Comments on the Single Convention on Narcotics in relation to the Scheduling and Prohibition of Cannabis.

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Introduction

A primary motivation for the prohibition of Cannabis in South Africa is often given as 'international responsibility' arising from South Africa's accession to **The Single Convention on Narcotic Drugs.**

[52}"….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" From the judgment of The Hon Judge J. Ngcobo in *PRINCE vs. THE MINISTER OF JUSTICE and THE ATTORNEY-GENERAL OF THE CAPE OF GOOD HOPE* .

Quoted from Annexure 8 **Prince vs. The Minister of Justice**

This view arises from the perception that Cannabis is harmful.

This paper provides information that moderate Cannabis use is not harmful and that "use" does not necessarily constitute "abuse".It also questions the wisdom and the legality of the Scheduling of Cannabis as a Schedule I and Schedule IV drug by the Single Convention on Narcotics.

Supplementary information on the historical process of Prohibition of Cannabis in America, and its subsequent global extension of this malicious prohibition via the Single Convention on Narcotic Drugs is provided.

The Single Convention is an expression of the vested interests of the pharmaceutical industry and other corporations of the United States of America, and in Europe.
Quoting from the text of the Convention:

"Resolution III

SOCIAL CONDITIONS AND PROTECTION AGAINST DRUG ADDICTION

The Conference,

Recalling that the Preamble to the Single Convention on Narcotic Drugs, 1961, states that the Parties to the Convention are concerned with **the health and welfare of mankind** and are conscious of their duty to prevent and combat the evil of drug addiction, "

(end of quote)

Argument 1:

In its inclusion of Cannabis in Schedules I and IV of the list of Controlled Drugs, the Convention fails to recognize that criminalization of Cannabis causes much greater social damage and violation of individual human rights than any ill effects arising from the use of Cannabis itself**.** This clause recognizes only "the evil of drug addiction," but does not acknowledge the evils and harms caused by Prohibition itself, and it does not acknowledge the medical and environmentally friendly industrial benefits of the plant.

Quoting from Section 5 of the Convention:

5. If the World Health Organization finds that a drug in Schedule I is particularly liable to abuse and to produce ill effects (paragraph 3) and that such liability is not offset by substantial therapeutic

advantages not possessed by substances other than drugs in Schedule IV, the Commission may, in accordance with the recommendation of the World Health Organization, place that drug in Schedule IV."
(End of quote.)

Argument 2:

Placement of Cannabis in Schedule 4 by claiming that it is **"particularly liable to abuse and to produce ill effects (paragraph 3) and that such liability is not offset by substantial therapeutic advantages**" is entirely false and without medical or scientific verification whatsoever.

Research now instead indicates that all use of Cannabis, whether smoked or ingested, and used in moderation, is medically beneficial and preventive of metabolic damage to cells, inflammatory conditions, and assists and enhances the body's natural endocannabinoid system. See Annexure 16 "**An Introduction to the Medical Benefits of Cannabis"** Acton, April 2011.

It is also well known that Cannabis is not toxic and only two cases of purported (yet disputed) Cannabis-related deaths are thought to have occurred in history of humankind. If Cannabis was truly toxic in any way, history would be littered with bodies, yet there is a complete lack of any such phenomenon, a testament to the safety of this herb.

There are also volumes of well-documented research on the numerous medical benefits of Cannabis. Cannabis can prevent and cure cancer, and is useful for many ailments including the treatment of pain, nausea, asthma, colds and flu, menstrual cramps, opiate addiction, alcoholism, Crohn's disease spastic colon, muscular spasm in Multiple Sclerosis, glaucoma of the eye, AIDS-related wasting, motor neurone disease, mental irritability, depression, ADHD and Autism Spectrum Disorder, pain in

haemochromatosis , epilepsy, and it is supportive in radiation and chemotherapy against cancer. See Annexure 16 "**An Introduction to the Medical Benefits of Cannabis"** Acton, April 2011.

Cannabis is thus falsely and for monetary and malicious purpose included in the Single Convention on Narcotics. Despite the claims by the outdated propaganda of the signatory States that Cannabis is harmful to society, the legalization of Cannabis, and its moderate use by citizens, would have a very positive effect on the health of the general population, especially if an increase in Cannabis use was linked to a decrease in the use of alcohol, tobacco, and prescription drugs.

The reason Cannabis is illegal is because legalization will result in lowered sales of pharmaceutical products, and alcohol, and numerous other products (wood pulp, fossil fuel, plastics, herbicides, etc), to the detriment of these vested interests.The Single Convention on Narcotics is the mechanism used by these interests to enforce a worldwide ban on this precious medical and industrial and cultural resource.

