

4. INDIGENOUS RIGHTS

THE LEGAL REGULATION OF DRUGS: The potential to deliver Indigenous rights

The imposition of colonial drug prohibition has undermined the fundamental relationship between Indigenous communities and drug plants, interrupting centuries of holistic cultural practice.

It denies Indigenous Peoples the ability to live in accordance with their cultural philosophies, impedes their traditional medicine, health and economic wellbeing, prevents Indigenous-led research and development into drug crops (whilst restricted grants are given to scientific and commercial organisations) and has made them a target for violence from both organised crime and states.

Indigenous communities are targeted by drug traffickers, leading to the appropriation of Indigenous crops and displacement from their lands. In Colombia, Brazil, Guatemala, and Honduras, 'Narcos' regularly use violence, threats and cash to buy up or take over large areas of indigenous land. This imposes health threats from illegal mining and violence and murder from drug cartels. Meanwhile Indigenous Peoples have been violently targeted by state efforts to eradicate illicit crops and have been disproportionately incarcerated for drug related offences.

- Māori make **17.3%** of New Zealand's population, but Māori men are **51.9%** of the prison population, with almost half of that population (**47%**) incarcerated for drug related offences.¹



HEALTH
POVERTY
ACTION

Definitions

Biocultural heritage is a way of life that places harmony between Indigenous people and the environment and social relationships as paramount. It includes Indigenous Peoples' relationships to traditional crops and medicinal plants, wild foods, landscapes, and long-standing traditions, practices and knowledge for adaptation to environmental change and sustainable use of biodiversity. Biological heritage is also closely linked to cultural identity and religious beliefs. This collective stewardship of the earth is passed down through generations.

Bioprospecting and **biopiracy** are contentious and overlapping terms. The former is broadly defined as exploration of biodiversity for potential medical, academic or commercial use, whilst biopiracy is the theft of traditional Indigenous plants and knowledge. Both can involve the use of intellectual property rights by corporations to patent certain substances and knowledge, severing the rights of Indigenous peoples to plants and knowledge they have held for centuries.

As we witness the beginning of the end of prohibition, with alternatives such as harm reduction, decriminalisation and the legal regulation of cannabis, cocaine, psychedelics, ketamine and MDMA/ecstasy on the agendas of governments across the world, it is vital that the emergent reforms of the global drug trade prioritise Indigenous Peoples to avoid further imposition of colonialism and erosion of rights.

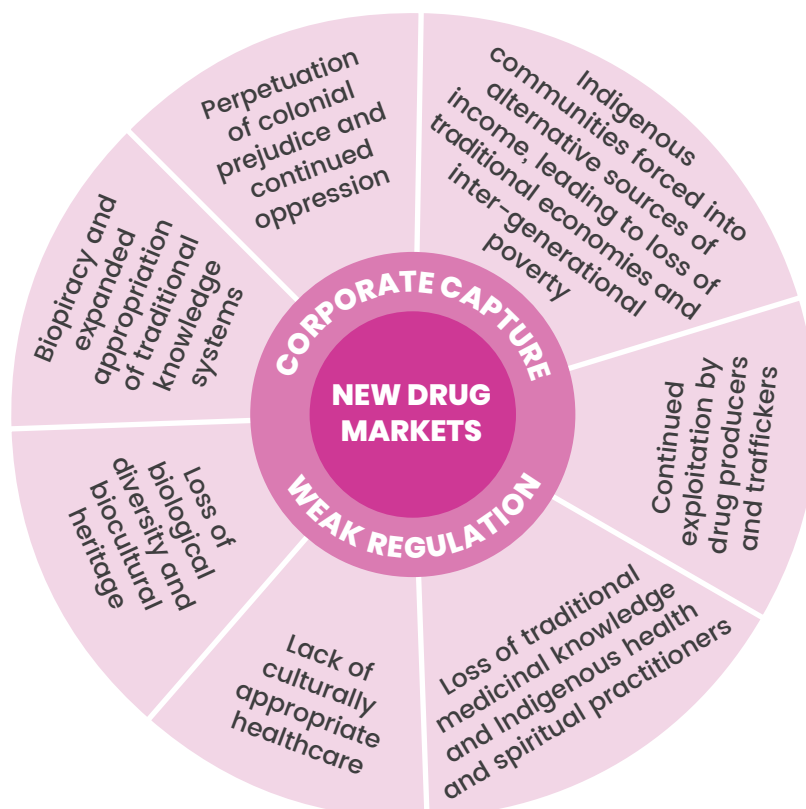
A legal drug trade – risks for Indigenous rights

If drug reforms happen without the full participation of Indigenous communities we risk the injustices of prohibition being recreated, and even expanded in a legal market as non-Indigenous interest in traditional plants and medicine grows.

