

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
Respondent**

Second

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

Third Respondent

**THE MINISTER OF JUSTICE
Respondent**

Fourth

**THE ATTORNEY-GENERAL ~~REPLYING~~ AFFIDAVIT
CAPE OF GOOD HOPE**

Fifth Respondent

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. I have read the affidavit of Fifth Respondent and reply thereto as follows.
At the outset I however wish to state that by virtue of its length and the

amount of annexures annexed thereto, and the time constraints pertaining to my reply, it is not possible to reply to all the allegations contained therein, which in many instances contain duplications and reiteration of facts and submissions by Fifth Respondent ("Respondent") of many of the issues already seized of by the above Honourable Court. Accordingly, my failure to reply to any allegation contained therein is not to be seen as any admission as to the truth thereof.

3. **AD THE 'BROAD PERSPECTIVE' (PARAGRAPH 2-17 THEREOF)**

AD PARAGRAPHS 2- 6.2 THEREOF

3.1 It is clear that the Respondent is taking a highly emotive approach in its opposition to the granting of a religious exemption to bona fide adult Rastafari to use cannabis for our religious practices and observances in private.

3.2 I agree that there is at present a perception of general unlawfulness prevailing amongst the general public over the amount of violent and unnecessary crime in South Africa. I however do not understand how this perception can bolster in any way the Respondent's submissions or be relied upon by the Respondent as a ground for the refusal of a religious

exemption.

- 3.3 As referred to in my counsel's written submissions, cannabis (as conceded in many of Respondent's own documents and by Respondent's own expert witnesses) is one of the few substances that has proven to be negatively correlated with violence. (See **pages 168, 201-205** of the written submissions).

Respondent refers the above Honourable Court to cases in **pages 29-32** (and annexures **9-36**) of its heads of argument as support for its contention that cannabis, and especially a 'wit pyp' leads to violence. I submit that the cases relied upon do not in fact support the Respondent's contentions.

S v Lee and others

In this case, none of the accused were 'choir boys'. Only Accused No 2 did not have a criminal record. Previous convictions for the other three accused ranged cumulatively *inter alia* from house breaking and theft, theft of motor vehicles, assault with a knife, assault with intent to do grievous bodily

harm in relation to the killing of a man by strangulation etc. The alleged use of a 'wit pyp' (cannabis mixed with mandrax) can not be relied upon by the Respondent for the contention that cannabis led to the murder in question. Copies of the accuseds' previous convictions are available for the above Honourable Court at any further hearing of the matter.

S v Chavulla and others

In this case, all the accused had lengthy lists of previous convictions ranging cumulatively from *inter alia*, possession of dangerous weapons, assault, housebreaking, robbery, rape, sodomy, attempted murder, murder etc. I again submit that the alleged use of a 'wit pyp' cannot be relied upon by the Respondent for the contention that cannabis lead the events in question.

S v Letsolo 1970 (3) SA 476 (A)

Extenuating circumstances found by the Court in evading the death penalty was not only 'addiction' to dagga, but addiction to alcohol, a degree of temporary mental abnormality and the commission of previous assaults '*while he was under the*

influence of liquor (and possibly dagga as well)'. (My underlining)

R v Mouton 1944 CPD 399

In this case, the Court was left in doubt whether the accused was able to form the intent to kill by virtue of the fact that the accused had smoked dagga prior to a fight in gaol, and accordingly found him guilty of culpable homicide. It appears from the case that there was no medical or scientific evidence led to buttress or refute this belief, nor do we know anything about this accused including his previous record and the reason for his imprisonment.

S v Ndiwene 1971 (3) SA 260 (R)

In this case, the Court was again left in doubt whether the accused had the intention to kill after smoking dagga, and therefore found the accused guilty of culpable homicide. Once again there appears to have been no medical or scientific evidence led to buttress or refute this belief.

S v Francis 1993 (1) SACR 524 (A)

In this case, the appellant had robbed, kidnapped and murdered a priest. The trial court had taken into account the appellant's underprivileged background with a violent father, the appellant's sub-normal intelligence, and that he was under the influence of dagga at the time. On appeal, the Appeal Court found that it could not support the finding that the Appellant had subnormal intelligence especially by virtue of the detailed planning involved in the crime, nor could it support the finding that the dagga had affected the appellant to any significant degree.

- 3.4 As experts from around the world, including Respondent's own expert witnesses, agree that cannabis does not lead to violence, the fact that there may be such an erroneous perception in the South African general public's mind (as submitted by the Respondent) and apparently in the minds of many judicial officers, that cannabis promotes violence, is not something that the above Honourable Court can or should take into account as a reason for not granting the exemption sought. The sooner the general public is informed about

the true position, the sooner accused will no longer be able to attempt to mislead the courts in this regard, and nor will the courts be swayed by intentionally misleading evidence.

- 3.5 In any event, Respondent's contention that '*there is a firm link between cannabis (in the form of a "wit pyp") and the commission of violent crime*' cannot be relied upon to bolster Respondent's case, as we Rastafari are not seeking the right to use mandrax in any form or manner whatsoever, and support the continued criminalisation of mandrax as a dangerous drug.

I accordingly deny that '*any perceived diminishing of the dangers of cannabis is going to further the perception that the law protects the criminals only*'.

