



**NON-PROFIT COMPANY**

Collectively Reforming South Africa's Cannabis Laws

# **BACKGROUND, HISTORY & CONTEXT**

---

A Full-Spectrum Manifesto For Policy Reform

## 2. Background, History & Context

### 2.1. Introduction

Let us make it clear right from the beginning: Cannabis will not be legal in South Africa until the South African Police Service (SAPS) is fully aware of its role within the new regulatory framework. That role will likely be restricted to those offences relating to Cannabis which cause harm or violate the rights of other citizens. Cannabis prisoners whose convictions no longer carry weight under our constitution are to be set free, with no conditions.

Cannabis cannot be considered de jure legal in South Africa unless each and every adult citizen can have access to the legal Cannabis economy should they wish to and unless they are able to comply with legislation and regulations without fear or favour.

Since the Constitutional Court judgement on 18 September 2018, every citizen has the right to grow their own Cannabis in private spaces for their own consumption. As the new Cannabis dispensation takes shape, every citizen must have equal opportunity to seize new opportunities in the emerging economy. Regulations should not favour those who already have access to greater capital

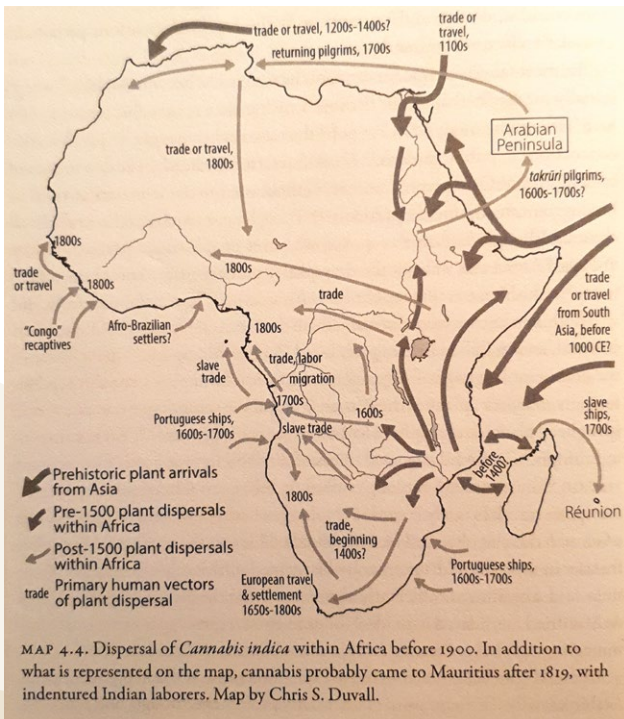
or infrastructure. We are well aware that legal regulation opens up opportunities for corruption, and this is one of the concerns informing this document.

In order for the legal and economic rights of all citizens to be protected, it is essential that lawmakers engage with the public while establishing a framework for Cannabis legalisation. This is essential, because South Africa has an existing Cannabis economy, one that is centuries old and, although it is unregulated, it functions efficiently and already contributes vast sums to the economy through the informal sector.

This is why we insist that Cannabis users, cultivators and traders be consulted throughout the process of drafting legislation.

#### Nothing About Us, Without Us.

*"History teaches us that men and nations behave wisely once they have exhausted all other alternatives."*  
- Abba Eban



"The smoking of Hemp renders Indian immigrants unfit and unable to perform with satisfaction to their employer, that work for which he was specially brought to this colony."  
Report of the Indian Immigrants Commission, Natal, South Africa, 1885.



## 2.2. The History of Cannabis Laws in South Africa

**There are 22 South African government departments affected by Cannabis legalisation. How many of our “leaders” know the history of *The Last Apartheid Law*?**

We dealt with this issue in our first short movie, **Dagga: The Truth**, released in 2013. We fought for historian David Paterson to be admitted as an expert witness in **The Trial of the Plant**. Sadly, even many of those tasked with changing Cannabis law remain sadly uninformed about the history of South Africans being persecuted because of Dagga.

After hundreds of years of Cannabis being used across Africa, South Africa had the dubious distinction of becoming the first country where one population group imposed the prohibition of Cannabis on another population group. The British settlers of the late 19th century disliked their Hindu labourers using bhang as a sacrament in the sugar cane fields of the Natal Colony. In a 1885 report, colonial observers found “it renders the Indian immigrant unfit and unable to perform with satisfaction to the employer, that work for which he was specially brought to this colony”.

The prohibition of Cannabis in South Africa was subsequently built on similarly racist perceptions.

The Medical and Pharmacy Act of 1891 classified Cannabis indica (Indian Hemp) as a poison, and when the Union Of South Africa was established in 1910, a ban on the sale and consumption of Indian Hemp (Dakka) for all population groups was promulgated nationally.

Just more than a decade later, as South Africa was passing the Customs and Excise Duties Act, No.27 of 1924, ratifying the national ban on Dagga, the League of Nations was drafting laws to ban the use and sale of opium. A timely letter from the South African government concerning “Indian Hemp” and an impassioned plea by the King of Egypt concerning “hashish”, brought Cannabis sativa into the League’s spotlight.

The timing of then SA prime minister Jan Smuts’s letter to the League of Nations was no coincidence. The Smuts communique was a political tactic – it conflated opium and cannabis policy, and became a bargaining chip at the opium table for the British. This was a pivotal moment for international drug policy, for South Africa and for the Cannabis plant.

South Africa’s intervention on the international drug-policy stage was a critical step leading to the global prohibition of Cannabis.



“The Native view that there is nothing reprehensible about dagga-smoking in itself, as distinct from smoking to excess which is frowned upon, has not been changed by the fact that the law of the white man now forbids the practice. In rural areas the Natives of several groups, notably the Zulu and Xhosa-speaking ones, still remain entirely unconvinced that there is anything wrong or detrimental in the moderate use of dagga.”  
South African governmental committee, 1952



“Amongst Europeans, dagga-smoking is generally regarded as a vice and in consequence it is hardly ever practised by persons who are, or wish to be thought, respectable.  
From the evidence it would appear that the habit is largely confined to vagrant -(hoboes, tramps) and criminals. Some female vagrants and prostitutes also seem to have taken to the habit.”  
RIDCAD 1952

Successive South African governments in the 1940s and 1950s conducted an almost obsessive amount of research into Dagga. This culminated in the 1952 Report of the Inter-Departmental Committee on the Abuse Of Dagga (RIDCAD). It was hailed as a ground-breaking publication in its day, but the report was thin on scientific evidence, even if it did recommend a more scientific approach to the substance. Regardless, it had little or nothing good to say about Dagga or the people that used it.

It was obvious from the tone of RIDCAD that South Africa would become a signatory to the United Nations Single Convention on Drugs in 1961. This document remains the apex of world drug policy and has changed little in almost 60 years. It has been a popular treaty for successive South African governments to hide behind. Whenever there are calls for domestic drug-policy reform, governments cite their obligations under the international treaty as a reason why this is impossible. However, the wheel turns slowly, and contemporary opinions around drug policy and Cannabis use have become far more enlightened. Drug policy is changing worldwide, and it can change in South Africa too. We just need our government to pay attention.

When the United Nations ratified the 1971 Convention On Psychotropic Drugs (signed by South Africa), US President Richard Nixon was launching his “all out war on drugs”. South Africa, on cue, passed the draconian Abuse of Dependence Producing Substances and Rehabilitation Centres Act of 1971. More than 77 000 citizens, the overwhelming majority black males, were incarcerated within two years of the Act being passed. Not only was this another example of racist law disguised as drug policy, it was the most punitive piece of Apartheid legislation to have been passed at the time. The Act not only criminalised users, but also slapped farmers and traders with minimum mandatory sentences and the presumption of guilt before innocence.

