

Ganja – The new Caricom frontier

Lessons from the EU

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I have labelled this discussion “The New Frontier” because truly, we are embarking on something very different to what obtained before. It is a hot topic – as Chair of the Commission on Marijuana, I have just come out of a two-year exercise reviewing CARICOM laws on marijuana / cannabis / ganja on whether to change the legal status quo. We held public consultations across the region and national stakeholder meetings. A report was made to the CARICOM Heads in July and countries are now preparing for law reform. Today I have an opportunity to brief you on these developments. The report is online on the CARICOM website ([Report of the Caricom Regional Commission on Marijuana](#)).

It is apt to speak of marijuana in an EU-CARICOM conference because to me, the linkages are obvious. There is no doubt in my mind that the EU has led the way in rethinking the issue of marijuana, and more broadly, drug control. Europe has provided the intellectual leadership and the rest of the world is now following.

There has been a re-imagining of this issue. From the EU, we saw the social experiment of the Netherlands that led us to understand that marijuana cannot be viewed through a narrow criminal law lens. The criminal injustice system was simply not adequate or appropriate.

Today, the new frontier that is marijuana envisions the issue as a public health issue and a rights issue. So in this new frontier, we can now frame the marijuana debate within the context of the right to health, the right to privacy and even protection against discrimination. Moreover, it concerns all of us, not only because cannabis is now seen as an important medicinal substance which many want access to, but because issues of social injustice affect us all.

LEGAL HISTORY

But let us start at the beginning, for if we are going for a new frontier, we must understand the old. In truth the marijuana story is largely one of misunderstanding, subterfuge and even propaganda.

Today marijuana/cannabis/ganja/hashish conjures up unsavoury, negative images and exists within a harsh, criminal-based regime we label prohibitionist. Yet the designation of cannabis/marijuana as an unlawful substance and a dangerous drug is of relatively recent vintage. For most of our history, marijuana was a free substance, grown naturally and easily throughout the region. Indeed before the advent of prohibition, many CARICOM citizens have memories of their grandparents and forefathers using cannabis/marijuana in benign fashion, such as bush tea. Our forefathers used the plant for general and beneficial use, without shame. At one point we were being implored to cultivate it, since hemp – a strain of cannabis, is an industrial product. You can make rope with it and use it in construction.

It was at the turn of the century that there was a concerted effort to outlaw and criminalise the substance.

In fact, cannabis/marijuana has deep historical, cultural and religious significance to Caribbean peoples. It can be traced to several ethnic, religious and cultural traditions within Asia, Africa and the Middle East and from ancient times, was known throughout history as a substance with healing properties. It was introduced during the post-emancipation period to the Caribbean countries of Jamaica, Trinidad and Tobago and Guyana by East Indian indentured labourers.ⁱ

Of course too, ganja or the Holy Herb, has deep religious, sacramental meaning for our Rastafarian community. The Commission heard repeatedly of its medical properties which had been gifted by God as a natural, free, substance for the healing of all. At each of the Consultations, we were treated to quotations from the Bible to substantiate these claims, such as: "Every moving thing that liveth shall be meat for you; even as the green herb have I given you all things." (Genesis 9:3).ⁱⁱ Revelations, Exodus.

This long cultural association with cannabis perhaps accounts for the early scientific interest in the substance in the Commonwealth Caribbean. In fact, did you know that the region can boast of having the earliest cannabis/marijuana medical patented products, a treatment for glaucoma (cannasol) developed by the University of the West Indies (UWI)ⁱⁱⁱ?

The current laws were responses to international treaty formation which deemed cannabis/marijuana a "dangerous drug" without any value, medicinal or otherwise. Harsh, criminal penalties were imposed on cannabis in all its forms within a context of strict liability, meaning no discretion or mitigation is allowed. This was despite the lack of scientific or medical data to support this classification, a status that has now been proven to be misleading.

