



Ganja Licensing in Jamaica

Learning lessons and setting standards.¹

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Executive Summary

- In 2015 Jamaica decriminalised the possession of two ounces of cannabis and the cultivation of five plants per household for personal use, and allowed licensed cultivation and trade for medical and religious uses ...”
- The Dangerous Drug Act Amendment (DDAA) has dramatically changed some aspects of law enforcement and eased the tensions between the community and the police. Cannabis consumers, particularly young men, are no longer subject to police harassment.
- A number of cannabis dispensaries and herb houses have built up thriving businesses, but small farmers are struggling to reap economic benefits from the new opportunities in this emerging industry. The growth of integrated seed to sale businesses will preclude the opportunities for small farmers and processors and should be reviewed.
- The Cannabis Licensing Authority (CLA) has increased the speed at which licenses are being awarded, improved communications with applicants and willingly waives or defers fees for small farmers. But the agency by itself cannot overcome structural problems impeding small farmers such as landlessness, lack of capital and the requirements of the International Narcotics Control Board (INCB). The alternative development programme has stalled and needs to be better designed for purpose, funded and supported if obstacles faced by poor farmers are to be overcome.
- The medical market both domestically and in export markets is too small and not equally accessible to small players to provide an opportunity for the large number of illicit, small farmers. The DDAA is not a suitable instrument for rural development or poverty alleviation among farming communities. It is not merely the costs and challenges of acquiring a license but the small size of the domestic and tourist medical markets that set a strict limit to the ambitions for rural development
- Illicit markets continue to thrive, and cannabis continues to be widely available to local people and visitors alike. Law enforcement and defence forces continue to engage in violent eradication in rural areas, and corrupt of law enforcement officers, including extortion rackets of suspected cannabis farmers, was reported.
- The development of the medical cannabis industry is hampered by the lack of guidance and the lack of leadership by the medical authorities. Testing of cannabis products is expensive and the number of recognised testing facilities is restricted.
- The displacement of traditional cannabis strains that are adapted to Jamaica’s equatorial conditions, continues apace. Imported strains and hybrids with shorter cultivation spans and different THC and CBD profiles dominate production. No efforts are made to protect Jamaica’s “brand”, or to develop a high-end connoisseur market through any study and recognition of regional differences and strains.
- The most widely sold product range in the dispensaries are cannabis flowers. There is a limited range of extracts like oils and topical balms. There are only approximate indications of THC and CBD potency and no information on terpenes or other cannabinoids. No information is provided as to which conditions or ailments any cannabis product is used for. There is a disconnect between the medical screening that the cannabis dispensaries provide and the medical folk knowledge.
- Opportunistic interventions in the cannabis market by people who in the recent past had been at the forefront of cannabis prohibition, is heightening frustrations and the sense of injustice among small farmers.

- Questions have been raised about CLA expenditure for office rents and the accountability processes, as well as the overall cost of operating the Authority.

Recommendations

- Research on the impact that DDAA has had on police time, courts and prisons and calculate the savings to the public purse.
- Establish a national Ganja Seed Bank to conserve indigenous cannabis strains and protect the intellectual property of Jamaican growers
- Open debate about taking cannabis reform to the next step to normalise recreational cannabis consumption
- Share the experience of cannabis reform with other Caribbean countries and develop a regulatory framework for the legal (fair) trade in medicinal, cosmetic and other cannabis products, including options for an inter se modification within CARICOM member states.
- Keep the operation of the integrated seed to sale operations under review to ensure that independent licensed farmers can sell to dispensaries and herb houses
- Training of dispensary staff to ensure that there is a better understanding of the medical benefits of cannabis therapies and of the psychoactive effects of different cannabis strains

Cannabis Reform in the English-speaking Caribbean

“Law is the codification of customary manners and behaviour. It works in synchrony with morality, protecting society against deviance. Laws that depend solely on naked power of the state for their enforcement are repressive...Jamaica’s dilemma lies in maintaining a colonial order in a post-colonial state, a task that demands repression and must undermine the moral foundation of the independent state”

Barry Chevannes, 2004

For many years there has been disquiet in the countries of the English-speaking Caribbean about the disproportionate punishments for cannabis offenders, who in their thousands were being incarcerated for what were widely perceived as minor offences. In several jurisdictions, possession of small amounts was penalised with up to 40 years imprisonment, while wounding with intent could result in non-custodial sentences. The deep dissatisfaction with such blatant injustice and the criminogenic and destabilising consequences of a lopsided legal system are driving change across the region.

Reformers are inspired by the legalisation of recreational cannabis use in many states in the US as well as Uruguay and Canada, and by the growing appreciation of its therapeutic value. At the same time, there is concern that Caribbean people, who have long been advocating the medical and spiritual properties of cannabis, are being left behind in a fast-developing medical cannabis industry. To address these issues the CARICOM Conference of Heads of Government in March 2014 formed a Regional Commission on Marijuana. After an extensive consultation process they reported that:

“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.” (CARICOM, 2018:1). The commission moves on to recommend replacing cannabis prohibition with a regulated framework (CARICOM, 2018:5).⁴

Remarkable in this review is the sense of urgency and the frustration expressed by informants interviewed for the report. Patterns of cannabis consumption vary across the region and are most deeply entrenched in Jamaica, where some 40 years ago an interdisciplinary team of researchers coined the term “ganja complex” (Rubin and Comitas, 1975). There is also a long history of consumption in Trinidad (Littlewood, 1980) and large prevalence of use in St. Vincent. Barbados and Grenada, by contrast have different profiles. But across the Caribbean enforcing the drug legislation is the key driver behind large prison populations (Singh, 2004) and a bitter source of contention between community and the authorities.

Contested history

Jamaica, the most populous Commonwealth CARICOM nation, has long held a reputation for ganja famously promoted by such music icons as Peter Tosh and Bob Marley. Strains of cannabis first grown for fibre by Spanish colonialists in the 17th century, cross fertilized with the psychoactive *indica* strains introduced by indentured labourers from the Indian subcontinent in the 1850s.⁵ Since far smaller numbers arrived in Jamaica than in Trinidad and Guyana, there was far more communication and exchange with the population of African origin, who assimilated ganja (including the Sanskrit derived name), curry and religious notions (Chevannes, 2004).

⁴ The CARICOM report reports solid public support for reform even in countries like Antigua and Barbuda 62%, Barbados 63% and Grenada 61%

⁵ These new settlers filled the labour shortage following emancipation of slaves in 1838

Cannabis soon became implicated in the struggles for political freedom and social justice. Ratification of the 1913 International Opium Convention was seized on by Jamaica's Legislative Council to insert cannabis which at that time was of no interest to the international conventions, into the list of prohibited substances. Penalties for infractions were sharpened by changes to the Dangerous Drugs Law in 1924, 1947, 1954 and 1961, the latter establishing mandatory sentences of 5 years for cultivation and trafficking.

These measures were responses to cannabis being integrated into Rastafari, a social, spiritual and political movement indigenous to Jamaica, that rejects as corrupt many aspects of the colonial heritage. In the 1940s ganja was grown by the Rastafari community leader Leonard Percival Howell on the Pinnacle Estate. The authority used cannabis as a pretext to raid the settlement and harass its members. Relations did not improve after independence and in the Coral Garden incident of 1963, large numbers of Rastafarians were arrested, beaten and incarcerated following an altercation with security officers.

From the 1980s onwards successive Jamaican governments were pressured by the US into using paramilitary measures against ganja farmers and traders. Regular exercises known during the 1990s as Operation Buccaneer, involving air borne raids on farmers across the region became a regular training opportunity for US armed forces and regional allies (Griffith, 1993). Raids, supported by helicopters continue to this day, with different pretexts and rationales employed to justify this extraordinary level of violence unleashed against a vulnerable community.⁶

Jamaica leading the way to reform

In large part because of the tensions arising from the enforcement of prohibitionist laws there have been successive efforts to reform the drug control regime. As far back as 2000 the Ganja Commission led by Professor Chevannes submitted a series of recommendations including decriminalising the possession of small quantities and opening a space for medical and sacramental use. Though the ideas found wide support, Jamaican policy makers decided the time was not opportune for a major reform of cannabis policy. The day after the Ganja Commission published its report US ambassador Michael Keplovsky issued a statement warning that the US government would consider the proposals against Jamaica's obligations to the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Klein, 2001). Every year the US State Department assesses the extent to which countries have been "cooperating" with the US on drug control and can impose sanctions on countries that are seen to be uncooperative.