The issue of the unwarranted prohibition of Cannabis is also examined closely in the references by Wikipedia to the Single Convention on Narcotic Drugs[28], as quoted here:

"Rescheduling proposals

There is some controversy over whether cannabis is "particularly liable to abuse and to produce ill effects" and whether that "liability is not offset by substantial therapeutic advantages," as required by Schedule IV criteria. In particular, the discovery of the cannabinoid receptor system in the late 1980s revolutionized scientific understanding of cannabis' effects, and much anecdotal evidence has come to light about the drug's medical uses. The Canadian Senate committee's report notes,[42]

> *At the U.S.'s insistence, cannabis was placed under the heaviest control regime in the Convention, Schedule IV. The argument for placing cannabis in this category was that it was widely abused. The WHO later found that cannabis could have medical applications after all, but the structure was already in place and no international action has since been taken to correct this anomaly.*

The Commentary points out the theoretical possibility of removing cannabis from Schedule IV:[43]

> *Those who question the particularly harmful character of cannabis and cannabis resin may hold that the Technical Committee of the Plenipotentiary Conference was under its own criteria not justified in placing these drugs in Schedule IV; but the approval of the Committee's action by the Plenipotentiary Conference places this inclusion beyond any legal doubt. Should the results of the intensive research which is at the time of this writing being undertaken on the effects of these two drugs so warrant, they could be deleted from Schedule IV, and these two drugs, as well as extracts and tinctures of cannabis, could be transferred from Schedule I to Schedule II.*

Cindy Fazey, former Chief of Demand Reduction for the United Nations Drug Control Programme, has pointed out that it would be nearly impossible to loosen international cannabis regulations. Even if the Commission on Narcotic Drugs removed cannabis from Schedule IV of the Single Convention, prohibitions against the plant would remain imbedded in Article 28 and other parts of the treaty. Fazey cited amendment of the Articles and state-by-state denunciation as two theoretical possibilities for changing cannabis' international legal status, while pointing out that both face substantial barriers.[44] *See Cannabis reform at the international level*.

In a 2002 interview, INCB President Philip O. Emafo condemned European cannabis decriminalization measures:[45]

> *It is possible that the cannabis being used in Europe may not be the same species that is used in developing countries and that is causing untold health hazards to the young people who are finding themselves in hospitals for treatment. Therefore, the INCB's concern is that cannabis use should be restricted to medical and scientific purposes, if there are any. Countries who are party to the Single Convention*

> *need to respect the provisions of the conventions and restrict the use of drugs listed in Schedules I to IV to strictly medical and scientific purposes.*

However, the European Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs issued a report on March 24, 2003 criticizing the Single Convention's scheduling regime:[46]

> *These schedules show that the main criterion for the classification of a substance is its medical use. In view of the principle according to which the only licit uses is those for medical or scientific purposes (art. 4), plants or substances deprived of this purpose are automatically considered as particularly dangerous. Such is the case for cannabis and cannabis resin which are classified with heroin in group IV for the sole reason that they lack therapeutic value. A reason which is in any event disputable, since cannabis could have numerous medical uses.*

There have been several lawsuits over whether cannabis' Schedule IV status under the Single Convention requires total prohibition at the national level. In 1970, the U.S. Congress enacted the Controlled Substances Act to implement the UN treaty, placing marijuana into Schedule I on the advice of Assistant Secretary of Health Roger O. Egeberg. His letter to Harley O. Staggers, Chairman of the House Committee on Interstate and Foreign Commerce, indicates that the classification was intended to be provisional[47]:

> *Some question has been raised whether the use of the plant itself produces "severe psychological or physical dependence" as required by a schedule I or even schedule II criterion. Since there is still a considerable void in our knowledge of the plant and effects of the active drug contained in it, our recommendation is that marijuana be retained within schedule I at least until the completion of certain studies now underway to resolve the issue."*

The reference to "certain studies" is to the then-forthcoming National Commission on Marijuana and Drug Abuse. In 1972, the Commission released a report favoring decriminalization of marijuana. The Richard Nixon administration took no action to implement the recommendation, however. In 1972, the National Organization for the Reform of Marijuana

Laws filed a rescheduling petition under provisions of the Act. The government declined to initiate proceedings on the basis of their interpretation of U.S. treaty commitments. A federal Court ruled against the government and ordered them to process the petition (*NORML v. Ingersoll 497 F.2d 654 (1974)*). The government continued to rely on treaty commitments in their interpretation of scheduling related issues concerning the NORML petition, leading to another lawsuit (*NORML v. DEA 559 F.2d 735 (1977)*). In this decision, the Court made clear that the Act requires a full scientific and medical evaluation and the fulfillment of the rescheduling process before treaty commitments can be evaluated. *See Removal of cannabis from Schedule I of the Controlled Substances Act*.

