DRAFT Community guidelines - Reforms of cannabis-related policing in South Africa (not for circulation without the permission of authors - comments most welcome)

Aims

These community guidelines aim to bring police practice in line with recent cannabis-related legal changes in South Africa. Taking a participatory approach, the guidelines are based on extensive engagement and input from South African civil society and communities that have been negatively impacted by prohibitionist drug policy and policing. The drafting of the guidelines was part of the *Policing Post-Prohibition Cannabis in South Africa* (PPPCiSA) project and based on research by the *Cannabis Africana: Drugs and Development in Africa* research project (2020-2024), which studied changing cannabis policies and their impact on the rights and lives of people in four African countries.

The PPPCiSA project (2025-2027) is a partnership between Fields of Green for ALL (FGA) and the University of Bristol and University of Cape Town and funded by the UK ESRC Impact Acceleration Account (grant ES/X004392/1). The project hosted three workshops on the policing of cannabis and its reform (in Johannesburg and online) in 2025 and 2026. The workshop discussions as well as the South African research of the *Cannabis Africana* project form the basis of these guidelines.

The guidelines shall guide the changing implementation of cannabis-related laws, policies and policing in South Africa. Their major aim is to feed civil society and community voices into the ongoing reform process and its implementation, especially regarding the policing cannabis in South Africa. The lessons from South Africa presented in these guidelines will also be significant for other countries in Africa and beyond, which face similar challenges in the reform process.

South African context

Following the judgment of the Constitutional Court of South Africa, in *Minister of Justice and Constitutional Development and Others v Prince and Others* (2018), and the subsequent enactment of the Cannabis for Private Purposes Act (7 of 2024), South Africa entered a transitional legal environment regarding cannabis use, cultivation, and possession for private purposes. In order for the Act to be implemented, corresponding regulations have to be published in the government gazette. These regulations have yet to be finalised, resulting in a 'legal vacuum' causing confusion among both cannabis communities and law enforcement. Despite the constitutional right to use and cultivate cannabis in private, community reports of inconsistent and harmful policing practices have continued across multiple provinces and sectors.
South Africa is unique in this "privacy" aspect of cannabis law as all other African countries who have made reform progress have only done so within the narrow confines of cannabis for

medical and industrial purposes. Adult use of, and trade in, cannabis remains strictly prohibited across Africa, while South Africa is the only country on the continent where it is decriminalised.

In South Africa, colonial and apartheid regimes entrenched a highly punitive approach to cannabis which used drugs laws as instruments of repression and social control. South Africa transitioned to democracy in 1994 and the country's first post-prohibition cannabis law was enacted in 2024. Despite democracy and legal reforms, law enforcement has not reviewed its operating procedures, nor been compelled to do so through action from the legislature. Reform of enforcement procedures remains a major challenge which presents itself in varying ways across South Africa's provinces and the circumstances of widely diverse communities. It is in this context that these guidelines were drafted and aimed to have a direct impact on ongoing policy and policing reform.

International lessons

The PPPCSA project's approach to police reform and the drafting of these civil society guidelines drew on international best practices while remaining sensitive to the South African context. For that reason, the project hosted an international workshop to gather expert input from researchers, policymakers and activists in October 2025. Specific lessons were drawn from Canada, California, the UK, Nigeria and South Africa and other countries taking similar reform steps as South Africa. The main aim of the expert workshop was to learn from international experiences directly relevant to the reform of cannabis policing in South Africa.

The key relevant lessons were:

1. Experiences from other jurisdictions showed that the move away from cannabis prohibition is not always smooth. Prohibitionist and repressive policing rarely disappears by itself and in some cases policing powers can disperse, take on new forms or be implemented by other agencies with a similarly repressive mindset.
2. Policing metrics of success need to be rethought as part of police reform. There needs to be a shift of focus from arrests and seizures as measures of success towards the reduction of harms, including the harms caused by policing itself. Market data available in newly liberalised settings should also be drawn on instead.
3. Policy and policing reforms need to include up-to-date information and training for police forces on the changed legal and policy frameworks, as well as on cannabis itself.
4. Institutional support, especially from police forces themselves, is necessary for meaningful reforms to take effect. There also needs to be engagement with other stakeholders, especially consumers of cannabis, for reforms to work in practice.
5. The experiences of policy reform and policing in South Africa are clearly unique and the reform process up till today has highlighted the key role of civil society, which needs to continue to be the driver of reforms into the future.

