

SUBMISSIONS FROM THE CANNABIS DEVELOPMENT COUNCIL OF SOUTH AFRICA

We must right at the outset register our objection to the abject lack of public participation and the failure of the National Assembly to abide by its own Public Participation Model. The issue of cannabis continues to affect the lives of millions of people yet Parliament blatantly discriminate against our community and continue to ignore the existential reality of the cannabis community in particular and the previously disadvantaged communities in general. Parliament's duty to inform, educate, workshop and feed back to communities, in relation to cannabis; is ignored whereas we are and remain a severely traumatized and victimized community.

1. The recommendation that the Department of Justice received from Judge Gorvan/Gordon as well as others members from civil society was that cannabis be regulated the same as alcohol and or tobacco. We do not sense the impact of that recommendation in the proposed amendments.

2. The bill still propose to regulate cannabis vastly different from the manner in which alcohol and tobacco is regulated and this has obvious equality implications, in that cannabis, and cannabis users is unfairly discriminated against by being subjected to much stricter regulation.

3. The proposed amendments to regulate commercial activities around cannabis flows from an improper and unlawful interpretation of the duty and responsibility of the Dept of Justice. The Constitutional Court imposed upon the Department of Justice the obligation to ensure that cannabis is regulated in a manner that respects the whole constitution of South Africa, even though the court only found unconstitutionality on the ground of privacy. Parliament must respect the fact that our laws operate interrelated, interdependent and holistically. Parliament must therefore ensure the Bill respects the privacy provisions but must also ensure that the bill does not violate the rest of the constitution.

4. The Bill must therefor ensure that cannabis, at the very least, is treated in the same manner as alcohol or tobacco and may not subject the cannabis community to stricter regulatory measures. The penalties and offences created under the bill must accord with that in place for tobacco and alcohol, but as it stands the bill proposes a much stricter penal regulation for cannabis which is unlawful and endanger the bill of being unconstitutional

5. The objective of the Bill which intends to only provide for the religious observations of members of the Rastafari way of life unfairly discriminates against indigenous cultures, and should include those indigenous cultures who has a history of using cannabis for religious and or cultural purposes. Sec15 and 31 of the Constitution protects religious and cultural practices and the bill should do the same. The manner in which the amendment is structured violates equality as well the notion of restorative justice. The affirmative measure of the amendment is applauded but the remedial action cannot be unfairly discriminative.

6. The right to decide what medicine or medical procedure to use is a very important constitutional protection and government may not, and cannot dictate to citizens what medicines they can use or what medical procedures to follow. The right to use cannabis for palliative or medicinal purposes is therefor protected under our constitution and the bill must remove, and not create, obstacles to the exercise of this right. It follows that the inclusion of the right to use cannabis for palliative and medicinal reasons is supported, even though it is technically not required because the right is already protected.

DEFINITIONS AND INTERPRETATIONS.

7. The JPC recommendation to change 1% to 2% in Sec 1b is arbitrary and does not speak to South African conditions. It would make much more sense if that is changed to 3-5% because the THC content of landrace cannabis is usually between 3-5% THC. The purpose must be to ensure that local landrace cannabis is not unduly restricted especially in relation to commercial or industrial activity. Nothing prevents Parliament or South Africa from having a regulatory regime that allows that. International law and recent developments makes it abundantly clear that South Africa would not be in violation of any Treaty if the level is moved to between 3-5%.

8. The recommendations in Sec 1(c) iii and iv is subject to the same critique. It is an offence to drive with a blood alcohol level above 0.05%. The appropriate studies must be conducted for cannabis otherwise the figures are simply arbitrary. The measures for regulation must accord with science.

9. We propose that those who want to export hemp products abide by the 0.02 international recommendations but for South African industrial and medicinal

purposes, we should abide by the 3-5% levels in order to use our landrace cannabis for industrial and medicinal purpose.

10. The proposed limitation on height of plants is arbitrary and does not reflect the South African reality where cannabis plants can reach heights of 3-4 metres.

11. Possess in Private should not include measures that treats cannabis as dangerous or dirty justifying that it be shielded from public view. If those same measures are not in place for tobacco or alcohol, then they are unfairly discriminative.

12. The proposed limits on traffic-able quantity is also arbitrary and imposes regulatory measures on cannabis that is not similar to those imposed on alcohol or tobacco users and therefor unfairly discriminative.

13. The definition of remuneration as "**any form of compensation...**" is unlawful because restrictions on rights should be narrow not wide and the limitation should therefor be specific and not general.

COMMERCIAL ACTIVITY IN RESPECT OF RECREATIONAL CANNABIS

14 There is a distinct contradiction in the manner in which the Department of Justice proposes to deal with the commercial activity around cannabis. The proposed regulatory framework puts undue restrictions on activities that flows naturally from having the right to possess, use, and cultivate cannabis. Those same restrictions do not apply to other recreational substances, therefor the proposed restrictions are unlawful and unconstitutional.

15. The definition of commercial activity as "**any activity that...**" is unlawful because these definitions cannot be broad and general; it must be narrow and specific. Our laws are clear in this respect. Limitations on rights must be narrow, but constitutional guarantees must be broad. The manner in which recreational use is understood is also problematic as it denotes our usage of cannabis as something that must be hidden from public view as if it is something undignified. Again this is not how alcohol or tobacco is treated.

