

# Drug Policy and Indigenous Peoples

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## Abstract

This paper identifies the principal concerns of indigenous peoples with regard to current international treaties on certain psychoactive substances and policies to control and eradicate their production, trafficking, and sale. Indigenous peoples have a specific interest in the issue since their traditional lands have become integrated over time into the large-scale production of coca, opium poppy, and cannabis crops, in response to high demand from the American and European markets, among others. As a consequence, indigenous peoples are persecuted because of their traditional use of these and other plant-based narcotics and hallucinogens. They are also victims of the drug producers who remove them from their lands or forcibly recruit them into the production process. As indigenous peoples are caught in the violent world of illicit drug production, law enforcement often targets them first, resulting in disproportionate rates of criminalization and incarceration.

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## Introduction

In light of ongoing international discussions on drug policy, the increasingly recognized failure of the “war on drugs,” and the interests of the human rights community to ensure that drug control in its current or future forms fully respects human rights, the paper argues that indigenous communities must be involved in discussions on drug policy and human rights. It also recalls the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007, which constitutes the framework for the inclusion of indigenous peoples’ rights and interests in reform efforts.

The purpose of the present paper is to flag some of the issues that require further elaboration and examination and to stimulate a debate on an appropriate new approach to illicit drugs and respect for the hard-fought and universally recognized rights of indigenous peoples to be fully taken into account in any eventual new drug regime. It recognizes that current efforts to develop international guidelines on drug policy and human rights are one means of complementing and working towards this objective. Further research is needed to assess the impact of current drug policy at the community level, as well as drug use within indigenous communities, especially among youth and children. It is also desirable to involve indigenous experts in the elaboration of human rights guidelines. The paper concludes with possible future areas of research and action. The present article does not cover the production of cannabis as there is no strong correlation between the areas of production of cannabis and indigenous peoples’ lands.

### The current international drug control regime

The international drug control system is based on three treaties: the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol (Single Convention), the 1971 Convention on Psychotropic Substances (1971 Convention), and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Convention).<sup>1</sup> Together, these conventions define licit drug

production, supply, and use, and create a system to suppress any illicit activities. Their primary goal, as set out in Article 4 of the Single Convention, is “to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.”<sup>2</sup>

Examining coca specifically, the Single Convention lists the coca leaf as a Schedule 1 substance alongside cocaine, making it subject to various control measures, including that coca bushes must be destroyed if cultivated illegally.<sup>3</sup> Article 49(2) created a temporary exception for the traditional use of coca leaf, but outlawed coca leaf chewing as of December 12, 1989.<sup>4</sup> The rationale behind prohibiting coca stemmed from the United Nations Economic and Social Council’s Commission of Enquiry on the Coca Leaf and was done to eradicate consumption of the coca leaf itself and to prevent cocaine production.<sup>5</sup> The commission classified coca as “Indian,” and although its sacred nature was documented, this was not recognized as a valuable cultural practice but considered a superstition. The report undermined traditional uses of coca chewing, concluding that coca leaf chewing should be eradicated.<sup>6</sup> The report also incorrectly determined that coca leaf caused malnutrition, adversely affected the user’s personality, and limited their economic activity.<sup>7</sup> More recent research on coca chewing shows that many of the findings of the report were false.<sup>8</sup>

While the 1971 Convention reduced interference into indigenous uses of plant derivatives, the 1988 Convention took a hard-line approach in addressing the illicit traffic of narcotic drugs, obliging states to criminalize possession and purchase of controlled substances.<sup>9</sup> Article 14 of the 1988 Convention recognizes the traditional use of certain plants, including the coca bush, but also stipulates that measures shall not be less stringent than the obligations of the Single Convention.<sup>10</sup> Therefore, the Single Convention’s requirement that traditional use of the coca leaf be eradicated remains unchanged. Further, Article 14 does not require consultation with and the eventual consent of indigenous communities before actions are taken to eradicate illicit crops on their lands.<sup>11</sup> The

International Narcotics Control Board's (INCB) continuous criticism of coca leaf chewing further legitimizes the deeply prejudicial views of coca that are now entrenched in international law. In 2007, the INCB called on states "to abolish or prohibit activities that are contrary to the 1961 Convention, such as coca leaf chewing and the manufacture of *mate de coca* (coca tea) and other products containing coca alkaloids for domestic use and export."<sup>12</sup> However, in its latest report, the INCB recognized that "under the reservation, and since February 2013, the chewing of coca leaf and the consumption and use of the coca leaf in its natural state for 'cultural and medicinal purposes' are permitted on the territory of the Plurinational State of Bolivia."<sup>13</sup>

