



SUBMISSIONS ON THE CANNABIS FOR PRIVATE PURPOSES BILL [B19 - 2020]

To: **Portfolio Committee on Justice and Correctional Services**

Parliament Street

P.O. Box 15

Cape Town

From: **Umzimvubu Farmers Support Network**

Registration Number 2019/392876/08

978 Gap Road, Mthumbane A/A, Port St John's, Eastern Cape

Date: 30 November 2020

EXECUTIVE SUMMARY

- A. The Umzimvubu Farmers Support Network ("UFSN") was formed in 2014 as a voluntary association between civil society members and indigenous cannabis farmers, and formally registered as non-profit company during early 2019. The registered beneficiaries of the UFSN are the hundreds of thousands of rural cannabis farmers situated in *inter alia* the Greater Umzimvubu River Basin region – the South Africans who are traditionally and culturally known as the *amaMpondo aseQuakeni*. The amaMpondo have farmed, used, and traded cannabis for over three centuries. The UFSN has participated in many workshops, both locally and internationally, where we have assisted with the formulation of rational drug policy founded on Human Rights. The UFSN is accordingly qualified to make submissions on drug policy and legislative reform in South Africa.
- B. The Mpondoland cannabis cultivar is a hardy, drought-resistant plant that thrives in the dry and challenging environment in and around the Umzimvubu river system. Cannabis has been cultivated in this region for centuries and has, over time, adapted and naturalised to the unique



environment of the river valley system. Historically, the local cultivar formed an essential component of the lawful trade with the Khoisan Nation.

- C. In terms of the *Privacy Judgment*, the Government is required to regulate the private cultivation and use of cannabis in South Africa by adults. The 'new' penalties are a gross overreach of power; reminiscent of apartheid-era legislation; out of sync with reality and the need for human rights to be the central pillar in any drug policy; in conflict with International Law and South Africa's treaty obligations; and most importantly, do not conform with the *ratio decidendi* of the *Privacy Judgment*.
- D. The calculation and stipulation of the maximum number of cannabis plants a person is entitled to cultivate, and how much dried cannabis flower they may consequently possess at any single moment, is a clear indication of the real absence of any knowledge on cannabis and the variations which exist amongst cultivars of the cannabis species. Furthermore, the stipulated quantities do not take into account other personal and private uses of cannabis, such as food, juicing, medicinal, preventative care, acute medical care (HIV and Cancer), animal feed and remedies, fibre, and so on.
- E. As the UFSN, we have consulted extensively with certain of the affected communities in Mpondoland, their Traditional Leaders, and Kumkani Zanozuko Sigcau. The purpose of these consultations and engagements were to; deliberate on the Bill; collate the comments from the communities, and encapsulate those comments within this submission. There has been neither adequate notification (through non-internet means) of the Bill nor any public consultation amongst the amaMpondo communities. It should be clear by now that these communities are primary custodians of cannabis in South Africa with entrenched customary and cultural rights to cultivate, use and trade the cannabis plant. It was thus critical for the Government to notify and consult the holders of this indigenous knowledge. That this has not taken place is both telling and unconstitutional.
- F. The UFSN would like to appeal on behalf of our beneficiaries that their concerns be heard and included within any future iterations of the Bill, to the extent that is even possible since the present Bill is respectfully considered to be unworkable and unconstitutional. When considering how the amaMpondo have used and farmed cannabis for centuries, it is clear that



the Bill will directly affect those ancient ways and destroy a trove of cannabis customs, culture, and indigenous knowledge. In its current format, the Bill criminalises the amaMpondo cannabis farmers and threatens their livelihoods.

- G. The UFSN welcomes well-formulated regulations and laws that will enable and guide the formation of an all-inclusive cannabis industry and economy. First and foremost, these regulations need to be written for the benefit of local communities and rural development if South Africa is to take seriously the profound opportunities a cannabis resource economy will present our Nation.

- H. It remains clear from our consultations with the amaMpondo farmers, Traditional Leaders, and Kumkani Zanozuku Sigcau, that the only conceivable recommendation is that the Bill should be withdrawn altogether, and new constitutionally compliant legislation should be drafted in its place, which drafting should only commence *after* the Government has undertaken proper consultation with the millions of ordinary South Africans residing in rural areas who will be impacted by cannabis legislative reform.

