LEGAL SERIES

The International Legal Architecture For Ayahuasca

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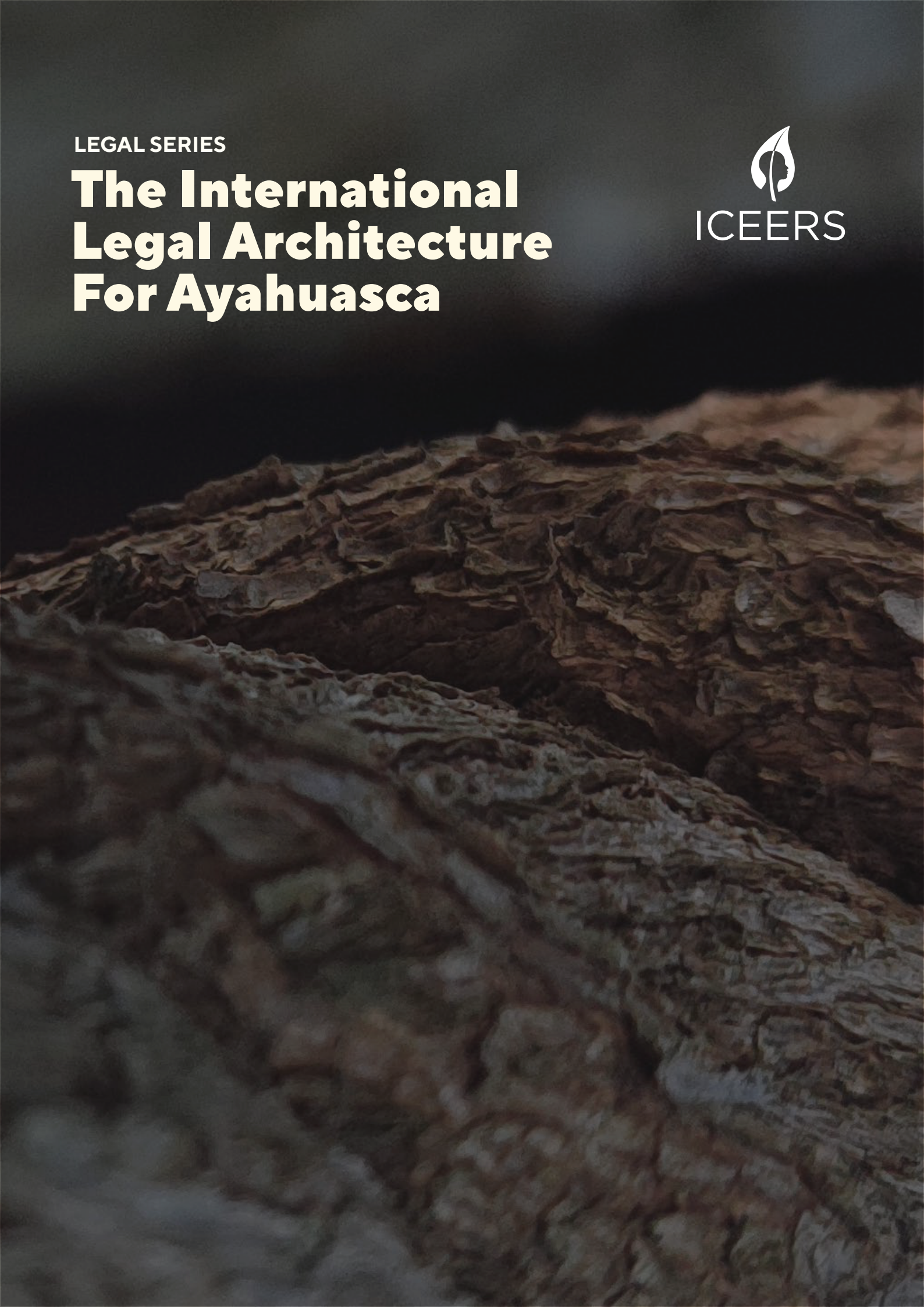

LEGAL SERIES
The International Legal Architecture for Ayahuasca
Ayahuasca Defense Fund (ADF) — a program of ICEERS

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LEGAL NOTICE
This publication provides general information on international legal instruments and comparative case law. It does not constitute legal advice, does not create a lawyer–client relationship, and cannot substitute for counsel qualified in the relevant jurisdiction. The legal situation of ayahuasca and of other traditional plant preparations varies substantially between countries and changes over time; the content reflects the state of the law as of the date of this edition. Neither ICEERS nor the author assumes liability for decisions taken on the basis of this material. ICEERS does not organise, facilitate or recommend sessions involving ayahuasca or any other plant preparation, and does not encourage conduct contrary to the law in force in any jurisdiction.

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The ADF does not charge fees for its legal defense services. This work is made possible entirely through the generosity of the community. If this series is useful to you, consider supporting the ADF at iceers.org/donate.

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Introduction

In 2014, at the first World Ayahuasca Conference in Ibiza, the Ayahuasca Defense Fund was born from a simple observation: across the globe, people were being arrested, prosecuted, and imprisoned for engaging in ancestral plant practices that Indigenous communities had carried for centuries. There was no coordinated legal defense. There was no shared understanding of the international instruments that protected the people and communities engaging in these practices. There was no common language between the courtroom in Spain and the constitutional challenge in Mexico, between the border seizure in Turkey or Germany.

A decade later, that landscape has been transformed. The ADF has supported nearly 500 cases across 49 countries. Courts in multiple jurisdictions have recognized distinctions between practices involving ayahuasca and those involving isolated synthetic DMT, have found that certain traditional practices may be entitled to legal protection under specific legal frameworks, and have, in some cases, considered prosecutions of practitioners to be disproportionate.

At an international level the panorama is clear, the INCB has clarified that ayahuasca is not explicitly scheduled under international conventions, while its constituent substances may be subject to control. The WHO has adopted a Traditional Medicine Strategy that calls for integration, not criminalization. The UNDP, WHO, UNAIDS, and OHCHR have jointly declared that drug policy must respect human rights.

But the situation locally can vary widely from legal frameworks to interpretations. People are still imprisoned. Indigenous healers are still arrested at borders. The psychedelic patent boom threatens to appropriate traditional knowledge. As globalization continues, new countries enter the ADF's map every year and with it new challenges. Legal tools exist to defend people exercising their rights through these practices — but they must be understood, shared, and deployed.

That is the purpose of this series.

The Legal Literacy Series is a collection of introductory information organized in four acts. It is designed for defense lawyers encountering an ayahuasca case for the first time, Indigenous leaders preparing to travel abroad with their medicine, policy advocates engaging their governments, researchers navigating regulatory barriers, and community members who want to understand the legal world that surrounds their practice.

Each document is self-contained: you can read Document #12 on the scientific evidence without having read Documents #1–11. But the series is also cumulative: the instruments build on each other, the arguments deepen, and the strategies in Document #18 draw on everything that precedes them. The architecture is designed so that a lawyer preparing a defense can start with the legal defense strategies used to protect people engaged in these practices (#18), identify the relevant information, and then drill into the specific instruments they need.

How the Series Is Organized

ACT I — INSTRUMENTS & JURISPRUDENCE Documents 1–8

The binding treaties, conventions, and court decisions that form the legal foundation. From ILO Convention 169 to the ICCPR and ICESCR, these documents establish that Indigenous rights, religious freedom, cultural participation, and the right to health are not optional aspirations — they are enforceable obligations. The WHO coca leaf review (#7) provides a precedent analysis showing how the system works in practice, including its failures.

ACT II — POLICY FRAMEWORKS Documents 9–13

How the drug control system works, how practices involving ayahuasca are treated within it, and what policy alternatives exist. The Nagoya Protocol (#9) addresses knowledge sovereignty. The drug policy architecture (#10) maps the institutions. The UNDP Guidelines (#11) bridge drug control and human rights. The three prohibition criteria (#12) present the scientific case. The regulatory models (#13) show what's possible — from Brazil's CONAD to France's prohibition.

ACT III — EMERGING CHALLENGES Documents 14–17

What is happening now and what is coming. The psychedelic patent boom (#14) threatens to appropriate traditional knowledge. Globalization (#15) creates legal incidents in 49 countries. The right to health (#16) and the right to science (#17) provide new frameworks — particularly the WHO's 2025 Traditional Medicine Strategy and the CESCR's General Comment No. 25 on the right to science.

ACT IV — STRATEGY & FUTURE Documents 18–20

How to deploy everything in practice. The legal defense strategy (#18) provides six defense strategies organized by situation, a First 48 Hours emergency protocol, and a prevention guide. The regional analysis (#19) maps Asia, Eastern Europe, and Africa — the new frontiers. The closing document (#20) presents three horizons for the future and a seven-point call to action for the community.

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How to Use This Series

- **If you are a lawyer preparing a defense case:** Start with Document #18 (Legal Strategies). Identify which of the six strategies fits your scenario. Follow the series references to the specific instruments you need.
- **If you are an Indigenous practitioner preparing to travel:** Read the First 48 Hours protocol in Document #18 and the travel prevention guide. Check the regional analysis in Document #19 for your destination. Carry this series with you.
- **If you are a policy advocate engaging your government:** Documents #10–13 provide policy architecture and comparative models. Document #16 (Right to Health) and the WHO 2025 Strategy are your strongest tools for engaging health ministries. Document #11 (UNDP Guidelines) is the UN's own statement that drug policy must respect human rights.
- **If you are a researcher navigating regulatory barriers:** Document #17 (Right to Science) provides the human rights framework for challenging scheduling barriers. Document #12 (Three Criteria) gives you the scientific evidence base. Document #14 (IP & Patents) helps you navigate knowledge protection.
- **If you want to understand the big picture:** Read the series in order. Each document builds on the previous ones, and by Document #20 you will have a comprehensive understanding of the international legal architecture for ayahuasca — its strengths, its gaps, its future.

#1

ILO Convention 169

Indigenous and Tribal Peoples Convention, 1989

WHAT IS IT?

ILO Convention 169 is the only binding international treaty specifically dedicated to the rights of Indigenous and tribal peoples. Adopted on June 27, 1989 by the International Labour Organization (ILO), it entered into force on September 5, 1991. It replaced the earlier C107 (1957), which had an assimilationist orientation. C169 recognizes Indigenous peoples' right to maintain their own institutions, cultural identities, and to participate in decisions affecting their lives.

IS IT ENFORCEABLE?

✅ **BINDING**

Yes — for the 24 States that have ratified it. Once ratified, it becomes part of the national legal order and can be invoked before domestic courts. States must align legislation, policies, and programmes within one year of ratification, and report periodically to the ILO's Committee of Experts.

KEY PROVISIONS RELEVANT TO AYAHUASCA

1 **Self-Identification (Art. 1.2)**
Self-identification as Indigenous or tribal is a fundamental criterion. No State or third party defines who is Indigenous — communities do.

2 **Cultural & Spiritual Integrity (Art. 5)**
States must recognize and protect the social, cultural, religious, and spiritual values and practices of Indigenous peoples.

3 **Right to Consultation (Art. 6)**
Governments must consult Indigenous peoples through appropriate procedures, in good faith, whenever legislative or administrative measures may affect them directly.

4 **Own Development Priorities (Art. 7)**
Indigenous peoples have the right to decide their own priorities for development, including their beliefs, institutions, and spiritual well-being.

5

Customary Law & Practices (Art. 8)

States must respect customs and customary law. Indigenous peoples have the right to retain their own customs and institutions, where compatible with human rights.

WHO HAS RATIFIED? (24 STATES)

LATIN AMERICA (15 States)	**Argentina • Bolivia • Brazil • Chile • Colombia • Costa Rica • Dominica • Ecuador • Guatemala • Honduras • Mexico • Nicaragua • Paraguay • Peru • Venezuela**
EUROPE (6 States)	**Denmark • Germany • Luxembourg • Netherlands • Norway • Spain**
ASIA / AFRICA / PACIFIC (3)	**Nepal • Central African Republic • Fiji**

Key absence: The United States, Canada, Australia, and New Zealand — countries with large Indigenous populations — have not ratified C169. However, the Convention remains an international reference point cited by UN bodies, regional human rights courts, and national tribunals even in non-ratifying States.

WHY IT MATTERS FOR AYAHUASCA

Convention 169 provides critical legal foundations for the defense of ayahuasca as a cultural and spiritual practice of Indigenous peoples:

- **Cultural & Spiritual Protection:** Art. 5 requires States to protect Indigenous spiritual values and practices. Ayahuasca, as a sacramental medicine central to dozens of Amazonian Indigenous traditions, falls squarely within this protection.
- **Prior Consultation:** Art. 6 mandates that governments consult Indigenous peoples before adopting laws that affect them. Decisions to subject traditional plant medicines to international scheduling should trigger this obligation.
- **Customary Law Recognition:** Art. 8 obliges States to consider customary practices. Where Indigenous peoples have used ayahuasca for centuries under their own governance systems, this use constitutes recognized customary law.
- **Traditional Medicine:** Art. 25 requires health services to account for traditional healing practices and medicines. This creates obligations for States to integrate — not criminalize — traditional plant medicine systems.
- **Defense Against Criminalization:** C169 provides a binding treaty basis to argue that Indigenous ceremonial use of ayahuasca should not be subject to criminal sanctions under legislation restricting access to psychoactive plants. This argument has been successfully deployed in courts across Latin America.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***C169 only protects "real" Indigenous peoples in the Amazon.***

✓ **FACT:** C169 applies to both Indigenous and tribal peoples worldwide. Art. 1 defines two categories broadly, and self-identification is the fundamental criterion — not geographic origin, genetics, or appearance.

✗ **MYTH:** ***C169 gives Indigenous peoples a veto over government decisions.***

✓ **FACT:** C169 requires consultation in good faith with the objective of achieving consent (Art. 6.2), but it does not grant an absolute veto right. However, the duty to consult is substantive, not merely procedural — a government cannot simply "inform" communities and proceed. The Inter-American Court has interpreted this standard progressively.

✗ **MYTH:** ***C169 is irrelevant to ayahuasca because it's a "labor" convention.***

✓ **FACT:** Despite originating in the ILO (a labor body), C169 is a comprehensive human rights instrument. It covers culture, religion, health, education, land, and self-governance. Its provisions on spiritual practices (Art. 5), traditional medicine (Art. 25), and customary law (Art. 8) are directly applicable to ayahuasca defense.

✗ **MYTH:** ***If my country hasn't ratified C169, it has no legal relevance.***

✓ **FACT:** Even in non-ratifying States, C169 is routinely cited as an interpretive standard by the UN Human Rights Committee, the Inter-American Court, and national courts. It informs the meaning of Indigenous rights in other instruments (like UNDRIP and the ICCPR). Many judges treat it as reflective of customary international law.

✗ **MYTH:** ***C169 only protects Indigenous people, not non-Indigenous practitioners.***

✓ **FACT:** Correct — C169's protections are specifically for Indigenous and tribal peoples. However, its legal framework benefits the broader ayahuasca ecosystem by establishing that traditional plant medicines are legitimate cultural practices, not criminal substances. Non-Indigenous practitioners benefit indirectly when States are obliged to recognize ayahuasca's cultural status.

IN PRACTICE: AYAHUASCA DEFENSE

ADF CASE INSIGHT

The Ayahuasca Defense Fund (ADF), coordinated by ICEERS, has supported legal defense cases in over 49 countries. In cases across Latin America, defense strategies have invoked ILO C169 to argue that:

(a) Criminal prosecution of Indigenous ceremonial use violates the State's treaty obligations under Arts. 5 and 8;

(b) Drug scheduling processes that did not include prior consultation with affected Indigenous communities are procedurally defective under Art. 6;

(c) The State's obligation to protect traditional medicine under Art. 25 creates an affirmative duty to accommodate ayahuasca practices within its health framework.

C169 is stronger when combined with UNDRIP, the ICCPR (Art. 18), and domestic constitutional protections for religious freedom and cultural identity.

READ THE FULL TEXT
ilo.org/dyn/normlex → Convention C169
Ratifications list → normlex.ilo.org

#2

UNDRIP

United Nations Declaration on the Rights of Indigenous Peoples, 2007

WHAT IS IT?

UNDRIP is the most comprehensive international instrument on the rights of Indigenous peoples. Adopted by the UN General Assembly on September 13, 2007 (Resolution A/RES/61/295), with 144 votes in favor, 4 against, and 11 abstentions, it contains 46 articles covering individual and collective rights, self-determination, cultural identity, land and territories, education, health, and free, prior and informed consent (FPIC). It was the product of over 25 years of negotiation between UN member States and Indigenous peoples' representatives.

IS IT ENFORCEABLE?

⚠ SOFT LAW

Not directly binding as a treaty, but far from "just symbolic." As a UN General Assembly declaration, UNDRIP is "soft law" — it does not require ratification and cannot be enforced as a treaty. However, it is widely viewed as an authoritative interpretation of existing human rights obligations, and has been cited by the Inter-American Court of Human Rights, national supreme courts, and UN treaty bodies as an interpretive standard. Bolivia incorporated it directly into its Constitution (2009). Canada adopted implementing legislation (2021).

KEY PROVISIONS RELEVANT TO AYAHUASCA

1 Self-Determination (Arts. 3–5)

Indigenous peoples have the right to freely determine their political status and pursue their economic, social and cultural development, including autonomy in internal and local affairs.

2 Cultural & Spiritual Practices (Art. 12)

Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies — including access to their ceremonial objects and repatriation of remains.

3 **Free, Prior & Informed Consent (Arts. 19, 32)**
States shall consult and cooperate in good faith with Indigenous peoples to obtain FPIC before adopting measures that may affect them, including legislative or administrative actions.

4 **Traditional Medicine & Health (Art. 24)**
Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including conservation of vital medicinal plants, animals, and minerals.

5 **Land, Territory & Resources (Art. 26)**
Indigenous peoples have the right to the lands, territories and resources they have traditionally owned, occupied, or used. States must give legal recognition and protection to these territories.

6 **Non-Discrimination (Arts. 1–2)**
Indigenous peoples are entitled to the full enjoyment of all human rights and fundamental freedoms, free from any form of discrimination.

GLOBAL ADOPTION

Unlike ILO C169, UNDRIP does not require ratification — it was adopted by the General Assembly.

144 States voted in favor on September 13, 2007.

4 States voted against: Australia, Canada, New Zealand, United States — all four have since reversed their positions and now endorse UNDRIP. Canada adopted implementing legislation in 2021.

11 States abstained: Including Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russia, Samoa, and Ukraine.

National implementation: Bolivia incorporated UNDRIP into its Constitution (2009). Canada enacted the UNDRIP Act (2021). The Belize Supreme Court has relied directly on UNDRIP provisions. Courts across Latin America, Africa, and Asia routinely cite UNDRIP as an interpretive tool.

WHY IT MATTERS FOR AYAHUASCA

UNDRIP provides the broadest international framework for defending ayahuasca as a protected cultural and spiritual practice:

- Spiritual & Ceremonial Freedom (Art. 12): This is the strongest international provision protecting Indigenous ceremonial practices. It explicitly covers spiritual traditions, customs, and ceremonies — which directly encompass ayahuasca rituals across Amazonian and syncretic traditions.
- Traditional Medicine Rights (Art. 24): Goes further than ILO C169 by explicitly recognizing the right to traditional medicines AND to the conservation of vital medicinal plants. This creates a strong argument against scheduling regimes that would prohibit access to ayahuasca plants *(Banisteriopsis caapi, Psychotria viridis).*
- FPIC Standard (Arts. 19, 32): UNDRIP's consent standard is stronger than C169's consultation standard. The argument that decisions to subject Indigenous plant medicines to international scheduling require FPIC carries significant moral and legal weight, even when UNDRIP is treated as soft law.
- Self-Determination (Art. 3): The right of Indigenous peoples to determine their own cultural and spiritual development is a foundational principle. Criminalizing their sacramental practices is a direct infringement of this right.
- Complementarity with C169: UNDRIP and ILO C169 are mutually reinforcing instruments. In countries that have ratified C169, UNDRIP amplifies its binding provisions. In non-ratifying countries, UNDRIP often serves as the primary international reference point for Indigenous rights claims.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"UNDRIP is just aspirational — it has no legal effect."***

✓ **FACT:** While UNDRIP is not a treaty, it has concrete legal impact. The Inter-American Court, African Commission, and numerous national courts treat it as an authoritative interpretation of existing binding obligations under the ICCPR, ICESCR, and CERD. Bolivia made it constitutional law. Canada adopted implementing legislation. Its provisions increasingly reflect customary international law.

✗ **MYTH:** ***"FPIC means Indigenous peoples can block all government decisions."***

✓ **FACT:** FPIC as articulated in UNDRIP (Arts. 19, 32) requires meaningful engagement aimed at obtaining consent — but its precise scope remains debated. In practice, it creates a heightened procedural obligation and a strong presumption against proceeding without consent, especially for measures affecting cultural and spiritual practices. It is not an absolute veto in most interpretations, but it shifts the burden of justification heavily onto the State.

✗ **MYTH:** ***"UNDRIP only applies to the Americas and is irrelevant in Europe, Asia, or Africa."***

✓ **FACT:** UNDRIP is universal. It was adopted by the General Assembly with global support. It has been applied by courts and bodies in Belize, Kenya, Malaysia, India, Norway, and across the EU. The African Commission on Human and Peoples' Rights has cited UNDRIP extensively in its decisions on the Endorois and Ogiek communities.

✗ **MYTH:** ***"UNDRIP doesn't say anything about plants or medicines."***

✓ **FACT:** Article 24 explicitly protects the right to traditional medicines and the conservation of vital medicinal plants. Article 31 protects traditional knowledge, including knowledge of flora. These provisions, read together with Art. 12 on spiritual practices, create a comprehensive shield for plant-based ceremonial medicines like ayahuasca.

IN PRACTICE: AYAHUASCA DEFENSE

ADF CASE INSIGHT

In ADF-supported cases, UNDRIP is deployed as an interpretive framework in three principal ways:

(a) To interpret domestic constitutional provisions on religious freedom and cultural rights in light of UNDRIP Arts. 12 and 24, establishing that ayahuasca use falls within protected spiritual and medicinal practice;

(b) To challenge the proportionality of criminal sanctions against Indigenous ceremonial use, arguing that criminalization is incompatible with UNDRIP's self-determination and cultural integrity standards;

(c) To reinforce ILO C169 arguments in ratifying States: UNDRIP's broader recognition of FPIC and traditional medicine rights amplifies the binding obligations under C169, creating a layered defense strategy.

UNDRIP is especially powerful in non-C169 countries (e.g., most of Europe, the US, Australia), where it often serves as the primary international reference point for Indigenous rights in ayahuasca cases.

HOW UNDRIP COMPARES TO ILO C169

FEATURE	ILO C169	UNDRIP
Legal nature	Binding treaty (for ratifying States)	Soft law / Declaration (universal reach)
Adoption	24 ratifications	144 votes in favor (near-universal)
Consultation standard	Consultation in good faith (Art. 6)	Free, Prior & Informed Consent (Arts. 19, 32)
Self-determination	Implicit (not expressly stated)	Explicit right (Art. 3)
Traditional medicine	References traditional healing (Art. 25)	Explicit right to medicines + plant conservation (Art. 24)
Spiritual practices	General protection (Art. 5)	Specific protection of ceremonies & sacred objects (Art. 12)
Enforcement	ILO supervisory bodies + domestic courts	Courts, UN mechanisms, constitutional incorporation

READ THE FULL TEXT

A/RES/61/295 → Full Declaration (UN.org)

OHCHR UNDRIP Resource Page →

#3

The 1971 Convention on Psychotropic Substances

And the Plant Exclusion That Protects Ayahuasca

WHAT IS IT?

The Convention on Psychotropic Substances is the main international treaty controlling psychoactive chemicals. Adopted in Vienna on February 21, 1971, it created a scheduling system for substances deemed to pose public health risks, including hallucinogens, stimulants, and sedatives. DMT (*N,N*-dimethyltryptamine) — a compound present in *Psychotria viridis (chacruna)* and other plants used to prepare ayahuasca — is placed in Schedule I under the Convention's criteria of high dependence potential and limited recognized therapeutic application.

However — and this is the crucial point — no plants or plant preparations (including ayahuasca) are listed in any Schedule of the Convention. The treaty controls chemical compounds, not the natural materials that contain them.

IS IT ENFORCEABLE?

✅ **BINDING**

Yes — ratified by 184 States. It is one of the most widely ratified treaties in the world. The International Narcotics Control Board (INCB) monitors compliance. States Parties must implement its scheduling requirements into domestic law. However, States retain discretion to add or not add substances — including plants — to their national schedules beyond what the Convention requires.

THE PLANT EXCLUSION: THE CORE LEGAL ARGUMENT

THE INCB POSITION (2010 Annual Report, §284)

"No plants (natural materials) containing DMT are at present controlled under the 1971 Convention on Psychotropic Substances. Consequently, preparations (e.g., decoctions) made of these plants, including ayahuasca, are not under international control and, therefore, not subject to any of the articles of the 1971 Convention."

