Propaganda, Perjury and Prejudice in the Constitutional Court: A Citizen's Evaluation of the Judgments given in *Prince vs. The Minister of Justice. Case CCT 36/00*

By Jeremy Acton

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About the author

I am a citizen of South Africa who has smoked dagga without harm for the last 20 years. I have observed the effects of dagga and the prohibition thereof on my own life and on the lives of other citizens. My research about the medical benefits and economic potential of Cannabis, and about the history of its prohibition, has required me to act upon my conscience to help the people, who value and use the dagga tree, to gain their rights to respect and their freedom to use the plant for their own benefit. I am dedicated to building a culture and spirituality that is centered upon the tree as a direct access to communion with the Creator.

In 2009 I founded and registered **IQELA LENTSANGO: The Dagga Party of South Africa** and, with the help of good friends in the Dagga Culture, have been trying to work for the legalization of dagga for the public benefit. Many citizens do not actually know about the medical effects of dagga or its potential as a valuable economic resource that would enable all citizens to participate in a sustainable carbon-neutral economy.

After the Dagga Party was registered in the Langeberg Municipality, Western Cape, my political activities became noticed and I was arrested for the first time ever for the possession of dagga seeds on 3 January 2011. During the elections my house was raided again while I was away from home and a warrant issued for my arrest for the seeds allegedly found in my house. I was arrested in Montagu on 3 May 2011 and later charged a second

time that day after another visit to my home, where I gave the SAP 15 grams of ultra-low-quality cannabis leaf. I was issued two summonses on SAP 496 forms to appear in court on Tuesday 10 May.

After the local elections on 18 May I was again arrested at my home on 25 May 2011for possession of cannabis seed and spent 24 hours in the Montagu Police Station holding cells before appearing in court.

As a result of my plea statement for the first case I was granted permission to motivate for a direct referral to the Constitutional Court. The additional cases have all been combined with the first and I will appear again in the Montagu Magistrate's Court on 14 July 2011, when this article will be also submitted in motivation for consideration for direct referral to the Constitutional Court.

Introduction

This article evaluates statements by the judges in the above case. It highlights false statements not based on fact, looks at the legality of the 'war on drugs' and looks at the issues of personal spirituality and conscience in relation to the State's findings.

Because some judges repeat information in another judgment, I refer back to the previous statement made by a judge for comments made there. Where I have felt it necessary, however, I have repeated facts or points previously mentioned to make as complete a reply as possible to each separate quotation from the judgment.

Comments on the Judgment (dissent) of Ngcobo J.

[3] Ngcobo: "Cannabis is a dependence-producing drug, the possession or use of which is prohibited by the law, subject to very few exceptions that do not apply to the appellant."

The underlined section of this statement is not a statement of scientific fact but is false propaganda and simply a direct extraction from the Illicit Drugs and Trafficking Act 140 of 1992.

From page 5 of the Illicit Drugs and Trafficking Act 1992:
"undesirable dependence-producing substance" means any substance or any plant from which a substance can be manufactured included in Part III of Schedule 2.

From page 80 of the Illicit Drugs and Trafficking Act 1992:

PART III *Undesirable Dependence-Producing Substances*
1. The following substances or plants, namely-
Amphetamine.
Brolamfetamine.
Bufotenine (N,N-dimethylserotonin).
Cannibis (dagga), the whole plant or any portion thereof, except dronabinol [(-)-transdelta-9-tetrahydrocannabinol]. …etc…

The concept of 'dependence' should not automatically be regarded as "undesirable," or in a negative light.

A man sips water on a hot day. He depends on it to regulate his inner physical equilibrium. Water is harmless and beneficial and needed by all humans but we do not classify it as 'dependence producing' or 'addictive'. In the same way, Cannabis can also be regarded as something we might begin to depend upon, depending on our age and our physical condition, for any of the medical benefits that Cannabis is known to provide.

Cannabis interacts with, and supplements, the endocannabinoid system of the human body (See "Worth Repeating: Body's Own Cannabinoids Are The Bliss Within" By Ron Marczyk, R.N. Pg. 76 of Annexure 16, "An Introduction to the Medical Benefits of Cannabis" by Acton, April 2011). This interaction has never been known to cause harm or physical dependence. It has been shown that this interaction is helpful to the endocannabinoid system.

Research shows that cannabinoids in Cannabis also work synergistically to facilitate the necessary programmed die-off (apoptosis) of cells that need to be replaced by new body cells. Cancer is a condition in which the endocannabinoid signaling system is less functional, and the cells do not switch off when they should. THC and cannabinol in Cannabis are now known to cure cancer. It has also been shown that Cannabis users have a

lower incidence of upper body cancer than those who do not smoke Cannabis. (See Annexures 16 and 17)

This amazing interaction between a **plant-based substance and the human endocannibinoid signaling system** is a coincidence that is miraculous.

This evolutionary coincidence is made more remarkable by the fact that the (non 'narcotic') seeds of the Cannabis plant, when ground as flour, also provide up **to 24% protein, and all the amino acids necessary for human nutrition**.

Dagga seeds also contain Omega 3, 6 and 9 fatty acids **in a perfect balance for human cardiac and mental health**. The seed oil, which is non-narcotic and identical to hemp oil, can be used in cooking, for energy, as a health supplement, as an industrial lubricant and, if necessary, as a fuel.

This plant was, I believe, **given for the benefit of humankind**. It was the first plant ever domesticated by humans. Our species co-evolved with the plant, for over 5 000 (to possibly 12 000) years, as evidenced by the remarkable, beneficial relationships between Cannabis and the human body and mind.

Cannabis became illegal 100 years ago to the great detriment of the environment, and of individuals' health and freedom.

See "**Cannabis Relegalization vs. Vested Interests**" by Acton, (part of my submission to the Montagu Magistrate's Court on 7 April 2011) to understand the real reasons why it is illegal. See also Annexures 2-7 and Annexure 20 for the history of the prohibition of cannabis.

In addition to the regular obtainment of the medical benefits of cannabis, any person who uses Cannabis to be in the presence of, and communicate with, his God on an everyday basis might also 'depend' on Cannabis in establishing and maintaining such a communion, even to the extent that an observer without knowledge of the motivation of the user of Cannabis, might consider the use of Cannabis as 'dependence' producing.

An individual's private motive for the use of Cannabis is, however, the primary issue to consider in determining if harm or addiction is becoming a danger to the individual. Impartial medical studies also show that moderate

use of Cannabis, even when smoked, has not shown any quantifiable damage to adult users and has many potential medical benefits. This is noted in Ngcobo, footnote 26 to para 26, pg 14.

In "**The Report. Cannabis the Facts, Human Rights and the Law**" by D'Oudney and D'Oudney (Annexure 7) on pages 4 and 5, the following points are emphatically made:

> "Cannabis is a herb benign in effects and results to humans: in all the long history of cannabis use, of which written record dates back approximately 5000 years, cannabis has never been cause to a single fatality."
>
> All the clinical empirical studies confirm cannabis contains no addictive properties in any part of the plant nor in its smoke: cannabis does not induce psychological or physical dependence. The medico-scientific aspect shows cannabis is not only wrongly defined as a "drug" in any meaningful (semantic) definition of the word, but also, by empirical reality, cannabis is wrongly proscribed (prohibited) as a "drug" (or other substance)
>
> Although dictionaries vary slightly in their definitions of "drug", virtually all refer to, and rely for definition on a drug's habit-forming, addictive properties. Webster's New World Dictionary, for example, defines "drug" as: a narcotic, hallucinogen, especially one that is habit-forming. To recapitulate: The medico-scientific empirical research confirms cannabis contains no narcotic, no hallucinogenic, and no habit-forming properties, neither in the plant itself nor in its smoke. Evident from the most fundamental and widely inferred meaning, by definition based on empirical fact, cannabis is not a drug.
>
> Most unlike, and in contrast to tobacco, alcohol, tea, coffee, the caffeine-colas, and all legal or illegal 'recreational ' substances, cannabis is both non-habit-forming and non-toxic. Cannabis is uniquely safe. The word safe in the context of cannabis use, by definition, means:"free of danger, risk or injury" Referring to cannabis as a "drug" is misleading and untruthful. In the context of evidence, where accuracy and veracity are paramount, to do so is both inept and unacceptable. The invalidity of linking cannabis with "drugs" is further demonstrated by the U.S. government's Bureau of

> Mortality Statistics: the table (Pg 2 of Annexure 7) shows that cannabis by any meaningful definition is not a drug. Cannabis cannot correctly be categorized or referred to as a drug of any type.
> To people whose financial interests are served by Prohibition (discussed later in THE REPORT) the incorrect use of the word "drug" where cannabis is concerned, is premeditated; a strategy of simple but effective disinformation, associating the harmless herb with addictive toxic drugs."

[11]Ngcobo regarding The Rule 30 application:
"The rule has no application where the facts sought to be canvassed are disputed. A dispute as to facts may, and if genuine usually will demonstrate that the facts are not "incontrovertible" or "capable of easy verification." If that be the case, the dispute will in effect render the material inadmissible. Ultimately, the admissibility depends on the nature and the substance of the dispute.

Facts that disagree and which give rise to dispute should all be given consideration and not merely be rendered 'inadmissible' because they dispute each other. This approach would allow propaganda to dispute scientific research and empirical observation. This would permit a liar to dispute the truth and in so doing render the truth inadmissible. If a good judgment is to be reached all the facts presented must be considered, and judgment should be based on credible scientific observation and research. The sources of the facts must also be evaluated for political or economic motive. Should any motive be determined, that motive should be evaluated and its justification should also be assessed. All points made and their sources should be noted as an appendix to a judgment, so that students of law in the future can not only read judgments but know also the facts upon which the decision was made.

I must state here that any information submitted by any body of the State (Attorney –General, Minister of Health etc) which originates from, or is sponsored by pharmaceutical corporations, and research sponsored by the American Federal Government, or its agencies, should be evaluated for its admissibility, and be rejected as biased information with an agenda. It is well known that American drug policy is manipulated by corporations who sponsor State opposition to the legalization of Cannabis. They do this in

order to protect their market and financial interests which are served by ensuring that Cannabis is kept away from the general population.

See Annexure 3, Page 48 -50 Herer "**The Emperor Wears No Clothes**" quoted here:

Marijuana Research Banned

However, in 1976, just as multi-disciplined marijuana research should have been going into its second, third, and fourth-generation studies (see Therapeutic Potential of Marijuana and NORML federal files), a "surprise" United States government policy again forbade all promising federal research into marijuana's therapeutic effects.

This time, the research ban was accomplished when American pharmaceutical companies successfully petitioned the federal government to be allowed to finance and judge 100% of the research.

The previous 10 years of research had indicated a tremendous promise for the therapeutic uses of natural cannabis, and this potential was quietly turned over to corporate hands – not for the benefit of the public, but to suppress the medical information.

This plan, the drug manufacturers petitioned, would allow our private drug companies time to come up with patentable synthetics of the cannabis molecules at no cost to the federal government, and a promise of "no highs."

In 1976, the Ford Administration, NIDA and the DEA said, in effect, no American independent (read: university) research or federal health program would be allowed to again investigate natural cannabis derivatives for medicine. This agreement was made without any safeguards guaranteeing integrity on the part of the pharmaceutical companies; they were allowed to regulate themselves.

Private pharmaceutical corporations were allowed to do some "no high" research, but it would be only Delta-9THC research, not any of the 400 other potentially therapeutic isomers in cannabis.

Research revealed positive indications when using cannabis for asthma, glaucoma, nausea from chemotherapy, anorexia and tumors, as well as a general use antibiotic; epilepsy, Parkinson's disease, multiple sclerosis, muscular dystrophy, migraines, etc.—all these merited further clinical studies.

Why did the drug companies conspire to take over marijuana research? Because U.S. government research (1966-1976) had indicated or confirmed through hundreds of studies that even "natural" crude cannabis was the "best and safest medicine of choice" for many

1988: DEA Judge Rules that Cannabis has Medical Value

The DEA's own conservative administrative law judge, Francis Young, after taking medical testimony for 15 days and reviewing hundreds of DEA/NIDA documents positioned against the evidence introduced by marijuana reform activists, concluded in September 1988 that "marijuana is one of the safest therapeutically active substances known to man."

But despite this preponderance of evidence, then DEA Director John Lawn ordered on December 30, 1989 that cannabis remain listed as a Schedule I narcotic – having no known medical use. His successor, Robert Bonner, who was appointed by Bush and kept in office by Clinton, was even more draconian in his approach to hemp/marijuana as medicine. Bush, Sr., Clinton and Bush, Jr.'s DEA administrators have all upheld policies far worse even than Bonner's.

So…if all this has been known since 1975, what is our government waiting for?

2007: DEA Judge Rules Against the U.S. Government's Monopoly on Pot Production

Washington, DC: Drug Enforcement Administration (DEA) Administrative Law Judge Mary Ellen Bittner ruled February 12th, 2007 that the private production of cannabis for research purposes is "in the public interest." Her ruling affirms that the DEA, in 2004, improperly rejected an application from the University of Massachusetts (UMass) at Amherst to manufacture cannabis for FDA-approved research.

Protecting Pharmaceutical Companies' Profits

NORML, High Times and Omni (September 1982) indicate that Eli Lilly, Abbott Labs, Pfizer, Smith, Kline & French, and others would lose hundreds of millions, to billions of dollars annually, and lose even more billions in Third World countries, if marijuana were legal in the U.S.*

*Remember, in 1976, the last year of the Ford Administration, these drug companies, through their own persistence (specifically by intense lobbying) got the federal government to cease all positive research into medical marijuana. It's still the same in 2007.

Putting the Fox into the Health Care Chicken Coop

The drug companies took over all research and financing into analogs of synthetic THC, CBD, CBN, etc., promising "no high" before allowing the products on the market. Eli Lilly came out with Nabilone and later Marinol, synthetic second cousins of THC Delta 9, and promised the government great results.

Omni magazine, in 1982, stated that after nine years, Nabilone was still considered virtually useless when compared with real, home-grown THC-rich cannabis buds; and Marinol works as well as marijuana in only 13% of patients.

Marijuana users mostly agree, they do not like the effects of Lilly's Nabilone or Marinol. Why? You have to get three or four times as high on Marinol to sometimes get the same benefits as smoking good cannabis bud.

Omni also stated in 1982 (and it's still true in 2007) that after tens of millions of dollars and nine years of research on medical marijuana synthetics, "these drug companies are totally unsuccessful," even though raw, organic cannabis is a "superior medicine" which works so well naturally, on so many different illnesses.

Omni also suggested the drug companies petition the government to allow "crude drug extracts" on the market in the real interest of public health. The government and the drug companies, to date, have not responded. Or rather, they have responded by ignoring it. However, the Reagan/Bush/Clinton administrations absolutely refused to allow resumption of real (university) cannabis research, except under synthetic pharmaceutical studies.

Omni suggests, and NORML and High Times concur, the reason the drug companies and Reagan/ Bush , Sr./Clinton/Bush, Jr. have wanted only synthetic THC legal is that simple extractions of the hundreds of ingredients from the cannabis crude drug would be enjoyed without pharmaceutical company patents which generate windfall monopolized profits.

Undermining the Natural Medicine's Competition

Eli Lilly, Pfizer and others stand to lose at least a third of their entire, highly profitable, patent monopoly on such drugs as Darvon, Tuinal, Seconal, and Prozac (as well as other patented medications ranging from muscle ointments to burn ointments, to thousands of other products) because of a plant anyone can grow: cannabis hemp.

Isn't it curious that American drug companies and pharmacist groups* supply almost half the funding for the 4,000 "Families Against Marijuana" type organizations in America?

The other half is supplied by Action (a federal VISTA agency) and by tobacco companies like Philip Morris, and by liquor and beer makers like Anheuser Busch, Coors, etc., or as a "public service" by the ad agencies that represent them.

*Pharmacists against Drug Abuse, etc. See appendices.

(End of excerpt from Herer "The Emperor wears no Clothes")

Regarding the judge's observation: "Ultimately the admissibility depends on the nature and substance of the dispute."…..

The nature of the dispute is whether Cannabis is dangerous to the individual and therefore to society. The substance is Cannabis. Only the evaluation of the real effects of Cannabis by the honorable judges through the partaking of the substance in question could surely reveal the truth about any harm caused, thus providing a sound basis on which to evaluate the conflicting 'evidence'. The failure to have done this means that the judgment is primarily based on hearsay, speculation, propaganda and law, instead of on empirical observation and Knowledge.

[13]Ngcobo: "….. it is common cause that Cannabis is a harmful drug and that its effects are cumulative and dose related."

I have already provided a difference of opinion in my comments to [3] of Ngcobo (D'Oudney and D'Oudney. "THE REPORT", Annexure 7)

I have also searched for writings, in particular by Yawney, on the Internet that link Cannabis to the concern that harm and effects of Cannabis are "cumulative and dose related." I found no such claims by Yawney. I did however find a link to the Shafer Commission of 1972 (Annexure 13).

Annexure 13 "Marihuana: A Signal of Misunderstanding. National Commission on Marihuana and Drug Abuse" (Shafer Commission) 1972 provides detailed information on the acute effects of Cannabis use, which is summarized on page 208. Despite many possible minor differences between Cannabis users and non-Cannabis users, none of the impacts of Cannabis described are as harmful as alcohol use or provide justification for the prohibition of Cannabis.

The short term effects of smoking Cannabis are not cumulative or dose related, as the smoking of Cannabis only affects human endocannabinoid receptors up to a point, whereafter one cannot become much more affected by further smoking.

The oral consumption of Cannabis is, up to a point, cumulative in effect in that there is a deeper saturation of human endocannabinoid receptors according to dose, but even very heavy doses of cannabis taken orally do not result in fatalities. The complete non-toxicity of cannabis indicates that the effects of cannabis are NOT cumulative or dose related. The overdosing of cannabis would be fatal in larger quantities if this was true, but it has never happened in the history of humankind.

The smoking of cannabis has never resulted in fatalities and, in my own experience of smoking cannabis over the past 20 years, has never resulted in signs of cumulative harm either in the short term or long term.

[18] There is no genuine dispute that the use of cannabis is central to the Rastafari religion.[22] According to Professor Yawney, to the Rastafari, cannabis or “the herb”, as the Rastafari call it, is a sacred God-given plant to be used for the healing of the nation. Rastafari describe their religious experience as “knowing God”, “gaining divine wisdom” and “seeing the truth”. In the pursuit of their religious experience they seek to gain access to the inspiration provided by Jah Rastafari, the Living God. The use of cannabis is critical to opening one’s mind to inspiration because God reveals himself through this medium. It is believed that there is a duty incumbent upon human beings to praise the Creator and that through the use of cannabis one is best able to fulfill this obligation. Thus cannabis is also called incense. The use of cannabis is a sacrament known as Communion which accompanies reasoning.

I greatly value Judge Ngcobo’s observations in this paragraph. Although I am not a Rastafarian, I fully agree with and share in their beliefs regarding Cannabis as a medium which provides revelation of, and direct communion with the Creator. I believe that the Creation is suffused with the presence of the Creator, and that in this Creation, and on our planet, there are plants which are able to impart or promote knowledge to humans about the possible nature of the Creator, via healing, teaching and even nutritional effects.

I believe that if consumed in their natural form, with seriousness and spiritual intent, they are beneficial to the individual who so partakes, while it is frowned upon the State. This is possibly because such a citizen is less under State control, or less motivated to serve the economic machine.

