

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 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,

George William MASON

I do hereby make oath and say:

1. I am an adult male, and a Senior Superintendent in the South African Police Service, being the Commander of the South African Narcotics Bureau, Detective Service, Head Office, Pretoria.
2. I am duly authorized to depose to this affidavit on behalf of the South Africa Police Service.
3. The facts here in contained are within my own personal knowledge, save where the context otherwise indicates.
4. I have been employed by the South African Police Service since 1971. I was the acting Commander of the South African Narcotics Bureau from 1995 to 1996. In 1998 I was appointed Commander of the South African Narcotics Bureau, a post which I continue to hold. In my capacity as the Commander of the South African Narcotics Bureau I was appointed as a member of the former Drug Advisory Board in 1995 by the then Minister of Welfare. I continued to be a member of the Drug Advisory Board until it was disbanded in 2000, when legislation was amended and the Drug Advisory Board was replaced by a Central Drug Authority. In so far as the activities of the former Drug Advisory Board is concerned I was also involved with compiling of the Drug Master Plan which was approved by parliament in 1999. I was included in the South African delegation which represented South Africa at the United Nations Commission on Narcotic Drugs in 1998, 1999 and 2000. I have represented the South African Police Service on numerous international drug-related conferences over this period of time. During my career as a police official for twenty nine years I have dealt with numerous drug-related cases in which cannabis was the substance involved. I have also dealt with cases where the accused alleged to be Rastafari. This interaction with Rastafari gave me insight into Rastafarianism. I do however not profess myself as an expert on Rastafarianism.
5. The South African Narcotics Bureau was established in 1974 as a Specialized Unit in the South African Police Service responsible for the investigation of drug-related crime. The South African Narcotics Bureau is situated in all major areas in South Africa, and has 48 offices. South African Narcotics Bureau works in conjunction with a myriad of organizations, such as the United Nations Drug Control Programme (UNDCP), Interpol, Southern African Economic Development Community (SADC), World Customs Organization (WCO), South African Regional Police Chiefs CO-Operation Organization (SARPCCO), Department of Welfare, Department of Health, Department of Justice and the South African Revenue Service.
6. **EXTENT OF CANNABIS CULTIVATION IN SOUTH AFRICA**
- 6.1. Cannabis is widely cultivated in South Africa. Cannabis cultivating areas are mainly located in Kwazulu Natal and the Eastern Province. Smaller cultivation areas do exist in Mpumalanga and the Northern Province. Two of the neighbouring countries, Swaziland and Lesotho have major cultivating areas.

7. **ESTIMATING HECTARAGE UNDER CULTIVATION**

7.1. In essence the methodology used by the South African Police Service to estimate area under cultivation depends on an extrapolation from the quantity of chemicals used in a spraying exercise. Accuracy therefor depends on three principal factors:

- (a) whether the spraying exercise covers all existing cultivation areas;
- (b) whether the actual spraying itself is conducted in a precise and non-repetitive manner; and
- (c) the mathematical accuracy of the calculations.

Point (a) is taken care of by available intelligence to the South African Police Service which accurately details the main cultivating areas.

Experience indicates that the same areas tend to be used for cultivating cannabis in South Africa.

Crops are located in these areas and will be larger or smaller depending on the season in which it is grown.

7.2. **PRECISION OF FLIGHT OPERATIONS**

Self-imposed preconditions for operations are that the air must be completely still so that there is no risk of the chemicals overshooting the target zone. The release of the chemicals is performed from an average height of 8-10 metres. The average approach speed is about 25 knots. The width of coverage from the four nozzles on the underside of each helicopter is a 10 metres swathe. The drop size is made large enough to permit it reaching the ground in the most direct manner. An accurate record of the quantities of chemicals used is maintained and recorded.