— International Narcotics Control Board

This position is grounded in three sources:

- The Official Commentary to the Convention (§32-12): Explicitly states that peyote, *Mimosa hostilis* roots, and psilocybin mushrooms are NOT included in Schedule I — only their isolated active principles (mescaline, DMT, psilocybin). The inclusion of an active principle does not mean the plant itself is controlled.
- The INCB 2010 Annual Report (§284): Formally and publicly confirmed that no plants and no preparations made from plants (including ayahuasca) are under international control. This is the clearest and most authoritative statement on record.
- The INCB 2012 Annual Report (§§328–334): Dedicated an entire section to plants containing psychoactive substances used in traditional and religious rites. The Board reiterated that no plants are controlled under the 1971 Convention and urged governments to address the issue through dialogue with communities, not through criminal repression.

KEY ARTICLES TO KNOW

1 Schedule I — DMT Classification (Art. 2)

DMT is listed in Schedule I (most restrictive). But Schedule I lists chemical compounds — not plants, not preparations, not decoctions. *Banisteriopsis caapi* and *Psychotria viridis* are not named anywhere in the Convention.

2 Art. 7 — Restrictions on Schedule I Substances

Requires States to limit use of Schedule I substances to scientific and medical purposes. This applies to synthetic/isolated DMT, not to ayahuasca preparations. Prosecutors who conflate the two are misreading the treaty.

3

Art. 32.4 — Reservations for Traditional Use

Allows States to make reservations permitting traditional use of scheduled substances by small, clearly determined groups in magical or religious rites. Mexico, Peru, the US, and Canada made such reservations at signing. This is a secondary argument — the primary argument is that ayahuasca is simply not controlled.

4

Art. 3 — WHO Review Process

New substances can only be added to Schedules upon WHO recommendation. The WHO has never recommended scheduling any plant or plant preparation used in ayahuasca.

5

Preamble — "Health and Welfare of Mankind"

The Convention's stated purpose is to safeguard public health. This cuts both ways: it means the treaty should not be weaponized to criminalize traditional healing practices that demonstrably serve community well-being.

THE PROBLEM: NATIONAL DIVERGENCE

Despite the clear international position, national governments have diverged dramatically:

- France and Italy have explicitly scheduled ayahuasca and its component plants. France added *Banisteriopsis caapi* and *Psychotria viridis* to its controlled substances list in 2005. Italy followed with similar measures. These are among the very few countries to directly prohibit the plants themselves.
- Most countries exist in a legal gray zone: DMT is scheduled nationally, but ayahuasca is not explicitly addressed. Prosecutors and judges must decide whether a plant preparation "containing" DMT falls under the DMT prohibition. Results vary by court, by case, by jurisdiction.
- Brazil, Peru, and Colombia explicitly protect Indigenous ceremonial use of ayahuasca. Brazil's CONAD resolution (2010) affirmed the legality of ayahuasca in religious and ritual contexts after extensive study. Peru declared ayahuasca part of its national cultural heritage in 2008. Colombia recognizes the practice within its constitutional framework for Indigenous autonomy.
- Spain: A consistent line of acquittals and dismissals has established that ayahuasca is not controlled under Spanish law. In 2025, the High Court of Justice of Madrid (TSJM) issued Ruling 316/2025 — the highest-level judicial decision on ayahuasca in Spain to date — confirming that ayahuasca, as a complex plant preparation, is neither listed nor prohibited under any national or international provision. The TSJM emphasized that while DMT is scheduled, ayahuasca itself is not, and the prosecution failed to demonstrate any risk to public health. The Spanish Medicines Agency (AEMPS) has also confirmed this position in writing. No person is currently imprisoned in Spain for ayahuasca-related activities.
- United States: The Supreme Court ruled in Gonzales v. O Centro Espírita (2006) that the UDV church could import and use ayahuasca under the Religious Freedom Restoration Act, without resolving the broader plant exclusion question under the Convention.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"Ayahuasca is illegal under international law because it contains DMT."***

✓ **FACT:** This is the single most widespread legal misconception about ayahuasca. The 1971 Convention schedules DMT as a chemical compound, but the INCB — the body that monitors treaty compliance — has explicitly and repeatedly confirmed that ayahuasca is not under international control. The Convention does not extend the scheduling of an active principle to the plant that contains it. Prosecutors who argue otherwise are contradicting the treaty's own official interpretation.

✗ **MYTH:** ***"The 1971 Convention bans all traditional plant medicines."***

✓ **FACT:** No plant material of any kind is listed in any Schedule of the 1971 Convention. This is a deliberate design choice, not an oversight. The negotiators explicitly discussed traditional plant use and chose not to include plants. Art. 32.4 was added as an additional safeguard for traditional use in case plants were ever added in the future — which has never happened.

✗ **MYTH:** ***"If my country has scheduled DMT, ayahuasca is automatically illegal there."***

✓ **FACT:** Not necessarily. National scheduling of DMT does not automatically extend to plants or preparations that naturally contain DMT. The legal question is whether the national law controls the isolated compound or also the natural materials containing it. In many jurisdictions, this question has never been adjudicated. The INCB position, the Official Commentary, and the AEMPS letters can all be presented as authoritative interpretive guidance.

✗ **MYTH:** ***"The Art. 32.4 reservation is the only legal protection for ayahuasca."***

✓ **FACT:** Art. 32.4 is a secondary defense. The primary argument is that ayahuasca is simply not covered by the Convention at all. The reservation mechanism under Art. 32.4 was designed for a hypothetical future scenario where plants might be added to the Schedules and it is directly link to the obligations contained in article 7 of the treaty. Since no plants have ever been added, the strongest argument is that no reservation is even needed.

✗ **MYTH:** ***"The INCB position is just an opinion and has no legal weight."***

✓ **FACT:** The INCB is the quasi-judicial body established by the drug control conventions to monitor compliance. Its interpretive statements carry significant legal authority as the authoritative institutional voice on treaty interpretation. The INCB has addressed this question in both its 2010 and 2012 Annual Reports. While not formally binding like a court judgment, INCB positions are treated as highly persuasive by national courts and have been successfully introduced as expert evidence in multiple ADF-supported cases.

IN PRACTICE: AYAHUASCA DEFENSE

ADF CASE INSIGHT

The 1971 Convention's plant exclusion is the single most important legal tool in ayahuasca defense worldwide. In ADF-supported cases, the argument is structured in layers:

(a) Primary argument: Ayahuasca is not internationally controlled. The INCB 2010 Report (§284), the INCB 2012 Report (§§328–334), and the Official Commentary (§32-12) are presented as authoritative evidence that the Convention does not reach plant preparations;

(b) Secondary argument: Even if a court disagrees on the plant exclusion, national constitutions and human rights treaties (C169, UNDRIP, ICCPR Art. 18) provide independent grounds for protecting ceremonial use;

(c) Proportionality argument: Criminal sanctions against traditional plant use are disproportionate when the treaty itself does not require them, and the INCB has explicitly stated they are not warranted under international law.

This layered approach has been deployed in cases across Spain, the Netherlands, Italy, Chile, Peru, Poland, and other jurisdictions. Spain's TSJM Ruling 316/2025 and other judgments serve as particularly strong precedents where both a higher court and a national competent authority have confirmed the INCB position.

KEY DOCUMENTS

Full text of the 1971 Convention → INCB

INCB 2010 Annual Report (§284) →

INCB 2012 Annual Report (§§328–334) →

ICEERS — Ayahuasca International Legal Status →

ICEERS — Can Ayahuasca Be Used Legally in Spain? →

#4

INCB Positions on Traditional Plant Use

How the UN Drug Control Watchdog Addresses Ayahuasca, Peyote, and Sacred Plant Medicines

WHAT IS THE INCB?

The International Narcotics Control Board (INCB) is the independent, quasi-judicial monitoring body for the UN drug control conventions. Established in 1968 under the Single Convention on Narcotic Drugs (1961), the Board consists of 13 expert members and is responsible for monitoring governments' compliance with the 1961, 1971, and 1988 drug control treaties. The INCB publishes an Annual Report analyzing global drug control trends, issuing recommendations, and interpreting treaty provisions. These reports are the primary vehicle through which the INCB has addressed the legal status of traditional plant medicines.

WHAT LEGAL AUTHORITY DOES THE INCB HAVE?

QUASI-JUDICIAL

The INCB is not a court and its statements are not legally binding in the way a treaty or court judgment is. However, as the authoritative institutional interpreter of the drug control conventions, its positions carry significant persuasive weight. National courts in Spain, the Netherlands, Brazil, Chile, and other countries have accepted INCB statements as expert evidence on the meaning and scope of the conventions. The INCB's position on plants is the single most frequently cited piece of international authority in ayahuasca defense cases.

THE THREE KEY INCB STATEMENTS

1. INCB Annual Report 2010 (§§282–284) — *The Foundation*

> *"No plants are currently controlled under [the 1971] Convention or under the 1988 Convention. Preparations (e.g. decoctions for oral use) made from plants containing those active ingredients are also not under international control."*
>
> **— INCB Annual Report 2010, §284**

This was the first time the INCB formally and publicly confirmed the plant exclusion in its Annual Report. The statement is categorical: no plants, no preparations, no decoctions. However, the same report also noted the INCB's "concern" about the expansion of traditional plant use beyond Indigenous communities and recommended that "governments should consider controlling such plant material at the national level where necessary."

This recommendation has been criticized by scholars and Indigenous rights advocates as overstepping the INCB's mandate and contradicting the treaty framework.

2. INCB Annual Report 2012 (§§328–334) — *The Dedicated Section*

The 2012 Report dedicated an entire section to "Plants containing psychoactive substances."

Key points:

- Reiterated that no plants or plant preparations are under international control, consistent with the 2010 position.
- Identified by name the plants about which the INCB expressed concern, including ayahuasca, peyote, psilocybin mushrooms, *Salvia divinorum,* iboga, kratom, ephedra, and khat — and confirmed none are internationally scheduled.
- Acknowledged that some of these plants have traditional uses in religious rites in certain countries and regions.
- Urged governments to address the expansion of these practices through dialogue with communities, cooperation with health authorities, and evidence-based approaches — rather than through blanket criminal prohibition.

- Invited States to share information with the INCB about their national approaches, signaling that this is an evolving area of policy rather than a settled prohibition.

3. Official Commentary to the 1971 Convention (§32-12) — *The Treaty Interpretation*

"Neither the crown (fruit, mescal button) of the Peyote cactus nor the roots of the plant Mimosa hostilis nor Psilocybe mushrooms themselves are included in Schedule I, but only their respective active principles, mescaline, DMT and psilocybine."

— Official Commentary to the 1971 Convention, §32-12

The Official Commentary is the authoritative interpretive guide to the Convention, prepared contemporaneously with the treaty text. It establishes the foundational principle that scheduling a chemical compound does not extend to the plant containing it. This distinction is the legal bedrock of the plant exclusion argument and has been consistently upheld by the INCB in all subsequent statements.

WHY IT MATTERS FOR AYAHUASCA

The INCB's positions are the cornerstone of ayahuasca defense at the international level:

- Authoritative Non-Control Confirmation: When a defendant faces prosecution for ayahuasca possession, the INCB's 2010 and 2012 Reports can be introduced as evidence that the highest international drug control authority considers ayahuasca to be outside the scope of international control.
- Shifts the Burden to Prosecutors: If the INCB itself says ayahuasca is not under international control, a prosecutor must explain why domestic law should extend further than the international treaty requires. This creates a powerful proportionality argument: criminalizing what the treaty itself exempts is excessive.
- Dialogue, Not Prohibition: The 2012 Report's emphasis on community dialogue and evidence-based approaches provides policy ammunition for advocates arguing that governments should regulate rather than criminalize traditional plant use.
- Bridges to Human Rights: The INCB's acknowledgment of traditional religious use connects the drug control framework to the human rights instruments covered earlier in this series (C169, UNDRIP, ICCPR Art. 18). A State that criminalizes what international drug law does not require and what international human rights law protects faces a powerful dual-track challenge.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"The INCB wants governments to ban ayahuasca."***

✓ **FACT:** The INCB's position is nuanced. While the 2010 Report recommended governments "consider controlling" plant materials "where necessary," the 2012 Report emphasized dialogue, cooperation with health authorities, and evidence-based approaches. Critically, neither report states that ayahuasca should be banned. The INCB has consistently confirmed that ayahuasca is not under international control and that the decision rests with national governments.

✗ **MYTH:** ***"The INCB's statements are just opinions with no legal weight."***

✓ **FACT:** The INCB is the institutional body established by the conventions to monitor and interpret treaty compliance. While its statements are not formally binding like court judgments, they constitute the most authoritative institutional interpretation of the conventions. National courts have accepted INCB reports as expert evidence in ayahuasca cases in Spain, the Netherlands, Chile, and elsewhere.

✗ **MYTH:** ***"The 2010 Report only protects Indigenous use, not other contexts."***

✓ **FACT:** The INCB's plant exclusion is categorical — it applies to the plants and preparations themselves, regardless of who uses them or in what context. The statement that "no plants are controlled" and "preparations are not under international control" does not distinguish between Indigenous and non-Indigenous users. The legal status of ayahuasca under the treaties is a matter of what the substance is, not who consumes it.

✗ **MYTH:** ***"The INCB reports are outdated and have been superseded."***

✓ **FACT:** No subsequent INCB report or statement has reversed the 2010 or 2012 positions. The plant exclusion remains the Board's standing interpretation. If anything, the consistent absence of any retraction over 15+ years strengthens its authority as settled institutional interpretation.

IN PRACTICE: AYAHUASCA DEFENSE

ADF CASE INSIGHT

In ADF-supported defense cases, the INCB Reports are deployed in the following ways:

(a) Documentary evidence: The INCB 2010 Report (§284) and 2012 Report (§§328–334) are submitted as official UN documents demonstrating that the international drug control authority considers ayahuasca outside the scope of control;

(b) Expert interpretation: The Official Commentary (§32-12) is cited as the authoritative interpretive guide to the 1971 Convention, establishing that the treaty's drafters deliberately excluded plants from the Schedules;

(c) Proportionality argument: Defense counsel argues that criminal sanctions for possessing a substance that the INCB explicitly states is "not subject to any of the articles of the 1971 Convention" fail any reasonable proportionality test;

(d) Combined with national precedents: In Spain, the INCB position is reinforced by the TSJM Ruling 316/2025. In Brazil, it aligns with CONAD's 2010 resolution. In the US, it provides context for the Gonzales v. O Centro Espírita holding.

The INCB Reports are particularly effective because they come from within the drug control system itself. When the body charged with enforcing the conventions says ayahuasca is not controlled, it is difficult for a prosecutor to argue otherwise.

KEY DOCUMENTS

INCB 2010 Annual Report (§§282–284) →

INCB 2012 Annual Report (§§328–334) →

Official Commentary to the 1971 Convention →

ICEERS — Ayahuasca International Legal Status →

ADF Country-by-Country Legal Map →

#5

Inter-American Court of Human Rights

Jurisprudence on Indigenous Spiritual Practices, Cultural Identity & Consultation

WHAT IS THE INTER-AMERICAN COURT?

The Inter-American Court of Human Rights (IACtHR) is the judicial organ of the Organization of American States (OAS) responsible for interpreting and enforcing the American Convention on Human Rights. Based in San José, Costa Rica, and composed of seven judges, the Court issues binding judgments against OAS member States that have accepted its contentious jurisdiction. Since the landmark Awas Tingni case in 2001, the IACtHR has developed the most progressive body of international jurisprudence on Indigenous peoples' rights in the world — establishing binding standards on cultural identity, spiritual connection to land, consultation and FPIC, and traditional medicine that go far beyond any other international tribunal.

IS IT ENFORCEABLE?

✅ **BINDING**

Yes — IACtHR judgments are legally binding on the respondent State and its reasoning serves as a mandatory interpretive precedent across OAS member States. 20 States in the Americas have accepted the Court's contentious jurisdiction, including Mexico, Colombia, Ecuador, Peru, Brazil, Chile, Argentina, Costa Rica, and most of Latin America. The Court's interpretive standards are routinely cited by national supreme courts and constitutional tribunals throughout the hemisphere.

LANDMARK CASES: BUILDING BLOCKS FOR AYAHUASCA DEFENSE

The IACtHR has never ruled directly on ayahuasca. However, it has built a powerful line of jurisprudence on Indigenous cultural identity, spiritual practices, traditional medicine, and consultation that provides binding legal foundations for ayahuasca defense across the Americas. Here are the six key cases:

Awas Tingni v. Nicaragua (2001)

Mayagna (Sumo) Awas Tingni Community v. Nicaragua — Series C No. 79

Key Principle: Indigenous peoples' communal property over ancestral lands is protected under Art. 21 of the American Convention through an evolutionary interpretation that recognizes both material and spiritual dimensions of the land relationship.

Ayahuasca Relevance: Established that Indigenous land rights have a spiritual and cultural dimension beyond mere economic value. This principle extends to the territories where sacred plants grow and ceremonial practices take place.

Yakye Axa v. Paraguay (2005)

Yakye Axa Indigenous Community v. Paraguay — Series C No. 125

Key Principle: Displacement from ancestral territory violates the right to a dignified life (Art. 4) and cultural identity. The Court recognized that shamans, traditional healing practices, and the spiritual connection to land are essential to Indigenous survival.

Ayahuasca Relevance: Directly recognized the role of shamans and traditional medicine within Indigenous communities. The Court held that access to traditional territories is necessary for cultural and spiritual practices — an argument directly applicable to access to sacred plant medicines.

Saramaka v. Suriname (2007)

Saramaka People v. Suriname — Series C No. 172

Key Principle: Large-scale development projects on Indigenous or tribal territories require free, prior and informed consent (FPIC), not merely consultation. The Court established three safeguards: effective participation, benefit-sharing, and prior environmental/social impact assessment.

Ayahuasca Relevance: Established FPIC as a binding standard in the Inter-American system. Drug scheduling decisions that affect Indigenous ceremonial practices can be argued to require similar FPIC processes — especially where they impact the spiritual and cultural survival of communities.

Sarayaku v. Ecuador (2012)

Kichwa Indigenous People of Sarayaku v. Ecuador — Series C No. 245

Key Principle: The duty to consult Indigenous peoples is a general principle of international law. The Court recognized the concept of "Kawsak Sacha" (living jungle) — affirming that Indigenous spiritual cosmologies linking land, plants, and ceremony constitute a protected dimension of cultural identity under Art. 21.

Ayahuasca Relevance: The strongest IACtHR statement on the spiritual relationship between Indigenous peoples and their natural environment. The recognition of living spiritual ecosystems directly supports arguments that criminalizing sacred plant medicines violates Indigenous cultural identity rights.

Kaliña & Lokono v. Suriname (2015)

Kaliña and Lokono Peoples v. Suriname — Series C No. 309

Key Principle: States must guarantee Indigenous peoples' juridical personality and collective property rights, including over territories shared with other groups. Strengthened the requirement for culturally appropriate consultation processes.

Ayahuasca Relevance: Reinforced that Indigenous collective rights are not abstract — they require concrete State action to protect cultural practices, including the spiritual and medicinal traditions that depend on territorial integrity.

Lhaka Honhat v. Argentina (2020)

Lhaka Honhat Association v. Argentina — Series C No. 400

Key Principle: Landmark: for the first time, the Court declared that cultural rights under Art. 26 of the American Convention are autonomous and judicially enforceable. Recognized the right to cultural identity, healthy environment, adequate food, and water as directly justiciable ESCR.

Ayahuasca Relevance: Game-changer for ayahuasca defense. Cultural rights are now independently enforceable — not merely derivative of property rights. This means Indigenous spiritual and medicinal practices can be defended as standalone cultural rights, even outside the property/land framework.

WHY IT MATTERS FOR AYAHUASCA

The IACtHR jurisprudence creates a binding legal framework across the Americas that supports ayahuasca defense on multiple grounds:

- Cultural Identity as a Protected Right: From Sarayaku's "living jungle" to Lhaka Honhat's autonomous cultural rights, the Court has established that Indigenous spiritual cosmologies — including the ritual use of sacred plants — are constitutionally protected under the American Convention.
- FPIC for Drug Scheduling: If FPIC is required before granting an oil concession (Saramaka, Sarayaku), the argument that it should also be required before scheduling a substance that Indigenous peoples use ceremonially is legally coherent within IACtHR doctrine.
- Traditional Medicine Recognition: The Court's recognition of shamanic healing and traditional medicine in Yakye Axa creates a binding precedent that traditional plant medicine is integral to Indigenous survival and dignity — not a criminal activity.
- Proportionality Standard: IACtHR proportionality analysis requires States to demonstrate that any restriction on Indigenous cultural practices serves a legitimate aim, is necessary, and uses the least restrictive means available. Criminal prosecution of ceremonial ayahuasca use is unlikely to survive this test.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"The IACtHR has no jurisdiction over drug policy decisions."***

✓ **FACT:** The IACtHR has jurisdiction over any State action that violates the American Convention, including drug policy measures that disproportionately impact Indigenous cultural and spiritual rights. If a drug scheduling decision violates Arts. 21 (property/cultural identity), 12 (conscience/religion), or 26 (cultural rights), the Court can adjudicate the matter.

✗ **MYTH:** ***"This jurisprudence only applies in Latin America."***

✓ **FACT:** IACtHR judgments are binding on OAS member States that have accepted its contentious jurisdiction — 20 countries across the Americas. Beyond that, IACtHR reasoning is increasingly cited by the European Court of Human Rights, the African Commission, and UN treaty bodies as persuasive authority on Indigenous rights. The principles travel far beyond the Americas.

✗ **MYTH:** ***"Since the IACtHR has never ruled on ayahuasca, this jurisprudence is irrelevant."***

✓ **FACT:** The Court builds its jurisprudence through evolving interpretation of the Convention across different factual contexts. Every landmark Indigenous rights case started with a specific dispute (oil, logging, land tenure) and produced principles of general application. The cultural identity, FPIC, traditional medicine, and proportionality standards apply to any State action affecting Indigenous spiritual practices — including drug control.

✗ **MYTH:** ***"Lhaka Honhat only matters for land disputes."***

✓ **FACT:** Lhaka Honhat's true significance is doctrinal: it established that economic, social, and cultural rights (including cultural identity) are autonomous and directly enforceable under Art. 26. This opens the door for Indigenous peoples to bring claims about spiritual and medicinal practices as standalone cultural rights violations, without needing to frame them as property disputes.

IN PRACTICE: AYAHUASCA DEFENSE

ADF CASE INSIGHT

In ADF-supported cases across Latin America, IACtHR jurisprudence is deployed as follows:

(a) Constitutional interpretation: National courts in Mexico, Colombia, Ecuador, Peru, and other countries are bound by IACtHR standards when interpreting constitutional provisions on Indigenous rights. Defense counsel cites Sarayaku and Lhaka Honhat to argue that domestic drug laws must be read consistently with the right to cultural identity;

(b) Conventionality control: Under the doctrine of "control de convencionalidad," national judges must ensure that domestic legislation conforms with the American Convention as interpreted by the IACtHR. This means judges can disapply or interpret restrictively any drug law provision that conflicts with IACtHR standards on Indigenous cultural rights;

(c) Amparo and constitutional remedies: In Mexico and other Latin American jurisdictions, IACtHR precedents are invoked in amparo proceedings to challenge the constitutionality of applying drug control provisions to Indigenous ceremonial use of ayahuasca.

IACtHR jurisprudence is stronger when combined with ILO C169 (binding treaty obligations), UNDRIP (universal standards), and the INCB plant exclusion (drug control framework). Together, these instruments create a multi-layered defense that is increasingly difficult for prosecutors to overcome.

KEY DOCUMENTS

IACtHR — Full list of Indigenous rights judgments →

Sarayaku v. Ecuador — Official Summary →

American Convention on Human Rights (full text) →

#6

American Convention on Human Rights

Freedom of Conscience, Cultural Identity, and the Treaty Behind the Jurisprudence

WHAT IS IT?

The American Convention on Human Rights ("Pact of San José") is the binding human rights treaty for the Americas. Adopted on November 22, 1969 in San José, Costa Rica, and in force since July 18, 1978, it establishes the rights and obligations that OAS member States must guarantee to all persons under their jurisdiction. It is the foundational treaty of the Inter-American Human Rights System, interpreted and enforced by the Inter-American Commission and the Inter-American Court of Human Rights (see Document #5 in this series). The Convention contains 82 articles organized in three parts covering civil and political rights, economic/social/cultural rights (Art. 26), and institutional mechanisms.

IS IT ENFORCEABLE?

✅ **BINDING**

Yes — ratified by 25 OAS member States. Ratifying States include Mexico, Brazil, Colombia, Ecuador, Peru, Chile, Argentina, Costa Rica, Bolivia, Paraguay, Uruguay, and most of Latin America and the Caribbean. 20 States have also accepted the contentious jurisdiction of the IACtHR. The Convention has direct effect in domestic legal systems — in many countries, it has constitutional or supra-legal rank.