If any person who seeks to be in constant communication with his Creator does so by puffing a few joints during the day, and he causes no harm to others in his chosen state of mind, no-one, not the State or anyone else, has any right or reason to declare his use a 'dependency' or 'addiction' or seek to 'protect' society from such use, and from knowledge of a potential connection with the Creator.

Yet the State, in the name of "protecting" society from harm, inflicts harm on and violates the rights of peaceful citizens who choose to use a harmless and benign and health-giving herb. All States do this to protect the interests of the corporations mentioned in Herer above.

See also Annexure 10 "The Cannabis Biomass Energy Equation" for information about the real money motivations behind prohibition of cannabis, and also refer to "**Cannabis Relegalization vs. Vested interests"** by Acton (submitted in motivation for referral to the Constitutional Court.)

[20] Ngcobo: "The use of Cannabis by followers of the religion "is to create unity and to assist them in re-establishing their eternal relationship with their Creator. It is not to create an opportunity for casual use of Cannabis."

I must suggest here, from my own use of Cannabis over the last 20 years, that even the apparently 'casual', or 'recreational' use of Cannabis among any followers of any religion creates unity and assists an individual to recreate their eternal relationship with their Creator. 'Recreational' use is also spiritual and positive in its long term effect on the reflective individual.

Moderate use of Cannabis, whether for religious purposes or recreation has not been shown by any scientific studies to cause harm to the individual, and has even shown itself to be medically beneficial. All use of cannabis, including the smoking thereof, is medicinal and preventive of illness. Cannabis is a most effective treatment for the' flu, (my own experience) and

its anti-cancer activity has been well documented and scientifically verified. (See Annexures 16 and 17.)

[22]Ngcobo: "Cannabis is listed in Part III of Schedule 2 to the Drugs Act as an undesirable dependence- producing substance."

I raise the question "Whose legal or social opinion results in the term "undesirable?" If a citizen believes Cannabis, a natural and benign herb, to be desirable, and he partakes of it without causing harm to others, or himself, the State should not have the right to criminalize that person's behavior due to its unsubstantiated opinion that Cannabis use is 'undesirable'. The State should only have the right to intervene when that person violates the rights of others, or is at risk of suffering real harm e.g. by a morphine overdose, and not necessarily by calling a person a criminal.

If it was recognized that Cannabis is physically benign and its use might enable human communion with the Creator, and creativity in contemplative individuals, and that its use has been shown to be medically beneficial, the use of Cannabis would not elicit the negative judgment that it is 'dependence' producing.

I happily classify myself as a long term, chronic heavy user of Cannabis, and I do not in any way regard Cannabis as "undesirable." My relationship with Cannabis, although perhaps appearing to the judgmental as "dependence", is also my own conscious choice and spiritual pathway. I have NEVER suffered any harm from the use of Cannabis. I have however, suffered much harm from its prohibition and the State's response to my activism for legalization.

[23] Ngcobo: "Section 22(a) of the Medicines Act read with Schedule 8 of that Act, also prohibits the use of Cannabis except for research or analytical purposes."

The known medical benefits of Cannabis warrant its prescription by doctors for many medical problems including cases of cancer, yet the Medicines Act does not permit its prescription by doctors, as its use is only permitted for 'research or analytical' purposes.

The Medicines Act is intentionally worded to prevent access by citizens to a natural, non-toxic medicine which is effective in the treatment of numerous

medical ailments. The present wording of the Medicines Act protects the money and market interests of the pharmaceutical corporations and the elitist medical profession.

Cannabis is a plant that has been used by *Homo sapiens* for thousands of years, but only in the last 100 years has it become illegal. Humans coevolved with Cannabis until their access to the plant was prohibited by States for reasons of political control and oppression, and as a result of corporate manipulation and lobbying of the State.

Cannabis is only prohibited because it cannot be patented and, because it is estimated that pharmaceutical corporations would lose millions of dollars in revenue should the public insist on their rights to access cannabis for the purposes of self medication.

As stated above by Herer (from Annexure 3):

"Eli Lilly, Pfizer and others stand to lose at least a third of their entire, highly profitable, patent monopoly on such drugs as Darvon, Tuinal, Seconal, and Prozac (as well as other patented medications ranging from muscle ointments to burn ointments, to thousands of other products) because of a plant anyone can grow: cannabis hemp."

Even though Cannabis is very effective in the treatment of many ailments, its side effects are not damaging (unlike prescription drugs), and there is no known toxic or lethal effect in the use of Cannabis.

Many activists for the legalization of Cannabis are concerned that Cannabis extracts and cannabinoid synthetics will be patented for profit by pharmaceutical companies, while the use of the whole plant by ordinary citizens remains illegal.

The prohibition of Cannabis is NOT justified on the grounds of health or fear of harm to individuals or society. The prohibition instead violates the rights of citizens to health care, as expressed in Section 27 of the Bill of Rights: Health care, Food, Water and social security (the emphasis on Health Care and Food).

Legalization for the public benefit MUST ensure direct access to the plant by all citizens, whether for recreational/preventive use or as prescribed medication for the treatment of ailments.

Section 22(a) of the Medicines Act read with Schedule 8 of the Act is therefore unconstitutional because it prevents doctors' prescriptions for and citizens' access to, the medical health care provided by this safe and very effective healing herb.

On 25 June 2011, I was told by a medical research doctor that cannabis was recently evaluated in research for its benefits to terminal cancer patients in Cape Town. The doctor and the patients were able to know whether a placebo or cannabis had been administered, with greatly beneficial effect noted in those who received cannabis especially with regard to pain management and maintenance of appetite and muscle mass. A full analysis is still pending. The benefits of cannabis to the sick must not be permitted to accrue to the profits of pharmaceutical companies but must be granted to all citizens as the right to grow one's own cannabis. Nothing less is just or acceptable.

[24]Ngcobo: "Cannabis is the target of both statutes (The Drugs Act and the Medicines Act), primarily because it has the potential to cause harm in the form of psychological dependence when consumed regularly and in large doses."

As it has already been shown in earlier parts of this document, and in Annexures 1, 3, 7, 16 and 17 submitted to the Court, Cannabis is medically beneficial and does not cause physical or psychological dependency. Its consumption by humans is beneficial and of no harm. The prohibition of Cannabis is unwarranted and has always been an unlawful harmful violation of a fundamental human right to partake of a natural herb that causes no harm to the user and which use is of no consequence to others.

[25] Ngcobo: "Medical evidence on record indicates that Cannabis is a hallucinogen."…
The definition of *'Hallucinogen'* is "a drug causing hallucinations."

The definition of '*hallucination*' is "the apparent or alleged perception of an object not actually present."

(Definitions from Reader's Digest Oxford Complete Wordfinder combination dictionary and thesaurus)

The smoking of Cannabis only mildly enhances the ability to visualize, and will never cause a person to suffer distorted perceptions that might result in risk or danger to themselves or others or to "see an object not actually present." Cannabis is by definition not an hallucinogen and the claim by the Constitutional Court that this is so is perjury.

Speaking from my own experience, Cannabis when smoked mildly enhances the ability of a person to visualize and to originate and evaluate new ideas, but this is NOT hallucination. I consider this effect to be an integral part of the reason that many religions and cultures value Cannabis for its enhancement of contemplative thought and imagination. I have found this effect to be most helpful in the fields of drawing and graphic design, ceramics, sculpture, architectural design and planning, poetry, the writing of stories, mathematics, and the appreciation of music.

Famous users of Cannabis include: Louis Armstrong, The Beatles, Lewis Carrol, Bill Clinton, Salvador Dali, Eugene Delacroix, The Doors, Alexander Dumas, Peter Fonda, Benjamin Franklin, Jerry Garcia, Art Garfunkel, Al Gore, Tipper Gore, George Harrison, Jimi Hendrix, Woody Harrelson, Paris Hilton, Dennis Hopper, Thomas Jefferson, Steve Jobs, Donovan Leitch, John Lennon, Abraham Lincoln, James Madison, Bob Marley, Paul McCartney, Joni Mitchell, Ralph Nader, Willie Nelson, Jack Nicholson, Prince Harry, Queen Victoria, The Rolling Stones, Carl Sagan, William Shakespeare, Ringo Starr, Peter Tosh, Dione Warwick, George Washington, W.B.Yeats…..

It is clear from this list that some of the greatest artistic and historical achievements were (to a greater or lesser extent) inspired and influenced by the consumption of Cannabis. (Most paintings by all the Western masters are also painted on Cannabis (hemp) canvas.)

The smoking of Cannabis only mildly enhances the ability to visualize, and will never cause a person to suffer distorted perceptions that might result in risk or danger to themselves or others.

I have found on the few occasions that I have eaten Cannabis that the visions/visual impressions are stronger and more mysterious/deeper than when it is smoked, and I therefore reserve the eating of Cannabis for special meditations and retreats where I make special preparation to withdraw from everyday situations that might require my attention.

The visions I have seen after having eaten Cannabis have been greatly valued events in my life, and through my knowledge of psychology and my ability to interpret the meaning of symbols, I have found these interactions with Cannabis to have been an essential part of my life pathway and world view and value system.

I reject all notions held by the State that it has the right to intervene, via the prohibition of Cannabis, in my fundamental right to visualize or see visions, or to hallucinate as I please, or to communicate with my Creator, and my fellow humans, while using Cannabis. I respect and value the rights of others, and only when I do not respect the rights of others does the State have any reason or right to hold me accountable, not for the consumption of Cannabis, but for any activity which might violate others' rights.

Ngcobo:"..it is common cause that the abuse of Cannabis is considered harmful because of its psychoactive component tetrahydrocannabinol (THC) ;

Firstly, it is disingenuous to equate the ordinary use of Cannabis with the term 'abuse', it being almost impossible to consume large enough doses for the concept of abuse to be considered. It is also almost impossible to abuse Cannabis because of its non-toxicity.

I consider the interaction of the many chemical components of Cannabis, which include the cannabinoids Cannabidiol (CBD), Cannabinol (CBN) and Tetrahydrocannabinol (THC) with my brain to be a gift from the Creator and I claim and defend my right to use Cannabis for whatever reason I choose.

Ngcobo:"..the effects of cannabis are cumulative and dose related.

This statement has been dealt with on page 9 of this document, and based on my long personal experience of Cannabis use' I consider it to be false.

[26] Ngcobo: "The harmful effect of cannabis which the prohibition seeks to prevent is the psychological dependence that it has the potential to produce."

I have never suffered physical harm or damaging psychological dependence from the use of Cannabis. I have only suffered from the prohibition itself. I

have been arrested 4 times. I have spent time in holding cells. I have had to spend time and money in an effort to claim my right to a fair hearing and to claim my rights to use Cannabis. Prohibition has caused more loss to me and to the State itself, than the supposed harm that is claimed to be caused by Cannabis. The costs to the State in prosecuting me already far exceed the monetary value of the cannabis found in my possession.

Ngcobo: "On the medical evidence on record there is no indication of the amount of cannabis that must be consumed in order to produce such harm."
'['
It is most commendable of Judge Ngcobo to note this truth. This does however, completely repudiate the previous observation by the judge: "The harmful effect of cannabis which the prohibition seeks to prevent is the psychological dependence that it has the potential to produce."

If there is no accepted medical indication of the amount of Cannabis which causes any harm, then there is surely no harm caused by cannabis. If there is no medical evidence of harm arising from the use of cannabis, the prohibition is unjustified.

[28] Ngcobo: " …the Attorney –General and the Minister of Health contended that such prohibition is justifiable in terms of Section 36 of he Constitution. They submitted that the prohibition is essential to the war on drugs and is required by our international law obligations."

My comments to the paragraph [26] of Ngcobo's judgement: ("On the medical evidence on record there is no indication of the amount of cannabis that must be consumed in order to produce such harm.") must repeated here.

If there is no accepted medical indication of the amount of Cannabis which causes any harm, then there is surely no harm caused by cannabis. If there is no medical evidence of harm arising from the use of cannabis, the prohibition is unjustified. The Prohibition of Cannabis is not justified by Section 36 of the Bill of Rights. The State only claims this to be so.

The agreement of the judges in the Constitutional Court with this unsubstantiated claim by the State indicates that even though judgments are supposed to be impartial and for the benefits of Justice and for the rights of

citizens, at all times citizens in the Constitutional Court are subject to, and victims of, a partial system in which cases challenging the laws of the State are being judged by employees of the State.

The absence of a jury in the Constitutional Court means that citizens are always subject to the State and that the State is the final arbiter of justice and law. Only a jury system at Constitutional Court level will restore the right of final arbitration to the People and ensure that Justice is vested in the will of the People.

The term “war on drugs” was coined by President Richard Nixon, but many writers consider this declaration of war to not be Constitutional in the USA.

In his essay *The Drug War and the Constitution*,[1] Libertarian philosopher Paul Hager makes the case that the War on Drugs in the United States is an illegal form of prohibition, which violates the principles of a limited government embodied in the Constitution. Alcohol prohibition required amending the Constitution, because this was not a power granted to the federal government. Hager asserts if this is true, then marijuana prohibition should likewise require a Constitutional amendment.

See also Annexure 18: Redlich, Warren (2005-02-05). "A Substantive Due Process Challenge to the War on Drugs" (PDF). "It is true that the approach suggested in this paper would limit police power. Constitutional protection of individual rights exists for that very purpose. We face coercive government action, carried out in a corrupt and racist manner, with military and paramilitary assaults on our homes, leading to mass incarceration and innocent deaths. We can never forget the tyranny of a government unrestrained by an independent judiciary. Our courts must end the War on Drugs."

The ‘war on drugs’ is effectively a war by the State upon a country’s own citizens. I reject not only the use of this term ‘war on drugs’ with regard to cannabis but also the claims that this war is justified.

The evidence, and the origin of the evidence, that was to be submitted by the Attorney-General in this judgment are not described by Judge Ngcobo, and this prevents any query of facts and sources of information.

The medical evidence I have provided in Annexure 7 (from pg. 61-92) and Annexures 16 and 17 indicates that moderate and even heavy use of cannabis causes no harm to the individual (and therefore to society and the

State), and in fact, provides medical benefit to the user due to the constructive interaction of cannabis' constituents with the human endocannabinoid system.

South Africa has the right to secede from all of the conventions that comprise our 'international obligations'. Secession from the Single Convention on Narcotic Drugs, 1961, has been recommended by the **Beckley Foundation Global Cannabis Commission** (See Annexure 15) and the recent Report of the **Global Commission on Drug Policy June 2011** (See Annexure 19).

[30]Ngcobo:" The SCA found that, having regard to the harmful effects of cannabis, especially when used in large doses, the general ban on the use or possession of cannabis was necessary to prevent the abuse of cannabis by the Rastafari followers and that an effective ban of the abuse of drugs is a 'pressing social purpose'

The finding by the SCA regarding "the harmful effects of cannabis, especially when used in large doses" is not based on impartial scientific evidence of harm caused by cannabis.

"..the general ban on the use or possession of cannabis was necessary to prevent the abuse of cannabis…" unreasonably equates the 'use or possession' of cannabis with the 'abuse' of cannabis, when in fact, it is physically impossible to suffer harm from Cannabis use or possession.

"…and that an effective ban of the abuse of drugs is a 'pressing social purpose.' Here the sentence takes a step further and equates the use and 'abuse' of cannabis with the abuse of 'Drugs.'

Information already shared from "**The Report. Cannabis, the Facts, Human Rights and the Law**" by D'Oudney and D'Oudney (Annexure 7 pages 4 and 5) is quoted here again:

> "The medico-scientific empirical research confirms cannabis contains no narcotic, no hallucinogenic, and no habit-forming properties, in the plant itself nor in its smoke. Evident from the most fundamental and widely inferred meaning, by definition based on empirical fact, cannabis is not a drug.

> Most unlike, and in contrast to tobacco, alcohol, tea, coffee, the caffeine-colas, and all legal or illegal 'recreational ' substances, cannabis is both non-habit-forming and non-toxic. Cannabis is uniquely safe."
>
> "The invalidity of linking cannabis with "drugs" is further demonstrated by the U.S. government's Bureau of Mortality Statistics: the table (Pg 2 of Annexure 7) shows that cannabis by any meaningful definition is not a drug. Cannabis cannot correctly be categorized or referred to as a drug of any type. To people whose financial interests are served by Prohibition (discussed later in THE REPORT) the incorrect use of the word "drug" where cannabis is concerned, is premeditated; a strategy of simple but effective disinformation, associating the harmless herb with addictive toxic drugs."

I reject the finding against Prince by the SCA as being based on malicious unsubstantiated propaganda and not on medical or scientific facts.

[31]Ngcobo It is important to emphasize what this case is not about but what it is about. This case is not concerned with a broad challenge to the constitutionality of the prohibition on the use or possession of cannabis. Although this was the form of the main prayer….., the statutory provisions in question were never attacked on the basis that they should be struck in their entirety.

In the case of *Acton vs. The State* the case is <u>DEFINITELY concerned with a broad challenge to the constitutionality of the prohibition.</u> I contend that laws prohibiting the use of Cannabis are unconstitutional and that the Cannabis plant should be freely available to all adults over 18 years (or an age to be determined by new regulations originating from public discussion, or by parents or as determined by a cultural grouping).

The right to cannabis should be available to citizens of all spiritual and cultural traditions, should they choose to use it.

All citizens should have the right to grow Cannabis for its industrial benefits (fibre, oil, nutrition and energy), whether or not they consume the plant for 'narcotic' or its medical effects, subject only to their respect for the rights of others and their own self discipline.

Doctors must be permitted to prescribe cannabis for citizens of all ages including children less than 18 years of age and babies, when this is necessary.

The Court will be required to consider not only the truth regarding the alleged harm caused by the consumption of cannabis (no harm), but also consider the potential socio-economic, industrial and environmental benefits of the plant to South Africa.

The Court must instruct the State to legalize cannabis, with regulatory provisions determined by **public debate**, and with regard to and inclusion of the views of existing members of the Dagga Culture of South Africa, who are presently guardians and protectors (under great persecution) of this valuable agricultural, economic, medical and genomic resource.

After 90 years of enforcing Prohibition, the State cannot be trusted, or be regarded as competent, to draft law for the legalization of Dagga. It should be the right of members of the Dagga Culture, who have suffered persecution and stigmatization for many years, to determine for the benefit of their own culture and their Tree, legislation which is also for the good of all citizens, and does not in any way violate the rights of others. This process must be facilitated by the State, the State in truth being (or supposed to be) the servant and expression of the will of citizens.

Should any doubt be held regarding the real will of the citizens of the Nation, the State is obliged to establish the will of the citizens and to only enact legislation which is based on public discussion and participation in the wording of the law, for the benefit and good of all.

In determining legislation for Dagga relegalization, the State must allow citizens of the Dagga Culture to initially draft the law, before this first draft is submitted to the public for broader discussion, and to the Constitutional Court for consideration of its constitutionality.

This process should ideally be regarded as a creative and constructive debate and engagement between citizens for the benefit of present and future generations, and I claim here my right to participate in this process.

Returning to the judgment:

[52] The importance of the limitation Pg. 30. of Prince.

(b) The importance of the limitation

[52] NGCOBO J "
"Yet, there can be little doubt about the importance of the limitation in the war on drugs. That war serves an important pressing social purpose: the prevention of harm caused by the abuse of dependence-producing drugs and the suppression of trafficking in those drugs.64 The abuse of drugs is harmful to those who abuse them and therefore to society. The government thus has a clear interest in prohibiting the abuse of harmful drugs. Our international obligations too require us to fight that war subject to our Constitution.65

[53] The government objective in prohibiting the use and possession of cannabis arises from the belief that its abuse may cause psychological and physical harm. On the evidence of the experts on both sides, it is common cause that cannabis is a harmful drug. However, such harm is cumulative and dose-related. Uncontrolled use of cannabis may lead to the very harm that the legislation seeks to prevent. Effective prevention of the abuse of cannabis and the suppression of trafficking in cannabis are therefore legitimate government goals. The conclusion reached by the courts below in this regard cannot be gainsaid. But does the achievement of these goals require a complete ban on even purely religious uses of cannabis by Rastafari, regardless of how and where it is used?"

