

# Agriculture, Aquaculture & Fishing Sector

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SOUTH AFRICA

Seeds of opportunity: Exploring cannabis and hemp cultivation laws in South Africa and beyond



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## Seeds of opportunity: Exploring cannabis and hemp cultivation laws in South Africa and beyond

In 2018, the Constitutional Court of South Africa decriminalised the private use and cultivation of cannabis for personal consumption in the renowned judgment of *Minister of Justice and Constitutional Development and Others v Prince; National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton and Others* [2018] ZACC 30.

After much anticipation, Parliament passed the Cannabis for Private Purposes Bill on 27 February 2024, which was officially signed by the President on 28 May 2024, and is now known as the Cannabis for Private Purposes Act 7 of 2024 (Act). The Act establishes a legal framework for the use, possession and cultivation of cannabis in South Africa. Is this good news for the agricultural industry? Not quite yet. As detailed below, the Act currently imposes significant restrictions on the legal cultivation and commercial trade of cannabis, mirroring trends observed in several other African countries. However, as additional regulations concerning the commercial production and distribution of cannabis continue to evolve, there is potential for change in this landscape.

Conversely, hemp – a close genetic relation to cannabis – has been extensively cultivated for commercial purposes in South Africa and other African countries for several years now. This broad cultivation has expanded opportunities in crop production, presenting significant potential for growth in the agricultural sector.

This article takes a closer look at the legislation around hemp and cannabis throughout Africa, focusing mainly on South Africa.

### South Africa's Cannabis for Private Purposes Act 7 of 2024

In terms of the Act, the use and cultivation of cannabis in the privacy of one's own home is legal, while the use of cannabis in a public space, as well as the distribution of cannabis for commercial and recreational purposes, remains illegal and constitutes a criminal offence. The recent case of *S v Haggis and Another* (A147/2013) [2023] ZAWCHC 32 (17 March 2023) shows that perpetrators found guilty of distributing cannabis in exchange for payment may be sentenced to a fine and/or imprisonment not exceeding 15 years. In this case, the accused was found guilty of dealing in more than 300kg of cannabis.

The Act provides an amended definition of cannabis, as '*the flowering or fruiting tops of a cannabis plant and includes products made therefrom, but excludes any seed, seedling, the stalk, leaves and branches without any fruit or flower, and the roots of a cannabis plant, including products made therefrom*'.

Section 4 of the Act sets out detailed offences and penalties applicable to anyone who contravenes the Act, including, *inter alia*, (i) any person found guilty of dealing cannabis may face up to 10 years of imprisonment or a fine, (ii) any person who transports cannabis in an amount which exceeds the maximum amount, as prescribed for private purpose, will be guilty and liable to a fine

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or imprisonment up to five years, (iii) any person who transports cannabis and contravenes or fails to comply with any condition, restriction, prohibition, obligation, requirement or standard regarding the transportation of such cannabis, will be guilty of an offence, liable to a fine not exceeding R2 000, (iv) any person who is in possession of cannabis exceeding the maximum amount prescribed for private purpose, will be charged with either a fine or up to 5 years' imprisonment, and (v) any person who cultivates cannabis plants which exceed the maximum amount prescribed for private purposes, will be charged with a fine or up to 5 years' imprisonment.

While a previous version of the Bill set out specific cultivation and possession limitations, those have been removed. Under the new Act, regulations will be passed in due course by the Minister which will prescribe the maximum quantities in terms of cultivation and possession.

Cultivation of medicinal cannabis is legal to those in possession of the relevant license. Growers who wish to cultivate medicinal cannabis may apply to the South African Health Products Regulatory Authority – under the provisions of section 22C(1)(b) of the Medicines and Related Substances Act 101 Of 1965 – for permission to do so.

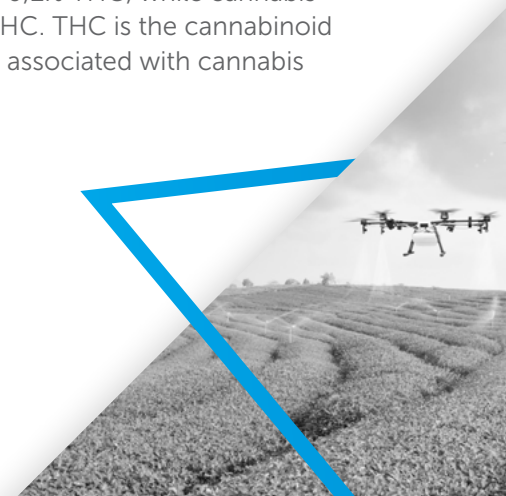
In summary, as the legislation and anticipated legislation currently stand, the cultivation of cannabis remains limited to farming for either medicinal use (licensed), or private use in small quantities without any economic gain for the cultivator.

## Hemp cultivation in South Africa

After hemp was declared an agricultural crop under the Plant Improvement Act 53 of 1976 (which is to be replaced by the Plant Improvement Act 11 of 2018 (Plant Improvement Act) on a date determined by the President by Proclamation in the Government Gazette), during October 2021, the Minister of Agriculture, Land Reform and Rural Development commenced issuing hemp permits for commercial cultivation. The Plant Improvement Act provides for import and export control of certain plants and propagating material, maintaining the quality of such plants and propagating material, and ensuring the usefulness of the products thereof for agricultural and industrial purposes. This development has led to hemp providing huge potential for growth to the agricultural sector as well as the economy as a whole, as exportation of hemp to other countries where cultivation is limited poses great advantages.

