

PETITION FOR THE LEGALIZATION OF THE GROWTH OF CANNABIS AS A CASH CROP FOR EXPORT FOR MEDICINAL USE

(Under Article 37 of the Constitution of Kenya and Section 3 of the Petition to Parliament (Procedure) Act Number 22 of 2012) as read together with National Assembly Standing Orders Nos. 219-223

To: National Assembly of Kenya  
C/O The Clerk  
Kenya National Assembly  
Parliament Buildings  
P.O. Box 41842 – 00100,  
Nairobi,  
Kenya



Cc: Hon. Sabina Chege, M.P.  
Chairperson,  
National Assembly Committee on  
Health

WE, THE UNDERSIGNED CITIZENS OF THE REPUBLIC OF KENYA duly concerned with the economic opportunities surrounding the cultivation, processing and export of cannabis as an agricultural product for medicinal use in other countries as an opportunity for individual and country-wide development;

DRAW the attention of the House to the following:

1. The Constitution of Kenya 2010 confirms that all sovereign authority belongs to the people of Kenya.
2. Through Articles 1(2) and (3) of the Constitution, the people of Kenya have delegated legislative authority to Parliament as their democratically elected representatives. That delegation is not absolute and can also be exercised directly by the people. Article 119 provides that every person has the right to petition Parliament to amend any legislation.
3. It is in accordance with this constitutional prerogative that we put forth this Petition seeking amendment and implementation of the Narcotic Drugs and Psychotropic Substances (Control) Act (hereinafter "the Act") to allow for the legal cultivation, processing and exportation of cannabis from the country for medicinal use in designated jurisdictions that offer a ready market for medical marijuana.
4. The Pharmacy and Poisons Act recognizes the growth, processing, manufacture and processing of cannabis as a Part I Poison under the mandate of the Pharmacy and Poisons Board.

## BLANKET ILLEGALITY OF CANNABIS IN KENYA

5. Through the Act, Kenya has criminalized the use of cannabis within its jurisdiction and adopted a 'war on drugs policy' that involves prohibitions on the use and possession of cannabis.
6. Section 2 of the Act defines cannabis as:
  - a. "cannabis" means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by tops) from which the resin has not been extracted, by whatever name they may be designated".
7. Section 3(2)(a) of the Act further lists cannabis as a banned substance. This is in line with Kenya's national drug policy and in line with other legislation duly anchored in the 1961 UN Single Convention on Drugs and Narcotics (United Nations, *Treaty Series*, vol. 520, No. 7515, p. 151, hereinafter the "Single Convention") which was acceded to by Kenya on 13 Nov 1964.
  3. Penalty for possession of narcotic drugs, etc.
    - (1) Subject to subsection (3), any person who has in his possession any narcotic drug or psychotropic substance shall be guilty of an offence.
    - (2) A person guilty of an offence under subsection (1) shall be liable—
      - (a) in respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years and in every other case to imprisonment for twenty years;
8. For purposes of full disclosure, we note that subsection (3) makes provisions for exemptions thus:
  - (3) Subsection (1) shall not apply to—
    - (a) a person who has possession of the narcotic drug or psychotropic substance under a licence issued pursuant to section 16 permitting him to have possession of the narcotic drug or psychotropic substance; or
    - (b) a medical practitioner, dentist, veterinary surgeon or registered pharmacist who is in possession of a narcotic drug or psychotropic substance for any medical purposes; or
    - (c) a person who possesses the narcotic drug or psychotropic substance for medical purposes from, or pursuant to a prescription of, a medical practitioner, dentist or veterinary surgeon; or
    - (d) a person authorized under the regulations to be in possession of the narcotic drug or psychotropic substance.
9. However, these exemptions have not been operationalized particularly with regard to cannabis a development that one may attribute to Kenya's policy on war on drugs.
10. Schedule 3 of the Act lists the cannabis plant as one of the prohibited plants in the country. Section 6 of the Act criminalizes cultivation of the cannabis plant, being a prohibited plant, as reproduced below.
  6. Penalty for cultivation of certain plants

Any person who—

(a) cultivates any prohibited plant; or

(b) being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of the cultivation, gathering or production of any prohibited plant

shall be guilty of an offence and liable to a fine of two hundred and fifty thousand shillings or three times the market value of the prohibited plant, whichever is the greater, or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.

