

ICEERS contribution to the Office of the High Commissioner for Human Rights on the implementation of the UNGASS joint commitment to effectively addressing and countering the world drug problem with regard to human rights.

Geneva, Palais des Nations, May 18 2018

The International Center for Ethnobotanical Education, Research and Service (ICEERS) is a non-governmental organization dedicated to the integration of ayahuasca, coca leaf, iboga and other traditional plants as therapeutic tools in modern society and works for the preservation of the indigenous cultures that have been using these plants since antiquity on their habitat and botanical resources.

ICEERS is a recognized organization that holds consultative status for ECOSOC and subsidiary bodies, and has actively worked for the harmonization and better implementation of drug policies inclusive of human rights. From there, ICEERS' perspective is to work towards the acceptance and integration of these ethnobotanical tools based on scientific research, evidence and education. It is within this context that the integration of indigenous knowledge with modern therapeutic practices has failed to meet policies with a rights-based approach. The indigenous and modern users of traditional medicine across the globe are constantly facing legal challenges that frustrate the untroubled practice with psychoactive plants.

Even though no plants are currently controlled under the three main international drug control conventions of 1961 (amended by the 1972 Protocol), 1971 and 1988 (*except for cannabis plant, opium poppy and coca bush*), the utilization of plant-based preparations and other plants that contain psychoactive substances are increasingly being problematic under domestic law enforcement and national drug policies. Due to the constant challenges that indigenous and non-native users of traditional plants face, ICEERS created the Ayahuasca Defense Fund (ADF), a program that offers legal advice and works with defendants worldwide in plant-related cases¹. From 2008 to 2017, the ADF

¹ See ICEERS <http://iceers.org/> See also Ayahuasca Defense Fund (ADF): <http://ayahuascadefense.com/>

has noted a significant increase in the legal incidents by 1110% across the globe.² The clashes between the use of traditional plants and drug policies has also increased in a large number of countries where laws tend to be interpreted in a restrictive manner and exclude a rights-based dimension where the universality, interdependence, indivisibility and interrelatedness of human rights is not transversally present. As a consequence, and as traditional plants come onto the radar of various international and national drug control bodies and monitoring agencies, an increasingly common approach has been to treat them as a “novel psychoactive substance” – a category typically used to describe research chemicals, legal highs or spice (synthetic cannabinoids) designed to mimic existing established recreational drugs with no history of human use or scientific data about their effects and health risks. This approach means that in the legal interpretation of traditional plants they are often reduced solely to their active components (specially DMT, mescaline, etc.). This reductionist approach by the authorities neglects the substantial scientific evidence available about their safety, and divorces the plants from their cultural, historical, religious, and social history.

I. Indigenous peoples and the use of ancestral plants

Traditional plants have been used by indigenous peoples for centuries as an expression of their cultural identity and as medicine to heal psychical, mental and spiritual illness. Psychoactive substances are used as a mean to connect with the collective and ancestral territories of the indigenous peoples, as a tool for decision making and territorial defense. The lack of evidence-based policies respectful of human rights of indigenous peoples, has led to the progressive stigmatization of traditional medicine and to discriminatory practices that obstruct the full realization of indigenous rights.

Moreover, the UNGASS 2016 outcome document recognized under chapter 4 (i) that illicit cultivation of psychoactive substances must “[r]espect fundamental human rights, take due account of traditional licit uses, where there is historical evidence of such use, and of the protection of the environment, in accordance with the three international drug control conventions, and also take into account, the United Nations Declaration on the Rights of

² See the Ayahuasca Defense Fund, Annual Report 2016-2017. Available at: http://ayahuascadefense.com/wp-content/uploads/2017/11/ICEERS_ADF_annual-report-FINAL.pdf (All the data of legal cases and incidents regarding traditional plants are collected by the ADF.)

Indigenous Peoples (“DRIP”).”³ The operational recommendations opened the possibility of finally including drug policies that are comprehensive and inclusive of the indigenous *corpus juris*. The ancestral use of psychoactive plants must also meet the legal standards under the DRIP, the ILO Convention 169 and the UN core treaty instruments. In this regard, General Comment No. 14 of the Committee on Economic Social and Cultural Rights (“CESCR”), established that States must activate their obligations in order to reach the highest attainable standard of health for indigenous peoples and “[t]he vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected.”⁴ Moreover, the CESCR also recognized a “symbiotic relationship” between indigenous peoples with their lands. The latter implies that due to the unique connection to their ancestral territories, special protection of traditional medicine must be implemented in order to protect the collective dimension of the right to health of indigenous communities. This must necessarily be read in connection with the obligations that States have under article 10 of the DRIP and article 6 of the ILO Convention 169 regarding the duty to consult in accordance with the legal standards under international and regional jurisprudence. In this line, States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing any drug control measures that may affect them. According to international standards, this process must inevitably be culturally appropriate in order to respect and guarantee integrally, the right of indigenous peoples to their medicine and ancestral territories.

