



NON-PROFIT COMPANY
COLLECTIVELY REFORMING SOUTH AFRICA'S CANNABIS LAWS

Reg No: 2013/191487/08

PROPOSAL FOR THE LEGAL REGULATION OF CANNABIS IN SOUTH AFRICA



2ND PRINT EDIT
Outcomes Document

Copyright © Fields of Green for All - March 2018



Foreword

to the Discussion Document

There are an estimated 900 000 Cannabis farmers in South Africa and collectively they support upwards of 3 million people. 20 million people use or have used Cannabis and tens of thousands of people use Cannabis to treat illness. South Africa has 350 000 Traditional Healers. Remember these numbers as you read this draft proposal.

One of the first buzzwords we learned at the beginning of our campaign was “desired outcomes”. What do we want legal Cannabis to look like? Since 2010 our experience as activists has modified this document and the rising tide of international change has helped it along its way. Thirteen gruelling days in the Pretoria High Court in 2017 taught us a great deal. Honourable Judge Ranchod started hearing our evidence and a date for “The Trial of the Plant” to resume has yet to be set. Judge Davis’ judgement in the Western Cape High Court in March 2017 quickened the pace and the Constitutional Court confirmed the judgement on 18 September 2018.

In a unanimous decision effectively “decriminalising” Cannabis in South Africa, the Constitutional Court ordered parliament to rewrite the law as it pertains to the PERSONAL use and cultivation of Cannabis within PRIVATE spaces. Trade (or “dealing” as the prohibitionists call it) remains illegal in South Africa. In fact, Judge Davis quotes from case history: “... the use of Dagga is a great social evil in South Africa.” Our work is far from over. We have won a battle but the war is not over.

From the court record / 18 September 2018 / Pg4 Paragraph 10

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 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.



It could be said that, once our case challenging the constitutionality of the prohibition of Cannabis in South Africa has received a favourable judgment, our job is done & Cannabis prohibition is over. To some extent it is and the two of us look forward to taking more of a back seat to concentrate on our passion for Cannabis Culture, music and art. There are many brilliant South African activists that will run with the suggestions in this document but we feel that, together with our supporters, we should offer the South African government a well defined, well researched and comprehensive document that outlines what we, the people who have been persecuted by these unjust laws for so long, want the new laws to look like. If they don't know what we want, we won't get what we want.

We trust that you will see some light at the end of the tunnel when reading this first draft. It summarises all the issues we feel need to be dealt with. It attempts to guard against the new regulations equating to Prohibition 2.0, as is happening around the world, particularly in Canada. This is the first draft of a uniquely South African solution and it is for you, the South African public, to comment on its contents and be part of the process of finalising our demands.

This first draft has been compiled by Fields of Green for ALL and the members of our Green Network and it is the responsibility of the authors to see its entry into discussions in parliament one day. However, it is not exclusive to our opinions or desires. We will gladly accept submissions for inclusion wherever appropriate and credit the contributing authors or organisations accordingly. This is not a Fields of Green for ALL solution, it is a uniquely South African solution. Just like there has never been a Trial of the Plant anywhere in the world, we don't believe there have been draft regulations produced anywhere that include the majority of the population and make reparations for the harms of prohibition like these do.

"Nothing About Us Without Us!"

(Latin: "Nihil de nobis, sine nobis") is a slogan used to communicate the idea that no policy should be decided by any representative without the full and direct participation of members of the group(s) affected by that policy. This involves national, ethnic, disability-based, or other groups that are often thought to be marginalized from political, social, and economic opportunities.

This is the slogan of the disability rights movement in South Africa. We would like to borrow it here and ask that you have these 5 words ringing in your ears while you read this draft. Now, more than ever, it is really important to stand together to make the voices of people who use, cultivate and trade in Cannabis in South Africa heard, loud and clear.

We could not do this without you.
Green Regards
Myrtle Clarke and Julian Stobbs,

Together with the expert witnesses for
The Trial of the Plant and members of
The Green Network.



The
Green
Network



CONTENTS

SECTION 1 - BACKGROUND

1. INTRODUCTION
2. INPUTS
3. ACTIVITIES
4. OUTPUTS
5. IMPACTS
6. REFERENCES
7. CURRENT LAWS PROHIBITING THE USE OF CANNABIS
8. CURRENT "BLACK MARKET / INFORMAL ECONOMY" – cultivation, trade and use
9. SUMMARY OF THE 'BLACK MARKET' CULTIVATION, TRADE & USE OF CANNABIS IN SA
10. PRINCIPLES AND AIMS OF CANNABIS REGULATION
11. POLICY OPTIONS AND CURRENT INTERNATIONAL TRENDS
12. INTERNATIONAL CONVENTIONS
13. NOTES FROM ALCOHOL AND TOBACCO REGULATION

SECTION 2 – STRUCTURE OF PROPOSED CANNABIS REGULATIONS

2A: GROWERS

1. INDUSTRIAL
2. COMMERCIAL
3. CO-OPERATIVE
4. IN HOUSE
5. SUBSISTANCE
6. TRADITIONAL

2B: HUBS

1. QUALITY CONTROL
2. PRICING
3. ANNUAL CERTIFICATION
4. TAX
5. ANONYMOUS AUCTIONS
6. WAREHOUSING
7. BY PRODUCTS

2C: DISTRIBUTION

1. DISTRIBUTORS
2. HEMP PRODUCTS
3. FOOD PRODUCTS
4. ADULT USE PRODUCTS
5. TRADITIONAL PRODUCTS
6. IN HOUSE

2D: RETAIL

1. REGISTRATION
2. LABELLING
3. ADVERTISING / MARKETING
4. PACKAGING
5. TRADITIONAL PRODUCTS
6. AGE LIMIT



SECTION 3 – REGULATION OF PRODUCTION / CULTIVATION / TRADE

1. CHALLENGES
2. HOME GROWING
3. TRADITIONAL PRODUCTION
4. PRODUCTION FOR MEDICINAL USE
5. PRODUCTION FOR INDUSTRIAL USE – HEMP
6. MAKING OUR POINT ABOUT LICENSING / PERMITS
7. SECURITY
8. SAFETY & QUALITY CONTROL
9. TRAINING & ENTREPRENEURSHIP IN THE CANNABIS INDUSTRY
10. ENVIRONMENT & ENERGY
11. SOCIAL CLUBS / CO-OPERATIVES / COLLECTIVES
12. SCIENTIFIC RESEARCH INITIATIVES
13. WORKER'S RIGHTS WITHIN THE CANNABIS INDUSTRY

SECTION 4 – REGULATION OF USE & TRANSPORTATION

1. AGE LIMITS
2. METHODS FOR / AREAS FOR CONSUMPTION
3. DRIVING
4. TRANSPORTATION & STORAGE
5. CANNABIS TESTING AT WORK
6. CANNABIS TOURISM
7. EXPORT

SECTION 5 – CONCLUSION & THE WAY FORWARD

1. ENGAGING WITH GOVERNMENT
2. STANDING FIRM ON SELF REGULATION
3. THE IMPORTANCE OF TECHNOLOGY
4. SWAZILAND AND LESOTHO, OTHER SOUTHERN AFRICAN REGIONS
5. REPARATIONS FOR CURRENT CRIMINAL RECORDS
6. REWRITING DRUG EDUCATION
7. NATIONAL DEVELOPMENT PLAN COMPATIBILITY
8. CONCLUSION & HOW TO SUBMIT YOUR COMMENTS / SUGGESTIONS



NON-NEGOTIABLE OUTCOMES

While it is essential that these proposals are put forward with an underlying spirit of flexibility, the following are non-negotiable for the success of Cannabis regulation in South Africa:

1. Cannabis regulations must be structured around an 18 year age limit unless a minor needs Cannabis for a medical condition.
2. Cannabis regulations in South Africa will not be structured around a license system where any individual, organisation or government body has the right to grant or deny said license.
3. All Cannabis regulations must be “tested” against the current laws regulating alcohol and tobacco. Cannabis must not be regulated in any manner that is harsher than these two more harmful substances.
4. The first thing that must happen is the cessation of any arrest or incarceration for Cannabis use, cultivation and trade. Under new regulations there will be no criminal sanction for violation of these regulations. Non-criminal sanctions for violations must be clearly set out before any regulations are put into place.
5. No person will be excluded from the “new Cannabis economy” by virtue of the fact that he/she has a criminal record for a Cannabis-related “offense”.
6. No person can be subjected to testing for Cannabis at work unless there is sufficient grounds that the employee is not fulfilling his / her duties in terms of an employment contract and there are also sufficient grounds to suspect that the employee’s use of Cannabis is the cause of this.
7. Use of Cannabis cannot be used in family disputes / custody battles no more than the use of alcohol can be used under these circumstances.
8. The legitimisation of the current SA Cannabis industry must be a priority before any new regulations are put in place. The “black market” must become part of the formal market economy with immediate effect.
9. All criminal records for the use, possession and trade of 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.