7.3. **METHOD OF CALCULATION**

On average, one hectare of healthy-growing and evenly-spaced cannabis plants measuring one metre in height will yield 21,200kg of wet cannabis. Since it is estimated that moisture loss will reduce this mass by 90%, the amount of dry cannabis yield by the hectare is 2,120kg. This, however, is not the usable cannabis since this figure includes stalks, stems and other non-useable elements. Reducing the figure to net out these elements will yield an amount of useable cannabis from one hectare equivalent to 700kg. Using the street level retail price of R1,00 per gram of cannabis, the street value of one destroyed hectare with the above specifications is calculated at R700 000,00.

The following calculation goes beyond merely estimating the extent of crop cultivation and derives an actual value for the amount destroyed. For the purpose of estimating hectareage, the first

three lines of the calculation are the most important since they permit a derivation of hectares sprayed

of a rate of 30 litres per hectare.

METHOD USED BY SAPS TO CALCULATE STREET VALUE OF CANNABIS ERADICATED PER HECTARE	
ACTIVITY	EXAMPLE OF CALCULATION
Litres of chemicals sprayed	150 Litres
Multiply by ration of litres to hectares @ 30 litres per hectare	Divide by 30
= Hectares covered during spraying	5 Hectare
Multiply by visual estimate of density of crop (in %)	85%
=	4.25 hectare
Multiply by estimated unit value of “useable” cannabis per hectare based on a height of 1 metre. (Rands 700 000)	Rand 2 975,000
Multiply by percentage estimate of height of plant (100% = 1 metre)	1.7 (as per pilots visual estimate of crop height)
Yield	Rands 5 057,500

9. It is estimated that there is approximately 1247 hectare under illicit cultivation in South Africa.

10. **CULTIVATION ELEMENTS**

Seeds from current crops are harvested and retained to ensure continuity until the next planting. Plot sizes vary considerably. It ranges from approximately one - twentieth of a hectare to one quarter of a hectare. The fields are located close to water. Usually near to the banks of rivers flowing through isolated valleys. The majority of fields are irrigated in one way or another. The irrigation method involves upstream channelization of river water using long stretches of hosepipe. The resulting pressure is sufficient to allow the water to exit the pipe unassisted at a lower altitude. Fertilisers commonly available and used on farms for legitimate crops are also used to produce improved cannabis yields.

11. **HARVEST TECHNIQUES**

In terms of the harvest techniques used, these vary. The cannabis may either

- (a) be harvested as a complete plant when it is about one metre high with only the seed and flowering tops being removed, dried and then compacted for sale; or
- (b) be pruned on a regular basis during the entire year with the original plant still standing but with the newest leaves (i.e. those with the highest THC levels) being constantly removed for processing in a manner akin to the harvesting of tea leaves. In South Africa the crop calendar for cannabis can vary. But essentially the main or highest yielding cannabis crop is planted just after the rains. With three months required for maturing the crop will be harvested starting in January.

12. **ERADICATION STRATEGY**

Eradication is by means of heli-borne gravity delivery of the liquid chemical “Touchdown Plus” whose active ingredient is glyphosate trimesium (Sulphosate). Upon contact with the cannabis plant, the chemical needs six hours to start to take effect. If rain occurs during this period the plant must be sprayed again. The plant starts to exhibit yellow spots thereafter and within 10 days is brown and dry.

The “Touchdown Plus” is loaded from the support trucks at the landing zone into dispensers slung onto the undercarriage of helicopters. The main objective of the enforcement strategy is to break the seed cycle. Without seeds to plant, potential growers would have to import them from elsewhere. The shortage of seed will effect the ease with which the farmer can cultivate cannabis. **(Annexure A)**

13. **WHOLESALE**

- 13.1. It stands to reason that cannabis has to be trafficked from cultivation areas to the consumer markets in South Africa. This involves the trafficking of cannabis over provincial borders and even national borders to consumer markets. Based on previous seizures multi kilo quantities of cannabis are transported from cultivating areas packed in bags. These are easily identifiable and difficult to conceal. This type of trafficking with large consignments of cannabis is usually arranged by a few individuals who contribute financially to the purchasing of the cannabis.