In the mid 1980s, the UN passed more drug-war resolutions, encouraging an even tougher stance in member countries, with increased sentencing and incarceration measures. As a result, **The Drugs & Drug Trafficking Act of 1992 (the Drugs Act) came about as an amendment to the 1971 Act. It remains the current law dealing with illicit drugs, including Dagga, in South Africa.**

**Provisions of this Act were found to be unconstitutional by the Constitutional Court in September 2018.**

While we were preparing for The Trial of the Plant, which got underway in the Pretoria High Court in July 2017, we were often called upon to defend our request to have a history expert testify. We remain convinced that knowing the history of the Cannabis plant and its prohibition, both here and worldwide, is essential for mapping the way forward.

During our campaign we have often referred to the 1992 Drugs Act as the last apartheid law.

We see both the Act and the proposed Bill as a cut-and-paste progression, encompassing 150 years of laws and punishments with roots in colonial racism and moral judgement, not scientific evidence. We wish to remind the lawmakers of this.

We challenge the parliamentarians in charge of this process to accept our offer to start the proceedings with a presentation on The History of Cannabis in Africa. We suggest beginning with a look at the word “Dagga” itself; how it is steeped in historical prejudice and superstition, almost a plant version of the tokoloshe.

The word Dagga’ is still being brought up in regular emails to us by South Africans who really despise this five-letter word. The word is thousands of years older than the prohibition of the plant and derives from a now-extinct Khoe linguistic description of intoxication – not Cannabis.

The repeal of Cannabis-prohibition laws, and the rewriting of the offending legislation will give the South African government a chance to apologise for continuing to impose unjust, irrational colonial laws on its citizens, even beyond the fall of apartheid in 1994. Our government has perpetuated a colonial legacy with the arrest and detention of hundreds of thousands of citizens, some of whom remain behind bars to this day. Cannabis must no longer be a criminal offence.

International drug treaties can no longer be an excuse for inaction. Countries such as Uruguay and Canada have fully legalised all uses of the plant, and more than half of the states of the USA now have medical and/or adult-use laws in place.

**Lest we forget...**

## 2.3. Current Status of Cannabis in South Africa: Prohibition, Non-Regulated Trade & the Constitution

### 2.3.1. Current Laws & the Constitutional Court Judgment

The following laws prohibit the use, possession and trade of Cannabis in South Africa.

- Drugs and Drugs Trafficking Act 140 of 1992
- Medicines and Related Substances Control Act 101 of 1965 (the Medicines Act) (as it relates to the scheduling of Cannabis within Schedule 7)
- Section 21 of the Medicines Act (Inadequate access to Cannabis warrants inclusion of this law here. It can be seen as enabling.)

#### The Trial of the Plant

Thirteen grueling days in the Pretoria High Court in 2017<sup>2</sup> taught us a great deal. Honourable Judge Ranchod began hearing our evidence, but a date for “The Trial of the Plant” to resume has yet to be set<sup>3</sup>.

The Davis judgement in the Western Cape High Court in March 2017<sup>4</sup> quickened the pace and the Constitutional Court confirmed the judgement on 18 September 2018<sup>5</sup>. In a unanimous decision effectively “decriminalising” Cannabis in South Africa, the Constitutional Court ordered parliament to rewrite the law as it pertains to personal and private use: that is, the personal cultivation, possession and consumption of Cannabis within private spaces. At the time of this publication, trade (or “dealing” as the prohibitionists call it) remains illegal in South Africa.

In paragraphs 10 and 11 of its order, the Constitutional Court ruled as follows:

*“It is declared that, with effect from the date of the handing down of this judgment, the provisions of sections 4(b) of the Drugs and Drug Trafficking Act 140 of 1992 read with Part III of Schedule 2 of that Act and the provisions of section 22A(9)(a)(i) of the Medicines and Related Substances Control Act 101 of 1965 read with Schedule 7 of GN R509 of 2003 published in terms of section 22A(2) of that Act are **inconsistent with the right to privacy***

*entrenched in section 14 of the Constitution and, therefore, invalid to the extent that they make the use or possession of Cannabis in private by an adult person for his or her own consumption in private a criminal offence.*<sup>6</sup>

*It is declared that, with effect from the date of the handing down of this judgment, the provisions of section 5(b) of the Drugs and Drug Trafficking Act 140 of 1992 read with Part III of Schedule 2 of that Act and with the definition of the phrase “deal in” in section 1 of the Drugs and Drug Trafficking Act 140 of 1992 are inconsistent with the right to privacy entrenched in section 14 of the Constitution and **are therefore, constitutionally invalid to the extent that they prohibit the cultivation of cannabis by an adult in a private place for his or her personal consumption in private.**”*  
(bold emphasis added)

The Constitutional Court suspended the operation of the above orders for a period of 24 months from the date of the judgment, i.e. until 17 September 2020, to enable the democratically elected Parliament to rectify the constitutional defects.

On 1 September 2020 the Minister of Justice and Correctional Services officially introduced the Cannabis for Private Purposes Bill 19 of 2020 (the Cannabis Bill) in Parliament. Having allowed a mere 3 months to conduct a meaningful parliamentary process, including the requisite public participation and approval in both the National Assembly and National Council of Provinces, Parliament was never going to meet the Constitutional Court’s 24-month deadline after meaningful debate in Parliament. Moreover, such meaningful debate is desperately required.

While the Cannabis Bill does permit an adult to: possess seeds and seedlings; cultivate plants in a private place; possess bud in a private place; privately possess (including transporting) bud or plants in a public place; consume in a private place; and without any compensation give seeds and seedlings, plants and bud to another

adult, it does so in arbitrary quantities. By the same token, the Bill criminalises the cultivation, possession, consumption and gifting of Cannabis in arbitrary quantities, creating some curious offences with harsh sentences that would make it difficult for many to exercise their constitutional, privacy-based Cannabis rights. It therefore risks perpetuating and even deepening socio-criminal stigmas against already marginalised, cannabis-using communities such as those living in informal settlements and, notably, homeless people who often do not have legal access to private spaces.

Together with our constituency and stakeholders, we want our voice heard in front of parliament to speak about this bill and its inherent flaws. Here is a summary of the pertinent issues that need to be addressed, with further details to be found in our submitted commentary:

- **Privacy**  
There is an obvious contradiction between respecting the privacy of citizens and prescribing the quantity of Cannabis that may be cultivated. If there is to be no prescribed quantity of Cannabis for consumption, then why limit cultivation and possession?
- **Harms of Cannabis**  
Fields of Green for ALL and our constituency rejects this Bill outright, as it is based on the perceived harms of Cannabis, the plant itself and the trade therein. This Bill is not based on evidence. In South Africa these “harms” have never been debated with scientific evidence and testimony from relevant experts, nor has any evidence for the supposed harms of Cannabis been presented before a court of law.
- **Prohibition and the South African Police Service**  
The harms of the prohibition of Cannabis far outweigh the perceived harms of the plant and the trade therein. This Bill constitutes the continued prohibition of Cannabis by giving the police undue power and, by doing so, guarantees that the stigma surrounding Cannabis and the uninformed actions of the police will prevail. This Bill does not constitute the “decriminalisation” of Cannabis in South Africa.

- **Social Equity**

Fields of Green for ALL would like to think that, particularly given the current Covid-19 pandemic, our government would be putting the needs of the most disadvantaged in our society first. Unfortunately, this Bill excludes the “poorest of the poor” – people who live in informal settlements and many in our nation’s townships and urban areas do not have private spaces where they can grow Cannabis safely and securely.

On a positive note, though, the Cannabis Bill does make provision for the automatic expungement of all criminal records for convictions for possession of cannabis in terms of section 4(b) of the Drugs Act. However, we know from our record of dealing with Cannabis arrests, that there are thousands of wrongful convictions for “dealing” and there does not appear to be any recourse for these victims of prohibition. It is also important to note that there is a long list of stays of prosecution that have been granted to defendants in Cannabis cases on the basis of every citizen being equal under law in our Constitutional democracy. Fields of Green for ALL has been at the frontlines with more than 100 stays of prosecution, as well as hundreds of documented cases where human rights were abused at the hands of police.

