**ORAL PRESENTATION OF REPORT OF THE CARICOM REGIONAL COMMISSION ON MARIJUANA TO THE HEADS OF GOVERNMENT MEETING – Waiting to Exhale - JULY 6, 2018[[1]](#footnote-1)**

**Introductions and Mandate**

Honourable Prime Ministers and Presidents, the Commission represents wide and relevant regional expertise and inclusiveness in the scientific, medical, legal and social science fields, as well as representatives from the Christian and Rastafarian religious communities and of the youth. Such a Commission enabled your vision - an approach grounded in comprehensive research, objective, honest, evaluation and a balanced public policy framework which a regional Commission of independent, inclusive experts could achieve. Together, we analysed the several multi-faceted aspects of the cannabis/ marijuana question- the social, religious, legal, scientific and medical issues.

Honourable Leaders, you, the Leaders of the Caribbean Community, in establishing this Regional commission, challenged us to undertake an important task- to interrogate the issue of possible reform to the legal regimes regulating cannabis/ marijuana in CARICOM countries, conducting a  **rigorous enquiry into the social, economic, health and legal issues surrounding marijuana use and to determine** whether there should be a change in its current classification as an illegal drug thereby making it more accessible for all types of usage; and if so, what **legal and administrative** conditions that should apply;

The salient issue was, to evaluate whether the benefits to be derived from the removal of current restrictions outweigh possible harms of increased use.You also authorised and mandated us to engage “in an extensive consultation process with the public of the region to elicit their views.’’ This was your response to the increasing calls from the public, NGOs and other stakeholders in the region and amidst the fast-changing global environment toward law reform. Several states in the United States had decriminalised the use of marijuana. Uruguay, a sister OAS state, had legalised it. Today, the trend is even stronger, Canada being the latest to legalise. There was need to frame a regional response as opposed to a ‘go it alone’ approach and an uneven regional dialogue .

You recognised that coherence in legal and social policy among Member States might help illuminate difficult policy issues in non-partisan political ways. So this Commission could help cushion the negative impact of reservoirs of controversy from opposing stakeholders in the policy debate, divorcing this sensitive issue from the politically partisan stranglehold that, as we have seen, often accompanies calls for change, or reform. These include referenda, which, in the past, have often provided fertile ground for the ‘hijacking’ of important social issues by partisan agendas.

Although getting off to a late start because of funding issues,[[2]](#footnote-2) we undertook our task conscious of the responsibilities and imperatives which had been bestowed upon it. We trust that we have fulfilled your desire to capture the complex socio-economic, legal dimensions of cannabis/marijuana.

**Very Establishment Fuelled Law Reform**

We are aware that the very act of establishing a Regional Commission was a catalyst for change. It showed that CARICOM Heads were treating with the issue with the seriousness that it deserved and was the final push for some countries already deeply engaged. Soon after Jamaica went ahead with law reform. We visited both Belize and Antigua and Barbuda and they too made some law amendments. We have learnt from all of those first steps and hopethat our Report will further those processes also.

**Methodology Consultations and Research- Meaningful Democracy**

These national consultations in Member States and interaction with the region’s public proved to a significant aspect of our study and analysis and we believe, a meaningful exercise in democracy. 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.  We learnt that the law on cannabis/ marijuana /ganja/Indian hemp is demonstrably an issue of **d**eep social significance to Caribbean peoples.

The Consultations in 9 countries were structured in two parts, comprising focus group discussions of targeted stakeholders, in addition to public Town Hall meetings. The focus groups included a large number of the targeted stakeholders.[[3]](#footnote-3) These Consultations provide quick, lively and effective means to gather rich data and very frank views on the subject.

We did not get the green light to visit Grenada, Saint Lucia Trinidad and Tobago.[[4]](#footnote-4) However, we are confident that we have received views from those countries through formal submissions. Grenada provided an important submission from the police. St Lucia and Trinidad and Tobago have vibrant NGOs which sent us submissions. Even a petition seeking to legalise cannabis with over 9,500 signatures from Trinidad and Tobago was also received. I hope however, that those countries that we did not visit will be able to use this Report to initiate national discussion in their respective countries as we go forward.[[5]](#footnote-5)

Data was also obtained from national surveys conducted by CADRES, national household surveys, national school surveys and a self-commissioned online survey. We also designed a questionnaire for police in the region to gather data and we received many written submissions from the public, researchers and other interested person, both via hard copy and electronically.[[6]](#footnote-6)

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.

