



CANNABIS DEVELOPMENT COUNCIL OF SOUTH AFRICA

**PORTFOLIO COMMITTEE ON JUSTICE AND
CORRECTIONAL SERVICES**

Your Ref: Cannabis Bill
Our Ref: Cannabis Bill Comment V3

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Date: 08 October 2020

*****ATTN: HON. V. RAMAANO & HON. S MTHONJENI*****
*****PER EMAIL ATTACHMENT*****

Dear Hon. Members of Parliament,

RE: COMMENT ON THE CANNABIS FOR PRIVATE PURPOSES BILL

1. We, hereby, accept your invitation to submit comments on the "*Cannabis for Private Purposes Bill*" ("*the Bill*"), which comments follow hereunder.
2. We expressly record that **we would like the opportunity to make verbal presentation/s to Parliament hereon.**

3. THE CANNABIS DEVELOPMENT COUNCIL OF SA AND OUR MANDATE:

This submission is made by the Cannabis Development Council of SA (CDCSA), registered as a Non-Profit Company Reg. 2019/048084/08 with the following objectives:

- To formalize and develop indigenous cannabis communities that have always existed in South Africa
- To facilitate training and skills development / transfer for the cannabis industry.
- To create a system for monitoring and approving cannabis related products.
- To have a legal framework that is beneficial to government and the community, that opens the cannabis market to the general public and connects members in the industry together to facilitate the development of a cannabis industry cluster that would provide opportunities and jobs for South Africa's most impoverished rural communities.

- To ensure that all people have access to the cannabis plant and its derivatives as well as business opportunities.

Collectively we represent cannabis users, growers and stakeholders from all nine provinces that have organised themselves into a representative stakeholder body that has extensively workshopped our position on how to develop cannabis in South Africa. Our constituent base includes Indigenous Knowledge System (IKS) communities, Traditional Healer Associations, the Traditional Healers Organisation (THO) with over 75,000 members, Traditional Leaders, Indigenous Communities including the Khoi San, Herbalists, RasTafari, Spiritual healers, Mampondo, 420 clubs & forums, Tribal Authorities and other entities. CDCSA used various platforms - zoom meetings, social media forums, electronic media (SABC news, eNCA) and word of mouth to reach members and collate their diverse views in responding to this proposed Cannabis for Private Use Bill.

We humbly request the opportunity to make oral representation to the Justice & Correctional Services Parliamentary Sub Committee on our proposed way forward for inclusive cannabis regulation in SA.

4. COMMENT ON THE PROPOSED BILL:

Our jurisprudence makes it clear that South Africa is a constitutional state built on the pillars or principles of participatory democracy, equality, freedom, dignity and social justice. All laws must be drafted and interpreted giving effect to these principles and ideals. ***When drafting or interpreting laws courts and parliament must adopt an expansive and not a narrow approach.***

Because the cannabis issue simultaneously implicates several rights and obligations we expected a bill that spoke to all of these rights and obligations. Sadly this Bill does not do that and has instead adopted a minimalistic and narrow approach in conceptualizing our cannabis future.

The proposed bill perpetuates the criminalisation of cannabis that originated in colonial and apartheid legislation put forward to the League of Nations by Prime Minister Jan Smuts in 1924 to control native labour and further entrenched by John Vorster's Nationalist governments Abuse of Dependence Producing Substances & Rehabilitation Centres Act of 1971 that has imprisoned millions of South Africans for mere possession of cannabis.

4.1 CONSTITUTIONALITY OF THE PROPOSED BILL:

The proposed bill raises core constitutional issues around adequate public consultation in framing the legislation, human rights in making cannabis accessible to all, criminalising of

indigenous customs, limits in equal access and accessibility, and has numerous unforeseen and unintended consequences when interpreted with other legislation. It reflects a lack of understanding of cannabis in general and its social economic potential for the people of South Africa.

The Department of Justice has adopted decriminalisation over commercialisation without any consultation on the matter. This has resulted in a very narrow interpretation that continues to regulate cannabis as a criminal issue rather than a social issue and favours alcohol and tobacco even though its scientifically proven in a table of harms that cannabis is less harmful.

