



Submission to the UN Special Rapporteur on Freedom of Religion or Belief

On the right to freedom of thought, cognitive liberty, and the global drug control regime

June 2021

Submitting organisation:

The International Drug Policy Consortium is a global network of 191 non-government organizations that advocate for drug policy reform to advance social justice and human rights.

Instituto RIA, AC is a Mexican organization that undertakes research and advocacy for innovative drug policies within a social justice framework as a means of building peace.

Contact details for this submission:

International Drug Policy Consortium
61 Mansell Street
E1 8AN London, United Kingdom
contact@idpc.net

Executive summary

1. The International Drug Policy Consortium (IDPC) and Instituto RIA welcome the opportunity to provide this submission to the United Nations Special Rapporteur on Freedom of Religion or Belief (the ‘Special Rapporteur’) concerning the right to freedom of thought, cognitive liberty, and the arbitrary and discriminatory limitations imposed by the global drug control regime.
2. While the right to freedom of thought has been a historically neglected concept, an emerging literature¹ argues that this freedom should be construed as entailing, in its positive dimension or manifestation, a right to self-determine one’s own brain chemistry and consciousness –in other words, the right to control and alter one’s perceptions, thoughts, and thought processes.
3. The capacity to alter one’s own consciousness is an ‘implicit assumption’ of our daily life. It can be achieved through a very broad range of methods, from practicing meditation to the use of psychoactive substances, legal or illegal. This submission shows that the alteration of one’s own consciousness through psychoactive substances –including through internationally controlled drugs like cannabis, mescaline, or LSD– occupies a central role in religious, spiritual, and cultural practices around the world, in both the Global North and South.
4. The blanket prohibition of such practices, as established in the UN drug conventions and in certain national laws, arguably constitutes a limitation on the right to the freedom of thought. This submission argues that such limitation is contrary to international human rights law in two critical ways:
 - a. First, because it is inconsistent with the available scientific evidence on the harms to individual and society associated to the use of drugs, and therefore it is arbitrary and unnecessary.
 - b. Second, because it has a discriminatory nature, as it prohibits psychoactive substances traditionally used by communities in the Global South, while allowing for the alteration of one’s consciousness through substances that are central to the way of life of communities in the Global North, such as alcohol.
5. This is far from a merely academic or conceptual debate. The right to freedom of thought, as well as connected notions of personal development and self-determination, are at the heart of several legislative and judicial decisions to decriminalise and, in some instances, legally regulate internationally scheduled drugs. In this rapidly evolving landscape, the findings of the Special Rapporteur on this matter will be of consequence.

Cognitive liberty and the right to freedom of thought

(Question 1)

6. According to an emerging literature, the term ‘cognitive liberty’ describes the right to control and self-determine one’s own consciousness.² Under this definition, the term consciousness should be interpreted broadly, to include both the content of one’s thoughts and perceptions, and the process of creating them, including by modifying one’s own brain chemistry.³
7. Cognitive liberty arguably includes a negative dimension, which entails the right to not have one’s own brain chemistry, consciousness and thoughts manipulated, as well as the right to not have one’s own thoughts revealed.
8. However, cognitive liberty also has a positive dimension, which consists of the right to intentionally alter one’s own brain chemistry, consciousness, or thoughts. The positive dimension of cognitive liberty is not a radical notion, but an ‘implicit assumption’⁴ of our everyday life. We intentionally alter our consciousness through a broad array of very different actions, including ingesting legal psychoactive substances, such as coffee or alcohol, reading books, practicing meditation, and in some cases using illegal drugs.
9. The right to freedom of thought provides a natural space for recognising cognitive liberty within the framework of international human rights law, in both its negative and positive dimensions. That this has not been done before should not be interpreted as a rejection of this possibility, but simply as a symptom of the little attention paid so far to both freedom of thought, and to the implications of international human rights law for our minds. As the capacities of neurotechnology evolve, and the global consensus on the war on drugs fades, the need to consider cognitive liberty becomes urgent.

Cognitive liberty and the use of illegal substances

(Questions 1 & 3)

10. Across time and place, societies have hosted rich traditions of using a broad diversity of psychoactive substances to intentionally alter one’s own brain chemistry and consciousness for a variety of purposes, secular or religious, spiritual or recreational, in settings rural or urban. Some examples include:
 - a. The use of **cannabis** in religious or sacramental practices for centuries, amongst others in the Hindu, Rastafarian, or Sufi traditions⁵. Beyond religious purposes, with an estimated 192 million users of cannabis worldwide⁶, cannabis arguably plays a central role in contemporary culture.

