

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT 36/00

In the matter between:

GARRETH ANVER PRINCE

Appellant

versus

**THE PRESIDENT OF THE LAW SOCIETY
OF THE CAPE OF GOOD HOPE**

First Respondent

**THE LAW SOCIETY OF THE CAPE OF
GOOD HOPE**

Second Respondent

**THE SECRETARY OF THE LAW SOCIETY
OF THE CAPE OF GOOD HOPE**

Third Respondent

THE MINISTER OF JUSTICE

Fourth Respondent

**THE ATTORNEY-GENERAL OF THE
CAPE OF GOOD HOPE**

Fifth Respondent

AFFIDAVIT

I, the undersigned **GARRETH ANVER PRINCE** do hereby solemnly affirm and say:

1. The facts herein contained are within my personal knowledge and belief, unless it appears otherwise from the context, and are both true and correct.

2. On 12 December 2000, the above Honourable Court handed down a judgment granting me leave to deliver evidence on affidavit as set out in paragraph 2 of the said judgment. I accordingly set out hereunder the following information:

3. **ORIGINS AND THE INSTITUTION OF THE RASTAFARI RELIGION IN SOUTH AFRICA**

3.1 The Rastafari Religion matured in Jamaica in the early decades of the 20th century through the writings of Leonard Percival Howard and Marcus Garvey who predicted the coming of a black Messiah. It was initially anti-colonialist, anti-imperialist and anti-racist and stressed the fight towards justice and equality by the downtrodden and downpressed in Babylon (western society) and their redemption and eventual repatriation to Africa (Zion). In this regard, I refer the above Honourable Court to my founding affidavit concerning the origin of the Rastafari Religion (**Record p 13:4-p14: 13**) and to the annexures to Prof Yawneys affidavit.

3.2 The Rastafari Religion has had a formal presence in South Africa from at least 1975, and can also be seen as a continuation of cultural practices in Africa as from time immemorial allowing adherents to assert a way of *livity* (living) that is essentially African.

The Rastafari Religion is open to any person of any class or colour as it is premised on the principles of international morality, but traditionally, and especially in South Africa, it is essentially a religion of black people as it asserts the right of all black people to egalitarianism and justice allowing us to portray and assert our own spirituality and religiousity, without requiring us to interpret our spirituality through Western spectacles.

3.3 We Rastafari believe in the divinity of H.I.M Haile Selassie and accept the teachings and examples set by H.I.M Haile Selassie who was a member and keeper of the faith of the Ethiopian Orthodox Church. As referred to in my founding affidavit, Ethiopia is recorded in history as having received the Old Testament and then the New Testament earlier than most other countries in the world. Orthodox Christianity became the official religion of Ethiopia in 330 CE although the laws of Moses were observed and practiced from the time of Menelik I (circa 900 BCE)(**Record p13: 7-13**).

3.4 Our religion encourages a respect for life and a moral code according to which we strive to live. The bible is very important to us. The admonition in the Bible that 'one must not kill' entails a respect for all living things. Accordingly, most Rastafari are '*ital*' or strive to be *ital* and accordingly

eat only food that is natural or organic and do not eat meat, fish or eggs. We eat only vegetables and natural foods as the seeds from these natural foods are used to create further life. We do not use tobacco, alcohol or salt.

- 3.5 The reggae music that we listen to is an educational force and a vehicle to spread the gospel of Rastafari. For example, the words to the 'hit' reggae song 'War' by Berhane Selassie (Bob Marley) are taken from a speech made by H.I.M. Haile Selassie to the United Nations on 4 October 1963. The words are :

*" Until the philosophy that holds one race
superior, and another inferior,
is finally and permanently discredited and abandoned,
everywhere is war. Is a war.*

*That until there are no longer first class
and second class citizens of any nation,
until the colour of a mans' skin is of no more significance
than the colour of his eyes, is a war*

*That until the basic human rights are equally guaranteed to all
without regard to race, there is a war*

*That until that day the dream of lasting peace,
world citizenship, and the rule of international morality
will remain nothing but a fleeting illusion,
to be pursued but never to be attained*

Know everywhere is war. War

And until the ignoble and unhappy regime that now holds

Our brothers in Angola, in Mozambique

South Africa. Sub-human bondage

have been toppled, utterly destroyed.

Well, everywhere is war. Is a war

(Chorus)

And until that day the African Continent will not know peace

We Africans will fight (if) we find it necessary

and we know we shall win

- 3.6 Most Rastafari in South Africa belong to two main Houses or Branches, even though irrespective of the House they may belong to, we view each other firstly as fellow Rastafari, as brothers and sistren.

Each House has its own structures. The recently formed **Rastafari National Council** ("RNC") although created by members from predominantly the Nyahbinghi order, is open to all other Rastafari.

- 3.7 The two main Houses are the **Nyahbinghi Order** and the **Universal Movement of Rastafari**. The adherents of these Houses, including those Rastafari who do not belong formally to one of these Houses or the Houses referred to below in 3.8 below, all worship the True Living God (H.I.M Haile Selassie), and use cannabis for sacramental and spiritual purposes.

- 3.8 In addition to the two main Houses in South Africa, there are also other Houses present, but these Houses do not presently have formal structures. These Houses are the **Twelve Tribes of Israel** and the **Emmanualites** (Bobo Dreads). In addition, there is the **Burning Spear Movement** which can be viewed as a South African Rastafari movement which was

compelled by the inequality and lack of dignity afforded to Rastafari, to take on the mantle of a 'frontline liberation movement' representing South African Rastafari in their quest for equality, dignity and justice.

3.9 THE NYAHBINGHI ORDER

3.9.1 Adherents of this order are the most numerous of any house in South Africa, and represent approximately 40 percent of Rastafari in South Africa. According to Prof Yawney, this house is often viewed as a frame of reference for Rastafari orthodoxy with its churchical orientation. **(Record p 475 : 24-28; p 487: 45-50)**. Many Rastafari who do not formally belong to any house, identify with the principles of the Nyahbinghi order. This order is the most organised of all the orders in South Africa.

3.9.2 The order is committed to :

3.9.2.1 worship of the True Living God

3.9.2.2 uplift the Nyahbinghi principles, Ras Tafari philosophy and doctrines

3.9.2.3 live according to the guidelines of H.I.M Haile Selassie
(D)Ivine Theocracy Order of the Nyahbinghi

3.9.2.4 implement and to exercise the 22 theocratic Proposals and
strengthen Ras Tafari universally. A copy of the 22
theocratic Proposals is annexed hereto as Annexure 'A'.

I refer the above Honourable Court to the Constitution of the Nyahbinghi
Order as annexure 'B' hereto.