4.2 THE SA DRUG POLICY MASTERPLAN 2019 - 2024:

The proposed bill is not aligned to South African Drug Masterplan 2019 to 2024 which states “The world drug problem and response continue to present challenges to the health, safety, and well-being of people in South Africa. A drastic change in approach to drug policy recognises that the punitive approach has not been successful in tackling drug-related problems. Instead, emphasis should be placed on evidence-based public health and social justice principles that focus on individuals, families, communities, society as a whole, and must underscore social protection and health care instead of conviction and punishment.” SA Drug Masterplan 2019 to 2024, Executive Summary Page 14.

The use of cannabis is a social issue and should be managed as a matter of public health and safety and should not be criminalised and regulated by the Department of Justice. Criminalizing cannabis use hasn’t deterred South Africans from using it - it’s only made its use less safe and sustained the proliferation of gangs and organised criminal groups.

Speaking on the side lines of the United Nations general assembly Global Commission on Drug Policy, 3rd October 2020 the Deputy Minister of Social Development Hendrietta Bogopane-Zulu called for a review of treatment protocols for drug dependent people, and a move to a ‘human rights’-based approach. “We need to remove the punitive, war-based language on the issue of drugs. This has not led to any of us being successful in the fight against drugs. We need to begin to focus on the social welfare services, so we can focus on putting the drug user at the centre and ensuring they have access critical medicines that they need.”

4.3 CANNABIS FOR PRIVATE USE:

The proposed bill excludes any person who does not have access to a private space to cultivate cannabis from access to cannabis. This is unconstitutional and prevents a considerable portion of the SA population who live in informal settlements or high density areas from the ability to cultivate cannabis and therefore a legal means to obtain cannabis. It also fails to make provision for how people can access seed to cultivate cannabis. The law

needs to accommodate a reasonable trade in cannabis so as to enable people without access to land the right to still use cannabis in the privacy of their homes.

4.4 CANNABIS AND CHILDREN:

The proposed bills position on children and cannabis has been rendered unconstitutional by the Johannesburg High Court. “Judge Ingrid Opperman said the way children were still being treated, two years after the Constitutional Court decriminalised cannabis possession and use for adults, was redolent of apartheid laws” August 2020

4.5 EXPUNGEMENT:

“The right to remedy and reparations for victims of Human Rights violations is enshrined in Article 8 of the Universal Declaration of Human Rights: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” This applies to victims of prohibition-related Human Rights violations.

All criminal records for the use, possession, and trade in Cannabis must be expunged from the record with immediate effect. All prisoners being held on Cannabis charges in South African jails must be released with no conditions, with immediate effect. The only convictions that should be exempted or placed under review during this process are those convictions that involved violence & harm to others not associated with Cannabis.”

This Bill does not state what is to happen to those who were convicted under the old Sec 21 of the Drugs Act presumption. If you had more than 115 grams of cannabis in or on your possession you were presumed to be a dealer. This presumption was declared unconstitutional in *S v Bhulwana*, *S v Gwadiiso* in 1995. These people were convicted of dealing under Sec 5b of the Drugs Act of 1992. Their records must also be cleared. The bill only propose to pardon or expunge possession related offenses. All dagga related offenses must be expunged. That is the least this government can do for the injustice committed against millions of people. Let everybody start on a clean slate.

4.6 GENERAL COMMENTS ON RECOMMENDED QUANTITIES:

There should be a recognition of traditional healers who use cannabis in their work. The current quantities for personal use are inadequate as the healers use cannabis for professional purposes; it is akin to restricting a doctor access to medicines based on what she/he can personally consume. This provision should also cover how much they should grow and how much they should transport. The traditional healers should be engaged to arrive at such quantities. Groups that use cannabis for other reasons including religious reasons cannot

be covered by the quantities prescribed under personal use. The quantities prescribed for ritual use should be different from personal use and linked to observed use during the rituals.

Determination of quantities for personal use should be linked to average personal consumption; as well as how many plants the average user would need to cover their use adequately, as well as share with their contemporaries. The cannabis community is a sharing community.

