

Emerging Quest for Cannabis Policy Reforms: Growing Voices from Men and the Younger Population at the Grassroots in Kenya

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“Meru Couple jailed for Life for Trafficking Kshs 3 million Marijuana” (*Daily Nation* 30th September 2021).

“Man sentenced to Life Imprisonment for Trafficking bhang worth Kshs 23,250” (*The Standard* of 16th May 2018).

“Why Small Amount of Bhang Earned Woman 30-year Sentence” (*Kenya News of* 23rd May 2019).

These screaming headlines three years apart provide a glimpse to the effects of prohibitionist regulations currently in force in Kenya with regard to possession, consumption and trafficking in cannabis. Of all the three mentioned cases, the third one involving the woman sentenced to 30-years in prison elicited the comments that best captures the mood of the nation in regards to the regulations.

Trafficking bhang worth Kshs 2,820 has cost Rose Wanjiru a 30-year-old jail sentence without the option of a fine. The judge noted that Wanjiru was not a first-time offender but had been charged with a similar offense previously.

The following comments were registered online from members of the public following this development: “Justice system is dead; moving hardcore drugs and looting public resources are backed by big wigs and so the peddlers are untouchable---- welcome to Kenya where the poor are strangled whilst the rich who loot our resources and share them go scot free; Is Uhuru aware?; Others traffic cocaine, heroin and other hard core drugs why aren’t they arrested?; *Kesi kubwa kubwa* sentence *ndogo ndogo*, but *ya mwizi wa kuku*--- life imprisonment *Balaa Kenya* (Big cases attract low fines and cases involving the small chicken thieves attract life sentences, what a tragedy in Kenya); Thirty years for what? Just being in possession of Marijuana? Did someone just lose their mind?; It is 2019, Marijuana is being legalized all over the world and is even being used for health reasons, magical Kenya; This is crazy, but anyway our justice system was designed for the weak in the society while the high and mighty walk free even after looting our economy; The corrupt judiciary needs an overhaul, *yaani* you jail a poor woman for 30 years who is struggling to feed and educate her children while people who steal billions walk away free?; Indeed this is Kenya which has two tribes- the haves and the have-nots, God bless Kenya”

The reactions to the 30-year-old woman’s case above brings out several misgivings on the prohibitionist policies currently in force regarding narcotics in general and marijuana in particular. The many views apparently directed to the judiciary ought to be reserved for the

policy formulators and gives us the opportunity to add a voice in the debate about decriminalization and legalization of cannabis in Kenya.

INTRODUCTION

UNODC (2008) observes that Cannabis is the most widely used illicit substance globally with 5.6% of adults and youth aged 15-64 years reporting use. The world body singles out Africa as one of the continents with the highest users per the population at 7.7% (UNODC, 2007) with a projected rise to 40% in 2050 (UNODC, 2021). For centuries, the drug has been used across cultures for medicinal, recreational and sacramental purposes (Abel et al., 2011).

Despite its use for centuries across cultures for medicinal, recreational and sacramental purposes (Abel et al., 2011), the drug has been noted to be by far the most widely trafficked and abused illicit drug and accounts for half of all the drugs seizures worldwide (WHO, 2016).

In Kenya, marijuana is the most widely used narcotic drug with prevalence stabilizing at 1% from 2007-2017 (Kamanderi et al., 2019a). Regional variations in consumption have been noted with the Coast region reporting a 2.8% followed by Nyanza at 2% and Nairobi at 1.4% among the 15–65-year-olds. The drug has also accounted for a 7.5% of drug use among secondary school students (Kamanderi et al., 2019b).

The use and trade in cannabis has been documented in Africa for centuries. Duvall (2019) reports that cannabis came to Africa at least 1,000 years ago arriving in Madagascar and later to the Mediterranean Coast. During this period, the Pre-colonial and Colonial sources across the North Africa associated cannabis with lower social classes, particularly farmers, soldiers, slaves and prostitutes (Duvall, 2017). It is reported that Colonial French troops smoked cannabis with prostitutes in Algeria, Morocco and Tunisia (Taraud, 2003) while in French Morocco, prostitutes spent half their income or more on alcohol, cannabis, and tobacco (Maghraoui, 2013). This association with low classes could be one of the reasons why the legal status of cannabis has remained so for so long in Africa. Despite the association of cannabis use with the low class, cannabis has been traded in Africa for centuries (Duvall, 2019). Perhaps the quote below captures the ambivalent view by which cannabis is seen by different lenses.

"To the agriculturist cannabis is a fibre crop; to the physician of a century ago, it was a valuable medicine; to the physician of today, it is an enigma; to the users, a euphoriant; to the police, a menace; to the traffickers, a source of profitable danger; to the convict or parolee and his/her family, a source of sorrow" (Mikuriya, 1973: xiii).

Generally, Colonial regimes suppressed cannabis since it was seen as a menace. Colonialists considered African cannabis an Eastern hindrance to Europe's civilizing mission. The settlers increasingly forbade cannabis as morally and/ or physically harmful even though they continued to supply the black laborers. This attitude can be summed up by a quote attributed to a British administrator in the Belgian Congo:

"The tobacco introduced by the Portuguese has contended successfully against the stupefying or maddening hemp from the afar Muhammadan north-east" (Johnston, 1908).

It has been observed that cannabis-control laws were enacted in Africa earlier than elsewhere in the world (Duvall, 2016). The laws were stricter too and were apparently aimed at improving public health by prohibiting behaviours considered detrimental to “native” health. Clearly and as observed by Duvall (2006), many of these laws served ulterior motives, particularly labour control and religious proselytizing. The British Natal’s 1870 law aimed to control Indian laborers while Portuguese Angola’s 1913 law targeted colonial troops while also pushing farmers toward tobacco production (Duvall, 2016).

Prohibition (Criminalization), Decriminalization and Legalization of Marijuana

Today, one of the biggest debates worldwide is the law reforms currently sweeping across the globe in regard to the status of marijuana. It is worth stating from the onset that in Africa, cannabis was initially legal under colonial governments (Duvall, 2019) but this later changed as noted above. Today, the three main legal approaches to cannabis regulation are Prohibition, Decriminalization and Legalization (Arrara’s and Bello-Pardo, 2015:174).

Prohibition has been the prevailing choice of policy worldwide, prohibiting or banning the production, sale, possession and consumption of the drug and treating all those acts as crime (criminalization) (Hoz Schilling, 2015).

On the other hand, Legalization has been described as “an acknowledgement that the government has no fundamental interest in an individual’s use of a drug, although it may still seek to regulate its sale, distribution, use and advertisement to safeguard the public’s health”, while decriminalization “refers to the elimination, reduction, and or non-enforcement of penalties for the sale, purchase, or possession of marijuana although such activities remain illegal” (Joffe and Yancy, 2004: 633; Hammond et al., 2020). Regarding marijuana legalization and or decriminalization, different jurisdictions will attach diverse weights to the importance of things like liberty, privacy, safety, limits of police discretion amongst others (Blumenson and Nielsen, 2009). Legalization therefore, means that marijuana would be legally available to adults (Morse, 2016). Globally, legalization has been a controversial issue owing to the various moral, ethical, public health, legislative and logistical issues associated with the matter (Hajizadeh, 2016).

The 1912 Hague Opium Convention marked the very first time that the guidelines for internationally coordinated drug control was established (Hoz Schilling, 2015). Even though the focus was on the ban of Opium, some delegates inadvertently introduced the discussion on cannabis regulation where some first regulatory strategies were incorporated. It is reported that “Many delegates were bewildered by the introduction of cannabis into the discussions. Pharmaceutical cannabis products were widespread in the early 20th Century and the participants had no substantive knowledge, due to lack of statistics on international trade or even a clear scientific definition of the substance” (Bewley-Taylor et al., 2014: 13). As a result of the above, Duvall (2016 and 2019) observes that colonial governments widely outlawed cannabis by the 1925 when it ultimately became subject to the international control under the Geneva Opium Convention. This was based on a request by the South Africa’s white minority government supported by newly independent Egypt (Mills, 2003) whose conservative authorities had suppressed cannabis since 1868 to control laborers as earlier stated (Kozma, 2011).

One would wonder then that if the colonialists suppressed cannabis as the drug of the low-class people, then the independent governments would consider it something good for its people. This was however, not the case as cannabis laws remained unchanged after independence.

The current prohibitions on cannabis are anchored in the global drug control regime defined by three United Nations treaties: The 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Habibi and Hoffman, 2018; Hoz Schilling, 2015). In all these three conventions, cannabis and its compounds have been scheduled in the categories of the most dangerous drugs with little or no therapeutic value, representing a threat to public health. Cannabis being in Schedule I and IV of the 1961 Convention and Table 1 of 1988 one, and Tetrahydrocannabinol (THC)¹ being in Schedule IV of the 1971 Convention. At their core, these treaties aim to curtail drug use by requiring Parties to criminalize the possession, cultivation, production, importation, sale and distribution of illicit drugs for non-medical and non-scientific purposes (Bewley-Taylor and Jelsma, 2012).

