

# Submission to the Committee on Economic, Social and Cultural Rights

## SOUTH AFRICA

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The International Centre on Human Rights and Drug Policy (HRDP)<sup>2</sup>

1. The following joint submission has been prepared by the Umzimvubu Farmers Support Network and the International Centre on Human Rights and Drug Policy. Its main objective is to illustrate how current approaches to illicit drug control engage important questions related to South Africa's compliance with obligations contained within the International Covenant on Economic, Social and Cultural Rights. In specific, this submission will highlight two ways in which current drug policies impact the economic, social and cultural rights of traditional rural farming communities in the Eastern Cape region of the country: 1. The harmful health and development consequences of the **aerial fumigation** of traditional cannabis crops grown by these communities, and 2. The socio-economic consequences these communities face because of barriers to the emerging **licit, medicinal cannabis market** in South Africa.

### I. General information: Economic, Social, and Cultural Rights and Drug Policy

2. South Africa has been considered one of the most unequal countries in the world. During apartheid, the Eastern Cape region had high numbers of 'homelands', regions reserved for black South Africans, which received little support in infrastructure and public services.<sup>3</sup> As a result of this legacy, between 2005 and 2015, this same region had the lowest reduction of poverty levels<sup>4</sup> and in 2016 it was found to have the highest multidimensional poverty headcount ratio at 12.7%, with those living in rural areas being the most affected.<sup>5</sup>
3. The Eastern Cape, and more specifically the Pondoland<sup>6</sup> district,<sup>7</sup> is internationally known for its large cannabis production.<sup>8</sup> Although this industry may seem lucrative, the reality is that the standard of life for these South African farmers has not improved.<sup>9</sup> Through personal testimony, the local farmers of the regions of Pondoland, report that their crops of maize, pumpkin, beans and spinach are for their personal consumption and the crops of cannabis are their only source of income. Moreover, as

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<sup>1</sup> Umzimvubu Farmers Support Network <<http://ufsn.org.za>> accessed 30 June 2018.

<sup>2</sup> International Centre on Human Rights and Drug Policy, An Academic Partner of the Human Rights Centre <<http://www.hr-dp.org/>> accessed 30 June 2018.

<sup>3</sup> The World Bank, 'Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities' Report' (March 2018) xi, xxv.

<sup>4</sup> The World Bank, 'Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities' Report' (March 2018).

<sup>5</sup> The World Bank, 'Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities' Report' (March 2018) 31.

<sup>6</sup> Kepe, T., 'Cannabis Sativa and rural livelihoods in South Africa: Politics of Cultivation, Trade and Value in Pondoland' 20 (5) Development Southern Africa (2003) 608.

<sup>7</sup> Laniel, L., Cannabis in Lesotho: A Preliminary Survey (UNESCO, Management of Social Transformations - Discussion Paper No.34) 1998 <[www.unesco.org/most/dslaniel.htm](http://www.unesco.org/most/dslaniel.htm)> accessed on 6 July 2018.

<sup>8</sup> Craig Paterson, 'Prohibition & Resistance: A Socio-Political Exploration of the Changing Dynamics of the Southern African Cannabis Trade, c. 1850 – the present', Thesis in History-Rhodes University, (December 2009) 3.

<sup>9</sup> See Paterson (n 8) 4.

agricultural markets are geographically distant accessing alternative economic activities is currently not a viable development pathway. Income earned through the cannabis trade allows these communities to afford what they cannot grow, such as clothing items, oil and books.<sup>10</sup> It has also been reported that income from cannabis crops assists with school fees.<sup>11</sup>

4. South Africa is party to all existing United Nations Conventions relating to drugs,<sup>12</sup> which bind the state to control identified psychoactive substances. Each state has flexibility in their compliance with the obligations as laid out in these Conventions; however, restrictive measures must be put into place.<sup>13</sup> South Africa has adopted restrictive measures through national legislation. In 2015, the state also ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>14</sup> creating tensions (and perhaps direct conflicts) between obligations related to drug control and those contained in the Covenant.
5. Importantly, the communities represented in this submission have been cultivating cannabis for traditional uses for generations. Representatives of the farming communities report cannabis has been an integral part of the community's cultural and socio-economic lives for "generations", unable to pinpoint a specific linear chronology. Cannabis was not always illegal in South Africa. The ethnographic evidence from the 18<sup>th</sup> and 19<sup>th</sup> centuries demonstrates the enduring tradition of cannabis.<sup>15</sup> Understanding this historical and ethnographic context of these communities, it is difficult to ignore the ways in which forced eradication of these crops may violate the right to culture.<sup>16</sup> The aim of the aerial spraying is the total eradication of the practice of cannabis cultivation altogether— which, to these communities, is a long-established traditional way of living.
6. In 1922, the Customs and Excise Duties Amendment Act prohibited the cultivation of cannabis, among other drugs.<sup>17</sup> In 1937, the Weeds Act<sup>18</sup> was passed, which was more directed towards criminalizing the occupier or owner of a property and/or land where cannabis plants could be grown. This was a way more far-reaching Act that gave the South African Police Service (SAPS) much power to eradicate any "habit-forming drugs" from the lands.<sup>19</sup> Then came the Drugs and Drug Trafficking Act 140 of 1992<sup>20</sup> which criminalized the possession of drugs, with the exception of medical use. In Pondoland, communities rely solely on the cultivation and trade in cannabis. It represents "an important cash crop in a deeply impoverished subsistence economy." For more than 60 years, South Africa has