The Single Convention also lists opium as a Schedule 1 substance.<sup>14</sup> However, the opium poppy and poppy straw are excluded from the Convention's schedules and restrictions on cultivation only apply to the "cultivation of the opium poppy for the production of opium."<sup>15</sup> As with the coca leaf, Article 49(2) creates a temporary exception for traditional uses of opium, but only permits such persons registered as of January 1, 1964 to smoke opium and states that quasi-medical uses of opium must be abolished by 1979.<sup>16</sup> Additionally, while Article 14 of the 1988 Convention also recognizes the traditional use of the opium poppy, it also stipulates that measures shall not be less stringent than the obligations of the Single Convention.<sup>17</sup> Therefore, the Single Convention's requirement that traditional uses of opium be eradicated remains unchanged.

With regards to psychoactive and hallucinogenic drugs, as stated, the 1971 Convention took a more lenient approach to drug control. This was because pharmaceutical companies pressured North American and European governments to lobby for weaker controls.<sup>18</sup> The Convention excluded from the schedules plants from which alkaloids could be extracted, while listing the alkaloids themselves.<sup>19</sup> This resulted in greater protection being given to indigenous use of plant derivatives. For example, ayahuasca and peyote were not placed under a schedule.<sup>20</sup> During debates surrounding the drafting of the 1971 Convention, the United States argued: "It was not worth attempting to impose controls...[t]he

American Indians in the United States and Mexico used peyote in religious rites, and the abuse of the substance was regarded as a sacrilege."<sup>21</sup>

## Human rights impacts of current drug policy on indigenous peoples

*Correlation of drug production and indigenous peoples' lands:* Indigenous peoples and ethnic minorities are disproportionately affected by the production of illicit drugs, trafficking, and the "war on drugs." The major production areas of the raw materials—coca and the opium poppy—for the most commodified drugs are often on the traditional lands of indigenous peoples and ethnic minorities. The traditional opium-producing areas are in the highlands of the "Golden Triangle" (Myanmar, Laos, and Thailand) and the "Golden Crescent" (principally Afghanistan), populated largely by hill tribes and ethnic groups. Poppy cultivation is also carried out in Mexico, Colombia, and Northeast India, often by indigenous peoples and ethnic groups.<sup>23</sup> Coca is grown in South America (Colombia, Peru, and Bolivia, and on a smaller scale in Brazil and Ecuador) on lands often considered ancestral indigenous territory.

*Forced displacement:* The mass production of illicit crops has resulted in the violent removal of indigenous peoples and other rural groups from their homes. In Colombia, where the civil war has displaced up to 6 million people, a significant cause of displacement has been the internal war to produce and control the lucrative production of cocaine by drug traffickers, the armed opposition movements such as FARC and the paramilitaries. The "war on drugs," which has been particularly virulent in Colombia, drove the producers onto indigenous peoples' lands. From 1990-2000, funds from drug trafficking were used to seize more than 5 million hectares of the country's agricultural land.<sup>23</sup> The "war on drugs" has also impacted poppy growers in Thailand and northern Myanmar, especially affecting the Wa people. In these countries, conflict involving governmental forces, irregular armed groups, and criminal drug traffickers has

led to the displacement of indigenous peoples. The production of coca and opium often involve violent and exploitative labor conditions and the criminalization of indigenous individuals who may unwillingly engage in the production, refinement, use, and transport of these raw and transformed materials, either through force or due to poverty and the absence of alternative means.