WRITTEN SUBMISSIONS

1. INTRODUCTION, OUR BACKGROUND & CREDENTIALS

- 1.1. The Umzimvubu Farmers Support Network (“UFSN”) was formed in 2014 as a voluntary association between civil society members and indigenous cannabis farmers, with formal registration as a non-profit company with the Companies and Intellectual Property Commission occurring during early 2019. The registered beneficiaries of the UFSN are the hundreds of thousands of rural cannabis farmers situated in *inter alia* the Greater Umzimvubu River Basin region – the South Africans who are traditionally and culturally known as the *amaMpondo aseQuakeni* (“amaMpondo”). The amaMpondo have farmed, used, and traded cannabis for over three centuries (300 years).
- 1.2. The founding objectives of the UFSN were twofold: -
 - 1.2.1. Firstly, to assist our farmer-beneficiaries with a legal challenge (in 2015/16) against the South African Government’s discriminatory drug policy of forced aerial eradication of illicit cannabis crops in the region (for almost 20 years). These eradication efforts involved the aerial spraying of pesticides containing the known cancer-causing agent, glyphosate, using South African Police Service (SAPS) helicopters fixed with belly-spray hoppers to spray the chemicals on cannabis, waterways, farmlands, livestock, homesteads, and **people** (the challenge was ultimately successful); and
 - 1.2.2. Secondly, to seek and lobby for legal and economic policies that include historical cannabis-producing communities in the emerging legal cannabis industry. Thus, to bridge the gap between some of our most marginalised South African’s and our Government, with a view that the abundant heritage wealth and indigenous knowledge which our beneficiaries possess, is not lost due to genetic contamination caused by the cross-pollination from “hemp” and other imported cannabis cultivars (see 3.6 below). Further, the UFSN aims to ensure that **this** cannabis species, and **the** people who cultivate it – are not ‘sold’ to the highest bidder or otherwise subjected to other forms of “capture”.



- 1.3. During May 2018, the UFSN was invited to participate in the South African leg of the workshop aimed at drafting the *International Guidelines on Human Rights and Drug Policy* (“Guidelines”). The workshop was collectively organised by the International Centre on Human Rights and Drug Policy; UNAIDS; the World Health Organization; and the UNDP. The Guidelines are intended to be “...a reference tool for policy-makers, diplomats, lawyers and civil society organisations working to ensure human rights compliance in drug policy.” The Guidelines were officially published on 15 March 2019 and can be accessed at www.humanrights-drugpolicy.org.
- 1.4. **We strongly encourage the Portfolio Committee on Justice and Correctional Services to read the aforementioned Guidelines and trust in earnest that your committee members will do so with little delay. We will be so bold, if we may, and request that you provide the Minister of Justice, Honourable Ronald Lamola, and the Office of the State Law Adviser, with a copy of the Guidelines as essential reading before further iterations of the Bill are gazetted.**
- 1.5. During October 2018, the UFSN and the International Centre on Human Rights and Drug Policy submitted a joint submission to the 64th Session of the United Nations Committee on Economic, Social and Cultural Rights (“UNCESCR”). The purpose of the submission was to *inter alia* highlight the genuine plight of South Africa’s foremost legacy cannabis farmers who have been farming and trading cannabis for centuries despite the South African Government’s relentless and discriminatory aerial eradication efforts to stop them, and to highlight that these farmers would seemingly be left behind in the global cannabis race to include cannabis as a ‘Western medicine’.

The outcome of our submission was that:

“The [UNCESCR] Committee is concerned about the use of glyphosate, which was classified as probably carcinogenic by the International Agency for Research on Cancer of the World Health Organization, in the aerial spraying of cannabis crops to control the illicit cultivation of cannabis in the Pondoland region”.



Furthermore, the UNCESCR Committee recommended that:

“The State party [South Africa] suspend such aerial spraying and instead offer alternative development programmes to the affected communities to encourage them to abandon the illicit cultivation of cannabis, including the possibility of participating in the medical cannabis market through a licensing programme for small-scale community farmers”.

1.6. Accordingly, the UFSN is qualified to make submissions on drug policy and legislative reform in South Africa, and we ask that our submissions are taken seriously. Our work in general, and this submission in particular, finds the support of the King of the *AmaMpondo aseQuakeni*, Kumkani Zanozuko Sigcau; the Traditional Leaders who govern in our operating environments; and the farming communities themselves as our ultimate beneficiaries and in whose best interests we continue to act.

1.7. For the avoidance of any doubt, we confirm that this submission on the Cannabis for Private Purposes Bill (“Bill”) is submitted on our own behalf, as UFSN NPC, on behalf of our beneficiaries, and in the public interest.

2. **AN ANCIENT HISTORY OF CANNABIS CULTIVATION & TRADING PRACTICES**

2.1. The Mpondoland cannabis cultivar is a hardy, drought-resistant plant that thrives in the dry and challenging environment in and around the Umzimvubu river system. Notably, cannabis has been cultivated in this region for centuries and has, over time, adapted and naturalised to the unique environment of the river valley system. Historically, the local cultivar formed an essential component of the **lawful** trade with the Khoisan Nation.

2.2. When the colonial authorities first declared the cannabis plant illegal in the 1920s, the extreme geography of the Umzimvubu river valley created a refuge where cannabis cultivation expanded and thrived. Today, in terms of sheer volume, the region is the largest cannabis production area in sub-Saharan Africa. In response, the South African Government undertook an eighteen-year aerial fumigation campaign that was implemented without environmental authorisation and in violation of South African law.