The information and references already given in this document in response to previous statements by Judge Ngcobo provide enough reasons for the reader to understand why I reject these claims by Judge Ngcobo regarding the supposed harms of cannabis as money-motivated propaganda that is utterly false.

The State's original motives for the prohibition of Cannabis in South Africa are explained in Annexure 20 ("**Prohibition and Resistance: A Socio-political Exploration of the changing dynamics of the South African Cannabis Trade c 1850 –the present**" an MA thesis by Craig Paterson,. 2009. Rhodes University)

These motives arose from a combination of the State's control of indigenous people as a workforce, Christian conservatism, and bigoted theories of Social Darwinism in the fields of physiology and criminology and psychiatry. These excepts of passages from Annexure 20, pages36 -46

> "A major consequence of Social Darwinian thinking was the 'scientific' justification of oppression in the colonies. This was because the theory was taken – on a physiological level – to legitimize racism. Another important development was the emergence of criminology in Europe, an intellectual climate which took the now 'scientifically justified' idea of 'primitive types', and broadened it to include criminals."

> The view that cannabis caused insanity amongst the 'natives' in India was quickly adopted throughout the British colonies, especially in places where indentured Indians were shipped. It should be no surprise that one of the earliest available government discussions on cannabis is found in the Natal Indian Immigrants Commission Report (RIIC). This was published in 1887, at the height of 'criminal anthropology', religious zealotry, and concern about cannabis causing insanity amongst Indians.

> While the conclusions of the Commission identified cannabis as a cause of many symptoms associated with cannabis insanity in India, and so did attribute insanity to the use of the plant, this was not their main concern. Instead, it seems as if their main concerns were labourer indolence and violence. A point worth mentioning about the Commission's findings concerns non-Indian 'natives' and 'dakkha'.

> Their report stated:

>> "As we are strongly convinced that the smoking of hemp is as baneful to the Kaffir as to the Indian, we consider it is our duty to suggest that chemists, holding special licences subject to stamp duty, should be the only persons allowed by law to sell any portion of the hemp plant, whether wild or cultivated, to any person whomsoever, whether of white, Kaffir, or Indian descent."

> But just why this proposition was included is not immediately clear. Many reports attested to the widespread use of cannabis amongst Africans in the Colony and the dangers of its use. But these dangers were not indolence, or crime *per se* – rather, it was apparently the danger posed by Zulu armies under its influence. There were persistent rumours that Zulu armies had been under the influence of cannabis at Isandlwana and Blood River and that "under the exciting stimulation of the drug [are] capable of accomplishing hazardous feats."[36] "They were to be feared,"[37] says Chanock, because cannabis use was said to cause "extreme moroseness... [and] dangerous and criminal incitement."

> It is interesting to note the inclusion of 'whites' by the commissioners, despite there being no reports about cannabis use by 'whites' in Natal. Consider the comments immediately preceding the above statement:
>
> > "We have reason to think that much hemp is sold to Indians by Kaffirs and storekeepers; we are aware that, in some parts of the Colony, white traders purchase green hemp from Kaffir growers and retail them, in a dried state, to any customer who applies for them."
>
> It would seem that the main concern here was not cannabis use, but cannabis trading. And while cannabis could have been as "baneful" to Africans as Indians, the above reference was not to the effects of cannabis on Africans or Indians. It appears that inter-racial contact was the concern here. This was supported by the 'scientific' view of criminology that prevailed in the colonies, in which criminality was "infectious: criminality spread from lower races to higher."[40]
>
> Inter-racial contact between 'whites' and Indians or Africans, and between Indians and Africans, led to the debasement of the former in each case. Cannabis trading, it was claimed, facilitated this moral degeneration. The findings of the Indian Immigrant Commission Report framed the future debates on cannabis in South Africa. (Paterson, C. 2009)

The legitimacy of the State's claim in Prince (as expressed by the words of its employee, Judge Ngcobo) that the prohibition of the possession and use of cannabis arises "from the belief that its abuse may cause psychological and physical harm" is in fact not true for the reasons provided and clearly explained in Annexures 2-7 (American prohibition.), Annexure 10 (the motivations behind prohibition), Annexure 19 (Global Commission Report on Drug Policy 2011) Annexures 16 and 17 (the medical benefits of cannabis), Annexure 20 (South African Prohibition),

The racist origins of the prohibition of cannabis in South Africa have since progressed to the modern day motives of a worldwide, corporation-sponsored, State oppression of the Cannabis plant and its culture.

See Annexure 3, Page 48 -50 Herer "The Emperor Wears No Clothes" for information about the conspiracy against cannabis by pharmaceutical corporations, quoted in this article on pages 6-9

The conspiracy against Cannabis by the fossil fuel industry is described in Annexure 10: "**The Cannabis Biomass Energy Equation**" in "**THE REPORT. Cannabis, The Facts, Human Rights and the Law"** by

D'Oudney and D'Oudney, (Annexure 7). In summary thereof , Pg.60 is quoted here:

THE CANNABIS BIOMASS ENERGY EQUATION shows that amelioration of the world's people's Standard of Living by global provision of economical (very cheap) superior Energy, Food and Resources (the essentials of human life), and the Universal Democratisation of Fuel-Energy Production can easily, and immediately, be realized. This would yield to domestic, small-scale and localized private enterprises, the profits which currently accrue undeservedly to giant corporations and oil-producing countries; and would render the present arbitrary duties and revenues from fuel, uncollectible.

De facto monopoly on fuel-energy production and provision is obtained solely by covert conspiratorial means of Prohibition on Cannabis. Fuel-energy for industrial and domestic use at present derives from fossil fuels, uranium and alternatives all significantly expensive compared to the free fuel-energy by-product sourced from cannabis.

As a catastrophic result of Prohibiting cannabis, the world's most prolific and economical fuel-energy resource, fuel-energy presently accounts for not less than four fifths (4/5) of the Cost of Production of Gross World Product: i.e. all commercial Food, Goods and Services. By Cannabis Prohibition, all of the duties, taxes and profits on fuel-energy provision, that is, the 80% of the world's people's total Production of Wealth, has been brought into the hands and under control of a small group of men and women. Owner-magnates of oil producing countries and corporations, and politicians, for whom as a proportion of world population almost nobody has voted, do not intend to relinquish control of the Wealth of the World which they have stealthiy misappropriated.

Knowledge and understanding of the evidence of facts and circumstances expose the underlying financial motivation by which

a spurious Prohibition is contrived feloniously on a substance that is not only harmless but also health-promoting. Legal availability of, and competition from, cannabis, annihilate duty, taxes and profits in businesses which rely for their income upon sales of inferior products and resources.

The CANNABIS BIOMASS ENERGY EQUATION exposes and measures the utmost scale of money-motivation behind the illegal controls on cannabis. Regarding fuel-energy, The CBEE reveals the duty, tax and corporate profit protection racket that is the tyrannical State Crime of Cannabis Prohibition. This is in addition to the corrupt money motives behind Prohibition exposed in other Parts of THE REPORT.
To the mortal detriment of the World and its People's, hegemony, control and Monopoly-Ownership of the trillions involved are the ulterior objects of the minute number of self serving criminal politicians bureaucrats and magnates implicated."

I believe I have provided enough information regarding the real motives behind the prohibition of Cannabis for it to be clear that it is an unjust and unjustified law which is in violation of the UN Declaration of Human Rights, and the Bill of Rights of the Constitution of South Africa.

I will not comment further on statements by Ngcobo except to say that his finding for Prince's rights to cannabis on grounds of his religion and the right to freedom of religion are most gratefully received and commended by this citizen. His call on the State to facilitate the rights of Prince by amending the Drugs Act and the Medicines Act to exempt the religious use of Cannabis from prohibition was a step in the right direction. It would have opened the gates to further consideration of the reasons and rights of others to use and possess Cannabis, such as for medical reasons and, as raised in this article, simply for the Section 15 right to freedom of conscience, belief and opinion.

Had his views been shared by the majority, South Africa would have had to creatively consider policies and law towards the realization and expression of rights. Through this process and the opening up of intelligent debate in

society about the appropriate legal status of cannabis, we might have considered that, ultimately, the source of the entire cannabis problem in South Africa is in fact, the prohibition itself.

Should my application for direct referral to the Constitutional Court for the hearing of *Acton vs. the State* be granted by the magistrate's court and by the Constitutional Court, I would propose a possible legal and social paradigm whereby the legalization of Cannabis within South Africa will:

- Promote solidarity, co-operation and hope in all communities.
- Maximize the economic benefits of cannabis and provide employment to all who seek it.
- Minimize harms, including the harms caused by prohibition.
- Provide an environmental solution to the problems of dwindling fossil fuels and climate change.
- Enhance the productivity of agriculture and promote tourism.
- Reduce crimes related to poverty.
- Be of minimum cost and hassle to the State.
- Positively affect South Africa's balance of payments in the global economy.
- Provide a 'win-all-around' solution for the State, the citizens, law enforcement and for the rights and wellbeing of future generations.

I continue this article by looking at some issues arising from the judgment of Chaskalson CJ, Ackerman and Kriegler JJ, Goldstone and Yacoob JJ:

Comments on the Judgment of Chaskalson CJ, Ackerman and Kriegler JJ.

[98] "We also agree that the disputed material tendered in terms of Rule 30 is not admissible. Rule 30 makes provision for placing factual material before the Court if such facts are "common cause or otherwise incontrovertible", or are of an "official, scientific, technical or statistical nature capable of easy verification". A dispute as to the facts may, and if genuine usually will, demonstrate that they are not "incontrovertible" or "capable of easy verification". Where that is so, and it is in the present matter, the material will be inadmissible. Ultimately, admissibility depends on the nature and substance of the

dispute. It is in this sense that the dictum in S v Lawrence; S v Negal; S v Solberg, to the effect that the rule has no application to disputed facts, should be understood."

I am not a learned judge or practitioner in law, but it is common sense to this ordinary citizen that the exclusion of factual material because it is disputed by other factual material seems to result in judgments being determined with a greater emphasis on the court record and legal history than on scientific information and relevant social trends that might be relevant to the judgments.

In modern day complex society, many issues are constantly the subject of lively debate and dispute, and this is healthier than the exclusion of information because it is one side or another of a difference of opinion.

All disputed information should be noted in a judgment, its source being noted and evaluated for motive and bias.

My comments on page 6 regarding the Rule 30 application at [11] (by Ngcobo) also apply here too.

[99] I comment on the words of Prince "The object of using Cannabis by followers of the Rastafari religion is to create unity and to assist in reestablishing the eternal relationship with their Creator. The use of cannabis by the followers of the Rastafari religion is not to create an opportunity for the casual use of cannabis."

Although I am not a Rastafarian, I agree with the view that the use of Cannabis facilitates an individual's "eternal relationship with the Creator."

Even 'casual' use outside of formal religious ceremonies and gatherings facilitates this communion with the Creator, and apparently 'casual' use should not be frowned upon by anybody, not by the State or by any religious tradition, including Rastafari.

[100] Chaskalson CJ, Ackerman and Kriegler JJ:
"Other Rastafari may use more, whilst some may use less. Both the rate and manner of use varies from member to member, although smoking it seems the most common method. The appellant confines his use to smoking, preferring "not to puff the holy herb before work

and use(s) it maximum twice per day after work". He acknowledges, however, that as in any religion there are "good" and "bad" adherents and thus some who use cannabis excessively and/or recreationally. Although there is no set norm or generally accepted pattern, such use is condemned by true Rastafari."

I reject the notion that those Rastafari who use cannabis excessively and or recreationally might be considered to be "bad" adherents of the Rastafari faith. I question how, in a world of unique individuals and freedom of choice, anyone can judge another as a 'bad' adherent of a religion, if the rights of others not being violated by the 'good' or 'bad' adherent.

I also reject any condemnation of the use of Cannabis for 'recreational purposes". One's spirituality can also be expressed in one's 'recreational' life. I consider all use of Cannabis (especially when smoked) to be medically beneficial to my body and to "recreate" my connection with my Creator. The duality of religious use vs. recreational use of Cannabis is a false one and I consider all use to be justifiable spiritually, and medically motivated, whether in a social or meditational situation.

[101] I believe that the Court's concerns and queries about data regarding the Rastafarian use of Cannabis are out of line. It should not matter that an organization is not rigidly organized and "there are no formal organizational structures that could compile and maintain had data" regarding cannabis use.

The harmlessness of Cannabis and its positive promotion of solidarity within a community such as the Rastafarians do not require concern, or the State's prohibition. Cannabis use should therefore also not require any court's concern for harm or the compilation and maintenance of data of usage by any group. If no rights are being violated, the use of Cannabis should be of no concern to anyone else, neither the neighbors, nor the State.

I make note of Prof Yawney's note that cannabis "encourages inspiration and insight through the process of sudden illumination. Sociologists would call this a visionary state."

As an artist and poet, I value the use of cannabis in all my creative and artistic processes as it promotes insights and inner visual impressions, ideas, and verbalization of my thoughts essential to my craft, which I also consider to be an expression, through me, of my Creator.

[104] Chaskalson CJ, Ackerman and Kriegler JJ:
"The possession and use of cannabis is prohibited by section 4(b) of the Drugs Act and section 22 A(10) of the Medicines Act referred to above. It is an hallucinogen which has an intoxicating effect that is cumulative and dose-related. There are only about ten thousand Rastafarians in South Africa and the legislation is not aimed at them. Its purpose is to protect the general public against the harm caused by the use of drugs. Cannabis is but one of several substances prohibited under this legislation and its prohibition is not peculiar to South Africa. The possession and use of cannabis is prohibited in many countries, and it is listed as a prohibited substance in the international instruments referred to by Ngcobo J in his judgment."

Regarding "It is an hallucinogen which has an intoxicating effect that is cumulative and dose-related."

The definition of *'Hallucinogen'* is "a drug causing hallucinations."

The definition of '*hallucination*' is "the apparent or alleged perception of an object not actually present."

(Definitions from Reader's Digest Oxford Complete Wordfinder combination dictionary and thesaurus)

The smoking of Cannabis only mildly enhances the ability to visualize, and will never cause a person to suffer distorted perceptions that might result in risk or danger to themselves or others or to "see an object not actually present." Cannabis is by definition not an hallucinogen and the claim by the Constitutional Court that this is so is false.

See also all my comments on [25] on pages 15 and 16. I reject all notions of the State that it has the right to intervene, via the prohibition of Cannabis, in my fundamental right to visualize or see visions, and to communicate with my Creator, and my fellow humans, while using Cannabis. I respect and value the rights of others, and only when I do not respect the rights of others does the State have any reason or right to hold me accountable, not for the consumption of Cannabis, but for any activity which might violate others' rights.

It is also utterly hypocritical to prohibit the "intoxicating" effect of Cannabis while the State permits, and extracts levies and duties on the use of highly toxic, intoxicating and debilitating alcohol, and the highly toxic and addictive and harmful nicotine.

Once again, the statement "cumulative and dose related" occurs.

See also [13] of Ngcobo's judgment and my comments on pages 10 and 11.

The complete non-toxicity of cannabis indicates that the effects of cannabis are NOT cumulative or dose related. The overdosing of cannabis would be fatal in larger quantities if this was true, but it has never happened in the history of humankind.

The smoking of cannabis has also never resulted in fatalities and, in my own experience of smoking cannabis over the past 20 years, has never resulted in any signs of cumulative harm either in the short term or long term.

The well known fact that cannabis use, and even abuse, has never resulted in a single deadly toxic effect throughout human history, means that the perceived harms that must "protected against" are scientifically non existent. In my own life, with 20 years of heavy cannabis use, I can state with experience that the only harm I have ever experienced in relation to my cannabis use has resulted from its prohibition and the application of this prohibition against me over the past 5 months by the SAP.

I do not oppose legislation that controls access to highly addictive and very dangerous substances, but the inclusion of Cannabis in the same schedule of the Single Convention on Narcotic Drugs as heroin, is entirely unjustified and was motivated by America for the "protection" of the vested interests of its pharmaceutical and fossil fuel corporations.

The global prohibition of cannabis is not "to protect the general public against the harm caused by the use of drugs." It is a global conspiracy by these corporations and the various governments of the world. It is a violation of citizens' basic human rights and its motivation is based on lies. The moderate use of Cannabis has been shown to be medically beneficial to all individuals who choose to use it, and its use is generally of no consequence or harm to others. The application of the laws enforcing the prohibition of

Cannabis causes more harm and cost to society than the use of Cannabis itself (which carries on regardless of the prohibition).

It must be noted here that Cannabis is not only a 'drug', as the court has tried (without justification) to define it. It is also a source of highly nutritious seed (non psychoactive) and a valuable and health-giving seed oil. It also provides the most durable and versatile natural plant fibre on the Planet, and from the inside of the stalks, a carbon feedstock for the manufacture of liquid fuel and plastics. (See Annexure 10)

The use of the whole plant for its cannabinoids has been shown to cure many cancers especially brain and skin cancers. In addition to the research done on the medical effects of Cannabis, the medical use of Cannabis is presently permitted in 14 states of America, which is further testament to its medical usefulness.

If the State is to truly evaluate Cannabis for its potential to cause harm to society as a 'drug' this alleged harm must be transparently evaluated against the physical and social effects of accepted drugs like alcohol and nicotine, and it must also be evaluated for its economic potential to alleviate poverty at grassroots level, and for its ability to allow every citizen, educated or otherwise, to participate equally in the production of a most valuable agricultural resource.

Cannabis is also the only resource which, if planted on a megascale, could replace fossil fuels with a carbon-neutral energy source and, if plantings exceed the amount used for energy consumption, would actually sequester carbon from the atmosphere for material wealth and constructive application in the economy. (See Annexures 3, 9, 10, 11)

Cannabis is also the only known technology which, if applied on the required scale, could actually restore the atmosphere to carbon dioxide levels that existed prior to emissions caused by the fossil fuels.

[105] Chaskalson CJ, Ackerman and Kriegler JJ:
"Sachs J refers to the history of the prohibition of the use of cannabis in South Africa. Whatever that history might have been, it is not in our view relevant to the constitutionality of the present legislation. The constitutionality of this legislation is derived first from the provisions of the interim Constitution and later of the 1996 Constitution.

These constitutions continued in force all law that existed when they were adopted, subject only to consistency with their terms. Save for the argument on the religious exception, which we have dealt with fully in our judgment, it was never suggested that the laws as such were inconsistent with the interim Constitution or the 1996 Constitution.

It is also abundantly clear from the attitude adopted by the government in this matter, that it does not consider these laws to be an illegitimate inheritance from the past; it considers them legitimate and necessary provisions of our present criminal law legislation and international obligations."

The attitude adopted by Government towards Cannabis and the absence of any public debate on the issue of the legalization of cannabis does NOT necessarily mean that the law prohibiting cannabis is legitimate or even necessary. If laws are to be considered as just and constitutional in this country, it is absolutely essential to consider the historical origin and motivation of any and every law in society.

Attitudes in society change over time and an era of bigotry and intolerance can give rise to laws that sooner or later, MUST be challenged by the conscience of society and be exposed for being the unlawful, oppressive, unjust, and unjustified laws that they were then , and still are.