South African community voices

The project considered it vital to foreground and learn from community experiences of the policing of cannabis. To this end, Fields of Green for ALL initiated a community engagement process to gather lived experiences and stakeholder perspectives; identify ongoing harms and operational challenges; support the development of civil society guidelines; and contribute to discussions regarding the future cannabis-related Standard Operating Procedures within South African police forces.

As the first part of this process, on 26 February 2026, a meeting was held at Constitutional Hill, Johannesburg that brought together community leaders, traditional healers, women's advocacy groups, harm reduction advocates and a range of other stakeholders to discuss cannabis policing in the years since the landmark 2018 court ruling. The workshop generated much powerful insight into how policing lagged behind the changes in the law and policy, and continued to cause many harms to communities; it also generated consensus that the policing of cannabis must be transformed. There was much agreement that current harmful policing practices emerged from the following factors:

1. Operational ambiguity: A recurring concern was the absence of clear, nationally consistent operational guidance for police members that could sensitise them about the recent legal changes, and help impose consistency in how cannabis is policed.
2. Corrupt policing: Several community members lamented how cannabis policing was often a corrupt endeavour and an excuse for extortion. This has long been the case in South Africa, and as yet policy and legal changes have done little to alter this. There was a strong sense that ambiguities around the new legal environment were creating opportunities for abuses of power.
3. Disproportionate targeting of poorer growers, traders and consumers by the police: Historically, poorer people involved with cannabis have been those most targeted by its policing, and this remains the case today, especially as those with resources are better placed to be sheltered from cannabis policing.
4. Lack of protection for and recognition of cannabis' religious and cultural significance: Community members spoke powerfully of cannabis' religious and cultural significance and how important it is that these be respected by policymakers and law enforcement.
5. Increased vulnerability of women to policing: Contributors stressed that women have historically served as custodians of cannabis knowledge, household resilience, and community wellness, yet remain disproportionately exposed to policing risks within unclear regulatory environments.
6. Lack of police understanding of provisions for both private adult and medical cannabis usage: Community groups spoke of confusion regarding usage in the new legislative landscape, especially in regard to medical usage where there was a lack of clarity for all stakeholders, and a lack of understanding among the police of 'Section 21 authorisations' for use of medical cannabis.

7. The need for more Harm Reduction approaches in cannabis policing: Several contributors spoke of the need for more attention to harm reduction in cannabis policing as any potential benefits for public safety in punitive approaches were outweighed by the negative consequences on people's human rights and on society in general.
8. Lack of trust between police and communities: Many participants spoke of how trust between law enforcers and the public erodes through punitive policing of cannabis. This was for the following reasons: communities do not experience police forces as protective; policing is frequently experienced as intimidating or exploitative; and selective or inconsistent enforcement undermines legitimacy. Participants did, however, emphasise that there are examples of positive police engagement with communities that can build trust and are possible where professionalism and care are applied.

The community engagement phase supports a move away from undifferentiated cannabis enforcement and towards decision-making centred on legality, consistency, evidence and demonstrable harm.

The community engagement process led to the following key recommendations for the police:

1. Develop clear standard operating procedures
2. Prioritise constitutional training
3. Adopt privacy and harm reduction focussed approaches
4. Restrict arbitrary searches and seizures
5. Arrest should be the last resort
6. Accountability and oversight should be improved
7. Cultural and indigenous practices should be recognised
8. Community engagement should be supported
9. Historic cannabis possession records should be expunged.

A second workshop was held in June 2026 at The Jazzfarm in Johannesburg to consolidate the findings from the first community engagement stage and to specifically draw on the experiences of commercial actors in the cannabis industry in South Africa and the challenges they face from both law enforcement and unregulated operators in the currently uncertain policy and implementation context. At this workshop, participants also discussed how all the recommendations from community and industry stakeholders could be put into practice.

Key principles to translate community voices into police practice

Cannabis law reform will have limited practical effect unless the South African Police Service (SAPS) and other police forces translate the evolving legal framework into clear, consistent and defensible operational practice. Based on the project's community and expert workshops as well as the *Cannabis Africana* research, a set of key principles for the reform of police practice in

South Africa was developed. These principles were also worked into a template for a *Cannabis policing tree*, which is available in the Annex of these guidelines.