The Single Convention in its provisions requires Parties to implement baseline legislation and regulatory measures that prohibit the production, use and trade of narcotic drugs. In the Preamble, the treaty invokes a concern for the “health and welfare of mankind” and describes addiction as a “serious evil for the individual” that is fraught with social and economic danger” (Habibi and Hoffman, 2018; and Single convention, Preamble).

The Single Convention was amended by the 1972 Protocol owing to USA government led initiative. The main effect of changes was to enhance International Narcotics Control Board’s (INCB) mandate to prevent the illicit cultivation, production and manufacture of, illicit, trafficking in, and use of drugs. Provisions in the prevention of drugs use were also amended to include “treatment, education, after-care, rehabilitation, social reintegration” as an alternative to or in lieu of conviction (Habibi and Hofman, 2018, see article article 38).

Besides reiterating concerns for the health and welfare of humankind, the Preamble to the Psychotropic Convention acknowledges the “Public health and Social problems resulting from the abuse of certain Psychotropic Substances” while recognizing that their use could still be indispensable for “medical and scientific purposes”. It also brings into focus the imperative to treat, educate and rehabilitate victims of drug use (See Psychotropic Convention Preamble article 20(1)).

The 1988 Trafficking Convention directly addresses the illicit production, trafficking and demand for drugs which appeared in the 1970s and 1980s. The treaty seeks to eliminate the “root causes of the problem of abuse or narcotic drugs and Psychotropic Substances by providing for comprehensive measures to combat drug trafficking, such as the confiscation of assets and mandating additional law enforcement mechanisms such as extradition which depend on international collaboration to achieve these objectives. The treaty also established a system of control over precursor chemicals used in the production and manufacture of narcotic drugs and Psychotropic Substances (article 12).

¹ THC is the main active ingredient in cannabis which was later listed in Schedule II of the 1972 Convention.

As observed by Habibi and Hofman (2018), the Prohibitionist approach to drug possession and consumption across the treaties is softened by certain caveats. First, all Penal Provisions pertinent to drug consumption are subject to the constitutional limitations of each party and in Trafficking Convention, "Subject to basic concepts of each party's legal system. Parties are therefore, afforded a degree of latitude in fashioning legal and policy responses to drug control adapted to their unique domestic context. This has been referred to as the Safeguard Clause.

In Kenya, cannabis criminalization is contained in the Narcotics and Psychotropic Substance (Control) Act of 1994. This was enacted in 1994 and incorporates various provisions of the United Nations Conventions dealing with drugs. In this act, trafficking in drugs is punishable with life imprisonment. It also provides for money laundering and forfeiture of the proceeds derived from drugs, rehabilitation of addicts, international assistance in drug investigation and proceedings.

The various penalties for possession of narcotic drugs range from imprisonment of between ten and twenty years for cannabis consumption, possession and trafficking, minimum of twenty years for other narcotic drugs and or fine of one million or three times the market value of the narcotic drug or to life imprisonment or to both such fine and imprisonment. As a result of the provisions in the Act, a number of Kenyans have been jailed and are serving different sentences including life imprisonment. Besides the law, there is also a Semi-Autonomous State Corporation called National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) under the Ministry of Interior and Coordination of National Government as per the executive order No.1 of 2018 June (Revised). This body has had a long history with diverse changes over the years. It was first established via a Gazette Notice dated 26th April 2001 as the National Agency for the Campaign Against Drug Abuse (NACADA) to undertake public education and awareness campaign against drug abuse especially among youth in schools and other institutions of higher learning.

Later in 2007, His Excellency Mwai Kibaki through a Legal Notice No 140 of 2007, the Agency was transformed into the National Campaign Against Drug Abuse Authority (NACADA) under the State Corporation Act (Cap 446 of the Laws of Kenya) to coordinate a multi-sectoral campaign to prevent, control, mitigate the impact of alcohol and drug abuse in the country. In 2010, the Authority's mandate was expanded to include implementation of the Alcoholic Drinks Control Act 2010.

Five years later in July 2012, the Authority was again transformed to the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) having been firmly established under an Act of Parliament and its mandate expanded and elaborated in the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) Act, 2012. The Authority works with Schools, Workplaces, Colleges, Universities, Technical Institutions, County Governments, Ministries, Parastatals, National Government administration officers, Faith-Based institutions, Community Based Organizations, Non-Governmental Organizations, self-help groups as well as individuals interested in a society free from alcohol and drug abuse².

² See www.nacada.go.ke/about-us

The Authority has several co-functions but the following three are critical in enhancing the drug policy debate in Kenya and provides them the opportunity to be the lead in the new discourses on drug laws.

- Coordinate and facilitate in collaboration with other lead agencies and no-state actors the formulation of national policies, and plans of action on control of alcohol and drug abuse and facilitating their implementation, enforcement, continuous review, monitoring and evaluation.
- In collaboration with other public and private agencies, facilitate, conduct, promote and coordinate research and dissemination of findings on data on alcohol and drug abuse and serve as a repository of such data.
- To assist and support county governments in developing and implementing policies, laws, plans of action on control of drug abuse.

The Pros and Cons of Decriminalization and Legalization of Marijuana

The raging debate world-wide on the legalization of cannabis typically discusses on the one hand, the positive or the negative health effects of the drug on individuals and on the other hand, the effects that legalization would have on society as a whole (Hoz Schilling, 2015). While much drug use remains prohibited and illegal, there are growing efforts to decriminalize certain drug classes such as marijuana. This is related in part, to evidence that drugs such as marijuana and heroin which had previously been categorized as having no medical value may have potential medical benefits (Hammond et al., 2020; Hall, 2017). The efforts are also in line with the experiences of countries like Portugal, which decriminalized all illicit drugs in 2001 and has reported subsequent decrease in drug related societal problems, as well as support for legalizing drugs like marijuana for non-medical use in countries such as Canada and Uruguay (Room, 2014; Cox, 2018). It has been noted that the Dutch who have legalized marijuana do not have elevated rates of cannabis use compared with neighboring European Countries. Drug related harms have also diminished in Portugal and adolescent drug use has decreased (Room et al., 2010). In the USA, eight States and the District of Columbia have legalized recreational marijuana, and twenty-nine States have legalized medicinal marijuana. Public opinion has also shifted in favour for marijuana legalization from 12% in 1969 to 61% in 2017 (Geiger, 2018). Overall, people in the USA are in favour of legalization and decriminalization of marijuana (both medical and recreational), but not heroin and cocaine (Hammond et al., 2020).

There have been arguments against legalization of marijuana based on diverse perspectives ranging from morality, health, public decency and lack of regulations. Some Legislators and preachers think that licensing cannabis growing will make young people resort to marijuana consumption (Kafeero (2021). The moral arguments against cannabis seems so strong that it diminishes any objective debate about decriminalization. For instance, Uganda's first lady and a section of former and current cabinet ministers for example have opposed attempts at legalizing the product, calling it "satanic" and ruinous to the "future of our children" (Kafeero, 2021). In Kenya, major efforts to push for some forms of legalization have been met with resistance centered on religion and negative public perceptions.

Health Perspectives

The medical value of marijuana is an on-going debate within the scientific community with divided opinions. Some point towards the damaging long term effects on the brain and lungs,

especially on minors and the high potential for addiction (Venegas, 2014:655-656), increased uptake, accidents and injuries (Hajizadeh, 2016; Svrakic, 2012) potential abuse and easing the manner by which minors manage to purchase and use the drug (Salomonsen-Sautel et al., 2012), while others emphasize its therapeutic values, including chronic pain relief, glaucoma remedial as well as cancer and AIDS treatment (Callado, 2012: 79-82).

There has been evidence of marijuana's therapeutic benefits in areas such as neuropathic pain relief, inflammatory bowel disease, managing symptoms of chemotherapy and treatment of resistant epilepsy in children (Bronskill, 2016; Esposito et al., 2013; Moore et al., 2007). However, according to a report by the Centre for Addiction and Mental Health (CAMH), the regular use of marijuana is associated with some health risks such as: problems with healthy brain development among youth, progression to use of other illicit drugs, depression or anxiety injury and risks of death from motor vehicle collisions, symptoms of chronic bronchitis, schizophrenia and addiction problems (Crepault, 2014; Volkov et al., 2014; WHO, 2016). There have also been increases in marijuana related healthcare utilization due to intoxication, burns and cyclic vomiting syndrome and eating edible marijuana among children in Colorado (Monte et al., 2015).