Consideration of the history of cannabis prohibition in South Africa (See annexure 20) clearly indicates that the laws arose from racism, oppression of the indigenous people by the State, and from bigoted social theories that are now considered to be unscientific. See the entire Annexure 20 "**Prohibition and Resistance: A Socio-political Exploration of the changing dynamics of the South African Cannabis Trade c 1850 –the present**" an MA thesis by Craig Paterson, 2009. Rhodes University) especially pages36 -46, also excerpted on pages 25 and 26 of this article).

A reading of this document will confirm that the prohibition of cannabis was, and still is, a criminal, and unjustified and unconstitutional law, and that the State is guilty of crimes against humanity in the application of this law.

[106] Chaskalson CJ, Ackerman and Kriegler JJ: (quoting here the Minister of Justice in an affidavit lodged in the High Court proceedings):

"There is no doubt that the effect of prohibition of the abuse of a legal (sic) drug (sic), such as cannabis, which results in severe damage to its users, is a pressing social purpose. The government of the Republic of South Africa simply has to take active steps to suppress the use, possession and trafficking of illicit drugs."

I state here again that all impartial medical scientific evaluations of the risks and dangers of cannabis indicate that that cannabis is entirely non-toxic and safe, and that no fatalities have ever resulted from the use of Cannabis alone, whether smoked or ingested. The Minister of Justice's statement is not based on scientific fact, and is in fact shown by research to be perjury.

The Minister of Justice's statement also tried to imply that the prohibition of Cannabis automatically renders all use of Cannabis as 'abuse', and does not acknowledge that cannabis could be used safely, and with respect for others in society.

Regarding the statement "The government of the Republic of South Africa simply has to take active steps to suppress the use, possession and trafficking of illicit drugs.":

It is now well known that many writers and researchers in the field of drug policy research, including many prominent world leaders, now consider the criminalization of drug use, and the "war on Drugs" to be ineffective, costly, damaging to individuals and society as a whole, and in the case of Cannabis is entirely unwarranted.
See the following Annexures in this regard:

Annexure 13, "Marihuana: A Signal of Misunderstanding National Commission on Marihuana and Drug Abuse" (Shafer Commission) 1972,

Annexure 14: A REPORT OF THE NATIONAL COMMISSION ON GANJA TO THE PRIME MINISTER OF JAMAICA, 2000.,

Annexure 15: Conclusions and Recommendations of the Beckley

Foundation Global Cannabis Commission 2009.

Annexure 20: REPORT OF THE GLOBAL COMMISSION ON DRUG POLICY, JUNE 2011.

Chaskalson CJ, Ackerman and Kriegler JJ:
"Although the appellant disputed the allegations made concerning the harm done by users of cannabis, he did not suggest that the prohibition of the use and possession of cannabis had any purpose other than that attested to by the Minister."

I support Prince in his dispute of the allegations made in the statement of the Minister of Justice concerning the harm done to users of Cannabis.

Unlike Prince, I do however suggest that the prohibition of the use and possession of cannabis does have a purpose other than that attested to by the Minister. I have provided ample information to confirm that the present prohibition is NOT to protect citizens and society from harm. It exists to protect the money interests of the pharmaceutical industry, the fossil fuel industry, the cotton and soya industries, the logging industry, the synthetic fiber industry, and corporate control of the food supply.

See Annexures 3, 7 and 10 for substantiation of this claim.

[108] Chaskalson CJ, Ackerman and Kriegler JJ:
"In a democratic society the legislature has the power and, where appropriate, the duty to enact legislation prohibiting conduct considered by it to be anti-social and, where necessary, to enforce that prohibition by criminal sanctions. In doing so it must act consistently with the Constitution, but if it does that, courts must enforce the laws whether they agree with them or not."

I question here whether the criminal sanction against cannabis is "appropriate" and justified, and have provided enough information in this article and its references to substantiate my insistence that it is NOT "appropriate."

I do not accept that the prohibition of cannabis is in any way compliant with the Bill of Rights and the restriction of the right is not validated by Section 36 or by the facts about the cannabis plant.

I also question the unsubstantiated attitude that Cannabis use is "anti-social" and insist that it is not. The Cannabis plant has been the centre and basis of many cultures throughout history and all around the world, including the Dagga cultures of Africa, (See Annexure 2 "**Marijuana: The first 12 000 Years**" by Abel, E.). Its prohibition has always been an aspect of the subjugation and oppression of those cultures by Western imperialist economic interests. The prohibition itself is antisocial.

The use of cannabis is of no harm to the user and its use is of no consequence or harm to others. If no-one's rights are being violated during the use of cannabis, no harm is being done and no crime is being committed. Prohibition itself is the source of the crime, not the cannabis or its use.

In a democratic society the legislature always has the duty to establish the will of the citizens regarding the issue being considered and to only enact legislation which is based on public discussion and participation in the wording of the law, for the benefit and good of all.

This obligation of the State, namely the determination of the will of the people regarding the possibility of the legalization of cannabis, and the facilitation of debate around the issue, has never occurred in the history of South Africa, and it is high time that this debate happens. Until such a debate occurs, the State cannot continue to claim that its prohibition is legitimate and is supported by the people of South Africa.

[109] Chaskalson CJ, Ackermann and Kriegler JJ:
"The question before us, therefore, is not whether we agree with the law prohibiting the possession and use of cannabis. Our views in that regard are irrelevant. The only question is whether the law is inconsistent with the Constitution."

In the case of *Acton vs. the State* the courts will HAVE to deal with the issue of whether the law against Cannabis is justified and constitutional. I believe that this important question should not only be left to the judges of the Constitutional Court, who are employees of the State, and therefore by first consideration, representatives of the State's interests over and above the interests of the citizens of South Africa. In the interests of justice and fairness, these issues should also be evaluated by a hearing of jurors comprising impartial citizens, who should be able to add their view on the

matter and instruct the judges on all aspects of a correct, justifiable and desirable decision that is to the benefit of the public interest.

The State must institute the necessary commissions to facilitate inquiry into a more appropriate legal status for Cannabis, and for the drafting of a Cannabis Relegalization Bill, which the legislators may only sign into effect when so instructed by those commissions, and by public confirmation of their support for relegalization via democratic processes such as referenda and the right to comment on draft bills for legalization.

I motivate this statement with the following extract from page 72 of "The Report. Cannabis: The Facts, Human rights and the Law" by D'Oudney and D'Oudney (Annexure 7):

> "The judicial department of government is not responsible to the People: by dependence for their careers and salaries, and by impeachment, members of the judiciary are responsible to the legislature. Their dependence on the legislators guarantees that judges sanction and execute the laws, whether or not the laws are just. Hence, in all enforcement of law, criminal, civil and fiscal, there exists the need for restoration of the genuine Constitutional Common Law Trial by Jury, which definitively requires juries to be comprised of indiscriminately chosen adult citizens and, amongst their duties, to judge *firstly* **on the justice of the law**: for the jurors to find their verdict by including judgment on whether the law and enforcement are themselves **Just**; and to annul enforcement of injustices and bad laws by finding the Verdict of Not Guilty; and *secondly, on the facts of the case,* for which *not the judge*, but the Jury alone is responsible for deciding on admissibility of evidence and the calling of witnesses."

Regarding the question whether the law is inconsistent with the Constitution, I believe I have submitted enough information and research to show that the law against cannabis is VERY inconsistent with the Bill of Rights of the Constitution.

[110] Chaskalson CJ, Ackermann and Kriegler JJ:

Section 15(1) of the Constitution provides that:

"Everyone has the right to freedom of conscience, religion, thought, belief and opinion."

Section 31 provides that:
"(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community –

(a) to enjoy their culture, practise their religion and use their language; and

(b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights."

The dictionary definition of "*everyone*" is given as 'every person, everybody', with supplementary or similar terms given in the thesaurus as: 'all (and sundry), one and all, each and every one or person, the whole world, everybody under the sun, every man jack.'

This definition also includes, and cannot by law or logic be said to exclude, all those who choose to possess and use cannabis for all of its benefits and for the purpose of claiming or expressing their rights to freedom of conscience, religion, thought, belief, and opinion (and not only for their religion).

In terms of Section 31(2), as long as a person who chooses to possess and use cannabis does not violate another person's rights, the possession and use of cannabis in terms of Section 15(1) as an individual, or in terms of Section 31(1) in a group in an expression of their culture or religion, (whether it be regarded as the Dagga Culture of Africa or not) is not in violation of the Bill of Rights, and cannot be forbidden.

Thus everyone has the right (and should have the right) to possess and use cannabis subject to compliance with Section 31(2).

Section 31(2) is the clause in the Bill of Rights which is a fundamental yardstick in establishing whether any action is constitutional or lawful, and in determining whether a crime has been committed by one against another.

Where an activity is in compliance with Sections 15 and 31 of the Bill of Rights, any prohibition of that activity would violate these rights, and be unconstitutional.

The prohibition of the possession and use of cannabis also violates the following Sections in the Bill of Rights:

Section 9 Equality
10 Human Dignity
12. Freedom and Security of Person
14 Privacy
15 Freedom of religion, belief and pinion
19. Political Right
24 Environment
27 Health care, Food, Water and social security (the emphasis on Health Care and Food)
30 Language and Culture
31 Cultural, religious and linguistic Communities.
33 Just Administrative Action
36 Limitation of Rights
39 Interpretation of Bill of Rights

For more detailed information on why the prohibition of cannabis violates these rights, see the article **"Cannabis Rights in relation to the Bill of Rights"** by Acton, J.

[111]Chaskalson CJ, Ackermann and Kriegler JJ:
"We agree with Ngcobo J that the legislation criminalising the use and possession of cannabis limits the religious rights of Rastafari under the Constitution, and that what has to be decided in this case is, whether that limitation is justifiable under section 36 of the Constitution. It is in regard to this question that the respective views of Ngcobo J and ourselves diverge. For the reasons that follow, we do not believe that it is incumbent on the state to devise some form of exception to the general prohibition against the possession or use of cannabis in order to cater for the religious rights of Rastafarians.

Legislation criminalizing the possession and use of Cannabis limits (violates!) not only the religious rights of Rastafari, but also the rights of all citizens of formal religions and cultural groupings and individuals who

choose to use cannabis in claim of their right to expression of their freedom of conscience, religion, thought belief, opinion and culture. That is a lot of different kinds of people.

In *Acton vs. the State*, I shall not claim a right to some form of exception to the general prohibition against the possession or use of cannabis. I shall claim, with substantiation, that the entire general prohibition against cannabis is founded in lies, based on unscientific prejudices, exists to protect the money and market interests of corporations and the State, and is damaging to individuals, and therefore to society. The prohibition of Cannabis, in creating a crime when no rights are violated, is a crime and violation of rights in itself.

I shall also claim that the listings of Cannabis as an "undesirable dependence producing drug" by the Illicit Drugs and Trafficking Act 140 of 1992, and the Single Convention on Narcotic Drugs, and in section 22A(10) of the Medicines and Related Substances Control Act 101 of 1965 are all criminal because the enforcement of the prohibition of cannabis causes more harm to society than the use of cannabis by individual citizens, or groups of citizens, whether these groups be cultural, religious, secular or recreational.

[112] Chaskalson CJ, Ackermann and Kriegler JJ:
"Sections 15(1) and 31 of the Constitution are wide-ranging provisions protecting both believers and non-believers, and all religions, large or small, irrespective of their creeds or doctrines."

These provisions and protections are violated by the prohibition of cannabis.

[113]] Chaskalson CJ, Ackermann and Kriegler JJ:
"The appellant does not dispute that the legislation prohibiting the possession and use of cannabis by the general public serves a legitimate government purpose."

As stated before, I vehemently dispute that the legislation prohibiting the use and possession of Cannabis serves a legitimate government purpose.

The law against Dagga is unjust, and unjustifiable, and is motivated and sponsored by vested corporate money interests and the collusive interests of the State, and by foreign influence upon the State.

These vested interests include the pharmaceutical, fossil fuel, soya, alcohol, tobacco, logging, and biotech industries, and the State itself, which levies duties and taxes on many of the toxic, inferior and environmentally destructive products produced by these industries.

See Annexures 3, 7, and 10, for substantiation of these claims.

[114] Chaskalson CJ, Ackermann and Kriegler JJ:
It must also be accepted that the legislation serves an important governmental purpose in the war against drugs.

See my comments to [113] and to [52] page 23-27 in refutation of this statement. The true reasons for the government's 'war on drugs' are not justified, and thus I do not accept this statement by the judges.

"Legitimate government purpose", namely the "Prevention of harm" and the protection of the well-being of citizens from the abuse of dangerous drugs (Cannabis is not a dangerous drug) would be most effectively and adequately served by less restrictive means, namely by the relegalization and regulation of cannabis for the public benefit.

The cannabis plant cannot only be considered as an "undesirable dependence producing drug." (I note here again that cannabis is not a 'drug.' See comments to [3] Ngcobo, pages 2-5, and the substantiating references provided there.)

Cannabis is a medically beneficial (Annexures 3, 7, 16 and 17) plant whose interaction with the human endocannabinoid system is a God-given gift. Cannabis also provides the most nutritious seeds, a health-giving seed oil, the most versatile and durable fibre, and from the inner parts of the stalks, a feedstock for the manufacture of carbon-neutral liquid fuel and plastics.

Cannabis, if legalized, would provide great economic, industrial and environmental benefits to citizens, and therefore our whole nation. We would all benefit greatly from the legalization of cannabis which would constructively assist the alleviation of poverty (which is caused by a lack of useful renewable resources at local level), and from the prevention of crimes that arise from poverty.

In evaluating "legitimate government purpose" all these facts about the economic potential of the plant must all be considered, not only the false belief that Cannabis is a harmful 'drug'.

[115] Chaskalson CJ, Ackermann and Kriegler JJ:
In *Christian Education South Africa v Minister of Education* this Court held:

> "The underlying problem in any open and democratic society based on human dignity, equality and freedom in which conscientious and religious freedom has to be regarded with appropriate seriousness, is how far such democracy can and must go in allowing members of religious communities to define for themselves which laws they will obey and which not. Such a society can cohere only if all its participants accept that certain basic norms and standards are binding. Accordingly, believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land. At the same time, the state should, wherever reasonably possible, seek to avoid putting believers to extremely painful and intensely burdensome choices of either being true to their faith or else respectful of the law."

Regarding "Accordingly, believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land."....

In any ethical or spiritual issue needing resolution by a citizen who must consider his beliefs, which appear to be in contravention of the laws of the land, the law of the land must also first be evaluated by the citizen for its justness and justification, not only in terms of the believer's religious beliefs, but also by evaluating whether the law violates any rights of the believer as they are expressed in the Bill of Rights of the Constitution. In evaluating whether the law of the land or his religious beliefs are just, a believer can easily evaluate both the law of the land and his beliefs against the rights of others as they are protected and upheld by all the provisions of the Bill of Rights.

Therefore when a citizen expresses his belief in the right to use cannabis, and the use causes no harm to himself, and does not violate the rights of others, the final evaluation of "right" or "wrong" occurs by evaluating both the law and his beliefs and his conscience against the Section 31(2) of the Constitution, and NOT by simply complying with the law or the judgment of a judge.

If a citizen can also show that his actions do comply with Section 31(2), those activities are then also protected by the Constitution. Any legislation that prohibits a citizen's Sections 15 and 31 rights to belief, or to the harmless use Cannabis, or any harmless activities or expression, is then itself in violation of Section 15 and Section 31(1) and (2) of the Bill of Rights.

This right to evaluate the justness of a country's laws and not just obey them is upheld by Section 15, "Everyone has the right to freedom of **conscience**, religion, thought, belief and opinion." and this right is only qualified by evaluation against Section 31(2). If enforcement of a law can be shown to be violating rights (as it clearly is with cannabis prohibition) then a citizen of conscience should oppose that law and bring the injustice to the attention of his fellow citizens, and also have the right to be heard in the formulation of an alternative social paradigm that stops the violation of rights and restores justice.

Sections 15 and 31 of the Bill of Rights, expresses the rights of all, including the rights of cannabis users to use cannabis according to their own conscience.

> Section 15(1) of the Constitution provides that:
> "Everyone has the right to freedom of conscience, religion, thought, belief and opinion."
>
> Section 31 provides that:
> "(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community –
> (a) to enjoy their culture, practise their religion and use their language; and
> (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
> (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights."

[116] Chaskalson CJ, Ackermann and Kriegler JJ:
The unchallenged general prohibition….. seeks to address the harm caused by the drug problem by denying all possession of prohibited substances (other than for medical and research purposes) and not by seeking to penalise only the harmful use of such substances. This facilitates the enforcement of the legislation. Persons found in possession of the drug are guilty of an offence, whether they intend to use it for themselves or not, and irrespective of whether its eventual use will indeed be harmful.

Never once in South African history has the State ever considered the real costs and benefits of the approach described in [116]. It is well known that cannabis has never been known to cause a single fatality. It is also well known that the prohibition of cannabis has led to many deaths and injuries and costs the State millions of Rand to enforce without making any noticeable impact on the cost or supply of cannabis. It requires just common sense to understand that a prohibition and its enforcement should not cause more harm to the population than that which is prohibited.

A law which causes more harm than that which it prohibits, especially when the prohibited substance is harmless, cannot be justified by the claim of "protection from harm."

This unreasonable and unsubstantiated prohibition against cannabis has been clearly pointed out in numerous Commissions of Enquiry into the effects of cannabis and the social impacts of the criminalization thereof on society. See Annexures 13, 14, 15 and Annexure19, the very recent "Report of the Global Commission on Drug Policy June 2011". See also the submission **"Findings by Cannabis Commissions"** by J.D.Acton.

In the light of hard statistics and the findings of all of these commissions, no government is justified in continuing the 'war on drugs' as described in [116].

The continuance of this 'war on drugs', especially with respect to cannabis, raises questions as to the real motivations behind the prohibition. These motivations have been clearly described in this article and in the substantiating documents submitted. (Annexures 2-7, 10, and 20)

[117] Chaskalson CJ, Ackermann and Kriegler JJ:
"The state was not called upon to justify this method of controlling the use of harmful drugs. The validity of the general prohibition against both possession and use was accepted."

In view of the recent Report of the Global Commission on Drug Policy, June 2011, (Annexure19) and the extensive support expressed for the Dagga Party of South Africa by a great number of citizens across South Africa, the State must now be called upon to scientifically justify the present methods of

control of the use of harmful drugs (note: cannabis is not a harmful drug) and the prohibition of cannabis.

This will be an absolute necessity for the case *Acton vs. the State.*

[118] Chaskalson CJ, Ackermann and Kriegler JJ:
"We are accordingly unable to agree with the significance attached by Ngcobo J to the fact that certain of the uses to which cannabis is put by Rastafari are not harmful. Subject to the limits of self-discipline, the use may or may not be harmful, but that holds also for non-Rastafarians who are prohibited from using or possessing cannabis, even if they use it sparingly and without harming themselves."

Here the judges insist, without substantiation, and in defense of the enforcement status quo, that all use of cannabis is harmful.

In this conclusion, they also (almost!) acknowledge that the use of cannabis may or may not be harmful "subject to the limits of self discipline" and that this holds for everyone.

The prohibition of cannabis prevents any citizen from exercising "self discipline" in the use of cannabis and instead imposes the State's unjustified, costly and ineffective methods of "control", this being merely the execution of tyranny over citizens masquerading as a 'war on drugs'.