## Cannabis versus hemp

It is important to distinguish between cannabis and hemp. While hemp is a variation of the same plant species as cannabis, it differs in its chemical composition. Hemp consists of less than 0,2% THC, while cannabis contains more than 0,2% THC. THC is the cannabinoid which causes the euphoria associated with cannabis ([see here for more detail](#)).



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Regulation 1 of the Regulations to the Plant Improvement Act (Regulations) defines hemp as “*low THC plants or parts of plants of Cannabis sativa L. cultivated for agricultural or industrial purposes, of which the leaves and flowering heads do not contain more than 0,2% THC*”.

Regulation 4 provides that a hemp permit relates to the following activities: (i) the importation of plants or propagating material for breeding, research or cultivation; (ii) propagation of plants by a breeder or researcher in relation to a breeding or research programme to develop new or improved hemp varieties; (iii) sale of hemp seed, seedlings, plants or cuttings; (iv) cleaning and conditioning of seed for cultivation; (v) export of plants or propagating material for cultivation purposes; and (vi) cultivation of hemp for seed production, seedling production and production of grain or material for industrial purposes.

### Cannabis laws around Africa

South Africa’s decision to expand its hemp cultivation laws within the agricultural industry is a significant step forward for harnessing the economic and environmental benefits of this versatile plant. It also raises the hope that similar progressive measures will be taken regarding cannabis cultivation. As South Africa moves to evolve its legislation around hemp and cannabis cultivation, it is helpful to consider the position of other African countries in regard to these plants.

#### **Lesotho**

Lesotho was the first African country to legalise the cultivation of medicinal cannabis in 2017. This developing country has seized the opportunity and many of its farmers have turned to medical cannabis cultivation to earn a living.

The Drug of Abuse (Cannabis) Regulations Act of 2018 governs the use and cultivation of cannabis, and provides that it may only be cultivated for medicinal and scientific purposes, with valid licenses to do so. At present, Lesotho does not provide licences for industrial hemp cultivation.

#### **Zimbabwe**

Zimbabwe was the second African country to legalise cannabis cultivation for medical and scientific purposes in 2018, and in 2019 it started approving commercial permits for the cultivation of hemp.

#### **Ghana**

Ghana has legalised the medical cultivation of hemp, however the medical and recreational use, cultivation and possession of cannabis remains illegal.

#### **Malawi**

Malawi legalised the cultivation of hemp in 2015. Five years later, Malawi decriminalised the commercial production, use and export of cannabis for medical, scientific and industrial purposes. In terms of the Malawi Cannabis Regulation Act 6 of 2020 (Malawi Cannabis Regulation Act), the recreational use and cultivation of cannabis remains illegal. This act only allows authorised persons to handle, use and cultivate cannabis. Unlawful use or cultivation of cannabis in Malawi invites hefty consequences – in terms of section 50 of the Malawi Cannabis Regulation Act, any person who cultivates, propagates, produces, processes, stores, distributes or uses cannabis in contravention of the act commits an offence and shall be liable to a fine of MWK 50 million (approximately R520,000), and imprisonment of 25 years.



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**Zambia**

The Zambian Government approved cannabis exports in 2019, and legalised cannabis for medicinal and research purposes in 2021. On 20 May 2021, Zambia enacted two laws, the Cannabis Act and the Industrial Hemp Act. These acts (separately) govern the use, possession and cultivation of cannabis and hemp. The Cannabis Act allows for engaging in a licensed activity, defined as *"the cultivation, manufacture, production, storage, distribution, import and export of cannabis for medicinal, scientific or research purposes"*. Using and cultivating cannabis for recreational purposes remains illegal. Under the Industrial Hemp Act, a licensed activity is defined as *"the growing, processing, distribution, buying, export and conducting of research on industrial hemp"*, and thus the commercial cultivation of hemp is legal.

**Morocco and Rwanda**

In both Morocco and Rwanda, the cultivation of cannabis for medical and research purposes was legalised in 2021, however, the recreational use and cultivation thereof remains illegal. The commercial cultivation of hemp for recreational purposes also appears to not yet have not been legalised. The legislation does not differentiate between cannabis and hemp.

**Other African countries**

The majority of other African countries, including Algeria, Angola, Benin, Botswana, Burundi, Cameroon, Cape Verde, Central African Republic, Tanzania, Sudan, Somalia, Senegal, Nigeria, Mozambique, Mauritius, Madagascar, Kenya, Ethiopia, Egypt and the Democratic Republic of the Congo appear to still criminalise the use and cultivation of both cannabis and hemp for both medicinal and recreational use.

**Conclusion**

The Plant Improvement Act presents promising opportunities for South Africa's agricultural sector by expanding the market with the cultivation of hemp. We see that this trend is spreading across several African countries. When looking at the various African countries where cannabis has been decriminalised, there is one major commonality, which is the acceptance of cultivation and use of cannabis in the medical and scientific sector. It is clear that there is significant potential for cannabis cultivation in the commercial sector, promising substantial revenue for farmers. The full agricultural potential of cannabis and hemp has yet to be harnessed, but there are steps, albeit 'baby steps', being made towards realising that potential.

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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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