Medically, research has proven that cannabis has much lower levels of toxicity than alcohol and tobacco and that there are no known cases of death or overdoses related to cannabis (Callado, 2012: 83), which has been an argument that has been frequently used in favour of the legal regulation of the drug. From a health perspective, the harm reduction approach has increasingly been used, which views prohibitionist drug policies as being more harmful than the drug use itself. It argues that if the drug is legalized or at least decriminalized, users can be treated as patients and not as criminals, because "the public health consequences of the application of the criminal law against cannabis users may be at least as significant as those that flow directly from cannabis use itself" (Swift et al., 2000: 106).

Publicly and privately funded studies have mostly concluded that the casual use of marijuana is not harmful to most users (Patton et al., 2002) and the Medical Journal Lancet (1998) found cannabis less of a threat than alcohol and tobacco----*"on the medical evidence available, moderate indulgence in cannabis has little effect on health"* (Lancet, 1998:88).

Human Rights Perspectives

In order to reduce the criminality, corruption and violence rates and to avoid the excessive power accumulation of drug traffickers, reformists suggest the legal regulation as an alternative for the State to take the power away from criminal organizations and focus on the public health of the population (Barra, 2015: 91-92). Human rights advocates abhor the punitive approach towards the drug consumers, the un-proportional sentences and the accordingly excessive imprisonment rates. They believe that cannabis smokers are stigmatized and unnecessarily harassed by the police, and many more people are in prison for growing or simply being found in possession of cannabis. The weight of the law comes down on a specific part of the population; people with little education and scant resources, who are either unemployed or holding down informal sector jobs (Metaal and Youngers, 2011: 6).

Spurred by inflammatory language that describes drug addiction as a "serious evil" (Single Convention, Supra Note 4, Preamble), the global drug control community's political vision of a

drug free world habitually promoted a fear-based response to drugs and an approach that some civil society advocates have described as “overwhelmingly prohibitionist (Barret et al., 2008). Habibi and Hoffman (2018) argue that by explicitly allowing parties to adopt more strict or severe measures of drug control, the treaties have also had the effects of facilitating human rights abuses ranging from excessive use of force in law enforcement to the denial of harm reduction initiatives in the name of a “drug free world” (Barret et al., 2008). As the U.S. delegate to the UNGASS 2016 acknowledged, the rhetoric on the war on drugs “unintentionally became a war on people who use drugs” (Bridge, 2016). The claims of the “gateway effect” may equally be untrue since the indisputable fact is that the large majority of marijuana users never go on to use hard drugs (Trebach, 2005; MaCoun and Reuter, 2001).

Thus, a more humane approach is encouraged that does not come down hard on disadvantaged population sectors and offers assistance instead. This level of discrimination and inhuman reference to certain sectors of society is plainly unacceptable in today’s world.

Economic and Social Perspectives

There are those who believe that legalization of marijuana could increase tax revenue through the taxation levied on its products and could also allow the government to save citizens’ tax dollars currently being spent on prohibition enforcement (Hajizadeh, 2016). Additionally, legalization is seen to have the potential of removing the criminal element from marijuana market and reducing the size of cannabis black-market and its consequences for the society.

This economic thinking seems to drive the clamour for reform in Africa. Kafeero (2021) estimates that Africa’s legal marijuana industry could be worth as much as 7.1 billion U.S dollars by 2023. The projection focused on the legal and regulated cannabis markets in South Africa, Zimbabwe, Lesotho, Nigeria, Morocco, Malawi, Ghana, eSwatini and Zambia. Most proponents of the liberalization of the marijuana market have promoted the crop’s untapped value, emphasized opportunities blocked by prohibition and noted that Global Northern countries are already profiting from liberalization (Duvall, 2019). This view is captured by the voices of two politicians from eSwatini and Nigeria.

“We are losing potential revenue, unlike First World countries that have decriminalized the growing and use of dagga” (eSwatini politician as reported by Chatora, 2015).

“People are making billions out of that particular plant. we should be focusing on it, Nigeria should be exporting weed instead of chasing after people who are growing weed” (Stated a Nigerian Presidential candidate as reported by Toromade, 2018).

Researchers have also concluded that removing illegal access point through legalization could be beneficial in terms of reducing youth illegal activity rates, and diminishing the drug dealer’s power over the youth (Ruschmann, 2009). One study suggests that about 10% of marijuana users, and perhaps half of the daily users, experience dependency for some period, no evidence suggests that marijuana dependency is criminogenic and most users are young people who give it up as they get older (MaCoun and Reuter, 2001).

The overall call for relaxation of the drug laws is overwhelming and the world is changing fast. Most recently, in August 2008, Britain's former anti-drug policy director called for drug legalization, and asserted that the overwhelming majority of police, health and political officials believe that illegality causes far more harm than good, even while they publicly recite the "nonsensical tough-on-drug mantra" (Campbell, 2008). The quote attributed to former American President Jimmy Carter suffices, he said "*Penalties against a drug should not be more dangerous to an individual than use of the drug itself, and where they are, they should be changed,*" adding that "*nowhere is this clearer than in the laws against the possession of marijuana*" (Musto, 2002). It is important that even though regarding marijuana legalization and or decriminalization, different people will attach different weights to the importance of liberty, privacy, safety, limits of police discretion, morality among others, at least we can attempt to understand the facts in an unbiased and depoliticized way (Blumenson and Nielsen, 2009). The harm attributed to marijuana do not justify the onslaught against its users, a cure more harmful than the disease.

The recent policy reforms in Africa have been swift. The South African Parliament authorized medical marijuana in 2017 in order to benefit ill people, while in 2018, the country's high court decided that adults have the right to garden and use dagga privately (Janzen, 2017; Zondo, 2018). While in 2019, a Canadian pharmaceutical company (EXMceuticals) announced that it had, in January 2017, obtained a license for growing psychotropic and non-psychotropic cannabis on more than 10,000 acres in DRC (Duvall, 2019).

In 2017, Lesotho government began licensing cannabis production under the existing laws and Malawi Parliament approved agricultural trials on non-psychoactive cannabis grown for fiber and oilseed. In February of 2019, EXMceuticals announced a deal to grow 2,000 acres of the crop, for psychoactive and non-psychoactive medicinal products and in May, it announced the acquisition of a Malawian agricultural processing firm (Mzungu, 2016; Nyale, 2018).

In eSwatini, a Parliamentary committee recommended licensing a drug plant production in April 2018 and a U.S. pharmaceutical company announced a license agreement in January 2019. In 2012 in Uganda, Industrial Hemp Uganda (IHU) owned by Ugandans began advertising hemp fiber products and in 2017, it began growing psychoactive cannabis. In April 2019, IHU announced agreements to export marijuana to Germany and Canada. IHU, together with EXMceuticals seem to have been licensed under existing laws but no regulations have been published despite at least 12 other applications for licenses (Mugerwa, 2019a; Erez, 2018; Industrial Hemp Uganda, 2018; Bloomberg, 2019). This trend has also been witnessed in Zimbabwe where in June 2017, the economy minister accepted an application to grow medical marijuana from a Canadian company. In April 2018, the government published regulations that allowed cannabis growing licenses under existing laws.

Generally, cannabis policy changes have enabled business partnerships made opportunistically with Global Northern Companies while no reforms have allowed cannabis possession or consumption and authorities have explicitly discouraged preexisting agriculture. The cannabis that has become legal in Africa is not the cannabis that has benefited African farmers nor decriminalized the drug (Duvall, 2019). It is from such strict legal framework that this paper argues for the relaxation for the laws currently in force in Kenya providing the evidence from the grassroots.

METHODS

The data for this paper was generated from an ethnographic study conducted in Siaya and Vihiga Counties in Western Kenya in 2020. Siaya County with a population of 993,183 (males 471,669 and females 521,496) has six sub-Counties namely Alego-Usonga, Gem, Ugenya, Ugunja, Bondo and Rarieda (Kenya Population and Housing Census (KPHC), 2019). Vihiga County on the other hand has a population of 590,013 (283,678 males and 306,323 females) within five sub-Counties namely Emuhaya, Vihiga, Sabatia, Luanda and Hamisi (KPHC, 2019). This study was specifically anchored in Gem, Alego and Ugunja sub-Counties of Siaya and Luanda and Emuhaya sub-Counties of Vihiga.

The research design was ethnographic and cross-sectional in nature combining both quantitative and qualitative approaches. It involved both men and women of different age categories (the old men, old women, young men and young women). The participants gave their views regarding the perceptions of consumption, reasons for consumption as well as community views on decriminalization and legalization of marijuana. The data collection process started with the survey then followed by the Focus Group Discussions (FGDs) and Key Informant Interviews (KIIs) to enable qualitative probe into gaps identified in the survey.

The study applied purposive, convenient and stratified random sampling strategies. A total of 327 (210 men and 117 women) were involved in the survey. Vihiga County had a total of 167 respondents (105 men and 62 women) with Siaya having 160 respondents (105 men and 55 women).