- 2.3. The amaMpondo continue to grow this ancient cultivar which has developed a rather unique cannabinoid profile mainly in response to the harsh environmental conditions. The plant has very low levels of the psychoactive cannabinoid, Tetrahydrocannabinol (“THC”), with THC levels of around 3 - 4% only, and therefore, the specific cultivars have minimal recreational potential. However, these cultivars possess immense medical potential due to the diversity of cannabinoids and terpenes.

This unprecedented potential was first discovered during 2018 when the University of the Free State (UFS) released pioneering research that demonstrated that the amaMpondo cultivars had the unique ability (as opposed to 16 other known anti-cancer cultivars from around the world) to inhibit MCF-7 breast cancer cell growth, invasion and angiogenesis. This is a remarkable finding which gives credence to the wealth of knowledge the amaMpondo possess on the cannabis plant and its applications in medicine and everyday life.

- 2.4. The amaMpondo cannabis farmers primarily cultivate cannabis with the aim of commercialisation from traditional-industrial uses as opposed to own (recreational) consumption. In other words, cannabis is rarely consumed via inhalation/smoking, and instead, is farmed and traded for traditional and industrial uses, and used **personally** and **privately** in the same ways (see 2.5 and 2.6 below).

This is plainly due to the abundance of medicinal, religious, cultural and agricultural uses of the cannabis plant to these farmers, their families, and as communities. For many of these farmers, cannabis remains their **only cash crop** and is the means to put food on the table and provide their children with whatever education is available in the region.

- 2.5. Generational indigenous knowledge passed down over centuries – cannabis has been used in *every* amaMpondo home as a remedy to alleviate chest pains and mild fevers, amongst many other traditional remedies and recipes. Cannabis is used by burning it (*ukuyiqhumisa*), steam bathing (*ukufutha ngayo*), purging (*ukugabha ngayo*), and as a tea (*ukuyiphunga*).



- 2.6. Therefore, and on a **personal** and **private** level, the amaMpondo use cannabis for the following reasons: -
- 2.6.1. Religious or sacramental;
 - 2.6.2. Custom and cultural;
 - 2.6.3. Medicinal (home remedies for humans and animals);
 - 2.6.4. Recreational; and
 - 2.6.5. Agricultural (animal feed).
- 2.7. The amaMpondo farmers, and South Africans for that matter, not only need but want, a revolution in agriculture. We have one of the finest yet diverse agricultural climates on the globe with sufficient arable land to boot. Cannabis, when viewed as a **crop**, has the potential to ignite precisely the growth revolution that our agricultural sector so desperately craves. This is because cannabis is a plant which can supply humankind's four basic human needs - clothing, food, fuel and shelter. No other plant or crop known to our species has such (largely) untapped yet revolutionary potential for agriculture and agri-processing.
- 2.8. The National Development Plan ("NDP") aims to eliminate poverty and reduce inequality in South Africa by 2030 - only ten years from now. According to the NDP, South Africa can realise these goals by drawing on the energies of its people, growing an inclusive economy, building capabilities, enhancing the capacity of the state, and promoting leadership and partnerships throughout society.
- 2.9. Whilst the global cannabis industry was still in its infancy when the NDP was implemented during 2013, we can see now that cannabis has a significant role to play in achieving the wholesale development mandated by the NDP, and in particular, chapter 6 of the NDP which aims to build an inclusive rural economy.



3. PROBLEMS & ISSUES WITH THE DRAFT BILL

3.1. The Bill intends, according to public statements by the Ministry of Justice and the Preamble to the Bill, to deal *only* with the constitutional defects which were identified in the *Privacy Judgment* of the Constitutional Court as handed down on 18 September 2018. In terms of the *Privacy Judgment*, Parliament had twenty-four (24) months in which to cure the constitutional defects in existing laws, thus by 18 September 2020. Should Parliament fail to cure the defects as aforesaid, then the interim “reading-in” order would become final. Since Parliament has been unable to fix the constitutional defects timeously, the present Bill serves no legitimate purpose and will only deepen social inequality.

3.2. The amaMpondo have attempted to understand the implications of the *Privacy Judgment* as compared to the Bill, but due to the lack of awareness and education around the consequences of the judgment on existing laws; the ruling remains misunderstood by those most affected by it.

As UFSN we have fielded countless questions raised by amaMpondo community members at our consultative meetings concerning the implications of the *Privacy Judgment* on their way of life, and how the Bill is intended to protect their privacy, custom, and culture, when it comes to cannabis. It is clear that many people still believe or assume that cannabis can now be grown, used, and sold openly, freely, and legally when it is in fact restricted to cultivation and use in private spaces only.

3.3. Whilst the Minister of Justice has publicly stated that a separate commercial and trade Bill shall be promulgated by the Department of Rural Development and Land Reform (see 3.6 below), it is submitted that the present Bill represents a lost opportunity to capitalise on the existing policy window and create an all-inclusive trade-based cannabis industry in South Africa.

