



PRESS RELEASE 20 APRIL 2019

SOUTH AFRICAN DAGGA PRIVATE CLUBS INITIATIVE



We, the people who use Cannabis throughout South Africa who are the keepers of traditional knowledge of the plant, have been freed after 110 years of the State-led violations of our right to privacy and our dignity as human beings after the Constitutional Court's judgement "decriminalising the use or possession of Cannabis by an adult in private for that adult person's personal consumption in private; and the "decriminalisation" of the cultivation of Cannabis by an adult in a private place for that adult's personal consumption in private"¹.

Facing the apparent reluctance from the authorities to timeously develop and implement a sensible and sustainable legal framework with regards to Cannabis cultivation for personal use, as required by the Constitutional Court's judgement – and thus our concerns as to the ability of our authorities to protect, preserve and enhance our rights, we are:

- *Aware that the right to privacy can be exercised as a collective right²,*
- *Aware that, besides our right to privacy, it is also our right to equality, our right to the highest attainable standard of health, our freedom of thought, conscience, religion, opinion, expression, and information, our freedom from arbitrary arrest and detention, our freedom from torture and other cruel, inhumane, or degrading treatment or punishment, our right to a fair trial, and our right to remedy and reparation for the gross violations of human rights, that are in the balance,*
- *Determined to make use of our freedom of association and peaceful assembly to ensure that the rights of our people are respected,*
- *Committed to ensuring that the exercise of our rights and freedoms conforms to the law,*
- *Resolved to collaborate with the authorities in order to gain the recognition of our society as a whole,*
- *Acknowledging that trade in Cannabis remains completely illegal in South Africa,*

We initiate our own model of non-trade regulation and control, affirming its non-profit nature, and framing it in the collective exercise of our rights to personal production, retention, and use of Cannabis,

We call this model a Dagga Private Club and declare that it aims to prevent us from being involved in illegal activities, and ensuring that certain requirements concerning public health and safety are being fulfilled.

We are confident that, like Cannabis Social Clubs³ in Spain, Belgium, Uruguay, Switzerland and USA, local authorities will have an interest in designing regulations based on this model, which can enable them to ensure a transparent and safe framework, prevent the access of minors to Cannabis, and help redirect public expenditure on law enforcement to real safety priorities.



Promoted by Fields of Green For All
Empowered by the European Institute for Multidisciplinary Studies on Human Rights and Science (**Knowmad Institut**)

Supported by Local Community Groups & Non-profits | African Bush Doctorz | African National Healers Association | Afristar Foundation | Cannabis Development Council of South Africa | Cannabis Industry Development Cooperative Western Cape | Ethnomedicine Practitioners Association of South Africa | Rastafari United Front | South African Drug Policy Initiative | South African Drug Policy Week | Traditional Healers Organisation | Traditional and Natural Health Alliance | Umzimvubu Farmers Support Network | **Supported by the private sector** | Aeradix | Baked in Jozi | Bio Leaf Technologies | CannabizArt | FreedomFarms | Futurama | GreenRush | Greenthumb Hydroponics | Grow Guru Horticulture | HempHub | Hemporium | i420cpt | Oil2Health | Puff.co.za | The High Co | The Presentation Clinic | Vaporize

¹ Constitutional Court's briefing: www.concourt.org.za/index.php/judgement/260-minister-of-justice-and-constitutional-development-and-others-v-prince-cct108-17

² Marks, Amber (2019), "Defining "personal consumption" in drug legislation and Spanish Cannabis clubs", International & Comparative Law Quarterly, 2019.

³ ENCOD, Code of Conduct for a Cannabis Social Club in the European Union encod.org/en/cannabis-social-club/how-to-create-a-cannabis-social-club/code-of-conduct-for-european-cannabis-social-clubs

Please note that this document constitutes fundamental policy research, and in no way constitutes any sort of formal regulation.

CODE OF CONDUCT for a **Dagga Private 3**

Dagga Private Clubs (DPC) is a registered, non-profit company formed by adult people who use Cannabis. A DPC consists of articulation of private spaces where registered members collectively organize the safe & private cultivation of *Cannabis sativa* L. for an amount exclusively meant for their own personal use.

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Before becoming a member of a DPC, the applicant must state that he or she is already a person who uses Cannabis.

The only way to become a member without prior personal background of Cannabis use is by providing a medical recommendation stating the diagnosis and the dosing recommendations. Diseases granting access to the DPC are those for which the use of Cannabis is indicated, according to the regularly published list of the International Association for Cannabinoid Medicines (IACM). *(This clause will only be applicable when regulations for the prescription of Cannabis in South Africa are available.)*

DPCs have a protocol for adhesion of new members that includes an explanation on their rights and duties and an indication of the *estimated* amount required for personal use monthly.

DPCs seek partnership with social and health care professionals to provide information and to train staff and members of the DPC in harm reduction and basic health responses to problematic use or hazardous outcomes of Cannabis use.

DPCs should aim to be hubs of information for Cannabis knowledge, from botanics to cultural, social, historical, spiritual and traditional aspects of this plant, both locally and internationally.

