



RESEARCH REPORT

EASTERN CAPE CANNABIS PROJECT TOWARDS AN ENABLING REGULATORY FRAMEWORK

Version 1

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**ECRDA research report by Nicholas Heinemann, Interim Cannabis Coordinator
with supporting commissioned report for the
Conceptualisation, Motivation and Key Provisions for an
Enabling Regulatory Framework for Cannabis
developed by Webber Wentzel**

1. Purpose

The purpose of this research report is to provide a high level overview of the State of Cannabis in the Eastern Cape at the end of 2021.

This report sets out:

- Current production and expertise for dagga and hemp available in the province,
- Details the expectations of the dagga and hemp producers,
- Summarises the existing legislation and considerations of the Cannabis Master Plan
- Explores the shortfalls of the current legislation and the associated barriers to entry that limit the development of an inclusive industry
- Proposes a single Cannabis Bill with an indicative outline of a regulatory framework and detailed motivation aligned with international legislation and treaty obligations.

The broader ECRDA objective of this report is to contribute to a series of researched position papers aimed at aiding a general discussion and understanding of issues pertaining to rural development as a field of inquiry and action.

The specific objective is to outline an enabling regulatory framework that could fast track the development of the cannabis industry in the Eastern Cape based on our distinctive global comparative and competitive advantage that will assist the ECRDA towards achieving our articulated target of an inclusive, multi-dimensional practice of rural development.

2. Research Question and Methodology

This research is based on the last 14 months work undertaken by the ECRDA and DRDAR to develop the cannabis industry in the Province where the entities were tasked by Premier Mabuyane and DRDAR MEC's Meth and Pieters in their respective policy objectives to develop a strategy and implementation plan for cannabis in the Eastern Cape.

The research questions that this paper intends to unpack and discuss pertain to the existing illicit cannabis industry and the legacy hemp farmers in the province and an enabling regulatory environment that will formalise / legalise existing production and enable them to immediately participate in the cannabis value chain within the limitations of the United Nations Single Convention on Narcotics & Drugs treaty to which South Africa is a signatory.

To answer this research, question a high level understanding of existing production in the Eastern Cape is required as well as the limitations of the existing and proposed cannabis legislation in South Africa. The crux of the issue is that for the traditional poor small holder farmer in the Eastern Cape to participate in the global cannabis value chain we need to base our industrial strategy on the naturalised, drought tolerant indigenous cannabis farmed by tens of thousands of farmers in the province.

3. Background Information & Research

3.1 Existing Dagga Production

There is large-scale cultivation of cannabis. Most of the cannabis cultivation takes place in small, remote plots in the following provinces (by order of importance): Eastern Cape, KwaZulu-Natal, Limpopo and Mpumalanga. Cannabis is usually cultivated in mountainous or otherwise inaccessible areas. In both the Eastern Cape (essentially the former Transkei) and in KwaZulu-Natal, a large number of rural families supplement their cash income with cannabis production. Almost all are Black/African small farmers who are poor. They supplement their subsistence agriculture with cannabis as a cash crop. Unlike other countries in the subregion, there is no evidence of plantation style cultivation in South Africa (Aziz 2001).

Most of the cannabis consumed in the country is of South African origin. Authorities estimate that excess production enabled exports to grow from 15% of total production in 1991 to 70% of total production by 1996. Although the cultivation and wholesaling at domestic level is in the hands of rural Black/African communities and middlemen, much of the international cannabis trafficking to Europe is reportedly in the hands of British and Dutch expatriates living in South Africa, working in conjunction with South Africans. Western Europe in general, and the United Kingdom and the Netherlands in particular, are the main final destinations.

South Africa seems to have stopped submitting an Annual Reports Questionnaire to the UNDOC as there is no recent data in the latest reports covering 2013 onwards. Estimates on cannabis production vary from 2,000 to 82,000 hectares. In the mid-1990s, an official SAPS report identified 56,000 acres under cannabis cultivation (equivalent to 22,700 Ha or 0.1% of the arable land) in 1994 (SAPS 1995).

The precise amount of land dedicated to cultivation remains a matter of dispute, as is the total quantity of cannabis produced, in view of the varying estimates of the number of crops harvested per year (typically between two and four). While intermittent eradication operations conducted by the SAPS do provide accurate details on the scope of these operations themselves, they do not actually go further to indicate the totality of what is occurring with regard to cannabis cultivation in South Africa. Nonetheless, even at currently reported levels, South Africa is still one of the world's largest producers (UNODCCP 2001 and UNODCCP 2002). South Africa's importance in the cultivation and production of cannabis internationally can be extrapolated from the huge quantity of seizures the country makes each year. According to Interpol, South Africa is among the world's top four source countries for herbal cannabis (Interpol 2001).