However, what is clear is that the original classification of cannabis in law as a dangerous drug with no value was made without the benefit of scientific research and data – it is a legal fiction. This is significant given that the harshness of the law was premised on this supposed egregious harm. There is credible evidence that its acquisition of an illegal status was also due to attempts to stifle competition with alcohol, which had just emerged out of prohibition itself. This classification, first in international treaties, was spearheaded by the US and was automatically followed domestically. Documents declassified and released to the public in 2002 illustrate that the US Shafer Commission, established by Nixon to cement marijuana laws, came to the opposite conclusion. Its 1972 Report to the US Congress challenged this classification, finding that marijuana presented little harm and could "not justify the intrusion by the criminal law into private behaviour."

Others place the illegalisation of marijuana on the shoulders of race and social prejudices, an attempt to label, criminalise and oppress the Mexican and black races in the US.

Laws are powerful. They can sanitise or elevate and can also de-legitimise. Just as alcohol, now deemed acceptable, in the Al Capone days became criminalised and demonised in its prohibition period, so did cannabis. It is therefore no surprise that once criminal laws were passed, they led to the demonisation of the substance and the criminalisation and imprisonment of many persons in the Caribbean, for possessing miniscule amounts of the substance, even when using for medicinal purposes.

However, good law requires a rational basis for its legitimacy – to correct a harm or real mischief. The consequences of a legal regime that is grounded in prohibition and enveloped by criminal sanction, but unaccompanied by a solid evidential basis, are far and wide. They encompass questions of social justice, the efficacy of law enforcement, human rights issues and the very legitimacy of the law itself.

Thus, despite the draconian, prohibitionist legal regime that exists in every CARICOM Member State, with extensive controls and punitive measures, use of cannabis/marijuana has persisted and taken root globally in the Caribbean and worldwide, reaching every social stratum. It is the most extensively used illicit drug in the world. An estimated 183 million people consume it.

CHANGED ATTITUDES & SCIENCE SUPPORT LAW REFORM

After holding national consultations receiving several submissions and a petition from the public, reviewing data from polls and surveys from several countries, in the region, attitudes toward cannabis have changed in recent times. There is now overwhelming support for law reform, moving away from the prohibition on cannabis and consequent criminalisation. This holds true not only from the data, but for the many prominent persons and groups that have lent their voice to this cause from all walks of life, including church leaders, magistrates, judges, social workers, educators, doctors, Chief Justices, DPP, Members of Parliament and senior members of the Bar. In Barbados, public opinion for those who want law reform grew to over 63% in 2017 from below 30% three years previously, while in Grenada, it was 61 % in 2018 and 62% in Antigua & Barbuda in 2016. Similar statistics obtain elsewhere in the region.

Most Caribbean peoples believe that the cannabis/marijuana laws are ineffective, discriminatory, deeply unjust, violate rights and lack legitimacy. They also believe that prohibition is preventing the region from taking advantage of the economic opportunities in the cannabis industry and medical research and prohibiting access to medicine that can heal them more effectively and more cheaply than traditional pharmaceuticals.

A stirring image is the group of persons with disabilities in wheelchairs, many of them elderly women, who begged the Commission to change the law for them to access medical marijuana.

The groundswell of support and enthusiasm for change is a significant indicator to CARICOM governments on the question of law reform. This, in my view, is a necessary, but not sufficient condition to invoke change. Consequently, the Commission interrogated and analysed the most up to date scientific, medical, legal and social data to substantiate these views.

The conclusion was that the evidence clearly supports this public opinion and demonstrates that the existing prohibitionist regime induces more harm than any possible adverse consequences of cannabis/marijuana itself. Indeed, in many respects, the horse has already bolted, since Caribbean nationals are already accessing marijuana as self-described “medical refugees” from other countries.

