with customers, it does seem to confirm that, at least at the level of expressed desire, *'There is a demand for ethically sourced cannabis'*.

Other experiences centred on the medical cannabis market and patient-grower relationships also offer interesting insights. In countries such as the United States, Canada, the Netherlands, Colombia and Chile, patient advocacy groups are leading the way with a call for legal access to safe cannabis products for medical and therapeutic use not controlled by 'big pharma'.¹²⁰

Other anecdotal evidence also backs this up. A participant (who is a former medical doctor)

at the 'Fair Trade Options for the Cannabis Market' workshop noted that *'more and more patients are demanding product of **good quality**'* (emphasis added). This meant in his experience for patients to be given not only a choice between different types of medical cannabis products, but also crucially to receive information on how the product was produced, specifically if it is organically grown. Another participant at the workshop, a drug policy expert drawing on findings from a workshop organised in Cali, Colombia, noted that organised consumers/patients could drive what is needed. While it appears that, as knowledge about the potential for the individualisation of medical cannabis products grows, patients first and foremost want access to a safe product that is beneficial to them and their specific medical needs, but they also *'want to know what's in it'*. That is to say, in terms of ethics, *'something that people feel good about using'*.

b) How can (political) consumerism drive change?¹²¹

The nascent literature and findings, anecdotal and otherwise, on consumer demand for fair(er) trade cannabis therefore indicate that there is a pool of cannabis users (both medical and non-medical) who are interested in issues of provenance and environmental and social sustainability. Building on this base, one can envisage a scenario in which this demand grows over time, especially as consumer awareness on the issue is raised and active marketing and branding strategies continue to develop.

There is a cross-over here with how markets in other sectors have differentiated over time in response to public pressure and concerns about the impact of trade on the environment, human rights, corruption, peace and security. This has led, in a number of instances, to processes of international standard setting and the development of codes of conduct to help better regulate these sectors and prevent further harm and abuse.¹²² Media articles are to some extent already deploying this kind of pressure with titles such as *'It's very possible you're smoking "blood weed"'*.¹²³

Nevertheless, one should be aware of the unique challenges confronting the global cannabis market when it comes to advocating for sustainability. These are related to the different legal status of cannabis use and products worldwide, the continued scheduling of cannabis under the 1961 Single Convention, and even in countries or states where cannabis has been fully legalised or decriminalised, the legacy of prohibition and the 'War on Drugs' on social attitudes, mind-sets, and perceptions towards the plant. All of these reduce the potential for consumers to raise demands for fair(er) trade cannabis. Writing about this legacy in her study on demands for ethical cannabis in Portland, Oregon, Elizabeth Bennett argues that:

It illustrates how prohibition inhibits producers from building transparent supply chains, dissuades potential participants, constrains point of purchase information dissemination, and limits conversations among consumers and potential consumers. These effects, which this study suggests may endure well past the

*end of prohibition, dismantle the principal organizing tools of ethical consumerism - transparency, social movement organizing, and consumer education.*¹²⁴

Note that these kinds of constraints can find expression in a surprising diversity of views from, for example, responses that assert that legal cannabis must in principle be 'OK' (based on the assumption that legal markets must be better than illegal ones, and that therefore there is no need to ask further questions), to those that suggest that the very notion of ethical cannabis is simply, in itself, a contradiction in terms (based on its international scheduling and the ongoing effects of stigmatisation). This shows how notions of legality and illegality, licit and illicitness can play out in sometimes competing ways.