Dagga grows well in almost all the nine provinces. The optimum growing conditions exist in what is known as the dagga belt. This is an area that extends from Eastern Cape to KwaZulu-

Natal. It is referred to as a traditional crop in this area. It is estimated that more than 900 000 small-scale farmers are growing dagga. The target market for majority of their harvest is Cape Town, Johannesburg, Durban and other South African towns and cities. Millions of people depend on income from dagga. (Cannabis Masterplan V5, 2021, pg 16).

3.2 The Eastern Cape Hemp Research Project

Hemp cultivation in South Africa officially started in 1999. The Eastern Cape Provincial Department of Agriculture in collaboration with the then National Department of Agriculture, as well as Department of Trade and Industry embarked on a National Hemp Pilot Initiative aimed at establishing the hemp industry in South Africa. This initiative was informed by preliminary studies done by the CSIR and partners, which indicated favourable conditions for growing hemp within parts of Eastern Cape, Western Cape and KwaZulu-Natal.

The Agricultural Research Council was given the mandate to conduct breeding and agronomic research on hemp. These programmes were conducted over a period spanning more than twenty years. The hemp breeding programmes resulted in development of two cultivars, namely, SA Hemp 1 and SA Hemp 2. The two cultivars are currently awaiting variety listing and registration for plant breeder's rights, once all the current legal restrictions had been removed. The agronomic research work resulted in documentation of best practices in the form of production guidelines that are appropriate for South African conditions

Commercial trials were conducted under the guidance of the ARC, DAFF and the Eastern Cape Department of Agriculture. The trials proved that commercial hemp production in South Africa is possible and might be 16

feasible. They further proved that commercial production of hemp by smallholder farmers is possible, but the production costs are too high. The security requirements regarding putting up a 2 m-high fence around the field is unaffordable for most farmers. This may be a serious barrier for new entrants.

The National Agricultural Marketing Council (NAMC) was commissioned to carry out economic feasibility studies to determine as to whether the hemp industry will be economically viable in South Africa. The NAMC worked with organisations like the Industrial Development Corporation (IDC), private sector companies, the Agricultural Research Council and many others.

These studies proved that the hemp industry in this country may be economically feasible and sustainable if all the current legal restrictions can be addressed or removed altogether.

Cannabis Masterplan V 5, 2021, pg 17

3.3 Current and Proposed Cannabis Legislation

The cultivation of cannabis is made possible under the following legislation or constitutional court rulings. **Cannabis the plant and all parts thereof remain an illegal substance in terms of the Drugs and Drugs Trafficking Act of 1992 with the following exceptions:**

- I. The **Constitutional Court ruling of 2018 allowed for cannabis to be cultivated and used in private** and made no provision for trade of any part of the plant thereby effectively legalising cannabis for private cultivation and use. Parliament is still considering the **Cannabis for Private purposes bill** until then there is no defined limited on cannabis cultivation in private.
- II. The **Cultivation of Cannabis for Medicinal Purposes on a Commercial Basis** requires a licence issued in terms of section 22C(1)(b) from SAHPRA and a permit in terms of section 22A(9)(a)(i) from the Director-General of Health.
- III. The **Cultivation and Processing of Hemp Permits** announced by the Department of Agriculture Land Reform and Rural Development in October 2021 that make provision for cannabis cultivation under .2% THC.

3.4 Draft Cannabis Master Plan

A National inter-ministerial committee has been established and is responsible for the development of the draft Cannabis Masterplan driven by the Department of Agriculture Land Reform and Rural Development and the Department of Trade and Industry with inputs from numerous other government departments. It aims to provide a framework for the establishment, growth & development of the cannabis industry in SA to contribute to economic growth, poverty alleviation & job creation. The stated objectives include:

- Increase the volumes and variety of Cannabis products destined for both local and export markets.
- Establish and increase the capacity of South African farmers to produce dagga and hemp
- Create opportunities for creation of small and medium size enterprises across the Cannabis value chain.
- Replace imported Cannabis products with locally produced products.
- Increase investments in research and technology development to support increased production, productivity and competitiveness of the Cannabis industry.
- Establish and increase the manufacturing capacity of the South African Cannabis industry.
- Development and maintenance of an effective regulatory system by strengthening law enforcement measures to deter the production, manufacturing and sale of Cannabis outside the legal framework.