The now relatively few voices against change to the law premise their arguments, not on immorality or wrongdoing, but chiefly on concern about perceived adverse impacts on mental health, the youth, increased use and the supposed incapacity of institutional resources. Church leaders who were hesitant did so not on morality, but on these grounds. Surprisingly, perhaps, most church leaders, like our own Commissioner Bishop Hall, saw the moral compass on the cannabis question pointing in the direction of elevating social justice and compassion.

There are legitimate concerns which remain, but I am confident that they can be appropriately addressed through a responsible framework for law reform as is advocated in this report.

LESSONS FROM JAMAICA, URUGUAY AND WORLDWIDE

Moreover, the region has now had the benefit of observing the effects of law reform not just in countries around the world, first, from the lessons from Europe, but also in a CARICOM country, Jamaica, which presents three years of experience since leading decriminalisation efforts (and de facto legalisation for small amounts) in 2015. The latest data reveals that there has not been any discernible increase in use, or in psychosis cases. Further, criminal arrests have decreased, and Jamaica has begun to reap benefits from the cannabis industry. Significantly, the numbers of persons approving of law reform for various reasons have increased, between 70% and 90%. Clearly, even many of the sceptics have been converted. The problems being experienced relate to teething administrative issues such as licensing arrangements and the like.

The data from countries that have either decriminalised or legalised cannabis/marijuana is that there is no statistically significant increase in usage as a result. There is an initial increase immediately after law reform, the “experimental factor”, but these figures balance out over time. This demonstrates that, except for medical purposes, the fears that law reform will cause a floodgate toward marijuana use is unfounded, particularly if law reform is undertaken with the appropriate educational and marketing programmes.

Recently, there has been increased buzz on medical marijuana, However, I want to caution that this is only one dimension of the justification for law reform. The medical and scientific issues are central in framing the legal questions here. Ultimately, however, it is the social justice issues that are the most compelling and cry out for change. There was consensus among the Commissioners that prohibition was not the answer and the deep social wrongs needed to be put right.

CARICOM COMMISSION URGES REFORM FOR GANJA LAWS

The analysis of the comprehensive information gathered indicates that the current legal regime for cannabis/marijuana, characterised as it is by prohibition and draconian criminal penalties, is ineffective, incongruous, obsolete and deeply unjust. After considering the most up to date evidence and the views of Caribbean peoples, the Commission is unanimous in its view that the status quo with respect to the legal regime governing cannabis/marijuana cannot be maintained and legal reform should be a priority for Member States. I will explain why.

It is accepted that marijuana is a substance with psychoactive properties which has the potential for negative health consequences and mental health complications especially among youth. However, the health risks are concentrated in high risk persons, in particular, youth, and specific risk situations. The need for more robust research about some claims is acknowledged, but significant support exists in the literature about the potential beneficial and adverse effects associated with marijuana, such that a realistic law reform process and regulatory regime can be designed. There is conclusive evidence that it is beneficial for several ailments; there is moderately strong evidence for another group of illnesses and emerging evidence, with good prospects for scientific proof soon, for others.

More importantly, scientific evidence has now disproved, or severely challenges, some of the most popularly held beliefs and perceptions of harm that currently underpin the law, in particular, the gateway theory (leading to harder drugs), addiction and causative factors in relation to psychosis.

The medical evidence also establishes that cannabis is less harmful, or no more harmful than substances that are not prohibited or criminalised under law, like alcohol. For example, lethality is measured as 50 for alcohol, 100 for cocaine and 0 for cannabis.

Of the potential adverse effects, the most significant is the persuasive evidence that exists for the negative effect on the adolescent brain and on driving. This is consistent for the advice for alcohol and other such substances – even coffee – it will make your head “hard.” Consequently, cannabis/marijuana use for children and young persons was not recommended, except in medical treatment, as it may affect memory, learning and attention and may put youth at risk for early onset of psychosis.