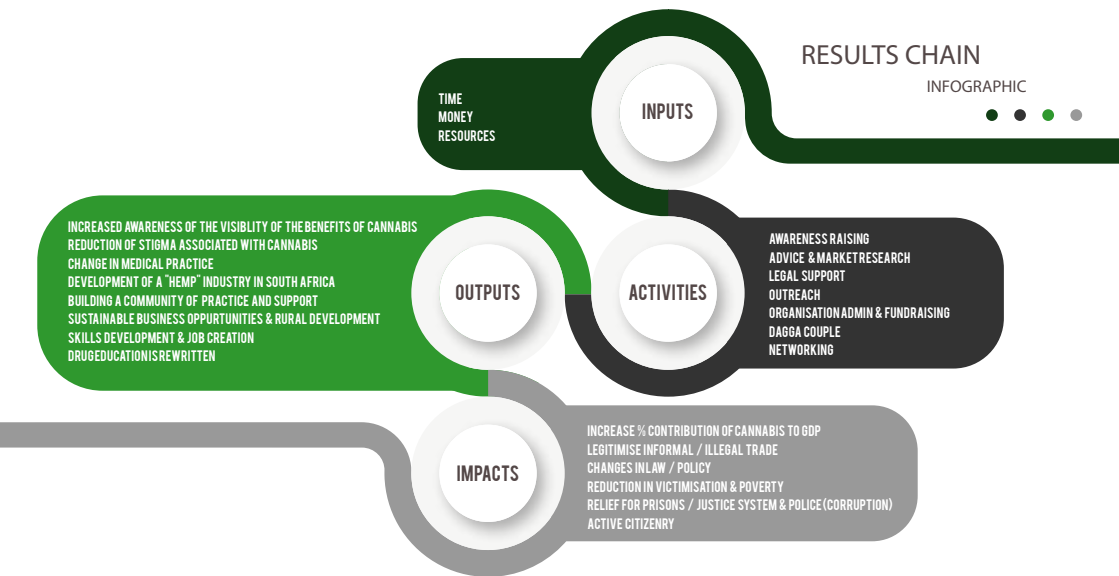
1. INTRODUCTION

Since the start of our campaign in 2010 and the registration of Fields of Green for ALL as South Africa’s first Cannabis legalisation Non-Profit Company, the question of what legal Cannabis will look like in South Africa as been an ever present one.

Let us make it clear right from the beginning: Cannabis is not legal in South Africa unless each and every citizen has access to the legal Cannabis economy. Since the Constitutional Court judgement on 18 September 2018, every citizen now has the right to grow their own Cannabis in private spaces for their own consumption in private spaces. Every citizen must be able to function within much broader regulations without favour being granted to those who have the capital or infrastructure in place already or at their disposal. We are well aware that opportunities that arise from legal regulation are wide open to corruption and this has been a major force that has shaped this document. Every citizen has the right to benefit directly from a legal Cannabis economy.

In order that both the legal and economic rights of all citizens are protected, it is essential that policy makers engage with the public during the establishment of 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 called “the black market”, it functions very efficiently and contributes vast sums to the economy in an informal way. This is why are we insisting that Cannabis users, cultivators and traders are involved in drafting of legislation – Nothing About Us, Without Us.

The current potential for legalisation of Cannabis in South Africa has been brought about through active citizenry on the part of Cannabis traders, cultivators and users nationwide. Fields of Green for ALL and The Dagga Couple have a vast support base and our campaign has been structured according to the following:



2. INPUTS

TIME: This campaign has been running since 2010. A projected time frame for legalisation is difficult to establish but the judgement handed down in the Constitutional Court on 18 September 2018 has pointed the cause in the right direction. The court has given the legislature 24 months to make the amendments they ordered.

The Trial of the Plant (<https://fieldsofgreenforall.org.za/fields-of-green-for-all-legal>) started in the Pretoria High Court on 31 July and was adjourned sine die on 18 August 2017. A favourable outcome in our trial will strengthen the evidence needed for our government to make informed decisions. In the meantime, we will continue to assist people arrested or adversely affected by the police under the current system which is full of grey areas and confusing to say the least.

We predict that it will still take a few years before any new laws pertaining to the legal regulation of Cannabis are passed in South Africa. In the meantime, we will continue to assist people who are arrested (<http://www.jointheq.co.za>) or adversely affected by the police under the current inhumane system.

MONEY: Cannabis legalisation in South Africa is totally self-funded. We are not aware of any organisation or group who receives funding from corporations or international organisations. Fields of Green for ALL relies entirely on donations and membership fees for The Green Network, a group of individuals with the foresight to see that supporting us is in their interests as Cannabis users and potential players in the future Cannabis economy. Fund raising (www.fieldsofgreenforall.org.za/donate) remains our biggest challenge and we would surely be much further along the road if we had some form of concrete funding for our endeavours. Budgets and our Funding Prospectus are available to members of The Green Network or on request. Funding is needed for the advancement of this proposal and in order to ensure that the relevant experts are not isolated from the users, cultivators and traders on the ground.

resource

/rɪˈsɔːs, rɪˈzɔːs/ ⓘ

noun

plural noun: resources

1. a stock or supply of money, materials, staff, and other assets that can be drawn on by a person or organization in order to function effectively.
"local authorities complained that they lacked resources"
synonyms: assets, funds, wealth, money, riches, capital, deep pockets; More
2. an action or strategy which may be adopted in adverse circumstances.
"sometimes anger is the only resource left in a situation like this"
synonyms: expedient, resort, means, measure, method, course, way, scheme, plan, plot, stratagem, manoeuvre, machination, agency, trick, ruse, artifice, device, tool
"so often her only resource is tears"



3. ACTIVITIES

All information regarding the activities of our organisation can be found on our websites and social media platforms. Our calendar is structured around these key areas:

AWARENESS RAISING: By maintaining a public profile and expanding our support base, together with thousands of concerned citizens, we have raised the profile of the Cannabis plant in South Africa. The first advocate we consulted advised us that we would need to create a large social awareness campaign in order to succeed in our endeavours. This is why we are The Dagga Couple (<https://www.daggacouple.co.za>) and we strive to keep a constant presence in the media.

INDUSTRIAL, TRADITIONAL / CULTURAL / RELIGIOUS, HEALTH USES: These are three of our Four Platforms (<https://fieldsofgreenforall.org.za/the-four-cannabis-platforms>) and, while our main focus is overall access for Responsible Adult Use (<https://fieldsofgreenforall.org.za/adult-use>) of Cannabis we spend time considering the varied use and how prohibition impacts these three sectors. With raised awareness of the health benefits (<https://fieldsofgreenforall.org.za/health>) has come a flood of enquiries from the public. There are many people interested in the industrial applications of the plant (<https://fieldsofgreenforall.org.za/industrial-cannabis>), particularly the role that Cannabis can play in the environment and healing our battered planet. Traditional use of the plant makes South Africa a unique environment (<https://fieldsofgreenforall.org.za/traditional-use>) for legalisation as compared to most of the rest of the world and this is a very important factor to bear in mind. Through our various platforms we aim to keep people informed with reliable and up to date information and there are extensive resources available on our websites. (<https://fieldsofgreenforall.org.za/resources-downloads>)

THE GREEN NETWORK: (<https://fieldsofgreenforall.org.za/community>) This is a network of donors, experts and activists with a keen interest in contributing to having our voices heard.

JOIN THE QUEUE: (<http://www.jointheq.co.za>) Our legal help department where we help people who are arrested on Cannabis charges. Despite “decriminalisation”, the police have not stopped arresting citizens.

RESOURCES:

To start with, these were largely dependent on the internet and our ability to use it as a resource for gaining knowledge and networking with both local and international Cannabis activists and interested parties. Since 2010, our knowledge base has grown significantly due to our participation in various local and international committees, organisations and think tanks. Our attendance at many Cannabis & Drug Policy related events, conferences and discussions over the years has contributed to the growth in non-financial resources available to us. We have also developed our own resources in order to support the efforts of this campaign. These include 3 websites, numerous social media platforms, print resources available to the public and extensive local video content created by Fields of Green for ALL and The Dagga Couple. We do not have the finances to employ staff and all work is done by Julian Stobbs, Myrtle Clarke, William Wallace (directors of Fields of Green for ALL) and a small team of volunteers. The same applies to all equipment – computers, vehicles and office space. It is our intention to expand our human resources in order to further the aims of this proposal. It should become clear after The Trial of the Plant that we have sufficient scientific evidence for a solid base for regulations and hence the need for employing more people to assist with the way forward.



DRUG POLICY: We have taken it upon ourselves to be well informed about the various policies being considered and implemented around the world. We are up to date with debates around the international conventions that attempt to “control illegal drugs” worldwide.

ORGANISATION ADMINISTRATION AND FUND RAISING: Fields of Green for ALL, Non-Profit Company is registered as a public benefit organisation, is tax compliant and independently audited.

DESIRED OUTCOMES: This document.

4. OUTPUTS

- Increased awareness and visibility of benefits
- Reduced stigma
- Legal advice for the general public
- Change in medical practise
- Progress towards a viable, legal Cannabis Industry
- Engagement with the public and, after litigation is complete, with government
- Creation of sustainable business opportunities
- Skills development and job creation
- Fostering entrepreneurship
- Building a community of practise and support

5. IMPACTS

- Active citizenry
- Changes to law and policy
- Legitimising informal / illegal trade
- Reduction in victimisation
- Reduction in poverty
- Reduction in police corruption
- Reduction in corruption in the judicial system
- Relief for prisons and justice system
- Significant contribution to GDP

6. REFERENCES

An extensive list of documents and all documents referred to here are available on Fields of Green for ALL's Resources / Downloads page under DESIRED OUTCOMES.

(<https://fieldsofgreenforall.org.za/resources-downloads>). The final draft of this document will be fully referenced.

7. CURRENT LAWS PROHIBITING THE USE OF CANNABIS IN SA

- Drugs and Drugs Trafficking Act 140 of 1992
- Medicines and Related Substances Control Act 101 of 1965 (as relates to the scheduling of Cannabis within Schedule 7)
- Section 21 of the Drugs Act.

8. CURRENT “BLACK MARKET / INFORMAL ECONOMY” - CULTIVATION, TRADE AND USE

Cannabis has been cultivated and traded in Southern Africa for hundreds of years. The historical context and significance has been presented as evidence in The Trial of the Plant (<https://fieldsofgreenforall.org.za/fields-of-green-for-all-legal>) and a concise history timeline is available on The Dagga Couple website. (<https://daggacouple.co.za/history-cannabis-prohibition>)

We (<https://daggacouple.co.za/history-cannabis-prohibition>) estimate that 20 million people use, or have used, the Cannabis plant in South Africa. Millions of people are involved in cultivation and trade and there is no specific demographic attached to any aspect. From rural communities steeped in traditional cultivation and use, to wealthy executives having their high grade delivered to the door, Cannabis use is all pervasive in South Africa and on the sub-continent.