I respectfully submit that the above statement is a non sequiter and must be seen as an emotive ploy to 'muddy the waters' and confuse the issues. The thrust of the statement is that we Rastafari are criminals and should be treated as such, and that we are not deserving of any respect or dignity.

AD PARAGRAPH 6.3 & 7 THEREOF

3.6 I deny that the survey confirms at all the link between cannabis and violent crime. The fact that urinalysis revealed (at FWK 2) that **43.6%** of arrestees (in the sample used) tested positive for cannabis does not lead to the conclusion that cannabis caused the crime or that the arrestee was under the influence of cannabis at the time of the offence. I have already referred the above Honourable Court in my written submissions to the medical and scientific fact that cannabis has a long half-life and evidence of its use remains months after its use. (It would be interesting to know what percentage of arrestees tested positive for alcohol use.)

The only conclusion that can be drawn is that the use of cannabis in South Africa is widespread and wide ranging amongst all different strata of society (including that of the arrestees in question).

It is interesting to note (at FWK 4) that the data obtained from the sampling of arrestees *‘supports the proposition that two different drug use profiles exists in South Africa. The first contention is that there is “greatest use of drugs such as dagga in traditionally black residential*

areas (eg Jabulani) and more varied use of drugs in traditionally white and mixed race residential areas (eg Sea Point) ”.

- 3.7 I deny that any exemption granted for the religious use of cannabis would send a disastrous message to the already fearful public. On the contrary, it would show the public that our Constitution protects all of us and promotes the respect and dignity of all. An exemption to Inuits (Eskimos) to kill whales could never be seen as an endorsement to the public that killing whales is permissible.

AD PARAGRAPHS 8 – 12

- 3.8 I respectfully submit that the Respondent is again attempting to cloud the issues. We Rastafari disapprove of the recreational use of cannabis and harmful drugs by persons of all ages, and forbid the smoking of the holy herb by Rastafari under the age of 18 years.
- 3.9 I believe that any problem experienced with under-age youths must be dealt with as an educational issue as submitted in my written submissions.
- 3.10 I have already referred the above Honourable Court in my written

submissions and in my Supplementary Affidavit to the reality of the trend towards decriminalisation of cannabis in Western democracies, the judgments of courts internationally pertaining to the low level of harm resulting from cannabis to other persons and to society (and to the user), especially when compared to the consequences of licit drugs such as nicotine and alcohol, and the recent worldwide acceptance of medical exemptions for cannabis.

- 3.11 The above Honourable Court has unanimously held in **Christian Education South Africa v Minister of Education 2000 (4) SA 757 (CC) ([25 & 42]** that it has the power to create exemptions especially for small groups of sincere religious believers who are more reliant on the protection of our Constitution than large groups who could more readily rely on the legislative process and that "*it would not be unfair to anyone else who did not hold those views.*" The grant of a religious exemption would clearly be seen in this light by all right thinking persons in South Africa.

- 3.12 I further respectfully point out that the Institute of Medicine Report (IOM Report) conclusively rejected the gateway and stepping stone theories. (See **paragraph 202.2 of my written submissions**). Even

one of Respondent's experts from 'Doctors for life, Prof Du Pont stated in his book **Getting Tough on Gateway Drugs**, (1983) (previously furnished by Respondent to my legal representatives) at page 135 that '*Alcohol is a common gateway drug into all non-medical or recreational drug-taking.*'

AD PARAGRAPHS 13 - 17

3.13 I deny that the public, in the event of a religious exemption being granted, '*would feel that the lofty ideals of the Constitution have been eroded whilst the general sense of lawlessness has been encouraged*'.

I am uncertain how Respondent can believe that permitting a religious exemption to myself or a group who have **legally** gone through all the court processes to protect and regain our fundamental rights, including our right to dignity, to which all inhabitants of South Africa are all entitled, could be seen as encouraging a sense of unlawfulness or bring the ideals of the Constitution into disrepute. It could even appear to some people from what is stated in Respondent's Supplementary affidavit that Respondent has little regard for the

norms of our new society, based on equality, human dignity and liberty.

- 3.14 The assertion by the Respondent that ‘*the general perception that the Constitution protects the criminals only*’ is an insult not only to the above Honourable Court and the judgments it has handed down, but to myself and other Rastafari. It is precisely due to the lack of dignity which so many of us South Africans experienced under Apartheid, that it was necessary for us to have a Bill of Rights protecting, equality, human dignity and liberty.

It is just such a belief amongst certain sections of the public that some persons are somehow less worthy of respect than other persons, that makes it essential that the above Honourable Court comes to the protection of us Rastafari.

- 3.15 I deny that the grant of a religious exemption could be seen as applying double standards. I have already referred the above Honourable Court to the **CESA v Minister of Education** (supra) pertaining to the grant of exemptions. As held in **Prinsloo v Van der Linde and Another 1997 (3) SA 1012 (CC)** (as cited in **CESA**) ‘*the*

essence of equality lies not in treating everyone the same way, but in treating everyone with equal concern and respect ([32-33])

We Rastafari are reliant on the Constitution so that we can practice our religion in private with equality, dignity and respect. We will not ‘flaunt’ ourselves as do ‘road-side traders and the taxi drivers’. Accordingly, no right-thinking person would perceive that the laws are being unevenly applied. It is a fact of life that exemptions of one type or another are available and present in everyday life.