Cannabis leaves (as opposed to buds) are a special case. The Canadian Health Protection Branch's *Cannabis Control Policy: A Discussion Paper* found that, while the Single Convention requires nations to take measures against the misuse of, and illicit traffic in, cannabis buds, a ban is not required on licit production, distribution, and use of the leaves.[48]

> *The Single Convention defines "cannabis" as the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted. (Art. 1, s-para. 1(b)) It is generally accepted that this definition permits the legalization of the leaves of the cannabis plant, provided that they are not accompanied by the flowering or fruiting tops. However, uncertainty arises by virtue of paragraph 3 of Article 28 which requires parties to the Convention to "adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant." In summary, it appears that parties are not obliged to prohibit the production, distribution and use of the leaves (since they are not drugs, as defined the Convention), although they must take necessary, although unspecified, measures to prevent their misuse and diversion to the illicit trade.*
>
> *(end of quotation)*

In a Report issued in March 2011 by the Beckley Foundation titled **"Fifty years of the 1961 Single Convention on Narcotics"**, written by David Bewley-Taylor and Martin Jelsma of the Transitional Institute in Netherlands, it is stated that

> "Reflecting the divergent interests and varied political influence of the states involved in the drafting of the treaty and at the plenipotentiary conference itself, the Convention also forced many so-called 'developing countries' to abolish all 'non-medical and scientific' uses of the three plants **that for many centuries had been embedded in social, cultural and religious traditions.** This included medicinal practices not accepted by modern medical science as it had developed in the 'North'.
>
> In tune with such cultural asymmetry, the Single Convention **lacks a rational and evidence-based scale of harm for Schedule I and IV substances.** While some scaling of harm was introduced between morphinelike (Schedule I) and codeine-like (Schedule II) properties and an exemption scheme included for preparations with low-alkaloid content, a similar **ranking logic was not applied to the coca leaf and cannabis,** both of which were brought under the morphinelike level of control **without solid argumentation."**

The Beckley Foundation Global Cannabis Commission (See Annexure 15), after a detailed evaluation of the effects of global Cannabis prohibition policy on society, recommended to the United Nations Convention on Narcotic Drugs held in Vienna, Austria, in March 2009, that all nations signatory to the Convention should denounce the 1961 and 1988 conventions, and re-accede with reservations with respect to Cannabis.:

Quote begins (from Beckley Foundation Global Cannabis Commission's Conclusions and Recommendations):

":Setting the international conventions aside:

24. **The international drug control regime should be changed to allow a state to adopt, implement and evaluate its own cannabis regime within its borders.**
This would require changes in the existing conventions, or the adoption of a new pre-emptive convention.
25. In the absence of such changes, a state can act on its own by denouncing the conventions and re-acceding with reservations, or by simply ignoring at least some provisions of the conventions.
26. Any regime which makes cannabis legally available should involve state licensing or state operation of entities producing, wholesaling and retailing the drug (as is true in many jurisdictions for alcoholic beverages). The state should, either directly or through regulation, control potency and quality, assure reasonably high prices and control access and availability in general and particularly to youth.
27. The state should ensure that appropriate information is available and actively conveyed to users about the harms of cannabis use. Advertising and promotion should be banned or stringently limited to the extent possible.
28. The impacts of any changes, including any unintended adverse effects, should be closely monitored, and there should be the possibility for prompt and considered revision if the policy increased harm."

Quoting here on Page 5 of the Beckley Foundation Global Cannabis Commission's Conclusions and Recommendations, the Commission made the following observations and recommendations:

BEYOND THE INTERNATIONAL TREATIES

11. The present international treaties have inhibited depenalization and prevented more thoroughgoing reforms of national cannabis regimes.

Regimes which do go beyond depenalization or decriminalization have been characterized by inconsistencies and paradoxes. For example, the Dutch coffee shops may sell cannabis products through the front door, but are not supposed to buy their supplies at the back door.

12. 'That which is prohibited cannot be regulated'. There are thus advantages for governments in moving toward a regime of regulated legal availability under strict controls, using the variety of mechanisms available to regulate a legal market, such as taxation, availability controls, minimum legal age for use and purchase, labeling and potency limits. Another alternative, which minimizes the risk of promoting cannabis use, is to allow only small scale cannabis production for one's own use or gifts to others.