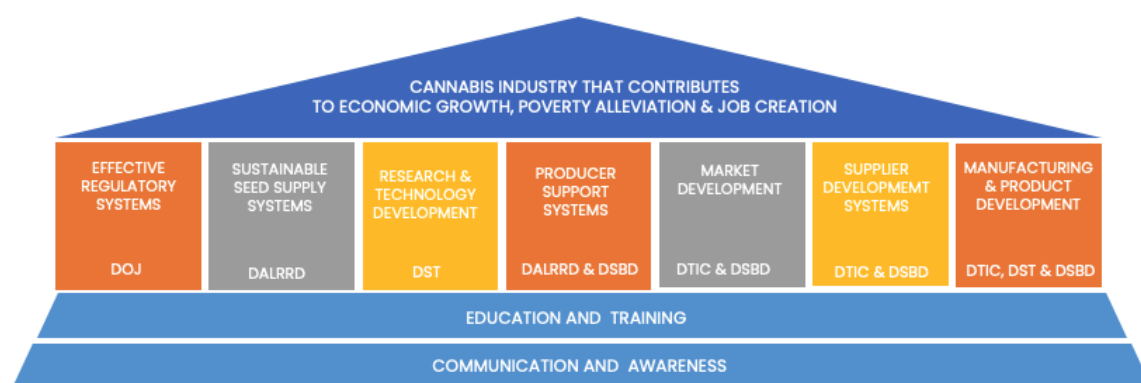


Illustration of the 7 pillars of the cannabis masterplan and the respective responsibilities of national departments.

3.5 Interpretations, Impacts, and Implications of Existing Regulations

The research above serves to establish that South Africa and the Eastern Cape in particular has a long legacy of cannabis farmers and cultivation that are well positioned to participate in the emerging cannabis economy if the State can provide enabling legislation to facilitate the potential for rapid industrialisation based on our competitive advantages to unlock economic potential in an inclusive and sustainable industry so as to position the Eastern Cape as a global leader in cannabis production. These can be summarised as follows.

- our acclimatised genetic strains naturalised over hundreds of years, and
- the need to legitimate these strains and their application to commercial products

- thousands of existing farmers in the province familiar with the crop, and
- the importance of valorising the effort of these farmers by bringing them into the formal economy of the industry as it develops
- an ideal climate and soil, and
- the cannabis plant that provides food, fuel, fibre, housing, and medicine

The Draft Cannabis Masterplan talks directly to hemp and dagga production but fails to provide a way forward for existing dagga farmers and puts prohibitive unachievable limits on the categorisation of hemp that serve only to position the industry based on foreign seed supply.

It can reasonably be argued that the **Constitutional Court ruling of 2018 which allowed for Cannabis to be Cultivated and Used in Private** will at some stage be extended to allow a reasonable trade in cannabis for those that do not have access to a private space to cultivate dagga to be allowed to practice their establish right to use cannabis in private. This opens the door to formalising recreational cannabis in some form.

It is of serious concern that after 3 years of the **Department of Health and SAHPRA issuing Regulations and Licences for the Cultivation and Processing of Medical Cannabis** that there are no black participants in the cultivation and processing space (although some black based businesses have received licences none have started cultivation). So whilst the Cannabis Masterplan supports dagga cultivation in theory the barriers to entry remain too high for existing rural farmers to participate in the space. The Eastern cape and KZN provincial governments are developing cannabis incubators to provide access to community cultivation and opportunities for traditional growers to enter the cultivation and processing space but it is a strategy of necessity with a reliance on largely white 'compliant' service providers to help develop the licence applications, business plans, quality management systems and access to international markets (as there is no accessible regulations to open the local market for medical cannabis).

In October 2021 DALRRD announced a framework for issuing **Hemp Permits** that once again presents formidable barriers to entry for farmers wanting to participate in hemp cultivation. The **biggest barrier is the maximum 0.2% THC level** that is arbitrarily applied based on the most conservative European regulations. However, Europe is not at the same latitude as South Africa and doesn't have the same amount of sunlight as we have in the South. The average temperatures and sunlight hours tend to let the hemp plant 'grow hot', a term used to describe hemp plants that exceed the maximum THC levels. Other limitations include:

- **Availability of Seed.** There is currently no local hemp seed supply in the SA which means that hemp seed must be imported from Europe, China or North America. This also requires seed import and phytosanitary certificates which take time and often difficult to get. It also

forces a country rich in cannabis genetics to import seed as the cornerstone of its industrial cannabis strategy for the short term. It puts us behind the curve and reliant on the external sources for seed supply which is unsustainable.

