

South African Drug Policy Initiative's oral submission to the Portfolio Committee On Justice And Correctional Services on the Cannabis for Private Use Bill

This submission is made on behalf of the members of the South African Drug Policy Initiative (SADPI), a Voluntary Association that was formed a few years ago in order to inform both the public and politicians of the urgent need to reform the outdated, discriminatory and harmful South African drug laws.

The SADPI membership consists of professionals such as medical doctors, criminologists, social scientists, drug counsellors, community leaders, lawyers, and other professionals from relevant disciplines who, together, bring a wealth of experience and understanding to the subject of drug law reform.

But before I begin my submission I would like to emphasize that neither I nor my SADPI colleagues condone the use of cannabis by children, and we all support laws that punish adults who provide children with drugs. As we do for all drugs, we also advise those who use cannabis not to do while using any other psycho-active drug.

Because many of SADPI's written submissions on the bill overlap with those of previous speakers I am going to try to avoid repeating them where possible. Instead I will attempt to help the honorable committee members to view the issue of cannabis legislation from a perspective different to that from which it has been doing up until now.

Unfortunately, both the constitutional court, this committee itself and most of those making submissions to the committee have had to approach this bill from the perspective of the draconian and harmful laws governing the use and trade in cannabis. These laws and their harmful consequences have created an overwhelming amount of noise that has distorted both the public and the authorities' view of the cannabis trade and those who use the plant.

The situation at the moment is that most of those involved in creating this bill take as their starting point the existing legislation that is based on the banning of cannabis and the punitive laws that go with it. In my opinion and experience I recommend that when considering changes to the bill, the honorable members take step back and view the issue from a time before cannabis was ever banned. In this way you won't have the unenviable task of having to tinker with the existing cannabis laws in order to try to please both those authorities who still oppose the legalisation of cannabis and the millions of South Africans who deserve to be rid them.

Now, as most of you know, our current cannabis laws are based on the United Nations Single Convention of 1961 that scheduled all psychoactive drugs according to their perceived harms. While cannabis is listed as a schedule 7 drug, in other words an extremely harmful drug, alcohol and tobacco that together kill over 9 million people a year do not even appear on that UN schedule of banned substances. The reason why the two latter drugs were never even included in that schedule of banned drugs was stated quite clearly at the time. It was because the UN knew from the disastrous failure and harms caused by alcohol prohibition in Russia and the USA that the control of the global trade in those two substances would be impossible.

The UN's naïve belief that banning the trade in other widely used drugs such as cannabis would be successful has resulted in the exponential growth in the global trade in cannabis and other drugs. Moreover, it has created a trillion-dollar illicit drug market controlled by ruthless gangs and other organized crime structures and the persecution of drug users and traders in most countries including South Africa. The handing of the drug trade to organized crime has resulted in gang-related turf wars that regularly kill innocent bystanders in this and other countries.

The assumption by the UN and most countries that they could eliminate the trade of a popular and widely used drug like cannabis was based not on science, evidence or past experience, but by ignorance, misplaced moralism, prejudice, racism and political expediency. Moreover, the failure to understand that when you ban the trade in something that people really want, instead of abolishing that trade you simply drive it underground and into the hands of criminals

So, instead of trying to grapple with these harmful UN based cannabis laws that our successive governments tried in vain to enforce, let's look at some of the fundamental realities of drug use.

Before we do that, I would like to make it clear that I disagree with those who say we are dealing with a complex issue. The issue is not complex, it is multifactorial. And once we understand what the fundamental realities of drug use and the drug trade are, it is a simple matter of creating policies that are based on those realities.

For example, if you put cannabis into the same legal framework as alcohol you will see that the issue is not complex at all. The laws controlling alcohol have been around for a long time and, in spite of all their faults, have been tried and tested to the point that we know more or less how laws will affect the trade in that drug.

