

STATEMENT BY MINISTER OF JUSTICE ON THE DANGEROUS DRUGS (AMENDMENT) BILL FOR POST CABINET PRESS BRIEFING

Introduction

The public will recall that in June and September, 2014 Cabinet approved the amendment and enactment of legislation to, among other things:

- i. Make the possession of two ounces or less of ganja a non-arrestable, ticketable infraction that does not result in a criminal record;
- ii. Permit the use of ganja for religious, medical, scientific and therapeutic purposes;
- iii. Prohibit the smoking of ganja in public places;
- iv. Provide for the grant of licenses to permit the development of a lawful industry for medical ganja and industrial hemp.

The much-anticipated legislation to make provisions treating with these legislative reforms was, on January 19, 2015, approved by Cabinet for tabling in the Houses of Parliament. It is a Bill entitled the Dangerous Drugs (Amendment) Act 2015.

Background

The system of complete legal prohibition of ganja in Jamaica has been in place since 1948, has not worked and is no longer considered fit for purpose. The reality is that ganja remains as prevalent in Jamaica as it

ever was, perhaps more so. Many thousands of Jamaicans have been arrested, detained prosecuted and convicted for possession and smoking of ganja. It has been a source of deep distrust, bitterness and dysfunctional relationships between many youths and the Police. It has damaged many lives through criminal records which prejudice employment prospects and travel possibilities. It has abrogated the rights of the Rastafarian community, who regard the plant as a holy sacrament, who have faced nearly a century of oppression in giving expression to their religious beliefs.

For decades the reform of the law relating to ganja has been the subject of several recommendations and reports by public and private sector groups, including the 1977 and the 2003 Joint Select Committees of Parliament and the 2001 Report of the National Commission on Ganja. Nevertheless, despite all this, prior to 2014 nothing was done to right the wrong.

The winds of change have been blowing internationally. There have been significant reforms in some European countries. In our hemisphere, regulated medical cannabis has been permitted in Canada, and recreational liberalisation has been enacted in Uruguay. The United States has recognised the need for some flexibility in approaching this issue, given that many of their own states have introduced laws to permit medical marijuana, and some states have gone further to introduce more general liberalization.

In Jamaica, this Administration has decided to move in a measured, deliberate way towards ganja law reform. The reforms introduced by the 2015 Bill reflect some of the recommendations coming out of the 2001

Reports and other consultations at the local level, and also current developments and trends in other countries.

A significant reform relates to the modification of the penalty for smoking ganja and possession of ganja in small quantities. The harsh penalty for these offenses under the existing law was a common point of concern in all the reports, in particular the imposition of a criminal record and the adverse long-term social and economic consequences suffered by persons convicted of such offenses, predominantly young men, as a result of this.

The first step in our reform was achieved by the passing of the Criminal Records (Rehabilitation of Offenders) (Amendment) Act 2014, which was brought into effect on October 12, 2014. It has removed the attachment of a criminal record for possession of small quantities or smoking ganja. Administrative arrangements have been put in place to facilitate the expungement of the past records.

The new penalty structure introduced by the 2015 Bill, and the removal of the attachment of a criminal record, seek to offer the opportunity for rehabilitation while respecting the human rights of offenders. In addition, the new approach is expected to positively impact the caseload of the courts, as research has shown that these minor ganja cases have significantly contributed to the case backlog which burdens our overstretched criminal justice system.

Another significant reform which has also been the subject of comment and recommendation in the various reports and consultations, relates to the criminalization of the use of ganja by Rastafarians for religious purposes.

This is viewed as an undue restriction on their freedom of religion guaranteed under the Constitution and the Charter of Fundamental Rights and Freedoms introduced by bipartisan cooperation in 2011, as the sacramental use of ganja is an integral aspect of their religious practice. The provisions of the Bill permit the use of ganja by Rastafarians for religious purposes, and provides also for related activities such as the cultivation, possession and conveyance of ganja pursuant to such use, subject to stipulated requirements.

