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| **Contact:** Byron Tenneson Bernard  **Cell:** 078 555 5588  **Physical Address:**  663 Paulsen Street  Gezina, Pretoria  Gauteng**,** 0084  **Postal Address:**  1001 Beckett Condos  220 Beckett Street  Arcadia, Pretoria  Gauteng, 0083  **Email: angilbyron@gmail.com** |

Constitutional Cannabis Rights Statement

by SA citizen/accused, Byron Tenneson Bernard, with ID number 1234567890987, regarding legislation applicable to and/or charges of possession and/or cultivation/dealing/transport of Cannabis (Dagga) at his/her home/in his vehicle/on his person/or in any other private circumstance)

Case number (*mark “None” if there is no pending or prior case being referenced*)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Magisterial District/Magistrate's Court.

“With respect to the South African Police Service and/or this Court,

"I do not recognise the jurisdiction of the magistrate’s/lower courts in South Africa in relation to any charges brought against me for possession or cultivation or “dealing” in Cannabis (otherwise known as Dagga), as the provisions, justification and Constitutionality of the prohibition of Cannabis have already been challenged by a number of cases in the High Courts of South Africa, and were considered by the Constitutional Court, in Case 108/17 CCT, on 7 November 2017, which was ruled on by Justice Zondo ACJ on 18 September 2018.

At this stage in the High Court; and Constitutional matters regarding cannabis, I insist that it is in the interests of justice and the rights of all citizens, including myself, that all cannabis charges for personal use in private must be dismissed and/or withdrawn pending the outcomes of the High Court and Constitutional Court challenges which are still pending and concern further human rights violations, besides only the right to privacy. Further information regarding the Constitutional case is provided below for the information of the court.”

Considerations of this statement in relation to the 2018 Constitutional Court judgment, as well as current on-going challenges in the High Court and Constitutional Court.

* Information in this section is provided by Jeremy David Acton, a Plaintiff in the Western Cape Constitutional Dagga hearings (Case 4153/12 WCHC).
* The matter was heard on 13 and 14 December 2016, and ruled on in the Constitutional Court of South Africa on 18 September 2018.
* Information in this section is supplemented by Byron Tenneson Bernard, a Plaintiff in the North Gauteng High Court. (Case 76071/18 North Gauteng High Court).

1.2.1 The matter is pending and scheduled to be heard in the North Gauteng High Court on 11 June 2019.

1.3 Constitutional Claims regarding Cannabis by the Plaintiffs in terms of the Bill of Rights were as follows (numbering as per original document):

“The plaintiffs also allege that the prohibition is an unjustifiable infringement of the following fundamental rights under Chapter 2 of the Constitution (the Bill of Rights), namely:

*15.1 The (Section 9) right to equality; and*

*15.2 The (Section 10) right to inherent dignity and the right to have dignity respected and protected; and*

*15.3 The (Section 12) right to freedom and security of the person; and*

*15.4 The (Section 12(1) (e)) right to not be treated or punished in a cruel, inhuman or degrading way; and*

*15.5 The (Section 14) right to privacy; and*

*15.5 The (Section 15 (1)) right of freedom of thought, belief, opinion, conscience and religion in relation to the use, possession and cultivation of Cannabis for all these purposes by adults; and*

*15.6 The (Section 16 (d)) right to academic freedom and freedom of scientific research by citizens in relation to Cannabis*

*15.7 The (Section 18) right to freedom of association; and*

*15.8 The (Section 24 (a)) right to an environment that is not harmful to their health or well-being; and*

*15.9 The (Section 24 (b) (iii)) right to ecologically sustainable development and use of natural resources; and*

*15.10 The (Section 27(1) (a)) right of access to health care services; and*

*15.11 The (Section 27(1) (b)) right of access to sufficient food and water; and*

*15.12 The (Section 30) right of citizens to participate in the cultural life of their choice; and*

*15.13 The (Section 31 (a)) right of citizens to not be denied the right to freely form, join and maintain cultural associations with other members of the Dagga Culture or any other secular, cultural or religious grouping that uses Cannabis; and*

*15.14 The (Section 31 (b)) right of citizens to not be denied the right, with other members of their chosen community, to enjoy their culture and/or practice their religion;”*

(end of quotation of claims)

1.4 A judgment was handed down on 31 March 2017 in relation to only Section 14 Privacy right of adults to privately cultivate and consume Cannabis at home.