3.4. From the outset, the Bill is **rejected** with the contempt it deserves due to the absence of appropriate trade provisions aimed at including rural subsistence cannabis farmers within the regulatory framework. For the sake of completeness, we do, however, provide specific input and comments around draft provisions contained in the Bill as we believe that our contribution will be invaluable to the future passage of this Bill and cannabis legislative reform in South Africa.



Our comments are equally necessary and valuable to ensure that our beneficiaries have a rightful seat at the table.

3.5. Cannabis Seeds

3.5.1. Cannabis is cultivated by planting a seed or a cutting (from a plant already grown from seed). The Bill makes provision for a person to possess (and plant, but only until flowering-stage) as many cannabis seeds as they desire, however, it fails to set out how a person is to obtain those cannabis seeds? Can they purchase them? If they can't, then how are they supposed to obtain them? And if they can buy seeds, then from where are they to be purchased? Are the amaMpondo entitled to sell their ancient cannabis cultivars to medical researchers, scientists, and cannabis enthusiasts so that those persons can exercise their rights to cultivate and consume cannabis in private or use it for otherwise personal purposes?

3.5.2. To the extent that the Bill purports to prohibit the monetary exchange and sale of cannabis seeds, then it remains unconstitutional and susceptible to legal challenge on that basis alone since cannabis seeds are excluded from the definition of 'cannabis' per the International Treatises, and failure to permit the trade in cannabis seeds will leave any intended law in conflict with South Africa's international law obligations.

3.6. Hemp

3.6.1. Perhaps the most glaring pitfall of the Bill is the rather unfortunate reference to "hemp". We are at pains to point out that "hemp" is not a plant – it is a **word only**. Or rather, a term used to describe cannabis that is used solely for *industrial purposes*, as opposed to any other purposes (such as medicinally, culturally, religiously, or recreationally). The arbitrary THC levels of 0.2% - 0.3% beseeched of the cannabis plant for it to be deemed to be "hemp" are a fallacy, an illusion of grandeur, and a product of prohibition.

This is a simple yet scientific truth, because when a "hemp" seed, which is certified to contain less than 0.3% THC, is planted in African soil under the African sun, it behaves differently and ends up having more than 0.3% THC (often over 3%) in the harvested raw material. At that stage, it can no longer be called "hemp" and would become unlawful. The state of play in the



United States of America, concerning so-called “hot hemp” (cannabis seeds planted with less than 0.3% THC, which THC level then exceeds that threshold on harvest) should serve as a cautionary tale to our legislators.

- 3.6.2. To the extent that various Government departments, Politicians, officials, and private companies, have publicly said that a “*commercial hemp industry*” shall be ushered into law soon – those utterances are dangerously misplaced until laws and regulations have been gazetted, commented upon, and promulgated as law to allow for the commercial cultivation of cannabis in South Africa (be it industrially or for any other purposes).
- 3.6.3. There is currently not a single piece of legislation in force which authorises the licensing or permitting of the cultivation of cannabis for any commercial purpose whatsoever. This became the legal position on 22 May 2020 when the Minister of Health removed “cannabis” as a plant from Schedule 7 to the *Medicines and Related Substances Act*, thereby removing the legislative authority of the Minister and the South African Health Products Regulatory Authority (SAHPRA) to regulate how cannabis is cultivated. This does seem like an unforeseen consequence of the 22 May amendment to the Medicines Act, however, was to be expected of lawmakers seemingly intent to enact piecemeal legislation dealing with “cannabis” and “hemp” without a proper scientific understanding of cannabis as a **plant**.
- 3.6.4. It would appear based on the aforementioned public statements and further ‘roadshows’ undertaken by officials of the Eastern Cape: Department of Rural Development and Land Reform (“DRDAR”); that the Government and DRDAR plan to roll-out “hemp” farming permitting schemes within the amaMpondo communities and regions. As mentioned earlier, cannabis may only be called “hemp” if it possesses less than 0.3% THC. Therefore, and because the ancient amaMpondo cultivars contain more than 0.3% THC, it will (according to this definition and Government’s intentions) mean that the amaMpondo will not be able to continue cultivating their world-renowned cannabis cultivar.

Is the Government (and DRDAR) genuinely trying to say that the amaMpondo will need to destroy their ancient genetics and cultivars and instead cultivate imported “hemp” varieties? Is there not something fundamentally wrong with this narrative and mindset? It needs to be retired immediately, and we would request that much.