There are an estimated 900 000 Cannabis farmers in South Africa and collectively they support upwards of 3 million people.



9. SUMMARY OF THE 'BLACK MARKET' CULTIVATION, TRADE & USE OF CANNABIS IN SA

CULTIVATION

Due to the abundance of sun during long summers, the majority of Cannabis is grown outdoors in South Africa and neighbouring countries. The size of the areas under cultivation is directly proportional to the quality and price.



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 optimizing light cycles, water, airflow, temperature, nutrients and water.



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 greenhouse methods are very popular amongst growers due to having more room to work with larger plants than indoor growers.



Outdoor – Cannabis thrives outdoors and can produce heavily when cared for. The vast majority of cannabis in South Africa is grown outdoors under varying conditions. The simplest method of growing, risk due to crop damage, eradication from inclement weather, pests or the police.



Seeds – While some rural farmers and small scale growers still use seed harvested from last year's crop, there are a number of local Cannabis seed 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.

1. Rural areas where individual farmers will tend many 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 due to the interest from both local and international Cannabis enthusiasts with an interest in the local strains ‘helping’ rural farmers to improve quality.
2. Smaller scale, higher quality illicit farming takes place in every outlying area in the country. These cultivation projects are mainly run by more affluent, better educated farmers. Many of these farmers are white males who have been said to have been affected by declining employment opportunities.
3. Intensive indoor cultivation of high end, very valuable strains is undertaken in private homes and industrial areas around the country, generally near to urban areas.
4. Many South Africans grow Cannabis in their own gardens. This is both for their own use and to sell to friends for extra income. These home growers rarely rely on Cannabis as their sole source of income.
5. Swaziland & Lesotho. Cannabis remains completely illegal in both Kingdoms that border SA. Despite the recent granting of cultivation licenses in Lesotho we remain sceptical as to the benefit to the local population as Lesotho citizens continue to be arrested on the street and in their homes. Large quantities of Cannabis crosses the border from our neighbours every day.

TRADE

“The Success of a Country’s Drug Policy is Directly Proportional to the Size of its Black Market”

1. Personal use...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 a larger vehicle on their way down the national highways. The value increases. Distribution of this is in townships, on the streets, bus stations, shebeens, taxi ranks and small time dealers. Think matchbox, bankie. Low to mid price range. Sometimes sold on the spot in bulk to oil makers who travel from the city / individuals willing to risk travelling back to the city with bulk.
Price R10 to R50 / g (\$0.71 to \$3.60)
2. Smaller scale, local hood, friends distribution network. This type of Cannabis sometimes makes it onto the street as higher grade. Outdoor and, to a lesser extent, indoor. Some sold wholesale for oil / concentrates.
Price: R30 to R100 / g (\$2.5 to \$7.15)
3. Indoor, high risk, high price. Sold to wealthier people & executives beating stress through sophisticated delivery channels. Many well-established illicit outlets in the cities. **Price: R80 to R250 / g (\$5.70 to \$18).**
4. Concentrates for medicinal use, edibles & 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, particularly people in need of medical assistance. **Price: R400 to R600 per gram (\$28.50 to \$43). Some producers are said to charge up to R800 / g (\$58) for concentrates.**



USE

Use of Cannabis in South Africa is outlined in the Four Platforms across which the evidence for The Trial of the Plant is structured.

- 1. Responsible Adult Use:** Estimated 20 million regular users across all socioeconomic groups in all geographical locations in South Africa.
- 2. Traditional, Cultural & Religious Use** – widespread historical use amongst first nations people, traditional healers and members of the Rastafari religion.
- 3. Industrial Use:** Despite many trials over the years, all hemp products are still being imported. Local knowledge of the industry is growing and there are many poised to invest in this sector after legalisation. Local experts are fully capable of making this industry a very viable part of our economy.
- 4. Health uses:** Tens of thousands of South Africans use Cannabis and Cannabis products for health. Many producers in 2 & 3 above also produce Cannabis concentrates, edibles and other products for this market. Distribution is by word of mouth or more brazenly on social media.

10. PRINCIPLES AND AIMS OF CANNABIS REGULATION

For this section we are indebted to Transform's "How to Regulate Cannabis – A Practical Guide". (<http://www.tdpf.org.uk/blog/cannabis>)

We have adapted it to be relevant for South Africa.

PRINCIPLES FOR EFFECTIVE REGULATION:

Proportionality: The burden of regulation should be proportionate to the benefits that are expected to result. Decisions concerning regulation should be based on the risks involved and take into account the costs thereof.

Certainty: Regulations should be clear and provide a degree of certainty. Regulations should be consistent with other policies (eg: alcohol and tobacco) and with the judgements handed down by the courts (eg: Cannabis is less harmful than alcohol and tobacco so therefore it should be regulated accordingly)

Flexibility: Regulations should be administered flexibly and policies and procedures set up so that they may be adapted / changed according to their performance in reality. Non-regulation measures, particularly self regulation, should be used wherever possible.

Durability: Closely related to flexibility. The regulatory system must have the capacity to evolve to respond to new information and changing circumstances. Systems for monitoring and evaluation are essential from the outset in order that regulations keep up with technological change and external innovation.

Transparency and Accountability: Regulators must be able to justify decisions and be subject to public scrutiny. This includes non-discrimination, provision for appeals and a sound legal base for decisions. Judgements given in arbitration / regulation violation hearings should be steadfastly adhered to.

Capable Regulators: The regulator must have the resources and knowledge necessary to operate an efficient and effective regulatory system. The regulator **MUST** have an extensive knowledge of the Cannabis plant, local and international drug policy, the history of Cannabis prohibition and Cannabis culture. The regulator **MUST** have been closely involved in the process of the legalisation of Cannabis in South Africa. We suggest that the regulator is called the “Cannabis OmBUDsman” and is a new body set up to include those with the knowledge and skills required to do the job, not just any government bureaucrat. The OmBUDsman should be democratically elected by all who register, in one form or another, to be part of the legal Cannabis industry and abide by regulations.

Regulations within a Specific Set of Aims: FGA suggests Transform’s “specific aims of drug policy”:

- Protecting and improving public health and access to affordable healthcare
- Reducing drug-related crime
- Improving security and development
- Protecting the young and vulnerable
- Protecting Human Rights
- Providing good value for money

Regulations with Foresight: While we see Cannabis as the “gateway” to more rational drug policies, it will become increasingly important to see Cannabis within the bigger picture of drug policy making, not isolated or in some way a ‘special case’.

Regulations must be Relevant to Social Context: Cannabis regulation must contribute to improving public health education and prevention of misuse, as well as action on poverty, inequality, social exclusion and discrimination. Reform cannot only reduce the harms of prohibition, but can also create opportunities and benefits.



11. POLICY OPTIONS AND CURRENT INTERNATIONAL TRENDS

There is a spectrum of legal / policy frameworks available for regulating the production, supply and use of non-medical psycho-active drugs, all of which include Cannabis. At one end are the criminal markets created by absolute prohibition, moving through less punitive prohibition models, partial /de facto / quasi-legal supply models, legally regulated market models with various levels of restrictiveness, to legal / commercial / free markets at the other end.

What kind of Regulation Model will most effectively achieve our policy aims in South Africa?

The answer is simple, a uniquely South African Regulation Model. When Cannabis is legally regulated in South Africa we will be the first major Cannabis producing country to do so. South Africa is in the top 3 producing and consuming countries in the world. This is a long standing tradition going back hundreds, possibly thousands of years. Yes, we look to international trends for guidance but neither The Netherlands, Portugal, Uruguay, States in America or Canada have the long standing traditions of the use of Cannabis that we have.

South Africa's apartheid history is well known internationally and we live with the consequences of that history every day. South Africa was the country who suggested to The League of Nations that they put "Indian Hemp" on the list of banned substances in 1925. Of all countries, South Africa has no excuse for legal regulation to look like Prohibition 2.0. We need a radical shift in policy and regulations that are the most liberal in the world, given our history.

Definition of Terms

Decriminalisation: Generally understood to refer to the removal of criminal sanctions for certain offenses – Usually the possession of small quantities of currently illegal drugs for personal use. The possession of drugs remains unlawful and a punishable offense (fines / community service) but no longer attracts a criminal record.

Legalisation: The process of the removal of ALL types of penalty, criminal or administrative – for production, supply and possession of, for example, Cannabis.

Regulations: A framework of rules that sets the parameters for the legal production, supply and possession of a potentially harmful substance, such as sales to minors. Hence our aim / goal is the Legal Regulation of Cannabis in South Africa.

SUMMARY OF CANNABIS REGULATION MODELS – from most to least restrictive

Laws are changing around the world. The following were correct at the time of the release of this document.

1. Prohibition of all production, supply and use (SA 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 & 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 alcohol and tobacco regulations, particularly in Russia and China.
7. Regulated legal production and supply for non-medical use – with a mix of commercial and government monopoly elements – Uruguay and Canada.
8. Regulated legal production and supply for 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.

South Africa will be a combination of 8 & 9.

We are working on a summary of the Cannabis laws across Africa. It is interesting that the judges in the Constitutional Court expressed interest in having such an overview at their disposal.

12. INTERNATIONAL CONVENTIONS AFFECTING THE POSSESSION, USE & TRADE IN CANNABIS

- The Single Convention on Narcotic Drugs, 1961
- The Convention on Psychotropic Substances, 1971
- The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
- The Southern African Development Community (SADC) Protocol on Combating Illicit Drugs, 1996

“As jurisdictions enact reforms creating legal access to Cannabis for purposes other than exclusively ‘medical and scientific,’ tensions surrounding the existing UN drug treaties and evolving law and practice in Member States continue to grow. How might governments and the UN system address these growing tensions in ways that acknowledge the policy shifts underway and help to modernise the drug treaty regime itself, and thereby reinforce the UN pillars of human rights, development, peace and security, and the rule of law?”