I accordingly submit that the Respondent misunderstands the ratio in **Pretoria City Council v Walker 1998 (2) SA 363 (CC)**. In that case, the legislation did not have a negative impact on a persons dignity, but had a negative impact on a vulnerable minority group, while in this case, the opposite position is present: namely, the legislation in question has a negative impact on a persons dignity while an exemption would impact favourably in favour of a vulnerable minority group.

- 3.16 I have already dealt with the Republic’s international obligations in my written submissions (**pages 217 –226**). I point out however that it was

erroneously submitted therein that there was no mention of cannabis in the 1971 Convention or in its schedules (**page 220**). As pointed out by Respondent in its heads of argument, this is not the case. However, Article 22 of the 1971 Convention provides that its application, as in the other two conventions, is ‘*subject to constitutional limitations*’. I accordingly incorporate the submissions made in respect to the Single Convention of 1961 and the Vienna Conventions to the 1971 Convention.

4 **AD PRACTICAL PROBLEMS**

AD INTRODUCTION (PARAGRAPHS 18 –19 THEREOF)

4.1 I respectfully point out, as conceded by the Respondent, that facts pertaining to “grave practical problems” are just not available, and that the Respondent’s probable and practical scenarios are just mere speculation.

AD INTERNAL CONTROL BY THE RASTAFARI

AD PARAGRAPHS 20.1- 22 THEREOF

- 4.2 Save to state that sistren are not allowed to participate in the chalice (at religious gatherings), the contents hereof are admitted.

AD PARAGRAPH 23 -26

- 4.3 As stated in my supplementary affidavit, like in any other religion, some adherents may be 'good' and some may be 'bad'. Our structures and constitution are there to ensure to the best of our ability the control over members of our religion.
- 4.4 In so far as the e-tv programme is concerned, I had no say or knowledge over what footage of film was available to e-tv or was to be shown by them. The Rastafari National Council (RNC) does not approve of young children being allowed to smoke the holy herb and this to my knowledge, is the position of the overwhelming majority of Rastafari in South Africa. Should any member abuse his powers or act in a manner contrary to law or in breach of any exemption granted, such member is liable to prosecution by the relevant government authority. In the incidents referred to, the State obviously has the right to prosecute any persons encouraging and allowing young children to smoke cannabis just as it has the right to prosecute any person or

organisation encouraging children to smoke cigarettes or use alcohol.

AD PARAGRAPH 27 - 32

- 4.5 If there is ever any indication or evidence that a parent in a household is abusing his position with respect to nicotine or alcohol and that such abuse is detrimentally affecting a child, the relevant authorities have a duty to act to protect the child. Similarly, if there is any indication or evidence that a Rastafari parent is abusing his/her position, the authorities also have a duty to protect the child and take such action that is considered proper in the circumstances.
- 4.6 I deny that Rastafari children are more vulnerable to 'drug abuse' by virtue of their presence in a Rastafari home. The same position would equally apply to a child growing up in a household where parents use nicotine and/or alcohol or in a religion where children are occasionally permitted the odd sip of alcohol. As evidenced in my supplementary affidavit, the holy herb is used only within a spiritual and religious setting and paradigm, and not for recreational or carnal purposes.

AD PARAGRAPH 33

- 4.7 Any Rastafari found using the holy herb with secular users within a recreational setting would not be using it in terms of an exemption granted, and thus such person would be liable for prosecution and his/her exemption could be revoked.
- 4.8 Obviously, any Rastafari selling or distributing the holy herb to persons not subject to the exemption or entitled thereto, would be liable for prosecution, and his/her exemption could be revoked.
- 4.9 I deny that any exemption would make the holy herb more available. Cannabis is already so widely used in South Africa (and in the rest of the world) for mainly recreational purposes that notwithstanding any exemption granted, it will still continue to be widely available to those persons who seek it.

5. **AD WILL SAPS AND COURTS BE ABLE TO CONTROL THE SITUATION**

AD PARAGRAPH 34 THEREOF(MASON'S AFFIDAVIT)

- 5.1 As stated repeatedly, Rastafari are against the use of all dangerous

drugs and support governmental efforts to suppress drug use, abuse and trafficking.

5.2 Because millions of people in South Africa do not consider the harm to themselves from using cannabis in private to be unacceptable or large, particularly when compared to the dangers of nicotine and alcohol, it is not surprising that cannabis-related offences are the most prevalent of drug-related crimes. According to Mason (**page 56** of Respondent's papers), for the period under review, **81,8%** of drug-related occurrences involved cannabis. It is interesting to note that in the breakdown given by Mason (on **page 58**) concerning the number of arrestees testing positive for at least one drug, he does not furnish the figures relating to those arrestees testing positive for alcohol use. In any event, as Rastafari only use cannabis and not the substances referred to in Mason's report, I submit that it would be unfair to use the fact that arrestees in the sample concerned (not Rastafari) tested positive for other substances.

5.3 In 1999, drug-cases in South Africa totalled **41 461** and for the period 1 January 2000 to 31 July 2000 a total of **24 274** drug-related cases were investigated (Mason page 53). For the period from 1 January

2000 to 30 October 2000, **862 persons (too many!) under the age of 20 were sentenced to imprisonment** for drug-related offences (read as cannabis) (Mason page 57). During this same period, **4449** persons in total were imprisoned for drug-related offences. (Mason page 58). The cost not only to the State, but to the individuals imprisoned for cannabis-related offences has been dealt with in my written submissions (**pages 206 - 213** thereof).