1.5 None of the other claims were considered and yet none were dismissed.

1.6 The State appealed the judgment on 24 May 2017, and the original Plaintiffs also cross-appealed, claiming that the judgment failed to attend to all claims, and motivating why all claims and considerations in relation to cannabis must be considered and judged.

1.7 The honourable Constitutional Court heard these appeals on 7 November 2017, and judgment was handed down by the Honourable Acting Chief Justice Zondo on 18 September 2018 ordering:

***[129] In all the circumstances I make the following order:***

* *The application to stay these proceedings is dismissed.*

*2. The application brought by King Adam Kok V, the Griqua Nation,*

*Chief Petros Vallbooi and the /Auni San People for leave to intervene as*

*parties is dismissed.*

*3. Leave to appeal is granted.*

*4. Leave to cross-appeal is granted.*

*5. The appeal is dismissed.*

*6. The cross-appeal is upheld in part to the extent that the reference in the*

*order of the High Court to “in a private dwelling” or “in private dwellings”*

*is replaced with “in private” or in the case of cultivation, “in*

*a private place”.*

*7. The order of the Western Cape Division of the High Court is confirmed*

*only to the extent reflected in this order and is not confirmed in so far as*

*it is not reflected in this order.*

*8. To the extent that the order of the Western Cape Division of the*

*High Court purported to declare as constitutionally invalid provisions of*

*sections referred to in that order that prohibit the purchase of cannabis,*

*that part of the order is not confirmed.*

*9. To the extent that the order of the Western Cape Division of the*

*High Court excluded from the ambit of its order of the declaration of*

*invalidity provisions of the sections referred to in that order that prohibit*

*the use or possession of cannabis in private in a place other than a*

*private dwelling by an adult for his or her own personal consumption in*

*private, that part of the order is not confirmed.*

*10.It is declared that, with effect from the date of the handing down of this*

*judgment, the provisions of sections 4(b) of the Drugs and Drug*

*Trafficking Act 140 of 1992 read with Part III of Schedule 2 of that Act*

*and the provisions of section 22A(9)(a)(i) of the Medicines and Related*

*Substances Control Act 101 of 1965 read with Schedule 7 of GN R509*

*of 2003 published in terms of section 22A(2) of that Act are inconsistent*

*with right to privacy entrenched in section 14 of the Constitution and,*

*therefore, invalid to the extent that they make the use or possession of*

*cannabis in private by an adult person for his or her own consumption in*

*private a criminal offence.*

*11.It is declared that, with effect from the date of the handing down of this*

*judgment, the provisions of section 5(b) of the Drugs and Drug*

*Trafficking Act 140 of 1992 read with Part III of Schedule 2 of that Act*

*and with the definition of the phrase “deal in” in section 1 of the Drugs*

*and Drug Trafficking Act 140 of 1992 are inconsistent with the right to*

*privacy entrenched in section 14 of the Constitution and, are, therefore,*

*constitutionally invalid to the extent that they prohibit the cultivation of*

*cannabis by an adult in a private place for his or her personal*

*consumption in private.*

*12. The operation of the orders in 10 and 11 above is hereby suspended for*

*a period of 24 months from the date of the handing down of this*

*judgment to enable Parliament to rectify the constitutional defects.*

*13. During the period of the suspension of the operation of the order of*

*invalidity:*

*(a) section 4(b) of the Drugs and Drug Trafficking Act 140 of 1992 shall*

*be read as if it has sub-paragraph (vii) which reads as follows:*

*“(vii) , in the case of an adult, the substance is cannabis and he or*

*she uses it or is in possession thereof in private for his or her*

*personal consumption in private.”*

*(b) the definition of the phrase “deal in” in section 1 of the Drugs and*

*Drug Trafficking Act 140 of 1992 shall be read as if the words*

*“other than the cultivation of cannabis by an adult in a private place*

*for his or her personal consumption in private” appear after the word*

*“cultivation” but before the comma.*

*(c) the following words and commas are to be read into the provisions of*

*section 22A(9)(a)(i) of the Medicines and Related Substances*