The bags are purchased at farmgate prices from the cultivator. As described in paragraph 10(a) the harvested seed and flowering tops of the cannabis plant are the most prevalent and considered

to be of the highest grade cannabis. It is the most expensive of the grades of cannabis sold to the wholesaler. Cannabis harvested by pruning on a regular basis is considered to be the second highest grade and the farmgate price thereof is cheaper than the seeds and the flowering tops. The lowest grade of cannabis is that which contains impurities such as stocks and stems and other unuseables. The farmgate price of this impure cannabis is the lowest per bag. Farmgate prices are

usually calculated per bag while wholesale prices are calculated per type of packaging and quantity contained in the package. At this point the cannabis enters into what is considered the wholesale market.

Seizures also indicate that the prevalent mode of transport is with vehicles. Pantechincons operating on main routes are often used in collaboration with the drivers of these vehicles to transport large quantities of cannabis to the consumer markets. In other instances hired light delivery vehicles are used to transport multi kilo quantities of cannabis. Minibuses are often also used. Instances occurred were public transport such as buses of transport companies are used and the bags containing cannabis is concealed in the luggage compartment of the bus. The consignment is then delivered to a central point from where it is distributed to each of the recipients.

13.2. **RETAIL**

At this point the consignments are repackaged into smaller consignments which are easier to conceal and handle. This level of dealing is generally referred to as the retail level. These consignments may be made up of what is referred to as “arms”. An arm of cannabis is a quantity of cannabis designed in a roll and usually wrapped in newspaper. It is fashioned in such a manner that it is as thick and long as an adult’s forearm. It may differ in weight as it is not weighed before packaging, it is rather an amount of herbal cannabis which is fashioned and packed. This means of packaging is by far not the only means of packaging. Loose cannabis may be concealed in any type of container which will roughly hold the same amount of cannabis as contained in an arm.

13.3. **LAW ENFORCEMENT STRATEGY**

This strategy encompass that roadblocks are held on roads leading to and from the cultivation areas and on other routes which previous experience indicated as preferred routes by traffickers to the

consumer markets. Secondly intelligence is gathered on dealers. These dealers, once profiled and positively identified as dealers, are brought to book through police actions or entrapment.

14. **STREET LEVEL DEALING**

The last link in the chain is generally referred to as street level dealing. Street dealers may be runners in the employ of retailers or may be viewed as entrepreneurs obtaining cannabis from retailers. Cannabis is packaged for the consumer market in a variety of manners. Examples of packaging are cannabis pocket in matchboxes, bankbags, or cannabis fashioned in a roll similar to an arm and wrapped in paper. These are referred to as fingers as they represent a finger of a person. Street level price of cannabis is determined at R1,00 per gram and are sold to the cannabis smokers.

14.1. LAW ENFORCEMENT STRATEGY

Street level dealing and possession of cannabis are generally addressed through crime prevention actions by the South African Police Service. These actions may entail searches of premises on individuals which lead to the detection of cannabis and ultimately leads to a person being charged for possession of cannabis.

15. Unlike crimes such as house breaking, theft or assault that are reported to the South African Police Service for investigation, drug-related crimes such as the dealing in/or possession of drugs depend heavily on pro-active policing methodology to uncover drug-related crimes.
16. Statistics prepared by the SA Police Service Crime Information Analysis Centre indicate that approximately 2,2 million cases are reported to the South African Police Service annually. Of these cases 47 323 drug-related cases were reported to the South African Police Service in 1994. In 1995 there was a decrease in drug-related cases reported to 40 782. This trend continued in 1996 to 39 241 drug-related cases reported. In 1997 there was an increase to 42 805 cases reported. In 1998 drug-related cases once again decreased to 3 983 cases and in 1999 an increase was noted with 41 461 cases reported. **(Annexure B)**
- 16.1. For the period 1 January 2000 to 31 July 2000 a total of 24 274 drug-related cases were investigated by the South African Police Service. **(Annexure C)**
17. Statistics prepared by the Crime Information Analysis Centre pertaining to drug-related occurrences registered on the Crime Administration System (CAS) system for the period 1994 to 1999 indicate that drug-related crime is on the increase in the Western Cape. The incidences of drug-related crime in the Western Cape has risen from 12% reported in the country in 1994 to 29,1% reported in 1999. Statistics for the period 1 January 2000 to 31 July 2000 indicate a further increase to 35%.