3.9.3 No specific dress code is required by adherents of this order, save that
adherents must wear non-exposive garments at all times. During religious
ceremonies, the Priest and members wear long white robes with Rastafari
colours along the skirtings of the garments

3.9.4 Dreadlocks are mandatory due to the belief that one should stay unshaven
and wear dreadlocks because this represents adherence and dedication to
the will of Jah Rastafari and because it represents a free and
unencumbered way of life as dictated in most revealed scriptures. The
wearing of dreadlocks by members of this order is also often viewed as

representing a symbolic public witnessing to our faith and to a proud and uncompromising stance in the face of persecution by wider society (**Prof Yawney: Record p 480: 51-54**)

- 3.9.5 The taking on of a new name is voluntary and a member may do so if such member is baptised by the High Priest. Sanctifications (baptism) are conducted on 2 November.
- 3.9.6 All the practices, observances and rituals of members of this order as followed elsewhere in the world are performed and adhered to by Nyahbinghi Rastafari in South Africa. Examples of practices and rituals observed locally in a tabernacle (church) are set out in the annexures to Prof. Yawneys affidavit (**Record p 481: 24-50; p 484: 11-25**).
- 3.9.7 According to Ras Afa Negus, a local Priest in this House, the Nyahbinghi Grounds consists of a Tabernacle and Lion quarters. The Tabernacle consists of twelve outer posts representing The Twelve Patriachs, The Twelve gates of New Iruusalem, The Twelve Tribes of Israel and The Twelve Apostles. The Altar which stands in the centre of the Tabernacle consists of six outer-posts surrounding the centre post of the Tabernacle representing the book of Seven Seals, and the Seven Golden Candlesticks.

Nyahbinghi drums are played only by capable brethren during the hour of chanting. The Fire Key is lit with the reciting seven Psalms: Psalm 68, 2, 83, 94, 20, 11 and 9. The fire must burn unceasingly throughout the duration of the Issembly, and not be disturbed.

At a Nyabinghi service, the meeting starts with the singing of the Ethiopian National Anthem. Thereafter there is the recital of prayers and the chanting of psalms. There will be a scriptural reading, followed by a sermon by a presiding priest, then the chanting of further psalms and praises (Ises) to Jah, accompanied by drumming. The chanting of Ises are seen as a ritual means for summoning the forces of nature to crush the wicked and move the downpressors. (**Yawney: Record p 481: 48-50**). During the whole ceremony, there is the burning of the holy herb and other incense. The chalice is passed around during the service. Present at the service are women and children who are are not allowed to partake of the communal chalice. Sistren are allowed to participate in the service and rituals, and to speak or give a testimony in the Nyahbingi ceremony, but presently, they may not beat the drums or lead the service.

A hierarchy is present at each service. The service is controlled by the Priest, or if one is not present, by an assistant priest, or in his absence the Elder or capable brethren.

Each ceremony has a set structure but its length can vary. The service will be sealed off with the Ethiopian Anthem.

Nyahbinghi Rastafari are encouraged to discover the Truth of Rastafari for themselves, through reasoning, meditation and the giving of thanks and praise in the form of chanting and drumming (**Record p 483: 9-10; & 20-35**)

3.9.8 Official churchical gatherings are held at the tabernacle on the first Saturday afternoon of each month. In Cape Town, the main tabernacle is in Philippi at Marcus Garvey Square, but official churchical gatherings in Cape Town alternate with gatherings in Stellenbosh and Belhair. Other official tabernacles are located in Port Elizabeth, Knysna, George, Kimberley and Johannesburg.

3.9.9 Seven local Priests were appointed, annointed and ordained in 1997 by the High Priest of Jamaica, Bongo Thyme during his official visit to South

Africa. They officiate at all the official churchical gatherings. If an annointed Priest is not available, his duty is performed by an assistant Priest where one is available and who was/is being trained by such local Priest. If neither a Priest nor assistant Priest is present, the ceremony is led by an Elder or capable (experienced) brethren.

According to Ras Afa Negus, the Priesthood consists of brethren who are well nurtured in the Ivine livity of Rastafari and have led exemplary lives in the sight of the congregation and Jah. They administrate around the Altar of the Tabernacle, and lead the congregation in prayer as well as in the sanctification of the new born sons and dawtas of the Nyahbinghi order. The Priesthood is looked upon for wise decision and counsel. A priest must be just and non-partial. He must maintain an *Ital livity* to make sure he does not defile the Temple of Jah with abominable flesh. The signature of the Priest must be affixed to all official documents of this House.

Prior to the appointment of anointed priests in 1997, capable Elders performed and led the rituals.

The affidavit of Ras Afa Negus, in support and confirmation hereof, is annexed hereto as Annexure 'C'.

3.9.10 To become a member of the Nyahbinghi order, one must attend the religious ceremonies and gatherings regularly and accept the Divinity of H.I.M. Haile Selassie coupled with the teachings and examples set by H.I.M. Members have to be *ital* and live an *ital livity* according to the Nyahbinghi moral and religious code.

When a potential member has shown that he/she has accepted the Divinity of H.I.M Haile Selassie and the principles of the Nyahbinghi House, and is leading an *ital livity*, the leadership of that tabernacle or community will determine whether such person is genuine in his/her belief and conduct. If then accepted as a member, such person has to sign up with the Nyahbinghi order and register with the RNC, and must pay a monthly subscription.

If a member does not live up to his moral code, then he will be put aside, that is, he must repent and amend his ways, and if he does not do so, he will lose his membership of the Nyahbinghi order.

3.9.11 The Nyahbinghi order is represented in all ten provinces of South Africa (Knysna is regarded as a separate province).

According Ras Maxi who is a member of this House and the National Secretary of the National Executive Committee of the RNC, a registration programme was commenced during 2000 to ascertain the numbers of Nyahbinghi members in South Africa. He advises that the number of persons who are presently registered or will soon be registered, or who identify with Nyahbinghi principles is approximately 3000-4000. A copy of his affidavit is annexed hereto as Annexure 'D'.

3.10 UNIVERSAL MOVEMENT OF RASTAFARI

3.10.1 This House is the second largest of the Houses in South Africa and represents approximately 30 percent of Rastafari in South Africa.

- 3.10.2 This House has its own Constitution and Code of Conduct, copies of which are annexed hereto as Annexures 'E' and 'F' respectfully.
- 3.10.3 Although this House was present in South Africa in 1981, it only became formally established in 1986. This House has presently between 2500 and 3000 registered members who are mostly found in its 17 branches in the Western Cape, although other branches are found throughout the country and especially in the Free State, the Eastern Cape and Northern Cape. In addition, it has branches in other Southern African countries such as Malawi, Zimbabwe, Ghana, Kenya and Tanzania, and now also has a branch in Jamaica.
- 3.10.4 The leadership structure in each branch consists of the chairperson, secretary, treasurer and two to three Elders for spiritual guidance. These Elders are usually the most seasoned Rastafari of that branch. The function of chairperson, secretary and treasurer are as set out in the Constitution, being Annexure 'E' hereto.
- 3.10.5 The leadership structure of each branch has business meetings at least twice per month where the day to day running of the branch is discussed and implemented.

3.10.6 Spiritual religious ceremonies are held on the last Sunday of each month either in brethrens homes or in a dub hall, as there are no tabernacles in this order.