The Commission is, therefore, satisfied that it succeeded in harnessing wide and representative perspectives on legal policy on cannabis/marijuana in the region, which adequately informs this Report.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. While CARICOM countries are not homogenous, there are important patterns in the region.

**How did we Get Here?**

Today marijuana, cannabis, ganja, hashish, conjures up unsavoury, negative images and exists within a harsh, criminal based regime we label prohibitionist. Yet, the designation of cannabis/ marijuana as an unlawful substance and a dangerous drug is of relatively recent vintage**.** For most of our history, marijuana was a free substance, grown naturally and easily throughout the region. Indeed, many CARICOM citizens have memories of their grandparents and forefathers using cannabis/ marijuana in benign fashion, such as bush tea before the advent of prohibition.

In fact, cannabis/ marijuana has deep historical, cultural and religious significance to Caribbean peoples. It can be traced to several ethnic, religious and cultural traditions within Asia, Africa and the Middle East and from ancient times, was known throughout history as a substance with healing properties. It was introduced during the post-emancipation period to the Caribbean countries of Jamaica, Trinidad and Tobago and Guyana by East Indian indentured labourers. [[7]](#footnote-7)

Of course too, ganja or the Holy Herb, has deep religious, sacramental meaning for our Rastafarian community. The Commission heard repeatedly, of its medical properties which had been gifted by God as a natural, free, substance for the healing of all. At each of the Consultations, we were treated to quotations from the Bible to substantiate these claims, such as: “Every moving thing that liveth shall be meat for you; even as the green herb have I given you all things." (Genesis 9:3).[[8]](#footnote-8) Revelations, Exodus.

This long cultural association with cannabis perhaps accounts for the early scientific interest in the substance in the Commonwealth Caribbean. In fact, did you know that the region can boast of having the earliest cannabis/ marijuana medical patented products, a treatment for glaucoma (cannasol) developed by the University of the West Indies (UWI).[[9]](#footnote-9)

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

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 – **a legal fiction.** This is significant given that the harshness of the law was premised on this supposed egregious harm. There is credible evidence that its acquisition of an illegal status was also due to attempts to stifle competition with alcohol, which had just emerged out of prohibition itself. This classification, first in international treaties, was spearheaded by the US and was automatically followed domestically. Documents declassified and released to the public in 2002, illustrate that the US Shafer Commission, established by Nixon to cement marijuana laws, came to the opposite conclusion. Its 1972 Report to the US Congress, challenged this classification, finding that marijuana presented little harm and could “’not justify the intrusion by the criminal law into private behaviour.”’

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

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

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

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

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, DPP, 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 & 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, violate rights and lack legitimacy.** They also believe that prohibition is preventing the region from taking advantage of the economic opportunities in the cannabis industry and medical research and prohibiting access to medicine that can heal them more effectively and more cheaply than traditional pharmaceuticals.

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

The **groundswell of support** and enthusiasm for change is a significant indicator to CARICOM governments on the question of law reform. Notwithstanding, we felt that it is a necessary, but not sufficient condition to invoke change. We therefore interrogated and analysed the most up to date scientific, medical, legal and social data to substantiate these views. We 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. Indeed, in many respects the ‘horse has already bolted,’ since Caribbean nationals are already accessing marijuana as self-described “medical refugees” from other countries.

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

However, questions on adverse consequences are legitimate concerns which we 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.

**Lessons from Jamaica, Uruguay and Worldwide**

Moreover, the region has now had the benefit of observing the effects of law reform not just in countries around the world, 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, or in psychosis cases. Further, criminal arrests have decreased and Jamaica has begun to reap benefits from the cannabis industry. Significantly, the numbers of persons approving of law reform for various reasons have increased, between 70% and 90%. Clearly, even many of the sceptics have been converted. The problems being experienced relate to teething administrative issues such as licensing arrangements and the like. Consider also Uruguay **-**the first to legalise – judging from their performance at the World Cup – no problem.

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

**More than Merely Medical Marijuana – Compelling Social Injustices**

Recently, there has been increased buzz on medical marijuana even from CARICOM leaders, like PMs Mottley and Skerritt. However, I want to caution that this is only one dimension of the task. The medical and scientific issues are central in framing the legal questions here- Ultimately, however, it is the social justice issues that are the **most compelling** and cry out for change. We had differences of opinion among us, but always, a **common denominator** was our realisation of this need. This was something the **entire Commission** felt strongly about. Even those who worried about medical marijuana being presented as a panacea, or those who but worried about the capacity of our public health systems to deal with change, accepted that prohibition was not the answer and the deep social wrongs needed to be put right.

