



To: The Portfolio Committee on Justice and Correctional Services
Attn: Mr V Ramaano at cannabisbill@parliament.gov.za
From: The South African Drug Policy Initiative (SADPI)
Re: Public Comments on Cannabis for Private Purposes Bill [B19 – 2020]

SADPI SUBMISSION TO PARLIAMENT: CANNABIS FOR PRIVATE PURPOSES BILL

SADPI

The South African Drug Policy Initiative (SADPI) is a voluntary association advocating for humane, rational drug laws to reduce drug-related harms. It aims to reform the laws governing those psychoactive substances such as cannabis whose production, sale, possession, and consumption are currently prohibited by criminal law. The SADPI believes that drug policy should be informed primarily by public health and human rights.

Purpose of the submission

- A.** To draw attention to the clauses in the Bill that we believe are harmful, unworkable, counterproductive, disproportionate, discriminatory or run counter to the spirit of the 2018 Constitutional Court Cannabis Judgment¹ pursuant to this Bill (B19 – 2020).
- B.** To propose alternative, workable, non-discriminatory laws that are in line with global best practice, human rights, and the spirit and purpose of the Constitutional Court ruling. Laws that will mitigate against the harmful effects of the criminalisation of the use and trade in cannabis. Harms that include the criminalisation of those using and growing cannabis, the enabling of organised crime structures and gangsterism that will benefit from the continued prohibition of cannabis trade, the cost to the criminal justice system of policing those laws, prison overcrowding and the social devastation caused by the criminalisation of people trying to make a living from the cannabis trade.

Positives of the Bill

The Bill should be commended for providing that the criminal record of a person in respect of a previous drug offence as pertaining to cannabis as provided for in the Bill (e.g. use and possession convictions) must be expunged. This is an encouraging progressive step towards redressing the stigmatisation and marginalisation of drug users.

¹ *Minister of Justice and Constitutional Development & Others v Prince (Clarke and Others Intervening); National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton* [2018] ZACC 30.

Objections to the Bill

1. Omission of regulation dealing with the commercial trade in cannabis.

The Bill fails to provide a regulatory framework for the commercial trade in cannabis, continuing the prohibition of commercial activity under criminal penalty of law.² South Africa's cannabis industry is estimated to be worth approximately R100 billion.³ The commercial cannabis industry is considered to be a promising catalyst for the growth of South Africa's most underdeveloped regions and the development of small-scale businesses. The absence of the Bill addressing the commercial trade in cannabis represents a missed opportunity in that a legally regulated market in commercial cannabis would provide significant economic benefits including tax revenues.

In addition, the absence of a legally regulated commercial cannabis market ensures that the current illicit cannabis market subsists – with its concomitant violence, gangsterism, corruption, and human rights violations.

2. Disproportionate and draconian penalties.

The imposition of penal sanctions for non-compliance with the Bill are extremely severe and arbitrary. For example, if a person is found with more than 1kg of dried cannabis or nine flowering plants they could be jailed for up to 15 years, and a person who smokes in public may be jailed for up to two years. We submit that the penalty of imprisonment, which is the ultimate state limitation of an individual's rights: the deprivation of freedom, is draconian, counterproductive, ineffective and disproportionate with regard to a voluntary, non-violent offence such as consuming cannabis. Furthermore, the limits on the quantities respective to the imposed penalties in the Bill are arbitrary and grossly disproportionate as compared to, for example, violent offences.

3. Anti-poor

The Bill provides for stringent requirements to cultivate and/or consume cannabis in private, which effectively excludes the millions of South Africans who lack the space to grow and/or consume cannabis in such strict conditions of privacy. Those persons who lack sufficient space in their dwellings cannot participate in the benefits of the Bill without violating the limiting conditions applied therein. Accordingly, the Bill is exclusionary and does not offer equal opportunity to all South Africans. In this way the Bill discriminates against the indigent by imposing a de facto prohibition on their use and cultivation of cannabis, and leaves poor communities at risk of effectively relying on the illicit market.