As no priests are present in this House, these spiritual meetings are guided by the leadership structure of each branch. The ceremony is opened with a prayer to H.I.M. Haile Selassie. Elders then discuss various spiritual and religious issues, a chalice is passed around to members and reasoning occurs where members *'explore the implications of a particular insight, which could be based on subjects as diverse as a Bible passage or an event in the day's news'*. (**Prof Yawney: Record p 483 : 20-28**). This spiritual meeting proceeds with chanting, readings from the teachings of H.I.M. Haile Selassie and ends with a thanksgiving prayer.

A typical spiritual meeting lasts between 1 to 1.5 hours.

At present, no women are allowed to be present at spiritual meetings, but changes are contemplated in the future.

3.10.7 There are no major theosophical differences between this House and the Nyahbinghi House. Members of this House view the House of the Nyahbinghi as the churchical movement within Rastafari, and many members of this House often regularly attend the tabernacle and ceremonies of the Nyahbinghi order. The use of the holy herb by members of this house is no different from the use of the holy herb by members of other Houses. Accordingly there is a belief amongst many members of this House and that of the Nyahbinghi, that in the foreseeable future, greater co-operation (and possibly even a union) will ensue between this House and the Nyahbinghi House.

3.10.8 The overall governing structure of this House is the Regional Committee which consists of 3 delegates from each of the 17 local branches. This committee meets once every 2 months, where decisions are made for the local branches.

3.10.9 To become a member of the Universal Movement of Rastafari, one must accept the Divinity of H.I.M Haile Selassie coupled with the teachings and examples set by him. Such potential member must also complete and furnish an enrolment form to the local branch, a copy of an example of such enrolment form is annexed hereto as Annexure 'G'. At a later stage,

the potential member is invited to a local branch meeting where the code of conduct, the constitution and the basic principles of this House are explained to such potential member, and copies of the code of conduct and constitution are furnished to the potential member, who must read and understand the contents of these documents.

After two to three months, the potential member becomes a registered member, if the leadership of that branch believes such person is firm in his belief, and in such event, such person is given a membership card containing a photograph with his identity number as found in his/her's identity book. Each branch decides how much such new registered member must pay for the monthly subscription, which differs from branch to branch depending on the means of the members.

An attendance record is kept to ascertain how often members attend meetings, workshops and functions. If a member does not attend these meetings regularly, an Elder experienced in spiritual and religious matters (a chaplain) visits such member to ascertain his/her spiritual needs and why he/she has not been attending.

If it is decided that such person is not genuine in his beliefs or violates the moral code of Rastafari, then he loses his rights and ceases to be a member of the Universal Movement of Rastafari.

3.10.10 I refer the above Honourable Court to the affidavit of Ras Levi, the Secretary General of the Regional Committee of this House who confirms that he is authorised to depose to an affidavit on behalf of the Universal Movement of Rastafari and who confirms the contents of my affidavit in so far as it relates to the Universal Movement of Rastafari and to the contents of paragraphs 3.10.1- 3.10.10 inclusive herein. This affidavit is annexed as Annexure 'H' hereto.

In addition, Ras Levi confirms that should an exemption be granted to bona fide Rastafari to use and possess the holy herb for religious and spiritual observance and practices, the Universal Movement of Rastafari supports the position that the RNC be the responsible and governing body which liases with the authorities, and/or assists in its implementation and in the administration of the exemption granted, and confirms that the Universal Movement of Rastafari will abide any decision taken by the RNC in this regard.

3.11 THE TWELVE TRIBES OF ISRAEL

3.11.1 This House was formed internationally in 1968 by Dr Vernon Carrington who is also known as Prophet Gad. The establishment of this House internationally coincided with the first significant crossover of middle class Jamaicans into the Rastafari fold.

3.11.2 As referred to in 3.8 above, this House in South Africa has no formal local structures. There are no local leadership structures, no formal meetings and no priests. In view of this fact, the actual number of members of this House is difficult to ascertain with clarity. Nevertheless, from my discussions with members of this House and my brethren in other Houses and those who do not belong to formal structures, I believe that there are no more than a thousand bona fide practising adherents of this House in all the provinces of South Africa.

3.11.3 For members of this House, dreadlocks are not essential and there is no mandatory dress code.

3.11.4 Every member is given a new name depending on the month when they were borne. For example, a person could be called brother Joseph (if borne

between 22 January to 23 February); Benjamin (February to March); Ruben (March to April); Simeon (April to May); Levi (May to June); Judah (June to July); Issachir (July to August); Zebulon (August to September); Dan (September to October); Gad (October to November); Asher (November to December) and Naphtali (December to January).

3.11.5 Most Rastafari in South Africa as a result of their desire to associate with a new consciousness, have adopted the names used by this order, even though though they are not members of this order nor follow all its tenets.

3.11.6 Members are not strict vegetarians and are allowed to eat meat (but not pork or ham) or fish although some members strive to be *ital*.

3.11.7 Without going into a theosophical discussion of the differences between the various Houses, the adherents of this House view his H.I.M Haile Selassie as the second manifestation of Christ in His Kingly Character. An essential tenet of this house is an individual reading of a chapter of the bible daily. (Rastafari in general are expected to read and study the bible).

3.11.8 This order holds religious ceremonies where Jah is praised through the use of musical instruments and song. The Holy herb is used during these

ceremonies. Some of the members of this House in addition attend Nyahbinghi ceremonies

3.11.9 Should an exemption be granted by the above Honourable Court to bona fide Rastafari, the RNC, or its local structures, would administer the exemption on behalf of bona fide members of this House.

3.12 THE EMMANUALITES (BOBO DREADS)

3.12.1 This is smallest group of Rastafari in South Africa, predominantly being found in the Western Cape. This House accounts for approximately 200 members in South Africa.

3.12.2 As referred to in 3.8 above, this House has no formal local structures, having only recently established a presence in South Africa. There are no local leadership structures, no formal meetings and no priests that I am aware of.

3.12.3 The members of this order are the strictest (most orthodox) in their observance of all religious practices and rituals. For instance, where they

are formally established with leadership and other structures as in Jamaica, they have 3 hourly scriptural readings daily.

3.12.4 The members of this House live strictly according to the Nazarene vow and are completely *ital*. They dress according to a specific dress code and all are required to wear turbans.

3.12.5 Where they are fully established, the members of this order usually live together in communes.

3.12.6 There are theosophical differences with the Nyahbinghi house, but they nevertheless accept H.I.M Haile Selassie as Jah.

3.12.7 Most of the members of this House in South Africa regularly attend Nyahbinghi ceremonies and meetings.

3.13 THE BURNING SPEAR MOVEMENT

3.13.1 As referred to in 3.8 above, the Burning Spear Movement can be viewed as a Rastafari movement that felt itself compelled by the inequality and lack of dignity experienced by brethren in South Africa, to take up the

cudgels as a 'frontline liberation' movement fighting for equality, dignity, justice and respect for all Rastafari in South Africa. It was this Movement that unsuccessfully made representations to the Constitutional Assembly for the acceptance of the Rastafari Religion in South Africa.