13. There are four main choices for a government seeking to make cannabis available in a regulated market in the context of the international conventions:

(1) In some countries (those that follow the expediency principle), it is possible to meet the letter of the international conventions while allowing *de facto* legal access. The Dutch model is an example.

14. If a nation is unwilling to do this, there are three routes which are the most feasible:

(2) Opting for a regulated availability regime which frankly ignores the conventions. A government that follows this route must be prepared to withstand substantial international pressure.

Continued…

(3) **Denouncing the 1961 and 1988 conventions, and re-acceding with reservations with respect to cannabis.**
(4) Along with other willing countries, negotiating a new cannabis convention on a supra-national basis.
15. The record is mixed concerning whether making cannabis use and sale legal in a highly regulated market would lead to increased harm from cannabis use in the long run. Experience with control regimes for other psychoactive substances teaches that lax regimes and allowing extensive commercial promotion can result in high levels of use and of harm, while stringent control regimes can hold down levels of use and of harm.
16. A nation wishing to make cannabis use and sale legal in a regulated market should draw on the substantial experience with other relevant control regimes for psychoactive substances. These include pharmacy and prescription regimes, alcohol sales monopolies, labelling and licensing, availability and taxation controls. Special attention should be paid to limiting the influence and promotion of use by commercial interests. Attention should also be paid to the negative lessons from the minimal market controls which have often applied for tobacco and alcohol, as well as to the positive examples."
(End of quote)

Argument 3:

All of these recommendations and observations by the Beckley Foundation could easily be implemented through the drafting of legislation in South Africa which legalizes Dagga.

This legislation must result from a public participation process and be the result of the will of the people, and NOT be exclusively written within the structures of the presently biased and corrupted State.

South Africa must take the lead in denouncing the Single Convention on Narcotics as it presently stands.

Legislation must prevent harm (without criminalization of any aspect of Cannabis production, possession or use) and promote and enable access to Cannabis as a resource for the benefit of our society. This legislation must always respect the traditional cultural use of Cannabis in Africa, the medical rights of all citizens to have free access to Cannabis, the personal right to Freedom of Choice subject to one's respect of the rights of others, and it must enable the economic production and use by all citizens of the medical, fiber, energy, cultural and other benefits of Dagga, according to their choices.

Anything less than this is criminal.

Argument 4

The legal argument given in my statements for the court record (on 17 March 2011), namely that the criminalization of Dagga is in violation of sections 1, 2, 3, 7, 8, 9, 10, 12, 16, 21, 25, 26 of the UN Declaration of Human Rights, (more clearly stated by D'Oudney, K. and D'Oudney, J. in "THE REPORT. Cannabis: The Facts, Human Rights and the Law", Annexure 7) and of numerous clauses in the Bill of Rights of the Constitution of South Africa, reinforces this defendant's view that the inclusion of Cannabis in Schedule I and IV of the Convention is not only unsubstantiated, but is also in fact illegal.

The question arises "Which is the higher law: The UN Declaration of Human Rights or the Single Convention on Narcotic Drugs?"

D'Oudney and D'Oudney, on Page 25, call the UN Declaration on Human Rights "**The Supreme Law**" and state that the "denial of legality in the use Cannabis is the denial of the Human Right and Liberty to *a private activity harmless to the user and of no consequence to others."*

I note that the inclusion of Cannabis into the Single Convention was at the insistence of the United States, and that the original prohibition of Cannabis in the USA (Marijuana Tax Act 1937) was based on false, alarmist and racist propaganda issued by the Federal Bureau of Narcotics, examples of which are given here

(This section was drawn from the manuscript of The Marihuana Consensus: A History of American Marihuana Prohibition, in press 1972, by Professors Charles H. Whitebread, 11, and Richard J. Bonnie of the University of Virginia Law School.)*

Quote 1 :

Despite the fact that medical men and scientists have disagreed upon the properties of marihuana, and some are inclined to minimize the harmfulness of this drug, the records offer ample evidence that it has a disastrous effect upon many of its users. Recently we have received many reports showing crimes of violence committed by persons while under the influence of marihuana.

The deleterious, even vicious, qualities of the drug render it highly dangerous to the mind and body upon which it operates to destroy the will, cause one to lose the power of connected thought, producing imaginary delectable situations and gradually weakening the physical powers. Its use frequently leads to insanity.

I have a statement here, giving an outline of cases reported to the Bureau or in the press, wherein the use of marihuana is connected with revolting crimes (U.S. Congress, 1937: 30).