Self discipline and respect for Section 31(2) of the Bill of rights is all that is ever needed by any citizen to reduce any perceived harms that might be thought to be associated with the use of cannabis (a harmless, non-addictive and beneficial herb).

[121] In the case of *Oregon vs. Smith* mentioned by Chaskalson CJ, Ackermann and Kriegler JJ, I agree with view that a free exercise of religion "does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his or her religion prescribes (or proscribes)."

However, all citizens in South Africa do have a right of **conscience**, as expressed in Section 15(1) of the Bill of Rights and they also have the right to evaluate laws for their justness and to decide whether a law is a "valid and neutral law of general applicability."

I strongly believe that the prohibition of the use of peyote by Native Americans (or anybody who chooses to use it), and the prohibition of cannabis is NOT a "VALID law of general applicability" if the use of peyote and cannabis complies (in South Africa) with the responsibility expressed in Section 31(2) of the Bill of Rights.

In America, peyote is classified as a 'drug' by the dominant Western culture while in fact, to the Native Americans, Peyote is their God (named Peyote) who lives in that cactus plant and God the Creator as God has manifested in the plant.

If no rights are violated in the use of peyote, the dominant culture does NOT have the right to call their laws "valid laws of general applicability" and then impose them on another oppressed culture, whose laws and customs and rights have been violated throughout history by the violent and dominating culture that invaded the land.

In the same way, in South Africa, the law against cannabis is also NOT a "valid and neutral law of general applicability" as it is invalidated by medical and scientific research, and is an unfair and prejudiced prohibition, especially when the State condones and profits from laws which permit the use of more dangerous and addictive drugs such as alcohol and nicotine, which may be freely consumed at a user's discretion.

Therefore when a citizen expresses his belief in the right to use cannabis, and can show that his use causes no harm to himself, and it does not violate the rights of others, the final evaluation of "right" or "wrong" occurs by evaluating, with his conscience and with self discipline, both the law and his beliefs, and his use of cannabis, against the Section 31(2) of the Constitution, and NOT by simply complying with the law or the judgment of a judge.

This view is supported in these words by M. K.Gandhi, who was himself a man of law:

> "In matters of conscience, the law of majority has no place."

> "The only tyrant I accept in this world is the still voice within."
>
> "There is a higher court than courts of justice and that is the court of conscience. It supersedes all other courts."
>
> "Non-cooperation with evil is as much a duty as is cooperation with good."

If a citizen can also show that his actions do comply with Section 31(2), those activities are then also protected by the Constitution. Any legislation that prohibits a citizen's right to belief, or to Cannabis, or any harmless activities or expression, is then itself in violation of Section 15 and Section 31(1) and (2) of the Bill of Rights, and is unconstitutional.

[122] Chaskalson CJ, Ackermann and Kriegler JJ:
on *Oregon vs. Smith.*
The minority, in an approach that is more consistent with the requirements of our Constitution, took a different view. They agreed that the First Amendment insofar as it applies to the practice of religion, as distinct from belief, is not absolute. It could be subordinated to a general governmental interest in the regulation of conduct, but only if the government were able to justify that "by a compelling state interest and by means narrowly tailored to achieve that interest". One of the minority, O'Connor J, held that notwithstanding this, the state's overriding interest in preventing the physical harm caused by drug use constituted sufficient justification for the interference with religious freedom.

In the case of Cannabis, use has not been shown to cause harm, so the "state's overriding interest in preventing the physical harm caused by drug use constituted sufficient justification for the interference with religious freedom." is not justified if there is no proof that harm is caused, especially when the harms caused by the enforcement of prohibition are also properly considered.

In comparing the issues in the case of *Oregon vs. Smith* with the Prince case, the judges equate the mild effects of Cannabis with the psychedelic visions caused by peyote (which also causes no physical harm).

The regulation of peyote in America use does not require or result in the absolute prohibition of the possession and use of peyote. It is permitted, subject to regulations. This should also be the case with Cannabis. Relegalization with regulations that minimize harms and maximize benefits could be easily achieved, but the underlying money motives that sponsor the legal status quo of Cannabis prevent all debate around this issue in South Africa.

[129] " All that distinguishes his (Prince's) use of cannabis from the general use that is prohibited, is the purpose for which he uses the drug, and the self discipline that he asserts in not abusing it.

Firstly, as rightly noted by Ngcobo in [26] "On the medical evidence on record there is no indication of the amount of cannabis that must be consumed in order to produce such harm."

No quantity of Cannabis has ever been determined as harmful, and for this reason the use of Cannabis cannot be regarded as abuse.

In the use of Cannabis the right to exercise self discipline and conscience to not abuse cannabis (or even to abuse it, if that is possible), is a valid right, as long as a citizen acts in terms of the behavior required by Section 31(2) of the Bill of Rights. Such choice and behavior is a right that is vested in the citizen, and not in any sanction or prohibition by the State.

[130] Chaskalson CJ, Ackermann and Kriegler JJ:
"There is no objective way in which a law enforcement official could distinguish between the use of cannabis for religious purposes and the use of cannabis for recreation."

It must be recognized that the use of cannabis is not necessarily only about exercising the freedom of religious rights, but in terms of (Section 15(1) it may also be about the exercising the freedoms of "conscience, thought, belief, opinion."

There is no reason why Cannabis use should not also be accepted for 'recreational' purposes subject to self discipline (as determined by the user) and his respect for the rights of others as upheld in the Bill of Rights. No

further restriction is necessary other than those that might be determined by the individual himself, or his chosen cultural or religious group.

[131] Chaskalson CJ, Ackermann and Kriegler JJ:
"Cannabis is grown in South Africa and according to the evidence South Africa is one of the major sources from which the world trade in cannabis is supplied. South Africa has an international obligation to curtail that trade and, though its obligation is subject to its Constitution, the fact that it has this obligation and the importance of honouring it, cannot be ignored in the limitations analysis.

If Cannabis possession and use was permitted within South Africa, the laws of other countries could still be respected through the prohibition of the export of Cannabis from South Africa.

"There is an extensive trade in cannabis within South Africa itself" for legitimate cultural, medical and social reasons, and it has in no way ever been curtailed by the costly and useless oppression of this trade by the State.

If cannabis was legalized in South Africa we would still be able to export products manufactured from the fibers and hurds (inside of the stalks) of dagga such as building materials, paper, cardboard, textiles, plastics, and liquid fuel, to name but a few of the possibilities.

We would also be able to use dagga to meet our climate change challenge and offset our fossil carbon emissions by using dagga to sequester atmospheric carbon dioxide and convert this atmospheric carbon to material wealth.

If planted on an adequate scale, dagga could also replace our use of fossil carbon with a carbon-neutral source of fuel for use either in vehicles or in our highly polluting coal fired power stations.

If plantings exceeded our national energy requirements we would be able to gradually sequester atmospheric carbon dioxide and hopefully achieve the restoration of atmospheric carbon dioxide levels to pre-industrial levels.

This initiative would include all citizens and create an economy that is far more sustainable and equitable than the present-day economy. The legalization of dagga must however be for the benefit of communities at the

grassroots level and not only for a few licensed corporations while the ordinary citizen's lot is not improved.

This is my vision for my country and I believe it is only a matter of time before everyone is prepared to consider cannabis as a resource. This is because our dependence on fossil fuels is already becoming an extremely expensive addiction and being a finite resource, is not sustainable in the long term.

[132] Chaskalson CJ, Ackermann and Kriegler JJ: .
"The right to freedom of religion is a right enjoyed by all persons. The right embraces religions, big and small, new and old. If an exemption in general terms for the possession and use of harmful drugs by persons who do so for religious purposes were to be permitted, the State's ability to enforce its drug legislation would be substantially impaired."

This right to freedom of religion also includes the right of citizens to private and individual spiritual beliefs and practices, and not only to membership of formally constituted religious groupings.

The State would not have to enforce its 'drug' legislation in relation to cannabis if it was legalized and regulated and not merely prohibited. The attempts by the State to prohibit drugs is actually the stupid way of trying to prevent any harms causes by the use of drugs. There is also no scientifically proven data on fatalities or reduced life expectancy caused by cannabis.

See Annexure 15 "**Conclusions and Recommendations of the Beckley Foundation Global Cannabis Commission 2009**" and Annexure 19 "**Report of The Global Commission On Drug Policy, June 2011**" for recommendations of policy alternatives to the prohibition of cannabis.

[133] Chaskalson CJ, Ackermann and Kriegler JJ:
"The appellant, appreciating this difficulty, suggested that a permit system be introduced allowing bona fide Rastafari to possess cannabis for religious purposes. In support of this contention he sought an analogy in the provisions of the legislation permitting the

use of harmful drugs for medical purposes. The analogy is unsound, however."

The permitting of specifically exempted groups to use cannabis while maintaining a general prohibition of use on other groups is not a satisfactory solution because any such permission would be result in law permitting discrimination based on religious, or other, differences. This would be unconstitutional, violating Section 9 of the Bill of Rights:

> Section 9 **Equality**
>
> (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
>
> (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
>
> (3)The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
>
> (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
>
> (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

As a citizen who uses dagga, I also claim all the rights in Section 9, both for myself and my culture. I contend that the present prohibition of Cannabis violates my Section 9(1-4) rights and that, in terms of Section 9(5), the State has not adequately established that the discrimination against me is fair. I say that it is most decidedly unfair. See Annexure 21 "**A Critical Analysis of Prince and an Objective Justification for the Decriminalisation of Marijuana in South Africa**" By Paul-Michael Angelo

Chaskalson CJ, Ackermann and Kriegler JJ:

"Cannabis has not been approved as being suitable for medical use and, in fact, there is no medical exemption that permits it to be used for such purpose."

Cannabis' medical benefits were well known long before prohibition and this statement highlights that the legislation has specifically been written to exclude all public access to the medical effects of the plant, thus protecting the market interests of pharmaceutical companies who cannot patent the whole plant, but are already trying to profit from synthetic THC.

The exclusion from the Medicines Act of rights to Cannabis for medical reasons violates Section 27 (1a) of the Bill of Rights.

27. Health care, food, water and social security

1. Everyone has the right to have access to
    a. **health care** services, including reproductive health care;
    b. sufficient food and water; and
    c. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
3. No one may be refused emergency medical treatment.

The 'heath care services ' described in this Section do not only refer to access to clinics and medical personnel, but also to access to the most efficient, least cost, remedy available for a specific ailment.

The requirement that a medicine can only be used if it has been approved by the Medicine's Control Council may be valid reasoning for the prevention of risks caused by drugs and medication that have dangerous side effects, but the complete non-toxicity and harmlessness of Cannabis should permit citizens to have free access to the plant for their own use, their being no chance of harm even from a large dose. There is no such thing as a cannabis overdose. There is no need for the medical use of Cannabis to be restricted for reasons of safety or concern of harm.

The Medicines Control Council must approve the use of cannabis for medical purposes without delay. Many people are suffering and dying due to State's violation of their right to have access to this medicine. (The fact that the law does not permit the medical use of cannabis, does not mean that it has no medical use, or that citizens don't have a right to it. They do have a right, and the law must recognize and accommodate this right)

Cannabis has been shown to cure cancer and cure or control the progress of many other ailments including pain, nausea, asthma, colds and flu, menstrual cramps, alcoholism, Crohn's disease, spastic colon, muscular spasm in Multiple Sclerosis, epilepsy, glaucoma of the eye, AIDS-related wasting, motor neurone disease, mental irritability, depression, bipolar disorder fibromyalgia, and many other human health challenges.

(See annexures 16 and 17 and pages 61 -92 of Annexure 7**, "THE REPORT. Cannabis*:* The Facts, Human Rights and the Law"** by D'Oudney, K. and D'Oudney, J.

In addition to the right to a cure (if it is possible), citizens also have the right to preventive medication when such medication is available. The use of Cannabis is shown to help in preventing (and curing) cancer, high blood pressure, stress, epileptic episodes, and numerous inflammatory diseases such as arthritis and rheumatism. Access to cannabis for its medical benefits should be every person's right, and the Medicines Act must be amended to permit the use of Cannabis by citizens for prevention of disease, self medication for cure, and the right of a doctor to prescribe it.

Failure to permit this right contributes to increased costs to the State Department of Health and a higher incidence of many serious diseases, like cancer, and even greater suffering and risk from colds and influenza. Failure to protect the right of citizens to have access to Cannabis violates the Bill of Rights in that it deprives many people of their right to life.

Section 11. **Life**

Everyone has the right to life.

[134] Chaskalson CJ, Ackermann and Kriegler JJ:
"There would be practical difficulties in enforcing a permit system."

"They include the financial and administrative problems associated with setting up and implementing any such system, and the difficulties in policing that would follow if permits were issued sanctioning the possession of cannabis for religious purposes."

It is very true that a permitting system which provides exemptions to a general prohibition would result in the problems described in [134]. Exemptions granted from a law by means of a permitting system adds complexity (and thus costs) instead of simplicity to the law and leads to privileges for one group over the rights of all.

This difficulty could be easily resolved by relegalization and regulation, allowing a new system that maximizes cannabis' benefit to citizens, while minimizing the potential for any harm (if any) at the least cost to the State. Such regulation should be policed on a 'complaints received' basis, rather than with the maintenance of the constant vigilance of law enforcement that is required by the Illicit Drugs and Trafficking Act 140 of 1992.

The present harms and costs of prohibition must be acknowledged by the State and be transparently evaluated and they must be included in the people's decision whether the legalization of Cannabis would be beneficial or not, and in considerations upon how legalization might best be arranged to confer the greatest benefits to ALL citizens.

[138] Chaskalson CJ, Ackermann and Kriegler JJ:
"But more importantly, the religious use of cannabis cannot be equated to medical use. It would expose Rastafari to the same harm as others are exposed to by using cannabis, depending only on their self discipline to use it in ways that avoid such harm. Moreover, to make its use for religious purposes dependent upon a permit issued by the state to "bona fide Rastafari" would, in the circumstances of the present case, be inconsistent with the freedom of religion. It is the essence of that freedom that individuals have a choice that does not depend in any way upon the permission of the executive. If cannabis can be possessed and used for religious purposes, that must be so whether the executive consents or not, and whether the person concerned is a Rastafari or an adherent of some other religion. Quite

apart from this objection, such a permit system would not address the law enforcement problems referred to in para 130 above. Ensuring that the use of cannabis fell within the conditions of the permit would depend entirely upon the self-discipline of the holder and would not be amenable to state monitoring or control. There is, of course, the pervading anomaly that permission for Rastafari to possess cannabis is meaningless unless they are allowed to grow it themselves (which presents its own complications) or their suppliers and the original growers are also brought within the exemption (this too presents complications).

The entire text of [138] is given above to indicate the tone of the statement, which raises many issues for consideration. I shall comment on each sentence in the above paragraph.

Chaskalson CJ, Ackermann and Kriegler JJ:
"But more importantly, the religious use of cannabis cannot be equated to medical use.

Religious use is not medical use but the use of cannabis for religion would also confer positive medical benefits. It is reasonable that people who use cannabis for religious purposes would be aware of the medical uses and also claim those rights too. In my defense against the charges against me and my understanding of my rights, I claim both medical and religious rights, as well as environmental and other rights to grow possess and use cannabis. There is no done harm to those who use it and those won't don't wish to use it suffer no harm as a result of its availability to others.

Chaskalson CJ, Ackermann and Kriegler JJ:
"It would expose Rastafari to the same harm as others are exposed to by using cannabis, depending only on their self discipline to use it in ways that avoid such harm."

It should not be the concern of the State that a Rastafarian or any other citizen would rely on their own self discipline to determine their own use of cannabis, especially in view of the fact that cannabis has no known toxicity and has never caused a fatality in any user. The previously quoted claims by the judges that harm is caused by the use of cannabis are without substantiation. The harms of prohibition are also not acknowledged or considered anywhere in this judgment and the statement above shows bias

towards the legal status quo because of the interests of the State and certain corporations in maintaining prohibition.

The exercising of one's own 'self discipline' results from the expression of an individual's Section 15 right to Freedom of Conscience, and Thought and Opinion. As these are fundamentally protected rights in the Bill of Rights, actions arising from the exercising of conscience and self discipline such as the smoking of a joint, or even 10 joints, do not fall under the control of the State until such time as another's rights are violated by a lack of self discipline and conscience in respecting the rights of others.

The presumption that the State must prohibit the use of a harmless natural substance because a citizen's self discipline may not be adequate is the equivalent of declaring someone guilty before they have even committed a crime.

Chaskalson CJ, Ackermann and Kriegler JJ:
Moreover, to make its use for religious purposes dependent upon a permit issued by the state to "bona fide Rastafari" would, in the circumstances of the present case, be inconsistent with the freedom of religion. It is the essence of that freedom that individuals have a choice that does not depend in any way upon the permission of the executive.

This statement is very true. It would be a violation of the religious rights expressed in Section 15(1), that a permit should be required for any religious practice including the use of Cannabis for religious purposes. It is also a violation of rights that it is prohibited in the first place.

The Court must realize that the present prohibition of the use of cannabis by the Rastafari religion, or other religion, is not only presently unenforceable but also, if measured against this very statement by the judges, is unconstitutional and illegal, all religious rights and harmless religious practices being protected by Section 15 of the Bill of Rights.

Chaskalson CJ, Ackermann and Kriegler JJ:
It is the essence of that freedom that individuals have a choice that does not depend in any way upon the permission of the executive.

It is also the essence of religious freedom that individuals have a choice to use cannabis for religious purposes that does not depend in any way upon the permission of the executive.

Chaskalson CJ, Ackermann and Kriegler JJ:
If cannabis can be possessed and used for religious purposes, that must be so whether the executive consents or not, and whether the person concerned is a Rastafari or an adherent of some other religion".

It is well known that Cannabis CAN be used for religious purposes and has been used by a great many spiritual traditions throughout the history of humankind. (See Annexure 1, "Wiki on Cannabis," Page 61, "**Religious and Spiritual use of Cannabis**").

In the real, everyday world Cannabis is freely used for spiritual purposes, regardless of the intentions of the State to prohibit it. The State's law does not reflect public reality and norms, nor does it respect the free choices of citizens to exercise their religious rights.

If the judges' statement was read in a positive way (rather than in the stern voice of concern expressed by the judges), the right to the religious use of Cannabis would be affirmed and ensured for everyone. The attitude of the statement is the difference between prohibition and acceptance of a harmless right and custom. All that we require in this county is a change of attitude towards cannabis, so that a perceived harm to be made into a benefit for all.

Chaskalson CJ, Ackermann and Kriegler JJ:
"Ensuring that the use of cannabis fell within the conditions of the permit would depend entirely upon the self-discipline of the holder and would not be amenable to state monitoring or control."

I repeat here again that it should not be the concern of the State that a Rastafarian or any other citizen would rely on their own self discipline to determine their own use of cannabis. I also reject without the reservation the idea that State monitoring or control of an adult's use of cannabis might be justified in any way.

The exercising of a person's own 'self discipline' is the result of the expression of an individual's right to Freedom of Conscience and Thought, Belief and Opinion. As these are fundamentally protected rights in Section 15 of the Bill of Rights, actions arising from the exercising of conscience and self discipline such as the smoking of a joint, or even 10 joints, do not fall under the control of the State until such time as another's rights are violated by a lack of self discipline and conscience in respecting the rights of others.

Refer here also to my comments to [133] above, regarding my right to Equality in term of Section 9 of the Bill of Rights.

Chaskalson CJ, Ackermann and Kriegler JJ:
Quite apart from this objection, such a permit system would not address the law enforcement problems referred to in para 130 above. Ensuring that the use of cannabis fell within the conditions of the permit would depend entirely upon the self-discipline of the holder and would not be amenable to state monitoring or control.

