



## REPORT OF THE CARICOM REGIONAL COMMISSION ON MARIJUANA 2018

*WAITING TO EXHALE -  
SAFEGUARDING OUR FUTURE THROUGH  
RESPONSIBLE SOCIO-LEGAL POLICY ON MARIJUANA*



Chairperson - Professor Rose-Marie Belle Antoine





# **Report of the CARICOM Regional Commission on Marijuana 2018**

## **Waiting to Exhale – Safeguarding our Future through Responsible Socio-Legal Policy on Marijuana**

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**REPORT TO THE CARIBBEAN COMMUNITY HEADS OF GOVERNMENT  
BY THE  
THE CARICOM REGIONAL COMMISSION ON MARIJUANA**

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SAFEGUARDING OUR FUTURE THROUGH  
RESPONSIBLE SOCIO-LEGAL POLICY ON MARIJUANA**

**June, 2018**

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## **(i) ACKNOWLEDGEMENTS**

The CARICOM Regional Commission on Marijuana (the Commission) records its deep appreciation to the Governments and peoples of the Caribbean Community (CARICOM), in particular, the several countries that permitted the Commission to enter sovereign spaces to conduct respectful dialogue and to gather information vital to its work on the behalf of CARICOM. Notably, submissions and information came not only from the National Consultations, focus groups and other meetings, but also via electronic media (website and email), from individuals, NGO's, National Commissions and organisations, importantly, including those from countries that the Commission did not visit. The Commission is therefore satisfied that it harnessed the regional public's view in a wide and diverse way as contemplated by its mandate. The Commission remains indebted to all.

A list of individuals, organisations that made written submissions to the Commission is included in Appendix D.

The Members of the Commission acknowledge the support of the CARICOM Secretariat and the University of the West-Indies, (The UWI) St. Augustine, especially its Bursary, in performing the administrative and logistical functions in what was a complex process and without which the Commission could not function.

The Commission also records its appreciation of the Open Society Foundation for the generous funding, which enabled the Commission to operationalise its work and fulfil its mandate to undertake regional consultations.

The Commission acknowledges too, the input received from researchers commissioned: Mr. Samuel Gabriel, BSc, Msc (Economics), Economist/ Researcher, HEU, Centre for Health Economics, The UWI, St. Augustine; and Mr. Duane Gutzmer, Research Assistant (Social Data), CEO, Institute of Law & Economics, MBA - Finance (University of Wales); BSc. (University of Technology, Jamaica).



## **(ii) PREFACE**

Responding to the increasing calls from the public, NGOs and other stakeholders in the region and amidst the changing global environment, the CARICOM Conference of Heads of Government at its Twenty-Fifth Inter-Sessional Meeting convened in St. Vincent and the Grenadines, 10 -11 March 2014, mandated the establishment of a Commission to interrogate the issue of possible reform to the legal regimes regulating cannabis/ marijuana in CARICOM countries. The Heads were deeply concerned that thousands of young persons throughout the region had suffered incarceration for marijuana use and consumption and many, after their first experiences with the law, resolved to continue with crime as a way of life. Inconsistent applications of the law had led to deep resentment and non-cooperation with law enforcement agencies.

They were mindful too, that for years, Caribbean citizens had promoted the value of marijuana for its medicinal properties. Increasingly, these claims appeared to be confirmed by emerging scientific evidence. There was also a concern that without action, the region could be left behind because of fast-paced global trends toward law reform in terms of cannabis/marijuana. Already, several states in the United States had decriminalised the use of marijuana for medicinal uses. Uruguay, a sister OAS state, had legalised the consumption of marijuana.

CARICOM Heads recognised that unanimity or coherence of legal and social policy among Member States might help illuminate difficult policy issues in non-partisan political ways and help cushion the negative impact of reservoirs of controversy from opposing stakeholders in the policy debate. It was also recognised that there was an uneven dialogue existing in the region. Indeed, some CARICOM countries had already embarked on plans to change the existing legal policy on marijuana. However, there was concern that a 'go it alone' approach might cause instabilities in other CARICOM countries, so that a regional policy approach was desirable. A regional approach would also enhance the legitimacy of any policy reform initiatives. In addition, an establishment of regional social and legal policy with CARICOM existing within a unified position of solidarity was seen as an effective way to interface with countries outside of the region on what is a delicate issue and to meet the challenges of the existing international treaty framework on cannabis.

CARICOM Heads resolved to proceed with care, mindful of the need to capture the complex, multi-faceted socio-economic, legal dimensions of cannabis/marijuana legal policy and to divorce this sensitive issue from the politically partisan stranglehold that often accompanies calls for change. These include referenda, which have often provided fertile ground for the 'hijacking' of important social issues by partisan agendas.

Those who supported the establishment of a regional Commission favoured an approach that was grounded in comprehensive research, objective, honest, evaluation and a balanced public policy framework which a regional Commission of independent, inclusive experts could achieve. The Commission undertook its task mindful of the responsibilities and imperatives which had been bestowed upon it and with the seriousness that it deserved.

An important part of the Commission's mandate was to undertake national consultations in Member States to harness the views of the CARICOM public. The depth of interest, passion and knowledge exhibited by Caribbean peoples that accompanied the work of the Commission was perhaps surprising to some Commissioners and even the policy-makers who attended packed public meetings. They spoke to broad issues, moving way beyond the narrow constraints of medical marijuana, to embrace notions of social justice, human rights, economics, regional hegemony and their right to health. As the Heads of Governments meeting drew near and the public got wind of the finalisation of the eagerly anticipated Report to the Heads, the Commission was flooded with additional submissions from across the region.

The law on cannabis/ marijuana is clearly an issue of deep social significance to Caribbean peoples. The Commission is pleased and indeed honoured that it was able, through the wise decision of the CARICOM Heads of Government in 2014, to be the mechanism through which these important voices were heard, an expression of genuine democracy. It hopes that this Report will be an important developmental tool centred on human rights and democratic ideals consonant with the sustainable

development goals (SDGs) that CARICOM has embraced enthusiastically and that it will bring meaningful change to Caribbean peoples.

**June 8, 2018**

***Professor Rose-Marie Belle Antoine***

**Chair, CARICOM Regional Commission on Marijuana, on behalf of the Commission**

*DPhil (Oxon); LLM (Cambridge); LLB (UWI); Attorney-at-Law*

### (iii) LIST OF COMMISSIONERS\*\*<sup>1</sup>

#### **PROFESSOR ROSE MARIE BELLE ANTOINE – CHAIR**

Dean, Faculty of Law, UWI and Professor of Labour Law & Offshore Financial Law, Professor Antoine is an award winning author, attorney, activist and international legal consultant. She holds a doctorate in law from Oxford University, an LLM from Cambridge, and the LLB from The UWI. Antoine was elected by OAS states as a Commissioner on the Inter-American Commission on Human Rights, Washington 2011 and President in 2015. She was the Rapporteur for Persons of African Descent, Rapporteur for Indigenous Peoples and the inaugural Head of the Economic, Social and Cultural Rights Unit at the IACHR / OAS. Currently, she is the Chair of the Family Planning Association. Antoine has won international awards and honours for her scholarship which has been described by international jurists as “original, insightful and amazing”. She created history by winning the distinguished UWI Vice Chancellor’s Prize for Excellence twice (research, then public service). She is an Honorary Fellow of the international Society for Trust Practitioners, the only person from the Caribbean. Antoine has published twelve books, including four with the renowned Oxford University Press and numerous scholarly articles.

Formerly a Legal Officer at the ILO in Geneva, Antoine has served as Lead Consultant/ Advisor to all of the governments of CARICOM, the UK, Venezuela, USA and Canada, NGOs, the judiciary and to several international organizations, including the UN Drugs Control Project, UNIFEM, EU, OAS, IADB, World Bank, CARICOM, OECS, UNICEF, PANCAP, UNDP, CAREC, and UNAIDS. Consequently, she authored influential Policy Reports and drafted legislation on diverse subjects including Drugs, Labour Law, CSME Free Movement, HIV, Financial Law, Health, Discrimination, MLATs, Constitutional Reform, Gender, Money-Laundering, Anti-Corruption, the Judiciary, Public Service, Police, Juvenile Justice, Education and Human Trafficking. As EU/ UK consultant, she led an international team that carried out extensive law reform in the Turks and Caicos Islands which was cited as the forerunner for returning the TCI to democratic governance. Her CARICOM Harmonization in Labour Law Report 1992 was the blueprint for the CARICOM / ILO model labour laws and the catalyst for law reform in the region, including on equal opportunity, unfair dismissal and sexual harassment. As ILO Consultant, she drafted a Labour Code for Saint Lucia and recently, labour laws in The Bahamas. Antoine’s 2009 CARICOM Report on Law & Freedom of Movement is a background document for the CSME’s integration agenda.

Professor Antoine has therefore contributed an important share to the practical realisation of the aims of Caribbean legal development through her pioneering scholarship, activism and consultancy work. As a result, she is described by governments, international sources and others as the “foremost labour law expert in the region”, the “leading” authority in the region on International/ Offshore Financial Law and a “change agent” in HIV law.

#### **PROFESSOR WENDELL ABEL - DEPUTY CHAIR**

Professor Wendell Abel has worked extensively in the field of mental health for many years in Jamaica and the Caribbean and is currently a Consultant Psychiatrist at the University Hospital of the West Indies and Head, Section of Psychiatry, Department of Community Health & Psychiatry, Faculty of Medical Sciences, UWI, Mona. He holds a Bachelor in Medicine, Bachelor Surgery (UWI), Doctor of Medicine in Psychiatry (UWI), the Advanced Diploma in Psychiatry and a Master’s in Public Health (Johns Hopkins). He is an alumnus of the Wolmer’s Boys’ School, Jamaica. He is fluent in Spanish and French.

Professor Abel has published several peer reviewed book chapters and over 75 technical papers and journal articles focusing on mental health and health policy issues such as suicide, depression and community mental health services. His specialist areas of research include cannabis and he has been at the

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<sup>1</sup> The Commission notes with regret the passing of one of the Commissioners early in its tenure: Justice Frederick Bruce-Lyle. Another Commissioner, Dr. Albert Persad, retired from the Commission for personal reasons.

forefront of leading empirical research in the Caribbean on the mental health effects of cannabis. Abel has received honours and awards for his outstanding work and public service, including the Order of Distinction, Officer Class, 2007 from the Government of Jamaica, special awards from the Medical Foundation of Jamaica and the Jamaica Psychiatric Association respectively as well as awards from the Pan American Health Organization (PAHO). He was promoted to the rank of Professor, UWI, in 2013.

Professor Abel has been a consultant to CARICOM and the Pan American Health Organization (PAHO) on public mental health. Professor Abel has served and continues to serve on numerous boards in the public and private sector. Currently he is the Chair of the National Council on Drug Abuse, Jamaica and a Commissioner, on the Cannabis Licensing Authority of Jamaica.

### **ESTHER BEST**

Ms. Esther Best is the Manager of the National Drug Council of Trinidad and Tobago, the Unit within the Ministry of National Security with responsibility for discharging Trinidad and Tobago's overarching strategic drug policy. She holds a Bachelor of Social Work - Summa Cum Laude, University of the District of Columbia, Washington, D.C. and the Masters in Social Work, Howard University, Washington, D.C. Ms. Best has represented her country and the region at a number of important international fora on drug reform and policy, including cannabis/ marijuana.

Between 2002 and 2007, Best lectured at the Department of Behavioural Sciences, University of the West Indies St. Augustine Campus at both the Bachelors and Masters levels. She has also been a guest lecturer on the issue of drugs in other faculties at the UWI. Ms. Best was one of the academic staff charged with developing the course content for modules to be delivered in the Caribbean Distance Education Programme offered by the Organization of American States at the Certificate level in addiction studies.

### **FRANKLIN LENNOX FRANCIS/RAS FRANKI TAFARI**

Ras Franki Tafari is the Ambassador of Antigua and Barbuda to Ethiopia and a citizen of St. Vincent and the Grenadines and of Antigua and Barbuda. He holds a B.A. in History & Economics from the University of the West Indies, Cave Hill Campus 1969 and a Diploma in Economic Development from Glasgow University, 1972. Ambassador Francis is an Historian, Social Activist, Rasta Leader, Sports Journalist, Cricket Commentator and Teacher in secondary schools in Antigua/Barbuda and Jamaica and the UWI Challenge programme in Antigua. Ambassador Francis has held a number of important positions with significance to the subject of cannabis, including:

- Rastafari Nyabinghi Elder, Rastafari Nyabinghi Theocracy Order.
- Past Chairman Caribbean Rastafari Organization
- Member of Reparations Committee (Antigua/Barbuda)
- Member Antigua and Barbuda Herb Commission

Ambassador Francis has worked and researched for over 40 years on the subject of cannabis. In 2018 he represented the Government of Antigua and Barbuda at the Organisation of American States General Assembly, speaking on the subjects of cannabis and cannabis law reform initiatives in his country and its position on the Rastafarian community.

### **DR. ALANA DIONE DEVINA GRIFFITH**

Dr. Griffith is a Lecturer in Sociology specialising in Social Policy. She began lecturing part-time with UWI Cave Hill in 2004 while working in the Prime Minister's Office Barbados as a Research Officer. She joined the Faculty as a full time member later in 2005. She left UWI to pursue a PhD at the University of Kent (UK) in 2008. Upon completion of her PhD in 2011, she took up a post at Kent as an Assistant Lecturer. She has also held a Research Assistant post at the University of Kent. She re-joined the UWI Social Sciences Faculty in 2012.

Dr. Griffith's specialist research interests include cannabis / marijuana and its social dimensions. She is one of the few scholars in the region researching this area. She has published a number of scholarly articles. Dr. Griffith has also undertaken consultancies at the Urban Development Commission and the Ministry of Social Transformation (Barbados). She is a Member of the Social Policy Association.

#### **DR. MAXINE GOSSELL- WILLIAMS**

Dr. Maxine Gossell-Williams is a Senior Lecturer in the Section of Pharmacology and Pharmacy, University of the West Indies, Mona Campus. Her research training was led through mentorship by Professor Manley West; the first scientist in the Caribbean to produce medicines from marijuana. Dr. Gossell-Williams' research interests focus on the assessment of drug benefits and adverse effects; thus monitoring the safety of drugs. Through her work, she showed that marijuana use makes treatment of schizophrenic patients more challenging. She is a Fulbright Scholar and a winner of the Jamaica Public Service Company/ Scientific Research Council Young Scientist of the year award. She previously served as member of the Central Drug and Therapeutics Committee of the Ministry of Health of Jamaica.

Dr. Gossell-Williams has published a number of scholarly articles relevant to the subject of cannabis / marijuana, including: P Thomas, M Gossell-Williams, CA Sewell, WD Abel, D McGrowder, J Martin (2015). The Impact of Cannabis Use on the Dosage of Antipsychotic Drugs in Patients Admitted on the Psychiatric Ward at the University Hospital of the West Indies. *West Indian Medical Journal Open* 2 (1): 23-27.

#### **BISHOP (RETIRED) SIMEON HALL**

After thirty years of serving in the Pastorate, Bishop Simeon B. Hall presently serves as Pastor Emeritus of New Covenant Baptist Church and Moderator Emeritus of the Bethel Baptist Association. Bishop Hall has led numerous Evangelistic and Mission exercises around the world. He has travelled extensively proclaiming the gospel, and has preached on all the Islands of the Commonwealth of The Bahamas, in every major island nation in the Caribbean, forty-eight (48) States in the USA, Canada, South Africa, Malaysia, Singapore, Beijing, London, Australia and many European and South American Countries. Bishop Hall is the author of three books, *"How the Kingdom Will Come"*, *"When the Eagle Stirs Her Nest"* and *"Sermons from A Bahamian Pulpit"*. Bishop Hall was also honoured to have his sermon *"How to Dance in A Graveyard Situation"* recently featured in Baylor University's publication *"Baptist Preaching: A Global Anthology"*.

Bishop Hall graduated from the American Baptist Theological Seminary in 1973 and completed studies at Vanderbilt University, Southern Baptist Theological Seminary and The Billy Graham School of Evangelism. He was consecrated a Bishop on August 27th, 2002 by the Association of Evangelical Churches of the State of Florida. He is married to the former Linda Hall (nee Farrington) and they are the proud parents of three children. Before going into fulltime Pastorate, he served as the Vice-Principal and an educator at the Jordan Prince William Baptist School and the Charles W. Saunders Baptist School. Bishop Hall was elected President of The Bahamas Christian Council of Churches in 1997 and served the full term of three years. His strong social conscience, public advocacy, unique and colourful speeches placed the Council in the hearts and spirit of the Bahamian people and raised it to a new level never before experienced. Since completing his term, he remains an active member of the Council, often serving in an advisory capacity to the Council's Board and its leadership.

A strong advocate for the disenfranchised and social justice for all, Bishop Hall's stance on many political, social and economic issues has not gone unnoticed by the major political parties within The Bahamas. In the past 26 years, he has addressed both major Bahamian political parties a total of fourteen times on various issues and has been appointed and/or elected to various governmental and community bodies focused on social justice and community outreach. He was formerly President, Baptist Congress of Christian Education (B.B.M.E.C.) (1985-87), Vice President at Large, Bahamas National Baptist Convention, 1st Vice President, Bahamas Missionary & Educational Convention, Special Assistant to the President, Bahamas Christian Council, Pastor, Central Baptist Church (1982-1983), President, Baptist

Ministerial Alliance (1978-1980), President, The Baptist Youth (1974-1980), Vice Principal, Jordan Prince William School (1973-1981), Assistant Pastor, St. Paul's Baptist Church (1973-1981) and Pastor, Good Hope Baptist Church, Fort Campbell, Kentucky (1970-73). He also served previously as the Chairman, Bahamas National Advisory Council on Crime, President, Bahamas Christian Council of Churches, President, Bahamian-Haitian Covenant Association. On June 14th, 2000 Bishop Hall was named in the Queen's Birthday Honours - Officer of the Most Excellent Order of the British Empire. Bishop Hall's personal maxim is: "It is always better to be justified by God than to be vindicated by man."

### **MR. DORMAH HARRISON**

Mr. Dormah Harrison is the Law Enforcement Specialist, Institute of Criminal Justice and Security, The University of the West Indies, Lecturer, (Management of Strategic Issues) Mona School of Business and Management, The University of the West Indies, Police Advisor (Humanitarian Law & Use of Force) International Community of the Red Cross and a Leadership Development Trainer and Executive Coach Caribbean Law Enforcement Partners Purposeful Training and Coaching Partners. Mr. Harrison is currently pursuing a doctorate at The UWI. His dissertation is entitled Implementing Community Policing as Organisational Change. He holds a Master of Business Administration from The UWI in Public Sector Management, a Bachelor in Business Administration from the University of Technology, Jamaica, and a Professional Diploma from the British Institute of Industrial Managers, England. Mr. Harrison also earned several certificates including a Professional Coaching Certificate from the Institute for Professional Excellence in Coaching, 2015, and a certificate from the Centre for Hemispheric Defense Studies, National Defense University, United States of America, 2009. He also holds a Postgraduate Diploma from the University of the West Indies, Mona Campus, Jamaica, in Public Administration, Leadership Academy for Policing International Unit, Bramshill Police College, England on Combating Transnational Organized Crime and Illicit Networks and from the Canadian Police College, Canada on Ethics and Organisation Value (2007).

Mr. Harrison has held a number of important positions including:

- Assistant Commissioner of Police (2011-2013) of the Jamaica Constabulary Force which he served from 1977-2013.
- Member, Technical Working Group on Law Enforcement Cooperation and Capacity Building supporting the Caribbean Basin Security Initiative Commission (2009-2011)
- Advisor, Police Leadership & Management Education and Training Development, Association of Caribbean Commissioners of Police (2008-2013)
- Member, Strategic Review Implement Team (2008-2013) – Manager of Team (2009-2013)
- Administrative Director, Jamaica Constabulary Force Staff College (2004-2008)
- Research and Project Coordinator, Planning and Research Division (2001-2002)
- Director, Police National Computer Centre (2000)
- Vice- President of the Jamaica Red Cross
- Chairman of Care and Welfare Committee, Church of God of Prophecy in Jamaica
- Leadership Development Trainer, Men's Fellowship, Church of God of Prophecy in Jamaica

In 2006, he was a Visiting Research Scholar at the John Jay College of Criminal Justice, New York, United States of America

### **DR. KISHORE SHALLOW**

Dr. Kishore Shallow holds a Doctorate in Business Administration (DBA) from Walden University, with concentration in Finance. He also holds an MBA from the University of Wales Institute, Cardiff (UK), and a BSc (Hons) in Applied Business Computing from the University of Sunderland. Dr. Shallow is an IT and Business Development Consultant, with emphasis on the implementations of National Information Systems (software).

Dr. Kishore Shallow has been a prominent voice for young people across the Caribbean for many years. He has served as Vice-Dean of the CARICOM Youth Ambassadors Programme, as well as the

CARICOM Youth Ambassador for St. Vincent and the Grenadines. Currently, he is Chairman of the Saint Vincent and the Grenadines Young Professionals Association, which he founded in 2014. At age 34, he is presently the youngest cricket president for any national cricket association, the St. Vincent, and the Grenadines Cricket Association, and also serves as director of Windward Islands franchise and Cricket West Indies.

## TERMS OF REFERENCE AND METHODOLOGY

The Terms of Reference for the Commission were to:

- (a) *conduct a rigorous enquiry into the social, economic, health and legal issues surrounding marijuana use in the Caribbean and to determine whether there should be a change in the current drug classification of marijuana thereby making the drug more accessible for all types of usage (religious, recreational, medical and research); and*
- (b) *recommend, if there is to be a re-classification, the legal and administrative conditions that should apply;*

In the scope of its work, the Commission was also authorised and mandated to “engage in an extensive consultation process with members of the Community and other key stakeholders at the national level to elicit the population’s view about current usage and re-classification.”

Ten persons from across the region with relevant expertise in the scientific, medical, legal and social science fields, as well as representatives from the Christian and Rastafarian religious communities and of the youth, were selected as Commissioners, ensuring inclusiveness. A Chair and Deputy-Chair were appointed. The Commission convened in 2016 and in June 2016, the first national consultation was held in St. Vincent and the Grenadines. However, due to a lack of funding, the national consultations were suspended.

In February 2017, the Commission obtained funding from the Foundation to Promote Open Society (OSF) to support the implementation of its work. Consequently, after the initial June 2016 meeting, the national consultations resumed in June 2017.

### Methodology

To fulfil its mandate, the Commission employed mixed methods to gather data. Primary data were obtained from the National Consultations, comprising national public meetings and focus group discussions to obtain indepth information. National consultations were convened in Member States working in collaboration with the Ministries of Foreign Affairs. Secondary data was obtained from several sources.

The Commission made itself available to every Member State of CARICOM and accommodated all requests with respect to scheduling, so as to ensure that Caribbean peoples had the opportunity to voice their opinions on this issue of deep social significance to the region. Consequently, national consultations were conducted in nine (9) countries: St. Vincent and the Grenadines, Antigua and Barbuda, Barbados, Guyana, Suriname, Montserrat, St. Kitts and Nevis, Belize and the Commonwealth of The Bahamas.

A national consultation was scheduled for the Commonwealth of Dominica, but unfortunately, had to be cancelled because of the devastation caused by Hurricane Maria. The Commission takes the opportunity to offer salutations to the Government and peoples of Dominica, to thank them for their interest in the work of the Commission and wish them every success in the road to rebuilding and continued development.

A request to Grenada which was postponed due to imminent elections in that country, ~~but~~ did not materialise. There were no responses to requests from the CARICOM Secretariat to Saint Lucia to host a Consultation and Trinidad and Tobago indicated in response to requests that the Consultation could not be accommodated during the time period. The Commission also received a request for a Consultation from Jamaica, but given that Jamaica had already amended its laws, this was not prioritised for funding reasons.

The Consultations were structured in two parts, comprising focus group discussions of targeted stakeholders, in addition to public Town Hall meetings. The national public meetings allowed for attendees to articulate their concerns on the issue of decriminalisation of marijuana. While national surveys would have provided information general to the population, given the time and budgetary constraints for conducting national surveys, public town hall meetings allowed for open discussion and



clarification of issues where such necessity arose. The disadvantage of such meetings is that the views expressed do not necessarily reflect the opinions of the entire population. Given this shortcoming, the focus groups allowed for breadth in data-gathering. Further, the Commission itself commissioned an online survey and a designed a questionnaire for police in the region to gather data. Importantly, the Commission also commissioned a specialist Economics Study to provide expert analysis on possible economic outcomes of law reform on cannabis, provided as Appendix E in this Report. Data on public attitudes to decriminalisation were also obtained for CARICOM countries from national surveys conducted by the Caribbean Development Research Services (CADRES), national household surveys and national school surveys.

The focus groups included representatives from the National Drug Councils, or their equivalents, law enforcement personnel, youth organisations (in and out of school) and organizations and entities that work with them, faith-based organisations and Special Interest Groups such as researchers, medical practitioners, Non-Government Organizations, practitioners of alternative medicine and advocates for medicinal use of marijuana. During the national consultations, the Commission succeeded in harnessing a wide variety of perspectives. These included personal testimonies from persons who have used marijuana, (either home or abroad), often persons who had been arrested for small amounts of the substance, as well as those who argued for the legal permission to do so for medical and other reasons.

Focus group discussions moderated by Commissioners were used to quickly and conveniently gather rich data from a large number of the targeted stakeholders (youth, special interests – religious, medical, and criminal justice personnel, inter alia) about their general opinions on decriminalisation in a short period of time. Approximately 3 focus group discussions were held in each country for which national consultations occurred for a total of 27 focus groups, each comprised of various, representative stakeholders. The informal structure of the focus group discussions allowed participants to speak freely about their views on the present policy and potential policy change. Only Commissioners and a rapporteur were allowed in the focus groups. The intimate nature of the groups meant that, especially for the youth, they felt less fearful of expressing opinions and experiences that may have challenged the status quo. National governments were issued instructions for the composition of focus groups and were responsible for coordinating the location and participants. The impracticality of individual interviews also made focus groups a good option for gathering data. As typical for focus group discussions the level of dynamism in the discussions saw the sessions sometimes exceeding the scheduled duration. Focus groups have the benefit of high face validity, that is, they accurately reflect the understanding of participants.

The Commission also invited and received submissions and written information from the public, researchers and other interested persons. A petition seeking to legalise cannabis with over 9,500 signatures from Trinidad and Tobago was also received. These were received via hard copy or electronically through a webpage link on the CARICOM Commission webpage and emails. Desk Research was also undertaken to examine the relevant legislation, case law, related studies, some of which were provided by Member States, and other published materials. A survey instrument to collect information from adolescents and youth was also adapted and was transmitted to the Directors of National Drug Councils regionally, requesting their assistance in conducting the surveys. Secondary data from nationally representative national secondary school surveys conducted in Member States in 2013 were also used to explore use patterns among adolescents. In addition, two researchers were hired to provide additional input to the Commission, an economist and a marketing specialist.

A special website was set up for the CARICOM Regional Commission on Marijuana to permit interaction with the Commission and otherwise inform Caribbean peoples of its ongoing work: [marijuana@caricom.org](http://marijuana@caricom.org).

Thematic analyses were performed of data recorded from focus groups, other sources and national meetings and are used to inform the Report. Although CARICOM countries are not homogenous, several patterns emerged from the data. Some were initially deduced from desk reviews of grey and published literature and some emerged out of the specific country circumstances.

A challenge arises with the reliability of focus groups, town hall meetings and social media surveys, that is, whether the same results would be obtained under the same circumstances if repeated at a different time. All three methods lack specificity to national populations. Further, given the illegal status of marijuana, it

was difficult to ascertain accurate use patterns from the adult population and they are likely to be under-reported.

The Commission is, however, satisfied that it was able to harness wide and representative views on legal policy on cannabis/marijuana in the region, which adequately informs this Report.



## NATIONAL CONSULTATIONS





Commissioners: Left to right Dormah Harrison, Bishop Hall, Dr. Gossell-Williams, Ambassador Francis, Professor Rose-Marie B. Antoine, Professor Wendel Abel, Esther Best, Dr. A. Griffith, Dr. K. Shallow.



## (iv) EXECUTIVE SUMMARY

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 Guyana, Jamaica, and Trinidad and Tobago by East Indian indentured labourers.

The designation of cannabis/ marijuana as an unlawful substance and a dangerous drug is of relatively recent vintage. For most of our history, cannabis/ marijuana was a free substance, grown naturally and easily throughout the region. Indeed, many CARICOM citizens have memories of their grandparents and forefathers using cannabis/ marijuana in benign fashion, such as “bash tea”, before the advent of prohibition, or, at least, its strict enforcement.

In spite of its social significance, the cultivation and importation of marijuana was officially criminalized 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. These were responses to international treaty formation which deemed cannabis/ marijuana a “dangerous drug” without value, despite the lack of scientific or medical data to support this classification, a status that has now been proven to be inaccurate. There is 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. Harsh, criminal penalties were imposed on cannabis in all its forms within a context of strict liability. This led to the demonization of the substance and the criminalisation and imprisonment of many persons in the Caribbean, often for possessing small amounts of the substance and even when using for medicinal purposes.

Remarkably, despite extensive controls and punitive measures, use of cannabis/ marijuana has persisted and taken root globally in many societies. Cannabis/ marijuana is also widely used in the Commonwealth Caribbean across all borders and strata, despite the draconian, prohibitionist legal regime that exists in every Member State. It is the most extensively used illicit drug in the world. The World Drug Report (2017) notes that an estimated 183 million people consume it.

The Commission considered the several multi-faceted aspects of the cannabis/ marijuana question. It analysed the social, religious, legal, scientific and medical issues associated with this subject, gleaning information from literature reviews and views from the public. 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.

After holding national Consultations receiving several submissions and a petition from the public, reviewing data from polls and surveys from several countries, it is clear that 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 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, DPPs, Members of Parliament and senior members of the Bar. For example, this Report illustrates that 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 and Barbuda in 2016. Similar statistics obtain elsewhere in the region.

The majority of Caribbean peoples believe that the cannabis/ marijuana laws are ineffective, discriminatory, deeply unjust, unfit for purpose, 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 cheaply than traditional pharmaceuticals.

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.

The groundswell of support and enthusiasm for change is a significant indicator to CARICOM governments on the question of law reform. Notwithstanding, the Commission believes that it is a necessary, but not sufficient condition to invoke change. It therefore interrogated and analysed the most up to date scientific, medical, legal and social data to substantiate these views. It found 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. It seems that Caribbean peoples have their hand on the

pulse. Indeed, in many respects the ‘horse has already bolted,’ since Caribbean nationals are already accessing marijuana as “medical refugees” from the several countries, including allies that have already decriminalised, or legalised the plant.

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. These are legitimate concerns which the Commission carefully assessed. Some of these fears have been assuaged through the modern scientific research that was harnessed. Others remain, but the Commission is satisfied that they can be appropriately addressed through a responsible framework for law reform as is advocated in this Report.

Moreover, the region has now had the benefit of observing the effects of law reform not just in countries around the world, but in a CARICOM country, Jamaica, which presents 3 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, but also no increase 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 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. The following reasons explain our position.

The Commission accepts that marijuana is a substance with psychoactive properties which has the potential for negative health consequences and mental health complications especially among the youth. However, the health risks are concentrated in high risk persons, in particular, the youth, and specific risk situations. Even as it acknowledges the need for more robust research with regard to some claims, the Commission is satisfied that significant support exists in the literature with regards to 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 in the near future, 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, addiction and causative factors in relation to psychosis. It also establishes that cannabis is less harmful, or no more harmful than substances that are not prohibited under law, like alcohol.

The Commission is guided by the conclusive evidence that exists for the negative effect on the adolescent brain and on driving. Consequently, cannabis/marijuana use for children and young persons is not recommended.

Of the potential adverse effects, the Commission is guided by the conclusive evidence that exists for the negative effect on the adolescent brain and on driving. Consequently, cannabis/ marijuana use for children and young persons is 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. Driving under the influence is also not recommended.

On balance, after evaluating the scientific data and testimonies from the public, the Commission is of the view 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, the most influential of which have labelled the current legal regime “redundant” and “obstructionist.” This Report acknowledges the work of these previous studies. 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.

The Report acknowledges that it may be necessary to invest resources in treating cannabis/ marijuana as a public health issue, at least in the short-term, notwithstanding general expectations to public health. It should be noted that the Commission’s Economics Study illustrates that significant earnings may be realized from averted enforcement costs, sales, licensing requirements for production, taxes and other revenue for a law reform model that is strictly regulated by the state. Funding costs may therefore be offset by these revenues.

The Commission accepts the evidence 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. 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, in a 1972 Report to the US Congress, itself challenged this classification, finding that marijuana presented little harm and should be decriminalised. Given the key finding that now establishes that cannabis/ marijuana has several beneficial effects, cannabis/ marijuana 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.

**Cannabis/ marijuana can no longer be accurately classified in law as a “dangerous drug” with “no medicinal or other value”.**

The prohibition based regime supported by criminal sanctions is deemed to be ineffective, inefficient and unfit for purpose both by many members of the public and those who administer it. Despite its illegal status, marijuana is readily available and its use is prevalent across the region and across all classes, races and social status. The prohibitionist legal regime and the harsh penalties, remnants of a now discredited ‘war on drugs’ approach, have failed to deter usage. Influential international and regional authorities have acknowledged this and called for a new approach, centred on public health and rights, to treat with cannabis/ marijuana. CARICOM itself endorsed this approach in 2002 at its Heads of Government Meeting, but has failed to implement it.

Moreover, there are many arrests and much imprisonment, pressuring law enforcement resources and filling the jails with otherwise law-abiding citizens who have had small amounts of cannabis/ marijuana in their possession, exacerbated by their inability to raise bail. Law enforcement personnel themselves complain about this ineffective, wasteful system and believe that their resources are better employed fighting serious crime. They debunk myths that cannabis/ marijuana is a causative factor in criminal conduct and believe that most persons use for stress relief. They also acknowledge that the poor are targeted in enforcing cannabis/ marijuana law while the rich are not.

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.

While asserting that cannabis/ marijuana does not cause criminal behaviour, law enforcement personnel 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, where millions of black market profits are lost each year. Continued prohibition perpetuates the illicit market which has negative implications for citizen security and attempts to ensure quality and 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.

The law is also 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. Persons spend long periods of imprisonment for possessing small amounts of cannabis/ marijuana, even persons who use for medical reasons. 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." For example, wounding with intent offences can result in non-custodial sentences in some cases, (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. 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.

The legal and social dimensions on the issue of marijuana are wide, varied and very compelling. They embrace issues of human rights and deep, abiding concerns about equity and social justice which must be considered in any regulatory policy. They range from the very conception of the law, to the patterns of arrest, trial and sentencing. The Commission listened to many heartrending stories of persecution and harassment from CARICOM citizens. Biases and inequality are discernible in every aspect of the administration of the criminal justice system relating to marijuana, particularly with regard to the poor, marginalised and Rastafarians. Stereotyping and hidden prejudices remain, even in our courts. 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.

There is therefore a discernible cycle of disadvantage based on status. Persons who get arrested and convicted for marijuana typically belong to a particular social class and race, (racist and classist) which does not correspond to the many who actually use it. Yet, law and policy remain blinded to these unequal paradigms and prejudices, revealing a structural and systematic defect of equity in the criminal justice system. The impact of such criminalisation has been not only a diminution of economic, social and cultural rights (the right to work/ livelihoods, health), but to civil and political rights such as equality.

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.

Modern jurisprudence also indicates that important human rights are at stake. Courts in Canada and the US have found that denying persons the ability to grow cannabis/ marijuana at home for use as a personal medicine violates human rights. 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/ marijuana. Such precedents are amplified by recent right to privacy judgements in Caribbean courts. These cases have held that it is unconstitutional for the state to prevent individuals from such use when taken to promote their health. 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.

Further, prohibition denies the CARICOM region substantial economic benefits, both in terms of savings from the negative costs accrued by law enforcement, fighting prohibition induced crime, reduced black market, and from the potential positive benefits. It can benefit from developing a cannabis industry, creating innovative enterprise, providing employment and encouraging entrepreneurship.

Prohibition denies the CARICOM region substantial economic benefits

An Economics Study commissioned for the Commission 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.

The Economics Study illustrates that prices inflated because of the black market will fall with liberalisation. Consideration should be given to establishing fixed prices and moderate taxes, taking care not to re-ignite the black market. While prices will fall, revenue will accrue because of sales, taxes and related measures.

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

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 local recreational market.

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, (given that Caribbean UWI researchers led in cannabis drugs for glaucoma), if given the opportunity. 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.

Economic development in cannabis should also be cognisant of tensions between small local farmers and large enterprises, including foreign companies. 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. 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 paradigms of persistent poverty that occurred with sugar, bananas and other Caribbean crops and raw products. This should include concerns about intellectual property rights given the unique strains of cannabis in the region.

Choosing the right approach involves taking account of the national political and social circumstances as well as the institutional capacities of Member States.

### **The Way Forward**

The Commission believes that 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. However, it acknowledges that law reform can take many forms and should conform to national realities. This is particularly because the Commission is of the view that law reform should not adopt a laissez-faire, liberalised approach, but proceed within a responsible,



controlled regime that will depend on focussed and adequate institutional resources to achieve the desirable objectives.

The Commission is 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”

The Commission is 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.”

The Commission is unanimous in its view that 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 counterproductive and inimical to the goals of Caribbean development, as outlined in the SDGs and endorsed by CARICOM. Consequently, there is a consensus that all criminal penalties from marijuana laws should be removed. If only decriminalisation is envisaged, reasonable fines and compulsory rehabilitative treatment should be substituted. 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; however, young people who use marijuana should be directed to treatment and diversion programs rather than being prosecuted or criminalized.

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.

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 all legal sanctions are removed from hemp and hemp production, so as to encourage a hemp industry.

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

Given the clear scientific support for the medical benefits of cannabis/ marijuana, its use for medical purposes should be legalised. This should occur within special regulatory conditions for the use of marijuana for commercial medicinal purposes, (despite the fact that 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.

The Commission recommends that cannabis/ marijuana smoking and other uses should be banned in all public spaces. Whether in a decriminalised or legalised regime. CARICOM could consider the establishment of designated or contained public spaces for this purpose, as occurs in The Netherlands, Portugal and Spain. However, this was not considered a priority for the Commission. The exception to the ban on public use should be for Rastafarians who should be able to practice their faith.

The Commission is of the view that possession and use in private households and for personal use only should be decriminalised. In doing so, it concurs 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. Given these precedents, limited home-growing for a small number of plants should be permitted. A number of

legislated models permitting home-growing already exist, including Uruguay, Colorado, and Washington and in the Caribbean, Jamaica, and Antigua and Barbuda.

**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**

The Commission also recommends access to limited amounts of cannabis 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, but is balanced enough to stimulate cottage industries and entrepreneurship. The risk of over-commercialisation, which could stimulate irresponsible demand, is discouraged. A central government run regulatory authority should be established to manage the private/ public partnership process, with authority to issue licences, monitor production, including strains of cannabis, and quality of product, supervise distribution, supply and dedicated retail centres. Limits should be placed upon the amount of cannabis that may be purchased at a given time. This is the model used in Uruguay, the US, The Netherlands and Spain. Marketing and licensing arrangements should be established. Where states adopt a more liberalised regime, the Commission cautions against an over-commercialised model within a free market economy, especially where foreign firms are involved. Such a model will also require more detailed regulations on production, supply, monitoring of product, marketing etc., as discussed infra.

International Drug Conventions 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

**International Drug Conventions have been labelled redundant and dysfunctional even by UN bodies**

countries, including important allies like Canada, have deviated from them, undermines their authority. 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, but should work with allies such as Canada, Uruguay and other Latin American states, to modify them.

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 Commission also recommends that CARICOM Member States work together to formulate a formal, regional position on the need to amend the existing UN treaties that govern cannabis. In the interim, Member States should declare that the treaties contravene human rights principles in CARICOM states, so as to ground a justification for avoiding treaty obligations

**There are now deep rationales for law reform**

Moreover, an approach to substitute the current draconian, counterproductive prohibitionist law regime on cannabis in favour of a public health/ rights focussed approach is one that CARICOM Heads of Government have themselves embraced since 2002. The time is ripe for this commitment to be realised.

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## 1. INTRODUCTION AND CONTEXT FOR LAW REVIEW

1.1. At the core of the work the Commission was required to do is the issue of legal policy in relation to marijuana. Currently, in all CARICOM states, cannabis/ marijuana exists as an illegal substance in a legislative regime often described as prohibitionist, leading to criminal sanctions. Significantly, the criminalisation of cannabis/ marijuana in the Commonwealth Caribbean region was initiated without indigenous analysis or debate, but was merely an automatic, unquestioning response to international treaty formation on the subject, itself emerging un-endowed with scientific grounding and labelled an “historical accident”.<sup>2</sup> This change in legal status instantly criminalised Caribbean peoples who had hitherto used cannabis/ marijuana without condemnation.

1.2. The determination of whether or not the status quo with respect to the legal status of marijuana deserves to remain, or be changed, necessitates a deep inquiry into the several, multi-disciplinary dimensions of the subject: the scientific, medical, legal, social, religious and economic. Notably, although marijuana for medical purposes has been very topical recently, the issue of marijuana usage in general,

The Commission is of the view that a law reform process that focusses only on medical marijuana would seriously short-change Caribbean peoples, given the many deeply significant considerations that need to inform legal policy.

predates and goes beyond using marijuana for medical purposes in CARICOM. Cannabis/ marijuana is part of the historical, cultural and religious traditions of Caribbean societies and is used for other purposes. Identifying an appropriate legal policy direction therefore involves balancing complex variables.

1.3. The Commission is of the view that a law reform process that focusses only on medical marijuana would seriously short-change Caribbean peoples, given the many deeply significant considerations that need to inform legal policy. In fact, as it stands, law reform is not necessary for medical marijuana use since existing legislation already creates such avenues, although little known. The issue of law reform and in particular, whether to remove prohibition from existing laws is not only, or even mainly, about Medical Marijuana. Indeed, it is ironic and somewhat incongruous that there is an apparent eagerness to legalise marijuana for medical purposes, thereby acknowledging the benefits of the substance, while at the same time, maintaining a legal fiction that it is a dangerous drug without value, to continue to criminalise persons who use it for other purposes.

1.4. We have found that the social justice and human rights issues are paramount in this dialogue. In 2018, a person can still be imprisoned for up to 40 years for 1.16 kg of cannabis/ marijuana because of law existing on our books. This is a sobering thought and an indictment on our justice systems and very democracies.

1.5. Importantly, the Commission recognised from the onset, that even if the scientific evidence reveals that there is some “harm” in using marijuana, itself a line of inquiry, this would not necessarily point to criminalisation, or prohibition. Rather, the inquiry would be whether legal and social policy objectives may be better achieved by other, more proactive approaches, which are informed by pragmatic public health, social justice and developmental rationales.

*The issue of a name – marijuana or cannabis.*

1.6. The issue of the appropriate name for the plant substance that is the subject of this Report is itself controversial. While CARICOM chose to label the Commission using the term ‘marijuana’, several persons across the region objected to this name. They cited the racist and propagandist connotations of the term, popularised by US policy-makers wishing to blacklist Mexicans. We prefer the scientific term ‘cannabis’, but given the established name of the Commission, in this Report we will continue to use the

<sup>2</sup> Schwartz D (2014). Marijuana was criminalized in 1923, but why? CBC News. Available at <http://www.cbc.ca/news/health/marijuana-was-criminalized-in-1923-but-why-1.2630436>.

term marijuana, but with the prefix ‘cannabis’, although used interchangeably. On occasion, the term ‘ganja’, which has religious and cultural significance in Jamaica, is used, where the context demands.

*Work Informed by National Commissions, Organisations and the Public*

1.7. The work of the Commission follows on and draws from several in-depth studies, reports and National Commissions on the subject of cannabis in the region over a period of many, many years. We consider that our Report is enhanced by the work of the many that have gone before. Consequently, any move toward law reform can hardly be described as ‘rushed’ or premature. Indeed, it is demonstrable that law reform has significantly lagged behind several medical, social and justice initiatives and findings, both globally and regionally. The time is therefore ripe for the law to be amended to keep abreast of these developments.

1.8. As a result of these studies, National Commissions and non-governmental organisations (NGOs), lobbyists, several calls have been made, persistently, for substantial law reform on the subject of cannabis/ marijuana. The consistent cry has been for the removal of prohibitions, including criminal sanctions. The work of the Jamaica Commission and the Belize Commission, for example, led to concrete law reform.<sup>3</sup> In Guyana, a 2015 Commission of Inquiry on the prisons recommended that “no one should be jailed for possession of a small amount of marijuana for personal use. . . [and] that Guyanese authorities should avoid remanding what it called “low-level, non-violent” drug offenders and instead look at non-custodial sentences such as community service, treatment and educational opportunities.”<sup>4</sup>

1.9. Prominent bodies and persons from varied walks of life have also made public calls for either the full legalisation of cannabis, or its decriminalisation, too numerous to provide an exhaustive list. For example, church leaders in Antigua and Barbuda, St. Vincent and the Grenadines and Belize, Members of Parliament, the Archbishop of Trinidad and Tobago, the Chief Justice, a former judge and an Independent Senator from Trinidad and Tobago. The latter are important since the Commission did not visit that country.

