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Submission for consideration in developing a supportive regulatory environment for the growth and trade in medicinal and recreational marijuana in South Africa

Submission prepared by Dr. Leif Petersen (Sustainable Livelihoods Foundation NPC) and Mr. Matthew Gaylard (8Linkd).

This submission is based upon our collective inputs which consider the findings of our research, and our interpretation of these findings in relation to the development of a legislative framework for the legalisation of marijuana production, processing and trade in South Africa.

BACKGROUND

Since 2017, three separate events have influenced the legality of cannabis in South Africa. Firstly, a licensing framework was introduced for the domestic cultivation and manufacture of medicinal cannabis by the Department of Health (2017). In September 2018 the Constitutional Court ruled that it was no longer a criminal offence for adults to use, possess or grow marijuana, and gave parliament 24 months to bring the law in alignment with this ruling - most notably, the Drugs and Drug Trafficking Act, but potentially impacting on a range of legislation and regulations. (At present, there is still policy uncertainty in relation to the court's ruling with respect to what constitutes private use of marijuana). In 2019 an active ingredient of cannabis—Cannabidiol (CBD) was rescheduled (from a Schedule 7 to Schedule 4 drug) by the Minister of Health from the operation of the Schedules to the Medicines and Related Substances Act. Each of these actions represents initial steps for South Africa, alongside a growing number of countries towards decriminalising and legalising marijuana, both for recreational and medicinal purposes.

The changing legal environment and increasing scientific evidence suggesting important societal, medicinal and economic benefits related to cannabis for these attributes represents potentially the single largest economic opportunity in a generation for South Africa. Such market sentiment is clearly growing—a recent (18 September 2019) industry stakeholder meeting hosted by WESGRO had over 150 attendees including landholders, scientists, processors and manufacturers, with various representatives from the state attending and presenting. Whilst the market for recreational use is poorly quantified, there are “various expectations the legal cannabis market is expected to grow at approximately 20% per annum over the next 10 years” (WESGRO 2019). Internationally the legal medicinal marijuana market was estimated at US\$9.3 billion in 2013, anticipated to grow to US\$47 billion by 2027 (SAHPRA 2019). In light of these developments industry interest and uptake in this sector has been rapid. South Africa's

corporates including AB-Inbev (South African Breweries) have announced billions of Rands in investment in the sector with a view to capitalising on the business opportunities it represents.

Yet, a critically important stakeholder group for the sector are Black South Africans, in particular smallholder farmers, indigenous knowledge communities, and small, medium and micro-sized enterprises (SMMEs) who have historically been persecuted¹ and largely borne the social, economic and legal costs from their association with this product. In order to promote equity in South Africa this industry needs to be shaped in ways that foster inclusiveness and economic opportunity.

PROBLEM STATEMENT

Currently, and prior to decriminalisation (for recreational and medicinal purposes), there existed a largely unquantified but nevertheless significant domestic market for marijuana. In the past, serving this market has formed an important source of income for a large number of (mainly black) households and smallholdings. Depending on the manner in which marijuana is regulated in this country, legalisation can either benefit these households - which have materially suffered from past racial discrimination and ongoing police harassment in relation to marijuana - or it can hinder their continued participation in the market for marijuana.

Similarly, a range of new economic opportunities is presented through the legitimisation and commercialisation of the medicinal marijuana sector. Whilst the barriers to entry for medicinal product manufacturing are likely considerably higher than for recreational, there is still a critical need for this industry to embrace the principles of BBBEE and spread economic and social benefits to South Africa's poorest communities—many of whom are rural and regionally based.

With legislation being developed, the opportunity for creating equity at the ground-floor of emergent recreational and medicinal industries is now. The rapid mobilisation of the state and industry to meet the needs of this market must foreground the need for inclusiveness through appropriate policy and investment or operational guidelines.

RELEVANT CHARACTERISTICS OF RECREATIONAL AND MEDICINAL MARIJUANA PRODUCTION / PROCESSING

In the formulation of legislation and industry development strategy it is critical to separate the recreational and medicinal markets from one another, and devise an appropriate strategy for each that reflects the state of the current sector, considering the various barriers to entry and practical constraints for micro-enterprise. The table below highlights important practical and process stage differences between these sectors;

¹ The Sustainable Livelihoods Foundation produced a series of 'digital stories' with the Rastafarian community in 2016. This short story illustrates their perspective:
https://www.youtube.com/watch?v=aKLbALVILFc&list=PLIWHCTyf4KVNsdKgE_caGiWatQIXHgSTu&index=6