KEY ARTICLES FOR AYAHUASCA DEFENSE

Article 12 — Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

⚠ NON-DEROGABLE: Art. 12 is listed in Art. 27(2) as a right that cannot be suspended even during war, public danger, or states of emergency. This gives it the highest level of protection in the Convention.

Article 21 — Right to Property / Cultural Identity

Everyone has the right to the use and enjoyment of his property. As interpreted by the IACtHR through an evolutionary reading, this article protects Indigenous communal property over ancestral territories — including their material AND spiritual dimensions. The Court has held that this encompasses cultural identity, spiritual cosmologies, and the relationship with sacred natural elements (see Sarayaku, Lhaka Honhat in Document #5).

Article 26 — Progressive Development / Cultural Rights

States undertake to achieve progressively the full realization of economic, social, and cultural rights. Since Lhaka Honhat v. Argentina (2020), the IACtHR has held that cultural rights — including the right to cultural identity — are autonomous and directly enforceable under this article. This is a breakthrough: Indigenous spiritual and medicinal practices can now be defended as standalone cultural rights, independent of the property framework.

Article 11 — Right to Privacy / Protection of Honor and Dignity

Protects private life and dignity. In the context of ceremonial plant use, this article supports arguments that what individuals do in their private spiritual life — including participation in ayahuasca ceremonies — falls within the sphere of protected privacy, particularly when conducted in closed, structured settings with no impact on third parties.

THE NON-DEROGABILITY ADVANTAGE

Art. 12 enjoys a special status among Convention rights: it is non-derogable under Art. 27(2).

This means that even in the most extreme circumstances — war, public danger, national emergency — a State cannot suspend freedom of conscience and religion. The practical implication for ayahuasca defense is significant: if a government argues that drug control constitutes a public safety or public health justification for restricting ceremonial use, the defender can invoke the non-derogable character of Art. 12. The State bears the burden of demonstrating that any restriction on the manifestation of religious practice (Art. 12.3) is truly "necessary" and prescribed by law — and even then, the inner dimension of religious freedom (the right to hold and change beliefs, Art. 12.1–2) remains absolutely protected.

Contrast with ICCPR Art. 18: The ICCPR also protects religious freedom and makes it non-derogable (Art. 4.2). When both instruments apply simultaneously — as they do for most Latin American States — the protection is doubly reinforced. Document #8 in this series covers the ICCPR in detail.

WHY IT MATTERS FOR AYAHUASCA

- Sacramental Use as Protected Religion: Ayahuasca ceremonies within Indigenous traditions (and within syncretic religions like the Santo Daime and União do Vegetal) constitute religious or spiritual practice under Art. 12. Criminal prosecution of this practice engages the Convention directly.
- Limitation Test (Art. 12.3): Any restriction on the manifestation of ayahuasca ceremonies must be: (a) prescribed by law; (b) necessary for a legitimate aim (public safety, order, health, morals); and (c) proportionate. The INCB's confirmation that ayahuasca is not internationally controlled undermines the "necessity" leg of this test — how can prohibition be "necessary" when the international drug control body itself says it's not required?
- Cultural Identity via Art. 21 + Art. 26: For Indigenous peoples, ayahuasca is not only a "religious" practice but an integral part of cultural identity. The IACtHR's evolutionary interpretation of Arts. 21 and 26 provides a broader shield than Art. 12 alone — protecting the entire cultural ecosystem of which ayahuasca is a part.
- Control de Convencionalidad: National judges in OAS member States are obligated to interpret domestic law consistently with the American Convention as read by the IACtHR. This means drug control legislation must be read in light of Arts. 12, 21, and 26 — not the other way around.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"Art. 12 only protects recognized religions, not Indigenous spiritual practices."***

✓ **FACT:** Art. 12 protects freedom of conscience AND religion, with no requirement for formal recognition or institutional registration. Indigenous spiritual practices, shamanic traditions, and plant medicine ceremonies fall within the scope of protected beliefs and their manifestation. The IACtHR has consistently interpreted Convention rights in light of Indigenous cultural realities, not Western institutional categories.

✗ **MYTH:** ***"Drug control is a public health matter that overrides religious freedom."***

✓ **FACT:** Art. 12.3 permits restrictions only when "necessary" to protect public health, and the restriction must be proportionate. Where the INCB has confirmed that ayahuasca is not internationally controlled, and where there is no evidence of significant public health harm from structured ceremonial use, the "necessity" threshold is very difficult for a State to meet. The non-derogable status of Art. 12 means the right cannot simply be overridden by invoking public policy.

✗ **MYTH:** ***"The American Convention only applies in Latin America."***

✓ **FACT:** The Convention has been ratified by 25 States across the Americas, including Caribbean nations like Barbados, Jamaica, Dominica, and Trinidad & Tobago. Its principles are also cited by the Inter-American Commission in relation to all 35 OAS member States (including the US and Canada) through the American Declaration on the Rights and Duties of Man, which applies to all OAS members regardless of Convention ratification.

✗ **MYTH:** ***"Art. 12 can be suspended during a drug emergency."***

✓ **FACT:** No. Art. 12 is explicitly listed in Art. 27(2) as non-derogable. It cannot be suspended under any circumstances — not during war, not during states of emergency, not during a declared drug crisis. This is the strongest form of protection the Convention offers.

IN PRACTICE: AYAHUASCA DEFENSE

ADF CASE INSIGHT

In ADF-supported cases across the Americas, the American Convention is deployed as the binding treaty foundation that connects all other instruments:

(a) Art. 12 + INCB position: If ayahuasca is not internationally controlled (INCB 2010, 2012), then criminalizing its ceremonial use cannot be "necessary" under Art. 12.3. The prosecution must demonstrate a compelling public health need that the international drug control body itself does not recognize;

(b) Art. 21 + ILO C169: Indigenous communal property rights (Art. 21 as interpreted by the IACtHR) are reinforced by the binding consultation obligations under ILO C169. Together, they require States to consult Indigenous peoples before adopting measures — including drug scheduling — that affect their cultural practices;

(c) Art. 26 + UNDRIP: Since Lhaka Honhat, cultural identity is an autonomous right under Art. 26. UNDRIP Arts. 12, 24, and 31 provide interpretive content for what "cultural identity" means in the context of Indigenous plant medicine traditions;

(d) Amparo proceedings: In Mexico, the American Convention is invoked in amparo proceedings to challenge the application of drug control provisions to Indigenous ceremonial ayahuasca use, arguing that the restriction violates Art. 12 and fails the Art. 12.3 necessity/proportionality test.

The American Convention is the binding treaty that gives legal teeth to the principles in UNDRIP and the interpretive standards of the IACtHR. In the layered defense strategy, it occupies the middle position: broader than ILO C169 (which applies only to Indigenous peoples in ratifying States), and stronger than UNDRIP (which is soft law).

KEY DOCUMENTS

American Convention on Human Rights (full text) →

Ratification status → OAS Treaty Office

IACtHR — Indigenous peoples case law →

Protocol of San Salvador (ESCR) →

#7

WHO 2025 Coca Leaf Critical Review

A Precedent Model: What the Coca Review Teaches Us About Ayahuasca's Future

WHY IS THIS IN THE SERIES?

This document is different from the others in the series. It is not about a legal instrument that directly protects ayahuasca. It is about a precedent: the WHO's 2025 critical review of the coca leaf is the first time the UN drug control system formally reviewed the scheduling of a traditional plant under the 1961 Convention. The process, its outcome, its contradictions, and its lessons are directly relevant to any future effort to review the international legal status of ayahuasca or its component plants.

WHAT HAPPENED?

In October 2025, the WHO's Expert Committee on Drug Dependence (ECDD) completed a critical review of the coca leaf at its 48th session. This review had been decades in the making. Bolivia's 2013 re-accession to the 1961 Single Convention (with a reservation protecting traditional coca use) and sustained advocacy by Andean Indigenous peoples had built pressure for a science-based reassessment.

The result: the ECDD recommended maintaining the coca leaf in Schedule I of the 1961 Convention — the most restrictive category, alongside cocaine itself.

However, the review's own scientific findings told a strikingly different story from the outcome.

THE PARADOX: WHAT THE WHO FOUND VS. WHAT THE WHO DECIDED

✓ WHAT THE SCIENCE SAID

- Traditional use (chewing, infusions) does not pose a serious public health risk
- No documented fatal overdoses from traditional coca use
- Coca leaf has important cultural and therapeutic significance for Indigenous peoples
- 383 compounds identified; cocaine is only 0.11–1.02% of dry weight
- Emerging evidence of antioxidant, anti-inflammatory, and neuroprotective properties
- No significant dependence potential from traditional use

✗ WHAT THE DECISION SAID

- Maintain coca leaf in Schedule I (most restrictive)
- Basis: "convertibility" — cocaine can be extracted from the leaf
- Global cocaine production is increasing
- Relaxing controls could worsen cocaine-related harms
- The leaf remains equated with cocaine in international law
- No change recommended

> *"The traditional consumption of coca leaf does not appear to pose a particularly serious public health risk."*
>
> **— WHO 48th ECDD Critical Review Report: Coca Leaf (2025)**

WHAT THIS TEACHES US ABOUT AYAHUASCA

The coca review is a roadmap — both for what to emulate and what to avoid — in any future international review process for ayahuasca:

- The "convertibility" trap: The coca decision shows that even when the science supports safety, a plant can be kept under the most restrictive controls if a harmful derivative can be extracted from it. For ayahuasca, this is less relevant (DMT is present in trace amounts and the brew is not a precursor to synthetic DMT production), but the precedent warns against allowing policy to override evidence.
- Science can be acknowledged and ignored: The WHO recognized traditional coca use was safe, culturally important, and showed therapeutic potential — then recommended no change. This demonstrates that the scheduling process is not purely scientific; it is political. Any ayahuasca advocacy strategy must prepare for the same dynamic.
- Indigenous participation is essential but insufficient: Andean Indigenous peoples advocated for decades for the review. Bolivia made a historic reservation. The review happened — but the outcome didn't reflect the advocacy. Lesson: Indigenous voice must be combined with scientific evidence, political alliances, and legal strategy at the CND/ECOSOC level.
- The INCB plant exclusion is ayahuasca's advantage: Unlike coca (which IS listed in Schedule I of the 1961 Convention), ayahuasca is NOT listed in any schedule of any convention. The INCB has confirmed this. This is a fundamentally different starting position. Coca had to argue for descheduling; ayahuasca must argue against scheduling. Defense, not offense.
- The human cost of prohibition: ICEERS/ADF has documented cases of Andean migrants prosecuted in Spain, Mexico, Indonesia, and elsewhere for carrying coca leaf — a substance their own countries protect as cultural heritage. This same pattern is already emerging with ayahuasca. The coca precedent shows what happens when a plant remains criminalized despite evidence of safety.

COCA LEAF VS. AYAHUASCA: LEGAL POSITION COMPARED

FEATURE	COCA LEAF	AYAHUASCA
International scheduling	Schedule I, 1961 Convention (listed)	NOT listed in any schedule of any convention
INCB position	Listed plant — under international control	Not controlled; INCB explicitly confirmed (2010, 2012)
WHO review	48th ECDD (2025): reviewed, kept in Schedule I	No WHO review has been conducted or requested
Active compound	Cocaine (0.11–1.02% of leaf)	DMT (trace amounts in *Psychotria viridis*)
Convertibility risk	Low (complex chemical extraction yields cocaine)	Very low (ayahuasca is not a precursor to synthetic DMT)
Traditional use recognition	Recognized by WHO as safe, but not reflected in scheduling	Not yet formally evaluated by WHO; protected by INCB exclusion
National protections	Bolivia (constitutional), Peru, Colombia, Argentina	Brazil (CONAD 2010), Peru, Colombia; Spain (judicial precedent)
Strategic position	Must argue for DE-scheduling (offense)	Must PREVENT scheduling (defense)

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"The coca review is irrelevant to ayahuasca because they are completely different substances."***

✓ **FACT:** The substances are different, but the process is the same. The WHO ECDD is the only body that can recommend changes to the international drug schedules. Understanding how it reviewed coca — what evidence it considered, how political pressures shaped the outcome, why the science was acknowledged but overridden — is essential preparation for any future review involving ayahuasca or its component plants.

✗ **MYTH:** ***"Since ayahuasca is not scheduled, there will never be a WHO review."***

✓ **FACT:** Any UN member State or the WHO itself can initiate a review of any substance at any time. The INCB's 2010 and 2012 reports recommended that governments "consider controlling" plant materials at the national level. If enough States move toward national scheduling, pressure for an international review could build. The coca precedent shows that the review process can take decades once triggered.

✗ **MYTH:** ***"The coca review failed, so international advocacy is pointless."***

✓ **FACT:** The coca review generated an unprecedented body of WHO-validated scientific evidence confirming the safety of traditional use. This evidence is now available for legal defense cases worldwide. Bolivia's reservation remains in force. The review's contradictions have strengthened the argument for reform. Every advocacy effort shifts the terrain, even when the immediate outcome disappoints.

✗ **MYTH:** ***"Bolivia's coca reservation is a model for ayahuasca."***

✓ **FACT:** Bolivia's 2013 re-accession with a reservation was a historic achievement for the coca leaf. However, it required Bolivia to withdraw from the 1961 Convention entirely and re-accede with a reservation — a politically costly process. For ayahuasca, the strategic position is stronger: since ayahuasca is not listed in any convention, the goal is to maintain the INCB's exclusion rather than seek a reservation. The Bolivian model is inspiring but the legal mechanics are different.

IN PRACTICE: LESSONS FOR AYAHUASCA ADVOCACY

STRATEGIC TAKEAWAYS FOR WAF ATTENDEES

(a) Defend the exclusion: Ayahuasca's greatest legal asset is that it is NOT scheduled. The coca review shows how difficult descheduling is once a plant enters the schedules. Every effort should be directed at maintaining the INCB's 2010/2012 position and preventing national or international scheduling;

(b) Build the evidence base: The coca review's strongest elements were the peer-reviewed studies on safety. Ayahuasca research is growing (Bouso *et al.,* dos Santos *et al.,* Palhano-Fontes *et al.*) but more rigorous, large-scale studies are needed to create an unassailable evidence base before any review is triggered;

(c) Center Indigenous voices: The coca review showed that Indigenous advocacy is necessary but must be combined with scientific and legal strategies. The WAF 2026 provides a unique platform for this convergence — Indigenous leaders, scientists, lawyers, and policymakers in the same room;

(d) Engage at the CND level: The Commission on Narcotic Drugs (CND) is where scheduling votes happen. Building relationships with delegations sympathetic to evidence-based reform — particularly from countries that already protect ayahuasca (Brazil, Peru, Colombia) — is a long-term strategic investment;

(e) Use the coca evidence defensively: The WHO's own finding that traditional coca use is safe and culturally significant — even while keeping it scheduled — can be cited in ayahuasca defense

cases as evidence that the WHO recognizes the legitimacy and safety of traditional plant use in general.

As ICEERS has noted: the coca review "represents an opportunity lost to repair historical damage: the international criminalization of practices involving a plant with deeply rooted traditional, cultural and medicinal uses, incorporated into the international regulatory framework for controlled substances, in a context marked by colonialism and the exclusion of directly affected communities." The ayahuasca community has the chance to learn from this history.

KEY DOCUMENTS

WHO 48th ECDD Critical Review Report: Coca Leaf (2025) →

ICEERS — The WHO's Critical Review of the Coca Leaf →

ICEERS — Coca Leaf and WHO: The Debt of the Global Drug Regime →

TNI — The UN Coca Leaf Review and Indigenous Peoples' Rights →

#8

ICCPR & ICESCR

The Universal Human Rights Covenants: Religious Freedom (Art. 18) & Cultural Rights (Art. 15)

WHAT ARE THEY?

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) are the two binding global human rights treaties that, together with the Universal Declaration of Human Rights, form the "International Bill of Rights."

The ICCPR was adopted by the UN General Assembly on December 16, 1966 and entered into force on March 23, 1976. It has been ratified by 173 States — near-universal coverage. It protects civil and political rights including freedom of religion (Art. 18), freedom of expression, right to privacy, and minority rights (Art. 27). It is monitored by the Human Rights Committee (HRC), which issues binding views in individual complaint cases and authoritative General Comments.

The ICESCR was adopted simultaneously and entered into force on January 3, 1976. It has been ratified by 171 States. It protects economic, social, and cultural rights including the right to take part in cultural life (Art. 15), the right to health (Art. 12), and the right to benefit from scientific progress. It is monitored by the Committee on Economic, Social and Cultural Rights (CESCR).

ARE THEY ENFORCEABLE?

✅ **BINDING**

Yes — both are binding treaties with near-universal ratification. Unlike the American Convention (#6) which covers only the Americas, these covenants apply globally. The ICCPR's First Optional Protocol allows individuals to bring complaints to the Human Rights Committee. Both Committees issue General Comments that serve as authoritative interpretive guidance. Crucially, ICCPR Art. 18 is non-derogable under Art. 4(2) — the same absolute protection as American Convention Art. 12.

KEY ARTICLES FOR AYAHUASCA DEFENSE

FROM THE ICCPR

ICCPR Art. 18 — Freedom of Thought, Conscience and Religion

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

⚠ NON-DEROGABLE (Art. 4.2): Like American Convention Art. 12, this right cannot be suspended even during states of emergency. The inner dimension (holding/changing beliefs) is absolutely protected; the outer dimension (manifesting beliefs) may be limited only under strict necessity and proportionality requirements.

ICCPR Art. 27 — Minority Rights

In States with ethnic, religious or linguistic minorities, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Ayahuasca relevance: Art. 27 provides a collective cultural dimension that Art. 18 lacks. The HRC's General Comment No. 23 (1994) clarifies that "culture" includes traditional practices, spiritual rituals, and the use of natural resources integral to cultural identity. This encompasses Indigenous plant medicine traditions.

FROM THE ICESCR

ICESCR Art. 15 — Right to Take Part in Cultural Life

1. The States Parties recognize the right of everyone: (a) to take part in cultural life; (b) to enjoy the benefits of scientific progress and its applications; (c) to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production.

CESCR General Comment No. 21 (2009) interprets Art. 15.1(a) as encompassing the right of Indigenous peoples to their cultural practices, traditional knowledge, and ceremonies. States must not only refrain from interfering with cultural participation but actively facilitate it. Criminalizing traditional plant ceremonies constitutes both an interference with and a failure to facilitate cultural life.

ICESCR Art. 12 — Right to Health

States recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. CESCR General Comment No. 14 (2000) requires States to respect traditional healing practices and to integrate them into health strategies. The Committee has emphasized that the right to health includes access to traditional medicines. This creates an affirmative obligation that contradicts the criminalization of ayahuasca in its traditional medicinal context.

GLOBAL REACH: WHY THESE COVENANTS MATTER BEYOND THE AMERICAS

The ICCPR and ICESCR fill a critical gap in the ayahuasca defense toolkit:

- In Europe, where the American Convention does not apply, the ICCPR is the primary binding treaty protecting religious freedom. Cases in Spain, the Netherlands, Italy, and other European countries can invoke Art. 18 directly. The European Convention on Human Rights (Art. 9) provides a parallel regional protection, but the ICCPR's universality gives it additional authority.
- In Asia and Oceania, where neither the American nor European Conventions apply, the ICCPR is often the only binding international human rights treaty available for ayahuasca defense. Australia, New Zealand, Japan, and most Southeast Asian countries have ratified it.
- In Africa, the ICCPR complements the African Charter on Human and Peoples' Rights (Art. 8, Art. 17). The ibogaine/iboga community, which faces similar legal challenges, draws on the same treaty framework.
- In the Americas, the ICCPR provides a second layer of protection on top of the American Convention. The US has ratified the ICCPR (but not the American Convention), making Art. 18 the primary international religious freedom protection available in US litigation — alongside RFRA and the First Amendment.

THE KEY INTERPRETATION: HRC GENERAL COMMENT NO. 22

GENERAL COMMENT NO. 22 (1993) — FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

The HRC's General Comment No. 22 is the authoritative interpretation of Art. 18. Key points for ayahuasca defense:

- "Religion" and "belief" are interpreted broadly: they include traditional, Indigenous, and non-institutional spiritual practices. Art. 18 is not limited to organized religions. The right protects "theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief."
- "Manifestation" includes ritual and ceremonial practice: the concept of "worship, observance, practice and teaching" extends to ritual ceremonies, dietary observances, distinctive clothing, participation in rituals, and the use of a particular language. The use of sacramental substances in ceremony falls within "observance" and "practice."
- Limitation must be strictly necessary: the Art. 18(3) limitation clause must be narrowly interpreted. Restrictions must be prescribed by law, necessary (not merely convenient), and proportionate. The HRC has stated that restrictions "must not be applied in a manner that would vitiate the rights guaranteed in article 18."
- Art. 18 may not be restricted by Art. 20: the Committee has clarified that Art. 20 (prohibition of propaganda for war/incitement to hatred) cannot be used to restrict Art. 18. By analogy, drug control policies cannot be used to override religious freedom protections absent clear and compelling justification.

WHY IT MATTERS FOR AYAHUASCA

- Universal coverage: 173 States have ratified the ICCPR. This means Art. 18 protection is available in virtually every country where ayahuasca defense cases arise — including the US, all of Europe, most of Asia, and Africa. No other instrument in this series has this reach.
- Non-derogable status: Like American Convention Art. 12, ICCPR Art. 18 cannot be suspended under any circumstances. This is the same absolute protection, now with global scope.
- Art. 18 + INCB = the global defense formula: In non-C169, non-American Convention jurisdictions (Europe, Asia, Africa), the ICCPR Art. 18 + INCB plant exclusion combination is the primary defense strategy. The logic: if international drug law does not require prohibiting ayahuasca (INCB 2010/2012), then prohibiting its ceremonial use cannot be "necessary" under Art. 18(3).
- Cultural rights as a second track: ICESCR Art. 15 provides an independent basis for defense based on cultural participation rather than religion. This is crucial for Indigenous practitioners who frame ayahuasca as cultural practice rather than "religion" in the Western sense, and for researchers arguing that access to traditional knowledge is a cultural right.

- Dual Covenant strategy: Invoking both Art. 18 (ICCPR) and Art. 15 (ICESCR) simultaneously creates a dual-track argument: criminalizing ayahuasca ceremonies violates both religious freedom (civil/political) AND cultural rights (economic/social/cultural). This makes the State's justification burden doubly heavy.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"The ICCPR only protects 'religions' — not shamanic or Indigenous spiritual practices."***

✓ **FACT:** General Comment No. 22 explicitly states that Art. 18 protects beliefs broadly, including traditional and non-institutional spiritual practices. The concept of "religion or belief" is not limited to organized religions with institutional structures. Indigenous spiritual traditions centered on ayahuasca fall squarely within this protection.

✗ **MYTH:** ***"ICESCR rights are just aspirational — they can't be enforced in court."***

✓ **FACT:** The ICESCR imposes binding obligations on States. While some rights are subject to "progressive realization," the CESCR has clarified that core obligations are immediate. The duty to respect cultural participation (not criminalizing cultural practices) is an immediate obligation, not a progressive one. The Optional Protocol to the ICESCR (2013) allows individual complaints to the CESCR in ratifying States.

✗ **MYTH:** ***"The US hasn't ratified the ICESCR, so cultural rights arguments don't work there."***

✓ **FACT:** Correct — the US signed but has not ratified the ICESCR. However, the US HAS ratified the ICCPR, making Art. 18 and Art. 27 directly applicable. In US litigation, the ICCPR is supplemented by domestic religious freedom protections (First Amendment, RFRA), which were the basis for the landmark Gonzales v. O Centro Espírita decision.

✗ **MYTH:** ***"These covenants are too abstract to use in a criminal defense case."***

✓ **FACT:** Not at all. In many countries, the ICCPR has direct effect in domestic law or has been incorporated through constitutional provisions. Defense counsel can cite Art. 18, General Comment No. 22, and HRC jurisprudence as binding or highly persuasive authority. The INCB plant exclusion provides the factual bridge: if ayahuasca is not internationally controlled AND criminalizing its ceremonial use violates Art. 18, the defense has both the factual and legal elements.

IN PRACTICE: AYAHUASCA DEFENSE

ADF CASE INSIGHT

The ICCPR and ICESCR are the backbone of ayahuasca defense outside the Americas. In ADF-supported cases:

(a) Europe (Spain, Netherlands, Italy, Poland): ICCPR Art. 18 is invoked alongside ECHR Art. 9 (freedom of religion) and the INCB plant exclusion. The dual-instrument approach (UN + European) creates maximum legal pressure. In Spain, TSJM Ruling 316/2025 is consistent with this framework;

(b) United States: ICCPR Art. 18 provides international context for RFRA arguments. In Gonzales v. O Centro Espírita (2006), the Supreme Court applied RFRA but the international framework reinforces the principle that religious use of sacramental substances is a protected practice;

(c) Latin America: ICCPR Art. 18 + ICESCR Art. 15 provides a third layer on top of the American Convention (Art. 12) and ILO C169. Mexico's SCJN has recognized the ICCPR as constitutionally binding through the 2011 human rights reform (Art. 1 CPEUM);

(d) Asia and emerging jurisdictions: In countries without regional human rights courts (most of Asia, some of Africa), the ICCPR is the primary — and sometimes only — binding international treaty available for ayahuasca defense. The Art. 18(3) limitation analysis combined with the INCB position forms the core argument.