Kwazulu Natal has the second highest drug-related cases which are registered on the CAS system. Statistics indicate a marginal increase from 19,5% in 1994 to 20,9% in 1999. Statistics for the

period 1 January 2000 to 31 July 2000 indicate a decrease to 14,4%.

Gauteng has the third highest incidences of drug-related cases captured on the CAS system. Statistics indicate a decrease in the percentage of cases registered from 16,9% in 1994 to 12,2% in 1999. As increases is indicated for the period 1 January 2000 to 31 July 2000 to 14,5%.

The Free State is the province with the fourth highest incidences of drug-related crime. As in the case of Gauteng incidences decreased in the Free State from 11,1% reported in 1994 to 8,4% in 1999. Statistics for the period 1 January 2000 to 31 July 2000 indicated a stabilized trend at 8,3%.

Statistics in the Eastern Cape indicated a slight increase from 11% in 1994 to 12,3% in 1999. However statistics for the period 1 January 2000 to 31 January 2000 indicated a significant decrease to 6,9%.

The North West Province indicated a slight increase from 5,3% in 1994 to 6,2 in 1996 . From 1997 a constant decrease to 4,8% in 1999. Statistics for the period 1 January 2000 to 31 July 2000 indicate a further decrease to 3,9%.

The Mpumalanga Province indicated a stable trend of 4,8% in 1994 to 4,2% in 1999. A slight decrease was indicated from 1 January 2000 to 31 January 2000 to 3,7%.

The Northern Cape indicated a slight increase from 3,3% in 1994 to 4,1% in 1999. A significant decrease was noted for the period 1 January 2000 to 31 July 2000 to 2,5%.

The Northern Province indicated a slight increase from 3,3% in 1994 to 3,5% in 1999. For the period 1 January 2000 to 31 July 2000 a further increase is indicated to 3,7%.

Measured over the period 1994 to 1999 the following trend is indicated:

-	Western Cape	-	26,1%
-	Kwazulu Natal	-	19,3%
-	Gauteng	-	14,7%
-	Free State	-	12,45%
-	Eastern Cape	-	9,2%
-	North West Province	-	5,5%
-	Mpumalanga	-	4,4%
-	Northern Cape	-	3,6%

-	Northern Province	-	3,4%
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Comparing these figures with those for the period 1 January 2000 to 31 July 2000 the following emerges:

-	Western Cape	-	35%
-	Kwazulu Natal	-	22%
-	Gauteng	-	14%
-	Free State	-	8,3%
-	Eastern Cape	-	6,9%
-	North West Province	-	3,9%
-	Mpumalanga	-	3,7%
-	Northern Cape	-	2,5%
-	Northern Province	-	1,8%

The following inference may be drawn from the comparison:

WESTERN CAPE

Drug-related crimes significantly increased in the Western Cape by 8,9% compared to the average of 26,1% for the period 1994 to 1999.

KWAZULU NATAL

Drug-related crime indicated a slight increase of 2,7% compared with the average for the period 1994 to 1999 in Kwazulu Natal.

GAUTENG

Gauteng indicated a decrease of 0,7% compared with the average for the period 1994 to 1999.

FREE STATE

A very significant change is the fact that the Free State has changed its position from the fifth position to the fourth position. This is ascribed to the fact that the Eastern province indicated a significant decrease from the average for the period 1994 to 1999 of 12,24% to 6,9% for the period 1 January 2000 to 31 July 2000. This is in spite of the fact that drug-related crime incidents decreased with 0,9% for the period 1 January 2000 to 31 July 2000 compared to its average for the period 1994 to 1999 in the Free State.

EASTERN CAPE

As mentioned a significant decrease in drug-related crime occurred in the Eastern Cape. A decrease of 5,5% is indicated from the average of 12,45% for the period 1994 to 1999 compared to 6,9% for the period 1 January 2000 to 31 July 2000.