1.10. Some of these bodies and individuals also made oral or written submissions to the Commission. These were from a wide cross-section of Caribbean peoples and organisations. They include, for example, doctors, pharmacists, mental health practitioners, nurses, patients, young entrepreneurs, religious organisations, including Rastafarians, social workers, school principals, educators, community groups, NGOs, the Faculty of Medicine from the University of the West Indies (UWI), St. Augustine Campus, magistrates, judges, senior members of the Bar Association of St. Vincent and the Grenadines, the police etc.

1.11. Calls have also been made by the region’s researchers, scientists and scholars for a change in legal status to enable cannabis to be researched without fear or hindrance from prosecution, given its potential for development.

1.12. The public consultations, focus groups and submissions were vital elements in the work of the Commission and provide legitimacy to proposals for law reform and deep change across the region. There were many commonalities in the discourse across the region. Many persons had vital information and strong opinions about marijuana and its use, including strong lobbying for use for medical reasons from a group of persons living with disabilities and in wheelchairs.<sup>5</sup> Just as many had important questions and wanted more information and education and look to the Commission’s Report to provide those answers. The large numbers that turned out for the Consultations and focus groups in several countries also catalysed interest in policy-makers, some of whom had been unaware of the seriousness and interest

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<sup>3</sup> See the Report of the Belize Decriminalisation of Marijuana Committee: <http://druglawreform.info/images/stories/documents/DMC-Report-Feb-20-2015.pdf>. The Commission met with some of these National Commissions. For example, we were hosted by the National Commission on Marijuana of St Kitts & Nevis for the national consultations. The Commission also received a formal submission from an NGO based Commission in Saint Lucia.

<sup>4</sup> Update – Report <https://www.caribbeanintelligence.com/content/ci-shorts-slow-growth-legalised-ganja> ‘Ci Shorts: The Slow Growth of Legalised Ganga (2018).

<sup>5</sup> <http://www.caribflame.com/2017/10/barbados-disabled-community-wants-medical-marijuana-use-legal/>

with which the Caribbean public treated the issue.<sup>6</sup> Public expressions through the Commission's work in turn helped to galvanise policy positions and promises for national review even in advance of this Report.

1.13. The need for more public education and a more coherent regional approach has also been raised in those states where decisions have already been taken to engage in law reform on marijuana, or which have already done so.

1.14. The work of the Commission in hosting public consultations regionally and in general, highlighting the issues for debate, also helped to mobilise existing law reform initiatives, giving a regional frame of reference to the issue. During the tenure of the Commission, two countries took steps to amend its law to decriminalise the possession of small amounts of cannabis. These were Belize and Antigua and Barbuda. Jamaica had amended its law soon after the announcement of the Commission, but before its convening. Arguably, the commitment demonstrated by CARICOM in the establishment of the Commission in of itself, provided the impetus for those Member States which were close to readiness for law reform. Other Member States have awaited, patiently, the outcome of the process initiated by CARICOM.

1.15. The work of the Commission is thus envisaged as providing support even to those governments that have already advanced their law reform agendas on marijuana. It aims to contribute to the multi-disciplinary policy rationales and research needed to inform future law reform on the subject of marijuana, law reform processes which are still in the infant stages. Importantly, it seeks to provide the groundwork for a unified and coherent CARICOM policy on marijuana.

## 2. USAGE AND ATTITUDES TOWARD CANNABIS/ MARIJUANA

### Widespread Usage Despite Prohibition

2.1. Cannabis/ marijuana, is the most extensively used illicit drug in the world. The World Drug Report (2017) notes that an estimated 183 million people consume it.<sup>7</sup> Remarkably, despite extensive controls and punitive measures, use of the substance has persisted and taken root globally in many societies. Cannabis/ marijuana is also widely used in the Commonwealth Caribbean despite the draconian, prohibitionist legal regime that exists in every Member State.

2.2. The information gleaned from the Commission's Consultations, submissions and focus group meetings confirms this wide usage, which cuts across all social classes, professions, race, religion and income bracket. Many participants in the Consultations highlighted that it was easily available and accessible. 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. In Barbados, 43% admitted to using cannabis/ marijuana in a 2014 CADRES poll commissioned by the Government.<sup>8</sup> In 2017, 17% of persons in The Bahamas said they used marijuana monthly. In 2016, Guyana the percentage of persons who used marijuana within that year was 9.8%.

2.3. While usage of cannabis/ marijuana for purposes other than medicinal is often referred to as 'recreational,' the Commission notes that, as discussed below, cannabis/ marijuana is proven to have therapeutic properties, as a stress reliever, so that the term 'recreational' is somewhat of a misnomer, since it ignores the mental health issues in this paradigm.

2.4. What is evident too is that there is also widespread usage among children and young persons. In the Commission's online survey conducted over the period Feb 20 to May 17, 2018. 91% of youth between the ages of 17-30 responded that it was either "easy" or "very" easy to get and purchase marijuana.

<sup>6</sup> <https://thenassaeguardian.com/2018/01/11/cabinet-to-discuss-marijuana-issue/> Cabinet to discuss marijuana issue, January 11, 2018.

<sup>7</sup> Lee & Hancox (2011); Thielmann & Daenink (2013) also found cannabis to be a popular drug.

<sup>8</sup> Peter Wickham, 'Ganja Politics', National News, June 5, 2016, <http://www.nationnews.com/nationnews/news/81923/peter-wickham-ganja-politics>.



Approximately 49% of the respondents admitted to Marijuana use and approximately 20% admitted to using either once or twice per day.<sup>9</sup> It is also instructive to note that males accounted for 64% of these users. This contrasts with earlier data from 2010, which shows that an average 17.03 lifetime prevalence rate among secondary school students in the region, with some rates going as high as 29.54 (Dominica).<sup>10</sup>

2.5. More recently, usage and trade appear to have evolved into usage of marijuana products, especially ‘edibles’. For example, in May 2018, it was reported that convent girls in Trinidad and Tobago were caught selling Marijuana cookies.<sup>11</sup> In this form the substance is not easily detected and can be made available without responsible persons being aware. Notably, however, in the aforementioned survey, although 49% admitted to using Marijuana, 77% of respondents admitted to substance use which included Marijuana and other drugs. At some of the Consultations youth also admitted to both alcohol and marijuana use, as well as mixing the substances.

## Concerns for Increased Usage after Law Reform

2.6. Some concerns have been raised that legalization of marijuana could suggest the harmlessness of the substance or decrease perceptions of risks, which may lead to increased consumption. The Commission has already seen evidence of some of these adverse consequences, such as the increasing usage by children and the advent on the market of extremely potent strains of cannabis/ marijuana in terms of tetrahydrocannabinol (THC) levels, which did not exist before. Given that these have emerged within the harsh, legal regime of prohibition, the Commission understands that reformed laws must better address such paradigms. It is important to note, however, that the Commission does not predicate law reform initiatives on a value judgement that cannabis/ marijuana is a substance without any adverse effects whatsoever. Like many other substances, it should be acknowledged that cannabis/ marijuana may have adverse effects, particularly if abused. A pragmatic and proactive move toward law reform should not, therefore, be translated to mean a ‘glamourising’ of the substance. Care should be taken to put regulatory controls in place to prevent abuses and the most adverse consequences. This may also involve mechanisms to encourage responsible use, which may mean, in general, to dampen enthusiasm for its recreational use. Moving away from prohibition does not necessarily mean a laissez-faire approach to cannabis/ marijuana or carte blanche encouragement for usage.

2.7. Significantly, 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. This is the experience, e.g. in Canada.<sup>12</sup> More recently, information from Jamaica, which decriminalised cannabis in 2015, confirms this finding. There is evidence of an initial increase immediately after law reform, what may be termed the ‘experimental factor’, but these figures balance out over time. The Commission is therefore satisfied that, except for medical purposes, the fears that law reform will cause a floodgate movement toward cannabis/ marijuana use is unfounded, particularly if law reform is undertaken with the appropriate educational and marketing programs in place.

## Changing Attitudes toward Cannabis/ Marijuana

2.8. There is clear evidence that attitudes toward cannabis/ marijuana in the region are changing, a situation which corresponds to changing attitudes globally toward law reform. Increasingly, this is leading to calls for legal reform to move away from the harsh, prohibitive stance of a legal regime supported by criminal sanctions. This may be by way of removing criminal penalties and replacing with civil penalties or other interventions, termed decriminalisation, or removing sanctions and penalties altogether, that is, legalisation, although certain regulatory controls may still be maintained.

2.9. The finding from the public Consultations, the national focus groups that the Commission engaged with and the stakeholder submissions received, as well as empirical data gathered, is that the overwhelming majority of opinion is toward law reform, at least the removal of criminal penalties. Notably, some contributors did not make legal distinctions between decriminalisation and legalisation, simply wanting prohibition to be removed.

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<sup>9</sup> CARICOM On line survey – Usage and Attitudes toward marijuana (2018)

<sup>10</sup> OAS/CICAD Comparative Analysis of Student Drug Use in Caribbean Countries Report (2010).

<sup>11</sup> ‘Ganja Brownies Sold in Convent’, Newsday, May 19, 2018, <http://newsday.co.tt/2018/05/19/ganja-brownies-sold-in-convent/>

<sup>12</sup> See *Cannabis Policy Framework*, Centre for Addiction and Mental Health (CAMH), Canada, 2016.

2.10. Statistical data gathered over the period also confirms this public viewpoint. Surveys done in five CARICOM countries by the well-known Caribbean Development Research Services Inc. (CADRES), reveal considerable shifting in public attitudes toward some form of law reform away from prohibition.<sup>13</sup> In the Barbados survey, it was demonstrated that attitudes had shifted from an earlier 2008 poll in which 73% of the population wished to retain the status quo of prohibition, as compared to just 37% in 2016.<sup>14</sup> This mirrored the results of Eastern Caribbean countries, where the majority was also in favour of law reform, removing criminal sanctions. For example, 57% of Dominicans wanted to see the law changed to remove sanctions.<sup>15</sup> In St. Vincent and the Grenadines, support for full legalisation doubled in a three-year period, from 9% in 2013 to 18% in 2017, although there is a slight dip in support for partial legalisation (35% in 2017 as compared to 36% in 2013). The percentage of those who said it should remain illegal fell from 44% in 2013 to 35% in 2017.<sup>16</sup>

2.11. In Antigua and Barbuda, a poll conducted in August 2016, showed that 62 of residents supported some form of marijuana decriminalization. Pollster Peter Wickham noted that the result was “not surprising since the global and regional trend is in that direction and Antiguanans are clearly “on-board” with this more liberal attitude.”<sup>17</sup> It was also noted that the slighter lower figures approving law reform and legalization in St. Vincent and the Grenadines was because this was a growing country and there was a concern that legalization would drive the price of cannabis/ marijuana down. In Saint Lucia, in a poll conducted in September 2017, there was also a majority in favour of law reform, 51% as opposed to 38 % that wished to keep cannabis illegal.<sup>18</sup> The most recent survey, done in Grenada in January 2018 shows that 61 % of the population want to remove prohibition, with only 22 % wanting to retain the status quo (others were not sure). Given that the Commission did not visit Grenada, this is important information.<sup>19</sup>

2.12. Recent surveys done in Jamaica, which decriminalized cannabis in 2015, are instructive, given that the population has now had the opportunity to self-assess the impact of law reform. The results, which assessed persons between 12 – 65 years, reveal that exceedingly high majorities of Jamaicans now approve of cannabis/ marijuana use, for all purposes. For example, 70% of persons agreed with being allowed to have limited amounts of cannabis for personal use and only 22.6% disagreed. 88.4% agreed with its use for medical and therapeutic purposes; 63.8% for religious purposes and 92.2% agreed that cultivation for scientific purposes should be allowed. Interestingly, despite Jamaica’s amended law providing only for restricted use by tourists, approximately 75% of Jamaicans believed that tourists should be allowed to use ganja.<sup>20</sup>

2.1.3. It is evident that the public attitudes and emerging medical research run counter to existing drug policies (Griffith & Cohall, 2017). Without question, there is a clear groundswell of public opinion in favour of legal reform to the existing laws on cannabis/ marijuana and the removal of prohibition. This factor can no longer be ignored by CARICOM Member States. CARICOM states have a unique opportunity to shape the direction that this reform will take in an informed, balanced way.

2.14. Notwithstanding, while the Commission considers that this overwhelming public support for law reform is a necessary pre-condition for changing the existing prohibitionist laws, it did not consider it to

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<sup>13</sup> The surveys were designed to gauge public opinion with a +/-5% margin of error with the main question seeking to determine their views on the decriminalisation of marijuana (CADRES, 2017). For the purpose of simplifying the analysis the survey did not make a distinction between decriminalisation for medical or religious use. As such the responses were structured as below. I think it should be made completely legal (*full decriminalization*)

- I think that it should be made legal only for medical or religious purposes
- I think it should remain illegal (*in all respects*)
- I am not sure/prefer not to say what I think

<sup>14</sup> ‘Barbadians more open to decriminalization of marijuana’ May 20, 2016; <http://www.caribbean360.com/news/barbadians-open-decriminalization-marijuana>. <http://www.nationnews.com/nationnews/news/98523-yes-ganja>. ‘Yes to ganja’ Nation News, June 9, 2016,

<sup>15</sup> ‘Puff on a Spliff’, SunDominica, September 3, 2017, <http://sundominica.com/articles/puff-on-a-spliff-4459/>

<sup>16</sup> Ibid.

<sup>17</sup> <https://antiguanewsroom.com/news/featured/poll-shows-majority-support-for-marijuana/> ‘Polls Show majority Support for marijuana’, Antigua Newsroom, May 17, 2017.

<sup>18</sup> Information from pollster, Peter Wickham, CADRES, Public Opinion on Marijuana Decriminalisation in St Lucia, Poll conducted September 2017, published October, 2017.

<sup>19</sup> Caribbean Development Research Services Inc (CADRES), January 2018.

<sup>20</sup> CARICOM National Drug Use Prevalence Survey 2016.

be sufficient, on its own, to ground this Report. Rather, it felt it necessary to carefully evaluate the available scientific, medical, legal and social data to arrive at its conclusions.

Without question, there is a clear public opinion, in favour of legal reform to existing laws on cannabis/marijuana and the removal of prohibition.

### Main Rationales for Calls for Reform

2.15. The debate and consistent demand for law reform on cannabis/ marijuana law is as a result of the several deep social and legal problems that a law that is characterised by prohibition, but uninformed by proven legal or scientific rationales, invokes. The most problematic of these, which are discussed in depth below, include:

- (a) *Continued claims of persecution and discrimination by profiled categories of marijuana users, in particular low income persons and Rastafarians who are criminalised and their lives negatively impacted;*
- (b) *The realisation that the existing, prohibitionist law is not an effective deterrent to usage, including by children;*
- (c) *The lack of proportionality in the law in terms of strict liability, harsh and mandatory sentences, when compared to other offences, including more serious offences;*
- (d) *Assertions of violations of religious freedom by Rastafarian religious practitioners;*
- (e) *Accumulated scientific data that cannabis is not as harmful as depicted and in fact, has beneficial properties, leading to growing demands for usage for medicinal purposes to substitute for expensive and sometimes ineffective pharmaceuticals and its removal or status as a 'dangerous drug';*
- (f) *Greater awareness of the economic potential of cannabis/ marijuana and increasing opportunities for international and local business;*
- (g) *Providing opportunities for brilliant Caribbean researchers and scientists in the new industries and medical revolution, particularly since Caribbean peoples were original pioneers and the region has unique strains of cannabis;*
- (h) *The realisation that prohibition based law is counter-productive and creates criminality (failure of the war on drugs);*
- (i) *The belief that prohibition violates human rights without being "reasonably required" as the constitutions demand;*
- (j) *The finding that illegality leads to further criminalisation and financial sanctions because of proceeds of crime laws;*
- (k) *The concern that cannabis use has broader social origins, since usage, especially by young people, is directly related to structural social problems, such as social inequality; hopelessness, poverty, stress etc., which require approaches based on care and rehabilitation, public health improvements and enhanced macro-social policy, instead of punitive measures.*

### Maintaining the Status Quo

2.16. On the other side of the spectrum, the voices against change, which today, appear to be few, have focussed mainly on the following:

- (i) Concerns about increased usage and greater access by children and young persons;
- (ii) The perception that cannabis/ marijuana is a dangerous substance that is more harmful than familiar substances like alcohol and has no societal value;



- (iii) Perceived associations with criminality;
- (iv) Concerns that cannabis/ marijuana leads to psychosis and anti-social behaviours, including the ‘drop out’ or amotivational syndrome;
- (v) Fears that cannabis/ marijuana, while a ‘soft drug’ which is relatively harmless, could be a gateway to more dangerous drugs like cocaine; and
- (vi) Difficulty isolating different strains of cannabis/ marijuana which could create problems in regulatory change.

2.17. Another concern relates to the practicality of reform at this time, given the lack of confidence in the region’s ability to adequately operationalise a legalised regime that requires strict regulatory controls and the requisite resources.

**Overall, however, the main focus of the voices against law reform was because of concerns for the youth, mental health and the institutional capacity of the states to manage public health objectives.**

2.18. A very few persons objected to reform based on what may be described as a didactic approach, by arguing that this was the law and it should not be broken. One email writer said:

“While I feel for the young people who have been imprisoned for the possession of marijuana, the fact is that they broke the law. Why should they be given a ticket to save them from a criminal record? I understand the need to save our young

people. But are we helping them by giving them a pass? Possession is a criminal offence as long as marijuana is on the list of illicit drugs.”

2.19. The Commission does not find such views persuasive given that the objective of the exercise is to inquire into rationales for changing the law. To suggest that a law should not be changed because it is the law is a circular argument that does not interrogate the justice imperatives of the law as is required.

Overall, however, the main focus of the voices against law reform was because of concerns for the youth, mental health and the institutional capacity of the states to manage public health objectives. The Commission believes that its recommendations in this Report adequately address these legitimate concerns.

Ultimately, the Commission’s task was to evaluate each of the above claims against the available scientific, medical, social data and legal grounding to determine their validity and weight in constructing appropriate legal and socio-economic policy.

### **Ending Prohibition and Embracing a Health and Rights Centred Approach**

2.20. Consistent with the emerging imperatives for law reform, there has been a growing trend toward decriminalisation and even legalisation in the region and globally, at the most authoritative fora. For example, at the 2016 United Nation’s General Assembly Special Session (UNGASS) on drug policy, a clear call was made for a different approach to marijuana. Several representatives and world leaders made strong statements urging member countries to move away from legal prohibition toward a liberal approach, but with effective regulations for medical Cannabis. H.E. Mogens Lykketoft, the then President of UNGASS, in his opening address stated that “... access to drugs for medical use is a human right to protect.”

2.21. Similarly, the UN Global Commission on Drug Policy has advocated the end of a criminal sanction backed regime for controlling cannabis/marijuana. It has been particularly vocal on the need to “end the war on drugs”<sup>21</sup> which it declared had “failed”, a claim that has now been accepted globally. The Global Commission’s main recommendations included the end of criminalization and marginalization of users

<sup>21</sup> War on Drugs, REPORT OF THE GLOBAL COMMISSION ON DRUG POLICY JUNE 2011

who they saw as causing no harm to others, cannabis/ marijuana being a victimless crime. The Global Commission went further, encouraging Governments to experiment with the legal regulation of drugs. In tandem with law reform, it recommended increased health services to users and investment in prevention programs especially for youth. It envisaged that such measures would undermine organized crime and protect the security of citizens.

This so-called 'war on drugs' has not only failed, it is also undermining efforts to tackle poverty, improve access to health, protect the environment, reduce violence, and protect the human rights of some of the most marginalised communities worldwide.

2.22. The same message was promoted in the OAS and accepted by CARICOM Member States.<sup>22</sup> The OAS Drug Report influenced public opinion and encouraged “UN agencies to prioritize a discussion on drugs that focuses on public health, citizen security, human rights, and development. . . . Additionally, putting an end to the criminalization of drug users . . . , are ideas worth highlighting in the countries of the Americas.”<sup>23</sup>

2.23. Significantly, the UN’s sustainable development goals (SDGs), which CARICOM has embraced enthusiastically, also support an anti-prohibitionist strategy toward cannabis, substituting with health and human rights emphases:

“Since the mid-20th century, global drug policy has been dominated by strict prohibition and the criminalisation of drug cultivation, production, trade, possession and use – with the intention of creating a drug-free world. This so-called ‘war on drugs’ has not only failed, it is also undermining efforts to tackle poverty, improve access to health, protect the environment, reduce violence, and protect the human rights of some of the most marginalised communities worldwide.”<sup>24</sup>

2.24. These are therefore not new recommendations. Further, CARICOM states have themselves acknowledged the need for such new approaches to drugs. As far back as July 2002, at the CARICOM Heads of Government Summit, the Heads acknowledged that drug addiction and use should be treated primarily as a “public health issue”.<sup>25</sup> Despite this, successive CARICOM governments have not acted on their own advice, perpetuating a legal regime that has been shown not just to be unproductive and unfit for purpose, but inherently unjust.

As far back as July 2002, at the CARICOM Heads of Government Summit, the Heads acknowledged that drug addiction and use should be treated primarily as a “public health issue”

2.25. Notably, other countries have hosted Commissions and produced studies which have come to similar conclusions. In Canada, several national Commissions assessed the evidence and concluded that prohibition and criminalisation is ineffective, costly and constitutes poor public policy. This was articulated in Canada by the federal government’s Le Dain Commission in 1972, the Senate in 1974, the Canadian Bar Association in 1994, the Canadian Centre on Substance Abuse in 1998, CAMH in 2000, the Fraser Institute in 2001, the Senate Special Committee on Illegal Drugs in 2002, the Canadian Drug Policy Coalition in 2013, and the Canadian Public Health Association in 2014. The case for change generally rests on four evidence-based propositions:

- 1) Prohibition has not succeeded in deterring cannabis use.

<sup>22</sup> “The OAS Drug Report, . . . has generated a very active and serious discussion of possible changes in cannabis laws throughout the hemisphere, from Chile to Jamaica. . . the Report asserted that . . . decisions will need to be taken on assessing signals and trends that lean toward the decriminalization or legalization of the production, sale, and use of marijuana . . . This new debate has shifted in tone from one principally about morality to one that recognizes a broad scope of gains and losses . . . Some jurisdictions are considering a legalized system in which the state retains control of all or much of the system of production and distribution. Other jurisdictions have given more freedom to private entrepreneurs to serve the market . . . the current debate surrounding cannabis policies in the Western Hemisphere is at the forefront of a reinvigorated global discussion about drug control.” OAS Drug Report, 16 Months of Debates and Consensus - “Toward a Hemispheric Drug Policy for the Twenty-First Century”. 2014. OAS, Washington.

<sup>23</sup> Ibid, at p. 7.

<sup>24</sup> Drug Policy and the Sustainable Development Goals -Why drug policy reform is essential to achieving the Sustainable Development Goals – *Health, Poverty, Action*, UNODC, 2015, [https://www.unodc.org/documents/uncss2016/Contributions/Civil/Health\\_Poverty\\_Action/HPA\\_SDGs\\_drugs\\_policy\\_briefing\\_WEB.pdf](https://www.unodc.org/documents/uncss2016/Contributions/Civil/Health_Poverty_Action/HPA_SDGs_drugs_policy_briefing_WEB.pdf).

<sup>25</sup> <<http://www.caricom.org/expframes2.htm>>

- 2) The risks and harms of cannabis are lower than those of tobacco or alcohol.
- 3) Cannabis can and should be separated from illicit drug markets, in which users are exposed to other (more dangerous) illegal drugs.
- 4) The resources spent enforcing laws against personal cannabis use are better allocated elsewhere.<sup>26</sup>

2.26. In the US, as far back as 1972, despite President Nixon's desire to stamp out marijuana, the Shafer National Commission on Marijuana and Drug Abuse found no justification for prohibition policy and presented a report to Congress entitled "*Marihuana, A Signal of Misunderstanding*".<sup>27</sup> According to oval office tapes declassified in 2002, Nixon told Shafer he wanted a report that would blur the distinction between marijuana and hard drugs. However, the Report favored legalizing marijuana and adopting other methods to discourage it and concluded that "there is little proven danger of physical or psychological harm from . . . cannabis"<sup>28</sup> and that the "actual and potential harm of use of the drug is not great enough to justify intrusion by the criminal law into private behavior".<sup>29</sup>

2.27. The latest UK Commission also put forward this approach, saying simply, but profoundly, that prohibition causes harm with vast financial and human costs, more than the substance itself and that this "desperately needs to change."<sup>30</sup> It took the rationales for change as a given and focused on designing an appropriate regulatory framework.

2.28. Such Commissions concluded that legal reform was necessary, moving away from the criminal justice, law enforcement lens to implement a public health and rights centred approach to cannabis that reduces its harms to individuals and society. These rationales also exist in the Caribbean, along with other important ones, such as social justice and religious freedom. Such an approach does not deny that cannabis may have adverse effects or cause harm in some cases and for some people. Rather, it posits that prohibition is not the most sensible or effective policy to address those concerns. As Room et al. point out, "In modern societies, a finding of adverse effects does not settle the issue of the legal status of a commodity; if it did, alcohol, automobiles, and stairways, for instance, would all be prohibited, since use of each of these results in substantial casualties."<sup>31</sup>

2.29. The public health/ rights centred approach attempts to put health promotion at the core of policy within a framework that respects individual rights as far as possible, maximising benefits for the largest number of people. It is based on evidence-informed policy and practice, turning away from punitive measures and addressing the underlying determinants of health and rights. This philosophy guides approaches to alcohol and tobacco, and is presented as a model superior to prohibition for addressing cannabis. Fischer et al argue that:

"The [current] policy approach to cannabis is fundamentally different from current approaches to other popular drugs like alcohol, where a public health approach instead focuses on high-risk users, and especially on modifiable risk factors, to reduce harms to individuals and society. Given that the majority of harms related to cannabis use appear to occur in selected high-risk users or in conjunction with high-risk use practices, a similar . . . approach to cannabis use should be considered . . . and not

<sup>26</sup> Room R, Fischer B, Hall W, Lenton S, Reuter P (2010). *Cannabis Policy: Moving Beyond Stalemate*. Oxford: Oxford University Press.

<sup>27</sup> The Shafer Commission Report (1972) National Commission on Marihuana and Drug Abuse, "Marihuana: A Signal of Misunderstanding; First Report," Washington, D.C., U.S. Government Printing Office, March 21, 1972.

<sup>28</sup> <https://www.marijuana.com/news/2014/08/Richard-Nixon-was-the-marijuana-antichrist/>

<sup>29</sup> <http://www.stateoftheunionhistory.com/2015/11/1973-richard-nixon-shafer-commission.htm#/2015/11/1973-richard-nixon-shafer-commission.html>;

'1973 Richard Nixon and Shafer Commission Report on Marijuana. The Commission found that there "No significant physical, biochemical, or mental abnormalities could be attributed solely to their marihuana smoking . . . Most users, young and old, demonstrate an average or above-average degree of social functioning, academic achievement, and job performance . . . The weight of the evidence is that marihuana does not cause violent or aggressive behavior; if anything marihuana serves to inhibit the expression of such behavior... Marihuana is not generally viewed by participants in the criminal justice community as a major contributing influence in the commission of delinquent or criminal acts... Neither the marihuana user nor the drug itself can be said to constitute a danger to public safety." It called for a policy "which prohibits commercial distribution of the drug but does not apply criminal sanctions to private possession or use nor casual, non-profit distribution incidental to use." This approach was dubbed "decriminalization."

<sup>30</sup> *A Legal Framework for a Regulated Market for Cannabis in the UK*, Parliamentary Commission, UK 2017.

<sup>31</sup> Room et al, 2010, at p. 15.

criminalization of use – and its limited effectiveness and undesirable side effects as the main intervention paradigm, therefore increasing benefits for society.”<sup>32</sup>

The Commission considers that a public health/ rights based approach is well suited to the Caribbean in addressing cannabis/ marijuana.

### Changed Global Legal Landscape

2.30. It is clear that the global legal landscape has already changed. Several countries, including traditional allies like Canada, the UK, Europe, several states in the USA, as well as Israel and many countries in Latin America, have moved away from the prohibition based regime which relies on criminal sanctions. They have introduced legislative amendments to permit cannabis for medical use and in many cases, for recreational use. In the United States, recreational marijuana is legal in nine states plus Washington DC and marijuana for medical purposes is legal in another 29 states.<sup>33</sup>

2.31. CARICOM states have also begun the process of law reform, as discussed below. It is anticipated that this movement toward law reform will grow even stronger, particularly given anticipated potential medical and economic benefits of cannabis/ marijuana.

“Marijuana spent more time legally on earth than illegally”

## 3. HISTORY OF ILLEGALITY AND RELIGIOUS VIEWS

3.1. The designation of cannabis/ marijuana as an unlawful substance and a dangerous drug is of relatively recent vintage. For most of our history, cannabis/ marijuana was a free substance, grown naturally and easily throughout the region. “Marijuana spent more time legally on earth than illegally”, one participant said.<sup>34</sup> Indeed, many CARICOM citizens have memories of their grandparents and forefathers using cannabis/ marijuana in benign fashion, such as “bush tea”,<sup>35</sup> before the advent of prohibition, or, at least, its strict enforcement.

3.2. Cannabis usage may be traced to early civilizations and it was only in the 1900s that moves towards criminalization were undertaken and enforced, which evolved into prohibitive international and subsequently, domestic laws relative to cultivation, use, trade and sale. In 2008, an ancient Xinjiang tomb was discovered with cannabis, believed to have belonged to a shaman and used for medical purposes.<sup>36</sup>

3.3. The genesis of cannabis/ marijuana, which goes back thousands of years, is inextricably linked with the historical continuum and cultural identity of the CARICOM region. Cannabis can be traced to several ethnic and cultural traditions relevant to the Caribbean within Asia, Africa and the Middle East<sup>37</sup> It was introduced during the post-emancipation period to the Caribbean countries of Jamaica, Trinidad and Tobago and Guyana by East Indian indentured labourers<sup>38</sup>. In Trinidad and Tobago and Guyana however, territories with much larger East Indian populations than Jamaica, the influence of marijuana was somewhat subdued in terms of public acknowledgement until the 1960s<sup>39</sup>. On the contrary, in Jamaica, socially disaffected persons of African descent readily embraced “ganja”, using it to celebrate their non-European heritage.<sup>40</sup> It was subsequently integrated into the Rastafarian religion, which emerged during the 1930s in Jamaica.

3.4. In spite of its increasing prevalence, the cultivation and importation of marijuana was officially criminalized in 1913 under the Opium Law in Jamaica and subsequent pieces of legislation expanded the

<sup>32</sup> Fischer B, Jeffries V, Hall W, Room R, Goldner E, Rehm J (2011). Lower risk cannabis use guidelines: A narrative review of evidence and recommendations. *Canadian Journal of Public Health* 102: 324-327.

<sup>33</sup> As at April 20, 2018, M. Robinson, J. Burke and S. Gould 'This Map shows every State That has Legalised Marijuana ', <http://www.businessinsider.com/legal-marijuana-states-2018-1>. A 2017 Gallup poll showed that 64% of Americans support legalization.

<sup>34</sup> St. Vincent Consultations, June 2015.

<sup>35</sup> Participants said 'bush tea', which seems to be different from the more familiar 'bush tea.'

<sup>36</sup> <http://www.pbs.org/wgbh/nova/next/evolution/patenting-pot/CarrieArnold>, 'The Rise of Marijuana TM (Patent Pending).

<sup>37</sup> Warf (2014)

<sup>38</sup> Klein (2016)

<sup>39</sup> Hamid (2002)

<sup>40</sup> Chevannes (2004) cited in Klein (2016)

scope of prohibitions. Mandatory incarceration was also introduced for infractions which resulted in cannabis/ marijuana having a comparable status to that of opium.<sup>41</sup> Criminalisation elsewhere in the region came later with the introduction of Dangerous Drugs Ordinances in the then British territories in the 1930's pursuant to the 1937 Dangerous Drug Ordinance in the UK. In Jamaica criminalisation of cannabis/ marijuana is associated with the rise of Rastafarianism, whose members were stereotyped as criminals and cultism.<sup>42</sup>

3.5. In spite of negative stigmatization and extensive measures to stem its proliferation and use in the Caribbean, cannabis consumption has expanded beyond the sphere of Rastafarianism. However, such a scenario did not unfold within a vacuum, since Jamaican reggae music played a pivotal role by romanticizing cannabis use, advocating less draconian legislative restrictions and facilitating its spread and social acceptability<sup>43</sup>. Marijuana therefore, against all odds, battled its way into Caribbean popular culture and is recognized internationally as a core feature of not just the Jamaican national identity, but as a part of Caribbean identity. Given the prevalence and historical usage of cannabis throughout the region and across all races and social classes, the question for consideration is whether the law should be divorced from the social customs and practices where serious harm cannot be demonstrated and benefits accrue.

## Use in Religious Practices

3.7. In the Caribbean the debate surrounding religion and cannabis primarily revolves around its use by Rastafarians. However, marijuana use for religious purposes may be traced to Taoism and Hinduism, both of which are evident in the region. With regard to the Taoist, a 4<sup>th</sup> century BC ancient Chinese belief system, cannabis was used in ritual incense burners to eliminate selfish desires and attain a state of naturalness<sup>44</sup>. It was also used by Taoist priests and shamans to communicate with good and evil spirits<sup>45</sup> and reveal truths about the future<sup>46</sup>.

3.8. Similarly in Hinduism one of the oldest books, the Atharva Veda, identified cannabis as one of five sacred plants and worshipped it<sup>47</sup>. Moreover, the Vedas referred to cannabis as a source of happiness, joy and liberation that was compassionately given to humans to help with the attainment of delight and abandonment of fear<sup>48</sup>.

3.9. The Vedas also provided an account of the Hindu God Shiva bringing the plant down from the Himalayas for use and enjoyment<sup>49</sup> and thus Hindu devotees on occasion offer cannabis to Shiva during religious ceremonies<sup>50</sup>. Within Hindu spiritual practices cannabis is used in three forms: bhang, a milky drink made from cannabis leaves and buds; charas, a type of hash made from resin; and ganja, the smoked buds<sup>51</sup>. The consumption of bhang cannabis milk is considered to be a holy act which cleanses and purifies the body during religious festivals<sup>52</sup>. Hindus also frequently use chilams, a clay pipe, to smoke cannabis and charas.<sup>53</sup>

## Religious Views, Rights and the Rastafarians

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<sup>41</sup> Bandopadhyay (2015). Louis Moyston, The ganja law of 1913: 100 years of oppressive injustice, *Jamaica Observer*, December 02, 2013. [http://www.jamaicaobserver.com/columns/The-ganja-law-of-1913-100-years-of-oppressive-injustice\\_15548584](http://www.jamaicaobserver.com/columns/The-ganja-law-of-1913-100-years-of-oppressive-injustice_15548584)

<sup>42</sup> The increased criminalisation of cannabis use accompanied the rise of Rastafarianism in Jamaica especially around the periods that followed the raid on the Pinnacle Community in 1941, the Claudius Henry incidents in 1959 and 1960, and the Coral Gardens episode in 1963. It was maintained by many in the early days of the movement that there was a strong link between cannabis use and criminal conduct, even though research tended not to support that inference. For example, the Jamaican Prime Minister gave warnings about his intention to radically change the existing drug laws at about the same time as the Coral Gardens incident in 1963. Despite the declarations that regulation of cannabis was related primarily to international concerns, an interest in controlling violent crimes locally seemed to inform the debates and was reflected in the actual amendments.

<sup>43</sup> Hamid (2002)

<sup>44</sup> <https://www.royalqueenseeds.com/blog-a-brief-history-of-cannabis-use-in-world-religions-n624>

<sup>45</sup> *Ibid.*

<sup>46</sup> <https://www.leafly.com/news/cannabis-101/cannabis-a-gift-from-the-ancient-gods>.

<sup>47</sup> Aldrich, (1977) cited in Ayenigbara (2012)

<sup>48</sup> <https://www.royalqueenseeds.com/blog-a-brief-history-of-cannabis-use-in-world-religions-n624>

<sup>49</sup> Abel, (1980).

<sup>50</sup> Hamid (2002)

<sup>51</sup> <https://www.royalqueenseeds.com/blog-a-brief-history-of-cannabis-use-in-world-religions-n624>

<sup>52</sup> *Ibid.*

<sup>53</sup> Burgess (2007)



3.10. Cannabis was integrated into the Rastafarian religion which emerged during the 1930s in Jamaica. Rastafarianism, after struggling before the courts, was identified judicially as a religion in the case of *Francis v AG*.<sup>54</sup> It is accorded sacramental importance in this religion and it is smoked to aid in spiritual quests<sup>55</sup>.

3.11. In the case of the Rastafarians, cannabis is regarded as a “holy herb”, a gift from God that has been cultivated and smoked for its medicinal benefits as well as for its psychoactive properties to aid in a spiritual quest<sup>56</sup>. Moreover, cannabis, called ganja by Rastafarians, is their primary sacrament and its ritualized smoking during communal smoking sessions, known as ‘reasoning’ or ‘grounding’, is paramount to their way of life<sup>57</sup>.

3.12. Ganja is also viewed as the most natural and direct route to communion with God and the Rastafari brethren, and it is used as an essential element in prayer and meditation<sup>58</sup>. Biblical verses are often cited to authenticate and legitimize the naturalness and glories of ganja<sup>59</sup>.

3.13. Some researchers have identified similarities between chillum smoking sessions of the Hindus and reasoning sessions of the Rastafarians.<sup>60</sup> Therefore, cannabis is integral to this religion’s identity and prohibition of its use constitutes an extreme invasion on their right to freedom of religion<sup>61</sup>.

3.14. Significantly, the Commission heard from many members of the Rastafarian religious community who spoke passionately of the violations to their religious freedoms as a result of the illegal status of their holy sacrament and the persistent and invasive targeting by the police due to their usage of cannabis/ marijuana. They lamented that they are subjected to unjust treatment by law enforcement agents who frequently harass them and raid their properties because of cannabis/ marijuana. In Suriname, this is reportedly not the case and cannabis/ marijuana use is tolerated although illegal, which is indicative of a measure of tolerance.

3.15. Importantly, even some non-Rastafarian participants at the Consultations concurred that marijuana use for religious purposes should be permitted, but within the framework of the necessary controls. It was also instructive to note the acceptance and integration of the Rastafarian religion in some of the Inter-Religious Organizations (IRO’s) across the region, with representatives from Christian faiths speaking in support of their Rastafarian brethren.

Cannabis is regarded as a “holy herb”, a gift from God that has been cultivated and smoked for its medicinal benefits

3.16. Thus the aggressive policing of marijuana offences in Jamaica challenged the freedom of Rastafarians to practice their beliefs without fear of prosecution or persecution. Legislative changes in Jamaica in 2015,<sup>62</sup> which, as discussed below, exempt Rastafarians from the prohibitive provisions of cannabis/ marijuana regulation, therefore facilitated a paradigmatic shift in the treatment of Rastafarians who were

previously liable to all marijuana -related criminal charges. A policy shift is also discernible in Antigua and Barbuda, with the legislative reform of 2018. The Commission believes that these policy changes are in keeping with the freedom of religion that is protected under the constitutions of all CARICOM states. Future law reform should make provision for this right.

3.17. While some of the major Christian religions did not provide outright support for legalization or decriminalization, they did express concern on the need for approaches to be fair to all citizens. Indeed, the majority of submissions from the various representations of churches in the Consultations focussed on issues of social justice and did not reference marijuana use in the context of an offence to faith. Many religious representatives spoke directly against the legal regime which criminalises young people and persons from poor socio-economic backgrounds and believed reform was necessary since the current

<sup>54</sup> Civil Suit No. 191 of 1996, dec’d September 2001, high Court of Antigua and Barbuda.

<sup>55</sup> Bandopadhyay (2015)

<sup>56</sup> Ibid.

<sup>57</sup> Burgess (2007)

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Burgess (2007)

<sup>61</sup> De Vos (2001)

<sup>62</sup> Dangerous Drugs (Amendment) Act 2015.

regime was both unjust and unproductive. One pastor in Antigua and Barbuda asked: “If we leave it on the books, will it help? If we take it off, will it not help?”

3.18. However, there were also voices that reiterated that its illegal status meant that citizens should respect the law and abide by the national laws. In Belize, the picture was mixed. A total of 225 pastors and other evangelical church leaders produced a paper which was not supportive of change in the existing policy, on the basis of concerns relevant to youth and other at risk populations. However, religious representatives at the focus groups, who represented over 200 religious organisations (*Alliance of Ministries*) spoke in favour of decriminalisation on grounds of social justice:

3.19. It is worth noting that many churches condemn, not just cannabis/ marijuana, but alcohol and the like, so that the contributions were often framed in the context of the institutional ability of states to curtail all forms of substance abuse from a public health perspective. A church statement from St. Vincent, for example, mindful that the country was not managing alcohol, wondered how they could “manage possible increased access to marijuana.”

One of the difficulties with the marijuana debate is that the *raison d'être* for the law is not easily discernible, especially considering the scientific evidence, the long history of marijuana use undisturbed by legal regulation, the lack of proportionality and respect for human rights and the empathetic social and cultural mores surrounding it.

## 4. LEGAL ENVIRONMENT OF CANNABIS IN THE CARIBBEAN

### Clear Rationales Needed for Law-making and Criminal Penalties

#### –Legitimacy of the Law

4.1. Law and legal policy, especially when involving criminal penalties, must be informed by clear policy rationales. The law seeks to consider what is termed the “mischief” or “harm” that must be cured and creates solutions to address the specific problem. That ‘harm’ is usually harm done to others, or in some cases, to oneself. Another sound, although more controversial basis for law-making, is morality. Yet, none of these rationales was demonstrably present when the status of the plant cannabis was changed to one of a narcotic or dangerous drug in the early 20<sup>th</sup> century, in Jamaica, in 1913 and in other countries 1930s and beyond, with the result that criminal penalties were imposed and mandated. Consequently, one of the difficulties with the marijuana debate is that the *raison d'être* for the law is not easily discernible, especially considering the scientific evidence, the long history of marijuana usage undisturbed by legal regulation, the lack of proportionality and respect for human rights and the empathetic social and cultural mores surrounding it.

4.2. This lacuna in legal policy has contributed to the lack of legitimacy that seems to surround cannabis laws and accounts for the several years of challenge to these laws, including before the courts. Many Caribbean peoples do not believe that there is a solid basis for making cannabis/ marijuana, not only illegal, but criminal: “A plant is not a criminal”, one participant asserted<sup>63</sup> and criminalisation was often referred to as a “crime against humanity.” Users, especially Rastafarians, saw themselves as “healers” and not “drug men.” The Commission heard often statements about what was suspected was the true reason for the change to the legal status for cannabis. Such claims are also found in the literature.

“Contributing in no mean way to the scepticism is the factual consideration that the original proscription against ganja was never based on medical evidence, but now medical evidence is being sought to justify its continued ban.”<sup>64</sup>

4.3. Claims are made that it was the tobacco and alcohol industries, the latter, just coming out of prohibition itself and wanting to stifle competition, that lobbied to declare marijuana an illegal and

<sup>63</sup> Consultations in Antigua & Barbuda, May 22, 2017.

<sup>64</sup> Report of the National Commission on Ganja to Rt. Hon. P.J. Patterson, Q.C., M.P. Prime Minister of Jamaica' (Chaired by Prof Barry Chevannes) (7 August 2001) accessed at <https://www.cannabis-med.org/science/Jamaica.htm>

dangerous substance. Others point to the steel industry which faced competition from hemp. Even others place the illegalisation of marijuana, which before was a peace pipe associated with several ancient cultures, on the shoulders of race and social prejudices, an attempt to label, criminalise and oppress the Mexican and black races in the US.<sup>65</sup>

4.4. As to protecting individuals from harming themselves, some point out that many other natural substances are harmful and they are not criminalised, such as alcohol, tobacco and even cassava and ackee. As illustrated below, the lack of proportionality and human rights in the law and its administration also underpin the lack of trust in existing cannabis/ marijuana laws.

### ***Moral and Ethical Issues – By-products of Criminalisation***

4.5. The lack of a solid basis for prohibition includes the sparseness of a clear argument for illegality on moral grounds. Indeed, the issue of morality was seldom raised in the Consultations and this justification for the current law seems to be on the wane. It is apparent that whatever concerns remain about morality are predicated on the fact of the law being deemed illegal itself, that is, a by-product of the criminalisation. It does not appear to owe its existence to an independent concern. Rather, it is clear that our moral and ethical concerns spring from the classification of the substance as unlawful and banned. It has acquired an unsavoury character. It may well be that decriminalisation will correct this problem, in the same way that alcohol, demonised and leading to criminal gangs while under prohibition, was sanitised after it was legalised.