The ICCPR's near-universal ratification makes it the single most widely applicable instrument in the ayahuasca defense toolkit. Combined with the INCB plant exclusion (#3–4), ILO C169 (#1), UNDRIP (#2), and regional instruments (#5–6), it completes the international legal architecture.

KEY DOCUMENTS

ICCPR (full text) → OHCHR

ICESCR (full text) → OHCHR

HRC General Comment No. 22 (Art. 18) →

CESCR General Comment No. 21 (Art. 15) →

#9

The Nagoya Protocol

Protecting Traditional Knowledge, Genetic Resources, and the Fight Against Biopiracy

WHAT IS IT?

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits (ABS) is a supplementary agreement to the 1992 Convention on Biological Diversity (CBD).

Adopted on October 29, 2010 in Nagoya, Japan, and in force since October 12, 2014, the Protocol has been ratified by 142 parties (141 States + the EU). It creates a legally binding framework requiring:

- Prior Informed Consent (PIC) from the country and/or Indigenous community providing genetic resources or associated traditional knowledge before access is granted;
- Mutually Agreed Terms (MAT) between providers and users establishing how benefits will be shared;
- Fair and Equitable Benefit-Sharing (monetary and non-monetary) arising from the utilization of genetic resources and traditional knowledge.

The Nagoya Protocol sits within a broader framework: the CBD (1992) and its Art. 8(j), which requires States to respect, preserve, and maintain the knowledge, innovations, and practices of Indigenous and local communities.

IS IT ENFORCEABLE?

✅ **BINDING**	Yes — 142 parties. Ratifying States must enact domestic legislation to implement ABS obligations. Over 130 national ABS laws have been adopted worldwide. The Protocol is monitored through the ABS Clearing-House and compliance mechanisms under the CBD. The EU has adopted a specific regulation (EU Regulation 511/2014) implementing the Protocol across all member States. Non-compliance can result in denial of patent applications, penalties, and enforcement actions.

KEY PROVISIONS FOR AYAHUASCA

1 Prior Informed Consent for Traditional Knowledge (Art. 7)

When traditional knowledge associated with genetic resources held by Indigenous communities is accessed, the PIC or approval and involvement of those communities is required. This applies to any research or commercial use of ayahuasca-related traditional knowledge.

2 Benefit-Sharing from Traditional Knowledge (Art. 5.5)

Benefits arising from the utilization of traditional knowledge associated with genetic resources must be shared fairly with Indigenous communities holding that knowledge, on mutually agreed terms.

3 Community Protocols (Art. 12)

States shall support the development of community protocols — charters through which Indigenous communities set out their own rules for access to their genetic resources and traditional knowledge, their rights, and their benefit-sharing expectations.

4 Compliance & Monitoring (Arts. 15–18)

User countries must ensure that genetic resources and traditional knowledge utilized within their jurisdiction were accessed in compliance with PIC and MAT requirements of the providing country. The ABS Clearing-House and checkpoints (including patent offices) monitor compliance.

5 CBD Art. 8(j) — The Foundation

States must respect, preserve, and maintain the knowledge, innovations, and practices of Indigenous communities, promote their wider application with community approval, and encourage equitable benefit-sharing. This is the parent obligation that the Nagoya Protocol operationalizes.

THE "DA VINE" CASE: AYAHUASCA'S BIOPIRACY LANDMARK

CASE STUDY: US PLANT PATENT NO. 5,751 (1986)

In 1986, American entrepreneur Loren Miller obtained a US Plant Patent on a variety of *Banisteriopsis caapi* — the ayahuasca vine itself — which he named "Da Vine." The patent claimed novelty based on the rose color of its flower petals and its "medicinal properties" — properties that Indigenous Amazonian communities had known and used for centuries.

In 1999, the Center for International Environmental Law (CIEL), acting on behalf of COICA (the Coordinating Body of Indigenous Organizations of the Amazon Basin) and the Amazon Coalition, filed a request for re-examination with the US Patent and Trademark Office. The PTO rejected the patent, accepting that the plant was not novel based on prior herbarium specimens. However, the PTO did not address COICA's argument that the plant's sacred cultural value should preclude patenting.

In a subsequent procedural reversal, the patent was briefly reinstated on appeal (2001) before finally expiring in 2003. The case remains a defining example of biopiracy and was instrumental in building momentum for the Nagoya Protocol.

Key lessons: (a) Patent systems can appropriate Indigenous knowledge when disclosure requirements are weak; (b) Indigenous communities were excluded from the re-examination process; (c) Cultural and spiritual objections carried no weight under patent law as written; (d) Defensive measures (herbarium documentation as prior art) proved more effective than moral arguments.

WHY IT MATTERS FOR AYAHUASCA

The Nagoya Protocol addresses a dimension of the ayahuasca question that the other instruments in this series do not: the protection of traditional knowledge from commercial appropriation.

- Against Biopiracy: As ayahuasca research expands (depression, PTSD, addiction treatment), pharmaceutical and biotech companies are increasingly interested in the brew's active compounds and traditional preparation methods. The Nagoya Protocol requires that any research utilizing Indigenous traditional knowledge about ayahuasca obtain PIC from the communities and share benefits equitably.
- Patent Defense: Under the Nagoya Protocol and the 2024 WIPO Treaty on Genetic Resources and Associated Traditional Knowledge, patent applicants whose inventions are based on genetic resources or traditional knowledge must disclose the country of origin and the Indigenous community involved. Non-compliance can result in patent denial. This creates a systemic barrier against future "Da Vine"-type patents.
- Community Protocols as Self-Governance: Art. 12 empowers Indigenous communities to develop their own rules for who can access their knowledge and on what terms. For ayahuasca communities, this means the ability to create binding protocols governing research access, ceremony facilitation, plant cultivation, and benefit distribution — a form of cultural self-governance recognized by international law.
- Medicalization Risk: As ayahuasca moves toward clinical research and potential medicalization, the Nagoya Protocol creates obligations that pharmaceutical companies must respect. Without these safeguards, Indigenous communities risk being excluded from the benefits of commercialized products derived from their millennial knowledge.
- Conservation & Sustainability: Rising global demand for ayahuasca puts pressure on wild *Banisteriopsis caapi* and *Psychotria viridis* populations. The CBD's conservation objectives and the Nagoya Protocol's sustainability requirements support community-based cultivation programs and sustainable harvesting protocols that protect both biodiversity and cultural practices.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"The Nagoya Protocol only applies to pharmaceutical companies, not to individual researchers or ceremony facilitators."***

✓ **FACT:** The Protocol applies to anyone who utilizes genetic resources or associated traditional knowledge, including academic researchers, biotech startups, and individuals who commercially exploit traditional preparation methods. If you are conducting research on ayahuasca using Indigenous knowledge about preparation, dosage, or ceremonial context, Nagoya obligations may apply. The scope is broad and extends to non-monetary utilization.

✗ **MYTH:** ***"Since ayahuasca knowledge is widely shared, it can't be protected as 'traditional knowledge.'"***

✓ **FACT:** The Nagoya Protocol protects traditional knowledge associated with genetic resources regardless of how widely it has been disseminated. The fact that ayahuasca preparation methods are known across many Indigenous groups does not extinguish the rights of those communities. Art. 12 specifically addresses shared traditional knowledge held by multiple communities across borders.

✗ **MYTH:** ***"The 'Da Vine' patent case is ancient history — biopiracy is no longer a threat."***

✓ **FACT:** Biopiracy risks have intensified, not diminished. The psychedelic research boom has generated hundreds of patent applications related to psilocybin, DMT, and ayahuasca-adjacent compounds. Companies are filing patents on preparation methods, dosage protocols, and therapeutic applications that draw on Indigenous traditional knowledge. The Nagoya Protocol and the 2024 WIPO Treaty are more relevant than ever.

✗ **MYTH:** ***"Community protocols have no legal force."***

✓ **FACT:** Under the Nagoya Protocol, States are required to support the development of community protocols and to ensure that PIC from Indigenous communities is obtained when their traditional knowledge is accessed. In countries that have enacted implementing legislation, community protocols can have binding legal effect. Peru's Law 27811 (2002) and Brazil's Biodiversity Law (2015) provide specific legal frameworks for community-level ABS governance.

IN PRACTICE: PROTECTING AYAHUASCA KNOWLEDGE

STRATEGIC TAKEAWAYS FOR WAF ATTENDEES

(a) For Indigenous communities: Develop biocultural community protocols under Art. 12 that establish your rules for access to ayahuasca knowledge. Successful examples include Peru's Potato Park protocols and South Africa's Rooibos agreements. Intercultural spaces of dialogue can be a catalyst for initiating this process across Amazonian communities;

(b) For researchers: Before conducting any research involving ayahuasca plants, preparations, or traditional knowledge, verify whether the providing country has Nagoya Protocol implementing legislation and obtain PIC from both the national authority and the relevant Indigenous community. Document compliance through the ABS Clearing-House;

(c) For advocates: Monitor patent filings related to ayahuasca, DMT, harmine/harmaline, and traditional preparation methods. The WIPO 2024 Treaty's disclosure requirement means that patents based on undisclosed Indigenous knowledge can be challenged. Build partnerships with patent watch organizations and IP lawyers;

(d) For policymakers: Ensure that national ABS legislation specifically addresses traditional plant medicines and ceremonial knowledge. Many current ABS laws focus on pharmaceutical bioprospecting and may not adequately cover the ceremonial, spiritual, and cultural dimensions of ayahuasca knowledge. The Nagoya Protocol's flexibility allows for culturally appropriate implementation.

The Nagoya Protocol shifts the ayahuasca conversation from defense (against criminalization) to sovereignty (over knowledge and resources). It empowers Indigenous communities not just to protect their practices from prosecution, but to govern how their knowledge is used, shared, and benefited from. This is the transition from rights to self-determination.

KEY DOCUMENTS

Nagoya Protocol (full text) → CBD

Convention on Biological Diversity — Art. 8(j) →

ABS Clearing-House →

CIEL — Ayahuasca Patent Dispute →

WIPO 2024 Treaty on Genetic Resources & Traditional Knowledge →

#10

Drug Policy and Its Intersection with Ayahuasca

The Three UN Conventions, the Institutions That Run Them, and Where Ayahuasca Fits

THE BIG PICTURE

The global drug control regime is built on three UN conventions and administered by a network of institutions based primarily in Vienna and Geneva. These treaties, ratified by over 180 States, establish the scheduling framework that determines which substances are controlled, how strictly, and what exceptions exist. Ayahuasca exists in a unique position within this architecture: its primary active compound (DMT) is scheduled, but the plant preparation itself is not — a gap that creates both protection and vulnerability.

Understanding this system is essential for anyone engaged in ayahuasca advocacy, defense, or policy work. This document maps the architecture, identifies the key decision-making points, and shows where the ayahuasca community can engage.

THE THREE UN DRUG CONTROL CONVENTIONS

1961 SINGLE CONVENTION	1971 PSYCHOTROPIC CONVENTION	1988 TRAFFICKING CONVENTION
Controls narcotic drugs: opium, coca, cannabis. Plants ARE listed. 186 ratifications Ayahuasca: NOT listed. *Banisteriopsis caapi* and *Psychotria viridis* are not mentioned.	Controls psychotropic substances: LSD, MDMA, DMT. Plants NOT listed. 184 ratifications Ayahuasca: DMT is in Schedule I, but INCB confirms that ayahuasca is NOT controlled (see #3–4).	Controls trafficking, money laundering, precursor chemicals. Enforcement-focused. 191 ratifications Ayahuasca: No plants controlled. INCB 2010 Report §284 confirmed.

THE INSTITUTIONS: WHO DECIDES WHAT?

INSTITUTION	ROLE & AYAHUASCA RELEVANCE
CND	Commission on Narcotic Drugs (53 States, Vienna). The central policymaking body. Votes on scheduling changes recommended by WHO. *→ Where scheduling votes happen. If ayahuasca plants were ever proposed for scheduling, the CND would vote. Building relationships with sympathetic delegations is critical long-term strategy.*
INCB	International Narcotics Control Board (13 experts, Vienna). Monitors treaty compliance. Issues Annual Reports and interpretive statements. *→ Has confirmed ayahuasca is NOT controlled (2010, 2012). Its statements are the single most cited authority in ayahuasca defense. But also recommended governments "consider controlling" plant materials nationally.*
WHO/ECDD	World Health Organization Expert Committee on Drug Dependence (Geneva). Conducts scientific reviews and recommends scheduling changes. *→ Only body that can trigger a scheduling review. Has never reviewed ayahuasca. Reviewed coca leaf in 2025 (see #7). If a review were initiated, WHO's scientific assessment would be decisive.*
UNODC	UN Office on Drugs and Crime (Vienna). Provides technical assistance, publishes World Drug Report, supports enforcement cooperation. *→ Frames the global narrative on drugs. Its reports and language influence how national authorities perceive ayahuasca — as "drug" or as "cultural practice."*
ECOSOC	UN Economic and Social Council. Can confirm, alter, or reverse CND scheduling decisions. *→ The only body that can override a CND scheduling vote. A political safety valve that has never been used for this purpose.*

THE 2026 LANDSCAPE: KEY DEVELOPMENTS

The global drug policy landscape in 2026 is marked by simultaneous openings and threats:

- UNGASS 10th Anniversary (April 2026): The 2016 UN General Assembly Special Session on drugs embedded human rights and public health in international drug discourse for the first time. The 10-year anniversary is a moment for stocktaking — and for pressing on unfinished business, including the rights of traditional plant medicine communities.
- CND Resolution 68/6 — Independent Expert Panel: Established a panel of independent experts with a mandate to assess whether the international drug control system is "fit for purpose." This creates rare institutional space to question the regime's treatment of traditional plants and Indigenous rights.
- Securitization trend: A global revival of "tough on drugs" rhetoric and militarized anti-drug campaigns threatens to sideline human rights, harm reduction, and evidence-based approaches. The language of "narcoterrorism" is being revived to justify punitive approaches that could sweep traditional plant medicines into broader crackdowns.
- Psychedelic research boom: The rapid expansion of clinical research on psilocybin, MDMA, DMT, and ayahuasca is creating new regulatory questions. Several countries are developing frameworks for psychedelic-assisted therapy. This creates both opportunities (mainstreaming evidence of safety) and risks (medicalization that excludes Indigenous voices and traditional contexts).
- Cannabis precedent: Canada's 2018 legalization acknowledged treaty non-compliance. Uruguay legalized it in 2013. The cannabis experience shows that States can move beyond convention requirements when domestic policy demands it — but the political cost is significant and the legal framework remains contested. These precedents are instructive for ayahuasca, though the strategic position is different (defense vs. legalization).

WHERE AYAHUASCA SITS IN THE SYSTEM

Ayahuasca occupies a unique legal position in the drug control architecture — one that is both advantageous and precarious:

- Not listed in ANY convention: Unlike coca (1961 Convention), cannabis (1961), or synthetic DMT (1971), ayahuasca as a plant preparation is not scheduled under any of the three conventions. The INCB has explicitly confirmed this.
- DMT IS listed: The chemical compound DMT is in Schedule I of the 1971 Convention. This creates the ambiguity that prosecutors exploit: if the brew "contains" DMT, does the DMT prohibition extend to it? The INCB says no, but national courts are divided.

- No WHO review pending: Unlike coca (reviewed 2025) and cannabis (reviewed 2019), ayahuasca has never been the subject of a WHO ECDD critical review. No State has requested one. The longer this remains the case, the stronger the INCB's exclusion position becomes.
- National patchwork: The absence of international scheduling means each country decides for itself. Result: France/Italy prohibit, Brazil/Peru/Colombia protect, Spain acquits, most countries exist in gray zones. This patchwork is both the greatest vulnerability (no global floor of protection) and the greatest opportunity (no global ceiling of prohibition).

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"International drug treaties require countries to ban ayahuasca."***

✓ **FACT:** No. The INCB — the body charged with monitoring treaty compliance — has explicitly stated that ayahuasca is not under international control. No treaty requires prohibiting it. Countries that do prohibit ayahuasca are making a sovereign national choice that goes beyond what the conventions demand.

✗ **MYTH:** ***"The drug conventions cannot be changed or reformed."***

✓ **FACT:** The conventions can be amended by the CND (with ECOSOC confirmation), substances can be rescheduled on WHO recommendation, States can make reservations (as Bolivia did for coca), and inter se treaty modification is possible between willing parties. The system is rigid but not immutable. Cannabis legalization in Canada and Uruguay demonstrates that States will move beyond convention requirements when domestic policy demands it.

✗ **MYTH:** ***"Drug policy reform is only about cannabis and opioids — ayahuasca is a niche issue."***

✓ **FACT:** Ayahuasca sits at the intersection of drug policy, Indigenous rights, religious freedom, cultural heritage, and biodiversity — making it a more complex and cross-cutting issue than cannabis reform. The principles established through ayahuasca advocacy (traditional plant exclusion, cultural rights, FPIC for scheduling) have implications for peyote, iboga, psilocybin mushrooms, coca leaf, and every other traditional plant medicine.

✗ **MYTH:** ***"The securitization trend will inevitably lead to ayahuasca prohibition."***

✓ **FACT:** Securitization is a real threat, but ayahuasca's legal position (not internationally scheduled, INCB exclusion confirmed, IACtHR cultural identity protections) is structurally different from substances where criminal law unambiguously applies to possession and use. The risk is not a global ban but a patchwork of national crackdowns. The defense strategy is to reinforce the international framework (INCB position + human rights instruments) so that national deviations face legal challenge.

IN PRACTICE: ENGAGING THE DRUG POLICY SYSTEM

STRATEGIC TAKEAWAYS FOR WAF ATTENDEES

(a) Defend the INCB exclusion: The single most important strategic objective is to maintain the INCB's 2010/2012 position that ayahuasca is not controlled. Every national prosecution that is successfully defended reinforces this position. Every conviction that goes unchallenged weakens it;

(b) Engage the CND Resolution 68/6 expert panel: Submit evidence to the independent expert panel on the incoherence between the conventions' treatment of traditional plants and the human rights obligations of ratifying States. Emphasize that the regime's failure to protect traditional plant medicine communities is a systemic deficiency;

(c) Build CND alliances: Countries that already protect ayahuasca (Brazil, Peru, Colombia) should be engaged as allies at the CND. Side events at the annual CND session in Vienna are opportunities to present evidence, share ADF case outcomes, and build political support;

(d) Prevent a WHO review trigger: No State has requested a WHO ECDD review of ayahuasca. The coca review (#7) showed that once a review is triggered, the outcome is unpredictable. The strategic priority is to prevent a review from being initiated — while simultaneously building the evidence base so that if one occurs, the science overwhelmingly supports non-scheduling;

(e) Use the UNGASS anniversary: The 10th anniversary of the 2016 UNGASS (April 2026) is an advocacy moment. The UNGASS outcome document embedded human rights and public health language in the drug policy framework. Ayahuasca advocates should invoke this language to argue that traditional plant medicine communities' rights are part of the UNGASS legacy.

As IDPC noted in its 2026 outlook: "The rights of Indigenous Peoples should continue to gain prominence in UN debates, and the disappointing outcomes of the critical review of the coca leaf will not constitute the end of the efforts to decolonise the UN drug control system." The WAF 2026 is positioned to be a decisive moment in this trajectory.

KEY DOCUMENTS

TNI — Primer on UN Drug Control Conventions →

UNODC — How International Drug Control Works (2026) →

IDPC — What to Expect from 2026 →

Transform — Global Drug Policy Overview →

ICEERS — Ayahuasca International Legal Status →

#11

UNDP International Guidelines on Human Rights and Drug Policy

When the UN's Own Development Agency Says Drug Policy Must Respect Human Rights

WHAT IS IT?

The International Guidelines on Human Rights and Drug Policy (2019) are a comprehensive normative framework developed by UNDP, WHO, UNAIDS, and OHCHR in partnership with a coalition of UN member States and leading human rights experts. They represent the first systematic attempt to map the entire body of international human rights law onto drug policy — from supply to use, from criminal justice to public health, from development to Indigenous rights.

The Guidelines are organized into three sections: (I) foundational human rights principles, (II) specific rights standards (right to health, privacy, fair trial, non-discrimination, cultural rights, freedom of religion, and others), and (III) obligations toward specific groups — including a dedicated section on Indigenous peoples.

The Guidelines were launched at the 62nd session of the CND (2019) and align with the 2016 UNGASS outcome document and the 2018 UN System Common Position on drug policy.

WHAT LEGAL AUTHORITY DO THEY HAVE?

⚠ SOFT LAW

The Guidelines are not a treaty. However, they are not aspirational either. They are a systematic compilation and application of existing binding human rights obligations to drug policy. Every guideline is grounded in treaty provisions (ICCPR, ICESCR, CERD, CRC, CEDAW), treaty body interpretations (General Comments, Concluding Observations), and Special Rapporteur reports. When a guideline says "States shall," it reflects an existing binding obligation — the Guidelines simply make explicit what the law already requires.

KEY GUIDELINES FOR AYAHUASCA

GUIDELINE I.1

Right to Health

States must ensure that drug control measures do not undermine the right to the highest attainable standard of health. This includes respecting traditional healing practices and ensuring access to traditional medicines (ICESCR Art. 12; CESCR General Comment No. 14). States should not criminalize health-seeking behavior, including the use of traditional plant medicines in therapeutic or ceremonial contexts.

GUIDELINE I.5

Freedom of Religion and Belief

Drug policies must not unjustifiably interfere with the right to freedom of thought, conscience, and religion (ICCPR Art. 18; ACHR Art. 12). Any restrictions on the manifestation of religious practice — including the sacramental use of controlled or non-controlled substances — must be prescribed by law, pursue a legitimate aim, and be strictly necessary and proportionate. The Guidelines note that this right is non-derogable and that blanket prohibitions on ceremonial use are unlikely to meet the necessity test.

GUIDELINE I.7

Non-Discrimination & Racial Equality

Drug policies must not disproportionately impact ethnic minorities and Indigenous peoples. The Guidelines cite the Committee on the Elimination of Racial Discrimination's concern about racial profiling, over-policing, and disproportionate incarceration of Indigenous persons resulting from drug policies. States must take measures to eliminate racial discrimination in drug enforcement.

GUIDELINE I.9

Right to Cultural Life

States must respect the right of everyone to take part in cultural life (ICESCR Art. 15), including the cultural practices of Indigenous peoples. Drug control measures that criminalize traditional plant use directly violate this right. The Guidelines call for drug policies to be consistent with States' cultural rights obligations, including those under UNDRIP and ILO C169.

GUIDELINE III.4

Indigenous Peoples (Dedicated Section)

This is the Guidelines' most directly relevant section for ayahuasca. Key obligations identified:

- States must ensure that drug control measures respect the rights of Indigenous peoples to maintain their traditional, religious, and medical practices, including the use of controlled substances for ceremonial and healing purposes;
- States must ensure FPIC before adopting drug policies that affect Indigenous peoples' traditional practices (grounded in UNDRIP Arts. 19, 32 and ILO C169 Art. 6);
- Criminalization of Indigenous peoples for traditional plant use is identified as a human rights violation stemming from the historical exclusion of Indigenous voices from the drug control treaty-making process;
- States must address the disproportionate impact of drug enforcement on Indigenous communities, including racial profiling and discriminatory sentencing;
- *The ban on traditional uses of coca, opium, and cannabis was adopted at a time when "scant attention was given to cultural and Indigenous rights and before the adoption of key international instruments" protecting Indigenous peoples.*

WHY IT MATTERS FOR AYAHUASCA

The Guidelines are a game-changer because they come from within the UN system itself — developed by the same family of organizations that administers the drug control regime:

- UN vs. UN: When a defendant argues that criminalizing practices involving ayahuasca violates human rights, prosecutors often respond that international drug control treaties require it. The UNDP Guidelines demonstrate that four UN agencies — including WHO, which manages the scheduling process — have concluded that human rights obligations must be respected in drug policy. The UN itself has acknowledged the tension between its drug control and human rights mandates.
- Indigenous section as authoritative statement: The dedicated Indigenous peoples section (III.4) is the most comprehensive UN-authored statement connecting drug policy to Indigenous rights. It explicitly recognizes that the original treaties were adopted without Indigenous participation and that criminalizing traditional plant use is a human rights violation — a remarkable concession from within the system.