3.13.2 Ras Bernard Brown established this movement in 1981. Although there are only 70 registered members who are active in this movement, this movement is active in local community and civic affairs and has a large following.

3.13.3 This movement raises funds for its own activities and for the Nyahbinghi order by holding and promoting most Saturday nights reggae 'gigs'. Funds from these 'gigs' are used by this movement for diverse causes ranging from the running of a soup kitchen every Thursday serving indigent persons, to self-empowerment initiatives, to a campaign to save the wetlands in the Western Cape.

3.13.4 This movement has its own constitution, but due to the fact that it is a Rastafari movement and not a House, I have not attached the constitution as an annexure to this affidavit. I however refer the above Honourable

Court to a pamphlet from this movement setting out its purpose and program as Annexure 'I' hereto.

3.13.5 This movement holds meetings every Thursday evening where the aims of the movement are discussed and plans made for future endeavours. The meeting starts with the singing of the Ethiopian national anthem. This is followed by the chanting of psalms using the bible and Rastafari literature for direction. On occasion, there is drumming. The President-Elect, Ras Bernard Brown then delivers a sermon, whereafter the Chairperson, secretary and treasurer discuss plans and future endeavours. A chalice is passed around amongst the members and reasoning ensues. The meeting ends with the chanting of the Ethiopian National Anthem.

Notwithstanding these meetings, most members attend Nyahbinghi religious ceremonies

3.13.6 Once a month, this movement holds a gathering for all the other Houses.

3.13.7 Like many Rastafari in South Africa, Ras Bernard Brown, after much victimisation over many years by the local police force, was found guilty of the possession of the holy herb (15 spliffs (joints) on the 19 November

1998 and sentenced to 6 months imprisonment. His appeal based on religious grounds and the harm principle to the Cape of Good Hope Provincial Division has been stayed pending the outcome of this appeal. He intended to proceed to the above Honourable Court for relief.

- 3.13.8 Ras Bernard Brown entered into correspondence with the Department of Justice seeking legalisation of the holy herb for Rastafari, but his request was refused.
- 3.13.9 I refer the above Honourable Court to an affidavit of Ras Bernard Brown confirming the contents of paragraphs 3.13.1-9 herein as Annexure 'J' hereto.
- 3.14 Although I do not belong formally to any House, I attend some of the ceremonies of the Nyahbinghi order, and observe many of the rituals and practices of the Nyahbinghi and Emmanuelite orders. I respect all Rastafari who believe in the tenets of our religion whether or not they formally belong to an established House and prefer to view myself as a sincere and true Rastafari without divisions or schisms.

3.15 STRUCTURES OF LEADERSHIP AND AUTHORITY

3.15.1 The governing body of all the different houses of Rastafari in South Africa is the RNC. It has been established since 1997 and one of its aims was to adopt a Constitution. A copy of the Constitution formally adopted in December 2000 in Johannesburg is annexed hereto marked 'K'.

This is the same national organisation referred to by Prof Yawney
(Record p462: 1-5)

3.15.2 As the Nyahbinghi Order is the most organised and populous order in South Africa, the provisions of the Constitution adopted by the RNC accordingly has a Nyahbinghi flavour but I believe the Constitution will evolve in the future to encompass the other Houses on a more equitable basis.

3.15.3 In terms of the Constitution of the RNC:

3.15.3.1 The RNC is the supreme decision making body and has the jurisdiction to liase with all levels of government and agree policy on behalf of its members **(Clause B. 1 and D.1.1)**

- 3.15.3.2 The National Executive Committee (NEC) is elected by the RNC (**Clause D 1.2**) and its term of office is for 3 years (**Clause E 3.1**). It is responsible for the day to day running of the RNC (**CI E 4.1**) and has the power to adopt rules and regulations for the better carrying out of the activities of the Rastafari movement. (**CI F.2.1**). All rules and regulations only become operative when approved by the NEC or the RNC. (**CI F.2.3**).
- 3.15.3.3 The NEC consists of 20 members (**CI E1.2**) and is made up of a chairperson, a deputy chairperson, secretary general and deputy, a treasurer general, a public relations officer and a national priest. In addition, the National Working Committee ("NWC") assists the NEC in the management and control of funds received by the RNC.
- 3.15.3.4 A National Council of Elders ("NCE") represent a 'board of trustees' who oversee all activities of the RNC (**CI E. 4.7**)

3.15.3.5 The National Council of Priesthood ("NCP") consists of all Priests of every house, and two of such number are members of the NEC (**CI E.4.7**)

3.15.3.6 In addition, there is a National Sisters Council ("NSC") and a National Youth Council (NYC) and two members from each council are members of the NEC (**CI E.4.8 and 9**)

3.15.3.7 The National Constitutional Council is responsible for all disciplinary matters and has powers to discipline any member 'who needs discipline or violates the constitution. Two such members are represented in the NEC (**CI E.4.10**)

The RNC is holding a meeting on 28 January 2001 in Kimberley, where a new Council will be elected.

3.15.4 Fundamental Religious rights of all Rastafari are set out in **CI G** of the RNC Constitution. As previously referred to and as evidenced by its content, the Constitution presently leans towards Nyahbinghi orthodoxy.

Religious rights and observances in terms of this Constitution include inter alia:

- 3.15.4.1 the paramouncy of the Bible;
- 3.15.4.2 the required use of the holy herb at all religious gatherings;
- 3.15.4.3 the prohibition on any person under 18 years of age from smoking the holy herb, unless used in another form with parental supervision on special occasions (C1 G4 of the RNC Constitution). The reason for this prohibition, according to Ras Maxi, the National Secretary of the RNC, is the following:
 - (a) Youth are generally immature and not yet ready to engage in conscious reasoning and meditation. The RNC is accordingly aware and shares the belief that children must be protected

from any activity or conduct that can or be seen to cause them harm. However, in the same manner that children of other religious groups are occasionally allowed on special occasions under the supervision of their parents a small sip of alcohol, the RNC believes that permitting persons under 18 years of age to partake of God's fruit when they are mature enough to do so **under strict supervision of their parents on special occasions** in similar circumstance within our religious paradigm will not cause them any harm. As the holy herb is only used by us within a spiritual, religious and sacramental setting and context, any usage in another form would only be permissible **within this religious paradigm** when used **under strict**

parental supervision and on special occasions and only when such youth is mature enough.

- (b) It is self-evident that no adult Rastafari would allow an immature youth to smoke the holy herb in any form; but that a mature youth could be introduced to the holy herb in a non-invasive form such as in tea (which does not have any psychoactive component in small quantities) or in food in the most minute of quantities on special occasions and under parental supervision.
- (c) The RNC believes that such an approach is a proper and responsible one and in the best interests of our youth.

- (d) The RNC disapproves of and forbids the recreational use of cannabis (or of any 'drug') and would not allow anything to jeopardise the health or welfare of our children.

