

Comment on the Cannabis for Private Purposes Bill [B19 – 2020]



Umphakathi Okhathazekile
(Concerned Young People of South Africa)

“Caring for our future”

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For the attention of:

The Portfolio Committee on Justice and Correctional Services

RE: Comments on Cannabis for Private Purposes Bill [B19 – 2020] – Defend the Minds and Futures of South Africa’s Youth! Decriminalization violates the principle of the best interests of the child.

To whom it may concern

1. We refer to the invitation for written submissions on the Portfolio Committee on Justice and Correctional Service’s proposed Cannabis for Private Purposes Bill hereinafter (“the Bill”).
2. Umphakathi Okhathazekile (CYPISA) is a national non-profit and public benefit organisation, focused primarily on youth upliftment and work amongst grassroots communities nationally. We have to date motivated over 18,500 youth via our various programmes and have conducted awareness campaigns to over 5,500 schools nationally, in addition to many other activities conducted on a national scale.
3. As an organisation representing South African youth and grassroots communities in all nine provinces, we have grave concerns and a great apprehension, about specific provisions of the Bill and the effects that the adoption of the Bill is likely to have on South Africa’s youth, education system and our society.
4. Of primary concern to CYPISA is the effect that the Bill is likely to have on South Africa’s education system. CYPISA is of the opinion that the black letter law of the

Bill does not adequately anticipate, nor does it provide for, the likely practical ramifications of cannabis decriminalization on the South African education system.

5. Section 1 of the Bill defines an adult as being “someone who is 18 years or older.” Within the South African education system, learners still completing high school who are over the age of 18 years old are common. How will those learners who are over 18 years of age, who partake of cannabis before school and during break times, and then return to school and disrupt classes and teaching, be dealt with under the proposed Bill? We recommend specific provisions be incorporated into the Bill to deal with school going learners over the age of 18 years, and decriminalized cannabis in the relation to the school system in general, in order to protect the right to a quality education of South Africa’s youth.
6. How will the irresponsible or aggressive conduct of a learner over the age of 18 years, or even a teacher for that matter, on a cannabis ‘high’ during school hours and in the classroom be handled? The Bill does not consider and makes no provision for such scenarios.
7. Should such provisions not be incorporated into the Bill, CYPISA is of the opinion that the Bill in its current form potentially violates the right of non-cannabis using learners, more specifically those under the age of 18 years and who are defined as being a “Child” under Section 1 of this Bill itself, to a quality education.
8. The Bill will impact the public use of cannabis during break times and on or near school premises. School staff and members of the public will be entitled to smoke cannabis legally and may do so on or near school property. The public will be entitled to sell and smoke cannabis near schools and will do so in the presence of school-going minors.
9. Injuries due to cannabis intoxication during school hours and on school premises are likely to increase, resulting in claims for damages against the DBE.
10. The increase in the availability of cannabis within our communities resulting from the provisions of this Bill, will mean that more cannabis will be used by school going children than ever before. To control and regulate cannabis in the manner

suggested by the Bill is a practical impossibility, as has been seen even in first world and well-resourced countries such as the United States.

11. When accidents happen due to learners being under the influence of cannabis, who will be held responsible? What will happen in the event of a cannabis related injury or even death which takes place on school property during school hours, and will the DBE be held responsible for these incidents?
12. Cannabis decriminalisation via this Bill will result in late coming, absenteeism and school dropout escalations due to the increase in the availability and consumption of cannabis in our communities. Due to their addiction to cannabis and likely subsequent progression to the use of other narcotics, many learners will drop out altogether. Parents legally using cannabis in the evenings may fail to get their children to school on time or at all.
13. The lack of matriculants with Mathematics and Science skills is already well publicized. South Africa is currently bleeding professionals and qualified individuals at an alarming rate. See articles below:

[ARTICLE 1](#)

[ARTICLE 2](#)

Now is a time that we as South Africans should be doing all we can to safeguard and encourage the quality education of our young people, who we are relying upon to become the future professionals and leaders of our nation. Decriminalizing cannabis will only serve to lead to a dramatic increase in the skills shortage we already face in South Africa.

14. Regular cannabis users will resort to funding their habits by encouraging the use of cannabis amongst their peers. Even those who do not smoke cannabis themselves, may see schools as a lucrative marketplace where they could earn a considerable income. Due to this Bill, they will no longer face prosecution for cultivating the cannabis they wish to sell. Teachers may supply learners directly. Learners may now see selling cannabis as a way to acquire cell phones,

fashionable clothing and other luxury items otherwise unavailable to them. How would such practices be policed? It will not be illegal for a learner over the age of 18, or a teacher, to be in possession of cannabis and they can claim that the cannabis in their possession is intended for personal use.