*Militarization of indigenous peoples' lands:* Outside the geographic areas of drug production, trafficking in countries such as El Salvador, Guatemala, Honduras, and Mexico has led to militarization, excessive use of force, and human rights violations, especially in rural areas, which in these countries are often predominantly indigenous. The breakdown in law and order, and impunity in cases of homicide, femicide, and enforced disappearances perpetrated by either the authorities or criminals involved in drug trafficking, has resulted in this region having the highest levels of homicide in the world and has caused the population, especially young people, to flee to neighboring states and the United States. Many of those fleeing the violence associated with drug trafficking are indigenous people.<sup>24</sup>

*Criminalization and impacts on women and children:* As noted, drug production and trafficking on indigenous peoples' lands has the effect of criminalizing entire communities that the authorities view as involved in these activities.<sup>25</sup> Women are particularly affected.<sup>26</sup> They are often pressured through poverty and a lack of alternatives into taking up low-ranking, low-paying, high-risk positions, and a disproportionate number of women, especially those from ethnic minorities, work as drug mules.<sup>27</sup>

*Impact on subsistence activities:* The large-scale introduction of illicit crops and the disruptions to communities as a consequence of official measures to eradicate these crops has reduced the capacity of indigenous peoples to maintain their subsistence activities. The aerial spraying of illegal crops during the Plan Colombia period from 2002 to 2015 dam-

aged the environment and prevented planting and harvesting of food for local use. Drug control policies implemented by states as a result of drug conventions severely impacted indigenous peoples' rights to subsistence. Crop eradication methods, such as aerial spraying, affect indigenous peoples' health, right to a healthy environment, and livelihoods.<sup>28</sup> In cases where ethnic groups and indigenous peoples are no longer able to grow illicit crops due to repressive action by the state, they have been driven deeper into poverty.<sup>29</sup> International bodies focusing on law enforcement rarely see crop substitution and more integrated alternative development programs as an option. When such policies have been implemented, as in northern Thailand, although bringing some benefits, the rights of local indigenous producers to be consulted and to establish their own development priorities have not been respected.<sup>30</sup>

*Violation of indigenous peoples' religious, cultural, and health rights:* Among some of the indigenous peoples affected by drug policies, the opium poppy and coca, as well as certain other illicit drugs, have historic, cultural, health, or religious value and have been produced for local use over centuries prior to the introduction of international laws. Opium production in Afghanistan, Myanmar, and other neighboring countries making up the "Golden Crescent" and "Golden Triangle" are often valley and hill regions where indigenous peoples and other distinctive ethnic groups have traditional lands and subsistence activities. The use of opium for health, religious, and cultural reasons has a long history and remains of importance for some hill peoples in the regions, such as the Hmong of northern Thailand, Vietnam, and Laos.<sup>31</sup>

*Intellectual property issues:* Incidental to the impacts of current drug policy on indigenous peoples, plants and combinations of plants used by shamans, healers, and other traditional knowledge holders are often the subject of interest by outside commercial interests. In an ironic twist of the prevailing drug regime, indigenous peoples criminalized for the use of certain psychoactive drugs

for community use may lose intellectual property rights to their inventions. This occurred with ayahuasca, a psychoactive plant-based product used by Amazonian indigenous peoples for spiritual and healing for which a US patent was requested in 1986 and affirmed in 2001.<sup>32</sup>

### Indigenous peoples and a human rights framework for drug policy: key questions

The decades-long “war on drugs” has not measurably reduced the production, trafficking, or consumption of illicit drugs and by most accounts has resulted unwittingly in the proliferation of production and the expansion of organized crime with its violent and corrupting impacts. Current drug policy has considerably worsened the human rights of those drawn into its orbit. In the case of indigenous peoples, the consequences have been disproportionately negative as a result of their proximity to areas where the drugs are produced and their relatively weak economic and political situation.

As we consider a new approach to international drug policy, we must ensure that all human rights are protected for all. Indigenous peoples, in light of their cultural specificity require particular attention in these efforts to ensure human rights protection. In 1961, when states negotiated the present drug regime, the predominant thinking was that indigenous peoples would eventually be assimilated into the wider society and that their practices, deemed backward, would also disappear. The emerging rights, elaborated during the 1980s and 1990s and resulting in the adoption of UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, recognize the distinct cultural identity of indigenous peoples and their right to self-determination. Since the General Assembly adopted UNDRIP, the international community has universally accepted human rights standards that any new drug treaties and policies need to take into account. Not to reflect these rights would be to create unnecessary tensions or even contradictions within the corpus of international agreements and commitments.