On balance, after evaluating the scientific data and testimonies from the public, the Commission found that the proven medical benefits of cannabis/ marijuana in several areas outweigh the risks. This finding is consistent with those of numerous other national bodies/Commissions in the region and globally and that of international bodies (UNGASS, UN Global Commission on Drug Policy, etc.), the most influential of which have labelled the current legal regime “redundant”. The scientific data supports law reform to permit the use of marijuana, but in a controlled regulatory environment. A public health, rights-based, non-prohibitionist approach focused on high-risk users and practices – similar to the approach favoured with alcohol and tobacco – allows for more control over the risk factors associated with cannabis-related harms than the current, ineffective prohibition, which heightens health risks and induces social harms.

Ultimately, legal and social policy objectives are more achievable by other, more proactive approaches, which are informed by pragmatic public health, social justice and developmental rationales.

FLAWED BASIS FOR CRIMINAL CLASSIFICATION

Given the key finding that now establishes that cannabis/marijuana has several beneficial effects, cannabis can no longer be accurately classified in law as a “dangerous drug” with “no medicinal or other value”. This finding is significant since the illegal status of the drug was premised on its classification as a dangerous drug.

PROHIBITION, HARSH PENALTIES HAVE FAILED

We found that the prohibition-based regime supported by criminal sanctions is ineffective, inefficient and unfit for purpose and this is also the verdict of those who administer or enforce the law. Despite its illegal status, marijuana is readily available, and its use is prevalent across the region. We confirmed this wide usage in the national consultations, which cuts across all social classes, professions, race, religion, social status and income bracket. Several professionals, including doctors and lawyers, spoke openly of their current or past use of cannabis/marijuana and their belief that it had helped, not harmed them. Many persons also stated that despite the harsh laws, they would never stop using the substance.

The prohibitionist legal regime and the harsh penalties, remnants of a now discredited “War on Drugs” approach, have therefore failed to deter usage. One speaker even told us that he was jailed for cannabis but in jail he had access to much more marijuana than before. Influential international and regional authorities have acknowledged this and called for a new approach, centred on public health and rights, to treat with cannabis. CARICOM itself endorsed this approach in 2002 at its Heads of Government meeting but has failed to implement it.

There is also widespread usage among children and young persons. In the Commission’s online survey, 91% of youth said it was “easy” to get marijuana. Approximately 49% of the respondents admitted to marijuana use. More recently, usage appears to have evolved into usage of marijuana products, especially “edibles” like marijuana cookies. Recently, convent girls in T&T were reported as selling marijuana cookies. The young people spoke openly to us. Their views and situations were considered carefully in the Report. Possibly, prohibition and the fact that it is forbidden, encourages such experimentation. We need a different approach, grounded in education and persuasion.

OVERFLOWING JAILS

Moreover, there are many arrests and our jails are overflowing with otherwise law-abiding citizens who have been caught with small amounts of cannabis, exacerbated by their inability to raise bail, pressuring law enforcement resources. Thousands are incarcerated each year (we have provided tables). We heard of instances where even an 80-something year old, who used medical marijuana for her pain, was jailed in Guyana. Having huge fines, as in Saint Lucia, is not much better, since if people cannot pay the fines, they still end up in jail and are criminalised.

Law enforcement personnel themselves complain about this ineffective, wasteful system and believe that their resources are better employed fighting serious crime. This was validated by our police attendees and questionnaires. They debunk myths that cannabis/marijuana is a causative factor in criminal conduct and believe that most persons use it for stress relief, to calm things down, not to exacerbate aggression. It was for these reasons that Netherlands, Portugal, Spain etc. took steps to reform the law. They created safe spaces for users (cafes in Netherlands), controlling usage.

In some countries, because of this, the law is hardly enforced, but in others, police officers themselves told us that targeting persons for marijuana was an easy way to get promotion. In terms of legal policy, neither situation is satisfactory – a law that is subject to abuse, or a law that is unenforceable, inappropriate or irrelevant. Both erode the rule of law.