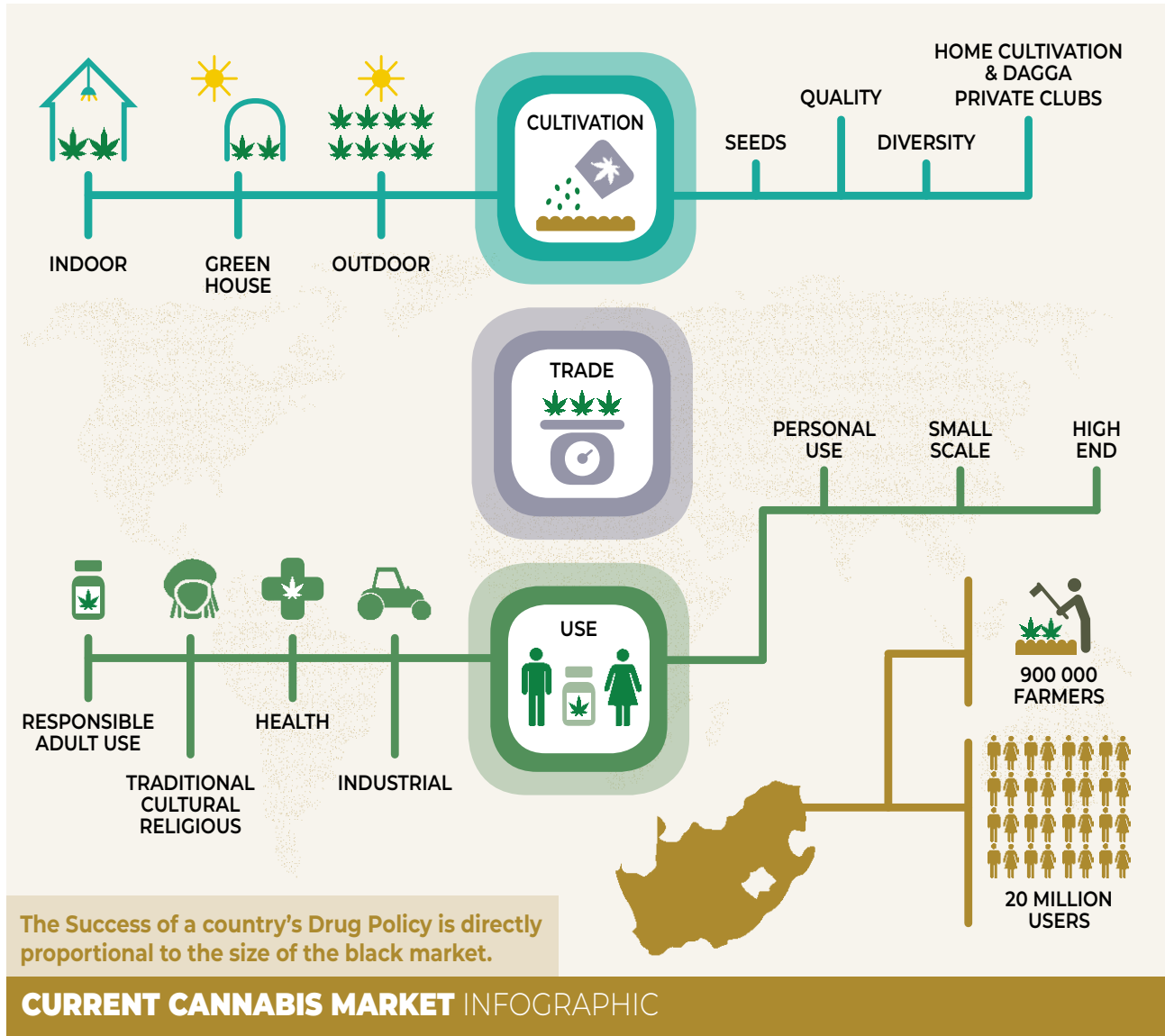
It therefore seems that - outside of the confines of the medicinal cannabis sector and the long-awaited regularisation of the industrial hemp sector - we will have to fight for the right to continue to trade in Cannabis, as we have done for centuries. Exceptions to the law will only be made for those who are allowed to obtain some sort of government licence. That is the recipe for disastrous Cannabis policy in South Africa. We fully acknowledge that regulation of trade is essential. Our opposition to licences is born from experience of the exclusionary nature of this system. This pattern is already taking shape in the local medicinal cannabis sector and in other parts of the world, It also opens up a very real threat of corruption here at home.

*“Our work is not done. We have won a battle but the war is not over. We will not stop until we get Fields of Green for ALL South Africans.”*

*- The Dagga Couple, September 2019*



### 2.3.2. Current Unregulated Market



Millions of people are involved in - or benefit from - the Cannabis industry in South Africa.

There is no specific demographic attached to any aspect of the Cannabis market in South Africa. From rural communities steeped in traditional cultivation and use, to wealthy executives having their high grade delivered to the door, Cannabis use is pervasive in South Africa and on the sub-continent.

South Africa is among the top 3 Cannabis producing and consuming countries in the world<sup>7</sup>.

Seven centuries of cultivation and use of Cannabis in South Africa have embedded the plant in our country's economy.

### 2.3.2.1. Cultivation

Due to the abundance of sun during our long summers, most Cannabis is grown outdoors in South Africa and neighbouring countries. The size of the areas under cultivation is directly related to the quality and price. Three types of cultivation are observed:

#### Indoor Grown

Indoor Grown in an environmentally controlled indoor area under artificial lighting, the high level of control allows for maximum production per square metre. Due to popular perpetual growing and hydroponic (soilless) techniques, indoor growers are also able to meet the exact needs of the plants by optimising light cycles, water, airflow, temperature and nutrients. Intensive indoor cultivation of high-value strains is undertaken on private properties and other areas around the country, generally near to urban centres.



#### Greenhouse

Greenhouses provide either a plastic or shade netting enclosure to minimise damage from weather and garden pests. They rely predominantly on sunshine as the light source. Organic and hydroponic greenhouse methods are popular among farmers, as the space allows for larger plants than indoor spaces.



#### Outdoor

Cannabis thrives outdoors and can produce large crop yields when cared for. The vast majority of Cannabis in South Africa is grown outdoors under varying conditions. This is the simplest method of cultivation but there is a risk of crop damage and eradication due to inclement weather, pests or the police. Legacy outdoor cultivation in the rural areas is linked to local endemic varieties of the plant (called “landraces”). These landraces, specific to local conditions of cultivation and traditional processing methods, constitute true sources of biological diversity that deserve adequate protection. These landraces are also renowned internationally and are the basis for many newly bred Cannabis plant varieties and cultivars worldwide, but also a potential drawback for rural Cannabis tourism.



### Cannabis Cultivation in South Africa: Relevant Factors

#### Seeds

While some rural farmers and small-scale growers still use seed harvested from the previous year’s crop, thus perpetuating/maintaining ancient local varieties, there are also local suppliers offering quality seed sourced or bred locally. Some of these suppliers have become agents for international seed companies in order to guarantee the supply of good genetic material for a quality product. However, there are concerns about the fair and equitable sharing of benefits over these resources.

#### Quality

In rural areas where individual farmers tend small plots covering vast, often inaccessible areas, most Cannabis is of varying quality, tending towards the lower end of the scale. However, the quality has improved during recent years due to improved access to seed and education on better growing methods. This is also due to local and international Cannabis enthusiasts with an interest in the local cultivars, “helping” rural farmers to improve quality.

#### Diversity

Smaller-scale, higher-quality illicit farming takes place in every outlying area in the country. Historically, indigenous black communities have cultivated the plant, but recent decades have seen a transformation of the landscape. Nowadays, many cultivation projects are run by more affluent, better-educated farmers, and white males who have moved from other industries. This has resulted in a rainbow nation of Cannabis growers, with a diversity of characteristics, aspirations, practices, traditions and backgrounds.

#### Home Cultivation & Dagga Private Clubs

Many South Africans grow Cannabis in their own gardens. This is mainly for their own use, but at times they trade with friends to cover cultivation expenses and to earn a nominal extra income. These home growers rarely rely on Cannabis as their sole source of income. This informal exchange market has often been compared to Cannabis social clubs as they exist in Europe or North America.



