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Date: 13 October 2023

SUBMISSIONS IN RE:

CANNABIS FOR PRIVATE PURPOSES BILL (B19-2020)

TITLED 'WORKING DOCUMENT - 11 SEPTEMBER 2023'

Executive Summary

(1) The cornerstone of these submissions is that the constitutional rights to privacy and the right to freedom of association respectively enshrined in sections 14 and 18 of the Constitution of our beautiful Republic ("**the Constitution**"),[1] are indivisible corollaries of one another, forming a constitutional yin-and-yang in the context of private Cannabis production and consumption communities and cultures across all conceivable divides in South Africa.

(2) The landmark 2018 Constitutional Court judgment in *Minister of Justice and Constitutional Development v Prince and Others* ("***Prince 3***")[2] conferred to consenting adults the rights to privately cultivate, possess and use, and personally consume Cannabis in private, firmly rooted in the constitutional human right to privacy (we refer to these rights collectively as the "**Cannabis private-use rights**").

(3) We submit that our Cannabis private-use rights are largely illusory unless we, the bearers of such human rights who most frequently lack the resources (time, land, expertise or equipment) to personally produce Cannabis *all by ourselves*, are free to associate with our fellow community members and *realise* the promise of these rights. In other words, most of us cannot exercise our Cannabis private-use rights without simultaneously leveraging the equally enshrined constitutional freedom of association. In human rights law jargon, the freedom of association is thus characterised as an indivisible corollary of the Cannabis private-use rights.

(4) In *Prince 3*, the Constitutional Court, upholding previous authoritative Constitutional Court pronouncements, expressly approved the 'continuum nature of privacy interests', which are characterised—

(i) at the core, by the 'inner sanctum' or 'truly personal' realm of near inviolable privacy interests, where the reasonableness of an individual's expectation of privacy is very strongly presumed; and

(ii) beyond the core, as an individual moves into the associative realms of communal relations and social interaction, where the near-impenetrability of privacy interests start to shrink and the reasonableness of an individual's expectation of privacy is questioned.

(5) By clear implication and constitutional logic, we submit, in *Prince 3*, the Constitutional Court upholds the indivisibility of the right to privacy and the freedom of association in the context of the Cannabis private-use rights, which are frequently exercised beyond the core 'inner sanctum' or 'truly personal' realm, in associations or communities of individuals, in what we might call the "**privacy penumbra**".

(6) However, for a number of reasons notably including the Separation of Powers, we do not argue for the express and possibly complex regulation in the Bill of a model – compliance criteria, juristic entities, agreements, oversight bodies or other administrative requirements – that would strike the appropriate balance between the exercise of constitutional rights and prohibited, commercial forms of supplying Cannabis.

(7) Rather, in our submission, the Court is best positioned and qualified to deploy complex concepts of private and public law and determine whether a given community or association of Cannabis enthusiasts legitimately and non-criminally exercises its Cannabis private-use rights.

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[1] The Constitution of the Republic of South Africa, 1996.

[2] *Minister of Justice and Constitutional Development and Others v Prince (Clarke and Others Intervening); National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton* (CCT108/17) [2018] ZACC 30; 2018 (10) BCLR 1220 (CC); 2018 (6) SA 393 (CC); 2019 (1) SACR 14 (CC) (18 September 2018) ("***Prince 3***").

(8) Moreover, the order in *Prince 3* explicitly imposed upon Parliament, and thereby this Portfolio Committee for Justice and Correctional Services ("**this Committee**"), the esteemed obligation of giving effect to the Cannabis private-use rights via the Cannabis for Private Purposes Bill ("**the Bill**").

(9) Ultimately, therefore, this Committee is constitutionally obliged to expressly recognise the freedom of association as an indivisible corollary of the Cannabis private-use rights *in the Bill* and, pending the enactment of legislation commercialising the trade in Cannabis in the adult-use market, appropriately defer to the Courts to adjudicate whether in a particular case, a criminal contravention and conviction is legally sanctioned. This would also engender the clear and piecemeal development of binding legal precedent for the Cannabis community to follow.

