

## **International Indigenous Intervention to the 2019 United Nations General Assembly Special Session on Drugs**

### **Preamble**

*We, the participants of the 2018 Eighth Gathering of Healing Our Spirit Worldwide in Sydney, Australia urge the United Nations General Assembly Special Session on Drugs to respond to the emerging international indigenous drug policy crisis. This intervention outlines our concerns as indigenous citizens on the harm from drugs suffered by indigenous, first nations and peoples of colour.*

*It draws from individuals, organisations and a range of communities from around the world, including family members of those who have experienced issues with drugs, people who use drugs, health professionals, educators, researchers, policy specialists, community advocates, people in recovery and young people.*

*We, the participants endorse this paper to be sent to the United Nations General Assembly Special Session on Drugs (UNGASS) and require a greater commitment by UNGASS as set out in this document.*

## 1. Introduction

**1.1** This paper argues that indigenous communities must be involved in discussions on drug policy and human rights. It is informed by the ongoing international discussions on drug policy, the increasingly recognised failure of the “war on drugs,” and the interests of the human rights community to ensure that drug control fully respects human rights. It also recalls the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, which constitutes the framework for the inclusion of indigenous peoples’ rights and interests in reform efforts<sup>1&2</sup>.

## 2. Mandate

**2.1** That the United Nations General Assembly Special Session on Drugs (UNGASS) in April 2016 endorsed the outcomes document entitled ‘our joint commitment to effectively addressing and countering the world drug problem’. While the outcomes document (4i) acknowledges UNDRIP, it is silent on indigenous drug policy issues and subsequent harms from drugs in indigenous populations<sup>3</sup>.

**2.2** The United Nations Commission on Narcotic Drugs Report on the sixty-first session (8 December 2017 and 12–16 March 2018) Resolution 61/7.9 Addressing the specific needs of vulnerable members of society in response to the world drug problem. Encourages Member States, within national legislative and administrative systems, to work towards identifying and addressing the specific vulnerabilities associated with drug use disorders among indigenous populations. Where appropriate, also paying particular attention to overcoming barriers to accessing effective, comprehensive, scientific evidence-based demand reduction initiatives<sup>4</sup>.

**2.3** The International Drug Policy Consortium (IDPC) 3<sup>rd</sup> Drug Policy Guide under the rights of indigenous groups, states that governments should repair the discrepancies between United Nations drug conventions and international human rights agreements, to ensure that the rights of indigenous peoples are upheld and fully protected. They state that indigenous communities should be meaningfully involved in the design and implementation of any policies and regulations that affect them<sup>5</sup>.

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<sup>1</sup> 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>.

<sup>2</sup> Julian Burger and Mary Kapron. (2017). Drug Policies and Indigenous Peoples. Health & Human Rights Journal. June, Volume 19, Number 1 - <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/13/2017/06/Burger.pdf>, downloaded 26 October 2018

<sup>3</sup> <https://documents-dds-ny.un.org/doc/UNDOC/LTD/V16/017/77/PDF/V1601777.pdf?OpenElement>, downloaded 26 October 2018

<sup>4</sup> <http://undocs.org/E/2018/28>, downloaded 26 October 2018

<sup>5</sup> <https://documents-dds-ny.un.org/doc/UNDOC/LTD/V16/017/77/PDF/V1601777.pdf?OpenElement>, downloaded 28 October 2018

### **3. Indigenous human rights**

- 3.1** The UNDRIP sets out the individual and collective rights of indigenous peoples, rights to culture, identity, language, employment, health, education and other issues. It emphasises the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations.
- 3.2** The UNDRIP asserts that states 'shall provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of dispossessing them of their lands, territories or resources' (Article 8, 2b), and that indigenous peoples 'shall be consulted on any action that are connected to the development, utilization or exploitation of mineral, water or other resources' (Article 32).
- 3.3** Indigenous human rights organisation's must consider the implications of drug laws and policies that directly impact on the rights of indigenous peoples. This must include institutions like the: United Nations (UN); United Nations Permanent Forum on Indigenous Issues (UNPFII); International Labour Organisation's (ILO); IDPC; United Nations Commission on Narcotic Drugs (UNCND); the Economic and Social Council (ECOSOC); and the United Nations Office on Drugs and Crime (UNODC).
- 3.4** The decades-long "war on drugs" has not measurably reduced the production, trafficking, or consumption of illicit drugs. By most accounts, the war on drugs has resulted unwittingly in the proliferation of production and the expansion of organised 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.
- 3.5** 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 UNDRIP, recognise the distinct cultural identity of indigenous peoples and their right to self-determination.

### **4. Right to self-determination**

- 4.1** Article 3 of UNDRIP recognises 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.