### 2.3.2.2. Trade

*"The Success of a Country's Drug Policy is Directly Proportional to the Size of its Black Market"*

#### Personal use price ranges

R2 to R10/g (\$0.13 to \$0.63)

- Rural farmers sell their crop to "wholesalers" who arrange for transportation to urban areas.
- Transportation is generally carried out by women on public transport to larger areas, where the crops are often consolidated into larger vehicles on their way down the national highways. The value increases.
- Distribution takes place in townships, on the streets, bus stations, shebeens, taxi ranks, and at small-time dealers - think matchboxes and bankies. Prices are in the low-to-mid range. Sometimes shipments are sold on the spot in bulk to oil makers who travel from the city, or to individuals willing to risk travelling back to the city with bulk cargo.

R10 to R50/g (\$0.71 to \$3.60)

- Smaller scale, local neighbourhood, circle-of-friends distribution networks. This type of Cannabis sometimes makes it onto the street as higher grade.
- Outdoor and, to a lesser extent, indoor cultivation
- Some sold wholesale for oil and concentrates..

R30 to R100/g (\$2.5 to \$7.15)

- Indoor, high risk, high price. Sold to wealthier people and executives beating stress through sophisticated delivery channels.
- Many well-established illicit outlets in the cities.

R80 to R250/g (\$5.70 to \$18).

- Concentrates for medicinal use, edibles and vapourising. The number of "oil makers" is increasing daily in South Africa and most, if not all, are producing high-quality products which are being tested through various private laboratories before being sold on to the public. Often for people in need of assistance with health issues.

R400 to R600 per gram (\$28.50 to \$43).

- Some producers are said to charge up to R800/g (\$58) for concentrates.

### 2.3.2.3. Uses

The uses of a variety of Cannabis-based products in South Africa are wrapped up in the Four Platforms across which the evidence for The Trial of the Plant was structured:

#### Responsible Adult Use

Regular users across all socio-economic groups in all geographical locations in South Africa.



#### Traditional, Cultural & Religious Uses

Widespread historical use amongst people, traditional healers and members of the Rastafari religion.



#### Industrial Uses

An as-yet unregulated and untapped resource despite a "hemp" research licence being issued more than 20 years ago. South Africans have knowledge of the vast applications of Cannabis and there is great potential for this form of cultivation to be successful if left in the capable hands of the agriculture sector.



#### Health Uses

Tens of thousands of South Africans use Cannabis and Cannabis products for health. Many producers also manufacture dried Cannabis, concentrates, edibles and other products for this market. Distribution is by word of mouth or more brazenly on social media.



## 2.4. International Perspective

---

Although international law on Cannabis control is usually understood to be constraining in terms of policy reforms, the international community has largely adopted the “Brownfield’s Flexibility Doctrine”<sup>8</sup>, which relies on tolerance and the acceptance of different countries addressing their drug- issues in different ways.

This flexibility includes alternative ways to read the three International Drug Control Conventions (IDCC) and an increased weight being placed on the “spirit” over the “letter” of these treaties. International Human Rights law is another critical consideration over and above the international Treaties and Conventions.

The flexibility approach allows for the human rights-compatible implementation of the IDCC, where a state can commit to protecting global health, avoiding drug-related health risks and dependence on medication, in order to ensure constant and unconditional availability and harmonisation of international trade. However, provisions of the IDCC that overly restrict the sovereignty of countries and interfere with human rights obligations can be disregarded by member states.

The international community is free to proceed with drug-law reform in this way and two possibilities seem to prevail from precedents:

- The example of Canada, which remained a signatory to the IDCC with full powers despite having regulated all uses of Cannabis. This was understood by some to be in breach of its IDCC obligations, but Canada defends its approach as being aligned with its human-rights obligations

- Bolivia, which withdrew from the 1961 Convention to re-adhere with a reservation allowing legal operations using coca leaf (a plant subject to similar international control to Cannabis) on its territory. Bolivia argues for the respect of fundamental rights of communities using coca leaf traditionally.

Beyond these two countries, the respective national legal and policy frameworks vary widely - from strict prohibition that violates human rights, to models that regulate the production, manufacture, supply, and use of non-medical psychoactive plant materials, including Cannabis. The regulation of the mild African stimulant khat is another area that has seen a variety of legal approaches<sup>9</sup>.

So far, only Bolivia has made a move to try to reflect its international commitments towards the IDCC in an honest manner<sup>10</sup>. The reforms of all other countries seem to adopt a *sui generis*<sup>11</sup> approach, fully focused on national concerns.

Because Cannabis law reform in South Africa cannot happen in a vacuum, there is a need to look into drug policies in other countries. Fields of Green for ALL has been involved on the international stage at several levels to acquire an international perspective on the subject. See the postface for further discussion of our organisation’s involvement in international drug policy.

## 2.4.1. International Law & Cannabis

### 2.4.1.1. International Drug Control Conventions

South African policies on Cannabis are partly framed by the so-called International Drug Control Conventions (IDCC) which consists primarily of three treaties:

- Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol.
- Convention on Psychotropic Substances, 1971.
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

In addition, a regional enforcement arrangement locally reinforces the IDCC: the Southern African Development Community (SADC) Protocol on Combating Illicit Drugs, of 1996.

We are pleased that since our manifesto was last published there have been positive developments with respect to the 1961 Convention. On 2 December 2020, the United Nations Commission on Narcotic Drugs reconvened for their 63rd session. The purpose of the meeting was to vote on the scheduling recommendations of the

WHO regarding “Cannabis and Cannabis-related substances” for “medical and scientific purposes”.

The United Nations took the bold step of removing Cannabis from Schedule IV of the 1961 drug Convention treaty, recognizing the therapeutic value of this century-old medicinal plant and no longer considering it as “particularly liable to abuse and to produce ill effects.”<sup>72</sup>

The votes that took place, and the recommendations of the WHO upon which they were based, do not concern “adult use” or “recreational use” and do not concern “hemp” or “industrial cannabis.” The recommendations concerned only the levels of policy control over “medical cannabis” (medical CBD, medical THC, etc.)<sup>73</sup>

The recommendations that were to be voted on are as follows, where the scheduling recommendations in blue blocks were passed and in green blocks were not:

JUNE 2018 (ECDD40)		NOVEMBER 2018 (ECDD40)	
5.0	Preparations considered to be <b>pure cannabidiol</b> should not be scheduled within the Conventions	<span style="color: blue;">↖</span> <b>This recommendation is not subject to vote</b> (but still exists, and helps in understanding 5.5)	
5.1	Delete <b>cannabis</b> and <b>cannabis resin</b> from Schedule IV of the 1961 Convention	5.4	Delete <b>extracts</b> and <b>tinctures of cannabis</b> from Schedule I of the 1961 Convention
5.2.1	Add <b>dronabinol</b> and its stereoisomers (delta-9-THC) to Schedule I of the 1961 Convention	5.5	Add a footnote on <b>cannabidiol</b> preparations to Schedule I of the 1961 Convention to read: ‘Preparations containing predominantly cannabidiol and not more than 0.2 per cent of <i>delta-9-tetrahydrocannabinol</i> are not under international control!’
5.2.2	If 5.2.1 is adopted: Delete <b>dronabinol</b> and its stereoisomers (delta-9-THC) from Schedule II of the 1971 Convention		
5.3.1	If 5.2.1 is adopted: Add <b>tetrahydrocannabinol</b> to Schedule I of the 1961 Convention	5.6	Add <b>preparations containing dronabinol</b> , produced either by chemical synthesis or as preparations of cannabis that are compounded as <b>pharmaceutical</b> preparations with one or more other ingredients and in such a way that dronabinol cannot be recovered by readily available means or in a yield which would constitute a risk to public health, to Schedule III of the 1961 Convention
5.3.2	If 5.3.1 is adopted: Delete <b>tetrahydrocannabinol</b> from Schedule I of the 1971 Convention		

Image Source: (<https://kenzi.zemou.li/cndmonitor-results/>)



South Africa voted Yes for all 4 votes:

1. To delete Cannabis and Cannabis resin from Schedule IV of the 1961 Convention.
2. To add dronabinol and its stereoisomers (delta-9-tetrahydrocannabinol) to Schedule I of the 1961 Convention.
3. To delete extracts and tinctures of cannabis from Schedule I of the 1961 Convention
4. To add a footnote to the entry for cannabis and cannabis resin in Schedule I of the 1961 Convention to read “Preparations containing predominantly cannabidiol and not more than 0.2 per cent of delta-9-tetrahydrocannabinol are not under international control”

In light of these positive developments there is still massive room for improvement in revising International Drug Control Conventions (IDCC) not just for Cannabis, but for all drugs.

