

The New Brazilian Law on Drugs and the Religious Uses of Ayahuasca: Legal and Anthropological Aspects¹

Luciana Boiteux

The criminalization of the use and trade of drugs classified as illicit is the fruit of drug control policies established during the 20th Century, policies implemented vertically in every country in the world through the imposition of an international system of control that selects and criminalizes psychoactive substances and the raw materials used in their production without considering local and regional factors. This prohibitionist model has been the object of criticism as a violation of fundamental human rights as put forth in international and regional declarations and national constitutions, considering it to be an intrusion by the State into the private affairs of individuals, as well as a disproportional penal reaction to behavior related to illicit drugs.

Nevertheless, some national variations to the radical model prescribed in international treaties on drugs are evident, and the current Brazilian policy on drugs may be classified as an intermediate model, or a tempered prohibitionism closer to the policies of western European countries, which are characterized by a reduction of penal control over users, implementation of policies for the reduction of damages and imposition of limits to the excessively punitive policies identified with the United States, particularly at the federal level.² In addition, the acceptance and administrative regulation of religious use in Brazil, as in the case of ayahuasca, is one more element that differentiates it from the more radical North American model.

In this article, we intend to analyze regulations imposed on the religious use of psychoactive substances in Brazil. We start by identifying the conflict between two rights: on one hand, there is the right to privacy and freedom of religion, and on the other, the justification presented for prohibiting the use of certain psychoactive substances. In this regard, it is important to present the case study on the regulation of the religious use of ayahuasca in Brazil as an example, even if it is incipient, of an intermediate solution, and identify its positive and negative aspects in order to evaluate whether the solution proposed is feasible for resolving the conflict between religious and ritualistic uses of psychoactive substances and the prohibitions contained in international treaties on the control of drugs. But before addressing this central theme, we must first look at the general aspects of the new Brazilian law on drugs.

General Elements of the New Brazilian Law on Drugs

At the end of 2006, thirty years after the enactment of the repressive and punitive Law on Drugs n. 6368/76, which remained in effect until the aforementioned date,

Brazil adopted a new law on drugs (n. 11.343/06), the first change made under the new Brazilian Democratic Constitution of 1988. This law was considered by some to be an advanced piece of legislation in the area of illicit drug control, especially in regard to the unprecedented decarceration³ of offenses related to the use of drugs and the creation of the only crime under Brazilian law for which there is no automatic provision for applying the penalty of incarceration. In article 28, the law provides only for alternative measures for users of illicit drugs, such as warnings on the effects of drugs, rendering of community service and obligatory attendance at a course or educational program.

In light of this striking characteristic, and in accordance with the classification of models of drug legislation previously mentioned (cf. Boiteux, 2006), the Brazilian law on drugs may be identified today as a tempered prohibitionist model, especially as compared with other more radical ones, such as that of the USA. Among aspects considered to be positive, in addition to decarceration, the new Brazilian law gave the user the same status as a *grower*, meaning an individual who plants for personal use (§ 1^o), and also reduced the penalty in the case of shared use of an illicit drug (art. 33, § 3^o), an offense that had previously been considered the same as trafficking. These measures were considered to be correct because they reflect a reduction in penal control over the user of drugs in comparison to the previous law, which was highly repressive, establishing a penalty of six months to two years of imprisonment for the user under the previous art. 16 of Law n. 6.368/76.

On the other hand, the minimum sentence for the offense of drug trafficking, prescribed in art. 33 and § 1^o, increased from three to five years of imprisonment, an absolutely disproportional measure, making the crime of trafficking now punishable by sanctions more severe than those applied for the crime of robbery, which is defined as involving violence or grave threat. This has come under criticism as to its constitutionality due to the disproportion between the penalty and the offense (cf. Boiteux, 2006, p. 8-9). In addition, the extensive list of aggravating circumstances prescribed, such as the use of a firearm or the location where the drug trade occurs, can lead to an increase in the penalty of up to two-thirds, as Maria Lucia Karam has correctly pointed out (Karam, 2008).

Nevertheless, the creation of a “National System for Public Policies on Drugs” is considered to be the greatest advance of the new legislation, and is based on the principles proclaimed in article 4^o of the new law, such as: respect “for the fundamental rights of the individual, especially in regard to autonomy and freedom,” “to diversity and the particular aspects of existing populations,” and “the promotion of the ethical and cultural values and citizenship of the Brazilian people,” among others. In article 19 of the same text, the guiding principles for the prevention of the unlawful use of drugs are listed, including “the strengthening of individual autonomy and responsibility in regard to the unlawful use of drugs” (paragraph III).

These principles, as *central tenets of a system*, define the logic and rationality of the normative system for the control of drugs, giving it a center and a harmonic sense, lending strength to the establishment and solidification of the rights enumerated, and serving as foundations or guides for the preparation of laws which will give them formal meaning.⁴ As a concrete example of these principles, the recent Law n. 11.754/08 changed the former name of the “National *Antidrug* Agency,” the

agency responsible for the executive responsibilities involved in carrying out drug policies in Brazil, to the “National *Drug Policy* Agency,” as well as changing the name of the “National *Drug Policy* Council” along the same lines. The idea behind this change is to get away from the stigma associated with the term “anti-drugs,” even if this is merely a symbolic gesture, and remove the negative weight inherent in the term by substituting “drug policy” in a move that goes against the tendency being followed in international treaties on drug control.