- Cannabis Regulation and the UN Drug Treaties – Strategies for Reform (Briefing Paper) April 2016 as presented at the United Nations General Assembly Special Session on Drugs.

Fields of Green for ALL is connected to the New York NGO Committee, which advises the United Nations Office on Drugs and Crime. Our association with the Vienna NGO Committee is similar and keeps us informed of developments in Europe. We attended the United Nations General Assembly Special Session on Drugs (UNGASS) in New York in 2016. In the same year we attended the Global Forum of Producers of Prohibited Plants in Heemskerk, The Netherlands. We look forward to sharing this document at the 61st session of the Commission on Narcotic Drugs in Vienna, March 2018. Our growing list of International Affiliates keeps us informed of developments in the rest of Africa and around the world, from Mexico to Indonesia, Europe to Australia and New Zealand.

In 2017 we were invited to present a paper at Harm Reduction International (<https://www.hri.global/conference-2017>) in Montreal, Canada and our presentation was entitled “Cannabis is the Gateway to more Evidence based Drug Policy in South Africa” and was centred around our #JoinTheQ (<http://www.jointheq.co.za>) project where we help citizens arrested on Cannabis charges. To date we have achieved 59 stays in prosecution in 5 of the 9 provinces and this project has received significant international interest as the majority of Drug Policy issues around the world are dealt with in the political arena, not through the courts.

We have participated in SA Drug Policy Week (<http://www.sadrugpolicyweek.com>) which attracts high profile Drug Policy experts from around the world. This annual conference is gaining momentum and has put the efforts of local activists firmly on the international map. Our Clinical Cannabis Convention, (<https://fieldsofgreenforall.org.za/clinical-cannabis-convention>) which was held during The Trial of the Plant in August 2017, saw our local and international speakers connect the dots between Cannabis Science and Drug Policy reform.

Cannabis law reform in South Africa cannot happen in a vacuum and we are grateful for all the international support we have received. The state continues to use the international conventions as an excuse to hamper reform efforts but, as outlined in our “Heads of Argument” for our intervention in the WCHC case in the Constitutional Court (<https://daggacouple.co.za/2017/11/02/groundbreaking-heads-argument>) the time for using the conventions against us is over.



Practice Abstract submitted by Fields of Green for ALL, Cannabis Legalisation Non-Profit Company, Johannesburg, South Africa for Harm Reduction International 2017.

Written by Myrtle Clarke and Julian Stobbs, directors.

JoinTheQueue: Cannabis is the gateway to evidence-based Drug Policy in South Africa.

ISSUE

We are reducing the harms of Cannabis prohibition in South Africa as a precursor to more evidence based drug policies in general.

PROJECT

JoinTheQueue is a service offered to South African Citizens who are arrested on Cannabis charges. The charges against the accused are put on hold, thus avoiding unnecessary & expensive prosecutions.

SETTING

South Africa is a major Cannabis producing and consuming nation with a famously liberal constitution. By asserting our rights we are drawing attention to the irrationality of current Cannabis laws and inviting fellow accused to “JoinTheQueue” and become active citizens.

In 2011 7 South African government departments were sued on charges of enacting unlawful laws. “The Trial of the Plant” is due to start at the end of July 2017. The accused in this case obtained a Stay in Prosecution in order to bring about their constitutional challenge.

The South African Constitution allows for equality before the law for all its citizens. JoinTheQueue takes advantage of this equality and has achieved 36 High Court Orders staying the prosecution of the accused. Court statistics indicate that there are approximately 1000 arrests a day for Cannabis in South Africa. The vast majority are for low level possession by young people under the age of 30.

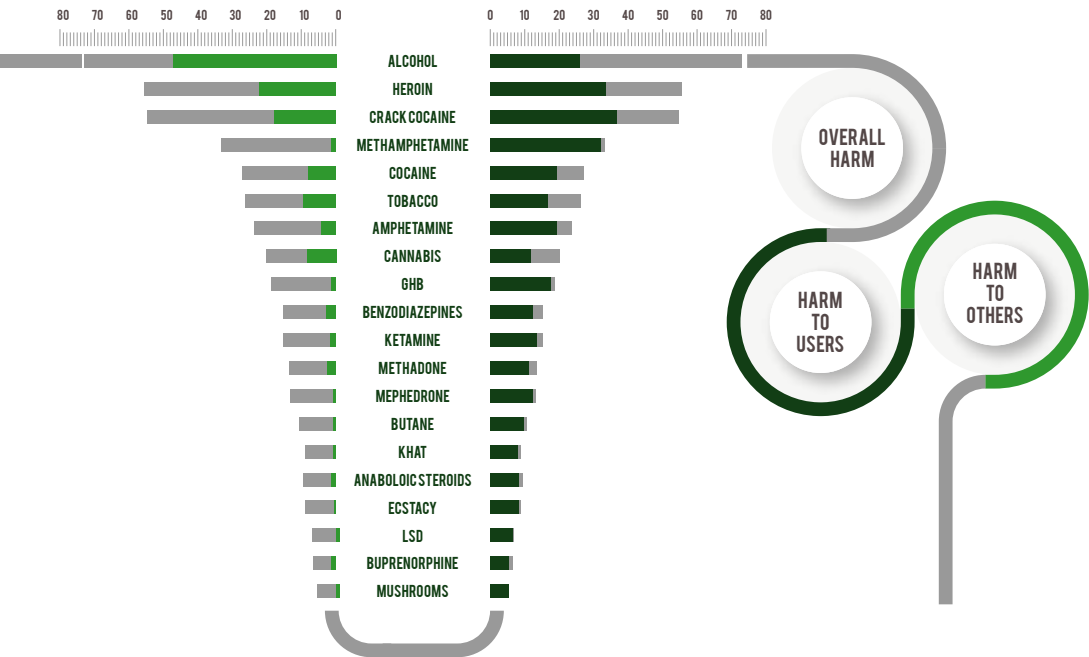
OUTCOMES

Drug Policy debates are gaining momentum in South Africa & our project can be used as a model for challenging irrational drug laws in court. South Africa is going through political turmoil at present but we have a strong judiciary. Let us use this to our advantage to fast track more sensible drug policies.



SCALE OF HARM

INFOGRAPHIC





Watch Prof Nutt give evidence and be cross examined in The Trial of the Plant.

https://www.youtube.com/playlist?list=PLyEKHM08IxVi8_WDA1X-uedFc9lRQDMtb

Watch Prof Nutt's presentation at the Clinical Cannabis Convention.

<https://www.youtube.com/watch?v=OgOABr60lkg>

Read a transcript of Prof Nutt's evidence and cross examination in court.

<https://daggacouple.co.za/2017/08/24/trial-plant-written-record>



The British peer-reviewed journal Lancet published a study titled "Drug Harms in the UK: A Multicriteria Decision Analysis" on Nov. 1, 2010 which ranked 20 drugs from alcohol to marijuana to tobacco based on harm factors. One of the authors, Professor David Nutt is one of the expert witnesses for The Trial of the Plant. Professor Nutt has presented scientific evidence of this scale of harms and we will prove that Cannabis is less harmful than both alcohol and tobacco. Also of significance here is Professor Nutt's and colleagues' document prepared for the World Health Organisation in November 2016. This was a report prior to the WHO reviewing their stance on Cannabis and is available on our Website Resources Page.

Therefore, just as the laws prohibiting the cultivation, trade in and use of Cannabis are irrational, it is irrational to regulate this plant in a harsher manner than either alcohol and tobacco.

However, it is important to take into account the fact that the development of policies for alcohol and tobacco are rooted in commercial interest and not in public health. There is a long-standing conflict between the enormous commercial driving forces and attempts to enforce stricter regulations. This is particularly evident with the alcohol industry.

Cannabis, on the other hand, offers a blank canvas and the opportunity to introduce evidence-based regulations from the outset. Self-regulation is of paramount importance, as is the use of tax revenue for drug education as a harm reduction measure. Cannabis law reform is perfectly placed to demonstrate best practise in drug policy and regulation.

Cannabis is NOT the same as alcohol and tobacco and therefore Cannabis regulation must be administered by its own department and not be lumped together with these more harmful substances. Hence the proposal to appoint the office of the "Cannabis OmBUDsman".

The right balance needs to be struck between the interests of commerce and public health-based regulation. Government intervention, licensing, pricing and taxation all have precedents set within the alcohol and tobacco industries. Let us use these as benchmarks within the logic of the scale of harms above. Let us also learn lessons from the failings of tobacco and alcohol regulation, of which there are many in South Africa, particularly as relates to tobacco and the link between government corruption and illegal cigarettes.



While there are vital lessons to be drawn from experiences with alcohol and tobacco control, as well as the growing body of evidence from cannabis policy innovations around the world, there remains a great deal we do not know about cannabis regulation. The proposition of developing a fully functional regulatory model, for most jurisdictions effectively from scratch, is highly unusual in social policy and almost unique in drug policy.

Any policy innovation has a degree of intrinsic unpredictability and will carry risks. But from what we know already, we can reasonably anticipate and mitigate against nearly all of these risks. As when developing any public policy, progress should involve informed experimentation, evaluation, and a willingness to be flexible and respond intelligently to both successes and failures. – Transform UK

Important Points to Note with Regards Cannabis Regulation in SA and Alcohol / Tobacco

1. The Trial of the Plant is in the process of providing concrete evidence and this evidence, in the public record, is an essential starting point for the legalised regulation of Cannabis in SA.
2. As with alcohol and tobacco, Cannabis should never be available to under 18's unless prescribed by a doctor for a specific medical condition.
3. Cannabis Regulations must not be stricter than those applied to alcohol and tobacco.
4. Tax revenue from Cannabis industry sales must be administered by a Cannabis specific regulatory body. We suggest that this be established in consultation with all parties who have been working so hard for the reform of South Africa's Cannabis laws and be called the "Cannabis OmBUDsman."
5. Tax revenue from Cannabis must be used for education, harm reduction and tangible social upliftment.
6. Core regulatory decision making should stay with authorities who have the public interest (use, cultivation and trade) at heart, not large scale commercial interests.
7. Core regulatory decisions should be made by those who have specific expertise in the use, cultivation and trade in Cannabis. It should not be lumped with alcohol or tobacco in any way.