These fundamental realities underlying drug use are as follows:

1. The desire to use mind altering drugs is in our genes and humans have been taking a variety of psychoactive substances for tens of thousands of years. Whether it be magic mushrooms, peyote, opium, khat, coca, cannabis, betel nut, coffee, tea or alcohol, humans have always had a need to take psychoactive drugs at some time or other during their lifetimes. And most importantly they have always had the need to decide for themselves whether a particular drug provides the effects they are looking for. What one person finds useful in a certain drug another may find very unpleasant. So personal choice has always been important in the use of psychoactive drugs. A choice that has been arbitrarily denied by the UN-based drug laws.
2. Most people take a drug for the first time either out of curiosity or because of peer pressure; but around 80% of those who do so never use that drug again. A good example is that at least two thirds of our adult population do not drink alcohol. What's, more, legalizing a drug does not necessarily result in an increased use of that drug.

3. Most people who take alcohol or illegal drugs regularly do not develop problematic drug use or addiction
4. That small minority of regular drug users who do develop problematic drug use mostly have manageable psychosocial issues or mental illnesses. These unfortunate individuals are usually self-medicating with substances that either help to control the symptoms of their mental illness or to relieve the abject circumstances they find themselves in.
5. There is no difference in the dynamics underlying the trade in illegal drugs and that of alcohol. Drug manufacturers, drug lords and drug pushers no more drive the drug trade than do wine farmers, beer makers and liquor outlets drive the liquor trade. They all supply a market that has been around forever- that is a proportion of the population that likes to ingest the psychoactive substances of their choice.
6. And finally, the most important of these fundamental realities concerning drug policies is that the voluntary use of any banned drug by an adult is *in itself* a victimless crime. The corollary of that reality is that that the trade in a drug that someone wants to purchase is also a victimless crime. Therefore, neither the use or trade in cannabis should be deemed to be crimes.

Alcohol provides a prime example of where people who are observed consuming that highly toxic drug, are not deemed by most of us to be doing anything bad. Neither do we consider those who manufacture or trade in alcohol products to be evil or bad people.

Unfortunately, the same cannot be said about cannabis that, as the result of our draconian prohibition laws and government propaganda has been demonized in the eyes of the public for over a century.

So, knowing what we do about drug use let's imagine a time where there were virtually no laws governing the trade in any drugs and we are tasked with banning those drugs that have the most potential to harm both individuals and to society as a whole.

ALCOHOL

Alcohol consumption is associated with at least fifteen potentially fatal diseases and is the sole cause of at least half of those.

- Death by acute poisoning
- Seizures
- Psychosis
- Death by sudden withdrawal of alcohol from problematic drug users
- Heart disease
- Cirrhosis
- Pancreatitis
- Osteoporosis

- 8 Different types of cancer: Those of the mouth, throat, oesophagus, stomach, colon, liver, bile ducts and breast
- Fetal Alcohol Spectrum Disorder: An irreversible brain disorder that is associated with the consumption of alcohol during pregnancy and that affects over 6% of South African babies and up to 20% in certain regions.
- Well documented association with violent behavior

CANNABIS

- No recorded death from acute poisoning
- Acute psychosis from overdose - reversible
- Cannabinoid Hyperemesis Syndrome,
- Cannabinoid catatonia
- Little evidence that it causes violent behaviour in fact cannabis is a very useful sedative
- **Schizophrenia**

One of the most over-used arguments of those who oppose cannabis legalisation is that of its purported cause of psychotic diseases such as schizophrenia.

This notion has been shown to be completely unfounded after an Australian study found that in spite of a steep rise in the prevalence of cannabis use in that country over a thirty year period there was no evidence of a significant increase in the incidence of schizophrenia.

Although excessive cannabis use may cause the schizophrenia to manifest a few years earlier in life it does not cause schizophrenia.

I hope that the honorable members will agree that, based on this exercise that compares the harms of alcohol versus those of cannabis, if we had to choose which one (if any) we had to ban, the choice would be obvious. If you do agree I hope this will help you to appreciate that, at the very least, cannabis needs to be fully legalised and regulated in a similar framework as we currently use for alcoholic beverages.

