FIELDS OF GREEN FOR ALL
NON-PROFIT COMPANY
Actively reforming South Africa's Cannabis Laws

Cannabis Law Reform at the Intersection between Drug Control and Human Rights Obligations

Written Submission to the Expert Panel Established Pursuant to CND Resolution 68/6
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We consent for our submission to be made public.

Fields of Green for ALL NPC (2013/191487/08), based in South Africa, has advocated for the re-legalisation of cannabis through Human Rights, Harm Reduction and Drug Policy Reform mechanisms, since 2010. Granted special consultative status with ECOSOC in 2020, our work encompasses strategic litigation, policy development, community engagement and international advocacy. Our experience demonstrates a conflict between international drug control and human rights obligations as they apply to constitutional rights, cultural practices (as reported to the UN Special Rapporteur on Cultural Rights in June 2026) and livelihoods of affected Cannabis communities in South Africa and the African continent.

Cannabis has been cultivated, used and traded across Africa for centuries. South Africa played a significant role in placing Cannabis under international control in 1925, initiating a century of prohibition whose consequences remain deeply embedded in our society. In 2018, the WHO recommended the rescheduling of Cannabis and transmitted these to the UN in early 2019; the CND then voted on 2 December 2020, to remove cannabis and cannabis resin from Schedule IV of the 1961 convention, while remaining recommendations were not adopted. South Africa voted to accept the recommendations.

1. Challenges and Barriers

Constitutional Rights vs International Obligations / Drug Control vs Human Rights

In September 2018, South Africa's Constitutional Court ruled that criminalising the private use, possession and cultivation of Cannabis by adults infringed the constitutional right to privacy. However, commercial trade remains prohibited. SA's Cannabis for Private Purposes Act 7 of 2024 was assented to but remains uncommenced.

The attendant regulations that are required to promulgate the Act are yet to be published. The result is that cannabis retains its classification as a dangerous dependence-producing substance under the Drugs and Drug Trafficking Act of 1992. This legislative inertia is, in part due to lack of political will and enduring stigma, but can also be attributed to the perception that international conventions prevent meaningful reform.

The 1961 Single Convention accommodates medical, scientific and certain industrial uses while ignoring adult use cannabis markets. Consequently, governments pursuing reform across Africa restrict legal reforms to the cultivation of pharmaceutical grade cannabis for export to developed countries with legal regimes. This excludes communities historically associated with all aspects of the plant.

Adult use: The Elephant in the Room

Cannabis remains the world's most widely used internationally controlled drug (World Drug Report 2026). Yet adult use continues to be inadequately addressed within international drug policy discussions, despite regulated markets operating in Uruguay, Canada, Germany and numerous United States jurisdictions. These developments demonstrate that governments are already pursuing alternatives to prohibition.

Exclusion, Discrimination and Law Enforcement

In South Africa, traditional cultivators, informal traders, adult consumers and an estimated 300,000 Traditional Healers remain inadequately recognised within emerging regulatory frameworks. Communities historically dependent on cannabis livelihoods face continuing criminalisation while well-resourced commercial operators obtain access to expensive licensing systems.

Fields of Green for ALL is currently undertaking a project entitled "Policing Post Prohibition Cannabis in South Africa". Our aim is to reform policing structures in collaboration with the South African Police Service to secure our Constitutional rights against continued victimisation. Although the project is ongoing, initial feedback from affected communities shows that law enforcement remains the most significant barrier to an equitable cannabis sector in South Africa. Arrests, confiscations, intimidation, inconsistent policing and corruption undermine constitutional protections and perpetuate distrust between communities and the state.

Globally, the continued application of the death penalty for drug offences represents an extreme example of punitive drug policy conflicting with fundamental human rights.

2. Opportunities for Meaningful Reform

Economic justice and historical accountability

Cannabis prohibition in South Africa is frequently described by activists as "the last apartheid law", reflecting its discriminatory history and disproportionate impact on marginalised communities. Acknowledging the colonial and racial foundations of prohibition provides an opportunity to pursue restorative economic justice, particularly for traditional farmers and communities excluded from emerging legal markets. Examinations of the flexibility within the treaties should recognise Cannabis as an existing African agricultural, cultural and economic resource, rather than treating it exclusively as a pharmaceutical or industrial commodity.