In addition, I respectfully point out that this prohibition against the smoking of cannabis by Rastafari under the age of 18 years, must also be seen from the perspective that many secular users who smoke cannabis for recreational purposes are below the age of 18, which practice is expressly forbidden by the RNC.

It is clear that the RNC, as representative of the Rastafari Religion in South Africa, is

endeavouring to achieve an accommodation with the authorities and to act in a manner that is proper and responsible and in the best interests of our children.

3.15.4.4 that all members especially the Priesthood must be married:

3.15.4.5 a prohibition on polygamy and fornication.

3.15.5 I refer the above Honourable Court to the affidavit of Ras Maxi, the national secretary of NEC of the RNC, who is authorised to depose to the affidavit on behalf of the RNC, who also confirms should an exemption be granted to adult Rastafari to use, possess, cultivate and transport cannabis for religious observance and practice:

3.15.5.1 that the RNC is aware of the belief among certain sections of society, that the proscription on the use and possession of cannabis by Rastafari serves an important public interest, and that whilst the use of cannabis is proscribed in South

Africa, the RNC will assist the authorities to the fullest extent of its authority in ensuring that only bona fide adult Rastafari are benefited by this exemption for use of cannabis for religious purposes in private.

- 3.15.5.2 that the RNC is starting to compile a list of bona fide Rastafari in South Africa which compilation will assist in minimising any perceived practical difficulties in the administration of an exemption granted.
- 3.15.5.3 that the RNC is keen to liase with and to co-operate with the authorities in helping set up and administer an administrative permit system, should such be contemplated as part of any exemption granted.
- 3.15.5.4 that to the extent that it may be necessary in an attempt to achieve accommodation with the authorities, the RNC, if required in terms of any exemption granted, will authorise its local structures to make available members to assist the Courts either as assessors, or in such other position as required, to ensure that **only** bona fide Rastafari who may

have been charged with possession, use, cultivation or transportation of cannabis for the purposes of religious observance and practise, are able to claim the exemption granted.

- 3.16 In view of what is set out in paragraphs 3.9.10, 3.10.3, 3.11.2 and 3.12.1, I believe that together with those Rastafari who are not formal members of any House, there are between 8 000 and 12 000 bona fide practising Rastafari in South Africa.

4. **AD PARAGRAPH 2(a) OF THE COURT ORDER**

THE USE OF CANNABIS WITHIN THE RASTAFARI RELIGION IN SOUTH AFRICA

HOW

- 4.1. The use of cannabis in South Africa within the Rastafari religion does not differ in its usage from other Rastafari communities around the world.
- 4.2 We use the holy herb for culinary purposes (eating and drinking), meditational and medicinal purposes and for washing.

4.2.1 Culinary purposes

4.2.1.1 The preparation of the the holy herb is very important as cleanliness is next to godliness. First it must be cleaned. This is done by removing the pips, any dirt, hair, stick, stones, stems and other impurities.

4.2.1.2 It may be used in foods for example, such as soups, cakes, bread, stews, and sweets with honey.

4.2.1.3 It may be used as a tonic or in tea. In such a case, it is prepared similar to a tea. It is usually used in tea for medicinal or preventative purposes. When used in this manner, the effects are similar to any other herbal tea.

4.2.1.4 The holy herb (and often only its seeds) is used on occasion in preparing food, and when we do use it in our food, the quantity of holy herb used depends on the food being prepared, the number of adult Rastafari participating in the meal and the quality of the holy herb. It may be used during both individual and communal meals.

Thus if the holy herb was either from Swaziland or Malawi, as a general rule, less of it would be used in the preparation because of its quality (strength), whilst more would normally be used if the holy herb was from the Transkei or Pondoland.

When the holy herb is used in communal foods, the meal is preceded and followed by thanks-giving and reasoning.

4.2.1.5 We often use the seeds of the holy herb in the preparation of meals.

The seeds contain no psychoactive components.

Seeds are second only to soya bean in protein. The seeds can be used to make ice-cream, butter, margarine, or cheese. They can be churned to make milk, or boiled and made into porridge or soup

4.2.1.6 On some occasions, food containing the holy herb is served during religious ceremonies on Holy days; for example, on 7 January (Feast of the Nativity of Christ-" christmas"); 6 February (St Berhane Selassie's birthday); 2 March (Battle of Adwa'- victory of Menelik II over the Italian forces'); 25 May (All Africa Day); 23 July (birthday of H.I.M. Haile Selassie), 17 August ((b)irthday of

Marcus Garvey); 11 September (Ehiopian new year); 2 November (Coronation of H.I.M.).

4.2.1.7 When the holy herb (other than its seeds) is used in food on special occasions in which Rastafari youth who are mature enough are allowed to participate under the supervision of their parents, only very small quantities of the holy herb are used as youth are not mature enough to enter into conscious reasoning.

4.2.2 Meditational purposes

4.2.2.1 First, the holy herb is cleaned.

4.2.2.2 It is either burnt as incense , or smoked in a chalice (a bong) which should be constructed from natural elements such as clay, coconut or wood. As a sacrament in our religion, it is incumbent that it is used in a ritualised manner.

4.2.2.3 When alone in private, it may be smoked in the form of a spliff (a joint), often wrapped in onion skin or in a chalice.

4.2.2.4 I prefer not to puff the holy herb before work and use it maximum twice per day after work for meditational, spiritual and religious purposes. I use about 5 grams of cannabis daily for meditational purposes. Other adult Rastafari might use more, some less. However, I could in addition wash in it, drink it as a tea or burn it as an incense.

4.2.3 Medicinal purposes

4.2.3.1 First the holy herb is cleaned.

4.2.3.2 It may be placed in boiling water and the steam would be inhaled.

This method is often used for flues and asthma.

4.2.3.3 It may be drunk in boiling water as a tea or as a tonic for various ailments.

4.2.3.4 It may be placed over bare coals as incense and the fumes inhaled.

4.2.3.5 It is also used as a topical cream. In such an event, the preparation is time consuming and elaborate. The cream is then applied over the affected area.

4.2.3.6 It can also be smoked for medicinal purposes.

4.2.4 Washing/bathing

The water is boiled and the cannabis leaves or its essential oils are added to the water.

WHERE

4.3 We use the holy herb at:

- * religious ceremonies and gatherings;
- * in the privacy of our own homes;
- * where it will not cause offence , such as on a mountain in private.

- 4.3.1 The use of the 'holy herb' is central to our spiritual practice and is used to assist us in re-establishing our eternal relationship with the Godhead as it encourages insight and inspiration. Reasoning and meditation are central to our religious practice. As set out in Prof Yawney's affidavit (**Record p 483: 36-50; p489: 45-52**), the use of the holy herb is for the 'healing of the nation' and not to entertain but to facilitate elucidation and is a sacrament that accompanies reasoning
- 4.3.2 Accordingly, the use of the holy herb must be done **consciously** and in a **disciplined manner** and is never used for recreation or to excess as this would preclude reasoning and meditation.
- 4.3.3 The fact that the holy herb is used secularly, does not mean that our sacrament is not sacred. Our belief in Jah is reflected in every aspect of our lives and this incorporates the use of the holy herb. We do not live out our faith one day a week but continually. For us, our faith is a way of life.
- 4.3.4 We will only use the holy herb in a setting conducive to our religious observance and meditation, and not in a setting offensive to other people as this would disturb our meditation and communication with Jah. There is

thus an **inherent limitation** on where we can use it. We do not wish to offend people.