Law enforcement personnel confirmed that marijuana does not cause criminal behaviour (one of the key issues to interrogate) but warn that it encourages criminal activity through the protection of “turf” and gang wars, leading to violence. Some of this violence occurs as a result of heavy-handed policing in eradication efforts. Continued prohibition perpetuates the illicit market which has negative implications for citizen security and attempts to ensure safety in products. For example, this market encourages unsafe products such as those with high tetrahydrocannabinol (THC) and contaminants. It also provides undeserved opportunities for criminal entrepreneurs. Law reform and decriminalisation help to decrease this illicit market drastically.

DISPROPORTIONATE, INCONSISTENT, UNJUST LAW

A huge problem of the law is that it is demonstrated to be inconsistently applied, disproportionate and incongruous, particularly when viewed against the backdrop of other substances proven to be harmful, like alcohol, which are not similarly prohibited, criminalised or demonised. Most Caribbean law on cannabis provide for mandatory minimum penalties (typically draconian) which make the law harsher, especially within a strict liability regime. Significantly, persons arrested for cannabis/marijuana can end up with much harsher penalties than those convicted of serious victim-based crime. Cannabis/marijuana is a victimless crime. As the Commission was told often: “Nobody ever die from marijuana.”

Consider, for example, that a person can wound someone with intent and this can result in non-custodial sentences in some cases (no jail time), (even when death occurs), while a person with 1.16 grams of cannabis can be sentenced to imprisonment for 40 years. This is a travesty of any justice system. We provided a table showing the harsh sentencing occurring in the region.

These concerns undermine the legitimacy of the law and inhibit its enforcement. Many people do not accept the law on cannabis and recognise clearly that important rationales for law-making, especially criminal law – to cure real “harm” or “mischief” – are lacking. “A plant is not a criminal”, one participant said.

DISCRIMINATORY LAW ENFORCEMENT PRACTICES AND IMPACTS

The legal and social dimensions on the issue also embrace issues of human rights and deep, abiding concerns about equity and social justice which must be considered in any regulatory policy. We heard many heartrending stories of persecution and harassment from CARICOM citizens. Biases, discrimination and inequality are evident in every aspect of the administration of the criminal justice system relating to marijuana, particularly regarding the poor, the marginalised and the Rastafarians. We placed the issue of the persecution of Rastafarians at the core of our deliberations and we made special consideration for them in our recommendations.

Stereotyping and prejudices remain, even in our courts. You and I, if caught with cannabis, will likely not be arrested, but the poor, vulnerable “little black boy” on the block would. Marijuana is glamorised on television, in Hollywood (*Weeds*), seen as cute or hip; but poor, disenfranchised users are stigmatised and viewed as criminals, dropouts and dangers to society, despite the lack of evidence that marijuana causes psychotic behaviour and the considerable evidence that it has a calming effect. The police acknowledged that the poor are targeted. One officer when asked why, said that they were in the streets, so it was easier to arrest them.

Because of how Caribbean societies are stratified, such inequity often translates into underlying race biases.

Studies demonstrate that drug use itself is often a function of poverty and lack of opportunities, as a coping mechanism, so that the legal system penalises and criminalises the already vulnerable. These are broader social issues not solved by criminalisation.

The propensity to incarcerate (warehousing) has led to a wasteful and costly system where many potentially productive lives and families have been destroyed, without benefit to the society. There are gender dimensions when mothers are imprisoned. We heard direct testimony about these negative social impacts from the victims.

EMERGING HUMAN RIGHTS JURISPRUDENCE

Modern jurisprudence also indicates that important human rights are at stake. Courts in Canada (Allard) and the US have held that denying persons the ability to grow cannabis/marijuana at home for use as a personal medicine violates human rights to integrity and liberty. These are persuasive precedents and are likely to penetrate Caribbean courts, expanding and in some cases, reversing more restrictive older human rights precedents on cannabis. Such precedents are amplified by recent right to privacy judgements in Caribbean courts. When the precedents are read in conjunction with recent human rights precedents in the region, the Commission advises that the current prohibition on home-use in existing law is unlikely to be sustained if challenged in the courts.