It also points to some of the difficulties in untangling the development of fair(er) trade cannabis markets from broader issues around legal advocacy and campaigning, strategies for the normalisation and mainstreaming of cannabis use (away from deviance or counter-culture narratives), and challenges to prevailing stereotypes and norms. These matters are in many ways inextricably linked. It also explains why we have - thus far - seen less evidence of collective action strategies to effect changes in market actors, such as consumer boycotts, buycotts, protests, naming and shaming campaigns and so on, which are prevalent in some other sectors. One could, however, point to the emergence of patients' rights and public health advocacy groups as an example of an organised 'consumer' pressure group that are not only pushing for legal access to medical cannabis products, but are also increasingly mobilising and asking questions of quality, transparency and provenance, as noted above. This shows that it is possible to operate on two fronts.

c) Opportunities and challenges in recruiting political consumers

Nevertheless, despite the unique challenges posed by global regulations on cannabis production, use and trade, it is possible to make an ethical appeal to the consumer



Illicit cannabis cultivation, Cauca, Colombia. TNI/Martin Jelsma June 2017

without necessarily getting into the weeds of drug policy reform. This relies on strategies that emphasize a variety of other qualities, values, and forms of market interaction in which the consumer is invited to exercise discretion and assert a particular type of identity.

This is in fact again not uncommon in other types of markets, for example around food, where an emphasis on direct and more intense producer-consumer relations has resulted in the global movement for 'community supported agriculture' (CSA) (Box 8).¹²⁵

Would it be possible to envisage something as a community supported cannabis (CSC) model emerging? In a less codified, formal sense, this is of course already the reality for growing communities around the world where both cannabis production and use are embedded within a particular set of place-based relations. In Jamaica for example, which has a long history of traditional *ganja* use as part of the religious and spiritual identity of the Rastafarian and Maroon communities, producer and consumer communities are very close, if not one and the same.

Box 8: Community Supported Agriculture

Community supported agriculture (CSA) refers to arrangements between farmers and consumers in which both commit to support each other on a long-term basis. In return for the supply of fresh, high quality food of known provenance, consumers help farmers to secure fair and stable incomes. This is most commonly done through 'box schemes' involving standing orders (usually covering an entire growing season) for the doorstep delivery or collection of boxes of produce. It can also involve consumers helping out with farm work, creating local food credit unions to allow for the collective purchasing of food from local farmers, and other innovative mechanisms to help support producers' livelihoods such as securing access to land through crowdsourcing or the setting up of community farmland trusts. In all these ways, the CSA model signals a radical restructuring of producer-consumer relations as consumers are mobilised to share in the risks of agricultural production and generate a new type of social and solidarity economy.

Could one imagine transforming these kinds of more informal but direct producer-to-consumer networks into a more structured model such as that of the CSA movement – even one that could exist through fair(er) trade initiatives across national boundaries? A number of obstacles stand in the way – not least the fact that for the medical cannabis market, governments are the key interlocutors while even in legal recreational markets, such as those that exist in the state of California, direct marketing is prohibited – producers must sell through licensed distributors and retailers (also see below). This undermines the ability to form grower-patient and grower-consumer relationships as retailers can exert ‘gatekeeper control’, determining which products make it to market and are able to brand products under their own name rather than a producer’s brand.¹²⁶

As touched upon above, this has not stopped particular cannabis companies (medical and recreational in the Global North and South) from variously promoting themselves on the basis of ‘celebrating community’ and pointing out their commitment to localism and supporting small farmers as well as other sought after signifiers of a premium and craft product such as it being organic, derived from unique, heritage strains, and exploiting a specific *terroir*. All of these are familiar tropes from other sectors such as the marketing of speciality products in the food and beverage industry. Where true, these values can and should absolutely be leveraged to maximise options for fair(er) trade cannabis.