- 5.4 Notwithstanding Masons submissions that any exemption will be difficult to control and implement and that there will be financial implications to any exemption granted, and that the subsequent investigations will further clog up court rolls (pages 60-62), I deny that the cost of implementation of any exemption granted would exceed the cost of not implementing the exemption both with respect to the financial costs involved and the harm caused to society and to the individual user.
- 5.5 Any inconvenience suffered by a sincere Rastafari in the implementation and administration of any exemption granted would be borne (at least initially) in the belief that we have at last regained our dignity and self respect.

- 5.6 For example, I submit that the cost of prosecuting and imprisoning a Rastafari for use and possession of cannabis far exceeds by many multiples the cost and inconvenience to the State of implementing and administering an exemption (with the assistance of the RNC) for a small group of sincere religious believers.
- 5.7 I concede that in the initial setting up of the mechanism for the implementation and administration of an exemption, there will definitely be teething problems, as happens when all new systems are implemented, but I have no reason to believe that such problems cannot be overcome with understanding and good faith on both sides. As referred to in my supplementary affidavit, there have not been practical difficulties in the implementation and administration of medical exemptions in California and Canada, and nor have such exemptions led to any grave difficulties in policing or undermined the authorities' efforts to combat drug abuse and trafficking.
- 5.8 Concerning the cost of implementing and administering any system set up pursuant to the grant of an exemption, I respectfully point out that the cost involved is not large or insurmountable, and respectfully

refer to the additional R4 billion made available to the criminal justice system in this years budget.

- 5.9 I admit that current legislation would have to be amended, but such persons who would have to attend to the amendments, are already employed by government and therefore additional costs for salaries would not have to be incurred
- 5.10 I understand that any exemption would not be applicable to Swaziland or Lesotho as they are independent states.
- 5.11 I deny that persons will flock to become Rastafari to legitimise their use of cannabis. Only true and genuine persons will be admitted as set out in my Supplementary affidavit. In any event, most secular users consume cannabis without the law impinging or restricting this activity and they therefore would not see the need to attempt to mislead the RNC or other Rastafari in order to use the holy herb lawfully. In any event, I respectfully point out that Mason is not certain that an exemption would lead to an escalation in the use of cannabis, but merely suspects that it may (page 62 thereof).

5.12 As Annexures **B – I** inclusive referred to by Mason were only furnished to my counsel at 11h30 on Tuesday 27 February 2001, and as they comprise 287 pages (inclusive of the affidavit of Mason which has again been furnished) any failure to reply to all the allegations, facts and submissions contained is not to be seen as constituting an admission as to the truth thereof.

AD THE ANNEXURES TO MASON'S AFFIDAVIT

AD ANNEXURE A THERETO (OPERATION MOTOKWANE)(PAGES 20 –
35 THEREOF)

5.13 It might very well be that the "*lack of support by the authorities*" which slowed down the development of the unit involved in a spraying campaign against cannabis in South Africa, was due to the local authorities awareness that cannabis is so widely used by persons in South Africa who do not see its use as illegitimate or harmful, that

there was not the political will to enforce such a policy of eradication.

AD ANNEXURE E & F THERETO (PAGES 40 – 195 THEREOF)

5.14 Annexure E thereto provides a breakdown of persons younger than 20 years of age who are serving prison sentences in South Africa for mainly cannabis- related offences (such as possession) and the period to which they were sentenced for the periods 1998 - 2000. The sentences range in general from 0 –6 months up to 5 - 7years.

5.15 Annexure F provides a breakdown of persons older than 21 years of age who are serving prison sentences for mainly cannabis-related offences during the aforesaid period. Sentences range in general from 0 –6 months up to 15 – 20 years (as in the case of cultivation of cannabis).

AD ANNEXURE G THERETO (PAGES 196 – 204)

5.16 It is interesting to note that the Medical Research Council's Report finds that in cases where there is apparently an association between drug and alcohol use associated with crime, "*alcohol rather than*

drug(not necessarily cannabis) consumption was significantly more prevalent.) (Page 200). As referred to in paragraph 3.6 above, due to the long half-life of cannabis, there is no evidence that the arrestee was under the influence of cannabis at the time of the offence or that cannabis lead to the offence.

AD ANNEXURE H THERETO (PAGES 205 –206 THEREOF)

5.17 It is evident from this memorandum furnished by the United States Drug Enforcement Agency that the American Courts (as submitted in my written submissions at **paragraph 71**) do not treat all religions equally.

AD ANNEXURE I THERETO (PAGES 207 – 287 THEREOF)

5.18 The Dutch government intends to maintain its present '**policy of tolerance**' on coffee shops (**page 209 & 210**), notwithstanding the request by 20 mayors who criticized the ambiguity of Dutch Drugs policy and sought '*permission to experiment with controlled production of and trade in cannabis, arguing that it would make the policy clearer and more transparent. Moreover, it would reduce organised crime and*

allow for quality controls, with obvious benefits for consumer health'.

The reason for their request was that coffee shops are not prevented from selling cannabis and may keep stocks up to 500 grammes, but at the same time, the supplying of cannabis to the coffee shops is a criminal offence.