The Trinidad and Tobago courts, in the Barry Francis Case, have also ruled against harsh mandatory, non-discretionary penalties, in particular, 40 years imprisonment, for cannabis on the basis of human rights. The restriction of its discretionary sentencing powers by the mandatory penalties was a violation of the separation of powers. It denounced what it called “the arbitrary, capricious and oppressive” nature of the legislative sentencing formula, deeming it “cruel and inhumane punishment”, excessive and “wholly disproportionate” to the offences, saying: “...there is no rational relation of the penalty to the actual offence committed... It breaches the right to the protection of the law in section 4(b) of the Constitution.” It was deemed “grossly unfair and offensive of the fundamental principles of justice and rule of law” and was “not reasonably justifiable.”

MONEY LAUNDERING

The illegal status of cannabis/marijuana also means that any profits from its industry fall under money laundering statutes as the “profits of crime”. This also has negative implications for banks, including correspondent banking. To benefit from the medical marijuana industry, the legal status must be changed, a status which should be validated in the international conventions which inform cannabis.

ECONOMIC BENEFITS

We have found that prohibition denies the CARICOM region substantial economic benefits, both in terms of savings from the averted costs accrued by law enforcement, fighting prohibition-induced crime, reduced black market, and from the potential positive benefits, sales, licensing requirements for production, taxes and other revenue. A cannabis industry can create innovative enterprise, providing employment and encouraging entrepreneurship.

The Economics Study that we commissioned illustrates that the highest financial benefits will come from a fully legalised model that is strictly regulated and the lowest benefit will come from decriminalising only. Prices inflated because of the black market will fall with liberalisation.

Marijuana farmers who were once considered criminals will now be accepted as respected farmers and entrepreneurs contributing to the licit local economy. We met young persons who expressed their desire to enter this new market economy. No longer will our most potentially productive youth be criminalised and jailed for their involvement in a niche market that was criminalised by “historical accident.”

Savings will also accrue because 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.^{iv}

NEED TO DEVELOP CARIBBEAN MEDICAL RESEARCH

Importantly, too, the current prohibitionist regime also hinders scientific development and medical research by the region's brilliant science and medical researchers who have already proven that they can be pioneering in terms of cannabis research. They need to be liberated from a costly prohibitionist regime to contribute to the burgeoning body of knowledge of this useful plant substance and aid in economic development. Law reform will give opportunities to these indigenous professionals.

PROTECTING OUR HEGEMONY

Economic development in cannabis should also be cognisant of tensions between small local farmers and large enterprises, including foreign companies. There is a conundrum that cannabis has fuelled important economic gains and livelihoods for small farmers and traders, who now fear that liberalisation and legalisation might dis-empower them. Appropriate land tenure and licensing strategies need to be developed to be inclusive to small, landless farmers, who currently squat. Licensing needs to be equitable and not displace small entrepreneurs and farmers.

There is also need for leadership from the political directorate to safeguard our hegemony and future development interests. Industry development should be premised on innovation and not unduly rely on the provision of raw products, given the historical lessons of persistent poverty that occurred with sugar, bananas and other Caribbean crops and raw products because of inherent inequities in trade relationships with large developed countries. This should include concerns about intellectual property rights given the unique strains of cannabis in the region.

INTERNATIONAL LAW CHALLENGES

There are also legitimate concerns about the international paradigm since cannabis laws conform to International Drug Conventions which perpetuate criminalisation of cannabis. However, these have been labelled "redundant" and dysfunctional even by UN bodies and now lack the legitimacy and consensus to seriously challenge law reform. International treaty instruments derive their authority from consensus in the international sphere, thus the fact that so many countries, including important allies like Canada, have deviated from them, undermines their authority. The UN Global Commission acknowledged that this consensus "has fractured".