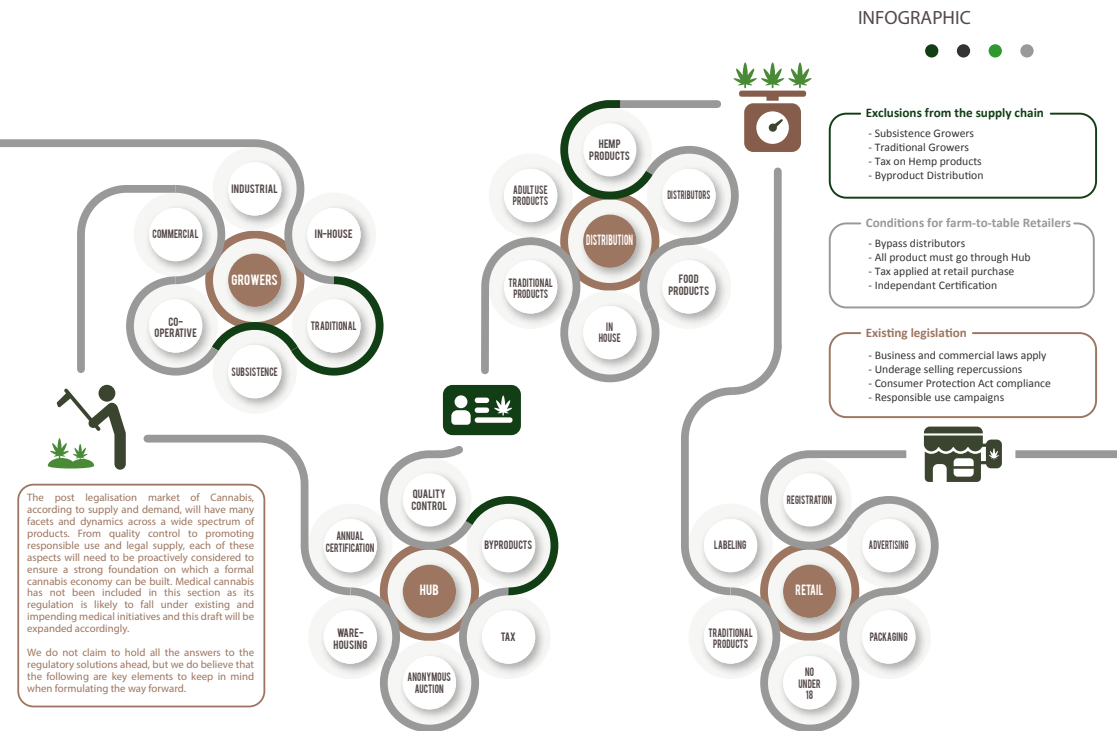
"Moves towards more effective cannabis regulation should be part of a wider process of reforming existing approaches to other drugs, both legal and illegal. This is likely to mean increased regulation of alcohol and tobacco markets as a greater consensus emerges on what constitutes optimal drug regulation. The rationale for regulating cannabis will necessarily also need to be applied to some other currently illegal drugs in the future, this wider debate should not be avoided."
- Transform, UK, "How to Regulate Cannabis".



SECTION 2 PROPOSED CANNABIS MARKET MODEL

The post legalisation market of Cannabis, according to supply and demand, will have many facets and dynamics across a wide spectrum of products. From quality control to promoting responsible use and legal supply, each of these aspects will need to be proactively considered to ensure a strong foundation on which a formal cannabis economy can be built. Medical cannabis has not been included in this section as its regulation is likely to fall under existing and impending medical initiatives and this draft will be expanded accordingly.

We do not claim to hold all the answers to the regulatory solutions ahead, but we do believe that the following are key elements to keep in mind when formulating the way forward.



Key to Market Model Diagram:

GROWERS

Summary of the anticipated Cannabis grower profiles within a legal market.

Industrial – Cannabis of very low to no psychoactive properties range which is grown to produce nutritional or textile products. Examples of these products include food, health supplements, fodder, fabrics, plastic composites, fuels, papers, construction materials and cosmetics.

Commercial – Large scale farms that grow Cannabis for use in either industrial or adult use products. Existing agricultural legislation, development programmes and subsidies will need to be considered when defining commercial growers or parameters that may apply to large scale production. Commercial farmers would typically not offer their products to the general public as it may be more viable to operate on a business to business model of sales to distributors or wholesale buyers.

Co-operative – Generally based on collective growing and not for profit principles; collectives are characteristically small groups of private individuals who pool their resources so that they may then grow and produce a self-limited amount of industrial or adult use plants in a single location or as part of a community development initiative. Products are then distributed internally only to the private collective members.

In House – Retailers who wish to own the entire seed to sale process of Cannabis plant materials and products. These may be artisanal, craft or large scale growers who produce products for either industrial or adult use.

Subsistence – Small scale rural growers whose Cannabis products would typically be used privately by the grower or their community, or sold in generally small quantities as a source of essential income. Regulating, taxing or monitoring such use or sales may prove challenging as these products might not enter into a formal market place or recognised supply chains.

Traditional – Historic, cultural, religious or traditional consumers may seek out products that are grown accordingly. Considerations may therefore need to be given to any constitutional rights that may potentially override any “new” Cannabis regulations. Regulating, taxing or monitoring such use or sales may prove challenging as these products might potentially not enter into a formal market place or recognised supply chains.

HUBS

Practical aspects of regulation and quality control.

Quality Control – Whether cannabis products are intended for industrial or human use will need to be considered in terms of accommodating existing regulations in various applicable sectors. Identifying any components or residuals that may be unwanted in the finished products, such as pesticides, herbicides, fungicides, preservatives, fungi, mould, residual hydrocarbons, contamination by chemicals / “other drugs” or any other potentially harmful contaminants. This would be for the health and safety of both producers and end users.

Grading of various types of Cannabis and testing for Cannabanoid profiles also falls within the area of Quality Control.

Pricing - The current pricing structure within the “black market” is an adequate starting point for a legal market. See Section 1.8 (Trade). It is what Cannabis consumers are used to and no attempt should be made to regulate pricing beyond what the market dictates. It goes without question that prices will come down due to a glut in the market and consumers being permitted to cultivate for personal use. There will always be a wide range of Cannabis consumers in South Africa, as the current price range demonstrates.

Annual Certification – Business registration and tax compliance in order to produce or distribute Cannabis products should not be limited to a specific number of growers or be unaffordable for entry into the formal market. The process should add value to the supply chain for the grower, distributor and the end user by offering a voluntary process that grants open access to quality control resources and markets; while being practical to administer and monitor. The pricing and process should not be cumbersome for either the participants or the body that administers the certification. This would be the Cannabis OmBUDsman and annual certification can be an accessible online process which carries a certificate that can be used both for consumer safety and for leverage in instances of non-compliance with regulations.

Tax – It would be unwise to assume that any psychoactive substance use is without any negative impact or cost to communities and society. A pro-active approach should be taken to define what nature of Cannabis products would be sold to the public as an intoxicant and quantify a tax structure applicable to these retail products. Existing legislation may already apply regarding the distribution of taxes related to such products. It would, however, be ideal to target this tax revenue for distribution among harm reduction programmes for substance use disorders. **If the tax level is set too high, the “black market” will continue to thrive.** This has been well documented internationally. Cannabis businesses must also receive tax relief for supporting training and community upliftment.

Anonymous Auctions – Should an auction model develop for large scale purchase of Cannabis products from producers, it may be prudent to protect growers from bid hedging or price fixing by wholesale buyers. An anonymous bid system of a single private bid per prospective buyer would ensure that the seller receives a fair price in terms of what is sustainable for both seller and buyer.

Warehousing – Producers, wholesale buyers and retailers may wish to house their raw or finished products offsite or with third party service providers. Regulations or best practices may need to be considered in respect of the logistics, security and storage in terms of consumable and perishable products.

By-Products – Waste and by-products from processed cannabis plant materials may potentially not contain sufficient value or components to warrant regulation other than that of the laws and regulations of the markets or industries in which they enter. Adult use tax and certification requirements would not apply to the use of or trade in these products.

DISTRIBUTION

The processing and distribution of Cannabis products in various contexts

Distributors – Companies that process raw materials into final products for distribution or distribute raw products to retailers may be required to maintain a minimum set of standards to ensure compliance with the respective regulations of industrial and adult use Cannabis products. These would be both for procuring and selling products.

Hemp Products – As these Cannabis products are free of any psychoactive components, higher tax brackets should not apply to them and they should only need to meet the standard and regulations of the building material, cosmetic, health supplement, textile, plastic, fuel, fodder and paper industries in which these products are traded or sold.

Food Products – Typically derived from hemp materials, these would need to meet the existing regulatory and labelling requirements of food products. This applies to both psychoactive and non-psychoactive food products.

Adult Use Products – These would be sold to adult users for responsible use. Insight into the existing regulation of tobacco and alcohol products would be valuable in identifying what does and doesn't work, so that we may apply a practical and responsible approach in terms of accountability for the distribution of these Cannabis products.

Traditional Products – These products may vary greatly in form and function. However products sold for consumption may need to be handled in similar contexts as the above scenarios to ensure the safety of end users.

In House – Distributors who form part of an internal supply chain should still be required to comply with the same standards as external distributors. They may bypass the logistics of purchasing from or selling to third parties, but all certification, tax and quality control regulations will still apply.