NORTHERN CAPE

Another significant change is indicated with the Northern Cape changing position with the North West Province. This is due to the decrease in drug-related crime occurrences in the North West Province. Drug-related crime decreased with 3% from the average of 5,5% for the period 1994 to 1999 compared to 2,5% for the period 1 January 2000 to 31st July 2000. The Northern Cape indicated an increase of 0,3% for the period 1 January 2000 to 31 July 2000 compared to the average of 3,6% for the period 1994 to 1999.

MPUMALANGA

On average the Mpumalanga Province indicated 4,4% of drug-related crime occurrences for the period 1994 to 1999. A slight decrease is indicated for the period 1 January 2000 to 31 July 2000 with a percentage of 3,7%.

NORTH WEST PROVINCE

As indicated previously a decrease is indicated in the North West Province from the average of 5,5% for the period 1994 to 1999 compared to 2,5% for the period 1 January 2000 to 31 June 2000.

NORTHERN PROVINCE

The Northern Province indicate a clear decrease in drug-related crime occurrences from the average of 3,4% for the period 1994 to 1999 compared to 1,8% for the period 1 January 2000 to 31 July 2000.

A breakdown of drug-related occurrences for the period 1 January 2000 to 31 July 2000 into types of drugs and into offences related to abuse such as possession, and trafficking such as dealing in drugs indicate the following:

CANNABIS

Cannabis-related offences are the most prevalent of drug-related crimes. For the period under review 81,8% of drug-related occurrences involved cannabis. Of those occurrences 68,3% related to the possession of cannabis and 13,5% related to dealing in cannabis. The World Drug Report 2000 released by the United Nations Office for Drug Control and Crime Prevention mention that:

The largest seizures, both in terms of volume and number of cases worldwide are reported for cannabis. At the global level, cannabis herb (marijuana) is trafficked mainly in the Americas and Africa and cannabis resin is trafficked mainly in Europe, Northern Africa and South West Asia. Trafficking in cannabis herb is more widespread than trafficking in any other substance.

Overall seizures of cannabis herb in Africa (14% of the total in 1997/98) are twice as large as those reported from Europe. The largest seizures were reported from Egypt, Ghana, Kenya, Lesotho, Malawi, Mauritius, Morocco, Nigeria, Republic of South Africa, Senegal, Swaziland and the United Republic of Tanzania.

In Southern Africa, large-scale eradication of cannabis in the South African Republic in the mid-1990s meant that overall cannabis herb seizures are down from a decade ago. The Republic of South Africa continues to report the third largest seizures of cannabis herb worldwide after Mexico and the USA, and a significant proportion of domestic production continues to be exported. Individual seizure statistics show that in 1998 South Africa was the third largest source of cannabis herb in North America and the second largest source of such substances seized in Western Europe in 1999.

South African Narcotics Bureau statistics indicate 169 620KG404GMS cannabis seized in South Africa during 1997 and a total of 243 565KG686GMS destroyed in cultivation areas.

Statistics for the period January 1998 to 31 December 1998 indicate a mass of 197 116KG000GMS seized and 784 201KG000GMS destroyed in cultivation areas.

In 1999 289 943KG000GMS was seized while a further 672 243KG000GMS was destroyed in cultivation areas. **(Annexure D)**

The retail price of cannabis is established at approximately R1,00 per gram **(Annexure D1)**.

35. **SENTENCED PRISONERS**

Statistics were obtained from the Department of Correctional Services on sentenced juveniles for the years 1998, 1999 and from 1 January 2000 to 30 October 2000 for drug-related crime.

Juveniles are viewed to be persons 20 years of age and younger. For the period under review in 2000 eight hundred-and-sixty-two (862) persons under the age of 20 were sentenced to imprisonment. **(Annexure E)**

For the period 1 January 1999 six-hundred-and-eighty-two (682) persons under the age of 20 years were sentenced to imprisonment.

For the year 1998 four-hundred-and-twenty-four (424) persons were sentenced to imprisonment.

The inference may be drawn from these statistics that there is an increase in drug-related crime in which cannabis is the substance used by people under the age of 20 years.

