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# NIGERIA'S CANNABIS QUESTION: BALANCING THE TRIPOD OF LAW, COMMERCE AND POLITICS.



## ► Background:

On May 20, 2019, the news hit the airwaves that His Excellency, Arakunrin Oluwarotimi Akeredolu, the Executive Governor of Ondo State, in company of the Chairman of the National Drug Law Enforcement Agency (“**NDLEA**”), Colonel Muhammad Mustapha Abdallah, had engagements in Thailand on medicinal cannabis development. Arakunrin Akeredolu indicated that Ondo State may explore cannabis cultivation for medicinal purposes in controlled plantations in the State. The ensuing uproar in Nigeria, particularly in the corridors of politics, is best left to imagination. The arguments largely border on the notoriety of cannabis’ addictive tendencies and usage by criminals. While noting that Ondo State is relatively the hotbed of cannabis cultivation in Nigeria and a legalization of cannabis cultivation would generate employment for its teeming youth, the Governor surmised that it would be a gaffe for Nigeria to miss out in participating in the global cannabis market with estimated potential earnings of \$145 billion by the year 2025.

In the succeeding paragraphs, we embark on a brief exposition of the legal framework for cannabis cultivation in Nigeria for medicinal or recreational use and conclude with highlighting the relevant conversations that should be had considering the potential annual ₦52.3trillion market opportunity available for Nigeria’s participation.

## ► Cannabis: The Plant and the Drug

Commonly known in Nigeria as marijuana, Indian hemp, weed or igbo, cannabis is a generic name for a species of plants with an estimated 483 known compounds, 65 of which are essentially cannabinoids. It is a tall flowering plant with a stiff upright stem and may include three species namely: sativa, indica and ruderalis. Its psychoactive properties, together with its mental and physical effects, endears it for any of medicinal, recreational or religious use. It is typically used for smoking, cooking or by extraction of its juices. Its direct side effects, short and long term, include any or all of the following: heightened mood, paranoia, anxiety, impairment of physical coordination, increase in appetite, decreased mental ability and addiction. There are medical assertions which consider cannabis effective in the treatment of: nausea and vomiting as side effects associated with antineoplastic therapy, anorexia and cachexia particularly in patients of AIDS and Alzheimer’s disease, spasticity, movement disorders, glaucoma, pain and tremors from Parkinson’s disease amongst others.

## ► Regulating Cannabis Cultivation in Nigeria – The Legal History

The Dangerous Drugs Act, 1935 (the “DDA”) is the first notable legislation against cultivation, trafficking and abuse of cannabis in Nigeria. The DDA defines Indian hemp as any plant or part of a plant of the genus cannabis; the separate resin, whether crude or purified, obtained from any part of the genus cannabis; or any preparation containing any part of cannabis. The DDA confers right on the President to make regulations and prohibitions on the control, importation, exportation, production, possession, sale and distribution of cannabis; except by persons or premises licensed or authorized in that behalf. The DDA allows any person, upon production of an import certificate issued by the competent authority in any country, to be issued an export authorization further to which he may lawfully export Indian hemp from Nigeria.

The DDA provides that an import certificate will not be necessary where the intended exportation is destined for a country which is not a party to the Geneva International Convention relating to Dangerous Drugs, 1925 or the Geneva Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 1931.

The Indian Hemp Act, 1966 (the “**IHA**”) retains the definition of Indian hemp in the DDA. A sentence of death or imprisonment for not less than twenty-one years is prescribed, upon conviction, for a person who knowingly plants or cultivates cannabis. Importation, possession and or sale of any medical preparation of cannabis is permissible provided no offence against the DDA is committed thereby. A person who exports cannabis is liable on conviction to imprisonment for a term of not less than twenty-one years. It is notable that the IHA fails to repeal the provision of the DDA which permits exportation of cannabis upon satisfaction of certain conditions by the prospective exporter. A number of other amendments were made to the IHA with the enactment of the Indian Hemp Amendment Act in 1975 and the Indian Hemp Amendment Decree, 1984.

In 1989, the NDLEA was established pursuant to the National Drug Law Enforcement Agency Act, 1989, as amended and currently compiled as Cap.N30 Laws of the Federation 2004 (the “**NDLEA Act**”) to enforce laws against the cultivation, processing, sale, trafficking and use of hard drugs and to empower the NDLEA to investigate persons suspected to have dealings in drugs and other related matters. By the NDLEA Act, a person who, without lawful authority, manufactures, processes, plants, grows or exports cannabis is liable upon conviction to a sentence of imprisonment for life. The burden lies on the accused person to prove that he has lawful authority to carry out any of the prohibited activities.

The National Agency for Food and Drug Administration and Control Act, 1993, as amended and currently compiled as Cap N1 Laws of the Federation of Nigeria (LFN) 2004 (the “**NAFDAC Act**”) was enacted to create a National Agency for Food and Drug Administration and Control responsible, inter alia, to ensure that the use of narcotic drugs and psychotropic substances are limited to medical and scientific purposes and grant authorisation for the import and export of narcotic drugs.

A measured study of the highlights of the cannabis related legislation in Nigeria outlined above would reveal that the IHA is at the vanguard of the criminalisation of cannabis cultivation and exportation in Nigeria. While the other laws, DDA, NDLEA Act and NAFDAC Act, admit the possibility of obtaining some authorization for lawful cannabis cultivation, sale, possession, importation and exportation in Nigeria, the IHA expressly prohibits these commercial activities save for the importation, possession and or sale of any medical preparation of cannabis, provided no offence against the DDA is committed in the process. It is also noteworthy that the possible authorization under each of the DDA, NDLEA Act and NAFDAC Act relate to the cultivation, sale, possession, importation and exportation of cannabis for medicinal purposes as none of the laws contemplate the use of cannabis for recreational purposes.