11. We submit that this blanket prohibition on cultivation of cannabis is outdated, considering the increasing realization of the medicinal use of cannabis the world over.

### BASIS FOR CRIMINALIZATION

12. The criminalization of the cultivation and possession of narcotic substances was introduced into Kenya's legal regime following a worldwide 'war on drugs' policy. This led to the ratification of various international conventions on the use of narcotics and other psychotropic substances, including the following:

i. The 1961 Single Convention on Narcotic Drugs;

ii. The 1971 Convention on Psychotropic Substances; and

iii. The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychoactive Substances.

13. Particularly, the 1961 Single Convention covers a wide range of narcotics, including opium, coca, cannabis and their derivatives. It explicitly prohibits the "production, manufacture, export, import, distribution of, trade in, use and possession" of these drugs unless for "medical and scientific purposes". There are caveats and transition periods embedded in the Single Convention, given the widespread nature of cannabis consumption, including specific opt-outs for constitutional limitations.

### RECENT DEVELOPMENTS

14. Recent studies have shown that cannabis, despite its psychotropic and stimulating properties, as well as industrial uses, can be effectively used for the treatment of a number of chronic diseases due to the fact that cannabis has a number of medicinal benefits that help in pain relief, stimulating appetite, as sleep aid, as anti-toxin, as anti-inflammatory and for reduction of anxiety, just to name a few. This is in addition to the wide array of industrial uses into which the plant could be put such as the manufacture of paper, textiles, biodegradable plastics, sustainable fuel, in construction and as a health food.
15. Numerous countries especially in Europe and North America, including members of the Security Council of the United Nations, have elected to effect the Single Convention's waiver exempting the use of cannabis for medicinal purposes.
16. In light of the above, we Petition that Kenya exercise sovereignty and emulate other members of the United Nations who have chosen to exercise their rights to opt out of the

Single Convention for the sake of the growth and utilization of cannabis for commercial, medical and other uses.

### A CASE FOR MEDICAL CANNABIS AS A CASH CROP IN KENYA

17. As mentioned above, significant scientific research has been carried out on the medical benefits of cannabis in treating and managing chronic and autoimmune diseases. Study of the drug has enabled scientists to identify the medicinal component of the drug, known as Cannabidiol (CBD) and use it to treat various ailments in jurisdictions that have legalized medical marijuana. In this respect it has been discovered that cannabis can be used in the treatment of the following illnesses:
- (a) Alzheimer's: Alzheimer's is the result of a plaque that builds up in the brain and disrupts the communication system. The memory loss and other cognitive deficiencies are related to parts of the brain which are no longer communicating with other parts. Tetrahydrocannabinol (THC) which is a chemical of the plant reduces the level of certain proteins in the brain, so the plaque cannot form.
  - (b) Glaucoma: Cannabis reduces pressure in the eye by dilating the blood vessels, relieving the pain of glaucoma.
  - (c) Opioid addiction: Cannabis reduces the anxiety of extreme opioid cravings in recovery to prevent relapse. It also enhances one's mood to overcome withdrawal symptoms, including depression. Marijuana can become an alternative option for opioid addicts while they are working on overcoming their addiction. Marijuana has no real health or overdose risks, and once a patient is off opioids, it is much easier to step-down the marijuana until the addiction is eliminated.
  - (d) Epilepsy: Cannabis disrupts the electrical impulses in the brain that cause seizures. It keeps the neurons from being over excited and protects them from damage. Epilepsy patients find a significant reduction in the length and frequency of seizures with cannabis. It allows them to wean off prescription medicines and live a more normal life.
  - (e) Attention deficit disorders: Attention deficit is generally attributed to an overload of sensory information. The brain is bombarded with thoughts constantly and is unable to prioritize them and focus on some and ignore the rest. It suppresses sensory input to the brain, so there are fewer thoughts to sort through. It may also use the endocannabinoid system to reduce overstimulation in the brain.
  - (f) Multiple sclerosis: This degenerative disease can be slowed by the THC in cannabis. By reducing inflammation and blocking nerve pain signals, THC also reduces pain for patients.
  - (g) Arthritis: The pain of arthritis is caused by inflammation in the joints. Cannabis reduces inflammation and relieves pain.