- 5.19 Dutch policy *'continues to uphold the distinction made in the Opium Act between drugs which entail an unacceptable risk to public health (hard drugs) and drugs which involve less risk (soft drugs). The law distinguishes between these two categories in view of the risk differential and for the purpose of separating the markets for the two types of substances. The underlying aim is to prevent cannabis users from being caught up in criminal circles and becoming involved in the traffic in hard drugs. The guidelines set out a non-prosecution policy in connection with coffee shops and users' shelters. Certain other offences are accorded a low priority. ...In the context of drugs policy this higher good is defined as public health (separation of the markets) and public order.'* (page 228).

'The policy on coffee shops precludes sales of soft drugs and alcohol on the same premises' (page 229).

'Production (of cannabis) by an adult of a small quantity for personal use is not a priority. Production by minors will continue to be prosecuted. (page 235).

- 5.20 The Dutch Coffee shops are regulated as set out on **page 237**. For example, they may not advertise, are not allowed hard drugs on the premises, forbid sales to persons under 18 years of age.
- 5.21 Dutch guidelines cover the amount of cannabis a person may possess and the indicated guidelines to sentencing. For example, an adult possessing more than 5 cannabis plants would have them confiscated by the police without any charges being brought (**page 245**).
- 5.22 I respectfully refer the above Honourable Court to the Q &A as furnished to Respondent by the Dutch Ministry of Foreign Affairs (**pages 254 – 274**) for an overall and brief summary of the approach to the question of cannabis use in Holland. It is interesting to note that according to this document, the percentage use of cannabis in the United States of America is far higher than in Holland (**page 256 & 280**).

I respectfully refer the above Honourable Court to a comparison of the risks of alcohol, tobacco and cannabis from the Dutch Ministry of Health, Welfare and Sport (**page 278**) from it can be seen that the negative consequences from the use of alcohol far exceed that due to cannabis use. Similarly, there are 2 200 deaths a year from alcohol, 30 000 from nicotine and none from cannabis in Holland (**page 279**).

5.23 I respectfully point out that Mr Mason has been employed by the South African Police since 1971. Most persons involved in law enforcement agencies worldwide have an inbuilt prejudice against cannabis by virtue of prevailing law enforcement cultures, whatever evidence is produced concerning the low level of harm of cannabis to other persons and society (or to the individual user.)

AD PARAGRAPHS 35 -45

5.24 I admit that at least initially, ‘*some*’ difficulties would be experienced by Respondent should an exemption be granted. However, I deny that that these difficulties would be intractable, insurmountable or

persistent. In any event, I submit that the granting of an exemption to genuine adult Rastafari to use cannabis for our religious observances and practices would afford us Rastafari the dignity and respect which we seek and to which we are entitled and outweigh the financial cost of the implementation and administration of the exemption.

- 5.25 For example, with respect to Respondent's argument as set out in paragraph 38 thereof, if large quantities of cannabis were to be obtained in the Transkei for transportation down to Cape Town for use by Rastafari for religious practice and observance, a route map pertaining to the consignment, information concerning the quantity to be purchased, together with the expected times of the transport, destinations etc. could be given to a particular State official or Police station prior to the purchase of the cannabis and an acknowledgment or validation obtained, which would have to be carried by the driver of the vehicle in question. Such documentation would be furnished to the policeman when required, who, if in doubt, could confirm the factual position with the state official or policeman concerned.

It is clear that if such driver were to breach the conditions of any exemption granted, or sell to someone not entitled thereto, his

exemption could be revoked and he would be liable for prosecution.

5.26 Whether a non-Rastafari could purchase and transport cannabis on behalf of other Rastafari is doubtful but would obviously depend on the terms of any exemption to be granted.

5.27 I have already conceded that in paragraph 5.10 supra that an exemption would not be applicable to Lesotho or Swaziland

AD PARAGRAPH 46 –52.1,& 53

5.28 The above Honourable Court has already held that it has the power to create exemptions in terms of our Constitution (See **CESA v Minister of Education** supra).

I have already submitted (**paragraph 20.4.5** of my written submission) that this may not necessarily be an appropriate case for the above Honourable Court to read in the relevant relief as there are a range of legislative choices that the Legislature could adopt to cure the unconstitutionality of the impugned Acts and other applicable Acts.

This was the approach adopted in the unanimous judgment of the Ontario Court of Appeal in **R v Parker** handed down on 31 July 2000

as dealt with in my Supplementary affidavit (**paragraph 7.5.5** thereof). In this case, the Canadian Court found the relevant Narcotic's Act to be unconstitutional but suspended the declaration of invalidity for a period of 12 months to enable the government to create the exemption for medicinal users.

Should the above Honourable Court decide to follow the approach of the Ontario Court of Appeal and not read in the exemption itself, the Court could still give directions as to the content and form of the exemption to be granted and how it should be implemented and administered.

AD PARAGRAPHS 54 -55

5.29 A permit system would go a long way towards preventing the scenario sketched by the Respondent. I personally believe that a combination of the approach as set out in **paragraphs 28.2 –28.7** in my written submissions, and augmented by the approach adopted in Canada

and San Francisco for medical marijuana (as dealt with in paragraphs **7.4 and 7.5** of my Supplementary affidavit), with prior registration with the RNC being a **sine qua non** for recognition as a bona fide Rastafari, would be the most effective system to administer and implement.

