



*SUPPORTS THE CANNABIS LEGAL CHALLENGES OF **ALL** SOUTH AFRICANS*



LEGAL SUMMARY

We have summonsed the following government departments to answer to the charge of unlawful laws as relating to the prohibition of the Cannabis plant in South Africa:

- National Directorate of Public Prosecutions
- Minister of Justice and Constitutional Development
- Minister of Police
- Minister of Health
- Minister of International Relations
- Minister of Social Development
- Minister of Trade & Industry (This department has indicated that it will not seek to defend the charges and will abide by the decision of the court.)
- “Doctors for Life”, a religious organization active in opposing gay marriage, stem cell research & abortion, have applied to join the defendants. We are not opposing their application.

Why is this case in the public interest?

1. The plaintiffs act:

- To avoid a conviction for possession of cannabis by challenging the constitutionality of the criminal prohibition of cannabis
- On behalf of those similarly persecuted and prosecuted for their use of cannabis
- In the public interest

2. The criminal prohibition of cannabis is irrational, because it:

- Is based on discredited scientific assumptions
- Is not dangerous, harmful or undesirable
- Is not a dependence-producing substance
- Is widely used as a benign recreational substance and can be regulated with its availability restricted to adults
- Should be regarded as a medicine
- Criminalises victimless behaviour that was perfectly acceptable in many indigenous societies before the imposition of Colonial mores
- Causes the arrest and incarceration of tens of thousands of people, mostly black and poor
- Wastes criminal justice and penal resources while furthering no criminal justice goals

3. The criminal prohibition of cannabis unjustifiably infringes on a range of constitutional rights:

- Dignity: puts users at risk of arrest, prosecution and incarceration; stigmatises users in the eyes of broader society as criminals; and builds insecurity and vulnerability into the lives of users
- Freedom and security of the person: arrest and incarceration intrudes on the bodily autonomy and self-determination of users; the State has no business interfering with behaviour that is harmless to the user and society
- The sanctions, namely arrest, prosecution and incarceration, for a victimless offence violate the right not be treated or punished in a cruel, inhuman or degrading way.
- Privacy: prohibits an activity engaged in private and authorises the invasion of such private areas
- Freedom of association: users often belong to cultural, religious or social groups that congregate for activities that may include the use of cannabis
- Ecologically sustainable development and use of natural resources: prevents the development of an industrial cannabis (hemp) industry, which has hundreds of applications with job-creation potential
- Access to health care services: Cannabis has proven and well-documented beneficial effects, such as the amelioration of nausea and vomiting, stimulation of hunger in chemotherapy and AIDS patients, treatment of glaucoma and use as an analgesic
- The use of cannabis is central to the cultural and religious convictions of many users and prohibition infringes that right
- Equality: discriminates unfairly against indigenous communities who use cannabis as part of their inherited culture

4. Prohibition constitutes an unjustifiable limitation of these rights:

- Prohibition serves no legitimate governmental purpose
- The measures used are not rationally connected to any governmental purpose
- To the extent there is a legitimate governmental purpose, the prohibition is disproportionate to the interests being served
- There are alternatives available to the State which are less intrusive
- Comparing legislative developments and prosecutorial policy in other democracies, the prohibition can no longer be justified in South Africa
- The prohibition ignores the emerging consensus in international discourse that the criminal prohibition of cannabis is counterproductive and in fact supports the existence of police corruption and organised crime

5. The issue of the constitutionality of the prohibition of cannabis is not *res judicata*, because the scope of the constitutional challenges and ensuing judgments in the *Prince* cases were markedly more restricted. In the present case the prohibition of the use and possession of cannabis is challenged, whereas in *Prince* the prohibition as such was not in question. The challenge in that case was that the prohibition was overbroad, ie that its scope was too wide and failed to allow members of the Rastafari religion (by way of an exception to the general prohibition) to use cannabis as part of exercising their religion.

6. This is the first ever legal challenge of the constitutionality of the use of Cannabis that encompasses all four areas of the use of the plant:

- Recreational / Personal Freedom
- Medicinal / All Health applications
- Industrial
- Spiritual / Religious Freedom

7. The plaintiffs wish it to be known that this is to be a major media event in which the issues should be globally ventilated through recourse to the International Court of Human Rights so as to ensure that the outcome of this trial will have global standing. It is the wish of the plaintiffs that this plant never has to be put on trial again, anywhere in the world.

PLEASE NOTE THAT A TIMELINE OF THE PROGRESS OF, AND ALL DOCUMENTS RELATING TO, THIS CASE ARE AVAILABLE ON THE WEBSITE.