3.7. Cross-pollination, contamination, and appropriation of the amaMpondo cultivar

- 3.7.1. Cannabis cultivars which have naturalised in specific regions of the world and have been cultivated consistently for centuries by the inhabitants of those regions, are commonly known as “landraces”. The amaMpondo landrace is prized the world over – known affectionately as “Pondo Gold”, “Transkei Gold” and “Durban Poison”. The landrace cultivators are ancient varieties that contain valuable medicinal cannabinoids and terpenes and therefore have unprecedented medical value, whilst the modern American and Dutch cultivars have been bred for commercial yield for the illicit recreational market with high percentages of THC and very limited other cannabinoids, thus possessing minimal medical benefits.
- 3.7.2. With the unprecedented growth of the global cannabis industry, there has been a rapid erosion of the diversity of cannabis through the pollution and destruction of landrace cultivars. The landrace cultivars are the critical genetic pool that maintains the genetic integrity and incredible medical variety of cannabis. The continued survival of, quite literally, the DNA of cannabis, is threatened significantly by the “hemp” narrative and the contamination from such “hemp” varieties and from imported high-THC American and Dutch genetics.

We request that an embargo be placed on the importation of any cannabis seeds into South Africa until our Government has appropriately understood the value of existing South African cannabis cultivars and their genetic diversity, and taken steps to protect such cultivars and the biodiversity of South African Cannabis.

- 3.7.3. The amaMpondo landrace cultivar is now further threatened by the proposal in the Bill which would legislate a maximum number of plants. This will encourage private growers within our region to cultivate foreign cannabis plants. The reason is simply that foreign *indica* cannabis cultivars produce up to 1 kg of cannabis per plant, whereas the amaMpondo cultivar produces 95% less at around only 50 grams per plant. Furthermore, the landrace takes twice as long to flower at four months, whereas the *indica* cultivars take just two months. Also, the foreign plants have up to 20% THC whereas the landrace cultivar has only 4% THC.
- 3.7.4. It is submitted that the Bill will lead to the destruction of the amaMpondo landrace cultivar within less than two (2) years. A case in point is the loss of the “Swazi Gold” landrace in Eswatini.



In the last ten years, Swazi cannabis farmers have focused exclusively on cultivating foreign *indica* plants, and rapidly, through cross-pollination, the celebrated Swazi cultivar has been lost for all intents and purposes, with the cultural heritage of the Swazi Nation and unknown medical cannabinoids going with it.

- 3.7.5. The amaMpondo farmers rights to privately cultivate and protect their landrace cultivars is threatened further by DRDAR's apparent rapid implementation of "commercial hemp projects" within the amaMpondo landrace cannabis Heartland. This is because male cannabis plants are retained within the "hemp" fields, and its dominant traits will quickly and undoubtedly pollute the landrace cultivar.

An interesting piece of information for the Government to consider is this: the pollen from male cannabis plants is renowned for travelling long distances via air, and for this reason, "hemp" fields are not typically established in landrace regions of the world (such as in Morocco and India). In Spain, cannabis pollen blowing across the Mediterranean Sea from Morocco causes medical problems with allergies amongst the Spanish population, and that pollen also cross-pollinates existing Spanish cannabis cultivars. This pollen travels more than 26 miles (or 40 kilometres) via air and over an entire ocean.

3.8. Penalties

- 3.8.1. In terms of the *Privacy Judgment*, the Government is required to regulate the private cultivation and use of cannabis in South Africa by adults. This does not mean that different prohibitionist ideologies should find application in the Bill, yet unfortunately, they do, and draconianly so.
- 3.8.2. The 'new' penalties are a gross overreach of power; reminiscent of apartheid-era legislation; out of sync with reality and the need for human rights to be the central pillar in any drug policy; in conflict with International Law and South Africa's treaty obligations (refer UNCESCR recommendations at 1.5 above); and most importantly, do not conform with the *ratio decidendi* of the *Privacy Judgment*.

3.9. Scale of Harms

- 3.9.1. The primary tenant of this argument is that the Bill is overtly punitive; is discriminatory in that unlike other legally regulated drugs like alcohol and tobacco, unrealistic and random cultivation and possession amounts are stipulated which do not take into account the diversity of the cannabis plant and its myriad uses outside of recreational consumption via inhalation/smoking. There exists no maximum limit on the amount of tobacco or alcohol that an adult South African can cultivate or brew for their own purposes, and a similar approach should be applicable to cannabis since it is scientifically far less harmful than alcohol or tobacco.
- 3.9.2. The Bill fails to take into account that there is a diversity of **private** yet non-recreational uses of the cannabis plant including for nutrition from the seed and seed oil, and as medicine for the family and livestock through boiling the cannabis as a tea. A maximum plant limit will further constrain the nutritional value of cannabis to the amaMpondo communities since they will not be able to cultivate enough seed-bearing cannabis plants to meet their nutritional needs.
- 3.9.3. Tellingly, the punitive and prohibitionist nature of the Bill neglects the science on the actual harms of cannabis to the consumer such that **not** a single death has been attributed to the use of cannabis, ever.