Governments tend to use the IDCC as an excuse to hamper reform efforts. However, as outlined in the Heads of Argument for our intervention in the WCHC case in the Constitutional Court<sup>14</sup>, the time for using the conventions against us is over. Indeed, it is now largely recognised that “obligations<sup>15</sup> derived from the drug control conventions are subordinate to human-rights obligations”. Many provisions of the drug control conventions conflict with Human Rights obligations – which has been demonstrated in concrete by the Constitutional Court of South Africa – to wit, “human rights violations occurring in the name of drug control can never be justified by States or their defenders as a necessary and unavoidable part of fulfilling international drug control obligations”<sup>16</sup>.

The academics Van Kempen and Fedorova explain that “under international law, states must give priority to their human-rights obligations over and above any conflicting obligations under the UN Drugs Conventions. This means that states have the possibility under international law to regulate

Cannabis despite their obligations under the UN Drugs Conventions”<sup>17</sup> provided they meet certain conditions:

1. The legal regulations must be motivated by a relevant human rights-based interest,
2. A more effective human-rights protection must be substantiated,
3. A national democratic support and an inclusive decision-making process are needed,
4. The legal regulation must not affect or disadvantage other states (closed system),
5. The State has an obligatory policy of discouragement of use (i.e., prevention and non- incitation).

“If a State is able to satisfy these conditions, under current international law it can legitimately prioritise the human rights obligations over and above any conflicting obligations arising from the UN Narcotic Drugs Conventions”<sup>18</sup> and regulate Cannabis for adult use<sup>19</sup>,” the academics contend.

These scholars just strengthen the evidence backing the Constitutional Court’s ruling: human rights prevail over prohibition, which implies that drug policies that violate human rights, either nationally or internationally can be disregarded. This is valid in terms of international human-rights law, but also internally, as “South Africa’s international obligations are subject to South Africa’s constitutional obligations. The Constitution is the supreme law of the Republic and, in entering into international agreements, South Africa must ensure that its obligations in terms of those agreements are not in breach of its constitutional obligations.”<sup>20</sup>

The South African Constitution obliges our government to breach the IDCC to the extent that limitations of the conventions enable laws that do not respect human rights and dignity. Arrests, incarceration and victimisation because of Cannabis cultivation, use and trade under laws that are not based on evidence are cases in point.

## 2.4.1.2. International Human Rights law: Indigenous People, Rural Communities & Farmers' Rights

Because of the strong human rights orientation of the South African constitution, recourse to international human rights law should not be necessary. Yet, elements of the broader human rights landscape should be considered as a guide for the design of any new policy that, beyond preventing human rights violations, aims to enhance individual and collective rights wherever possible.

Human rights are the legal way to enforce protection and respect for the dignity inherent in all people. Since the 1948 Universal Declaration on Human Rights, human-rights law has been expanded and refined, in a movement towards universal respect for the dignity of every single living soul on earth. Therefore, the "United Nations has gradually expanded human rights law to encompass specific standards for women, children, persons with disabilities, minorities and other vulnerable groups"<sup>21</sup>, in order to give positive legal protection to all.

This is why, in 2007, the United Nations extended the concept to local autochthonous communities, adopting the Declaration on the Rights of Indigenous Peoples (UNDRIPS)<sup>22</sup> reinforced in 2018 by the Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)<sup>23</sup>.

South Africa voted in favour of both texts<sup>24</sup>, which enshrine the rights of peasants and rural populations, workers and indigenous peoples

– while fully recognising their contribution to sustainable development and biodiversity. The guidance of these guarantor documents should be of more use to South African Cannabis policy reforms than the IDCC, which disregard rural populations and invite states to violate Cannabis farmers and indigenous communities' fundamental right to their traditional pharmacopeia<sup>25</sup> by underwriting the prohibition of Cannabis.

The importance of protecting biological diversity also informs some international protections for Cannabis-farming communities. In particular, the 2004 Convention on Biological Diversity and its Protocols<sup>26</sup> helped to shape most countries' legislation and policies on the protection of traditional knowledge, bioprospecting, access and benefit sharing, plant variety protection and plant breeders' rights and, more generally, the sustainable use of crop genetic resources. Each of these elements is key to a smooth, respectful transition to legal settings for historical Cannabis farming communities.

In a similar manner, South Africa is currently taking part, in Geneva, in negotiations<sup>27</sup> for a future treaty to ensure the effective protection of traditional knowledge, traditional cultural expressions and genetic resources. Both the international negotiation and our local Cannabis regulations would benefit from increased dialogue with experts on this matter.

## 2.4.2. Policy Options, Current International Trends & the Model(s) to Most Effectively Achieve our Policy Aims in South Africa

Laws are changing at an incredible speed around the world. However, Cannabis laws have never stood still and policy alternatives to internationally mainstreamed prohibition appeared rapidly after the IDCC entered into the fray. As far back as 1976, the Netherlands implemented the so-called “coffee-shop” system, and medical use of Cannabis was legalised in the US State of California in 1996. Another trend has been depenalisation: preventing de facto enforcement of criminalisation for personal use, or changing to de jure decriminalisation.

These options often result in the same situation on the ground while presenting very different legal obligations and implications on paper. The 2019

African continental report of ENACT<sup>28</sup> notes that “while most drugs still remain de jure illegal across the continent (with [...] exceptions), there is a wide discrepancy in how they are actually being policed and controlled within each state’s borders.”<sup>29</sup>

These numerous examples of legislative resistance against full prohibition have shaped a current international panorama that is extremely complex and diverse. Below are two attempts to expose these existing regulations. These lists might not be comprehensive or definitive, but they reflect the wide array of possibilities offered and are obviously subject to change as, worldwide, jurisdictions continue to enshrine modern Cannabis policies.

	Personal use & possession in private places	Non-commercial production for personal uses	Commercial production & supply for adult use	Commercial production & supply for medicinal uses	Commercial production & supply for industrial uses
Prohibition	Criminalised & judicialised – France, China	Prohibited	Prohibited	Prohibited	Prohibited
	Decriminalised (out of justice system, e.g.: fines) – Spain	Decriminalised (out of justice system, e.g.: fines)	Allowed only under State monopoly	Allowed only under State monopoly – Eswatini	Allowed under narcotics
Prohibition 2.0	Decriminalised on police discretion – Switzerland	Depenalised but with limits and / or register – Uruguay	Allowed under narrow licensing system – Canada	Allowed under narrow licensing system – South Africa, Zimbabwe	Allowed under sui generis system – European Union, China, Canada
Policy Coherence	Depenalised (no mention in laws, no penalty of any kind) – Spain	Depenalised (no mention in laws, no penalty of any kind)	Allowed with sui generis broad access system	Allowed with sui generis broad access system	Allowed as any other agricultural crop – North Korea

Focusing more on the production model, and mostly on adult use, it is also possible to list country regulations from most to least restrictive:

1. Prohibition of all production, supply, and use  
- South Africa and most of the world.
2. Prohibition of production and supply, alongside legal production and supply for medical use

- More than 50% US States, Canada, The Netherlands, Czech Republic, Germany, Ireland, and others.

3. Prohibition of production and supply, decriminalisation of possession for personal use  
- 16 US states, various Latin and European countries and South Africa.