Besides the respondents, the study also conducted eight (8) FGDs consisting of young women and men aged 18-34 years and older men and women aged 35 years and above. Each county had 4 FGDs (one each for the different cohorts and gender groups-young men, young women, old men and old women). There were also 20 key informants interviewed with 8 from Vihiga, 9 from Siaya and 3 from the National level actors including government officials and staff of the National Authority for Campaign Against Alcohol and Drug Abuse (NACADA).

Secondary data review assisted in anchoring the study. These included textbooks, journals, reports, newspapers and periodic reviews as well as internet and web-based literature. The reports by National Authority for the Campaigns Against Alcohol and Drugs Abuse (NACADA) were found useful in situating the problem of drug consumption within different contexts. Besides ensuring strict adherence to ethics in the study, research authorization was obtained from the National Commission of Science, Technology and Innovation via a permit (NACOSTI/P/20/4719) in Kenya.

RESULTS

Demographic Profile of Respondents

Table 1 below shows the demographic characteristics of the respondents interviewed in the survey. Interviews were conducted with a total of 327 respondents from Siaya (167) and Vihiga (160). Close to two thirds (64%) were males while 36% of the sample was females. In terms of age categories, the study reached out to a wide spectrum of individuals in the community including the young, middle aged as well as the old. In total, 50% of the respondents were young people aged 18-35 years and 30% were in the age bracket of 36-53 years while 20% were over 53 years old. Those aged above 35 years old (50%) provided information on the

traditional/conventional consumption practices in their communities from their own past experiences and what they observed and heard from the generations ahead of them.

In terms of educational achievement, more than a third (35%) had secondary education, 27% had primary education while close to a fifth (20%) had university education. Hence close to 82% of the respondents could provide information on consumption practices for school and college going students. The diversity in gender, age ranges and education levels in the study sample brings in different shades of opinion on the subject matter which enriches the ethnographic data presented.

Table 1: Demographic Characteristics of respondents

	Vihiga	Siaya	Total
	167 (51.1)	160 (48.9)	327 (100.0)
Gender of respondent			
Male	105 (62.9)	105 (65.6)	210 (64.2)
Female	62 (37.1)	55 (34.4)	117 (35.8)
Age			
18-35	84 (51.2)	78 (48.8)	162 (50.0)
36-53	48 (29.3)	48 (30.0)	96 (29.6)
Above 53 years	32 (19.5)	34 (21.3)	66 (20.4)
Highest level of completed education			
Pre-primary	2 (1.2)	7 (4.4)	9 (2.8)
Primary	40 (24.4)	47 (29.4)	87 (26.9)
Secondary	64 (39.0)	50 (31.3)	114 (35.2)
Tertiary	25 (15.2)	22 (13.8)	47 (14.5)
University	32 (19.5)	31 (19.4)	63 (19.4)
Other	1 (0.6)	3 (1.9)	4 (1.2)

Perceptions of Bhang Consumptions

The research teased out from the respondents what they considered to be the communal perceptions on the level of bhang consumption. The results are as indicated on table 2 below:

Table 2: Perceptions on cannabis consumption

What is the level of bhang consumption in this community?	Vihiga	Siaya	Total
Lowly consumed	13 (8.0)	25 (15.6)	38 (11.8)
Moderately consumed	41 (25.3)	61 (38.1)	102 (31.7)
Highly consumed	101(62.3)	66(41.3)	167 (51.9)
Don't Know	7 (4.3)	8 (5.0)	15 (4.7)
Do women consume bhang in your community?			
Yes	146(90.1)	129(80.6)	275(85.4)
No	16(9.9)	31(19.4)	47(14.6)

Regarding the rate at which the commodity is consumed, 52% of the respondents indicated that it is highly consumed (62.3% in Vihiga and 41.3% in Siaya). About 32% reported that bhang is moderately consumed (25.3% in Vihiga and 38% in Siaya) while only 11.8% indicated that the consumption rate is low (8% in Vihiga and 15.6% in Siaya).

“In the past, old people consumed it in low quantity unlike nowadays that they take it in very high quantity making them misbehave in the community, hence making them a nuisance to themselves” (Excerpt from Old men’s FGD Siaya).

“Bhang is consumed widely by boys, girls, men as well as women. Even school going children below 18 years old consume it here in Luanda” (Excerpt from Young women’s FGD Vihiga).

On whether women also consume bhang, about 85% (90% and 81% of the respondents from Vihiga and Siaya respectively) answered in the affirmative and indicated that bhang consumption does not discriminate on gender lines. When this information was disaggregated by sex, 87% of the male and 83% of the female noted that bhang is also consumed by women.

As shown in Figure 1, results show that there were no significant differences between perceptions on the level of bhang consumption by sex and age.

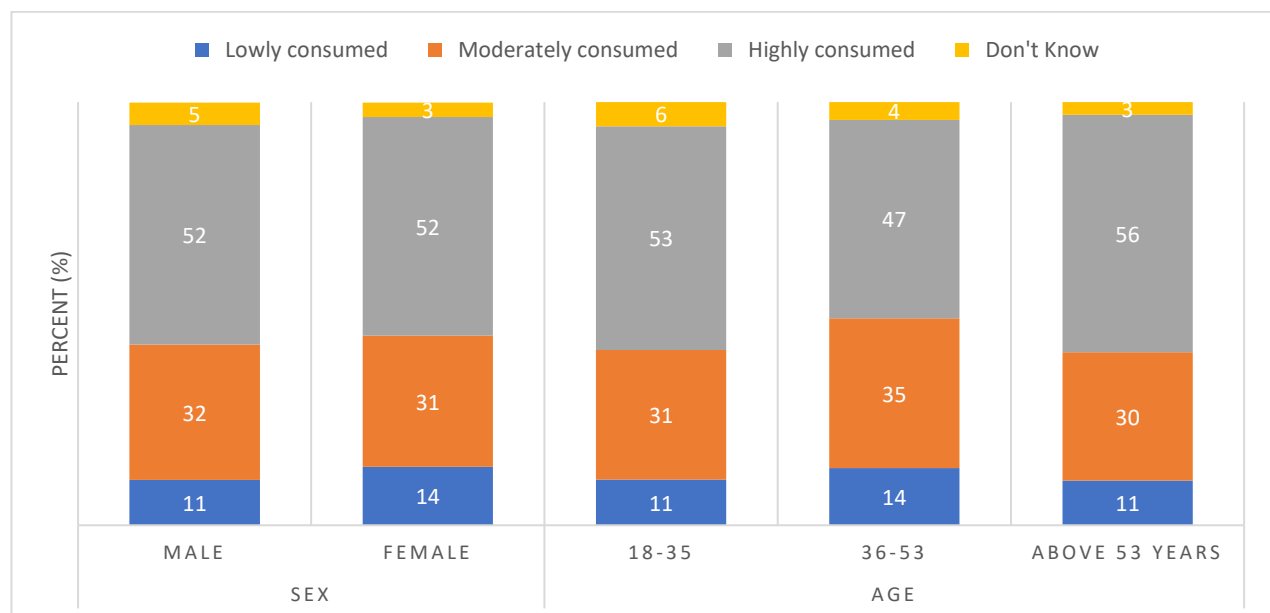


Figure 1: Perceptions on level of consumption of bhang in the community disaggregated by sex and age

The key informants and FGDs provided additional lens in which to see the engendered consumption of marijuana.

“In the past, marijuana was not consumed by women, but nowadays everyone consumes it. You can find a very young beautiful girl consuming it” (Excerpt from Young men’s FGD in Siaya).

“Women do smoke bhang in the community just like men but the number of women consumers are lower compared to men since the community views them as the weaker sex that cannot effectively handle the effects of bhang” (Excerpt from young women’s FGD Vihiga).

“In the past, smoking of bhang was a preserve of the elderly and the newly married only for both genders but for women, it was regulated” (Excerpt from Old men’s FGD Vihiga).

Reasons for Marijuana Consumption

The research unearthed several reasons why people smoke marijuana. The reasons differed from one group to the other and on the basis of age.