It is true that a permit system would not address the 'law enforcement problems' perceived by the judges. It is easily observed in the real world that even prohibition itself has little or no impact on the availability and price of dagga, or in lowering the prevalence of its use by those who chose to use it. The prohibition itself is the 'law enforcement problem" and it causes more damage to society than the Cannabis does.

There is no reason why Cannabis use should not also be accepted for 'recreational' purposes subject to self discipline (as determined by the user) and his respect for the rights of others as upheld in the Bill of Rights. No further restriction is necessary other than those that might be determined by the individual himself, or his chosen cultural or religious group.

Chaskalson CJ, Ackermann and Kriegler JJ:
There is, of course, the pervading anomaly that permission for Rastafari to possess cannabis is meaningless unless they are allowed to grow it themselves (which presents its own complications) or their suppliers and the original growers are also brought within the exemption (this too presents complications).

It is right that the judges raise this point, for ultimately, the rights that I claim, for myself and my culture, the Dagga Culture of Africa, is not only the right to possess and use Cannabis, but also the right to grow one's own to be self-sufficient in the use of the Herb as a source of energy, food, fibrous matter, as a medicine, and for my own spiritual use. I also claim the environmental right to be able to grow enough to substantially contribute to any national initiative for the sequestration of atmospheric carbon and the replacement of fossil fuels by using water-efficient cannabis to generate biomass for (carbon neutral energy) and material resources (sequestration of carbon). This could easily happen within a regulatory framework which would be determined, firstly, by members of the Dagga Culture, secondly, by other citizens, thirdly, by the Constitutional Court (which must feature a jury of citizens) and then, upon instruction from the people, it may be enacted by the State.

It must be noted that after 100 years of cannabis prohibition in South Africa, and the previously described collusion between corporations and the State in maintaining the Prohibition, the State is not capable or qualified to draft legislation for the legalization of cannabis, and this law or relegalization must originate from, and be ratified by the public, before it is referred to Parliament.

It has now also being realized worldwide that the 40 year global 'war on drugs' has been a costly and harmful failure. This view has been recently published in the "**Report of the Global Commission on Drug Policy, June 2011**" (See Annexure 19).

Taking into account the known medical benefits of cannabis, considering only substantiated harms arising from the use of cannabis as a relaxant, all possible industrial uses of cannabis, the potential of cannabis as a biomass feedstock for the manufacture of liquid fuels, the potential for equitable participation by all citizens in an economy based on cannabis, the savings in money and lives afforded by an end to prohibition, and the potential to alleviate poverty, especially in rural areas, it is clear that Cannabis would be of extraordinary benefit to the citizens in South Africa.

In a scientific and impartial evaluation of these potential risks and benefits of cannabis in society, the State would, by reason and logic, also be obliged to recognize that to prohibit Cannabis deprives people of rights to health and access to resources, as well as their Section 15 and 31 rights.

The State must also recognize that the Prohibition of Cannabis and its criminal enforcement is a crime against citizens. The State must legalize cannabis through a process of public discussion and also offer restitution and JUSTICE to all citizens who have suffered violation of any rights in the Bill of Rights of the Constitution as a result of the prohibition.

[139] Chaskalson CJ, Ackermann and Kriegler JJ:
"The use made of cannabis by Rastafari cannot in the circumstances be sanctioned without impairing the state's ability to enforce its legislation in the interests of the public at large and to honour its international obligation to do so. The failure to make provision for an exemption in respect of the possession and use of cannabis by Rastafari is thus reasonable and justifiable under our Constitution."

If the State claims that its prohibition of cannabis is "in the interests of the public at large" this must be scientifically and economically substantiated. Since the advent of a free and democratic society in South Africa, the prohibition of cannabis and its justification has never been reevaluated by a reasonable and impartial inquiry.

The perceived requirement of fulfilling "international obligations" to prohibit cannabis should not prevent debate in our country on the justification of Prohibition. The "obligations" themselves must be re-evaluated by South Africa as to their factual basis and motives.

The recent publication of the Report of the Global Commission on Drug Policy in June 2011, (See Annexure 19), has called the 'war on drugs' a costly and harmful failure. The Beckley Foundation Global Cannabis Commission of 2009, (See Annexure 15) also recommended that nations signatory to the Single Convention on Narcotic denounce and secede from the Convention until the Convention is renegotiated to exclude all mention of cannabis.

Until the State substantiates and scientifically proves that the present prohibition of cannabis is "in the interest of the public at large", the prohibition is unjustified and the law is unlawful and malicious.

[140] Chaskalson CJ, Ackermann and Kriegler JJ:
"In his judgment, Ngcobo J concludes that a limited exemption for the non-harmful use of cannabis could be crafted by the legislature to accommodate the religious needs of Rastafari. Because the appellant's case focussed on the general use of cannabis in which smoking has a prominent role, little attention was given in the evidence to the other uses of cannabis. It was never suggested that permitting other uses, but prohibiting smoking, would enable the appellant to practise his religion. According to Professor Yawney, the importance of cannabis to the practice of the religion is that it "encourages inspiration and insight through the presence of sudden illumination". It is the psycho-active effect of the drug that does this. Whilst smoking is the most potent form of use, it appears that eating and drinking have similar effects. The appellant stresses in his affidavit that children are not entitled to smoke cannabis, but that

> "A mature youth could be introduced to the holy herb in a non-invasive form such as tea [which does not have any psycho-active component in small quantities] or in food in the most minute of quantities on special occasions and under parental supervision."

There is no scientific evidence that the smoking of cannabis alone causes physical harm, debilitation, or mortality and the judges are mistaken to consider any use of cannabis to be harmful, or to make a distinction between 'harmful' and 'non-harmful' use of cannabis.

The smoking of cannabis is a safe method of use as a chosen dosage, determined according to conscience and cultural values, is easily obtained and controlled and maintained. The smoking of cannabis is an exceptionally effective way to treat influenza. There is no need to ever inhale the smoke deeply into the lungs (as prohibitionist propaganda claims). The smoke can be held in the mouth, swallowed and exhaled through the nose, thus effectively coating those areas in the nasal passages which are affected by the virus.

The State expresses an apparent concern for the health of dagga smokers but the criminalization of possession and use is in itself harmful to the smoker and costly to society. This is not acknowledged by any of the judges.

Instead, in a sane and just world, it would be reasonable that all State involvement in the regulation of cannabis must be evaluated by society for its usefulness and its benefit before any involvement is granted. For reasons explained in this article and in the Annexures 3, 5 6, 7, 10, 15, 16, 17, 19 and 20, the prohibition of cannabis is unsubstantiated, unjustified and malicious.

The smoking of cannabis is safer than the eating of cannabis, especially for inexperienced users. The eating of excessive amounts of cannabis induces more symbolic and inner "inspiration and insight through the presence of sudden illumination". No physical harm is done to such a user and the person generally meditates or goes to sleep.

If cannabis users are respecting the rights of others, the State should have no reason or right to discriminate against cannabis users and should not ever violate basic human rights such as those upheld in Section 15 and Section 31. The State should especially not have the right to forbid or attempt to regulate "inspiration and insight through the presence of sudden illumination," or any activity that contributes to such a state.

The effects of drinking cannabis depend on whether it is extracted into milk or into water. Cannabis simmered in milk (bhang) is the cultural drink of all adult Hindus.

I provide here information regarding the effects and risks of cannabis in relation to mothers, babies and young people.

See the article:
"Prenatal Marijuana Exposure and Neonatal Outcomes in Jamaica: An Ethnographic Study" by Melanie C. Dreher, PhD; Kevin Nugent, PhD; and Rebekah Hudgins, MA in Annexure 17, pg 12 of "Further Information on the Medical Benefits of Cannabis" Compiled by Jeremy Acton, June 2011. The conclusions were as follows:

> **"Conclusions.** The absence of any differences between the exposed on nonexposed groups in the early neonatal period suggest that the better scores of exposed neonates at 1 month are traceable to the cultural positioning and social and economic characteristics of mothers using marijuana that select for the use of marijuana but also promote neonatal development. *Pediatrics* 1994;93:254-260;"

See the views of on pg 113 of Annexure 7 “THE REPORT. Cannabis: The Facts, Human Rights and the Law.” By D’Oudney and D’Oudney

> ”These are the facts: humans receive benefits to health from cannabis; whenever cannabis moderates, reduces or replaces the use of those other virulent pathogens of addiction, alcohol and tobacco, *by young people or others*, the use of safe cannabis is to be unequivocally endorsed as sensible, and forthrightly recommended for the health-protecting Preventative Measure that it is.”
>
> “…. Further, cannabis mitigates drug use and helps people give up harmful addictions. An inequitable law selecting cannabis from amongst activities and substances, to restrict its use by young people or anyone else is not simply illegal; it is insupportable because *that very denial causes ill-health*, by withholding from people the efficacious Preventive benefits of cannabis use.”

Children should be given the truth about the effects of cannabis relative to the effects of alcohol and nicotine, and tik etc, and in making their choice about their personal use of substances, they should be encouraged and permitted to go for the healthiest choice. The healthiest choice by far, when scientifically measured, can be shown to be the moderate use of cannabis and coffee, or other non-alcoholic beverages.

I personally believe that children should not use cannabis recreationally and should be subject to certain rules and restrictions according to the parents’ discretion, and in class, according to the requirements of the teacher or school committee.

I believe that doctors should be permitted to prescribe cannabis to children, with the parents’ consent for certain medical conditions, and at the doctor’s discretion. There is no risk of harm in doing this.

I believe that possession of cannabis in schools should not be permitted, and be prevented through social contracts established between the student and the school. Possession or use in school could be punished by constructive community service at school, and not by the criminal justice system.

The legal age for the use of cannabis by minors may be considered to be around 18 years of age (equivalent to the right to consume alcohol) or possibly 16 years of age (equivalent to the right to consent to sex), but this age should also be subject to parent's discretion or be allowed to be determined by a cultural grouping without the need for control and policing by the State, unless actual complaint is made of a real violation of rights or regulations that occur in a paradigm of relegalization.

[141] Chaskalson CJ, Ackermann and Kriegler JJ:
"Moreover the disputed legislation, consistent with the international protocol, is not formulated so as to penalise only the harmful use of cannabis, as is the case with legislation dealing with liquor. It seeks to prohibit the very possession of cannabis, for this is obviously the most effective way of policing the trade in and use of the drug. This method of control was not disputed save for the religious exemption sought. The question is therefore not whether the non-invasive use of cannabis for religious purposes will cause harm to the users, but whether permission given to Rastafari to possess cannabis will undermine the general prohibition against such possession. We hold that it will."

The unfair prohibition of cannabis versus the legality of alcohol and tobacco is the result of a longstanding and unjustified and criminal discrimination by one culture over another, as described by Sachs J (footnote 23 to para 153 page 88 of Annexure 8 *Prince vs. The Minister of Justice)* and for the protection of the vested interests already mentioned. The prohibition of cannabis and the legality of alcohol and tobacco, which are far more damaging, is also a violation of Section 9 of the Bill of Rights **Equality**.

This Section 9 of the Bill of Rights also requires that laws for the regulation of alcohol and tobacco (and all drugs) and for cannabis should be equal before the law, based on fact and empirical observation of real dangers and physical effects.

Section 9 Equality

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

Cannabis users and users of alcohol and tobacco are presently not treated equally before the law. Cannabis users' Section 9(1) rights are violated.

> **(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.**

Cannabis users are not permitted the full and equal enjoyment of all rights and freedoms. They are not granted their right to and freedom of cannabis. The present prohibition violates the Section 9 (2) right to equality for cannabis users. Cannabis users, and their right to the possession of cannabis, are presently disadvantaged by unfair discrimination, and I believe they are entitled to the achievement of equality, through legislative and other measures.

> **(3)The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.**

Through prohibition, the State violates the Section 9(3) rights of cannabis users with regard to religion, conscience, belief, culture and birth.

> **(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.**

Members of the Dagga Culture should also not be unfairly discriminated against for having a different culture, conscience, belief or religion, whatever an individuals' personal reason to use cannabis might be.

> **(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.**

The State must yet scientifically justify the prohibition of cannabis on grounds of physical harm, especially in relation to the legal, but highly toxic and addictive drugs, alcohol and nicotine, and also justify the unfair discrimination brought against cannabis users who, in exercising their rights of conscience to use cannabis, cause no harm to themselves or others.

Refer also to the racism and imperial domination of the State over the indigenous people through the prohibition of cannabis in South Africa as described in Annexure 20**, "Prohibition & Resistance: A Socio-Political Exploration of the Changing Dynamics of the Southern African Cannabis Trade, c. 1850 – the present."** by Craig Paterson.

These ingrained attitudes of the State towards the Dagga Culture and its basic human rights continue today and are also expressed to varying degrees by all judges in the Prince judgment, although the attitude in the majority judgment that the State is rightfully a controlling and prohibitive and protective agent that is not required to recognize and uphold the rights of individual citizens, is an attitude I absolutely reject. The State must simply uphold and protect the rights of citizens, justifying any prohibition, and in fact must be limited to laws that in themselves do not cause harm.

I therefore do dispute outright that the total prohibition of cannabis is "obviously the most effective way of policing trade in and the use of the drug (sic)."

Prohibition is obviously ineffective in curtailing access to the substance and is a great cost to society when instead, the possession and use and trade could be permitted and regulated for the benefit of both citizens and the State.

[142] Chaskalson CJ, Ackermann And Kriegler JJ
"We are also unable to agree that the granting of a limited exemption for the non-invasive religious use of cannabis under the control of priests is a competent remedy on the evidence that has been placed before us. It would not meet the appellant's religious needs and he is the only party seeking relief from this Court. The Rastafarian Houses are not parties to the litigation and the appellant neither asserts nor has established authority to act on behalf of any person other than

himself. There is moreover no evidence to suggest that the granting of such an exemption would satisfy any of the Houses or enable Rastafari to practice their religion in accordance with their beliefs, or that the appellant or other Rastafari would refrain from smoking or consuming cannabis if such an exemption were to be granted. On the appellant's own evidence cannabis is required by him for the purpose of smoking, and as he told the Law Society and repeated in his affidavits, he intends to continue doing so. His claim was not for a limited exemption for the ceremonial use of cannabis on special occasions. An exception in those terms does not accord to him the religious right that he claims. Nor would a more general exemption for the non-invasive use of cannabis for religious purposes. All that this would do would be to facilitate the possession of cannabis by Rastafari, leaving them free for all practical purposes, to use it as they wish. Policing of the use in such circumstances would be well-nigh impossible. There are, moreover, important concerns relating to cost, the prioritisation of social demands and practical implementation that militate against the granting of such an exemption.33 The granting of a limited exemption interferes materially with the ability of the state to enforce its legislation, yet, if the use of cannabis were limited to the purpose of the exemption, it would fail to meet the needs of the Rastafari religion."

I shall comment on this paragraph sentence by sentence.

Chaskalson CJ, Ackermann And Kriegler JJ.[142]
"We are also unable to agree that the granting of a limited exemption for the non-invasive religious use of cannabis under the control of priests is a competent remedy on the evidence that has been placed before us. It would not meet the appellant's religious needs and he is the only party seeking relief from this Court."

I agree that the granting of a "limited exemption for the non-invasive religious use of cannabis under control of priests is not a competent remedy". Prohibition is also not a competent remedy to the perceived (but scientifically non-existent) harms of cannabis.

The only competent and reasonable remedy which also does not violate the Bill of Rights (as Prohibition does) is to permit all uses of cannabis within South Africa and to regulate the new industry and economy for public

benefit and participation, the laws arising from a just and equitable public process that considers the rights of ordinary people.

Prince's application for himself, even if not for others, was reasonable because the rights expressed in the Bill of Rights do not exclude the rights of individuals, or subject them to memberships of formal groups before they qualify for that right.

Prince's personal spirituality is uniquely his own expression of his relationship with his Creator and all the rights expressed in the Bill of Rights are inherently his rights, including his right to use cannabis for religious or other purposes according to his Section 15 rights (freedom of conscience, religion, thought, belief, opinion) and his Section 31 rights (to enjoy their culture, practice their religion, and use their language; and to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.), and subject only to his Section 31(2) respect for the rights of others.

Anything less than these rights is unconstitutional and unlawful, or limitation must be justified. The judges' considerations on the validity of the limitation of these rights in relation to cannabis, (See [52]Ngcobo, and [111] Chaskalson CJ, Ackermann and Kriegler JJ) which is actually well documented to be harmless and medically beneficial, are not based on scientific fact but on prejudice, the agenda of the State/corporate machine, on historical prejudice and suppression, and a on lack of respect for rights of citizens and the meaning of the Constitution.

Chaskalson CJ, Ackermann And Kriegler JJ.[142]
"It would not meet the appellant's religious needs and he is the only party seeking relief from this Court. The Rastafarian Houses are not parties to the litigation and the appellant neither asserts nor has established authority to act on behalf of any person other than himself. There is moreover no evidence to suggest that the granting of such an exemption would satisfy any of the Houses or enable Rastafari to practice their religion in accordance with their beliefs, or that the appellant or other Rastafari would refrain from smoking or consuming cannabis if such an exemption were to be granted.

The rights expressed in the Bill of Rights are not granted from above by the State, neither by the judiciary or the legislature. Nowhere does the

Constitution require that an individual citizen be a member of a formally structured group before they can claim any of their rights.

These rights are inherent in the lives of the citizens. I believe that the judges' reasoning that a lack of solidarity in the Rastafarian Houses or consensus on the rights claimed by Prince gives them grounds to disqualify Prince, and the Rastafarians, from their religious use of cannabis, is discriminatory and with malicious intent.

The judges' expression of concern whether a Rastafarian might be smoking a joint in either a 'religious' or 'recreational' mode is actually no business of theirs or anyone else's, whether another citizen, or the State itself, provided that Section31(2) is not violated.

Regarding "the appellant neither asserts nor has established authority to act on behalf of any person other than himself.":

I am a member of the Global Cannabis Culture on Planet Earth, and I am a member of the Dagga Culture of Africa and a citizen of the Dagga Nation of South Africa.

As the present leader of the established platform of **IQELA LENTSANGO: The Dagga Party of South Africa,** which participated in the May 2011 local elections in the Langeberg Municipality, Western Cape, I claim a right to speak here for my own rights and the equal rights of all citizens who use dagga, (whatever their reason), whether they yet know of the party or not, to use and possess cannabis, to resist the present prohibition of cannabis, and to propose ideas on how the legalization of cannabis could be achieved for the public benefit.

The Dagga Party has supporters in all parts of the country and a growing membership in social media on the internet. Since the elections we are concentrating on building a network of local ward groups to build our culture, to debate draft law for legalization, and to peacefully agitate and mobilize for our rights.

Should the Court only be willing to consider a class action in reconsidering constitutionality of the prohibition of cannabis and the possibility of full legalization, I would claim the right to be given reasonable time, as a part of my free and fair defense against my charges, to gather further participants in

my challenge against cannabis prohibition, both from individuals who are also charged with possession, or individuals and/or organizations who support the legalization of cannabis.

Chaskalson CJ, Ackermann And Kriegler JJ.[142]
"All that this would do would be to facilitate the possession of cannabis by Rastafari, leaving them free for all practical purposes, to use it as they wish."

This described use ("to use it as they wish") would actually be in full conformity with the rights upheld in Sections 15 and 31 of the Bill of Rights and the judges fail to recognize that there could be valid ways of regulating, or reducing harms from cannabis. Societies, if 'protected,' do not learn to evolve appropriate responses to their challenges and choices. Prohibition is preventing our country from growing in maturity and developing new, constructive cultural norms relating to the presently ubiquitous use of cannabis in everyday life.