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<sup>10</sup> Umzimvubu Farmers Support Network 'The Story inside the Mpondoland hut' (29 April 2006)

<<http://ufsn.org.za>> accessed 7 July 2018

<sup>11</sup> Kimon de Greef, "Battle to stop dagga spraying" <<https://www.groundup.org.za/article/battle-stop-dagga-spraying/>> accessed 7 July 2018.

<sup>12</sup> United Nations, Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs; United Nations, Convention on Psychotropic Substances (1971); United Nations, Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

<sup>13</sup> ibid

<sup>14</sup> Cite the ICESCR.

<sup>15</sup> See Paterson (n 6) 26.

<sup>16</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, Entered into Force 3 January 1976) 993 UNTS 3 (ICESCR) art 15 (c) 2.

<sup>17</sup> See Paterson (n 6) 52.

<sup>18</sup> Weeds Act, No. 42 of 1937.

<sup>19</sup> See Paterson (n 6) 53-54.

<sup>20</sup> [https://daggacouple.co.za/wp-content/uploads/1992/11/South-Africa\\_Drugs-and-Drug-Trafficking-Act-no-140-of-1992.pdf](https://daggacouple.co.za/wp-content/uploads/1992/11/South-Africa_Drugs-and-Drug-Trafficking-Act-no-140-of-1992.pdf)

conducted regular eradication programmes but failed to curb cultivation, “which remains sustained by high demand for [cannabis] and a lack of alternative options for the farmers who produce it, among other factors.”<sup>21</sup>

7. One of the most relied upon (and harmful) drug control measures in Pondoland is aerial spraying because of its capacity for rapidly eliminating large areas of cannabis fields. For nearly three decades, the South African Police (SAPS) have poisoned the crops before harvest with the herbicide glyphosate under the formulation name Kilo Max.<sup>22</sup> In a 2007-2008 annual report, SAPS declared that ‘1 754 hectares of cannabis fields were sprayed during spraying operations’, although no further details were provided.<sup>23</sup> In 2015, those operations caught the attention of the media, following the publication of the reports provided by the International Agency for Research on Cancer (IARC), a semi-autonomous part of the World Health Organization (WHO), stating the consequences of glyphosate spraying could be distressing, since it was found that the chemical could potentially be carcinogenic.<sup>24</sup> In addition, there a was recent ruling in the United States against the company Monsanto, corroborated the IARC’s findings regarding the health consequences of glyphosate.<sup>25</sup> In South Africa, several activists groups have demanded the halt of the practice, but the government has not followed recommendations.<sup>26</sup>
8. Importantly, the farming communities in Pondoland cultivate cannabis in fields and plots in close proximity to their homes (in some cases, right outside of the door step). Fumigation activity therefore does not discriminate between crops and homesteads, with community representatives reporting spraying activity directly onto homes, livestock, water sources, and people, including young children.
9. In addition to the harmful human health consequences of aerial spraying, it is important to note that Pondoland (and the cannabis growing area) is part (or on the cusp) of a biodiversity hotspot ‘Maputaland-Pondoland-Albany’, which is the second richest floristic region in Africa, with more than 540 species of birds, nearly 200 mammal species, 73 types of fishes and 8 100 types of plants.<sup>27</sup> As per the Convention on Biodiversity, State parties have an obligation to “introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity.”<sup>28</sup> Likewise, the right to health contained within the Covenant includes the collective right to a healthy environment. While the threat aerial fumigation presents to

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<sup>21</sup> Kimon de Greef, ‘Cash crops poisoned in Pondoland’ <<https://www.groundup.org.za/article/cash-crops-poisoned-pondoland/>; > accessed 7 July 2018.

<sup>22</sup> Kimon de Greef, “Cash crops poisoned in Pondoland” <<https://www.groundup.org.za/article/cash-crops-poisoned-pondoland/>; > accessed 7 July 2018; Arysta LifeScience ‘Kilo Max: Reg. No.: L8310 Act /Wet No. 36 of/van 1947’.

<sup>23</sup> SAPS ‘2007-2008 Annual Report, Programme 2: Visible Policing’ 108.

<sup>24</sup> International Agency for Research on Cancer (IARC), ‘IARC Monographs Volume 112: evaluation of five organophosphate insecticides and herbicides’ (20 March 2015) <<https://www.iarc.fr/en/media-centre/iarcnews/pdf/MonographVolume112.pdf>> accessed 07 July 2018.

<sup>25</sup> Sam Levine and Patrick Greenfield, ‘Monsanto ordered to pay \$289m as jury rules weedkiller caused man's cancer’ (*The Guardian*, 11 August 2010) <<https://www.theguardian.com/business/2018/aug/10/monsanto-trial-cancer-dewayne-johnson-ruling>> accessed 11 August 2018.