4.4 Religious gatherings and ceremonies

We use the holy herb at our (religious) churchical gatherings as referred to in the annexures to Prof Yawneys affidavit and as set out supra in this affidavit. The religious observances and practices, especially in established Houses, have been dealt with earlier in this affidavit. However, it is not required that all religious gatherings have to take place in a built-up structure, as Jah is there where two or three come together in His name.

As referred to supra in this affidavit, ceremonies are presided over (where and when available) by a priest, assistant priest, an Elder or by experience brethren.

4.5 In the Privacy of our homes

The use of the holy herb in the privacy of our homes is not less sacred when we wish to meditate and communicate with Jah.

4.6 Where it will not cause offence (in private)

As referred to in 4.3.4 above, we use the holy herb in settings conducive to our religious meditation and observances and not in a setting offensive to other people as this would disturb our meditation and communication with Jah.

We use cannabis at gatherings where Rastafari get together to meditate upon tenets of our faith.

WHEN

- 4.7 We believe that there is a duty incumbent on us to use the holy herb to enable us to continue our intimate relationship with our God. The holy herb is like spiritual food to us. It is a requirement to ask Jah for blessing before using the holy herb. We accordingly use the holy herb as the need occurs, not for recreational (carnal) purposes, but to be in contact with our Creator. Our whole lifestyle is framed by our religious beliefs. As the use of the holy herb is a **conscious act** of communicating with Jah, this imposes on each member of the Rastafari religion an **internal discipline** when using the holy herb as one can only be in contact with Jah when one is in a condition to be able to meditate consciously. This conscious act of communion therefore prevents members from 'over-indulging'. However, as in any religion, there are 'good' adherents and 'bad' adherents. Any

member who uses the holy herb in a manner that is viewed as carnal or to excess, is looked down upon and censored. The user must always be consciously aware of the purpose for which such user is using the holy herb. Accordingly, the **proper use** of herbs is very important to Rastafari. In addition, no additives such as tobacco can be added to the holy herb. It must be used naturally and purely. These are the only restriction placed on its use by members in private.

4.8 Accordingly, whilst it is not obligatory that a member **consume** the holy herb everyday, neither is it completely optional as the tenets of our religious observance require that a member communicate as often as such member feels the need to be in contact with Jah with the aid of our sacred God-given plant.

4.9 Preferably, every day should start with the smell of the holy herb as fragrance or scent irrespective of whether it is smoked, burnt as an incense or used in food. This is not obligatory but is encouraged by the tenets of my religion. I start and end every day with prayer and a scriptural reading. What is obligatory and necessary, is a reasoning about religious and spiritual matters. Thus whilst the consumption of the holy herb is theoretically not obligatory to be a Rastafari, every conscious Rastafari will want to use it in one form or another. The holy herb is like a compass that directs one in the right direction. The majority of us Rastafari need this compass for direction.

- 4.10 I personally, and nor have my fellow Rastafari, ever met a bona fide Rastafari who did not **use** the holy herb **in some form or other**.

What makes one a Rastafari is the acceptance of the Divinity of H.I.M. Haile Selassie coupled with the teachings and examples set by H.I.M.

BY WHOM

- 4.11 Cannabis is used as a sacrament by all adult practising Rastafari. Although we believe that the use of the holy herb in our religion allows us as Rastafari, to communicate with our Creator, we are aware that immature persons such as children are not ready to use it unhindered. Accordingly, as referred to above, Cl G4 of the RNC Constitution prohibits any Rastafari 'youth' (persons under 18 years of age) from smoking cannabis.

- 4.12 I have referred to in paragraphs 3.9.10 and 3.10.9 supra how persons become members of the two largest Houses of Rastafari in South Africa, namely the Nyahbinghi House and the Universal Movement of Rastafari respectively.

If a Rastafari is not a member of an established House, but **is** a genuine Rastafari in that such person accepts the Divinity of H.I.M Haile Selassie coupled with H.I.M's writings and teachings, the majority of these genuine Rastafari will associate with other Rastafari (whether members of established Houses or not) and live according to a Rastafari *livity*, even though it may not be the *ital livity* of the Nyahbinghi House.

It is easy for genuine Rastafari to recognize persons who pretend to be Rastafari but are not. The question therefore whether a person is a genuine Rastafari would not prove difficult or insurmountable to the RNC, its local structures, or to other genuine Rastafari, and I therefore do not believe that there would be much difficulty in administering any exemption granted to us Rastafari to use the holy herb for our religious practices and observances.

- 4.13 If an exemption is granted by the above Honourable Court to us Rastafari to use the holy herb for religious practices and observances, I assume that persons wishing to become Rastafari would, in the general course, first have to become a member of one of the established Houses, such as the Nyahbinghi order or the Universal Movement of Rastafari.

5. **AD PARAGRAPH 2(b) OF THE COURT ORDER**

HOW IS CANNABIS OBTAINED

5.1 Most of the holy herb that I and other Rastafari in the Western Cape use is obtained in the Transkei, Swaziland or Lesotho and transported down to the Western Cape.

5.2 In view of risks involved from the authorities in purchasing the holy herb due to its criminalisation, we purchase it in quantities of 10 kg bags and then transport it down to the Western Cape.

The consignments of holy herb is usually shared amongst groups of Rastafari.

5.3 If we do not have enough of the holy herb, or are between consignments, we obtain it locally in the so-called townships, for example, from locals in Khayalitsha, Guguletu and Langa. We do not support, nor want to, gangsters and dealers.

- 5.4 As stated above, most of our holy herb is purchased as it would not be possible, in view of the criminal proscription on cannabis, to cultivate sufficient cannabis for our religious and spiritual needs. Nor would it be possible in view of the criminal proscription, to ensure that all plants cultivated were of sufficient quality to facilitate our communion with our Creator.
- 5.5 Accordingly, should any exemption granted prescribe that the State would supply us Rastafari with cannabis, a probable difficulty that could arise concerns the quality, purity and quantity of cannabis that would be supplied by the authorities. Accordingly we would like the right to continue obtaining our holy herb from our present sources without undue interference from the authorities, should such prove necessary. In addition, we must still be able to grow some of our own plants legally both collectively and individually (under such supervision and regulation that is deemed necessary), the cultivation of which is a sacred undertaking to us.