**Unanimous that the Status Quo needs to be changed**

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

**There are Adverse Consequences but Over-stated and no Basis for Criminality**

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 we acknowledge the need for more robust research with regard to some claims, we are 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, (leading to harder drugs), **addiction** and causative factors in relation to **psychosis.**

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

Of the potential adverse effects, the Commission is guided by the conclusive evidence that exists for the negative effect on the adolescent brain and on driving. We heard suggestions otherwise but we prefer to err on the side of caution. This is consistent for the advice for alcohol and other such substances – even coffee – it will make your head hard. Consequently, cannabis/marijuana use for children and young persons 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.

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, (UNGASS) UN Global Commission on Drug Policy etc.), the most influential of which have labelled the current legal regime “redundant” . The scientific data supports law reform to permit the use of marijuana, but in a controlled regulatory environment. A public health, rights-based, non-prohibitionist approach focused on high‐risk users and practices – similar to the approachfavoured 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.

Our conclusions are not based on normative claims. We recognised from the onset, that even if the scientific evidence reveals that there is some “harm’’ in using marijuana, this would not necessarily point to criminalisation, or prohibition. Rather, the inquiry had to 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.

Any short term public health costs may be offset by the revenues earned from marijuana industry.

**Basis for Criminal Classification is Flawed**

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

**Prohibition Regime is Ineffective and Counterproductive**

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

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

There is also widespread usage among children and young persons. In the Commission’s online survey 91% of youth said it was “easy” to get marijuana. Approximately 49% of the respondents admitted to Marijuana use. More recently, usage appears to have evolved into usage of marijuana products, especially ‘edibles’, like marijuana cookies. Recently, convent girls in Trinidad and Tobago were reported as selling Marijuana cookies. The young people spoke openly to us. Their views and situations were considered carefully in the Report. Possibly, prohibition and the fact that it is forbidden, encourages such experimentation. We need a different approach, grounded in education and persuasion.

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

Law enforcement personnel themselves complain about this ineffective, wasteful system and believe that their resources are better employed fighting serious crime. This was validated by our police attendees and questionnaires. They debunk myths that cannabis/ marijuana is a causative factor in criminal conduct and believe that most persons use for stress relief, to calm things down, not exacerbate aggression.

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

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

**Disproportionate, Inconsistent and Unjust Law**

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

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

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

**Discriminatory Law Enforcement Practices and Impacts**

The legal and social dimensions on the issue of marijuana are therefore, 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. The Commission listened to many heartrending stories of persecution and harassment from CARICOM citizens. Biases, discrimination and inequality are evident in every aspect of the administration of the criminal justice system relating to marijuana, particularly with regard to the poor, marginalised and the Rastafarians. We placed the issue of the persecution of Rastafarians at the core of our deliberations and we made special consideration for them in our recommendations.

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

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

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

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

**Emerging Human Rights Jurisprudence**

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

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

**Money Laundering**

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

**Economic Benefits**

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

The Economics Study that we commissioned illustrates that the highest financial benefits will come from a fully legalised model that is strictly regulated and the lowest benefit will come from decriminalising only. Prices inflated because of the black market will fall with liberalisation. Consideration should be given to establishing fixed prices and moderate taxes, taking care not to re-kindle 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. We metyoung persons who 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, also laying the foundation for a 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.

**Need to develop Caribbean Medical Research**

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

***Protecting our Hegemony***

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

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

The Way Forward – Public Health – Human Rights Approach

We found the usual terminology, legalisation - decriminalisation to be less than helpful. Sometimes decriminalisation is de facto legalisation.We believe that the end goal for CARICOM should be thedismantling of prohibition in its totality, to be replaced by a strictly regulated framework akin to that for alcohol and tobacco, which are harmful substances that are not criminalised. The status quo should not be maintained. However, we acknowledge 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 and **education** (note that the anti-smoking campaign has been effective).

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 inimical to the goals of Caribbean development, as outlined in the SDGs and endorsed by CARICOM. Consequently, there is consensus that all criminal penalties from marijuana laws should be removed.

This will also immunise cannabis/ marijuana sales and profits from the current trajectory where they are treated a**s 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. In Jamaica, the new law has resulted in increased obstruction for researchers and needs to be revisited.

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

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

Marijuana use for medical purposes should be legalised, but 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. The exception to the ban on public use should be for Rastafarians who should be able to practice their faith in public spaces.