Further, in accordance with recent case law (Myrie) and established international law jurisprudence, they may be challenged on the basis that they violate domestic human rights norms. These treaties now provide weak opposition to restrict change and are themselves in transition. Consequently, CARICOM should not consider itself bound by these obsolete, obstructive treaty obligations.

What is needed now is for CARICOM Member States to work together to formulate a formal, regional position and to lend a persuasive voice to the calls for much needed reform of the relevant Drug Conventions. A regional approach and a clear, informed roadmap would also give credibility to policy reform initiatives. In addition, an establishment of regional social and legal policy, with CARICOM

existing within a strong unified position of solidarity, is an effective way to interface with countries outside of the region and to meet the challenges of the existing international treaty framework on cannabis/ marijuana.

CARICOM is better able to negotiate the tensions arising between redundant treaties and other requirements, not unilaterally, as Jamaica has been doing, but as a unified entity. It is not plausible that in the current global environment on cannabis, that the US or other developed nations have the moral authority to act against the Caribbean if we liberalise cannabis.

Partnering with powerful, traditional allies like those in Europe, Canada, Uruguay and other Latin American states presents a unique opportunity for influence in pressing for amendments to the Conventions. The long history and cultural significance of cannabis in the region makes CARICOM a potentially authoritative player in this process, but only if it proceeds as a powerful, unified, regional bloc of states.

In the interim, Member States should declare that the treaties contravene human rights principles in CARICOM states to ground a justification for avoiding treaty obligations.

THE WAY FORWARD: PUBLIC HEALTH – HUMAN RIGHTS APPROACH

The end goal for CARICOM should be the dismantling of prohibition in its totality, to be replaced by a strictly regulated framework akin to that for alcohol and tobacco, which are harmful substances that are not criminalised. The status quo should not be maintained. However, law reform can take many forms and should conform to national realities. Law reform should proceed within a responsible, controlled regime that will depend on focussed and adequate institutional resources to achieve the desirable objectives and education (note that the anti-smoking campaign has been effective).

The Commission was unanimous in its view that the current classification for cannabis/marijuana as a “dangerous drug” with “no value” or narcotic, should be changed to a classification of cannabis as a “controlled substance”.

Ultimately, legal policy toward marijuana should be informed, not by punitive approaches, but by public health rationales, within a human rights, social justice and developmental perspective. A too limited approach to law reform, including one that focusses only on medical marijuana, would be inimical to the goals of Caribbean development, as outlined in the SDGs and endorsed by CARICOM. Consequently, there is consensus that all criminal penalties from marijuana laws should be removed.

This will also immunise cannabis/marijuana sales and profits from the current trajectory where they are treated as proceeds of crime under anti-money laundering and proceeds of crime legislation.

The Commission is unanimous in its view that children and young persons must be protected from possible adverse effects of cannabis. Consequently, prohibition for children and young persons within an appropriate age limit should be maintained except for medical reasons; ^v

The Commission is unanimous that drug-driving laws and mechanisms should be put in place to prevent persons from driving under the influence. These are futuristic and mechanisms would need to be developed to enable this objective.

The law must also ensure unhindered access to cannabis/marijuana for scientific and medical research by approved institutions and researchers. In Jamaica, the new law has resulted in increased obstruction for researchers and needs to be revisited.

The law should enact legal definitions of hemp based on low THC levels and make clear distinctions between hemp and other varieties of cannabis, ensuring that legal sanctions are removed from hemp production, to promote a hemp industry.^{vi}

Marijuana use for medical purposes should be legalised, but within special regulatory conditions for the use of marijuana for commercial medicinal purposes (even though other nutraceutical products are not regulated), the provision of public health facilities for users in need of it, and well-supervised supply, marketing, branding, packaging arrangements, etc.