SPECIAL MEASURES TO ACCOMMODATE RELIGIOUS OR CULTURAL COMMUNITIES

16. CDCSA supports the idea that affirmative action or special measures be employed to accommodate religious and cultural communities, that has cannabis as a sacramental or cultural object. Restorative justice measures should however not result in further undue or unfair discrimination. Care must be taken to ensure that opportunities are available for all who want to operate in the cannabis space. Collaborative measures should therefore be encouraged to ensure that restorative justice is accomplished whilst not hampering the progress of the cannabis industry. For that reason it cannot simply be the Rastafari community that must be acknowledged but also Indigenous cultural communities as well as Traditional Healers.

17. To that extent CDCSA supports and endorses the recommendations made by the **Rastafari Human Rights Institute** on the issue of exemptions as a special measure for restorative justice purposes. We highlight the pitfalls mentioned therein on having too restrictive a regime in relation to evaluative measures for registration, membership, children, legal quantities, diversion and punitive measures; amongst others. CDCSA stress the fact that the cannabis community had to operate underground or in the shadows for the past 100 years and to come into the light of legality will not be an overnight thing. The requirements for compliance should take note of this and not set unrealistic expectations.

18. It must also be stressed that these measures must be strenuously workshopped with the affected communities and cannot simply be imposed. The lack of public input in the conceptualisation of these measures is also highly disconcerting and puts the bill at risk of unconstitutionality based on a lack of public participation.

19. The powers of the Minister to restrict, limit or impose punitive measures must accord with the realities and conditions of South Africa and South Africans and must be respectful of affirmative and restorative justice measures. The powers of the Minister cannot be ultra vires and must accord with the affirmative and restorative objectives of our constitution.

20. Sec 8(iv) that authorises the Minister to destroy cannabis is unlawful as it violates the rights of the cannabis plant and also contradicts the objectives of the Cannabis Master Plan. Illegal product can be fined or confiscated to be used by the state for the furtherance of its objectives in terms of the Master Plan.

21 Sec 11(c) contains a reference to the Rastafari community that is not actually required because Rastafari has been acknowledged or recognised as a religious or cultural community since Prince 1, in 2000. The Rastafari community is to the only religious, cultural or indigenous community that uses cannabis, even though we endured and endures, the most discrimination as a result of our unashamed association with the plant.

PRESCRIBED QUANTITIES FOR PERSONAL USE BY ADULT PERSONS

22 The right to use cannabis for medicinal purposes flows from the right to have autonomy over one's body and for that reason one should not require authorization from anybody to use cannabis for palliative or medicinal purposes. The right to use cannabis obviously must include the right to use it for medicinal or palliative purposes. Sec 2(4) is thus superfluous.

CULTIVATION OFFENSES

23 There is an inherent contradiction in this section in that it is counter intuitive to the objectives of the cannabis master plan. South Africa must encourage everyone to plant as many trees as they can in order to meet our needs and any limitations on cultivation will defeat that objective.

24 Sec 3(2)a which makes it an offence to make cannabis accessible to a child does not take into account the culture of indigenous communities including Rastafari for whom cannabis is cultural and sacramental. This provision will surely be challenged as unlawful apart from being insensitive.

25 The amounts determined under this section is arbitrary and has not been workshopped with the cannabis community and is therefor unlawful and is opposed by CDCSA in its entirety.

CANNABIS OFFENSES

26 The same critique as above applies to these provisions and is rejected in its entirety by CDCSA on the basis of lack of public participation.

SMOKING AND CONSUMPTION OFFENSES.

27 These provisions are arbitrary and rejected by CDCSA in its entirety on the basis that they have not workshopped or discussed with the cannabis community.

28. OFFENSES INVOLVING CHILDREN

The provisions of this section is rejected in its entirety on the basis that they are arbitrary and has not been workshopped with the cannabis community of South Africa. These provisions fail to take note of the fact that the use of cannabis is a customary and cultural practice in South Africa.

29 PENALTIES

These provisions are rejected on the same basis as above, in par 28.

EXPUNGEMENT OF CRIMINAL RECORDS FOR CANNABIS OFFENSES

30 This is the least the government can do for the cannabis community and the automatic expungement of records must be applauded. Sec 8(2)(a) iii and Sec 8(2)b is opposed because it should not be expected of citizens to make application in writing to the Minister or the Department of Justice to have convictions made under unlawful presumptions; expunged.

These should also be automatically expunged.

REGULATIONS

31 Regulations must be formulated in light of the recent development under law whereby the regulatory powers of the Minister cannot be exercised ultra vires. The Minister may not make regulations that would alter the main body of the Act as that is the prerogative of Parliament.

SCHEDULES TO THE ACT

32 All of the schedules to the Act are opposed and contested on the basis that they were not discussed or workshopped with the Cannabis community and still propose to regulate cannabis via the criminal penal code whereas this model of regulation has been declared unlawful and unsuitable for cannabis.

SUBMITTED ON THIS 13TH DAY OF MAY 2022 BY THE CHAIRPERSON
OF THE CANNABIS DEVELOPMENT COUNCIL OF SOUTH AFRICA

A handwritten signature in black ink, appearing to read 'G Prince'.

GARRETH PRINCE.