4.6 WHAT AN INCLUSIVE CANNABIS BILL NEEDS TO ACHIEVE:

An inclusive Cannabis Bill for South Africa primary objective should be to create the conditions for the rapid industrialisation of a cannabis sunrise industry in South Africa.

5. UNIFYING ENABLING CANNABIS AGENCY:

Our approach to cannabis needs to be driven from an African viewpoint of understanding the natural resource that we historically have at our disposal and how we can best unlock this for the benefit of our people and country.

The United Nations Single Convention of Narcotics 1961 states that any nation developing a cannabis industry needs to be managed by a Cannabis Agency. **We are advocating for a single cannabis bill to establish a Cannabis Agency to administer and regulate cannabis in South Africa.** This agency will be tasked to design and implement an innovative inclusive cannabis social compact to manage:

- Responsible adult use / recreational use
- Medical cannabis
- Industrial cannabis
- Green reparations

Our long history of illicit cannabis production and export, puts us in a strong position to develop a local cannabis market that unlocks the entire value chain, creates jobs, stimulates economic growth, generates substantial tax revenue for the fiscus and provides cheap health care solutions for our people.

- **Establish a separate and new Cannabis Agency as mandated by the international narcotic treaties** for countries that allow the use of cannabis for medical reasons.
- This agency would be solely responsible for cannabis and separate from SAHPRA and the Department of Health.

5.1 INDUSTRIAL CANNABIS:

- Move regulation of the plant from the Department of Health to the Department of Agriculture.
- Treat cannabis as an agricultural commodity no longer requiring special permits to be grown and returns the plant to cash crop status.
- Industrial Cannabis / Hemp to be classified by end use for commercial purposes.
- This requires developing an African definition of Industrial Cannabis / Hemp and moving away from the arbitrary .2 or .3% THC defined in Europe & North America.
- Existing genetics that have been grown in SA for hundreds of years and small scale farmers to drive industrial cannabis development starting with what we have.
- Naturalised, drought tolerant and currently being grown (illicitly) by small farmers all over the country (as mentioned by the President in his SONA 2020).
- Allowing small farmers to participate in the rapid industrialisation of cannabis utilising their traditional genetics.
- **Regulated at the point of processing** rather than as a crop in the ground.
- **End use regulation / remediation of higher THC cannabis** which allows our existing genetics to be grown for industrial purposes
- Research & Development for our industrial cannabis programme based on existing land race genetics
- Respecting & protecting our heritage and the potential of our existing cannabis resource base.

5.2 RESPONSIBLE ADULT USE:

- **The constitutional court found the existing criminal cannabis laws to be unconstitutional and indicated that they should not be regulated by the criminal justice system.**
- Unanimously ruled that the personal use of cannabis is not a criminal offence in private, however this is limiting in that it allows only those with access to private land the right to grow cannabis, thereby excluding the vast majority of our people.
- The law needs to accommodate a reasonable trade in recreational cannabis so as to enable people without access to land the right to still use cannabis in the privacy of their homes.
- We believe that our interpretation of this is a reasonable request to our State & would negate the need to revisit the constitutional court on this matter.
- **Expand the Constitutional Court ruling based on the right to privacy, to include the ability to cultivate, extract, process, manufacture and sell cannabis-based products for recreational use, along the same lines that alcohol and tobacco are currently regulated.**
- **State to formalise the existing illicit market and allow it to be taxed** - the recreational cannabis market is a massive potential revenue generator for the fiscus.

- Enormous potential tourism opportunities from legal recreational cannabis market opening our long established growers in the ‘dagga belt’ to tourism income opportunities from visitors wanting to experience traditional growing operations and world famous brands like Durban poison and Transkei rooibaard
- Immediately establish guidelines for the SA Police Service to operate under that protect cannabis users rights and stop arrests and police brutality towards marginalised communities that often face the brunt of police “dagga” operations.