RETAIL

This will be the interaction and purchase point for most Cannabis consumers and therefore carries significant responsibility.

Registration – Consideration will need to be given as to whether to only apply business registration requirements for retailers of adult use products. This may be in the form of certification that the products are sourced from credible production or distribution chains. Alternatively, registration requirements may be imposed at retailer level, in which case distributors would need to verify these before supplying adult use products.

Labelling – Correct labelling of all consumable Cannabis products will be essential. Various degrees of disclosure would apply to the respective contents and safe use of products. These may vary depending on the regulatory requirements of the intended use of the products. Such as labelling food products with their nutritional content and adult use products with their active THC and CBD content.

Advertising / Marketing – Products sold for adult use may fall under existing or impending advertising standards that permit or deny the ability to publicly advertise these products. Consideration will need to be given on whether advertising of adult use Cannabis products is permitted and what limitations may apply.

Packaging – Adult use products will need to be packaged in a manner that does not promote use or accessibility to minors.

Traditional Products – Traditional and cultural laws may exist that supersede a regulated retail interaction with psychoactive cannabis product purchasers and consumers. Considerations may need to be made in respect of defining what limits of sale and use may or may not apply. For example: Packaging, labelling, etc



No Under 18's – There is no doubt that psychoactive cannabis products should not be available for purchase by minors. There will be a need to therefore consider financial or criminal penalties for individuals or businesses that provide these products to anyone under the age of 18 years. The enforcement of this will need to fall under the OmBUDsman in conjunction law enforcement where appropriate.

Conclusion

This is by no means an exhaustive list of what to keep in mind when contemplating the potential regulatory or legislative requirements pertaining to legal cannabis. The realities of the ongoing black market tobacco trade, government tender irregularities and fishing licensing corruption are valuable lessons in what mistakes not to repeat. Only by engaging in a constructive manner with all interested parties can we begin to create proactive and practical solutions.

Any law can be written, but it is the implementation thereof that is the true test. Our aim for a uniquely South African solution expands on the above summary in the sections that follow.

SECTION 3 – REGULATION OF PRODUCTION / CULTIVATION – SA SPECIFIC

While the above is an outline of the proposed structure of the market model, there are specific issues that need to be addressed within the South African context.

1. CHALLENGES

- Inclusivity: Allowing the public the choice between a product with guaranteed quality (through appropriate testing, evaluation and oversight of production processes) and one which has been grown legally but not subject to strict and costly quality control.
- Limiting the size of the unregulated / illicit market by making regulations and training in best practise available and accessible to all.
- Managing the links between the producers and the rest of the supply chain.
- Awareness of the risks of over-commercialisation and maintaining entrepreneur-based regulations. This includes a very strong drive for inclusivity and empowerment for previously disadvantaged communities. **This point should be a major factor throughout the discussion in South Africa and is what sets us apart from the rest of the countries formulating regulations.**

2. HOME GROWING

- This is particularly pertinent in SA as the WCHC judgement declared the laws which prohibit the private cultivation of Cannabis unconstitutional. We await the outcome of the state's appeal in the Constitutional Court.
- The right for every citizen to grow at home for their own use is non-negotiable.
- There are a number of countries that have allowed home growing for some time and experience has shown that this is unlikely to pose significant challenges.
- Insofar as home growing requires regulation / limitation of the number of plants allowed, this is not desirable in South Africa as it is a waste of resources. Regulations should be such that it is not desirable for home growers to take the risk of expansion without the required company and tax registration. This will be facilitated by a process that is simple, cost effective and desirable. The self-regulation of Cannabis in South Africa emphasises the "right thing to do" within a well established Cannabis Culture.
- The transition available to home growers who wish to expand production is provided by both Cannabis Social Clubs or company registration of their production, both to be discussed in Section 4: Regulation of Trade in SA.

3. TRADITIONAL PRODUCTION

- This is a major factor that sets South Africa apart from other countries that have moved towards regulating adult use of Cannabis.
- Expanding domestic cultivation in jurisdictions that legalise and regulate will have impacts on traditional producer regions and their economies.
- As well as reductions in criminality and corruption, there is large potential for reductions in income and economic opportunities for some already marginalised populations. This potential is illustrated by the corporatisation of the Cannabis industry in other countries, particularly Canada and Israel. This is why traditional production must be a cornerstone of any regulation.
- Traditional producers must be included in the value chain from the beginning. Models for regulation need to be simple and based on de-centralisation and self regulation. This is achieved by creating local co-operatives which can be demarcated according to the existing voting wards.
- Cannabis farmers belonging to a co-operative will benefit from common resources such as training, equipment, seed and access to a Cannabis Farmer's Union.
- A task force must be appointed in order to disseminate information around Cannabis regulation in the rural areas. This is easily achieved through existing community structures and through media such as community radio stations.
- We acknowledge the work begun by the Cannabis Development Council of South Africa (CDCSA) and look forward to their input going forward with these proposals. The CDCSA is bringing together various stakeholders among rural Cannabis community to ensure that these users, cultivators and traders remain the focal point of Cannabis law reform in South Africa. The organisation is in its infancy but is sure to go from strength to strength with the right support.

4. PRODUCTION / CULTIVATION FOR MEDICINAL USE IN SA

- South Africa has bodies such as the Medicines Control Council and the Medical Research Council who have already shown their appetite for regulating and controlling medicinal use of this plant.
- Traditional healers and producers / cultivators that supply them are not subject to medical industry regulations but rather regulation by the relevant traditional healer's organisations.
- All producers who choose to claim that their product is for medical use should be regulated through existing bodies, but this area should be carefully considered in consultation with the current "black market" producers of Cannabis medicine as that is where the local expertise lies..
- All citizens have the choice to use a medically certified , "pharmaceutical-type" product or to self medicate with a product from other sources.
- This proposal does not outline any regulations for medicinal use as this is not within our mandate or area of expertise. However, it is our intention to broaden the scope of this section in future updates to this document.
- Standardisation and research that supports the medicinal claims of Cannabis products is what sets this sector of the Cannabis Industry apart.

5. PRODUCTION FOR INDUSTRIAL USE – HEMP

The production of Hemp in South Africa should be easily facilitated after legalisation given that there has been a research permit in place for 20 years at least. It is our wish that the results of this research will aid the development of a very viable Industrial Cannabis industry in the near future. We have enough South African experts to do this. More detail on this specific industry will be available at a later stage as it is a very large subject and out of the scope of expertise and resources of the current authors of this document. Watch Tony Budden, Hemp expert, at the Clinical Cannabis Convention.

<https://www.youtube.com/watch?v=0cS-m22153w>



6. MAKING OUR POINT ABOUT LICENSING / PERMITS

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

The process of licensing producers of Cannabis / Cannabis products is not appropriate in South Africa.

Production in South Africa **MUST** be open to any willing market participant that fulfils certain criteria.

The **ONLY** criteria required will be a registered business and tax number. This process will be made accessible and simple for **ALL** South Africans and will have the added benefit of introducing thousands of previously disadvantaged citizens to the formal economy.

We have a case study of the **ONLY** license awarded for research into Industrial Cannabis in SA and this case study spans over 20 years. This contains all our reasons why we know that licensing will only lead to corruption as it mirrors the tender system which, historically, has excluded so many of our citizens.



7. SECURITY

- Any Cannabis production facility with common sense knows that security is important.
- South Africa has a high crime rate so it follows that a Cannabis farm will need security. However, the extent of that security is up to the registered owner of the facility.
- Cannabis businesses need access to insurance for their crop / products / business
- Insurance requirements will set minimum standards of security.

8. SAFETY & QUALITY CONTROL

- Issues of safety and quality control must be dealt on the basis of an admission that South Africans have been using Cannabis for hundreds of years with very few quality measures in place other than the discernment of the user.
- Cannabis is a safe relaxant and prohibition comes from a place of fear. Members of the legislature who will be drafting the regulations must bear in mind the evidence on record from The Trial of the Plant as to the overall safety of the plant.
- Clear guidelines for quality control should be outlined and agreed to by experts and users alike.
- Quality control will determine the success or failure of a Cannabis business in the long run.
- Quality control can be in house, outsourced to a private company or accessed through a Cannabis co-operative / social club.
- Quality control measures are of utmost importance and must be the first priority when setting up new systems. These measures must be accessible to all cultivators and traders and be provided at little or no cost. The cost of these measures can be built into the cost of production in a simple, cost effective and enforceable way.
- If a Cannabis consumer wishes to use a product that is not tested or labelled then that is at the risk of the consumer. Untested, unlabelled Cannabis should remain legal but cultivators and traders need to be educated on the advantages of producing a quality product.
- We live in the age of technology and experts and entrepreneurs in this field must be encouraged to use their expertise to further the effectiveness of “seed to sale” quality control measures that are accessible to all.

9. TRAINING, EDUCATION & ENTREPRENEURSHIP IN THE CANNABIS INDUSTRY

Training and Education will differ from establishment to establishment and programs will be available to outsource training or complete it in house. Proposals around entrepreneurship in the Cannabis industry still need to be expanded here and we welcome the public's input on this.

Manuals and courses need to be set up for the following areas (for example) and this can be done by drawing on the vast knowledge contained within the current (illegal) Cannabis industry and this is a area with the potential for job creation. International expertise should be used to supplement local knowledge and training should be structured in such a way that national certification is possible. This would create a standard across the industry and enhance the enforceability of regulations.



1. BASIC TRAINING

- The proper use of security measures and controls that have been adopted by the Cannabis establishment for the prevention of diversion, theft or loss.
- Procedures and instructions for responding to an emergency; and
- Laws and regulations related to the use of Cannabis.
- Basic training on the plant, medicine and products that can be made from Cannabis.