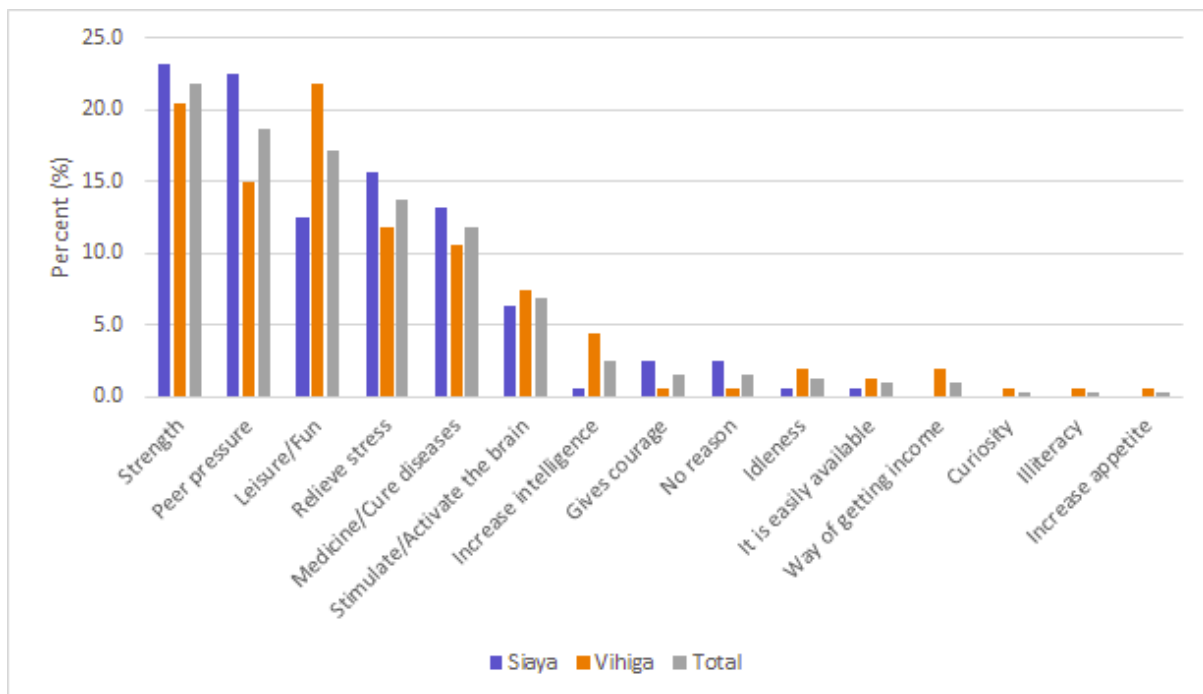


Figure 2: Reasons for Marijuana Consumption

As can be seen on the figure 2 above, most people consumed bhang as a recreational commodity and they mentioned that bhang smoking gives them strength at 22%, followed by peer pressure at 18%, Fun/leisure at 16%, stress reliever at 14%, medicinal at 12% and a stimulant at 7%. Other reasons included increased intelligence (4%), Courage (3%) among others.

Among the reasons advanced were:

- Means of coping with depression as bhang reduces stress
- Gives strength for performance of hard tasks such as farming and fishing
- Peer pressure resulting from youthfulness
- Increased intelligence as smokers is seen to be critical thinkers and brilliant in class
- Increases one’s appetite and makes one a heavy consumer of food/Appetizer
- Protects people from witchcraft and chases away evil spirits
- A source of economic empowerment/income to peddlers
- Means of boosting sexual vitality or acts as libido booster
- Enhances one’s courage to perform certain tasks
- Enhances bravery as is the case among the Abanyore
- Acts as a stimulant to many related activities such as wartime for courage

- Acts as a refuge for communal responsibilities if one is overwhelmed
- Means of relaxation and used during several communal occasions such as visitation, welcoming guests, burial ceremonies, parties and related events i.e., holidays, wedding, marriage and bride-wealth negotiations.
- Medicinal and credited for treating several ailments and conditions among them: Chest problems, blindness, stomach ailment, ulcers, bloating, cancer, malaria, measles, smallpox, tetanus, corona, blocked nose, pimples, wounds, common colds, flu, tooth decay/ache, asthma, bacterial infection among others. It is also credited as an anesthesia used for sedation of patients, an anti-depressant, a sleeping pill and a relaxant.

The voices of the key informants as well as the Focused Group discussants further give an impetus to the perceived advantages of the bhang consumption. The following are some of the excerpts:

"Bhang has really helped men in bed. It has made them sexually very active. They can do several rounds per night. Which man can do that on an empty head?" (Psychologist, Vihiga).

"Bhang acts as Viagra and is an important drug in enhancing sexual performance among men including the old. We old people would find it most useful" (Old Men's FGD in Siaya).

On its medicinal value, the following voices were noted:

"If you have stomach problems, you can use the leaves as herbs. You boil and after they turn colour, you add water in a glass and drink the concoction. This reduces the pain and you have to take in the morning and evening. You also regain your lost appetite" (Old Men's FGD, Siaya).

"Marijuana that is still soft cures measles. You first crush the leaves, then mix the extracted juice with fermented milk then drink" (Old Women's FGD, Siaya).

"With small pox, you boil bhang then cover yourself inside a blanket as the steam heals you" (Old women's FGD Siaya).

"Yes, bhang was mainly used to treat a disease known as anyiew or seregete (measles). We could just visit the old men and ask them to give us medicine. They gave us a small quantity of bhang and we would mix it with fermented milk that we used to give children while the rest of the portion was used to bathe them" (Old women's FGD, Siaya).

"Well, it also helps in stomach problems. For instance, if you have a running stomach and you boil bhang, it will trigger diarrhoea. So, it is good for stomach upsets and measles" (Old women's FGD, Siaya).

"Even after corona came into the picture, some people started spreading rumours that it can be cured with bhang. People in Tanzania really used it, and that is why they did not lock down their country, because bhang prevents corona" (Young men FGD, Siaya).

"There are people who started consuming bhang when they heard that it eliminates cancer. Even though there are people who use bhang but they do not have cancer, in their mind they are eliminating cancer" (Young women's FGD, Siaya).

"You can also use it to unblock a child's nose. You can smoke the bhang, then exhale it on the child's nose and you make sure it gets inside. When the child sneezes three times, you leave him alone" (Young women's FGD, Siaya).

"Bhang is used as treatment for wounds, childhood coughs and flu and a child whose mother died while giving birth would be given drops to sleep as a sleeping pill and was also used on dogs to make them fierce" (Key cultural informant, Vihiga).

In terms of alleviating pain and being a relaxant, the informants noted as follows:

"I think it can also be used to alleviate pain during operations and surgery, because in the hospital drugs injected sometimes contain cannabis. It is also used as a pain killer. That is why sometimes when you are a frequent bhang user and you go to hospital when injured, the drugs you are given will not help, because your cannabis content is too much. I believe that if research is conducted, you might find out that marijuana treats several diseases, it is just that many people misuse it" (Young women's FGD, Siaya).

"I heard that bhang also cleanses blood" (Key Informant, Vihiga).

"Before going out for a dance, someone may decide to consume bhang because it gives one courage to dance and do things. You can consume it before going out to a wedding or communal gathering. People who also beat drums in churches use it. For example, the Legion Maria adherents consume it excessively". (Young Men's FGD, Siaya).

"Bhang can give you morale if you are annoyed. You feel good after consuming it. You can also cook and perform hard tasks in the construction sites that people are afraid of doing because it adds your strength" (Young women's FGD, Siaya).

"People take bhang to get courageous. You can tell someone the truth without fear. While sober, one cannot tell you the truth about their character, but after using bhang, it gives a person courage of seven people" (Young women's FGD, Siaya).

Regarding its capacity to provide mysterious protection and attendant mythical powers, the informants noted as follows:

"From what I know, you can take its roots and mix it with certain medicine then go with it to a meeting and you will win the debates since every-one will respect your opinion irrespective" (Old men's FGD, Siaya).

"If you take bhang with pork, the evil spirits cannot attack you" (Old men's FGD, Siaya).

"Yes, bhang chases away evil spirits. The Majini are driven away by the scent" (Old women's FGD, Siaya).

"Bhang is consumed during funerals on the eve of the burial when keeping vigil at night and during exorcism of demons while casting away the evil spirit ceremonies" (Young women's FGD, Vihiga).

On its ability to enhance concentration on certain tasks, the informants noted as follows:

"Bhang enables people to concentrate on a particular task for longer hours whether it is farming, fishing or anything that requires physical as well as mental strength" (Young men's FGD, Siaya).

"Some students use it before exams and they do very well since it enhances intelligence" (Young women's FGD, Siaya).

Related to peer pressure and the need to look trendy and sophisticated, the informants noted thus:

"Bhang is appealing to young people in high schools. They just want to use to get high and be appreciated in the various groupings and to show that they are tough and rebellious to authority" (Key Informant, Vihiga).

"The reggae culture and mass media has enhanced the consumption of drugs like bhang and made them trendy and the order of the day for the youth. It is their way of coping with the present circumstances" (Key Informant, Vihiga).

As noted above, the reasons for the use and consumption of marijuana can be as diverse as the consumers themselves. The argument for or against the drug is therefore, rooted in aspects that may not be easy to comprehend for someone out of the context of the consumption. The recreational reasons are as many as the medicinal explanations and the process of decriminalization and or legalization should look at both perspectives. Whether it is a sexual enhancer, source of energy, stimulant to greater brain activity, a holy herb, as a means of coping with adverse weather conditions, part of popular culture, or of medicinal value, there is need to have a critical look at the drug and a more evidence-based approaches adopted.