- **SAPS.** All farmers are vetted by DALRRD with SAPS to get police clearance to ensure that they do not have any serious criminal records which is an additional administrative hurdle, and the local SAPS police station must be informed that farmer will be growing hemp and the exact location. SAPS are also required to test the hemp crops to ensure that they are not growing high THC dagga which is almost impossible as they currently have no capacity to test cannabis and already have heavy caseloads.
- **CBD.** SAHPRA has decided that CBD production doesn't fall under hemp production despite being low THC and wants to keep this under their licensing regime. For many farmers CBD offers a dual crop strategy where value can be gained from seed, fibre and cbd flower. In North America CBD is called hemp and falls under the same regulations. In removing CBD from hemp, SAHPRA has taken an industry enabler and short-term cash generator from the hands of farmers and considerably set back the emergence of the industry.
- **Infrastructure.** All farmers are required to erect fencing around their crop for security purposes, this imposes a significant cost before production even starts, a cost that most poor rural farmers cannot carry and that provincial agricultural departments do not have the budget to support. It's an unnecessary requirement for an agricultural commodity with no narcotic effect.
- **Agro Processing & Market Development.** Currently there is very limited agro processing capacity for industrial cannabis in the country. As with any agricultural commodity aggregation and processing needs to be facilitated close to production areas to reduce transport costs that can push costs up to make the venture unviable. A concerted effort needs to be made to cluster production in proof-of-concept nodes and to provide access to agro-processing equipment. Attention also needs to be paid to stimulating demand for hemp products through to product substitution in existing markets and opening up new markets.

4. Towards an Enabling Cannabis Policy Environment

The findings of this research based on the existing cannabis production in the Eastern Cape and the urgent socio-economic needs of South Africa to urgently address economic growth, unemployment, climate change mitigation and rural to urban migration indicate the need for a transformative policy shift from regulating to commercialising cannabis. A shift that recognises cannabis as an ordinary agricultural commodity, that stops criminalising farmers for producing dagga, that legitimises an existing industry and allows it to be formalised to raise tax revenue for the fiscus and ensure safety and efficacy for personal use and unlocks the potential for the rapid labour based industrialisation of the commodity to revitalise the rural

economy, creating meaningful work, sparking a new generation of entrepreneurs developing innovative products.

As the Interpol and UNODC reports detailed above indicate South Africa as one of the top four cannabis producers in the world can't find itself in a position where we are developing Western centric cannabis policy that is reliant on foreign cultivars and indoor cultivation standards that negate our formidable potential competitive advantage and put us considerably behind in the global cannabis industrial development curve.

Based on the summarised position stated above the ECRDA initiated a procurement process to appoint a professional legal service provider that could consider our international drug policy obligations and explore global best practices to develop a draft regulatory framework to facilitate the development of the potential multi-billion Rand cannabis value chain that enables the empowerment of small-scale farmers and the development of agro-processing cooperative hubs.

Webber Wentzel was appointed through the ECRDA supply chain management process and appointed to conduct the study. The ECRDA put together a Project Steering Committee made up of local cannabis policy experts and an international cannabis expert who works on cannabis policy at the United Nations. This team was constituted as follows:

- Garreth Prince, Principle litigant in the State vs Prince 1,2 and 3 that resulted in the September 2018 Constitutional Court ruling.
- Paul-Michael Keichel and Andrew Lawrie from Schindlers attorneys, the lawyers representing the Dagga Couple in the Trial of the Plant, Gauteng High Court
- Taryn Vos, Legal Counsel for Highlands Investments representing the Cannabis Trade Association Africa and Highlands Investments
- Kenzi Riboulet-Zemouli, Independent Researcher, Cannabis Policies, United Nations

Their deliberations were informed by the stakeholder engagement sessions (See Appendix B) conducted by DRDAR and the ECRDA in November 2020 to solicit comments on the proposed Cannabis for Private Purposes Bill .

The attached report proposes a framework for a well-regulated market for all uses of cannabis by establishing markets that can efficiently supply consumers and generate reliable tax revenue for Government. It provides a way forward for cannabis reform which includes responsible adult usage and trade whilst honouring its international law obligations, a mechanism to include traditional and small-scale cannabis farmers as the stronghold of the cannabis economy; and options for various policy mechanisms which could be invoked to ensure policy coherence and achieve an enabling regulatory framework for cannabis in South Africa.

5. Research References

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- **South Africa – Country Profile on Drugs and Crime**, UNODC 2002 https://www.unodc.org/pdf/southafrica/country_profile_southafrica.pdf
- **Cannabis in Africa, UNODC 2007** https://www.unodc.org/documents/data-and-analysis/Can_Afr_EN_09_11_07.pdf
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- **South Africa State of the Nation Address 2020** <https://www.gov.za/speeches/president-cyril-ramaphosa-2020-state-nation-address-13-feb-2020-0000>
- **Eastern Cape State of the Province Address 2021** <https://www.gov.za/speeches/premier-oscar-mabuyane-eastern-cape-state-province-address-2020-23-feb-2021-0000>
- **DRDAR Policy Statement 2020** <http://www.drdar.gov.za/wp-content/uploads/2020/05/Policy-Speech-2020.pdf>
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- **Fields of Green for All, Cannabis in SA, The People’s Plant, A Full Spectrum Manifesto for Policy Reform** <https://fieldsofgreenforall.org.za/the-manifesto-free-download-cannabis-in-south-africa-the-peoples-plant/#single/0>