I further respectfully submit that such an approach would not be unduly difficult or costly to administer and implement, especially when comparing the costs to society and the Rastafari should a permit system not be implemented.

In the event that the policeman in the scenario sketched by Respondent had reasonable grounds for believing that the Rastafari was a fraud, or that the cannabis was being carried by such person for the purposes of sale or distribution to persons not entitled thereto, I assume that the legislation creating the exemption would permit the policeman to detain the said person claiming to be a Rastafari for a pre-determined period whilst ascertaining the factual position. Obviously, the grounds for belief by the policeman would have to be legal, reasonable and substantial otherwise the person detained could utilize his legal rights to approach a court for his release and/or to

legally proceed at a later stage for iniuria or malicious prosecution etc...

AD PARAGRAPHS 55.1 – 55.2

5.30 A genuine Rastafari would not use the holy herb in a secular setting for recreational or carnal purposes. Should a Rastafari be arrested whilst consuming cannabis with a secular user, he could be charged and his exemption reviewed and/or revoked by the RNC and/or the relevant State authorities.

5.31 Should it ever be ascertained that a person obtained certification as a Rastafari who is not genuine or bona fides, or is breaching the terms of the exemption, it is clear that his exemption could be revoked by the RNC and/or the relevant State authorities in terms of the applicable legislation.

AD PARAGRAPHS 56 - 60

5.32 It is clear that until the teething problems in the implementation of an exemption have been sorted out, a bona fide Rastafari could suffer

certain inconvenience where for example, he is to be detained by the police subject to possible safeguards as set out in **paragraph 5.19** supra. However, I believe that all genuine Rastafari would gladly put up, at least initially with such inconveniences, as we would have regained our dignity and self respect.

5.33 After expected teething problems in the implementation of an exemption have been sorted out, the load on the courts could even be reduced, thus saving not only the Court's resources but also those of Correctional Services in the event that a person who would have been convicted and sentenced to imprisonment prior to the grant of an exemption, was a Rastafari.

AD PARAGRAPHS 61- 67

5.34 I contend that the RNC has expertise to implement and administer any exemption in good faith, alternatively to assist the relevant State authority assigned to the task, in the implementation and administration of the exemption.

5.35 In the event that the above Honourable Court should find the

impugned Acts and other applicable Acts to be unconstitutional and suspend the declaration of unconstitutionality for a period of 12 months, such period would obviously be used by the RNC to organize and prepare for the implementation and administration of the exemption and to commence liaising with the relevant state authority assigned thereto.

AD PARAGRAPH 68.1- 68.2

5.36 The RNC could arrange with its local structures throughout the country that assessors be made available in each area on reasonable notice being given to the RNC that such 'assessors' are required. In addition, a list of such persons authorised by the RNC to act as 'assessors' could be given to the local control prosecutor in each magisterial district who could contact the persons on the list on reasonable notice when such persons are required to assist the courts in deciding where an arrestee is a genuine Rastafari.

By being prepared to work with the authorities in this manner, we Rastafari are showing that we are prepared to accommodate the needs of the state, even though such course of action could invariably

lead to a certain amount of antagonism towards our members from other persons in society.

It may very well be that our assistance in making 'assessors' available will not be required by the state as judicial officers might feel that they are able to ascertain themselves whether a person claiming to be a genuine Rastafari is one. In such event, we Rastafari are prepared to furnish to the Department of Justice a detailed document which could be made available to all judicial officers concerning all the facts and queries that such judicial officers would require in order to ascertain whether a person is in fact a bona fide Rastafari.

AD PARAGRAPH 69

5.37 I deny the contents of this paragraph in its entirety.

6. **AD AFFIDAVIT OF AYANDA NTSALUBA**

6.1 At the outset, I respectfully state that I have the same objection to the

attaching by Respondent of a voluminous affidavit (and annexures thereto) from the Department of Health as I had with the introduction of the documents from 'Doctors for Life' as set out in my answering affidavit of 26 September 2000 (See **Court Record : pages 506-507**).

Clearly the Department of Health has a right to intervene in any matter in which it has an interest, but by failing to use the procedure set out in Rule 9 dealing with **amicus curiae**, it has now once again traversed material and issues that have already been dealt with, thus burdening the above Honourable Court with extra (and in many instances, unnecessary and irrelevant) documents and placing myself under the most pressing time constraints. Accordingly, my failure to reply to any allegation therein is not to be construed as an admission as to the truth thereof.

AD PARAGRAPH 2.2 & 2.3 THEREOF

6.2 Taking into account the responsibilities of the Director-General, I respectfully wonder why the Department of Health is so concerned by the use of the holy herb by Rastafari in our religious practices and observances whilst ignoring the evils and serious harm caused to

society from a licit drugs such alcohol, especially when the Department of Health is aware that the negative consequences of legal drugs such as nicotene and alchol far outweigh those of cannabis. In this regard, I specifically refer the above Honourable Court to the contents of my **paragraph 8.13** below.

AD PARAGRAPH 6.2 THEREOF

6.3 I deny that cannabis has no medicinal value as evidenced by the findings by the IOM Report, the use of marinol, medical exemptions in other Western democracies and even by the actions of the Epilepsy Association of Canada in joining as an amicus curiae in support of Parker in **R v Parker** (supra).

AD PARAGRAPH 7.3 THEREOF

6.4 As set out in my Supplementary affidavit (paragraph 4.10 thereof), every genuine Rastafari **uses** cannabis in one form or another.