Similar statistics of prisoners 21 years of age and older were obtained for the corresponding period. **(Annexure F)**

For the period under review in 2000, four-thousand-four-hundred-and-forty-nine (4449) persons were imprisoned for drug-related offences.

For the year 1999, 6 587 persons were imprisoned and ten-thousand-five-hundred-and-eight (10508) for 1998.

36. **DRUGS AND CRIME IN SOUTH AFRICA**

The 3-Metros Arrestee Study is part of the South African Arrestee Drug Abuse Monitoring Project (SA-ADAM). This initiative funded by the Department of Arts, Culture, Science and Technology, comprising a consortium of the Council for Scientific and Industrial Research (CSIR), Human Sciences Research Council (HSRC), Medical Research Council (MRC) and the Institute for Security Studies (ISS) and supported by the South African Police Service. **(Annexure G)**

The study is being undertaken over two years, with three (3) data collection periods and six-months intervals, namely August / September 1999, February . March 2000 and August / September 2000.

A copy of the 2nd phase of the study September 2000 is appended.

I refer to the front page of the report under the heading Highlights where it is stated.

Results of Phase 2 of the 3-Metros Arrestee Study conducted during February / March 2000 continue to show high levels of drug use among arrestees, with 44% of arrestees testing positive

for at least one drug including 36% for dagga (cannabis), 19% for mandrax (methaqualone and antihistamine) and 3% for cocaine. More arrestees in Cape Town tested positive for at least one drug (49%) than in the other sites: 47% in Durban and 36% in Gauteng. The proportion testing positive for at least one drug was highest in arrestees 20 years or younger - 49% of whom had taken dagga and 26% mandrax. Over all sites more than 50% of persons arrested for the following crimes tested positive for at least one drug: Motor vehicle theft (74%), housebreaking (70%), drug and alcohol offences (63%), robbery (53%) and other thefts (54%). Gender, race income and police station differences were also noted.

37. **HOW CANNABIS IS USED**

To my knowledge the preferred method of cannabis use is by means of smoking. The cannabis may be formed into a cigarette which is smoked or it may be smoked by means of a cannabis pipe which is specifically made to smoke cannabis with. A feature of cannabis abuse in South Africa is that it is often mixed with mandrax (Methaqualone). The method used is to pulverise the mandrax tablets and then to mix it with cannabis. This mixture known as a white pipe is then smoked in a similar manner as smoking cannabis in a cannabis pipe.

Very few instances are known to have occurred where a cannabis extract is made in a similar manner than making tea. These instances occurred where people allegedly have used the cannabis extract for medicinal purposes.

38. **RESPONSE TO THE EVIDENCE SUBMITTED BY THE APPELLANT**

I have read the statement of the Appellant submitted in evidence pursuant to the judgement by the Honourable Court.

I wish to refer the Honourable Court to page 22 paragraph 3.11.9 of the statement submitted the Appellant. The Appellant states:

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

There are several issues which arise in this statement.

Firstly, the statement refers to *bona fide* Rastafari of the Twelve Tribes of Israel. The application is in respect of all Rastafari in South Africa irrespective to which house they belong to, the

Nyabingy Order, Universal Movement of Rastafari, Twelve Tribes of Israel, Emmanuelites and the Burning Spear Movement, the latter two houses and movement not having formal structures in South Africa. I humbly wish to submit that although the Appellant describes basic guidelines pertaining to the admittance to the different houses, that it will be possible for a person to meet the requirements of becoming a Rastafarian without being a *bona fide* Rastafarian. This applies more specifically to the Twelve Tribes of Israel to which this paragraph applies.

With reference to paragraph 3.11.2 page 20

“... 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.”

Secondly, how does the Rastafari National Council (RNC), due to the lack of structures, propose to administer the exception on behalf of members of this movement or any self-professed Rastafarian not belonging to any house. The Appellant himself does not formally belong to any house. Does the proposed administration of the exemption only apply to the possession of cannabis for sacrament use or does it also imply cultivation, transport, dealing in cannabis?

