



## **OPEN LETTER: THE INFORMAL IKS CANNABIS ECONOMY VS SOUTH AFRICA'S LICENSED MARKET**

**Issued by:** H3 Legal Solutions (Pty) Ltd – Legal Strategy, Constitutional Reform & Cannabis Policy Division

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### **To Whom It May Concern,**

South Africa is standing inside a contradiction of its own making. On one side lies one of the world's oldest, largest, and most resilient Indigenous Knowledge Systems (IKS) cannabis economies, a functioning agricultural network that has sustained rural families for generations, preserved irreplaceable landrace genetics, and contributed billions to the informal economy despite 150 years of criminalisation.

On the other hand stands a small, capital-intensive, highly centralised licensed industry that has not yet demonstrated the capacity to supply the domestic market, absorb rural labour, or produce developmental value.

This letter outlines the constitutional, economic, and moral crisis emerging from a framework that criminalises the functional to protect the non-functional.

### **1. The IKS Cannabis Economy: Large, Functional, and Community-Driven**

For more than a century, rural families across the Eastern Cape, KwaZulu-Natal, Limpopo, Mpumalanga, and the Free State have cultivated cannabis through land-based systems rooted in Indigenous Knowledge Systems (IKS). These are not informal “side-activities”; they are intergenerational agricultural economies built on:

- inherited seed-preservation practices
- deep soil and micro-climate knowledge
- sustainable low-input cultivation
- community-anchored barter and trade

This sector is ecologically efficient, culturally embedded, and economically essential. It remains the only functioning agricultural market in many rural regions where formal employment has collapsed.

Despite decades of criminalisation, eradication campaigns, and targeted policing, the IKS cannabis economy continues to:

- supply the domestic cannabis market with consistency
- sustain regional trade networks that keep cash circulating in impoverished areas
- conserve South Africa's globally recognised landrace genetics
- inject billions of rand annually into rural economies

It has achieved all of this without:

- state subsidies
- infrastructure support
- development programmes
- legal protection

**The undeniable truth:**

South Africa does not lack a cannabis economy. South Africa lacks a government willing to recognise the one that already works.

**2. The Licensed Cannabis Sector: Small, Centralised, and Underperforming**

In stark contrast, South Africa's licensed cannabis industry remains:

- prohibitively expensive to enter
- dependent on SAHPRA, a body never designed to regulate agriculture
- geographically detached from traditional grower regions
- commercially fragile and export-dependent

After seven years of licensing:

- domestic medical demand remains tiny
- export markets are oversupplied and unstable
- Licensed facilities cannot supply South Africans
- most operate at less than 30% of capacity
- Several have shut down or entered financial distress

The licensed system was designed for pharmaceutical-style export production, **not** rural development, food security, or integration of IKS growers.

The licensed cannabis system does not feed communities, protect landrace genetics, support small farmers, or reflect the socioeconomic realities of South Africa. It exists apart from the people who sustained this industry for generations, offering no pathway for rural participation and no developmental value to the regions most in need of economic inclusion. By design, it is structurally disconnected from the communities that carried the cannabis economy through decades of criminalisation.

The licensed system was constructed without the people who built the real cannabis economy and now competes to replace them.

### **3. Criminalising the Functional to Protect the Non-Functional**

South Africa's cannabis laws have produced a staggering contradiction:

**Only cannabis grown in high-capital, SAHPRA-licensed facilities is “legal”, while cannabis grown by the communities that sustained the industry for generations remains criminal.**

This model:

- criminalises traditional cultivators
- erases 150 years of landrace stewardship
- denies poor households their primary livelihood
- protects an elite industry incapable of meeting domestic demand
- embeds police-driven compliance that no other crop faces
- reserves opportunity for capital, not knowledge

It is **economic displacement disguised as reform** — a policy architecture that punishes the functional to subsidise the failing.

### **4. The SAPS Reporting Requirement: A New Era of Over-Policing**

Under the Department of Agriculture's hemp permits and the Cannabis for Private Purposes Act (2024), every hemp farmer, regardless of scale, must now report planting, cultivation, and movement of hemp to SAPS.

This requirement applies to a crop containing less than 0.2% THC, a plant chemically incapable of intoxication and recognised globally as an ordinary agricultural commodity.

Yet South Africa compels rural farmers, co-operatives, and subsistence growers to report the planting of a crop that is objectively safer than maize, grapes, tobacco, or sugarcane **directly to the police.**

No rational agricultural system treats a harmless fibre crop as a potential crime scene.

No constitutional democracy asks impoverished rural communities to justify their planting decisions to law-enforcement officers.