Other than the good reasons that the respondents attributed to the consumption of marijuana, there were bad outcomes that they equally believed emanate from the consumption. Some of the bad effects included possible relationship to crime, mental retardation, addiction, loss of respect among the youth and possible health complications.

The informants and discussants noted the following as some of the bad effects from bhang consumption:

"There has been an increased number of cases of mentally unfit people in the society due to misuse and abuse of the drug" (Sub-County Director of Education, Siaya).

"There have been increased cases of arson in schools due to the negative effects of bhang on students who are majority users" (Educationist, Vihiga).

"Bhang corrupts a sober mind and users are considered mentally unstable" (Key Informant, Siaya).

“Bhang consumers are viewed as people with bad reputation. They are considered to be rowdy, untidy, unpresentable, violent, irresponsible and social misfits in the society” (County Official, Siaya).

“Women who consume bhang are considered as foolish, immoral, prostitutes, ill-mannered and unable to settle down as wives in the community” (Key Informant, Siaya).

“There are some people who use marijuana for fun, but others take it to go and spoil people’s things. In the past when somebody took marijuana in the morning, it would give them the urge to work, they could go to the farm for longer hours even without food. But nowadays our young boys use it to do nothing, but they just eat a lot, are irresponsible and lack respect for elders. They completely have no manners and can even abuse you without feeling ashamed” (Old women’s FGD, Siaya).

“The government restricts the use of bhang because it exacerbates sickness, sexual assault, crime and has made the consumers behave like zombies with very little productivity. As a responsible government, this cannot be allowed to continue” (Chief, Vihiga).

Generally, the negative effects of bhang consumption can be summarized as threat to security, exposes consumers to sexual abuse, enhances social isolation, leads to negative health outcomes, results in high school dropouts and interferes with one’s ability to reason well. Some of these noted negative perceptions are responsible for the continued criminalization of the drug and enhances the moral argument against any change in the law despite the new evidence from research.

Legalization of bhang in Kenya

Criminalization of bhang in Kenya was affected by the authorities to comply with the requirements after the ratification of the international protocol on narcotics. Consequently, the Narcotic and Substances Act of 1994 criminalized the drug use in Kenya. It is claimed that the drug was found to negatively affect those who were abusing it. They are said to have misbehaved and also got involved in illegal activities according to those who preferred to make the drug illegal.

Survey findings in this study however, indicate divided opinions on the criminalization, decriminalization and legalization of bhang in Kenya. Overall, 64% of the respondents (68% from Vihiga and 61% from Siaya) did not think that the use of bhang should be legalized. A third (32%) said bhang should be legalized. The results are summarized in the Figure 2 below which shows the perceptions on whether the use of bhang should be legalized disaggregated by sex and age.

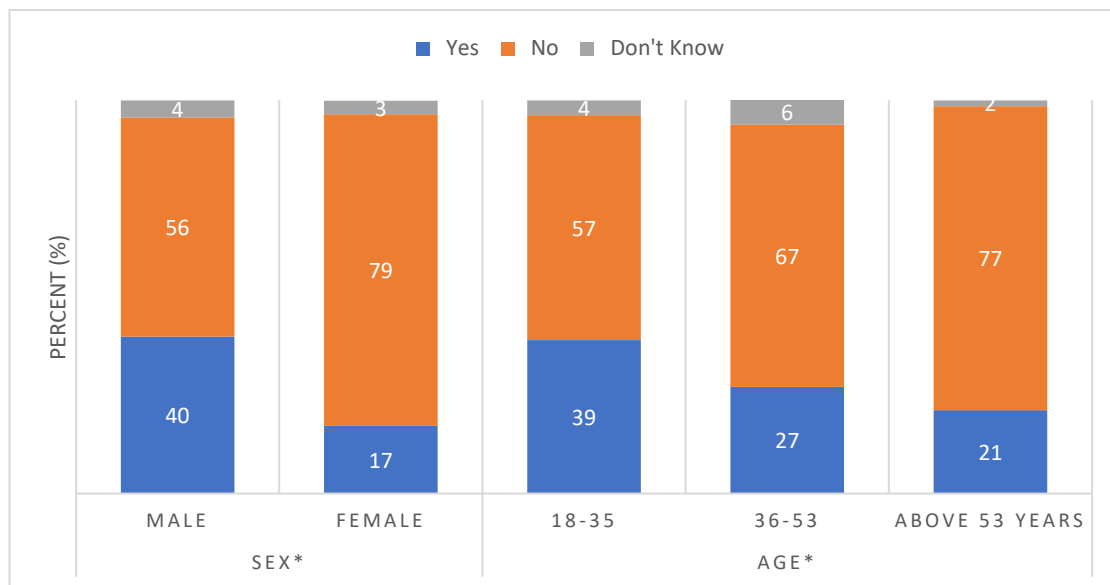


Figure 3: Perceptions on whether the use of Bhang should be legalized disaggregated by sex and age

Results showed that male respondents (40%) were relatively more likely to say the use of bhang should be legalized than female respondents (17%). Similarly, the younger respondents (18-35 years old) were more likely to support legalization (39%) compared to the 36-53 years old (27%) and those older than 53 years old (21%).

Table 3: Legalization of Bhang

	Vihiga	Siaya	Total
Should the use of bhang be legalized?			
Yes	50 (30.5)	53 (33.1)	103 (31.8)
No	111 (67.7)	97 (60.6)	208 (64.2)
Don't Know	3 (1.8)	10 (6.3)	13 (4.0)
Do you support the current illegalization of bhang in Kenya?			
Yes	111 (69.4)	106 (66.3)	217 (67.8)
No	49 (30.6)	54 (33.8)	103 (32.2)
Has the ban on bhang consumption limited its use in this community?			
Yes	48 (30.6)	42 (26.3)	90 (28.4)
No	99 (63.1)	112 (70.0)	211 (66.6)
Don't Know	10 (6.4)	6 (3.8)	16 (5.0)
What do you think would be the effects of legalizing bhang in Kenya?			
There will be self-regulated use of the substance	40 (24.5)	35 (21.9)	75 (23.2)
It will become an economic venture for business people	70 (42.9)	112 (70.0)	182 (56.3)
There will be a decrease in the number of arrests	38 (23.3)	83 (51.9)	121 (37.5)
There will be an increase in the number of social misfits	81 (49.4)	93 (58.1)	174 (53.7)
Others	24 (14.7)	51 (32.1)	75 (23.3)
What have been the effects the law on bhang consumption in this community?			

People have been arrested and jailed	105 (64.0)	107 (66.9)	212 (65.4)
Some people have gone underground Fearing arrest	46 (28.0)	91 (56.9)	137 (42.3)
Some people have defied the law	85 (51.8)	119 (74.4)	204 (63.0)
Others	39 (23.9)	75 (46.9)	114 (35.3)

A majority of respondents (68%) supported the current illegalization of bhang in Kenya and almost a similar number of respondents (67%) said the ban on bhang consumption has not limited its use in the community thereby revealing a glaring disparity on what is being said and practiced in the two communities. This disparity could be interpreted to mean that those who continue to consume it despite illegalization may be doing so because they believe they can do self-regulation and escape arrest by the authorities. Further, on perceptions of what would be the effects of legalizing bhang in Kenya, 56% of the respondents said it will be an economic venture for business people, 54% said there will be an increase in the number of social misfits, while 38% said there will be a decrease in the number of arrests and 23% said that there will be a self-regulated use of the substance.

Qualitative findings also indicated divided opinions on whether to maintain illegalization of the drug or to decriminalize it. *"It made people misbehave. Those who rolled it in papers were the ones who misbehaved unlike those who took it from the poku"*. This quote seems to suggest that on one hand, those who fear decriminalization of the drug express escalated abuse and mental health issues as their prime reasons. On the other hand, it also suggests that the present generation who use it like cigarettes have been linked to most of the abuse cases compared to the past generation who used it from earthen containers and water that helped to purify it.

"People talk of its benefits. They say it treats some diseases, they say that people who take bhang are bright, hard workers and that it enhances libido and so on... But there should be empirical proof, scientific proof for it to be legalized. How it works for me may be different from how it works for you. The disparities need scientific proof or medical laboratory testing". (Key informant, Siaya County)

Drawing from the above quote, there has been incessant debate to legalize it under strict control primarily because of its medicinal value and other perceived benefits. Furthermore, the findings suggests that criminalization has led people to take the drug in hiding, a fact that has worsened the situation since the people abuse it even more. There are even those who consume the drug as part of being defiant and anti-establishment.

"Because it is illegal, they take it while hiding and this is what makes them become more affected. They take too much of it to a point you become tired of them. They misbehave others become mad." (A female key informant aged 79).

"With criminalization, you make it more popular, costly.... people then defiantly use it". (A male Key informant from Vihiga).

"You know when you forbid someone from doing something, that is when they get the morale of doing it. Now that the youth are aware that bhang is forbidden, they have the motivation to taste it. Legalization will take away the curiosity" (Young women's FGD, Vihiga).

