



22 May 2026
Johannesburg, South Africa

To: United Nations Special Rapporteur in the field of Cultural Rights

Call for submissions to inform the report of the Special Rapporteur to be presented at the UN General Assembly.

Dear Ms Xanthaki

It is our pleasure to offer perspectives on the use, cultivation and trade in Cannabis in South Africa with respect to the implementation of cultural rights. This plant forms part of our Cannabis communities' cultural identities, heritage, and the right to participate in cultural life.

Background

The Cannabis conundrum in South Africa offers one of the most richly documented and legally contested examples of cultural rights implementation gaps globally. Our country can provide a case study in the gap between structural cultural rights recognition and substantive implementation. South Africa has a constitutionally robust framework for legislative enforcement machinery but has never translated the recognition into substantive protection for individuals or communities who use, cultivate and trade in Cannabis.¹

In 2018, the Constitutional Court of South Africa declared that the prohibition of the use and cultivation of Cannabis within private spaces is unconstitutional.² The Cannabis for Private Purposes Act was signed into law by our president on 24 May 2024.³ Regulations that will enable this law to be promulgated were published in draft form⁴ in February 2026 and the Department of Justice and Constitutional Development has

¹ <https://www.justice.gov.za/constitution/SACConstitution-web-eng.pdf>

² <https://fieldsofgreenforall.org.za/the-constitutional-right-to-privacy/>

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https://www.parliament.gov.za/storage/app/media/Acts/2024/Act_7_of_2024_Cannabis_for_Private_Purposes_Act.pdf

⁴ <https://www.justice.gov.za/legislation/notices/2026/20260202-gg54061rg7067-Draft%20Cannabis%20Regulations.pdf>

stated publicly⁵ that they received 2807 comments from the public by the submission deadline on 5 March 2026. To date, there has been no feedback from the department as to whether amended draft regulations will be circulated for further public comment or when the final regulations will be published in order for the Cannabis for Private Purposes Act to be promulgated and Cannabis to be removed from the Drugs and Drug Trafficking Act 140 of 1992⁶, as ordered by the Constitutional Court.

This status quo has resulted in the continued harassment, arrest and incarceration of members of our Cannabis communities and demonstrates why the South African-Cannabis nexus is a powerful case study for this report. In short, and to be discussed in more detail when answering the questions, Cannabis law reform and the implementation of cultural rights sit at the intersection of:

- Constitutional protection vs on-the-ground enforcement failure
- Colonial origins of prohibition vs draft legal reforms that do not recognise this.
- Indigenous and religious cultural identity vs a State that has never identified Cannabis as being part of this identity.

South African communities have had a centuries-long relationship with the Cannabis plant that continues to this day. This is despite one hundred years of colonial prohibition deliberately imposed by one population group on others to control labour and suppress non-Christian cultural practices. Indigenous people – the Khoi, San, Nama and others, as well as a wide range of South African cultures - Zulu, Xhosa, Venda, Tswana and others, have centuries of documented use of Cannabis for medicinal, ceremonial, and social purposes. The Rastafari religion is widely practised in SA. For people of this faith, the sacramental use of Cannabis is a core religious-cultural practise. Our rich history creates a cultural tapestry that is woven together by our rights under our (relatively new) Constitution.

⁵ <https://fieldsofgreenforall.org.za/cannabis-for-private-purposes-act-regulations-update-from-the-dept-of-justice/>

⁶ <https://www.justice.gov.za/legislation/acts/1992-140.pdf>

1. Cultural diversity is written into our South African Constitution. Freedom of religion, belief and opinion,⁷ as well as language and culture⁸ within cultural, religious and linguistic communities⁹ is enshrined in the apex law and enforced by the highest court in the land, the South African Constitutional Court.