- Bridges drug control and human rights regimes: The Guidelines systematically show that every major human rights treaty applies to drug policy. This means defense counsel can cite a single document that maps ICCPR Art. 18, ICESCR Art. 15, CERD, UNDRIP, and ILO C169 onto the drug control context — rather than building the argument from scratch each time.
- 2018 UN System Common Position: The Guidelines align with the 2018 Common Position in which the entire UN system committed to "truly balanced, comprehensive, integrated, evidence-based, human rights-based, development-oriented and sustainable responses to the world drug problem." This language can be cited in any jurisdiction as evidence of the UN's own institutional commitment to human rights-based drug policy.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"The Guidelines are just a UNDP opinion — they don't reflect the position of the drug control bodies."***

✓ **FACT:** The Guidelines were co-developed by WHO (the body that manages scheduling reviews), UNAIDS, OHCHR, and UNDP, with input from member States. They reflect a cross-UN institutional consensus. While the CND and INCB were not formal co-authors, the Guidelines cite the same treaty provisions that bind all UN bodies. The 2018 UN System Common Position, endorsed by 31 UN entities, further validates this approach.

✗ **MYTH:** ***"The Guidelines only apply to 'hard drugs' like heroin and cocaine, not traditional plants."***

✓ **FACT:** The Guidelines explicitly address Indigenous peoples' traditional plant use as a human rights issue. The Indigenous peoples section (III.4) specifically discusses the criminalization of traditional uses of coca, cannabis, opium, and other plants. The principles apply to any substance subject to drug control, including plant preparations like ayahuasca.

✗ **MYTH:** ***"Since the Guidelines are soft law, they can be ignored."***

✓ **FACT:** The Guidelines are soft law in form but hard law in content. Each guideline is grounded in binding treaty provisions (ICCPR, ICESCR, CERD, CRC, CEDAW) and authoritative treaty body interpretations. Ignoring the Guidelines means ignoring the underlying binding obligations they compile. Courts have increasingly accepted human rights arguments in drug cases, and the Guidelines provide the authoritative roadmap.

✗ **MYTH:** ***"These Guidelines tell States to legalize drugs."***

✓ **FACT:** The Guidelines do not advocate for or against legalization. They identify the human rights obligations that States must respect regardless of their chosen drug policy model. A State can maintain strict controls and still comply with the Guidelines — but it cannot maintain policies that violate the right to health, non-discrimination, cultural life, or religious freedom. The question is not "prohibition or legalization" but "does the policy respect human rights?"

IN PRACTICE: AYAHUASCA DEFENSE

ADF CASE INSIGHT

The UNDP Guidelines serve as a "master reference" in ayahuasca defense. Their practical value is in consolidating what otherwise requires citing dozens of separate instruments:

(a) Single-document synthesis: Instead of separately arguing ICCPR Art. 18, ICESCR Art. 15, CERD, UNDRIP, and ILO C169, defense counsel can present the Guidelines as a comprehensive UN-authored compilation showing that all these instruments converge on the same conclusion: applying criminal law to people´s traditional plant practices violates human rights;

(b) "The UN says so" argument: The fact that UNDP, WHO, UNAIDS, and OHCHR jointly authored the Guidelines gives them institutional weight that individual treaty body statements may lack. Presenting the Guidelines in court conveys that the UN system as a whole recognizes the human rights implications of drug policy;

(c) Proportionality framework: The Guidelines provide a structured proportionality analysis: Is the criminal law measure prescribed by law? Does it pursue a legitimate aim? Is it necessary? Is it proportionate? Is it non-discriminatory? This framework can be directly applied to any ayahuasca prosecution;

(d) Policy advocacy tool: Beyond litigation, the Guidelines are invaluable for policy advocacy. When engaging governments, legislators, or regulatory bodies, the Guidelines provide UN-backed evidence that human rights must set the boundaries within which drug policy operates — not an afterthought. This is particularly relevant for WAF 2026's policy track.

The Guidelines represent a paradigm shift: for the first time, the UN's own development and health agencies have produced a document that systematically holds drug policy accountable to human rights standards. For those working to defend people who face prosecution for their involvement with ayahuasca, this means the question is no longer whether drug control or human rights should prevail, but how criminal law must be constrained if it is to remain within human rights boundaries.

KEY DOCUMENTS

UNDP Guidelines on Human Rights and Drug Policy →

Commentary on the Guidelines (with full legal references) →

2018 UN System Common Position on Drug Policy →

International Centre on Human Rights and Drug Policy →

TNI — Human Rights and Drug Policy →

#12

Practices involving Ayahuasca and the Three Prohibition Criteria

Therapeutic Value, Dependence Potential & Public Health Risk: What the Science Actually Says

THE FRAMEWORK: HOW THE WHO DECIDES WHETHER TO SCHEDULE A SUBSTANCE

When the WHO Expert Committee on Drug Dependence (ECDD) conducts a critical review, it evaluates three core criteria to determine whether to place people's access to and use of a substance under international control :

- (1) Dependence and abuse potential — Do people who use these substances develop dependence? Do patters of use among people indicate abuse potential? Does it activate the brain's reward system?
- (2) Public health risk — Does the substance pose a serious risk to public health? What is the evidence of harm at the population level?
- (3) Therapeutic value — Does the substance have recognized or emerging medical or therapeutic applications?

For Schedule I placement (the most restrictive), the ECDD must find high abuse potential, serious public health risk, and limited or no therapeutic value. For ayahuasca, the available scientific evidence fails to meet any of these three thresholds. The WHO criteria use the term 'abuse' — a contested framing; the relevant question is whether the preparation produces dependence or harmful patterns of use.

CRITERION 1

Dependence & Abuse Potential

VERDICT: AYAHUASCA DOES NOT MEET THIS CRITERION

- No evidence of physiological dependence: Ayahuasca does not produce physical withdrawal symptoms. Long-term users in the ICEERS "Ayahuasca and Public Health" study series (Spain, Netherlands, Portugal) showed no signs of dependence.
- Does not activate the brain's reward system: Unlike substances associated with compulsive use patterns (cocaine, opioids, amphetamines), ayahuasca does not stimulate dopaminergic reward pathways. It acts primarily on serotonergic systems (5-HT2A receptors), which are not associated with compulsive use.
- No tolerance development: People who use ayahuasca repeatedly do not require increasing doses to achieve the same effect. In fact, experienced users often report that lower doses become sufficient over time.
- Powerful emetic properties: Ayahuasca characteristically produces nausea, vomiting, and diarrhea — effects that are incompatible with recreational abuse patterns. These effects are considered integral to the traditional healing process by the communities that work with ayahuasca, and function as a practical barrier to compulsive or casual patterns of use.
- Anti-addictive properties: Emerging evidence suggests that people who engage with ayahuasca in ceremonial contexts may experience reductions in problematic patterns of consumption. The Portuguese study (Teixeira et al., 2026) found self-reported abusive substance use patterns dropped from 24.2% before ayahuasca use to 8.3% afterwards. Studies by Thomas et al. (2013) and Fernandez et al. (2014) showed reduced use of alcohol, tobacco, and cocaine among ayahuasca users.
- Recreational use is virtually non-existent: Due to the emetic effects, the requirement for elaborate preparation, and the intense psychological nature of the experience, there is no documented recreational use pattern among people who access ayahuasca comparable to those seen with other psychoactive substances.

CRITERION 2

Public Health Risk

VERDICT: AYAHUASCA DOES NOT MEET THIS CRITERION

- No documented lethal overdoses: Despite centuries of traditional use and decades of expanding global use, there are no confirmed deaths from pharmacological toxicity of ayahuasca when used in traditional preparation without contraindicated substances.
- Extremely high safety margin: The lethal dose of DMT in animal studies is approximately 32 mg/kg (intravenous), far above the amounts present in typical ayahuasca doses. The β-carboline alkaloids from *B. caapi* have similarly wide safety margins.
- Population-level health data: The ICEERS "Ayahuasca and Public Health" study series across Spain, Netherlands, and Portugal found that people who participate in ceremonial ayahuasca practices had better health indicators than general population controls — lower rates of chronic conditions, lower BMI, less alcohol consumption, more physical activity, and higher self-reported well-being.
- Adverse event rate is low: The Portuguese study (Teixeira et al., 2026) found only 5.7% of respondents reported any adverse effects. Serious adverse events occur among people with specific contraindications — pre-existing psychiatric conditions or concurrent use of SSRIs or MAOIs — not among people who access ayahuasca in traditional ceremonial contexts without those risk factors.
- Reported deaths involve confounding factors: The small number of the people who died had polydrug interactions, pre-existing medical conditions, or had consumed non-traditional additives (e.g., tobacco, datura) in unregulated settings — circumstances unrelated to the pharmacological properties of ayahuasca prepared and used in traditional form.
- The ADF has documented over 448 cases across 49 countries. In none of these cases has the prosecution presented evidence that people engaging in structured ceremonial ayahuasca use have caused or faced population-level public health harm.

CRITERION 3

Therapeutic Value

VERDICT: AYAHUASCA HAS SIGNIFICANT AND GROWING THERAPEUTIC EVIDENCE

- Treatment-resistant depression: Palhano-Fontes et al. (2019), published in Psychological Medicine, demonstrated rapid antidepressant effects in treatment-resistant depression patients within 24–48 hours of a single ayahuasca session, sustained for up to several weeks. This is the first randomized, placebo-controlled trial of ayahuasca for depression.
- Substance use disorders: Thomas et al. (2013) found significant reductions in cocaine, alcohol, and tobacco use among participants in a Canadian ayahuasca-assisted treatment program. Fernandez et al. (2014) documented reduced addiction severity among regular ritual users.
- Anxiety and PTSD: Ongoing clinical research explores ayahuasca's potential for anxiety disorders and trauma-related conditions, building on its documented modulation of fear processing and emotional regulation.
- Traditional medicine recognition: UNDRIP Art. 24, ICESCR Art. 12 (right to health), and ILO C169 Art. 25 all recognize the right to traditional medicines. Ayahuasca has been the central therapeutic modality of dozens of Amazonian Indigenous medical systems for centuries.
- Over 500 scientific publications: The body of research on ayahuasca continues to grow rapidly, with studies on neuroplasticity, anti-inflammatory properties, serotonergic mechanisms, and potential applications in palliative care, eating disorders, and existential distress.
- Brazil's CONAD (2010): After extensive scientific review, Brazil's National Drug Policy Council concluded that ayahuasca is safe in ritual contexts and affirmed its legal use — a de facto State-level recognition of therapeutic/ritual value.

SUMMARY: AYAHUASCA VS. THE SCHEDULING CRITERIA

CRITERION	SCHEDULE I REQUIRES	AYAHUASCA EVIDENCE
Dependence / Abuse potential	High abuse potential, significant dependence risk	No dependence, no reward system activation, anti-addictive properties, emetic effects prevent recreational use
Public health risk	Serious risk to public health at population level	No lethal overdoses, better health outcomes than general population, low adverse event rates, ADF: 448 cases, zero evidence of population harm
Therapeutic value	Limited or no therapeutic value (for Schedule I)	Rapid antidepressant effects (RCT), substance use reduction, traditional

medicine recognition, 500+ publications, CONAD approval

Conclusion: Ayahuasca fails to meet ANY of the three criteria required for international scheduling. It does not produce dependence, does not pose a serious public health risk, and has significant and growing evidence of therapeutic value.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"Ayahuasca contains DMT, and DMT is in Schedule I, so ayahuasca is dangerous."***

✓ **FACT:** DMT's Schedule I classification reflects a 1971 political decision, not a 2026 scientific assessment. The scheduling of isolated, synthetic DMT says nothing about the safety of a traditional plant decoction containing trace amounts of DMT in synergy with β-carbolines. The INCB has explicitly confirmed this distinction. The three prohibition criteria must be evaluated for ayahuasca as a whole preparation, not for an isolated compound.

✗ **MYTH:** ***"People have died from ayahuasca, so it must be dangerous."***

✓ **FACT:** Reported deaths consistently involve confounding factors: concurrent use of contraindicated medications (SSRIs, lithium), non-traditional additives (tobacco, datura), pre-existing cardiac or psychiatric conditions, or negligent facilitation. No death has been attributed to the pharmacological toxicity of traditional ayahuasca in structured ceremonial settings. Context matters: the safety profile of a substance must be evaluated within its customary conditions of use, not in cases of misuse or adulteration.

✗ **MYTH:** ***"The therapeutic evidence is too preliminary to count."***

✓ **FACT:** While more large-scale RCTs are needed, the existing evidence base includes a published randomized placebo-controlled trial (Palhano-Fontes et al., 2019), multiple observational studies with positive outcomes, centuries of traditional medical use recognized by WHO standards (Art. 25 ILO C169, Art. 24 UNDRIP), and a national regulatory approval (Brazil's CONAD 2010). This evidence base is stronger than what existed for many substances when they were first evaluated.

✗ **MYTH:** ***"Ayahuasca can cause psychosis."***

✓ **FACT:** In structured ceremonial or clinical settings with proper screening, psychotic episodes are extremely rare. The Portuguese study found only 5.7% adverse effects of any kind. Long-term practitioners in the ICEERS series showed no elevated rates of psychiatric disorders compared to the general population. Screening for personal or family history of psychotic disorders is standard practice in both traditional and clinical settings.

The question is not whether a substance can cause harm in any conceivable circumstance, but whether it poses a population-level public health risk — and the evidence says it does not.

IN PRACTICE: USING THE SCIENCE IN DEFENSE

ADF CASE INSIGHT

The three-criteria analysis is deployed in ADF cases in two ways:

(a) Challenging the legal basis for prosecution: In countries where the drug law requires the substance to pose a "risk to public health" (e.g., Spain's Art. 368 Penal Code), the scientific evidence is presented to demonstrate that ayahuasca does not meet this threshold. Spain's TSJM Ruling 316/2025 relied in part on this reasoning;

(b) Proportionality argument: Even where the drug law does not require a specific health risk finding, the scientific evidence supports the argument that criminal sanctions are disproportionate. If ayahuasca does not produce dependence, does not cause population-level harm, and has therapeutic potential, then imprisonment is a manifestly disproportionate response;

(c) Expert testimony: The ADF maintains a network of scientific experts (pharmacologists, psychiatrists, ethnobotanists) who can provide testimony and written opinions for defense cases. Key references include the ICEERS Technical Report (Bouso et al., 2021) and the Ayahuasca and Public Health study series (Spain 2019, Netherlands 2022, Portugal 2026);

(d) Preemptive policy work: The three-criteria analysis is also the basis for policy advocacy. If a government considers scheduling ayahuasca nationally, the evidence presented here demonstrates that such scheduling would be scientifically unjustified and inconsistent with WHO ECDD standards. This is the "defend the exclusion" strategy described in Document #7.

The science is the foundation of every other argument in this series. Without evidence of harm, the legal arguments (INCB exclusion, human rights, cultural identity, religious freedom) stand on firm ground. With evidence of harm, they would face a much harder road. The current state of the science is unambiguously favorable to ayahuasca's non-scheduling.

KEY SCIENTIFIC REFERENCES

Palhano-Fontes et al. (2019). Rapid antidepressant effects of ayahuasca in treatment-resistant depression. Psychological Medicine, 49(4), 655–663.

Teixeira et al. (2026). Ayahuasca and Public Health III: Portugal. Journal of Psychoactive Drugs.

Bouso et al. (2021). ICEERS Technical Report on Ayahuasca.

Thomas et al. (2013). Ayahuasca-assisted therapy for addiction. Current Drug Abuse Reviews, 6(1).

Ona et al. (2019). Ayahuasca and Public Health I: Spain. J. Psychoactive Drugs, 51(2).

Kohek et al. (2022). Ayahuasca and Public Health II: Netherlands. J. Psychoactive Drugs, 54(1).

#13

Regulatory Models for Ayahuasca

From Prohibition to Protection: How Countries Have Approached Ayahuasca — and What Works

THE GLOBAL PATCHWORK

There is no single international regulatory model for ayahuasca. Because ayahuasca is not listed in any UN drug control convention (see #3–4), each country has developed its own approach — or, more commonly, has not developed any approach at all. The result is a spectrum ranging from explicit constitutional protection to outright prohibition, with the vast majority of countries existing in an undefined gray zone where criminal law neither expressly applies to practices involving ayahuasca nor expressly exempts them.

This document maps five distinct regulatory models that have emerged worldwide. Each model represents a different way of resolving the tension between drug control, Indigenous rights, religious freedom, public health, and cultural heritage. Understanding these models is essential for anyone advocating for evidence-based ayahuasca policy.

✅ Model 1: Administrative Regulation

Brazil (CONAD Resolution 01/2010)

How it works: Ayahuasca is regulated administratively, not through criminal or legislative channels. Brazil's National Drug Policy Council (CONAD) has authorized ritual and religious use through successive administrative resolutions since 1987, culminating in the 2010 Resolution that established a comprehensive "deontology of ayahuasca use".

- Based on constitutional freedoms of conscience, belief, and worship (Art. 5 VI) and state protection of Indigenous and Afro-Brazilian cultural expressions (Art. 215 §1)
- Permits ritual/religious use; prohibits commercialization, tourism, and proselytizing
- Children and pregnant women's participation authorized since 2004 (CONAD Res. 05/04)
- Developed through multidisciplinary working groups with participation of religious organizations

Strengths: Evidence-based, participatory process. Most comprehensive regulatory framework worldwide.

Weaknesses: Designed for syncretic religions (UDV, Santo Daime); poorly adapted for Indigenous urban practitioners. Commercialization prohibition creates tensions with growing retreat sector. Transport rules remain ambiguous, leading to seizures. Indigenous communities were excluded from the drafting process.

✅ Model 2: Cultural Heritage Recognition

Peru (Res. N° 836/INC, 2008) | Colombia (constitutional Indigenous autonomy)

How it works: Ayahuasca is recognized as part of the national cultural heritage, protected through cultural patrimony law rather than drug control exceptions. Peru declared ayahuasca's traditional use by Indigenous communities as Cultural Heritage of the Nation in 2008. Colombia protects ceremonial use through its constitutional framework for Indigenous territorial and cultural autonomy.

- Peru's declaration emphasizes social, medicinal, and ethnobotanical values, grounded in the traditional knowledge of Indigenous communities
- Colombia's 1991 Constitution (Arts. 7, 246, 330) recognizes Indigenous jurisdictional and territorial autonomy, which encompasses governance of ceremonial practices
- Protection is framed as cultural right rather than religious exemption, avoiding the need to define ayahuasca use as "religion" in the Western sense

Strengths: Centers Indigenous agency. Avoids problematic "religion" categorization. Connects to UNESCO cultural heritage framework and Nagoya Protocol protections.

Weaknesses: Limited scope — primarily protects traditional/Indigenous use. Less clear protection for non-Indigenous ceremonial or therapeutic use. Peru has no specific criminal law provisions; regulation of ayahuasca tourism remains undeveloped.

⚠️ Model 3: Religious Freedom Exemption

United States (Gonzales v. O Centro, 2006) | Netherlands (Santo Daime exemption, 2019)

How it works: Ayahuasca is generally prohibited, but specific exemptions are granted to recognized religious groups through judicial rulings or administrative decisions. In the US, the Supreme Court ruled in Gonzales v. O Centro Espírita (2006) that the UDV church could import and use ayahuasca under the Religious Freedom Restoration Act (RFRA). In the Netherlands, the Santo Daime received a formal exemption after decades of litigation.

- US: RFRA requires the government to demonstrate a "compelling interest" to justify burdening religious exercise. The Court found the government failed to meet this standard for the UDV's sacramental use
- Netherlands: After years of conflicting court decisions, the Santo Daime was formally exempted from prosecution through prosecutorial guidelines though this ruling has been challenged. Other groups remain in legal ambiguity

- Exemptions are typically group-specific, not substance-specific — each new group must litigate independently

Strengths: Creates legal certainty for the exempt groups. Grounded in fundamental rights jurisprudence.
Weaknesses: Requires framing practice as "religion" in a Western institutional sense. Group-by-group litigation is expensive and slow. Indigenous non-institutional spiritual practices may not fit the "religion" framework. Does not protect individual use, therapeutic contexts, or unaffiliated ceremonial settings.

⚠ Model 4: Judicial Precedent / De Facto Tolerance

Spain (TSJM Ruling 316/2025, AEMPS letters) | Several Latin American countries

How it works: Ayahuasca is not explicitly regulated, but a consistent pattern of acquittals, dismissals, and administrative confirmations has created de facto legal tolerance. In Spain, all ayahuasca cases have resulted in acquittals, including the 2025 TSJM ruling. No person is imprisoned in Spain for ayahuasca.

- Relies on the distinction between DMT (scheduled) and ayahuasca (not scheduled) as established by the INCB
- Courts apply the requirement that the substance must be expressly listed and must pose a concrete risk to public health (Spain's Art. 368 Penal Code)
- Creates a growing body of favorable case law that future courts may follow, though not formally binding nationwide

Strengths: Organic, evidence-based evolution. Does not require legislative action. Each acquittal strengthens the precedent. Respects separation of powers.
Weaknesses: Legal uncertainty until a supreme court ruling establishes binding doctrine. Individuals still face arrest, prosecution, and pretrial detention. Dependent on the quality of defense counsel. A single adverse ruling could shift the trajectory. Not a substitute for clear legislation.

✗ Model 5: Explicit Prohibition

France (2005) | Italy

How it works: The State has explicitly listed the ayahuasca plants *(Banisteriopsis caapi, Psychotria viridis)* and/or the brew itself as as substances subject to domestic controlled-substance law, going beyond what the UN conventions require. France added the plants and the brew to its controlled substances list in 2005. Italy has adopted similar measures.

- Goes beyond international treaty obligations — the INCB has confirmed that no plants are controlled under the 1971 Convention
- Eliminates the plant/compound distinction that protects ayahuasca in most other jurisdictions
- Criminalizes all use — Indigenous, religious, therapeutic, and personal — without distinction

Strengths: Legal clarity (though clarity in the service of prohibition). Eliminates gray zone uncertainty.
Weaknesses: Contradicts INCB position. Violates Indigenous rights (ILO C169, UNDRIP). Fails proportionality analysis under ICCPR Art. 18 and ECHR Art. 9. Ignores scientific evidence of safety (#12). Drives practice

underground, increasing actual health risks. France's prohibition has not eliminated ayahuasca use; it has made it more dangerous.

MODELS AT A GLANCE

MODEL	LEGAL BASIS	SCOPE	INDIGENOUS	NON-INDIG.	CERTAINTY
Admin. Reg. (Brazil)	CONAD Res.	Religious/ ritual	Protected	Protected (if religious)	High
Cultural Heritage (Peru/Col.)	Heritage law / Constitution	Traditional Indigenous	Strongly protected	Gray zone	Medium
Religious Exemption (US/NL)	RFRA / court order	Specific groups	If organized religion	If organized religion	High for exempt group
Judicial Precedent (Spain)	Case law / INCB position	All use (de facto)	Favorable	Favorable	Medium (growing)
Prohibition (France/Italy)	National schedule	All use criminalized	Criminalized	Criminalized	High (repressive)

THE EMERGING MODEL: WHAT COULD A RIGHTS-BASED FRAMEWORK LOOK LIKE?

None of the existing models fully address the complexity of ayahuasca in 2026. A rights-based regulatory framework would need to integrate multiple dimensions:

- Indigenous sovereignty first: Indigenous peoples must be at the center of any regulatory process, not added as an afterthought (the mistake Brazil made in 2002). FPIC (ILO C169 Art. 6, UNDRIP Arts. 19, 32) is not optional. Community protocols (Nagoya Protocol Art. 12) should be the governance mechanism.
- Cultural framework, not just religious: Peru's cultural heritage model is more inclusive than the US religious exemption model. Not all ayahuasca use fits Western "religion" categories. Cultural rights (ICESCR Art. 15, ACHR Art. 26) provide a broader protective umbrella but with challenges.
- Evidence-based safety standards: Regulation should focus on reducing actual harm (screening for contraindications, facilitator training, emergency protocols) rather than on prohibiting the substance itself. Brazil's CONAD approach of developing guidelines through multidisciplinary review is instructive, though it needs updating.
- Protection against biopiracy and commercialization: Nagoya Protocol obligations (#9), IP protections (#14), and benefit-sharing mechanisms must be integrated into any regulatory framework to prevent exploitation of Indigenous knowledge.
- Flexibility across contexts: A one-size-fits-all approach will not work. The framework must accommodate Indigenous ceremonial use, syncretic religious use, traditional therapeutic use,

clinical research, and personal spiritual practice — with differentiated governance appropriate to each context.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"Brazil's model is the gold standard that other countries should copy."***

✓ **FACT:** Brazil's CONAD framework is the most developed, but it was designed for syncretic religions (UDV, Santo Daime) and is poorly adapted for Indigenous practitioners, therapeutic use, or the scale of current global demand. Public hearings have revealed deep structural tensions: Indigenous leaders forced to adopt Christian institutional forms, ambiguous transport rules, and a regulatory gap for the growing retreat sector. The model needs significant updating.

✗ **MYTH:** ***"The US religious freedom model is the most progressive approach."***

✓ **FACT:** The US RFRA exemption model provides strong protection for the UDV and Santo Daime — but only for them. Every other group must litigate independently, at enormous cost. The model requires fitting into Western "religion" categories, excludes therapeutic and personal use, and provides zero protection for Indigenous practitioners who do not organize as formal religious entities.