The legalization of cannabis would be easily integrated into society, and the necessary appropriate behaviors and social agreements pertaining to the place of cannabis in a diversity of cultures, would evolve naturally in a reasonable and tolerant society.

The judges seem to believe that the law, and their judgment, and police enforcement, are the only means whereby society regulates itself, and in this judgment Prince's rights are regulated (and violated!) by a controlling, totalitarian, patriarchal, unsubstantiated, judgmental, prejudiced, and discriminatory attitude expressed in the views of Chaskalson CJ, Ackermann and Kriegler JJ, and Goldstone and Yacoob JJ.

In fact, society firstly regulates itself according to conscience, belief, thought, opinion. This is the intelligence of humankind being allowed to explore, and evolve in knowledge and culture. The law only arises out of the freedoms expressed in Section 15 and 31, and justice is only required when these freedoms are restricted or harmed in some way. The prohibition of cannabis causes harm to a cultural grouping and is thus a violation of equal rights and justice.

Chaskalson CJ, Ackermann And Kriegler JJ.[142]

"Policing of the use in such circumstances would be well-nigh impossible. There are, moreover, important concerns relating to cost, the prioritisation of social demands and practical implementation that militate against the granting of such an exemption.33 The granting of a limited exemption interferes materially with the ability of the state to enforce its legislation, yet, if the use of cannabis were limited to the purpose of the exemption, it would fail to meet the needs of the Rastafari religion."

Here the judges apply the prohibitionist's mindset in their view that the regulation of cannabis use in society would require "policing". Police are normally only required in situations where rights have been violated or laws pertaining to business (Taxation etc) are broken. The judges do not recognize that regulation can be achieved in many ways by society, without the need for intervention and "policing by the State."

In their narrow view of cannabis ('it's a drug') the judges have more concern for State control than willingness to give consideration to the possibility that the general welfare of citizens that might improve, this arising from the economic use of cannabis as an industrial (and spiritual) resource to serve the needs of society.

Looking into the future, there are also valid social demands in society (rights, health, nutrition, economic participation, alleviation of poverty, and equity) and challenges (unemployment, hunger, climate change, lack of resources , etc) which now motivate for the future use of cannabis in the economy as an environmentally friendly industrial resource and a carbon neutral fuel/energy source. These needs already motivate against the continuance of prohibition and its costs.

I concede that, to a certain extent, the finding by Chaskalson CJ, Ackermann and Kriegler JJ was justified in that if they had granted exemption to Prince, while excluding the rights of others, this would raise complications in law in terms of Section 9 Equality in the Bill of Rights.

Their decision for absolute prohibition was also clearly preferred to keep the application and enforcement of law simpler, but in this decision were also limited by the limited application submitted by Prince (religious rights to cannabis only for the Rastafarians).

Their decision can be challenged, however, because their judgment is based on the false assumptions that:

1. Cannabis is a harmful drug.
2. The use of cannabis constitutes abuse of cannabis.
3. The State has a legitimate purpose in criminalizing the possession of cannabis for the "protection of society.
4. Cannabis use is 'antisocial' and causes harm
5. Harms and costs caused by prohibition itself do not require consideration.
6. Cannabis has no medical benefit.

I end here this comment on the judgment by Chaskalson CJ, Ackermann and Kriegler JJ, and which was supported by Goldstone and Yacoob JJ.

With regard to the outcome of the case I call on other citizens of South Africa to consider that the Constitutional Court judgment in *Prince vs. the Minister of Justice* should be set aside, by declaration, as unconstitutional. I call on the public to insist that the State must facilitate the transformations required in law and in society to achieve the legalization of cannabis for the greater good of each and every citizen in South Africa.

Comments on the Supplementary Dissent of Sachs J:

[145] Sachs J;
"Intolerance may come in many forms. At its most spectacular and destructive it involves the use of power to crush beliefs and practices considered alien and threatening."

I welcome the points raised Judge Sachs's note regarding intolerance. In considering the issue of the prohibition of cannabis, it is very necessary to include consideration of 'intolerance,' in terms of the historical origin of the prohibition, and to also consider the "intolerance" in the modern day world that furthers an underlying agenda towards totalitarianism by the State/corporate complex.

I hold that the law against dagga is based on bigotry, intolerance, historical cultural and economic domination of indigenous people's culture, unscientific propaganda, corporate vested interests, the need for a State to be able to wield power over its citizens, and, through powers granted by the wording of the Illicit Drugs and Trafficking Act 140 of 1992, to establish and manage a totalitarian Police State to any desired extent under the guise of the 'war on drugs.'

"Although they (the laws criminalizing the use of dagga) appear to be neutral statutes of general application they impact severely, though incidentally, on Rastafari religious practices."

If the laws preventing harm from the use or abuse of drugs were neutral and equally applicable to all substances, the prohibition of cannabis would have to be questioned, as well as the legality of alcohol and nicotine. Instead, these harmful, addictive drugs are permitted, taxed and regulated, but the health-giving, benign herb is prohibited. The prohibition of cannabis is NOT based on 'neutral statutes of general application. It is instead singled out and classified, without scientific reason, with dangerous heroin by the Single Convention on Narcotics.

Sachs J;
The Rastafari claim that as a religious community they are subject to suppression by the implacable reach of the measures, and as individual believers they are driven to a constitutionally intolerable choice between their faith and the law.

The prohibition not only impacts on the Rastafarian religion. It also impacts upon the Hindu faith, and on all those citizens who use dagga, whether their reasons are for medical, religious, spiritual, social, or recreational use. We are all subjected to the implacable reach of the measures enforced by prohibition.

Like Prince, I will always, without hesitation, choose my own faith and my expression of my rights to act according to my conscience, thoughts, beliefs, opinion, and my health and environmental rights, as the basis for my use and possession of cannabis, over and above the present law which is unjust and malicious. The State must now justify the prohibition of cannabis (it hasn't yet) or it must accommodate these rights, and my rights to use of cannabis.

[146] Sachs J
"The Court observed that in issue was the validity of statutes that served an important public interest, namely, the prevention of drug trafficking and drug abuse, so that a declaration of invalidity would have far-reaching consequences for the administration of justice."

In the case of cannabis, the scheduling of cannabis as a "drug" of "abuse", when it is in fact a plant with many beneficial medical and industrial uses, was NOT in the public interest, but serves the interests of those whose money and market interests are protected by the prohibition.

Regarding the statement "a declaration of invalidity (of the statutes enforcing prohibition) would have far-reaching consequences for the administration of justice," I reject the notion that the present cannabis prohibition has anything to with justice, but consider it to be, in fact, an administration of tyranny and oppression. The principle of Justice, if ever reasonably applied to cannabis, would only result in the full relegalization thereof, and restitution for all those who have suffered human rights abuse under the existing law.

[146] Sachs J
Our Constitution recognises that minority groups may hold their own religious views and enjoins us to tolerate and protect such views. However, the right to freedom of religion is not absolute. While members of a religious community may not determine for themselves which laws they will obey and which they will not, the State should, where it is reasonably possible, seek to avoid putting the believers to a choice between their faith and respect for the law."

All citizens in South Africa have a right of **conscience**, as expressed in Section 15(1) of the Bill of Rights and they also have the right to evaluate laws for their justness and to decide whether a law is a "valid and neutral law of general applicability."

I have already claimed (and provided ample information in substantiation) that the law against cannabis is NOT a "valid and neutral law of general applicability" as this claim is invalidated by medical and scientific research, and is instead an unfair and prejudiced prohibition, especially when the State condones and profits from laws which permit the use of more dangerous and

addictive drugs such as alcohol and nicotine, which may be freely consumed at a user's discretion.

Therefore a citizen is justified in the right to use cannabis, if he can show that his use causes no harm, and does not violate the rights of others. The final evaluation of "right" or "wrong" occurs by evaluating, with his conscience and with self discipline, both the law and his beliefs, and his use of cannabis, against the Section 31(2) of the Constitution, and he is NOT constrained to simply complying with the law or the judgment of a judge.

I believe all citizens are entirely justified in any peaceful expression of disrespect for the law prohibiting cannabis, including by means of the possession and use of cannabis. All use and possession of cannabis constitutes legitimate activism against an unjust prohibition.

[147] Sachs J:
…"In my view the majority judgment puts a thumb on the scales in favour of ease of law enforcement, and gives insufficient weight to the impact the measure will have, not only on the fundamental rights of the appellant and his religious community, but on the basic notion of tolerance and respect for diversity that our Constitution demands for and from all in our society."

With great respect for this view expressed by Judge Sachs, I must add here that the "law enforcement" calls people criminals, even when they are not harming themselves, and are in communion with their Creator, and are expressing their humanity and culture, and are respecting the rights of others. This entire law prohibiting cannabis is based on intolerance, and enforces a lack of respect for diversity of culture, and basic human rights and freedoms.

[148] Sachs J:
The most useful approach would appear to involve developing an imaginary continuum, starting with easily-controllable and manifestly-religious use at the one end, and ending with difficult-to-police utilisation that is barely distinguishable from ordinary recreational use, at the other. The example given by Ngcobo J of officially recognised Rastafari dignitaries receiving dagga from state officials for the burning of incense at tabernacles on sacramental occasions, would be at the easily-controllable and manifestly-religious starting point.

Such a narrow and closely defined exemption would be subject to manageable state supervision, and would be understood publicly as being intensely and directly related to religious use. One step further along would be to allow designated priests to receive dagga for sacramental use, including smoking of a handed-round chalice, at designated places on designated occasions. This too could be easily supervised and be readily appreciated by the public as being analogous to religion as widely practised; indeed, I cannot imagine that any reasonable balancing of the respective interests of the Rastafari and of the state could provide for less. At the other end of the continuum would be the granting of everything that the appellant asks for, including the free use of dagga in the privacy of Rastafari homes. Such use would be extremely difficult to police and would completely blur the distinction in the public mind between smoking for purposes of religion and recreational smoking.

I raise the issue that law cannot provide a religious person the right to use cannabis without granting the same rights to a non-religious person using cannabis (for whatever the reason). A non religious user who uses cannabis should receive a similar respect from the State and the law, and not require policing or be discriminated against for their religious choices, or for the possibility that their use is ‘recreational’ use.

I consume cannabis for my own personal spiritual reasons yet my appearance when using it looks like recreational use to the uncaring, the uninformed and the uniformed, none of whose rights are violated by my use of Cannabis.

The continuum suggested by Judge Sachs is a commendable attempt to consider and balance the rights of the Rastafarians to use cannabis versus the State’s need to prohibit and control and monitor and police an unjust law. The continuum suggested unfortunately raises a false distinction, and unconstitutional discrimination, between apparently legitimate (aka religious) users and apparently recreational (but no less spiritual) users.

The State must substantiate the harm caused by cannabis or it must recognize that cannabis is harmless to the individual (and therefore to a just society). If the right of all citizens (religious and non-religious, medical, recreational, and industrial) to possess and use cannabis in all its forms, was recognized, subject to compliance with Section 31(2) of the Constitution, the

State would easily achieve its stated goal of an "important pressing social purpose: the prevention of harm," (See [52] Ngcobo)., it being impossible to suffer harm from the intentional use of cannabis.

[149] Sachs J:
As I see it, the real difference between the majority judgment and that of Ngcobo J relates to how much trouble each feels it is appropriate to expect the state to go to in order to accommodate the religious convictions and practices of what in this case is a rather small and not very popular religious community. I align myself with the position that where there are practices that might fall within a general legal prohibition, but that do not involve any violation of the Bill of Rights,[10] the Constitution obliges the state to walk the extra mile.

Footnote:10 to Sachs J: Whether or not a religious practice infringes the Bill of Rights is the basic marker which section 31(2) of the Constitution establishes for limiting the extensive associational rights which section 31(1)(a) emphatically states shall not be denied to religious communities. Thus, practices such as human sacrifice, the immolation of widows or the stoning of adulterers, violate the Bill of Rights and accordingly are not rendered immune to state action simply on the grounds that they are embedded in religious belief. The sacramental use of dagga on the other hand comes nowhere near to infringing the Bill of Rights. Accordingly, the religious rights which the Rastafari have under section 15(1) of the Constitution are strongly reinforced by their associational rights under section 31. As Ngcobo J indicates, their rights to dignity under section 10 are also strongly implicated.

The Constitution not only obliges the State to walk the extra mile "to accommodate the religious convictions and practices" of all citizens, but also obliges the State to more fully evaluate the constitutionality of the entire prohibition of cannabis, (including the evaluation of disputed facts) and NOT to spout false information regarding the supposed dangers of cannabis, and or the need to "honour international obligations" to violate rights in our country through prohibition.

Sachs J notes in the footnote, "The sacramental use of dagga on the other hand comes nowhere near to infringing the Bill of Rights. Accordingly, the religious rights which the Rastafari have under section 15(1) of the Constitution are strongly reinforced by their associational rights under section 31. As Ngcobo J indicates, their rights to dignity under section 10 are also strongly implicated."

The rights upheld by Sections 15, 31 and 10, mentioned are not the only rights in the Bill of Rights that are violated by the prohibition of cannabis.

This is a list of all the Constitutional rights violated by the prohibition of cannabis:

Section 9 Equality
10 Human Dignity
12. Freedom and Security of Person
14 Privacy
15 Freedom of religion, belief and Opinion
19. Political Right
24 Environment
27 Health care, Food, Water and social security (the emphasis on Health Care and Food)
30 Language and Culture
31 Cultural, religious and linguistic Communities
33 Just Administrative Action
36 Limitation of Rights
39 Interpretation of Bill of Rights

If the prohibition of cannabis was evaluated against these rights and impartial, scientifically verified facts about cannabis, it would fail on every Section. Further information in this regard is given in the submission "**Cannabis Rights in Relation to the Bill of Rights**" by Acton.

[150] Sachs J:
"The first will deal with the broad historical South African context in which the proportionality exercise in the present case has to be undertaken. The second considers the special responsibility which I believe the courts have when responding to claims by marginalised and disempowered minorities for Bill of Rights protection. The third concerns South Africa's obligations in the context of international conventions dealing with drugs. The fourth investigates the possibility of developing a notion of limited decriminalization as a half-way house between prohibition and legalization. Finally, I will refer to the special significance of the present matter for the constitutional values of tolerance, openness and respect for diversity."

The points raised by Judge Sachs are a great contribution to the debate around cannabis, and these points should all be considered in future cases

relating to cannabis in South Africa. These points will be evaluated where they occur later in the article.

[152] Sachs J:
"..Dagga is a herb that grew wild in Africa and was freely imbibed in the pre-colonial period.

This indicates that the use of dagga was regulated by the customs of African people. For more information on these customs refer to Annexure 20 ("**Prohibition & Resistance: A Socio-Political Exploration of the Changing Dynamics of the Southern African Cannabis Trade, c. 1850 – the present."** A thesis in fulfilment of the requirements for the degree of Master of Arts in History at Rhodes University By Craig Paterson, December 2009)

This document adds weight to Judge Sachs' concern that we should consider the past to find the origin of laws in society and to evaluate these laws according to modern day values and rights.

The paper shows that prohibition was definitely part of the colonialist's agenda to disrupt the culture of the indigenous people, and to dominate them legally.

Knowledge of the history and social contexts underlying the prohibition of cannabis would allow citizens to look at the attitudes of the past, and then, judging them, they would be more empowered to look forward to the issues of the future, to make choices about the future they choose, and to evaluate all the resources at their disposal. In a society that is free to make informed choices, this must happen in relation to cannabis.

The footnote 20 to [152] Sachs notes the importance of Cannabis to human spirituality, in this case the Rastafarian religion:

> "[G]anja's place in Rastafari would appear to be more than justification for smoking an enjoyable drug. As Barrett (1988) states 'the real center of the movement's religiosity is the revelatory dimensions brought about by the impact of the 'holy herb'."

The use of cannabis is clearly the central aspect of Rastafarianism, and I have also been told by a devout Rastafarian of the Xhosa nation that "Instango is Jah". ("Cannabis is God").

This relevance of cannabis to spirituality is further discussed in [152].

[151] Sachs J:
In *Christian Education*11 and *Prince 1*12 this Court emphasised the importance of contextualising the balancing exercise required by section 36 of the Constitution.[13] Such contextualisation reminds us that although notional and conceptual in character, the weighing of the respective interests at stake does not take place on weightless scales of pure logic pivoted on a friction-free fulcrum of abstract rationality.[14] The balancing has always to be done in the context of a lived and experienced historical, sociological and imaginative reality. Even if for purposes of making its judgment the Court is obliged to classify issues in conceptual terms and abstract itself from such reality, it functions with materials drawn from that reality and has to take account of the impact of its judgments on persons living within that reality. Moreover, the Court itself is part of that reality and must engage in a complex process of simultaneously detaching itself from and engaging with it. I believe that in the present matter, history, imagination and mind-set play a particularly significant role, especially with regard to the weight to be given to the various factors in the scales.

The balancing of considerations that the Court had to consider for Prince did not take place in the majority judgment, for any reasonable balancing point in this case would not have, COULD not have, simply remained in the status quo of the present prohibition. It is clear that the Court did not make the effort to move the 'fulcrum' from the interests of the State/corporate machine towards recognition of a basic human right, in this case freedom of religion, or in any way evaluate a balance between legislation and constitutional rights.

Prince's application, if even given the least possible recognition by the Court should have, at the very least, resulted in a strictly-controlled access to cannabis by the Rastafarian religion and an order that he might be granted the right to commence his articles and be registered with the Law Society. The denial of this was more the expression of a totalitarian State removing

the rights of individuals than it was about democracy and tolerance and mutual respect among citizens.

Comparing the majority judgment against Judge Sachs's observation that "…in the present matter, history, imagination and mind-set play a particularly significant role…," it is also clear that the mindset of the majority prevented them from seeing, or imagining, that a regulated access to cannabis for religious purposes would result in a possible 'reduction of harm' to the Rastafarians that should be considered beneficial to a diverse and tolerant society. This judgment instead ostracized the Rastafarians, (and all dagga smokers), from the right to contribute to mainstream society. It completely ignored the realities of cannabis use in our society and maintained an historical, defunct and unsubstantiated stance against the use of cannabis by Africans. It also denied the rights of citizens to a medicine and a resource that provides food, energy, oil, useful and materials, in protection of the interests of the State and the corporations that control it.

[152] Sachs J.
"…Prohibit the use of dagga, and the mystical connection is destroyed. The affidavit by Prof Yawney highlights the centrality of dagga-use to the practice of the Rastafari religion. She states that:

> "For Rastafari, cannabis or *holy herbs*, commonly known in Jamaica as *ganja*, is a sacred God-given plant to be used for *healing of the nation*. Its consumption is central to Rastafari spiritual practice . . .
>
> "In keeping with the practice of knowing Jah ! Rastafari as God directly for oneself, the ingestion of herbs encourages inspiration and insight through the process of sudden illumination. Sociologists would call this a visionary state characterized by the experience of oneness or interconnectedness.

This use of cannabis goes back to the beginning of human history. See Annexures 1, 2 and 3. The laws that prohibit cannabis on false claims of harm not only violate the Section 15 and 31 rights of citizens but also exist as a real attempt by the State to close this particular door of direct spiritual contact that humans have with the Creator which is facilitated by the consumption of the herb.