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

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

While there is considerable consensus amongst Commissioners about the nature and thrust of law reform, in particular, the move away from criminalisation toward a responsibly regulated, public health/ rights-based approach, there is a divergence of views as to how best to achieve this shared objective. Accordingly, the Commission envisages a two-pronged route to law reform. On the one hand, it visualises a more liberalised regime for those states that have already initiated law reform, or which believe that they have the institutional capacity for the full removal of prohibition in the manner described. For others, a more incremental approach is envisaged. However, certain key denominators or minimum standards should inform both approaches, as outlined above. Several law reform models with varying degrees of regulation are discussed in the Report to guide CARICOM states.

A private/ public partnership model is envisaged which allows states to have important roles in regulation and control of distribution and production, including licensing, but is balanced enough to promote cottage industries and entrepreneurship. The risk of over-commercialisation, which could stimulate irresponsible demand, is discouraged. A central government run regulatory authority should be established with authority to issue licences, monitor production, including strains of cannabis, and quality of product, supervise distribution, supply and dedicated retail centres. This will also require more detailed regulations on production, supply, monitoring of product, marketing etc., as discussed infra.

**International Law Challenges**

I recognise that there are some fears about the international paradigm. International Drug Conventions which perpetuated criminalisation of cannabis have been labelled “redundant” and dysfunctional even by UN bodies and now lack the legitimacy and consensus to seriously challenge law reform. International treaty instruments derive their authority from consensus in the international sphere, thus the fact that so many countries, including important allies like Canada, have deviated from them, undermines their authority. The UN Global Commission acknowledged that this consensus “has fractured’’.

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

The Commission also recommends that CARICOM Member States work together to formulate a formal, regional position and to lend a persuasive voice to the calls for much needed reform of the relevant Drug Conventions; A regional approach and a clear, informed roadmap would also give credibility to policy reform initiatives. In addition, an establishment of regional social and legal policy with CARICOM existing within a strong unified position of solidarity is an effective way to interface with countries outside of the region and to meet the challenges of the existing international treaty framework on cannabis/ marijuana. CARICOM is better able to negotiate the tensions arising between redundant treaties and other requirements, not unilaterally, as Jamaica has been doing, but as a unified entity. It is not plausible that in the current global environment on cannabis, that the US or other developed nations have the moral authority to or, will act against the Caribbean if we liberalise cannabis.

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

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

**Honour to participate in building a genuine Democracy**

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

Now, at the end of our task, we thank you, the Heads, for giving us the opportunity to participate in this process. It was truly a pleasure and an honour for us to be able, through the wise decision of the CARICOM Heads of Government, to be the mechanism through which important voices were heard, and from the ground- up ideas and people-will expressed, the core of any genuine democracy.

We, the Members of the Commission present to you our Report. We hope it will be an incisive, impactful, dynamic tool for development which is 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. Law reform for marijuana can no longer be ignored. If we do not act, or if we delay further, Caribbean peoples will feel cheated – they are waiting anxiously to exhale, both figuratively and literally.

1. ***Professor Rose-Marie Belle Antoine,* Chair, CARICOM Regional Commission on Marijuana,** *DPhil (Oxon); LLM (Cambridge); LLB (UWI); Attorney-at-Law.* [↑](#footnote-ref-1)
2. The Commission had to acquire independent funding, (no funds) which delayed the process. Thus, although convened in 2016 and an initial consultation in June 2016 in St. Vincent and the Grenadines, we had to suspend the national consultations until June 2017, when the Commission obtained funding from the Foundation to Promote Open Society (OSF)) and operationalised its work. [↑](#footnote-ref-2)
3. 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 asresearchers, medical practitioners, Non-Government Organizations, practitioners of alternative medicine and advocates for medicinal use of marijuana. [↑](#footnote-ref-3)
4. We should have gone to Dominica, but unfortunately, Hurricane Maria intervened. [↑](#footnote-ref-4)
5. The Commission also received a request for a Consultation from Jamaica, but given that Jamaican had already amended its laws, this was not prioritised for funding reasons. [↑](#footnote-ref-5)
6. Desk Research was also undertaken to examine the relevant legislation, case law, related studies, some of which were provided by Members States, and other published materials. [↑](#footnote-ref-6)
7. It 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. [↑](#footnote-ref-7)
8. 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.” [↑](#footnote-ref-8)
9. West, Manley, Homi, J. ‘Cannabis as a Medicine’, Br J Anaesth, 1996, Jan 76 (1) 1-67. [↑](#footnote-ref-9)