Two decades later this external pressure has been fading as some of the main development partners as well as other countries in the region have significantly changed their position. Since 2013 ballot led initiatives have legalized the recreational consumption, production and sale of cannabis in a number US states with no interference from the federal government. Then Uruguay pioneered the legalisation of cannabis use at national level, and the Organisation of American States began considering alternative regulatory scenarios in its ground-breaking report "On the Drug Problem in the Americas" (OAS, 2013). In 2018 Canada became the first G7 country and significant development cooperation partner to legalise cannabis and establish a regulated cannabis industry.

A small island developing state, like Jamaica, relies heavily on the international order, and has therefore to be in harmony with international partners. Without powerful armed forces of her own, Jamaica relies on the rule of law for her own protection and cannot afford to defy international

⁶ One reason provided is to impede the import of guns (US origin mainly) that are acquired from Haiti in exchange for cannabis (Jamaica Observer, 01/04/2019; INCSR, 2019). Wittbois (2020) claims that this forms part of a new criminal "flow" and that since "the cultivation of marijuana was legalized (subject to regulation)" the trade in marijuana has become a "potentially highly lucrative enterprise". This highly erroneous statement misrepresents the DDAA and the impact on cannabis production, provides no data on prices and profits, and speculates about the scale of the arms trade. According to Anthony Harriott, Haiti is the source of a mere 5% of weapons imported into Jamaica (Harriott, pers.com)

treaties. Hence, the People's National Party 2012-2016 government under Prime Minister Portia Simpson having scrutinised the provisions of the drug control conventions⁷ identified three areas where there was opportunity for reform: medical and therapeutic applications of cannabis, depenalization of personal consumption and in relation to religious and sacramental use.

The Minister of Justice, Mark Golding, who was driving the reform saw it primarily as a human rights issue and the correction of a historic injustice (Interview, MG, 28/01/2020). Even sceptics admit that "it was long in coming" (Interview, NCDA, 30/01/2020). What added urgency was the case of Mario Deane, a young man arrested for smoking a spliff and then beaten to death while in police custody, causing uproar in the country and throughout CARICOM (Gleaner, 2016).

In 2015 the Minister of Justice, Mark Golding, introduced an Amendment to the Dangerous Drugs Act that while adhering to the principles of the UN international drug control conventions made some significant changes, including:

- The decriminalization of possession of up to two ounces of cannabis for personal use and cultivation of up to 5 cannabis plants per household for horticultural and therapeutic purposes. It also provided for the expungement of criminal records for cannabis possession of quantities now considered decriminalised.
- Provisions for a regulated medical cannabis production and distribution system as medical use is provided for within the conventions
- Exemptions for sacramental use by the Rastafarian community.⁸ Further exemptions are made for the consumption, distribution and transport of cannabis for events in celebration or observance of the Rastafarian faith and culture, such as the Rootzfest.
- The creation of a Cannabis Licensing Authority to oversee the emerging cannabis industry. The new regulatory authority is comprised by representatives from key ministries, government agencies and faith-based organisations represented on the Board.

The implementation of the policy, its social impact and the reaction of the international community is widely watched across the English-speaking Caribbean. St. Vincent and the Grenadines, the most prolific cannabis exporter in the Eastern Caribbean, have already decriminalised possession of up to two ounces, allowed for consumption in private and religious spaces, and are mapping the chemical profiles of the traditionally cultivated cannabis strains. Antigua and Barbuda and Trinidad and Tobago have also decriminalised possession of up to 15 grams and Dominica's Prime Minister Roosevelt Skerrit announced in August 2019 that the decriminalization of marijuana for medical, religious and recreational use would be suggested to parliament. The St Kitts and Nevis National Assembly established a National Marijuana Commission that recommended the decriminalization of marijuana and a phased approach to the establishment of a marijuana industry.⁹ In 2016, the incoming Jamaica Labour Party government continued with the policy of its predecessor but made substantial changes to the organisation of the Cannabis Licensing Authority that included the replacement of staff and board members. Personnel changes were in part

⁷ 1961 Single Convention on Narcotic Drugs; 1971 Convention on Psychotropic Substances; 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

⁸ The freedom to practice religion is clearly an issue of domestic significance (Bone, 2014). The DDAA is the first legislative recognition of Rastafari in Jamaica.

⁹ In a landmark ruling that has yet to be recognised as such, *MacCabee vs the Commission of Police and the AG of St. Kitts and Nevis*, claim no.: SKBHCV2017/0234, that found that, even though the case was brought before the Court advocating that the use of cannabis for sacramental purposes was constitutionally protected, to which the Justice of the Organisation of Eastern Caribbean States (OECS) High Court agreed. The Justice went further by ruling that the overall prohibition of cannabis consumption and the overall prohibition to growing of cannabis for personal use was a violation to an individual's constitutional right to privacy. Activists in St. Lucia and Dominica are hoping that this forms a precedent for other OECS countries because the drug control legislation is so similar.

responsible for the delay in the awarding of licenses that produced frustrations among applicants, particularly small farmers. Further complications arose in the wake of the country visit by a mission from the International Narcotic Control Board (INCB), the watchdog of the UN drug control conventions, whose findings were reviewed at the 124th session (4-8 February 2019) of the board and communicated to the Jamaican government.¹⁰ Questions were raised about the legal basis of several provisions in the DDA amendment, including the sacramental use for Rastafari, access to medical cannabis, the threshold of amounts of cannabis that were de-penalized and the risk of diversion from cultivation (INCB, 2019).

On the other hand, there was a growing sense of frustration among applicants for licenses and small farmers who were hoping to transition into the legal economy. Farmers and cannabis consumers were reported to be frustrated by the administrative process and to “hold a negative attitude towards the CLA” (Emanuel et al., 2018).

In order to gain a better understanding into the licensing process The Honourable J.C. Hutchinson, MP, Minister without Portfolio at the Ministry of Industry, Commerce, Agriculture and Fisheries (MICAF) commissioned a team from the University of the West Indies (UWI) and the University of Swansea to review the licensing process in June 2019. He was particularly concerned to learn more about the roadblocks that were preventing small farmers from being issued with licenses and realising opportunities along the value chain of the emerging ganja economy.

Aims, Methods and Limitations of the Ganja Licensing Review

The team conducted a series of interviews and site visits over 2019 – 2020 to different locations across the country, including alternative development projects, ganja farms, both licit and illicit, processing facilities, medical cannabis dispensaries and herb houses. Meetings were also held with members of the Rastafarian community and ganja growers’ associations. Contextual information was obtained from interviews with various stakeholders including the National Council on Drug Abuse, Member of Parliament Mark Golding, who as Minister of Justice in the previous government had steered the amendment to the Dangerous Drugs Act through parliament and the former Deputy Solicitor General. Every attempt was made to capture the views of the widest possible number of stakeholders using different interview modalities.

Unfortunately, it was not possible to interview any of the current staff members of the Cannabis Licensing Authority. The information on the agency is therefore derived from responses to a written questionnaire, the information on the CLA website and public statements by its management team as reported in the media.

The submitted report is the result of careful discussion and analysis and is intended to inform the Minister as well as discussions in a UWI hosted workshop on cannabis policy that had been planned for April 2020 but has since postponed to a future date.

¹⁰ See the appendix for the INCB letter

Measuring the Achievement and Impact of Ganja Policy Reform

1. The licensing process

The most intricate challenge for the Jamaican government was putting into place a regulatory process for a sector that had for over a century operated illegally at the margins of society. The amendment to the DDA created a new specialised agency, the Cannabis Licensing Authority (CLA), located within the Ministry of Industry, Commerce, Agriculture and Fisheries (MICAF). With few models to follow, the CLA developed a unique and untried licensing process that distinguishes between different processes: research and development, cultivation (divided into 3 tiers according to acreage), processing, retail (with/without consumption facilities, and therapeutic use) and transportation.

The process soon ran into difficulties with causing widespread dissatisfaction voiced among “major cannabis industry players and interest groups” and a growing lack of trust in the agency.¹¹ The most salient issues revolve around the long processing periods for applications, the complexity and high costs of the application process and the number of obstacles that applicants had to overcome.