### **Current Status of Strict Liability Criminal Offences and Harsh Penalties**

4.6. The laws making cannabis a criminal offence are substantially similar throughout the region and can be described as draconian. The main statutes are found in specific laws that outlaw all drugs or narcotics, with cannabis being named as a substance belonging to this category. In keeping with the requirements of the Conventions, cannabis is classified as a ‘dangerous drug,’ or narcotic, which means a substance with no medicinal, or other value. The legal regime encompasses wide prohibitions, from mere possession, to production, handling, supply, trade, trafficking, cultivation and even possession of “pipes, equipment or apparatus intended for use of marijuana.”<sup>66</sup>

4.7. A common denominator in the region’s laws on cannabis/ marijuana is the application of strict liability to offences of possession, usage, control, trade and related offences. This means that the judiciary is not given a discretion to determine conviction, since it does not depend on intent and mitigating circumstances are not applicable. The strict liability nature of the relevant offences has resulted in two paradigms, each of which is concerning. On the one hand, persons have received harsh penalties, including imprisonment, for having in their possession very small amounts of cannabis, leading to the concern that the law and its penalties are disproportionate. On the other, some law enforcement personnel, believing the law to be too harsh, have refrained from enforcing the law at all, preferring to turn a blind eye to any offences. This results in a violation of the rule of law and / or having laws on the statute books which are *de facto* unacceptable and unenforceable.

4.8. Significantly, some legislation goes a step further and imposes fixed, steep minimum, or mandatory penalties for conviction, which exacerbates the strict liability condition and the harshness of the law. A good example is the statute of Guyana which imposes minimum fines together with imprisonment for up to 10 years if convicted on indictment and up to 5 years on summary conviction.<sup>67</sup> A similar provision is found in St. Vincent and the Grenadines.<sup>68</sup> In fact, such laws contradict the spirit of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, which proposes alternatives to imprisonment for offenders convicted of possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption. Non-custodial sanctions suggested include education, rehabilitation and social reintegration, treatment, aftercare rehabilitation and social

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<sup>65</sup> Steven W. Bender ‘The Colors of Cannabis: Race and Marijuana’ University of California, LR, Vol. 50:689

<sup>66</sup> See, e.g. s.9 of the Grenada statute, the Drug Abuse (Prevention and Control) Act, 1992 as amended 2011.

<sup>67</sup> Narcotic Drugs and Psychotropic Substances (Control) Act chp.35.1 of Guyana. Marijuana is listed as a narcotic under the First Schedule.

<sup>68</sup> The Drugs (Prevention of Misuse) Act of St. Vincent and the Grenadines does not provide for any alternatives with regard to drug offences, including possession, which is an offence punishable by terms of imprisonment of 3 years on summary conviction and a fine of EC\$100,000, and 7 years, plus a fine of EC\$200,000, on indictment.



reintegration in the case of those who are drug abusers. In large part, these alternative approaches are lacking in the Commonwealth Caribbean.

4.9. The Guyanese law was recently highlighted when a young husband received a 3- year gaol sentence for having a mere 8 grams of cannabis in his possession, which caused an outcry:

“ . . . the Magistrate told them to be calm before explaining to them that the Laws of Guyana stipulate that any person found in possession of over five grams is liable to face a fine, together with the minimum of three years or the maximum five years imprisonment. She added “I gave him the least sentence which is three years. He could have been sentenced to between three and five years. . . I can’t do anything.”<sup>69</sup>

4.10. These are not isolated incidents. Such harsh and disproportionate sentences were reported to the Commission in its National Consultation in Guyana. The Commission heard of an eighty-something year old woman who had been jailed for one ‘joint’, which apparently she had taken to relieve pain.<sup>70</sup> In 2017, a middle-aged women in Trinidad and Tobago was also jailed for taking small amounts of cannabis/ marijuana to relieve her pain and suffering. There have been similar incidents throughout the Caribbean. Courts have also imposed harsh concurrent sentences in convictions for cannabis/ marijuana, as seen in the recent case of *R v Haywood*, from Barbados.<sup>71</sup> Indeed, it is believed that the ‘tipping point’ toward the 2015 law reform in Jamaica was the public’s condemnation of events whereby persons were identified as having spent several years in prison for cannabis/ marijuana and another was killed in prison after being incarcerated for possession of a ganja cigarette.<sup>72</sup>

4.11. Moreover, sentencing appears to be out of sync with social realities and the measure of the offence and are often inconsistent or even arbitrary. This may cause considerable confusion as courts seek to define their appropriate roles in this regard and obtain just outcomes. Importantly, in Trinidad and Tobago, the heavy, mandatory minimum penalties under section 5(5) of the Dangerous Drug Act, which imposed a mandatory minimum penalty of a fine of \$100,000 and 25 years of imprisonment, with a further term of 15 years of imprisonment in the event of default of payment of the fine (a total of 40 years imprisonment) for trafficking was declared unconstitutional by the Court of Appeal in the case of *Barry Francis, Roger Hinds v The State*.<sup>73</sup> The Court found that the restriction of its discretionary sentencing powers by the mandatory penalties was a violation of the separation of powers. It also spoke out against the oppressive, arbitrary nature of the legislative sentencing formula, deeming it cruel and inhumane punishment, disproportionate to the offences, saying:

“ . . . it imposes or authorises the imposition of a penalty which is arbitrary, capricious and oppressive. It is arbitrary because, in this case, there is no rational relation of the penalty to the actual offence committed. It is capricious because the judicial discretion to adapt the penalty to the nature of the crime is removed. It is oppressive because, in this case, the mandatory minimum, of itself, is excessive and wholly disproportionate to the crime committed. . . It breaches the right to the protection of the law in section 4(b) of the Constitution, in this case, by authorising the imposition of cruel and unusual treatment or punishment by permitting the imposition of a mandatory minimum penalty which is grossly disproportionate and inordinately excessive and which bears little or no relation to the crime committed.

4.12. The court reinstated that judicial discretion had to be read into the law. Notwithstanding this enlightened judgment and because the Court acknowledged Parliament’s intention to impose harsh penalties, sentences have often only been slightly less draconian. For example, 16 years imprisonment have been given for 4 kgs of marijuana and 20 years for 10.47 kgs<sup>74</sup>, while Barry Francis himself received 15 years imprisonment with hard labour for 1.6 kgs of cannabis. Sentences are also inconsistent, for

<sup>69</sup> ‘Court Erupts after Poultry Farmer gets 3 Years for 8 grams of ganja’, *Kaiteur News*, May 22, 2018, <https://www.kaiteurnews.com/2018/05/22/court-erupts-after-poultry-farmer-gets-3-years-for-8-grams-of-ganja/>. See s.4 of the Act.

<sup>70</sup> National Consultation, Guyana, November 6, 2017.

<sup>71</sup> (2016) 88 WMR 45

<sup>72</sup> Paul A Reid, ‘Mario Deane beaten, stabbed over use of bed, court told’, *Jamaica Observer Newspaper*, August 14, 2014, [http://www.jamaicaobserver.com/news/Mario-Dean-beaten-stabbed-over-use-of-bed-court-told\\_17351341](http://www.jamaicaobserver.com/news/Mario-Dean-beaten-stabbed-over-use-of-bed-court-told_17351341)

<sup>73</sup> Criminal Appeal Nos 5 & 6 of 2010, decided Jan 31, 2014.

<sup>74</sup> *Ramesar v The State*, Cr App No 8 of 2014; *Lancaster v The State*, Crim App No 4 of 2011 respectively.

example, 1.2 g attracted 2 years imprisonment, while in another, 1.16 g was given 8 years imprisonment, adjusted to 4 years.<sup>75</sup> Some judges have labelled this inconsistency “creative sentencing.”

4.13. It is instructive that sentences in the Caribbean are typically much lighter than in North America, the latter averaging only 6 months.

4.14. The rigidity in sentencing is not, however, uniform throughout the region. Some laws provide for flexibility. For example, in Grenada, possession is a hybrid offence, which can be tried either summarily, where it attracts a lesser penalty, or indictably (as a more serious offence).<sup>76</sup> Sentences can either be custodial or non-custodial, typically providing for both. However, the concern is that this can lead to inconsistency in the justice system. In addition, in a society where there is misinformation and mistrust about cannabis/ marijuana, some judicial officers are likely to take the harsher route. In fact, it is demonstrable that in many cases, there is the incongruity that due to uninformed and ad hoc legal policy, a person may receive higher sentences in the Magistrates’ courts for summary conviction than in the High court on indictment.<sup>77</sup>

4.15. Some legislation, as in Saint Lucia, allows for fines instead of imprisonment.<sup>78</sup> For example, for a drug trafficking offence, on summary conviction, a fine may be imposed of \$100,000 *or* imprisonment of 5 -10 years. However, given the arrest profile in the region, typically low-income or indigent, remanded persons often cannot afford such steep fines and end up in jail, criminalised. Speaking about St. Vincent and the Grenadines but indicating that the situation was the same throughout the OECS, a UN Report found that “75% of the total sentenced prisoner population had been given the option of a fine, but had been imprisoned because they could not pay them.” In other words, if all the prisoners who had the option of paying a fine could pay the fine determined by the court, the sentenced prison population size would be reduced by 75%.<sup>79</sup> In the same report, the author laments about Saint Lucia, “The high level of

Otherwise law-abiding CARICOM citizens can receive a much harsher sentence, including imprisonment for many years, for possessing a single ‘joint’ of marijuana, a victimless crime, than a person convicted of wounding another with intent and similar serious crimes.

fines for the possession of cannabis is noteworthy. It is difficult to understand what purpose is served by applying such high fines, which the offender is unable to pay, as a result of which he/she ends up in prison, while he/she is subjected to the criminalising impact of imprisonment.”<sup>80</sup>

4.16. Poverty also hampers persons arrested from posting bail. When Archbishop Harris of Trinidad and Tobago raised a petition seeking pardons for those on remand “to make this land, . . . a more merciful place,”<sup>81</sup> many relatives of the incarcerated agreed: “I agree with the Archbishop, is real stupidity that a man will get hold with weed and he in jail because he can’t post his bail. The system needs to change,” She said it was difficult for bailiffs to want to put up property for \$1,200 or \$1,500 bail for persons charged

with possession of marijuana and relatives could not afford bail.”

## Sentences Harsher than for Serious Victim Crimes

4.17. In terms of sentencing, however, the most damning indictment of the current regime is its inherent inequality when compared to penalties for other criminal offences, in particular, victim based crimes. It is an unfortunate truism that otherwise law-abiding CARICOM citizens can receive a much harsher sentence, including imprisonment for many years, for possessing a single ‘joint’ of marijuana, a victimless

<sup>75</sup> Vishnu Ragbir v Gary John MGP 86/2013; Abraham Jose Savisente and Others v Kirk Peters C & E Officer 1, MGS 30/2012, respectively.

<sup>76</sup> Summarily, a magistrate can impose either a fine of up to EC\$250,000.00 or imprisonment of up to five (5) years in prison, or both. On indictable matters, a judge can impose a fine of up to EC\$500,000.00 or imprisonment of up to twenty-five (25) years in prison, or both. They do have the flexibility when comes to sentencing. Drug Abuse (Prevention and Control) Act 1992, chp. 84A, as amended 2011. Cannabis, Indian hemp, is listed as a dangerous drug in the First Schedule.

<sup>77</sup> See, e.g. the Trinidad and Tobago examples above.

<sup>78</sup> Drugs (Prevention of Misuse) Act Cap 3:02, of Saint Lucia. Cannabis is listed as a Class A drug in the Second Schedule.

<sup>79</sup> Tomris Atabay, The Prison System and Alternatives to Imprisonment in Selected Countries of the Organisation of Eastern Caribbean States, UNODC, 8 November, 2010, p 5.

<sup>80</sup> Ibid, p.35

<sup>81</sup> Archbishop called for remand mercy – many marijuana offences - <http://www.guardian.co.tt/news/2016-04-29/pardon-petition-now-online> ‘April 29, 2016’ “Pardon Petition now Online” “

crime, than a person convicted of wounding another with intent (even where death occurs) and similar serious crimes. Indeed, the latter person may even receive a non-custodial sentence if mitigating circumstances are found, an option not available to the marijuana user. The injustice of such sentences seems more acute when compared to sentences for non-drug criminal offences which have affected victims seriously.

4.18. In the Consultations, the Commission heard repeatedly, first-hand accounts of the personal hardship and suffering that such sentencing and prohibitionist policies have caused to Caribbean citizens, even though their offences were victimless.

### **Low Thresholds for Presumption of Trafficking**

4.19. While a distinction is made between mere usage and supplying, or trafficking, the latter conceptualised as the more serious offence, drug legislation also typically provides for low thresholds for defining trafficking. For example, in St. Kitts and Nevis, possession of a mere 15 grams of cannabis triggers the trafficking charge and the possession is deemed to be trafficking or supplying.<sup>82</sup> A similar provision is found in Saint Lucia.<sup>83</sup>

4.20. The low thresholds established for trafficking and supply offences mean that effectively, persons with possession of very small amounts of cannabis/ marijuana can be tied to these much more serious offences and penalties. This is problematic given that typically, it leads to long terms of imprisonment, especially of young persons, who are in fact, just users. The Commission received recommendations for either removing such assumptions altogether, or specifying a much higher amount in the legislation, such as 500 grams, before trafficking or supply could be assumed. The Commission prefers the latter option.

### **School Premises**

4.21. Notably, legislation in some jurisdictions provide for special charges to be laid for trafficking if an individual is found on a school compound or within a specified distance of one hundred yards from a school, with an illegal substance.<sup>84</sup> The intent of the framers of the legislation in Trinidad and Tobago was to keep persons who would encourage young people to use substances from selling to them at school. While the hope is that such provisions would have a deterrent effect on would be traffickers, due to the prevalence among students they have been ineffective. Students continue to be found with the substance on school compounds. Further, an unintended consequence is that small users receive harsher penalties if per chance they are arrested near schools, even if by accident, or they live near the school.

### **Remand**

4.22. While these issues are not unique to marijuana arrests, the problems of delayed justice and remand are notable. Trials are plagued by case-overload and unavailability of court rooms and, or magistrates or judges to deal with these matters expeditiously. Consequently, matters take a long time to be called and stay in the court for long periods of time before trial, leading to further injustices.<sup>85</sup>

### **Appropriate Personal Amounts in Law Reform**

4.23. The Commission received submissions as to the appropriate amount that should be permitted without restriction in terms of possession. For example, the Saint Lucia Commission on Marijuana recommended that 30 grams or less of cannabis should not be an offense, noting that this would “allow for personal use and remove what has become a nuisance for enforcement.” This is higher than the current amount in Antigua and Barbuda, but lower than the 56 grams now allowed in Jamaica. As seen above, the new laws in Jamaica continue to meet with public approval.

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<sup>82</sup> See the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act 1986, chp. 9:08, under s. 6(4) (e)/ Cannabis is listed as a Class A drug in the Second Schedule.

<sup>83</sup> See s.8 (4) of the Saint Lucia Act. See also s.22 (3) of the Guyana Act, where possession of two or more “packets” of the substance, or “excess” raises the presumption of intent to supply. See also Barbados, the Drug Abuse (Prevention and Control) Act 1990.

<sup>84</sup> See, e.g. s.21 of the Grenada Act; s. 12 of the Saint Lucia Act.

<sup>85</sup> Trinidad and Tobago and The Bahamas have some of the highest remand rates. 34% and 42% respectively. Penal Reform in the Caribbean, Presentation, Barbados, 2000.

4.24. Notwithstanding, the Commission considers that legislating for personal use should go beyond imposing small amount exceptions and consider the broader questions of the inability to enforce prohibition in households, the issue of personal use in public spaces and the right to private life/ privacy issues that arise when the state attempts to regulate personal conduct in private households.

4.25. As a first step, the Commission is unanimous in its view that any legal reform should continue to prohibit the use (especially smoking) of cannabis/ marijuana in public spaces, as is currently done for tobacco smoking. This would also preserve the rights of non-users. Possible exceptions would be a regulatory regime that permits ‘regulated spaces’, such as the ‘coffee shops’ of The Netherlands or the cooperatives of Spain. On the other hand, regulatory regimes for private households which criminalise persons for use are untenable for the reasons mentioned above.

### **Classifying Cannabis Equally to Hard-core Narcotics Undermines Credibility of the Law**

4.26. Cannabis is categorised as a narcotic or dangerous drug in exactly the same way as other substances such as cocaine, crack etc. which are known to have much more harmful, even deadly effects. This fact alone undermines the ability of law to properly enforce it, given that the law is seen as being without basis, appropriate knowledge or awareness, or just plain wrong. Indeed, many participants in the Consultations argued that while cocaine and crack are harmful and should be outlawed, cannabis is incorrectly made equivalent to such substances. The Commission heard often too, the statement that cannabis has never been known to “kill anyone.” The scientific data substantiates these comparisons.

4.27. The scientific evidence supporting the medical benefits of cannabis, detailed below, highlights the defective classification of cannabis/ marijuana as a substance without medicinal or other value. This defect strains the credibility of the law itself and law enforcement efforts and should be rectified.

4.28. Further, the incongruity of the harsh laws and inaccurate classification of cannabis/ marijuana is exacerbated by the fact that other harmful substances are not similarly treated under the law, leading to claims of inherent unfairness and injustice in the legal system. As discussed below, both alcohol and tobacco are equally, or more harmful than cannabis, but are legal.

### **Current Exceptions in Law Not Applied Because of Stigma**

4.29. The existing Drug/ Misuse of Drugs Laws contain provisions for exceptions to legal liability where the relevant Minister is given authority to grant permission for the importation of cannabis/ marijuana, or its products for medicinal purposes. This, in itself, is an acknowledgement of the medical properties of cannabis/ marijuana and a contradiction to its classification as a dangerous drug, or narcotic with no medicinal properties. For example, pursuant to sections 4 and 57 of the Dangerous Drugs Act of Trinidad and Tobago – the Minister may make exceptions and issue a license to import marijuana for medicinal and scientific research purposes.<sup>86</sup> In some cases the exceptions are wide and not based on such purposes. Yet, because of the stigma attached to the substance, successive Ministers have refused, or have been reluctant to do so.<sup>87</sup> This timidity is typical in the region. The Commission heard several complaints from desperate, frustrated members of the public and stakeholders who had attempted to make use of this legislative exemption for personal medical treatment, without success.

4.30 In many instances, Ministers appear to be unaware of their authority under the relevant statute and even when made aware, were afraid to utilise it. Indeed, the work of the Commission in hosting the Consultations was a source of education on this provision in many quarters. The leeway for the sick and ailing has therefore been rendered ineffective because of the lack of information, fear, misinformation and stigma surrounding the plant, direct results of prohibition.

### **Ancillary Laws Supporting Illegality – The Financial Collateral Problem**

4.31. The issue of law reform for cannabis/ marijuana goes beyond questions of legal liability for persons under the legislative prohibition of dangerous drugs and the regulation of marijuana for medicinal

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<sup>86</sup> See also s.3 of the Dangerous Drugs Act 2008, chp 228 of The Bahamas. The substance is listed as Indian Hemp in this statute. See also, s. 10(3) of the Saint Lucia Act. In Guyana, under s. 23, the power granted to the Minister to make exceptions is not limited to medical purposes.

<sup>87</sup> See also s.9 of the Misuse of Drugs Act, 1973, Antigua and Barbuda,

purposes. The illegal status accorded to cannabis/ marijuana has additional implications in other areas of law. These laws are relevant to the treatment of cannabis as an illegal substance and support the prohibitionist regime. Consequently, if cannabis remains, even theoretically, an illegal substance, important matters that the legal regime will need to address include the status and facilitation of hemp, the need for patent laws, change to customs laws, the regulation of pharmacies and the amendment to anti-money laundering and proceeds of crime.

4.32. Already, problems have arisen with regard to the inability of companies operating marijuana businesses to legally transact with banks and financial institutions, given that the proceeds of their businesses are viewed as the “proceeds of crime.” In addition to the ability to transact with banks, under the current legal regime, any profits from cannabis can also be legitimately viewed as offending the now several, up-to-date anti-money-laundering statutes, all of which outlaw the proceeds of any crime. Further, this discussion spills over into our concerns about the international context, considered below.

4.33. All CARICOM states have strict anti-money-laundering and Proceeds of Crime legislation. Originally, the offence of money-laundering was predicated on drug offences. However, the modern approach to money-laundering and proceeds of crime is linked to the proceeds of any crime. The fact that prohibition hinges on criminal proceedings and penalties, instead of civil proceedings (like traffic offences, for example), brings it squarely within the anti-money-laundering/ proceeds of crime regime, which itself has draconian penalties and legal consequences. The implications of this, even in the face of law reform, but where elements of criminality and criminal penalties are retained, keeping cannabis/ marijuana essentially as an illegal substance, are elaborated upon below, particularly in the international context.

4.34. Not surprisingly, should cannabis/ marijuana be reclassified, it will also be necessary to amend laws relating to Customs and pharmacies/ pharmaceuticals, since currently cannabis/ marijuana is listed as a substance without medicinal value.

## Hemp

4.35. The question of hemp, a strain of the cannabis plant with negligible tetrahydrocannabinol (THC) arose on several occasions in the National Consultations. The value of hemp as an industrial and commercial substance is validated by the scientific and scholarly literature. Currently, CARICOM laws either do not make provision for hemp or treat it in the same way as all forms of cannabis, thereby prohibiting the usage of hemp for any purpose, including important commercial uses. The Commission is persuaded that hemp should be differentiated from other types of cannabis in the relevant legislation, using provisions that define hemp according to minimal THC levels and thereby excluding these from any regulatory or legal prohibitive regime. This will liberate hemp and encourage its use in important industry development. In the cultivation of hemp, careful zoning is needed to prevent cross-fertilisation.

4.36. The amended Jamaica law now provides for a new definition of ganja which excludes medicinal products and hemp. Hemp is defined in that statute as cannabis with no more than 1 % THC levels (tetrahydrocannabinol).<sup>88</sup>

4.37. The Belize amendment now makes similar provision for Indian hemp (cannabis). However, the Commission did receive submissions on hemp which recommended that the threshold for the definition of hemp be less than 5% Tetrahydrocannabinol, which it was believed, would allow for the formation of an industrial hemp movement. It was suggested that the impact on illicit use would be zero since “few people would use low THC cannabis as an euphoriant as is evident by the abandonment of “fat leaf”, low THC cannabis leaf in the field.”<sup>89</sup>

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<sup>88</sup> See section 3 of the 2015 Act.

<sup>89</sup> A suggestion from the Cannabis Movement of Saint Lucia, which functioned like a de facto Commission and worked for 2 years, harnessing the views of several stakeholders on the issue of possible law reform.



## Urgent Need for Patent Law in Law Reform Process

4.38. Apart from considerations of legal liability for users and traders, any law reform on marijuana must, in the future, consider the issue of patenting. This is in view of the huge interest in marijuana as a medicinal substance and also information that varieties of cannabis grown in the region are of superior, sometimes unique quality, even in terms of recreational use. There is a view that much of the interest by large foreign companies in the region is for the purpose of acquiring stakes in the seeds and related materials unique to the region, which can, if not protected by patent and other laws, be exploited without adequate benefit to CARICOM states. If patent opportunities are lost, there are likely to be foreign patents of regional substances and products, as is already occurring,<sup>90</sup> with considerable detriment to the potential market value and usage of the region. In view of concerns for patenting, the Jamaican model makes specific provision for seeds, but it is limited. In general, this is an issue that has not often been debated, but one with considerable implications.

## Regional Law Reform Initiatives

4.39. Three countries in the region have now taken steps to remove prohibition status from marijuana, beginning with Jamaica in 2015,<sup>91</sup> then Belize,<sup>92</sup> with the latest being Antigua and Barbuda.<sup>93</sup> There is a common trajectory in all of the three jurisdictions, that is, the decriminalisation for the offence of possession where small amounts of cannabis are involved, although the prescribed amounts vary. In Antigua and Barbuda, for example, the excepted amount is 15 grams, whereas it is 2 ounces in Jamaica (equivalent to 56 grams) and 10 grams in Belize.<sup>94</sup>

4.40. In truth, while these new regimes self-label as ‘decriminalisation’ models, they are hybrid constructs, incorporating some elements of legalisation and other elements of decriminalisation. For example, it is now *de jure* legal to have 5 plants in the household in Jamaica and 4 plants in Antigua and Barbuda.<sup>95</sup> The Antigua and Barbuda law now makes provision for the institution of ticketable offences for fines for any current offence under the parent statute, by way of Regulations created by the Minister.<sup>96</sup> This provision makes it possible for all criminal penalties to be removed from the law without the need for a new statute.<sup>97</sup>

4.41. There is also provision for the expungement of criminal records for marijuana offences. For example, in Antigua and Barbuda, the new section 39 reads:

“Notwithstanding the provisions of the Criminal Records (Rehabilitation of Offenders) Act 2013, No. 19 of 2013, any notation on the criminal record of a person prior to the passing of this Act for conviction of offences involving the drug Cannabis or Cannabis resin in a quantity of 15 grams or less, shall be regarded as spent and expunged accordingly.”

4.42. Special provisions have also been included to automatically refer children (defined as persons under 18 years) for counselling and rehabilitation where found in possession of marijuana.<sup>98</sup>

4.43. The Jamaican model made provision for a licensing regime for the growing of cannabis and the arrangements for commercial transactions of the substance for medicinal purposes, concurrent with the thrust toward decriminalisation. However, reports are that the regime has not yet worked as envisaged and the Licensing Board was dissolved in May, 2018. The need for an appropriate regulatory framework that is both realistic and responsible, remains.

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<sup>90</sup> See, e.g. the controversial Monsanto patent for “specialty cannabis”: <http://www.pbs.org/wgbh/nova/next/evolution/patenting-pot/CarrieArnold>, ‘The Rise of Marijuana TM (Patent Pending) G4.

<sup>91</sup> Dangerous Drugs (Amendment) Act 2015 of Jamaica.

<sup>92</sup> Misuse of Drugs (Amendment) Act 2017 of Belize.

<sup>93</sup> In Antigua and Barbuda, it is the Misuse of Drugs (Amendment) Act, 2018, which amends the parent statute, the Misuse of Drugs Act, Cap. 283. Cayman Islands and Bermuda, Associate Members of CARICOM, also amended their laws recently to decriminalise (for medicinal purposes).

<sup>94</sup> Under the Misuse of Drugs (Amendment) Act 2017. S 7 – 10 grams or less is now a ticketable offence with a prescribed fine of \$100.

<sup>95</sup> See s 8 (1A) of the Misuse of Drugs (Amendment) Act, 2018 of Antigua and Barbuda.

<sup>96</sup> S 13A, *ibid*.

<sup>97</sup> In Belize section 26 protects against a criminal record, while section 28A makes provision for the expungement of criminal convictions for cannabis.

<sup>98</sup> S.6C in the Antigua and Barbuda Act.

### *Emergence of Drug Courts and Mandatory Rehabilitation Programs*

4.44. Recent developments include more benevolent laws which seek to treat the use of cannabis and other drugs as a public health issue and direct the offender to rehabilitation. The emergence of Drug Courts, Drug Treatment Courts, which are specialised courts and mandatory rehabilitation programs for drug offenders in the region illustrates this trend toward changing the punitive, criminal sanction backed legal regime. The creation of such courts in Jamaica, Barbados and Trinidad and Tobago,<sup>99</sup> together with the accompanying parent legislation, create a *de facto* decriminalised system. These courts have authority to place a drug offender in a health facility to undergo treatment for substance use disorders instead of being fined or imprisoned. Such judicial programs correspond to the thrust of authoritative world bodies emphasising that cannabis should be treated as a public health instead of a criminal justice issue and that harm reduction strategies should be employed.<sup>100</sup>

4.45. Such courts also attempt to address the high levels of incarceration of persons with substance use disorders. However, eligibility criteria vary across jurisdictions. Drug trafficking offences are not usually considered in these courts, and many jurisdictions do not consider participants with violent offences. While welcome initiatives, they cannot substitute for improved laws regulating cannabis/ marijuana.

## **5. SCIENTIFIC AND MEDICAL CONTEXT - IMPLICATIONS FOR THE LAW**

5.1. While the mandate of the Commission goes far beyond the question of cannabis/ marijuana for medical purposes, the scientific and medical components of the cannabis/ marijuana issue are vital to the question of law reform in two main ways. On the one hand, accurate, up-to-date scientific evidence is necessary to evaluate the likely physiological impact of cannabis/ marijuana as it relates to identified problems in the justice system. On the other hand, the value of cannabis/ marijuana for medical purposes cannot be underestimated.

5.2. Understanding accurately the scientific and in particular, the medical facts about cannabis, is important for law-making and law reform, since marijuana is currently classified under law and international treaties as a “dangerous drug”. This classification describes a substance that has no medicinal or other value. Given that the evidence illustrates that this is an inaccurate description of the plant and its derivative products, logically, its classification is now questionable and should be reviewed.

<sup>101</sup>

### **Uncertainty of the Cannabis Substance and Different Strains of Cannabis**

5.3. There are some obstacles to a new regulatory regime or change to the law which relate to the composition of cannabis. Many are unsure of the psychotropic effects of the plant and there is a considerable amount of confusion about what cannabis actually is. That is in fact, understandable, since, as we have learnt, it is a varied plant, with vastly different scientific properties. In addition, the issues of dosage and purity of grade are important factors that could dramatically alter the intended effects of medicinal marijuana. Medical uses should be carefully controlled and monitored.

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<sup>99</sup> Drug Court (Treatment and Rehabilitation of Offenders) Act No 40 of 1999 of Jamaica. Trinidad and Tobago started a Drug Treatment Project under the auspices of the OAS in 2013, but this is a voluntary program. It nevertheless acknowledges the changing legal policy. See ‘A Policy to Establish Drug Treatment Courts in Trinidad and Tobago’, [http://www.cicad.oas.org/fortalecimiento\\_institucional/dtca/activities/Trinidad/FINAL%20DTC.%20TRINIDAD%20AND%20TOBAGO.%20ENGLISH%20PD E.pdf](http://www.cicad.oas.org/fortalecimiento_institucional/dtca/activities/Trinidad/FINAL%20DTC.%20TRINIDAD%20AND%20TOBAGO.%20ENGLISH%20PD E.pdf). Belize is progressing toward a Drug Court. Rehabilitative approaches are utilised instead of traditional adversarial, punitive, court formats.

<sup>100</sup> Drug Treatment Courts were developed in the USA in response to the rising number of drug-involved offenders in the criminal justice system. These specialised courts work with treatment providers to encourage drug-involved offenders to participate in treatment, and divert them from traditional criminal justice consequences such as prison. The phenomenon recognises that conventional courts may not deal with drug offenders in the best way and it may be better to reduce drug use and drug related crime through a system designed specifically for those issues. Courts are supported by trained professionals (judges/magistrates, other criminal justice staff, drug treatment personnel). Models vary and treatment programs may be either mandatory or voluntary.

<sup>101</sup> The dangerous drug status of marijuana itself hindered researchers from doing the necessary scientific research to prove that it should not be so classified and in fact, educate our public. Since the 1960’s The UWM has been conducting experimental studies on marijuana, but at great costs and difficulty.



5.4. There are three main species of the cannabis plant: *Cannabis sativa*, *Cannabis indica* and *Cannabis ruderalis*. The plant has over 700 compounds of which more than 100 are cannabinoids. The main cannabinoids of interest medicinally are the psychoactive compound, delta-9- tetrahydrocannabinol (THC) and cannabidiol (CBD) which is non -psychoactive. These cannabinoids act on the endocannabinoid system which plays an important role in the body's function.

5.5. There are also now genetically modified versions of the plant; plants with higher THC strains due to cross-fertilization or deliberate manipulation, as well as hybrids. The Commission heard, even from marijuana users, that these strains, such as “cush”, have been specifically developed to give a greater ‘high’ to users.

5.6. In addition, there is evidence that many users mix marijuana with other substances such as alcohol or other drugs, which can change the effect of the plant. As a consequence, even if there is now widespread acceptance in the region that marijuana has established medical uses, there is need for clarity as to precisely what, in what dosages, what types of cannabis plants etc. CARICOM should embrace. These scenarios present particular challenges for regulation, even if prohibition were to be removed in favour of a regulated regime similar to alcohol, for example.

5.7. The Commission is of the view that strains of cannabis with very high THC levels that have been developed, should remain prohibited substances for purposes of general public consumption, since they present too high risks. Indeed, such substances should be specifically banned in the law. While we appreciate that currently, the practical tools may not be available to test for such qualities, the law should be futuristic in this regard since undoubtedly, such tools will be developed for wide use in the near future. Further, it is important for the law to play a role in warning of the clear risks with such strains. The only exceptions should be where such new strains of cannabis are developed and utilised in specific medical products as may be patented.

### **Evidence as to Positive Medicinal Benefits Now Overwhelming**

5.8. One of the most important reasons for the increased interest in cannabis/ marijuana is because of its use as a medicinal substance. This is by no means novel in the region given the social and cultural significance of cannabis/ marijuana, enhanced by the adoption of the plant for religious purposes by the Rastafarian community. The Rastafarians designated the plant the ‘holy herb’ and the Commission heard repeatedly, of its medicinal properties which had been gifted by God as a natural, free, substance for the healing of all. The Commission, at each of its Consultations, was 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).<sup>102</sup>

**Strains of cannabis with very high THC levels that have been developed, should remain prohibited substances for purposes of general public consumption, since they present too high risks.**

5.9. Indeed, this long historical and cultural association with cannabis/ marijuana perhaps accounts for the early scientific interest in the substance in the Commonwealth Caribbean. In fact, the region can boast of having the earliest cannabis/ marijuana medical patented products, a treatment for glaucoma developed by the University of the West Indies (UWI).<sup>103</sup>

5.10. Medical Marijuana dates back to five millennia. Its use as a medicinal substance was popularised in Western culture in the mid-19th century by an Irish physician, William B. O’Shaughnessy who published a book “On the Preparations of the Indian Hemp, or Gunjah”. In this book, he promoted Marijuana for the treatment of pain, nausea and vomiting, spasms, epilepsy and insomnia (Robson, 2001). Marijuana as medicine was marketed in the early 20th century but was dropped from the pharmacopoeia of many

<sup>102</sup> 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.”

<sup>103</sup> West, Manley, Homi, J. ‘Cannabis as a Medicine’, Br J Anaesth, 1996, Jan 76 (1) 1-67.

countries, the U.S.A in 1941 and Britain in 1932.<sup>104</sup> Over the past 25 years there has been renewed interest in Medical Marijuana and today claims exist for marijuana in the treatment of over 70 conditions.

5.11. Increasingly, the general public has embraced cannabis/ marijuana as a “miracle herb”. Much of this has to do with public interest documentaries in popular media accessible to the public in ways that scientific journals are not. CNN’s influential series with research over several years on cannabis/ marijuana produced by a popular medical doctor who is a recent convert to cannabis/ marijuana, was referenced on several occasions in the Consultations.<sup>105</sup>

5.12. The issues relating to the medicinal properties of marijuana and to the physiological impact of the substance are not without controversy. Nonetheless, it is evident that many countries have already changed their policy in regards to Medical Marijuana in the light of scientific data and perhaps, partly driven by public opinion. In the USA (2015), 58% of respondents and Jamaica (2014), 51% of respondents had supported legal use of legal Marijuana as Medicine. Today there is an increase in products available on the market and in the number of persons using Medical Marijuana and support for it has increased, now 88.4% in Jamaica.

5.13. Several persons in the public national Consultations shared their personal experiences on the positive impacts of marijuana on pain, asthma, epilepsy, multiple sclerosis, cancer, glaucoma and cerebral palsy. There was also a view that the side-effects of marijuana were far less severe than some prescriptive drugs and alcohol, as well as an acknowledgement of its use for meditation, relaxation therapy and stress relief. Many persons gave accounts that cannabis/ marijuana helped them to heal when traditional drugs did not work. The Commission also received numerous testimonies to this online.

Several persons in the public national Consultations shared their personal experiences on the positive impacts of marijuana on pain, asthma, epilepsy, multiple sclerosis, cancer, glaucoma and cerebral palsy.

5.14. Some of these treatments, the Commission was told in Belize, St. Kitts and Nevis, St. Vincent and the Grenadines, Barbados and Antigua and Barbuda, were treatments by local, ‘homeopathic’ practitioners. Several alternative health practitioners also attended the Consultations and Focus Groups and spoke openly about their use of cannabis/ marijuana products for healing, giving detailed accounts of their treatment data to test cannabis/ marijuana. Many expressed their desires to be able to access cannabis/ marijuana medicinal products legally. Perhaps the most poignant of these was a group of wheelchair bound citizens of Barbados, many of them elderly and female, who came as a group to the national Consultations and implored the Commission to persuade the authorities to allow them access to cannabis/ marijuana for medicinal purposes to ease their pain and suffering.

5.15. Significantly, some persons gave accounts of their treatment overseas by doctors who prescribed cannabis/ marijuana for them legally because of new laws in the US and Canada. They labelled themselves “medical refugees” and implored the Commission to permit access to cannabis/ marijuana in CARICOM countries. Faced with the increasing first-hand knowledge of persons being treated and being healed by cannabis/ marijuana, it is difficult for CARICOM to maintain the position in its laws that cannabis/ marijuana is merely a ‘dangerous drug’ with no medicinal value. Consequently, the current legal classification appears obsolete and idiosyncratic.

## Increasing Scientific Support for Medical Marijuana

5.16. The now overwhelming evidence on the medicinal properties of cannabis/ marijuana is summarised below. The science is emerging as more relaxed legal regimes allow for further scientific inquires and new discoveries (or rejections) of its beneficial effects are occurring at a fast pace, exploding, or at least challenging, many of the negative myths previously associated with cannabis. Its status as a prohibited substance previously frustrated attempts to carry out scientific research on it. However, as this paradigm has shifted, more conclusive evidence is emerging and is expected to improve quickly, particularly as many governments, including Canada, the US, Israel and others, are now funding this research.

<sup>104</sup> Robson, 2001; Manzanares, Julian & Carrascosa, 2006.

<sup>105</sup> Dr. S. Gupta: CNN, ‘Charlotte’s Web’; ‘Weed 3, The Marijuana Revolution’.

5.17. The economic value of Medical Marijuana has also been noted. This is not only in relation to potential exports, but also for use in the domestic sector. Moreover, in a region where pharmaceuticals are costly, often unavailable and foreign exchange in short supply, being able to produce locally a substance that seems to have so many important, varied medicinal properties, is not to be lightly discounted for the nations' health and purses.

5.18. Despite cannabis/ marijuana's ancient pedigree as a medicinal substance, the rapidly expanding knowledge in scientific data and the global policy shift, in some respects there is still a paucity of quality research on the beneficial and adverse effects associated with Marijuana. Nevertheless, the evidence is substantial enough to determine that there is considerable value in cannabis/ marijuana as an important plant for medicinal purposes. Notwithstanding the limitations therefore, several important conclusions may be made to inform this Report and to guide CARICOM in its deliberations.

5.19. In evaluating the sometimes conflicting data widely available, some of which is not supported by scientific research or by established scientific research norms, the Commission was guided extensively by the report published in 2017 by the National Academies of Sciences – *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*. The authors of this report were also guided by previous reports of the agency Marijuana and Health (1982) and Marijuana and Medicine (1999). This is an organization that has a track record of providing objective analysis of issues in order to inform policy. As such, it was not necessary to reinvent the wheel. In this vein, and in view of its mandate to consider the approaches of other national bodies beyond CARICOM, the Commission is also guided by a recent Report coming from Canada, as Canada gets ready to legalise marijuana, removing prohibition, but in a controlled environment.

5.20. Somewhat ironically, the fact that there is now a considerable amount of scientific evidence which supports the use of marijuana for medicinal purposes, may lead to greater regulation, given that medical drugs are typically regulated strictly. Such regulation would, however, be very different to what currently obtains and would not be based on a punitive, prohibition regime. Nonetheless, it should be noted that marijuana usage for medicinal purposes can also fall under a class of drug called nutraceuticals, many of which are not regulated. Examples of these would be alternative health products.<sup>106</sup>

There is now a considerable amount of scientific evidence which supports the use of marijuana for medicinal purposes

*New Laws Permitting Medical Marijuana*

5.21. Several countries now have laws permitting marijuana use for medicinal purposes, thereby removing prohibitions for this purpose. A non-exhaustive list includes Canada, Chile, Colombia, Costa Rica, Spain, Germany, Greece, Israel, Italy, The Netherlands, Poland, Peru, and Uruguay, Jamaica, Belize, Puerto Rico and Antigua and Barbuda. Australia passed legislation to allow the medicinal use of Marijuana in some states. In the United States 29 States, plus Washington DC have approved marijuana for medicine (Hill, 2015; Manzanares, Julian & Carrascosa, 2006). In Jamaica, for example, the Dangerous Drug (Amendment) Act 2015 made provisions for scientific and medicinal use but did not allow for the liberal cultivation and transport of the drug. Jamaica made provision for licences and permits to allow easier access to cannabis for scientific and medicinal purposes.

5.22. The classification of cannabis/ marijuana for medicinal purposes must also be considered and may require different regulation. A distinction must be made between 'Medical Marijuana' and 'Herbal Marijuana'. Medical Marijuana refers to products containing cannabinoids used for medicinal purposes and includes, herbal Marijuana, edibles, extracts and synthetic preparations. Several purified and approved pharmaceuticals/ pharmaceutical formulations<sup>107</sup> of marijuana are available. Herbal Marijuana includes

<sup>106</sup> 'Nutraceutical Advancements in CBD-based Products Opens the Door for Massive Opportunities in Cannabis Industry' MarketNewsUpdates.com News Commentary, PALM BEACH, Florida, November 8, 2017 /PRNewswire/ -656096123.html. Published in a recent report released by Freedomia Group, World demand for nutraceutical ingredients is forecast to increase 6.4 percent annually to \$28.8 billion in 2017. <https://www.prnewswire.com/news-releases/nutraceutical-advancements-in-cbd-based-products-opens-the-door-for-massive-opportunities-in-cannabis-industry>.

<sup>107</sup> Several pharmaceutical formulations exist, including those with natural extracts and synthetic versions of marijuana.

Name of	Classification	Constituents	Countries	Indication
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any material derived from the plant such as the stem, leaf, seed, root, resin and any other part of the plant. Herbal marijuana can be smoked, vaporized, taken by mouth in food or drinks or processed into a variety of products. In addition, the marijuana industry for medicinal purposes includes the following classifications: ‘Edibles’, which are food products infused with marijuana (cakes, brownies, biscuits, candies etc.) and marijuana infused beverages. These may also be used for recreational purposes; and ‘Extracts’ - which may contain any combination of the constituents from the marijuana plant including the main cannabinoids THC or CBD. Two of the earliest preparations containing plant extracts (Canasol and Asmasol) were produced in the Caribbean.<sup>108</sup>

### *Beneficial Effects of Marijuana for Medicinal Purposes*

5.23. A review of the literature has identified several potentially beneficial and therapeutic effects of cannabis/ marijuana. The scientific evidence is now strong in relation to some, while moderate in others. Cannabis/marijuana is beneficial in the treatment of the following diseases and ailments:

*Chemotherapy Induced Nausea and Vomiting* - A substantial body of research suggests that natural and synthetic THC are effective in the treatment of chemotherapy induced nausea and vomiting;<sup>109</sup>

*Glaucoma* - A large body of research indicates that marijuana may be effective in reducing intraocular pressure in glaucoma and slowing the progression of glaucoma;<sup>110</sup>

*Anorexia and Weight Loss* - Numerous studies have found that marijuana improves the appetite and slows weight loss of those with cancer and undergoing chemotherapy. Marijuana has also been found to be helpful in improving appetite for those with anorexia nervosa (Medical Marijuana, 2010; Robson, 2001; Hazekamp & Grotenham, 2010; Kowal, Hazekamp & Grotenham, 2016));

*Pain* - Several studies have demonstrated that marijuana is efficacious in the treatment of chronic and neuropathic pain (Lynch and Campbell, 2011). Neuropathic pain is a form of severe pain involving the nerves. (Rahn & Hohmann, 2009). Other reviews have suggested mixed results across clinical trials as it relates to the analgesic effect of marijuana. (Hazekamp & Grotenham, 2010) (Kowal, Hazekamp & Grotenham, 2016);

*Multiple Sclerosis (MS)* - This debilitating, autoimmune condition for which adequate treatment is lacking is characterised by muscle spasms, tremor, ataxia, weakness or paralysis, constipation, loss of bladder control and severe pain. Numerous researchers have reported that marijuana may reduce spasticity, pain, tremors, and ataxia and slow the progression of MS;

*Sleep Disorders* - There is an accumulating body of research that shows Marijuana to be useful in the treatment of sleep disorders. <sup>111</sup>

*Mental Disorders* - Preliminary data suggest a possibility for CBD in the treatment of Psychosis and Post-traumatic Stress Disorder but more robust studies need to be conducted to support these claims (Leweke et al);

*Other Disorders* - A growing body of scientific research suggests that marijuana is effective in the treatment of diseases such as Migraines, Inflammatory Bowel Disease, Fibromyalgia, Arthritis

Dronabinol (Marinol, Syndros)	Synthetic		USA	Chemotherapy induced nausea & vomiting Anorexia & weight loss in AIDS patients
Nabilone (Cesamet)	Synthetic		USA, Canada, UK	Chemotherapy induced nausea & vomiting and adjunctive for chronic pain
Cannabidiol (Epidiolex)	Purified Plant Extract	CBD	USA,	Intractable childhood seizures, e.g., Dravet, Lennox-Gastaut syndromes
Nabiximols (Sativex)	Purified Plant Extract/Synthetic	THC:CBD (1:1)	UK	Pain, muscle spasticity in multiple sclerosis
Canasol (1987)	Plant Extract	THC	JA	Glaucoma
Asmasol	Plant Extract	THC	JA	Asthma

<sup>108</sup> Sativex and Epidiolex a CBD extract which was approved for the treatment of seizures in 2018 in the USA are two other extracts available. West, Manley, Horri, J. ‘Cannabis as a Medicine’, Br J Anaesth, 1996, Jan 76 (1) 1-67.