3.10. Quantities

- 3.10.1. The calculation and stipulation of the maximum number of cannabis plants a person is entitled to cultivate, and how much dried cannabis flower they may consequently possess at any single moment, is a clear indication of the real absence of any knowledge on cannabis and the variations which exist amongst cultivars of the cannabis species. For example, different cannabis cultivars produce vastly different amounts; one *indica* cultivar could produce up to 4kg's, whereas one amaMpondo cultivar will produce only 50 grams.
- 3.10.2. Furthermore, the stipulated quantities do not take into account other **personal** and **private** uses of cannabis, such as food, juicing, medicinal, preventative care, acute medical care (HIV and Cancer), animal feed and remedies, fibre, and so on.



3.11. Expungement

3.11.1. The provisions dealing with the expungement of cannabis offences are most welcomed. However, the provisions as drafted fail to consider that the previous 115-gram limit used as the threshold for deemed “dealing” was declared unconstitutional many years ago. What about those cases where persons were never convicted of dealing in drugs but had more than 115 grams of cannabis on their person? What about reparations for the countless number of professional careers which have been ruined? And for the families who have had breadwinners removed from the home and their family dynamic destroyed? May we be bold enough to request a Cannabis Commission to deal with such reparations?

3.12. Cannabis Private Members Clubs

3.12.1. The UFSN notes that private members cannabis clubs are popping up all around South Africa. Examples are The Haze Club, The Cape Cannabis Club, and the Bud Club. All of these clubs publicly advertise that their models are lawful and the media has given them a broad audience.

3.12.2. It is submitted that the lawmakers should consider such private-social club models in any further iterations of the Bill. Their acceptance in Europe by the governments of various countries can serve as the point of departure.

3.12.3. For present purposes though, we must ask what Government’s position is in respect of these clubs? Are the amaMpondo now able to seemingly offer a private member’s service to cultivate cannabis on their members’ behalf?

4. **CONSULTATION**

4.1. Over the past few months, we have consulted extensively with certain of the affected communities in Mpondoland, their Traditional Leaders, and Kumkani Zanozuko Sigcau. The purpose of these consultations and engagements were to; deliberate on the Bill; collate the comments from the communities, and encapsulate those comments within this submission. Unsurprisingly, not many communities had even heard of the Bill, with some having only seen or heard something about it on television or social media.



- 4.2. Plainly, there has been neither adequate notification (through non-internet means) of the Bill nor any public consultation amongst the amaMpondo communities. It should be clear by now that these communities are primary custodians of cannabis in South Africa with entrenched customary and cultural rights to cultivate, use and trade the cannabis plant. It was thus critical for the Government to notify and consult the holders of this indigenous knowledge. That this has not taken place is both telling and unconstitutional.
- 4.3. Acceptable consultation would include: -
 - 4.3.1. That ordinary rural people are consulted extensively about laws that will significantly affect their lives; increase the poverty divide, and threaten the survival of their indigenous knowledge on cannabis;
 - 4.3.2. That people should be afforded enough time to respond to any call for submissions on draft legislation in the form of a Bill or Regulations;
 - 4.3.3. That Government advertises the Bill, as well as the procedures for public participation, in places and through mediums that rural people have access to (such as SABC radio stations);
 - 4.3.4. That consultations should take place in venues that are accessible to ordinary people even if this means that multiple consultations will need to take place; and
 - 4.3.5. That appropriate means to enable ordinary people's attendance at the public consultations should be provided for.
- 4.4. The only means for the Bill to have reached the majority of South Africans has been through the internet, whilst the amaMpondo cannabis farmers who are most affected by the contents of the Bill, live in rural communities where there is **no** access to the internet or social media, and for many, **no** access to electricity (and thus television).
- 4.5. Furthermore, there is a stark educational barrier which prevents many communities from reading the Bill since it was published in English only. These are the very people who rely almost solely on the cannabis plant to make a living and for medicinal, religious, cultural and agricultural purposes.



4.6. It is the UFSN's respectful view, that far too short a time has been allowed for public participation and awareness, especially if the rural communities are realistically expected to submit their comments on the current Bill.

4.7. For the reasons mentioned above, we submitted an urgent request for an extension in which to make these submissions on 7 October 2020. The deadline was extended to 30 November 2020, however, and with respect, this is still too short a period within which to conduct meaningful constitutionally-compliant public participation.

4.8. We must therefore reiterate our request and recommend that a minimum period of six (6) months be afforded to the affected communities so that they may be adequately educated and engaged on the Bill.

5. **RECOMMENDATIONS**

5.1. The UFSN would like to appeal on behalf of our beneficiaries that their concerns be heard and included within any future iterations of the Bill, to the extent that is even possible since the present Bill is respectfully considered to be unworkable and unconstitutional.

5.2. When considering how the amaMpondo have used and farmed cannabis for centuries, it is clear that the Bill will directly affect those ancient ways and destroy a trove of cannabis customs, culture, and indigenous knowledge. In its current format, the Bill criminalises the amaMpondo cannabis farmers and threatens their livelihoods.