Thirdly, the Appellant mentions exemption. The question arises what criteria the Rastafari National Council will apply to be able to distinguish when cannabis is used for sacramental purposes or recreational use / abuse.

I humbly submit to the Honourable Court that the Appellant has failed to inform the court as to what measures will be implemented to administer the exemption as well as to how it proposes to administer the exemption.

With reference to page 35 paragraph 3.15.52 of the statement the Appellant states that the Rastafari National Council 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. Such a list of Rastafari will benefit the Rastafari National Council in a census of membership, but will be of little practical use to the South African Police Service in resolving practical difficulties save for verifying the registration of a professed Rastafarian.

A practical example of such a difficulty which may occur should the South African Police Service, during the conduct of their duties encounter a person in possession of cannabis. Save for the dreadlocks and clothing, the police official will have difficulty to establish whether the individual is a *bona fide* Rastafari, and therefor entitled to the exemption. As the possession of cannabis is

an offence in terms of Part I of Schedule 2, of the Criminal Procedure Act 1977 (Act No 51 of 1977), the official will be obliged to arrest and keep in custody the individual for possession of cannabis. Follow-up investigation will have to be done to establish whether the individual is a *bona fide* Rastafari or not.

This will imply that the Rastafari National Council will have to be contacted to enquire whether the individual is registered with the Rastafari National Council or not. Statements will have to be obtained to verify that the individual is registered as a Rastafari or not. The conduct of obtaining such verification will entail documentation to be exchanged between the South African Police Service and the Rastafari National Council. Certified extract of the registration form, and other registers will have to be obtained, together with a statement from a competent person in the Rastafari National Council, to either prove or to rebut the individual's claim to be a Rastafari.

For Rastafari belonging to Twelve Tribes of Israel it is not mandatory to wear dreadlocks, making it more difficult to identify individuals as Rastafari. It may also occur that Rastafari neglect to register with the Rastafari National Council.

Besides the delay it will bring about in the investigation, it will also contribute to the backlog of cases in court. Cases will have to be remanded for further investigation in order to obtain the relevant documentary evidence. It will also have an effect on the time spent to conclude the case in court as more evidence is to be submitted to the courts.

Even in cases where such an individual claiming to be a Rastafari produce a permit, the follow-up investigation has to be done to verify the legality of the permit as well as to verify that the holder of the permit is entitled thereto. I wish to point out to the Honourable Court that should the Police is to encounter such a situation in remote rural areas, after hours, during weekends or public holidays, the South African Police Service will have further difficulty in establishing the *bona fide* of the individual.

Numerous difficulties are foreseen. For one, what will the financial implication be to the Government to set up and administer an administrative permit system. It should be resolved which government department is to be responsible to administer such a administrative system. The human resource implications has to be considered as well as the logistical implications.

In this day and age of corruption in South Africa a permit will have to be developed that will be difficult to forge. Guidelines will have to be developed as to the issue of such permits as well as guidelines in respect of permits, the validity of which has expired or reported lost. Administrative guidelines will have to be developed as to administrative procedures to administer such a system.

A administrative permit system may be structured similar to that of firearms registration, which is administered by the South African Police Service. This will entail that a dedicated compartment

authority will have to be established at a national level to administer the exemption. Personnel will have to be made available on station level to process applications for exemption. Proof of identity by means of identity documents will not suffice as a means of verifying identity. It is foreseen that the fingerprints of applicants will have to be taken and forwarded to the South African Police Criminal Record Centre for processing. A registration system will have to be developed for record and control purposes. Tenders will have to be obtained to print permits. Such permits should not only include personal particulars of the applicant but perhaps a imprint of thumb to verify that the holder of such permit is in fact the person identified upon the permit. A permit should also include some feature so as to make it difficult to forge.

It also stands to reason that current legislation contained in the Drugs and Drug Trafficking Act 1992 (Act No 140 of 1992), and the Medicines Control and Related Substances Act 1965 (Act No 101 of 1965) will have to be amended. New regulations pertaining to the procedures and control will have to be formulated.