Turn-around times and objectives

The CLA application process was perceived by actual and potential applicants as complex, the required conditions onerous, and the time period for decisions, extremely long (Emanuel, 2018). Farmers interviewed on one location in June 2019 reported that they had been waiting for over a year without result and had had to destroy an entire harvest. The founder of Epican, a cannabis dispensary with outlets in Kingston and Montego Bay, said “I was paying for a lease on my Kingston premises for over 2 years before I was able to open the doors” (Epican interview 31/01/2020). Frustration with the slow pace of licensing was also echoed by a member of the CLA board (personal interview 26/06/2019). By May 2018 the agency had issued a total of 16 licenses- three for processing, three for retailing and 10 for cultivation (Serju, 2018)

Many stakeholders thought that the objectives of the CLA, as outlined on radio by the first agency director Greg Douglas, a Management Information Systems manager seconded from the Jamaica Bureau of Standards, were to facilitate foreign direct investment (Emanuel, 2018). An impression confirmed by the fact that license fees were quoted in US dollars, starting with “a non-refundable application processing fee of US\$300 per individual and US\$500 for a company business or cooperative.” (Graham, 2016). Amounting to \$30,000 to \$50,000 in Jamaican dollars, these were onerous amounts for a small farmer.

The smooth functioning of this new agency was impeded further by personnel changes following the change of government in 2016. To make matters worse, the entire board of directors was dismissed and when no new appointees were forthcoming, retained as a provisional “acting board”. During that time period, few licenses were being awarded, there were no visible trickle-down benefits and the agency, according to one informant was “lacking in vision”.

Improvements in the process

Since then, the process has been significantly improved. The agency has a staff complement of 56 which is expected to rise to 65 by April and has stepped up its work rate. By January 2020, 57

¹¹ Data collected by Machel Emanuel, UWI, from questionnaires, semi-structured interviews and focus groups at the re-launch of the Ganja Growers and Producers Association of Jamaica and SCARCE Commodity's Scarce Fest, Jamaica 4/20 Cannabis Cup held at the National Conference Centre on April 20, 2017, as well as the 14th Annual Stepping High Festival in Negril Jamaica held on March 4 and 5, 2017.

licences had been issued and 15 were pending. A further 259 had been conditionally approved (December 2019), meaning the applicants are verified and can now begin preparing their facility for inspection. A review of the Import/Export Regulations has been completed and a second draft is being prepared by the Chief Parliamentary Council, to lend the CLA the statutory authority to handle the import and export of cannabis products (Jamaica Loop, 2019)

For applicants, turnaround continues to be lengthy, but the process is now far more transparent. Most importantly, from the perspective of some applicants, was the regular communication they were now receiving from the agency. They were asked for documentation, and they were given dates when the agents would come to inspect the site. “The officer was very professional, and the communication was good. If they send you an email and you don’t respond they will follow up with a second mail and then you get a phone call“(Interview 28/01/2020).

The agency has also been accommodating in putting in place options for the deferment or waiver of fees for small farmers. It also has a tiered licensing system for applicants with different acreage of land. Licensing fees for small farmers are significantly less than those for large farms, but still too high for many. There is also a mechanism in place that allows small farmers to postpone payment until after harvest.

Schedule of cannabis licensing fees

TYPE OF FEE	TYPE OF LICENCE		ANNUAL LICENCE FEE
Application Processing Fees <i>(Non-Refundable; Payable after application is reviewed for completeness)</i>	Individual		US\$300 (Fee per application)
	Company, Business or Cooperative		US\$500 (Fee per application)
Licence Fees <i>(Non-Refundable; Payable when Licence is Approved)</i>	Cultivator's Licence	Tier 1	US\$2,000
		Tier 2	US\$2,500 per acre
		Tier 3	US\$3,000 per acre
	Processing Licence	Tier 1	US\$3,500
		Tier 2	US\$10,000
	Transport Licence	-	US\$10,000 for the first vehicle and US\$1,000 for each additional vehicle
	Retail Licence	Herb House	US\$2,500
		Therapeutic	US\$2,500
	Research and Development Licence	Experimental	US\$5,000
		Analytical Services	US\$5,000
Security Bond (Refundable) <i>(Payable when Licence is Approved)</i>	Cultivator's Licence	Tier 1	US\$1,000
		Tier 2 and 3	US\$2,000 per acre
	Processing Licence	-	US\$3,000
	Research and Development Licence	-	US\$3,000

Source: Cannabis Licensing Authority

Several informants acknowledged that there was a need for farmers to pool their resources into “cooperative” structures where they would share risk and revenues. This would mark a constructive

development from the current “associations” that are loose gatherings of interested parties but not corporate bodies.

At the moment farmers are not receiving any technical advice in how to establish such cooperatives. There are also no lenders to provide credits to support this process. Such efforts are reportedly being made in the Eastern Caribbean. In St. Vincent and the Grenadines, the Ministry of Agriculture has been supporting cooperatives, and in Saint Lucia the Ministry of Agriculture is providing technical assistance and training to a group of cannabis farmers, enabling them to register “The Herbal Co-operative” in anticipation of the changes in the cannabis law.¹²

There are, however, two (misnamed) “Alternative Development” projects that the CLA has been supporting in conjunction with the Ministry of Industry Commerce Agriculture and Fisheries (MICAFA). The first, in Accompong, in St. Elizabeth parish is difficult to access because of poor roads, the other is in Orange Hill, in Westmoreland parish.

~~These are based two locations in Accompong, in St. Elizabeth parish, and Orange Hill, in Westmoreland parish.~~ A further 10 acres have been allocated in a different location in St. Elizabeth for the surrounding community. Farmers in all three locations have been licensed to produce medicinal cannabis.

Having received the license and putting their experience to work, farmers have found it challenging to become commercially active. The requirements, particularly around security are onerous even for an Alternative Development project. For farmers who are just loosely associated these additional obstacles have proven difficult to overcome.

The need for compliance with the drug control treaties

Jamaica is steering a difficult course through the loopholes of the international conventions that it aspires to be seen to be in compliance with. In 2018 the International Narcotics Control Board despatched a delegation of observers to inspect and review the processes under way. The report included a number of queries and recommendations, including a request for clarification “how the alternative development project allowing “traditional small cannabis farmers” would allow your Government to secure that farmers would be subject to the same level of control that is being applied to the licensed cultivation of cannabis in order to prevent diversion” (INCB, 2019b).

Ensuring that Jamaica is in compliance is the responsibility of the CLA, a role that is possibly not always fully appreciated by applicants. A constructive relationship, regular reporting and being seen to respond to INCB instructions will go a long way to ensuring that Jamaica is not singled out for criticism at the Commission for Narcotic Drugs for not complying with international treaty obligations, as happened in 2016, when the INCB annual report noted that “the recent regulatory developments in Jamaica are not in accordance with the 1961 Convention, which limits the use of cannabis to medical and scientific purposes” (INCB, 2016:55).

This is important, because countries that in the past were reported to not be adhering to their obligations under the conventions have been subject to sanctions by for instance the United States government with severe consequences for ordinary Jamaicans. Ultimately it is the role of the CLA to prevent this from happening by imposing a regulatory regime with a strong symbolic function.¹³

On the ground, however, farmers are struggling to meet the requirements imposed. What they would question further is if the particular circumstances of their situation should not be taken into account. Could for instance community cohesion or geographical isolation not be listed as security factors in lieu of standardised requirements for hard fences and security cameras?

¹² Pers. comm Marcus Day, Interim Secretary of the Herbal Cooperative, 28/02/2020

¹³ Jamaica’s attendance of the CND has been sporadic, but prompted by introducing the DD(A)A, the government has applied for and been elected to membership, and is as of 2020 a CND Member, and will also establish a permanent mission in Vienna

Obstacles in the way

Security requirements: The CLA is concerned in preventing cannabis grown by licensees from (i) being stolen by third parties, or (ii) being sold onto the illicit market. Growers are therefore required to take strong security measures that go well beyond the capacity of small farmers. One applicant explained that: “The CLA are now telling us what cameras are needed so that all the farms are connected to their office. They specify where the cameras should be placed in the field, storage area, drying area, office. They say how big the fence should be” (interview 28/01/2020). For these applicants the process was becoming too daunting and they were on the point of giving up.