Changing discretionary assumptions and judgements: Legislative change may alter the formal boundaries of criminalisation, but it does not automatically change the assumptions, routines and discretionary judgements through which cannabis laws are enforced. Operational guidance must therefore distinguish lawful possession, use and cultivation from conduct that provides a reasonable evidentiary basis for suspecting dealing or trafficking. The mere presence or quantity of cannabis should not, in itself, determine the police response. Rather, officers should assess the broader circumstances, including the manner in which cannabis is stored or packaged, the presence of transactional evidence, the conduct of those involved and any other information capable of supporting a reasonable suspicion. Quantity may remain relevant, but only as one factor within a wider evidentiary assessment, rather than as a proxy for criminality.

Arrest not as default response: This distinction is particularly important in relation to the exercise of coercive police powers. Decisions to stop, search, seize or arrest must remain lawful, necessary and proportionate to the circumstances. Arrest should not operate as the default response where the facts are uncertain or where less restrictive measures are available. Nor should ambiguity within the legal framework be resolved automatically against the individual. Where officers cannot establish a sufficient basis for suspecting an offence, the appropriate response may be to record the encounter, issue guidance where necessary, or refer the matter for further investigation rather than effecting an immediate arrest. In so doing, law-enforcement agencies would not be withdrawing from cannabis regulation; they would instead be aligning their interventions more closely with the evidentiary thresholds and constitutional safeguards that govern policing more generally.

The need for police training: Achieving this requires more than the formal circulation of revised directives. Officers should receive practical, scenario-based training addressing possession, cultivation, search and seizure, suspected dealing and the treatment of cannabis-related evidence. Such training should reflect the circumstances officers are likely to encounter, including cases in which lawful and potentially unlawful conduct are not immediately distinguishable. Supervisors should, in turn, review cannabis-related decisions for legality, consistency and evidentiary sufficiency. Recurring errors should be treated not simply as failures by individual officers, but as possible indicators of weaknesses in policy, training, supervision or command practice. Clear review and escalation mechanisms are therefore necessary, particularly where officers confront novel circumstances or conflicting interpretations of the law.

Beyond arrests and seizures as success metrics: Performance measures must similarly move beyond arrest and seizure totals. These indicators may create incentives for visible enforcement activity without demonstrating that such activity is lawful, necessary or effective. A more appropriate framework would prioritise legality, case quality, the prevention of serious harm and the efficient use of limited criminal-justice resources. Monitoring should assess whether revised guidance produces meaningful changes in operational behaviour, including patterns of search,

seizure and arrest; the quality and progression of cases through the criminal-justice system; the reasons for prosecutorial withdrawal; and the incidence and nature of public complaints.

Towards differentiated and harm-focussed policing: The broader objective is therefore not the abandonment of enforcement, but its differentiation, i.e. an evidence-based approach that directs police attention towards organised supply, exploitation and conduct associated with demonstrable harm, rather than relying on cannabis possession or quantity alone as a convenient substitute for proof of criminal activity.

Conclusion - rights & responsibilities

Within the confines of the Cannabis for Private Purposes Act 7 of 2024, South African cannabis consumers and cultivators are well versed in knowing their rights when it comes to law enforcement. However, while these rights might be defined by the Act, their responsibility to act within the spirit of the law should be guided by concise, evidence-based regulations and these regulations are conspicuous by their absence at the moment. Having navigated the harms of prohibition for more than a century, communities across Africa are looking forward to the development of legal and socially just cannabis industries.

The consultations held for this project demonstrated that those who have been oppressed for so long are willing to work with the authorities. Community leaders expressed their disappointment at the myriad barriers to entry in the emerging cannabis sector: Prohibitive license fees, the dominance of commercial companies who seem to act with impunity and the loss of the market share enjoyed by rural farmers under prohibition. Yet, despite the complexities of the ‘newly legal’ sector, the most grave concern amongst those in South Africa who should benefit from the economic potential of legal cannabis, is law enforcement.

Reform of policing procedures will give those previously persecuted a chance to demonstrate their willingness to conduct themselves within the confines of the law, as opposed to having to continuously fight for their rights.

ANNEX: Cannabis policing tree

Purpose
To ensure that all cannabis-related policing is lawful, consistent, proportionate, and aligned with constitutional rights, particularly privacy, while maintaining enforcement against unlawful dealing, child endangerment, and public harm.