Such a conflict exists under the current arrange-

ment. At present, states committed internationally and under their constitutions and national laws to respect indigenous peoples’ cultures, including their right to the traditional use of plants for religious, cultural, or health purposes, are also signatories to the international drug control treaties which require them to eliminate the production and use of these plants. For states with indigenous peoples traditionally using plants that are prohibited under these international agreements, a suitable accommodation needs to be found to enable the peoples concerned to enjoy their culture without hindrance.<sup>33</sup>

*The right to self-determination:* Article 3 of UNDRIP recognizes the right to self-determination of indigenous peoples. It acknowledges, inter alia, the right of indigenous peoples to freely pursue their own cultural development. Other rights in UNDRIP flow from this over-arching recognition and include the right of indigenous peoples to maintain their customs, use traditional medicines, determine the use of their lands, set their development priorities, and be consulted fully through their own decision-making bodies in matters that may affect their communities.

*Rights to lands and resources:* Article 26 of UNDRIP recognizes the rights of indigenous peoples to own, use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation. This right gives indigenous peoples the possibility of continuing to produce crops and plants that they have traditionally grown for their own religious, medicinal, or customary purposes, and which constitute a part of their cultural practice and identity. The question may arise about whether this also includes a right to produce plants or crops that may be transformed into illicit drugs that are prohibited nationally and internationally. In certain countries, in the absence of alternative means of survival, indigenous peoples have been drawn into using their lands for the production of illicit crops. In such cases, rather than prosecuting the producers, a human rights approach developed in cooperation with the

indigenous peoples would be appropriate in order to find marketable substitute crops.

*Right not to be forcibly removed from their lands:* Article 10 of UNDRIP addresses forced relocations or removals of indigenous peoples from their lands. It is unequivocal in prohibiting the forced removal of indigenous peoples from their lands and, in the event of undertaking such an operation, requires states to obtain the free, prior, and informed consent of the indigenous peoples concerned.

*Right to enjoy their culture:* Article 8 of UNDRIP states that indigenous peoples have a right not to be subjected to the destruction of their culture; this is described as any action that deprives them of their cultural values or ethnic identity. Article 11 recognizes the right of indigenous peoples to practice and revitalize their cultural traditions and customs. Article 12 recognizes the right of indigenous peoples to manifest, practice, develop, and teach their spiritual and religious traditions, customs, and ceremonies. Article 31 recognizes indigenous peoples' rights to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions, as well as the manifestations of their sciences, technologies, and cultures, including human and genetic resources, seeds, medicines, and knowledge of the properties of fauna and flora. The article also protects indigenous peoples' intellectual property rights over their cultural heritage, traditional knowledge, and traditional cultural expressions. The various rights set out in the Declaration require that any new drug policy, in order to accommodate the rights of indigenous peoples established by member states, needs to ensure that indigenous peoples have the right to grow and use all plants, including those that may have psychoactive effects. These plants and their use form a part of their cultural identity and constitute a recognized cultural practice. In 2009, the Permanent Forum on Indigenous Issues called for the amendment or repeal of those portions of the 1961 Convention regarding coca leaf chewing that are inconsistent with the rights of indigenous

peoples to maintain their traditional health and cultural practices, as elaborated in UNDRIP.<sup>35</sup>

*Right to the conservation of indigenous peoples' lands:* The "war on drugs," particularly measures taken to eradicate the production of crops through aerial spraying, has had a negative impact on the environments on which indigenous peoples depend. Article 29 requires governments to ensure the protection of the productive capacity of indigenous peoples' lands and resources, a commitment that is not compatible with measures taken to poison large areas of crop production.

*Right to health:* Article 24 of UNDRIP recognizes the right of indigenous peoples to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants. Among many indigenous peoples, medicines are obtained from locally grown or harvested plants. In the absence of easily available Western medicines, or because of cost, or even because local medicines are considered more efficient than Western alternatives, indigenous communities are dependent on local plants and medicines for their health and well-being. If prohibitions continue to be applied internationally to the production of certain plants, indigenous peoples should not be deprived of the right to produce, harvest, and use them if they are essential elements that contribute to the health and well-being of their communities.

*Right to peace and security:* Indigenous peoples have been affected by heavy-handed policing and military operations on their lands in the "war on drugs." Article 30 of UNDRIP addresses this concern, calling on governments to desist from military operations in the lands or territories of indigenous peoples unless justified by a relevant public interest or otherwise freely agreed upon or requested by the indigenous peoples concerned. The article requires consultation and a good faith assessment of the threats to the public and indigenous community before considering military operations on indigenous peoples' lands.