6.5 I respectfully state that the assertion by the Director-General with respect to my not belonging to any one House.that.'*this on its own*

puts a question mark on his commitment and sincerity on the religion of the Rastafarians...) is disgraceful and repugnant and I reject it with the contempt it deserves. It is because of such sentiments and prejudices that the Constitution was made the supreme law of our land and why religious minorities are reliant on the Constitution for their protection and the achievement of dignity and self-respect. (See also **paragraph 7.4.2** of the Director-Generals affidavit for further such sentiments).

- 6.6 With regard to the assertion that none of the Rastafari constitutions refer to the smoking of the holy herb, I refer the above Honourable Court to Clause G 3 thereof of the Constitution of the RNC (**page 104** of my Supplementary affidavit)

AD PARAGRAPH 7.8.1 THEREOF

- 6.7 Notwithstanding the questionable accuracy of many of the statements contained herein, I again reject with contempt the insulting and disgraceful sentiments expressed by the Director-General. It appears that the Director general is not in favour of a society based on human dignity, equality and freedom. It is clear why it was necessary for

South Africa to have a Constitution protecting the fundamental rights of all our people.

AD PARAGRAPH 7.8.2 THEREOF

6.8 It appears with respect that the Director-General is unaware that we Rastafari seek the right to use the holy herb in private. Is the Director-General seriously suggesting that incense or the lighting of candles should not be allowed in Christian Churches, and that nicotine does not pollute at all?

AD PARAGRAPH 7.8.3 THEREOF

6.9 The statement by the Director-General that ‘...*cannabis as a plant which can be smoked for pleasure was literally unknown at that time*’ flies even in the face of the evidence submitted by Respondent. By way of example, I refer the above Honourable Court to the document from the United Nations International Drug Control Programme annexed to a letter from FW Kahn SC of Respondent to the Director of the above Honourable Court (advising inter alia that due to certain duplications certain documents would not be attached to

Respondent's Supplementary affidavit). The United Nations document states that '*...cannabis has been part of human culture for millennia...*'.

AD PARAGRAPH 7.8.7 THEREOF

6.10 I admit that besides the Drugs and the Medicines Acts there are other acts that would have to be amended in the event that an exemption is granted.

7 AD AFFIDAVIT OF ONICA CECILIA MAPHAI

7.1 As referred to in my written submissions (**paragraph 201.8**), the IOM Report has found that there is no convincing evidence that cannabis use is casually related to the development of mental disorders, viz, cannabis could possibly precipitate schizophrenic episodes, but could not cause the underlying psychotic disorder. The question therefore is only whether cannabis can modify the course of a pre-existing mental disorder.

7.2 It is obvious that persons accused of deviant criminal behaviour, including murder, rape and other types of violence come from all

religious groups and all sectors of society, and that the presence of persons professing to be Rastafari (whether genuine or not) at Westford is therefore not surprising. Without further information as to the background, previous convictions, mental condition etc, it is not possible to comment on whether the reasons put forward by an individual for anti-social behaviour, such as killing a relative whilst allegedly mistaking the relative for an animal, is in fact true or was used as an excuse in an attempt to mitigate such person's actions.

8 **AD AFFIDAVIT OF INGRID MADEL VAN VUUREN**

8.1 As most of the submissions made by this deponent have been dealt with earlier in my written submissions or in my Supplementary affidavit or are irrelevant to the issues before the above Honourable Court, I will only deal with a few of the deponent's submissions. Any failure to reply to all the assertions is not to be construed as an admission as to the truth thereof.

AD PARAGRAPH 14.1

8.2 As already submitted, reliance on international agreements is

constitutionally misplaced (see **paragraph 221.3** of my written submissions). If a prohibition cannot be justified in terms of the general limitation enquiry, any international agreement purporting to require the state to impose it would be unconstitutional and the resultant international obligations would be invalid in South African law. In addition, all the relevant treaties are specifically made subject to that countries' constitutional limitations. In this regard, I refer to section 1(a) of the **Single Convention** of 1961, article 22 of the **1971 Convention** and section 3(2) of the **Vienna Convention**.

AD PARAGRAPH 14.5 &14.6

- 8.3 The allegation that an exemption would increase the availability and supply of cannabis and lead invariably to an increase in use is based on mere speculation. As shown in my written submissions, countries where the use and possession of cannabis have been decriminalized have not shown any increase in the use of cannabis and in fact, the percentage use in those decriminalized countries is in fact lower than in countries where it has not been decriminalized. In fact, according to the British Medical Journal, as reported in Time Magazine of 2 October 2000, notwithstanding decriminalisation in Holland as

evidenced in my written submissions, there has been a percentage fall of 13,08 % of cannabis use by Dutch youth since 1996. A copy of the relevant page from Time Magazine is annexed hereto as Annexure “P”.

8.4 I have already indicated in my Supplementary affidavit, that we Rastafari are not against the legal production and supply of cannabis by the State as long as the quality is good and the supply constant and as long as we are permitted to also cultivate, collectively and individually, the holy herb under such supervision that is deemed necessary. In this regard, I refer to **paragraph 7.5.7** of my Supplementary affidavit concerning the recent conclusion by the government of Canada of a 5 year contract to Prairie Plant Systems Inc to produce cannabis for medical exemptees.