4. Prohibition of production and supply
  - with decriminalisation of possession for personal use, and some retail sales
  - *Dutch “coffee shop” model, some localised informal models around the world.*
5. Prohibition of production and supply
  - with decriminalisation of small-scale personal cultivation and “Cannabis social clubs”
  - *Belgium, Spain, The Netherlands, Switzerland*
6. Regulated legal production and supply
  - entirely under government monopoly
  - *No Cannabis examples, but this is the case to a large extent with most controlled drugs regulations, e.g. in Russia.*
7. Regulated legal production and supply for medical and non-medical use - with a mix of commercial and government-monopoly elements
  - *Uruguay and Canada.*
8. Regulated legal production and supply for medical and non-medical use - licensed producers and/ or licensed vendors
  - *Colorado, Washington State, Oregon, California, Washington DC and a number of states with their Cannabis laws under review.*
9. Free Market Model.

Even though the options mentioned for South Africa often look like a combination of approaches 8 and 9, relying on elements taken from 4 and 5, it is clear that a uniquely **South African regulation**

## African Neighbours<sup>31</sup>

In 2017, Lesotho became the first African nation to issue licences permitting the cultivation of Cannabis for medicinal and research purposes, followed by Zimbabwe early in 2018 and Uganda in April 2019. Cannabis remains illegal for the citizens of all three countries and this means that Basotho, Zimbabwean and Ugandan people are not allowed to use, possess or cultivate Cannabis, nor are they allowed to access Cannabis products for their own benefit, whether for industrial, traditional, religious, medicinal or adult use.

Despite the granting of these medical and research cultivation licences in these countries, we remain sceptical as to the benefits to the local population. For instance:

**model** is needed, rather than an approach that copies the imperfections of other countries' pioneering of timid, partial legalisation.

**South Africa is well placed to be one of the pioneering traditional Cannabis-producing countries when it comes to legally regulated Cannabis.** Neither The Netherlands, Uruguay, the United States or Canada have the long-standing traditions of Cannabis use that we have.

South Africa's apartheid history is well known internationally and we live with the consequences of that history every day.

For example: South Africa was the country that first suggested to the League of Nations in 1925 - as part of an imperialist power bloc - that Cannabis should be included in the League's list of banned substances.

Of all countries, South Africa has no excuse for implementing regulations that look like Prohibition 2.0 and which continue to hamper the rights of its citizens or violate its traditions and history. Given our history and the irrefutable evidence that the prohibition of Cannabis has been used as an instrument of oppression, South Africa needs Cannabis laws and regulations that take ALL of the evidence<sup>30</sup> into account - from the historical to the scientific. Because the South African context requires it, these regulations may end up being the most liberal and the most human rights-centered in the world.

- Lesotho citizens continue to be arrested on the street and in their homes whilst large quantities of Cannabis cross the border every day into South Africa<sup>32</sup>.
- In Zimbabwe, unlicensed growing or possession could carry a 12-year prison sentence.

Employment and community-based opportunities for locals are limited due to the fact that GMP<sup>33</sup> -certified grow facilities are often highly automated, thus reducing the need for physical labour. GMP certifications are required in order for the final product to be used as an Active Pharmaceutical Ingredient (API)<sup>34</sup>.

There is conflicting information about the cost and entry requirements of licensing, all of which exclude locals due to the high costs of “compliance” i.e. security measures or sterile packaging rooms. While we understand the strict regulations required for producing registered medicine, this should not be the only avenue, as there are too many barriers to entry for local cultivators and traders.

There are grey areas with regard to the trade and export of the final product. Neither African country mentioned above has regulations in place to allow its own citizens to trade in or consume Cannabis. This means there is a lost opportunity in not allowing individuals and SMEs to benefit from the global Cannabis movement.

In 2020, unfortunately not much has changed, besides the fact that a few more countries have “legalised” Cannabis under a medicinal framework, such as Rwanda, Malawi and Zambia.

Global demand for landrace strains<sup>34</sup> has made African Cannabis genetics extremely valuable to seed breeders. Strains that have been grown for generations in all parts of Africa are now being exported across the world, most often with no benefit to the local communities who have been tending these genetics for generations.

### A Word About Licences

The way in which Cannabis production and trade is to be allowed, and the mechanisms by which production will link to supply, are foundational elements of any regulatory framework.

As with all proposals to develop and commercialise a product, some degree of compromise is required to build a model that is viable and sustainable for all industry participants.

The compromise required from the authorities (government and law enforcement) is to let go and allow a reasonable degree of self-regulation in the fledgling legal Cannabis industry in South Africa.

The existing, largely unregulated Cannabis industry is ready and willing to compromise its complete autonomy under prohibition for a regulated industry that allows for best practice and customer safety without undue barriers to entry.

“We are good at what we do and we will continue as before if you overregulate us or create regulations that only suit the rich. Good people disobey bad laws.”  
- Anonymous Underground Dagga Trader.

The process of licensing producers and traders of Cannabis (outside of a registered medicine) is not appropriate in South Africa because cultivation, production and trade has many facets within the existing Cannabis industry. A system of business registration (where applicable) and affiliation to a hub must be open to any willing market participant. Business registration serves the requirements of legal regulation and can fit into existing regulatory protocols. Registration criteria specific to the Cannabis industry must be developed and enforced through the office of the Cannabis OmBUDsman in conjunction with the Hubs.

Affiliation to Hubs can serve as de facto licences for those who do not have business registration. This is a simple and accessible way for all South Africans – including thousands of previously disadvantaged citizens – to have real opportunities to enter the formal economy. The combination of registered businesses and Kasinomics operators within a single Hub will also contribute to broadening the knowledge base of those previously disadvantaged.

Licensing of non-medical cultivators, manufacturers and traders is wide open to corruption. A licensing system is regarded as a *fait accompli* by many South Africans. The many grey areas, rumours in the media of licences and permits being handed out, and the nefarious nature of criminal activity related to “drugs” ALL point to the inevitable failure of this top-down approach.

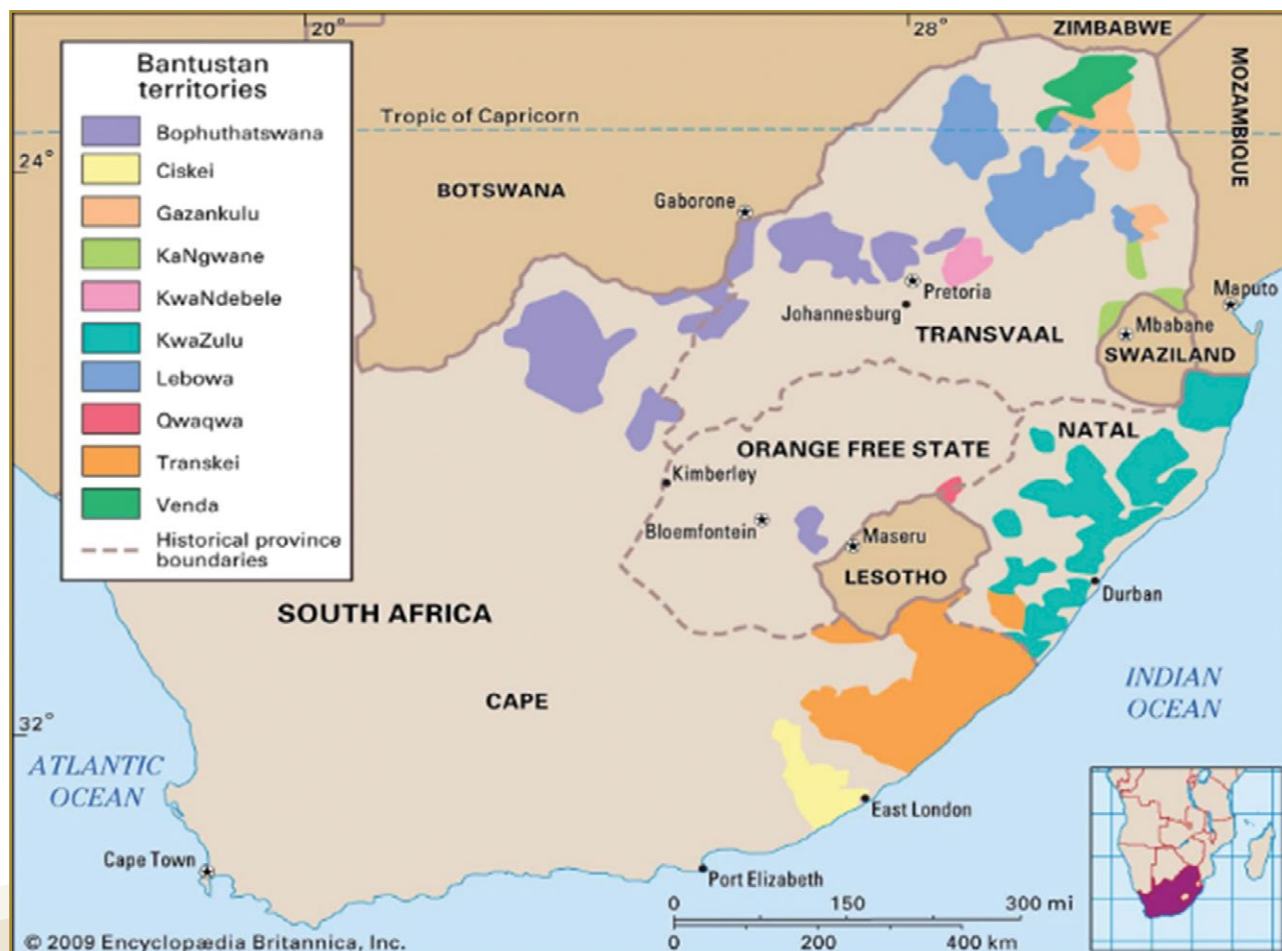
## 2.5. Remedy & Reparations for Historical Injustices & Human Rights Violations