5.3. The UFSN welcomes well-formulated regulations and laws that will enable and guide the formation of an all-inclusive cannabis industry and economy. First and foremost, these regulations need to be written for the benefit of local communities and rural development if South Africa is to take seriously the profound opportunities a cannabis resource economy will present our Nation.

5.4. It remains clear from our consultations with the amaMpondo farmers, Traditional Leaders, and Kumkani Zanozuku Sigcau, that the only conceivable recommendation is that the Bill should be **withdrawn altogether**. Entirely new constitutionally compliant legislation should be drafted in its place, which drafting should only commence *after* the Government has undertaken proper


consultation with the millions of ordinary South Africans residing in rural areas who will be impacted by cannabis legislative reform.

5.5. We recommend that once adequate public participation has been achieved, that the starting point for the lawmaking process should be a genuine consideration of the Guidelines we referred to at 1.3 above. Also, we request that the lawmakers familiarise themselves with the “20 Principles for the Responsible Legal Regulation of Cannabis” which were recently published by the International Drug Policy Consortium. We are enclosing a visual infographic of these principles for the lawmaker's ease of reference.


20 PRINCIPLES FOR THE RESPONSIBLE LEGAL REGULATION OF CANNABIS

Health and human rights of people who use drugs


1. PROTECT RIGHTS
Regulated markets enable consumer protection and health regulations to uphold the rights of people who use drugs, while labor laws protect cannabis workers from exploitation and




2. PUBLIC HEALTH & HARM REDUCTION
Legal regulation can be a powerful harm reduction tool, reducing stigma against people who use drugs, enabling access to health services, and guaranteeing a safe supply of drugs.



3. AUTONOMY, LIBERTY & PRIVACY
Regulations should seek a fair balance between individual rights to autonomy and privacy, and the protection of public health. All restrictions must be based on evidence.




4. ACCESSIBLE & NEEDS-BASED
To become a viable alternative to the informal supply, regulated markets need to be accessible, and to respond to the needs of people who use drugs, including users of cannabis-based medical products.




Social justice


5. COMMUNITY INVOLVEMENT
Legal systems should be informed by the wealth of knowledge accumulated by people involved in currently illegal markets, from cultivators to people who transport, sell and use cannabis.




6. TRANSIT TO LEGALITY
Legal markets must support the participation of people and communities involved in informal drug economies by removing existing legal, financial, technical and bureaucratic barriers.




7. SMALLER-SCALE GROWERS
To guarantee sustainable livelihoods for traditional cannabis farmers, legal regulations should prioritise their participation in supply, and ensure they are not displaced by new private actors.



8. REPARATION, SATISFACTION & NON-REPETITION
Legal frameworks must include reparations for people who suffered prohibitions, redress rights violations, and allocate resources to those unjustly targeted.




9. TRADITIONAL USES
Legal regulations must recognise the value of cannabis' rich history of traditional, cultural, religious and medical uses, and ensure their preservation.




Inclusive & equitable trade


10. INCLUSIVE BUSINESS MODELS
Legal markets should seek to distribute power and value across the supply chain by enabling alternative business models that empower communities.




11. WORKERS RIGHTS
In a legal system, workers are entitled to labour rights and protections, which can be enforced through formal oversight mechanisms.




12. MAXIMISE VALUE
Regulators should work with producers and users to develop innovative certification schemes that bolster the competitiveness of small and medium-sized producers.



13. CHALLENGES TO INTERNATIONAL TRADE
Regulators should reflect on how to remove the legal barriers that impede the transnational trade of non-medical cannabis, while protecting traditional growers from the inflow of foreign capital.




14. ENVIRONMENTAL SUSTAINABILITY
To address potential environmental harms, legal frameworks must include strong regulations, as well as ecolabeling schemes, to promote sustainable practices throughout the supply chain.




Responses to activities outside of the legal market

15. DECRIMINALISE ALL DRUG USE & ANCILLARY ACTIVITIES
A socially just legal framework is not compatible with any form of criminal or administrative punishment for the personal use of any drug.




16. PROPORTIONALITY
Where retained, criminal justice responses to drug-related activities, such as drug trafficking, must be strictly proportionate, consider personal circumstances, and accompanied by support.




A gender-sensitive approach


17. WOMEN & CULTIVATION
In addressing the history of discrimination and harassment of women growers, legal regulations should establish gender-sensitive protections against exploitation and abuse.



17. ACCESS TO SERVICES
Legal regulations must promote gender-sensitive drug treatment and harm reduction services that respond to the specific needs of women.




17. EQUALITY
Regulators must take immediate action to address structural gender inequalities and power imbalances in legal cannabis markets.



Monitoring and learning

20. DATA COLLECTION & COMMUNITY FEEDBACK
Legal frameworks must be constantly reviewed in light of objective data, lessons learnt, the evolution of the market, and feedback provided by affected communities and civil society.