Even the government supported Alternative Development projects in Accompong and Westmoreland have been struggling with onerous security requirements that were reportedly made by CLA staff. In both locations farmers have been asked to set up a high perimeter fences and to install security cameras for continuous monitoring. The costs for acquiring these are forbidding, the installation requires significant inputs of labour, will then impede the free movement of farmers across the terrain not to speak of blighting the landscape. Community members were caustic in their criticism of this requirement, which they did not see as being needed given the circumstances of their location.

Both projects are situated in locations that are not easy to access among tight knit communities with a long history of ganja cultivation. Strong community support, the difficulty of access to the growing areas, and a severe approach to criminal justice mitigate the risks of praedial larceny¹⁴ and diversion to criminal markets. In Westmoreland one informant, with little regard for due process, explained how the severity of community ‘justice’ was posing an effective deterrent to anyone attempting to steal the cannabis. “If we catch a thief, we kill him” (Interview 02/02/2020).

It was also argued that the precautions were pointless because the only people with access to the land were project participants who were not going to do anything untoward. “We are not going to steal from ourselves”. For the farmers involved in the AD project there was a clear sense of ownership of not only the cannabis crop but also the land on which it was grown. In the case of Accompong it belonged to the community. For other applicants’ land ownership is the first hurdle that has to be overcome.

Land titles: Any applicant for a cannabis cultivation license must demonstrate that they hold the title to the land or produce a letter from the title holder stating their consent to cannabis cultivation. At this point the already tricky issue of cannabis licensing runs into the historic legacy of deeply entrenched injustice and social inequality. A significant proportion of the rural population, some estimate as many as a quarter, have no security of occupation. Under the law they are considered squatters, as the situation of liberated slaves, who following emancipation in 1833 “captured crown and marginal estate lands and land abandoned by planters, thus, making squatting institutionalized as a form of land tenure in Jamaica” (Tindigarukayo, 2017) Efforts to normalise the status of cannabis farmers are therefore running into a host of other unresolved and deeply embedded social problems that the cannabis licensing authority are poorly equipped to deal with.

For traditional farmers who have been growing cannabis on “Crown Lands” (State owned lands) for decades, the transition into the legal medicinal cannabis sector is blocked from the start. The only way to circumnavigate this dilemma is by shifting the entire inspection process from the site of production – the land and cultivation sites – to the product, that is the cultivated cannabis itself. This would require a redesign of the entire licensing process, which at this stage, would be difficult.

Bringing many of the traditional cannabis farmers into the system would then require addressing the rights of squatter farmers and possibly a land reform programme, consideration of which are well beyond the ambit of this review. But until these issues are addressed most cannabis farmers, will be locked out of the opportunities opening up in the medicinal market.

¹⁴ Theft of agricultural produce

Finance and expertise

Having produced satisfactory evidence authorizing them to grow cannabis the applicant then needs to raise the necessary finance. Small farmers, who own their land may still lack the required means to secure financing alone. Many have limited access to banking and may lack any formal credit history. Farmers, suspicious of losing their crop or liberty, are reluctant to come together and form cooperatives or joint venture companies. This concept of cooperation is challenging for people who have spent a lifetime engaged in illicit activities and simply lack the trust that is needed for working together. As an unintended consequence of the war of drugs, community solidarity has been corroded by the authorities paying off informants in exchange for information on where cannabis is grown.

These are areas in need of technical assistance. The CLA could employ agricultural extension officers (AEO) to support applicants across a number of different disciplines. AEOs, in addition to sharing technical information on cannabis cultivation could also be advising farmers on financial matters such as the benefits of cooperatives, where revenues and expenses are shared and how to access credit facilities. The financing for this scheme could be raised from cannabis taxes and license income.

Strains and breeds

AEOs would also focus on the cultivation itself, particularly on strains and breeds. At present, applicants are advised to purchase cannabis seeds from licensed cultivators some of which are conducting their own trials. The Director of Kaya explained that they were working with the University of Technology in stabilising the genetics of 36 different strains, both local and imported, with a view to protecting some of the Jamaican strains. Each crop is tested so as to identify the strains that perform optimally in the heat under the low altitude growing conditions.

Further cannabis cultivation trials are being undertaken at the Life Science Department at the University of the West Indies. But there is currently no coordinated effort at preserving the genetic heritage of cannabis strains that are indigenous to Jamaica and adapted to tropical conditions. They are hybrids from hemp plants grown by the British in the 18th century that cross fertilised with the sativa strains introduced by the Indian indentured labourers in the 1850s. Cultivars such as *Goshen* from the parish of St Elisabeth, *Cotton* from the highlands in St Thomas, and most famously *Lamb's Bread* originally found in the Black River area of St. Elizabeth and Westmoreland are ideally adapted to the geological and climactic conditions of the island.

Most significantly, they produce a particular psychoactive effect, a euphoric, anxiety relieving high on which "Brand Jamaica" is based. The chemical profile is produced by the diurnal light conditions of the tropics where the plants enjoy a longer flowering period in optimal temperatures that hardly vary throughout the year, to produce a moderate THC content, that is well balanced by CBD, and comes with a rich terpene profile. The high D-Limonene content, for instance found in several indigenous strains has known relaxing properties that are well suited for relieving anxiety and depression (interview Emanuel 28/02/2020).

Skills and techniques

Unfortunately, many of these cannabis strains are at risk, because many farmers across the island have been replacing indigenous strains with imported breeds from northern latitudes in response to the aggressive eradication campaigns as well as shifts in demand for higher THC containing strains, especially from tourists, and the arrival of foreign seed companies. Northern hybrids are much shorter in height and therefore more easily concealed, and have a shorter flowering period, again reducing the period at which the farmer is at risk. Over the years, many farmers have become accustomed to prioritising security over product quality. Their concern is with fast growth and speedy processing to minimize exposure to law enforcement or robbers. It produces a product that

often contains seeds, residue from fertilizer and possibly mould or traces of tobacco mosaic virus from poor storage (see below).

One study found that while most small farmers were now growing ganja hybrids which can be male, hermaphrodite or female, there was little knowledge or use of vegetative propagation even though it would produce only female plants and therefore seedless or sinsemilla ganja. Most farmers were not interested in applying to the scheme and would likely continue to grow and sell seeded mixed strain illegally (Jones, 2016). Heavy enforcement has contributed to the loss of technical expertise, that is now threatening the one comparative advantage attributed to the small farmer: access to indigenous land races with unique characteristics and farming skills (CI, 2019).

There is then ample opportunity for raising the quality and diversity of Jamaica's cannabis culture. The experience from applying tissue culture to improved pineapple varieties like MD2, Queen and Sugar Loaf, can be transferred to propagate female plants of single strain ganja varieties. This would facilitate the availability of standardised disease-free clones for distribution to farmers. There is furthermore, an urgent need at collecting and identifying the genetic material that is being bred by Jamaican farmers. A close, interactive relationship with farmers would facilitate the collection of indigenous expertise and genetics into a National Ganja Seedbank as a first step for registering strains, consolidating the brand identity and protecting the nation's intellectual property. To facilitate this, the licensing for research materials needs to become faster and less cumbersome.

2. Human rights

Reducing arrests: The erstwhile objective of the Minister who steered the DDAA through Parliament was the promotion of human rights. For decades the arrests and prosecutions of people for the smoking and possession of ganja had been one of the main sources of friction as the police were habitually arresting members of the Rastafari communities or any male with dreadlocks (Chevannes, 1995: 219). Processing petty cannabis offences placed a huge strain on the criminal justice system. It has been estimated that before the introduction of the DDAA, 15,000 of cannabis possession cases were processed by the criminal courts per annum (Interview, MG, 28/01/2020). Convictions, particularly for repeat cannabis offenders and prosecutions for non-payment of fines were a key driver for Jamaica's notoriously overcrowded prison system. With a prison population of 3,866 Jamaica has a ratio of 138 per 100,000 of the national population in 2016, an improvement on the peak of 188 reached in 2009 (5,163 prisoners).