<sup>109</sup> (Robson, 2001; Hazekamp & Grotenham, 2010; Kowal, Hazekamp & Grotenham, 2016).

<sup>110</sup> (West, 1996; Robson, 2001; Watson, Benson, Joy et al. 2000; Hazekamp & Grotenham, 2010; Kowal, Hazekamp & Grotenham, 2016);

<sup>111</sup> (Robson, 2001; Hazekamp & Grotenham, 2010).

and Rheumatoid Arthritis, Digestive Diseases, Gliomas, Hepatitis C, Huntington’s disease, Parkinson’s disease, HIV/AIDS, Post-Traumatic Stress Disorder and Depression, and Asthma – if prepared without smoking.<sup>112</sup> Research has also credited marijuana use to the slowed progression of Alzheimer’s disease<sup>113</sup>.

It is noteworthy that in the body of research conducted over the past four decades there has been no report of severe or fatal adverse events due to marijuana based medications,<sup>114</sup> a point made often in the Commission’s Consultations by members of the public.

*SUMMARY OF EVIDENCE IN TERMS OF EFFECTIVENESS IN SEVERAL MEDICAL CONDITIONS<sup>115</sup>*

Conclusive or Substantial Evidence <sup>1</sup>	Moderate Evidence <sup>2</sup>	Limited Evidence <sup>3</sup>	Insufficient Evidence <sup>4</sup>
Chronic Pain	Short term sleep disturbances	Appetite and Weight Loss due to HIV/AIDS	Cancers
Chemotherapy induced nausea and vomiting	Asthma	Anxiety	Irritable Bowel Syndrome
Multiple Sclerosis Spasticity Symptoms		Post-Traumatic Stress Disorder	Epilepsy <sup>116</sup>
		Dementia/ Alzheimer’s	Amyotrophic Lateral Sclerosis
		Glaucoma	Schizophrenia

### Addressing Concerns about Adverse Health Impacts

5.24. The concerns about marijuana in terms of health are being tested by undergoing intense research. In some cases, long held beliefs/ myths about adverse consequences are being disproved, while in a few, the evidence supports the concerns. In other instances, the results are inconclusive. The concerns include the following:

#### *Health Considerations for Children and Young Persons*

5.25. Given that the average age of initiation to cannabis/marijuana in the Caribbean is 13 years of age, it is important that its effect on children and adolescents be addressed. There is a large consensus with respect to the scientific evidence concerning the negative effect of cannabis on children and young adults. This necessitates an exception to whatever change to the legal status quo ensues, ensuring that strict prohibitions remain with respect to this group of persons.

5.26. The adolescent brain is in a stage of critical development and is not fully developed before the age of 24 years which makes it susceptible to the effects of marijuana. There is a convincing body of literature that recent use affects several domains of cognition such as memory, attention and learning. These effects appear to persist even after the drug is stopped.<sup>117</sup>

5.27. Studies indicate that marijuana use in adolescents is associated with, but not necessarily the cause of, lower academic achievement and education, compromised social relationships and roles. Significant risk factors for marijuana use include; younger age of alcohol use, nicotine use, parental substance use, childhood sexual abuse.

Because of its ability to de-sensitise and calm, cannabis has also been demonstrated to have de-motivating effects especially on young people, which is a cause for concern.

<sup>112</sup> Eubanks et. al (2006); Thielmann & Daeninck (2013);

<sup>113</sup> Eubanks et al (2006); Reynolds (2016). Recent findings suggest that medical marijuana can be used as substitution therapy and may result in different and even positive effects on users who are affected by the effects of recreational marijuana on these consumers. Following 3 months of treatment, MMJ patients demonstrated improved task performance accompanied by changes in brain activation patterns within the cingulate cortex and frontal regions. Interestingly, after MMJ treatment, brain activation patterns appeared more similar to those exhibited by healthy controls from previous studies than at pre-treatment, suggestive of a potential normalization of brain function relative to baseline (Sagar et al 2017).

<sup>114</sup> (Robson, 2001).

<sup>115</sup> Source: *Information in this table has been taken from the National Academies Press, 2017.* 1. There is conclusive or strong evidence from high quality studies; 2. There is some strong evidence of studies supporting effect, but also studies refuting effect; 3. There is some evidence to support, but the studies are of low quality; 4. There is no or insufficient evidence to support the conclusion.

<sup>116</sup> Devinsky et al (2015)

<sup>117</sup> Hanson, Winward, Schweinsburg, Medina, Brown & Tapert, 2010; Hall, 2009; Medina, Hanson, Schweinsburg, Cohen-Zion, Nagel & Tapert, 2007.



## ***Evidence Re Cannabis, Mental Health and Psychosis***

5.28. One of the repeated concerns about cannabis/ marijuana is its link to psychosis. Most of the reservations that were expressed about possible law reform involved this claim. Some respondents at the consultations feared that any change in current legislation could exacerbate mental health issues which current health and legal sectors are ill-equipped to effectively address. Given the clear link with the criminal justice system, that is, the fear that this could lead to criminal behaviour, this is an issue that must be confronted head on.

5.29. The Commission was mindful about these concerns which in the main came from nurses and other medical practitioners working in psychiatric spaces. However, the Consultations themselves revealed that there was no empirical data collected which could demonstrate whether cannabis caused psychosis, or whether persons who were already susceptible to psychosis and other mental disorders self-medicated with the use of cannabis/ marijuana given its well touted properties for stress relief. This was an issue that we were particularly eager to interrogate. The scientific evidence as it relates to marijuana use and psychosis thus far, is not conclusive.

The emerging consensus is that Marijuana use may advance the age of onset of psychosis, but only in *high risk* individuals such as those with a genetic vulnerability.

5.30. In regards to psychotic disorders such as schizophrenia, current theories suggest that the relationship could be due to several factors: (1) *Self-Medication*: Some individuals may use marijuana to self-medicate symptoms; (2) *Precipitate*: Problematic use of marijuana (heavy use, frequent use, high potency) in adolescents may advance the age of onset and increase the risk for the disorder in persons with a predisposition to such disorders (Arseneault et al 2004; Zammit et al, 2007); (3) *Exacerbate*: Marijuana use may worsen the symptoms of schizophrenia and Bipolar Disorder; and (4) *Coexist*: The high level of marijuana use among persons with psychotic disorders may be coincidental relationship rather than marijuana being the cause. (Degenhardt et al 2001, Ferdinand et al. 2005).

5.31. Overall, the emerging consensus is that marijuana use may advance the age of psychosis, but only in *high risk* individuals such as those with a genetic vulnerability. However, it is to be noted that many individuals with psychotic disorders do not report a history of marijuana use. Significantly, just concluded studies in Jamaica, evaluating results since the 2015 decriminalisation amendments, reveal no significant change to those reporting psychosis.<sup>118</sup>

5.32. Intriguingly, very recent data reveals evidence of the use of cannabis/ marijuana in the treatment of post-traumatic stress disorder (PTSD), research and treatment that is now being supported by the US government after much opposition.<sup>119</sup> This appears to support those who have consistently maintained that the link between psychosis and cannabis/ marijuana is as a result of self-medication and that consequently, cannabis/ marijuana is not causative of psychosis or violence.

5.33. *Withdrawal and Dependence Syndrome* - Research has shown that marijuana use is associated with dependence, which is a proxy for addiction, intoxication and withdrawal. (American Psychiatric Association 2013). However, these categories of Dependence, Intoxication and Withdrawal Syndromes are not unique to marijuana and they are all described for the major drugs of abuse such as alcohol, nicotine, opiates and cocaine etc. (American Psychiatric Association, 2013). In fact, these symptoms with these conditions are less severe for marijuana as compared to other drugs (Smith 2002). The Dependence liability of marijuana compared to other drugs are: Marijuana is 10%, Nicotine 32%, Opiates 26%, 23% for alcohol, and 21% for cocaine.<sup>120</sup>

5.34. *Amotivational Syndrome* - This is a syndrome described in users of marijuana, this syndrome has been refuted by several researchers some of whom posit that what is observed are depressive symptoms

<sup>118</sup> Abel and Mona - <http://www.looptt.com/content/lwi-mona-psychiatrist-no-increase-cannabis-cases>, 'UM Mona psychiatrist: No increase in cannabis cases' – Caribbean News, May 14, 2018.

<sup>119</sup> Robert Muller, 'Medical Marijuana for PTSD? Combined with other therapies, medical marijuana may help those with PTSD.' Psychology Today, Dec 14, 2017, <https://www.psychologytoday.com/intl/blog/talking-about-trauma/201712/medical-marijuana-ptsd>

<sup>120</sup> Lopez-Quintero et al., 2011. Some report nicotine at 68%. This is a distinctive condition but it is mild, short lived and characterized by irritability, agitation, sleep disturbances and nausea. short lived disorder due to recent onset of Marijuana use. It is characterised by euphoria, impaired judgement, motor skills, red eyes, dry mouth, increased appetite and tachycardia. (American Psychiatric Association 2013).



associated with the disorder. The data is inconclusive on its existence and more research is required to establish the effect of marijuana on motivation;

5.35. *Effects on memory* - For a long time researchers believed that the primary effect of marijuana on memory was acute, but recent studies have reflected that in adults, damage to memory may not be permanent.<sup>121</sup>

5.36. *Respiratory System* - There are clearly adverse medical consequences associated with cannabis/marijuana when smoked, as opposed to its use in other preparatory forms. While there is evidence that supports Medical Marijuana for asthma and related respiratory diseases, it is evident that these dissipate if the plant is smoked, as opposed to other uses. Participants in the Consultations and focus groups told us, however, that the preparation for asthma is not smoking, but various forms of tinctures, often using the root and parts of the plant. Marijuana, *when smoked*, contains more carbon monoxide, tar and cancer causing chemicals compared to cigarettes. (Moir, et al., 2008; Benson & Bentley, 1995; Tashkin et al., 1991; Wu et al., 1988; Addiction Research Foundation, 1980). Long-term marijuana smoking is associated with an increased risk of some respiratory problems (cough and sputum production) similar to that of tobacco smoking and increasing risks for lung cancer.<sup>122</sup> It is inconclusive as to whether smoking marijuana use may cause asthma or worsened lung cancer (NAP, 2017).

5.37. *Cardiovascular System* - The evidence is inconclusive as to whether marijuana is associated with heart attack, stroke and diabetes (National Academies of Science Press, 2017).

5.38. *Pregnancy and Pregnancy Outcomes* - Studies on the effects on pregnancy and pregnancy outcome have yielded conflicting results. Some studies suggest that marijuana may be associated with increased risk of congenital malformation, foetal death and low birth weight in infants (Addiction Research Foundation, 1980). The most conclusive evidence overall support low birth weight infants but the evidence to support complications in pregnancy is limited (National Academies of Science Press, 2017).

5.39. *Immune Function* - Despite earlier assertions that marijuana use reduces immune function (Addiction Research Foundation, 1980), a recent review found that there is insufficient evidence to suggest that marijuana has a significant negative effects on the immune system (National Academies Press, 2017).

## The Gateway Theory

5.40. The Gateway theory suggests that cannabis/marijuana use leads to the use of harder drugs. This theory has been debunked as this has not been observed in the majority of persons who use marijuana.<sup>123</sup>

## Problems with Psychomotor Functioning

5.41. Most significant from a public health perspective is the impact of cannabis use on the skills necessary for safe driving and the substantial increase of risk of motor-vehicle accidents. There is substantial evidence that marijuana use does have an adverse effect on driving ability and increased risk of motor vehicle accidents due to the effect on cognitive processes, (reaction time, judgement, perception of sensory stimuli and of time).<sup>124</sup> However, some studies suggest that driving risk may not be as severe as previously considered (Sewell, Poling, Sofuoglu, 2009).

5.42. In Ontario, an estimated 9% of licensed drivers aged 18 to 29 report having driven within an hour of using cannabis in the past year. In Colorado, marijuana-related traffic deaths doubled from 55 deaths in 2013 to 123 deaths in 2016.<sup>125</sup> “Although the accident risk associated with cannabis-impaired driving is significantly lower than that of alcohol-impaired driving, it is a serious concern.”<sup>126</sup>

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<sup>121</sup> Mohini Ranganathan & Deepak Cyril D'Souza). Ranganathan and D'Souza [1] found in their review that acute administration of Marijuana impairs immediate and delayed free recall of information, while Fletcher and Honey [2] also cited evidence for difficulties in performing certain cognitive tasks.

<sup>122</sup> (Mehra et al, 2006; Tashkin, 2013). Hwden & Naughton (2011).

<sup>123</sup> SAMHSA (2014); De Angelo (2016); (Moral et al 2003).

<sup>124</sup> Asbridge et al., 2012; Addiction Research Foundation, 1980).

<sup>125</sup> RMHIDA (2017)

<sup>126</sup> CNMH Report,

5.43. On this matter, the Commission prefers to err on the side of caution and is of the view that there should be a total ban on driving while under the influence of cannabis/ marijuana. The length of time after usage when it could be considered safe would have to be determined.

## Human Rights and Health

5.44. As discussed below, there is already case law in the US and Canada that hold that an individual has the right to cultivate and use cannabis/ marijuana for personal health reasons in her private home.<sup>127</sup> Such precedents are persuasive in the region and the continued prohibition on home-grown plants, even small amounts, may well be deemed unconstitutional as the right to health becomes more entrenched. There is also the question of perpetuating a paternalistic law that takes health decisions out of the hands of citizens and according to law enforcement, cannot be effectively enforced. The lobbying for access to Medical Marijuana by a burgeoning number of CARICOM citizens points to this becoming an important constitutional and public health issue. This right to health is also related to the right to privacy and the relative inability of law enforcement to monitor small amounts of home-grown herbs, discussed below.

## Comparative Harm re Other Substances

5.45. Instructively, for policy-makers desirous of re-designing a legal regime, the health risks for cannabis/ marijuana are significantly lower than tobacco or alcohol, neither of the latter being prohibited or criminalised. Cannabis-related harm is reported to be concentrated among a limited group of high-risk users. “At the levels and patterns of use reported by most adult cannabis users, the health risks are modest – significantly lower than tobacco or alcohol.” The incongruity of a law that prohibits cannabis, a substance apparently more benign than alcohol and other substances which are not illegal but impose more risks to individuals and societies, was pointed out in each Consultation held and several submissions. The table below lists the estimated intrinsic or inherent risks of six different drugs, rated along different dimensions of harm on a scale of 0 to 100 (with 100 representing the highest risk).<sup>128</sup>

	Alcohol	Tobacco	Cannabis	Amphetamines	Heroin	Cocaine/Crack
<b>Lethality (death)*<sup>129</sup></b>	50	0	0	0	100	22.5
<b>Damage to physical health</b>	80	100	20	30	20	40
<b>Impairment of mental function</b>	65	0	30	60	30	80

Further, the health risks of cannabis increase significantly with intensity of use; frequency of use is a strong predictor of cannabis-related harms.<sup>130</sup> Problems with cognitive, psychomotor, and respiratory functioning, as well as dependence and mental health problems, are all concentrated among people who use cannabis daily or near-daily – an estimated 20-30% of users.<sup>131</sup>

## Views of Scientific/ Medical Community

5.46. Apart from the research data, the Commission received both written and oral submissions from the medical community in the Commonwealth Caribbean, including from the Faculty of Medicine, UWI, St. Augustine.<sup>132</sup> They all recommended decriminalisation of marijuana to reduce both social harms and to promote an appropriate health strategy, with safeguards for children. Portugal and Israel models were cited as evidence of best practice, in contrast to the ineffective approach under prohibition, with potentially positive effects for public health. The Faculty of Medicine, UWI paper concluded:

<sup>127</sup> *Allard et al v. Canada* [2016] F.C.J. No. 195[2016] 3 F.C.R. 303, 394 D.L.R. (4th) 694, Federal Court, Vancouver, British Columbia, discussed below.

<sup>128</sup> *Cannabis Policy Framework*, Centre for Addiction and Mental Health (CAMH), Canada, 2016, p.5.

<sup>129</sup> Expressed as ratio of lethal dose and standard dose, *ibid*.

<sup>130</sup> Fischer et al., 2011.

<sup>131</sup> CAMH Study, *Cannabis Policy Framework*, above, p.5.

<sup>132</sup> 'MARIJUANA LEGISLATION – Review of the Social, Economic, Health and Legal Issues Surrounding Use', Faculty of Medical Sciences the University of the West Indies St. Augustine, prepared by Dr. Sandra Reid MBBS, DM(Psych), MPH; Written submissions were also received from Dr. Stephen King, CMO, Saint Lucia and President of the RISE Foundation.

“Generally there is evidence that the public health burden of marijuana use is modest compared to that of alcohol, tobacco and other illicit drugs, and occasional marijuana use is not harmful to the majority of adults who use it . . . Enforcement of the policy of criminalization of marijuana has caused major social harm to individuals who have been arrested and imprisoned for marijuana possession, and poses undue burden on the judicial system with major economic effects.”<sup>133</sup>

5.47. The Commission also takes note of the Risk Guidelines developed by the Centre for Addiction and Mental Health (CAMH), of Canada.<sup>134</sup> Noting that cannabis-related harm is mainly concentrated among a limited sub-group of users who use cannabis heavily and/or began to use it at an early age, and that these risk factors are potentially modifiable, the authors recommended these guidelines as a way of reducing the harms of cannabis use at an individual and a population level. The Guidelines are modelled on the example of low-risk drinking guidelines that have been introduced in Canada and elsewhere. They include: delayed use until early adulthood, avoiding frequent use, shifting away from smoking cannabis towards less harmful (smokeless) delivery systems such as vaporizers, use of less potent products, or titrated THC dose, avoiding driving for 3 to 4 hours after use etc. and abstinence where there is a personal or family history of psychosis, or cardiovascular problems.<sup>135</sup>

### **Dosage and Administration**

5.48. The optimal dose and the most appropriate route of administration for medical marijuana remains unclear. Dosing to date has been heavily based on a patient self-titration model. Numerous experts have argued for more rational guidelines for the dosing for medical marijuana (Carter, Weydt, Kyashna-Tocha & Abrams, 2004). The drug may be administered by numerous routes (oral, via inhalation, sublingually, topical etc.), the amount of marijuana that gets into the system varies when inhaled as compared to when smoked. (Martinez, 2000). Although smoking is the most common route of administration of marijuana, it is to be noted that, the smoking of any substance, including marijuana, is to be discouraged. There are reasonable grounds to support the smoking of marijuana in terminal disorders in which the benefits would far outweigh the potential risks. Vaporization has been suggested as a safer option to smoking (Campbell, 2001).

### **Providing Opportunities for Caribbean Medical Researchers**

5.49. Of particular importance is the negative impact of the illegal status of cannabis on the ability of the scientific community to research the plant to determine more comprehensively its benefits and potential demerits. This is an often overlooked factor in the cannabis/ marijuana debate. There is need for law reform to catalyse and support indigenous scientific and medical research from and for the CARICOM community itself. Researchers and scientists complained to the Commission about the deleterious effect that prohibition has on the development of research, not only accessibility to materials, but the high costs involved because of the security and safety requirements, direct incidents of its illegal status and prohibition ideology.

5.50. The UWI was among the first in the world to research marijuana for medicinal purposes and formulate a medicinal product for glaucoma.<sup>136</sup> However, it has been difficult to engender long term research. The Commission heard of medical research initiatives, with external partners from world renowned scientific institutions partnering with Caribbean institutions that had to be abandoned due to the obstacles of researchers. The opportunity costs to these aborted initiatives are immeasurable. As stated by the President of the Caribbean Association of Pharmacists, the region is “perfectly positioned”

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<sup>133</sup> Ibid, at pp 11-12.

<sup>134</sup> In 2011, a team led by Dr. Benedikt Fischer and Dr. Jürgen Rehm of CAMH developed and published a set of lower-risk cannabis use guidelines (LRCUG). Fischer et al., 2011.

<sup>135</sup> These guidelines have been endorsed by a number of organizations including CAMH and the Canadian Public Health Association (CPHA) as an educational means of reducing high-risk cannabis uses and practices”, CAMH Study, above, p.5.

<sup>136</sup> The work of Professor Manley West and his team from The UWI, Mona campus. See, e.g. The Use of Certain Cannabis Derivatives (Canasol) in Glaucoma, West Indian Medical Journal 1978 Vol 23:16-25.

to begin medical cannabis research.<sup>137</sup> One Member of Parliament in the Consultations warned that we had already “lost a generation and a half of research.”

5.51. The Commission is of the view that, apart from the economic rationale, brilliant and talented researchers from the Caribbean deserve opportunities to contribute to the growing field of medical and scientific knowledge that surrounds cannabis/ marijuana at this juncture.

### **Regulating Medical Marijuana as Part of a New Law Reform Model**

5.52. The Portugal and Israel experiences demonstrate that law reform can positively impact the prevalence of public health complications of all drugs and social justice imperatives. Portugal decriminalised cannabis/ marijuana in 2001. The positive impact on population health was attributed in part to the change in drug policy, but in large part to the increased investment in harm reduction, prevention and treatment programs. Similarly, in Israel, fines and probation are the methods of control for users. Israel also invests heavily in medical marijuana research. This points to a law reform model that is proactive and will include, as a strategy, a concentrated focus on harm reduction with appropriate regulation, as CARICOM committed to do in 2002.

5.53. In terms of the specific regulatory controls that are required for Medical Marijuana itself, several models for regulating cannabis/ marijuana for medicinal purposes now exist which CARICOM can draw from. These include:

*Liberal Access:* Access to medical marijuana for a wide range of disorders. Access is not limited to qualifying conditions that have some evidence to support use. This is the model in many states in the USA and Canada. Some commercially oriented market models allow for a wide range of products and preparations but have the framework to restrict risky products (Washington and Colorado) under a liberal access model.

*Restricted:* This model allows access to marijuana for persons with a qualifying condition and/ or a restricted access to a limited product range. For example, access to medical marijuana may be granted by the Attorney General after approval by the Ministry of Health (Suriname). Examples include limits on products in the market through a licensing regimen. (Uruguay, Jamaica);

*Restricted product range:* Smokable marijuana not allowed, allows other products for qualifying condition. (Minnesota, New York).

*Highly Restricted:* Sixteen States (USA) have non- THC policy which allow access to only products with no – THC or low- THC/CBD ratio such as CBD oils to treat a list of qualifying conditions. Under this model, doctors cannot write prescriptions for medical marijuana, but can only certify conditions or make recommendations. Physician certification: Only three States require physician certification (New York, Maryland and Massachusetts). The commonest qualifying conditions for medical marijuana are (cancer, HIV/AIDS, multiple sclerosis, seizures, and pain).

5.54. Legalization, combined with strict health-focused regulation, provides the optimum opportunity for a state to reduce the harms associated with cannabis use, more so than partial decriminalization. An under-regulated approach may lead to an increase in cannabis use or abuse. Finding the right balance of regulations and effectively implementing and enforcing them is the key to ensuring that there is a net benefit to public health and safety while protecting those who are vulnerable to cannabis related harms.

### **Use of Cannabis in Sport**

5.55. The use of cannabis in sports is a particularly controversial issue as there is conflicting evidence on its impact on the athlete. Traditionally, its detrimental effects on performance has been publicized, especially as it relates to decreased coordination, distorted spatial perception and altered perception and awareness of the passage of time.<sup>138</sup>

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<sup>137</sup><https://doctorsfordagga.wordpress.com/2018/03/21/cap-president-tt-perfect-for-medical-cannabis-research-https-t-co-ua0we5syg-medicaldagga/>; Doctors for Dagga, May 21, 2018.

<sup>138</sup> Huestis et al (2011)

5.56. There are however, competing contemporary views which highlight notable performance enhancing properties of cannabis for athletes such as improved vision for goalkeepers, muscle relaxation<sup>139</sup> and the management of chronic musculoskeletal pain.<sup>140</sup> Nevertheless, cannabis has been added to the World Anti-Doping Agency's Prohibited List<sup>141</sup> in spite of the perception that analgesic use does not enhance the performance of athletes.<sup>142</sup>

Legalization, combined with strict health-focused regulation, provides the optimum opportunity for a state to reduce the harms associated with cannabis use, more so than partial decriminalization.

### Sufficient Support on Medical Marijuana for Law Reform

5.57. In conclusion, in terms of the use of marijuana for medicinal purposes and even as it acknowledges the need for more robust research with regard to some claims, the Commission is satisfied that significant support exists in the literature with regard to 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 in the near future 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, addiction and causative factors in relation to psychosis. It also establishes that cannabis is less harmful than substances that are not prohibited under law.

5.58. A public health, 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 harm than the current, ineffective prohibition, which heightens health risks and induces social harms.

5.59. Of the potential adverse effects, the Commission is guided by the conclusive evidence that exists for the negative effect on the adolescent brain and on driving. Consequently, cannabis/marijuana use before the age of 24 is not recommended as it may affect memory, learning and attention and may put youth at risk for early onset of psychosis. The use of cannabis/ marijuana by children should be prohibited. Similarly, driving under the influence rules should be established.

5.60. On balance, after evaluating the scientific data and testimonies from the public, the Commission is of the view that the proven medicinal benefits of cannabis/ marijuana outweigh the relatively few risks, particularly when viewed against more harmful substances such as tobacco and alcohol. The scientific data supports law reform to permit the use of cannabis, but in a controlled regulatory environment.

## 6. LAW ENFORCEMENT PERSPECTIVES ON PROHIBITION

6.1. The Commission paid special attention to the view of law enforcement personnel and experts, given that they are the persons “on the ground”. Several such law enforcement persons spoke to us at the Consultations and also in the focal groups. In addition, the Commission sent a simple questionnaire to all of the police headquarters in the region on policy, practice and effects of the existing marijuana law.<sup>143</sup> There was a clear convergence of views in the law enforcement community and that view was strongly in support of law reform, in particular, decriminalisation and the removal of prohibition. While at first blush this may seem to be surprising, it is entirely consistent with the findings in this Report concerning the lack of legitimacy of marijuana laws in general, due to issues of enforceability, efficacy and social justice.

<sup>139</sup> Ibid.

<sup>140</sup> Hainline et al (2017)

<sup>141</sup> Hilderbrand (2011)

<sup>142</sup> Hainline et al (2017)

<sup>143</sup> See Sample of the questionnaire in Appendix C.



6.2. As an illegal drug, marijuana is looked at by the police through three distinct lenses:

1. Its impact on the crime figures;
2. The violence that is associated with the marijuana trade in an attempt to protect turf; and
3. The levels of resources required to fighting the trade, resources they consider could better be directed to more serious crimes.

6.3. Law enforcement personnel also confirmed two important matters. First, they reported that marijuana arrests do focus more on low income communities and persons. Second, they reported that the police often do not enforce the law in full, “turning a blind eye”, especially for users, because of the belief that the law is too harsh, or unjust for what they see as non-violent conduct and because the police have much more important offences to address.

The prohibition of cannabis and criminalization of its users does not deter people from consuming it.

6.4. While there is large support among law enforcement for reform of marijuana laws, there are differing views about the approach, whether decriminalisation, or total removal of prohibitions. However, given the challenge of other serious crimes, this is not considered a priority for senior law enforcement operatives.

### Prohibition is Ineffective and Inefficient

6.5. In the Consultations of the Commission, a significant factor was the repeated information from law enforcement officials, including senior enforcement officers, who saw the current prohibitive laws as not only inefficient and ineffective, but unjust and leading to criminality, because of gangs and drug cartels.

6.6. Law enforcement voices continually emphasise that the relatively high numbers of arrests for cannabis is counterproductive to fighting serious crime initiatives. Information on ages of persons arrested and socio-economic profile reveal that many more men are arrested than women and many of these are young people, at their most productive ages. More importantly, despite draconian laws, such figures did not decrease unless law enforcement used a ‘blind eye’ approach to the problem.

6.7. The views of law enforcement are borne out by the research data worldwide.

“The prohibition of cannabis and criminalization of its users does not deter people from consuming it. The evidence on this point is clear: tougher penalties do not lead to lower rates of cannabis use.<sup>144</sup> In jurisdictions like Canada where cannabis use is prohibited, large proportions of the population use it nonetheless – often at higher levels than jurisdictions with more relaxed cannabis control regimes – exposing themselves to criminality and risking being caught up in the criminal justice system. People who are already vulnerable are affected disproportionately; evidence suggests that “police often use the charge of cannabis possession as an easy way of harassing or making life difficult for marginalized populations.”<sup>145</sup>

Law enforcement voices continually emphasise that the relatively high numbers of arrests for cannabis is counterproductive to fighting serious crime initiatives.

6.8. The numbers of persons incarcerated for possession of small amounts of cannabis/ marijuana have remained high over the years, seeing little change except for the recent decriminalisation intervention in Jamaica. Statistics presented by the Inter-American Drug Abuse Control Commission for seizures of illegal drugs and the corresponding arrests made in 2000, are

<sup>144</sup> Room R, Fischer B, Hall W, Lenton S, Reuter P (2010). *Cannabis Policy: Moving Beyond Stalemate*. Oxford: Oxford University Press.

<sup>145</sup> Room et al, *ibid*, at p. 72.



reproduced in the table below. Based on these statistics, the rate of arrests calculated for illegal drugs per 100,000 inhabitants in the Commonwealth Caribbean, ranged from 96 in Guyana to 809 in Belize.<sup>146</sup>

6.9 More recent statistics show similar patterns. In Trinidad and Tobago, for example, in 2012, 3128 males and 265 females were arrested for cannabis/marijuana; in 2015, 3220 males and 270 females were arrested and in 2017, 3022 males and 201 females were arrested. During the period 2015 to 2017, Grenada experienced a slight (3%) decline in the total number of marijuana related arrests, falling from 601 in 2015 to 583 in 2017. Guyana has experienced a significant increase of 53% of arrests that were marijuana related. In Jamaica, even after

Country Year 2000	Seizures of Illegal Drugs				Arrests
	Cannabis Plants (un)	Cannabis Leaf (kg)	Cocaine (kg)	Cocaine Salts (kg)	
Antigua/Barbuda	9,317	126	25		165
Bahamas		3,800	2,740	2,740	1,811
Barbados	1,078	2,641	59		933
Belize	43,000	203	13		2,072
Dominica	123,032	468			257
Grenada	2,091	103	96	96	225
Guyana	31,598	98	144	139	747
Jamaica		55,900	1,624	1,624	8,659
St. Kitts	34,067	119	53		64
St. Lucia	9,314	1,596	71		339
St. Vincent & the Grenadines	28,375	1,709	51		490
Trinidad & Tobago	7,200,000	8,287**	203	203	3,200

decriminalisation, between January 1, 2017, and November 30, 2017, a total 937 persons were arrested in Jamaica for breaches of the Dangerous Drugs Act as follows; 796 males and 141 females<sup>147</sup>. The age range for persons arrested was between 15 and 76 years old.

Moreover, as medical marijuana products become available overseas and even within the region, the inability to enforce the law becomes more obvious. Attempting to police individuals who grow or use cannabis/ marijuana for personal use, especially medicinal use, is even more difficult.

6.10. The spectacular failure of the prohibition based legal regime in the region and globally to curtail cannabis/ marijuana use is concerning for law enforcement and many policymakers. To many, it is enough proof of the need for law reform. They advised that a considerable proportion of law enforcement resources was diverted to the war on drugs and its associated violence with little or no returns in prevention. Thus, the continuance of such laws is considered unproductive.

### Recidivism and Creating Hardened Criminals

6.11. There is significant concern that incarcerating persons for cannabis induces criminality, turning them into hardened criminals, more likely to create serious victim-based crimes. This is especially the case because of the stigma attached to such persons, now being criminalised, who cannot get jobs etc. afterward and are therefore rendered more vulnerable than before. Programs to assist ex-convicts are generally lacking too. A rising crime rate is therefore often identified as one of the “perverse outcomes” of the harsh, punitive approach to drugs, creating an even greater social evil in the “form of a growing pool of embittered, alienated, and unschooled criminals.”<sup>148</sup>

### The Costs and Inefficiencies of a Prohibitive Regime

6.12. Estimates place persons convicted for minor drug-related offences and possession of small quantities of illegal drugs, as constituting the bulk of prison populations in Caribbean Commonwealth countries (approximately 33 to 60 percent, most of whom are categorised as young offenders).<sup>149</sup> The United Nations Drug Control Programme 2000 Report on “Global Illicit Drug Trends”, acknowledged

<sup>146</sup> Source: (CICAD 2001). Calculations also based on statistics provided by Caribbean Community and the CIA Factbook 2000. See <<http://caricom.org/expframes2.htm>> <http://www.odci.gov/cia/publications/factbook/geos/ac.html>>.

<sup>147</sup> 126 of these females were arrested for attempting to export, confirming the ‘drug mule’ status of women.

<sup>148</sup> Marcus Day and Axel Klein- ‘From war on drugs to harm reduction in the Caribbean: the influence of the European commission, the UNDCP and the Jamaican Ganja Commission.’

<sup>149</sup> Based on estimates from the Report from the United Nations Centre for International Crime Prevention 1998, using nationwide surveys.

that the increase in the prison population is mainly related to the war on drug policy and a lack of efforts in the area of Demand Reduction Experience.<sup>150</sup> As Singh reports: “Perverse outcomes of the war against drugs on the criminal justice system include: legislation which has resulted in overcrowded prisons and cluttered courts; harsher sentencing laws with longer prison terms for people who are for the most part drug users, not traffickers; large-scale arrests of those found in possession of small quantities of drugs; and the inappropriate incarceration of drug users who need treatment, not detention.”<sup>151</sup>

6.13. The inefficiency of the current regime is exacerbated by the very high costs associated with prohibition and the lack of any revenue potential for the state in return. Such resources are better placed elsewhere. This is a factor also highlighted in the Commission’s Economics Study. Such costs have been measured in other countries. In Canada, “the enforcement of cannabis laws is very costly: for 2002, the annual cost of enforcing cannabis possession laws (including police, courts, and corrections) in Canada was estimated at \$1.2 billion.”<sup>152</sup> Notably, in Canada and in the US, sentences are lower than in CARICOM, which means that our enforcement costs are higher. In Canada, the maximum sentence for first-time offenders is a \$1,000 fine and six months in jail.

6.14. Law enforcement experts emphasise, and the Commission concurs, that judicial and law-enforcement institutions in the region stand to benefit from a reform of the law’s current stance of illegality on marijuana cultivation, sale and possession. The penal system, which is in dire need of restructuring and relief, can be improved by removing cannabis/ marijuana from the criminal legal system. Law enforcement personnel point to the poor prison conditions and local magistrate courts which are “bursting at their seams” from inmate overcrowding, and case overloads for marijuana possession. The situation is viewed as even more untenable by the fact that often arrests are for miniscule amounts of possession and consumption levels. For example, in Saint Lucia 52% of the prison population was incarcerated for cannabis related offences.<sup>153</sup> The Commission’s Economics Study notes this negative cost.

### **Lessons from Jamaica and Other Countries from a Law Enforcement Perspective**

6.15. The 2015 initiative of Jamaica toward decriminalisation is instructive. Since the amendment to the Dangerous Drugs Act in Jamaica in 2015, which decriminalised possession of ganja of two ounces or less, the Police have also emphasised educational activities along with the decriminalisation initiative. Notably, Jamaica has consequently experienced a considerable drop in youth crime and juvenile delinquencies. Law-enforcement experts and those who work with juvenile delinquents point out that placing youth in the criminal system tended to promote further criminality rather than dissuade it, creating hardened criminals and lasting negative social consequences, inevitably creating greater harm to the societies and industries than use itself.

6.16. The Jamaica experience mirrors that of other jurisdictions. For example, In Portugal, possession and use of all drugs have been decriminalized since 2001. The Portuguese model focuses on diversion: drug use is formally prohibited but authorities refer users with substance use problems to treatment. Civil penalties such as fines may also be imposed. Since the implementation of this system, Portugal has seen declines in substance misuse and in drug-related harm, a reduced burden on the criminal justice system, and a reduction in the use of illicit drugs by adolescents.<sup>154</sup> Similar experiences have been documented from The Netherlands system, which decriminalised cannabis early on. Indeed, there is evidence that the model separated cannabis from the “harder” drug markets.<sup>155</sup> Decriminalisation has not led to misuse, dependence, and harm.

6.17. Similarly, recent studies have found that the legalization of the cannabis market across the US has resulted in a reduction in crime<sup>156</sup>. More specifically, it was emphasized that changes in policy could

<sup>150</sup> <[http://www.odccp.org/report\\_2000-09-21\\_1.html](http://www.odccp.org/report_2000-09-21_1.html)>

<sup>151</sup> Wendy Singh, ‘Drugs and the Prison System – Impact of Legislative Changes on the Prison Crises in the Commonwealth Caribbean region’, in A. Klein, M. Day, A. Harriott (eds) *Caribbean Drugs*, Zed Books Ltd., 18 Jul 2013, Chapter 4.

<sup>152</sup> Rehm et al., 2006

<sup>153</sup> Tomris Atabay, *The Prison System and Alternatives to Imprisonment in Selected Countries of the Organisation of Eastern Caribbean States*, UNODC, 8 November 2010.

<sup>154</sup> Hughes CE, Stevens A (2010). What can we learn from the Portuguese decriminalization of illicit drugs? *British Journal of Criminology* 50: 999-1022.

<sup>155</sup> Room et al, 2010.

<sup>156</sup> Dragone et al (2017)

shrink the size of the cannabis black market, and may even address some social problems such as reducing the negative consequences of criminal labelling for possession of small amounts of marijuana<sup>157</sup>, decreasing youth illegal activity rates and diminishing the power of drug dealers.<sup>158</sup>

6.18. By any account, this is a wasteful system. Some might say a crisis. It is one that CARICOM and its leaders are aware of and had already acknowledged needs a different approach in their 2002 resolution.

### **Legitimacy of the Law Leading to Inability to Effectively Enforce it.**

6.19. The underlying difficulty of enforcing the law is directly related to its lack of credibility and acceptance, as discussed above. Administering a law which lacks credibility because many believe it to be an unwarranted and unjust law in contradiction to the wide social acceptance of cannabis brings the law into disrepute and undermines the legitimacy of the legal system as a whole. It is absolutely clear that prohibition has not resulted in prevention, as intended, but in the criminalisation of Caribbean peoples, at huge costs to themselves and to our societies. The Commission echoes the conclusions of the Jamaica Report of the Ganja Commission 2001, which stated that “it was of the view that whatever health hazards the substance poses to the individual ... these do not warrant the criminalisation of thousands . . .”<sup>159</sup>

From a law enforcement perspective, there is very little correlation between marijuana users and violent crimes, taking into consideration the effects of the drug

### **Criminality not from Use but from Protecting Turf**

6.20. The Commission felt it important to interrogate the perception, held by some, that marijuana impairs the judgement of users, who consequently exhibit a higher propensity for involvement in crime than non-users.<sup>160</sup> Some research findings have identified associations between cannabis use and violence.<sup>161</sup> Therefore, detractors of the liberalization policy argue that it would produce escalations in crime. However, law enforcement personnel sought to debunk first-hand, the myth

that marijuana causes persons to be violent and engage in criminal behaviour. They reported that typically, users of the drug for reactional purposes are not involved in violent crime. In fact, the typical usage was to relieve stress, calming things down, rather than exacerbating aggression. Users told us so themselves at the Consultations. The medical and scientific data on the properties and impact of cannabis/ marijuana, discussed infra, that marijuana has desensitising properties, is therefore borne out by the observations made by law enforcement personnel as to the reasons people give for usage. They informed that cannabis/ marijuana is typically used for stress and medicinal purposes, including as a tea. For example, the Grenada police, when asked about the correlation between violent crime and marijuana use as observed through the arrest profile rates for marijuana in the questionnaire, said:

“From a law enforcement perspective, there is very little correlation between marijuana users and violent crimes, taking into consideration the effects of the drug.”<sup>162</sup>

6.21. Studies have also demonstrated that the increase in crimes in the region is “not the prevalence of a drug-using lifestyle”, but rather to the illegal, or illicit drug trade itself. Moreover, since cannabis is readily available, “cannabis use [itself] therefore hardly ever drives one to commit other crimes in order to support the habit.<sup>163</sup> This contrasts with the pattern for other drugs such as cocaine, which is addictive.

<sup>157</sup> Cotter et al (2015) cited in Hajizadeh (2016)

<sup>158</sup> Hajizadeh (2016)

<sup>159</sup> A Report of the National Commission on Ganja to Rt. Hon. P.J. Patterson, Q.C., M.P. Prime Minister of Jamaica’ (Chaired by Prof Barry Chevannes) (7 August 2001) accessed at <https://www.cannabis-med.org/science/Jamaica.htm>. A Sergeant of Police opined that ganja smoking did not cause crime but that its prohibition drove cultivation and trafficking underground.

<sup>160</sup> Cheon et al 2017

<sup>161</sup> Norström and Rossow (2014)

<sup>162</sup> CARICOM Law Enforcement Questionnaire – Grenada.

<sup>163</sup> A. Harriott and M. Jones – ‘Drug Courts in the Caribbean, Means to an End or End in Itself, in A. Klein, M. Day, A. Harriott (eds) *Caribbean Drugs, Zed Books Ltd., 18 Jul 2013 Chapter 3*. The authors were speaking in the Jamaica context, but the statements are equally relevant to other CARICOM countries.

Numerous studies show that drug users commit far fewer crimes when undergoing outpatient drug therapy or even when the price of drugs drops.

6.22. The related violence that may be identified is attributable to the illegal trade itself, i.e. the growing, sale (local) and importation. That marijuana prohibition is viewed by law enforcement as being responsible for much of the drug related crimes within and across the region's nation states is beyond dispute. This is viewed as such because, unlike other drugs where the region serves primarily as transshipment points, marijuana is a drug produced and consumed by many locals. This may lead to violence due to the special requirements to protect crops and turf<sup>164</sup>. The view was often expressed that had the region fully abolished marijuana prohibition our crime rates today would likely be half what they now are.

6.23. Police reports indicate that criminal gangs use the proceeds of drug trafficking (including marijuana) to purchase weapons, vehicles, homes and pay rank and file members of their organisations. The subculture of violence and the availability of guns have led to high incidences of gun-related homicides and shootings and raids drive the price up.<sup>165</sup> This is particularly important as many Caribbean countries are plagued by "micro trafficking", which is the dealing of small amounts of drugs by mainly young people in communities. While micro trafficking is not limited to marijuana, the proliferation of use of the substance renders it the most economically viable item. It is argued that this activity leads to the creation of "drug blocks" and the clear demarcation of "turf" by those persons who control these blocks. The income from blocks is significant and can include amounts exceeding \$5000 USD per week.<sup>166</sup> Therefore there is great incentive to protect these areas and this results in increased violence in communities.

6.24. Some analysts, while not disputing the end result of violence, maintain that the 'turf wars' are exaggerated and largely for crack, not for cannabis/ marijuana and that violence is often initiated by law enforcement:

"There are rarely the "turf wars" that accompany the cocaine trade. The violence in the cannabis trade is linked to drug enforcement efforts. Rarely do the police report firearms found on cannabis plantations. Violence often accompanies the well-armed, militarised police eradication exercises . . . The level of violence that the police bring to cannabis enforcement exercises is disproportionate to the threat."<sup>167</sup>

6.25. The Commission agrees that whatever the reason, prohibition promotes violence and further criminality. It concurs too with the views of law enforcement that legislation that tackles the purse-strings of these 'dons' and their gangs is a viable approach to return the authority and legitimacy of law enforcement. Notably, the Commission's Economics Study illustrates that the removal of prohibition will reduce market price, making it less lucrative for cartels. It may also help to transform these neighbourhoods into free spaces where residents are not encumbered by the violent power of gang members.<sup>168</sup>

6.26. Many have compared marijuana, both the substance and the regime surrounding it, to alcohol, which was also a prohibited, illegal substance in years gone by. After the lifting of prohibition on alcohol in the 1930's, the image of alcohol was sanitised and so was the serious criminality problem surrounding it, as exemplified by the Al Capone drug don legend. Anti-prohibitionists assert that there is an even greater case for removing prohibition for cannabis laws given that it is a less harmful substance than alcohol.

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<sup>164</sup> For example, those who cultivated had to protect field from persons who would want you steal at the time reaping. Also, once reaped and being prepared for marketing (for local use or export) there was the likelihood to be raided. The use of violence (including the use of guns) became a feature of the trade both in defense and to rob.