Article XXX (5) of the American Declaration on the Rights of Indigenous Peoples, adopted in June 2016, limits military operations on indigenous peoples' lands except in the public interest or if requested by indigenous peoples. Although Colombia includes a reservation stating that "the provision would be in breach of the principle of need and effectiveness of the security forces, preventing them from fulfilling their institutional mission, which renders it unacceptable."

*The right to be consulted:* Flowing from the right to self-determination, a number of UNDRIP articles call upon states to consult with indigenous peoples. Article 19 calls on states to consult and cooperate in good faith with the indigenous peoples through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them. This principle extends to the international arena, where indigenous peoples argue—and states increasingly recognize—that indigenous peoples have a right to be consulted in international agreements that may impact their lands, resources, cultures, and identities.<sup>36</sup>

*The requirement to respect human rights:* UNDRIP requires indigenous peoples, in the practice of their cultures, customs, and legal systems, to respect established human rights. While the intention of this qualification is to ensure that the Declaration complies with internationally agreed human rights, and is usually referred to in matters relating to indigenous peoples' justice systems, it has application more generally to customs and cultural practices that may affect human rights.

## Conclusion

The purpose of this article is to argue that any new international framework for drug policy or national drug control policies need to recognize the particular situation of indigenous peoples. Crops currently prohibited internationally may in some communities be part of their cultural heritage and

play a fundamental role in religious, health, and customary practices. De facto, certain states accept these traditional uses of plants, as is the case with some Andean countries and coca leaf chewing.<sup>37</sup> In countries like Peru, Bolivia, and Colombia, it is impossible to reconcile respect for the cultural practices of indigenous peoples with a blanket eradication and criminalization of coca growing.<sup>38</sup>

In the discussions that will be carried forward to elaborate a new approach to drug policy, it is indispensable that indigenous peoples are consulted to ensure a full understanding of the traditional use of plants that are subject to prohibition. Consultation and consent are principles now accepted by states in relation to indigenous peoples. The right of consultation of indigenous peoples extends to the international level when reviewing and deciding upon policies that may affect them. Furthermore, there exist mechanisms for consultation with indigenous peoples. These include the special rapporteur on indigenous peoples, the Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council, and the Permanent Forum on Indigenous Issues that advises the Economic and Social Council. It would seem indispensable that the General Assembly draw upon the expertise represented by these mechanisms as it reviews a new drug policy.

At the time of elaborating drug policy, the rights of indigenous peoples had not been acknowledged and given universal recognition. This is no longer the case. UNDRIP represents a framework of rights accepted by all member states, and future international law needs to operate in compliance with these newly established norms. Any new bans on plants used by indigenous peoples as part of their cultural heritage would violate their rights. Although the Declaration is non-binding, it represents a universal consensus and has binding force, particularly with regard to the right to culture, through its association with existing international human rights law. In any future agreement on drug policy, consideration needs to be given, inter alia, to the right of indigenous peoples to use plants they have used historically and that are part of their customs. It must address their right to be

free to grow these crops on their own lands for their own use without interference. Future drug reform efforts must ensure that the forced removals of indigenous peoples from their lands is prohibited and that there is no damage to the long-term viability of indigenous peoples' lands and environment through actions to eradicate illicit crops. Action taken to address the production of illicit drugs on indigenous peoples' territories should be undertaken only after consultation and the consent of the peoples concerned has been obtained. The right of indigenous peoples to be secure on their lands and to be consulted in matters affecting them are rights established by UNDRIP, incorporated into national law in many countries, and recognized as such by intergovernmental human rights bodies such as the Inter-American Court of Human Rights.<sup>39</sup>

Looking forward, there is a need for further research and action in relation to indigenous peoples and any future drug policy. Little has been said in this article about the right to health implications of drug use within indigenous communities, the devastating effects on youth and children, and on culturally appropriate action to address this challenge. As noted, in some countries indigenous peoples may be disproportionately incarcerated as drug producers, traffickers, and users, raising questions about the operation of the justice system and its impact on vulnerable groups. Are there alternative models, drawing on indigenous peoples' own legal traditions that could play a more active role? Further research is needed on the economic and environmental impacts of drug production and illicit crop eradication and on culturally appropriate and community-driven and controlled alternatives. Ultimately, fulfillment of UNDRIP's provisions, recognition of indigenous peoples' rights to their lands and resources, and recognition of their right to determine their own development offer the best basis for a relationship between states and indigenous peoples in their joint efforts to eliminate the violence and destructive impact of criminal drug trafficking organizations while protecting indigenous peoples' cultures.