For the individuals who are now spared the trauma of arrest, charge and conviction this is quite evidently a massive gain. Large numbers of people will avoid being saddled with potentially havoc-wreaking criminal records, while potentially thousands more are having their convictions expunged and their record restored. It is not an automatic process because the system was never digitalized and works only on the prompting by individuals. A new regulation prescribes that anyone applying for a police certificate will have cannabis possession and consumption convictions automatically removed. This measure alone removes a massive obstacle that has been blocking the path of many Jamaicans when looking for work and applying for a US visa.

It accompanies the most dramatic improvement in the quality of life experience of many who are now spared the humiliation of being stopped and searched by the police, and worse still, the brutalisation of a potential arrest with all that can accompany it. According to one informant, a young man with dreadlocks, the situation has become far better as he is simply no longer being subjected to routine searches. These encounters with law enforcement were a regular experience and cast a dark shadow over his everyday life.

Improving governance: Another way of regarding the abolition of this intrusion by the state into the private lives of the citizenry is as an improvement in governance. Removing the friction between police and a large section of the community may in the long run help improve this critical

relationship. An immediate gain has been the decongestion of courts and prisons and the release of police resources that can be redeployed elsewhere. A good indication is provided by data from the “Corporate Area Resident Magistrates Court which show a significant reduction in the court caseload. In 2014, cannabis cases were approximately 25% of all criminal cases filed. Since depenalization of personal use in April 2015, cases involving possession of small quantities or smoking of cannabis coming into that court have been reduced by over 3,096 (90%), with the overall flow of criminal cases into the court being reduced by nearly 25% relative to 2014. The reform is enabling the court to allocate significantly more of its time to disposing of its remaining case load.” (Golding, 2016:1)

Concerns and Corruption

Preventing net-widening: In Jamaica, as in other countries, the legal reforms are not supported by all sections of the community, including large number of criminal justice professionals who have spent their working lives combating cannabis. Experience from other countries have shown that reforms designed to ease penalties and reduce arrests, such as the drug courts, can in fact result to a larger number of people being pushed through the system as law enforcement officers lower the threshold at which they arrest (Lilley, 2017; Walsh, 2011).

To prevent this kind of net-widening effect via the simple transfer of established police behaviour patterns, the government has held back from introducing a cannabis ticketing system. It was feared that instead of easing off cannabis consumers, some police officers would be assiduously issuing cannabis tickets. That could in turn lead to a large number of offenders appearing before the court or worse, in prison, for non-payment of ticket (Interview, MG, 28/01/2020).

Though the ticketing system remains on hold some law enforcement officers are reportedly still arresting people for cannabis possession even if it is below the threshold. The actual cannabis is not produced at court because police argue that they do not have storage facilities. One informant, a Justice of Peace¹⁵ in the parish of St. Thomas said that half the cases before him were people charged with cannabis consumption. It was not clear whether the reason for these arrests were that the amount found on the arrestee exceeded the two-ounce limit, or if they were found in close proximity to a school. According to the informant, the procedure used for establishing guilt is the defendant’s previous record. If they have been arrested on four previous occasions or more, they are found guilty (interview 28/01/2020).

Informants also reported that it could be further noted that there was a sharp increase in fines for the use “of indecent language”, which was often used alongside the possession of ganja. Both offences have been used as a pretext for police violence and unlawful arrest. The informant thought that this was motivated by “revenue collection” and that these are an onerous imposition on the poor. The result may yet be rising incarceration for non-payment of fines.

Even more serious, however, is the continuing practice of extracting money from cannabis farmers. In Westmoreland, a parish on the western coast of the island, it has been alleged that members of the Jamaica Constabulary Force (JCF) and Jamaica Defence Force (JDF) are reportedly abusing the state of emergency and the knowledge gained from continued crop eradication exercises to rob farmers in their homes and along the roadside. Surveys conducted in the wake of anti-corruption programmes have established that having a “clean police force” is the greatest priority for households earning less than J\$ 50,000 (USAID 2015:60). The disturbing allegations need to be followed up, particularly when the depredations of rogue law enforcement officers impact on one of the designated Alternative Development Projects.

¹⁵ A member of the community of “unquestionable integrity” who serves in an honorary capacity as a judicial officer to uphold the rights of citizens and serve in the lower court, including in the Drug Court

Redressing Social Injustice

Germane to the allegation of police malpractice is the wider question of how successful the DDAA has been in addressing issues of Social Justice, particularly in lifting small farmers from the underground into the licit economy, as there are rising concerns about the equitable distribution of economic benefits. According to one observer, “In the countries and states where ganja has been legalized, we have seen the benefits disproportionately accrue to socially dominant groups – particularly along the lines of race, class, and gender” (Edmonds, 2020:3). Jamaican policy makers like Senator Kerensia Morrison have been vociferous in demanding that:

“Our small farmers, the little man, must not be left behind on this lucrative ganja ship. It is very important that ordinary Jamaicans are not marginalised as we capitalise on the benefits of the 'Green Gold' that is the emerging medicinal ganja industry. Small traditional ganja farmers, the same ones who were persecuted and who bore the full brunt of the law, the same ones who first believed in the power of the herb, the same ones who were seen as worthless and as criminals, must not be pushed aside by those who never believed in it, but who today have the big bucks to get into the industry. [...] The small farmer, the bushman, the Maroons, the Kumina practitioners, the Rastas who have long considered the holy herb as sacrament, must not be alienated now that the world has embraced it. They too must be the face of the reward from cannabis. We ought to create a niche for them, include them in the discussions, include them in a regulated framework where they can be trained in standards and monitored as per the requirements of the law and licensing authority” (Henry, 2018).

Policy makers in countries like SVG, Thailand and Colombia have also sought to harness the opening of a medical cannabis market to the economic development of peripheral regions or affected communities such as traditional farmers.¹⁶ Beyond the redistribution of wealth, there are two factors that lend poignancy to such restorative aspirations.

First, in Jamaica property rights are tied into a bitter history of deep injustice and massive exploitation. As discussed above, the large number of dispossessed squatters whose property rights were never clarified raises old ghosts from the plantation era. One is the question of unpaid reparations for the descendants of slaves, and the long-term legacy in marginalisation and expropriation that is playing out in the cannabis eradication campaigns. While the CARICOM campaign for reparations is targeted at former colonial powers,¹⁷ there is a potentially explosive debate within Jamaica about the distribution of wealth held by former slave owners as well as the assets claimed by an illegitimate colonial government. One argument has it that it is the descendants of the most marginal and slaves who now find themselves again on the wrong side of the law and shut out of the economy, and hence resort to cannabis.

Further, it is these farmers who over generations bred the strains that established “Brand Jamaica” and inspired the praises of her most famous musical ambassadors. The intellectual property rights for the genetics of such brands as “Lamb’s Bread” have never been claimed or patented and can therefore be commercialised by anybody.

Jamaica’s farmers not only developed the strains but paid a very high price for it. Cannabis cultivators have been arrested, their homes violated, property destroyed since the colonial era. The paramilitary incursions into the rural area by heavily armed combat troops supported by helicopters, have deeply traumatised the farming community. While the legal reforms in Jamaica

¹⁶ In Thailand the medical cannabis programme meant to “sustainably improve the quality of life for Thailand’s highland communities” Avinash Tharoor, Thailand Authorises Country’s First Medical Cannabis Programme, TalkingDrugs, 1 May 2018. <https://www.talkingdrugs.org/thailand-medical-cannabis-approved> and Colombia regulated the inclusion of small- and medium-scale growers “to bring those who were already growing the crop illegally into the licit market”. Rivera (2020:17)

¹⁷ “Ever since slavery was abolished in the Caribbean in the 1830s and in the broader Americas in the 1860s and 1880s, the victims of slavery and their progeny have been struggling for justice to repair the damages wrought by this most horrific of crimes against humanity. This struggle has ebbed and flowed over the decades of the 19th and 20th centuries but has always been consistent in the demands for restitution and recompense for the crimes of chattel slavery in the Western Hemisphere.” <http://caricomreparations.org/>

and elsewhere in the world are a welcome vindication, there is deep concern that small cannabis farmers will not be the economic beneficiaries.