Along with concerns about being pushed aside for economic opportunities, particular concern of some Indigenous Communities regards bioprospecting and biopiracy. If the licences given for research and development into drug plants prioritise corporations or non-Indigenous scientific organisations, this could restrict Indigenous-led research and development.

Advocates for Indigenous Rights must seize the opportunity before new drug markets get captured by corporations. This graphic explores what could happen to new legal drug markets if advocates fail to engage with drug reforms.

A legal drug trade: The risks we must avoid



Will revolutionary drug reform in Mexico create opportunities for Indigenous communities?

Psychedelic plants and fungi such as peyote and mushrooms are currently illegal in Mexico, outside of Indigenous ceremonial customs.² A proposed new bill introduced by the Senate aims to decriminalise specific psychedelics and make them available for therapeutic use, combining ancestral knowledge with Western biomedicine to address mental health challenges. The proposed bill is likely to include measures to protect Indigenous medicinal knowledge and genetics as well as 'bio-conservation' modifications to environmental law, to conserve the land where these species grow. It is envisioned that the traditional Indigenous therapy will be regulated by a newly established Office of Traditional Medicine, and that the ongoing bioprospecting of Indigenous medicinal plants would provide compensation to Indigenous communities for the use of their traditional knowledge.

Supporters of the bill say that enshrining the traditional use of psychedelic mushrooms in law is a form of protection and recognition of Indigenous medicines. However Indigenous communities remain concerned by potential risks. These include: whether mainstreaming traditional medicines could lead to commercial exploitation, the misuse, appropriation and the potential loss of the spirituality, ethics and custom as part of the healing process, and lack of participation of Indigenous Peoples in research and development. Some want greater engagement and consultation with Indigenous Peoples and safeguards to ensure the bill delivers psilocybin access respectfully and equitably.

“The medicine is not protected now. It’s out of control...What we need is a record that says the Mazatecs are the custodians, the Mazatecs are the ones that for millennia have defended the medicine.”³

Alejandrina Pedro Castañeda Indigenous healer

Meanwhile legal regulation risks enabling the expansion of biopiracy and the appropriation of Indigenous knowledge. Whilst mainstream interest in the medical potential of psychedelics is understandably growing, regulation must protect the inherent relationship with psilocybin containing mushrooms, mescaline containing cacti and DMT containing plants held by Indigenous Peoples.

The opportunity for Indigenous rights

If constructed using principles of transitional justice, the legal regulation of drugs has the potential to reverse the colonial exploitation of Indigenous plants and knowledge, end the disproportionate incarceration of Indigenous peoples and enable culturally appropriate healthcare.

This will only be possible with the deliberate development of new markets that **rectify the injustices of both prohibition and the colonial erosion of Indigenous rights**. New markets must respect the vital relationship between Indigenous Peoples and drug crops, be developed in adherence

with international Conventions that protect the rights of Indigenous Peoples and ensure meaningful participation of Indigenous peoples in their development.

They must be designed to provide appropriate economic opportunities that mitigate inequities in global trade, prevent corporate domination of new drug markets, promote sustainable economic growth within ecological limits and enable access to culturally appropriate health care. There is a precious window of opportunity to do this.

“Our sacred leaf is an essential part of our ancestral cultures...The coca leaf [forms] the basis of thousands of years of ancestral knowledge, traditions, uses and customs. For the original Indigenous peasant peoples and the Bolivian people, the coca leaf signifies life, culture, dignity and sovereignty.”⁴

David Choquehuanca Vice President of the Plurinational State of Bolivia

Indigenous rights frameworks

A number of existing and emergent international treaties provide a framework for the rights of Indigenous peoples. These include:

- **The United Nations Declaration on the Rights of Indigenous People (UNDRIP).**
Any new international frameworks on drug policy must recognise the unique position of Indigenous Peoples and their rights to use and cultivate biocultural heritage without interference, as part of custom and cultural identity.⁵
- **The International Labour Organisation's Indigenous and Tribal Peoples Convention.**
Article 2 calls for coordinated action to protect Indigenous rights and promote the full realisation of Indigenous social, economic and cultural rights with respect to cultural identity, customs, traditions and institutions.⁶
- **The International Guidelines on Human Rights and Drug Policy 2019** support the rights of Indigenous Peoples to develop and teach cultural spiritual and religious traditions, which include the use and cultivation of plants and substances with psychoactive effects and the right to control, cultivate, use and protect medicinal plants and seeds connected to cultural identity, cultural medicinal and spiritual practices.⁷
- **The Convention of Biological Diversity 1992** and its supplementary agreement on the conservation of biological diversity, sustainable use of biological resources, fair and equitable sharing of benefits arising from biological resources.
- **The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity.**
- The ongoing development of World Intellectual Property Organisation (WIPO) treaty on the **Intellectual Property of Genetic Resources and Traditional Knowledge Associated with Genetic Resources (GRATK)**. Formalised in May 2024, the treaty aims to create protective mechanisms for traditional knowledge associated with genetic resources. It currently covers patents based on genetic resources associated with traditional knowledge, however, the scope is likely to expand covering other areas of intellectual property rights.

Tribal Opioid Settlements: Redress to Indigenous communities, could it go further?

In the United States Native American tribal nations have brought a suite of lawsuits against numerous companies involved in the manufacture and supply of synthetic opioids. Along with Native Alaskans, Native Americans have the highest overdose death rates of any racial group.⁸

The central claim of the lawsuits is that companies knew their opioid products were more addictive and harmful than prescribed, contributing to addiction and harm across Indigenous communities.

Settlement funds are to be targeted at reduction and prevention of opioid use. So far, settlements have amounted to over US\$1.5 billion, to be utilised by tribes and their tribal health organisations.

Whilst many tribal leaders are grateful for the settlements and the unique way the money can be spent for traditional, cultural and inter-cultural healing practices. Others question the fact that it only applies to tribes that are federally recognised and whether the amount of money equates to 'true' loss or reflect the 'true' impact of opioids among Indigenous Peoples and their communities.⁹

“The ongoing, cumulative effects are generational, and this money is not going to be generational.

Cheryl Andrews-Maltais The Wampanoag Tribe of Gay Head Aquinnah¹⁰

Indigenous-led collaboration to harness the potential of traditional medicine

Tū Wairua is a health science collaboration led by the Indigenous Māori community of Rangiwaho Marae, New Zealand. The collaboration aims to unlock the therapeutic potential of psilocybin found in Indigenous varieties of psilocybin mushrooms, which have been traditionally used in cultural medicinal practice by certain Māori groups for generations.¹¹

The priority is to create culturally centred practice to alleviate trending drug use in the community and foster a culturally safe healing space to support participants through therapy.

The Tū Wairua collaboration includes a network of Indigenous medicine practitioners, Indigenous health providers, Indigenous-born biotech company Rua Bioscience, national science institutes, universities, medical research institutes, medical practitioners and other community stakeholders. There are ten varieties of fungi endemic to New Zealand, that have been found to contain psilocybin or psilocin. Rua Bioscience has been granted a licence to cultivate all ten varieties.

The project was granted a license for cultivation and has now secured ethical and regulatory approval for Phase I clinical trials, to demonstrate the safety of psilocybin. Phase II of the trials will explore therapies with the intention of helping people affected by methamphetamine and other addictions.

Indigenous Māori practitioners are involved in the development of the clinical research programme and will participate in the clinical trials, providing guidance and support to participants. A medical doctor will be involved in prescribing during the clinical trials, including the pre-screening and post-session follow-up consultations.

Indigenous rights in a legal drug trade – key principles

- **Repair the colonial harms of prohibition.** Recognition of the inherent traditional, cultural, medical and spiritual relationships between Indigenous Peoples and certain drug plants, expungement for those who have been criminalised and the reinvestment of tax revenue into Indigenous Communities.
- **Enable Indigenous community-led solutions:** Indigenous Peoples are significantly community-based, and their functions operate best at a local level. Influence and support are needed at the local government level to enable Indigenous solutions for harm reduction, community supported drug treatment and recovery initiatives, culturally appropriate healthcare.
- **Robust regulation to protect Indigenous biocultural heritage** and knowledge systems, which have made a substantial contribution to modern medicine, primarily without acknowledgement or compensation. Policies must centralise environmental sustainability, provide provision and opportunity for Indigenous participation with biocultural heritage species, alongside clear safeguards against corporate domination. Consider regulations that gives

elements of the environment personhood and legal rights, such as that afforded to the Whanganui River in New Zealand.¹²

- **Remove barriers to and provide support for small and Indigenous farmers,** traders and traditional herbalists. Reforms could include affirmative licensing, reduce or exempting small and Indigenous farmers from fees, requirements for capital outlay and bureaucracy or timing payments until after harvests, quotas for numbers of small local growers, supporting traditional herbalists to function as medical suppliers and proactive support to enable them to meet the required processes and standards to enter the market.