## ► Sizing the Global Cannabis Market and International Trends:

A CNBC News report of March 14, 2019 indicates that the marijuana industry in the United States of America added 64,389 jobs in 2018. According to the New Frontier Data's analysis, released in the Global Cannabis Report: 2019 Industry Outlook (the "Report"), the global total addressable cannabis market is presently worth USD\$344 billion worldwide. The top five regional markets are Asia (USD\$132.9 billion), North America (USD\$85.6 billion), Europe (USD\$68.5 billion), Africa (USD\$37.3 billion) and Latin America (USD\$9.8 billion). Over 260 million cannabis consumers currently make up that worldwide market. The worldwide demand is exponentially increasing. There are an estimated 1.2 billion people worldwide who suffer from medical conditions for which medical cannabis has shown potential therapeutic value. Interestingly, as acceptance is further assured by positive feedback from the patients, leading health organisations have validated the medical efficacy of cannabis derivatives further strengthening the global interest and adoption of medical cannabis and lowering the utility of upholding blanket prohibitions.

## ► Regulatory Disposition in other Jurisdictions:

### **Uruguay:**

In December 2013, Uruguay became the first country to legalize recreational cannabis by a legislation signed by President Jose Mujica. In a bid to reduce the large profits earned by cannabis traffickers which occasions violence, organized crime, cartelization and its attendant societal problems, the Uruguayan Government implemented a plan to cultivate cannabis for non-commercial uses and licensing professional farmers for large scale production by applying and grant of licenses from the government. A prospective farmer must be registered with the government; and with fingerprint recognition, a Uruguayan citizen may purchase up to 40 grams of cannabis for monthly use. To prevent sale of cannabis to foreigners and non-registered consumers, the Uruguayan Government tightly controls price, quality and maximum production volume.

### **Canada:**

On 17th October 2018, the federal Cannabis Act came into effect in Canada thus formally legalising the cultivation, possession and consumption of cannabis and its' derivatives. Prior to the passage of the Cannabis Act, regulated medical use of cannabis was legal in Canada under the Access to Cannabis for Medicinal Purposes Regulations (ACMPR) issued by Health Canada in 2001. Only growers licensed by the government are allowed to produce cannabis. Cannabis companies are prohibited from promotions through television commercials, billboards, magazine advertisements and sponsorship events.

### **Lesotho:**

In 2017, Lesotho became arguably the first African nation to grant a license for the cultivation, processing and sale of cannabis for medical and scientific purposes in the country. International firms are granted licenses at a steep cost (USD\$10,000) to ensure government control and high entry level for interested parties.



## ► Our Concluding Thoughts:

Given international trend, regulated cannabis cultivation in Nigeria may hold great possibilities. From economic diversification, foreign exchange earnings, job and wealth creation to a better health outlook for its citizens stemming from a greater awareness of medical cannabis use, it is arguable that there are no downsides to a Nigerian participation in the global cannabis trade.

As opined above, the tenor of the IHA represents a major impediment to the cultivation and processing of cannabis in Nigeria for medical and scientific purposes. The IHA unreservedly criminalizes the planting, cultivation and or exportation of any plant of the genus cannabis in Nigeria. In contrast, the importation, possession and or sale of any medical preparation of cannabis is permissible under the IHA, provided no offence against the DDA is committed in the process. A few questions arise: what is the nexus between an absolute bar on planting, cultivation and exportation of cannabis as in the IHA; and the provisions of the DDA, NDLEA and NAFDAC Acts which contain permissive provisions for these activities? Is there a need for an amendment of the IHA which is a federal legislation, being that Part II of the Second Schedule of the Constitution of the Federal Republic of Nigeria vests the House of Assembly of a State with the power to make Laws for that State with respect to industrial, commercial or agricultural development of the State? Can Ondo State, being desirous of exploiting the commercial benefits of cannabis cultivation for medical purposes, decide to enact its own agricultural development laws which permit regulated cannabis cultivation and exportation in alignment with the DDA, NDLEA and NAFDAC Acts? Is cannabis a plant which may be concurrently legislated upon by the Federal and States' legislatures or a drug within the exclusive legislative list of the federal legislature? Where the resolution is that it is both, is it then not arguable that since a plant requires cultivation then the cultivation of cannabis should be a matter for State Governments while its use, either for medicinal or recreational purposes be left to the Federal Government? Is the Nigerian sociocultural context mature enough for a policy consideration of legalizing cannabis for regulated recreational use in order to participate in the global cannabis trade boom? What measures may be instituted by the [Federal] government to avert abuse if a framework for regulated cannabis cultivation is adopted?

The answers to these posers, we believe, would shape policy direction for Nigeria to determine whether to explore this blossoming market. We may, like Lesotho, find that a ganja revolution was all we needed to take Nigeria to the next level.

For further information on the foregoing (none of which should be taken as legal advice), please contact: Bidemi Olumide ([bidemi.olumide@ao2law.com](mailto:bidemi.olumide@ao2law.com)) or Ifure Udofa ([ifureuwem.udofa@ao2law.com](mailto:ifureuwem.udofa@ao2law.com)) with the subject: ***"Nigeria's Cannabis Question: Balancing the Tripod of Law, Commerce and Politics"***