Medical Cannabis

While we're talking about drug-related diseases I would like to make a few points on the topic of so-called medicinal cannabis and the role that SAHPRA should or should not play in the drafting of this bill.

We need to be quite clear that the use of the cannabis plant by members of the public as a herb for their own self-medication is a completely different matter to their use of registered and scheduled cannabis-based medications that have undergone the processes that all medicines have to undergo before being registered by SAHPRA. Other than the cannabis products that are submitted to them for registration, SAPRAH should have absolutely no say in how cannabis is regulated in South Africa.

Instead, the way that another common psychoactive drug, caffeine is regulated should be followed. Caffeine is a ubiquitous psychoactive stimulant that can occur in many widely available grocery products such as coffee, tea, cola drinks, chocolate and energy drinks. And these products are not regulated by SAHPRA.

On the other hand, there are a number of prescription and OTC medications containing caffeine that are registered by SAHPRA for conditions such as migraine.

As cannabis has a safety profile very close to that of caffeine there is no reason why the laws governing these two psychoactive drugs should differ. Just as this bill should not intrude on SAHPRA's territory, so SAHPRA should have absolutely no influence on the outcome of this bill.

During these oral submissions it has been noted that honorable members who expressed concern that cannabis may cause schizophrenia are also keen to know if it can help in the prevention or treatment of another disease, severe COVID-19. The short answer is that, as with many other purported treatments, there is no scientific evidence to show whether or not it does; and it would take at least a billion dollars to conduct valid clinical studies to show whether or not it can prove effective. Although this would fall under SAHPRA's purview, there should be no law preventing people who believe that it would help to prevent serious COVID from using the herb for that purpose.

HARMS VS BENEFITS

I would like to remind the honorable members that when creating laws that affect the public's health and welfare they are obliged to do some sort of harms vs benefits and cost vs benefits analyses of the proposed laws. As those assessments were never carried out when these ancient cannabis laws were promulgated now is the opportune moment for the committee to correct this oversight.

As we have looked at the harms of cannabis and alcohol it may help to summarize the harms that the existing disproportionate and inequitable cannabis laws have wreaked on the public and the massive costs these same laws have had both on individuals and the fiscus.

- Arrest and incarceration of minors
- Arrest and incarceration of those with mental illnesses - such as FASD
- Arrest and incarceration of parents and breadwinners for minor cannabis offences
- Conversion of minors and others to gangsterism
- Contaminated products on the market
- Criminal records for minor drug offences affecting future job prospects
- Exploitation of the laws by police to fill arrest quotas - especially of poor vulnerable communities
- Backlog in the courts cause by minor drug offences
- Jails overcrowded with remand prisoners who can't afford bail
- Diversion of police resources from serious crimes to deal with minor cannabis offences
- Corruption of police in cahoots with gangs
- Accepting bribes from those caught with illegal quantities of cannabis

- Corruption of the criminal justice system
- Corruption of politicians
- Empowerment of organized crime structures by handing it to the cannabis trade
- Cost and time burden on the criminal justice system
- Loss of potential cannabis industry revenue to the fiscus

SUMMARY

The cannabis laws as they exist and appear in the bill are discriminatory, inequitable, and do far more harm than good. And the more punitive the laws, the worse the effect on individuals and society.

The fundamental realities underlying the use and sale of drugs should be considered if the laws are to be successfully implemented.

The only way for this to happen is for the use and trade in cannabis to be fully legalised and regulated in similar frameworks to those that are used to control the alcohol trade.

Failure to fully legalise cannabis will eventuate in further court cases, continuing persecution of the poor, the fueling of corruption as well as unnecessary costs and depletion of criminal justice resources. It will also delay the implementation of the much-needed commercialization of cannabis.

Dr Keith Scott
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