15. How will increased cannabis use amongst adolescents as a result of this Bill, impact learner IQ average and matric results on a national level? It is well established in literature that cannabis use lowers IQ average. In an Australian study conducted over a 30-year period it was shown that persistent cannabis users experienced a decline of 8 IQ points between childhood and adulthood (see article below). Will the DBE be held responsible for further deteriorating national matric results? It is well known that cannabis use disrupts the academic progress of learners, and there is no doubt that an increase in cannabis consumption amongst learners will be accompanied by a proportional decrease in national academic performance levels. See article below:

[ARTICLE 1](#)

16. Whilst having had the right to protect their learners from cannabis pulled out from under them, it is likely that those in education will be the very ones called upon to answer for poor school results and will be expected to come up with a way to remedy the situation.
17. How will cannabis decriminalisation via this Bill affect discipline procedures with regards to aggressiveness and lethargy in school classes on the part of learners who have legally consumed cannabis before school or during break times? Will the DBE be liable in cases of aggressiveness and injuries resulting from cannabis use amongst learners? Teachers regularly report that they already face challenges in disciplining their learners and that after they have smoked cannabis they cannot be taught or disciplined at all. Attempts to discipline a learner under the influence of cannabis has often resulted in violent acts directed at the teacher concerned, and such incidents will only become more common should this Bill be implemented in its current form.

18. How will cases of cannabis toxicity, commonly reported as a result of learners having consumed cannabis muffins or other cannabis edibles, resulting in the need for medical treatment during school hours, be handled? Will the DBE be liable for medical costs in such cases?

19. Section 1A(3) of the Bill states that although commercial activities surrounding recreational cannabis use are to be authorized, this should be done so giving due consideration to:
 - (a) harm reduction;
 - (b) demand reduction;
 - (c) public education and awareness campaigns in respect of the harms associated with recreational cannabis;
 - (d) the prevention of persons under the age of 18 years to access recreational cannabis;
 - (e) the prohibition of advertising or promotion of recreational cannabis; and
 - (f) population level monitoring of use and associated harms of recreational cannabis.

If one considers the above, it is unclear how these measures are likely to be achieved in a country with an already overburdened police force, few and poorly funded rehabilitation centres and a lack of control over even socially acceptable substances, which are currently easily available those below the age of 18 despite supposedly being regulated and restricted for use by people over the age of 18.

20. The Bill defines smoking cannabis as being to “inhale or exhale smoke produced by ignited cannabis” or “vapour or aerosol of cannabis produced by a vaping device producing cannabis vapour or aerosol.” When one considers the Bill’s claim that in decriminalizing and commercializing cannabis these various mitigating measure should be observed, one must simply think of a child living in a home where parents and siblings smoke or vape cannabis in their so-called “private” space. By the Bill’s own definitions, children will themselves be smoking cannabis when they inhale the fumes produced by their parents and siblings and no meaningful mitigation of the harms that will be caused by decriminalizing cannabis

is possible. It is not realistic to think that every home can be monitored for child exposure to cannabis and cannabis products for example.

21. CYPISA is an organization that has conducted nation-wide drug and addiction awareness campaigns for the past 13 years. CYPISA fails to see how the Bill in its current form will achieve the prevention of access to recreational cannabis by persons under the age of 18, when currently South African youth are easily able to access alcohol and cigarettes, which are supposedly only for use by individuals over the age of 18 years. To the contrary, during our campaigns, it has become apparent to CYPISA that the message our youth have received is that cannabis use is now legal and CYPISA believes that the legalization of cannabis in South Africa via this Bill will only reinforce and encourage cannabis use by youth below the age of 18 years.
22. CYPISA objects to the use of this Bill as a vehicle for the first step in implementing a “harm reduction” approach to dealing with drugs and drug addiction in South Africa. We fear that this may be the first step in an attempt to legalize the use of all drugs for recreational purposes in South Africa.
23. Harm reduction measures which have been implemented in first world countries are showing little signs of success and have largely resulted in increased drug use and criminal activity. Further, a European or American model for Harm Reduction cannot simply be imported into South Africa, a third world country with a unique demographic model. Unlike foreign nations, South Africa has a population pyramid that indicates a large cohort of young people and that we are a “young” nation, versus “older” nations who are more mature and more responsible decision makers.
24. With a global trend towards the decriminalizing of all drugs, even so-called “hard drugs” such as heroin and cocaine, CYPISA believes we as a nation should fight this trend towards decriminalization and protect the minds and wellbeing of South Africa’s youth. More especially considering the negative results of legalization and decriminalization emerging in those nations where drugs have been decriminalized. See articles below:

ARTICLE 1

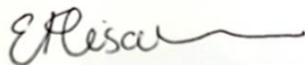
ARTICLE 2

25. Section 1B of the Bill deals with the issuing of permits to communities who claim to use cannabis for cultural or religious purposes. Will a single permit be issued for an entire community and if so, how will an individual's adherence to a specific religion be proven when they could simply be seeking to use and sell cannabis under the umbrella of religion? Should permits be issued on an individual basis would we not then simply generate "licensed" drug users, and anyone may claim to be a member of one of these communities or religions in order to obtain a permit that would license them to possess and use drugs legally.
26. Rather than protecting cultural and religious communities, such a permit system would very likely lead to the abuse of these cultures and religions by cannabis drug users.
27. The Bill claims to be aimed at freeing up resources by avoiding arrests and resources utilized by arresting and prosecuting cannabis users for what is now called a minor offence. However, having worked with over 18,500 drug users over the past nine years, CYPISA is all too well aware of the link between cannabis use and a progression to the use of harder drugs, more specifically heroin (whoonga / nyaope) amongst South African youth of school going age. The link between cannabis and heroin is especially strong within the South African context, where cannabis is used as a medium in which to smoke cheap powdered heroin.
28. An increased availability of cannabis will lead to an increased use of cannabis within our communities. Once young people progress from cannabis use to using heroin or crack cocaine, their drug use is accompanied by habitual criminality and violence. Increasing the availability of cannabis and removing penalties for the possession and use of cannabis, will ultimately fuel an increase in harder drug use and will place an increased demand on the SAPS and the criminal justice system of South Africa.

29. Increased use of cannabis in our communities as a result of this Bill will lead to an increase in cases of mental illness. Not only will this place an increased burden on South Africa's already failing healthcare system, but mentally ill people are also often responsible for violent or sexual offenses. CYPISA believes that increased cannabis use in our communities will only serve to fuel the wave of Gender Based Violence (GBV) already sweeping through our country.
30. While South African learners are required to use pit toilets during school hours, have no electricity or running water at their schools and no internet access for research and study purposes, and whilst many South African schools are in a state of disrepair, CYPISA believes that funding and resources could be better utilized on improving the school system and infrastructure in our country than trying to regulate a decriminalized recreational and commercial cannabis market.
31. CYPISA believes that teachers and South African teachers unions have not been adequately consulted in the preparation of this Bill and that the provisions of the Bill will only serve to add to the already almost impossible situation that South African teachers face in our nation's schools.
32. CYPISA believes that South African parents have not been provided an adequate opportunity to comment on and participate in the drafting of this Bill, nor in the legal processes that gave birth to it. Elders and parents in grassroots and rural communities have no knowledge of, or means to access, the processes through which this Bill is currently passing and are unaware of the opportunity currently being provided for public comment on the Bill via electronic platforms.
33. CYPISA believes that the Traffic Police and Traffic Departments have not been adequately consulted during the preparation of this Bill. The smoking of cannabis in private will result in people who then leave their location and enter vehicles in order to travel. Accidents resulting from drivers under the influence of cannabis will result in the loss of lives, even the lives of innocent road users who do not use cannabis. CYPISA believes that the Traffic Police and Traffic Departments are not adequately equipped to deal with the increased burden of testing for and policing of cannabis road users that this Bill will place on them.

34. More research is required, within the uniquely South African context, before a Bill such as this can be safely drafted and adopted, if it can be safely done so at all. For example, cannabis in South Africa is largely cultivated in rural areas. Rural learners are aware of and must pass by these crops of cannabis on their way to school. Cannabis decriminalization will serve to encourage larger scale cultivation of cannabis in these areas, thereby exposing more youth to a larger amount of more readily available cannabis. CYPISA is not aware of any formal or meaningful research having been done into the likely results of cannabis decriminalization in a South African context to date, and it is unclear whether this Bill and its provisions are based on or guided by any reliable sources of information whatsoever.
35. The competing rights of our youth and learners should be recognized and weighed against the so-called right of an adult to consume cannabis legally. For example, the child's right to freedom of choice and the right to personal security, the right to a basic education and a safe environment, the best interests of the child (which refers to those younger than 18, according to the Constitution (sec.28(3)), and the right of access to health care services. The Bill will not only have serious social implications, but also serious legal implications. The Bill should, but does not, adequately consider children's rights and should not be passed in its current form.

Yours faithfully,



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CYPISA: Secretary



Adam Mickleburgh

(LLB)

CYPISA: Administration