Legal foundation
This instruction gives operational effect to the Cannabis for Private Purposes Act, 2024, the

Constitution (Section 14), the Criminal Procedure Act, 1977, and the Constitutional Court judgment in Minister of Justice v Prince.

Scope
Applies to all SAPS members conducting patrols, searches, investigations, and arrests involving cannabis.

CORE OPERATIONAL PRINCIPLE

Cannabis is not presumptively illegal.
Every encounter must begin with classification and de-escalation not enforcement and arrest.

FIELD DECISION PATHWAY

Use this in sequence. Do not skip steps.

Step 1: AGE CLASSIFICATION
Is the person under 18?

If YES
→ Do not treat as standard criminal case
→ Activate child protection pathway
→ Refer to Child Justice and Children's Act procedures
→ Investigate any adult involvement

If NO
→ Proceed to Step 2

Step 2: LOCATION CLASSIFICATION
Where is the conduct taking place?

Private place (home, yard, private room, non-public space)
→ Proceed to Step 3

Public place (street, park, taxi rank, etc.)
→ Proceed to Step 4

Step 3: PRIVATE PLACE ASSESSMENT

Ask:

Is there evidence of dealing (sale, exchange for value, organised distribution)?

If YES
→ Criminal offence
→ Investigate and proceed

If NO
→ Is the cannabis for personal use within lawful limits?

If YES
→ No enforcement action
→ Do not search further or seize

If NO or unclear
→ Check legal quantity limits (only if regulations are in force)
→ If excessive → offence
→ If unclear → do not assume illegality without evidence

Also assess:

Are children present and is cannabis accessible to them?

If YES
→ Possible offence (failure to secure)
→ Document and act proportionately

If NO
→ No further action

END

Step 4: PUBLIC PLACE ASSESSMENT

Ask:

Is the person using cannabis in public?

If YES
→ Offence (typically fine-based)
→ Issue notice or summons (do not arrest unless justified)

If NO (possession only)
→ Not automatically an offence
→ Do not act unless other offences present

Also assess:

Is use occurring near a child or non-consenting adult, or causing nuisance?

If YES
→ Offence
→ Act proportionately

END

Step 5: DEALING TEST (APPLIES AT ANY STAGE)

Do not infer dealing from quantity alone.

You must identify at least one of the following:

Exchange of money or value
Packaging consistent with distribution
Communications indicating sale
Distribution networks or facilitation

If NONE present
→ Do not charge dealing

Step 6: SEARCH AND ENTRY

Before any search:

Is there a warrant?

If NO
→ Is there valid consent?
→ OR are there urgent grounds under CPA section 22?

If neither applies
→ Do not search

Private space = heightened protection
Cannabis alone is not justification for entry

Step 7: ARREST DECISION

Ask:

Is arrest necessary?

Only arrest if:
Risk of flight
Risk of evidence destruction
Serious offence (e.g. dealing involving networks)

Otherwise:
→ Use summons or written notice

Step 8: SEIZURE

Only seize cannabis if:

It is evidence of an offence
OR exceeds lawful limits (where applicable)

Record:
Reason for seizure
Legal provision relied upon

If conduct is lawful
→ Do not seize
→ If seized incorrectly → return procedure must follow

MANDATORY RECORDING (ALL CASES)

Each encounter must record:

Age classification
Location type
Nature of conduct (use, possession, cultivation, dealing)
Legal basis for any search
Legal basis for arrest (if applicable)
Evidence of dealing (if alleged)
Presence of children
Outcome (warning, notice, arrest, no action)

SPECIAL PROVISIONS

Children
Handled through diversion and protection frameworks
Never default to criminalisation

Transport
Only enforce regulations that are formally in force
Do not rely on draft rules

Quantities
Use only officially promulgated thresholds
Never use informal station-level limits

SUPERVISION AND ACCOUNTABILITY

Station commanders must review:

All cannabis-related arrests
All dealing charges
All searches of private premises

Focus on:

Legality
Consistency
Disparities across communities

OPERATIONAL SUMMARY (FOR FIELD USE)

Ask in this exact order:

Is the person an adult?
Is this a private or public setting?
Is there actual evidence of dealing?
Is the conduct clearly outside lawful limits?
Is any enforcement action necessary?

If uncertainty remains at any point
→ Default to non-coercive action