- b. The use of **psychedelic drugs** such as the ayahuasca concoction, LSD, mescaline, or psilocybin, in both traditional indigenous practices and in the secular Western tradition, to facilitate experiences of ego transcendence.
 - c. The central position of **opioids** like morphine or heroin in literature, music, and visual arts since the mid nineteenth century⁷, particularly in Western culture.
 - d. The use of empathogens like **MDMA or ecstasy** in clubbing scenes, to enhance the experience of listening and dancing to music, sometimes with life-transforming effects⁸. It should also be noted that there is increasing evidence of the usefulness of MDMA for certain psychiatric therapies⁹.
11. Freedom of thought, conscience, religion or belief is intrinsically content-neutral and pluralistic, as it provides equal protection to all beliefs, religious or atheistic, formal or informal, old or new, majoritarian and minoritarian¹⁰. The construction of cognitive liberty within freedom of thought should also be content-neutral and pluralistic, which means that there should be no space for allocating greater ‘spiritual’, ‘mystical’, or life-transforming value to certain substances, or to certain forms of substance use. That said, distinctions can be done from other perspectives and based on other criteria -for instance, on the basis of health risks, or on the basis of the added protection provided under the framework of freedom of religion or belief.

The specific case of substance use for religious and sacramental purposes

12. A broad variety of psychoactive drugs are currently used for sacramental and religious purposes across the world. The list is very long, and it includes the recognised religious uses of substances like the betel nut, opium, peyote, or khat, as well as the following examples:
- a. **Cannabis**, or ‘ganja’, is central to the religious practice of the Rastafarian communities in the East Indies and elsewhere, and is integral to the Rastafarian movement itself.¹¹ Smoking cannabis is at the heart of many Rastafarian worship rituals, and is regarded as a sacrament that helps achieve communion with god.¹² Cannabis is also used in a variety of religious settings, including in Hindu religious celebrations¹³, and in tantric traditions¹⁴.
 - b. **Ayahuasca** is a decoction of two Amazonian plants that which has historically been used by indigenous and mestizo Amazonians in shamanic and healing rituals, among other contexts, and was thereafter adopted by several Christian religious groups.¹⁵ Countries such as Brazil, Canada, or the USA allow for religious uses of the ayahuasca decoction, while others like France, Russia, or the UK have prohibited it.¹⁶

- c. Across the Andean-Amazonian region the **coca leaf** is sacred, and coca leaf chewing has been used by indigenous communities for its stimulant effects in connection to religious rituals, and celebrations such as weddings and funerals¹⁷.
13. When these religious practices are carried out by indigenous people, yet another layer of protection is added to the consciousness-altering practice, as the 2007 United Nations Declaration on Indigenous People's Rights recognises the right of indigenous peoples to preserve and develop their cultural and religious traditions, which include the traditional use of psychoactive plants for religious, cultural, or health purposes.¹⁸
14. The right to freedom of religion or belief is grounded on a broad construction of the term 'belief' that includes new and non-institutionalised beliefs, as well as theistic and atheistic practices.¹⁹ As such, it should also include the secular Western-based tradition of using psychedelics to achieve experience of transcendence and ego-dissolution, in acts of self-creation and self-discovery.²⁰ In all of these cases, traditional or non-traditional, indigenous or non-indigenous, the alteration of one's consciousness is an integral part of the religious or spiritual practice at hand.

The limitations on cognitive liberty derived from the UN drug conventions: arbitrary, and discriminatory.