Alternative Development

So far efforts by the government have focused on two so-called Alternative Development Projects. The name evokes programmes that have been trialled among opium farmers in countries like Thailand, Myanmar, Afghanistan and in coca growing countries like Bolivia, Colombia and Peru where alternative crops are offered to farmers as a substitute for the illicit plant. The most pertinent model, however, was from Bolivia, where development interventions were delivered around the regulated and licensed cultivation of coca. Without substantial investment in infrastructure, social, medical and community services they rarely succeed beyond lending a humanitarian alibi to the accompanying military intervention.

The two schemes, one inside a Maroon community in Accompong, St. Elizabeth and the other in one of the finest cannabis cultivation domains at Orange Hill, Westmoreland are slowly pushing ahead. Neither has become commercially operational yet. When the team visited Accompong the community reported that they had to destroy the first harvest and had since been obliged to set up a steel perimeter fence. The project in Orange Hill was also struggling with obligations to strengthen the security measures, as discussed above. A third scheme in St Elizabeth is yet to be activated.

All three AD projects are essentially large cannabis farms. They are quite different from the operations run by Kaya or Epican who in addition to growing cannabis, transform the harvested flower into oils or vapes and sell these at their own outlet. If, as is likely, the most profitable part of the market is those closest to the end customer then neither the small farmers nor the urban sellers who built and maintained “Brand Jamaica” are likely to be the main beneficiaries.

Displacing the small farmer?

It seems that in its current form the DDAA will neither be an instrument for rural development nor for restorative justice against a long discriminated and unjustly treated section of the community. This should be qualified because of the employment opportunities opening in the emerging medical sector and the organisation of events, such as Rootzfest. But the configuration of the medical market, much more than the regulatory requirements imposed by the CLA, form a formidable obstacle for three reasons: capital and know how, limited size of the market, the evaporation of any comparative advantage

- Small farmers have neither the financial capital nor the know-how to set up, organise and run a therapeutic outlet – be it a dispensary or a wellness centre.
- Any hope for transitioning illicit cannabis farmers into the formal economy have not properly understood what has been achieved by the amendment. The focus is clearly on *decriminalization, sacramental use* and *medical cannabis*. These very narrow licit markets that has been created by the current legislation cannot possibly absorb the cannabis produced on the estimated 15,000 hectares under cultivation in the country.
- Any intellectual property held by small farmers can be harnessed by well-funded commercial growers. Genetic material and cultivation techniques can be purchased and replicated under better conditions

There is then every reason to echo the concerns signalled by the CARICOM Marijuana Commission over large and possibly overseas corporations coming to displace small farmers who were currently depending on their livelihood (CARICOM, 2019:56). It has indeed been suggested that in St. Vincent, “the state has provided a form of protection to the growers by keeping ganja illegal. While this may not be intuitive at first, the reality is that St. Vincent and St. Lucia only have a comparative advantage in growing illegal ganja and cannot compete with the mega plantations

emerging in the United States that adopt advanced technology and economies of scale to produce a cheaper product.” (Edmonds, 2020:21). It has been argued, however, that there is scope for a Caribbean cannabis market with a division of labour and specialisation (Emanuel, 2018).

One of the most troubling prospects in the coming future is the continuation of aggressive eradication of illicit cannabis, with applause from the international authorities: “the Board would like to recognize the efforts made by your Government in the area of drug supply reduction” (INCB, 2019b:2), while at the same time nurturing the medical cannabis economy. What is particularly irksome to people criminalised and persecuted for their cannabis use is the licensing of a new cannabis company owned by a former Commissioner of Police and former Commissioner of customs, individuals who directly coordinated and enforced an aggressive war on cannabis that resulted in criminal justice contacts for so many Jamaicans.¹⁸

Communities that for generations have been championing the medical and spiritual value of cannabis, in the face of severe persecution are therefore at risk of being left behind even further. For the moment, Rastafarians and recreational users continue to enjoy the lifting of repression and the niche opportunities found in a more permissive regime. Yet, these gains will soon be assimilated and normalised, leading to questions asked why foreign investors and police officers turned corporate directors are now the economic beneficiaries of “Brand Jamaica while farmers and Rastafarians continue suffer persecution and remain marginalised.

3. Public Health

Impact on prevalence and consumption patterns

In Jamaica as in other parts of the Caribbean, the opposition to any easing of the restrictions of cannabis was usually justified on the grounds of public health. The legalization of cannabis, it was feared “could suggest the harmlessness of the substance or decrease perceptions of risks, which may lead to increased consumption” (CARICOM, 2018:11). Similar discussions have been held in the US states legalising cannabis, Uruguay and Canada, where studies suggest that legalization had insignificant effect on overall cannabis use (Anderson et al., 2019; OUD, 2020; Statistics Canada, 2019).

According to the National Council on Drug Abuse (NCDA) the number of adolescents who were being referred for counselling to address problematic cannabis use was rising. Whether this is attributable to a more relaxed attitude towards cannabis consumption among young people in the wake of the DDAA is unclear. Another tentative explanation is that by removing the stigma on cannabis, problem users have found it easier to admit to problems and access help. Yet, it is unlikely that consumption among young people is much affected by the diversion of medical cannabis. As long as the dispensaries charge prices that are ten to twenty times higher than those on the street they will only be selling to members of the economic elite and tourists.

It is furthermore difficult to see how the handful of licensed cannabis growers can have any impact on the Jamaican market which, according to US sources, is supplied by an estimated 15,000 ha of cannabis every year. In 2018 Jamaican law enforcement “eradicated 186 hectares (ha) of cannabis plants and seized approximately 20.2 metric tons of cured marijuana,” (INCSR, 2019:196). It will take a considerable rise in the number of cultivation licenses awarded to make a serious dent into this volume of illicitly grown cannabis.

Meanwhile Jamaica’s domestic demand is buoyant. According to the most recent available household survey from 2016, 28.5% of male respondents 12-65 reported annual cannabis use and

¹⁸ Danville Walker, former Commissioner of Customs and Owen Elling, former Commissioner of Police
Are directors of Global Canna which operates a 270,000 square foot facility in Montego Bay, one of the largest in the country. <http://www.loopjamaica.com/content/ganja-exporter-former-heads-police-and-customs-ships-canada>

23.5% current use (Younger-Coleman et al., 2016)¹⁹ in defiance of legal status. Whether this will be significantly affected by a small number of dispensaries remains to be seen. It will also be interesting to see if there are any fluctuations in the reported use of cocaine, where the numbers in a much lower order of magnitude with lifetime use of 0.4%, and where the impact of measures can possibly be reflected more accurately. It will be interesting to see if the decriminalisation of cannabis and the opportunity to access cannabis for therapeutic needs or by cultivating it will have an effect on cocaine consumption, considering that the latter is still available and Jamaica continues to be a hub for cocaine trafficking.

Regulating the sales of medical cannabis products

It is against the backdrop of demand, with close to one third of the male adult population reporting regular cannabis consumption, and the scale of supply from 15,000 ha of cannabis that the concern over diversion from medical cannabis dispensaries has to be read. It should further be noted that cannabis has been a folk remedy for generations, and both the scale at which these practices continue and the therapeutic knowledge that is held by people with no commercial interests remains to be assessed.

The NCDA staff did voice their concerns over inadequate regulation and monitoring of the cannabis dispensaries (interview NCDA, 30/01/2020). Their suspicions were supported by the release of two publications, one an NCDA designed field study conducted, the other an investigation by the newspaper *The Gleaner*, one of the leading newspapers in the country. Both conclude that there are lapses in the assessment process for medical cannabis patients.

According to one secret shopper working for the NCDA: “No medical consultation was done. I was advised that the night of my visit was a night where the store waived medical consultations. On any other day, a client would be required to register for J\$1,500, speak with a medical doctor on a Skype phone call, and then be allowed to make a purchase of any marijuana product that the store has in stock.” And the undercover reporter for *The Sunday Gleaner* was able to buy cannabis “without a doctor’s prescription or recommendation” (Robinson, 2020).

The test purchases attempted by the team working on this report were met with a different response. Staff in four of the pharmacies visited refused to make a sale without a medical consultation. Punctilious in their adherence to the protocol though they were, they did not have much knowledge about medical properties of the different strains or products. On one occasion, however, staff did recommend strains with a lower THC potency. It is certainly an area where further improvements could be made. There is still some way to go to realise the full potential for encouraging patients to switch to non-smokable forms of cannabis particularly oils and vapourizers.