The above quotes reveal the effects of bhang criminalization as excessive use in hiding, misbehaviour, violence, defiance to the law, high costs, increased curiosity and mental illnesses. In addition, the study has established loss of livelihoods for the bhang farmers and traders and arrests and confinement in jail as other consequences of criminalization.

"There are so many young people currently in jail for bhang consumption. This should not be the case since these are victims who actually need help and not incarceration" (Civil Society Actor, Kisumu).

Survey data also revealed the effects of criminalization of bhang in the two counties. A majority (65%) of the respondents noted that people have been arrested and jailed, 63% observed that some people have defied the law with 42% revealing that some people have gone underground fearing that they may be arrested.

The results further show that in the traditional societies, consumers of bhang were old men according to 71% of the respondents while 28% said it was warriors. In the present-day society however, the most commonly mentioned group of consumers in both counties included young men at 94% and young women at 59% of the respondents. Others mentioned included old men at 27% and old women at 16% of the respondents. The cohort of consumers have been noted to be unruly hence contributing heavily towards the attitudes the old generation has towards the drug. There is a perception in the community that there is a nexus between the youth misbehaviour and the increased consumption of the drug. It is also being blamed for the increased arson in schools by students.

Study participants supporting legalization mentioned advantages such as source of income, it would make the users to smoke it without fear, people will use it more responsibly and that since it can treat some conditions, it can be used as medicine or to develop medicine. The quotes below bring out the diverse perspectives from the informants:

"Bhang legalization will act as a big income earner for the farmers and a good source of taxes for the government" (Young women's FGD, Vihiga).

"Bhang can be safely used for medication. It should only be restricted for treatment of diseases such as cancer and measles" (Excerpt from Old Women's FGD, Siaya).

"Criminalization of bhang is just hurting the youth with so many of them behind bars. At the moment, the police sell back the arrested bhang to the drug lords. It is the police who are trading in the drug. Trafficking the drug is a big and lucrative business yet it does not directly benefit government" (Key Informant, Vihiga).

"Bhang if legalized could be Luanda's cash crop that could change the economic outlook of this region. We should pick from the world trends and signs. We must embrace science in tandem with the rest of the world and take the legalization debate seriously. This is a five-billion-dollar industry but at the moment, the government gets nothing from it" (Key Informant, Vihiga).

The above quotes reveal the key issues people are grappling with should the drug be legalized. These issues should form part of the clinical trials before legalization. It further indicates that

people are aware of the economic potential that the industry holds. In the same breadth, there are those who opine that the criminalization is hurting the vulnerable when the real drug peddlers have the resources to buy their freedom. One further wonder where all the bhang that the authorities have in their custody is disposed.

On the measures to be taken towards the legalization of the drug, participants suggested a number of strict control mechanisms with set parameters that should be considered. Some of the measures and precautions necessary included the age of consumption, strict processing and labeling, the timing of consumption, licensing of the farmers and sellers, documentation of the benefits, development of a strict protocol, regulated consumption, creation of the necessary awareness, demystification, defining the dos and don'ts, managing risks associated with consumption, community engagement, sufficient research conducted on the medical and related effects among others. The following voices highlight some of the suggestions:

"Assuming all the due processes are done including research to provide empirical evidence on the drug composition of marijuana, I would then propose that based on the research findings, let them legalize so that they can give prescriptions for specific aspects. For instance, when I say it enhances my strength to do physical work, it enhances my strength sexually and enhances my academic memories, then my proposal is that it is legalized for the various provisions that would have been confirmed. That if I have a deficit or am weak in my libido let it be enhanced and given a prescription. On medical grounds, if it is proven that bhang will make a positive impact then it should be allowed". (A male key informant aged 51 who is a County Government Official in Siaya County).

"Besides creating the smoking zones, government should have clear policies on licensing who can plant and sell bhang as well as set the age limit of possible consumers" (Excerpt from Young men FGD, Siaya).

"The government should put in place proper regulations such as place and time of use, licensing the production, distribution and consumption processes and spell out clear punishment for possible offenders and those who break the law" (Excerpt from Young women's FGD, Siaya).

"Legalization will lead to proper regulations, controlled advertisement, age limit, more information about side effects among others. It will also ensure proper pricing, revenue through taxes, controlled usage, hygienic growing, distribution and consumption as a rated commodity, hence quality assured" (Chief Officer, Vihiga).

"The process will result into trusted vendors, legal sale points, prescribed usage for proper control and the amount allowed to a consumer" (Key Informant Vihiga).

"We must have a participatory process and explain to people why we are legalizing bhang. This will lead to its proper use in medical field, rehabilitation of the lost generation as the many youths will learn the value of controlled consumption" (Key Informant, Vihiga).

"This conversation requires sufficient research, critical community engagement as well as the medical recommendations on the amount to be consumed, required

medical dosage and proper regulations generally. Otherwise, legalization of bhang is timely and long overdue” (Clinical Officer, Vihiga).

“This process should start by opening up the debate on marijuana so that extensive consultations can be possible. At the moment, even talking about the drug is done in whispers since you are not sure whether what you say will land you in trouble with the law” (Civil Society Actor, Kisumu).

The above quotes indicate that the population simply requires a process that enables them to open up and understand the various issues surrounding the consumption of bhang. They opine that the market for the commodity already exists locally and abroad. What needs to be done besides the creation of the necessary awareness is to put in place measures to educate the consumers on the side effects, flag out the side effects and create the necessary infrastructure to ensure that the side effects are mitigated. The psychologist at the County Referral Hospital in Vihiga noted that the government needs to understand that bhang smoking is not only real but widespread and the incarceration of users and peddlers has not deterred extensive consumption. Time is ripe to engage in a conversation that respects the realities on the ground and where possible, join the world trends towards greater accommodation of things that seemed too unacceptable just the other day.

One aspect that may require proper interrogation is ‘whose docket does drug and alcohol control’ fall? This question is pertinent since one of the key informants noted that *“Drug and Alcoholic Control is a devolved function”* yet there is lack of capacity on the officials to be able to provide the needed leadership in the control or the process towards legalization. There seems to be more attention on the control of alcohol through licensing and a lack of sufficient awareness and knowledge on the other drugs.

DISCUSSIONS

As noted, today cannabis is by far the most widely consumed and traded substance deemed illegal by the state in Africa (Carrier and Klantsching, 2018). Social perceptions of the drug and its potential harms in Africa are as polarized as those in the west between those who see it as a “hard drug” strongly linked to madness and those who extol its virtues as a “herb” (Ibid). However, there exists enough impetus to start a nation-wide debate on the process of decriminalization and or legalization of the cannabis. The strict prohibitionist regulations that inform local policies seem outdated and are based on the colonial attitudes on substances that were seen to have originated from Africa as seen from the 1912 Hague Opium convention (Hoz Schilling, 2015; Bewley-Taylor et al., 2014).

Most of the fears and the negative effects of marijuana that is based on the lay knowledge have been debunked through research and now evidence exists of the medicinal and therapeutic value of the drug (Lancet, 1998; Patton et al., 2002). In Ghana, just like in the Kenyan evidence (Olungah and Muga, 2021), Henry Bernstein reports of young consumers who eloquently defend cannabis as “life enhancing; good for ailments (asthma, appetite loss), reading, contemplation and sense of self and sexual potency” (Bernstein, 1999). These same consumers are very much influenced in their perceptions of cannabis by reggae culture and Rastafarianism, which is a major factor throughout the continent (Savishinsky, 1994).

Even the traditional “gateway effect” that was also mentioned in the study linking marijuana smoking to alcohol and other hard drugs has been disapproved (Trebach, 2005) and no evidence has been availed to show marijuana dependency as criminogenic (MaCoun and Reuter, 2001).

According to current knowledge, marijuana satisfies none of the three schedule 1 requirements since it 1) has a low potential for harm and abuse 2) appears to have therapeutic benefits and 3) according to the American College of Physicians may be used safely under appropriate conditions (American College of Physicians, 2018). In this regard, the harms attributed to marijuana do not justify the onslaught against its users. As Blumenson and Nielsen (2009) observe, the continuing prohibition of marijuana and the criminalization of its users in the face of the existing knowledge betrays a lack of respect for the millions of people who choose to use it for the benefits they see in it, and an inhumanity towards the unlucky minority who are arrested, incarcerated, stigmatized, or otherwise caught up in the drug war- or perhaps culture war is the more correct term, for doing something that they, and perhaps half the country, do not regard as wrong. How do you explain to the Rastafarian community that the “holy herb” is an illegality? How do you convince a woman in Siaya and Vihiga Counties that the “medicine” she has used over the years to cure several ailments for her own children is less effective and criminal to use in the absence of an alternative narrative? How do you convince a young man who sees marijuana as the only available and affordable means of relaxation in this world of limited resources?