This can go hand in hand with appellation systems such as geographic indications of origin that seek to give special market status to products (such as Parmesan cheese or Bordeaux wine) renowned for their unique regional characteristics and conditions of production. In his book on the potential for a ‘craft weed’ industry in the United States, Ryan Stoa sets out the different consumer patterns that may emerge as the cannabis market expands:

Consumers could embrace commoditization and consolidation of cultivation, of course, providing everyone with cheap and plentiful marijuana. The industry could, alternatively,

reject that approach in favor of a marijuana appellation system that encourages the development of diverse farming regions and high-quality products. The cheap generic stuff will continue to exist (Big Marijuana will make sure of that). But consumers will also have regionally protected marijuana products to choose from, as well as the security of knowledge that the products’ designations of origin are authentic.¹²⁷

The appeal to the ‘discerning’ consumer and the connoisseur market is one strategy that can certainly be explored for fair(er) trade cannabis. It will be important, however, that lessons are learned from these kinds of strategies in other sectors in order not to repeat the shortcoming of, for example, only appealing to an elite consumer base or transferring too much power into the hands of labelling agencies. Ultimately, fair(er) trade cannabis will only truly succeed if it is elevated beyond a niche to a more mainstream process of standard setting and market development.

Market, finance and trade policy framework

a) Avoiding the emergence of a ‘big cannabis’ complex

Fair(er) trade options for the cannabis market must ask critical questions about the functioning of markets and the terms of trade. This means going beyond a singular focus on market access and market participation (important as this is) towards a deeper understanding of how power, capital and information flow through markets. Appreciating these distinct market structures, and the role and position of various actors within them, can help prevent forms of ‘adverse incorporation’.

This holds true for the (emerging) legal cannabis market where there are fears that a new ‘green rush’ based on speculative capital are leading to land grabs and the squeezing out of small, traditional growers.¹²⁸ The rise of a big cannabis-finance-industrial complex is hereby mooted as a real prospect, with concerns that cannabis will go the way of ‘big Ag’ in which a series of mergers and acquisitions have led to an extraordinary degree of concentration in the world food system (Box 9).

Box 9: Agropoly

The globalization of agriculture that has taken place over the past 50 years has allowed for an extraordinary degree of corporate consolidation and control to develop as the increasing specialization and integration of world food production has enabled transnational corporations to insert themselves strategically in between the buyers and sellers of food. The rise of this 'corporate food regime' has seen a handful of agricultural input providers and food processors, traders, and retailers exert an enormous amount of structural power over the market. The state of 'agropoly' is such that the top corporations control the market to the following degrees:¹²⁹

- the top 10 animal feed corporations, 15.5 per cent;
- the top 4 livestock breeding corporations, 99 per cent;
- the top 10 seed corporations, 75 per cent;
- the top 11 pesticide corporations, 97.8 per cent;
- the top 4 food trading corporations, 75 per cent;
- the top 10 food processing corporations, 28 per cent;
- the top 10 food retail corporations, 10.5 per cent.

While a certain degree of integration and harmonization between different actors in the cannabis market is necessary and welcome (for example, to lower transaction costs, pool resources, and simplify certain procedures – see the following section), this should not be confused with forms of aggressive market takeover, homogenization and corporate consolidation; a process that already appears to be underway to some degree and on which a number of observers and government officials – as noted earlier – have already sounded the alarm on.¹³⁰

It is important to note here that the current legal cannabis market is not a level playing field as particular market actors have been able to take advantage of earlier legal options available to them, such as those afforded to the pharmaceutical industry in the medical market. It is clear that they will not want to give up their favoured market position. Indeed, pharmaceutical companies seem to have a double strategy at the moment: (1) lobbying for high standard thresholds for the opening of the medical market, so they can establish a near monopoly position vis-a-vis small producers of more natural cannabis products for medical purposes; (2) prepare for the opening of non-medical markets (which they all expect is coming) and use the firm market positions they have conquered in the medical market to have a competitive advantage when that larger market with lower standards opens.

b) A need for well-functioning supply chains

To avoid the emergence of what might be called a big cannabis complex, there is a need to develop transparent and well-functioning supply chains. Currently, this appears to be sorely lacking in key cannabis markets. A publication by the California Growers Association – the largest cannabis trade organisation in the state representing over 1,100 small and independent businesses – entitled *An Emerging Crisis*, details a wall of bureaucracy that small growers run up against.¹³¹ This includes a patchwork of local county ordinances, policy frameworks, and regulations around zoning, land use, shared space, testing, delivery systems, tax codes and licensing fee structures, local building and fire codes and so on. This creates extraordinarily high barriers to entry to the regulated market, especially for smaller business and growers who can often ill-afford expensive consultancy and advisory fees and other costs of compliance.