However, with regards Cannabis, despite its widespread, historic use, cultivation and trade and recognition of the harms of outright prohibition in our Constitutional Court, Cannabis communities are not accepted as part of our larger cultural diversity. This is illustrated by gaps between structures that exist and their implementation for the well being of all South Africans.

a) The foundational principles of the Constitution of South Africa mentioned above do not translate to the rights of indigenous Khoi, San and Nama people as they are not formally recognised in legislation, their languages are not included in our list of 12 official languages and they do not have a secure place in the House of Traditional Leaders¹⁰, despite repeated promises of inclusion from the Department of Cooperative Governance and Traditional Affairs. Many members of our Cannabis community, including the Rastafari and various rural and urban groups, are also part of indigenous communities affected by this structural gap.

b) The “Indigenous Knowledge Systems (IKS)” Act 6 of 2019¹¹ has been signed into law, but it has not yet fully commenced. It requires a formal presidential proclamation to take effect.¹² Cannabis is part of South African traditional knowledge and features in the 2nd Edition of the African Herbal Pharmacopeia¹³, a major new work dedicated to Africa’s medicinal plant heritage. The gaps in our legislative structure overshadow meaningful inclusion of Cannabis communities in culturally diverse IKS discussions. Inclusion would also reduce the stigma that surrounds Cannabis use, cultivation and trade.

c) The Cannabis for Private Purposes Act 7 of 2024¹⁴ has not been promulgated due to the attendant regulations not being finalised, eight years after the historic Constitutional judgment. This has resulted in “grey areas” that have been exploited by those with the resources to enter the once-prohibited Cannabis supply chain through various means.

⁷ <https://www.justice.gov.za/constitution/SACConstitution-web-eng.pdf> Chapter 2 (Bill of Rights) Section 15 pg 7.

⁸ <https://www.justice.gov.za/constitution/SACConstitution-web-eng.pdf> Chapter 2 (Bill of Rights) Section 30 pg 13.

⁹ <https://www.justice.gov.za/constitution/SACConstitution-web-eng.pdf> Chapter 2 (Bill of Rights) Section 31 pg 13

¹⁰ <https://nationalgovernment.co.za/units/view/135/national-house-of-traditional-leaders-nhtl> front page

¹¹ https://www.gov.za/sites/default/files/gcis_document/201908/4264719-8act6of2019protectpromodevelopmanagementindigenousknowledgeact.pdf

¹² <https://www.researchprofessionalnews.com/rr-news-africa-south-2022-9-south-africa-slow-to-promote-indigenous-knowledge/>

¹³ <https://www.aamps.org/african-herbal-pharmacopoeia>

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https://www.parliament.gov.za/storage/app/media/Acts/2024/Act_7_of_2024_Cannabis_for_Private_Purposes_Act.pdf

2. Following the Constitutional Court judgement of 2018, in October 2020, the Cannabis for Private Purposes Bill [B19-2020] was released in draft form for public comment¹⁵. What followed was lengthy public consultation process, the end being the signing of the Bill into law in May 2024. At the time, the process was in line with parliament's obligations as per the Constitutional Court and it was largely deemed to be fair, despite the frustratingly slow pace. Individuals, community and civil society organisations, and private companies submitted comments and were included in 2 online meetings during 2021 to present their views.

However, the attendant regulations published for public comment in February 2026¹⁶ – the mechanics of how the Act would be enforced, demonstrated that the public participation was not successful in the eyes of the public or civil society organisations. There is a marked tension between procedural participation and perceived substantive influence. [Annexure 1] The content of the proposed regulations does not reflect either lived experience or practical considerations of Cannabis horticulture with respect to "home growing" in private spaces. The limit on number of plants permitted (5) does not reflect South Africa's centuries-long cultivation practices and creates an environment where the South African Police Service will continue to have access to private spaces in order to count plants. Other than the call for public comment there has not been any further feedback, as of the end of May 2026, from the Department of Justice and constitutional Development as to the progress of the regulations or whether there will be amendments to the draft.

The Cannabis for Private Purposes Act created "grey areas" in the law and, as a result, enforcement has been uneven and largely skewed against poor and marginalised communities. In February 2025 the South African Human Rights Commission, a Chapter Nine institution¹⁷ (created after our first democratic elections in 1994 to strengthen Constitutional Democracy), held a Rastafari Round Table and produced a report detailing the extent and implications of ongoing harassment, profiling, arrest and incarceration of this group [Annexure 2].