And no evidence-based policy framework would place a non-psychoactive agricultural species under policing supervision while every harmful or high-risk crop in the country is regulated through ordinary agricultural channels.

South Africa has approximately 1,408 hemp permit holders, 150 SAHPRA-licensed medical/export sites, and an estimated 200,000 traditional rural growers, all overseen by approximately 1,150 SAPS police stations.

In practical terms, this means each station would be expected to monitor, verify, and administer compliance for roughly 170–180 growers *per station*, while simultaneously responding to violent crime, gender-based violence, hijackings, farm attacks, extortion syndicates, and kidnapping cases. No enforcement architecture can carry this burden.

The inevitable outcomes are selective policing, rural over-enforcement, intimidation, and the criminalisation of small farmers, while capital-heavy operators remain insulated.

It ensures that traditional growers remain criminalised, while lawful market participation is reserved for those with capital, connections, and corporate infrastructure.

## **5. Why Exclusion Is Not Accidental**

When an entire rural economy is criminalised while a small, well-capitalised elite is legislated into dominance, the central question becomes impossible to ignore: who benefits when 200,000 traditional cannabis growers are pushed out of the market?

There is no scientific justification for excluding IKS cultivators from lawful participation; hemp and landrace cannabis present no threat that warrants policing.

There is no agricultural necessity for suppressing a crop that has fed rural communities for generations.

There is no constitutional basis for denying poor households their Section 22 right to trade, their Section 9 right to equality, or their Section 10 right to dignity.

What does exist is a powerful commercial incentive: remove the traditional growers first, then open the market on terms that guarantee corporate capture.

We have seen this before. Rooibos growers were sidelined once commercial value emerged. Buchu harvesters who protected the plant for decades were erased at the moment of global demand.

Indigenous tea custodians were excluded from the markets their knowledge created. Cannabis is following the same script: police the plant where poor communities grow it; license the plant where capital grows it; criminalise the traditional economy; declare the licensed sector “the future”; and

only after the field has been cleared, introduce “inclusion programmes” that arrive too late to matter.

## **6. Erasing the People Who Built the Industry**

A policy that ignores IKS does not remain neutral; it undermines community systems.

Excluding traditional farmers does not reduce participation; it dismantles an entire cultural, economic, and constitutional foundation.

It erases heritage, threatens the survival of South Africa’s irreplaceable landrace genetics, collapses local rural economies, and discards intergenerational agricultural knowledge that has sustained communities for over a century.

This exclusion violates multiple constitutional guarantees, including equality under Section 9, dignity under Section 10, cultural and linguistic community rights under Section 31, and socio-economic and environmental rights under Sections **24 and 27** under the South African Constitution.

A lawful and legitimate cannabis market **cannot** be built by outlawing the people who built the real one. It is constitutionally incoherent to speak of “economic transformation” while criminalising the communities whose labour, seeds, knowledge, and survival instincts preserved the country’s cannabis heritage through decades of prohibition.

## **7. The Constitutional Reality**

South Africa already possesses a functioning cannabis economy, and it exists in the Indigenous Knowledge Systems (IKS) sector not in the licensed one.

The formal, capital-intensive framework cannot supply domestic demand, cannot integrate rural communities, and cannot meet national development objectives.

Continuing to criminalise traditional cultivators is not impractical; it is unconstitutional. It violates the equality guarantee in **section 9**, undermines dignity in **section 10**, restricts the freedom to choose a trade under **section 22**, risks arbitrary deprivation of property under **section 25**, and obstructs the socioeconomic rights entrenched in **sections 24 and 27**.

Any credible pathway to reform must integrate rural growers, not eliminate them. What is at stake are more than **200 000 small-scale farmers, 1.2 million dependants**, the entirety of **South Africa’s landrace genetic library**, and the economic survival of some of the most underdeveloped regions in the country.

If the current trajectory continues, South Africa risks repeating a familiar national tragedy: erase the community, preserve the commodity, and enrich the few.

South Africa cannot build a lawful future by legislating its own history out of the present. It cannot lay claim to constitutional democracy while pushing the poor into criminal categories so that others may inherit a sanitised, corporatised terrain.

The question now facing policymakers is no longer theoretical; it strikes at the core of constitutional integrity and public trust:

**Are these laws genuinely intended to regulate cannabis, or are they designed to remove the small-scale farmer so others may claim the industry unopposed?**

Until this question is confronted honestly, South Africa stands on the brink of repeating every historic pattern that has kept rural communities poor, invisible, and structurally expendable.

We cannot permit another national asset to be captured quietly.

We cannot allow the custodians of South Africa's landrace heritage, the growers who carried this plant through a century of prohibition, to be erased from the legal future they made possible.

Respectfully,

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