As a result, the Association has calculated based on the total number of growers in the state and the total number of licenses given out, that even in a 'low participation' scenario (i.e. assuming that only 25 per cent of California cannabis growers would be interested in obtaining a commercial license), only 3 per cent of interested growers are currently licensed. As they comment, *'There is a long way to go'*. This is despite the fact that, as we touched on earlier, Proposition 64 talked about *'ensuring... the industry in California will be built around small*

and medium sized businesses...strict anti-monopoly provisions,' and intent to 'reduce barriers to entry into the legal, regulated market.'

The consequence is that, by default if not by design, corporatisation, standardisation, and homogenisation will follow as companies vertically integrate in order to lower costs and increase profits. While this makes sense in particular circumstances, this is not always a model that is inclusive of smaller-scale growers: *'In many cases, vertically-integrated businesses in this category are concerned primarily with transporting their own product, and don't substantially add to the transportation capacity of the supply chain as a whole.'*¹³² The old adage from the development of large-scale, industrial agriculture to either 'get big or get out' is one that seems to also ring true for the emerging cannabis market.

It is important to note that this is also not a system that is necessarily to the benefit of the consumer and patient as the model of production that is favoured in this kind of supply chain - namely one based on mono-cropping and larger batch sizes - can reduce choice and quality.

c) Policy tools available to shape fair(er) trade cannabis markets

There are policy tools available to shape cannabis markets in ways that can offer real opportunities for fair(er) trade, both for traditional growing communities that are transitioning out of illegality as well as those that are new entrants. Policy makers should grasp this opportunity to structure the market in a different way in terms of wealth distribution and participation in order to tip the balance in favour of fair(er) trade. Three areas of attention stand out:

i) Supporting 'nested markets' and options for export

There are multiple options for fair(er) trade cannabis markets to explore that, depending on the legal regulations on cross-border trade, do not need to exclude one another.

One could focus on the creation of so-called 'nested markets' composed of small-scale cannabis cooperatives.¹³³ Through strategies of strategic niche management, qualities such as

craft, artisanal production and unique flavours based on heritage strains are emphasized. Given the inherent fungibility of the cannabis plant, one could even imagine various spin-off speciality markets developing. Indeed, this is already being seriously considered by a number of governments ready to support the development of a legal cannabis market that works for local businesses and small producers (Box 10). Various policy tools can support the creation of these 'nested markets', from the granting of special licenses or markers to most-favoured producers (think here of designated labels of origin or the granting of particular intellectual property rights for example - see also discussion above) to minimum price guarantees, or the setting of tariffs to ward off competition from imports (should, for example, the non-medical cannabis market open up to international trade in the future).

A second option would be to develop an export-oriented strategy designed to facilitate and boost the participation of traditional and small growers in the legal export trade of medical cannabis. Here, policy tools for fair(er) trade cannabis must revolve around supporting growers in adapting to GMP and navigating the various standards required by the importing countries. This work is already being done by several pioneering governments. In Jamaica for example, the CLA is in the process of an export-import legislative framework to allow for such a trade to take off, with some tentative initiatives already emerging.¹³⁴

While the current international drug control regime allows only for international trade in medical cannabis, as more countries legislate in favour of recreational use it is fair to ask what options are available here for fair(er) trade cannabis, particularly for growing communities in the Global South. As is increasingly becoming the case in some quarters, it is not unreasonable in this context to ask 'Why should these farmers be excluded from benefiting from the inevitable policy changes? Why should emerging regulation schemes in the Americas and Europe be purely domestic?'¹³⁵

Box 10: Cannabis as a 'flex crop' taking advantage of multiple speciality markets