## References

1. 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol (Single Convention), 520 U.N.T.S. 204 (1961). Available at <https://www.unodc.org/unodc/en/treaties/single-convention.html>; 1971 Convention on Psychotropic Substances (1971 Convention), G.A. Res. 3443 (1975). Available at <https://www.unodc.org/unodc/en/treaties/psychotropics.html>; United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Convention), ECOSOC (1988). Available at <https://www.unodc.org/unodc/en/treaties/illicit-trafficking.html>.
2. Single Convention (see note 1), Art. 4.
3. Ibid., Arts. 2(i), 19-21, 26, 30 & 33.
4. Ibid., Art. 49(2)(e).
5. United Nations Economic and Social Council, Report of the Commission of Enquiry on the Coca Leaf, UN Doc. No. E/16666-E/CN.7/AC.2/1 (1950); D. Bewley-Taylor and M. Jelsma, *Fifty Years of the 1961 Single Convention on Narcotic Drugs: A Reinterpretation* (Amsterdam: Transitional Institute, 2011), p. 13; United Nations, Commentary on the Single Convention on Narcotic Drugs, UN Doc. No. E/CN.7/588 (1973), p. 470.
6. United Nations Economic and Social Council, Report of the Commission of Enquiry on the Coca Leaf, UN Doc. No. E/16666-E/CN.7/AC.2/1 (1950), pp. 37 & 93-94.
7. Report of the Commission of Enquiry on the Coca Leaf (see note 5).
8. Transnational Institute, "Abolishing Coca Leaf Consumption? The INCB needs to perform a reality check" (Amsterdam: Transnational Institute, 2008). Available at <https://www.tni.org/en/newsroom/press-releases/item/383-abolishing-coca-leaf-consumption>.
9. 1988 Convention (see note 1), Preamble and Article 3; United Nations, Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, UN Doc. No. E/CN.7/590 (1988), pp. 1-3; N. Boister, *An Introduction to Transnational Criminal Law* (Oxford, UK: Oxford University Press, 2012), p. 55.
10. 1988 Convention (see note 1), Arts. 14(1) & (2).
11. D. Barrett, R. Lines, R. Schleifer, R. Elliott et al., *Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy* (Oxford, UK: Beckley Foundation Drug Policy Programme and International Harm Reduction Association, 2008).
12. International Narcotics Control Board, *Report of the International Narcotics Control Board for 2007* (Vienna: INCB, E/INCB/2007/1, 2008), pp. 37-8; Transnational Institute, "Abolishing Coca Leaf Consumption? The INCB needs to perform a reality check" (Amsterdam: Transnational Institute, 2008). Available at <https://www.tni.org/en/newsroom/press-releases/item/383-abolishing-coca-leaf-consumption>.

www.tni.org/en/newsroom/press-releases/item/383-abolishing-coca-leaf-consumption. Bolivia made a reservation to Art 3(2) and Peru to Article 3(1)(a)(ii).

13. International Narcotics Control Board, *Report of the International Narcotics Control Board for 2016* (Vienna: INCB, E/INCB/2016/1, 2016), para. 218.

14. Single Convention (see note 1), Sch. I.

15. D. Bewley-Taylor and M. Jelsma, "Regime Change: Re-visiting the 1961 Single Convention on Narcotic Drugs," *International Journal of Drug Policy* 23 (2012), p. 78.

16. Single Convention (see note 1), Arts. 49(2)(c) & (d); UN Human Rights Council, Report of the United Nations High Commissioners for Human Rights, Study on the Impact of the World Drug Problem on the Enjoyment of Human Rights, UN Doc. No. A/HRC/30/65 (2015).

17. 1988 Convention (see note 1), Art. 14(1).

18. M. Jelsma, "Lifting the ban on coca chewing: Bolivia's proposal to amend the 1961 Single Convention," *Transnational Institute: Series on Legislative Reform of Drug Policies* 11 (2011), p. 4.

19. A. Henman and P. Metaal, "Time for a wake-up call: An historical and ethnographic approach to the regulation of plant-based stimulants," *Transnational Institute, Series on Legislative Reform of Drug Policies* 27 (2014), p. 5; United Nations, Commentary on the 1971 Convention on Psychotropic Substances, UN Doc. No. E/CN.7/589 (1976), p. 387.