So far the range of medical products available comprises: cannabis flower, oil and vapourizers but no edibles, as these have been blocked by the Ministry of Health. Surprisingly, perhaps, cannabis patients remain unable to buy legally a medical product that relieves the pulmonary system on the ostensible grounds of health. The precautionary principle that prompts the authorities to prohibit a product or behaviour until “proven” safe comes at a high cost as consumers are pushed into more harmful modes of administration.

A further point of concern for the NCDA was how medicines were being regulated and prescriptions being governed. These, it was pointed out, should rightly fall into the mandate of the Ministry of Health which assesses all products that are classified as oils, edibles, tablets or tinctures.

¹⁹ <http://www.cicad.oas.org/oid/pubs/JamaicaNationalHouseholdDrugSurvey2017ENG.pdf>

The impact of quality and better cultivation methods

What is rarely considered, however, is how the legal changes are impacting on the quality of product available now in the dispensaries and herb houses. It may be that improved production methods and the reduction of chemical inputs, be these pest and herbicides or fertilizer will reduce the levels of toxic residues. Longer growing periods, improved harvesting methods and post-harvest processing are also likely to be eliminating pests and moulds, and the impact of the mosaic tobacco virus, all of which negatively impact on human health.

Unfortunately, these tangible public health benefits will not be captured by the surveys that are being conducted as these are preoccupied with establishing general prevalence levels rather than the more nuanced aspects of consumption and questions of cannabis quality.

One case in point, is that a return to the indigenous Jamaican strains with their longer flowering periods and different cannabinoid and terpene profile will significantly change the chemical composition and the psychoactive effect of the cannabis. This may in turn impact on the number of people seeking treatment for cannabis related consumption disorders. Even though consumption levels are exponentially higher for cannabis than for other substances, with the exception of alcohol and tobacco, cannabis is associated with barely half of the admissions to Jamaica's three drug treatment centres (Interview NCDA, 30/01/2020).

4. Economic opportunity

According to one assessment the focus of popular attention has been on the economic development potential of the cannabis market as much as on the civil liberties and social justice outcomes (Davenport and Pardo, 2015). In Jamaica, expectations of economic benefits from the medical cannabis boon continue to be high. Like much surrounding the cannabis reform, this has to be put in proportion. Only medical cannabis can be sold legally, and while there is a fast-growing market and the potential for mark-ups is high, it is only a fraction of the still, illicit recreational market. Hence, while there are definite opportunities and benefits, these remain modest and do not accrue to small rural farmers. According to the CLA, cannabis trade among licensees excluding medical retail sales, amounted to US\$ 629,000 for the May – November 2019 period (Balford Henry, 2019).

It is widely believed that the country can profit from its “expertise” in matters cannabis and that there are opportunities from monetising the “Brand Jamaica” and securing foreign direct investment in the cannabis sector. All the time, however, the legal obligations imposed by the requirements of the international conventions severely restrict the room for potential operators.

Clarity about the law

Exultance over the prospect of about economic diversification, export markets and new employment opportunities (Hylton, 2015), has since given way to a more sober appraisal. The CLA Director of Communications has said that “Meeting the expectations of the general public can be difficult coming from a booming illicit market. Persons often don't appreciate the difference between this new international industry and the illicit market that existed prior, and the need for a highly regulated industry”.²⁰

There is still some uncertainty about the actual meaning of decriminalising cannabis possession and cultivation for personal use. At first many people were under the impression that cannabis has

²⁰ Bailey, Felicia. "CLA Response to Swansea/UWI Mona Questionnaire" Received by Shinique Walters Sunshine, 05/02/2020.

been fully legalised and did not understand the process involved in obtaining a license for licit cultivation. The legal ambiguity is compounded by the constant demand for cannabis from tourists, with an even weaker grasp of the legal situations, leading to inter alia the arrests of rising number of cruise ship passengers (Bucknor, 2018).

Developing standards

For a sector that has over many decades evolved underground the introduction of good agricultural practice (GAP) and good manufacturing practice (GMP) is a novelty. The Cannabis Technical Committee established by the Bureau of Standards Jamaica (BSJ) is due to finalise the standards for cultivating, processing, packaging and labelling, which should be launched by MICAF in the middle of March 2020²¹. There is much expertise among Jamaican farmers, to the point where scientists and agriculturalists from around the world “have flown great distances to Jamaica to sit with people in the bush to be schooled by Jamaican ganja farmers, who, in tending to the plants, spend a lot of time touching them” (Silvera, 2019). Yet, Jamaican farmers are not always working towards optimising the quality of their product.

What has not been fully recognised is how Jamaican cannabis has suffered under decades of persecution. For security reasons, many farmers stopped growing indigenous cultivars that were adapted to local growing conditions and replaced these with strains from the northern hemisphere. With a faster maturation cycle and of much smaller size they are more likely to escape to detection by law enforcement. Over the years, farmers have had to put a disproportionate effort into defensive measures instead of the improving the product.

Jamaican cannabis will therefore often contain large quantities of seeds and is poorly processed (Interview 01/02/2020). Farmers suffer significant post-harvest loss because of inadequate storage. After harvest cannabis should be kept under dry conditions, away from sunlight and under consistent conditions (Interview 04/02/2020). But for security reasons farmers leave it often out in the open where the sunlight destroys the chlorophyll and it may be exposed to the tobacco mosaic virus.

Poor quality will undermine the future potential of Jamaica’s exports. But this is still a long way off and will first depend on domestic changes in the potential export countries and amendments to the international drug control conventions that were designed to prevent the trade in controlled substances. It therefore pays to review more closely the actual market that can be divided into three different segments.

Market segmentation

Demand for cannabis products falls across a number of different market segments that can be clearly distinguished and will require different techniques and approaches.

(i) Exports: The Jamaican newspapers have reported on a number of consignments that have been exported to Canada and the Cayman Islands respectively. While these are valuable developments that underline the professionalism of Jamaica’s producers it is important to remember the small scale of this trade. Since only “medical” cannabis can be traded internationally the market is quite small, even though this is likely to grow with the increasing acceptability of cannabis as a medicine and new scientific knowledge coming on stream. But most countries, including Canada and Germany, two of the largest medical cannabis markets, are nurturing their domestic production. While shortages have occurred in recent years this is likely to turn out to be due to teething problems as the domestic production systems are being set up. In medical, as previously in illicit personal use markets, domestic producers are likely to substitute the imports,

²¹ Due to the COVID 19 epidemic this has been postponed.

and Jamaican product may at present find it difficult to meet stringent the required standard for Good Agricultural Practices and Good Manufacturing Practices.

(ii) Domestic markets: These are changing gradually, as members of the social elite obtain cannabis in the dispensaries. Yet, given the price differential, with licit, medical cannabis selling at 10 to 20 times that of street prices it is unlikely to impact the illicit domestic market.

(iii) Tourist market: Even prior to the DDA amendment many tourists were buying Jamaican cannabis, usually for experimental or recreational purpose. Invariably this involved an element of risk, as tourists would be coming into contacts with elements “criminalised” and be purchasing product of an uncertain quality. Now that the dispensaries and herb houses provide a licit access route, with medical consultation, safely produced products (allegedly), safe locations where cannabis can be purchased and consumed, this is much easier. There are, then, real opportunities for unlocking a large tourist market that was hitherto untapped. In addition, the high prices (relative to street prices) allow providers a much larger profit on each sale as the comparable street sellers.

It is difficult to assess how this is working out without accessing the accounts of the major companies that are not publicly traded and making comparisons with previous years. There are several operations such as Kaya Herb House, Epican, and Apollon Formularies Jamaica. Between them they are employing a couple hundreds of people in cultivation, processing and sales. More jobs have been created in the licensing process, compliance, processing, testing, security and surveillance and transport. Electricians, carpenters and other contractors are involved in building the different facilities. The reform has therefore been a micro boost for formal sector employment (interviews with owners of Epican and Kaya Herb House).

More opportunities are being realised in integrating cannabis into wellness services that is one particular growth market in the sector. Doc’s Place Negril, for instance combines cannabis applications with a range of treatments and services.