(10) To these ends, we propose that the version of the Bill entitled 'Working Document – 11 September 2023'[3] be revised and simply amended as follows:

(i) via the insertion of the bold portions in square brackets such that the first asterisked-point to the Preamble of Bill read as follows:

"*To—*

* *respect the right to privacy of an adult person **[– acting alone or in association with other consenting adult persons –]** to use, possess or cultivate cannabis **[in private]**;"*

and

(ii) via the insertion of the bold portions in square brackets such that clause 2(1) of the Bill read as follows:

"*An adult person may—*

*(a) **[acting alone, or in association with other consenting adult persons,]** use, possess or cultivate cannabis; and*

(b) without the exchange of consideration per occasion provide to, or obtain from, another adult person, cannabis,

in a private place for a private purpose."

[3] We accessed this version uploaded to the official Parliamentary Monitoring Group website on 12 October 2023 at: https://static.pmg.org.za/230911cannabis_for_private_purposes_bill.pdf.

1. Introduction and approach

1.1. We make these submissions as co-founders and directors of Harambe Solutions, a professional legal and compliance business in the Cannabis and controlled substance markets. We have spent years interpreting the *Prince 3* judgment and order, and the Cannabis private-use rights, continuously formulating models of *bona fide* Private Cannabis Clubs ("**PCC**") that we assist our clients and their communities to establish. We provide these services to our clients under the extremely clear forewarning that while we sincerely believe that our models of PCC bear prospects of being defended in a High Court, we cannot, pending dispositive, enabling legal developments, provide any guarantees as to their respective legality.

1.2. Inspired primarily by the constitutional legal proposition made throughout these submissions concerning the yin-and-yang, indivisible legal nature of the Cannabis private-use rights and the freedom of association, the widely used South African concept of a *Stokvel*, and also globally recognised guidelines such as the European Guidelines for Cannabis Social Clubs (2020),[4] Harambe Solutions' formulated its Shared/Collective Model of PCC. In terms of this model, the PCC members commune and pool resources for the *bona fide* and non-profit, collective, safe & responsible production, ownership and consumption of their shared Cannabis crop, i.e., in the meaningful and collective exercise of their Cannabis private-use rights.

1.3. However, we are not making these submissions in an attempt to convince this Committee of the lawfulness of our Shared/Collective Model (or any other model) of PCC and to consequently incorporate their aspects and contours as legal criteria or standards in this Bill. This is for the following reasons:

1.3.1. This Committee has previously noted that PCCs "may provide an appropriate solution to perceived problems where a person does not have a place to cultivate Cannabis or a place to consume Cannabis". However, it rejected the plea to regulate PCCs in terms of this Bill because, this Committee responded, it would require extensive regulatory measures and associated oversight and funding implications, and would not be viable if effected independently or outside of the regulation of commercial activities in relation to the adult-use market.

1.3.2. Moreover, the appeal of the High Court judgment in the *Haze Club (Pty) Ltd v Minister of Police*[5] is presently pending before the Supreme Court of Appeal ("**SCA**"). In this appeal, the applicants ask the SCA to overturn the judgment of the court *a quo* and find that – by prohibiting the Grow Club Model, a certain model of PCC adopted by the applicants – sections 4(b) and 5(b) of the Drugs and Drugs Trafficking Act, 1992 (read as per the order in *Prince 3)* unjustifiably limit their and their members' constitutional rights. These include the rights to choose a trade, to bodily and psychological integrity, to dignity, and not to be unfairly discriminated against.[6] We understand that the parties and the *amicus*

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[4] European Coalition for Just and Effective Drug Policies, 2020 available at https://encod.org/the-european-guidelines-for-cannabis-social-clubs/.

[5] *Haze Club (Pty) Ltd and Others v Minister of Police and Others* (2101/2021) [2022] ZAWCHC 269; [2023] 1 All SA 280 (WCC) (29 August 2022).

[6] These rights are entrenched in sections 22, 12(2)(b), 10 and 9(3) of the Constitution, respectively.

curiae including Fields of Green for ALL have filed their heads of argument and the appeal has yet to be set down for hearing.