Quote 2

I wish I could show you what a small marihuana cigarette can do to one of our degenerate Spanish-speaking residents. That's why our problem is so great; the greatest percentage of our population is composed of Spanish speaking persons most of whom are low mentally, because of social and racial conditions (Baskette, September 4, 1936).

Quote 3

Under the influence of this drug the will is destroyed and all power of directing and controlling thought is lost. Inhibitions are released. As a result of these effects, it appeared from testimony produced at the hearings that many violent crimes have been and are being committed by persons under the influence of the drug Not only is marihuana used by hardened criminals to steel them to commit violent crimes, but it is also being placed in the hands of high-school children in the form of marihuana cigarettes by unscrupulous peddlers. Cases were cited at the hearings of school children who have been driven to crime and insanity through the use of the drug. Its continued use results many times in impotency and insanity (U.S. Congress, 1937: 1-2).

Reference: Technical paper **"History of Marihuana Legislation***
Included in the National Commission on Marihuana and Drug Abuse.(USA), 1972. (Shafer Commission)

Further information about the vested interests and political manipulations that led to the prohibition of marijuana (which is hemp) is provided in:

Annexure 3, "**The Emperor Wears no Clothes**", by Herer, J., and in
Annexure 4, "**The History of the Non-Medical Use of Drugs in the United States**." by Charles Whitebread, Professor of Law, USC Law School and in
Annexure 5**, "Unraveling An American Dilemma: The Demonization Of Marihuana"** by John Craig Lupien, April, 1995, and in

Annexure 6 **"The Forbidden Fruit And The Tree Of Knowledge: An Inquiry Into The Legal History Of American Marijuana Prohibition"** By Richard J. Bonnie & Charles H. Whitebread.

In view of the spurious and evil motivations against the Cannabis plant by the Federal Bureau of Narcotics, and its real impact on attitudes in South Africa in the 1920's and 1930's, (in conjunction with local racist attitudes) and the vested interests in the present economy which benefit from prohibition of Cannabis, and in view of my own personal knowledge of the medical benefits and spiritual value of Cannabis/Dagga, I believe myself to be 100% justified in claiming that the inclusion of Cannabis (Dagga) in Schedule 1 and IV of the Single Convention on Narcotic Drugs is based on historical, malicious, fundamentally irrational prejudice originated for the protection of industrial vested interests, who benefit to this day from Prohibition.

The prohibition of Cannabis is therefore illegal and unconstitutional in South Africa,

The Convention and it's application in South Africa via the **Illicit Drugs and Trafficking Act 1992** is an illegal infringement of my rights and the rights of the members of my culture, the Dagga Culture of Africa, whose historical existence is documented in "**Marijuana The First 12 000 Years"** by Earnest L. Abel ,1980, Annexure 2 to this document.

Quoting from Page 14 of Annexure 7, "**THE REPORT *Cannabis: The Facts, Human Rights and the Law*"** by D'Oudney, K. and D'Oudney, I claim that:

"Where Cannabis is concerned, the legislation of its Prohibition:
1. is in its entirety, without factual foundation;
2. is base on mendacity;

3. is itself illegal on numerous grounds by Common, Substantive and International Law;
4. is perjurious in prosecution; perjury by the state is both implicit and overt in every Cannabis trial.
5. The acts of its enforcement are crime per se; people persecuted thereby qualify for Amnesty and Restitution (as for other Wrongful Penalisation);
6. The ignoring of these aforegoing Findings of Fact by courts and legislators is ex parte, the crude and criminal denial of Justice.
7. In its replacement of the use of drugs alcohol, tobacco, etc. by young people and adults, Cannabis promotes health. All private cultivation, trade, possession and use are vindicated.
8. In regard to Cannabis legislation of substance control is damaging, lethal, and unlawful; all special regulatory control of Cannabis produces negative, damaging and/or lethal results, and is per se unlawful.
9. Cannabis related prosecutions are legally malicious, ie premeditated crime against the person.
10. Cannabis Relegalisation is legally mandatory, that is legislative amendment for the return to the normal status of Cannabis which obtained before the introduction on any controls."

Conclusion

In the case of *Acton vs. the State* (possession of dagga), I repeat here my plea of '**political persecution**' and I claim my right, in terms of Section 167 (6) of the Constitution, to have this case to be referred directly to the Constitutional Court.

I also claim here my right to the cultivation, possession and use of dagga, subject to my respect for the Constitutional rights of others.

Jeremy D. Acton. 6 April, 2011.