Further, with increased recognition of the medicinal advantages of ganja, not only locally but also internationally, the Bill provides also for a legal, regulated system for medical, scientific and therapeutic purposes. With the changes to the ganja laws in other territories such as the United States of America, Australia and Canada, and the revenue that has been acquired by them as a result of their reforms, there has been extensive campaigning and consultation surrounding the establishment of a medical ganja industry in Jamaica.

Some Jamaican scientists are already engaged in research into the medicinal uses of ganja, through longstanding ad hoc arrangements. However, a viable medical ganja industry cannot be established without a robust legal framework to support it. We need to position ourselves to take advantage of the significant economic opportunities offered by this emerging industry. The current law prohibits the cultivation, production, import, export, transport, trade in, possession and use of ganja. Therefore, the reforms and objectives proposed can only be accomplished through legislative amendments, primarily to the Dangerous Drugs Act.

Economic opportunities also exist in relation to the production of hemp (i.e. cannabis with a very low level of the psychoactive ingredient THC) and its versatile array of industrial by-products, and the 2015 Bill will also enable a regulated industry in hemp to emerge.

International Obligations

Jamaica is a small independent country that believes in the rule of law. Given our size and limited resources, our national security and territorial integrity depend on upholding the rule of law in the international sphere, and we have always respected and complied with our international obligations, just as we expect other countries to do the same.

Therefore, in considering any change to the law relating to ganja, it is critical that regard must be had to obligations under the relevant international agreements to which Jamaica is signatory. These agreements place certain limitations on the changes that can be made to our domestic law without violating our international obligations. Of particular significance are the 1961 UN Single Convention on Narcotic Drugs and the 1972 Protocol Amending the Single Convention, which list Cannabis among the most dangerous substances which are particularly harmful. Unless and until the stipulated requirements in the abovementioned international conventions are reviewed and adjustments made, Jamaica is obliged to ensure that the reform of our domestic legislation is within the present scheme of our international obligations.

However, these international conventions permit some flexibility. They allow for the use of ganja for medical or therapeutic purposes, subject to

regulation by way of a licensing regime, and also industrial hemp (i.e. cannabis with a very low level of the psychoactive ingredient THC). They also recognize the supremacy of the Constitutions of member states, when it comes to the particular domestic regimes to give expression to the obligation to control, restrict and impose sanctions in respect of prohibited activities relating to drugs. The international conventions therefore provide some flexibility in the treatment of the use and possession of ganja in our local context. Our approach to this reform is fully cognisant and respectful of these international conventions and Jamaica's obligations under them, and seeks to operate within the treaty framework of permissible approaches.

The 2015 Bill that has been approved by Cabinet therefore amends the law taking into account recent developments in other jurisdictions, our local culture and economic advancement, without violating our international obligations.

Illegal drug trafficking and abusive use of ganja

Before I describe the reform provisions in the 2015 Bill, two important aspects of this legislation need to be highlighted.

Firstly, it must be emphasized that these reforms do not represent a softening of our stance on illegal drugs and related criminal activities. Jamaica remains fully committed to the fight against transnational illegal trafficking in all forms of prohibited drugs and the organized crime that it fuels, an ongoing effort which is fundamental to our national security at home and our international reputation and relationships. The financial

penalties related to the offences involved in transnational drug-trafficking have become outdated with the depreciation in real terms of nominal monetary values over time. These financial penalties are therefore being significantly increased by the 2015 Bill, and Jamaica will continue to work cooperatively with our international partners to ensure robust law enforcement in this area.

Secondly, it is fully recognised that the use of ganja in Jamaica by adolescents and other vulnerable groups, is a pressing social problem. However, the current approach of outright prohibition of ganja has in no way addressed this problem - in fact, it has made it worse, because many adolescents are attracted to experimenting with things that are regarded as taboo, and this has attracted many of them to ganja use. Whereas public education around unsafe sex and alcohol drinking practices has become quite prevalent, the legal prohibition on ganja has meant that the very real need for public messaging to discourage abusive practices in relation to ganja has been largely ignored.