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DPCs are organized as Non-Profit Companies, characterised by transparency, democracy, and non-profitability.

DPCs function with complete openness to their members about financial arrangements. Members can see how the costs are calculated and the money is spent.

DPC organize a general assembly at least once a year, where annual reports are discussed. These reports include a complete balance of income and expenses, as well as a quality assessment of the crops and the products proposed for consumption.

DPC can hire staff members, who can receive reasonable remuneration. Thus they contribute to the creation of decent and sustainable employment, to economic dynamism, and the State can regularly collect taxes on its wages.

DPC members pay membership fees which may be proportionate to their consumption, used to cover the costs of production, processing, storage, management, and wages. Any economic profit or excedent is reinvested in the association, in particular social, cultural, artistic or scientific

activities, in the hiring of legal or medical consultancy, or in the support to the civil society sector promoting the legal regulation of Cannabis.

DPCs are willing to enter into dialogue with authorities and all local social stakeholders, groups, and communities.

DPCs seek partnership with local universities, scientific entities or NGOs able to undertake content analysis of the crops in order to determine content in cannabinoids and the possible presence of contaminants.

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The production capacity of a DPC is based on the expected level of yearly consumption of its members, increased with a reasonable buffer to counter the risk of failed harvest, theft, and provide for 'emergency stash' for people who consume Cannabis for medicinal reasons. The internal rules of a DPC include a protocol about the management of this eventual surplus.

DPC takes a comprehensive written record of consumption made by their members from the collective crops, a register which contains at least a membership number, the amounts withdrawn and the date of withdrawal. These registers must respect personal data privacy at all times.

The records of a DPC need to reflect the amounts that members obtain in order to avoid the possibility of diversion.

DPC takes a comprehensive written record of production, in which the association certifies the dates of the cycle of cultivation, the methods of cultivation and processing and the amounts harvested and suitable for consumption.

Cultivation area is safe, secure, and include areas for staff.

Inspections are carried out randomly by the staff of the DPC, to verify the safety measures and estimated volume of production.

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The methods of cultivation, post-harvest treatment, processing, etc. shall meet to the standards of organic agriculture, ensuring the safety of the final product, and include an assessment of the sustainability of the use of natural resources.

Harvests are controlled wherever possible and analyzed to prevent possible contamination and the final production volume is quantified once dried.

Where necessary, DPCs issue written authorizations to its representatives in charge of transporting the harvests from the cultivation area to the premises where the controlled distribution is carried out.

Background.

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concourt.org.za/index.php/judgement/260-minister-of-justice-and-constitutional-development-and-others-v-prince-cct108-17

The High Court declared that...

- the prohibition of the use or possession of any dangerous dependence-producing substance or any undesirable dependence-producing substance [4(b)]
- the prohibition of the deal in any dangerous dependence-producing substance or any undesirable dependence-producing substance [5(b)]
- the prohibition of the acquisition, use, possession, manufacture or supply of Cannabis (22A(9)(a)(i), Schedule 7)
- the prohibition of the sale or administration of Cannabis other than for medicinal purposes [22A(10), Schedule 7]

...are inconsistent with the right to privacy to the extent that they prohibit the use, possession, purchase or cultivation of Cannabis by an adult person in a private dwelling for his or her consumption.

The effect of the judgment is two-fold:

- (a) it decriminalises the use or possession of Cannabis by an adult in private for that adult person's personal consumption in private; and**
- (b) it decriminalises the cultivation of Cannabis by an adult in a private place for that adult's personal consumption in private.**

However, the use or possession of Cannabis by a child anywhere, or by an adult in public, is not decriminalised.

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See: Marks, Amber (2019). "Defining "personal consumption" in drug legislation and Spanish Cannabis clubs". International & Comparative Law Quarterly, 2019.

The concept of privacy in Article 8 of the European Convention on Human Rights (ECHR) includes the right to establish and maintain relations with other human beings for the fulfilment of one's personality, and this extends to the right of association:

The Court reiterates that 'private life' is a broad term encompassing the sphere of personal autonomy within which everyone can freely pursue the development and fulfilment of his or her personality and to establish and develop relationships with other persons and the outside.¹¹⁸

In *Niemitz v Germany*, the European Court of Human Rights stated:

The Court does not consider it possible or necessary to attempt an exhaustive definition of the notion of 'private life'. However, it would be too restrictive to limit the notion to an 'inner circle' in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings.¹¹⁹

The North American theorist Bloustein proposed an explicit link between individual privacy and the right of association. "The right to be let alone," he **I.C.L.Q. 222* asserts, "protects the integrity and dignity of the individual. The right to associate with others in confidence - the right of privacy in one's associations - assures the success and integrity of the group purpose." He explains that:

[g]roup privacy is an extension of individual privacy. The interest protected by group privacy is the desire and need of people to come together, to exchange information, share feelings, make plans and act in concert to attain their objectives ... , group privacy protects people's outer space rather than their inner space, their gregarious nature rather than their desire for complete seclusion.¹²⁰

If we are to define 'personal consumption' is defined as everything that pertains to the constitutionally protected realm of the private, it is at least arguable that it should include collective cultivation and consumption by consumers in private.