6. **AD PARAGRAPH 2(c) AND (d) OF THE COURT ORDER**

REGULATIONS AND RESTRICTIONS ON THE USE OF CANNABIS BY
MEMBERS OF THE RASTAFARI RELIGION

6.1 As referred to in paragraphs 4.3.2, 4.3.4 and 4.7 above, external restrictions are considered unnecessary in the Rastafari religion, as inherent internal restrictions are present in terms of Rastafari religious observance and practise. Our religion encourages **self-discipline** and **self-control**. One of the fundamental principles of Rastafari is that we do not encourage any form of intoxication.

We use the holy herb as part of our religious and spiritual journey with our Jah- it is a conscious act of communion which precludes the abuse or the overuse of the holy herb. Rastafari, like other persons, must keep the balance of one-self. Overuse would lead to the user falling asleep and would defeat the purpose of our religious observances.

6.2 Other internal restrictions are founded by our day to day lives in the wider society. Even though there is a duty incumbent on us to praise Jah by using the holy herb, it is evident that the use of the holy herb is dependent

on our work and responsibilities. There is a time and place for everything. Thus, for example, I do not consume cannabis before work but only at the end of my working day.

7. **AD PARAGRAPH 2(d) OF THE COURT ORDER**

7.1 We Rastafari are against drug abuse and opposed to trafficking in drugs. We are aware that the authorities are concerned that the creation of an exemption to adult Rastafari to use, possess, cultivate and transport cannabis (under such regulation that is thought to be reasonable and necessary) for our religious observance and practice might lead to an undermining of governmental efforts and would be difficult to police, but I believe this concern is misplaced.

7.2 As referred to in my written submissions, cannabis is already so widely and regularly used in the world and in South Africa, where its use amongst many recreational users is not considered immoral, illegitimate or harmful to other persons or to society, that I do not believe that any exemption granted for religious use would have much effect on the present usage of cannabis by recreational users in South Africa.

- 7.3 In any event, I refer the above Honourable Court to the affidavits of Stephen G Nelson and John W Conroy annexed hereto as Annexures 'L' and 'M' respectively. From these affidavits, it is evident that there have not been practical difficulties in the implementation and administration of medical exemptions to persons in California and Canada, nor have such exemptions led to any grave difficulties in policing or undermined the authorities efforts to combat drug abuse and trafficking.
- 7.4 Mr Stephen Nelson has for the past six years been an attorney in private practice in California. Prior to that, he worked for 25 years in the United States Department of Justice as an 'Assistant United States Attorney, serving in various capacities including that of Trial Attorney, Chief of the Complaint Unit, Chief of the Narcotics Prosecution Unit, Chief of the Criminal Division, and Assistant United States Attorney Coordinator of the Presidential Organized Crime Drug Enforcement Task Force. He is familiar with California state law as it pertains to criminal violations, particularly those laws dealing with controlled substances such as cannabis. He is also familiar with California law as it pertains to 'medical marijuana'.

As the attorney for a California 'medical marijuana patient', he has personal knowledge of the procedures and protocols set up to implement and administer the use of 'medical marijuana'. As set out in pages 4 and 5 of his affidavit, Californian law does not require a patient who receives 'medical marijuana' to have an identification card. Such person simply keeps a copy of his medical certification available.

However, a person in San Francisco who has undergone an examination by a doctor, receives a certification from such doctor on a form approved by the City and County of San Francisco that such person is qualified under the laws to use cannabis. The person then registers with the San Francisco Department of Health which issues an identification card, which is valid for one year. No name appears on the card, only a photograph of such person. The card will however not be issued unless the Department of Health has verified such persons medical certification and identity. Such person then obtains cannabis from one of several 'Cannabis Clubs' or cooperatives that have been established, or such person can grow his/her own cannabis. However, the amount purchased, possessed or grown must be consistent with such persons personal medical use, and is obviously subject to other state and federal laws prohibiting the smuggling and commercial cultivation and distribution of cannabis. A copy of this San

Francisco card entitling the person whose photographs appears thereon to obtain or grow cannabis, is annexed to Mr Nelson's affidavit.

- 7.5 Mr John Conroy has been a practising lawyer in British Columbia, Canada for a period in excess of 28 years. He has personal experience of the administration and implementation of exemptions for the medical use of cannabis by virtue of his involvement in many cannabis-related legal cases and as counsel to the British Columbia Compassion Club and the Vancouver Island Compassion Club, which are both registered non-profit societies. According to Mr Conroy's affidavit, these societies sprung up to fill a vacuum in Canadian law by ensuring the availability of a supply of cannabis for medical purposes only that met appropriate quality standards to those having a prescription or a written authorization from their doctor and some others on an exceptional basis. These two societies have in excess of 1400 members. Distribution of cannabis by these Compassion Clubs requires confirmation from a members doctor recommending the use of cannabis or satisfaction of equivalent criteria of required medical need established by the clubs.

Mr Conroy also states *inter alia*, that:

- 7.5.1 The police are aware of the Compassions Clubs' existence and allow the distribution of cannabis to Club members, provided that they are satisfied the cannabis will not be redistributed for non-medical use. No members have been charged for simple possession.
- 7.5.2 The Clubs have a certain amount of growers or cultivators who produce the cannabis of a quality and grade considered appropriate for use in a medical context. The growers sign a contract with the Clubs and they are subject to periodic inspection by Club representatives to ensure they are not marketing their product in the illicit market and that they are meeting quality standards.
- 7.5.3 Typically, patient growers who had been charged received either absolute or conditional discharges; namely, that if they were convicted, they were deemed immediately not to be convicted in the case of an absolute discharge and were so deemed not to be convicted after serving a period of probation in the event of a conditional discharge. In either case, the person convicted does not receive an official criminal record under the Criminal Records Act R.S.C. 1985, c 47, and the police are required to purge any

reference to the matter from their records after one year in the case of an absolute discharge and three years from the end of the probation period in the case of a conditional discharge.

7.5.4 While Regulation 53 (of the Controlled Drugs and Substances Act) expressly authorizes a medical practitioner to prescribe or furnish a narcotic (now a controlled drug), for example cannabis, if such is required by such patient for his/hers medical condition, in Canada there is currently no lawful source of supply to fill such a prescription.

7.5.5 the Ontario Court of Appeal on 31 July 2000, in **R v Parker** upheld the finding of the court a quo of 10 December 1997, and held that the Controlled Drugs and Substances Act was unconstitutional to the extent that it did not provide a medical exemption for cannabis to those persons who required such treatment. It also held that section 56 of the Act was unconstitutional because it gave the Minister of Health an unfettered discretion to decide whether or not to grant such an exemption without any established criteria. The Court however suspended its declaration of invalidity for a period of twelve

months to enable the government to create the exemption. The Federal Government determined not to appeal this judgment.

7.5.6 Because there is currently no lawful supply of cannabis available for those with a section 56 exemption, they are required to obtain their supply either from the black market or through an established Compassion Club.

7.5.7 On 21 December 2000, Allan Rock, the Minister of Health of Health Canada, announced the issue of a five year contract to Prairie Plant Systems Inc. of Saskatoon, Saskatchewan, to produce standardized, affordable, research grade cannabis for medical purposes.