'Flex crops' are crops that have multiple uses that can, to a greater or lesser degree, be flexibly interchanged based on the prevailing incentives and regulations around existing and emerging markets.¹³⁶ In the current conjuncture, the rise of flex crops in the agricultural commodities sector has proven to be an attractive strategy for corporations to diversify portfolios and sustain strategies of accumulation in an increasingly financialised and technological driven process. This has oftentimes left producers of these crops out of the picture - while leaving broader questions around the impacts of this kind of model of development untouched. While this global context cannot be ignored, there are opportunities for policymakers to grasp. Here, the fungibility of the cannabis plant provides multiple avenues that can be explored - also for fair(er) trade cannabis. These can be in line with traditional uses of the cannabis plant, often practiced over generations, or tap into new market opportunities, either locally or export oriented. It is clear that a number of governments are already encouraged to think in this strategic fashion as evidenced by the recent CARICOM Regional Commission Report on Marijuana. Commenting on the opportunities for the CARICOM Heads of Government to develop a responsible socio-legal policy on marijuana, it writes that:

In addition, the region's already established and developing tourism economy can be leveraged further by a cannabis industry located in safe and secure environments. Cannabis can be produced for export as well as for local healing and can be the foundation for a new and vibrant wellness tourism industry. Savings will also accrue as a result of lower public health bills as Caribbean nationals substitute expensive pharmaceutical drugs with often more effective cannabis at lower costs and often with lower side effects. The development of an industrial hemp industry is also envisaged. Cannabis, produced organically and outdoors can also provide for the already lucrative recreational market.¹³⁷

ii) Balancing rural and urban development

Fair(er) trade cannabis markets can and should not only be directed towards servicing consumer demand in urban areas, leaving behind the interests and needs of rural areas where the vast majority of producers live. Much can be learned here from the failures of previous efforts, such as Alternative Development programmes in the Rif region of Morocco - one of the poorest, most densely populated and environmentally fragile regions in the country. One of those projects, financed by the EU (ending in 2015), intended to persuade cultivators to switch from growing Kif (for hashish) to industrial hemp. The project did not however develop a route-to-market for the products of industrial hemp (fibres, textiles, building bricks). As a result, the crop substitution failed to fulfil its development goals and exists - to date - only as a small pilot project in the Rif. Such a failure should not have come as a surprise; an earlier study of the EU's development and poverty reduction programmes in the Rif had concluded *'The only way to eradicate cannabis, is to convince the Europeans to smoke carrots.'*¹³⁸

Developing a more integrated territorial approach is, therefore, vital in order not to deepen rural marginalization. This is as true of producers living in the Rif region of Morocco as it is of cannabis growers in the state of California, where microbusiness licensing and other regulations remain insensitive to agricultural dynamics and are *'more about an outlet for retailers who want to produce, rather than producers who want access to retail.'* It has been argued in the case of California that, *'So long as this remains the case, the microbusiness will serve largely to streamline licensing for larger urban retailers while doing little to help smaller producers in disadvantaged rural areas.'*¹³⁹

iii) A banking system fit for the regulated market

A final policy tool available to support fair(er) trade options for the cannabis market relates to the banking and finance sector. Even in countries where there has been a shift towards regulating cannabis markets, banking systems have not always followed suit. In the U.S., for example, cannabis business owners are ineligible to receive agricultural or small

business loans or, for that matter, to access other banking and financial services for paying salaries or servicing customers using credit/debit cards as there is no federally approved system in place. This is despite the fact that legal cannabis businesses are subject to stringent controls such as mandatory licensing, background checks, financial disclosures, video surveillance, alarm systems, seed-to-sale tracking, labeling and testing regulations, and routine random inspections.