## 5. Indigenous over representation in the criminal justice system

- 5.1** Australian Indigenous imprisonment rates are higher now than they were at the time of the Royal Commission into Aboriginal Deaths in Custody. The Royal Commission attributed indigenous imprisonment to indigenous cultural, economic and social disadvantage. There is however evidence that indigenous drug and alcohol use is a more important cause of indigenous contact with the justice system than indigenous disadvantage<sup>6</sup>.
- 5.2** In New Zealand Māori make up 15 percent of the total population yet are over 40 percent of those convicted and 58 percent of those imprisoned for drugs.
- 5.3** Drug policies work in direct opposition to international indigenous human rights. Some approaches to implement the United Nations Single Convention on Narcotic Drugs (1961) have been shown to threaten the exercise of indigenous peoples' rights, particularly when drug prohibitions interfere with traditional use of plants<sup>7</sup>. Support for drug supply eradication by the UNODC and UNCND have worked in direct opposition to concurrent UN efforts to ensure the rights of indigenous peoples<sup>8</sup>. Insufficient attention has been placed on indigenous rights specific to international drug policy and policy makers need to be encouraged to pay greater attention to these issues. The war on drugs is in reality a war on people. A war that impacts particularly on indigenous communities and ethnic minorities resulting in the over incarceration of indigenous peoples<sup>9</sup>.

## 6. Forced displacement

- 6.1** The mass production of illicit crops has resulted in the violent removal of indigenous peoples and other rural groups from their homes. In Colombia, 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.
- 6.2** 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>10</sup>.
- 6.3** 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 labour conditions and the criminalisation of indigenous individuals who may unwillingly engage in the production, refinement, use, and transport of these raw and transformed materials. This may be through force or due to poverty and the absence of alternative means.

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<sup>6</sup> <https://www.tandfonline.com/doi/abs/10.1080/09595230701710811>, downloaded 26 October 2018

<sup>7</sup> S Pfeiffer, 'Rights of Indigenous Peoples and the International Drug Control Regime. The Case of Traditional Coca Leaf Chewing'. *Goettingen Journal of International Law* 5 287-324, 2013.

<sup>8</sup> Open Foundation Society, *The impact of drug policy on the environment*, 2015.

<sup>9</sup> Transform Drug Policy Foundation, *Debating Drugs, How to make the case for legal regulation*, 2014.

<sup>10</sup> International Work Group on Indigenous Affairs, *The Indigenous World 2016* (Copenhagen: International Work Group on Indigenous Affairs, 2016), p. 120.

## **7. Violation of indigenous peoples' religious, cultural, and health rights**

**7.1** 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. They have been produced for local use over centuries prior to the introduction of international laws. Opium production in Afghanistan, Myanmar, and other neighbouring 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 important for some hill peoples in the regions, such as the Hmong of northern Thailand, Vietnam, and Laos<sup>11</sup>.

## **8. The right to be consulted**

**8.1** 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 recognise—that indigenous peoples have a right to be consulted in international agreements that may impact their lands, resources, cultures, and identities<sup>12</sup>.

## **9. Right to the conservation of indigenous peoples' lands**

**9.1** 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.

## **10. Right to lands and resources**

**10.1** Article 26 of UNDRIP recognises 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.

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<sup>11</sup> C. Culas, "History of the opium and this uses among the Hmong in South-East Asia," *Journal Asiatique* 287:2 (1999), p. 629.

<sup>12</sup> 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

## **11. Right not to be forcibly removed from their lands**

**11.1** 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.

## **12. Right to health**

**12.1** Article 24 of UNDRIP recognises 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.

## **13. Criminalization and impacts on women and children**

**13.1** 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. Women are particularly affected<sup>13</sup>. They are often pressured through poverty and a lack of alternatives into taking up low-ranking, low-paying, high-risk positions. A disproportionate number of women, especially those from ethnic minorities, work as drug mules<sup>14</sup>.

## **14. Indigenous solutions**

**14.1** Healing from addiction for indigenous people is rooted in cultural interventions which address wellness in a holistic approach, in contrast to western biomedical models. The key to understanding the benefit of culturally-focused treatment is recognising the meaning of indigenous wellness, which is understood as one of a harmonious relationship within the whole person, including mind, body, emotion, family and spirit. The disproportionate impact of current drug laws, policy and practice is influenced within the context of personal and institutional racism which is consistent across all indigenous communities.

## **15. International indigenous drug reform network**

**15.1** The 2018 Eighth Gathering of Healing Our Spirit Worldwide urges UNGASS 2019 to consider an immediate response to the issues highlighted in this intervention.

**15.2** That UNGASS 2019 endorse the establishment of an international indigenous drug policy reform network.

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<sup>13</sup> 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>.

<sup>14</sup> 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).