1.3.3. The Harambe Solutions Shared/Collective Model of PCC differs from the applicant's Grow Club Model. We therefore do not feel that we could stand in genuine support of and solidarity with the applicants and the *amicus* in the Haze Club case (which we unequivocally do) were we to ask this Committee to recognise a different model of PCC to constitute the legal standard. To the contrary, the outcome of the appeal (assuming it is not settled out of court) will inevitably impact all models of PCC. Instead, we make more general submissions before this Committee which, we understand, have neither been canvassed in the Haze Club case, nor before this Committee in previous sessions.

1.3.4. Our submissions concern the more general, inevitable, and legitimate exercise of the Cannabis private-use rights via a freely constituted community or association of Cannabis enthusiasts, irrespective of the juristic person, legal instruments, and associated compliance principles elected to regularise and instantiate the association's activities as the *bona fide* and lawful exercise of constitutional rights.

1.3.5. Consequently, in other words, we argue for the simple acknowledgment – in the Bill – of the constitutionally conjoined nature of the Cannabis private-use rights and the freedom of association.

1.4. Essentially, we submit that our approach snuggly aligns with the Doctrine of the Separation of Powers and the Rule of Law in terms of which:

1.4.1. Parliament does not abdicate, but rather effectively discharges its function of enacting constitutional legislation without imposing complex and expensive regulatory burdens on the Executive's administration;

1.4.2. Parliament appropriately defers to the Judiciary, which, in turn, fittingly performs its expert function of deploying complex and technical legal concepts to determine on a case-by-case basis whether a community or association is sincerely exercising its Cannabis private-use rights in accordance with the Bill (once enacted), on the one hand, or contravening the prohibition against dealing in Cannabis (currently located in clause 4(1) of the Bill), on the other hand;

1.4.3. the Judiciary is appropriately authorised to discharge its function of striking the right balance in particular cases, without constant bombardment of challenges to the constitutionality of the legislation; and

1.4.4. the private adult-use Cannabis community at large would be able to lawfully regulate its own conduct with legal certainty, in accordance with the resultant binding judicial precedents, and in line with sound, technical legal principles.

1.5. Irrespective of this Committee's present intentions, our courts will inevitably be tasked with applying the provisions of the Bill, once enacted, to a variety of communities of Cannabis enthusiasts who exercise their Cannabis private-use rights collectively. In this regard, I would remind this Committee of the Court's fundamental obligation under section 39(2) of the Constitution to promote the spirit, purport and objects of the Bill of Rights when interpreting any legislation.

1.6. This Committee has rightly deferred to the competent government departments responsible for trade and industry and agriculture, among potential others, to spearhead

the drafting of commercial legislation in the industrial and adult-use markets. This does not, however, imply that this Committee can feasibly disregard the general constitutional imperative, clearly implied by *Prince 3*, to decriminalise the majority of Cannabis enthusiasts who associate with others in order to effectively and privately produce and consume their own Cannabis.

1.7. Consequently, in the following section 2 of these submissions, we seek to rediscover the import of *Prince 3* in the light of: (1) previous Constitutional Court pronouncements concerning the constitutional right to privacy; (2) relevant explications and implications of *Prince 3* itself; and (3) the stern warning issued to all members of the South African Police Services ("**SAPS**") by the SAPS National Commissioner on 23 August 2023. Thereafter, in section 3, we explore the ubiquitously associative nature of private Cannabis practices to further demonstrate their indivisibility from the freedom of association. We briefly conclude these submissions in section 4.

2. Rediscovering *Prince 3*

2.1. Previous Constitutional Court pronouncements

2.1.1. In the 6th edition of the 'Bill of Rights Handbook' (2013), constitutional law experts Currie & de Waal describe the 1996 Constitutional Court judgment in *Bernstein v Bester* ("***Bernstein***")[7] as our "richest and most comprehensive interpretation of the right" to privacy.[8] In that case, the Constitutional Court held that the scope of a person's privacy extends "only to those aspects in regard to which a legitimate expectation of privacy can be harboured".[9] A legitimate expectation of privacy has two components: (1) "a subjective expectation of privacy" that (2) "society has recognized as objectively reasonable".[10] The subjective leg is simply determined by one's state of mind and is satisfied where the right holder factually has the expectation. However, in order to qualify for constitutional protection, the subjective expectation must be reasonable.