Referring specifically to the religious use of prohibited substances in its artical 2^o, the new Brazilian law expressly recognizes the exceptions prescribed in the Vienna Convention on Psychotropic Substances of 1971 in regard to plants used strictly for ritualistic-religious purposes, expressly acknowledging the right to religious freedom as already contained in the Brazilian Constitution in regard to drug policy. As to the list of prohibited substances, in general terms the law follows the recommendations of international drug control agencies. However, it doesn’t define the substances that are considered illicit, leaving that responsibility to complementary regulation issued by the Ministry of Health that is currently contained in Decree SVS/MS no. 344, of 5/12/2008. In the specific case of ayahuasca, as will be seen further on, the plants from which it is derived and the tea extracted from them are not expressly included among the prohibited substances, this being the best example of religious exception in the current Brazilian system for the control of drugs.

Ayahuasca and its Cultural Context

The question of the religious use of psychoactive substances in Brazil is practically one and the same as the question of the use of ayahuasca, given that, despite the fact that there are some reports, for example, of the use of *Cannabis* in indigenous rituals, among other possible uses, the use of ayahuasca is by far the most documented. The consumption of ayahuasca (Labate, 2005),⁵ a drink prepared from the vine *Banisteriopsis caapi* and the leaves of a bush, *Psychotria viridis*, which contain the main active ingredient DMT (N-Dimethyltryptamine), can be traced to a long indigenous tradition in the western Amazon region in Brazil and east of the Andes. One of the peculiarities of its use in Brazil, different from the rest of South America, as pointed out by Labate (2005), is the consumption of this drink of indigenous origin within a Christian framework, in a type of religious syncretism.

According to MacRae,⁶ “although the Indians have been using it for a millennium, ayahuasca tea has for a long time been used as part of popular mestizo medicine in countries like Peru, Bolivia and Colombia,” and he adds that “it appears justified to include the sects that are users of ayahuasca in the list of Afro-Brazilian cults, along with the umbanda cult that originated in Rio de Janeiro, and the candomblé cult of Salvador, among others.” Thus, in ayahuasca we have a powerful psychoactive tea capable of altering human consciousness and perception which is consumed in diverse cultural contexts: indigenous groups, rubber tappers and farm hands, and the so-called “Brazilian ayahuasca religions,” which are made up of three principal groups: Santo Daime, Barquinha, and União do Vegetal.⁷ Notwithstanding this origin, there are records of its urban and non-indigenous religious use, beginning in

the decades of 1970 and 1980, in the outskirts of cities in the Amazon region, such as Rio Branco, in Acre, and Porto Velho, in Rondônia (cf. Goulart, 1996).

For the followers of these religious groups ayahuasca is a sacred drink related to the construction of a symbolic and ritualistic system associated with the notion of the sacrament in the Christian religion. According to various anthropological studies cited by MacRae (1999), the ayahuasca religious services are constructed in a “peaceful and orderly” manner among the followers of the aforementioned spiritual groups, “whose values coincide with those considered emblematic of traditional Christian societies,” and does not lead to abusive and destructive use, but promotes lifestyles that are “modest and austere, focused on the cultivation of spirituality and family and community values.”

However, in addition to this “traditional” use by the ayahuasca religions of the Amazon region, today we are seeing urban practices and the use of ayahuasca in large Brazilian cities as well as in other countries. In what could be considered a specific characteristic in the case of Brazil, the urban use of ayahuasca is still strongly linked to long-standing ayahuasca religious matrixes and traditions, which hold a “symbolic and concrete hegemony, given that access to the drink is controlled by these religions” (cf. Labate, 2004a, p. 88). According to a wide range of literature, the consumption of ayahuasca spilled over the borders of Amazônia and arrived with force in the urban centers outside of the region, crossing the frontiers of Brazil and reaching Europe, North America, and Asia. What once represented the expression of a native culture that was already born as a hybrid, with border elements and cross pollination, gained other influences that transformed it even further, through an interesting process of globalization, being recognized today and practiced by forces of a globalized world.

Thus, while a portion of these uses remain “traditional,” spreading to other geographic areas without losing their connection to their “original” meaning, as is the case with the União do Vegetal religious society that was established in the United States and continues to maintain a reasonable level of internal ritualistic homogeneity, we also see regional and international innovations in the use and consumption of the substance with the so-called “neo-ayahuasqueros,” among numerous other forms of cultural expression.

These new urban users form an intersection between the urban networks linked to the traditional use of the substance and the new innovative uses of ayahuasca that make up the “New Age” universe, following a broader concept of religiousness (of a “diffuse nature”⁸), exemplified by Labate (2004a) by the use of the tea with oriental meditation techniques, in various lines of corporal and psychological therapy, and also related to diverse modes of artistic production, in music, literature and theater (cf. