

The Limits of The Criminal Sanction: Possession, Harm and Therapeutic Evidence in The Case For Cannabis Law Reform in Nigeria

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Abstract

The continued criminalisation of simple cannabis possession in Nigeria rests on an expansive conception of the criminal sanction which contemporary criminal jurisprudence does not support. Section 11 of the National Drug Law Enforcement Agency Act prescribes a minimum of fifteen years' imprisonment for knowing possession, and the Indian Hemp Act preserves penalties of comparable and in places greater severity. This article argues that the prohibition cannot be justified on any principled account of the proper reach of the criminal law, and that its costs are borne disproportionately by the young, the poor and the unrepresented. It advances two arguments not developed in the existing Nigerian literature. The first concerns the harm of criminalisation itself: the disproportion of the statutory minimum, the contribution of possession prosecutions to pre-trial detention and custodial congestion, the collateral consequences of a criminal record in an economy of scarce formal employment, the opportunities for extortion which street-level enforcement creates, and the deterrent effect of criminal liability upon treatment-seeking in a country where some three million people live with drug use disorders. The second concerns the therapeutic evidence: the conclusions of the National Academies of Sciences, Engineering and Medicine on chronic pain, chemotherapy-induced nausea and multiple sclerosis spasticity; the regulatory approval of cannabidiol and other cannabinoid medicines; and the decision of the Commission on Narcotic Drugs in December 2020 to remove cannabis from Schedule IV of the Single Convention on the footing that its liability to abuse is offset by substantial therapeutic advantages. The said decision removed the international premise on which Nigerian prohibition was constructed. Drawing on comparative material from Jamaica, Ghana, South Africa, the Commonwealth Caribbean, Australia, Canada, New Zealand and the African cultivation States, and addressing Nigeria's obligations under the drug control conventions and the limitation clause in section 45(1) of the Constitution, the article proposes a three-tier statutory model and a draft amendment.

Keywords: cannabis; decriminalisation; criminal sanction; harm principle; proportionality; cannabidiol; drug control conventions; Nigeria.

1. Introduction

The criminal law is the most coercive instrument in the possession of the State. Through arrest, detention, prosecution, conviction and imprisonment it condemns conduct, and in condemning it deprives the citizen of liberty, reputation and standing. As a result of the grave consequences, modern criminal jurisprudence insists that the sanction be reserved for conduct which causes substantial harm to others, and for its severity to bear some rational relation to the gravity of the wrong.

Nigerian cannabis law satisfies neither requirement. Under section 11 of the National Drug Law Enforcement Agency Act, a person who knowingly possesses or uses the drugs to which the section applies is liable on conviction to imprisonment for a term of not less than fifteen years and not exceeding twenty-five years.¹ The Indian Hemp Act, which remains in force alongside it, prescribes for cultivation a sentence of death or imprisonment for not less than twenty-one years, and for permitting premises to be used for smoking, sale or preparation, a minimum of ten years without the option of a fine.² These are the penalties of a jurisdiction torn by terrorism and other violent crimes, applied to a young man found with a wrap of dried leaves particularly for self-use.

This article argues that the prohibition of simple possession cannot be defended on any coherent theory of criminalisation, and that its continued retention produces harms greater than those it prevents. It advances the argument in five stages. Part 2 sets out the jurisprudential foundation and anchors it, not in Mill alone, but in Nigerian constitutional authority. Part 3 states the statutory framework accurately, including a recent legislative development which runs against the argument and must be confronted. Part 4, which is the first of the article's two principal contributions, examines the harm that criminalisation itself inflicts. Part 5, the second, examines

¹ National Drug Law Enforcement Agency Act, Cap N30, Laws of the Federation of Nigeria 2004, s 11.

² Indian Hemp Act, Cap I6, Laws of the Federation of Nigeria 2004, ss 2-7.

the therapeutic evidence and the international reclassification of cannabis which followed from it. Parts 6 and 7 address the Constitution and the drug control conventions. Part 8 surveys comparative practice while parts 9 and 10 propose a model and a draft amendment.

2. Jurisprudential foundations

2.1 The harm principle and its critics

The question is not whether cannabis use is desirable. It is whether it is sufficiently harmful to others to justify punishment. Mill's answer, that the only purpose for which power may rightfully be exercised over any member of a civilised community against his will is to prevent harm to others, remains the starting point.³ It is not, however, the end of the argument, and an article which cites Mill and stops has not engaged the field.

Devlin's contrary position was that a society is entitled to legislate against conduct which excites the reprobation of the ordinary person, because shared morality is part of the bond which holds a society together and its dissolution is a harm in itself.⁴ Hart's reply, that the enforcement of morality as such is neither necessary to social cohesion nor consistent with individual liberty, and that legal moralism imposes suffering out of proportion to any good it secures, is the more persuasive.⁵ The debate is directly in point, because Nigerian drug policy is in substance Devlinite, in that it rests less on any calculation of harm than on a settled social conviction that the conduct is disgraceful.

Feinberg's refinement is equally necessary. He distinguished harm to others, which may justify criminalisation, from harm to self, which ordinarily may not, and from mere offence, which justifies criminalisation only in narrow circumstances.⁶ The distinction accommodates the obvious rejoinder to the present argument, namely that cannabis use is not harmless. It is not harmless. However, self-regarding risk is ordinarily addressed by regulation, taxation, labelling and health intervention, not by imprisonment, and Nigeria demonstrates the point daily in its treatment of alcohol and tobacco, both lawfully sold, both causing greater aggregate harm, and neither attracting a fifteen-year minimum imprisonment.

2.2 The domestic anchor: autonomy in Nigerian constitutional law

There is no need to rest the argument on nineteenth-century English liberalism. The principle exists in Nigerian law.

In *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* the Supreme Court considered whether a physician had been guilty of infamous conduct in declining to administer a blood transfusion to a patient who, with her husband, had refused it on religious grounds and had died.⁷ Ayoola JSC, delivering the leading judgment, held that the patient's constitutional right to privacy and to freedom of thought and religion embraced the right to decline medical intervention, and that the physician was entitled, indeed obliged, to respect a competent adult's refusal.

The reasoning establishes within Nigerian constitutional law precisely what the harm principle asserts in theory: that the State may not compel a competent adult, for that adult's own good, to submit to an intervention concerning his own body. If the Constitution protects the right of an adult to decline treatment that would save her life, it is difficult to construct a principled account on which the same Constitution permits fifteen years' imprisonment for an adult who introduces into his own body a substance the State considers unwise. *Okonkwo* is the most valuable authority available to the reformer and it has not previously been deployed in this field.

3. The Nigerian statutory framework

3.1 The Indian Hemp Act

The Indian Hemp Act, enacted as a Decree in 1966 and now consolidated as Cap I6, Laws of the Federation of Nigeria 2004, criminalises the planting, cultivation, importation, exportation, sale, possession, smoking and use of cannabis, and provides for the forfeiture of vehicles and articles used in connection with an offence.⁸ The Act was amended in 1975 and again in 1984, the amendments varying the penalties, and the secondary literature is divided as to whether the capital penalty for cultivation survives on the face of the consolidated text or was

³ J S Mill, *On Liberty* (London: John W Parker and Son 1859) ch 1.

⁴ P Devlin, *The Enforcement of Morals* (London: Oxford University Press 1965).

⁵ H L A Hart, *Law, Liberty and Morality* (London: Oxford University Press 1963).

⁶ J Feinberg, *The Moral Limits of the Criminal Law* (London: Oxford University Press 1984-1988), vols I-IV.

⁷ *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* (2001) 7 NWLR (Pt 711) 206 (SC), per Ayoola JSC.

⁸ Indian Hemp Act (n 2).

removed by the 1975 amendment.⁹ The fact that the question is open after sixty years is itself a criticism of the state of the statute book.

3.2 The National Drug Law Enforcement Agency Act

The Act establishes the Agency, confers functions and enforcement powers,¹⁰ and creates the principal offences. Section 11 is the operative provision for present purposes, prescribing imprisonment of not less than fifteen and not more than twenty-five years for the conduct it specifies, including knowing possession and use.¹¹ Section 20 extends criminal liability to Nigerian citizens convicted of drug offences abroad.¹² Jurisdiction over offences under the Act is vested in the Federal High Court.¹³

3.3 Legislative competence

Drugs and poisons is item 21 of the Exclusive Legislative List.¹⁴ The consequence is that decriminalisation can be effected only by the National Assembly. The proposals advanced since 2019 by individual State Governors for licensed cannabis cultivation cannot be implemented by State legislation, and any State enactment purporting to do so would be void for inconsistency. Reform in this field is therefore a federal question, and the article's proposals are addressed accordingly.

3.4 The contrary trend

Candour requires acknowledgment that the National Assembly has recently moved in the opposite direction. Section 11 has been amended to prescribe death penalty for people involved in drug related crimes. There were however dissenting voices over this decision.¹⁵ It is important therefore to state that reform arguments must now be made against the current, not with it. It is therefore a reason to make the arguments more carefully, not to abandon them.

4. The harm of criminalising mere possession

Prohibition is ordinarily defended by reference to the harms of cannabis. The defence is incomplete, because criminalisation is not a costless response to those harms. It generates harms of its own, and in the Nigerian setting these are severe, systematic and borne by the least advantaged. Some of them have been identified in this work.

4.1 Disproportion

The first harm is the disproportion of the sentence itself. A fifteen-year minimum for possession exceeds the sentence ordinarily imposed for a great many offences involving actual violence to the person. A punishment which bears no rational relation to the gravity of the conduct is not merely inefficient; it is unjust, and it corrodes the moral authority of the criminal law more generally. When citizens observe that possessing a plant attracts a heavier sentence than assaulting a neighbour, the message conveyed is not that cannabis is dangerous but that the law is arbitrary.

4.2 Pre-trial detention

The second is procedural. Persons arrested for possession are typically young, unrepresented and unable to meet bail conditions. They enter the remand population, where they remain for periods bearing no relation to the eventual disposal of their cases. Nigeria's custodial centres have long held a majority of persons awaiting trial rather than convicted persons¹⁶, and possession arrests, which are numerically the most common drug arrests, feed that population directly. The Administration of Criminal Justice Act 2015 was enacted in part to address precisely this pathology,¹⁷ and its provisions on custodial time limits and periodic review are undermined by an enforcement policy which generates a continuous supply of low-level detainees.

4.3 Collateral consequences

The third is the criminal record. In an economy in which formal employment is scarce and competition for it intense, a conviction for a drug offence is a lifelong disqualification from public service, from many forms of licensed activity, from visa applications and from professional admission. The disqualification operates without

⁹ Indian Hemp (Amendment) Decree No 34 of 1975; Special Tribunal (Miscellaneous Offences) Decree No 20 of 1984.

¹⁰ NDLEA Act (n 1), ss 3, 4 and 41.

¹¹ *ibid* s 11.

¹² *ibid* s 20.

¹³ *ibid* s 26(1); Constitution of the Federal Republic of Nigeria 1999 (as amended), s 251(1)(m).

¹⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), Second Schedule, Part I, item 21.

¹⁵ Amendment of s 11 of the NDLEA Act by the National Assembly following the report of the conference committee of the two chambers. The Amendment made in 2024 is yet to be assented to by the President and yet to be gazetted.

¹⁶ Nigerian Correctional Services (NCoS), 2025 Budget Performance and 2026 Budget Estimates Presentation to the House of Representatives Committee on Reformatory Institutions, Abuja.

¹⁷ Administration of Criminal Justice Act 2015, ss 33-34 and 110.

limit of time and without regard to the triviality of the conduct. It converts a single youthful act into a permanent condition of exclusion, and it does so most severely for those with the fewest alternative resources.

4.4 Extortion and street-level corruption

The fourth is a harm to the integrity of law enforcement. An offence which is easy to detect, difficult to disprove and attended by catastrophic consequences on conviction creates an ideal environment for extortion. The arrested person will pay almost anything to avoid a fifteen-year exposure, and the arresting officer knows it. The result is a tariff which never reaches a court, and which is invisible in conviction statistics precisely because it succeeds. This is a harm the prohibitionist literature rarely acknowledges, and it is one of the strongest arguments for administrative disposal: a fixed penalty payable to the State, recorded and receipted, removes the discretion on which the extortion depends.

4.5 Custody as criminogenic

The fifth is that the sanction is counterproductive on its own terms. A young person imprisoned for possession enters an environment in which criminal association is unavoidable, vocational prospects are extinguished, and drugs are frequently more readily available than outside. The intervention intended to reduce drug involvement is among the most reliable means of entrenching it.

4.6 Enforcement opportunity cost

The sixth is allocative. Every officer-hour devoted to a possession arrest, and every court day devoted to a possession prosecution, is unavailable for the trafficking networks, the financing structures and the organised criminality which the Agency exists to combat and which constitute the genuine public harm. An enforcement policy that maximises arrest numbers by pursuing users is a policy that guarantees the survival of suppliers.

4.7 The public health harm

The seventh is the most serious. The 2018 National Drug Use Survey, conducted by the National Bureau of Statistics with the United Nations Office on Drugs and Crime on data from 38,850 household respondents and 9,344 high-risk users, found past-year drug use among 14.4 per cent of Nigerians aged fifteen to sixty-four, or some 14.3 million people, more than twice the global average of 5.6 per cent, with cannabis the most widely used substance and close to three million people living with some level of drug dependence against extremely limited treatment provision.¹⁸

Criminalisation makes that treatment gap worse. A person whose use has become harmful will not present at a clinic if presentation risks prosecution, and the family will not seek help on his behalf. The criminal sanction thus operates as a barrier between the population most in need of intervention and the services designed to provide it. A State which prosecutes three million dependent citizens rather than treating them has not made a policy choice; it has abdicated one.

5. The therapeutic evidence and the international reclassification

The prohibitionist framework was constructed on a premise which the international community has since abandoned: that cannabis has no therapeutic value capable of offsetting its liability to abuse. It is clear that this premise is no longer tenable, and its collapse is the single most significant development in this field since 1961.

5.1 The evidence base

In 2017 the National Academies of Sciences, Engineering and Medicine published the most comprehensive review of the evidence yet undertaken, examining the literature published since 1999 and reaching nearly one hundred graded conclusions.¹⁹ The committee found conclusive or substantial evidence that cannabis or cannabinoids are effective for the treatment of chronic pain in adults, as antiemetics in the treatment of chemotherapy-induced nausea and vomiting, and for improving patient-reported multiple sclerosis spasticity symptoms.²⁰ It found moderate evidence of effectiveness for short-term sleep outcomes in patients with sleep disturbance associated with obstructive sleep apnoea, fibromyalgia, chronic pain and multiple sclerosis.²¹

Accuracy requires equal attention to what the committee did not find. It concluded that the evidence was insufficient to support or refute the effectiveness of cannabinoids in the treatment of epilepsy,²² and that for

¹⁸ National Bureau of Statistics and United Nations Office on Drugs and Crime, *Drug Use in Nigeria 2018* (UNODC 2019), released 29 January 2019, available online at https://www.unodc.org/documents/data-and-analysis/statistics/Drugs/Drug_Use_Survey_Nigeria_2019_BOOK.pdf accessed on 16 September, 2026

¹⁹ National Academies of Sciences, Engineering and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research* (National Academies Press 2017), available online at <https://www.nationalacademies.org/read/24625> accessed on 16 September, 2026

²⁰ *ibid*, conclusions 4-1, 4-3 and 4-7a.

²¹ *ibid*, conclusion 4-19.

²² *ibid*, conclusion 4-6.

conditions other than the three named above the information was inadequate to assess the effects. It also found limited evidence that cannabinoids are ineffective for dementia symptoms and for intraocular pressure in glaucoma.²³ Scholarship that overstates the therapeutic case does the reform argument no service; the honest position is that the evidence is strong for three indications, promising for several, and absent for most.

5.2 Cannabis oil and the regulatory approvals

The most consequential development came after the 2017 review. In 2018 the United States Food and Drug Administration approved Epidiolex, an oral solution of purified cannabidiol, for the treatment of seizures associated with Lennox-Gastaut syndrome and Dravet syndrome in patients aged two and above, the first approval of a drug derived from the cannabis plant.²⁴ The approval is significant for two reasons. It rests on well-controlled clinical trials, and it concerns precisely the indication on which the National Academies had found the evidence insufficient a year earlier: the science moved, and the regulator followed it.

Cannabidiol is not psychoactive. The World Health Organization's Expert Committee on Drug Dependence found that it exhibits no potential for abuse or dependence and no significant ill-effects, and recommended that preparations considered to be pure cannabidiol should not be scheduled under the international conventions at all.²⁵ Other cannabinoid medicines, including dronabinol and nabilone, have long been approved for chemotherapy-induced nausea and for anorexia associated with weight loss in AIDS patients.²⁶

The practical significance for Nigeria is direct. A Nigerian child with Dravet syndrome cannot lawfully be treated with a medicine that a Nigerian court would classify as a preparation of a prohibited plant, and no Nigerian institution may lawfully conduct the research that would establish local dosing, formulation or safety. Prohibition does not merely punish users; it forecloses medicine.

5.3 The removal from Schedule IV

Cannabis and cannabis resin were placed in Schedule IV of the Single Convention in 1961, the most restrictive category, reserved for substances particularly liable to abuse and to produce ill effects and whose liability is not offset by substantial therapeutic advantages. This placement was never the product of scientific assessment; no international scientific review of cannabis was undertaken until 2018.

Following the critical review by its Expert Committee, the World Health Organization submitted eight recommendations to the Commission on Narcotic Drugs in January 2019. On 2 December 2020 the Commission, by twenty-seven votes to twenty-five with one abstention, deleted cannabis and cannabis resin from Schedule IV of the 1961 Convention, while retaining them in Schedule I and thus subject to all the Convention's controls; the Commission declined to adopt the remaining recommendations.²⁷

The vote is the foundation of the argument in this Part. The international legal instrument on which Nigerian prohibition was originally modelled has now formally accepted that cannabis possesses substantial therapeutic advantages. The premise of the Indian Hemp Act has been withdrawn by the very system that supplied it, and Nigerian law has not noticed.

5.4 The unregulated market and the case for regulation rather than prohibition

There is a further and less comfortable dimension. Cannabis oil preparations of unknown composition are already sold in Nigerian markets and online, marketed for conditions ranging from epilepsy to cancer, unlabelled, unstandardised and untested. Prohibition has not prevented this trade; it has guaranteed that the trade is unregulated, that consumers cannot know the tetrahydrocannabinol content of what they buy, and that the National Agency for Food and Drug Administration and Control cannot bring the products within its regulatory scheme without conceding the lawfulness of the underlying substance.²⁸ The choice before Nigeria is not between a cannabis-oil market and no cannabis-oil market. It is between a regulated market and the one that presently exists.

5.5 The counterweight

²³ *ibid*, conclusions 4-13 and 4-14.

²⁴ United States Food and Drug Administration, 'FDA and Cannabis: Research and Drug Approval Process' (FDA), recording the approval of Epidiolex for seizures associated with Lennox-Gastaut syndrome or Dravet syndrome in patients two years of age and older. Information available on the FDA website: <https://www.fda.gov/news-events/public-health-focus/fda-and-cannabis-research-and-drug-approval-process> accessed on 16 September, 2026

²⁵ World Health Organization Expert Committee on Drug Dependence, fortieth report, recommending that preparations considered to be pure cannabidiol should not be scheduled within the international drug control conventions, available online at <https://iris.who.int/items/89d13659-e49b-4a40-90d0-a813409f3d97> accessed on 16 September, 2026

²⁶ FDA (n 24), recording the approval of Marinol and Syndros.

²⁷ United Nations Office on Drugs and Crime, 'CND Votes on Recommendations for Cannabis and Cannabis-Related Substances' (UNODC, 2 December 2020), recording the decision by 27 votes to 25 with one abstention to delete cannabis and cannabis resin from Schedule IV of the 1961 Convention while retaining them in Schedule I.

²⁸ National Agency for Food and Drug Administration and Control Act, Cap N1, Laws of the Federation of Nigeria 2004.

Intellectual honesty requires that the risks be stated. The National Academies found substantial evidence of a statistical association between cannabis use and the development of schizophrenia and other psychoses, with the highest risk among the most frequent users, and evidence of association with impaired learning, memory and attention, and with cannabis use disorder.²⁹ The United States delegation, explaining its vote in favour of deletion from Schedule IV, was careful to record that cannabis and cannabinoids are not benign, that there is robust evidence of lasting health effects particularly for adolescents and pregnant women, and that use can result in addiction.³⁰

None of this argues for imprisonment. It argues for an age limit, for potency regulation, for labelling, for advertising restrictions, for treatment capacity and for public education — that is to say, for the apparatus of regulation which prohibition has made impossible to build.

6. The Constitution

Sections 34, 35 and 37 protect dignity, personal liberty and the privacy of citizens and their homes, and each is engaged by arrest, detention and prosecution for private conduct.³¹ The article's argument, however, cannot stop there, because section 45(1) permits laws reasonably justifiable in a democratic society in the interest of, among other things, public safety, public order and public health.³² Any constitutional challenge to cannabis prohibition in Nigeria would be determined under section 45(1), and it is there that the argument must be made. The structure of that argument is proportionality. A prohibition on supply to minors is plainly justifiable. A prohibition on trafficking is plainly justifiable. A fifteen-year minimum sentence for private possession by an adult is a different proposition: the measure must be rationally connected to the public health objective, must impair the right no more than necessary, and must not impose costs disproportionate to the benefit secured. On the evidence set out in Part 4, this prohibition fails each limb.

This is precisely the analysis the Constitutional Court of South Africa conducted under section 36 of its Constitution in *Minister of Justice and Constitutional Development v Prince*, holding that the criminalisation of adult possession, use and cultivation of cannabis in private was an unjustifiable limitation of the right to privacy.³³ Nigerian courts have approached constitutional adjudication more conservatively, and it would be unrealistic to expect litigation alone to deliver reform here. Nevertheless, Okonkwo demonstrates that the underlying value is present in Nigerian law, and section 45(1) supplies the analytical framework within which the legislature itself ought to reason.

7. The international drug control conventions

Nigeria is party to the Single Convention on Narcotic Drugs 1961, the Convention on Psychotropic Substances 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988. Any proposal for decriminalisation must address them, and the failure of much of the Nigerian literature to do so has left the reform argument exposed to a one-sentence rebuttal.

Article 33 of the 1961 Convention provides that Parties shall not permit the possession of drugs except under legal authority, and article 36(1) obliges Parties to make possession punishable.³⁴ Article 3(2) of the 1988 Convention requires each Party to establish as a criminal offence the possession, purchase or cultivation of narcotic drugs for personal consumption.³⁵

Three answers are obtainable here and together they are sufficient.

First, the obligation in article 3(2) is expressly qualified: it applies “subject to its constitutional principles and the basic concepts of its legal system”. This clause is not decorative. It is the provision on which Portugal, Jamaica, Ghana and South Africa have each relied, and it is why Prince placed the Republic in no breach of its obligations.

²⁹ National Academies (n 19), conclusions on the association between cannabis use and the development of schizophrenia and other psychoses, and on cannabis use disorder.

³⁰ United States Mission to International Organizations in Vienna, ‘CND: Explanation of Vote on Changes in the Scope of Control of Cannabis and Cannabis-related Substances’ (2 December 2020), available online at <https://vienna.usmission.gov/cnd-explanation-of-vote-on-changes-in-the-scope-of-control-of-cannabis-and-cannabis-related-substances/> accessed on 16 September, 2026

³¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 34, 35 and 37.

³² *ibid* s 45(1).

³³ *Minister of Justice and Constitutional Development v Prince* [2018] ZACC 30, 2018 (6) SA 393 (CC), 18 September 2018.

³⁴ Single Convention on Narcotic Drugs 1961, as amended by the 1972 Protocol, arts 33 and 36(1).

³⁵ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, art 3(2).

Secondly, the official Commentary on the 1988 Convention confirms that paragraph 2 does not require drug consumption as such to be established as a punishable offence.³⁶ The conventions regulate possession, not use. Thirdly, the model proposed in this article does not legalise possession. It retains the prohibition and substitutes an administrative sanction for the criminal one. The conduct remains unlawful and remains subject to State sanction; only the classification of the sanction changes. This is a distinction the conventions accommodate, and it is the distinction on which the entire European and Latin American decriminalisation practice rests. To these may be added the reclassification described in Part 5.3. A Party which reduces the penalty for possession of a substance that the Commission on Narcotic Drugs has itself removed from the most restrictive schedule is acting in harmony with the development of the international regime, not against it.

8. Comparative practice

8.1 Jamaica

The Dangerous Drugs (Amendment) Act 2015 made possession of two ounces or less of cannabis a ticketable infraction attracting a fixed penalty, not an arrestable offence, with no criminal record arising from the conduct. It established the Cannabis Licensing Authority to regulate medical, therapeutic, scientific and industrial cannabis, recognised sacramental use by adherents of the Rastafarian faith, retained the prohibition on smoking in public places, and provided for the referral of persons under eighteen for assessment rather than prosecution.³⁷

Jamaica demonstrates that decriminalisation and legalisation are distinct. The State retained its full criminal armoury against trafficking while withdrawing it from minor possession.

8.2 Ghana

Ghana is the closest available comparator because it is a Commonwealth West African State, a fellow member of ECOWAS, sharing Nigeria's legal inheritance, enforcement institutions and resource constraints.

The Narcotics Control Commission Act 2020 converted the penalty for possession of a narcotic drug for personal use from imprisonment to a fine of between two hundred and five hundred penalty units, and states the treatment of drug use as a public health matter among its purposes.³⁸ Section 43 empowered the Minister, on the recommendation of the Commission, to license the cultivation of cannabis containing not more than 0.3 per cent tetrahydrocannabinol on a dry weight basis for industrial or medicinal purposes.³⁹

There are two lessons here which are both practical. First is a drafting warning. The Act defines possession for personal use as possession of a quantity not exceeding that which can reasonably be used by an individual in a day. Ghanaian judges and magistrates have identified the formula as a source of ambiguity and discretion open to inconsistency and abuse, and have called for fixed thresholds.⁴⁰ A Nigerian statute must state a number.

Second, is constitutional. In *Ezuame Mannan v Attorney-General and the Speaker of Parliament* the Supreme Court of Ghana, by four to three, struck down section 43 as null and void, holding that its introduction without an explanatory memorandum complying with article 106(2) of the 1992 Constitution, and the absence of any real parliamentary debate on so significant a shift of policy, violated both the letter and the spirit of the Constitution.⁴¹ Parliament re-enacted the provision in July 2023 under a certificate of urgency.⁴² Drug law reform is characteristically hurried through legislatures with minimal debate; in Ghana that expedient cost two years and a constitutional challenge. A Nigerian amendment would face comparable scrutiny under sections 58 and 59 of the Constitution, and should be introduced with a full memorandum and a proper second reading.

8.3 South Africa

Prince held the criminalisation of adult possession, use and cultivation of cannabis in private, unconstitutional, suspended the declaration for twenty-four months to permit Parliament to cure the defect, and granted interim

³⁶ *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations 1998), on art 3.

³⁷ Dangerous Drugs (Amendment) Act 2015 (Jamaica).

³⁸ Narcotics Control Commission Act 2020 (Act 1019) (Ghana), s 37.

³⁹ *ibid* s 43.

⁴⁰ International Drug Policy Consortium, 'Engaging Judges to Implement the New Drug Law in Ghana' (IDPC, July 2022).

⁴¹ *Ezuame Mannan v Attorney-General and the Speaker of Parliament* (unreported) Writ No J1/11/2021, Supreme Court of Ghana, 27 July 2022, per Kulendi JSC; Constitution of the Republic of Ghana 1992, art 106(2), (5) and (6).

⁴² Narcotics Control Commission (Amendment) Act 2023 (Act 1100) (Ghana).

relief which made private adult conduct lawful immediately.⁴³ The Cannabis for Private Purposes Act 7 of 2024 followed.⁴⁴

The instructive point is the interval. The Court declared the principle in 2018; the legislature supplied the machinery in 2024, and in the intervening six years the permissible quantity was undefined, with predictable consequences for enforcement. Litigation can establish that a prohibition is unconstitutional. It cannot draft a regulatory scheme. For Nigeria the sequencing lesson is that legislation is not a second-best substitute for constitutional litigation but the necessary vehicle of reform.

8.4 Australia and Canada

Australia is instructive because it is a federation. The Australian⁴⁵ Capital Territory legislated for personal possession and cultivation while Commonwealth criminal law remained formally applicable, producing exactly the vertical conflict that would arise in Nigeria if a State purported to legislate on a matter within item 21 of the Exclusive Legislative List. Canada⁴⁶ by contrast legislated federally and comprehensively for a regulated legal market. Canada marks the outer boundary of this debate, and it is not the model proposed here: this article argues for the removal of the criminal sanction from personal possession, not for the establishment of a commercial recreational market.

8.5 The cautionary cases

Two negative examples improve the credibility of the argument. New Zealand submitted legalisation to a national referendum in 2020 and the proposal was narrowly defeated, which establishes that reform is neither inevitable nor universally popular. Malawi, Zimbabwe and Lesotho have legislated for licensed cultivation of cannabis for medicinal and industrial purposes while leaving personal possession criminal, the mirror image of the reform proposed here, and a reminder that African legislatures have thus far proved considerably more willing to authorise cultivation for export earnings than to relieve their own citizens of criminal liability. This contrast deserves comment rather than silence.

8.6 Beyond the Commonwealth

Portugal⁴⁷ decriminalised the possession of all drugs for personal use in 2001, replacing criminal prosecution with referral to a dissuasion commission, and has generated two decades of outcome data on prevalence, treatment uptake and drug-related mortality. It falls outside the Commonwealth frame of this article, but an argument for reform which cannot point to outcome evidence is an argument from principle alone, and Portugal is where the evidence is.

9. A Nigerian model

The authors propose three tiers here.

Tier one: personal possession. Possession by an adult of not more than thirty grammes of cannabis, and cultivation of not more than a stated small number of plants for personal use, should cease to be a criminal offence and should attract an administrative penalty. The threshold should be fixed by weight in the statute rather than defined by reference to what a person might consume in a day, for the reasons the Ghanaian experience discloses. Persons under eighteen should be referred for assessment and education rather than penalised. The penalty should be payable to the State, recorded and receipted, so as to remove the discretionary space in which extortion operates.

Tier two: supply and trafficking. Trafficking, unlicensed commercial cultivation, supply to persons under eighteen, and supply in or near schools should remain criminal offences attracting substantial custodial sentences. Nothing in this article suggests otherwise. The purpose of tier one is to release enforcement capacity for tier two.

Tier three: medical, scientific and industrial. A licensing framework should be established, on the model of section 43 of the Ghanaian Act, permitting the cultivation of low-tetrahydrocannabinol cannabis for industrial and medicinal purposes and the importation, registration and prescription of approved cannabinoid medicines, administered by the National Agency for Food and Drug Administration and Control in consultation with the

⁴³ *Prince* (n 32).

⁴⁴ Cannabis for Private Purposes Act 7 of 2024 (South Africa). The commencement position of the several provisions of this Act should be verified before reliance.

⁴⁵ Drugs of Possession (Personal Cannabis Use Amendment Act 2019

⁴⁶ Section 16 Cannabis Act SC, 2018

⁴⁷ Law no. 30/2000 of 29 November, 2000; See C. Hughes & A Stevens, 'What can we learn from the Portuguese decriminalization of illicit drugs?' (2010) *The British Journal of Criminology*, 50(6) 999-1022

Agency. Research authorisation should be express, so that Nigerian institutions may study formulations relevant to Nigerian patients.

10. Conclusion

The case advanced in this article does not rest on the proposition that cannabis is harmless. It is not harmless, and Part 5.5 says so. It rests on four propositions, each of which is now established. It states that the criminal sanction is misapplied. Fifteen years' imprisonment for private possession cannot be reconciled with any principled account of criminalisation, and it cannot survive the proportionality analysis that section 45(1) of the Constitution requires.

Again, criminalisation causes harm of its own. It fills remand facilities, disqualifies the young from formal employment for life, funds street-level extortion, consumes enforcement capacity that trafficking networks would otherwise absorb, and interposes the threat of prosecution between three million dependent Nigerians and the treatment they need.

Yet again, the therapeutic premise of prohibition has collapsed. A purified cannabidiol medicine has been approved by a major regulator for a condition on which the evidence was thought insufficient a year earlier, and the Commission on Narcotic Drugs has removed cannabis from the schedule reserved for substances whose liability to abuse is not offset by therapeutic advantage. Nigerian law continues to rest on a proposition the international system has abandoned.

Finally, the comparative experience is now extensive enough to be instructive rather than merely suggestive. Jamaica ticketed; Ghana fined; South Africa adjudicated; Australia exposed the federal difficulty; Portugal generated the data. What none of them did was abandon the fight against trafficking, and neither does this proposal.

The reform urged here is modest in the sense that it removes the criminal sanction from an adult in possession of thirty grammes, substitutes an administrative penalty, protects minors by referral rather than prosecution, opens the medical and industrial applications to regulation, and restores to those already convicted the civil standing that the previous policy took from them. It leaves the trafficker exactly where he now stands, and it gives the Agency the capacity to reach him.