7.5.8 It would appear that the police have not experienced significant practical difficulties in policing the medical exemption situations. If there is any question about the legitimacy of a person's prescription, letter of authorization or exemption document, the legitimacy can be verified through either the author of the document or representatives of the Compassion Clubs.

7.5.9 The Compassion Clubs regulate the use of cannabis by its members by assigning each member a number and keeping a running members record which lists the nature of the strain of cannabis issued to that person, the date of issue and the cost.

Also annexed to Mr Conroy's affidavit is a copy of an exemption letter (of 3 October 2000) from the Ministry of Health setting out the typical terms of an exemption under section 56 of the Act, as currently worded. In terms of this exemption letter *inter alia*:

- (a) a person entitled to a medical exemption for cannabis may cultivate or possess cannabis, but may not allow any other person to use any of such person's supply;
- (b) such person is not entitled to have under cultivation more than three mature plants , four immature plants and thirty grams of usable cannabis per each mature plant;
- (c) the exemption could be immediately suspended and ultimately revoked if, for example, such person violated any terms and conditions of the exemption;

- (d) with the consent of such person (as furnished on the form supplied), such person's name, date of birth and details of the exemption could be provided to police agencies in order to limit the risk that such person could be inadvertently arrested or charged by the police;
- (e) a copy of the exemption should be carried by such person when he/she is in physical possession of cannabis.

Further annexures to Mr Conroy's affidavit include his curriculum vitae, a letter from Mr Allan Rock, the Minister of Health containing current initiatives by the Federal Government, and an article on the Compassion Clubs.

- 7.6 In view of the situation in both California and Canada pertaining to the implementation and administration of the exemption for medical cannabis, I do not believe that the grant of any exemption for the religious use of cannabis in South Africa would or could lead to the undermining of governmental efforts to combat drug abuse and trafficking or be difficult to police.

CONCLUSION

8. In view what is set out above in this affidavit and in other papers before the above Honourable Court, I respectfully submit that:

8.1 We Rastafari as members of a proud and sincere small religious minority are reliant on the protection of the Constitution to enable us to practise in private all aspects of our religion **lawfully** and to live our lives with dignity and self-respect.

8.2 The practice of all aspects of our religion in private does not cause any harm to other members of society. The only harm suffered insofar as it relates to Rastafari, has been the victimisation of genuine Rastafari (including myself) who have often borne the brunt of criminal laws prohibiting the use or possession of cannabis.

8.3 The trend towards decriminalisation in other Western democracies, the judgments of courts internationally pertaining to the 'perceived' harm of cannabis for recreational users, and the recent worldwide acceptance of medical exemptions for cannabis by courts and by State and Local

authorities, lends support to the widely held view that cannabis does not cause sufficient, substantial or serious harm to other persons or society, permitting its proscription and thereby preventing us Rastafari from practising our religion **lawfully** with dignity and self-respect.

In regard to the aforesaid submission concerning the trend towards decriminalisation of cannabis, I refer the above Honourable Court to an article from the Sunday Argus of 21 January 2001 concerning the decision by the Belgian government to make it legal for Belgians to grow and smoke cannabis, but not to sell or buy it, as Annexure 'N' hereto

- 8.4 The exemptions in South African Acts permitting patients to obtain cannabis from medical practitioners and pharmacists, in fact negates and rebuts the belief amongst certain persons in our society that cannabis has no beneficial attributes or that to allow its use by certain persons would undermine the governments efforts to combat drug abuse and trafficking. Put differently, medical exemptions in South Africa bolsters the belief that cannabis does not cause sufficient, substantial or serious harm to other persons or society.

- 8.5 the fact that the Ontario Court of Appeal in **R v Parker** of 31 July 2001 upheld the finding of a lower court staying the prosecution of Parker and finding that the Canadian drug legislation was unconstitutional as it did not allow for medical exemptions for the use of cannabis (the Appeal Court however varied the judgment of the court a quo where such court had read in the appropriate relief, preferring to declare the legislation unconstitutional but suspending the declaration of invalidity for a period of twelve months to allow the Canadian Parliament to create the exemption), lends support to the creation in South Africa of a religious exemption for the use of cannabis by adult Rastafari for bona fide religious practice and observance. Due to its length, a copy of this judgment has not been annexed as an annexure, but will be made available to the above Honourable Court at the appropriate time should the above Honourable Court so require.
- 8.6 I respectfully refer the above Honourable Court to the judgment of the Supreme Court Of Guam in the case of **People Of Guam v Benny Toves-Guerrero** 2000 Guam 26, as Annexure 'O' hereto. My Counsel had referred to and annexed the judgment of the court a quo in my written submissions to the above Honourable Court (pages 125-128 thereof) and had advised in paragraph 166.6 thereof that this case had been appealed to

the Supreme Court of Guam and that we were unaware of the judgment of that court. The Supreme Court of Guam has now found *inter alia*, that the relevant Acts substantially infringed upon Guerrero's right to the free exercise of his religion as protected by the United States Constitution and the Organic Act of Guam [27] and affirmed the trial court's dismissal of the action against Guerrero [28].

I accordingly submit that courts of other jurisdictions are now upholding the legitimacy of our religion and affording us Rastafari relief on a constitutional basis to which we are entitled.

- 8.7 There would not be grave difficulties in policing any exemption granted to members of our religion to use, possess, cultivate and transport cannabis (under such supervision and regulation that is deemed reasonable and necessary) for bona fide religious observance and practice; nor would any exemption granted to us Rastafari undermine governmental efforts to fight drug abuse and trafficking, which efforts we support.

As evidenced by the affidavits of Stephen G Nelson and John W Conroy referred to above, there have not been practical difficulties in the implementation and administration of medical exemptions to persons in

California and Canada respectively, nor have such exemptions led to any grave difficulties in policing or undermined the authorities efforts to combat drug abuse and trafficking.

8.8 We Rastafari are aware that under the present situation in South Africa where cannabis is proscribed, any exemption granted to us to practice our religion would not be granted as a right but as a result of a genuine attempt and willingness by us to accommodate the present concerns and norms in South Africa.

8.9 The Rastafari National Council has shown, as a responsible body, that it is keen to liase with and co-operate with the authorities to assist in the implementation of any exemption granted.

8.10 We Rastafari want to take our place in the wider South African society with dignity and respect. As Ras Afa Negus states in his affidavit, he longs to be viewed as a loyal South African

WHEREFORE I HUMBLY PRAY that the above Honourable Court grants an exemption to us Rastafari to use, possess, cultivate and transport cannabis (subject to

such reasonable restrictions that may be prescribed) for the purposes of our religious practice and observance.

GARRETH ANVER PRINCE

I certify that:

1. the deponent acknowledges to me that:
 - 1.1 he knows and understands the contents of this affidavit;
 - 1.2 he has an objection to taking the prescribed oath;
 - 1.3 he solemnly affirms that the contents of this affidavit are true and correct.
2. the deponent signs this declaration in my presence at CAPE TOWN on this 22 day of January 2001.

COMMISSIONER OF OATHS