In addition, there are a number of unlicensed operations that are openly selling cannabis products, including edibles, without any pretence at medical screening, since they have been running for over a year at least, they have some sort of stability. It is unclear the rationale of the government authorities, that allow these establishments to operate in violation of the licensing regime.

For the medical cannabis industry to remain in compliance with international treaty obligations the operators have to temper their profiteering instincts and comply with the requirements of the regulator. The dispensaries are strictly speaking for medical benefit only, and if they become outlets for non-medically endorsed use, the CLA will be forced to take action and close them down. The country is under close international scrutiny and has little choice if it wants to be in compliance with international law. According to Mark Golding “we are dancing between the raindrops of the conventions” (Interview, MG, 28/01/2020).

Foreign Investment

The cannabis sector is certainly successful in attracting international investment and two of the larger, well organised dispensaries visited were partnering with international investors. Apollon Formularies Jamaica in Negril is a joint venture between the former General Secretary of the opposition People’s National Party, Paul Burke, and the United States-based physician, medical researcher and entrepreneur Dr Stephen Barnhill (Medley, 2019). The Epican group, with dispensaries in Kingston and Montego Bay is a joint venture between two Jamaicans with 51% share and the Green Organic Dutchman the other 49%, a company registered on the Canadian stock exchange.

While Jamaican law at present provides for a minimum of 51% of Jamaican ownership there is a risk of ownership being lost to overseas investors who may be in a more powerful position and able to win over minority shareholders. There is also the possibility of expatriate Jamaicans being treated as nationals even though their focus may be on developing business elsewhere. It is not

clear whether this really poses a risk at present but is something that will need to be watched as the sector develops. Of particular interest for national economic development is the re-investment of profits in Jamaica, rather than repatriation overseas.

Banking challenges

As in other countries, the banking of cannabis proceeds is challenging. Banks are currently not accepting funds derived from cannabis related enterprises for fear of falling foul of US federal legislation that would jeopardise their international financial transactions. So, the cannabis business, even though medical, is a cash-based business. This is a serious structural problem that further exposes the dependency of Jamaica, indeed the entire region, on political processes in the US. Efforts at normalising banking regulations for cannabis businesses in US states where it has been legalised via the Secure and Fair Enforcement Banking Act (SAFE), were successful in the House of Representatives but have stalled in the Senate, leaving the issue unresolved.

The inability to bank cannabis proceeds is a further obstacle in the way of small businesses, who cannot push funds through other business operations. It also provides a security risk, as the high cash holdings of cannabis dispensaries are a potential target for robbers. One ironic consequence is the way that taxes are settled. According to the owner of Epican he has to go into the tax office in person to “pay the tax of 700,000 in cash” (interview 31/01/2020).

Nowhere is the hegemonic dominance of the US more apparent than in this banking dilemma. National sovereignty extends only as far as its economy can function in an interdependent financial system exposed to policy decisions made by US national agencies. Even as the president of the Caribbean Development Bank acknowledges that cannabis is a legitimate industry “as long as it remains within the law”, this does not enable the region to mainstream it into its national economy.²²

Integrated businesses

All of the three dispensaries either do or aim to control their own production. Apollon, has no cultivation license at present and obtains its cannabis from the Apollon Kannabiz Collective, a community of local growers. Epican and Kaya Herb House grow the bulk of the cannabis themselves and supplement with purchases from licensed growers. This allows them to control the quality of their product, to ensure for instance that product is organically grown and of the right strain.

For small farmers, there is a risk that a small number of retailers dominate the market. One informant worried that the cannabis sector could end up with a model similar to that of an “All-inclusive hotel”. Where large corporations retain the value addition at each stage and repatriate the profit. For Jamaica the sole benefit would be the employment of a given number of staff and the receipt of sales taxes.

Ancillary services

Patients attending a cannabis clinic for the first time have to go through a medical consultation with a Jamaican doctor, usually by Skype or telephone. Epican in June 2019, for example had 12 doctors on standby and charged J\$1,500 (US\$ 10) for a five-minute consultation.

No information was collected on the security services, but researchers were told that that any field planted with cannabis had to be protected by iron fencing and by security cameras. These cameras have to be connected to and monitored by one of the private security companies that have become

²² <https://barbadostoday.bb/2020/02/12/cdb-to-decide-on-financing-for-marijuana-industry/>

deeply involved in the cannabis industry. They provide the hard defences for the field itself. But also organised the transport of the harvested and processed products for which a license is required.

Ironically it is these security companies, often run and staffed by former law enforcement officers, who are among the biggest financial beneficiaries in the medical cannabis sector, providing a range of legally required services.

Conclusion

Our findings conclude that the DDAA has delivered substantive benefits that are unevenly distributed across different thematic areas and population segments. Most pertinent is the immense improvement the policy has made to the human rights of a very large section of the population who no longer need to fear arrest, prosecution and punishment by the authorities.

Lifting the heavy hand of the state from cracking down hard on a regular, socially accepted activity has massively augmented the quality of life.

Directly linked to this is the positive impact on the quality of governance in Jamaica as the criminal justice system has been decongested after thousands of petty cannabis offences have been removed. Concurrently the relations between police and community are set on a path of improvement. By erasing the contradiction between the legal status and the widespread habit of cannabis use it has helped to consolidate the legitimacy and moral foundation of the Jamaican state. Jamaica is now well poised to better allocate its resources towards socially approved priorities, rather than in pursuit of policies designed by former colonial powers and promoted by international partners.

A number of actors are reaping concrete economic benefits that have not been fully exploited as yet. At the moment the greatest benefits are accruing to a small number of cannabis entrepreneurs in the tourist industry, and possibly the private security agencies and the Cannabis Licensing Agency itself. A few hundred jobs have been created in cannabis cultivation, the cannabis hospitality and retail industry, in processing and packaging.

The impact of public health is yet to be established. The rise in harm from a possible rise in the smoking of cannabis flower has to be balanced against the health benefits gained from the higher quality of medical cannabis, the ease of access for patients, and the corollary in terms of a potential fall in the consumption of other illicit substances and any shift from smoking cannabis flower to ingesting oils.

Yet, it is important that the limitations of the market are recognised. Medical cannabis accounts for a fraction of wider cannabis use, and this sets an effective barrier precluding the entry of most currently illicit cannabis producers into the licit market. Exports markets will not close the gap with the supply surplus because most of the large economies – US, Canada, UK, Germany – are developing domestic medical cannabis products.

The bulk of cannabis product produced by the estimated 15,000 hectares currently under cultivation will therefore continue to feed into illicit markets. It is laudable to provide support to particular communities through dedicated interventions, such as the Alternative Development Programme in two locations and possibly, by offering credit facilities and extension services. Yet, the promulgated measures are in themselves insufficient to overcome historic injustices going back to the pre-emancipation era, questions of landownership, and structural poverty.

To help lift these illicit farmers out of poverty, more fundamental changes are required, that address their landownership and the legal status of the crop.

To help lift these illicit farmers out of poverty, more fundamental changes are required, that address their landownership and the legal status of the crop. The most effective way of formalising cannabis farmers is by regulating the non-medical production, distribution and consumption of cannabis.

As political pressure and threats international sanctions have shown in the past, this is a difficult step to take for a small island country with a fragile economy. The cannabis policy trend in North America and globally, however, offers ever greater safety in numbers. It is now possible for Jamaica and other Caribbean island states to follow in the footsteps of US States, Uruguay and Canada, that have already legally regulated their cannabis industries in spite of breaching the international conventions; Mexico, New Zealand and Luxembourg, among others, consider doing the same. Jamaica can join that growing group of countries and explore together how best to resolve the resulting treaty breaches.

In the meantime, the reforms as they stand are insufficient in themselves and the measures taken through the DDAA inadequate for promoting a pro-poor farmer agenda in pursuit of a restorative policy of social justice. There is a very high risk that the economic opportunities opening up in the medical cannabis sector will be cornered by a small number of well-funded investors who may tacitly support the continuing campaign against small illicit farmers.

Given that the dissatisfaction with the current legislative regime so strongly felt within CARICOM and is shared by many countries around the world the opportunities for collective action should be explored. There are provisions in international law to allow groups of like-minded countries to depart from existing treaty structures. Jamaica, having pioneered a regulated cannabis industry for medical and sacramental uses, has the policy experience to lead the region into the next phase of cannabis regulation.

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