*"These engagements revealed deeply troubling concerns regarding the systemic discrimination, criminalisation, and social exclusion faced by the Rastafari– whose spiritual and cultural identity is intimately tied to the use of cannabis as a sacrament. In response, the Commission exercised its constitutional mandate to create an inclusive forum that would surface these challenges and formulate collaborative solutions with affected communities and state institutions."*¹⁸

Policing remains the gravest concern within Cannabis communities in South

¹⁵ <https://pmg.org.za/bill/965/>

¹⁶ <https://www.justice.gov.za/legislation/notices/2026/20260202-gg54061rg7067-Draft%20Cannabis%20Regulations.pdf>

¹⁷ <https://www.justice.gov.za/constitution/SACConstitution-web-eng-09.pdf>

¹⁸ <https://fieldsofgreenforall.org.za/report-on-the-rights-of-the-rasta-roundtable/>

Africa. In October 2025, Fields of Green for ALL NPC¹⁹ (the authors of this submission), launched the initiative: “Reforming Cannabis Policy from within: A Data Driven Approach” [Annexure 3].

The project consists of two sections:

- October 2025 to October 2026: Community engagements supported by the University of Bristol “Cannabis Africana – Drugs and Development in Africa²⁰” project.
- February 2026 to February 2028 – Engagement with the South African Police Service to amend Standard Operating Procedures within the police.

In February 2026 Fields of Green for ALL held a workshop²¹ which engaged with 25 leaders of community organisations from all over South Africa. Each organisation submitted written statements and oral representations at the event [Annexure 4]. The submissions describe a disconnect between constitutional/legal reform and actual enforcement on the ground.

In March 2026, in an effort to highlight the importance of enforcement reform alongside legal reform (especially for developing countries), “Policing Post Prohibition Cannabis in South Africa was presented as a side event at the 69th session of the Commission on Narcotic Drugs in Vienna, Austria.²²

Meaningful participation of individuals and groups in decision-making impacting their rights or well-being with regards to the use, cultivation and trade in Cannabis remains highly nuanced. It is only when our law makers are bound by the most basic tenets of the law that this participation takes place. Incorporation of the input from communities into the final laws and regulations is not evident. The onus remains with civil society groups to resource and activate the voices of our communities.

3. South Africa is both culturally and economically diverse. The gap between rich and poor has often been described as the worst in the world. Our situation with Cannabis reflects this diversity and inequality. Civil society organisations and community groups bear the responsibility of translating our complicated legal position into both content and language that is accessible for those who consume Cannabis, as well as cultivators and traders who are excluded from a burgeoning “grey area” Cannabis industry. Knowledge and worldviews remain unequal and diverse, while aspirations remain steadfast. The foundation of our South African Cannabis industry is economic opportunity. It remains a challenge to gather data on participation beyond a community / civil society level. This is due to the sporadic nature of the government’s participatory processes and the lack of evidence of the content of public submissions in both the Cannabis for Private Purposes Act and its attendant regulations.

¹⁹ <https://fieldsofgreenforall.org.za/>

²⁰ <https://cannabisafricana.blogs.bristol.ac.uk/>

²¹ <https://www.youtube.com/watch?v=kBfjiS6VjGY&t=33s>

²² <https://www.youtube.com/watch?v=kTBlzJVozp0&t=1183s>

4. We must applaud the South African Constitution for providing a solid foundational structure for the protection of cultural rights in our country. Cultural rights are certainly promoted on a broader level but, when it comes to Cannabis, there is a gap between legislative change and the implementation of these rights. This gap is created by flawed implementation of structural, legal reforms, inequality and the ability of those with resources to find loopholes in both the law and enforcement of it. Processes are hampered by a lack of official data and over-reliance on the resources of civil society organisations. The outcome is a sizeable proportion of our Cannabis communities being dissatisfied with the trajectories that our vast and unstoppable Cannabis industry is taking.

In conclusion, we would like to thank the Rapporteur for this opportunity to deliver our submission against the background of challenges of incorporating a drug / narcotic plant within the realm of cultural rights. It can also be noted that the producers of prohibited plants – mainly the opium poppy and the coca leaf – face the same challenges both in their countries of origin and internationally. Local structural reforms have yet to translate into meaningful change at the level of the United Nations but the debate is a lively one that is receiving increasing attention.

Yours sincerely

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