“**Recognize the cultural and medicinal uses of plants and flora for their rich diversity beyond western medical paradigms by protecting the rights of Black people, Indigenous Peoples and people of African descent to grow, access and use such plants and flora without extraction and depletion by industries.**”¹³

Dr. Tlaleng Mofokeng United Nations Special Rapporteur on the Right to Health

- **Regulate big corporations.** Ensure they cannot dominate the market and new opportunities benefit the poorest. This may include limits on the size of grow sites, moratoriums, full transparency and caps or strict limits on foreign ownership and investment, requiring big companies to share knowledge and technology with small businesses, restrictions on the import of seeds, requirement to source inputs locally.
- **Fair intellectual property rights.** Protecting indigenous plants and seeds and knowledge, for example through ensuring trade deals do not include The International Union for the Protection of New Varieties of Plants (UPOV 91) Convention and exemptions from WTO TRIPS agreements. States should ratify and comply with the World Intellectual Property Organisation (WIPO) treaty on the Intellectual Property of Genetic Resources and Traditional Knowledge Associated with Genetic Resources (GRATK) Treaty. Providing publicly funded and publicly accessible research and development to further knowledge and development of seeds, growing conditions and uses to be available to all.

What comes next? Let's shape it.

Are emerging drug reforms on your agenda? Advocacy for drug reforms that support Indigenous rights must happen *now*.

Contact c.james@healthpovertyaction.org to contribute to the ongoing conversation to ensure drug reforms deliver justice for Indigenous peoples.

Published March 2025.

Author: Jenna-Rose Astwood, edited by Natalie Sharples. Thanks to Clemmie James and Rebeca Lerer.

Cover image: Street art, Cochabamba, Bolivia. Mario Chacon CC: BY-NC-ND 2.0

Design and layout: causeeffectdesign.co.uk

Endnotes

1. Implicit bias against Indigenous Peoples has been perpetuated within western colonial societies and has historically influenced police discretion. In 2015, the (now former) New Zealand Police Commissioner Mike Bush, acknowledged that New Zealand police have an 'unconscious bias' toward Māori (Indigenous Peoples of New Zealand)
2. <https://www.iceers.org/mexico-debating-decriminalization-psilocybin-mushrooms/>
3. <https://www.latimes.com/world-nation/story/2024-06-25/mexico-may-legalize-magic-mushrooms-will-this-traditional-medicine-lose-its-meaning>
4. <https://idpc.net/events/2021/05/decolonising-drug-policy-the-war-on-drugs-and-denial-of-indigenous-rights>
5. <https://www.hsph.harvard.edu/wp-content/uploads/sites/2469/2017/06/Burger.pdf>
6. The International Labour Organization's Indigenous and Tribal Peoples Convention 1989
7. The International Guidelines on Human Rights and Drug Policy (International Guidelines 2019)
8. <https://www.cdc.gov/nchs/products/databriefs/db491.htm>
9. <https://apnews.com/article/business-health-native-americans-epidemics-opioids-9e609e2294824db5101cffffeaff455dbws>
10. [Ibid](#)
11. <https://tuwairua.org>
12. Te Awa Tupua Act declared the Whanganui River a legal person with fundamental rights. It has its own legal identity with all the corresponding rights, duties and liabilities of a legal person. In addition, the act "recognise, respect, and protect the special relationship of the *iwi* (tribe) and *hapū* (sub-tribe) of Whanganui with the Whanganui River." Gerrard Albert, the lead negotiator for the Whanganui *iwi* says that "the reason we have taken this approach is because we consider the river an ancestor and always have." New Zealand Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 – Eco Jurisprudence Monitor
13. <https://documents.un.org/doc/undoc/gen/g24/069/12/pdf/g2406912.pdf>



Health Poverty Action: Health for all in a just world.

Suite 2, 23-24 Great James Street, London WC1N 3ES ☎ +44 20 7840 3777

@ c.james@healthpovertyaction.org 🌐 healthpovertyaction.org

f HealthPovertyAction ✂ @healthpoverty 📷 [healthpovertyaction](https://www.instagram.com/healthpovertyaction)

Registered charity no. 290535