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.”<sup>36</sup> This applies to victims of prohibition-related Human Rights violations<sup>37</sup>.

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 and harm to others not associated with Cannabis

It is only recently that various jurisdictions that are in the process of legalised regulation for responsible adult use began taking this important outcome into consideration (most notably California<sup>38</sup> and Canada<sup>39</sup>). This area will have to be elaborated on in consultation with law experts. While the Cannabis Bill does provide for the automatic expungement of criminal records associated with contraventions of section 4(b) of the Drugs Act, i.e. for possession and use of Cannabis, the current system for expungement of criminal records is lengthy, costly and cumbersome.

It is also impossible to establish how many citizens are currently being incarcerated for Cannabis offenses. The issue of actual reparations for harm done through criminalisation over the past 100 years is a contentious one, given South





Africa's current political climate. This does not mean that this should not be considered. As mentioned above, South Africa has the technological expertise to establish prisoner numbers and to set up a system for the cancellation of previous convictions. The authorities will need to be supported in both designing and implementing this system and there must be the political will to see this through.

Historical injustices relating to Cannabis prohibition and, in particular, to farming communities living in the former "Bantustans", must be considered for urgent remedy. In consideration of the economic climate in South Africa at present, it would not be fortuitous to claim financial reparation at the outset. There are many ways in which our current government can compensate those who have been wronged.

The scope of historical injustices and Human Rights violations-related remedies and reparations must cover (but not be limited to):

- Prisoners of prohibition (Liberation, reintegration measures, incentives for inclusion in legal markets),
- Victims of crop fumigations and aerial spraying<sup>40</sup> (Full health care coverage, in-depth health checks, community rights to soil evaluation and decontamination, incentives for legal markets, etc.), including collateral victims not directly related to Cannabis cultivation, but also affected by the destruction of their crops, the contamination of their environment or their own health,
- Other victims of prohibition should also benefit from State incentives for facilitated insertion into legally regulated Cannabis markets.

In late 2018, the UN Committee on Economic, Social and Cultural Rights expressed its concerns "about the use of glyphosate, which was classified as probably carcinogenic to humans by the International

Agency for Research on Cancer of the WHO, in the aerial spraying of Cannabis crops to control the illicit cultivation of Cannabis"<sup>41</sup> after receiving a documented submission by a farmers' network from the Pondoland region<sup>42</sup>. The Committee not only recommended to the South African government to "suspend such aerial spraying" but also proposed a way forward to integrate Cannabis farmers into the legal economy, proposing to "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." A pilot programme of this kind was launched in August 2019 in Jamaica<sup>43</sup>.

Alternative Development (AD) programmes are often proposed as a way for authorities to "encourage producers of drug crops to shift to remunerative alternative crops"<sup>44</sup>. AD has often been seen as meaning 1) eradication of Cannabis crops and 2) grants to plant other types of crops (often rice, cacao, coffee, etc.) however AD is simply the transition from illegal crops to legal crops, not necessarily excluding legal "drug-crops"<sup>45</sup>. If Cannabis is being regulated, AD should be implemented and it should target legal Cannabis production as an outcome of the programmes.

In 2013, the Ambassador of South Africa declared at the United Nations that the government was considering "alternative development strategies that invest in the infrastructure and equipment needed to support the social and human development of rural populations, whose livelihood is dependent on the Cannabis plant."<sup>46</sup> It is time to use AD programmes and funding streams to provide a remedy for the victims of prohibition, particularly those affected by crop-eradication measures and related environmental impacts – and to prioritise reintegrating them into the new legal economy.