2. RETAIL CANNABIS STORE

- The different strains of Cannabis;
- The different methods of using Cannabis and Cannabis products;
- Learning to recognize signs of Cannabis abuse, impairment and instability in the use of Cannabis by a consumer;
- Clinical effects of Cannabis on the human body and how THC affects the consumer;
- Required warnings and literature, which must be supplied to the consumer;
- Methods of refusing entry or sales to persons, including: Verifying identification and using age verification devices; Education on the effects of cannabis on those under 18; Recognition of false or altered identification.
- Understanding law enforcement's role and compliance checks
- Preventing unlawful consumption
- Preventing use of Cannabis by minors - laws and penalties
- How to prevent and deal with disturbances

3. CANNABIS TESTING FACILITY

- Good laboratory practices as adopted by the testing facility
- The standard operating procedures and the quality control and quality assurance programs of the testing facility.

4. CANNABIS CULTIVATION FACILITY

- This training could be supplementary to basic horticultural education.
- Methods of cultivation including the use of nutrients, fertilizers, grow mediums, etc
- Methods for recognizing the signs of insect infestation, pathogens and disease in Cannabis plants, and the procedures for eradication and the safe disposal of plants so affected;
- The nutritional requirements of Cannabis plants at various growth stages, including, without limitation, proper mixing and dispersal of fertilizer, flushing procedures and procedures for postharvest trimming, drying and curing; and
- The safe handling of equipment, including high-intensity discharge lamps, electrical ballasts, pumps, fans, cutting implements and other equipment for cultivation.
- General health, safety and hygiene.



5. CANNABIS PRODUCT MANUFACTURING FACILITY

- Understanding the difference between concentrated Cannabis, topical products and Cannabis flowers, as applicable to the operations of the Cannabis product manufacturing facility
- The procedures used by the cannabis product manufacturing facility to create concentrated Cannabis and Cannabis products; and
- The proper procedures for handling concentrated Cannabis and Cannabis products including the procedures used to prepare, produce, package and store such products as required.

6. CANNABIS DISTRIBUTOR

- The proper procedures for the handling of Cannabis plants, usable Cannabis, concentrated Cannabis and Cannabis products;
- The procedures for proper transportation and storage of cannabis plants, cannabis, concentrated cannabis and cannabis products; and
- Maintaining the proper driver's license for the expected loads.

10. ENVIRONMENT AND ENERGY

- All Cannabis farmers in South Africa should be encouraged to grow outdoors with a minimum of chemical fertilisers and grow mediums.
- All cultivators and traders must state clearly in their marketing material/ labelling whether the plants were grown indoors or outdoors and what grow mediums were be used.
- **ALL large scale indoor growing MUST use renewable energy sources – solar or wind power.**
- Good environmental practices should be used as marketing and encouraged on all levels of production.
- Education must be provided for those with a history of questionable environmental practices. Prohibition necessitated some such practices. For example: Cultivators were forced up into steep hillsides and Cannabis plants grown on slopes has led to soil erosion.
- Environmental impact assessments must be a requirement for the establishment of large cultivation operations.



11. CANNABIS SOCIAL CLUBS / CO-OPERATIVES / COLLECTIVES

Summary

- The purpose of Cannabis Social Clubs is to ensure that the rights of Cannabis users are respected, to ensure that their exercise conforms to the law and to make them compatible with the rights and freedoms of all persons.
- CSCs cultivate and produce Cannabis products according to the number of registered members. “These associations have been constituted from the model of sharing, that is self-cultivation and self-consumption shared by members of the association. The model is not, therefore, oriented to third persons, but to the activity among the members of the association.”
- All Cannabis Social Clubs must be registered and can be non-profit entities with a shareholding option available for those who work permanently at the club.
- All production and cultivation must be in-house or associated with a club’s community outreach programmes which are outlined in the registration and detailed in the annual report of the club.
- Quality control can be outsourced.
- Members can procure Cannabis either at the registered address or online via courier.
- Members are actively involved in choosing strains / products and monitoring the running of the club.
- Prices are kept low by the co-operative structure.
- Social clubs can increase in size but safeguard against corporatisation at the same time.
- Criteria, guidelines & codes of good practice are simple to establish and maintain.

An extensive list of “outcomes” documents from around the world is available on our website resources page and are important for reference when fleshing out the Cannabis Social Club / Co-Operative / Collective model.

12. SCIENTIFIC RESEARCH INITIATIVES

Although Cannabis remains the most researched plant on the planet, there is always room for more knowledge. To date the realm of Cannabis medicine has received the lion’s share of attention and funding and it is our hope that scientific research will broaden its scope after the plant is legally regulated. Despite our political woes, South Africa remains at the forefront of many areas of scientific research. Emerging, legitimate Cannabis businesses and organisations should be given the full support of the authorities for their support of research projects going forward. The various established research facilities should also be supported to come up to speed with world trends around Cannabis, the plant and its uses.

13. WORKER’S RIGHTS WITHIN THE CANNABIS INDUSTRY

The authors of this draft are in discussions with experts in the trade union field and this section will be updated once we have established the relevant parts of existing labour legislation and adapted them accordingly. We are very aware of the shortcomings of existing legislation pertaining to farm workers specifically and intend to draft this section in a manner that will showcase Cannabis workers rights as a model that is both economically viable and revolutionary in terms of the rights afforded to workers who are often left behind on the path to prosperity.



SECTION 4 – REGULATION OF USE AND TRANSPORTATION

1. AGE LIMITS

- Under South African law, one becomes an adult at the age of 18, and assumes the rights and responsibilities of any other adult under South African law.
- The Minimum Legal Drinking Age (MLDA) in South Africa is set at 18. The Minimum Cannabis Use Age (MCUA) in South Africa should mirror that of alcohol, which currently stands at 18.
- Cannabis has medical uses, and the recent move of Cannabis from Schedule 7 to Schedule 6 of the Medicines Control Act shows government's commitment to legalise Cannabis for medicinal use.
- The MCUA does not apply to those under 18 that have been prescribed Cannabis for medicinal use.
- Under South African law, adults who supply minors alcohol are criminally charged, and the corresponding Cannabis laws pertaining to this section should mirror those of alcohol but all cases must go through the Cannabis OmBUDsman to ensure that due legal process is followed.
- Schools and educational facilities cannot treat Cannabis related offences worse than alcohol. Drug education pertaining to Cannabis must be updated to reflect the latest scientific findings and thus be appropriate and relevant so as to strongly discourage the use of or possession of Cannabis within a school or learning environment without using fear as the main motivation.
- Cannabis related offences cannot have worse penalties than those of more harmful drugs like tobacco and alcohol.

2. METHODS OF /AREAS FOR CONSUMPTION BY ADULTS

- All traders – social clubs or retail – may trade in all types of Cannabis, consumable by all delivery methods.
- Cannabis hubs may test, and offer on auction, all types of Cannabis: Seed, flowers, concentrates, edibles, Industrial Cannabis and it's by-products, etc.
- Both retailers and social clubs may offer venues for the consumption of Cannabis.
- Hubs for testing and auction of Cannabis may not allow a venue for the consumption of Cannabis.
- It is possible that the authorities may ban all Cannabis smoking out of designated areas / clubs / retailers.
- Smoking of Cannabis, specifically, could be restricted to similar areas that currently allow tobacco smoking.
- Smoking of Cannabis in public areas could be restricted to similar areas that currently allow drinking of alcohol.

3. DRIVING

- Anyone who has used Cannabis will tell you that this plant does not have the effect of dampening inhibitions. If anything, Cannabis heightens awareness and the user is very aware when their ability to drive, for example, is impaired. This is exactly the opposite to alcohol and authorities who have expressed opinions as to how Cannabis and driving should be enforced have routinely ignored the actual, real life experiences of the users.
- It is important to note that this section will require vigorous scrutiny and research around international models. What follows is a broad outline and is by no means prescriptive.
- Driving under the influence of any substance that may impair the person is dangerous, both for the driver and for other road users, and is prohibited for good reason. If we look at current South African law, the legal blood alcohol limit for driving is less than 0.05g per 100ml of blood, and the legal breath alcohol limit is less than 0.24mg in 1 000 ml of breath.

- Operating a vehicle over these limits is seen as a very severe criminal offence, punishable by having either the offender's driver's license being suspended, massive fines, time in prison, or a combination of all of the above.
- Drug test machines such as the Drager DrugTest 5000 can be employed roadside to verify whether someone has Cannabis present in their system or not, but **cannot be used to test impairment. It is the responsibility of law enforcement to PROVE IMPAIRMENT.**
 - Tetrahydrocannabinol (THC, the primary psychoactive component of Cannabis) can impair one's ability to drive. The main problem is that there are many other contributing factors that mean that the use of the same amount of THC may affect one person's abilities more than another's. This makes visually proving impairment a challenge.
- By setting a Blood Drug Concentration (BDC) limit, similar to a Blood Alcohol Concentration (BAC) limit, applying the law becomes easier, and there is no need to prove impairment. The BDC limit would prove that the person had consumed cannabis within a period of time (2 hours) prior to driving and thus there is a high potential for impairment.
 - It must be understood that Cannabis and alcohol are sometimes consumed together. In this case, someone over the alcohol limit must be charged for that, it being the more harmful substance.
 - A test for BDC limit can ONLY be ordered if there is significant likelihood of impairment and this could be established by either a physical or cognitive test.
- It is suggested that a maximum BDC limit of >5 nanograms (ng) per millilitre of blood, and a minimum limit of >2 nanograms (ng) per millilitre of blood be set. >2ng/ml would be seen as a minor offence, accompanied by a fine, no different to a being fined for speeding or parking offences. BDC results of >5ng/ml may reflect some level of impairment, hence can be seen as a serious offence, and offenders can be dealt with in the same manner as those transgressing alcohol laws.
- Cannabis related offences cannot have worse penalties than those of more harmful drugs like tobacco and alcohol.