- (h) Chronic Obstructive Pulmonary Disease (COPD): COPD is a progressive disease for which there is no cure. Cannabis can help increase appetite and maintain healthy body weight to improve quality of life.
  - (i) Post-traumatic stress disorder (PTSD): The THC in marijuana repairs memory which makes it a good therapeutic tool for combatting PTSD. Medical marijuana also reduces stress and nightmares in those suffering from PTSD.
  - (j) Asthma: Cannabis helps relax muscles and reduce stress. Studies have shown that it can alleviate asthma symptoms. Even when smoked, marijuana can improve breathing in asthmatics.
  - (k) HIV/AIDS: Cannabis reduces nerve pain and anxiety for HIV/AIDS patients. It also stimulates appetite to help them maintain a healthy body weight and improve sleep.
  - (l) Cancer: Studies have shown that Cannabis not only helps cancer patients with effective pain management, but also slows down the growth of cancer cells. Further, studies done on a derivative of Cannabis has shown that the substance can in conjunction with other substances kill cancer cells while having no effect on healthy cells in the body.
18. The medicinal use of cannabis has been common knowledge among Kenya's indigenous communities, with peoples such as the Luo and the Agikuyu using it for various medicinal and even divine purposes. In Kenya, the plant was historically used to treat tetanus, hydrophobia, delirium tremens, infantile convulsions, neuralgia and other nervous disorders, cholera, menorrhagia, rheumatism, hay fever, asthma, skin diseases and protracted labour during childbirth.
  19. In addition to Cannabidiol (CBD), cannabis produces another chemical known as Tetrahydrocannabinol (THC) which is responsible for the psychoactive effects experienced when ingested. THC is responsible for a feeling of relaxation that is so popular among its recreational users.
  20. Different strains of cannabis have different concentrations of both components, with strains high in CBD content and low in THC being referred to as hemp, and being suitable for medicinal use. Such strains are what we propose to be grown in the Country with primary focus on the medicinal aspect of the plant.
  21. Of interest in this Petition therefore is CBD, the component of cannabis responsible for the healing and wellness properties of the plant. Such profound medicinal uses have been recognized all around the world with countries such as Australia, Canada, Chile, Colombia, Finland, Germany, Greece, Israel, Italy, Norway, the Netherlands, New Zealand, Peru, Poland, some states in the United States and Thailand having legalized the use of cannabis for medicinal purposes, often referred to as 'medical marijuana'.
  22. While cannabis still remains prohibited in most countries around the world, it has been legalized in some countries to varying extents, being countries that have legalized the possession for recreational use, countries that have legalized cultivation, and countries

that have legalized medical use and the conditions surrounding the medicinal use of cannabis. These different approaches have led to different markets for cannabis products depending on the legal regime.