<sup>165</sup> For example, the raiding of and destruction of marijuana /ganga fields as a feature of Jamaica's war on drugs with support from the USA through an early 1970 project code name Project Buchanare, increased the risks associated with the trade. During this period, for example, Jamaica was a major exporter of marijuana /ganga to the USA, Canada and England with the "shower posse and yardies gangs" the major players. In support of the local supply market, Jamaica saw an increase in guns being shipped to local players as protection of the trade. Support for the drug fight in Jamaica is considered to have influenced the USA and England support in order to prevent the drug reaching their shores with its associated violence.

<sup>166</sup> Data from OCU/TTPS 2017

<sup>167</sup> Marcus Day, Director of the Caribbean Drug and Alcohol Research Institute, Submission to the Commission, 24 May 2017.

<sup>168</sup> Magnus Lofstrom and Steven Raphael: *Journal of Economic Perspectives*, 'Crime, the Criminal Justice System, and Socioeconomic Inequality'—*Volume 30, Number 2—Spring 2016—Pages 103–126*. In major cities, at least one-fourth of the killings are systemic to the drug trade. The victims of interecine drug warfare are often innocent bystanders, even infants and school-children.

6.27. To many officers, marijuana laws present as a no-win “War on Drugs” that drives violence. Some believe that prohibition encourages usage. The majority is of the view that removing prohibition/ the illegal status from the drug would markedly reduce crime and the associated violence. Given the enormity of the crime problem in the region’s nation- states, the suggestion of either decriminalisation, or legalisation is a welcome discussion for senior law enforcement officials. However, a concern raised by many is the response legalisation would evoke in the international arena given that international Conventions treat cannabis as illegal. Because of this, some believe a more prudent approach is decriminalisation. They also expressed concerns regarding the impact of drug use on young people.

6.28. Legislative reform on marijuana, in particular, removing criminalisation, is viewed by law enforcement personnel as positive legal policy, to sharpen their resolve against corruption and toward crime reduction, the containment of violent gangs and the derailment of transnational organised criminal syndicates. Many law enforcement officials in the Caribbean believe that the current volatile security task environment and its economic malaise are reasons enough for parliamentarians to seriously consider joining their Latin American counterparts in their drug law reform initiatives, not only in rhetoric, but also through public policy.

### **Stereotyping and Discrimination in Law Enforcement?**

6.29. Perhaps the most compelling argument for change in the law is the clear evidence that cannabis/ marijuana laws are inconsistently and unevenly applied, with the poor, lower social classes and the marginalised, (in particular Rastafarians), being disproportionately targeted, arrested and convicted for cannabis use and possession, while the wealthy, although engaging in similar activities, are not addressed by the law.

6.30. This complaint was made in every forum in every country that the Commission engaged in and speaks to a deep and abiding sense of injustice about the legal regime entrenched in the minds of CARICOM peoples.

6.31. Given the well-documented social stratification patterns in the region, social class divisions are often related to race and ethnicity.<sup>169</sup> Put bluntly, this means that the “poor and vulnerable” often translates into poor, black, male youth (often living in particular areas), who are much more likely to be charged than rich, middle-class white or mixed persons. In Belize, race and ethnicity assumed a particular focus, with Afro-Belizeans and the Garifuna self-identifying as being targeted by the police because of their ethnicity. Inequality, inherent biases and blatant discrimination, such as in the profiling done to identify marijuana users, are common complaints throughout the region. The Commission heard these accounts even from the many school children who were interviewed and there was a remarkable similarity in their testimonies. In one Consultation, even some white participants spoke out on this issue, saying that “only black and brown” persons got locked up.

Cannabis/ marijuana laws are inconsistently and unevenly applied, with the poor, lower social classes and the marginalised, (in particular Rastafarians), being disproportionately targeted, arrested and convicted for cannabis use and possession, while the wealthy, although engaging in similar activities, are not addressed by the law.

6.32. The social injustice and waste that is produced from the current criminal law approach has not escaped the attention of law enforcement personnel. Interestingly, several of them who attended the Consultations confirmed this state of affairs. In one forum in St. Vincent and the Grenadines, when asked why this profiling was taking place, a senior police officer responded that poor young men smoked on the streets and were visible, whereas the middle and higher classes smoked behind closed doors and fancy clubs. These many young men have had their futures negatively impacted because of the consequent criminal records. Notably, it was reported by law enforcement personnel themselves, that the arrest of young, low income males for possession and use of the drug is an easy way for police offices to boost their arrest records.

<sup>169</sup> Roy McBree, ‘Race, Colour and Class in Caribbean Society’ in Shirley a Jackson (ed), Routledge International Handbook of Race, Class and Gender, Routledge, UK, 2015, p.233.



6.33. It was also conceded that there are more law enforcement encounters within lower income neighbourhoods where the drug is used both for income generation (sold in small quantities), and for recreation by many individuals. At social events (usually at nights) in low-income neighbourhoods, it is as much used as is alcohol. This attendance at these events influences the likely police intervention. They explained that some of those events, although staged in low-income neighbourhoods, attract the attendance of middle and upper-class patrons and are usually violence-free, resulting in little police attention. Those events that do not, attract police attention. It was pointed out, however, that the violence is usually not cannabis usage-related, thus underscoring the point made in this Report that drug usage, including cannabis, often springs from deeper seated social problems.

6.34. Both citizens and law enforcement concede that there are different standards of morality for cannabis use. While marijuana use for the rich in Hollywood and in the region is glamourized, users who are poor and disenfranchised are stigmatised, persecuted and prosecuted. The latter are seen as losers, 'drop-outs', disengaged, and dangerous to society, despite the lack of evidence that marijuana causes psychotic behaviour and the considerable evidence that it has a calming, peaceful effect. Such stereotypes inform judicial and law enforcement.

6.35. Persons, like Rastafarians, who are non-conformists, are the prime targets of law enforcement. The Commission has listened to heart-rending stories of persecution and harassment and heard often the cry for reparations and justice for the years of suffering.

6.36. There is therefore a discernible cycle of disadvantage based on status. Persons who get arrested and convicted for marijuana typically belong to a particular social class and race, (racist and classist) which does not correspond to the many who actually use it. Yet, law and policy remain blinded to these unequal paradigms and prejudices, revealing a structural and systematic defect of equity in the criminal justice system. The impact of such criminalisation has been not only a diminution of economic, social and cultural rights (the right to work/ livelihoods, health), but to civil and political rights such as equality. Laws that are not founded on solid pillars of justice and rights produce unjust and unequal results.

6.37. A related factor reported in usage patterns in low-income communities is the absence of men and fathers. Among the reasons for this noticeable absence of males are homicides related to gang violence and incarceration for criminal offences including possession of marijuana. It is therefore, a vicious cycle spiralled by prohibition. Law enforcement personnel and experts advised the Commission that removing prohibition and criminal penalties from marijuana and bringing it into the licit economy has the potential to stabilise these neighbourhoods controlled by gangs and plagued by a subculture of gun violence. They put forward a strong view that removing prohibition from marijuana can help to weaken and eliminate criminal gangs and help to dissolve their economic power. They further suggest that a sustained all-media, all-schools education programme aimed at demand reduction should accompany law reform, and that its target should be, in the main, young people; Jamaica law enforcement, for example, gave support for the establishment of a Cannabis Research Agency to be set up, in collaboration with other countries, to coordinate research into all aspects of cannabis, including its epidemiological and psychological effects, and importantly, as well its pharmacological and economic potential in order that Jamaica not be 'left behind'. Legislation which targets gains from illicit activities such as Proceeds of Crime statutes and Money Laundering Prevention statutes support this approach.

Notably, while the term 'decriminalisation' is often used in this discussion, the notion that the result of law reform should be to bring marijuana into a licit economy, points to legalisation, not mere decriminalisation, since in the latter construct, marijuana remains illegal and illicit, encouraging the black market and gang culture identified above.

### **Drug Use and Addiction related to Existing Social Inequalities**

6.38. The indirectly discriminatory and punitive stance of the law on the socially marginalised is part of a vicious cycle. Even if we accept that marijuana may be harmful to users and is addictive, there is considerable evidence that it is social inequity itself that propels drug use and addiction. Drug use therefore is a function of social inequality, a correlation that has been well documented. For example, Baer & Singer tell us that:



“an individual’s decision to use drugs is embedded in an unequal social structure, . . . that produces unequal outcomes for drug users contingent on their social status. By being poor, under-educated and of a low-status ethnic group, a person is at a greater risk for not only social marginalization, but becoming a victim of addiction. . . Many factors that plague the poor - stress of unemployment, depression, structural violence - contribute to addiction. At the same time, drug addiction contributes to both poverty and inequality, paralyzing the afflicted and rendering them unable to make positive changes or rise above their situation - less likely to be hired.”<sup>170</sup>

6.39. Studies from the Caribbean, including analysis of patterns in the prisons, endorse this view of the impact of structural poverty on drug use. Persistent, high rates of poverty and unemployment have led to increased consumption and trafficking of illegal drugs “which provide a source of claimed ‘comfort’ for users . . . and seasonal income for many poor and marginalised in both urban and rural communities.”<sup>171</sup>

6.40. As indicated above, there are variables of race in this inequality since in the Commonwealth Caribbean, race is typically associated closely with class. The region has not collected segregated data collection as we should. However, in the US, this is well documented. The key point is that drug use, including marijuana use, is not limited to poor black youth but they are the ones who the criminal justice system confronts:

“ . . . whites comprise a larger portion of the drug users in the U.S., . . . (However, out of the 5 to 1 ratio of white to black drug users, there is a 2 to 3 ratio of incrimination of white to blacks. This statistic clearly shows a racial bias in drug criminalization.”<sup>172</sup>

Similar findings have been made in Canada.<sup>173</sup>

6.41. Race and class biases are not only evident in arrests, but also play a role in sentencing. In court cases punishment for crack cocaine use and dealing (a drug associated with poor, black users) far outweighs punishments for identical crimes involving crack’s high-end counterpart, powdered cocaine (associated with wealthy, white users). This inequality in law enforcement creates a “dual frustration” among disadvantaged populations living with drug problems and dealing with the harsh penalties of criminalization.<sup>174</sup> In 2010 arrest rates for ‘blacks’ were four times as high as ‘whites’ in the United States<sup>175</sup>.

6.42. Consequently, in a law program that is centred on public health and social justice imperatives, in order to break the cycle of drug addiction, the root causes need to be addressed. Treatment needs to be readily available for all socio-economic backgrounds and the stereotypical profiling of an addict needs to be erased from the public mind-set. Rather than a punitive, counterproductive regime, “we need a multi-layered approach: we need better treatment, more harm-reduction programs, selective decriminalization, more creative adolescent prevention efforts and much more...”<sup>176</sup> The prohibition paradigm and the ‘War on drugs’ have succeeded only in making the inequities between the advantaged and the vulnerable greater. It has deepened the chasms in the law, legal policy and enforcement, frustrating important justice objectives.

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<sup>170</sup> ( Baer, H., Singer, M., and Susser, I. *Medical Anthropology and the World System*. Westport, CT: Praeger Publishers, 2003, 131 -).

<sup>171</sup> Wendy Singh, ‘Drugs and the Prison System – Impact of Legislative Changes on the Prison Crises in the Commonwealth Caribbean region’, in A. Klein, M. Day, A. Harriott (eds) *Caribbean Drugs*, Zed Books Ltd., 18 Jul 2013, Chapter 4.

<sup>172</sup> Husak, Douglas. *Legalize This! The case for decriminalizing drugs*. New York, NY: Verso, 2002.: 135). Estimates from the Bureau of Justice Statistics show that young black men are more likely to go to prison than to attend college.

<sup>173</sup> Wortley S, Owusu-Bempah A (2012). Race, ethnicity, crime and criminal justice in Canada. In Kalunta- Crumpton (ed.), *Race, Ethnicity, Crime and Criminal Justice in the Americas*. New York: Palgrave Macmillan.

<sup>174</sup> (Husak 2002: 136) There are, however, strides being made to rectify the racial bias at work in the legal system. Recently, a Supreme Court ruling overturned a U.S. appeals court ruling that judges could not hand down lesser punishments on the basis that they disagreed with the wide disparities for crack and powder cocaine sentences. Nevertheless, these laws remain in place, contributing to the inequalities in drug use and the criminal justice system.”

<sup>175</sup> Scherf (2015). Persons of African descent, and to a lesser degree persons of Latin American descent, from disadvantaged communities are more likely to be arrested, prosecuted and imprisoned for marijuana possession offences. Golub et al (2007); Evans (2013); Caulkins et al (2014) and Scherf (2015)

<sup>176</sup>‘Inequality and Drug Use’, Mary Kate McNamara, Emily Schirack, Dana Sherry & Amy Vereecke <https://neuroanthropology.net/2008/05/06/inequality-and-drug-use/>.

## 7. SOCIAL AND HUMAN COSTS OF PROHIBITION - IMPACTS ON FAMILY

7.1. The human costs of prohibition, in particular, incarceration, on CARICOM citizens cannot be discounted. Lost opportunities for education, health, family life and employment are significant and have long term implications. So too is the impact on the economy, especially as the data suggests that these are the region's young, potentially productive nationals.

7.2. The incarceration of persons for marijuana related charges challenges not only the offender but in most circumstances it affects their family and community. More specifically, parental arrests have been associated with a number of risks for the children of offenders such as further separations from their parent and possibly siblings, unstable care arrangements, uncertainty about his or her future, secrecy and deception regarding the incarceration, stigma, and difficulties with visitation.<sup>177</sup>

7.3. Qualitative research found that incarceration impacts the family's physical and mental health and viability.<sup>178</sup> Emotional stress, familial tensions and disruptions and loss of faith in the legal system are categorized as some of the human costs.<sup>179</sup> In addition, incarceration places marital relationships under significant pressure.<sup>180</sup>

7.4. Where mothers are incarcerated, given the matriarchal makeup of Caribbean societies, this negative impact has been increased, introducing important gender dimensions to prohibition. These have ricocheting consequences for family life. The Commission heard from many women who spoke passionately of the acute social dislocation that incarceration brought to their families. With statistics showing an increase in female arrests for cannabis, this is a cause for concern.

7.5. The cohort of the disadvantaged and discriminated who typify the marijuana convicted is beleaguered with grave financial and human costs that negatively affect their life chances and limit their developmental opportunities. Some calculable financial costs of marijuana offenders include attorney's fees, fines and other court costs, seized assets and lost income due to work absenteeism, or in some instances termination of employment due to incarceration, all of which are especially burdensome for offenders from disadvantaged communities<sup>181</sup>. Certainly too, it often results in a loss of the family's primary source of income, present and future, placing additional strain on families.<sup>182</sup> Marijuana arrests and convictions also have the potential to adversely impact the eligibility of these persons for student financial aid, child custody determination and immigration status<sup>183</sup>.

7.6. The social costs of prohibition and criminalisation also include the disincentive to productive lifestyles:

“Facing high returns for investment in drug trade, the opportunity costs of legal entrepreneurship, with more limited, long run profits are disadvantaged. . . As a consequence, in many poor areas of the region, children and young people who have the dream of escaping poverty do not see education and entrepreneurship as a major avenue in their upward mobility career, (those elements being the main catalysts for endogenous development of Caribbean societies), but as a mere loss of a time that would be more profitably spent in drug business in the short run.”<sup>184</sup>

7.7. The pertinent question is whether CARICOM can continue along this counterproductive path when other strategies have proven to be more beneficial both to individuals and societies. Anti-prohibitionists contend that cannabis legislative amendments would assist disadvantaged communities by reducing the

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<sup>177</sup> Seymour and Wright (2000)

<sup>178</sup> DeHart et al (2017)

<sup>179</sup> Beckett and Herbet (2011)

<sup>180</sup> Deldado (2011)

<sup>181</sup> Evans (2013)

<sup>182</sup> Codd (2008)

<sup>183</sup> ACLU (2013)

<sup>184</sup> Michael Platzer, 'Illicit Drug Markets in the Caribbean,' in Day et al, para 82

criminalization of the underprivileged classes, mending broken homes, promoting upward social mobility, and reducing the collateral consequences of existing drug enforcement policies<sup>185</sup>.

7.8. The Commission finds that the perceived harms of cannabis/ marijuana usage do not displace these deep social harms and inequality inherent in the justice system as applied to the current prohibition regime.

### Cannabis and Environmental Considerations

7.9. Environmental concerns have not appeared to attract the same attention as other socio-economic topics in discussions on marijuana -related policy changes. Yet, the impact of law reform on the environment, which can usher in a new land-based industry, is an important area for consideration that environmentalists and conservationists have been keenly investigating. The current method of addressing marijuana cultivation is to “slash and burn” or spray the illegal crops with chemicals. Both of these result in harm to the environment and communities, as there is exposure to either the chemicals or excessive smoke, as well as flooding or other problems. This should be addressed in future legal policy.

7.10. More pointedly a research study advanced that although marijuana’s current land-use footprint is small, the boom in cannabis agriculture could create substantial threats to the surrounding environment<sup>186</sup>.

7.11. During the consultations some Member States expressed concerns over policy changes in marijuana and its impacts upon the environment. The issue of deforestation also emerged as it relates to the potential increase in marijuana agriculture that may accompany a new paradigm.

## 8. HUMAN RIGHTS ARGUMENT AGAINST PROHIBITION

8.1. The criminalisation of the personal use of a natural substance which grows freely and existed for several thousands of years, whether for medicinal or recreational use, may itself introduce considerations of human rights, but when coupled with the uneven and inequitable enforcement of the law by targeting the disadvantaged, results in a gross human rights violations.

8.2. The threshold for limiting expressed human rights as contained in the various constitutions in the region is high, albeit the limitations are expressed differently in these constitutions. It requires a balancing exercise, measuring the necessity of the limitation as would be expected in a society governed by democratic principles, such that the limitation must be reasonably required and proportionate. When viewed from such a human rights perspective, imposing harsh criminal penalties on a person for personal use of a plant, particularly when there is no scientific evidence to suggest that it causes harm to others, or even the extent of harm to the user, is difficult to justify. Important rights that are relevant here are the rights to private life, to privacy of the home, to dignity, to liberty, equality, health, security and the right to freedom of religion. The notion of freedom was very prevalent in the Consultations.

8.3. In the *Barry Francis* case, the Court of Appeal of Trinidad clearly identified some of the rights violated by the draconian cannabis/ marijuana laws, when ruling on stiff mandatory penalties that left no discretion to the judiciary and were disproportionate to the offences. The court stated:

“The removal of such considerations from the sentencing process erodes the fundamental right to liberty and cannot be justified in any society which has a proper respect for the dignity of the human person and the inalienable rights with which we all, as human beings, are endowed. Thus, a provision which indiscriminately applies a mandatory minimum penalty to all offenders, irrespective of the nature of the offence, the degree of culpability of the offender and the mitigating circumstances affecting him, resulting in the offender serving a total of forty years imprisonment for one point one six kilogrammes (**1.16kg**) of marijuana, is so grossly unfair and offensive of the fundamental principles of justice and the rule of law, that it cannot be reasonably justifiable in a society which has a proper regard to the rights and freedoms of the individual.”

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<sup>185</sup> Evans (2013)

<sup>186</sup> Wang et al (2017)

8.4. Just recently, the right to a private life/ privacy was affirmed in the landmark Trinidad case of *Jason Jones v The Attorney-General of Trinidad and Tobago*,<sup>187</sup> declaring the Sexual Offences Act null and void since the limitations to the right to privacy, equality . . . were “not reasonable justifiable in a society that has a proper respect for the rights and freedoms of the individual.” In the cannabis/ marijuana context, criminalising individuals for usage in the privacy of their homes strains the justness of the law as understood in recent jurisprudence.

8.5. Courts from the US and Canada have already ruled that laws which prohibit a person from home-growing cannabis/ marijuana in order to use for self-medicating purposes, are not reasonably required and are unconstitutional. In the Canadian cases of *Allard et al v Canada* and *R v Terrance Parker*<sup>188</sup> the courts have considered that laws prohibiting cultivation and possession for such purposes violate rights to liberty. They have held that to prevent persons from accessing a treatment by threat of criminal sanction constitutes a deprivation of his security of the person and infringes an individual’s security by interfering with his/her physical and psychological integrity. Section 7 of the Charter protected his right to make choices concerning his own body and control over his physical and psychological integrity free from interference by criminal prohibition. Given that the Trinidad and Tobago Constitution is modelled on Canada’s and other regional constitutions are similar, courts are likely to follow such precedents, especially in the light of the new data on medicinal usage.

Courts from the US and Canada have already ruled that laws which prohibit a person from home-growing cannabis/ marijuana in order to use for self-medicating purposes, are not reasonably required and unconstitutional.

8.6. Notwithstanding the legitimacy of the human rights violations in these matters, litigation can and has failed because of the existence of saving law clauses in some of the countries in CARICOM, or in determining whether the relevant rights could be appropriately limited. Saving law clauses preserve existing pre-independence law even in the face of violations of human rights contained in the various constitutions.

This was the hurdle faced in the case of *Forythe v DPP and the AG of Jamaica*,<sup>189</sup> when a Rastafarian was arrested for the possession of ganja and dealing in ganja under the Dangerous Drugs Act. He contended that the Act contravened his constitutional right to the enjoyment of his freedom of conscience in the practice of his religion as a Rastafarian, since using ganja was a part of the sacrament and essential practices of his Rastafarian faith. The court dismissed the application on the ground that the Dangerous Drug Act had been saved by the Constitution and was enacted in the interests of public health.

8.7. Importantly, while the saving law clause obstacle has derailed some of these cases, it does not override legislative will and can be easily defeated should CARICOM and the respective Parliaments agree to change the law. This is because saving law clauses do not proclaim the human rights *appropriateness* of the challenged laws. Rather, they protect them from being overturned by the Courts on the grounds of unconstitutionality, leaving the change in law up to the Parliament. On several occasions courts have lamented that a particular challenged law violated the rights of citizens, but that they were powerless to

<sup>187</sup> Claim No. CV2017-00720, decided April 12, 2018 (HC, Trinidad and Tobago).

<sup>188</sup> *Allard et al v. Canada* [2016] F.C.J. No. 195 [2016] 3 F.C.R. 303, 394 D.L.R. (4th) 694, Federal Court, Vancouver, British Columbia: “[282 I agree that the Plaintiffs have, on a balance of probabilities, demonstrated that cannabis can be produced safely and securely with limited risk to public safety and consistently with the promotion of public health.” In *R v Terrance Parker*, (2000) 146 C.C.C. (3d) 193, the accused, an epileptic who experienced frequent, severe and potentially life-threatening seizures, cultivated and possessed marijuana to self-treat his seizures when he was unable to access it lawfully. The court found that the prohibition against marihuana infringed his rights under s. 7 of the Canadian Charter of Rights and Freedoms. In order to protect the accused and others like him who needed to use marihuana for medicinal purposes, the trial judge read into the legislation an exemption for persons possessing or cultivating marihuana for their “personal medically approved use”. On appeal, the Ontario Court of Appeal held that Parker’s liberty interest under section 7 of the Charter was affected by the marihuana prohibition. The Ontario court also held that a blanket prohibition on possession was unfair and that of all of the drugs with potential therapeutic effects, marihuana stood out because it was subject to a complete prohibition, making it impossible for a physician to prescribe it. The court acknowledged that the state has an interest in protecting against the harmful effects of marihuana, such as psychomotor impairment; and possible long-term cognitive effects in children; Despite this, it held that a blanket prohibition on possession and cultivation of marihuana, without an exception for medical use, does little or nothing to enhance the state interest, if it deprives those persons of the drug who require it to maintain their health.

<sup>189</sup> (1997) 34 JLR 512.

intervene because of the saving law clause, consequently calling upon the Legislature to make the necessary changes so as not to offend human rights.<sup>190</sup>

8.8. Moreover, not all CARICOM countries are hindered by these saving law clauses. In the case of *Francis v AG of Antigua and Barbuda*,<sup>191</sup> the court noted that this restriction did not apply. The argument here turned on whether there was enough evidence to demonstrate that the law was not reasonably required in the interest of public health and public safety, the test for constitutional propriety. The reasoning in *Forsythe* similarly relied on the element of a public health justification to uphold prohibitive laws on cannabis. However, the decisions in both cases, in light of the scientific and medical evidence about cannabis properties today, is now suspect. Moreover, in *Forsythe*, the court refused to consider the health benefits or otherwise of cannabis and further, did not balance the use of cannabis against any harms perceived. It is unlikely that if argued today, in the light of the considerable medical advancements, that these public health rationales would be on firm ground to deny human rights, particularly since a high threshold is required to deny constitutional rights.

8.9. While the applicant in *Francis* did not win his case, the decision scored an important victory for Rastafarianism as the court officially recognised it as a religion. This was in contrast to earlier cases like *Grant and Chin v The Principal of John A Cumber Primary School et al.*<sup>192</sup> where the Grand Court of the Cayman Islands inquired into whether Rastafarianism was a religion, and came up with a negative.<sup>193</sup>

8.10. The recognition of Rastafarianism as a religion in *Francis* paves the way for a stronger case on human rights to be made and also provides the basis for law reform to make special provisions for the Rastafarian religious practitioners.

### **Proportionality in Administration of Justice Approaches to Cannabis**

8.11. When we examine the imperatives of justice and equality, one of the key rights principles that comes to the fore, is that of proportionality. Public law has embraced this principle as fundamental to fairness in the administration of justice. Proportionality, which mandates the legal system to take the approach which is least invasive of human rights (and not use a sledgehammer to kill an ant), is pertinent to the marijuana question and the overall concerns of inequality, inherent bias and unfairness in the legal system. The treatment of cannabis/ marijuana in the legal system and administration of justice offends the principle of proportionality in several ways.

First, it is clear that Caribbean citizens can have their fundamental rights disturbed in much more deep and harmful ways for smoking a ‘joint’ that they can for what most will agree is more harmful and serious offences against society, including assault and the like.

8.12. Secondly, the fact that cannabis/ marijuana users are penalised severely when users of alcohol and tobacco, proven to be harmful substances, are not, offends the fundamental fairness and proportionality objectives of the justice system. This inconsistency undermines the legitimacy of the system. In addition, the harsh penalties that cannabis/ marijuana attracts, often with no flexibility or discretion, violate the proportionality principle and core tenets of the legal system. The fact that substances more harmful than cannabis/ marijuana, like cocaine, are scheduled similarly under law, is also disproportionate and unfair.

8.13. Further, as discussed above, the fact that, within drug policy enforcement, there are discriminatory enforcement patterns compromises the fairness of the system. It is felt that, typically, it is the users and not the traffickers or big time dealers that the criminal justice system confronts. This is a concern for all kinds of drug offences – that it is the ‘little man’ who is persecuted and prosecuted, while the ‘fat cats’ remain free and undisturbed.

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<sup>190</sup> See *Johnson v Balwant*, for example . . . when saved laws in Trinidad and Tobago which permitted female police officers to be dismissed because of family responsibilities, were complained about by the Court, but it noted that it could do nothing because of the saving law clause and called upon Parliament to change the law.

<sup>191</sup> Civil Suit No. 191 of 1996, dec'd September 2001, high Court of Antigua and Barbuda.

<sup>192</sup> 29 (1999) CILR 307.

<sup>193</sup> It viewed Rastafarianism more in the nature of a ‘socio-political movement than a religion,’ emphasising an approach which relied on faith and worship of a particular God or deity in defining a religion.

8.14. The Commission believes that these inherent defects in the law should be rectified by appropriate reform and these broad inequities addressed.

## 9. SPECIAL CONSIDERATIONS FOR CHILDREN AND YOUTH

9.1. An important issue for the Commission was the effect of cannabis/ marijuana and marijuana policy on children and young persons. The Commission found that despite the current prohibitive regime, the prevalence rate of cannabis/ marijuana use by children and young persons is significant. The general accessibility of marijuana to youth was also acknowledged in all of the Consultations. Young people in the region themselves told us of this prevalence.

9.2. This information is persuasive and concerning evidence that the current legal regime, based on prohibition and criminal sanction, is failing to protect our children and youth from cannabis/ marijuana use. A different approach needs to be taken if CARICOM wishes to change the current pattern.

9.3. The vast majority of participants in the consultative process expressed reservations relating to children and young people in future law reform initiatives. This was by no means unanimous. The Commission also heard from Rastafarian respondents who stressed that marijuana use does not negatively affect their children's performance in school as their children, who have used cannabis/ marijuana from early ages without harm, are top performers, and are not involved in anti-social behaviours which plague other young people.

9.4. A few children at the focus groups also maintained that they used cannabis/ marijuana to help them in their studies. Additionally, at many of the Consultations the view was expressed that often the youth who display adverse reactions to cannabis may have used a combination of cannabis and alcohol, or marijuana that was mixed with other chemicals.

9.5. The Commission does not doubt these personal testimonies and affords them great respect. Indeed, the mixed substance claim is real and it is also possible that the Rastafarian community is using much milder strains of cannabis. Nonetheless, after reviewing all of the evidence, including the substantial scientific data discussed above, the Commission is unanimous in its view that any lifting of prohibitions for cannabis/ marijuana should **not** include children and adolescents in its scope. Rather, going forward, the law should specifically outlaw cannabis/ marijuana use and possession by children and youth. Moreover, special, additional safeguards should be included in the law to protect and discourage children from cannabis/ marijuana use, except where that usage is on medically prescribed grounds.

9.6. There is also a fear that marijuana legislative changes would amplify cannabis use amongst adults, which may inadvertently increase the exposure of minors to the substance<sup>194</sup> and enable their access to the drug<sup>195</sup>. For example, in the case of Colorado there was a 26 percent increase in youth (ages 12 to 17 years) marijuana use in the three years after medical marijuana was commercialized as compared to the three years prior to commercialization<sup>196</sup>. Analyses on the impacts of decriminalization of medical marijuana on youth acceptance and use appear to be divergent as some findings reported a significant increase in marijuana use and acceptance among youth populations following this policy change,<sup>197</sup> while others reported no statistically significant differences before and after the legalization of medical marijuana.<sup>198</sup>

The Commission is unanimous in its view that any lifting of prohibitions for cannabis/ marijuana should **not** include children and young people in its scope.

<sup>194</sup> Wang et al (2014)

<sup>195</sup> SAM (2015)

<sup>196</sup> RMHIDTA (2014)

<sup>197</sup> Mech et al (2015) and Miller et al (2017)

<sup>198</sup> Lynne-Landsman et al (2013); Choo et al (2014)



9.7. More recent research, now that sufficient time has passed to adequately measure and the experimental factor subsided, has found that youth marijuana use rates have remained stable in States that have legalized marijuana for adults age 21 and older.<sup>199</sup> This compares to findings for adults.

9.8. At all consultations, the ease of accessibility was highlighted. It should be noted that young people do not need to smoke the substance, but often have access through edibles such as cookies. In this form the substance is not easily detected and can be made available without responsible persons being aware. Concerns also relate to possible accidental use by adolescents. One way to safeguard against such risks is by enacting laws on packaging, marketing, banning advertisements and the like, as the Canada government is contemplating.

9.9. As a note of caution, the view was also expressed that any change in the current legislative arrangements would essentially transmit an inaccurate message to children that marijuana is ‘OK.’ This is a concern that many policy-makers who have moved toward law reform, have had to address. The answer is to design a regulatory regime that places emphasis on de-popularising cannabis/ marijuana in order to control usage at the same time as it seeks to remove prohibition and criminality. Practical ways to achieve this include strict bans on marketing, mandatory warnings etc. as has been done successfully with tobacco. The Commission recommends this approach in any law reform that will ensue.

9.10. Of particular concern, is the impact of criminalization of young offenders in the current regime. The data suggests that most convicted and remanded persons in our jails are young persons. The destruction of future education, employment and social well-being benefits is huge and far outweigh the risks in changing the law.

## **Education and Children**

9.11. Marijuana use by children and adolescents, is of grave concern as it has been linked to cognitive deficits, anxiety and depressive disorders, amotivational syndrome, (demotivation which contributes to decreased academic performance)<sup>200</sup> and dropping out of school.<sup>201</sup> Cannabis consumption may therefore adversely affect the educational outcomes of youth users as it could compromise their ability to derive maximum benefits from the education system and in so doing limit their academic and economic opportunities.

9.12. Teachers, education professionals, and some medical professionals who participated at the National Consultations addressed some of the harmful effects of marijuana on youth. These included the adverse impact on cognitive development, reasoning and critical thinking skills. Principals and Deans of discipline have been known to take varied approaches to this issue, with some opting for counselling for the students while others call in law enforcement officials. Students who face law enforcement officials may find themselves before the court and therefore at risk for the aforementioned consequences.

9.13. There was the perception of many respondents, especially in the focus groups with young people - that marijuana arrests for marijuana -related offences hampered the educational and employment opportunities of offenders. Young people told us that often, cannabis/ marijuana arrests and convictions were conducted along ethnic lines and this exacerbated the discriminatory impact of the law on their education, life opportunities and well-being.

## **10. WHETHER AN ECONOMIC BASIS FOR LAW REFORM**

10.1 Not surprisingly, the economic arguments for law reform have been foremost in the public’s views as harnessed by the Commission. There are great expectations that the removal of prohibition from the legal regime can liberate important economic potential for cannabis/ marijuana to the region, given its natural home here. The marijuana industry is considered to be a multibillion-dollar one that if legitimized, could generate huge profits from tax revenues for nations, which could fund sensitization and prevention initiatives.<sup>202</sup> Jamaica, which liberalised cannabis in 2015, has already begun to reap economic benefits.<sup>203</sup>

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<sup>199</sup> Drug Policy Alliance (2018)

<sup>200</sup> Ferguson et. al 2003 (cited in CSAM 2009)

<sup>201</sup> McCaffrey et al (2008)

<sup>202</sup> Ogrodnik et al (2015); Kang et al (2016); Cattermole (2017)

Apart from this, legalization would provide opportunities for persons engaged in the marijuana business to enter into lawful employment and entrepreneurship as well as create prospects for additional jobs in the area of marijuana commerce.<sup>204</sup>

10.2. The economic dimensions of any change to the current prohibitionist approach to marijuana is a complex one. Regulatory economic policy will require a multi-faceted, all embracing approach. The question of economic benefit must also take into account the current negative economic costs resulting from prohibition. These include the high enforcement costs, depleting resources necessary for more serious crime and the lack of income or revenue for Member States and citizens within an illicit market.

### Results of Economics Study- State Control Most Beneficial

10.3. The Economics Study commissioned for this Report illustrates that considerable economic benefits may be gained from a more liberalised regime. It presents three possible models of liberalised law reform:

1. *Decriminalization of marijuana use only*: In this model, the use/possession of large amounts, production, and sale of marijuana remain illegal. Possession of small amounts will no longer be considered a criminal offence and offenders will be fined, rather than face arrest/possible incarceration.
2. *Full legalization of marijuana production, sale and use, with state control*: Here, the government controls the marijuana industry i.e. cultivation, processing, and sale of marijuana. The retail price of marijuana is set by the state, which has strict control of all levels of the supply chain.
3. *Full legalization of marijuana production, sale, and use within a competitive market framework*: Under this model, the price and quantity are determined by the forces of demand and supply, under the free market system, with some regulations.

10.4. Data was examined to estimate seven (7) potential benefits, including: averted cost of lost wages from marijuana possession arrests, cost averted by the police from marijuana possession arrests, costs averted by the prison from marijuana -related incarcerations, and additional revenues from marijuana -related license fees, among others. Data availability allowed for only two (2) costs impacts to be examined: Additional cost of marijuana abuse treatment requests and estimates of the additional costs from marijuana -related accidents.

The study concluded that:

“Savings and additional revenues may be significant, depending on the model of liberalization used, costs will also vary by the country and model. In the case of model 1 additional costs tend to be the lowest and so are the benefits in terms of savings and additional revenues. Models 2 and 3 have been shown to result in the highest benefits alongside the highest costs.”

Considerable economic benefits may be gained from a more liberalised regime.

10.5. Significantly, of the three models, the economic analysis suggests that the greatest economic benefit will be gained to Member States from Model 2, even as it posits higher costs for efficient public health and educational programs to support such a regime.

10.6. Model 1, decriminalisation only, is shown to have little or no impact on the economy, since it has very little positive impact on the black market or illicit economy, or the negative costs of enforcement associated with an enduring prohibitive system, albeit somewhat relaxed. More importantly, decriminalisation presents little opportunity for states to accumulate revenue from cannabis/ marijuana

<sup>203</sup> Jamaica's first medical cannabis biotechnology company, Medicanja Limited, launched its first six cannabis -based products for the treatment of pains, swellings and strains. The products were initially available in November in Jamaican pharmacies and the company is also seeking international markets. [https://www.caribbeanintelligence.com/content/ci-shorts-slow-growth-legalised-ganga 'Ci Shorts: The Slow Growth of Legalised Ganga' \(2018\), Update – Report, Caribbean Intelligence. Accessed May 30, 2018.](https://www.caribbeanintelligence.com/content/ci-shorts-slow-growth-legalised-ganga-Ci-Shorts-The-Slow-Growth-of-Legalised-Ganga)

<sup>204</sup> Ogrodnik et al (2015)

through sales, taxes and other benefits due to competitive market and security associated costs. Given that cannabis is still unlawful, law enforcement costs remain high.

**Figure Showing Grenada Results**



10.7. Given the fact that the Caribbean is now re-entering the medical marijuana market, albeit having been among the first to enter it (with the research and patent for a drug for glaucoma),<sup>205</sup> some opportunities and important gains may already be lost to corner this market. Realistically too, the Caribbean lacks the resources to undertake comprehensive scientific research on its own. This points to important opportunities for partnership research with better-endowed, world-class scientific institutions, a model which is already well established at the UWI for a variety of research initiatives. Alternative, the Caribbean can sell itself as a provider of the bare product. The latter has significant limitations as discussed below, although that process has already started, with large Canadian and other firms lobbying for stakes in the Caribbean market.

10.8. There is also economic potential for cottage-type industries, including nutraceuticals, already emerging in Jamaica. These can offset the high costs of pharmaceuticals in the region, but are likely to exist in similar fashion to other alternative health products which, incidentally, are not regulated. Given the touted superior quality of the cannabis/ marijuana grown in the Caribbean, there appears to be potential for developing niche markets and the economic benefits that it will bring.

10.9. While the commissioned Economics Study for this Report illustrates that the black market for cannabis perhaps cannot be eliminated entirely, it is apparent that the more the illegal labels are removed from the law, the less room is left for the continuation of black markets and their unwelcome spin-offs of criminal behaviour.

### *Tourism and Cannabis*

10.10. There is potential for the use of cannabis/ marijuana for developing the medical cannabis/ marijuana and recreational cannabis/ marijuana tourism markets. All of these policy decisions will require targeted law reform. For example, the amended Jamaica law 2015 does not fully liberalise the tourist market. Rather, it requires visitors to obtain a special permission to access cannabis/ marijuana. The various regulatory models are discussed in a following section.

10.11. Cannabis tourism, a burgeoning phenomenon in Denver and Colorado and more established in The Netherlands, is a significant income generating opportunity presented by liberalization of marijuana laws which could contribute to national revenue both directly and indirectly<sup>206</sup>. For instance, in Colorado point-of-sale data for the first six months of 2014 showed that close to 50% of sales stemmed from visitors to the state<sup>207</sup> and there was also evidence of thriving businesses that specialized in cannabis tours, the provision of cannabis friendly accommodations, and the serving of cannabis infused foods<sup>208</sup>. Similarly, in the first year of legalization Denver encountered 15.4 million overnight visitors, who spent a record of \$4.6 billion; with \$1.3 billion expended on lodging, \$913 million at restaurants, and \$579 million in retail. This State therefore experienced double and triple gains compared to the prior period.<sup>209</sup>

<sup>205</sup> West ME, Horri J. Cannabis as a medicine. *Br J Anaesth.* 1996 Jan; 76(1):167

<sup>206</sup> Kang et al (2016);

<sup>207</sup> Light et al (2014)

<sup>208</sup> Genovese (2016)

<sup>209</sup> Kang et al (2016)

10.12. However, despite these encouraging possibilities the economic impacts of pro-marijuana policies cannot be determined in vacuity as the very acts of decriminalization and legalization may impose significant costs which should be acknowledged and managed accordingly. Additionally, if legalization is poorly regulated and enforced, this could foster a reduction in its harm perception and increased marijuana consumption, both of which may escalate direct costs for healthcare and social services as it relates to cannabis use and dependency<sup>210</sup>.

10.13. Thus, cannabis policy shifts should be accompanied by adequate funding allocated for education and prevention programs to mitigate anticipated spikes in substance use and dependence.<sup>211</sup> Ideally, these should already be in place. The amended Jamaican law makes provision for Regulations for this purpose, but as yet, no concrete programs are in place. The Commission believes that such legislative safeguards against irresponsible use should be pre-requisites for any law reform initiatives. Changing the focus of cannabis/ marijuana away from prohibition and criminality and toward public health and human rights emphases, necessitates same.

10.14. Several respondents at the Consultations strongly supported the economic argument for liberalization as they espoused that the region was ‘missing out’ on the profits that could be derived from taxation which could assist with regional debt issues.

#### *Current Negative Costs*

10.15. As illustrated above, from a criminal justice perspective, the costs associated with the detention, arrest, prosecution and incarceration of marijuana related offenders continue to incur massive financial burdens on countries where the substance is still illegal<sup>212</sup>. Yet, in spite of considerable fiscal, human and technological resources allocated to the fight against marijuana there has not been a significant reduction in its availability<sup>213</sup>, accessibility or use<sup>214</sup> globally<sup>215</sup>. Additionally, the high costs of imprisonment of marijuana offenders was highlighted as an unsustainable expenditure. Consequently, funds which were traditionally used for marijuana enforcement could be better utilized for addressing serious crime<sup>216</sup> and other public safety goals<sup>217</sup> as well as be channelled into public sensitization and prevention efforts.<sup>218</sup>

10.16. Further to this, some research has concluded that marijuana liberalisation policy amendments produced sizeable savings for national budgets<sup>219</sup>. Accordingly, the main thrust was that Governments would accrue savings from the following avenues: reduction in police resources from the elimination of drug arrests; reduction in prosecutorial and judicial resources from the elimination of drug prosecutions; and the reduction in correctional resources from the elimination of drug incarcerations.<sup>220</sup>

### **Protecting Regional Hegemony, Finance, Fair Trade and Land**

10.17. Embracing cannabis/ marijuana as a means of economic development is not without its challenges however. 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, alternative health practitioners and citizens themselves. A law reform and regulatory framework must confront these challenges to protect the region’s hegemony, some of which may be fairly unique to the CARICOM region.

The region must be proactive to ensure that economic benefit from cannabis is not restricted to raw products only, while developed countries outside of CARICOM use our raw products to create sophisticated by-products with huge commercial value. This has been the historical paradigm with regard to prized natural substances in the Caribbean, such as cocoa, sugar and coconut. Cannabis presents an opportunity to reverse that negative pattern.

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<sup>210</sup> Caulkins et al (2012); Evans (2013)

<sup>211</sup> Evans (2013)

<sup>212</sup> Bates (2004)

<sup>213</sup> The World Drug Report (2017:39) stated that cannabis continues to be the most widely illicitly produced drug worldwide, both in terms of the size and geographical spread of the area under cultivation and the volume actually produced.

<sup>214</sup> ALCU (2013)

<sup>215</sup> The World Drug Report (2017:10) indicated that 183 million people used marijuana in 2015 as compared to 37 million who used amphetamines and prescription stimulants and 17 million who used cocaine for the same period.

<sup>216</sup> ALCU (2013)

<sup>217</sup> Beckett and Herbert (2011)

<sup>218</sup> Ogrodnik et al (2015)

<sup>219</sup> Miron (2010); Glauser (2012) and Golzar (2015)

<sup>220</sup> Miron (2010)

10.18. The question of hegemony also relates to the patent issue, discussed earlier, since there are threats from the international sphere in relation to patent and other intellectual property issues, such as unique types of seeds and strains found in the region. In these respects, the continued illegal status of cannabis and its products inhibit opportunities for the region to be proactive.

10.19. It is also 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. For example, the Commission heard from participants that an estimated 40% of persons in St. Vincent and the Grenadines live off of marijuana (although not verifiable). Some participants in the Consultations openly expressed their concerns that small scale marijuana farmers would suffer great losses as large pharmaceutical companies and other enterprises, often foreign, would be the primary beneficiaries of cannabis legitimisation.

### Socio-economic Concerns and Equality in Land Policy

Cannabis has fuelled important economic gains and livelihoods for small farmers and traders, who now fear that liberalisation and legalisation might dis-empower them.

10.20 One important consideration is the need for policy to consider our economic and sociological context in terms of land. This points to a collateral policy toward informed, fair land use and ownership with regard to any changes on marijuana law. The question of land use policy is relevant because, currently, cannabis/marijuana production occurs, for the large part, on squatted, state land, often grown in the hills etc. Under a reformed regime, choices will have to be made as to land use. Even initiatives toward the compulsory acquisition of land for foreign companies, of the kind we have seen in relation to tourism and the resulting litigation and constitutional law issues are not far-fetched.

10.21. It is already apparent that economic, equality and class concerns in terms of land in CARICOM societies are not only relevant but run deep in this discussion. This is particularly the case in high-growing countries like St. Vincent and the Grenadines, Jamaica and Dominica.