(Questions 8 & 10)

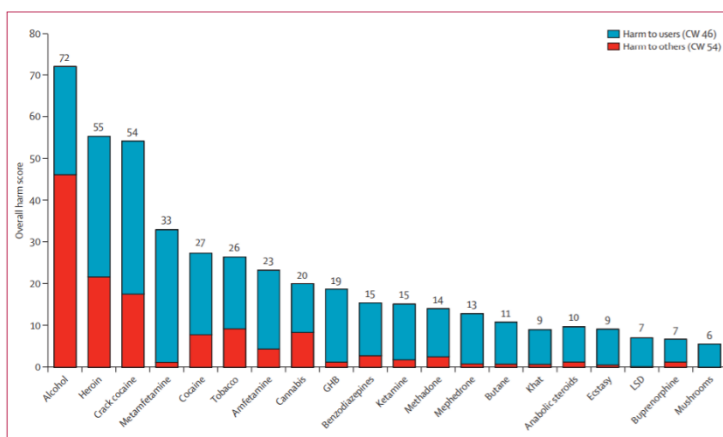
15. Traditionally, the right to freedom of thought has been construed as an absolute right that cannot be subject to any limitation or interference²¹ – thus distinguishing it from the freedom to 'manifest religion or belief', which can be subject to limitations²².
16. The development of the right to freedom of thought to recognise the notion of cognitive liberty challenges this absolutist position. While it can be argued that the right to self-determine one's own brain and mind should not tolerate any interference, it has also been argued that its positive dimension – that is, the right to intentionally alter brain chemistry and consciousness – could be subject to certain restrictions, as it would be a *manifestation* of freedom of thought.²³
17. Even in that case, under international human rights law any restriction on this right should be provided by law, pursue a legitimate aim, and be both necessary and proportionate.²⁴ The International Guidelines on Human Rights and Drug Policy, published in 2019 by UN agencies together with the University of Essex, also point out that limitations cannot be interpreted to jeopardise the essence of the right concerned, that they cannot be applied in an arbitrary manner, and that they should not be discriminatory.²⁵

The UN drug conventions as limitations of cognitive liberty

18. The use of psychoactive substances is routinely subject to state intervention. The scope and content of such interventions can vary dramatically²⁶, from the light restrictions applicable to very low-risk substances like coffee, to the complex system of regulations and taxation applied to tobacco and alcohol (as well as to cannabis in a growing number of jurisdictions), or to the outright prohibition of illegal drugs.
19. In most countries, the content and structure of drug laws is derived from the three UN drug conventions²⁷. The UN drug control conventions are binding agreements that require countries to ban the supply of scheduled drugs for non-medical or scientific uses. The drug conventions mandate the imposition of strict controls on substances like cannabis and its derivatives, psilocybin, mescaline, LSD, MDMA, the coca leaf, cocaine, heroin, and opium.²⁸
20. It is important to note that, while the UN drug conventions are almost universally ratified, they do not represent a current international consensus on the prohibition of drugs. In recent years, over thirty countries have moved to decriminalise the use and possession of all substances²⁹, whereas dozens of millions of people live in jurisdictions that have created legal markets for the non-medical use of cannabis.³⁰ Bills to regulate the coca leaf and its derivatives³¹ have already been tabled.
21. Some plants and preparations, such as the peyote cactus and the ayahuasca decoction, are not in themselves subject to international control, but they contain substances like DMT or mescaline, which are subject to international control. In practice, some countries have chosen to explicitly ban them, while in other countries their status is either regulated or in a grey area.³²

The UN drug conventions as an arbitrary and unnecessary limitation to cognitive liberty

22. A limitation on a right is only lawful when it is necessary to protect its stated purpose, and when it is not arbitrary. In that regard, drug policy experts have noted for years that the international scheduling of drugs established under the UN drugs conventions is inconsistent with the existing scientific evidence on their harms to health, and that it can only be explained by highly ideological and political considerations.
23. For instance, scientists have pointed out that level of harmfulness to individuals (including mortality, dependence, impairment of mental functioning, or loss of relationships) and to society (including crime, economic cost, or environmental damage) associated to cannabis is substantially lower than other substances currently placed under similar international controls, such as cocaine (see Figure 1).³³ Evidence does not lead to doubt that they are at the same level of harm as they are argued that the international control is unnecessary and



has been the basis for several court decisions to decriminalise cannabis use, in South Africa and in the Caribbean.