2.1.2. In order to conceptualise the determination of what constitutes a reasonable expectation, *Bernstein* introduces the concept of the 'continuum of privacy interests':

> "*The truism that no right is to be considered absolute, implies that from the outset of interpretation each right is always already limited by every other right accruing to another citizen. In the context of privacy this would mean that it is only the inner sanctum of a person, such as his/her family life, sexual preference and home environment, which is shielded from erosion by conflicting rights of the community. This implies that community rights and the rights of fellow members place a corresponding obligation on a citizen, thereby shaping the abstract notion of individualism towards identifying a concrete member of civil society. Privacy is acknowledged in the truly personal realm, but as a person moves*

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[7] *Bernstein v Bester* NO 1996 (2) SA 751 (CC) ("***Bernstein***").

[8] Currie, I. & de Waal, J. (2013) *The Bill of Rights Handbook,* 6th Ed., Juta at page 297.

[9] *Bernstein* note 7 above at para 68.

[10] *Bernstein* note 7 above at para 75.

into communal relations and activities such as business and social interaction, the scope of personal space shrinks accordingly."[11] (underlined emphasis added).

2.1.3. What this continuum implies is that where conduct takes place within the 'inner sanctum' or 'truly personal realm', the more obviously reasonable is the expectation of privacy and increasingly inviolable the protection afforded by the right to privacy. By contrast, as a person begins to enter communal relations, the scope of personal space shrinks and, accordingly, the less obviously reasonable and inviolable is the protection afforded by the right to privacy.

2.1.4. Therefore, where one is operating within the 'inner sanctum' of privacy, the reasonableness of the expectation of privacy requires very little demonstration. However, the diminishing personal and private space that occurs beyond the 'inner sanctum' does not entail that people involved in social interactions no longer have a right to privacy.[12] Rather, where one is operating beyond the 'inner sanctum' of this near inviolable privacy, in what we would characterise as the 'privacy penumbra', limitations or violations become increasingly justifiable.

2.1.5. Indeed, as the Constitutional Court subsequently held in *Hyundai Motor Distributors*—

> "*privacy is a right which becomes more intense the closer it moves to the intimate personal sphere of the life of human beings, and less intense as it moves away from that core. This understanding of the right flows, as was said in* Bernstein*, from the value placed on human dignity by the Constitution… The level of justification for any particular limitation of the right will have to be judged in the light of the circumstances of each case. Relevant circumstances would include whether the subject of the limitation is a natural person or a juristic person as well as the nature and effect of the invasion of privacy.*" (footnotes omitted).[13]

2.2. Relevant explications and implications of *Prince 3*

2.2.1. In *Prince 3*, the Constitutional Court approved the *Bernstein* dicta (quoted in paragraph 2.1.2 above) introducing the continuum of privacy interests.[14]

2.2.2. However, the *Prince 3* Court was careful not to specifically locate where, on this continuum, adults cultivate, use and possess Cannabis in private for their personal consumption in private because it was not dealing with a specific factual matrix of allegedly criminal conduct in the realm of Cannabis use. Rather, it was tasked with addressing the legal question concerning the broader constitutionality of prohibiting such conduct, not merely in the 'inner sanctum' of a home or private dwelling, but generally.

2.2.3. So while the Court held that the right to privately use Cannabis at home is comfortably protected within the inviolable 'inner sanctum', it did not stop there. In overturning appropriate parts of the order the High Court, the Constitutional Court made the following critical remarks:

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[11] *Bernstein* note 7 above at para 67.

[12] McQuoid-Mason, D. (2018) *Constitutional Law of South Africa,* Chapter 38 at page 2.

[13] *Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors* 2001 (1) SA 545 (CC), 2000 (10) BCLR 1079 (CC) ("***Hyundai Motor Distributors***") at para 18.

[14] *Prince 3* note 2 above at para 49.