AD PARAGRAPH 14.8

8.5 It is apparent that this deponent has not kept abreast of the momentum in western democracies towards the decriminalisation of cannabis

AD ANNEXURE VA TO VAN VUUREN'S REPORT (REPORT ON
DECRIMINALISATION OF CANNABIS)

- 8.6 As most of the submissions and findings of this report to the Minister of Health have been dealt with previously in my written submissions and in the documents furnished to the above Honourable Court in terms of my Rule 30 Application, I will only reply to certain of the contentions made therein.
- 8.7 It is interesting to see the spin placed on the report to the Minister of Health (pages 114 –132 of Respondent's Supplementary affidavit). For example at paragraph 5 on page 114, the statement is made that *'It is claimed that legislation in South Africa is unconstitutional and infringes on the rights of the individual, **as these rights include the abuse of drugs**'*.
- 8.8 It is trite that our Constitution does not contain a right allowing persons 'per se to abuse drugs'. Neither does it include a right per se allowing persons to abuse or use nicotine and alcohol. It is apparent that the authors of this report do not understand or have knowledge of the

nature and purport of the fundamental rights contained in our Constitution, especially the right to privacy, the right to self autonomy, the right to equality and the right to dignity, nor do they appreciate the harm principle, namely that as long as the conduct or activity in question does not cause serious, substantial or significant harm to other persons or society, such activity or conduct should not be proscribed.

It is further evident that the authors do not understand that the underlying values of our new constitutional dispensation is the promotion of the fundamental '*values that underlie an open and democratic society based on human dignity, equality and freedom*'.

In this regard, I refer the above Honourable Court to my written submissions and in particular, to the section therein titled 'Nature and scope of fundamental rights in general' (**paragraph 30** thereof).

- 8.9 The authors again erroneously state that by the time of the Single Convention 1961, cannabis was hardly known as a drug of abuse in the western world. (page 115 thereof).

- 8.10 With respect to the statement that *‘First time offenders will only in exceptional cases be incarcerated where they may be in contact with hardened criminals’* (page 116 thereof), I again refer the above Honourable Court to paragraph 5.3 above detailing the number of minors sentenced to imprisonment for cannabis (**862** from January 2000 to 30 October 2000) and **4449** person being imprisoned for cannabis during this same period, for an activity which millions of South Africans consider far less dangerous than alcohol.
- 8.11 Paragraph 21 on page 120 of the Report discusses the legalization of heroin and cocaine. I respectfully submit that the inclusion by the authors of this report of such a discussion, however cursory, while purportedly being concerned only with the question of the decriminalisation or legalisation of cannabis, is a clear indication of the bias, prejudice and pre-judgment by the authors as to their final conclusions and recommendations as they pertain to cannabis for the wider society.
- 8.12 Similarly, whilst finding that at a meeting in Vienna in April 1996 by the Commission on Narcotic drugs, the message was brought over that most countries were certainly not driving towards legalisation, the

authors again show their bias and prejudice after stating that ‘*On the other hand, some countries do apply some form of decriminalisation...*’ by not stating which countries were involved in this decriminalisation and by not discussing or analysing the reasons therefor, and an analysis of the impact to those countries of the decriminalisation of cannabis. (page 123 of Respondent’s Supplementary affidavit).

- 8.13 The apparent **highlight** of the authors findings is again the cynical argument that why bring a third popular drug onto the market (which is already there but unregulated and unaccompanied by any education as to the correct usage and what should be avoided!) after nicotine and alcohol by stating as follows: ‘***The negative consequences of legal drugs, such as tobacco and alcohol already outweigh those of illicit drugs. For example, instances of hospitalisation and even death are higher among users of legal drugs than illicit drugs. Adding yet another legal drug to the list will only add to a problem which is already out of control.***’ (Page 125 of Respondent’s Supplementary papers.)

- 8.14 I respectfully refer the above Honourable Court to a letter to the Cape

Times of 26 June 2000 from Mrs Helen Suzman wherein she supports the decriminalisation of cannabis in South Africa. A copy of this newspaper cutting is annexed hereto as Annexure 'Q' hereto.

CONCLUSIONS

9. I respectfully submit that the onus is on the Respondent to justify why an exemption should not be granted to bona fide adult Rastafari to use, possess, cultivate and transport cannabis for our religious worship and observances.

10. In view of what is set out herein, as well as in my Supplementary affidavit and my written submissions to the above Honourable Court, I respectfully submit that the Respondent has not discharged the onus on it. We Rastafari are reliant on the above Honourable Court to grant us the respect and dignity we seek. We have shown that we are willing to co-operate in the administration and implementation of any exemption granted to the benefit of the larger society.

WHEREFORE I HUMBLY PRAY THAT THE ABOVE HONOURABLE COURT
GRANT THE EXEMPTION SOUGHT, ALTERNATIVELY, THAT IT DECLARES

THE RELEVANT ACTS TO BE UNCONSTITUTIONAL BUT SUSPENDS THE DECLARATION OF INVALIDITY FOR A PERIOD OF 12 MONTHS TO ENABLE PARLIAMENT TO CREATE THE EXEMPTION IN TERMS OF DIRECTIONS OF THE ABOVE HONOURABLE COURT.

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 JOHANNESBURG on this
day of FEBRUARY 2001.

COMMISSIONER OF OATHS