The result is that many legitimate businesses are forced to operate as 'cash only', increasing security risks and operating costs. It also undermines the position of smaller cannabis growers and operators who are often most in need of start-up funding and working capital loans. As the following testimony of a cannabis business owner in front of the U.S. Committee on Financial Services reveals:

It should be noted that the absence of bank participation hits especially hard to small and minority owned businesses operators. Mom-and-pop businesses and minority-owned businesses traditionally look first to bank loans as a method of financing the start and growth of their operations. Without bank participation, the hurdle to entry is substantially higher.¹⁴⁰

This holds true not just for U.S. states with legally regulated recreational cannabis markets, but also for Uruguay; a nation state that is also suffering from the current operating practices and legal prohibitions of the U.S. banking sector. Reforming the banking and financial services sector to bring it in line with the development of the regulated cannabis market in the 21st century is, therefore, a matter of priority and needs to be a key point of discussion for those states currently considering a shift in policy.

4. CONCLUSIONS: FAIR(ER) TRADE CANNABIS: UTOPIA OR A POSSIBLE REALITY?

The 2006 *World Drug Report* concluded: "The world has failed to come to terms with cannabis as a drug. In some countries, cannabis use and trafficking are taken very seriously, while in others, they are virtually ignored. This

incongruity undermines the credibility of the international system, and the time for resolving global ambivalence on the issue is long overdue. Either the gap between the letter and spirit of the Single Convention, so manifest with cannabis, needs to be bridged, or parties to the Convention need to discuss re-defining the status of cannabis."¹⁴¹ Historical policy changes are now reshaping the global cannabis market and the gradual dismantling of the prohibitive regime that reigned in past decades is a welcome development. It would be a dramatic outcome, however, if the legally regulated medical and non-medical markets that are arising from the ashes of prohibition, ultimately leads to what prohibition intended but never succeeded in achieving: the destruction of the remnants of traditional cannabis cultures that barely managed to survive, and the eradication the illicit cannabis survival economies in the Global South. The construction of the global cannabis prohibition regime was an historical mistake with severe consequences, but if the transitioning towards a legally regulated market results in a corporate takeover that concentrates profits into a handful of Big Pharma, Agro and cannabis companies and pushes small-scale farmers in the Global South out of business, another historical mistake is already in the making.

Ensuring that fair(er) trade principles will guide this transition is a responsibility for governments and the cannabis industry alike. Far from a purely quixotic benevolent endeavour, benefits can be derived for both. For governments in the Global South, for example, carefully structured producer frameworks have the potential to achieve hitherto elusive development outcomes in marginalised communities thereby contributing to the achievement of the Sustainable Development Goals as committed to at the UN level. Kate Gilmore, OHCHR Deputy High Commissioner, when introducing in April 2018 the draft of the Declaration on the Rights of Peasants and Other People Working in Rural Areas, referred to the 2030 Agenda for Sustainable Development and its promise to 'leave no one behind': 'Promises that no one is to be left behind by discrimination nor poverty; or left out through marginalization; or forgotten

*because their truths are inconvenient to the privileged. Yet, those universal promises have not been upheld. Peasants and other people working in rural areas have been left behind.*¹⁴²

And there is a real risk that that will be especially the case now for those of them dependent on illicit cannabis cultivation.

Going beyond standard CSR and a Triple Bottom Line, companies within the cannabis sector are likely to benefit from the market appeal of ethically sourced, or fair(er) trade, cannabis. While that may be the case, as with regulative frameworks around other commodities, industry voluntarism is only likely to go so far and appropriate structures will thus necessitate a degree of government intervention. The issue is, however, also important for the drug policy reform movement that has played a crucial role in triggering these policy changes by rightfully pointing out the many negative consequences of prohibition. Now the wheels of change are turning, it is time to prioritise advocacy for a fair(er) trade cannabis market, to protect the rights of small-scale farmers and others who bore the brunt of repressive approaches, and to ensure a place for them in the emerging licit markets.