- "*The effect of the order of the High Court is that an adult would not be committing any crime by using or possessing or cultivating cannabis in a private dwelling or in a home for his or her consumption but the moment he or she steps out of the private dwelling or home, he or she would be committing a criminal offence*."[15]
- "*In my view, as long as the use or possession of cannabis is in private and not in public and the use or possession of cannabis is for the personal consumption of an adult, it is protected. Therefore, provided the use or possession of cannabis is by an adult person in private for his or her personal consumption, it is protected by the right to privacy entrenched in section 14 of our Constitution*."[16] (Underlined emphasis added.)
- "*This judgment does not confine the permitted use or possession or cultivation of cannabis to a home or a private dwelling. This is because there are other places other than a person's home or a private dwelling where the prohibition of the use or possession or cultivation of cannabis would be inconsistent with the right to privacy if the use or possession or cultivation of cannabis was by an adult in private for his or her personal consumption in private. Using the term 'in private' instead of 'at home' or 'in a private dwelling' is preferable*."[17] (Underlined emphasis added.)

2.2.4. Therefore, it is clear that *Prince 3* held that the expectation of privacy might well be legitimate (and violations thereof unjustifiable) even where one exercises the Cannabis private-use rights in the privacy penumbra.

2.2.5. Consequently, in our submission, it also clearly emerges that *Prince 3* protects adults' exercise of the Cannabis private-use rights both within the inviolable 'inner sanctum', and beyond, in the privacy penumbra, in the associative, social realm and company of others, on the conditions that they are exercised in private, without contravening the prohibition against dealing in Cannabis.

2.2.6. This is further buttressed when one has recourse to the plain meaning of any of the multiple formulations (mentions, holdings and rulings) in the order and judgment in *Prince 3* of the Cannabis private-use rights.[18]

2.2.7. Paragraph 109 of the *Prince 3* judgment, as one of many examples, provides in relevant part that—

2.2.7.1. "an adult person may use or be in possession of cannabis in private for his or her personal consumption in private" (underlined emphasis added); and

2.2.7.2. "[t]he cultivation of cannabis by an adult in a private place for his or her personal consumption in private is no longer a criminal offence." (Underlined emphasis added)

2.2.8. To be sure, *wherever* (and without exception) in *Prince 3* the Cannabis private-use rights are formulated, the words 'personal' or the phrase 'for his or her own' only ever qualify the word 'consumption', and never the phrase 'use or possession' or the word 'cultivation'.

2.2.9. In our submission, via these very carefully crafted formulations, the *Prince 3*

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[15] Ibid at para 98.

[16] Ibid at para 100.

[17] Ibid at para 108.

[18] See, for example, paragraphs 15, 19, 58. 63, 85, 86, 100, 108 of the judgment and orders 9, 10, 11, and 13 of the order in *Prince 3*, among several others.

Court deliberately contemplated the reality that the 'use or possession' or 'cultivation' of Cannabis rarely takes place personally by the adult who consumes the Cannabis, acting all alone within the core 'inner sanctum' or 'truly personal' realm of their privacy.

2.2.10. Therefore, on an even simple, syntactical basis, the very order and judgment of *Prince 3* and formulation of the Cannabis private-use rights evidence the Court's lucid and repetitive (1) acknowledgements of the continuum nature of privacy interests and (2) refusals to pin the exercise of the Cannabis private-use rights within the exclusive domain of the 'inner sanctum' or the 'truly personal' realms of privacy.

2.3. The 2023 SAPS Directive

2.3.1. The National Commissioner of the South African Police Services ("**SAPS**") issued a stern and concise warning to all SAPS members to stop abusing the Cannabis community for exercising their Cannabis private-use rights via a Directive dated 23 August 2023 ("**SAPS Directive**").

2.3.2. This SAPS Directive explicitly recognises the fact that private Cannabis production and consumption takes place in collective efforts or associations of community members.

2.3.3. In a concise interpretation of the *Prince 3* judgment, the SAPS Directive warns SAPS members, not only that:

2.3.3.1. the personal and private cultivation and/or or possession of Cannabis is not criminal;[19]

2.3.3.2. the quantity of Cannabis found in the possession of a person for private consumption, in private or for cultivation cannot form the basis of a presumption that the person is dealing in Cannabis;[20] and

2.3.3.3. SAPS members are forbidden from making arrests merely to achieve pre-determined targets, without assurance that there is a crime that will be enrolled by the National Prosecuting Authority,[21]

but, critically, for purposes of these submissions, also that:

2.3.3.4. "a person does not need to be the owner of a space for it to be their private space";[22] and

2.3.3.5. "more than one person may have ownership rights to personal and private Cannabis".[23]

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[19] Paragraph 6 of the SAPS Directive.