*Control Act 101 of 1965 after the word “unless”:*

*“, in the case of cannabis, he or she, being an adult, uses it or is in*

*possession thereof in private for his or her personal consumption*

*in private or, in any other case,”*

*14.The above reading-in will fall away upon the coming into operation of*

*the correction by Parliament of the constitutional defects in the statutory*

*provisions identified in this judgment.*

*15.Should Parliament fail to cure the constitutional defects within 24*

*months from the date of the handing down of this judgment or within an*

*extended period of suspension, the reading-in in this order will become*

*final.*

**1.8 The Citizen/Accused wishes to respectfully point out that even though the judgments in the Western Cape High Court and Constitutional Court were limited to Section 14 Privacy, and the honourable Constitutional Court has recognized that claims not attended to by the WCHC judgment could and would be returned by the Plaintiffs to the High Court and has therefore considered carrying out the evaluation of all of the High Court and Constitutional Court claims by the Western Cape Plaintiffs - as well as all other Plaintiffs in matters throughout South Africa - and it is expected that judgment will be given on all claims.**

**1.9 The Applicant therefore respectfully submits that personal adult consumption/possession/cultivation at home or in any private place is not the only grounds upon which any withdrawal/dismissal/stay may be granted, but that a withdrawal/dismissal/stay may be granted in regard to any charge regarding Cannabis, whether for dealing, cultivation, possession, extraction, transportation, consumption, etc. ALL provisions of the prohibition are still presently challenged.**

1.10 Further, in considering the Section 9 Equality of the applicant to all the previously cited precedents, (on Pg 2) the Applicant claims equal right in law, and in benefit and protection of the law, to citizens who were:

Cultivators:

(E Vorster Case 17927/14 WCHC; J. Rubin Case 7294/13 WCHC etc…)

Possessors:

(J. Acton Case 4153/12 WCHC, B. A. Wentzel, Case 8658/13, WCHC etc…)

Dealers:

( C. Vankerkhof Case 17925/14 WCHC, S. Bohm Case 7294/13, WCHC etc…)

and

Possessors/Cultivators/Dealers arrested subsequent to the 2018 Constitutional Court judgment:

(B.T. Bernard Case 76071/18, North Gauteng High Court etc…)

1.11 I, the citizen/accused, is therefore respectfully of the view that any and all on-going applications for a withdrawal/dismissal/stay may still be considered and granted by the honourable High Court in relation to all of these aspects and presumptions of cannabis prohibition as these matters are all before the High Court and Constitutional Court at this time, with the first judgment ruling in favour of adult personal use and cultivation in private having been handed down on 18 September 2018, and that it is in the interest of justice for such withdrawals/dismissals/stays to be granted at this time.

1.12 I, the citizen/accused, therefore respectfully request the SAPS to cease and desist from infringing on my rights and/or the Court to, at the very least, provisionally withdraw any charges against me relating to cannabis pending further High Court and Constitutional Court rulings on pending cases, and/or the publication of new legislation with regards to cannabis - which Parliament is compelled to amend by 18 September 2020, - in the interests of Justice and in respect of my own rights to a Constitutional defence regarding my private use of Cannabis, as have been claimed by other individuals as well as other major political parties and minority groups.”

Signed,

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Byron Tenneson Bernard**, SA Citizen/Accused

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Thus signed and sworn before me at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_ 20 \_\_\_\_, the deponent, having acknowledged that he/she knows and understands the contents of this statement, that is both true and correct to the best of his/her knowledge and belief, that he/she has no objection to taking the prescribed oath and that the prescribed oath will be binding on his/her conscience.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Full Rank and Names \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COMMISSIONER OF OATHS

Designation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_