✗ **MYTH:** ***"The only options are prohibition or full legalization."***

✓ **FACT:** The spectrum of existing models shows that the binary of "ban everything or legalize everything" is a false dichotomy. Brazil regulates without legalizing commercially. Peru protects without criminalizing. Spain tolerates without legislating. The US exempts specific groups without broader legalization. The regulatory space between prohibition and legalization is where most innovative approaches operate.

✗ **MYTH:** ***"Regulation will lead to commercialization and loss of sacred context."***

✓ **FACT:** Unregulated environments are what lead to commercialization. Retreats charging thousands of dollars operate most prolifically in countries with no regulation. A well-designed framework can actually protect sacred context by establishing standards for facilitation, centering Indigenous governance, and creating accountability for exploitative practices. The absence of regulation is not protection — it is abandonment.

IN PRACTICE: WHAT WAF ATTENDEES CAN DO

STRATEGIC TAKEAWAYS

(a) Study your jurisdiction: Which model does your country currently follow? Is it explicit regulation, judicial precedent, gray zone, or prohibition? The ADF Country-by-Country Legal Map provides baseline information. Understanding your starting point is essential for effective advocacy;

(b) Build cross-model coalitions: interdisciplinary frameworks bring together people from every regulatory model and disciplines in the world. Use this opportunity to learn what works and what doesn't;

(c) Center Indigenous voices in regulatory design: The co-creation model with Indigenous leaders is a template for how regulatory processes should work. Any regulatory framework developed without Indigenous participation at its heart will reproduce the same structural exclusions;

(d) Advocate for evidence-based harm reduction: Regardless of the regulatory model, advocate for safety standards that focus on actual risk reduction: screening protocols, facilitator training and accountability, contraindication awareness, emergency response plans, and ethical guidelines for cross-cultural practice. The science from Document #12 provides the foundation.

The question is no longer whether ayahuasca should be regulated, but how. Prohibition has failed. Unregulated expansion creates new harms. The challenge for the ayahuasca community is to design governance models that protect both sacred traditions and public safety — and the answer will be different in every jurisdiction.

KEY DOCUMENTS

ICEERS — Country-by-Country Legal Map →

ICEERS — Brazil Country Profile →

Chacruna — The Future of Ayahuasca Under Dispute in Brazil (2025) →

ICEERS — Can Ayahuasca Be Used Legally in Spain? (2025) →

Gonzales v. O Centro Espírita (US Supreme Court, 2006) →

#14

Intellectual Property & Risks of Patents

The Psychedelic Patent Boom, Biopiracy 2.0, and How to Defend Indigenous Knowledge

THE NEW THREAT: PSYCHEDELIC PATENTS

The psychedelic research boom has generated a patent gold rush. Companies including Compass Pathways, MindMed, Atai Life Sciences, and Cybin are filing hundreds of patent applications on psychedelic compounds, therapeutic protocols, delivery methods, and dosage formulations. While most patents currently focus on psilocybin and MDMA, DMT-related patents are growing rapidly — and ayahuasca sits directly in the crosshairs.

This is not hypothetical. In 2016, a German citizen filed a patent application for "synthetic ayahuasca" — extracting and reassembling the bioactive molecules (harmine, harmaline, DMT) into a standardized pharmaceutical preparation with defined concentrations, intended for therapeutic use. If granted, such a patent could restrict access to formulations that replicate what Indigenous peoples have prepared for millennia.

As the Harvard Law Review noted: "Because Indigenous communities pioneered many aspects of modern psychedelic therapies, their patenting by Western corporations may promote biopiracy, the exploitation of Indigenous knowledge without compensation."

HISTORY REPEATING: FROM "DA VINE" TO "SYNTHETIC AYAHUASCA"

1986: Loren Miller obtains US Plant Patent No. 5,751 on a variety of *Banisteriopsis caapi* he named "Da Vine," claiming novelty based on flower color and "medicinal properties" known to Indigenous peoples for centuries.

1999: CIEL, on behalf of COICA and the Amazon Coalition, successfully challenges the patent. PTO rejects it based on prior herbarium specimens. However, the PTO refuses to address COICA's argument that the plant's sacred value should preclude patenting.

2016: "Synthetic ayahuasca" patent application filed, proposing to extract, purify, and reassemble the brew's bioactive molecules into a standardized pharmaceutical preparation. A more sophisticated form of the same appropriation.

2023–2026: Hundreds of DMT-related patent applications filed by biotech companies. Patent claims increasingly cover therapeutic protocols, dosage regimens, and preparation methods that draw directly on Indigenous traditional knowledge without acknowledgment or compensation.

The pattern is clear: each wave of appropriation becomes more sophisticated. From patenting the plant itself, to patenting its isolated compounds, to patenting the preparation method, to patenting the therapeutic protocol. Each step extracts more value from Indigenous knowledge while appearing more "innovative."

FIVE PATENT THREATS TO AYAHUASCA

THREAT 1

Plant Patents

Direct patenting of *Banisteriopsis caapi* varieties or *Psychotria viridis* cultivars. The "Da Vine" precedent showed this is possible under US plant patent law. While the specific patent was revoked, the legal mechanism remains available. Any "new" cultivar with distinctive characteristics could be claimed.

THREAT 2

"Synthetic Ayahuasca" Formulations

Pharmaceutical compositions that combine harmine, harmaline, and DMT in defined ratios — replicating what the traditional brew achieves naturally. The 2016 patent application is the prototype. If granted, it could create exclusive rights over standardized versions of the medicine.

THREAT 3

Therapeutic Protocol Patents

Patents on the use of DMT/ayahuasca for specific indications (depression, PTSD, addiction) in specific dosages with specific therapeutic frameworks. Companies are filing patents on "methods of treatment" that

describe guided psychedelic therapy sessions — practices developed by Indigenous healers over centuries. This process is different in every country and legislation should be reviewed case by case

THREAT 4

Delivery Method & Bioavailability Patents

Novel delivery systems (sublingual, intranasal, transdermal) for DMT or harmine/harmaline that bypass the traditional oral decoction. While these are more genuinely "novel," they still build on Indigenous knowledge of the pharmacological synergy.

THREAT 5

Digital Sequence Information (DSI)

Genetic sequencing of *B. caapi* and *P. viridis* varieties and their biosynthetic pathways for alkaloid production. This emerging frontier allows companies to patent genetic information without accessing physical plant material, potentially circumventing Nagoya Protocol requirements.

FIVE DEFENSES AGAINST PATENT APPROPRIATION

DEFENSE 1

Prior Art Documentation

The most effective defense against patent claims is comprehensive prior art documentation. Herbarium specimens, ethnobotanical publications, and traditional knowledge databases can be used to challenge novelty claims. The Porta Sophia database, created by the psychedelic community, documents existing knowledge to prevent overly broad patents. Indigenous communities should prioritize creating documented records of their preparation methods, dosage protocols, and therapeutic practices.

DEFENSE 2

Nagoya Protocol Compliance (Doc #9)

Under the Nagoya Protocol, any research or commercial use of genetic resources or associated traditional knowledge requires Prior Informed Consent (PIC) from Indigenous communities and Mutually Agreed Terms (MAT) for benefit-sharing. Patent applications that do not demonstrate Nagoya compliance can be challenged. The 2024 WIPO Treaty adds a disclosure requirement: patent applicants must disclose the country of origin and the Indigenous community involved.

DEFENSE 3

Community Protocols

Nagoya Protocol Art. 12 empowers Indigenous communities to develop binding protocols governing access to their knowledge. These protocols can establish that preparation methods, ceremonial practices, and therapeutic knowledge cannot be used in patent applications without explicit community authorization. Successful models include Peru's Potato Park and South Africa's Rooibos agreements.

DEFENSE 4

Patent Challenges & Opposition

Once a patent is filed, it can be challenged through opposition proceedings (in jurisdictions that allow them), re-examination requests (US PTO), or invalidity actions in court. The "Da Vine" revocation was achieved through a re-examination request. Organizations like CIEL, Chacruna Institute, and ICEERS can coordinate opposition efforts when problematic patents are identified.

DEFENSE 5

Psychedelic Patent Pledges

The Harvard Law Review essay proposes "psychedelic patent pledges" — voluntary commitments by companies not to enforce patents against Indigenous communities, traditional practitioners, or academic researchers. While voluntary, these pledges can become industry norms and influence investor expectations. Advocacy at the WAF can help establish community standards for ethical IP practices.

THE LEGAL FRAMEWORK: WHAT PROTECTS INDIGENOUS KNOWLEDGE?

INSTRUMENT	IP PROTECTION FOR AYAHUASCA KNOWLEDGE
Nagoya Protocol (#9)	PIC + MAT required before accessing traditional knowledge for commercial purposes. Community protocols empower self-governance. ABS Clearing-House monitors compliance. 142 parties.
WIPO Treaty (2024)	Patent applicants must disclose country of origin and Indigenous community. Non-disclosure can result in patent denial. Systemic barrier against biopiracy.
CBD Art. 8(j)	States must respect, preserve, and maintain Indigenous knowledge and promote benefit-sharing with community approval.
UNDRIP Art. 31 (#2)	Indigenous peoples have the right to maintain, control, protect, and develop their traditional knowledge, including knowledge of flora. States must recognize and protect these rights.
ICESCR Art. 15 (#8)	Right to benefit from the protection of moral and material interests resulting from scientific, literary, or artistic production. Interpreted to include protection of traditional knowledge.
Peru Law 27811 (2002)	Specific national legislation protecting Indigenous traditional knowledge associated with biological resources. Establishes registration, PIC, and benefit-sharing requirements.

Brazil Biodiversity Law (2015)	Regulates access to genetic resources and traditional knowledge. Requires authorization and benefit-sharing for commercial use.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"You can't patent something that occurs in nature."***

✓ **FACT:** While naturally occurring substances generally cannot be patented as such, companies can patent novel formulations, extraction methods, therapeutic protocols, delivery systems, and "analogues" (synthetic modifications). The "Da Vine" patent was a plant patent on a claimed "new variety." Synthetic ayahuasca patents claim novel combinations of known compounds. The boundary between nature and invention is legally porous.

✗ **MYTH:** ***"Indigenous knowledge is in the public domain and cannot be protected."***

✓ **FACT:** The Nagoya Protocol, UNDRIP Art. 31, and national ABS laws (Peru, Brazil, Colombia) all establish legal frameworks for protecting traditional knowledge. The fact that knowledge has been shared within communities for centuries does not mean it is freely available for commercial appropriation. PIC and benefit-sharing requirements apply regardless of how widely the knowledge is known.

✗ **MYTH:** ***"Patents on psychoactive plant preparations will ultimately benefit Indigenous communities by making ayahuasca-based therapies available."***

✓ **FACT:** This assumes a trickle-down benefit that has not materialized in analogous cases (cf. Hoodia, Rooibos, Neem). Without explicit benefit-sharing agreements, Indigenous communities bear the costs of knowledge appropriation while pharmaceutical companies capture the profits. The WIPO 2024 Treaty and Nagoya Protocol exist precisely because voluntary benefit-sharing has historically failed.

✗ **MYTH:** ***"The 'Da Vine' case resolved the problem. It can't happen again."***

✓ **FACT:** The "Da Vine" patent was a crude, first-generation appropriation that was successfully challenged on narrow prior art grounds. Current patent strategies are far more sophisticated: they patent not the plant but the formulation, not the knowledge but the "method of treatment," not the brew but the "pharmaceutical composition." Each generation of biopiracy learns from the failures of the last. The defenses must evolve too.

IN PRACTICE: WHAT WAF ATTENDEES CAN DO

STRATEGIC TAKEAWAYS

(a) Document everything: Indigenous communities should create formal records of their preparation methods, ceremonial protocols, plant varieties, and therapeutic knowledge. These documented records serve as prior art that can block future patent claims. Work with ethnobotanists and IP lawyers to create herbarium deposits and published descriptions;

(b) Monitor patent filings: Track patent applications related to ayahuasca, DMT, harmine/harmaline, *B. caapi,* and *P. viridis* through patent databases (Google Patents, WIPO PATENTSCOPE, Porta Sophia). When problematic applications are identified, coordinate opposition through organizations like ICEERS, CIEL, and Chacruna;

(c) Develop community protocols: Use the Nagoya Protocol Art. 12 framework to establish binding protocols that govern who can access your knowledge and on what terms. These protocols create legal standing for challenging unauthorized use;

(d) Demand WIPO Treaty compliance: As the 2024 WIPO Treaty is implemented nationally, advocate for strong disclosure requirements. Patent applications that fail to disclose the Indigenous source of knowledge should be denied. Support legislation that makes this requirement enforceable;

(e) Advocate for psychedelic patent pledges: Engage with researchers and companies at the WAF to establish norms against patenting traditional knowledge. Push for commitments that no patent will be enforced against Indigenous ceremonial use, and that benefit-sharing will be built into any commercialization from the start, not as an afterthought;

The psychedelic patent boom represents the most significant threat to Indigenous knowledge sovereignty since the original "Da Vine" case. But the tools available today — the Nagoya Protocol, the WIPO Treaty, community protocols, prior art databases, and a global community of advocates — are far stronger than what existed in 1986. The question is whether the ayahuasca community will use them proactively or wait until the patents are granted.

KEY DOCUMENTS

Harvard Law Review — Patents on Psychedelics (Marks & Cohen) →

ICEERS — What If Someone Tries to Patent Ayahuasca? →

CIEL — Ayahuasca Patent Dispute Documentation →

WIPO 2024 Treaty on Genetic Resources & Traditional Knowledge →

Porta Sophia — Psychedelic Prior Art Database →

#15

The Globalization of Ayahuasca

When Millenary Practices Meet Modern Legal Systems: The Legal, Ethical & Safety Challenges of Expansion

THE SCALE OF GLOBALIZATION: ADF DATA

448	49	59	9
CASES since 2014	**COUNTRIES** across all continents	**NEW CASES** in 2025 alone	**INDIGENOUS** cases in 2025

The ADF's data tells the story of globalization in real time. What began as predominantly cases involving practices with ayahuasca in a handful of Latin American and European countries has expanded to encompass psilocybin mushrooms, coca leaf, san pedro, peyote, iboga, kambo, bufo alvarius, xanga, and yopo — in 49 countries ranging from Turkey to Armenia, from Indonesia to Belarus, from Chile to Canada.

The trajectory tells us something important: in 2018, the ADF handled 19 cases. By 2021–2022, that peaked at 62. After a slight dip to 43 in 2023, the trend resumed upward: 51 in 2024, 59 in 2025. Law enforcement responses are not decreasing — they are expanding and diversifying across jurisdictions. What was once concentrated in a few countries now spans continents. What was once concentrated around a limited set of practices now spans multiple substances and contexts.

FIVE CHALLENGES OF GLOBALIZATION

CHALLENGE 1

The Criminalization Patchwork

An Indigenous healer from the Peruvian Amazon can find themselves in a courtroom in Istanbul. A retreat organized in Costa Rica can generate legal consequences in Belgium. Practices involving substances that are part of daily life in the Andes can trigger a trafficking prosecution in Frankfurt. The practices have gone global, but the ignorance that surrounds them has gone global too. The result is a criminalization patchwork where the same act — preparing and sharing ayahuasca in a ceremonial context — is protected cultural heritage in one country, a gray zone in the next, and a serious felony in a third.

CHALLENGE 2

Safety Without Regulation

The ADF's data documents malpractice reports, deaths attributed and incidents during ceremony, and post-ceremony issues. The numbers are small relative to the overall landscape, but they are deeply concerning. They reflect the paradox at the heart of globalization: the very criminalization that governments pursue in the name of public health prevents the establishment of the quality standards, screening protocols, and accountability frameworks that would genuinely protect participants.

When people organizing and participating in ayahuasca ceremonies operate in legal gray zones, there is no mechanism for vetting facilitators, no requirement for medical screening, no protocol for emergencies, and no recourse for participants who are harmed. Prohibition does not eliminate these practices — it removes the conditions that would allow them to be carried out more safely.

CHALLENGE 3

Indigenous Healers Abroad

A growing number of ADF cases involve Indigenous practitioners who travel internationally to share their medicine and find themselves arrested at borders, prosecuted for trafficking, or detained for months without adequate legal representation or translation services. The irony is devastating: the people who originated and safeguarded these practices for millennia are the most vulnerable when they cross borders. They lack institutional religious structures that would qualify for exemptions (#13, Model 3), they often don't speak the local language, and they rarely have access to legal counsel who understands the cultural context of their work.

CHALLENGE 4

Family Disputes as a New Frontier

A growing number of ADF's cases involved custody or family disputes in which the use of traditional plants was weaponized as an argument against one of the parents. This extends the reach of criminalization into the private sphere — using plant medicine practices not as evidence of a crime, but as a character argument in family courts. Parents who participate in ayahuasca ceremonies are being portrayed as "irresponsible," "unstable," or "endangering their children" — framing that draws on the stigma of the "war on drugs" narrative rather than the scientific evidence of safety (#12).

CHALLENGE 5

Commercialization & Cultural Extraction

The global retreat industry has created a multimillion-dollar economy around ayahuasca. Retreats charging thousands of dollars per participant operate prolifically in Peru, Costa Rica, Portugal, the Netherlands, and beyond — often with minimal accountability to the Indigenous communities whose knowledge they utilize. As this situation grows, Indigenous leaders face regulatory constraints and transport seizures while commercial retreats operate with wide social media visibility and without equivalent scrutiny. The Nagoya Protocol (#9) and IP protections (#14) address this asymmetry in theory, but implementation remains weak.

WHY IT MATTERS FOR THE LEGAL FRAMEWORK

Globalization creates legal challenges that the existing instruments in this series were not designed to address:

- ILO C169 (#1) protects Indigenous peoples within ratifying States, but an Indigenous healer in Turkey is outside its geographic and institutional reach. The right to cultural practice doesn't travel automatically with the practitioner.
- ICCPR Art. 18 (#8) provides global religious freedom protection, but requires the practitioner to frame their work as "religion" — a categorization that is imprecise for traditional practices and even Indigenous healers resist as culturally inappropriate.
- The INCB exclusion (#3–4) confirms that ayahuasca is not internationally controlled, but this fact means nothing to a police officer in South Africa or a prosecutor in Belarus who has never heard of the INCB.
- Regulatory models (#13) exist in a handful of countries. The vast majority of the world operates in a gray zone where criminal law neither expressly applies to practices involving ayahuasca nor expressly exempts them — a vacuum that globalization fills with arbitrary prosecution.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"Globalization is a good thing because it spreads access to ayahuasca."***

✓ **FACT:** Globalization spreads access, but it also spreads risk: criminalization in new jurisdictions, exploitation of Indigenous knowledge without benefit-sharing, erosion of traditional safeguards, unvetted facilitators, and cultural decontextualization that strips the medicine of its spiritual framework. Access without safety, accountability, and reciprocity is not progress.

✗ **MYTH:** ***"The legal problems will resolve themselves as more countries learn about ayahuasca."***

✓ **FACT:** The ADF's 10-year data shows the opposite trend. The number of cases has increased, not decreased. The number of countries has expanded, not contracted. Awareness does not automatically produce tolerance. In some countries, increased visibility has triggered crackdowns. Legal change requires sustained, strategic advocacy — it does not happen passively.

✗ **MYTH:** ***"Indigenous healers don't need to worry about the law because they have cultural rights."***

✓ **FACT:** Cultural rights protections (ILO C169, UNDRIP) provide legal arguments, not legal immunity. An Indigenous healer arrested at Istanbul airport has the same immediate vulnerability as any other defendant. The cultural rights arguments must be invoked by competent legal counsel, supported by expert evidence, and accepted by the court — none of which is guaranteed. The ADF's Turkish case demonstrates the gap between rights on paper and protection in practice.

✗ **MYTH:** ***"The retreat industry is self-regulating and doesn't need external oversight."***

✓ **FACT:** Malpractice reports, incidents during ceremonies, and a lack of post-ceremony integration suggest that minimum safety and security standards have not been incorporated enough. While many facilitators and retreat centers operate with genuine care and expertise, the absence of regulatory standards means there is no mechanism to distinguish responsible practitioners from negligent or exploitative ones. Self-regulation has produced guidelines (*Towards Better Ayahuasca Practices*), but compliance is voluntary and enforcement is nonexistent.

IN PRACTICE: WHAT WE CAN DO

STRATEGIC TAKEAWAYS

(a) For Indigenous practitioners traveling abroad: Before traveling, consult the ADF's Country-by-Country Legal Map. Carry documentation of your community affiliation, your role as a traditional practitioner, and letters from your community authorities. Never carry plant materials across borders without verifying the legal status in the destination country. If arrested, invoke your right to an interpreter and contact the ADF immediately;

(b) For ceremony organizers: Implement medical screening protocols (contraindicated medications, psychiatric history), establish emergency response plans, ensure facilitator training and accountability, document informed consent, and maintain integration support resources. ICEERS' Support Center provides guidance and referrals;

(c) For the retreat industry: Adopt and publicize adherence to community-developed safety standards. Implement Nagoya-compliant benefit-sharing with source communities. Ensure transparent pricing and clear accountability mechanisms. The industry's long-term viability depends on demonstrating that self-regulation can produce genuine safety outcomes;

(d) For advocates: Use the WAF 2026 to build a global advocacy network that can respond rapidly when cases arise in new jurisdictions. The ADF cannot be everywhere — but a trained network of local lawyers, scientists, and community leaders in key countries can provide first-response capacity when the next case emerges;

(e) For everyone: Recognize that globalization creates responsibilities, not just opportunities. Every time ayahuasca enters a new country, a new legal frontier opens. Every unvetted ceremony creates risk for the entire community. Every arrest that goes undefended weakens the global legal position. The ayahuasca community's greatest asset is solidarity — and the WAF is where that solidarity becomes strategy.

The globalization of ayahuasca is irreversible. The practices have traveled, and they will not return to the Amazon. The question is not whether globalization will continue, but whether it will be guided by the values of reciprocity, safety, and respect that the traditions themselves teach — or whether it will be shaped by market forces, prosecution, and cultural extraction.

KEY DOCUMENTS

ICEERS — A Decade of Defending Sacred Plants: ADF Turns 10 →

ICEERS — Country-by-Country Legal Map →

ICEERS Support Center →

MAPS — Globalization of Ayahuasca: Public Policy Considerations →

#16

The Right to Health

Traditional Medicine, Mental Health, and the WHO's New Strategy: Why Criminalizing Ayahuasca Violates the Right to Health

THE RIGHT: WHAT DOES INTERNATIONAL LAW REQUIRE?

The right to the highest attainable standard of physical and mental health is one of the most fundamental rights in international law. It is recognized in the ICESCR Art. 12 (#8), the WHO Constitution, the UDHR Art. 25, UNDRIP Art. 24, ILO C169 Art. 25, the CRC Art. 24, CEDAW Art. 12, and the CRPD Art. 25. It is not merely a right to health care services — it encompasses the underlying determinants of health, including access to traditional medicines.

The right to health creates three types of obligations for States: to respect (not interfere with the enjoyment of health), to protect (prevent third parties from undermining health), and to fulfil (take affirmative steps to promote health). Criminalizing traditional plant medicines violates all three dimensions.

THREE PILLARS: HOW THE RIGHT TO HEALTH APPLIES TO AYAHUASCA

Pillar 1: The Duty to Respect Traditional Medicine

CESCR General Comment No. 14 (2000) establishes that the right to health includes the obligation to respect people's freedom to control their health and bodies, including access to traditional healing practices. The duty to respect requires States to refrain from interfering with traditional medicine practices — a duty that is violated when ayahuasca ceremonies are raided, practitioners arrested, or plant materials seized.

- The Committee has stated that States must "respect the right of individuals and groups to utilize traditional and folk remedies"
- UNDRIP Art. 24.1: "Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants"

- ILO C169 Art. 25: "Governments shall ensure that adequate health services are made available to [Indigenous] peoples… Their services shall be planned and administered in co-operation with the peoples concerned and take account of their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines"

Pillar 2: The Duty to Protect — Harm Reduction, Not Prohibition

The duty to protect health does not require prohibition. It requires evidence-based regulation that reduces actual harm. As the UNDP Guidelines (#11) and the 2018 UN System Common Position make clear, drug control measures must be compatible with the right to health. The CESCR has repeatedly expressed concern that criminalization of drug use drives people away from health services, increases stigma, and undermines public health outcomes.

- The obligation is to protect public health through the least restrictive means. Document #12 demonstrates that ayahuasca does not pose a serious public health risk — meaning prohibition is a disproportionate response that cannot be justified under the health protection rationale
- Prohibition actively harms health: it prevents screening protocols, drives practice underground, eliminates quality control, discourages reporting of adverse events, and removes accountability for facilitators
- The ICEERS "Ayahuasca and Public Health" series (Spain, Netherlands, Portugal) demonstrates that ceremonial practitioners in structured settings have better health outcomes than the general population

Pillar 3: The Duty to Fulfil — Integrating Traditional Medicine

The duty to fulfil requires States to take proactive steps to advance health, including integrating traditional medicine into health systems. This affirmative obligation has been dramatically strengthened by the WHO Global Traditional Medicine Strategy 2025–2034, adopted at the 78th World Health Assembly on 26 May 2025.