For this reason alone, the prohibition's violation of Section 15 rights is fundamentally unconstitutional. No laws should ever be permitted to separate a human's spiritual connection with the Creator, especially when

that connection also provides medical benefit and causes no harm to the individual or others. No limitation on this right is ever justified if it complies with Section 31 (2) of the Bill of Rights.

If even one citizen expresses the view that cannabis provides a spiritual link to knowledge of the Creator, then every law in a just state must respect that as true, and that practice must be protected and upheld in the Bill of Rights.

The judgment of the majority placed the vested interests of the State and its controllers above the rights of this grouping of citizens in the Dagga Culture, of which many tens, and possibly hundreds, of thousands would reasonably claim their use of cannabis for spiritual, medicinal and cultural purposes.

When viewed for its economic potential, Cannabis is literally "for the *healing of the nation".* For more information on the medical effects of cannabis see Annexure 16 and 17. For information about the economic potential of Cannabis see:

Annexure 1 " Hemp (Industrial uses of Cannabis)",

Annexure 3. **"**The Emperor Wears No Clothes" By Jack Herer.

Annexure 7 "THE REPORT. Cannabis*: The Facts, Human Rights and the Law*" by D'Oudney, K. and D'Oudney, J.

Annexure 9 COMMENTARY AND FEEDBACK ON THE CLIMATE CHANGE GREEN PAPER for IQELA LENTSANGO: The Dagga Party of South Africa, By Jeremy Acton

Annexure 10 The Cannabis Biomass Energy Equation Part Two of THE REPORT. Cannabis*: The Facts, Human Rights and the Law*" by D'Oudney, K. and D'Oudney, J.

The Rastafarians are absolutely correct in their claims that cannabis is "for *healing of the nation"* and all of this information listed above must be intelligently taken into account when evaluating the constitutionality of the prohibition of cannabis.

With regard to the footnote 18 of [152] pg 86: "Adherents… are enabled more easily to perceive Hailie Selassie as the true redeemer and to appreciate their own true identities [through the new level of consciousness to induced by the sacramental use of ganja]":

Although I greatly admire the writings of Haile Selassie, I do not personally believe in the Rastafarian views of him as the 'true redeemer'. I do agree however, with the Rastafarians in that I have also found that the use of cannabis enhances my ability to "appreciate (my) own true identity through the new level consciousness induced by the sacramental use of Cannabis."

My own spiritual pathway and my own conscious use of cannabis as a medium for insight and contemplation, and artistic inspiration, over the last 20 years of my life, results in the fact that I consider cannabis to be a fundamental aspect of my daily life, and my relationship with my inner self, and my relationship with the culture with whom I identify (the Dagga Culture, also known as the AmaDaggaDagga), my relationship with my nation, and my relationship with my Creator. I do not consider my relationship with cannabis to be 'psychological dependence'. I consider it to be a natural expression of my self, and thus I am forced to claim all the rights enjoyed all citizens in all sections of the Constitution to literally BE who I am.

I am prepared to provide further details of my beliefs and world view and spiritual practices, but the details are not relevant in establishing whether or not I qualify for rights or exemptions. I claim that the legalization of cannabis in South Africa is essential for my rights for myself (Section 15) and my culture, (Section 31), and I have provided enough information and references to allay the State's concerns, and refute the propaganda, that Cannabis is "harmful to society." The State must integrate this information, end prohibition and facilitate transparent processes to determine legislation that recognizes the value and potential of the cannabis plant to humanity. It must also rights the wrongs of the past, and facilitate a sustainable and equitable cannabis-based economy within South Africa.

The first country to do this will generate new products, unlock new skills, open up new markets and ensure a sustainable and resilient economy. By legalizing cannabis, South Africa would lead the way in (and profit from) climate change alleviation services and carbon credit trading that could be earned by the megascale planting of cannabis by citizens. This would

happen within a regulatory framework that enables massive carbon sequestration by cannabis (as material wealth for all producers/citizens) and as a carbon neutral fuel source as a replacement for dwindling fossil fuels.

South Africa was the first nation to make cannabis illegal in 1911. I hope that after 100 years of political persecution and prejudice, and 40 years after Nixon's declaration of a 'War on Drugs', it might be South Africa that leads the way again to unlock a new resource in such a way that it is well used for the good of all citizens in South Africa, and Africa, and globally.

It should be noted here that, <u>in all matters relating to cannabis, attitude is everything.</u>

[153] Sachs J:
Dagga is rooted both in South African soil and in indigenous South African social practice. In this respect it is significant that the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances expressly states that when State parties take measures to prevent illicit cultivation of plants containing narcotic or psychotropic substances:

"The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, . " [Article 14]

The historic evidence of traditional licit use in South Africa is abundant. This has been accepted over the years by our courts where it has been said that:

> ". . . [I]t is general knowledge that some sections of the [African] population have been accustomed for hundreds of years to the use of dagga, both as an intoxicant and in the belief that it has medicinal properties, and do not regard it with the same moral repugnance as do other sections of the population [23]."

Footnote 23 to SACHS J [153]
23 *S v Nkosi and Others* 1972 (2) SA 753 (T) at 762A. See also Milton and Cowling *South African Criminal*
Law and Procedure Volume III. Statutory Offences (Revision Service 1999) (Juta, Cape Town) F3 at 11.
There is serious legal scholarship to substantiate this view. Chanock *The Making of South African Legal Culture 1902-1936 Fear, Favour and Prejudice*

(Cambridge University Press, Cambridge 2001) at 69 and 92-6 states that until 1921 dagga was sold openly by mine storekeepers in the towns and grew wild in much of the country. He informs us that only in that year were there serious signs of moral panic focusing around dagga, when South African criminological thinking came to be obsessed with interracial sex, the provision of alcohol by whites to blacks and the reverse flow of dagga. Of particular concern, he notes, was the "camaraderie" which led some to lay aside race and other prejudices with regard to fellow addicts

As Judge Sachs noted, "The historic evidence of traditional licit use in South Africa is abundant." The prevalence of its present-day use confirms that this phenomenon of 'traditional licit use' continues unabated despite 100 years of costly and damaging prohibition and enforcement.

The number of male cannabis smokers in South Africa is roughly estimated at about 7.5 million.

(Source: Calculated as 30% of the approximately 25 million males in South Africa. Female data not known. The percentage is an approximation of data reported in the press from roadblocks which tested for cannabis in 2009 in Cape Town. 30% of males in Khayelitsha tested positive for cannabis. In Mitchell's Plein, 50% of males tested positive for cannabis.)

The prohibition of cannabis is absolutely ineffective in curtailing traditional use and is much more costly in terms of harm to individuals than the actual 'harms' that the State claims are caused by cannabis. More deaths and injury have occurred due to the prohibition of cannabis than have ever been caused by cannabis. To put it simply: A law that causes harm should not be lawful. Cannabis prohibition is illegal.

(In substantiation of this claim, see Annexure 7 **THE REPORT. Cannabis: The Facts, Human Rights and the Law." b**y D'Oudney, K. and D'Oudney, J. for a full explanation of the illegality of cannabis prohibition)

The footnote 23 notes that Chanock, in *The Making of South African Legal Culture 1902-1936 Fear, Favour and Prejudice* (Cambridge University Press, Cambridge 2001) "informs us that only in that year were there serious signs of moral panic focusing around dagga, when South African criminological thinking came to be obsessed with interracial sex, the provision of alcohol by whites to blacks and the reverse flow of dagga. Of particular concern, he notes, was the

"camaraderie" which led some to lay aside race and other prejudices with regard to fellow addicts"

Cannabis is also noted by Paterson (See Annexure 20) as being at the historical centre of the anti-apartheid movement, its use being an important cultural common ground between whites and blacks involved in the struggle.

> "There is evidence to suggest that those who used cannabis and those involved in opposing apartheid saw each other as sharing common ground in their illegal acts. Cannabis users appear to have been far more likely to be opposed to the apartheid government through experiences of persecution under that regime. To those holding anti-apartheid sentiments, cannabis use was seen as a way of expressing disdain for the law. Hence, cannabis users would often be accepted as being anti-apartheid in virtue of the fact that they used cannabis." In short, those involved with the anti-apartheid movement and cannabis users 'saw eye-to-eye'.

In our post-Apartheid society, I believe that the legalization of cannabis would facilitate an even greater solidarity in our nation between racially-oriented political groupings, but for now this is still a process that the new political platform of the Dagga Party of South Africa is striving to facilitate.

Cannabis legalization has a great potential to build a more tolerant and non-violent (and more sober) society and would promote an evolution of diverse cultural practices based on "inspiration and insight through the process of sudden illumination." (Yawney.) I cannot understand why the State might consider this possibility to be a problem. With quality education in mathematics and physics etc, this cannabis-facilitated gift of visualization would lead to innovation and the positive development of science and culture.

[154] Sachs J:
"…Indeed the "war on drugs" might be better served if instead of seeking out and apprehending Rastafari whose other-worldly use of dagga renders them particularly harmless rather than harmful or harmed, such resources were dedicated to the prohibition of manifestly harmful drugs."

Manifestly harmful drugs are those which:

1. **Are physically addictive** e.g. tik, nicotine, heroin, cocaine, benzodiazepines, alcohol.

2. **Are dangerous if overdosed** e.g. opiates (morphine, heroin), alcohol, nicotine.

3. **Are physically damaging** e.g. nicotine, tik, alcohol, cocaine, needle sharing with opiates.

4. **Promote behavior that violates rights** like theft, aggression, road safety rights, e.g. alcohol, tik, mandrax, opiates.

It must be noted here that cannabis inflicts none of the harms described in the above list. The legalization of cannabis would reduce the use of harmful drugs. Wherever a 'daggazol' is smoked it reduces the possible time spent consuming all the other harmful drugs like alcohol, nicotine, meth (tik), opiates, mood altering prescription drugs, etc. (the list is endless.)

It should also be researched whether the social harms caused by these 'manifestly dangerous drugs' may be better prevented, not only by a continuance of the present prohibition against **unauthorized sale**, but also by instituting a medical/clinical approach to addicts which provides care and the addictive substance under controlled and safe conditions, such as needle rooms for opiate addicts, or providing meth (tik) etc. to registered users in venues separated from other vulnerable sectors of society, such as youth.

These might be a better solution to the problems in society that are produced by these addictions. By treating such addictions as an illness which is accepted and treated, it loses it attractive power to youth since its image no longer complies with teen tendencies to rebel and question against the accepted norms.

I further express my belief in a South Africa where alcohol use is moderated, and where it is socially acceptable to cultivate my own cannabis and eat it or smoke it for my own reasons, as I choose to, subject to my respect for the rights of others. Legalization is a much more complex issue than this statement, but this is the fundamental cannabis right arising from our constitution. This right, if it was recognized, would generate a process of legislation to provide the guidelines and restrictions that facilitate this right. An entire economy could arise from this right.

Instead, we live with a law that maliciously enforces the centralized legislation of a historically oppressive State that chooses to not recognize certain rights and perpetuates an agenda which is based on lies and propaganda, cultural discrimination, foreign influence, and is motivated by the financial interests of corporate economic interests.

All that our country needs to ensure a sustainable future is a change in its attitude towards cannabis. I hope that my plight before the Court and my activism for my cause might facilitate this change.

The role of the courts in securing reasonable accommodation
[155] Sachs J:
"Limitations analysis under our Constitution is based not on formal or categorical reasoning but on processes of balancing and proportionality as required by section 36. This Court has accordingly rejected the view of the majority in the United States Supreme Court that it is an inevitable outcome of democracy that in a multi-faith society minority religions may find themselves without remedy against burdens imposed upon them by formally neutral laws.[26] Equally, on the other hand, it would not accept as an inevitable outcome of constitutionalism that each and every statutory restriction on religious practice must be invalidated. On the contrary, limitations analysis under section 36 is antithetical to extreme positions which end up setting the irresistible force of democracy and general law enforcement, against the immovable object of constitutionalism and protection of fundamental rights. What it requires is the maximum harmonisation of all the competing considerations, on a principled yet nuanced and flexible case-by-case basis, located in South African reality yet guided by international experience, particulated with appropriate candour and accomplished without losing sight of the ultimate values highlighted by our Constitution. In achieving this balance, this Court may frequently find itself faced with complex problems as to what properly belongs to the discretionary sphere which the Constitution allocates to the legislature and the executive, and what falls squarely to be determined by the judiciary."

Despite these valuable considerations by Judge Sachs on the balancing and proportioning necessary for determining the limitation of fundamental rights the majority judgment completely ignored the concept of balancing and proportioning and found for the interests of their employer, the State.

Cannabis prohibition is NOT a formally neutral law but is based on a colonial State's historical domination of indigenous cultures by a newly oppressive and controlling State, that now operates for the interests of pharmaceutical and fossil fuel corporations. The States's claim that its prohibition of cannabis is based on the need to prevent harm to society is a blatant lie , not only by ignoring the well established fact that all use of cannabis (including the smoking of it) is medically beneficial, but also by refusing to acknowledge the harms (including loss of life) caused by its prohibition.

All prosecutions that promote the lie and further the enforcement of the law as it stands are perjuries, malicious, and unconstitutional. The majority finding against Prince's application is also unconstitutional for its refusal to ultimately acknowledge Prince's basic rights in any way. Had the Court operated on a fair system of a trial hearing by jury, in which ordinary citizens decide of the first on legitimacy of the law and on the issues, it would have most likely come to a different conclusion from the majority judgment and would have accommodated Prince in some way, as recommended by Ngcobo and Sachs et al.

South Africa has a Constitution for a good reason, and that is to prevent the abuse and loss of rights. Constitutionalism is a fundamental aspect of any democracy and its law enforcement, and it is very necessary to evaluate all the laws of a country for their constitutionality and their basis in truth and justice.

[165] Sachs J:
"It has been suggested that decriminalisation appears to have the best prospects of success in dealing with the general prohibition on the use of dagga in South Africa because it draws on the strengths and dilutes the weaknesses of the two extreme positions, namely, prohibition and legalisation.[54] In the present case it is not necessary to consider whether or not decriminalisation should be applied generally to possession and use of small quantities of dagga for personal consumption. The only issue before us is whether a measure of limited decriminalisation in appropriately controlled circumstances could effectively balance the particular interests at stake, namely, sacramental use of dagga by the Rastafari and general enforcement of the prohibition against dagga by the state."

Footnote 54
Boister in "Drugs and the Law: Prohibition versus Legalisation" (1999) 12 *SA Journal of Criminal Justice*
1 at 11. (Lötter in "The decriminalization of cannabis: Hallucination or reality" (1999) 12 *SA Journal of Criminal Justice* 185 at 190 indicates that "[d]ecriminalization has been defined as 'those processes by which the competence of the penal system to apply sanctions as a reaction to a certain form of conduct is withdrawn in respect of that conduct.' (See The European Commission on Crime. Council of Europe 1980 *Report on Decriminalization*.) . . . When conduct is decriminalized, the criminal sanction and, consequently, the penal section attached to the conduct is removed. This indicates that a person will not be prosecuted by the state for that conduct. It does not necessarily make such conduct socially, morally or legally acceptable.

De iure decriminalization should be distinguished from *de facto* decriminalization. *De iure* decriminalization is the result of formal legal action whilst *de facto* decriminalization is the result of informal screening and diversionary programmes initiated and controlled by police departments, prosecutors, courts, correctional institutions or two or more of these groups acting in concert . . . Although legalisation and decriminalization are frequently used as synonyms they are not synonyms. If drugs are legalised illegal drugs will become legal. Decriminalization implies that the drug itself remains illegal but that the use and to a lesser extent the possession thereof are no longer prosecuted as crime.")

Decriminalization attempts to 'temper' the law as it is written but maintains the prohibitionist's mentality towards something that is harmless, beneficial and also could provide resources to alleviate poverty. Decriminalization still only thinks in terms of cannabis as a 'drug' and does not acknowledge the costs of prohibition and the socio-economic potential of full legalization.

It also allows police to apply discretion in the application of the written law for example, in this case they are obliged to consider whether someone's use of cannabis to for 'recreational' purposes and not 'religious' purposes.

The decriminalization of cannabis maintains the same paranoid control of the State over its citizens, and would still be used to prevent people's direct access to the resource and the medicine by limiting possession to small amounts while also not acknowledging that all 'small amounts' must be grown somewhere and supplied. Decriminalization prevents citizens from

growing their own cannabis and thus plays into the hands of gangs and cartels that will always thrive in a legislative framework that restricts and/or prevents full participation (the basic right to grow) in a cannabis-based economy.

The debate on Cannabis must be broadened to include the benefits of a lower cost in medical health care, tourism opportunities, the minimization of industrial pollution, an energy carbon neutral energy supply, as backing for finance, and for its potential to empower equitable economic production of real resources by every citizen.

[170] Sachs J: *Conclusion*
"In conclusion I wish to say that this case illustrates why the principle of reasonable accommodation is so important. The appellant has shown himself to be a person of principle, willing to sacrifice his career and material interests in pursuance of his beliefs.[61] An inflexible application of the law that compels him to choose between his conscience and his career threatens to impoverish not only himself but all of South Africa and to dilute its burgeoning vision of an open democracy. Given our dictatorial past in which those in power sought incessantly to command the behaviour, beliefs and taste of all in society, it is no accident that the right to be different has emerged as one of the most treasured aspects of our new constitutional order. Some problems might by their very nature contain intractable elements. Thus, no amount of formal constitutional analysis can in itself resolve the problem of balancing matters of faith against matters of public interest. Yet faith and public interest overlap and intertwine in the need to protect tolerance as a constitutional virtue and respect for diversity and openness as a constitutional principle. Religious tolerance is accordingly not only important to those individuals who are saved from having to make excruciating choices between their beliefs and the law. It is deeply meaningful to all of us because religion and belief matter, and because living in an open society matters."

In view of my research into the history of the prohibition of cannabis, I hold these words of Judge Sachs in the highest regard. "Yet faith and public interest overlap and intertwine in the need to protect tolerance as a constitutional virtue and respect for diversity and openness as a constitutional principle."

I have tried to show in this paper (in my defense and in claim of right) that "faith and public interest", "tolerance", "respect for diversity" and "openness" in South Africa would all be facilitated by the considered abolition of the prohibition of cannabis to permit its use as a resource for the public benefit. This is very possible. The laws can be crafted and rights can be restored for the benefit of all.

I confirm here great respect to Ras Garreth Prince for standing for his values. As a fellow citizen, I register my rejection of the decision of the majority judgment against him. Although he only spoke for his rights to practice his profession and for his own faith, he helped our court express values that can be claimed e.g. [18] (Ngcobo) and [170] (Sachs) and which will be ethical foundations for considering future cases evaluating the use of cannabis in relation to human rights in South Africa.

In conclusion,

I ask the court and my fellow citizens to evaluate the information I have provided in support of my claims of right.

I ask the Court and my fellow citizens to recognize that cannabis smokers can be good citizens too, and to recognize that the prohibition of cannabis violates their rights in the Bill of Rights of the Constitution of South Africa.

I ask the Court and my fellow citizens to find that the prohibition of cannabis violates section 2 of the Constitution, in that its enforcement results in conduct inconsistent with the Constitution, and that the prohibition of cannabis is therefore invalid:

> **2 Supremacy of Constitution**
>
> This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

I ask the court and my fellow citizens, for the sake of tolerance and respect, to recognize and make place for the people in South Africa who are members of the Dagga Culture.

I ask the Court and my fellow citizens to facilitate a process to determine the wording of a Cannabis Relegalization Bill for the good of all, and for the benefit of future generations.

I am who I am.
We are who we are.
Now it's time for our nation to grow.

This article is written for my Rights, for my Culture, for my Country,

Jeremy Acton
26 June 2011