10.22. Land use policy and reform must be a broad endeavour since they must encompass a regulatory framework for multinational corporations (MNCs) which are already wanting to buy up large tracts of scarce land resources in our small islands, while the local farmers struggle with having to plant on squatted land. These are more than mere nationalistic concerns and relate to historical patterns of land ownership in what were former colonies and slave societies and patterns of 'persistent poverty.'

### Certification and Licensing

10.23. Another concern relates to the fairness and accessibility of certification and licensing regimes for cannabis. The fear is that governments will take it out of the hands of the people (the little man) and big companies, including MNCs and the elite, will control the industry. This has already emerged as problematic in Jamaica. In May, the Jamaica Licensing Board was dissolved, as Jamaica attempts to iron out these teething problems.

10.24. Intriguingly, depending on which regulatory and licensing approach CARICOM takes, there is a danger that the marijuana industry may be sanitised only for large, mainly foreign companies, while felonising local growers, similar to what obtained in the extractive industries (mining) in Latin America and the Caribbean.<sup>221</sup> There, vulnerable, indigenous peoples were displaced from their land, title and control. They were also criminalised, with the complicity of the state, when they attempted to protect their interests. There is thus a legitimate fear that liberalisation and regulation, if not managed appropriately, may emphasise inequities in terms of resources in the society, resulting in further disempowerment.

### Unequal Trade Relationships and Foreign Control

10.25. If the decision is made to legalize marijuana activities in CARICOM, the region should carefully consider whether it would be in its best interest to allow (MNCs) or any foreign company for that matter,

<sup>221</sup><https://www.telesurtv.net/english/news/Regional-Indigenous-Activists-Slam-Corporate-Abuses-at-IACHR-20151021-0004.html>; Regional Indigenous Activists Slam Corporate Abuses at IACHR, Telesur News, October, 21, 2015.



to participate in the regional marijuana market, or under what conditions. This is important since the involvement of external actors will have a major impact on the outcome for the countries. These outcomes can be both negative and positive. Possible positive influences include, significant capital investments into the industry, the transfer of technology and knowledge, in areas relating to production, processing and research and development, particularly in marijuana pharmaceuticals. Although many MNCs have the tendency to limit such knowledge and technology transfers, the governments can ensure these features are written into the agreements between the MNC and the country in question. Possible negative influences include the use of large amounts of imports in the production process, the use of foreign labour, the exploitation of the region's indigenous marijuana plants, the repatriation of profits and domination of the local market, to the detriment of the local marijuana farmers and retailers.

10.26. The issue of the use of foreign labour and production inputs may be addressed by including restrictions in the Agreements that require the companies to use locally available production inputs. However, the repatriation of profits, the exploitation of the indigenous marijuana plants and market domination, may be more complicated to address and will require serious deliberation on the part of the Region's decision-makers.

10.27. Liberalisation and legal reform of marijuana cannot be undertaken in an ad hoc way, without a proper appreciation of the deep historical inequities between CARICOM states, as a group of underdeveloped, often exploited nation-states and companies from large, powerful nations interested in marijuana as an industry. CARICOM must avoid the unequal paradigms that were experienced in other trade arrangements and learn lessons from historical experiences with other crops and indigenous services. These include sugar, cocoa, bananas, offshore finance, even tourism, all of which existed within predatory relationships and too little returns for CARICOM peoples.

### **Overall Benefits to Liberalisation**

10.28. With liberalisation, while price is expected to fall, direct economic benefits in the form of revenue from taxes, licenses, tourism, sales etc. are likely to occur, with the highest gains projected for a legalised, but highly regulated industry with niche markets. Development gains will be superior with controls and balances to protect small entrepreneurs, farmers and local industry. Indirect benefits such as savings from increased employment from less incarceration, reduced costs for law enforcement and for medical treatment, are also likely. The region can also experience significant economic gains from developing its Medical Marijuana industry, including the development of its own medical and scientific research. Finally, the introduction of industrial hemp as a commodity, differentiated from other forms of cannabis, can lead to a vibrant industry. However, an ad hoc, uninformed and unilateral regulatory approach can run counter to CARICOM's developmental objectives. This is a powerful impetus for a carefully calibrated, balanced, powerful, regional response.

10.29. Considering the several variables of the economic question on the issue of cannabis/ marijuana, the Commission is of the view that the economic benefits of any law reform initiative that deviates from prohibition, considerably outweighs the economic benefits to retaining the status quo of blanket illegality.

## **11. INTERNATIONAL LAW ISSUES ON CANNABIS**

11.1. An important consideration for CARICOM is the status of cannabis in the international arena. This presents a significant obstacle in effecting change to the legal regime on cannabis given its classification as a dangerous drug or narcotic under international instruments. Cannabis is currently scheduled in Schedules I and IV of the UN Single Convention on Narcotic Drugs 1961, as amended by the 1972 Protocol (the "Single Convention"), which seeks to limit the possession and use of all narcotic drugs. This scheduling was created based on a report created by the Health Committee of the League of Nations in 1935. It is also regulated under the Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1998), which requires States to adopt measures to establish as a criminal offence any activity related to narcotic drugs.



11.2. Increasingly, there have been calls for these international standards to be amended to take account of the wealth of scientific evidence on the benefits of cannabis. H.E. Mogens Lykketoft, the then President of UNGASS, in his opening address, lamented the current unfortunate situation where medical “cannabis laws defy the current conventions.” Several countries have now breached the provisions of the Conventions and these instruments can no longer be seen as authoritative, given that international law is based on the consensus of states. The UN Global Commission acknowledged that this consensus “has fractured” and the treaty framework can be seen to be in transition. More and more states are viewing the core punitive elements of the drug treaties as inflexible, counterproductive and in urgent need of reform. It warned that the drug treaty system risks becoming “even more ineffectual and redundant, [and]. . .the integrity of that very system is not served in the long run by dogmatic adherence to an outdated and dysfunctional normative framework<sup>222</sup>

11.3. Many countries have decided not to wait on treaty reform. Some states challenge the interpretation of the Convention, arguing that usage of marijuana, as opposed to other activities, such as sale, trafficking etc. is not prohibited. For example, The Netherlands argues that “[t]he use of drugs is not an offence under international agreements. Nor is it an offence in Germany, Italy, Denmark or, indeed, most countries of the European Union. The Government sees itself in compliance with the UN Conventions of 1961, 1971 and 1988 . . . The policy is based on the “principle of expediency”, whereby authorities are given “discretion to decide, on the grounds of the public interest, not to bring criminal action in a given case.”<sup>223</sup>

11.4. The distinction between usage and trade has been exploited by several countries to bring about reforms consistent with treaty requirements. Notably, UNGASS also permits flexibility or a margin of appreciation given to a state to determine how best to deal with drug problems. A comprehensive public health program will suffice.

### Challenging the International Regime on Human Rights Grounds

11.5. The Conventions contain provisos that allow a state to proceed differently on constitutional grounds, invoking considerations of human rights. This is an established principle in international law which places treaty requirements as subordinate to fundamental human rights which are inalienable. As explained above, several human rights considerations are brought into play in the issue concerning cannabis as an unlawful substance.

11.6. As discussed above, the human rights argument on the use of cannabis has previously failed in Caribbean courts, because of the technical restriction of the savings law clause (*Foryth*), which preserved existing law from challenge, the reasonable justification requirement and in one case, in the early years, the failure of the court to accept that Rastafarianism is a religion. Notwithstanding, the results in the particular cases before domestic courts do not preclude Member States from raising human rights objections to the Conventions on this ground.

11.7. First it is now evident that current jurisprudence in the region recognises the general principle of human rights as a limitation to treaty requirements. For example, the landmark case of *Myrie* (CCJ)<sup>224</sup> supports an interpretation of the Convention as entrenching a human rights approach.

“(10) . . . It should be noted, however, that the Court is an international court authorised to apply “such rules of international law as may be applicable” of which human rights law is an inextricable part. It stands to reason therefore that, in the resolution of a claim properly brought in its original jurisdiction, the Court can and must take into account principles of international human rights law when seeking to shape and develop relevant Community law.”

<sup>222</sup> War on Drugs, REPORT OF THE GLOBAL COMMISSION ON DRUG POLICY’ JUNE 2011

<sup>223</sup> The Government therefore gives “high priority” to suppressing the sale of hard drugs and trafficking of large quantities of drugs, hard and soft, while “low priority is given to curbing the sale and possession of soft drugs” for personal use. In this context “soft drugs” refer to cannabis and its derivatives. A Guide to Dutch Policy; Foreign Information Division of The Netherlands Ministry of Foreign Affairs, in cooperation with the Ministries of Health, Welfare and Sport, Justice, and Interior and Kingdom Relations, Government of The Netherlands, 2000, p. 6.

<sup>224</sup> *Shanique Myrie v State of Barbados* [2013] CCJ 3 (CJ), at para 10. However, the Court has no jurisdiction to adjudicate violations of international human rights treaties and conventions. Those instruments generally provide for their own dispute resolution mechanism which must be the port of call for an aggrieved person who alleges a breach of those treaties.”

11.8. Other states that have ignored the provisions of the Conventions, for example, Uruguay, have also utilised this human rights argument.

11.9. The Jamaica Commission was reticent about this human rights approach and gave much significance to the limitations of the saving law clause in an international context. However, the Commission reiterates that these seek to preserve existing law, but do not deny the existence of human rights principles in such laws per se. It is open to each CARICOM state to change its law to bring it into conformity to the Constitution. The law is saved only if challenged in the absence of legislative reform. Given that our Constitutions do contain human rights that can protect from prosecution on criminal charges for personal use of cannabis, this is one route to bypass the international obligations imposed under the Conventions.

11.10. Further, the Commission notes that saving law clause restrictions have effect only in the domestic context and do not apply in relation to international law, so that it remains open to CARICOM states to argue that the Convention offends important human rights principles. The view suggested by Former Chief Justice Rattray, highlighted in that Jamaican Report and which emphasised the value of human rights as an exception to the Conventions was not apparently influential in that Report. However, it is noted that this was a 2001 document and the jurisprudence has advanced since then. The Commission believes that Rattray's initial views are preferred and are now adequately supported in jurisprudence and legal policy.

The drug treaty system risks becoming even more ineffectual and redundant.

11.11. The SDGs also emphasise human rights as the centre of development, goals which CARICOM have endorsed. Important human rights principles in the cannabis/ marijuana paradigm include the right to privacy or private life, equality before the law, particularly in sentencing policy, non-discrimination, religious freedom, liberty, the right to health and procedural rights relating to proportionality and due process. All of these provide grounds to avoid treaty obligations which violate them.

### **Removing Illegal Status Removes Legal Problems Relating to Proceeds of Crime**

11.12. Quite apart from issues surrounding identifying loopholes under the Convention which would permit a more liberal attitude toward marijuana, it is evident that the international stance in favour of criminalisation can lead to sanctions, either direct, or indirect, if a country acts unilaterally. The problems relating to transactions with banks and financial institutions mentioned above, are exacerbated here, given the fact that banking in the region is largely carried on by international correspondent banks. Already, there has been negative fall out in the banking and financial sector, blacklisting in relation to correspondent banks, for those who wish to use the traditional financial sector for their profits from marijuana, despite the double standards in a global environment where both Canada and the US have legalised cannabis/ marijuana.

11.13. The underlying threats of money laundering and proceeds of crime offences are significant even within the domestic sphere. Considering the issue in the international arena compounds it. It is evident that the only way to avoid such a categorisation of the profits of any business involving cannabis, whether for medicinal or recreational purposes, is to remove entirely the illegal status from the plant.

### **Unified CARICOM Approach to Lobby for Change to the International Regime**

11.14. CARICOM Member States should negotiate the tensions arising between redundant treaties and other requirements, not unilaterally, but as a unified entity. A clear, informed roadmap within a regional framework to address these real issues – at the very least, how to create exceptions in the law, is needed.

11.15. CARICOM must be cognisant of the inherent power imbalances between Member states and other states. The fact that the US has de facto legalised marijuana in many states and has gotten away without being deemed to be in conflict with international conventions in the name of legal flexibility, is of little comfort to CARICOM as we renegotiate our situation. However, it is not anticipated that in the current

global environment on cannabis/ marijuana, that the US or other developed nations have the moral authority to or, will act against the Caribbean if cannabis is liberalised.

11.16. Further, by its very existence as an economic / quasi-political regional bloc, CARICOM is an affirmation of the strength that can come in regional solidarity. There is need for CARICOM to have a strong, unified position if it is to lend a persuasive voice to the calls for much needed reform of the relevant 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.

11.17. The entry into the market of powerful, traditional allies like Canada, together with the several states in Latin American on the road to law reform, also presents a unique opportunity for alliances which can be influential in pressing for amendments to the Conventions.

## **12. LAW REFORM MODELS FOR CANNABIS - DESIGNING A REGULATORY APPROACH**

12.1. Several routes to law reform exist if CARICOM decides to move away from the existing status quo of prohibition and criminalisation. Given that several countries have already engaged in law reform, either decriminalised or legalised regimes to regulate cannabis/ marijuana, CARICOM has the benefit of learning from the experiences of these changes.<sup>225</sup> The main models are: (a) Legalisation for Medicinal Purposes Only; (b) De-criminalisation for Small Amounts for any Personal Purpose; (c) Liberal Legalisation Model; (d) Legalisation Model with Strict Regulatory Controls; and (e) a Hybrid Model with Strict Regulatory Controls.

12.2. In any of these directions, the several issues already covered in this Report will need to be examined. For example, as discussed previously, reports indicate that while, after the relaxation of prohibition, there is an initial increase in use (the experimenter effect), this levelled out afterward, so that the fear of liberalisation leading to untrammelled use is misplaced. This would be so for any relaxation in the law, whether decriminalisation or legalisation.

12.3. Whatever a model is called or labelled, there are certain elements that the Commission believes should be prioritised as minimum standards in the design of a more efficient, developmental model for reforming the laws on cannabis/ marijuana. These include strict prohibitions to prevent the youth accessing marijuana, to regulate driving and to de-incentivise recreational use through managed supply and marketing mechanisms. More details of regulatory approaches are referenced below.

The merits and demerits of each model will be briefly examined.

### ***(a) Legalisation for Medicinal Purposes Only***

12.4. This approach decriminalises or legalises cannabis for medicinal purposes only. However, this is a narrow perspective which ignores the several parameters of the issue of cannabis reform, as highlighted in the Commission's mandate. For example, legalisation or decriminalisation of Medical Marijuana will not address at all the needs and justice requirements of the many, many persons throughout the region who use cannabis for recreational, religious and other purposes, an imperative which the Commission found to be perhaps the most compelling objective for law reform. Such persons will continue to be criminalised, especially those in lower income and marginalised groups and the justice system will remain discriminatory and unjust. This approach would short-change Caribbean peoples.

12.5. Law reform for medicinal purposes only, will also ignore the economic issues at play. Would this mean only permission to import and use medical marijuana products, for example? If so, this approach would deny the thousands of small farmers, entrepreneurs and indigenous scientists and medical

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<sup>225</sup> For a description of several models, see *How to Regulate Cannabis, A Practical Guide*, Transform Drug Policy Foundation, 2016, for a description of several models. However, labelling is not so important.

researchers the opportunity to be part of what is a revolutionary change in attitudes toward cannabis the world over. Even if this model is not aimed only at products and the natural substance can be used, how would law enforcement differentiate between medicinal and other uses if persons are found in possession of cannabis/ marijuana? Would citizens require a permit? These and similar questions would make such a law just as inefficient and difficult to enforce as the current regime.

12.6. Moreover, as discussed earlier, current laws in the region already make provision for the import and usage of Medical Marijuana, but they have not been utilised. What is needed is the removal of stigmatisation and criminality from the image of the plant in order to make such authority operational. This requires additional law reform.

***(b) De-Criminalisation of Small Amounts for Any Personal Purpose***

12.7. Decriminalising cannabis for using small amounts for personal use, while it meets some of the justice imperatives, does not address several important questions surrounding the use and control of the substance. Cannabis/ marijuana remains inherently unlawful with all of the negative implications as have been discussed in this Report. This model is perhaps best exemplified by the law reform that took place in Belize, which did not go as far as regulating or de facto legalising for elements of production and supply as was done in Jamaica.

12.8. Since under decriminalisation, possession, growing and usage remain unlawful, this does little to discourage the current black market, which encourages criminality. Decriminalisation can, however, permit the state to introduce compulsory rehabilitation programs for users if it believes it appropriate to do so. Further, decriminalisation for small amounts re-introduces issues of the difficulty in enforcing the law, making the law irrelevant and inequitable.

12.9. More importantly, decriminalisation, without more, does not permit the state to introduce an efficient regulatory system, including licensing arrangements, to have effective control of the substance. This also means the lack of revenue for the state. Cannabis use remains unregulated, so that users do not have the opportunity to have accurate information about quality, potency or adverse effects.

12.10. Decriminalisation, which is supported by fines, instead of imprisonment, does little to address the social inequities in the system. In particular, persons with low incomes or indigents, often those targeted for cannabis/ marijuana use, cannot pay high fines and still end up in conflict with the law, criminalised and imprisoned. This has been the pattern in states in the US where simple vehicle offences have been used to criminalise blacks, who sometimes ended up dead.<sup>226</sup>

12.11. Decriminalisation targeting only small amounts for personal use also does little or nothing to stimulate a home-grown industry in the region, or medical research, which many see as viable routes to economic development. The many small farmers, entrepreneurs and indigenous scientists and medical researchers are denied the opportunity to be part of what has been termed the “marijuana revolution” and the “fastest growing industry.”

12.12. Decriminalisation is a useful method, but it is limited, a half-measure and can considerably short-change the long term objectives of Caribbean development.

***(c) Liberal Legalisation Model***

12.13. A liberal legalisation model would see prohibition being removed entirely from the law, allowing a free market and liberalised use of the substance with little or no controls. Given the evidence on the harm to children and high risk groups, the Commission does not recommend this model. Further, the Commission encountered very few persons in the Consultations who advocated such a liberal approach.

***(d) Legalisation Model with Strict Regulatory Controls***

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<sup>226</sup> <http://www.miamiherald.com/news/local/community/miami-dade/article36062421.html>, DAVID SMILEY, 'OAS human rights delegation hears South Florida police complaints', Miami Herald, September 21, 2015.

12.14. Because of the acknowledged limitations of decriminalisation, several countries, including Canada,<sup>227</sup> are moving toward the full legalisation of cannabis/ marijuana and the removal of prohibition, i.e. a legal regulation model. Such a model, however, is not a laissez-faire one, but operates within a tightly regulatory regime, aimed at the highest risks presented. Legalisation is not envisaged as sufficient in of itself for law reform. Unregulated legalisation is not the target and is viewed as harmful as prohibition.

12.15. It has been noted that while the legal regulation model “may appear radical . . . the legal and historical evidence demonstrates that, in fact, it is prohibition that is the radical policy. The legal regulation of . . . production, supply and use [of cannabis] is far more in line with currently accepted ways of managing health and social risks in almost all other spheres of life.”<sup>228</sup> Indeed, this is the way that more harmful substances like tobacco and alcohol are managed.

12.16. The model also has a strong prevention focus and includes strong messaging about the potential adverse consequences of cannabis, since it is based on a public health, citizen security approach. Responsible marketing and public education programs are emphasised, as with tobacco, to de-incentivise use.

12.17. Within this model, there are also variants. One approach, as in Canada, is for a tightly controlled regulatory regime, which places total control, both production and supply, in the hands of the state. In the other variant, the law informs the identified risks and the state retains some control over supply and demand, either by licensing suppliers and growers, or controlling where use can occur etc. as occurs in Portugal, Spain and The Netherlands, but there is more flexibility in the market arrangements. For example, there are special ‘coffee houses’ in The Netherlands and cooperatives in Spain which distribute cannabis/ marijuana. This model has been identified in the Economics Study as having the greatest potential economic benefit for CARICOM countries.

12.18. The strict state controlled model like Canada’s has the potential to displace many small growers and business people in a potential cannabis market. This introduces its own problems of inequality and injustice, particularly in high-growing countries. It also requires a significant amount of state regulation and resources. For these reasons it may appear to some to be ill-fitted for Caribbean purposes.

#### ***(e) A Hybrid Model with Strict Regulatory Controls- An Incremental Approach***

12.19. A hybrid legal regulation model for regulating cannabis/ marijuana presents the opportunity to draw upon the best possibilities of decriminalisation and legalisation objectives, while still emphasising public health, citizen security, justice and rights objectives and maximising economic potential. Certain activities can continue to be prohibited, where there is high risk. For example, certain high potency and high risk cannabis products could be banned, especially since the region may not have the capacity to regulate them and usage by youth totally prohibited. Cannabis/ marijuana for personal use in private homes will be permitted, thus emphasising rights to privacy and health as identified in recent judicial precedents and acknowledging the inefficacy of policing private households. However, cannabis/ marijuana will be banned in public spaces. A highly regulated commercial sector will be incorporated, particularly where medical products are envisaged.

12.20. Making some aspects of production, supply and trade lawful, through a regulatory regime such as licensing, would address problems caused by proceeds of crime legislation, which would deem such profits illegal under the current regime. A controlled public/ private partnership arrangement with selected few points of distribution may prevent feasible possibilities for CARICOM. The Commission is mindful that if distribution is too restrictive, the black market will continue to thrive. The regime would be accompanied by public health objectives as with a legalised model, regulating marketing, labelling and other factors that could encourage irresponsible use.

12.21. Keeping some aspects of cannabis/ marijuana prohibited will respond to those countries which believe that they do not as yet have the institutional capacity to engage in the removal of prohibition

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<sup>227</sup> Should Canada’s wanting to also legalised be mentioned? Ref: <https://www.theguardian.com/world/2018/jun/08/canada-closer-to-legalising-marijuana-after-senate-vote-in-favour>.

<sup>228</sup> *How to Regulate Cannabis, a Practical Guide*, Transform Drug Policy Foundation, UK, 2013, p 22.



altogether within the well-regulated environment that it requires. While the removal of prohibition in its entirety might be the desired end-option, a hybrid option provides for an incremental approach to this objective.

## CONCLUSIONS AND RECOMMENDATIONS

12.22. After carefully evaluating the evidence, including the most up-to-date body of medical and scientific research on the multi-faceted and complex subject of cannabis/ marijuana, the Commission makes the following findings and conclusions:

12.23. Marijuana is a plant substance with historical, cultural and religious significance to the Commonwealth Caribbean, which existed benignly as a beneficial plant without condemnation or legal intervention for centuries. Legislative history illustrates that cannabis/ marijuana acquired an illegal status and classification as a “dangerous drug” with “no value,” without scientific or moral rationales to support the radical change in the law, both internationally and domestically. Further, there is considerable evidence to suggest that this transformation was due to cynical motives to quash competition with the merging alcohol industry, itself emerging from prohibition and even racial policy. This resulted in the draconian legal regime existing today for cannabis/ marijuana which by virtue of its now illegal classification, acquired a demonised social status.

12.24. The Commission acknowledges that there are documented health risks associated with cannabis/ marijuana. However, modern scientific data demonstrates that there is conclusive evidence that cannabis/ marijuana has considerable value as a medicinal substance and as liberalisation in the law occurs, scientific studies are proving more medicinal uses for the plant. At the same time, medical science has disproved some of the most important myths or propaganda about the supposed negative physiological impact of cannabis/ marijuana, including a causative link to psychosis and its status as a gateway drug. It has also proved that cannabis/ marijuana is no more harmful than alcohol and other substances that are no longer prohibited and in many respects, less so.

12.25. Science has also proven some important adverse impacts of cannabis/ marijuana. These relate mainly to specific, high risk groups, among the most important being the young (adolescents) and its negative impact on psychomotor functions.

12.26. The argument for law reform is premised on the finding that the identified risks are more effectively managed and minimised within a responsibly regulated public health/ rights framework and market, than a punitive criminal justice led response and unregulated criminal market.

12.27. The now incontrovertible proof of the medical benefits and the value of cannabis/ marijuana as a medicinal substance challenges its classification as a “dangerous drug” without value (both domestically and internationally). This fact alone is sufficient to dismantle its currently legal classification. Accordingly, such inaccurate classification is now obsolete, can no longer be supported as a justification for law-making and should be rejected, as it undermines the legitimacy of the law itself.

12.28. Caribbean peoples have been eager to emphasise their views on potential legal reform. There is much concern about perceived injustices. There is also some misinformation and fear. However, there is now a clear majority and an increasing groundswell of Caribbean peoples in favour of law reform, largely because of social justice imperatives and enthusiasm toward Medical Marijuana. Calls for law reform, in particular, the removal of criminalisation from cannabis/ marijuana regulation have come, not just from the public at large (first hand or via polls), but from the Churches, law enforcement, judges, magistrates, the Bar and attorneys, the medical fraternity, informed NGO groups, National Commissions on cannabis/ marijuana and other professionals and organisations. Many believe that prohibition should be removed altogether, within a controlled regulatory environment, as was done with alcohol decades ago.

12.29. A core objective of any regulatory regime for cannabis/ marijuana would be to discourage the promotion of cannabis use for recreational purposes on a voluntary basis. This would involve adequate education and marketing strategies as currently obtains for tobacco. The World Health Organization



(WHO) Framework Convention on Tobacco Control and WHO guidelines for alcohol control should provide the framework for marketing and advertising controls. Marketing should be tightly controlled and only allowed for the limited purpose of ensuring awareness of the legal availability of cannabis products, but not to promote the use of cannabis products generally or of any particular product.

12.30. The evidence indicates that the existing legal prohibitionist regime on cannabis/ marijuana is not fit for purpose. Both the financial and human costs are huge. The Commission is satisfied that there should be significant changes to the laws of the region to enable the dismantling of this regime to better serve Caribbean peoples. A public health/ rights based approach is better able to confront the challenging multidimensional parameters of the drug problem, including its health, social justice and citizen security aspects”.

12.31. The Commission has heard the calls for caution in some quarters. Understandably, many of these reservations have to do with the several myths and misinformation in the public domain about a substance that was criminalised and demonised for over a century, but which has now been proven to be less harmful than legalised substances such as alcohol. The Commission is of the view that the end-goals for CARICOM should be the removal of a prohibitionist regime that has proven to be ineffective, unjust and caused more harm than it sought to prevent.

12.32. Notwithstanding the endgame, the Commission does not believe that total legalisation in a fully liberalised regime is a plausible option at this juncture for CARICOM. Yet, the Commission is of the view that a too limited approach to law reform, including one that focusses only on medical marijuana, would be counterproductive and inimical to the goals of Caribbean development, as outlined in the SDGs and endorsed by CARICOM. A balanced approach that would meet the main social justice, public health rights and citizen security objectives of the region would be a hybrid or mixed option. This would be an incremental and cautious approach to removing prohibition, but not too little that the goals would be frustrated, nor too much that CARICOM states are unable to manage the important regulatory controls that are envisaged. This approach would best suit the developmental objectives of the region.

## Recommendations

- Cannabis/ marijuana should be declassified as a “dangerous drug” or narcotic, in all legislation and reclassified as a controlled substance;
- CARICOM states should act to remove “Prohibition” status from cannabis/ marijuana, substituting the current prohibitive, criminal sanctioned regime with legal and social policy that emphasises public health, education and human rights; CARICOM states should have a margin of appreciation as to how to achieve this ultimate goal, either:
  - Complete and immediate removal of all prohibitive legal provisions, thereby rendering cannabis/ marijuana a legal substance, which is regulated only in strictly defined circumstances; or
  - As a preparatory step, the decriminalisation of cannabis/ marijuana for personal use in private premises and medical purposes;
- Full prohibition for children and adolescents with an appropriate age limit should be maintained except for medical reasons; however, young people who use marijuana will be directed to treatment and diversion programs rather than being prosecuted or criminalized (Murphy and Carnevale (2015);
- The law should enact legal definitions of hemp based on low THC levels and make clear distinctions between hemp and other varieties of cannabis and ensuring that all legal sanctions be removed from hemp and hemp production;
- Legislation should provide for the protection of seeds, strains of cannabis, through intellectual property mechanisms;

- Customs Law should be amended to make provision for the import and export of cannabis and cannabis products, as appropriate;
- To avoid the implications of Anti-money laundering and Proceeds of Crime legislation which currently prohibit legitimate banking and other financial transactions for illegal cannabis, commercial cannabis activities will need to be legalised;
- Small farmers and small business persons should be included in production and supply arrangements with appropriate controls limiting large enterprise and foreign involvement;
- An equitable land use policy for marijuana cultivation should be formulated;
- Distribution points for cannabis and its products should be limited;
- Special provision should be made to protect religious rights in the new regime;
- Retroactivity should be used as a tool to correct past injustices, such as expungement of criminal records and CSME rules;
- Restrictions that support no public smoking and vaping of cannabis in alignment with tobacco smoking and vaping restrictions should be adopted. Cannabis / marijuana use should be banned in public spaces with appropriate exceptions for Rastafarians on religious grounds. Such restrictions should include prohibiting use in workplaces, enclosed public spaces, on health authority and school board property, transit shelters, common areas of apartment building and community care facilities. In particular, measures that ban consumption in places frequented by children should be adopted (Child Health Care BC 2017);
- States should regulate the locations of marijuana retail establishments, by ensuring an appropriate distance from playgrounds and schools and also prohibiting stores that sell other products to minors from selling marijuana (Saloner et al 2016);
- Regulations should be aimed at reducing the likelihood of children accidentally ingesting marijuana. States with legal marijuana can regulate the appearance, packaging, and labeling of products likely to be appealing to youth, such as marijuana -infused candy and baked goods (Saloner et al 2016);
- Limit marijuana’s appeal by implementing restrictions on marketing through traditional media such as billboards, television, radio, newspapers;
- Retail availability of marijuana should be tightly regulated. States should develop licensing policies applying to all actors in the recreational marijuana supply chain, including retailers (Saloner et al 2016);
- Apply limits of allowable THC in products (CMHAO (2017);
- Drugged driving regulations should be created;<sup>229</sup>
- Ensure appropriate and reasonable pricing to deter consumers from purchasing cannabis through illegal means CMHAO (2017);
- Moderate taxes should be imposed taking care that the black market is not reinvigorated;<sup>230</sup>

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<sup>229</sup> Guo Hua Li et al (2013)

<sup>230</sup> Murphy and Camevale (2016). A weight-based tax is fixed by quantity, for example, \$50 dollars an ounce. Such a tax is easy to administer, simple to understand, and can be implemented quickly. However, it creates an incentive for sellers to differentiate products by potency, which could harm consumers (Caulkins et al. 2015). A price-based tax—also known as an excise tax—is set as a percentage (ad valorem) of value. Such a tax is levied on the seller and treated as a business cost. Typically, it is passed along to consumers in the final retail price. However, states should consider that higher retail prices spurred by this tax could run counter to the goal of reducing the size of the illegal market. A price-based tax is simple and easy to implement and administer. But, if imposed on cultivators, producers, and processors, it creates incentives for tax evasion from “phony prices” along the supply chain (Oglesby 2015). A potency-based tax is assessed on a product’s THC content and could potentially control product quality. Unlike a weight-based tax,

- Availability of cannabis should be limited by placing caps on retail density and hours of sale;
- Environmental conservation and preservation must guide commercial marijuana activities;
- Public Education programs should be prioritized;<sup>231</sup>
- A data collection system to track processes and outcomes should be established;
- Regular performance evaluations should be conducted to guide policy refinements.

### ***Special Provisions to Regulate Cannabis/ Marijuana for Medical Purposes***

In the liberalised regime for cannabis/ marijuana, its availability as medicine should take into consideration the following;

- Access to Medical Marijuana should be made for qualifying conditions in which there is clear evidence of its therapeutic effects and for debilitating, life threatening conditions that are intractable to treatment in which there is evidence of possible benefits e.g. disastrous and intractable seizures in children;
- The smoking of Marijuana should be discouraged except in persons with terminal conditions in which benefits may outweigh the risks;
- Measures should be put in place to regulate the market to minimise diversion into the illegal market (e.g. Track and Trace System);
- Measures should be put in place to support public health education, prevention and treatment;
- Support for research to explore and confirm beneficial and harmful effects of Marijuana;
- Mechanisms to identify those who require treatment should be expanded.<sup>232</sup>

## APPENDICES

### APPENDIX A

#### LIST OF NATIONAL CONSULTATIONS OF THE CARICOM REGIONAL COMMISSION ON MARIJUANA

1. National Consultation – CARICOM Regional Commission on Marijuana, St. Vincent and the Grenadines 14-15 June 2016

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which enables sellers to differentiate their products according to THC content, a potency based tax addresses product strength directly. However, a potency-based tax has many disadvantages, especially the challenge of ensuring that product testing is reliable (Gravelle and Lowry 2014).

<sup>231</sup> (Murphy and Carnevale (2015); Kim et al (2016) underscores the importance of point-of-sale education for visitors regarding the safe and appropriate use of marijuana products. Education for those that distribute cannabis to consumers should be considered (CMHAO (2017). Increased sensitization on the health impacts of Marijuana use. Sensitization education and prevention interventions for pregnant women; Robust and continued marijuana education tailored and targeted to children and youth in areas where it has been or will be decriminalized or legalized Cooley (2016). Implement parental education programs to encourage adults to keep recreational marijuana secure and monitor supply. These could be modeled after similar parental education programs for prescription drugs (Johnson et al. 2007).

<sup>232</sup> One such avenue could be the Screening, Brief Intervention, and Referral to Treatment (SBIRT) approach in primary health care facilities, hospital emergency rooms, and other settings. SBIRT is a comprehensive, integrated public health practice that provides early intervention and treatment in cases of substance abuse and for those at risk Murphy and Carnevale (2015).

2. National Consultation – CARICOM Regional Commission on Marijuana, Antigua and Barbuda, 22 May 2017
3. National Consultation – CARICOM Regional Commission on Marijuana and Face to Face Meeting of Commissioners, Barbados, 27 September 2017
4. National Consultation – CARICOM Regional Commission on Marijuana, Guyana, 6 November 2017
5. National Consultation – CARICOM Regional Commission on Marijuana, Suriname, 8 November 2017
6. National Consultation – CARICOM Regional Commission on Marijuana, Montserrat, 14 November 2017
7. National Consultation – CARICOM Regional Commission on Marijuana, St. Kitts and Nevis, 16 November 2017
8. National Consultation – CARICOM Regional Commission on Marijuana, Belize, 23 November 2017
9. National Consultation – CARICOM Regional Commission on Marijuana and Face to Face Meeting of Commissioners, The Bahamas, 3-5 January 2018)
10. Face to Face Meeting of Commissioners, Trinidad and Tobago, 21-22 May 2018.

APPENDIX B  
LIST OF FOCUS GROUPS – NATIONAL CONSULTATIONS OF  
THE CARICOM REGIONAL COMMISSION ON MARIJUANA

No.	Country/Place	Date	Focal Groups
1	St. Vincent and the Grenadines	14-15 June 2016	Youth Focus Group
			Health and Legal Sector
			Special Interest Groups
			Public Town Hall Meeting
2	Antigua and Barbuda	22 May 2017	Youth Focus Group
			Civil Society/Special Interest Groups
			Public Town Hall Meeting
3	Barbados	27 September 2017	Civil Society Focus Group
			Youth
			Special Interest Group
			Town Hall Meeting
4	Guyana	6 November 2017	Civil Society Focus Group
			Youth Focus Group
			Town Hall Meeting
5	Suriname	8 November 2017	Youth Focus Group
			Faith-Based Organisations and NGO Focus Group
			Special Interest Focus Group
			Town Hall Meeting

No.	Country/Place	Date	Focal Groups
6	Montserrat	14 November 2017	Youth And Youth Workers
			Legal Profession and Special Interest Groups
			Health Sector
			Public Town Hall Meeting
7	St. Kitts and Nevis	16 November 2017	Students, Youth Workers, Police
			Special Interest Groups
			Public Town Hall Meeting
8.	Belize	23 November 2017	Youth, Guidance Counsel and School Personnel Group
			Special Interest Medical Group
			Special Interest Religious Group
			Public Town Hall Meeting
9.	The Bahamas	5 January 2018	Youth Focus Group
			Special Interest Focus Group
			Town Hall Meeting



## APPENDIX C

### SAMPLE QUESTIONNAIRE FOR INPUT FROM POLICE HEADQUARTERS TO MARIJUANA COMMISSIONERS REPORT

#### GRENADA

1. *How is the law enforced (does law enforcement enforce this issue or turn a blind eye? If they do - for certain persons etc.?)*  
A. The law is enforced on anyone who contravenes it. There is no special person or groups that have been given the privilege or is exempted from facing the consequences of breaking this law.
2. *What are the arrest profile rates for marijuana - What percentage of users were involved in violent crimes?*  
A. From a law enforcement perspective, there is very little correlation between marijuana users and violent crimes, taking into consideration the effects of the drug.
3. *Do you have any information as to whether marijuana is used alone or mixed with other drugs?*  
A. Depending on the potency of the marijuana (sometimes it is determined by the origin) for example marijuana coming from South America is considered more potent than locally grown cannabis; users have been known to mix marijuana with local or imported tobacco.
4. *What is the trial process like - availability of legal representation; legal aid?*  
A. Marijuana is a Misdemeanour offence here in Grenada, meaning that it can be tried summarily by a magistrate, (which normally takes from a week to about year), or Indictable by a judge, (which can take from six months to three years). Legal aid is provided for all indictable matters.
5. *What are sentences like – Is there any flexibility?*  
A. Summarily, a magistrate can impose either a fine of up to EC\$250,000.00 or imprisonment of up to five (5) years in prison, or both. On indictable matters, a judge can impose a fine of up to EC\$500,000.00 or imprisonment of up to twenty-five (25) years in prison, or both. They do have the flexibility when comes to sentencing.
6. *Any information on Recidivism?*  
A. Of course, there have been repeated offenders that have passed from time to time in the system, (fined and imprisoned).
7. *Experiences for Drug rehabilitation, in particular, if there is a Drug court - how is that going?*  
A. In Grenada, we do not have a Drug Court; however, we have a psychiatric treatment center which also treats drug abuse victims, who is either sent for evaluation and treatment from the court, or receives treatment as a walk-in patient. This center is quite small and cannot accommodate persons for a protracted period.
8. *Can you give any information on the reasons people give for USAGE - i.e. medical purposes, religion, stress etc.?*  
A. Most persons has indicated that they use marijuana for recreational purposes, although a few has indicated that they use marijuana for medical purposes, such as cancer and other painful illnesses
9. *Male to female ratio?*  
A. Over a five-year period, the male to female ratio of arrests for marijuana average about 16:1
10. *Do you have any information on the impact of arrests etc. on female prisoners?*  
A. Due to the small number of females being arrested for marijuana, it is not a cause for concern, nor does it create an impact of female prisoners.

## APPENDIX D

### LIST OF WRITTEN SUBMISSIONS RECEIVED FROM THE PUBLIC<sup>233</sup>

Adrianna Peertamsingh  
Alexander Lee Young  
Amani Olunbanjo Buntu, Official Report of the Afikans and Afrikan Descendants World Conference  
Against Racism,  
Barbara Jenkins  
Belize Hemp Cooperative  
Bluerock 513  
Bongo First (Noel Joseph)  
C420 Media Release June 2017  
Cannabis Movement of Saint Lucia – Position Paper  
Cannabis Movement of Saint Lucia – Proposals for Legislative Reform  
Caribbean Collective for Justice  
Caribbean Drug and Alcohol Research Institute, Submission to the Commission, 24 May 2017.  
CLCIA Campaigners  
Colin Stephenson  
Daniel Johnson  
Dr. Lisa Skerritt, Position Paper for Legalising Cannabis.  
Dr. Stephen King  
Faculty of Medical Sciences, UWI, St Augustine (Dr. S. Reid).  
Faculty of Medicine, University of the West-Indies, (UWI) St. Augustine;  
Garvin Sealey  
Justice Gillian Lucky  
Lorraine Rooks  
Marcus Day – Director of the Caribbean Drug and Alcohol Research Institute, Statement to the  
CARICOM Cannabis Commission, 24 May 2017  
  
Marcus Day, ‘The Fluidity of Substance Use in The Context of a Small Island Developing State –  
Cannabis Use as Harm Reduction in Saint Lucia’.  
  
Marcus Ramkissoon – Position Paper on Marijuana Final, June 2015  
Marcus Ramkissoon- A Suggested Medical Marijuana Code For Trinidad and  
Tobago.  
  
National Alliance of Churches, Belize.

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<sup>233</sup> Note that some written submissions did not contain names of persons or groups submitting and could not be listed.

National Evangelical Association of Belize (NEAB) Position Paper

Nazma Muller, Statement to the Commission

NEAB letter to Regional Commission on Marijuana

Onefekerte

Onwubiko Agogino

Pablo Newally

Pancho De Caires

Petition Requesting Legalisation – Trinidad and Tobago (Nazma Muller)

Rastafari Nyabinghi Theocracy order – RasFreeman, Liberta, 'A Comprehensive Proposal on Legalization of Cannabis'

Vaughn Blanchard

Virgil Lezama

Welete Robinson

APPENDIX E  
ECONOMIC ANALYSIS OF THE POTENTIAL LIBERALIZATION  
OF MARIJUANA LAWS IN CARICOM:  
REPORT COMMISSIONED by the CARICOM REGIONAL COMMISSION ON MARIJUANA

**Acknowledgements**

This report was prepared by Samuel Gabriel (UWI, St. Augustine), with the assistance of the following persons; Tishana Simone, Cedrina Carr, Cassandra Smith, Roxanne Brizan-St. Martin and Charmaine Metivier. Special thanks to the many agencies across the region that have provided data for this study.

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## Summary of Economic Analysis

Recent estimates (2015) show that between 128.1 million to 237.9 million people worldwide consumed marijuana [1]. Additionally, even though marijuana remains illegal in most countries, consumption prevalence has grown, moving from an upper estimate of 4.3% in 2008[2] to 4.9% in 2015 [1]. Furthermore, evolving attitudes towards marijuana have resulted in an increase in the number of countries that are implementing “*alternate regulatory strategies*” [2] regarding the production, sale, and possession of marijuana. As of January 1<sup>st</sup>, 2018, recreational marijuana use has been legalized in 9 states in the United States of America. In 2013, Uruguay formally legalized the production, sale, and consumption of marijuana for recreational purposes [3]. Other countries including Costa Rica, Peru (2013), Mexico (2016), Ecuador (2013) and some states in Australia have implemented various forms of liberalization of marijuana laws.

The Caribbean Community (CARICOM) has also seen some movement in this regard, in 2015, Jamaica formalized the decriminalization of small amounts of marijuana (2 ounces or less). Moreover, many other countries within the trading blocs including Saint Vincent and the Grenadines are currently considering various alternative policy options for the legal treatment of marijuana. These developments have necessitated that CARICOM adopts a policy position on the issue, that will serve to guide Member States in their decision-making processes. An essential part of this initiative is an economic analysis of possible outcomes of adopting a more relaxed legislative approach to marijuana use, production, and distribution in the region.

The objective of the study is to conduct an economic analysis of the possible outcomes of adopting a more relaxed legislative approach to marijuana use, production and distribution in CARICOM.

The study examines three plausible models of liberalization of legislation governing marijuana in the region. This approach is necessary as the model of liberalization adopted can have a profound impact on price, demand, and supply of the product and on the economic and social outcomes of the applied measure. The models examined are:

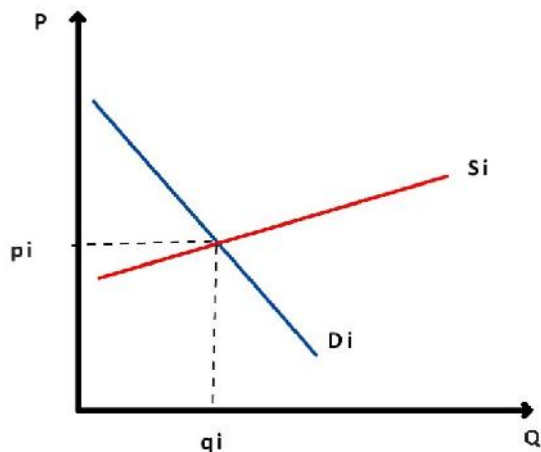
1. Decriminalization of marijuana use only: In this model, the use/possession of large amounts, production, and sale of marijuana remain illegal. Possession of small amounts will no longer be considered a criminal offence and offenders will be fined, rather than face arrest/possible incarceration.
2. Full legalization of marijuana production, sale and use, with state control: Here, the government controls the marijuana industry i.e. cultivation, processing, and sale of marijuana. The retail price of marijuana is set by the state, which has strict control of all levels of the supply chain.
3. Full legalization of marijuana production, sale, and use within a competitive market framework: Under this model, the price and quantity are determined by the forces of demand and supply, under the free market system, with some regulations.

Furthermore, whereas the impact of each of the proposed models may vary, it is expected that the proposed legislative changes will affect some common areas across each country. These include:

1. Fiscal measures
2. Law enforcement/Crime
3. Health Costs
4. Vehicle Accidents
5. Marijuana use

## ECONOMIC THEORY OF MARIJUANA LEGALIZATION

**Figure A: The Illegal market for Marijuana**



### **Supply**

Determinants: the price of the product, the price of inputs and the level of productivity, among other factors.