4. Non-Cooperative governance

The Bill continues to adopt a prohibition and criminalisation-based approach to drug policy. The focus remains on restricting access to, and the use of, cannabis against the threat of severe legal sanction in the form of criminal punishment. This is reflected in the Bill having been drafted by the Department of Justice and Correctional Services. Drug (mis)use is a complex social issue dependent on various personal, community and economic factors. Accordingly, we submit that legislation in respect of cannabis ought to

² Note however, in terms of s 1(2), the restrictions on dealing and cultivation do not apply to persons who are permitted or authorised in terms of any other act of Parliament to deal in or cultivate in cannabis; at present only the Medicines and Related Substance Act 101 of 1965.

³ <https://www.iol.co.za/capeargus/news/watch-africas-cannabis-market-estimated-to-be-worth-r106bn-37984838>

be considered in cooperation with the Departments of Health, Agriculture and the Treasury, as well as in consultation with stakeholders in sectors such as public health, etc. The international community⁴ as well as domestic drug policy⁵ favour a multi-disciplinary and harm reduction approach; legislation should reflect this accordingly. In addition, we submit that this must be augmented by adopting the position that drug policy ought to be informed from a public health and sociological perspective instead of a criminal justice point of view.

A

Classes A, B, C, D offences all carry the threat of a criminal record and custodial sentences. They are also disproportionate in relation to those meted out for more serious crimes as well as those related to the flouting of regulations pertaining to alcohol use and trade.

Clause 1(1)(h) is irrational in that it requires cannabis to be concealed from public view. It is arbitrary, as the far more harmful drug, alcohol, is allowed to both displayed and consumed in public areas.

Clause 3 is discriminatory in that it favours those living in more spacious dwellings; while it excludes millions of South Africans who live in crowded shacks in densely populated communities and who do not have the private space to grow or store cannabis.

Clause 5(a), (b), (c), (d) are discriminatory in that these favour those living in spacious dwellings; while it criminalises aspects pertaining to smoking and consumption of cannabis of the millions of South Africans who do not have the private space to use cannabis in their crowded, poorly ventilated dwellings. For these people, clause 5 is not only unfair it is illogical; if there are children in their one-roomed shack, or adults who object to their use of cannabis, in terms of the Bill, their only alternative is to leave the dwelling and enter a public area where they are not permitted to use cannabis. This is in stark contrast to those who reside in more spacious accommodation with yards or gardens and who are not faced with this dilemma.

B

The SADPI recommends that the regulations regarding the use and trade in cannabis be placed in similar legal and regulatory structures as those that control the use, production and trade in similar consumable psychoactive substances such as alcohol and tobacco, which are proven to be far more harmful drugs than cannabis.⁶

These regulations allow for the private production and use of alcoholic beverages such as wine and beer. They also allow the commercial production and trade of alcohol products under license and strict production and marketing standards.

The legal regulation of alcohol appropriately seeks – although it does not ideally attain – a balance between the interests of personal freedom and public health. In so doing, it

⁴ United Nations Office on Drugs and Crime

⁵ National Drug Master Plan 2019-2024.

⁶ *The Cannabis Judgment* para 70.

contributes directly to the economy, its production and trade are not associated with violent organised crime, and it avoids criminalising individuals in the name of protecting them from themselves (which results in lasting social stigma and exclusion from formal employment).

It also allows small enterprises easy entry to the industry: witness the many wine farms, craft beer producers, artisanal gin producers etc. in South Africa.

Placing cannabis in similar regulatory frameworks as alcohol will allow those who don't have the space to grow or use cannabis to buy those products from legitimate commercial entities.

It is worth noting that most people who drink alcoholic beverages do not make their own liquor – they purchase it from licensed, commercial entities. Similarly, the reality is that most people who do or would consume cannabis, do not or cannot cultivate their own cannabis, and thus rely on a commercial cannabis market. Where a legal one is absent, an illicit market meets this demand. This does extraordinary harm to the health and wellbeing of individuals, the stability and cohesion of marginalised communities, the integrity of the criminal justice system, and the fiscus. The Bill as it stands represents such negligible change that it may as well be an endorsement of the catastrophic status quo.

Contact

Dr Keith Scott
Chairperson, South African Drug Policy Initiative
084 682 1813
keith.scott@sadpi.org
www.sadpi.org