In addition to the territorial protection, as the CESCR established in the aforementioned General Comment, State parties must respect, protect and fulfil the right to health. However, and since the obligation to fulfil contains the obligations to facilitate, provide and promote, it is crucial that States not only respect and protect the indigenous use of psychoactive plants, but it is necessary that States comply with their obligations to fulfil and adopt all measures towards the full realization of the right to health in a culturally

³ UN Office on Drugs and Crime (UNODC), Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem, UNGASS 2016. p.15

⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (*Art. 12 of the Covenant*), 11 August 2000, E/C.12/2000/4. para. 27

appropriate manner. Furthermore, it is crucial that drug policies meet the standards of cultural rights enriched under UN treaties and specifically, as the CESCR understood them in the General Comment 21, the “right to take part in cultural life” is especially important for all indigenous peoples. National and regional courts have also understood cultural heritage as a non-divisible entity that must be read in connection with the right to life of indigenous peoples in order to promote and protect the entire range of human rights guaranteed under international law.⁵

The impact of the so-called “world drug problem” must be understood, as stated by the recently adopted resolution by the Human Rights Council, “[w]ith particular consideration for the needs of persons affected and persons in vulnerable situations”⁶, in order to properly implement the 2030 Agenda for Sustainable Development and to comply with the common and shared responsibility that concerns drug policies.

II. Modern use of traditional plants

As aforesaid, ICEERS has perceived an increase in the legal incidents regarding the use of traditional plants when they exit the indigenous context and travel to the globalized world. The persecutions and prosecutions has extended around the globe as a consequence of the misinterpretations and decontextualization of drug control and law enforcement bodies that tend to reduce the use of traditional plants to the mere active components without taking into consideration the medical or traditional use. In a multicultural world, the promotion and respect for cultural rights, understood as a living and dynamic process, is essential for the maintenance of human dignity.⁷

⁵See for example the vast jurisprudence of the Inter-American Court of Human Rights in this regard: *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, reparations and costs. Judgment of February 1, 2000. Series C No. 66; *Case of the Moiwana Community v. Suriname*. Preliminary objections, merits, reparations and costs. Judgment of June 15, 2005. Series C No. 124; *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Merits, reparations and costs. Judgment of March 29, 2006. Series C No. 146; *Case of the Saramaka People. v. Suriname*. Preliminary objections, merits, reparations and costs. Judgment of November 28, 2007. Series C No. 172, *Case of Sarayaku v. Ecuador* Merits and reparations, Judgment of June 27, 2012. Series C No. 245.

⁶ UN Human Rights Council, Contribution to the implementation of the joint commitment to effectively addressing and countering the world problem with regard to human rights, March 2018, A/HRC/37/L.41 See also Report of the United Nations High Commissioner for Human Rights: Study on the impact of the world drug problem on the enjoyment of human rights, 4 September 2015, A/HRC/30/65.

⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 21, Right of everyone to take part in cultural life (*art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights*), 21 December 2009, E/C.12/GC/21

Aware of the lack of dynamic interpretations of drug control treaties as “living instruments”⁸ that must adapt to contemporary contexts, the ADF has provided legal support in a complex legal landscape for the use of psychoactive plants in modern society in more than 25 countries where drug laws lack human rights fundamental values. In this regard, the main challenge is the lack of compliance, dialogue and harmonization between drug control laws and human rights obligations which must necessarily prevail in order to leave no one behind.

Concluding Remarks

The “world drug problem” has affected the most vulnerable groups and human rights standards must be applied to drug policies in order to face the contemporary challenges of the native and modern use of traditional plants. Regarding indigenous peoples, the consultation process is a pillar for a better implementation of drug policies that can adapt to the cultural particularities of indigenous worldviews and institutions. Drug policies must be adopted and implemented taking into consideration the Declaration on the Rights of Indigenous Peoples, the UN permanent Forum of Indigenous Peoples and all monitoring bodies that can foster a multidisciplinary approach to the protection of the indigenous use of traditional plants, understanding the strong connection to their territories.

Regarding the modern or non-native use of ancestral medicine, based on the right to health, religious or cultural rights, this practices must be understood under human rights principles that are able to prevent the decontextualization and avoid the criminalization and stigmatization of contemporary use of psychoactive plants.

⁸ The European Court of Human Rights and the Inter-American Court of Human Rights have agreed that International treaties must be interpreted under a evolutive interpretation as “living instruments” in order to meet present-day conditions.