<sup>26</sup> Kimon de Greef, “Cash crops poisoned in Pondoland” <<https://www.groundup.org.za/article/cash-crops-poisoned-pondoland/>; > accessed 7 July 2018.

<sup>27</sup> <https://web.archive.org/web/20100424011849/http://www.biodiversityhotspots.org:80/xp/hotspots/maputaland/Pages/biodiversity.aspx>

<sup>28</sup> <https://www.cbd.int/convention/articles/default.shtml?a=cbd-14>

such a rich and biologically significant area is clear, the long-term consequences of this harmful practice is not yet fully understood.

10. The harmful and punitive (and ineffective) policy of aerial fumigation emerges from the backdrop of a rapidly changing socio-legal landscape with respect to cannabis. As South Africa's social and political relationship with cannabis evolves, there are significant development opportunities for these traditional communities who remain deeply connected to the plant. As an alternative to illicit cultivation of cannabis, the government could facilitate access to the licit and rapidly expanding medicinal cannabis market.
11. While South Africa recognizes the licit production of cannabis for medicinal purposes, the Medical Controls Council (MCC)<sup>29</sup> are incredibly burdensome for low resource and income farmers. Therefore, access to this alternative is currently unattainable without significant revisions to existing legislation. In addition, the Guidelines published by the MCC regarding the cultivation of cannabis were not shared with the traditional, indigenous communities of South Africa. Neither did the MCC request the contribution of the Traditional Medicine Systems of South Africa, although cannabis is an indigenous plant which has been grown by these communities before and after its current prohibition. Instead, the MCC copied the Dutch model, often verbatim, requiring a pharmaceutical set-up, expensive indoor facilities and regulations, not suitable to the South African context.
12. Indigenous cannabis grown by thousands of communities and people in the South of Umzimvubu (who are represented in this submission) has little value in the illicit market owing to its low Tetrahydrocannabinol (THC)—the main psychoactive constituent of cannabis. However, the plants produced by these communities for generations are pharmacologically considered ideal cannabis for medical purposes. As such, traditional farming communities could play a key role in the medical cannabis market in South Africa, with the requisite political will. For example, a community-based monitoring programme or small-scale community farmer licenses. In addition, intergovernmental initiatives and an independent panel of experts could empower cannabis producing communities and support them to meet the requirements. Such an inclusive regulatory system would create employment among the communities, would help to reduce the illicit production of cannabis, and safeguard the cultural, economic, and social rights of these communities.<sup>30</sup>
13. The farmers in the region of Pondoland have a right to self-determination and to “freely pursue their economic, social and cultural development.”<sup>31</sup> They must also be allowed to generate their own means of subsistence, including with the use of their natural wealth and resources, and shall in no case be deprived of this right.<sup>32</sup> Domestically, the South African Constitution enshrines this principle

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<sup>29</sup> Medical Controls Council (MCC) <<http://www.mccza.com/>> accessed 12 July 2018;

<http://www.mccza.com/documents/959cb9e1Test.pdf>;

[http://www.mccza.com/documents/84a71af62.44\\_Cannabis\\_growth\\_Feb2017\\_v1\\_for\\_comment.pdf](http://www.mccza.com/documents/84a71af62.44_Cannabis_growth_Feb2017_v1_for_comment.pdf)

<sup>30</sup> Ricky Stone, 'General Comment and Outright Objection to the Medicines Control Council ("MCC") Guidelines for the Cultivation of Cannabis for Medical and Research Purposes in South Africa' (Boqwana Burns Inc, 30 March 2017).

<sup>31</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, Entered into Force 3 January 1976) 993 UNTS 3 (ICESCR) art 1.

<sup>32</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, Entered into Force 3 January 1976) 993 UNTS 3 (ICESCR) art 1.2.

by recognizing “the right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic.”<sup>33</sup>

## II. Recommendations

14. These are the recommendations for South Africa to fully respect its obligations under the International Covenant on Economic, Social and Cultural Rights :

- Formal abolition of the aerial spraying eradication programme.
- The state should facilitate access to the licit market of medicinal cannabis for the farmers involved in cannabis growing.
- Adopting a human rights-based approach to address the illicit drug production by the farmers. For example, the government should provide alternative production activities and allow the farmers themselves to contribute to the development and design of those programmes.<sup>34</sup>
- As this submission seeks to represent the voices and demands of the community of cannabis farmers in Pondoland, it must be emphasized that development and pathways away from illicit activity require roads. Many of these farming communities do not have roads that connect them with basic social and economic activities including schools, healthcare, and licit, alternative markets. Children walk three hours in some villages to school. When a community member passes away in more remote areas, the community must carry the bodies out for registration. Committing to more robust highway infrastructure is a key request from these farming communities.

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<sup>33</sup> Constitution of South Africa (1996), Chapter 14: General Provisions, para 235.

<sup>34</sup> Committee on Economic, Social and Cultural Rights ‘Concluding observations on the sixth periodic report of Colombia’ (19 October 2017) UN Doc E/C.12/COL/CO/6, para 54.