Figure 1. Classification of drugs according to their harms to users and others.
Source: Nutt, D. et al (2010), 'Drug Harms in the UK: a multicriteria decision analysis',
Lancet, <https://pubmed.ncbi.nlm.nih.gov/21036393/>

The UN drug

conventions

as a discriminatory limitation of cognitive liberty

24. As we have seen, the decision to subject certain substances to international control is highly ideological. In fact, it has been argued that the content of the UN drug conventions reflects the personal preferences and traditions of the people who negotiated them – mostly white men from the Global North – and is, in that regard, deeply colonial. A report by the 2002 Senate Special Committee on Illegal Drugs in Canada summarised this in the following terms:

‘The international regime for the control of psychoactive substances, beyond any moral or even racist roots it may initially have had, is first and foremost a system that reflects the geopolitics of North-South relations in the 20th century. Indeed, the strictest controls were placed on organic substances – the coca bush, the poppy and the cannabis plant – which are often part of the ancestral traditions of the countries where these plants originate, whereas the North’s cultural products, tobacco and alcohol, were ignored and the synthetic substances produced by the North’s pharmaceutical industry were subject to regulation rather than prohibition’.³⁵

25. In addition to this colonial background, the decision to prohibit certain substances was also tainted by the overtly racist tropes and prejudices connected to cannabis and opium that were

prevalent during the early twentieth century – a racist origin that has inevitably spilled into the racialised enforcement of drug laws across the world³⁶.

26. As a basic principle of international human rights law,³⁷ non-discrimination precludes any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, or other status, and which has the purpose or effect of impairing some rights³⁸. In view of this, it seems clear that the prohibition of substances traditionally used by peoples in the Global South, while still preserving the right to alter one's brain and consciousness through the use of substances traditional to the Global North, such as alcohol, with disregard to the evidence on their actual health on harm, is deeply discriminatory, and constitutes an unlawful restriction of the right to freedom of thought.

The emerging role of cognitive liberty in drug policy reform

Question 13

27. Far from being an academic or conceptual debate, in recent years the positive dimension of cognitive liberty, together with closely related and overlapping notions of personal autonomy, self-determination, and the right to a private life, have been at the heart of several drug policy reforms across the world. For instance:
- a. In **Mexico**, a series of five Supreme Court decisions published in 2019 struck down the absolute prohibition of cannabis on the basis that the recreational use of cannabis was part of the 'fundamental right to develop one's personality'. Interestingly, the decisions found that prohibition was a *disproportionate limitation* with regards to the aim of protecting health and public order.³⁹
 - b. In the case of **South Africa**⁴⁰, the Constitutional Court found that the absolute prohibition of cannabis was a limitation on the right to privacy that was not justified by the alleged purpose of protecting the health, safety and psychological well-being of persons. The decision also noted that the history of cannabis in South Africa is 'replete with racism' (para. 65), and that alcohol causes more individual and societal harm (para. 78).
 - c. In 2019⁴¹, the Eastern Caribbean Supreme Court moved to decriminalise the personal use of cannabis in **St Kitts and Nevis**, on the basis that total prohibition of cannabis was a limitation to *both* the right to freedom of conscience of all Rastafarian adults, and the right to privacy of all adults, and that this limitation was not the least restrictive way to protect public health.
28. The connection between cognitive liberty and the right to manifest one's own religious or beliefs has also played a critical role in recent legislative decisions to legally regulate the use of cannabis for sacramental purposes in the East Indies. Some examples include:

- a. In **Jamaica**, the Dangerous Drugs (Amendment) Act 2015 recognised the rights of Rastafarians to use cannabis for sacramental use, as it allowed for the authorisation of cultivation of cannabis ‘for use for religious purposes as sacrament in adherence to the Rastafarian faith’.⁴² (Regrettably, this regulation failed to recognise the religious use of cannabis by the Afro-Jamaican Maroon and Kumina communities).
- b. In **Antigua and Barbuda**, the Cannabis Bill 2018 provides for the cultivation of cannabis ‘by a religious body’, subject to inspections and recommendation of authorities, as well as for the creation of ‘sacramental dispensaries’ where cannabis can be obtained for religious purposes.

29. In view of these growing trend, the forthcoming report on freedom of thought by the Special Rapporteur will be a welcome and consequential development, particularly if it clarifies the position of cognitive liberty within the framework of international human rights law, and it lays down the conditions in which restrictions on such liberty would be lawful.

ENDNOTES

¹ See amongst others: <https://pubmed.ncbi.nlm.nih.gov/26838469/>; https://link.springer.com/chapter/10.1007/978-94-007-6253-4_19

² See: <https://pubmed.ncbi.nlm.nih.gov/26838469/>.