Process stage	Recreational	Medicinal	Practical iterations
Production	“Home” grown	Highly technical, with minimum volumes required for processors	Smallholder and household-based microenterprises vs commercial intense operations
Quality control	Variable quality tolerated	Strict controls on product quality (THC vs CBD) required	Experiential vs scientific approaches
Markets	Local markets with variable value adding processes	Complex, international value chains with set value adding processes	Informal local markets vs commercialised international markets
Products	Plant derivatives such as oil, leaves, flowers, buds	Highly synthesised pills, tablets and products	Raw materials vs value-added products

The above differences reflected in production, quality control, markets and products mean that industry differentiation can be seen in both product and producer types. For recreational markets the barriers to production and trading in markets are relatively low, whilst for medicinal markets there is a far greater requirement for significant business investments (in terms of infrastructure, skills, science and marketing) to meet market requirements. As such, we suggest that the regulatory environment must be split to separately recognise both recreational and medicinal industries. This would allow for a more nuanced approach to these markets, their actors and the investment and beneficiary opportunities they represent.

A “Two Markets” approach

Market 1: the recreational sector

In creating a sustainable and responsible industry for recreational marijuana government must take a ‘smallholder and industry development approach’. Such process is required to

incorporate existing and new smallholders in ways that will foster their capacity, business and market development. This should include aspects of;

- Engagement with smallholders
- Bolstering business and land management capacity
- Investment in smallholder farmer development including integrating steps towards business formalisation from a ‘bottom up’ approach that incentivises business regularisation
- Seed and product assistance

- Training on quality control
- Supply chain management (including product aggregation, transport logistics,)
- Training on brand development and markets
- Encouragement of regionalisation and localised branding
- Enhanced supply chain links into formal retail outlets
- Quality control audits on farms and products

Large-scale producers, corporate ownership and other non-BBBEE actors must be shut out of this industry, or have their influence limited in ways that prevent the monopolising of the sector.

Market 2: the medicinal sector

For the medicinal marijuana sector an alternative beneficiation approach is required. Due to the high barriers to entry for growers, processors and to enter markets it is suggested that a programme similar to the Renewable Energy Independent Power Producer Procurement Programme (REIPPPP) be developed. This scheme includes 27 new green energy projects to supplement Eskom energy production, stimulating 58 000 new jobs and considerable direct foreign investment into South Africa, of which local community economic and social development programmes have been developed. The REIPPPP is a proven programme with international recognition, from which learning should be applied to drive the models of investment in the medicinal marijuana production, processing and market sectors. Outcomes of a successful medicinal marijuana sector strategy must include;

- BBBEE empowerment through shareholding in processors. This could be shareholding through (e.g.) farmer groups or communities of engagement;
- Mandated and earmarked dedicated community development funds per project or license awarded;
- Supplier and farmer development within the medicinal marijuana sector through direct investment, training and supply / value chain support.

Going forward

Development of an appropriate and nuanced legislative environment is urgently required from government to ensure that South Africa's marginalised people are fair recipients of this enormous economic opportunity. It is essential that the structural conditions favouring corporate monopolisation are removed by levelling the playing field for BBBEE and redressing injustices faced by recreational marijuana microenterprises. Ensuring that the regularisation requirements for permitting and licensing are fair, just and incentivised is required in order to voluntarily attract marijuana microenterprises into the regulatory framework. Furthermore, large formal businesses in the medicinal marijuana sector must be compelled to support and invest in the principles of BBBEE and local economic and community development through programmes such as the successfully proven REIPPPP.

The consortium who prepared this concept note have clear ideas about the required research and programmes required that will capacitate legislators to support the development of an inclusive, sustainable and impactful industry framework for the recreational and medicinal marijuana sectors. We would welcome the opportunity to engage further on this matter.

Contact the authors

Dr. Leif Petersen, Sustainable Livelihoods Foundation NPC (SLF) – SLF is a think tank and development practitioner agency with leading expertise in engagement and policy development for South Africa’s informal economy. SLF has conducted interviews with over 15,000 informal economy businesses across all sectors throughout South Africa, and has worked in policy development at all layers of South African government. leif.petersen@livelihoods.org.za

Mr. Matthew Gaylard, Linkd – Linkd Environmental Services partner with businesses, government and NGOs to develop innovative environmental solutions and offer policy, project management and regulatory compliance services, in particular in the fields of climate change, biodiversity, pollution and waste management. matthew@8linkd.com