20. 1971 Convention (see note 1), Schs. I-IV.

22. United Nations, Conference for the adoption of a Protocol on Psychotropic Substances, Vienna, January 11–February 19, 1971, UN Doc. No. E/CONF.58/7/Add.I (Vol 2) (1971), p. 38; Bewley-Taylor and Jelsma (see note 13), p. 79.

22. On the development of coca cultivation in North-east India, see Transnational Institute, *On the Frontline of Northeast India: Evaluating a Decade of Harm Reduction in Manipur and Nagaland* (Amsterdam: Transnational Institute, 2011).

23. International Work Group on Indigenous Affairs, *The Indigenous World 2016* (Copenhagen: International Work Group on Indigenous Affairs, 2016), p. 120.

24. UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Mr. James Anaya, The situation of indigenous peoples in Colombia: follow-up to the recommendations made by previous Special Rapporteur, UN Doc. No. A/HRC/15/37/Add.3 (2010), para. 14; See also Barrett (see note 9), p. 31.

25. J. Hannah and N. de la Silva, *Human Rights, Drug Control and the UN Special Procedures: Preventing arbitrary detention through the promotion of human rights in drug control* (UN Human Rights Mechanisms and Drug

Control Legal Briefing Paper No 1: The Working Group on Arbitrary Detention, 2015), p. 19.

26. L. Pol and X. Tordini, *The Impact of Drug Policy on Human Rights: The Experience in the Americas* (Buenos Aires: CELS, 2015), p. 14. Available at <http://www.cels.org.ar/common/drug%20policy%20impact%20in%20the%20americas.pdf>.

27. UN Women, Policy Brief on Gender and Drugs, A Gender Perspective on the Impact of Drug Use, the Drug Trade, and Drug Control Regimes (2014).

28. United Nations Development Programme, *Addressing the Development Dimensions of Drug Policy* (New York: UNDP, 2015), p. 14; *Case Concerning Aerial Herbicide Spraying (Colombia v. Ecuador)* (International Court of Justice, Memorial of Ecuador, Vol I, 29 April 2009); Barret (see note 9), pp. 30-1.

29. According to a report by Transnational Institute "Studies by UNODC on the impact of the opium ban in Burma's Wa region reveal that, "many households are reduced to struggling from day-to-day for food, living from hand to mouth." See Transnational Institute, *Withdrawal Symptoms: Changes in the Southeast Asian Drugs Market* (Amsterdam: Transnational Institute, 2008).

30. D. Mansfield, *Alternative Development: The Modern Thrust of Supply Side Policy* (Vienna: UNODC, 1999), p. 7; On how Chinese Government's drug substitution programmes in Myanmar and Laos have dispossessed local indigenous farmers, see also Transnational Institute, *Alternative Development or Business as Usual?* (Amsterdam: Transnational Institute, 2010).

31. C. Culas, "History of the opium and this uses among the Hmong in South-East Asia," *Journal Asiatique* 287:2 (1999), p. 629.

32. K. Tupper, "Ayahuasca Healing Beyond the Amazon: The Globalization of a Traditional Indigenous Entheogenic Practice," *Global Networks: A Journal of Transnational Affairs* 9:1 (2009), pp. 117-136.

33. S. Pfeiffer, "Rights of indigenous peoples and the international drug control regime: the case of traditional coca leaf chewing," *Goettingen Journal of International Law* 5:1 (2013), pp. 287-324.

34. UN Permanent Forum on Indigenous Issues, Report on the eighth session (18-29 May 2009), UN Doc. No. E/2009/43-E/C.19/2009/14 (2009), para. 89

35. Article 41 of UNDRIP. See also D. Barrett, "Reflections on Human Rights and Drug Control," *Governing the Global Drug Wars – LSE Ideas* (2012), p. 59.

36. A. Henman and P. Metaal, "Coca Myths," Transnational Institute Briefing Series 17 (2009), p. 36f. It is also the case for peyote which despite its psychoactive qualities is not prohibited, including in the USA, because of its association with indigenous peoples.

37. See declarations of Colombia to the United Nations

Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (see note 1).

38. Several judgements of the Inter-American Court of Human Rights establish the right of indigenous peoples over the lands they have traditionally owned and occupied and their rights to be consulted to obtain the free, prior and informed consent. See, for example, *Case of the Saramaka People v. Suriname* (IACHR Series C No. 185, 12 August 2008).