Cannabis/marijuana smoking and other uses should be banned in all public spaces, whether in a decriminalised or legalised regime, like tobacco. CARICOM could consider the establishment of designated or contained public spaces for this purpose, as occurs in The Netherlands, Portugal and Spain. The exception to the ban on public use should be for Rastafarians who should be able to practice their faith in public spaces.

Possession and use in private households and for personal use only should be decriminalised. In doing so, we concur with the many law enforcement personnel who believe that effectively enforcing prohibitionist laws in private households is near impossible. It is an opinion reinforced by recent judicial precedents on the rights to health as demonstrated by the upholding of the freedom to grow and use cannabis for personal medical use and on the right to privacy. This means limited home-growing for a small number of plants should also be permitted. Several legislated models permitting home-growing already exist, including Uruguay, Colorado, and Washington and in the Caribbean, Jamaica, and Antigua & Barbuda.

The Commission also recommends access only to limited amounts of cannabis and only in strictly controlled retail outlets.

While there is considerable consensus amongst Commissioners about the nature and thrust of law reform, in particular, the move away from criminalisation toward a responsibly regulated, public health/rights-based approach, there is a divergence of views as to how best to achieve this shared objective. Accordingly, the Commission envisages a two-pronged route to law reform.

On the one hand, it visualises a more liberalised regime for those states that have already initiated law reform, or which believe that they have the institutional capacity for the full removal of prohibition in the manner described. For others, a more incremental approach is envisaged. However, certain key denominators or minimum standards should inform both approaches, as outlined above. Several law reform models with varying degrees of regulation are discussed in the Report to guide CARICOM states.

A private/public partnership model is envisaged which allows states to have important roles in regulation and control of distribution and production, including licensing, but is balanced enough to promote cottage industries and entrepreneurship.^{vii}

BUILDING A GENUINE DEMOCRACY

In conclusion, in 2018, there are now deep rationales for law reform of the harmful, ineffective and unjust prohibitionist legal regime that currently informs cannabis, supported by strong public opinion and credible scientific and empirical data and analysis. These rationales will provide legitimacy to new laws in ways that the current legal framework lacks. The public health/rights focussed approach that we advocate is one that CARICOM Heads of Government have themselves embraced since 2002. The time is ripe for this commitment to be realised.

I look forward to impactful, dynamic law reform centred on human rights and democratic ideals consonant with the sustainable development goals (SDGs) that CARICOM has embraced enthusiastically and that will bring meaningful change to Caribbean peoples. Law reform for marijuana can no longer be ignored. If we do not act, or if we delay further, Caribbean peoples will feel cheated – they are waiting anxiously to exhale, both figuratively and literally.

ⁱ It was officially criminalised in 1913 under the Opium Law in Jamaica and subsequent legislation expanded the scope of prohibition. Criminalisation elsewhere in the region came in the 1930s pursuant to the 1937 Dangerous Drug Ordinance in the UK.

ⁱⁱ See too, Ezekiel 34:29: “And I will raise up for them a plant of renown, and they shall be no more consumed with hunger in the land, neither bear the shame of the heathen anymore;” and Revelations 22:1-2, A gift from God.”

ⁱⁱⁱ West, Manley, Homi, J. ‘Cannabis as a Medicine’, Br J Anaesth, 1996, Jan 76 (1) 1-67.

^{iv} 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, also laying the foundation for a vibrant wellness tourism industry.

^v However, young people who use marijuana should be directed to treatment and diversion programmes rather than being prosecuted or criminalised.

^{vi} Concerns about the environment from inappropriate methods of land use for growing cannabis will also need to be addressed.

^{vii} The risk of over-commercialisation, which could stimulate irresponsible demand, is discouraged. A central government-run regulatory authority should be established with authority to issue licences, monitor production, including strains of cannabis, and quality of product, supervise distribution, supply and dedicated retail centres. This will also require more detailed regulations on production, supply, monitoring of product, marketing etc., as discussed infra.