23. For example, recently in Africa, South Africa has legalized the possession and use of cannabis for personal use, criminalizing only the public use of the drug and use by minors. Lesotho and Zimbabwe have legalized the cultivation of the plant as a cash crop by specific licensees for its export for medicinal use. This move by Zimbabwe and Lesotho has heralded huge economic benefits for both countries given their ailing economies.
24. We respectfully submit that Kenya should follow this example to boost our agricultural sector and attract foreign investment. Kenya has one of the best environments for growth of the plant in the world, with its growth naturally in the highlands around Mt. Kenya, Nyanza and the Coastal region. The particular strain that grows around these areas is unique to the country, and ideal for medicinal use upon careful processing. Cannabis is a low maintenance crop, especially here in Kenya where we have ideal climate and soil for the natural, rarely-tended-to plant. With the recent low yield associated with some of Kenya's highest agricultural earners such as maize, and the resulting difficulties faced by farmers of such crops, the cannabis plant would seem like a relief as the same only takes a growing cycle of three months from seed to harvest.
25. In growth of cannabis as a cash crop Kenya could not only capitalize on the medical marijuana market in Europe, but also the CBD wellness market that includes a series of various oils and ointments with an ever-growing popularity, and the pharmaceutical market that makes use of cannabis as a component of medicinal products.
26. Legalization of the growth, processing and exportation of cannabis from Kenya will allow the country to be the only supplier of cannabis for medicinal purposes in the wider Central and Eastern Africa region, with Lesotho and Zimbabwe being the only other suppliers in Africa. As a result, Kenya will be the hub for international investors bringing with it economic benefits including foreign exchange, employment opportunities for growers and factory workers, technology and skill transfer.

#### AMENDMENT OF THE LAW

27. As already mentioned, sections 3 and 6 of the Act criminalizes cannabis use and cultivation within the Kenyan jurisdiction. Unfortunately, these prohibitions on the cultivation, possession and use of cannabis has restricted research on its exploitation for medicinal purposes in the country. For the reforms desired under this Petition to be effected, this law ought to be amended.
28. To be clear, this Petition does not address and is separate from the recreational use debate raised in recent proposals tabled in the House, for instance by the Honorable Member of Parliament for Kibra, the late Honorable Ken Okoth who tabled in Parliament a proposed Bill for the legalization, regulation and taxation of marijuana use in the country. The Bill, dubbed the Marijuana Control Bill, proposed *inter alia* the formation of a Marijuana Control Council for licensing and regulation of the growth of marijuana in the country. The same is still pending in Parliament.

29. This Petition however redirects focus from the debate on local use and possession of cannabis for recreational use, to legal cultivation of the plant for the purpose of processing and exporting of cannabis for medical purposes to ready markets in other parts of the world. We respectfully submit that amendment of the law should only legalize the growth, processing and export of cannabis in the country solely for the medicinal use of the product in foreign jurisdictions.
30. As noted above, legal precedent for this has already been set by Lesotho, which country has licensed companies to cultivate cannabis for export purposes. Under this law, companies have been supplying to target markets in the West, largely dominated by Canada.

### PROPOSAL FOR AMENDMENT

31. We therefore petition that the provisions of the Act be amended to de-criminalize the growth, possession, processing and exporting of cannabis for medicinal purposes by holders of a licence to this effect.
32. More specifically, section 6 of the Act that prohibits cultivation of the plant ought to be amended to allow restricted and licensed growth of the plant for medicinal purposes, in conjunction with an amendment to Schedule 3 of the Act that classifies cannabis as a prohibited plant, to remove cannabis from that list.

### REGULATION OF THE SECTOR UNDER THE PHARMACY AND POISONS ACT

33. For purposes of regulation of the players in the market, we propose a co-regulation model which incorporates both self-regulation and statutory regulation.
34. We propose that the industry adhere to the following:
  - (a) international standards in terms of growth conditions, quality of product, required packaging and export conditions;
  - (b) safety and security of the sector including ensuring that the crop will remain strictly for export and that there will be no breach of this requirement that would allow penetration into the illegal market for recreational use;
  - (c) facilitation of an agreed percentage of the crop grown by local communities as out growers in a co-operative/communal setting, including but not limited to supply of raw materials, supervision of growth conditions, guarantee of product purchase and sustained training to ensure enhanced export product;
  - (d) compulsory local processing and packaging of the export product. The requisite processing plants should be set up in the proximity of production areas: and
  - (e) technology transfer by ensuring that there is adequate training and employment of local personnel on cultivation and growth of the plant, operation and maintenance of the equipment and value addition, among other skills and expertise.
35. Just as with any other resource, for the efficient implementation of the legal reforms proposed by this Petition, there ought to be an independent and supervisory entity responsible for operationalization of the proposals.