The challenges are manifold. The political, legislative and commercial landscapes fluid. Nonetheless, drawing on the initial discussions introduced here, we believe that it is possible to develop a set of guiding principles upon which a fair(er) trade cannabis model can be built. These include:

1. Demonstrate a **commitment to solidarity and social justice**, with initiatives going beyond pure profit and business making opportunities to integrate ethical concerns as a foundational part of the operation. This includes granting preferential access to small producers who have been involved in supplying the illicit market and the expungement of their criminal records.
2. Centre on **producer empowerment and community benefit sharing** through more equitable terms of trade. In this model, producers are not just seen as providers of raw materials but as value creators. They are paid a fair price for their labour with

investment in training and skill development in order to ensure that a greater share of the added value is captured and retained at the local and regional level.

3. Use production methods that adhere to **strong environmental sustainability standards** in relation to the use of energy, water, and agricultural inputs. Producers are supported in developing environmentally sound techniques.
4. Put in place proper **labour protections** to ensure worker safety, health, and satisfaction. A zero-tolerance approach is taken with regards to labour or sexual exploitation.
5. Encourage more **democratic control, participation and decision-making processes**, through inclusive business models and systems of worker driven social responsibility.
6. Generate **transparency and traceability** in the operation of the cannabis market and supply chain.
7. Focus on **longer-term strategies**, with special attention placed on marginalised communities and rural areas in (traditional) producing countries. This includes opening up a path to compliance for good faith cannabis producers who are transitioning out of illegality. Restorative justice should be considered for those previously excluded or criminalised.
8. Resonate with the **social history** of a particular place, foregrounding traditional growing communities and the role of cannabis in their cultural and religious identities and practices.

These principles are non-hierarchical and non-exhaustive. They are intended to stimulate further debate and reflection as the licit cannabis market evolves, although there will certainly be a need for cultural sensitivity and flexibility based on the diversity of profiles of growers and consumers in different regions. Above all, however, they are a call to policy makers, development agencies and investors to start taking the issue of fair(er) trade cannabis seriously and to transform the idea from a utopia to a reality.

ACKNOWLEDGEMENTS

This policy report benefited greatly from the deliberations of participants at the Cannabis Innovate organised 'Fair Trade Options for the Cannabis Market' workshop, held in London 4-5th February 2019. Thanks also go to Renata Legierska, Pien Metaal, Rene Roemersma, Lyda Fernanda Forero and Katie Sandwell for reviewing various versions and sections of the report and to Branwen Lloyd for assistance with its production. As is the norm, any errors of fact or interpretation remain with the authors.

ENDNOTES

- 1 For the sake of simplicity, the term cannabis is used predominantly throughout this report, with 'marijuana' and other terms used as appropriate depending on regional and country variation
- 2 The terms Global North and Global South are used here to refer to the geographical global north/south divide and the associated unequal distribution of economic and political power loosely based on the so-called Brandt Line
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- 139 California Growers Association (2018)
- 140 Testimony given by Corey Barnette on the Safe Banking Act before the US Committee on Financial Services. Available at: <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba15-wstate-barnettec-20190213.pdf>
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- 142 Open-ended Intergovernmental Working Group on the rights of peasants and other people working in rural areas, *Opening statement by Kate Gilmore, Deputy High Commissioner OHCHR*, Fifth session, Geneva, 9-13 April 2018. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23014&LangID=E>



About Cannabis Innovate

Cannabis Innovate aims to provide research and analysis across the three pillars of policy, legislation and technological innovation. The initiative constitutes a partnership between the Global Drug Policy Observatory (GDPO) at Swansea University and Equinox International, with some activities undertaken in collaboration with the Transnational Institute (TNI). Amidst the rapid expansion of medical cannabis markets around the world, it seeks to operate as a knowledge hub offering clarity and solution-oriented outputs and activities to a range of end-users operating within an increasingly complex commercial and policy environment. Work is underpinned by the promotion of ethically sourced and environmentally sustainable medical cannabis from traditional producer countries and the belief that improved access to cannabis for medical use predominantly within the Global North need not lead to the exclusion and continued marginalization of small-scale cannabis farmers within the Global South.



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