6. RESERVATION OF RIGHTS

6.1. No Consultation & Public Participation

6.1.1. There has been inadequate consultation and public participation leading up to the drafting of the Bill and in respect of the call for the submission of comments on the Bill. We have dealt with the absence of any meaningful consultation at 4. above and in our prior request for an extension, and reiterate the need for such an extension.

6.1.2. To the necessary extent, we hereby reserve our rights, and those of our beneficiaries, to formally challenge the Bill through judicial review due to the failure to conduct the constitutionally mandated public participation process in any meaningful manner.

6.2. Customary Law & Indigenous Knowledge

6.2.1. South Africa has a plural legal system consisting of the common law and customary law. Both of these legal systems are subject to the Bill of Rights contained in the Constitution of the Republic of South Africa, 1996, (“Constitution”), which is the supreme law of the land. The South African people to whom customary laws apply are largely socially integrated, but many South Africans, especially those who live in rural areas, follow traditional and customary practices, and cultural ways of living to varying degrees.

In the case of the AmaMpondo, they have practised their customs and ways of life for centuries, and for many, customary law is the *only* legal system that they recognise. The cultivation, use, and trade of cannabis forms an integral and entrenched custom and is well-established as a way of culture and life of the amaMpondo.

6.2.2. The Constitution is appreciative of these cultural and customary law rights, which are accordingly entrenched within the Bill of Rights. Thus, every South African has the right not to be subject to unfair discrimination on the ground of culture, and the right to culture. Section 30 of the Constitution affords everyone the right to participate in the cultural life of his or her choice and section 31(1)(a) provides that persons belonging to a cultural community may not be denied the right to enjoy their culture.



6.2.3. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) adopted the Draft Declaration on Cultural Diversity which provides:

“Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent...; ...and all persons have a right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.”

6.2.4. The Protection, Promotion, Development and Management of Indigenous Knowledge Systems Act, 6 of 2019, (“IKS Act”) has recently been promulgated and awaits final form Regulations for it to become fully operational. The IKS Act recognises that *“indigenous knowledge is a national asset and that it is therefore in the national interest to protect and promote indigenous knowledge through law, policy and both public and private sector programmes.”*

6.2.5. The World Intellectual Property Organization (WIPO) have stated that:

“Traditional knowledge is not so-called because of its antiquity. It is a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.”

6.2.6. The amaMpondo cannabis farmers recognise their customary law rights to cultivate, use and trade cannabis which has been further codified by the promulgation of the IKS Act and accepted within the International Treaties binding on South Africa.

6.2.7. In the circumstances, we consider it necessary to reserve our beneficiaries’ rights to **continue** to cultivate, use, and **lawfully** trade cannabis in terms of their entrenched customary law rights. To the extent that the Bill and the existing legislative scheme appears to restrict such customary law rights, then it remains unconstitutional and susceptible to legal challenge accordingly.



7. REQUEST TO MAKE ORAL REPRESENTATIONS

- 7.1. In addition to submitting these written submissions to the Bill, we request the opportunity for the members of the UFSN to make oral representations to the Portfolio Committee on Justice and Correctional Services.
- 7.2. We shall require ten (10) invitations which will be for our directors, amaMpondo farmer representatives, Chief Luthando Dinwayo of the Mantlaneni Traditional Authority, and Kumkani Zanozuko Sigcau, the King of Eastern Pondoland.
- 7.3. To the extent that the oral hearings might only be held in-person at Parliament, then we request that we be provided with at least fourteen (14) days' notice in which to make travelling arrangements from Mpondoland to Cape Town and to reschedule any cultural and customary events which might clash with the date/s of the oral hearing/s.
- 7.4. We do, however, anticipate that due to the existing pandemic, oral hearings will also be held via video/dial-in facilities. In that event, we request that we be provided with seven (7) days' notice for purposes of adequate preparation and to arrange that our representatives can convene in an area with electricity and stable internet connection.

8. CONCLUSION

- 8.1. The *Privacy Judgment* allows all adult South African's to cultivate a reasonable amount of cannabis for private consumption, and this judgment was well-received countrywide and by the international community. It came as an exciting breakthrough for the cannabis community and legacy cannabis farmers as it was the first step towards acknowledging that South Africans have the right to use the cannabis plant for various purposes.
- 8.2. The immense value of cannabis globally, for medicine and as a commodity for other uses, is being shown in countries such as Canada where cannabis has been fully legalised for sale to adult persons. The commercial value of cannabis could contribute significantly to the South African economy, especially for small scale farmers in Southern Africa and Mpondoland.



- 8.3. However, the Bill in its current format will undo all of that potential because it will, in essence, criminalise the amaMpondo cannabis farmers who have a long history of cultivating cannabis as part of their custom and culture. A seat at the table is now warranted.
- 8.4. We thank you for taking the time to read our submissions on the Bill. We look forward to engaging with you in a meaningful manner as we can undoubtedly offer you the guidance you will need to enable the constitutionally compliant regulation of cannabis in South Africa.