36. Since the utilization of cannabis as a cash crop will require high levels of regulation given the delicate nature of the plant, we propose that this regulatory and supervisory function be handled by the Pharmacy and Poisons Board established by section 3(1) of the Pharmacy and Poisons Act, Cap 244. We propose that the licensed growers and processors be subject to the supervision of the Board, which should license, maintain a register of licensees, and supervise growth and all other aspects of the industry. This Board already licenses, maintains a register of licensees, and oversees the professional conduct of pharmacists and pharmaceutical technologists under the Act. Under the same powers, the proposed licensees would be vetted according to already established operational guidelines.
37. The conduct of growers and their agents can thus be adequately monitored not only with respect to actions carried out within the country but even abroad if necessary, as this Act by virtue of section 12 already gives the Pharmacy and Poisons Board such powers over pharmacists and can as well be amended to regulate professional misconduct nationally and internationally for the medicinal cannabis industry players.
38. The bestowing of this mandate on this Board with its existing structures and processes not only prevents the formation of a new regulatory body but also narrows the niche for the proposed sector to strictly marijuana for medical use. Given the Board's existing mandate and experience, and specifically the fact that cannabis is listed as a Part I Poison under the Pharmacy and Poisons Act, the Pharmacy and Poisons Board is in the ideal position to discern the veracity of the various forms of medicinal substances processed locally for export purposes.
39. Section 26 of this Act then provides regarding the possession of Part I Poisons:
- (1) It shall be lawful for the following persons may [*sic*] be in possession of Part I poisons, but to the extent only and subject to the limitations prescribed by this subsection that is to say—
- (a) a wholesale dealer licensed under section 27 of this Act, for the purposes of the license and on the premises so licensed;
- (b) an authorized seller of poisons, on premises registered under section 23 of this Act;
- (c) a person licensed under section 28 of this Act to sell poisons for mining, agricultural or horticultural purposes, for the purposes of the license and on premises so licensed;
40. With emphasis on the above provisions, this Act authorizes the possession of cannabis upon the issuance of a licence under section 28 of the same Act. This provision, in conjunction with the above which authorizes possession, authorizes dealing in substances upon issuance of a license to do so for mining, agricultural or horticultural purposes, as follows:
28. Licence to deal in poisons for mining agricultural or horticultural purposes
- (1) A person carrying on a regular business in mining, agricultural or horticultural accessories may apply to the Board in writing on the prescribed form for a licence to deal in poisons and any such licence, if granted, shall authorize the licensee to sell only the poisons specified therein, to persons who require them for a trade or business of mining, agriculture or horticulture.



41. This provision further sets forth the conditions upon which the Board may grant, revoke or renew a licence. It provides for expiry of a licence annually on 31st December, subject to renewal, and additionally criminalizes the dealing in poisons in a manner contrary to that licensed.
42. This provides the Board with the required capacity and capability, legally and technically, to regulate the players in the sector and to ensure that intended purposes of this Petition are fully achieved within required standards, while at the same time achieving increased economic benefits for the country.
43. With respect to export, we propose that growers will only be allowed to export the products as already provided for export of other substances under the Pharmacy and Poisons Act. Under Rule 4 of the Regulations to this Act, growers would need to be issued with an export licence to enable them to export their product outside the country to ready markets.
44. In this respect, an export licence is issued by the Board following the making of an application under the Regulations. The prescribed form has to be submitted for every transaction, and contains details such as the destination and price of the shipment and other key information. Most importantly this form is signed by the chief chemist, a member of the Board. This gives the Board oversight over every export of regulated medicinal substances from the country.
45. Section 30 of the Pharmacy and Poisons Act provides for a 'Poisons Book' whereby the seller of a Part I Poison such as cannabis has to record certain details of the sale, including details of the seller and of the transaction itself. An amended version of this Book, or a similar Book to be kept under authority of the Board would provide transparency and accountability for dealings in cannabis for medicinal purposes.
46. There is minimal room for error or mischief with another detailed register known as Form 28 being required for each and every licensee, not only under the Act generally but also under specific categories or sectors for which a licensee may be dealing with the relevant substance. It is such stringent measures that makes regulation under this Act fitting for the proposed sector.