5.3 MEDICAL CANNABIS:

- Urgently **improve access to cannabis pharmaceutical and complementary medicine** allowing for a transparent fast tracked process that **opens the market for all**. Allow **access to cannabis for medicine & preventative health care for all** those that seek to benefit from the healing attributes of the plant **at low price points so as to be available to the majority of our people**.
- Two Tiers Pharmaceutical and Complementary
 - Establish enabling cannabis healthcare / wellness regime where **ONLY pharmaceutical grade medical cannabis for specific conditions** is controlled and administered through SAHPRA
 - Establish enabling cannabis healthcare / wellness regime for **complementary health care products for non-specific conditions** use would fall under Traditional and Natural Health Products regulations.
- Shift in the current SAHPRA medical licensing approach which is onerous and focused on export towards **developing a local market for medical cannabis**.
- Cannabis for health/wellness available through a **doctors’ or traditional healers’ recommendation** which would entitle a person to become a recognised medical
- cannabis user and have access to medical cannabis products, including flowers, extracts, edibles and vaporisers.
- **Motivate for research and development** based on efficacy, including indigenous knowledge and regional genetics to **maximise South Africa’s competitive advantage**.
- Opening up and encouraging **academic medical cannabis research** exploring new cannabis medicines and applications and soliciting international research & development funding.

5.4 GREEN RESTORATION:

“Our constitution gives our people the right to a clean and healthy environment. Our people are bound up with the future of the land. Our national renewal depends upon the way we treat our land, our water, our sources of energy, and the air we breathe”

“As we go into the future together, we need to be united in building a sustainable basis for the use of our resources. We need to ensure that there is development to meet the basic needs

of our people, but that development should be mindful of our fragile resources. So, we must promote development that takes into account our reconstruction needs now as well as leaving our children and their children a share of our precious resources.”

Nelson Mandela; Foreword to Environment Reconstruction & Development; 1995

- Cannabis aligns to the **National Development Plan** by unlocking the economic prosperity of the country with an environmental “bottom line” as the foundation for economic and social policy that allows us to address environmental security and the growing impact of climate change.
- Develop proactive and empowering regulations to allow cannabis to **restore the dignity of ordinary people**, creating jobs for meaningful work to **grow and manufacture their own, food, fuel, fibre, shelter and medicine in a green sustainable way**.
- Cannabis users are not criminals, all criminal records for cannabis related crimes to be expunged with provisions for a **social equity programme for victims of the pernicious “dagga act”**.

5.5 DEVELOPING LOCAL MARKETS:

- There can be NO cannabis industry in SA without developing local markets
- Opportunity to design a new agricultural system based on an innovative social compact utilizing local genetics and existing farmers as the cornerstone of an industrial cannabis strategy.
- Massive opportunity to develop our local markets to meet local needs and NDP goals.

The quickest route to market in the short term is to follow the rapid industrialisation of industrial cannabis model through the adaption of simple technology, low risk products that can immediately penetrate our existing markets with quality goods at competitive prices. These include; medium to low-end value adding opportunities for building materials such as hemp board and insulation, livestock feed, bedding, biomass fuels, pulp and paper. High-end value added opportunities in the oil and health food markets; moulded or pressed board such as car body panels.

6. FINAL COMMENTS:

Parliament has been tasked by the Constitutional Court to rewrite cannabis legislation in South Africa. Parliament has the choice to frame it narrowly as the Department of Justice has done in this Proposed Bill or to redefine Cannabis legislation that will unlock the potential of this massive sunrise industry and fast track new pathways for rural development that unlocks tremendous value into the hands of the rural poor.

Cannabis is a **South African natural resource** and should be managed in an **innovative new social compact** that recognises the potential of this high value cash crop. The aim will be to

develop the multi billion Rand cannabis value chain in South Africa to enable the empowerment of small scale farmers and the development of agro-processing cooperative hubs that support regional integrated development plans.

We envisage cannabis playing an important role as **South African's Primary Reconstruction and Development Agent** to put us at the forefront of the rapidly emerging global, multibillion-dollar cannabis industry worldwide to the immense benefit of the African continent, as well as addressing social change and economic empowerment.

We hope that we can work together with parliament to develop policy that unlocks the potential of cannabis to benefit all our people.

We humbly request the opportunity to make oral representation to the Justice & Correctional Services Parliamentary Sub Committee on our proposed way forward for inclusive cannabis regulation in SA.

This Submission made on behalf of the Cannabis Development Council of South Africa by;



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