- The Strategy envisions "a world in which everyone has universal access to people-centred traditional, complementary, and integrative medicine, contributing to the highest attainable standard of health and well-being"
- Its nine guiding principles include: the right to health and autonomy, Indigenous Peoples' rights, culture and health, evidence-based practice, and sustainability and biodiversity
- It calls on Member States to "develop national policies, strategies and action plans to strengthen the integration of traditional medicine into primary health care"

- The Assembly "explicitly recognized not only the role of traditional knowledge of Indigenous peoples but also the importance of upholding their rights"

THE WHO GLOBAL TRADITIONAL MEDICINE STRATEGY 2025–2034

ADOPTED: 26 MAY 2025 — 78TH WORLD HEALTH ASSEMBLY

This strategy is the most significant development in international health governance for traditional medicine in a decade. Its adoption by 194 WHO Member States creates a normative framework that directly supports the right to access traditional healing modalities — including ayahuasca in its therapeutic context.

FOUR STRATEGIC OBJECTIVES:

- Strengthen evidence for TCIM through research and innovation
- Ensure safety, quality, and effectiveness through regulatory mechanisms
- Integrate safe and effective TCIM into health systems, especially primary care
- Optimize the cross-sectoral value of TCIM and empower communities

Why this matters for ayahuasca: The Strategy creates a WHO-endorsed framework in which traditional plant medicine is recognized as a legitimate health resource that Member States should integrate into their health systems. It explicitly references Indigenous Peoples' rights and the protection of traditional medical knowledge. A State that criminalizes ayahuasca while simultaneously endorsing this Strategy is acting incoherently within its own international commitments.

THE MENTAL HEALTH DIMENSION

The right to health includes the right to mental health. In a global context of rising rates of depression, PTSD, substance use disorders, and suicide, the evidence that ayahuasca shows rapid antidepressant effects (Palhano-Fontes et al., 2019), anti-addictive properties (Thomas et al., 2013), and positive mental health outcomes among ceremonial practitioners (ICEERS Public Health series) is directly relevant to the right to health.

- The WHO's own Global Action Plan for Mental Health estimates that 1 in 8 people globally live with a mental health condition. Treatment gaps exceed 75% in low- and middle-income countries;
- Traditional healing modalities — including ayahuasca ceremonies — are often the primary or only mental health resource available in Indigenous and rural Amazonian communities;
- Criminalizing access to a substance with demonstrated antidepressant effects while simultaneously failing to provide adequate conventional mental health services is a double violation of the right to mental health;
- The 2025 WHO Strategy's emphasis on integrating traditional medicine into primary health care implicitly recognizes that traditional healing practices can help close the mental health treatment gap.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"The right to health doesn't cover traditional plant medicines — it's about hospitals and doctors."***

✓ **FACT:** CESCR General Comment No. 14 explicitly requires States to respect traditional and folk remedies. UNDRIP Art. 24 explicitly protects Indigenous peoples' right to their traditional medicines and health practices. ILO C169 Art. 25 requires health services to take account of traditional healing practices. The WHO 2025 Strategy calls for integration of traditional medicine into primary health care. The right to health is far broader than Western biomedical services.

✗ **MYTH:** ***"States can restrict access to traditional medicine if they believe it's unsafe."***

✓ **FACT:** States have a legitimate interest in protecting public health, but any restriction must be evidence-based, necessary, and proportionate. Document #12 demonstrates that ayahuasca does not meet any of the WHO's three scheduling criteria. A blanket ban on a substance that does not cause dependence, does

not pose a serious public health risk, and has documented therapeutic value cannot survive proportionality analysis under the right to health framework.

✗ **MYTH:** ***"The WHO Traditional Medicine Strategy is just about herbal supplements and acupuncture."***

✓ **FACT:** The Strategy covers all traditional, complementary, and integrative medicine, including Indigenous healing systems worldwide. The Assembly's adoption explicitly recognized Indigenous Peoples' traditional knowledge. While the Strategy does not name specific substances, its framework for evidence-based integration, respect for Indigenous rights, and promotion of traditional medical knowledge applies to ayahuasca and other plant medicine traditions.

✗ **MYTH:** ***"The right to health is too abstract to use in a criminal defense case."***

✓ **FACT:** The right to health provides a concrete proportionality framework for criminal defense: if criminalizing ayahuasca (a) violates the duty to respect traditional medicine, (b) fails the proportionality test because the substance doesn't pose a serious health risk, and (c) contradicts the duty to integrate traditional medicine, then the prosecution cannot justify the criminal sanction under the health rationale it claims to protect. This argument has been deployed in ADF cases across multiple jurisdictions.

IN PRACTICE: AYAHUASCA DEFENSE

ADF CASE INSIGHT

(a) The "health paradox" argument: Prosecutors claim they are protecting health. Defense turns this on its head: the evidence shows ayahuasca users are healthier than the general population, the WHO requires integration of traditional medicine, and prohibition actively harms health by driving practice underground. The State is violating the very right it claims to protect;

(b) WHO 2025 Strategy as new authority: The adoption of the Strategy by 194 Member States in May 2025 creates a new normative reference point. Courts can now be shown that the WHO itself calls for integration, not criminalization, of traditional medicine — and that the State endorsed this position at the World Health Assembly;

(c) Mental health evidence: The Palhano-Fontes RCT (2019) showing rapid antidepressant effects and the growing body of evidence on addiction treatment create a powerful argument: criminalizing a substance with demonstrated mental health benefits while a global mental health crisis worsens is incoherent with the right to health;

(d) Policy advocacy: The right to health provides a framework for engaging health ministries, not just justice or interior ministries. Ayahuasca policy should be developed through health governance institutions, not drug control institutions. The WHO Strategy gives advocates a mandate to demand that health authorities take the lead in traditional medicine regulation.

The right to health reframes the entire ayahuasca debate. It moves the conversation from "is this a dangerous drug?" to "is this a health resource that the State is obligated to respect, protect, and integrate?" The answer, under current international law and the WHO's own strategy, is yes.

KEY DOCUMENTS

WHO Global Traditional Medicine Strategy 2025–2034 →
WHA78: Traditional Medicine Takes Centre Stage (May 2025) →
CESCR General Comment No. 14 (Right to Health) →
OHCHR Fact Sheet No. 31: The Right to Health →
Palhano-Fontes et al. (2019) — Rapid antidepressant effects →

#17

The Right of People to Participate in and Benefit from Scientific Progress

When Drug Scheduling Blocks Scientific Discovery: The Human Right to Science and Ayahuasca Research

THE RIGHT: ICESCR ART. 15.1(B) AND THE FREEDOM OF SCIENTIFIC RESEARCH

ICESCR Art. 15.1(b) recognizes the right of everyone "to enjoy the benefits of scientific progress and its applications." Art. 15.3 requires States to "respect the freedom indispensable for scientific research." These provisions, ratified by 171 States, create binding obligations that directly intersect with ayahuasca policy.

In 2020, the CESCR adopted General Comment No. 25 — the first authoritative interpretation of the right to science. It identifies five "interrelated and essential elements": access to the benefits of science, participation in scientific progress, protection from harm, freedom of scientific research, and an enabling environment for science. Each of these has direct implications for ayahuasca.

The 2017 UNESCO Recommendation on Science and Scientific Researchers, adopted by 195 States, further reinforces these obligations and explicitly links scientific freedom to democratic governance and human dignity.

FIVE ELEMENTS OF THE RIGHT TO SCIENCE — APPLIED TO AYAHUASCA

ELEMENT 1

Access to the Benefits of Science

Everyone has the right to access the benefits of scientific progress. Ayahuasca research has produced evidence of rapid antidepressant effects (Palhano-Fontes et al., 2019), anti-addictive properties (Thomas et al., 2013), and positive mental health outcomes (ICEERS Public Health series). When a State criminalizes ayahuasca, it denies its population access to a substance with documented therapeutic benefits. This is particularly acute for treatment-resistant depression, where conventional therapies have failed and ayahuasca represents an evidence-based alternative that is being placed beyond reach by criminal law.

ELEMENT 2

Freedom of Scientific Research

Art. 15.3 requires States to respect scientific freedom. Drug scheduling creates massive barriers to psychedelic research: Schedule I classification requires researchers to obtain special licenses, navigate bureaucratic delays, secure approved sources of material, and comply with security requirements that add years and millions in cost to clinical trials. These barriers have delayed psychedelic research by decades.

- Researchers studying ayahuasca in countries where it is criminalized face the threat of prosecution for possessing the subject of their research
- The 50-year interruption of psychedelic research (1970s–2010s) caused by the war on drugs is itself a violation of scientific freedom on a historic scale
- General Comment No. 25 states that limitations on scientific freedom must be "strictly necessary to further the general welfare in a democratic society" and "appropriate and proportionate" — the same proportionality test that drug scheduling fails for ayahuasca (#12)

ELEMENT 3

Participation in Scientific Progress

The right to science includes the right to participate in the scientific enterprise. For ayahuasca, this has a unique dimension: Indigenous communities hold the original scientific knowledge of the brew's preparation, dosage, contraindications, and therapeutic applications. When Western researchers study ayahuasca without Indigenous participation, they violate both the right to science and the Nagoya Protocol (#9). When Indigenous knowledge holders are excluded from the research process that commercializes their discoveries, it is both a scientific and a rights failure.

ELEMENT 4

Protection from Harm

States must protect individuals from the harmful effects of science. This cuts in two directions for ayahuasca: (a) States should ensure that research and clinical applications are conducted safely, with proper screening, informed consent, and oversight; (b) States should also protect Indigenous communities from the harm of having their knowledge appropriated through scientific research without consent or benefit-sharing. The IP and patent threats (#14) are a direct manifestation of this concern.

ELEMENT 5

An Enabling Environment for Science

States must create conditions that enable scientific research to flourish. General Comment No. 25 emphasizes that an enabling environment includes adequate funding, institutional support, and removal of unnecessary regulatory barriers. For ayahuasca, this means reforming drug scheduling that impedes legitimate research, providing funding for clinical trials, and creating regulatory pathways for traditional medicine research that respect both scientific rigor and cultural context.

THE SCHEDULING BARRIER: HOW DRUG CONTROL BLOCKS SCIENCE

THE RESEARCH GAP

The classification of DMT as a Schedule I substance under the 1971 Convention has created cascading obstacles for ayahuasca research worldwide:

- Researchers must obtain special licenses that can take months or years to process
- Universities and institutions face administrative and liability barriers that discourage psychedelic research proposals
- Funding agencies have historically been reluctant to finance Schedule I research due to political and reputational risks
- Research-grade material must be obtained from approved suppliers, which often don't exist for traditional botanical preparations like ayahuasca
- Clinical trials require Investigational New Drug (IND) applications that were designed for synthetic pharmaceuticals, not traditional plant decoctions
- Researchers in countries where ayahuasca is criminalized risk prosecution for possessing the material they study

Result: Despite over 500 scientific publications on ayahuasca and growing evidence of therapeutic value, only one randomized controlled trial has been published (Palhano-Fontes et al., 2019). The scheduling barrier is not protecting public health — it is preventing the science that would inform evidence-based public health policy.

WHY IT MATTERS FOR AYAHUASCA

- Completes the three-rights architecture: Combined with the right to health (#16) and religious/cultural freedom (#8), the right to science creates a three-pillar argument: criminalizing ayahuasca simultaneously violates the right to health (denying access to traditional medicine), freedom of religion/culture (criminalizing spiritual practice), and the right to science (blocking research and denying access to its benefits). This triple violation makes the proportionality burden on the State overwhelming.
- Protects researchers: Scientists studying ayahuasca in restrictive jurisdictions can invoke the right to scientific freedom (Art. 15.3) as a defense against prosecution for possessing research material. This argument is particularly powerful when the researcher holds institutional authorization and the research has ethical review board approval.
- Strengthens the evidence-policy link: General Comment No. 25 requires that policy decisions be informed by the best available science. A State that maintains ayahuasca prohibition despite the evidence of safety (#12) and therapeutic value is failing to ensure that its drug policy is evidence-based — a violation of the enabling environment obligation.
- Protects Indigenous knowledge as science: The right to science includes protection of moral and material interests in scientific production (Art. 15.1(c)). Indigenous communities whose traditional knowledge forms the basis of modern ayahuasca research have a recognized right to benefit from the scientific and commercial applications of that knowledge. This reinforces the Nagoya Protocol obligations (#9) and the IP protections (#14) from a distinct legal basis.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"The right to science is an obscure, rarely invoked right with no practical application."***

✓ **FACT:** The 2020 adoption of General Comment No. 25 transformed the right to science from an abstract principle into a detailed, operationalized obligation with five essential elements, specific State duties, and a proportionality framework. MAPS (Multidisciplinary Association for Psychedelic Studies) submitted formal input to the CESCR during the drafting process, specifically advocating for the right to science to be applied to psychedelic research barriers. The right is no longer obscure — it is the next frontier of human rights litigation.

✗ **MYTH:** ***"Scheduling is necessary to prevent dangerous research."***

✓ **FACT:** Scheduling was designed to control recreational use and trafficking, not to regulate legitimate research. The scheduling barrier applies identically to a cartel manufacturing synthetic DMT and a university researcher conducting an IRB-approved clinical trial. There is no evidence that scheduling has prevented any harmful research — but abundant evidence that it has blocked decades of beneficial research on psychedelic-assisted therapy.

✗ **MYTH:** ***"Indigenous traditional knowledge is not 'science' and therefore not protected by the right to science."***

✓ **FACT:** General Comment No. 25 adopts a broad definition of science that encompasses systematic knowledge generation. Indigenous peoples' millennia of empirical observation, refinement of preparation methods, identification of contraindications, and development of therapeutic protocols constitute systematic knowledge. The UNESCO Recommendation and UNDRIP Art. 31 further reinforce that traditional knowledge is a form of intellectual production deserving of protection.

✗ **MYTH:** ***"The right to science only applies to researchers, not to patients or communities."***

✓ **FACT:** Art. 15.1(b) recognizes the right of "everyone" — not just scientists — to enjoy the benefits of scientific progress. A patient suffering from treatment-resistant depression has a right to access evidence-based therapies, including those derived from ayahuasca research. A community that developed the knowledge underlying those therapies has a right to participate in and benefit from the scientific enterprise built on their contributions.

IN PRACTICE: AYAHUASCA DEFENSE & ADVOCACY

ADF CASE INSIGHT

(a) The triple-violation argument: In court, combine Art. 15.1(b) (right to benefit from science) + Art. 12 (right to health, #16) + Art. 18 ICCPR (religious freedom, #8). Show that the prosecution simultaneously blocks access to a therapeutic resource, interferes with a health practice, and restricts a spiritual tradition. No proportionality analysis can survive this triple burden;

(b) Researcher defense: When researchers face prosecution for possessing ayahuasca in connection with authorized studies, invoke Art. 15.3 (freedom of scientific research) alongside institutional authorization and ethical review board approval. The State's obligation to create an enabling environment for science contradicts prosecution of authorized researchers;

(c) Policy reform lever: Engage science ministries, not just justice or health ministries. The right to science provides a mandate for science policy institutions to advocate for the removal of regulatory barriers that impede legitimate research. The CND Resolution 68/6 expert panel (#10) is an ideal venue to present evidence of how scheduling blocks scientific progress;

(d) Indigenous knowledge protection: Use Art. 15.1(c) (moral and material interests in scientific production) alongside the Nagoya Protocol and WIPO Treaty to argue that Indigenous communities have a recognized right to benefit from scientific applications of their knowledge. This creates a complementary legal basis for challenging patents (#14) and demanding benefit-sharing.

The right to science reframes the ayahuasca debate from a drug control question to a knowledge governance question. The issue is not whether a substance should be "allowed" or "banned" but whether humanity should be denied access to a body of knowledge that has the potential to address some of the most pressing health challenges of our time — and whether the communities that developed that knowledge will be recognized as its rightful custodians.

KEY DOCUMENTS

CESCR General Comment No. 25 (2020) — Right to Science →

UNESCO Recommendation on Science and Scientific Researchers (2017) →

AAAS — Right to Science (Article 15 Project) →

OHCHR Day of General Discussion on Art. 15 (2018, incl. MAPS submission) →

Harvard Law Review — Patents on Psychedelics (on research barriers) →

#18

Legal Strategies & Defense

How to Deploy the Entire Series in Criminal Defense, Policy Advocacy & Community Protection

HOW THIS DOCUMENT WORKS

This is the synthesis document. Documents #1–17 provide the individual instruments, principles, evidence, and frameworks. This document shows how to combine them into defense strategies for the scenarios that actually arise in practice. It is organized by situation, not by instrument — because defendants don't face abstract legal questions; they face concrete crises.

Every strategy references the specific documents in this series that provide the underlying authority. Think of this as the "table of contents for action."

STRATEGY 1

The Core Defense: Ayahuasca Is Not Internationally Controlled

USE WHEN: Any criminal prosecution for possession, transportation, or facilitation of ayahuasca ceremonies.

THE ARGUMENT:

- Ayahuasca is NOT listed in any schedule of ANY of the three UN drug control conventions (#3, #10)
- The INCB has explicitly confirmed this in its 2010 Annual Report (§284) and 2012 Report (§§328–334): "no plants are currently controlled" and "preparations made from plants containing those active ingredients are also not under international control" (#4)
- DMT is listed in Schedule I of the 1971 Convention, but the Official Commentary (§32-12) confirms that the plant preparations are distinct from the isolated compound (#3)
- If international law does not require prohibiting ayahuasca, then domestic criminalization is a sovereign choice that goes beyond treaty obligations — and must be justified under human rights standards

SERIES REFERENCES: #3 (1971 Convention), #4 (INCB Positions), #10 (Drug Policy Architecture)

STRATEGY 2

The Human Rights Multi-Layer: Four Rights, One Argument

USE WHEN: The domestic law expressly applies criminal sanctions to practices involving ayahuasca, or the court accepts that DMT = ayahuasca. Shift the argument to whether the prohibition is compatible with the State's human rights obligations.

THE FOUR-LAYER ARGUMENT:

- Layer 1 — Religious/Cultural Freedom: ICCPR Art. 18 (non-derogable) + ACHR Art. 12 + ECHR Art. 9. Ceremonial use is "observance" and "practice" under HRC General Comment No. 22. Limitation requires strict necessity and proportionality (#8, #6)
- Layer 2 — Indigenous Rights: ILO C169 (binding, 24 States) + UNDRIP Arts. 11, 12, 24, 31. Traditional use is protected cultural practice. FPIC required before restricting (#1, #2)
- Layer 3 — Right to Health: ICESCR Art. 12 + CESCR General Comment No. 14 + WHO 2025 Traditional Medicine Strategy. States must respect traditional healing practices and integrate traditional medicine (#16)
- Layer 4 — Right to Science: ICESCR Art. 15.1(b) + General Comment No. 25. Criminalizing access to a substance with therapeutic evidence violates the right to benefit from scientific progress (#17)

COMBINED EFFECT: A State must justify criminalization against ALL four rights simultaneously. No proportionality analysis survives this quadruple burden when the INCB confirms the substance isn't internationally controlled and the science shows no serious health risk.

SERIES REFERENCES: #1, #2, #5, #6, #8, #11, #12, #16, #17

STRATEGY 3

The Proportionality Challenge: Disproportionate Criminal Sanction

USE WHEN: The defendant has been convicted or faces severe sentencing. Challenge the proportionality of the sanction even if the court accepts the legality of the prohibition.

THE ARGUMENT:

- Ayahuasca does not produce dependence, does not activate the reward system, and has anti-addictive properties (#12, Criterion 1)
- No lethal overdoses documented; people who participate in ceremonial ayahuasca practices have better health outcomes (#12, Criterion 2; ICEERS Public Health series)
- Significant and growing evidence of therapeutic value (#12, Criterion 3; Palhano-Fontes RCT 2019)
- Imprisonment for practices involving a preparation that does not meet any of the three WHO scheduling criteria is manifestly disproportionate
- Compare: if States are rescheduling cannabis and exploring MDMA therapy, how can multi-year prison sentences for ayahuasca be justified?

SERIES REFERENCES: #12 (Three Criteria), #7 (Coca Review precedent), #11 (UNDP proportionality framework)

STRATEGY 4

The Indigenous Practitioner Defense

USE WHEN: The defendant is an Indigenous person, especially a healer or practitioner arrested abroad.

THE LAYERED ARGUMENT:

- ILO C169 Art. 8: respect for Indigenous customs and customary law (#1). Art. 5: protect social, cultural, and spiritual values. Art. 25: respect traditional healing practices
- UNDRIP Art. 12: right to manifest spiritual traditions. Art. 24: right to traditional medicines. Art. 31: right to maintain, control, and protect traditional knowledge (#2)
- ICCPR Art. 27: minority cultural rights — cannot be denied the right to enjoy their culture (#8)
- IACtHR jurisprudence: cultural identity as component of property rights, dignity, and autonomy (#5, #6)
- Mistake of law / error of prohibition: the practitioner reasonably believed their traditional medicine was lawful, given that their country of origin protects it and international law does not prohibit it
- Absence of criminal intent: the substance was carried for ceremonial/healing use, not trafficking

PRACTICAL NOTES: Request an interpreter immediately. Contact the ADF. Gather documentation: community affiliation letters, practitioner credentials, invitation letters from the host community. Invoke consular access rights (Vienna Convention on Consular Relations Art. 36).

SERIES REFERENCES: #1, #2, #5, #6, #8, #15 (Globalization challenges)

STRATEGY 5

The Atypicality Argument: Ayahuasca ≠ DMT

USE WHEN: The domestic drug law lists DMT but does not expressly list ayahuasca, its plants, or the brew. This is the most common factual scenario worldwide.

THE ARGUMENT:

- Principle of legality (nullum crimen sine lege): criminal law must be strictly interpreted. If the law lists "DMT" but not "ayahuasca," the brew is not covered
- Pharmacological distinction: ayahuasca is a multi-compound plant decoction (383+ compounds in the coca leaf analogy, #7); DMT in Schedule I refers to the isolated synthetic compound. They are pharmacologically, chemically, and culturally distinct
- The INCB has confirmed this distinction (#3, #4). The 1971 Convention's Official Commentary confirms plants are not controlled even when they contain scheduled active principles
- Quantification challenge: forensic laboratories often cannot determine the actual DMT concentration in ayahuasca. If the prosecution cannot prove the amount of the scheduled compound, the charge fails on evidentiary grounds
- Spain's TSJM Ruling 316/2025 and consistent acquittals apply this reasoning. France's Court of Appeal (2005) also recognized the distinction (before France explicitly scheduled the plants)

SERIES REFERENCES: #3, #4, #10, #12 (safety evidence for proportionality support), #13 (Spain model)

STRATEGY 6

Preemptive Policy Advocacy: Defending the Exclusion

USE WHEN: A government is considering scheduling ayahuasca nationally, or when engaging policymakers proactively to prevent future criminalization.

THE ARGUMENT:

- International law does not require it: INCB exclusion confirmed (#3, #4). Scheduling would go beyond treaty obligations
- Science does not support it: ayahuasca fails all three WHO scheduling criteria (#12). No dependence, no serious public health risk, significant therapeutic value
- Human rights prohibit it: criminalization violates religious freedom, cultural rights, right to health, and right to science (#8, #16, #17). The UNDP Guidelines (#11) explicitly identify criminalization of traditional plant use as a human rights violation
- WHO endorses integration, not prohibition: the 2025 Traditional Medicine Strategy calls for integration of traditional medicine into health systems (#16)
- The coca review teaches caution: once a substance enters the schedules, descheduling is nearly impossible even when the science supports it (#7). Prevention is far more effective than reversal
- Engage the CND 68/6 expert panel (#10) and use the UNGASS 10th anniversary as advocacy moments

SERIES REFERENCES: #3, #4, #7, #10, #11, #12, #13, #16, #17

THE FIRST 48 HOURS: EMERGENCY PROTOCOL

IF YOU OR SOMEONE YOU KNOW IS ARRESTED

1. SILENCE: Exercise your right to remain silent. Do not make any statements about the substance, its origin, its purpose, or who it belongs to without legal counsel present. Initial statements made without a lawyer are the most damaging evidence in prosecution;

2. LAWYER: Request a lawyer immediately. If you cannot afford one, request a public defender. If you do not speak the local language, request an interpreter — this is a right under international law (ICCPR Art. 14);

3. CONSULATE: If you are a foreign national, request consular access (Vienna Convention on Consular Relations Art. 36). Your consulate can help locate legal representation and notify family;

4. CONTACT THE ADF: Have a trusted person contact the Ayahuasca Defense Fund at law@iceers.org or through iceers.org/adf/. The ADF provides expert scientific and legal opinions, connects defendants with local counsel, and shares cross-jurisdictional precedents. This service is free;

5. DOCUMENT: If possible, have someone document the circumstances of arrest: what was seized, how it was handled, whether the chain of custody was maintained, whether your luggage was opened in your presence, whether you were read your rights;

6. DO NOT: Do not consent to searches without a warrant. Do not sign documents you don't understand. Do not agree to "cooperate" without understanding the legal implications. Do not discuss the case on social media or messaging apps.