## CONCLUSION

47. While this Petition may be viewed by some as a back-handed attempt to legalize the recreational use of cannabis, this could not be further from the truth as we propose strict regulation of the cultivation of cannabis solely for export for medicinal purposes by licensed, proven operators in the medical cannabis industry.
48. The current global market for marijuana products is US\$3 billion and is expected to rise to US\$56 billion as more countries legalize or decriminalize such products. The legalization of the cultivation and export of cannabis for medical purposes would position Kenya to derive maximum benefit from this rapidly growing industry.

49. Like in Lesotho, where cannabis is grown by licensed growers as a cash crop, we propose that legalization of the cultivation and growth of cannabis under the Narcotic Drugs and Psychotropic Substances (Control) Act, such cultivation and growth to be regulated by the Pharmacy and Poisons Board *solely* for processing and packaging of the plant for exportation to designated countries will go a long way in boosting the economy through foreign exchange earnings. Canada for instance, which is the second largest consumer of medical marijuana products, has close to 300,000 prescription-holding patients. Further, supplements have a consumption rate of forty percent per annum with growing popularity in developed countries.

50. In addition to foreign exchange, locally the industry will create numerous jobs. A policy which may be adopted is one of out-growers whereby licensees, through a well-regulated framework, could outsource the growing of cannabis to local land owners, thus devolving the economic benefit. Moreover, the policy could require that at all stages of production, be it the growing, manufacture or packaging of the cannabis, only local raw materials are utilized and only locals are employed, with potential for employment of thousands of individuals in the farms and factories involved in the process.

51. To the best of our knowledge the issues in respect of which the Petition is made are not pending before any court of law, or constitutional or legal body.

HEREFORE your humble petitioners pray that Parliament –

1. Deals with this Petition immediately in view of the economic benefits this matter could address;
2. Proceeds to debate and urgently enact the necessary amendments to the Narcotic Drugs and Psychotropic Substance (Control Act), 1994 to allow for the legal cultivation, processing and exportation of Cannabis from the Country for medical use in designated jurisdictions which offer a ready market for medical marijuana;
3. Do consider directing the Cabinet Secretary for Health to prescribe the application of the Pharmacy and Poisons Act to regulation of the growth, manufacture, processing and export of cannabis for medicinal purposes, by treating cannabis as a “medicinal substance” as defined in section 2(1) of that Act.

Dated at Nairobi this.....day of.....20.....

And your PETITIONERS will ever Pray.

No.	Name	Full Address	National I.D./Passport No.	Signature

SCHEDULE

Petition seeking the amendment and implementation of the Narcotic Drugs and Psychotropic Substances (Control) Act to allow for the legal cultivation, processing and exportation of Cannabis from the Country for medical use in designated jurisdictions which offer a ready market for medical marijuana.

Name: Dr B-W Njuyunah Identification Number: 11476547  
Signature: [Signature] Date: 16/8/2020

Name: Ivan Gichuki Identification Number: 20416637  
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Name: Prof. Gabriel G. Mbugua Identification Number: \_\_\_\_\_  
Signature: [Signature] Date: 18/8/2020

Name: MARIN ANAGA Identification Number: 22313808  
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Name: Christopher Mbugua Identification Number: 22136743  
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Name: JOHN KAGIA Identification Number: \_\_\_\_\_  
Signature: [Signature] Date: Aug 26, 2020

Name: \_\_\_\_\_ Identification Number: \_\_\_\_\_  
Signature \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Identification Number: \_\_\_\_\_  
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