Meaningful civil society participation

Grassroots organisations possess practical knowledge of the consequences of prohibition that is frequently absent from international policy discussions. The Panel presents an important opportunity to close the gap between deliberations in Vienna and lived experiences in communities. Affected populations must participate meaningfully in developing, implementing and evaluating drug policies, rather than being consulted only after decisions have been made.

3. Ineffective Policies and Approaches

Given that the mandate of the panel in resolution 68/6 is to cover the conventions and “other relevant international instruments”, it should be considered from the outset that the conflict between drug control and human rights obligations has its foundation in the absence of clarity around adult use cannabis in the conventions.

Domestic cannabis legal reforms in Africa see models that impose demanding licensing, infrastructure and compliance requirements that small-scale and traditional farmers cannot meet. Consequently, commercial opportunities become concentrated among well-capitalised businesses while established cultivators remain vulnerable to prosecution. This approach reproduces economic inequalities rather than addressing them.

4. Effective Policies and Approaches

South Africa's 2018 Constitutional Court judgment demonstrates the potential of constitutional rights to challenge disproportionate prohibition. By recognising the privacy rights of adults, the court established an important precedent for rights-based cannabis reform, inspiring grassroots advocacy across Africa.

5. Practical and Actionable Recommendations

Recognise constitutional and human rights as central to drug policy.

International drug control obligations must be interpreted consistently with applicable international human rights law, including privacy, health, dignity, cultural participation and equality. We recommend that the Panel sets out how States such as South Africa can resolve the conflicts between drug control and human rights obligations. We request that the Panel acknowledges South Africa's Constitutional Court judgment as an important example of rights-based reform. Consideration of the African Charter on Human and Peoples' Rights and the Common African Position for UNGASS 2016 for both international and regional drug policy implementation will also benefit other "developing" regions in prioritising harm reduction, dignity and public health.

Clarify the application of Article 2(9) of the 1961 Single Convention.

Commission independent legal analysis of Article 2(9), including its potential application to regulated non-medical Cannabis activities under effective safeguards against misuse. Publish accessible guidance for Member States, explaining the scope and limitations of this provision, recognising harm reduction as a legitimate policy objective.

Revisit existing instruments relevant to cannabis.

Encourage further scientific evaluation of cannabis scheduling, including its impact on traditional use, cultivation and trade. Data from Member States who have established, regulated environments could be invaluable to the assessment of alternatives to the prohibition of cannabis and contribute to the panel's exploration of the flexibilities within the treaties and "other relevant international instruments".

We recommend the Panel examines the public health consequences of prohibition and barriers to meaningful reform, within the context of the following:

- The WHO review of cannabis and cannabis-related substances to consider recommendations that were not adopted in 2020.
- UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- UN Declaration on the Rights of Peasants (UNDROP)
- WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (GRATK)
- The Convention on Biological Diversity and the Nagoya Protocol on Access and Benefit-sharing
- Cannabis within the Sustainable Development Goals. (Policy Toolkit)

Promote restorative justice and law enforcement reform.

Apply UNODC restorative justice principles to address harms caused by prohibition and strengthen the call for robust harm reduction measures. Guide member States in developing alternatives to criminalisation, review of historical convictions and strengthening of law enforcement accountability in terms of human rights obligations.

Reform international governance and accountability.

The International Narcotics Control Board's interpretation of treaty obligations and associated reporting requirements have been seen to discourage reform. We recommend, within the context of the above flexibility of the treaties and as a significant treaty body, the INCB should publish the legal reasoning behind its assessments, establish a right of reply for Member States and formalise civil society representation within their board.

Conclusion

South Africa's experience demonstrates that constitutional reform alone cannot overcome the institutional, economic and social consequences of prohibition. A century after Cannabis was placed under international control, those who have cultivated, used and traded in the plant for generations remain among those most excluded from its emerging legal economy. Within the context of the SDGs, international drug policy must evolve beyond punitive control towards a framework grounded in Human Rights, Harm Reduction and Economic Justice.

The success of international drug policy should be measured not by the extent of prohibition enforced, but by the health, dignity, rights and well-being of the people it is intended to serve.

Thank you for the opportunity to submit and Fields of Green for ALL wishes the Expert Panel all the best in their endeavours.