[20] Paragraph 3 of the SAPS Directive.

[21] Paragraph 6 of the SAPS Directive.

[22] Paragraph 6.1.2 of the SAPS Directive.

[23] Paragraph 6.1.5 of the SAPS Directive.

2.3.4. These latter two directives covertly cohere with our submission that *Prince 3* clearly endorses the privacy, and thus non-criminality, of the exercise of the Cannabis private-use rights by a freely constituted association of people who share cultures and beliefs around Cannabis cultivation and consumption and pool resources in order to realise what their constitutional rights guarantee them.

2.3.5. The Cannabis community celebrates the SAPS Directive as the most progressive statement on the Cannabis private-use rights in the last five years, since the *Prince 3* judgment was handed down.

2.3.6. While the SAPS Directive sternly warns SAPS members to leave such *bona fide* collectives alone to exercise their Cannabis private-use rights in peace, the SAPS Directive is not a legal development – we need our Parliament to sanction this clear understanding so that our courts may coherently adjudicate whether, in a particular case, the collective exercise of the rights takes place in private and without contravening the prohibition against dealing in Cannabis.

2.4. In the light of the foregoing we respectfully submit that this Committee is constitutionally obliged in terms of *Prince 3* to expressly recognise the freedom of association as an indivisible corollary of the Cannabis private-use rights *in the Bill*.

2.5. This submission and outcome is especially bootstrapped when considered in the light of the freedom of association in the context of the ubiquitously communal or associative nature of private Cannabis production and consumption cultures in South Africa.

3. **Private Cannabis practices are associative**

3.1. Constitutional law expert Stuart Woolman argues the following points in his exposition concerning section 18 of the Constitution – the right to freedom of association – contained in the *Constitutional Law of South Africa* compendium:

3.1.1. "Associational freedom is often justified on the ground that it enables individuals to exercise relatively unfettered control over the various relationships and practices deemed critical to their self-understanding".[24]

3.1.2. "If we were to shift our constitutional analysis to one in which we see associations as constitutive of the self, then we might be willing to treat individuals who participate in non-dominant forms of behaviour with greater respect."[25]

3.1.3. "The recognition of associations as constitutive of the self does not mean that we eschew hard constitutional choices. It means, rather, that we ought to think twice before we differentiate invidiously between our preferred way of being in the world and that way of being preferred by others."[26]

3.2. As many stakeholder representatives have passionately argued before this Committee over the last three years since the first iteration of the Bill was published, Cannabis production

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[24] Woolman, S. (2018) *Constitutional Law of South Africa* at Chapter 44 at page 9.

[25] Ibid at page 11.

[26] Ibid at page 12.

and consumptions practices, cultures and communities of all kinds have been marginalised and oppressed by the dominant legal and social, mainstream superstructures for well over a century in South Africa.

3.3. While the times and tides, and, as discussed, even the SAPS' approach to Cannabis are slowly changing, Cannabis cultures and practices will largely remain at the margins insofar as Cannabis trade and commerce remains illegal.

3.4. Additionally, however, the multitude of private Cannabis production and consumption cultures in South Africa are, well, in the broad sense at least, just that: they are cultures.

3.5. There are no doubt many individuals that cultivate, possess and use, and consume their own Cannabis all alone, by themselves, in the privacy of their homes. However, private Cannabis cultivation, use and consumption are (and always have been) inherently socio-cultural, associative phenomena: collectively practised by communities of people that share views, lineages, beliefs and cultures about the Plant and its uses and effects.

3.6. So, while there is arguably only one species of Cannabis plant, there are thousands (and an eternally evolving number of) varieties of this Plant precisely because it, quite uniquely, is '*The Human Companion Plant*'[27] that evolves with the communities of people that associate in the privacy of their social, traditional or religious Cannabis cultures and selectively and collectively cultivate, use and cradle it through human history.

3.7. Here are some straightforward reasons why Cannabis production and consumption cultures are associative:

3.7.1. Cannabis cultivation is a labour-intensive process. It requires knowledge of the plant's life cycle, growing conditions, and how to harvest and prepare the plant for use. This knowledge is often passed down through generations of farmers and growers.