Such an exemption, should it be granted by the Honourable Court in regard of the use and possession of cannabis, will not resolve the further implications of cultivation, transportation and supply of cannabis to Rastafari.

These considerations are of paramount importance. The Appellant explicitly states on page 48 paragraph 5.1 that most of the cannabis that he and other Rastafari use is obtained in the former Transkei, Swaziland and Lesotho.

Any exemption granted by the Honourable Court will not be applicable to either Swaziland or Lesotho. Both countries are independent States and any acts committed by Rastafari in these countries with regard to purchasing, transportation and possession will be illegal.

The implications of such a situation will inevitably also have an influence on the foreign policy between South Africa, Swaziland and Lesotho.

I refer to page 49 paragraph 5.5,

“Accordingly we would like the right to continue obtaining our holy herb from our present sources without undue interference from the authorities.”

On page 51 paragraph 7.2 the Appellant expresses his opinion that an exemption granted for religious use will not have much effect on the present usage of cannabis by recreational users in South Africa.

I beg to differ with the view expressed by the Appellant in that the exemption will create a situation where abusers will flock to the Rastafarian religion to legitimize their abuse of cannabis. This may well lead to an escalation in the abuse of cannabis in South Africa.

22. **SITUATION IN THE UNITED STATES**

I wish to refer the Honourable Court to a memorandum received from Mr Robert C Gleason, Acting Chief Council of the United States Drug Enforcement Agency. (**Annexure H**)

The memorandum was received in a response to a request by myself on how the United States Drug Enforcement Agency responded to State Court cases that permitted the use of controlled substances with specific reference to cases.

People v Woody, 394 P.2 d 813 (1964). I refer the Court to the Annexure marked “**H**”. I quote from the Annexure:

“The allowance made by the Federal Government for religious peyote use is rooted in the special status of Indians under federal law and in the historic religious use of peyote by the Indians. As a matter of International Law, the United States made a reservation to permit religious peyote use by Indians when it signed the 1971 United Nations Convention on Psychotropic Substances without any reservation”.

Should an exemption be granted to Rastafari to use cannabis for religious purposes it will be in contravention of the 1971 United Nations Convention on Psychotropic Substances.

Ravin v State 537 P.2 d 494 (1975) I wish to refer to the Honourable Court to the same Annexure pertaining to the Ravin Case and the response by Mr Gleason in this regard.

I wish to refer the Court to paragraph 3 where it is stated:

“No Federal Court has ruled that the United States Constitution protects marijuana possession for any reason. Several Federal Courts have specifically held that the religious use of marijuana is not protected by the Constitution's guarantee of the free exercise of religion.”

Dutch Policy

With regard to the situation in the Netherlands I have receive documentation from Doctor Ancke J ten Hoewe - van Heek. Dr ten Hoewe - van Heek is the Policy Officer, Judicial and Police Cooperation, Free Movement of Persons within the Ministry of Foreign Affairs of the Netherlands.

The Documentation is appended to this affidavit as **Annexure I**.

I refer to page 207 the last paragraph as to the reason why the Dutch Government thought it appropriate to amend the allowance of 30 grams of cannabis for retail purposes to be reduced to 5 grams. The reason for this being to counter drug tourism and to prevent coffee shops in border-areas from becoming suppliers to (young) people coming from France/ Belgium and Germany. The possession and trade of cannabis is illegal whatever the quantity.

CONCLUSION

I humbly pray that it may please the Court to dismiss the applicants application to grant exemption to Rastafari to use, possess, cultivate, transport or deal in cannabis for the purpose of their religious practices and purposes.

I have compiled this affidavit and I have read the statement prior to signing the affidavit.

I know and understand the contents thereof.

I have no objection in taking the prescribed oath.

I consider the prescribed oath as binding to my conscience.

Signed in Pretoria on **12 February 2001**.

GEORGE WILLIAM MASON

The deponent acknowledge that he knows and understand the contents of this declaration. He has no objection to take the prescribed oath and regards the prescribed oath as binding to his conscience.

COMMISSIONER OF OATHS

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/jdt