³ See: <https://pubmed.ncbi.nlm.nih.gov/26838469/>.

⁴ Bublitz, https://link.springer.com/chapter/10.1007/978-94-007-6253-4_19

⁵ See: https://www.scielo.br/scielo.php?pid=S1516-44462006000200015&script=sci_arttext&tlng=en

⁶ See: <https://wdr.unodc.org/wdr2020/en/drug-use-health.html>

⁷ See, amongst many others: <https://www.theguardian.com/tv-and-radio/2013/dec/22/art-heroin-christiane-f>

⁸ See: <https://filtermag.org/youth-clubbing-mdma-ecstasy/>

⁹ See: <https://www.nature.com/articles/s41591-021-01336-3>

¹⁰ See: <https://www.refworld.org/docid/453883fb22.html>

¹¹ See: <https://link.springer.com/book/10.1007/978-3-642-40957-8>, p. 92.

¹² See: <https://verbumeteclesia.org.za/index.php/ve/article/view/199>, pp. 13-14.

- ¹³ See: <http://www.bbc.com/travel/story/20170307-the-intoxicating-drug-of-an-indian-god>; <https://www.cannabisculture.com/content/2019/12/09/the-ganja-culture-of-india/#prettyPhoto>
- ¹⁴ See: https://erowid.org/spirit/traditions/buddhism/buddhism_tantra_article1.shtml
- ¹⁵ See: <https://link.springer.com/book/10.1007/978-3-642-40957-8>, p. 111.
- ¹⁶ See: <https://www.iceers.org/ayahuasca-legal-status/>
- ¹⁷ For a review of uses, see: <https://link.springer.com/book/10.1007/978-3-642-40957-8>, p. 36.
- ¹⁸ See: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473056/>
- ¹⁹ See: <https://www.refworld.org/docid/453883fb22.html>, para. 2.
- ²⁰ For a mostly US-based overview, see: <https://psychedelictoday.com/2018/11/17/brief-history-psychedelics-western-world/>
- ²¹ See: <https://www.refworld.org/docid/453883fb22.html>, para 3.
- ²² See: <https://www.refworld.org/docid/453883fb22.html>, para 8.
- ²³ See: <https://pubmed.ncbi.nlm.nih.gov/26838469/> p. 16.
- ²⁴ See: <https://digitallibrary.un.org/record/533996>, para. 6.
- ²⁵ See: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(10\)61462-6/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(10)61462-6/fulltext)
- ²⁶ For models of regulation that fall short of prohibition, see: <https://transformdrugs.org/drug-policy/models-of-regulation>
- ²⁷ These are: the 1961 UN Single Convention on Narcotic Drugs; the 1971 UN Convention on Psychotropic Substances; and the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
- ²⁸ See: https://www.emcdda.europa.eu/publications/topic-overviews/classification-of-controlled-drugs/html_en
- ²⁹ See: <https://www.talkingdrugs.org/drug-decriminalisation>
- ³⁰ See: https://en.wikipedia.org/wiki/Legality_of_cannabis
- ³¹ See: <https://www.vice.com/en/article/epdv3j/colombia-is-considering-legalizing-its-massive-cocaine-industry>
- ³² See for ayahuasca: <https://www.iceers.org/ayahuasca-international-legal-status/>
- ³³ See: <https://pubmed.ncbi.nlm.nih.gov/21036393/>
- ³⁴ See: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4813425/>
- ³⁵ See: https://www.tni.org/files/download/rise_and_decline_web.pdf, p. 9.
- ³⁶ See: <https://idpc.net/blog/2020/06/the-war-on-drugs-is-built-on-racism-it-s-time-to-decolonise-drug-policies>
- ³⁷ See: <https://www.refworld.org/docid/453883fa8.html>, para. 1.
- ³⁸ See: <https://www.refworld.org/docid/453883fa8.html>, para. 1.
- ³⁹ For an analysis of the decision (in Spanish), see: <https://www.nexos.com.mx/?p=27006>
- ⁴⁰ See: <http://www.saflii.org/za/cases/ZACC/2018/30.html>
- ⁴¹ See: <https://kn.vlex.com/vid/ras-sankofa-maccabee-v-840672112>
- ⁴² Dangerous Drugs (Amendment) Act 2015, Section 7D, Subsection 6.