## Footnotes

1. Dagga Couple. The Word Dagga. Retrieved 27 January 2021, from <https://fieldsofgreenforall.org.za/the-word-dagga/>
2. Clarke, Myrtle, and Julian Stobbs. "The Trial of the Plant – Written Record" Fields Of Green For All, 31 July -17 Aug, 2017. Retrieved and accessed on 08/08/19 from [fieldsofgreenforall.org.za/trial-plant-written-record/](https://fieldsofgreenforall.org.za/trial-plant-written-record/)
3. Clarke, Myrtle, and Jules Stobbs. "Trial of the Plant 2 – or not?" Fields Of Green For All. Retrieved and accessed on 08/08/19 from [fieldsofgreenforall.org.za/trial-plant-2-not/](https://fieldsofgreenforall.org.za/trial-plant-2-not/)
4. Prince v Minister of Justice and Constitutional Development et al; Rubin v National Director of Public Prosecutions et al; Acton et al v National Director of Public Prosecutions et al (4153/2012) [2017] ZAWCHC 30; [2017] 2 All SA 864 (WCC); 2017 (4) SA 299 (WCC) (31 March 2017)
5. Minister of Justice and Constitutional Development et al v Prince (Clarke and Others Intervening); National Director of Public Prosecutions et al v Rubin; National Director of Public Prosecutions et al v Acton (CCT108/17) [2018] ZACC 30; 2018 (10) BCLR 1220 (CC); 2018 (6) SA 393 (CC); 2019 (1) SACR 14 (CC) (18 September 2018)
6. Minister of Justice and Constitutional Development and Others v Prince; National Director of Public Prosecutions and Others v Rubin; National. Director of Public Prosecutions and Others v Acton [2018] ZACC 30, p 4 para 10 of the order of the Court.
7. "UNODC SOUTHERN AFRICA Regional Office". (South Africa, 2010), [https://www.unodc.org/documents/southernafrica/UNODC\\_Southern\\_Africa\\_-\\_E-brochure\\_-\\_September\\_2010.pdf](https://www.unodc.org/documents/southernafrica/UNODC_Southern_Africa_-_E-brochure_-_September_2010.pdf)
8. Fox E. 2015, US Sends Mixed Signals on UN Drug Convention Flexibility, accessed 07/08/19 [www.talkingdrugs.org/us-sends-mixed-signals-on-un-convention-flexibility](http://www.talkingdrugs.org/us-sends-mixed-signals-on-un-convention-flexibility)
9. Eligh, J. THE EVOLUTION OF ILLICIT DRUG MARKETS AND DRUG POLICY IN AFRICA. PDF file. June 2019. <https://globalinitiative.net/wp-content/uploads/2019/07/2019-06-30-continental-report-3.pdf>
10. Bewley-Taylor D., Jelsma M., Rolles S., & Walsh J. (2016) CANNABIS REGULATION AND THE UN DRUG TREATIES Strategies for Reform.
11. Sui generis is a Latin term which means of its own kind/genus. It is something that is unique in its characteristics.
12. Riboulet-Zemouli, K, and Krawitz, M (2020). Press release — History made today: UN recognizes medical cannabis. Retrieved 27 January 2021 from <https://faaat.net/blog/press-release-united-nations-recognize-medical-cannabis-december-2020/>
13. Riboulet-Zemouli, K, and Krawitz, M (2020). UNITED NATIONS MEDICAL CANNABIS VOTE: THE RESULT. Retrieved 27 January 2021 from <https://kenzi.zemouli.li/cndmonitor-results/>
14. Clarke, M (2017). Notes from the Constitutional Court. Retrieved 27 January 2021 from <https://fieldsofgreenforall.org.za/notes-constitutional-court/>
15. United Kingdom All Party Parliamentary Group for Drug Policy Reform (2015), "Guidance On Drug Policy: Interpreting The Un Drug Conventions" [unodc.org/documents/ungass2016/Contributions/Civil/APPG\\_for\\_Drug\\_Policy\\_Reform/Guidance\\_print\\_copy.pdf](http://unodc.org/documents/ungass2016/Contributions/Civil/APPG_for_Drug_Policy_Reform/Guidance_print_copy.pdf) page 4.
16. Lines, Richard (2017), "Drug Control and Human Rights in International Law" Cambridge University Press, 2017. DOI: 10.1017/9781316759707. Preface, p. XV.
17. Van Kempen & Fedorova (2016), "International law and Cannabis II. Regulation of Cannabis cultivation and trade for recreational use: positive human rights obligations versus UN Narcotic Drugs Conventions." Radboud University, 2016. See: [ru.nl/english/news-agenda/news/vm/law-0/law/2016/international-law-allows-legalisation-Cannabis/](http://ru.nl/english/news-agenda/news/vm/law-0/law/2016/international-law-allows-legalisation-Cannabis/)
18. ibid
19. See the conference "Is it legal to regulate drugs? Hierarchy of norms between Human Rights & Drug control" from the Legal Regulations Forum held at the United Nations, Vienna (2017): [youtu.be/ujalZSUv7k0](https://youtu.be/ujalZSUv7k0)
20. Minister of Justice and Constitutional Development and Others v Prince; National Director of Public Prosecutions and Others v Rubin; National. Director of Public Prosecutions and Others v Acton [2018] ZACC 30, para 82
21. Un.org. (2019). Human Rights. [online] Available at: <https://www.un.org/en/sections/issues-depth/human-rights/>, para 4. [Accessed 14 Aug. 2019].
22. UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295, available at: <https://www.refworld.org/docid/471355a82.html> [accessed 14 August 2019]
23. UN General Assembly, United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas : resolution / adopted by the General Assembly, 17 December 2018, A/RES/73/165, available at: <https://undocs.org/en/A/RES/73/165> [accessed 14 August 2019]
24. See United Nations General Assembly records of votes on the UNDRIPS in 2007: [www.un.org/press/en/2007/ga10612.doc.htm](http://www.un.org/press/en/2007/ga10612.doc.htm) and on the 2018 UNDROP in plenary session: [www.un.org/en/ga/third/73/docs/voting\\_sheets/L30.pdf](http://www.un.org/en/ga/third/73/docs/voting_sheets/L30.pdf) , and third committee: [viacampesina.org/en/united-nations-third-committee-ap-proves-the-un-declaration-on-the-rights-of-peasants-and-other-people-working-in-rural-areas/](http://viacampesina.org/en/united-nations-third-committee-ap-proves-the-un-declaration-on-the-rights-of-peasants-and-other-people-working-in-rural-areas/)
25. The 1961 Convention on narcotic drugs obliges its contracting countries to discontinue traditional and indigenous medical uses of Cannabis within 25 years, in flagrant violation of their rights to preserve ancient knowledge. This is one of the obligations under the IDCC that the South African constitution can not allow.

26. South Africa is part of the Convention as well as the Convention's Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.
27. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is, in accordance with its mandate PDF, Mandate of the IGC, undertaking text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s). See [www.wipo.int/export/sites/www/tk/en/igc/pdf/igc\\_mandate\\_2018-2019.pdf](http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc_mandate_2018-2019.pdf)
28. ENACT (Enhancing Africa's response to transnational organized crime) is implemented by the Institute for Security Studies ([issafrica.org](http://issafrica.org)) and INTERPOL ([www.interpol.int](http://www.interpol.int)), in association with the Global Initiative Against Transnational Organized Crime ([globalinitiative.net](http://globalinitiative.net)) and support from the E.U.
29. Jason Eligh (2019), "THE EVOLUTION OF ILLICIT DRUG MARKETS AND DRUG POLICY IN AFRICA" ENACT, June 2019. p. 9.
30. See also the History section
31. Kede, S. (2019). Africa's budding cannabis market - African Business Magazine. Retrieved 14 August 2019, from <https://africanbusinessmagazine.com/sectors/health-sectors/african-budding-cannabis-market/>
32. Stobbs, J. (2019). Legalise Exports, Criminalise Citizens. - Fields of Green for All. Retrieved 14 August 2019, from <https://fieldsofgreenforall.org.za/legalise-exports-criminalise-citizens/>
33. Good Manufacturing Practice (GMP) Resources. Retrieved 14 August 2019, from <https://ispe.org/initiatives/regulatory-resources/gmp>
34. Stone, K. (2019). What Is an Active Pharmaceutical Ingredient in Medication?. Retrieved 14 August 2019, from <https://www.thebalance.com/api-active-pharmaceutical-ingredient-2663020>
35. Colwell B. 2019, Landrace Cannabis Strains Of Africa , accessed 07/08/19 [briandcolwell.com/landrace-Cannabis-strains-of-africa/](http://briandcolwell.com/landrace-Cannabis-strains-of-africa/)
36. See: [un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](http://un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf) p. 18. Article 8 of the UDHR is reinforced by the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law proclaimed in 2005 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>
37. Ghehioeche F and Riboulet-Zemouli K., 2018. "Application of the Right to a Remedy and Reparation for Victims of gross violations of International Human Rights Law in the case of people affected by Prohibition: 58 years of global & systematic Human Rights violations in the name of drug control." Geneva, 2018.
38. State of California, "Assembly Bill 1793: Cannabis convictions: resentencing."
39. Government of Canada, "Bill C-93: No-fee, Expedited Pardons for Simple Possession of Cannabis." |
40. Dagga Couple. (2015). Dagga: Police in Helicopters 2015 [Video]. Retrieved from <https://youtu.be/qG9ymmOTjp0>
41. United Nations Committee on Economic, Social and Cultural Rights (2018), E/C.12/ZAF/CO/1 Concluding observations on the initial report of South Africa, see: [tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FZAF%2fCO%2f1 &Lang=en](http://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FZAF%2fCO%2f1 &Lang=en)
42. Umzimvubu Farmers Support Network, and International Centre on Human Rights and Drug Policy (2018), "Submission to the Committee on Economic, Social and Cultural Rights, periodic review of South Africa's implementation of the International Covenant on Economic, Social, and Cultural Rights from September-October 2018." [hr-dp.org/contents/1609](http://hr-dp.org/contents/1609)
43. Jamaican Observer, 2019 "Cannabis pilot project agreement signed in Accompong" [jamaicaobserver.com/news/cannabis-pilot-project-agreement-signed-in-accompong\\_169484](http://jamaicaobserver.com/news/cannabis-pilot-project-agreement-signed-in-accompong_169484)
44. Organization of American States (2013), "The Drug Problem in the Americas: Studies. Drugs and development." Washington, 2013.
45. Riboulet-Zemouli K et al. (2019), "Cannabis & Sustainable Development: Paving the way for the next decade in Cannabis and hemp policies." FAAAT think & do tank, Vienna, March 2019. [faaat.net/cannabiSDG](http://faaat.net/cannabiSDG), see Goal 1, pp. 16-17.
46. South African Embassy and Permanent Mission in Austria (2013), "Statement by Ambassador Xolisa Mabhongo of the Republic of South Africa, 56th Session of the Commission on Narcotic Drugs" Vienna, March 2013.