PREVENTION: BEFORE YOU TRAVEL OR ORGANIZE

FOR PRACTITIONERS & FACILITATORS:

- Check the ADF Country-by-Country Legal Map before traveling to any new jurisdiction
- Carry documentation: community affiliation letters, practitioner credentials, invitation letters, informed consent templates, certificates of traditional medicine training
- NEVER transport plant materials across international borders without verifying the legal status in both the origin and destination countries
- Maintain a relationship with a local lawyer in jurisdictions where you regularly practice
- Implement medical screening protocols (SSRIs, MAOIs, lithium, psychiatric history, cardiac conditions)
- Have an emergency response plan: nearest hospital, local emergency numbers, ADF contact information

FOR CEREMONY PARTICIPANTS:

- Know the legal status in your jurisdiction before participating
- Disclose all medications and psychiatric history to the facilitator
- Ensure the facilitator has screening protocols and emergency plans
- Keep the ADF contact information accessible: law@iceers.org
- Be aware that family disputes may use ceremony participation against you (#15, Challenge 4). Consider discretion in documentation

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"There's nothing you can do if you're arrested — the substance is illegal and that's that."***

✓ **FACT:** In most countries, ayahuasca is NOT expressly listed in domestic drug schedules. Even where it is, human rights arguments, proportionality challenges, mistake of law defenses, and evidentiary challenges (chain of custody, quantification) are all viable. The ADF has supported favorable outcomes in multiple jurisdictions. The worst thing you can do is assume there is no defense.

✗ **MYTH:** ***"International law is irrelevant in domestic courts."***

✓ **FACT:** In most legal systems, ratified treaties are either directly applicable or serve as interpretive guides for constitutional rights. Judges may not know about the INCB position, General Comment No. 22, or the UNDP Guidelines — but they are legally relevant. It is the defense lawyer's job to bring these authorities to the court's attention. The ADF provides expert opinions and legal briefs that do exactly this.

✗ **MYTH:** ***"The ADF only helps Indigenous people or religious groups."***

✓ **FACT:** The ADF provides support to anyone facing legal proceedings related to traditional plant medicines — regardless of their identity, nationality, or the context of use. While Indigenous practitioners and religious groups may have additional legal arguments available (C169, RFRA), the core defenses (INCB exclusion, atypicality, proportionality, right to health) apply to all defendants. The ADF has supported cases involving ceremony participants, travelers, researchers, and organizers.

THE ARCHITECTURE: HOW THE SERIES FITS TOGETHER

Foundation: #3–4 (INCB plant exclusion) + #12 (scientific evidence) = the factual base

Rights layer: #1–2 (Indigenous), #5–6 (Inter-American), #8 (global covenants), #16 (health), #17 (science) = the legal arguments

Policy context: #7 (coca precedent), #9–11 (Nagoya, drug policy, UNDP), #13 (regulatory models) = what's possible

Emerging challenges: #14 (patents/IP), #15 (globalization) = what's coming

This document (#18): How to deploy all of it in practice

Coming next: #19 (Asia, Eastern Europe, Africa — the new frontiers) and #20 (the future of ayahuasca law)

EMERGENCY CONTACTS & KEY RESOURCES

Ayahuasca Defense Fund: legal@iceers.org

iceers.org/adf/ →

ICEERS Country-by-Country Legal Map →

ICEERS Support Center →

The ADF does not charge fees for its services. This work is made possible through community donations.

#19

Ayahuasca & Drug Policy: Asia, Eastern Europe & Africa

The New Frontiers: Where Ayahuasca Practices Are Arriving Faster Than Legal Frameworks Can Respond

WHY THESE REGIONS MATTER NOW

Documents #1–18 in this series were developed primarily with reference to the Americas and Europe — regions where ayahuasca has a longer history of presence and where legal frameworks have begun to respond. But the ADF's data tells a different story for the 2020s: ayahuasca is now arriving in regions where legal systems are less familiar with it, where penalties can be dramatically more severe, and where the human rights instruments that protect it are less developed or less enforced.

This document maps the legal landscape across three regions where the ayahuasca community is expanding fastest — and where the risks are greatest.

EASTERN EUROPE: BETWEEN PROHIBITION & GRAY ZONE

✗ **EXTREME RISK**

Russia

Russia has adopted the most aggressive approach in Europe: domestic law prohibits all plants containing scheduled psychoactive substances. This means ayahuasca, its component plants, psilocybin mushrooms, peyote, and any botanical material containing DMT are treated as controlled substances by default. Russia does not distinguish between the plant and the compound — the INCB exclusion is effectively overridden by domestic law.

- Penalties: severe. Drug trafficking convictions carry sentences of up to 20 years. Possession of significant quantities is presumed to be trafficking
- No religious freedom exemption framework comparable to the US RFRA or Brazilian CONAD

- The ICCPR has been ratified but enforcement through domestic courts is limited
- ADF ADVISORY: Do NOT transport ayahuasca into or within Russia under any circumstances

✗ **HIGH RISK — ADF ACTIVE CASE**

Turkey

Turkey has generated one of the ADF's most significant cases an Indigenous healer sentenced to prison for carrying ayahuasca for a ceremonial gathering. The case illustrates every challenge identified in Document #15: an Indigenous practitioner arrested abroad, limited translation services, initial statements made without counsel, and a legal system with no framework for understanding traditional plant medicine.

- DMT is listed under Turkey's Law 2313; ayahuasca is not expressly listed but is treated as DMT-containing material
- Maximum sentence for importation (TCK 188): 20 years. The prosecution has appealed seeking the full maximum
- Defense arguments include: ayahuasca ≠ synthetic DMT, INCB plant exclusion, absence of criminal intent, Indigenous rights (UNDRIP, C169), and mistake of law (TCK 30)
- Turkey has ratified the ICCPR and ECHR, providing the primary international human rights framework for defense

⚠ **MEDIUM-HIGH RISK**

Poland & Central Europe

Poland has generated ADF cases involving both ayahuasca and mescaline-containing cacti. The legal framework lists DMT and mescaline as controlled substances, and recent amendments expressly list some of the plants. The atypicality argument (#18, Strategy 5) is the primary defense, but outcomes depend on prosecutorial discretion and judicial awareness of the INCB position.

- In a recent Polish case, forensic analysis presented by the prosecutors office inflated the alleged quantity by orders of magnitude — a recurring problem in jurisdictions unfamiliar with botanical preparations
- EU accession States have implemented ECHR protections (Art. 9 religious freedom), providing a European-level defense framework — but non-EU States like Belarus lack this layer entirely

ASIA & OCEANIA: SEVERE PENALTIES, LIMITED FRAMEWORKS

✗ **EXTREME RISK — DEATH PENALTY**

Indonesia

Indonesia classifies DMT-containing substances under Level 1 drug classification, which carries penalties including the death penalty. This applies to all plant-based materials containing DMT, explicitly including ayahuasca. Indonesia makes no distinction between the plant preparation and the synthetic compound. Bali, despite its reputation as a wellness destination, operates under the same national drug law.

- ADF ADVISORY: Indonesia represents the single highest-risk jurisdiction for ayahuasca globally. Do NOT transport, possess, or consume ayahuasca in Indonesia under any circumstances
- Indonesia has not ratified ILO C169 and has limited engagement with UN human rights treaty bodies on drug policy
- The ICCPR has been ratified, but Art. 18 religious freedom arguments have not been tested in the context of plant medicine

✗ **HIGH RISK**

Thailand, Japan, South Korea & East Asia

East Asian drug laws are among the most severe globally. Thailand lists DMT as a Category 1 substance (potential death penalty, though rarely applied to foreigners for possession). Japan and South Korea classify DMT under their narcotics acts with severe penalties. These countries generally do not distinguish between plant preparations and isolated compounds.

- Thailand's 2022 cannabis decriminalization created a brief window of policy openness, but the subsequent reversal signals that psychedelic reform is not on the near-term agenda
- Japan's drug laws are enforced with near-zero tolerance; even trace amounts can result in prosecution and deportation of foreigners
- No regional human rights court in Asia (unlike the Americas and Europe), meaning the ICCPR is the primary and often only binding international treaty available for defense (#8)

⚠ MEDIUM-HIGH RISK

India, Australia & New Zealand

India prohibits DMT under the Narcotic Drugs and Psychotropic Substances Act (1985) with severe penalties. Australia classifies DMT as a Schedule 9 substance (prohibited). New Zealand lists DMT under its Misuse of Drugs Act. None of these countries has specific legislation addressing ayahuasca as distinct from DMT.

- India: despite its rich tradition of plant medicines (Ayurveda, Siddha), there is no framework for Amazonian plant medicines. However, India's constitutional protections of religious practice (Art. 25–26) and its active engagement with the WHO Traditional Medicine Strategy could provide openings for future advocacy
- Australia: some underground ceremonies operate, but enforcement risk is real. The Australian TGA's 2023 rescheduling of psilocybin for treatment-resistant conditions may signal future openness to psychedelic therapies, but ayahuasca remains in a grey area
- New Zealand: similar to Australia. The Drug Foundation has advocated for harm reduction approaches, but no legislative or judicial precedent for ayahuasca exists

AFRICA: THE IBOGA CONNECTION & EMERGING FRONTIERS

⚠ VARIABLE RISK

Africa: A Largely Unmapped Landscape

Africa presents a unique landscape for plant medicine defense. Most African countries have drug laws modeled on colonial-era legislation or post-independence narcotics statutes that list DMT as controlled but do not address plant preparations. The INCB's plant exclusion is largely unknown to law enforcement and judicial authorities.

- Iboga/ibogaine is the primary plant medicine defense issue in Africa, particularly in Gabon and Cameroon where iboga is culturally central to the Bwiti tradition. The legal, ethical, and cultural parallels with ayahuasca are extensive
- South Africa: DMT is scheduled, but there is growing interest in psychedelic therapy and traditional medicine integration. The country's constitutional protections of cultural rights (Section 30–31) and religious freedom (Section 15) are robust
- The African Charter on Human and Peoples' Rights (Art. 8, Art. 17) protects cultural participation and provides a regional human rights layer that complements the ICCPR (#8). However, the African Court on Human and Peoples' Rights has limited jurisdiction and has not addressed plant medicine issues
- Most West, East, and North African countries operate in a gray zone for ayahuasca: not explicitly prohibited, but default narcotics laws with severe penalties create high risk for anyone transporting or facilitating ceremonies
- ADF has documented cases in Africa. As ayahuasca expands into the continent, the same legal patterns seen in Eastern Europe and Asia will likely emerge

THE DEFENSE TOOLKIT FOR THESE REGIONS

In regions without established precedent, the defense must be built from first principles. The available tools are more limited than in the Americas or Western Europe, but they exist:

- ICCPR Art. 18 (#8): The only binding international religious freedom treaty with near-universal ratification. Combined with HRC General Comment No. 22, this is the primary defense tool in jurisdictions without regional human rights courts.
- INCB plant exclusion (#3–4): Universal. The INCB's statements are relevant in every jurisdiction because they interpret the treaties all these countries have ratified. The challenge is getting judges and prosecutors to know this authority exists.
- Atypicality / legality principle (#18, Strategy 5): If the domestic law lists "DMT" but not "ayahuasca," the argument applies universally. Most Asian, Eastern European, and African countries fall into this category.
- Expert evidence (#12): Scientific evidence of safety is jurisdiction-neutral. The ICEERS Technical Report, the Public Health series, and the Palhano-Fontes RCT can be presented to any court in any country.
- Comparative jurisprudence: Favorable rulings from Spain (TSJM 316/2025), the US (Gonzales v. O Centro 2006), and Brazil (CONAD) can be cited as a persuasive authority showing how other countries — including fellow signatories to the same conventions — have resolved the same question.

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"If a country has severe drug penalties, there's nothing to be done."***

✓ **FACT:** Severe penalties increase the stakes but do not eliminate defense options. In the Turkish case, the defense is deploying INCB exclusion, ECHR Art. 9, Indigenous rights under UNDRIP, and mistake of law arguments — even within a system with a 20-year maximum sentence. The existence of severe penalties makes it MORE important, not less, to have a strong defense strategy and access to expert support.

✗ **MYTH:** ***"Ayahuasca practices don't really exist in Asia or Africa — these regions aren't relevant."***

✓ **FACT:** The ADF's data says otherwise. Cases have been documented. The trajectory is clear: anywhere that ayahuasca arrives, legal incidents follow within a few years. Preparing defense infrastructure BEFORE cases arise is far more effective than building it in the middle of a crisis.

✗ **MYTH:** ***"The death penalty risk in Indonesia means no one would bring ayahuasca there."***

✓ **FACT:** Bali is one of the world's most popular wellness tourism destinations. Visitors arrive from the global ayahuasca community, sometimes without understanding that Indonesia applies its national drug law uniformly across all provinces — including Bali. The gap between the perception of Bali as a "spiritual destination" and the reality of Indonesia's drug enforcement is one of the most dangerous information failures in the ayahuasca world.

✗ **MYTH:** ***"African traditional medicine has nothing to do with ayahuasca."***

✓ **FACT:** The legal and ethical frameworks are directly parallel. Iboga in Gabon's Bwiti tradition, khat in East Africa, and cannabis in Southern African traditional medicine all face the same tensions between drug control and cultural rights. The advocacy strategies, human rights arguments, and community protocols developed for ayahuasca are directly transferable to iboga defense — and vice versa. Cross-plant solidarity is strategically essential.

IN PRACTICE: BUILDING CAPACITY IN THESE REGIONS

STRATEGIC TAKEAWAYS FOR WAF ATTENDEES

(a) Build local legal networks: The ADF cannot maintain permanent legal capacity in 49 countries. WAF attendees from these regions should identify and train local lawyers who can provide first-response representation. The ADF provides expert opinions and cross-jurisdictional precedents; local counsel provides the in-court advocacy;

(b) Translate key materials: The INCB positions, the ICEERS Technical Report, and this Legal Literacy Series exist primarily in English, Spanish, and Portuguese. Translations into other languages would dramatically expand the reach of defense materials. WAF volunteers can contribute to this effort;

(c) Connect plant medicine communities: The iboga community in Africa, the peyote community in North America, the San Pedro community in the Andes, and the ayahuasca community share identical legal challenges. Cross-plant solidarity — sharing defense strategies, scientific evidence, and policy advocacy approaches — multiplies the impact of each community's work;

(d) Prioritize prevention: In high-risk jurisdictions, the priority is prevention, not defense. Clear, prominent warnings about legal risks must reach the community **BEFORE** incidents occur. The ADF's Country-by-Country Legal Map is the primary tool; community networks, retreat centers, and social media channels should amplify it;

(e) Engage regional human rights mechanisms: In Europe, the ECHR and ECtHR provide a robust regional framework. In Africa, the African Charter and African Court provide emerging possibilities. In Asia, the ICCPR and its First Optional Protocol (individual complaints to the HRC) are the primary

avenues. Long-term advocacy should target these regional mechanisms to build favorable precedent.

The globalization of ayahuasca has outpaced the legal infrastructure in these regions. Every case that arises without defense support weakens the global legal position. Every case that receives expert defense — even in the most hostile jurisdictions — contributes to the cumulative architecture of protection. The WAF 2026 is the moment to build the networks that will be needed when the next case arrives from a country we haven't heard from yet.

KEY RESOURCES

ICEERS — Country-by-Country Legal Map →

ICEERS — International Legal Status of Ayahuasca →

African Charter on Human and Peoples' Rights →

European Convention on Human Rights (Art. 9) →

Ayahuasca Defense Fund Emergency Contact: law@iceers.org

#20

Ayahuasca Future

Three Horizons: What Comes Next for Ayahuasca Law, Policy, and Community — and What the World Ayahuasca Forum 2026 Can Set in Motion

WHERE WE STAND: THE STATE OF PLAY IN 2026

This series has mapped an extraordinary legal architecture that did not exist a decade ago. When the first World Ayahuasca Conference convened in Ibiza in 2014, there was no INCB plant exclusion legal analysis, no ICEERS Public Health series, no UNDP Guidelines connecting drug policy to human rights, no WIPO Treaty on traditional knowledge disclosure, no WHO Traditional Medicine Strategy 2025–2034, and no ADF with 448 cases across 49 countries. The legal landscape has been transformed — but the transformation is incomplete.

The fundamental tension remains: ayahuasca is not internationally controlled, yet people are imprisoned for it. The science shows it is safe, yet States criminalize it. The WHO calls for integration of traditional medicine, yet prosecutors treat it as a dangerous drug. Indigenous peoples hold internationally recognized rights to their practices, yet a Shipibo healer sits in a Turkish prison.

What comes next depends on what this community decides to build. The WAF 2026 is not just a conference — it is a decision point.

HORIZON 1 — 2026–2028

Defend the Exclusion

THE IMMEDIATE PRIORITY: Ayahuasca's greatest legal asset is that it is NOT scheduled internationally. The coca review (#7) showed how nearly impossible descheduling is. Every strategic investment in the next two years should focus on maintaining the INCB's 2010/2012 position and preventing national scheduling:

- Win every defense case: each acquittal reinforces the INCB exclusion; each unchallenged conviction weakens it. The ADF needs expanded capacity to respond to the growing caseload (#15)
- Engage the CND Resolution 68/6 independent expert panel (#10): submit evidence on the incoherence between drug control treaties and human rights obligations regarding traditional plants
- Use the UNGASS 10th anniversary (April 2026) to reaffirm that Indigenous rights and traditional medicine must be central to drug policy reform

- Monitor patent filings (#14) and challenge any that threaten to create property rights over traditional knowledge
- Build the legal network in high-risk regions (#19): identify and train local lawyers in Turkey, Poland, Indonesia, India, and across Africa before the next case arrives

HORIZON 2 — 2028–2032

Build the Evidence & the Framework

THE MEDIUM-TERM GOAL: Create the scientific, legal, and institutional foundations for a rights-based regulatory model that can be adapted to any jurisdiction:

- Expand the scientific evidence base: fund more RCTs (not just for depression — addiction, PTSD, anxiety, palliative care), expand the ICEERS Public Health series to Asia and Africa, and create a comprehensive prior art database to block future patents
- Develop a model regulatory framework: drawing on the strengths and weaknesses of existing models (#13), create a template that centers Indigenous sovereignty, evidence-based safety standards, and cultural respect — adaptable to different legal traditions
- Implement the WHO Traditional Medicine Strategy (#16): engage health ministries in key countries to develop national traditional medicine policies that include ayahuasca and other plant medicines within the Strategy's framework
- Establish community protocols (#9): support Amazonian communities in developing Nagoya-compliant protocols that govern access to their knowledge and ensure benefit-sharing from any commercial or research use
- Advance the right to science (#17): use General Comment No. 25 to challenge scheduling barriers that block legitimate research. Build the case that the 50-year interruption of psychedelic research was a rights violation that must not be repeated
- Pursue strategic litigation at regional human rights courts: bring test cases to the IACtHR (Americas), ECtHR (Europe), and eventually the African Court to establish binding precedent on the intersection of drug policy and Indigenous/cultural/religious rights

HORIZON 3 — 2032 AND BEYOND

Decolonize the Drug Control Regime

THE LONG-TERM VISION: Transform the international drug control system itself — so that traditional plant medicines are governed by health, cultural, and Indigenous rights frameworks rather than criminal ones:

- The drug control conventions were adopted in 1961 and 1971 without Indigenous participation, without scientific evidence on traditional plant medicines, and within a paradigm that equated all psychoactive use with pathology. The UNDP Guidelines (#11) acknowledged this historical injustice. The coca review (#7) exposed its continuing consequences. The next step is structural reform
- Pursue formal recognition of traditional plant medicines as a distinct category within the international framework — governed by CBD/Nagoya Protocol principles of cultural sovereignty and benefit-sharing rather than by criminal scheduling
- Build toward a CND resolution recognizing the rights of Indigenous peoples to traditional plant use — analogous to the 2020 cannabis rescheduling vote but focused on the plant exclusion principle itself
- Ensure that any future WHO ECDD review of ayahuasca (if triggered) is conducted with full Indigenous participation, transparent scientific methodology, and genuine integration of traditional knowledge — the failures of the coca review as a template for what to avoid
- Establish a permanent global mechanism for legal defense of traditional plant practitioners — institutionalizing what the ADF has built as a volunteer program into a sustained, funded, global initiative

COMMON MISCONCEPTIONS

✗ **MYTH:** ***"The legal situation is improving on its own — we just need to wait."***

✓ **FACT:** The ADF's data shows the opposite: 448 cases across 49 countries, rising annually, diversifying geographically, and expanding to new substance categories. The coca review demonstrated that even when science supports reform, the system does not change without sustained, strategic advocacy. Legal progress is not linear, and it is never passive.

✗ **MYTH:** ***"The psychedelic renaissance will automatically solve the legal problems for ayahuasca."***

✓ **FACT:** The psychedelic renaissance is focused on synthetic or semi-synthetic compounds (psilocybin, MDMA, ketamine) within clinical frameworks. Ayahuasca — a traditional multi-plant decoction used in ceremonial and cultural contexts — does not fit neatly into the medicalization model. Without specific advocacy, ayahuasca risks being left behind as a "schedule I curiosity" while psilocybin gains clinical acceptance. Worse, the patent boom may appropriate ayahuasca's knowledge while excluding its communities.

✗ **MYTH:** ***"Indigenous communities don't need Western legal frameworks — they have their own governance."***

✓ **FACT:** Indigenous governance systems are essential and must be centered in any regulatory framework. But when a Shipibo healer is arrested in Istanbul, it is Turkish criminal procedure, not Indigenous governance, that determines whether they go free or spend years in prison. International human rights law exists precisely to bridge this gap — to ensure that Indigenous rights are recognized within the legal systems of States that may not share those traditions. The instruments in this series do not replace Indigenous governance; they protect it.

✗ **MYTH:** ***"One global framework will solve everything."***

✓ **FACT:** Ayahuasca exists in too many contexts — Indigenous ceremonial, syncretic religious, therapeutic, scientific, personal spiritual — and across too many legal systems for a single framework to work everywhere. What this series provides is a toolkit, not a template. The goal is not uniformity but coherence: a shared set of principles (Indigenous sovereignty, evidence-based regulation, human rights compliance, reciprocity) that can be adapted to the specific legal, cultural, and political context of each jurisdiction.

CLOSING: THE ARCHITECTURE WE HAVE BUILT

Over these 20 documents, we have mapped an international legal architecture for ayahuasca defense that rests on five pillars:

- The factual foundation: Ayahuasca is not internationally controlled (#3–4). It does not meet any of the three WHO scheduling criteria (#12). Practitioners in structured settings are healthier than the general population. The INCB, WHO, and UNDP all support this position.
- The rights framework: Religious freedom (non-derogable), Indigenous rights, cultural rights, the right to health, and the right to science create a multi-layered protection that no proportionality analysis can overcome (#1–2, #5–6, #8, #16–17).
- The policy alternatives: Five regulatory models demonstrate that the binary of prohibition vs. legalization is a false dichotomy. Evidence-based regulation that centers Indigenous governance is both possible and necessary (#13).
- The knowledge sovereignty dimension: The Nagoya Protocol, WIPO Treaty, and community protocols provide tools to protect traditional knowledge from commercial appropriation (#9, #14).
- The operational capacity: The ADF's decade of casework, the master playbook (#18), and the global legal network provide the infrastructure to deploy this architecture in practice (#15, #18–19).

The future of practices involving ayahuasca will not be decided in the Amazon alone. It will be decided in courtrooms in Istanbul, in patent offices in Washington, in the CND chambers in Vienna, in health ministries in Delhi, and in the community spaces. The question is whether those decisions will be made by people who understand the traditions, the science, and the rights — or by people who do not.

This series is a tool. Use it.

About This Publication

This series was prepared by the Ayahuasca Defense Fund (ADF), a program of the International Center for Ethnobotanical Education, Research, and Service (ICEERS). It draws on a decade of legal defense casework across 49 countries, the scientific literature on ayahuasca safety and therapeutic potential, and the international human rights framework that protects traditional plant medicine communities.

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The ADF does not charge fees for its legal defense services. This work is made possible entirely through the generosity of the community. If this series is useful to you, consider supporting the ADF's continued work through a donation at **iceers.org/donate**.

The legal architecture for ayahuasca defense did not exist a decade ago. Today it does — built case by case, instrument by instrument, country by country, by a community that refused to accept criminalization as the final word.

This series is the map of that architecture. Use it to navigate. Use it to build. Use it to defend.

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