Depending on the nature of the market<sup>234</sup>, the supply curve may be close to horizontal (highly elastic).

### **Demand**

Determinants: the price that the buyer is willing to pay for the product along with non-price factors.

Because of the nature of the product, the slope of the demand curve is assumed relatively steep (inelastic). Figure A.

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<sup>234</sup> The assumption is that producers can provide just about if not all that is demanded and that cost per unit does not increase with production levels. The flatness (slope) of the supply curve also speaks to the responsiveness (elasticity of supply) of the suppliers to changes in the price of the drug and indicates that small increases in the price will attract new supplies.



In the illegal market for marijuana, price includes direct and indirect costs of production. Direct costs include material, labour costs and other direct expenses. Indirect costs include the risk of arrest and imprisonment or personal harm (applicable to suppliers and demanders). These Indirect costs lead to a “compensatory markup” on the final price. The additional markup serves as compensation to the dealers and others along the supply chain[6], for the additional risk of doing business in the illegal market for marijuana.

With the enactment of more favourable legislation and less severe penalties, regarding marijuana offences, it is expected that in response to the reduced risks indirect costs will fall, thus reducing the compensatory mark-up on marijuana price. The demand curve will also shift to the right since the market now includes most of the old users plus some new users. Moreover, the reduced risks will also lower direct costs, these changes will lead to a rightward shift in the supply curve. The eventual impact on the market will depend on the magnitude of the change in supply and demand. If the supply curve for marijuana is low enough and demand curve shifts only moderately, then legal marijuana will be cheaper than non-legal marijuana. Assuming comparable quality, non-legal suppliers will become non-competitive. It is expected that there will be a gradual shift from the illegal to the legal suppliers. See Figure B.

**Figure B: Illegal vs legal Market for Marijuana**

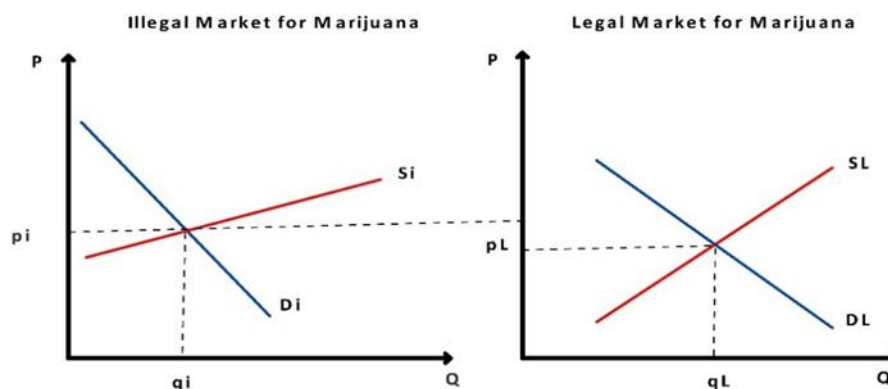


Table 1 shows the effects of the proposed legislative changes. As seen the effects can vary depending on the model implemented. Furthermore, a search of the literature revealed that different countries have applied different models of the liberalization of marijuana laws, each has had somewhat different outcomes with specific areas of impact being affected differently. These outcomes are summarized in Table 2 below

**Table 1: Effect of Legislative Change by Model**

Model 1	Model 2	Model 3
<ul style="list-style-type: none"> <li>• Reduces the non-monetary costs for the buyers only.</li> <li>• Lower non-monetary costs, demand increases-upward shift in the demand curve.</li> <li>• Since supply will remain illegal, little change is expected on the supply side.</li> </ul>	<p>Legalization -shift the demand curve upwards (increase) and quantity at any given price will increase.</p> <p>Legalization- supply curve shifts downwards to the right (increase), resulting in a fall in the price and a rise in the quantity.</p> <p>But with government setting price the actual impact will be uncertain.</p>	<ul style="list-style-type: none"> <li>• Elimination of all non-monetary costs for both the user and the supplier.</li> <li>• Upward shift of the demand curve and an increase in the quantity of the product, at any given price.</li> <li>• Supply curve will shift downward (increase) and prices will fall due to the disappearance of non-monetary costs, reinforced by competition among suppliers.</li> </ul>

**Table 2: Summary of Legalization and Decriminalization Experiences**

### Summary of Legalization and Decriminalization Experiences

Area of Impact	Impact		
	Model 1	Model 2	Model 3
Price	No significant impact on price.	<p>↑ US\$1 per gram in 2013 to US\$1.30 per gram in July 2017 to US\$1.40 per gram in January 2018. (URY)</p>	<p>↓8.9% within one year of legalization: Flowed marijuana (CO).                      ↓7.4% per year until 2020 is predicted (CO).                      ↓72% within one year of legalization (WA).                      ↑25% from its 2015 low of US\$8 (WA).</p>
Arrests/Fines/Referrals	<p>↑ 10% points each, in year 1 and year 2 after decriminalization: Referrals for cannabis possession. (PRT).</p>	<p>↓20%: drug related crimes since legalization (2018 report) (URY)</p> <p>↑drug related crimes increased from 538 in 2014 to 739 in 2015 to 1233 in 2016. (URY)</p>	<p>↑63% between 2012 and 2015: marijuana-related incidence (WA).</p> <p>↓ 30 percent between 2013-2014: marijuana charges (CO).</p>
	<p>↑ by 53% and 48% in year 1 and year 2 of decriminalization: cannabis expiations (AUS).</p>		
	<p>↓ 60 percent: Drug related-arrests (PRT)</p>		

### Summary of Legalization and Decriminalization Experiences

Area of Impact	Impact		
	Model 1	Model 2	Model 3
Adult Prevalence	<p>↑ 0.03% points, over the first 6 years of decriminalization (PRT)</p> <p>↑ 10 % points (14-40) over 20 years (AUS).</p>	<p>↑ 7.5% in by the second year of legalization: Habitual users (URY).</p> <p>↑ 16.7% between 2001 and 2014: marijuana smoking prevalence (URY).</p>	<p>↑ 2.58% points between 2012 and 2014 (WA).</p> <p>↑ 4.52% points between 2011 and 2014 (CO).</p>
Youth Prevalence	<p>↑ 5.69% points (16-18 years) in the first 4 years of decriminalization (PRT).</p>	<p>↑ 8.6 % points between 2001 and 2014, 1 year after legalization (URY).</p>	<p>↑ 9.45% (12-17 years) in 2012 to 10.06% in 2014 (WA).</p> <p>↑ 10.57% (12-17 years) in 2012 to 12.56% in 2014 (CO).</p>
Vehicular Accidents/ Fatalities	<p>↑ 190 percent: the number of fatal accidents where the driver tested positive for marijuana. (Various US States).</p>	<p>↓ 4.51% between 2011 and 2015, 2 years after legalization: Vehicular accidents (URY).</p> <p>↓ 5.11%, 1 year after legalization: Traffic fatalities (URY).</p>	<p>↑ 105%, from 10.8% in 2013 to 22.19% in 2014, the year of legalization: proportion of traffic fatalities where driver tested positive for recent marijuana use (WA).</p> <p>↑ 300% from 2% in 2013 to 8% in 2014: proportion of traffic fatalities where driver tested positive for recent marijuana use (CO).</p>

Summary of Legalization and Decriminalization Experiences			
Area of Impact	Impact		
	Model 1	Model 2	Model 3
Black Market		<ul style="list-style-type: none"> <li>60% of marijuana consumed was bought in the black market in 2014, 1 year after legalization (URY).</li> </ul>	<ul style="list-style-type: none"> <li>The black market makes up between 35 and 50 percent of the total marijuana market (WA).</li> <li>And about 30 percent in Colorado.</li> <li>In Oregon, large quantities of legal marijuana are funneled out of the state through the black market.</li> </ul>
Gov't Revenues	<p>↓ 1.9%: law enforcement expenditure (MA).</p>	<ul style="list-style-type: none"> <li>Marijuana activity fees: US\$128,192 in 2016. Projected to reach US\$665,412 by 2019 (URY).</li> <li>Estimated license fees of US\$1.3 million between 2017-2019 (URY).</li> </ul>	<ul style="list-style-type: none"> <li>US\$102.3 million (2014/2014) and US\$156.7 million (2015/2016): revenues collected from sale and excise taxes (CO).</li> <li>US\$65.7 million (2015, US\$189.2(2016) US\$319.1(2017): tax revenues collected (WA).</li> </ul>
Cost of Implementation/ Enforcements		<ul style="list-style-type: none"> <li>Cost of running IRCCA was US\$650,000 in 2016 and estimated to grow to US\$1.2 million by 2020 (URY).</li> </ul>	<p>US\$ 5.1 million (2014/2015), US\$ 8.06 million (CO)  US\$34 million, US\$42 million in 2016 and 2017, resp. (WA) .</p>

## THE ANALYSIS

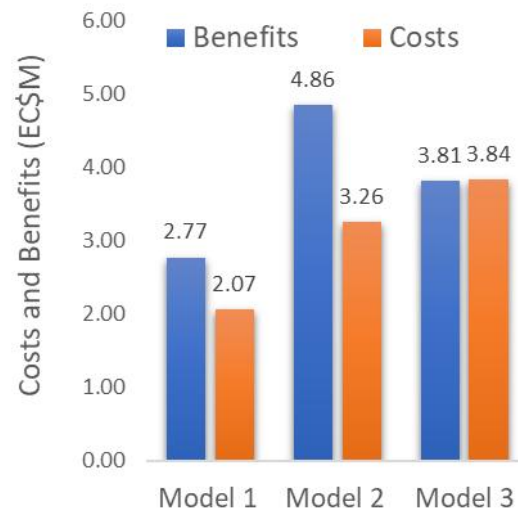
Data were collected from various ministries and agencies, from four selected Caribbean countries, namely Grenada, Barbados, The Bahamas, and Guyana. The list of agencies includes the police service, prison service, hospitals and other agencies that treat marijuana-related disorders, among others. The data collected were not common for each country, therefore the analyses vary across countries, both in terms of approach and output.

The three models of legalization/decriminalization were examined, with 2018 being the base year and year of implementation, here assigned as year zero. The potential effects on the various variables in year one (2019) and year two (2020) after the implementation of the legislative changes, were analysed. The data gathered were used together with the experiences found in the literature to estimate the potential effects of the possible legislative change to the marijuana legal framework, in the selected countries. The following are the results.

## THE GRENADA RESULTS

In this Grenada case, data were available to estimate seven (7) potential benefits, including: Averted cost of lost wages from marijuana possession arrests, cost averted by the police from marijuana possession arrests, costs averted by the prison from marijuana-related incarcerations, and additional revenues from marijuana-related license fees, among others. Data availability allowed for only two (2) costs impacts to be examined: Additional cost of marijuana abuse treatment requests and estimates of the additional costs from marijuana-related accidents

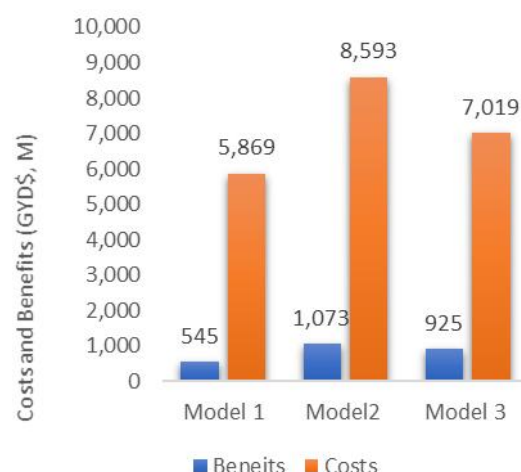
In Grenada model 1 was estimated to derive the lowest total benefit and model 2 the highest, with total benefits of EC\$2.77 million and EC\$4.86 million, respectively. model 3 was projected to result in the highest costs of EC\$3.84 million, followed by model 2 with EC\$ 3.26 million.



## THE GUYANA RESULTS

In Guyana, data were available to estimate five (5) potential benefits, including Costs averted from marijuana-related possession arrests, costs averted from incarcerations, estimates of excise revenues from marijuana sales and activities licensing. Data availability allowed for two (2) costs impacts to be examined, those were: Additional cost of marijuana-related health costs and estimates of additional costs from marijuana-related vehicular accidents.

Overall, model 1 was estimated to produce the lowest benefit in Guyana of GYD\$545 million and model 2 the highest of GYD\$1,073 million under model 2. Cost were, however, also highest (GYD\$ 8,593 million) under model 3 and lowest (GYD\$5,869 million) using the assumptions of model 1.

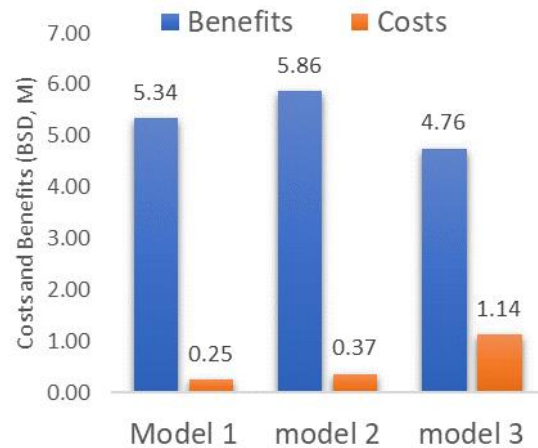




## THE BAHAMAS RESULTS

In The Bahamas, data were available to estimate four (4) potential benefits, including Excise revenues from marijuana sales, estimates of revenues from marijuana licenses fees, Fees collected from marijuana possession. Data availability allowed for two (2) costs impacts to be examined: Additional marijuana-related health costs and estimates of additional costs from marijuana-related vehicular accidents.

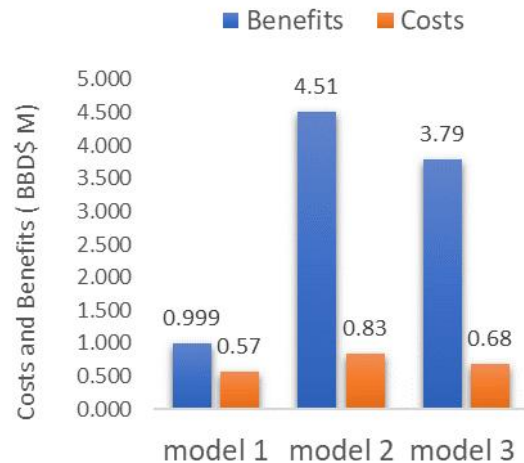
In the Bahamas, model 3 yielded the lowest benefit (BSD\$4.76 million) followed by model 1 (BSD\$5.34 million). The highest costs were estimated to occur under model 3 (BSD\$1.14 million). In all instances, estimated benefits substantially outweighed estimated costs.



## THE BARBADOS RESULTS

In Barbados, data were available to estimate three (3) potential benefits, including Estimated marijuana-related excise revenues, costs averted from marijuana-related arrests and costs averted from marijuana-related incarcerations. Data availability allowed for two (2) costs impacts to be examined: Additional marijuana-related health costs and additional marijuana-related vehicular accidents costs.

In Barbados total benefits were most significant under model 2 (BBD\$4.51 million) and least substantial (BBD\$ 0.999 million) when the assumptions of model 1 were applied. Estimated costs varied between BBS\$0.57 million and BBD\$0.83 million.



## Conclusions – Economic analysis

As the region contemplates the way forward regarding the legal treatment of issues relating to marijuana, an important fact has become apparent. While 2015 estimates show that between 128.1 million to 237.9 million people worldwide consumed marijuana [1], in the region this figure varies substantially. The same can be said about the effects of the substance's use on law enforcement activities along with other aspects of the marijuana market. These realities highlight the fact that individual country situations are not homogeneous. Furthermore, the literature and the analysis have demonstrated that such policies can result in varied outcomes for each country. So that whereas some countries may experience significant benefits from a change in the marijuana legal framework,

benefits that may surpass the resultant costs, there is no guarantee that others may realize the identical outcomes.

Savings and additional revenues may be significant, depending on the model of liberalization used, costs will also vary by the country and model. In the case of model 1 additional costs tend to be the lowest and so are the benefits in terms of savings and additional revenues. Models 2 and 3 have been shown to result in the highest benefits alongside the highest costs. Moreover, each model points to a different objective, model 1, decriminalization of marijuana possession, seeks to reduce the long-term legal fallouts of consumption of small amounts of marijuana, for the user, including youths. It also aims to improve resource allocation efficiency among law enforcement and the judicial system by no longer arresting and charging most marijuana users (most marijuana-related arrests and subsequent charges are for marijuana possession, see section 7 above). Whereas models 2 and 3 also achieve similar objectives, these models go a step further by including a revenue-raising component and greater freedom to grow, use and distribute marijuana. Model 2 allows for greater direct government control over the process than model 3. In each case, the impact on each of the variables of interest will be different.

Moreover, the region must decide on which objective is of interest to it, if any and adapt the appropriate model. In fact, as the literature disclosed, many of the countries and states that have legalized marijuana, started with some iteration of model 1 and have, over time, graduated to models 2, in the case of Uruguay, or model 3. This, therefore, highlights the point that countries need not have static objectives or feel compelled to move from its current state to a state of full legalization. In fact, Anderson and others (29) made a similar suggestion in their work on marijuana laws and their impact on traffic fatalities and alcohol consumption, where they stated that the movement from a state of illegal marijuana to one where marijuana is fully legalized, may be ill-advised, due in part to the predicted impact on price and marijuana use prevalence.

Furthermore, individual country experiences, as observed from the literature, show that after any of the legislative changes, marijuana use is likely to increase. Again, this increase tends to vary depending on the model implemented. In model 1 that change ranged from 0.03% within the first 6 years of the legislative modification, to 10% after 20 years of the implementation of the new marijuana legal framework. In the case of model 2, overall prevalence (last year use) increased 7.5 percentage points and among youth, the figure moved from 8.4% in 2003 to 17% in 2014, one year after legalization. In model 3 regular marijuana use among persons, age 18-24 increased from 11% in 2011 to 15% in 2015, two years after legalization.

What is more, there may be a need to be extra vigilant with respect to preventing the use of marijuana while driving, much like it is done with alcohol. The country experiences show that after legalization, there was a marked increase in the number of traffic fatalities where the driver tested positive for recent marijuana use, increases that have reach as high as 300%. It is however worth noting that this increase, if not laced in the right contest can be misleading, in that marijuana stays in the system long after the immediate effects have subsided, so that a person testing positive for marijuana in the blood may not have used marijuana in days and may therefore not have suffered from impaired driving abilities at the time of the accident. This figure may thus be reflecting an increase in the number of persons using marijuana, but not necessarily an increase in the number of persons driving under the influence of marijuana.

Furthermore, implementation and enforcement costs may be significant, depending on the model used. These costs are likely to be lowest under model 1 and highest under model 2, where there is greater government intervention. Therefore, authorities may have some degree of control over these costs by adjusting the level of government involvement in the market.

In addition, the Literature highlights the fact that in some countries that have legalized marijuana, the black market for the drug remains vibrant. In fact, in 2014, one year after legalization, it was estimated that roughly 60 percent of the marijuana consumed in Uruguay was sourced from the black-market. This outcome is hardly desirable as it robs the government of revenues and diminishes the influence of the authorities on the market for the product, among other things. One of the main reasons for this outcome may be that the black-market price and to a lesser extent, product quality may be more favourable to the marijuana user. Therefore, an important component of any marijuana legalization thrust is a sustained anti-black market effort. As outlined above, when such efforts by the authorities are effective, the non-monetary costs of the product tend to remain high, leading to a higher priced, less competitive product. If this result is achieved, the incentive to purchase marijuana from the illegal market will be minimized.

The importance of time horizon in the assessment of the outcomes of such legislative changes, must not be understated. Many of the countries experiences show that the initial response (in terms of prevalence, arrests etc.) tend to be significant, but over time as the novelty of the new framework diminishes, the long-term response is likely to be more tamed. Likewise, as seen in the case of Washington State and Colorado, marijuana-related tax revenues have grown over time.

## 1. Introduction

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It is estimated that between 128.1 million to 237.9 million people worldwide consumed marijuana in 2015[1]. Furthermore, although the supply and frequently, the possession of marijuana continues to be illegal in most countries, consumption prevalence continues to increase, moving from an estimated range of between 2.9% and 4.3% in 2008[2] to between 2.7% to 4.9% in 2015 [1]. Additionally, changing attitudes towards marijuana have resulted in a growing number of countries implementing “*alternate regulatory strategies*” [2] regarding the production, sale, and possession of marijuana. For instance, as of January 1<sup>st</sup>, 2018, the use of recreational marijuana has been legalized in 9 states and medical marijuana in 29 states in the United States of America. In 2013, Uruguay became the first country in the world to fully legalize the production, sale, and consumption of marijuana. The State-controlled marijuana regime allows residents to grow, consume and distribute marijuana without legal penalty [3]. Other countries have implemented various forms of liberalization of marijuana laws, including Costa Rica, Peru (2013), Mexico (2016), Ecuador (2013) and some states in Australia.

This trend is present not only in Europe, North America, and Latin America, but can also be observed in the Caribbean Community (CARICOM). In 2015, Jamaica formalized the decriminalization of small amounts of marijuana (2 ounces or less). Moreover, many other CARICOM Member States including Saint Vincent and the Grenadines are currently considering various policy options for the legal treatment of marijuana, including the legalization of medical marijuana. Given these developments, it has become necessary for CARICOM to develop a policy position on the issue that will seek to guide Member States in the decision-making process. A necessary part of this initiative is an economic analysis of possible outcomes of adopting a more relaxed legislative approach to marijuana use, production, and distribution in the region.

Because there is no specific CARICOM proposal for the liberalization of the legislation of marijuana in the region, three plausible models are examined in this study. This approach is necessary as the model of liberalization adopted can have a profound impact on price, demand, and supply of the product and on the economic and social outcomes of the applied measure. The three proposed models are as follows:

- Decriminalization of marijuana use only;
- Full legalization of marijuana production, sale and use, with state control; and

- Full legalization of marijuana production, sale, and use within a competitive market framework.

Furthermore, whereas the impact of each of the proposed models may vary, it is expected that the proposed legislative changes will affect some common areas across each country. These include:

6. Fiscal measures
7. Law enforcement/Crime
8. Health Costs
9. Vehicle Accidents<sup>4</sup>
10. Marijuana use

## 2. Economic Theory of Marijuana Legalization

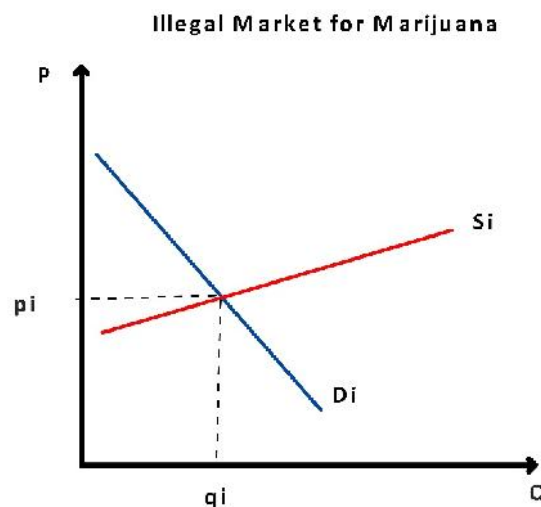
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### The Market for Illegal Drugs

In the market for illegal drugs (including Marijuana), the amount of the product supplied will depend on the market price of the product, prices of the factors of production and level of productivity, among other factors. On the demand side, this is influenced by the price that he/she is willing to pay for the products along with non-price factors which include taste and preferences. The amount that the supplier is willing to make available in the market is represented by the supply curve. Depending on the nature of the market, his curve may be close to horizontal (highly elastic), drawing on the assumption that producers can provide just about if not all that is demanded and that cost per unit does not increase with production levels. The flatness (slope) of the supply curve also speaks to the responsiveness (elasticity of supply) of the suppliers to changes in the price of the drug and indicates that small increases in the price will attract new supplies.

The quantity that the buyer is willing to purchase is represented by a negative (downward) sloping demand curve. The slope of the demand curve demonstrates the negative relationship between the price of the product and the amount the buyer is willing to purchase so that an increase in price will lead to a decrease in the amount demanded. [4]. The extent of that decrease in quantity demanded is measured by the buyer's price elasticity of demand or his/her responsiveness to price changes. Since marijuana, like most illegal drugs, tend to be habit forming, the slope of the demand curve is assumed relatively steep (relatively inelastic) This is explained by the existence of competing objectives between the supplier and the buyer, where the supplier aims to maximize profit, while the buyer seeks to maximize utility.

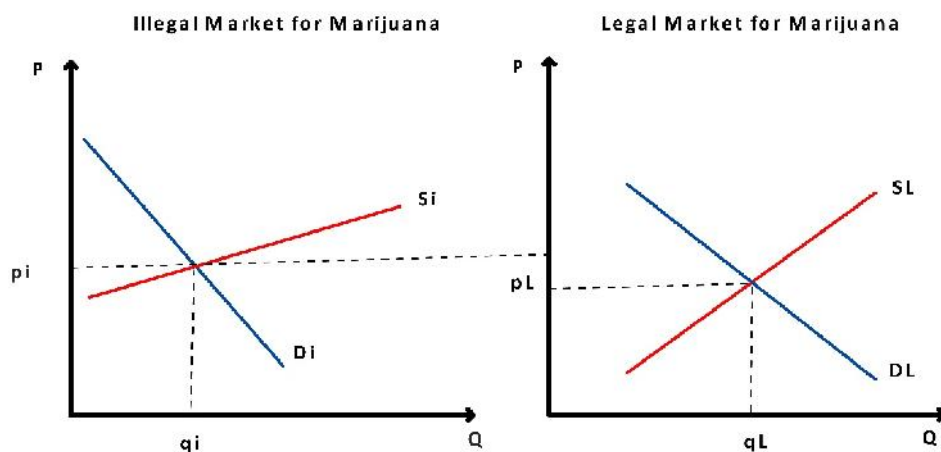
*Figure 1: Market for Illegal Marijuana.*



Currently, in most CARICOM Member States, marijuana is illegally supplied by the quasi-underground marijuana market. Under these conditions, the selling price of the product will not only include the direct costs of production, such as material, labour costs and cost of sale, but also the indirect costs (risks) associated with the production, distribution, and sale of an illegal good. These include the risk of arrest and imprisonment or the risk of personal harm that tends to be associated with illegal drug activity [4–6]. The additional markup serves as compensation to the dealers and others along the supply chain[6]. Since the supply curve demonstrates a willingness to sell the product, in an environment where the legislation governing activities in the illegal marijuana market becomes more favourable and penalties become less severe, it is expected that in response to the reduced risks direct costs will fall. The fall in direct costs, coincides with legalization, as the extra, sometimes costly measures that were needed to avoid detection, will no longer be necessary. Presumably, labour cost will also fall, stemming from reduced or no risk of persecution and an increased availability of willing workers. Reduced risks will also lower indirect costs and result in a reduction of the compensatory mark-up on marijuana price. These changes will lead to a rightward shift in the supply curve.

Moreover, in addition to the purchase price of the product, the full cost of an illegal good also includes the risk of persecution by the authorities and the risk of personal harm associated with conducting transactions with criminals (non-monetary costs)<sup>235</sup>. If the loosening of legislation that targets only the use of the drug, such as the decriminalization of its use, then it is expected that there will be some increased demand for the drug. Furthermore, the loosening of marijuana-related laws will reduce or eliminate the non-monetary costs to the buyer (under decriminalization) or to both the buyer and supplier (under legalization). Once these costs are lowered, the buyer will demand more marijuana. Under legalization, the downward shift of the supply curve may or may not trigger a fall in the price. If the supply curve moves low enough and the demand curve moves only moderately then the price will fall and marijuana in the legal market will be cheaper than in the non-legal market. This will trigger a gradual transition from black market suppliers to legal suppliers.

**Figure 2: Illegal vs legal Market for Marijuana**



### 3. Model One: Decriminalization of Marijuana Use, with Supply Remaining Illegal

The decriminalization of marijuana use means that a person caught with marijuana not exceeding a specified amount will be fined, rather than face arrest and possible incarceration. An important aspect of this model lies in the fact that the use/possession of large amounts, production, and sale of marijuana remain illegal; however, the possession of small amounts will no longer be considered a

<sup>235</sup>This does not include costs related to drug-induced negative health consequences.

criminal offence. Moreover, the decriminalization of marijuana use without legalizing supply will reduce, if not completely eradicate, the non-monetary costs (risk of arrest and personal harm). Economic theory predicts that with the lessening or removal of these non-monetary costs, demand for marijuana will increase, causing an upward shift in its demand curve with little if any change in price<sup>236</sup>. Since the supply of marijuana remains illegal and presumably, law enforcement efforts against its production and sale unchanged, no significant change in the supply is expected [4]

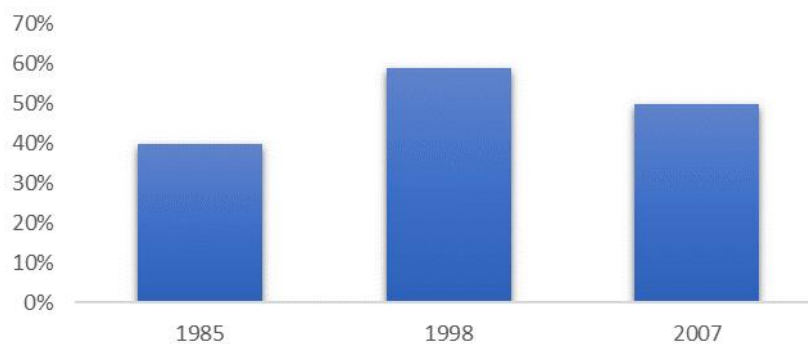
### The Decriminalization Experience

The magnitude of the resultant increase in demand will depend on the amount by which these non-monetary costs fall and the users' response to these decreases. Such liberal legislative approaches to marijuana use can be found in countries such as Portugal (2001), Switzerland (2013), Australia (2014) and recently in Jamaica (2015), among a host of other countries. These legislative changes have had varied effects on price, consumption, law enforcement, and the other relevant areas.

### Impact on Price and Prevalence

The literature shows that the impact of liberalization on marijuana use is somewhat uncertain. Portugal de-penalized marijuana, along with all psychoactive drugs in 2001. In their model, persons can possess up to 25 grams of marijuana for personal use<sup>237</sup>. Since decriminalization, the data indicate that lifetime prevalence<sup>238</sup> of marijuana use for students in the age group 16-18 years moved from 9.5% in 1999 to 19% in 2003 [7], while Hashish<sup>239</sup> use among adults ages 15-64 years went from 3.3% in 2001 to 3.6% in 2007 [8]. This suggests that the legislative change has had a more profound impact on the youth than on adults, at least in the short-run. Furthermore, while regular use of marijuana between 2001 and 2007 maintained stability, the data also suggested that the post-decriminalization initiation age fell and may explain the increase in the lifetime use prevalence [4].

**Figure 1: Lifetime Marijuana Use Prevalence in Australia of Persons Age 14-40 (1985, 1998, 2007).**



2007).

Source: Bretteville-Jensen and Williams (2011)[9]

Whereas the decriminalization regulations in Australia vary from territory to territory, generally, individuals are not persecuted for possessing small amounts of marijuana<sup>240</sup> [10]. Here, decriminalization did not have a significant impact on the uptake, but the evidence suggests that the policy resulted in an increase in the number of Australians who have ever used marijuana. Between 1985 and 2007, two years before the first state in Australia decriminalized marijuana, the lifetime prevalence of persons age 14-40 years was 40%. By 2007, that figure had grown about 10 percentage

<sup>236</sup> Price will remain the same based on the assumption of an almost horizontal supply curve.

<sup>237</sup> This can be considered legalization of small amounts of marijuana for personal use.

<sup>238</sup> Lifetime prevalence is the proportion of a population that at some point in their life (up to the time of assessment) have used marijuana at least once.

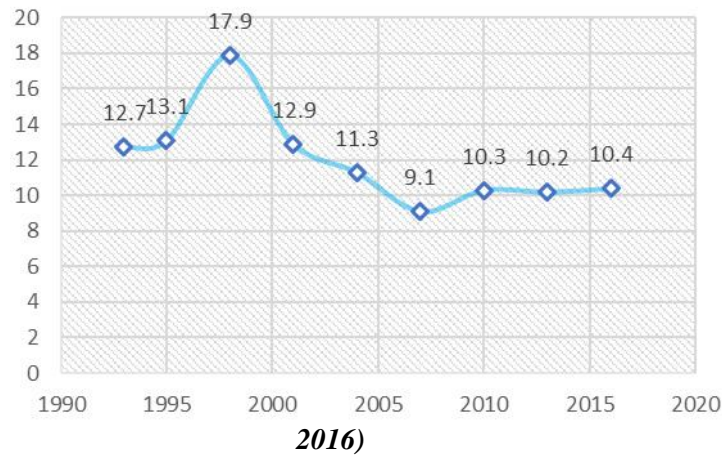
<sup>239</sup> A drug made from the marijuana plant and usually smoked.

<sup>240</sup> In western Australia that threshold amount is 10 grams. In southern Australia that amount is no more than 100 grams; in the Northern Territories, no more than 50 grams and no more than 25 grams in the Capital Territories [40].



points to 50% (Figure 1). However, as shown in Figure 2, between 1998 and 2016 the percentage of persons who have used marijuana in the last 12 months fell from its high of 17.90% in 1998 to 10.4% in 2016. The country also saw a switching of the uptake timing from adulthood to adolescent [4]. Other decriminalization efforts essentially returned a similar outcome, indicating that the policy does not lead to any significant increase in marijuana use and the price of the product.

**Figure 2: Use of Marijuana in the last 12 Months, persons age 14 and older in Australia (1990-**



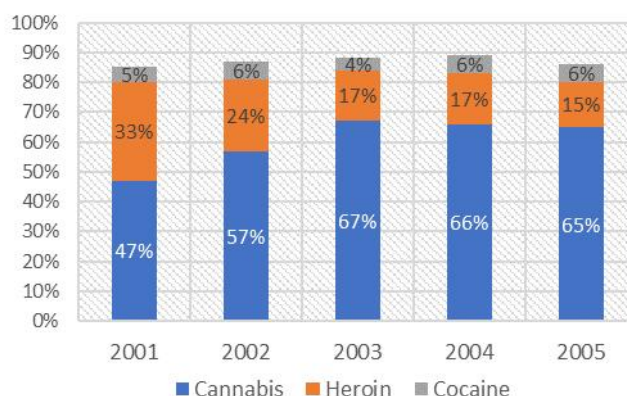
**Source: National Drug Strategy Household Survey (NDSHS) 2016, Key Findings, Australian Institute of Health and Welfare[11].**

### Accidents and other Legal Consequences

An important part of the new legal framework regarding marijuana and all other such drugs in Portugal was the introduction of a referral system where persons found in possession of drugs, including marijuana, by the police, are referred to a panel of three persons made up of social workers, legal counselors, and medical personnel. The number of persons referred to this panel can serve as a proxy of the number of persons found in possession of drugs by the police. Data from 2001 to 2005 show that as a percentage of the total of drug possession referrals, 47% of these were referred for being in possession of marijuana (Figure 3). By 2002 and 2003, one and two years after decriminalization, respectively, that figure had increased 10 percentage points in each year of 57% and 67%, respectively. During the period, only heroin possession experienced a decrease, while cocaine possession rose one percentage point between 2001 and 2005. Moreover, a 2016 report states that since decriminalization, the number of persons arrested for drug-related offences fell by 60% [12]. Meanwhile,

*“the number of people arrested and sent to criminal courts for drug law violations declined by more than half after decriminalization. The percentage of people in Portugal’s prison system for drugs also decreased by about half, from 44 percent in 1999 to 21 percent in 2008” [13].*

While this figure relates drugs on a whole, is not unreasonable to expect that marijuana-related

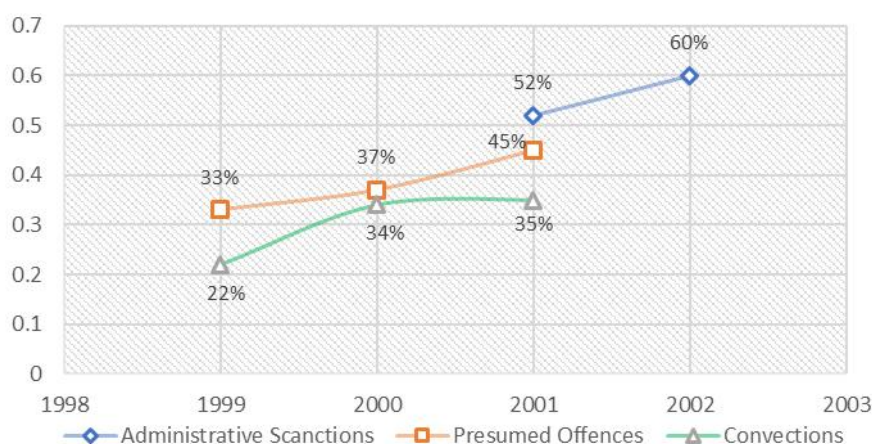


incarcerations would have fallen as well. **Figure 3: Trend in Drug Possession Referrals in Portugal (2001- 2005).**

*Source: Huges and Stevens (2007) [7]*

Meanwhile, the post decriminalization data for Administrative Sanctions<sup>241</sup> increased 8 percentage points in 2002, one year after the liberalization of the marijuana legal framework. However, it was noted that other marijuana-related metrics trended upwards prior to decriminalization. Both marijuana Presumed Offences and Convictions as a percentage of total drug-related offences, increased every year since 1999 (Figure 4). Thus, the presumed rise in the use of marijuana may not entirely be because of the legislative change.

**Figure 4: Trend in Marijuana-related Administrative Sanctions, Presumed Offences, and Conviction (% of total sanctions, offences and convictions, Portugal (1999-2002))**



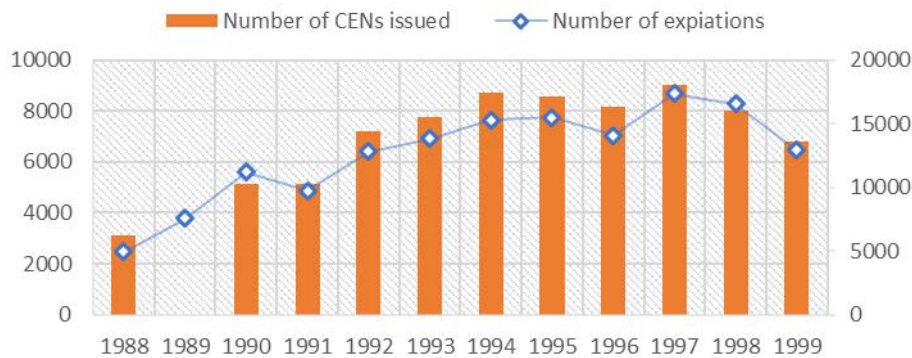
**Source: Huges and Stevens (2007) [7]**

Moreover, the impact on law enforcement of the decriminalization of marijuana in South Australia has been consequential. According to available data for the fiscal years 1987/1988 to 1998/1999, there

<sup>241</sup> These sanctions replaced the penal sanctions for drug use and possession, which may include fines and prison time (Huges and Stevens, 2007).

were marked increases in the number of Marijuana Expiations<sup>242</sup> paid between the 1987/88 fiscal period and the 1993/1994 period. Additionally, during the first two years of the new marijuana scheme, expiations increased by 53% and 48% for year one and year two respectively. Similarly, the number of Marijuana Expiation Notices<sup>243</sup> (CENs) issued also rose during the period (Figure 5) The number of expiations paid peaked in the 1996/1997 period and then fell thereafter. Arrests for marijuana-related crimes remained significant. During the 2011/2012 period, there were over 61,000 marijuana-related arrests, 86% of which were for marijuana consumption-linked offence [14].

**Figure 5: Marijuana CEN Issued and Expiations Paid in South Australia, (1988-1999)<sup>244</sup>**



Source: Christie and Ali (2000)[15].

### Impact on Health Costs

According to a 2003 report, in 2002, one year after decriminalization of marijuana in Portugal, “outpatient first treatment demand data concerning 53% clients of the outpatient public network indicate that marijuana remains one of the main substance used (36%) in the last 30 days prior to the first treatment episode”. This figure was constant at 29% for the years 2000 and 2001. Moreover, marijuana-related deaths in the country accounted for 5% of all drug-related deaths in 1999. This figure rose to 6%, 11%, and 13% in 2000, 2001 and 2002, respectively. [16]

### Law Enforcement Costs

Whereas the experiences vary across countries, in Massachusetts, the United States of America, the decriminalization of marijuana was estimated to produce annual savings in law enforcement resources of 1.9% or US\$29.5 million [17].

## 4. Model Two: Full Legalization of Marijuana Production, Sale and Use, with State Control

In this model, the government controls the marijuana industry and is involved in all aspects relating to the cultivation, processing, and sale of marijuana. This option allows the State to set prices and have strict control of all levels of the supply chain. This approach affects both the demand and supply of the product. Legalization of the use of marijuana will likely shift the demand curve upwards, thereby altering upward, the quantity demanded at any given price. On the supply side, legalization will shift the supply curve downwards to the right, resulting in a fall in the price and a rise in the quantity demanded. However, under this approach, the State acts as a public monopoly, which exercises control over price and quantity supplied. With this, the authorities are able to influence the quantity consumed, through its supply and pricing policies.[4]

<sup>242</sup> These are fines paid by persons found in possession of marijuana (of an amount at, or above the allowed threshold) and marijuana-related items.

<sup>243</sup> These are issued by the police to persons found in possession of the allowed amount of marijuana and require the payment of a fine.

<sup>244</sup> 1988 refers to the fiscal year 1987/1988. The same principle applies to all other years shown in Figure 5.

### **The Legalization with State Control Experience**

The marijuana legislative policy of Uruguay, South American country, comes closest to this model. In 2013, the Uruguayan Government implemented measures designed to establish “*regulated market for the non-medical use of marijuana*” [18]. Under this marijuana regime, the price is set by the government and marijuana can be accessed via three means.

- 1) Personal cultivation of up to 6 plants per household with a maximum annual yield of 480 grams.
- 2) Marijuana membership clubs, where between 15 and 45 members can collectively grow up to 99 plants, proportional to the number of members, with the maximum annual allotment of 480 grams of dried product per year per member. These cooperatives must be registered with the government-created regulatory body, the Institute for the Regulation and Control of Marijuana (IRCCA). Production yields above the allotted amount must be turned over to the authorities.
- 3) Sales in licensed pharmacies where government registered Uruguayan adult residents can purchase up to 10 grams of marijuana per week [19].

Essentially, the government is the main supplier of marijuana over which it exercises control of the quality, quantity, and price of the product. Other feature of the marijuana regime includes:

- 1) The IRCCA has a right to inspect any property used in the cultivation, processing, distribution or sale of marijuana.
- 2) A pharmacy may only receive two kilograms of marijuana monthly in deliveries every 14 days and prescriptions cannot be refilled before 30 days.[18]

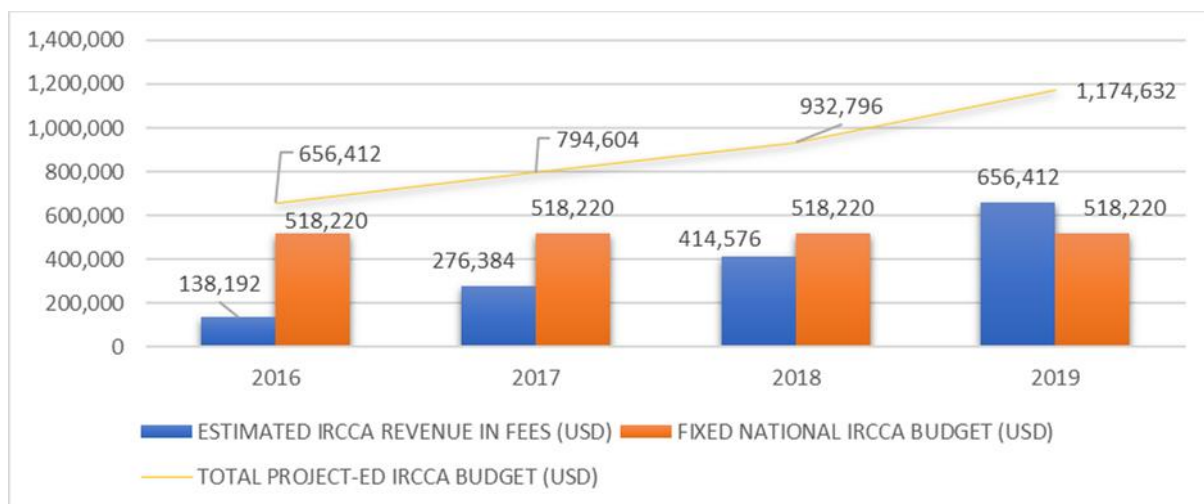
### **Sales and Price**

The initial launch of the initiative was met with some challenges that suppressed interests, but by the time the authorities implemented the last stage of the marijuana law, which included marijuana sales commencing in 16 pharmacies across the country, sales surged, and the number of registered users jumped from 4,900 prior to July 2017 to over 22,000 as of January 2018. Prices, while set at a fixed amount by the government, have seen some movement upwards; starting at US\$1[20] at the start of legalized sale in 2013, the price has increased to roughly US\$1.30 per gram in 2017 and again to US\$1.40 per gram by January 2018 [18].