3.7.2. Cannabis consumption is most frequently a social activity.

3.7.3. Cannabis cultivation and consumption cultures are commonly embedded in larger religious or spiritual practices, ceremonies, and traditions.

3.7.4. Owing to the marginalisation and discrimination that these Cannabis communities (of all persuasions) face, they must privately practise their traditions in order to preserve them.

3.7.5. Cannabis cultivation and consumption cultures and practices provide people with a sense of community, belonging, and identity in that they provide a shared space where people can come together to safely and responsibly celebrate their Cannabis practices and uses. These private events, spaces and rituals provide opportunities for people to learn from and reason with each other and simply enjoy each other's company.

3.8. Accordingly, it would be arbitrary and irrational, in conflict with the rule of law, on the one hand, and likely constitute unfair discrimination, on the other hand, if the only people who used Cannabis that benefitted from the Cannabis private-use rights were those who have the resources required in order to privately cultivate Cannabis all alone, *by and for themselves*, in private, who also choose never to commune with others in doing so.

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[27] Nohombile, S.V. (2020) *Cannabis is the Human Companion Plant*, Self-Published, Bush, R.

4. Conclusion

4.1. Ultimately, in our submission, the *Prince 3* Court deliberately refrained to designate – as protectable – the exercise of the Cannabis private-use rights *only* by adults acting all by themselves within the inviolable 'inner sanctum'. Rather, the Court, we submit, sensitively if implicitly acknowledged the historically marginalised and inherently communal, shared and associative cultures of Cannabis cultivation, consumption and use. It clearly contemplated the protectable exercise of such rights along the privacy continuum once the individual adult has entered into social albeit private relations with others.

4.2. If the Bill is going to comply with the true constitutional import of the message of *Prince 3*, we respectfully submit that this Committee ought, especially if the decision has been taken not to elaborately regulate such associations, to expressly recognise their factual and constitutional inevitability.

4.3. The courts would then draw on their specialist competencies, deploying complex concepts of private and public law, to determine whether, in any given case, the collective exercise of the Cannabis private-use rights is *bona fide* and/or whether any transactions made under the umbrella of that association are for 'consideration'[28] and therefore a prohibited form of dealing.[29]

4.4. We therefore, propose that the version of the Bill entitled 'Working Document – 11 September 2023'[30] be revised and simply amended as follows:

4.4.1. via the insertion of the bold portions in square brackets such that the first asterisked point to the Preamble of Bill read as follows:

"*To—*

* *respect the right to privacy of an adult person* ***[– acting alone or in association with other consenting adult persons –]*** *to use, possess or cultivate cannabis* ***[in private]****;*"

and

4.4.2. via the insertion of the bold portions in square brackets such that clause 2(1) of the Bill read as follows:

"*An adult person may—*

(a) ***[acting alone, or in association with other consenting adult persons,]*** *use, possess or cultivate cannabis; and*

(b) *without the exchange of consideration per occasion provide to, or obtain from, another adult person, cannabis,*

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[28] 'Consideration' is presently defined in the Bill as "any form of compensation, gift, reward, favour or benefit".

[29] In terms of clause 1 of the Bill, to 'deal in' Cannabis is to "provide for consideration, receive for consideration, sell, buy, offer for sale, offer to purchase, import, advertise for sale, export and any other conduct to facilitate selling" of Cannabis. If the Bill was enacted in its present form, be prohibited under clause 4(1).

[30] We accessed this version uploaded to the official Parliamentary Monitoring Group website on 12 October 2023 at: https://static.pmg.org.za/230911cannabis_for_private_purposes_bill.pdf.

in a private place for a private purpose."

4.5. The simplicity of our proposal also circumvents the complex, politically sensitive, definitional, and administrative issues that would have accompanied the enactment of the now-jettisoned '*special measures to accommodate cultural or religious communities*', while still affording the originally intended benefits of that clause to those communities, among the wider family of other private Cannabis production and consumption communities and cultures in South Africa.

4.6. Lastly, while this law drafting process has, in our estimation, been far from perfect, we would like to salute and thank this Committee for, for the most part, doing its best to listen and take very seriously the cries of a Cannabis community largely just seeking to change the dominant (criminal) narrative, and, ultimately, for treating the community with the respect, dignity and humanity it deserves.

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