Generally, marijuana criminalization seems to be creating more harm than good. It has kept the government from exercising any control over the purity, labeling, or content of marijuana in circulation, it has discouraged educational programs that could distinguish between ‘soft and hard’ drugs and between moderate and safer use and abuse; and it has foreclosed any chance of instituting enforceable age limits on purchasers of marijuana by guaranteeing the sellers will be profit-hungry dealers with no license to lose if they sell to children (Blumenson and Nielsen, 2009). The unfortunate thing is that even in contexts where cannabis has been smoked for centuries, its use by young generations is frowned upon, and the common discourse is that substance use has degenerated as a result of the loss of power by African elders can be heard, as reported by the 1999 UN Report from Mozambique (UNDCP, 1999; Olungah and Muga, 2021).

There is need for the media too to have a representation that does not portray the drug as causing petty crime (Salked, 2009), serious crime (Stretch, 2014), organized crime, mental illness (Bryne, 2011), psychosis (Bloom, 2014); and physical and moral decay (Ayres and Jewkes, 2012). The whole portrayal of drug as the major cause of the bad behavior and other societal evils as noted in the study should be reconsidered. Marijuana has been wrongly presented as a significant causal factor in a range of societal problems including car accidents (Romano et al., 2014), workplace accidents (Price, 2014); disease (Ceste, 2010); and child abuse (Ryder and Brisgone, 2013) and as Taylor et al. (2016) observe, prohibition is legitimized by the construction of drugs as unsafe and extremely harmful. This social construction of drugs provides a distorted lens through which licit and illicit drug use is seen, where reason, logic and science become clouded by ideology, dogma, intolerance: a process that reflects the wider political climate, which elevates feeling and prejudice above reason and evidence (Cohen, 2013).

Whereas in contrast to the rhetoric, the reality is that the majority of illegal drug use is non-problematic, most commonly associated with leisure, pleasure and desired outcomes (Hunt et al., 2010 and rarely does drug use lead to addiction (Cloud and Grantfield, 2001 or require treatment (Siliquini et al., 2005) This position fits well with the traditional consumption patterns that enabled the old men to socialize and have leisure at the community levels among the Luo community as well as the Luhya community. This media and morality constructed matrix of “drugs=danger=death” provokes social conformity by frequent graphic illustrations of the negative consequences associated with the use of these prohibited drugs (Taylor et al., 2016).

It has been argued that since the creation of the 1961 UN Single Convention, the negative perceptions of drug use has become more real and influential in shaping our perceptions, knowledge and policies on drugs, than rationality, science and evidence, and indeed worryingly, such distortions have been accepted and adopted by drug reformers (Reynolds, 2015). As observed by Taylor et al. (2016), the perpetuation of the above fallacies within a reductionist discourse has had far reaching consequences. First, it continues the “routinisation of caricature” (Reinarman and Duskin, 1999:81) whereby all use of illicit substances becomes conflated with problematic drug use; Second, the enjoyment, benefits and pleasure derived from illicit drug use are inadequately researched, acknowledged and discussed (Moore, 2008) as has been the case in Kenya. Third, drugs policy becomes impervious to scientific evidence and instead takes its lead from political ideology (Boland, 2008) and fourth, policy responses tend to focus almost exclusively upon problematic use and fail to comprehend the policy needs of recreational drug use (Taylor, 2011).

Literature and available evidence suggest that neither tough drug policies, nor liberal drug policy, have impact upon levels of drug use (Hughes and Stevens, 2010), but prohibition places responsibility for the content, strength and purity of drugs on underground organizations, who while motivated by the same profit orientation goals as licit drug manufacturers, are unregulated and unable to operate openly. This forces illicit users to engage in criminal networks to purchase and use unknown substances while having no legal recourse when issues arise. This applies well to the unregulated use of confectionaries laced with marijuana in Kenya which is out of the police radar (Olungah and Muga, 2021). Generally, few States have the capacity to police cannabis cultivation, trade and consumption effectively (Carrier and Klantschnig, 2016).

The observed risks of drug related diseases mentioned in the research and all the negatives associated with marijuana consumption whether overdose, or even death is largely caused by prohibition (Buchanan, 2009). Unless prohibition is abolished and all drugs are regulated and legal to possess, reforms will continue to punish users of unapproved and/or outlawed drugs, driving them underground and significantly increasing harms. It may be politically and morally expedient to present lives that have been damaged by deindustrialization, poverty unemployment, exclusion, abuse and/or trauma as caused by “drugs”, however, chronic problematic drug use is more often a symptom of wider underlying issues, not the causal factor (Buchanan, 2006; MacGregor and Thickett, 2011).

We must commence a serious consideration of any reform that would bring more respect for individuals, more safety to users, and more humane ways of treating the small minority who

get into trouble. Unless a mature, scientific and evidence-based approach to drug policy reform is adopted, that clearly starts to expose, challenge and dismantle the very foundations of the drug apartheid, any regulatory framework or so-called reform is arguably little more than repackaged prohibition (Taylor et al., 2016).

CONCLUSION

Cannabis is a substance that for many in Africa has a social, economic and cultural legitimacy, and attempts to definitively fix it as 'bad' have often failed, especially if the main promoter of its illegality is a state that lacks legitimacy and gets its laws from the colonial carry over (Carrier and Klantschnig, 2016). In as much as cannabis may be illegal, for many in Africa and Kenya in particular, it is far from being universally condemned. A majority of people see it as a legitimate source of livelihood and relief as well as available medication to their many ailments; it is the cannabis law that may seem illegitimate. The continued assault on the small producers and consumers of cannabis who are being charged and imprisoned as shown at the opening evidence in this paper are based on decisions that are often made rather arbitrarily by the state, its police officers and by extension the conservative judiciary. It is important to understand that the cannabis debate transcends pharmacological effects or the medical and social harms of psychoactive substances, but is also concerned with its broader roles in helping define inter-generational conflicts, the labeling of the poor sector of the society or as a way to debate such contested ideas as development, national identity, ethnicity or morally frowned upon abortion and the overall reproductive rights of women and girls. As many African countries struggle to economically take advantage of the demand of cannabis in the world markets and as western countries' pharmaceuticals rush to Africa to take advantage of the untapped potential, it is time to go beyond the opportunistic quasi decriminalization of cannabis. The "weed need to be freed" based on the existing evidence and the fact that it is currently the global trend. It is very unfortunate that the cannabis that has become legal in Africa is not benefitting the African farmers nor helping to ease the burden of the poor consumer or small-scale trader. The voices of the few Kenyans in Siaya and Vihiga must commence a robust debate earlier started by the late Hon. Ken Okoth former Member of Parliament for Kibra and being continued by Hon. Ledama Ole Kina the Senator for Narok County albeit in muted tones. The late Hon. Ken Okoth, pushed for a bill legalizing and regulating the substance before his sad demise. There have also been efforts by political analyst Gwada Ogot who took a petition for legislation to the Kenyan Senate. Okoth had argued for Kenya to benefit economically from an export market for cannabis, suggesting that government should stop wasting money on sugarcane farming and legalise marijuana instead (Carrier and Klantsching, 2019).

On the other-hand, Gwada Ogot focused more strongly on the medicinal benefits of cannabis and sought in his petition to have cannabis removed from the list of scheduled substances, and for the establishment of a regulatory body to oversee a legal market. He argued that: "The plant is God's gift to mankind just as the many minerals He has put in store for Kenyans. The banning was purely for commercial interests in the pharmaceutical firms seeking to control the medical industry during the first and second world wars". This petition was debated in the Senate in 2017, where it garnered much interest in the media, while the debate in the Senate was somehow inconclusive and decriminalization is unlikely at the moment, at least the fact that the petition was heard at all makes a shift in political parlance. More recently, the debate was re-ignited by the Narok Senator Hon. Ledama Ole Kina who visited a marijuana farm in Lithuania and while

standing in the middle of the farm uttered the following words in the video that went viral:

"If this is good to reduce the pain in cancer patients, why don't you legalise it? What is so bad about it? We only live once. If weed is good, then let's legalize it. If it is bad then let's not allow other people in the world to plant it"

The senator further opined that we in Kenya should legalise weed for medicinal purposes as is the case in many other countries. He quipped as follows:

"Why is it that we in Kenya are still stuck with the old way of saying that this is an illegal drug.... This is crazy. Life!! I swear all of us are naturally high! Some with Nyasore, others with Busaa! instead of giving directions or consulting they decide to give a striker the ball while facing the goal post! Sawa twende kazi!!"

Debating the issue confers at least some legitimacy on a topic that many Kenyans recently would rather have found shocking or comical. It is in this same spirit that this paper opens up an academic debate and more professional researchers should come out and do justice to this subject and stop being too cautious as a result of global histories based on the prohibition that has stunted research on the plant allowing inaccurate and unfounded historical anecdotes to persist.

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