This needs to change. Therefore, it is intended that a portion of the revenues from the licensing regime that is to be established under the Bill will be used to support a public education campaign to discourage the use of ganja by adolescents, persons with mental disorders, pregnant women and other vulnerable persons, and to mitigate adverse public health consequences associated with the use of ganja. It is also intended that our institutional arrangements for tackling the problems of drug abuse, and in particular our mental health services and the National Council on Drug Abuse, will be strengthened by this source of new revenues. The revenues

will also be used to support the regulatory framework being established to govern the medical, scientific and therapeutic ganja industry. The Minister of Finance is given specific authority under the Bill to direct the allocation of these revenues for these important purposes.

I will now describe in general terms the main reform measures that will be introduced by the 2015 Bill.

The Reform Provisions of the Bill

The 2015 Bill:

General amendments

- i. Amends the definition of ganja to exclude hemp;
- ii. Makes the possession of two ounces or less of ganja a ticketable infraction that is not subject to powers of arrest or detention, is dealt with outside the court system and does not result in a criminal record;
- iii. Removes the existing offence of smoking ganja from the Dangerous Drugs Act, and makes smoking ganja in public places a ticketable infraction that is not subject to powers of arrest or detention, is dealt with outside the court system and does not result in a criminal record;
- iv. Permits the cultivation of five or less ganja plants on any premises, which will be regarded as being for medical or therapeutic use of the leaves or for horticultural purposes;

Amendments related to Religious Purpose

- v. Permits the possession of ganja for religious purposes as a sacrament, in adherence to the Rastafarian faith;
- vi. Empowers the Minister responsible for justice:
 - to authorize a person, group of persons or organization adherent to the Rastafarian faith, to cultivate ganja on designated land, to be used for religious purposes; and
 - to declare an event an “exempt event” where he is satisfied that it is promoted or sponsored by a person, group of persons or organization adherent to the Rastafarian faith and is primarily for the purpose of the celebration or observance of the Rastafarian faith, so that persons will not be subject to penalty for conveying to, possession or smoking of ganja at the event;

Amendments related to medical and therapeutic purposes

- vii. Permits the use of ganja for medical or therapeutic purposes, as prescribed or recommended in writing by a registered medical practitioner, or other health practitioner approved by the Minister of Health;
- viii. Permits persons who are suffering from cancer or other serious chronic illness, to import ganja or products comprising ganja, where their use is recommended by a registered medical

practitioner, in an amount not exceeding that recommended by the registered medical practitioner (this measure recognizes an immediate need for persons with such illnesses to access cannabis strains and derivative products that have been developed overseas, pending Jamaica developing our own medicinal capacities in this area);

- ix. Permits persons visiting Jamaica who provide satisfactory evidence that their use of ganja for medical or therapeutic purposes has been prescribed by a medical practitioner in the jurisdiction where they are ordinarily resident, to purchase permits authorising them to purchase and possess up to two ounces of ganja while in Jamaica, subject to conditions (including the payment of a prescribed fee);

Amendments related to scientific and research purposes

- x. Permits the use of ganja for scientific research conducted by an accredited tertiary institution or research institution otherwise approved by the Scientific Research Council;
- xi. Empowers the Minister responsible for science and technology, by order, to authorize an institution or body to cultivate and/or import ganja or any part of the plant for scientific research;

Amendments related to the Licensing Regime

- xii. Provides for the establishment of a new regulatory body, the Cannabis Licensing Authority, which will be responsible for

establishing a lawful, regulated hemp and medicinal ganja industry. The Cannabis Licensing Authority will, with the approval of the Minister responsible for justice, make Regulations treating with (among other things) procedures and criteria for applying for and retention of licenses, permits and other authorizations for cultivation, processing, distribution, sale and other handling of ganja for medical, scientific and therapeutic purposes. The Bill specifically requires that the Regulations must be compliant with Jamaica's international obligations.

Jamaica recognises that certain monitoring, reporting and other enforcement mechanisms must be implemented to safeguard against the licensed activity being used as a pretext for illicit drug trade or to contribute to financing criminal enterprises. These reforms will be supported by a regulatory framework to be developed and enacted by way of Regulations under the Bill. The new Cannabis Licensing Authority will take the lead in developing the details of the regulatory framework.

It is my intention to table this 2015 Bill in the Senate this week Friday.

Thank you.