4. TRANSPORTATION & STORAGE - Some Ideas

- A registered Cannabis business may transport Cannabis and Cannabis products between a cannabis establishment and: Another Cannabis establishment; and between the buildings of the Cannabis establishment.
- A Cannabis establishment may only transport Cannabis and Cannabis products to a retail Cannabis store, Cannabis Social Club or other Cannabis distributor if both businesses are registered. This is to ensure safety, security and accountability and is in the interests of the businesses concerned.
- Registered Cannabis businesses may enter into service agreements or contracts with other Cannabis establishments for the transport of Cannabis and Cannabis products which may include such requirements as insurance coverage, third party and employee theft and climate control. For the safety of the businesses concerned, all paperwork relating to the products being transported should be in the possession of the driver.
- Before transporting Cannabis or Cannabis products it is recommended that the registered Cannabis business or its agent should complete a trip plan that includes, without limitation:
 - The agent name and registration number providing and receiving the Cannabis.
 - The date and start time of trip;
 - A description, including the amount, of the Cannabis or Cannabis products being transported; and
 - The anticipated route of transportation.
- In the interests of security it is recommended that the Cannabis businesses use a vehicle without any identification relating to Cannabis and which is equipped with a secure lockbox or locking cargo area which must be used for the sanitary and secure transportation of Cannabis and Cannabis related products and have a means of communicating with the Cannabis establishment for which he/she is providing transport and ensure that all Cannabis or Cannabis products are not visible.
- After transportation of Cannabis or Cannabis products a Cannabis business must enter the end time of the trip and any other changes to the trip plan should be recorded and kept with all transportation records.
- Each registered Cannabis business or its agent transporting Cannabis or Cannabis products must report any vehicle accident that occurs during the transportation to a person designated by the Cannabis distributor to receive such reports within 24 hours after accident occurs; and
- A Cannabis distributor that receives a report of loss or theft must immediately report it to the appropriate law enforcement agency.
- A registered cannabis distributor may only transport cannabis and cannabis related products within South Africa.
- At each registered Cannabis business, be it a production, retail, distribution or testing facility, Cannabis must be stored in a secure environment and staff must be rigorously trained in security procedures.



5. CANNABIS TESTING AT WORK

- Testing for alcohol and other substances is allowed by the Basic Conditions of Employment Act (BCEA) and the Occupational Health and Safety Act (OHSA).
- If minimum BDC levels for operating a vehicle have been established, it stands to reason that these levels must be used for testing in the workplace.
- Urinalysis test devices (the main way people are tested for drugs in South Africa) used for testing for drugs (legal/illegal/illicit) can only be used to indicate the presence of a substance in a person's system. Studies have shown that cannabis can be present in the system for a maximum period of between 25 and 77 days. Under proposed legalisation of Cannabis in South Africa, this would mean that the presence of Cannabis in one's system in a standard urinalysis would mean nothing, merely that THC is present in the system of the person. Dismissing someone under this situation would be a gross violation of the person's rights.
- Each industry will have different requirements, as it is for alcohol today.
- No person can be dismissed for a positive result for cannabis in their system without a registered BDC test.
- Only BDC results of $>5\text{ng/ml}$ may be grounds for dismissal, and only if it is proven that the person is sufficiently impaired to be unable to do their job.
- Each employer must have a Substance Abuse Policy. This policy must clearly stipulate and define how and when testing will take place, and the Substance Abuse Policy must be agreed upon by all staff.
- Persons that are using cannabis medicinally, and have a prescription for cannabis are to give a copy of said prescription to their employer. The employer may not test the employee for cannabis for a period of no less than 77 days after the employee has ceased taking cannabis.
- The employer may in no way, shape or form discriminate against any person that uses Cannabis for any reason.
- Cannabis related offences cannot have worse penalties than those of more harmful drugs like tobacco and alcohol.
- Complete prohibition of the use of Cannabis in the workplace can only be enforced if the work being done is of a highly specialised or dangerous nature. For example: Operators of heavy machinery or airline pilots.

6. CANNABIS TOURISM

Guidelines for the development of a Cannabis Tourism industry in South Africa should be carefully considered in consultation with both the Minister of Tourism and private companies, particularly those that operate within the tourism development field. Any efforts at promoting Cannabis tourism should be centred around sustainability and environmental awareness and be focused on supporting vulnerable rural populations. Tourism is a sector that is making good progress in these areas and there are many examples to reference.

7. EXPORT

The economic potential of the Cannabis export market is significant but, given the current discrepancies in legalisation models across the world, trade agreements with countries which have legalised or partially legalised Cannabis will have to be carefully thought out and tailored to each specific agreement. In an ideal world it would be significant if community development projects in compatible countries could partner with similar projects in SA to foster knowledge exchange and mutual economic benefit. These types of export agreements could be subject to preferential treatment in order to foster a spirit of reconciliation between communities who have been vilified by their governments for so long. This will also go some way towards curtailing the potential for large corporations to have the monopoly in the export market.

SECTION 6 – THE WAY FORWARD

1. ENGAGING WITH GOVERNMENT

The government are fighting the legalised regulation of Cannabis in South Africa in court and the authors of this document are, in various ways, plaintiffs in these court cases. It is therefore not prudent for these authors to engage with government at this stage. We know that various stakeholders advocating the end to Cannabis prohibition purport to be in discussions with government already. This is indicative of the contradictions at play. Cannabis remains completely illegal and classified as Schedule 7 in the Medicines Control Act.

We look forward to a favourable outcome in court and a process whereby interested individuals can be part of the process of engaging with government. Our time will come even though the exact processes through which this will happen are unclear. Citizens need to be ready and up to speed with the issues in order to mobilise the minute a favourable court judgement is announced. We need to be ahead of the pack!

2. STANDING FIRM ON SELF REGULATION

Once this discussion document has been expanded it should be clear that self-regulation is both possible and necessary. Cannabis use, cultivation and trade has been self-regulated under prohibition and there is a core of people who want to see a system of transparency and accountability once the veil of prohibition has been lifted. We are adamant that we will not place ourselves at the mercy of either monopolies created by wealth or self-enriching government officials who come in from the outside to tell us what to do. Let Cannabis in SA be the poster child for a self-regulated industry that actually works.

3. THE IMPORTANCE OF TECHNOLOGY

Under prohibition, users, cultivators and traders in Cannabis have harnessed the power of technology very successfully. The implementation of regulations should follow this trend and create a technology based system from the outset. It is common knowledge that the percentage of professionals working in the IT and related industries and using Cannabis is very high. We know that, in South Africa, we have a dearth of professionals who are keen to develop a system that is accessible to all in our diverse country. The technological approach is also the most feasible in terms of cost. This would prevent a bloated bureaucratic system but would require rigorous vetting of participants' credentials in order to combat costly failures with experimental systems.

4. SWAZILAND AND LESOTHO, OTHER SOUTHERN AFRICAN REGIONS

It is suggested that, once the courts have declared the relevant laws unconstitutional, South Africa should invite envoys from the SADC region to observe the process of establishing a legally regulated Cannabis industry. That way we would be able to share our experience and knowledge with each other and prevent any misconceptions along the way. Use must be made of international resources such as the United Nations and the World Health Organisation as we keep pace with changes around the world and lead the way in Southern Africa.

5. EXPUNGEMENT AND REPARATIONS FOR CURRENT CRIMINAL RECORDS / HARM DONE BY PROHIBITION

While we have been watching the developments in Cannabis policy around the world it is only recently that various jurisdictions that are in the process of legalised regulation for responsible adult use are taking this important outcome into consideration. Most notably California and Canada. This area will have to be elaborated on in consultation with law experts. The current system for the expungement of criminal records is lengthy, costly and cumbersome. The issue of actual reparations for harm done through criminalisation over the last 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 set up a system for the cancellation of previous convictions but the authorities will need to be supported in both designing and implementing this system.

6. REWRITING DRUG EDUCATION

"Instead of endorsing responsible education programmes, policy makers continue to appeal to tired fallacies, that have long lost their influence on our young people. Any young person with a bit of curiosity will find evidence (both through personal experience and through access to information) to discredit the intellectually hollow 'Just Say No' campaign. I suggest that we need to replace this failed approach with honest information giving and open discussion that respects the complex choices facing young people."

- Andre Croucamp "The Anatomy of Prohibition"

We are firm in our opinion that the current system of "drug education", particularly in schools, is sorely lacking in substance and often blatantly wrong. For example: South African learners are taught that Cannabis is a "gateway drug" and this has been disproved many times over. In consultation with experts in this field, the current curriculum will have to be revised and updated for the 21st century.

7. NATIONAL DRUG MASTER PLAN / NATIONAL DEVELOPMENT PLAN - HOW DOES THIS FIT IN?

These plans, outlined by our government, should be carefully considered so that the proposals for legal regulation of Cannabis can both add to, and be a critique of, existing strategies. In this way it is possible for civil society organisations and the public at large to participate in planning for the future. For example: Our expert witness for The Trial of the Plant, Dr Simon Howell, co-authored a document entitled: The South African National Drug Master Plan 2013 – 2017: A Critical Review, in which he describes the plan as being "riddled with internal inconsistencies and impractical resolutions." This discussion document needs to be informed by such expert critique and the authors of this document will need to consult with all relevant experts in this regard so that a succinct commentary can be delivered within the final draft.

8. CONCLUSION – HOW TO SUBMIT COMMENTS / SUGGESTIONS FOR THE FINAL DRAFT.

This is a discussion document. Please be part of the discussion by clicking on the link below to submit your comments. If you can help with the drafting of the final document, please sign up to become a member of The Green Network.

PLEASE SUBMIT COMMENT VIA THIS LINK: <https://podio.com/webforms/20043361/1361201>



NON-PROFIT COMPANY

COLLECTIVELY REFORMING SOUTH AFRICA'S CANNABIS LAWS

Reg No: 2013/191487/08