### **Costs of Implementation and Enforcement**

Furthermore, a 2016 report by The Washington Office on Latin America (WOLA ) reported that the operating costs of the regulatory agency, the IRCCA, was US\$650,000 in 2016 and is estimated to grow to US\$1.2 million by 2020 [18,21]. From this total operating costs in 2016, of US\$138,192 were derived from marijuana-related fees, these fees are predicted to grow to US\$ 656,412 by 2019 and will surpass the budgetary allocations to the agency. See Figure 6.

**Figure 6: Budgetary Allocations and Estimated Fees to the IRCCA**



*Source: The Washington Office on Latin America*

### **Impact on Consumption**

The impact on usage since of the liberalization of marijuana in Uruguay has been notable. The National Drug Council 's (JND) National Household Survey revealed that between 2001 and 2014 the percentage of the population that used marijuana within the last 12 months rose from 1.4% to 9.3%, while those using within the last 30 days increased from 0.5% of the population to 6.5%. By 2015, 14% were habitual users and 23% were occasional users[21]. The impact on youth consumption of marijuana is also significant. Marijuana use within the past 12 months by secondary school students increased to 17% of the population in 2014 compared to the 8.4% reported in 2003, with 9.5% reporting they used marijuana within that month [21,22]. Other estimates show that marijuana smoking prevalence increased 16.7 percentage points between 2001 and 2014.

### **Impact on Crime**

Crime may have been adversely affected by the change in the legal treatment of marijuana in Uruguay. It is estimated that gang-related homicides increased from 23% in 2011 to 36% in 2015[21]. Moreover, a 2018 article noted that since legalization in Uruguay, drug-related crimes have fallen 20% [23]

However, it appears that the impact on such variable may vary over time, as an article published in 2016, indicated that 739 persons were indicted for drug-related crimes, in 2015, up from 538 in 2014. By 2016 that figure had increased to 1233. [23–25]. While one of the primary aims of the marijuana policy is to stifle the illegal marijuana market, National Board of Drugs (JND), National Household Survey revealed that 60% of users obtained their products on the black market [21].

### **Impact on Road Safety**

Vehicular accidents in Uruguay improved slightly, falling 4.51% from 24,400 in 2011 to 23,300 in 2015. The number of vehicle accidents fatalities dipped by 5.11% in 2014 when 538 fatalities were recorded compared to 567 in 2013. [21].

### **Impact on Government Revenues**

Government's tax receipts from marijuana activity fees as regulated by the IRCCA's are expected to climb annually, from an estimated 4 million Uruguayan pesos (US\$138,192) in (year??) to 19 million pesos (US\$656,412) in 2019. Projections put revenues from license fees at US\$1.3 million between 2017-2019.



## **5. Model 3: Full Legalization of Marijuana Production, Sale and Use within a Competitive Market System**

The economic fundamentals remain the same as those described in model two, where both the supply and use of marijuana are legalized. This approach will result in the elimination of all non-monetary costs for both the user and the supplier,<sup>245</sup> thus triggering an upward shift of the demand curve and an increase in the demand for the product, at a given price. This will be accompanied by a downward shift of the supply curve, which in turn leads to a fall in the price due to the virtual disappearance of those indirect, non-monetary costs, reinforced by competition among suppliers. The major difference between model 3 and model 2 is that unlike in model 2 where the government sets the price and quantity of the product, in this model, the price and quantity are determined by the forces of demand and supply.

### **Legalization within the Competitive Market Experience**

This is a popular model of marijuana legalization. Possibly the most known cases of this approach are that of Washington State and Colorado in the United States of America. Voters in Washington State approved the initiative (502) to legalize the sale and use of recreational marijuana in 2012, however, the actual sale of the product did not commence until July 2014.[26] Similarly, Colorado's legislation was passed in 2012 and sale began in January 2014.[27] The United States of America has a total of 9 States and Washington DC [28] that have legalized recreational use of marijuana. Other places around the world where recreational use of marijuana is legal include The Netherlands, Spain, and Uruguay. These jurisdictions/countries all have varying marijuana regulations, but most have similar restrictions and taxation approaches which are meant to raise revenues.

Whereas there are regulations governing how marijuana is sold, produced and consumed, the quantity supplied, demanded and the selling price are primarily determined by market forces, which have likely led to different outcomes when compared to the other models.

### **Prevalence**

Since the legalization of marijuana in Washington State, the data suggest that its prevalence in terms of usage has increased. Regular use by persons between ages 18-24 years has increased from 11% in 2011 to 15% in 2015. Of the children between ages 12-17 years, marijuana use prevalence is increasing faster than the national average, moving from 9.45% in 2011-2012 to 10.06 % in 2013-2014. By way of comparison, the national average in the USA for that same age-group fell from 7.55% to 7.22% over the same period. The overall trend is also similar. Marijuana use prevalence jumped 2.58 percentage points over the same period, with an average change per period of 11.92% [29]. Changes in prevalence in Colorado were a little more significant; increasing to 12.56% in the 2013-2014 period from 10.57% in the 2011-2012 period for the 12-17 years age group. Likewise, overall prevalence moved from 10.41% to 14.93%, an increase of 4.52 percentage points over the period 2011-2014. Moreover, average changes per period were 9.53% and 19.76% for the 11-17 years age group and overall, respectively [29].

### **Accidents and other Legal Consequences**

In Washington State, the percentage of traffic fatalities where the driver tested positive for recent marijuana use more than doubled in the year recreational marijuana sales began (2014)), increasing from 10.8% in 2013 to 22.19% in 2014[29]. In Colorado, marijuana-related traffic deaths where the driver tested positive for marijuana rose from 55 deaths in 2013 to 125 deaths in 2016, a 127% increase[30]. Still, other reports indicate a contrasting overall outcome, for example, the Colorado Department of Transportation reported a fall in overall traffic fatalities in 2014, a year after the full legalization of marijuana in the State of Colorado. According to the Department, within the first 11 months of 2014 there was a 3% decrease in the overall traffic fatalities ([31]In Washington State, that

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<sup>245</sup> This holds true as long as production and consumption occur in the legal market, as it is possible to have a parallel black market alongside the legal market.



proportion of marijuana-related traffic fatalities moved from 2% in 2013 to 8% in 2014, the year of legalization [26].

### **Impact on Healthcare Utilization**

The data point to an increase in the number of marijuana-related health incidence since its legalization in Colorado. According to a 2017 report, “*The yearly rate of emergency department marijuana-related visits rose 35 percent after the legalization of recreational marijuana (2011-2012 vs. 2013-2015)*”. Moreover, “*the yearly number of marijuana-related hospitalizations increased 72 percent after the legalization of recreational marijuana (2009-2012 vs. 2013-2015)*”.[30]. Additionally, Washington State showed an interesting trend since marijuana legalization. Between 2011 and 2013, there was an average of 155 marijuana-related calls per year to the Poison Control Center, however from 2014 to 2016 the average number of calls surged to 268, a 73% increase. Furthermore, “*Population-based rates of state-sponsored Substance Use Disorder (SUD) treatment for marijuana use among youths had been increasing by 5 percent per year from 2006 to 2012. However, from 2012 to 2015, those rates decreased by 13 percent per year. SUD rates for other drugs have been decreasing by nine percent per year from 2009 to 2015*”. [32]. However, as one report noted, much of these increases have been the result of “*poorly controlled use of [marijuana] edibles*”<sup>246</sup> among specific population groups, including the young, tourists and older members of the population[33].

### **Impact on Crime and Law Enforcement Costs**

In some instances, an increase in some marijuana-related crimes has coincided with the legalization of recreational marijuana in Colorado. Data from the Rocky Mountain High-Intensity Drug Trafficking Area (RMHIDTA) show that the 2013-2016 four-year average of marijuana highway prohibition confiscations in Colorado soared 43% over the 2009-2012 four-year average, the period preceding to legalization. Youth arrests for marijuana-related offences have also increased since legalization [30]. However, in Colorado, the number of marijuana-related charges rose 2.77% between 2010 and 2012. In 2013 marijuana charges fell 69% when compared to its 2012 values. Further decreases were recorded in 2014; in that year, marijuana charges fell by 30%, from the previous year’s value. Similarly, marijuana court cases fell 69% between 2012 and 2013, while a 46% fall was observed between 2013 and 2014 [34].

Meanwhile, in Washington State, marijuana-related incidents <sup>247</sup> decreased by 63 percent between 2012 and 2015. Moreover, of the criminal activities relating to marijuana, possession or use was the most common, the frequency of these activities decreased by 65 percent from 2012 to 2015. Likewise, marijuana-related incidence on the highways and roads fell 75% between 2012 and 2015 [32]. Moreover, while states like Oregon, Washington state Colorado and Maryland, in the United States, have legalized marijuana for recreational use, there is evidence that the black-market for the product still exists and continues to pose a threat to the success of the marijuana market in the legal states. A 2017 report by the Associated Press highlighted the fact that marijuana grown legally in Oregon, for instance, is often “funnelled” out of the state by black market dealers. This, the report stated, comes at a significant cost to the state[35]. Furthermore, a 2017 article by the National Post noted that the legal market in Washington State was estimated to make up only 50 to 65 percent of the total marijuana market, while in Colorado that figure is believed to have surpassed 70 percent. It is therefore evident that the presence of a legal market does not extinguish the black market but in fact, competes with same[36]. The article continued by stating that the legal market in Washington State

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<sup>246</sup> “Marijuana edibles are food items made with marijuana or infused with marijuana oils. Edibles may be an alternative to smoking or vaporizing marijuana. Edibles come in many forms, e.g. brownies, cookies, candies, including animal or fruit-shaped gummies, suckers and chocolates, and as beverages.” [41]

<sup>247</sup>“As defined by the FBI, an “incident” occurs when any law enforcement officer investigates a scene or situation, whether that investigation results in an arrest or not. Incidents involving multiple illicit drugs or other criminal activities are counted only once and are included in whichever category is listed first by the local law enforcement agency. The order used by those agencies is not hierarchical”[32].

began to capture market share from the black market, as legal marijuana prices began to align with those prevailing in the illegal market.

### **Impact on Price**

A 2016 report<sup>248</sup> indicates that, while sales volumes of legal marijuana in Colorado increased by 56.4% between 2014 and 2015, the value of these transactions increased by only 42.4% during the same period, indicating a fall in the unit price of the product. By way of an example, the average price of flowers<sup>249</sup> marijuana declined 8.9% between 2014 and 2015. The report estimates that legal marijuana prices will fall at a rate of 7.4% per year, on average, up to 2020 [37].

The price per gram of marijuana in Washington State has fallen significantly but has fluctuated since legalization. Starting from a high of US\$29 per gram in August 2014, the price plunged by 72% to US\$8 per grams by July 2015. A slight recovery followed when prices rose to US\$9 by April 2016 and then to US\$10 in June 2016 [26,32].

### **Impact on Revenues and other Economic Variables**

According to a 2016 report<sup>250</sup> by the Marijuana Policy Group, “because the industry is wholly confined within Colorado” marijuana-related spending, most of which transfer directly to the local workers and businesses, creates more output and employment per dollar than 90% of the industries in the state. This is so because of the small import component of the entire production, distribution and sale processes. [37].

It was indicated that over time the marijuana industry had matured and became organized, creating the need for more specialized services, including legal, consultancy and professional services that can fulfil industry specific demands. The Colorado experience has shown that although sales have increased significantly, increases in domestic consumption have been much more tamed, relative to the overall change. This outcome can be explained by the surge in visitor demand for the product. [37]

Moreover, the marijuana industry was responsible for a surge in employment, adding approximately 18,000 full-time-equivalent jobs, 12,591 of which were directly involved in the marijuana industry [35]. Furthermore, the State’s marijuana-related revenues have been significant both in Colorado and Washington State. It was estimated that Colorado’s receipts from marijuana sales and excise taxes topped US\$102 million in 2014-2015 fiscal year, the first fiscal period after legalization. This figure increased to US\$156 million in the 2015–2016 fiscal year [38].

Likewise, according to the Washington State Liquor and Marijuana Board’s annual report for the 2017 fiscal year, in the 2015 fiscal year, the state collected US\$ \$65,688,345 in marijuana revenues<sup>251</sup>. By 2016 that figure surged to US\$189,219,693, an increase of US\$123,531,348 over the previous year’s total. Moreover, 2017 recorded the highest revenue intake since legalization (US\$319,087,924), more than double the 2016 figure [39].

### **Cost of Implementation and Enforcement**

According to the Council on Responsible Marijuana Regulation, total marijuana taxes and fees in Colorado amounted to US\$ 102,395,176 in the fiscal year 2014-2015 and \$ 156,701,018 in the fiscal year 2015-2016. This indicates a net gain in both fiscal periods since to carry out its activities it cost The Marijuana Enforcement Division (MED)<sup>252</sup>, US\$5,149,028 and US\$8,064,469 in fiscal years 2014/2015 and 2015/2016, respectively [38]. Whereas the marijuana-related costs were not disaggregated, the total operating expenses for Washington State’s Liquor and Marijuana Board

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<sup>248</sup> “The Economic Impact of Marijuana Legalization in Colorado.”

<sup>249</sup> Marijuana flowers are the hairy, sticky, crystal-covered bits that are harvested and dried to be used as medication [36]

<sup>250</sup> “The Economic Impact of Marijuana Legalization in Colorado.”

<sup>251</sup> Revenues include taxes, license fees and penalties.

<sup>252</sup> The agency in charge of marijuana regulation enforcement in Colorado.

amounted to US\$34 million, US\$42 million in 2016 and 2017 respectively, this represents 18% and 13% of the total marijuana revenues collected in 2016 and 2017 respectively [39].

## 6. Summary of Legalization and Decriminalization Experiences

**Table 1 shows a summary of the experiences by marijuana liberalization in Table 1: Summary of Legalization and Decriminalization Experiences in selected impact areas.**

Area of Impact	Impact	
	Model 1	Model 2
<b>Price</b>	No significant impact on price.	US\$1 per gram in 2013 to US\$1.30 per gram in July 2017 to US\$1.40 per gram in January 2018. (URY)
<b>Arrests/Fines/ Referrals</b>	<p>10% points each, in year 1 and year 2 after decriminalization: Referrals for marijuana possession. (PRT).</p> <p>8% points after year 1: administrative sanctions (PRT).</p> <p>by 53% and 48% in year 1 and year 2 of decriminalization: marijuana expiations (AUS).</p> <p>6,100 marijuana-related arrests in 2011/2012, 85% of which were for possession/use (AUS).</p> <p>60 percent: Drug related-arrests (PRT).</p> <p>109 percent: number of people arrested and sent to criminal courts for drug law violations. (PRT)</p>	<p>20%: drug related crimes since legalization (2018 report)</p> <p>drug related crimes increased from 538 in 2014 to 739 in 2015 to 1233 in 2016. (URY)</p>
<b>Court Cases and other Crimes</b>	drug related incarcerations fell from 44% of total incarcerations in 1999 to 21% in 2008 (PRT)	13% points between 2011 and 2015: gang-related homicides (URY).
<b>Adult Prevalence:</b>		
<ul style="list-style-type: none"> <li><b>Lifetime</b></li> </ul>	<p>0.03% points, over the first 6 years of decriminalization (PRT).</p> <p>10 % points (14-40) over 20 years (AUS).</p>	<p>7.5% in by the second year of legalization: Habitual users (URY).</p> <p>16.7% between 2001 and 2014: marijuana smoking prevalence (URY).</p>
<ul style="list-style-type: none"> <li><b>Past 12 Months</b></li> </ul>	7.5 % points after 29 years of decriminalization (AUS).	
<b>Youth Prevalence:</b>		
<ul style="list-style-type: none"> <li><b>Lifetime</b></li> </ul>	5.69% points (16-18 years) in the first 4 years of decriminalization (PRT).	

**Table 1 shows a summary of the experiences by marijuana liberalization in Table 1: Summary of Legalization and D selected impact areas.**

Area of Impact	Impact	
	Model 1	Model 2
<ul style="list-style-type: none"> <li><b>Past 12 Months</b></li> </ul>		8.6 % points between 2001 and 2014, 1 year after legalization (URY).
<b>Stage of Initiation</b>	: Marijuana use began earlier in life (PRT).	
<b>Vehicular Accidents/Fatalities</b>	190 percent: the number of fatal accidents where the driver tested positive for marijuana. (Various US States).	4.51% between 2011 and 2015, 2 years after legalization: Vehicular accidents (URY). 5.11%, 1 year after legalization: Traffic fatalities (URY).
<b>Illegal Market</b>		60% of marijuana consumed was bought on the black market in 2014, 1 year after legalization (URY).
<b>Gov't Revenues/Expenditure</b>	1.9%: law enforcement expenditure (MA).	<ul style="list-style-type: none"> <li>Marijuana activity fees: US\$128,192 in 2016. Projected to reach US\$665,412 by 2019 (URY).</li> <li>Estimated license fees of US\$1.3 million between 2017-2019 (URY).</li> </ul>
<b>Health/Healthcare Utilization</b>	to 36% in 2002, from 29% in 2001 and 2000: marijuana-related first treatment requests (after use in the last 30 days) (PRT).	
<b>Cost of implementation and Enforcement of Marijuana Regulations</b>		Cost of running IRCCA was US\$650,000 in 2016 and estimated to grow to US\$1.2 million by 2020 (URY).

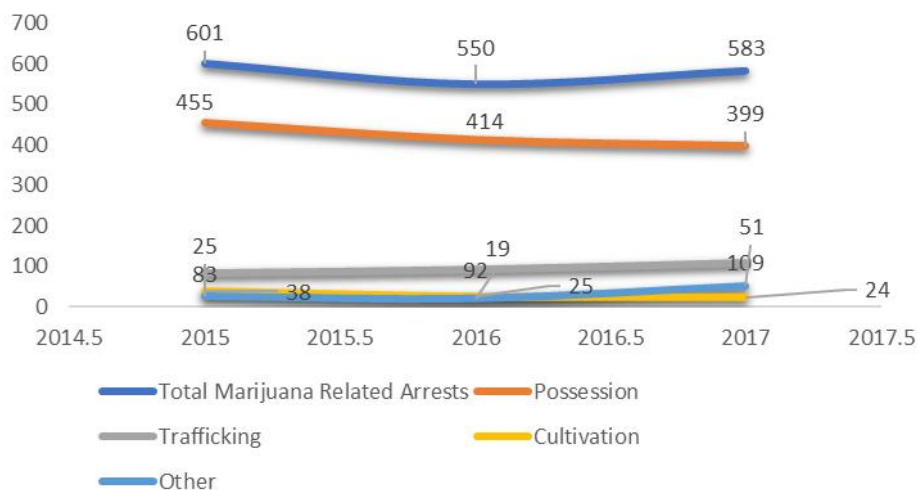
<sup>254</sup> Operating costs include costs for Alcohol and other drugs monitored by the agency.

Key: WA - Washington State; CO – Colorado; URY – Uruguay; MA – Massachusetts; PRT- Portugal; AUS – Australia. OR- Oregon - an increase in the variable - a decrease in the variable

## 7. Country Situational Analysis

### Law Enforcement and the Courts

**Figure 7: Marijuana- Related Arrests, by Category of arrests 2015-2017, Grenada**

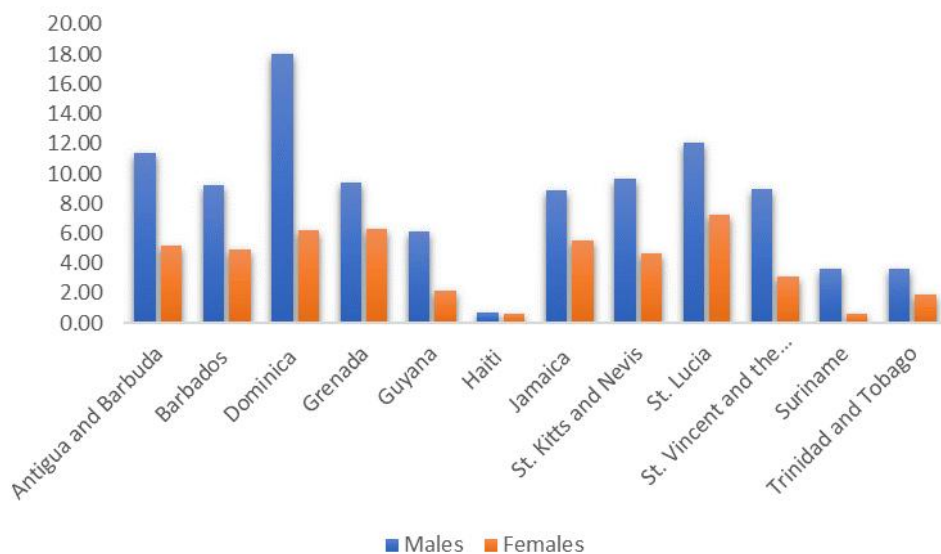


Source: Royal Grenada Police Force, Crime Statistics Division.

During the period 2015 to 2017, Grenada experienced a slight (3%) decline in the total number of marijuana-related arrests, falling from 601 in 2015 to 583 in 2017. Marijuana-related arrests in Grenada can be placed into four (4) arrests categories: Possession, Trafficking, Cultivation and Other. Of these, arrests for marijuana possession accounted for the largest share of total marijuana-related arrests, representing 76%, 75% and 68% in 2015, 2016 and 2017, respectively; with an average share of 73% over the period. See Figure 7 for details. In Barbados, 16.9% of total arrests were for marijuana-related crimes. Again, Possession occupied a significant portion (58%), of total marijuana-related arrests. Meanwhile, The Bahamas has seen a significant decrease in marijuana-related arrests between 2005 and 2015. The figures went from 3874 to 1337 arrests. In 2017 marijuana-related arrests increased to 1460, of which 838 were for Possession. On the other hand, Guyana has experienced a significant increase of 53% of arrests that were marijuana related. The percentage of those arrested due to possession went from 52.6% in 2013 to 27% in 2015. In all the countries, the offence of marijuana cultivation contributed the least to the total percentage of persons arrested for marijuana-related crimes. Regarding marijuana-linked court cases, data from Grenada indicate that there has been a decline in the number of marijuana-related matters being brought to court, falling from 468 in 2015 to 231 in 2017.

### Use among the Youth

**Figure 8: Past Month Prevalence of Marijuana Use among Youths, Selected CARICOM Countries, 2013.**



*Source: National School Surveys*

As seen in figure 8, males are more inclined to use marijuana than their female counterparts, with the past month use prevalence outpacing those of the females in every other country among those selected. Dominica recorded the highest male prevalence of 17.89% while Haiti registered the lowest (0.66%). The highest prevalence among females was found in St. Lucia (7.24%) and the lowest in Haiti (0.60%)

### Overall Prevalence

The prevalence of persons who currently smoke marijuana in Guyana and Jamaica in 2016 was 4.6% and 28%, respectively. In Barbados, that figure was between 6.2-8.8% (2006-2007) and in The Bahamas, the figure was 3% in 2017, with an average of 7.9 years since the respondents started using marijuana. Lifetime prevalence in Barbados rose from 13.5% in 2014 to 16% in 2016. Data showed a one-point increase between research years, 2006 and 2007. In 2006 the number of persons who use marijuana daily was 32.1%, whilst the weekly and monthly usage were 29.2% and 13.4%, respectively. Also, in 2006 18.2% of Barbadians admitted to using marijuana within the last 12 months and 5.3% used marijuana at least once for the year. In 2017, 17% of persons in The Bahamas said they used marijuana monthly, with 6.6% admitting having used in the last 12 months and 3% within the year of survey. In 2016, Guyana had a daily, weekly and monthly use prevalence of 1.9%, 0.8%, and 3.3%, respectively, while the percentage of persons who used marijuana within the past year was 9.8%.

## 8. Data Analysis and Results

Data were collected from various ministries and agencies, from four selected Caribbean countries, namely Grenada, Barbados, the Bahamas, and Guyana. The list of agencies includes the police service, the prison service, hospitals and other agencies that treat marijuana-related disorders, among others. The data collected were not common for each country, therefore the analyses vary across countries, both in terms of approach and output. This, therefore, limits the degree of comparability of the results among the countries. In fact, comparison of the result among the countries will likely lead to misleading conclusions and should be avoided. Furthermore, whereas costs and benefits are presented, it must not be assumed that these are the complete list of costs and benefits, rather the list of costs and benefits were heavily influenced by the availability of data in each of the countries. The



outputs are therefore meant to provide a sense of the potential impact, on selected areas, of the proposed adjustment to the legal framework regarding marijuana in the region.

As noted above, since there is no known specific proposal for the legalization/decriminalization of marijuana at the level of CARICOM, the use of models/models was necessary. Three models/models of legalization/decriminalization were examined, with 2018 being the base year and year of implementation, here assigned as year zero. The potential effects on the various variables in year one (2019) and year two (2020)<sup>255</sup> after the implementation of the legislative changes, were analyzed. The data gathered were used together with the experiences found in the literature to estimate the potential effects of the possible legislative change to the marijuana legal framework, in the selected countries. The results of previous studies, such as those of Manning et al 1989 who estimated the cost of accidents and external costs relating to marijuana use, served as valuable inputs into this process. Moreover, in instances where these estimates were produced in years prior to the study period, the figures were adjusted, using the inflation, to reflect today's prices.

Benefits	Model 1: Decriminalization of Marijuana Use, with Supply Remaining Illegal		Model 2: Full Legalization of Marijuana Production, Sale and Use, with State Control		Model 3: Full Legalization of Marijuana Production Sale and Use within a Competitive Market System	
	2019	2020	2019	2020	2019	2020
Averted lost wages from marijuana possession arrests and incarcerations (EC\$)	517,902	338,418	1,450,125	91,204	1,067,654	113,201
Cost averted by police marijuana possession arrests(EC\$)	527,267	86,134	1,476,347	211,029	1,086,960	196,099
Cost averted by the prison from marijuana incarcerations (EC\$)	311,531	203,567	872,287	54,861	642,221	68,093
Cost averted by the polies for marijuana cultivation arrests (EC\$)	-	-	325,966	45,256	239,993	60,447
Additional Revenues from marijuana-related license fees (EC\$)			92,099	104,822	95,250	114,300
Estimated additional Excise revenues from marijuana			63,401	70,651	62,094	68,222
Estimated Revenues additional from charges for	317,475	469,863				

<sup>255</sup> These years were chosen strictly for analysis proposes.

marijuana possession						
Total Benefit	1,674,174	1,097,982	4,280,225	577,823	3,194,172	620,362
Costs						
Additional cost of Marijuana abuse treatment requests	108,545	39,897	119,773	45,247	131,002	50,826
Additional costs from Marijuana related accidents	1,744,218	174,422	1,962,245	1,130,679	2,071,258	1,582,951
Total Costs	1,852,762	214,318	2,082,018	1,175,926	2,202,261	1,633,777
Net Benefit	-178,588	883,663	2,198,206	-598,103	991,912	-1,013,415

#### Grenada

As seen in Table 2, estimates of the potential benefits of changes to the marijuana legal framework using three different legalization/decriminalization approaches are presented. In this Grenada case, data were available to estimate seven potential benefits, these include; averted cost of lost wages from marijuana possession arrests, cost averted by the police from marijuana possession arrests and costs averted by the prison from marijuana

**Table 2: Estimated Costs and Benefits, Grenada**

Apart from the reduced costs, some potential additional revenues were estimated, of these were, additional revenues from marijuana-related license fees, additional excise revenues from marijuana sale and additional revenues from marijuana possession charges, in lieu of arrests. Total benefits ranged between EC\$ 620,362 for year 2 of model 3 and EC\$4,280,225 for year 1 of model 2. Data availability allowed for only two costs impacts to be examined; the additional cost of Marijuana abuse treatment requests and an estimate of the additional costs of Marijuana related accidents. Estimates of the costs of marijuana-related abuse treatment costs ranged between EC\$ 39,897 for year 2 of model 1 and EC\$131,002

for year 1 of model 3. The additional costs due to marijuana-related accidents were substantially higher than the additional abuse costs and were estimated to be between EC\$ 1,130,679 in year 2 of model 2 and EC\$ 2,071,258. Moreover, model 1 was estimated to derive the lowest total benefit and model 2 the highest. With total benefits of EC\$2.77 million and EC\$4.86 million, respectively. Model 3 was projected to result in the highest costs of EC\$3.84 million, followed by model 2 with EC\$ 3.26 million. See Figure 8

**Figure 8: Estimated Costs and Benefits, Grenada.**



### Guyana

In the case of Guyana, the available data was sufficient to enable the estimation of 6 potential benefits and 2 potential costs of the possible change of the legislative framework for marijuana in the region. These benefits include savings from marijuana-related possession arrests, incarcerations, and police activities, as well as estimates of the potential revenues that may be collected from marijuana possession fines in lieu of arrests, excise revenues from marijuana sales and activities licensing. The potential costs include marijuana-related external costs and vehicular accidents. Table 3 shows that across the three models, total savings from less marijuana-related incarcerations ranged between GYD\$93 million for model 2 in year two and GYD\$ 846 million also in model 2, year 1.

Benefits	Model 1: Decriminalization of Marijuana Use, with Supply Remaining Illegal		Model 2: Full Legalization of Marijuana Production, Sale and Use, with State Control		Model 3: Full Legalization of Marijuana Production Sale and Use within a Competitive Market System	
	2019	2020	2019	2020	2019	2020
Total savings from reduced marijuana-related activities	30,385,800	18,231,480	121543200	6077160	136736100	1519290
Total Savings from incarcerations	302,131,398	193,364,095	845967914.4	93056470.6	622843877	156876577
Revenue from marijuana possession fine	193,865	224,883				
Total marijuana related licenses			656,916	7,883	712,800	22,810

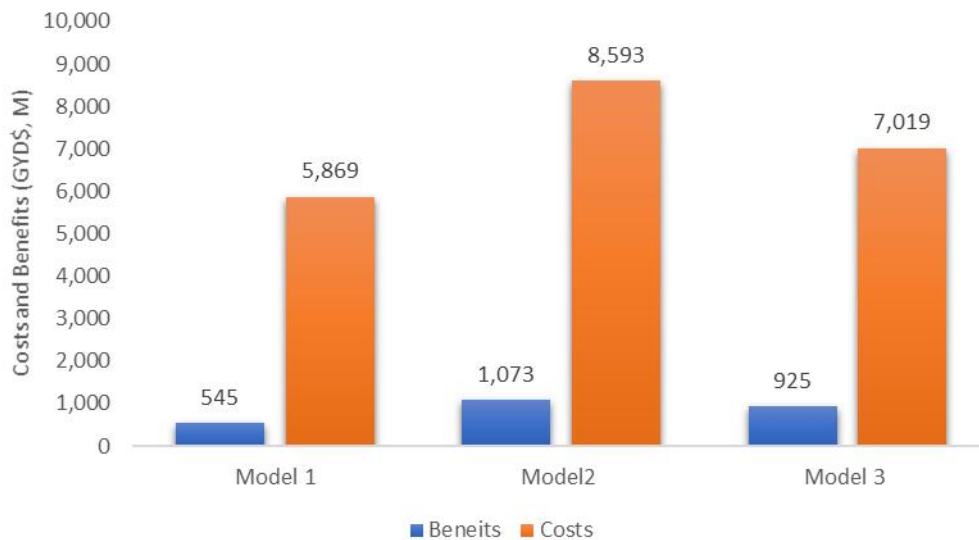
revenues						
Total Revenues from Excise Taxes			2,906,236	3,250,260	2,846,334	3,138,535
Total Benefit	332,711,063	211,820,458	971,074,267	102,391,774	763,139,111	161,557,211
Costs						
Total marijuana related health costs	5,492,376,233	181,326,252	7,931,069,525	375,542,518	6,530,005,151	255,430,064
Additional costs from Marijuana related accidents	189423915	6253674	273,530,832	12,951,905	225,210,199	8,809,404
Total Costs	5,681,800,148	187,579,925	8,204,600,357	388,494,423	6,755,215,350	264,239,468
Net Benefit	5,349,089,085	24,240,533	7,233,526,090	286,102,649	5,992,076,238	102,682,257

**Table 3: Estimated Benefits and Costs, Guyana.**

Potential excise revenues from marijuana sales were between GYD\$ 2.85 for model 3 year 1 and GYD\$3.25 million also in model 3. Estimated costs were significantly higher than the estimated benefits in this instance. Accidents costs ranged between GYD\$6.25 million in year 2 of model 2 and GYD\$273.53 million in year 1 of model 2; while external costs varied between GYD\$181.33 million in year 2 of model 1 and GYD\$7931.07 million in model 2 year 1.

Overall, model 1 was estimated to produce the lowest benefit of GYD\$545 million and model 2 the highest of GYD\$1,073 million under model 2. Costs were, however, also highest (GYD\$ 8,593 million) under model 3 and lowest (GYD\$5,869 million) using the assumptions of model 1. See figure 9

**Figure 9: Estimated Total Cost and Benefits, Guyana.**



### ***The Bahamas***

Like Grenada and Guyana, The Bahamas analyses were heavily influenced by data availability. Estimates of benefits were limited to 4 areas; excise revenues from marijuana sales, estimates of revenues from marijuana licenses fees, fees collected from marijuana possession and costs averted from marijuana possession arrests. As seen in Table 4, estimates of excise revenues from marijuana sales were between BSD\$ 180,930 for model 3 year 1 and BSD\$ 207,240 for model 2 year 2. By far, the largest benefit was costs averted from marijuana-related possession arrests, these ranged between BSD\$ 455,080 for model 3 year 2 and BSD\$ 3,416,060 for model 2 year 1. Moreover, much like the other countries, marijuana-related vehicular accidents costs were more severe than marijuana-related health costs, ranging between BSD\$5498 for model 1 year 2 and BDS\$ 248,475 for model 3 year 2. By way of comparison, marijuana-related health costs ranged between BSD\$2,239 in model 1, year 2 and BSD\$888,459 for model 3 year 1.

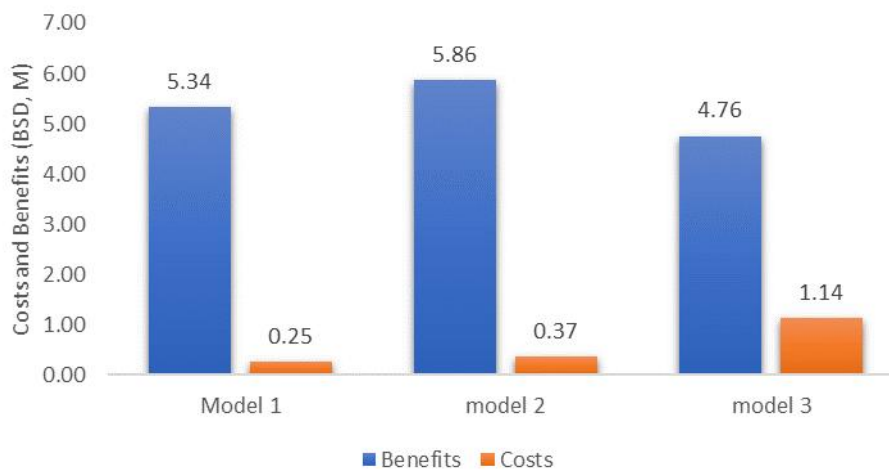
***Table 4: Estimated Costs and Benefits, The Bahamas***

Benefits	Model 1: Decriminalization of Marijuana Use, with Supply Remaining Illegal		Model 2: Full Legalization of Marijuana Production, Sale and Use, with State Control		Model 3: Full Legalization of Marijuana Production Sale and Use within a Competitive Market System	
	2019	2020	2019	2020	2019	2020
Excise revenues on marijuana sales			184,738	207,240	180,930	200,117
Cost averted from marijuana possession arrests(BDS\$)	3,233,057	1,589,112	3,416,060	489,726	2,515,075	455,080
Revenues collected from marijuana possession charges	311,531	203,567	872,287	54,861	642,221	68,093
Additional Revenues from marijuana- related license fees (EC\$)			308,651	328,516	325,925	369,110

Total Benefit	3,544,588	1,792,679	4,781,735	1,080,344	3,664,150	1,092,399
Costs						
Total marijuana related health costs	70,926	2,239	103,627	4,633	888,459	33,047
Additional costs from Marijuana related accidents	175256	5498	248,475	11,041	206,722	7,642
Total Costs	246,182	7,736	352,103	15,674	1,095,182	40,689
Net Benefit	3,298,406	1,784,943	4,429,633	1,064,670	2,568,968	1,051,710

In terms of total costs and benefits, model 3 yielded the lowest benefit (BSD\$4.76 million) followed by model 1 (BSD\$5.34 million). The highest costs were estimated to occur under model 3 (BSD\$1.14 million). Still, in all instance estimated benefits substantially outweighed estimated costs. See figure 10

**Figure 10: Total Estimated Costs and Benefits, the Bahamas.**



### **Barbados**

Barbados data allowed the estimation of only 3 benefits and two costs. The benefits include estimated marijuana-related excise revenues, costs averted from marijuana-related arrests and marijuana-related incarcerations. The costs estimates were marijuana-related external costs and marijuana-related vehicular accidents costs.

**Table 5: Estimated Costs and Benefits, Barbados**

Benefits	Model 1:	Model 2:	Model 3: Full
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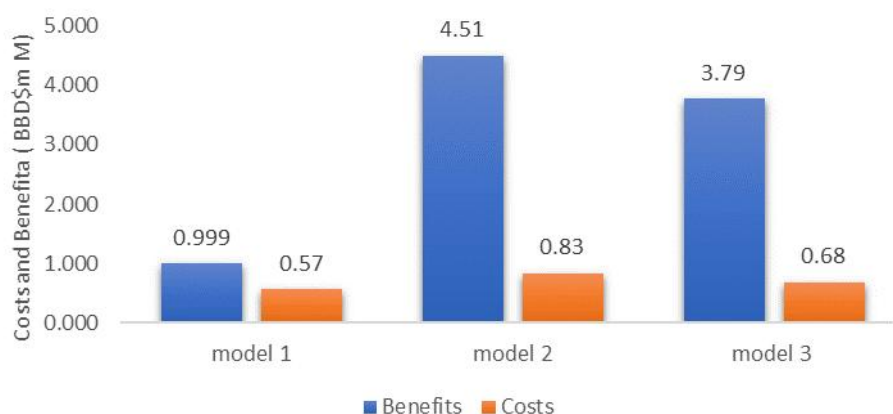


	Decriminalization of Marijuana Use, with Supply Remaining Illegal		Full Legalization of Marijuana Production, Sale and Use, with State Control		Legalization of Marijuana Production Sale and Use within a Competitive Market System	
	2019	2020	2019	2020	2019	2020
Excise revenues on marijuana sales			746,141	831,228	730,762	802,655
Cost averted from marijuana -related arrests (BDS\$)	557,198	171,673	835,796	572,242	1,114,395	286,121
Cost averted for marijuana-related incarcerations	191,786	78,555	1,503,601	18,194	815,048	36,274
Total Benefit	748,984	250,228	3,085,539	1,421,663	2,660,205	1,125,050
Costs						
Total marijuana related External costs	18,344	598	26,488	1,238	21,809	842
Additional costs from Marijuana related accidents	531,963	17,338	768,162	35,909	632,462	24,424
Total Costs	550,306	17,936	794,650	37,148	654,271	25,266
Net Benefit	198,677	232,292	2,290,889	1,384,515	2,005,934	1,099,783

The estimated savings from marijuana-related arrests, ranged between BBD\$ 171,673 for model 1, year 2 and BBD\$1,114,395 for model 3, year 1. Savings from averted marijuana-related incarcerations were also significant and were estimated to be between BBD\$36,274 for model 3, in year 2 and BBD\$1,503,601 in model 2, year 1. Marijuana-related excise revenues estimates (BBD\$831,228 ) were highest in model 1, year two and least (BBD\$ 730,762 ) in model 3 year 1. See Table 5 for more details.

Furthermore, as demonstrated by Figure 11, total benefits were most significant under the assumptions of model 2 (BBD\$4.51 million) and least notable when the assumptions of model 1( BBD\$ 0.999 million) were applied. The available data produced estimated costs that varied between BBD\$0.57 million and BBD\$0.83 million.

**Figure 11: Total Estimated Costs and Benefits, Barbados**



## 9. Conclusions

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As the region contemplates the way forward regarding the legal treatment of issues relating to marijuana, an important fact has become apparent. While 2015 estimates show that between 128.1 million to 237.9 million people worldwide consumed marijuana [1], in the region this figure varies substantially. The same can be said about the effects of the substance's use on law enforcement activities along with other aspects of the marijuana market. These realities highlight the fact that individual country situations are not homogeneous. Furthermore, the literature and the analysis have demonstrated that such policies can result in varied outcomes for each country. So that whereas some countries may experience significant benefits from a change in the marijuana legal framework, benefits that may surpass the resultant costs, there is no guarantee that others may realise the identical outcomes.

Savings and additional revenues may be significant, depending on the model of liberalization used, costs will also vary by the country and model. In the case of model 1 additional costs tend to be the lowest and so are the benefits in terms of savings and additional revenues. Models 2 and 3 have been shown to result in the highest benefits alongside the highest costs. Moreover, each model points to a different objective, model 1, decriminalization of marijuana possession, seeks to reduce the long-term legal fallouts of consumption of small amounts of marijuana, for the user, including youths. It also aims to improve resource allocation efficiency among law enforcement and the judicial system by no longer arresting and charging most marijuana users (most marijuana-related arrests and subsequent charges are for marijuana possession, see section 7 above). Whereas models 2 and 3 also achieve similar objectives, these models go a step further by including a revenue-raising component and greater freedom to grow, use and distribute marijuana. Model 2 allows for greater direct government control over the process than model 3. In each case, the impact on each of the variables of interest will be different.

Moreover, the region must decide on which objective is of interest to it, if any and adapt the appropriate model. In fact, as the literature disclosed, many of the countries and states that have legalized marijuana, started with some iteration of model 1 and have, over time, graduated to models 2, in the case of Uruguay, or model 3. This, therefore, highlights the point that countries need not have static objectives or feel compelled to move from its current state to a state of full legalization. In fact, Anderson and others (29) made a similar suggestion in their work on marijuana laws and their impact on traffic fatalities and alcohol consumption, where they stated that the movement from a state of illegal marijuana to one where marijuana is fully legalized, may be ill-advised, due in part to the predicted impact on price and marijuana use prevalence.

Furthermore, Individual country experiences, as observed from the literature, show that after any of the legislative changes, marijuana use is likely to increase. Again, this increase tends to vary depending on the model implemented. In model 1 that change ranged from 0.03% within the first 6 years of the legislative modification, to 10% after 20 years of the implementation of the new marijuana legal framework. In the case of model 2, overall prevalence (last year use) increased 7.5 percentage points and among youth, the figure moved from 8.4% in 2003 to 17% in 2014, one year after legalization. In model 3 regular marijuana use among persons, age 18-24 increased from 11% in 2011 to 15 % in 2015, two years after legalization.

What is more, there may be a need to be extra vigilant with respect to preventing the use of marijuana while driving, much like it is done with alcohol. The country experiences show that after legalization, there was a marked increase in the number of traffic fatalities where the driver tested positive for recent marijuana use, increases that have reach as high as 300%. It is however worth noting that this

increase, if not laced in the right contest can be misleading, in that marijuana stays in the system long after the immediate effects have subsided, so that a person testing positive for marijuana in the blood may not have used marijuana in days and may therefore not have suffered from impaired driving abilities at the time of the accident. This figure may thus be reflecting an increase in the number of persons using marijuana, but not necessarily an increase in the number of persons driving under the influence of marijuana.

Furthermore, implementation and enforcement costs may be significant, depending on the model used. These costs are likely to be lowest under model 1 and highest under model 2, where there is greater government intervention. Therefore, authorities may have some degree of control over these costs by adjusting the level of government involvement in the market.

In addition, the Literature highlights the fact that in some countries that have legalized marijuana, the black market for the drug remains vibrant. In fact, in 2014, one year after legalization, it was estimated that roughly 60 percent of the marijuana consumed in Uruguay was sourced from the black-market. This outcome is hardly desirable as it robs the government of revenues and diminishes the influence of the authorities on the market for the product, among other things. One of the main reasons for this outcome may be that the black-market price and to a lesser extent, product quality may be more favourable to the marijuana user. Therefore, an important component of any marijuana legalization thrust is a sustained anti-black market effort. As outlined above, when such efforts by the authorities are effective, the non-monetary costs of the product tend to remain high, leading to a higher priced, less competitive product. If this result is achieved, the incentive to purchase marijuana from the illegal market will be minimized.

The importance of time horizon in the assessment of the outcomes of such legislative changes, must not be understated. Many of the countries experiences show that the initial response (in terms of prevalence, arrests etc.) tend to be significant, but over time as the novelty of the new framework diminishes, the long-term response is likely to be more tamed. Likewise, as seen in the case of Washington State and Colorado, marijuana-related tax revenues have grown over time.

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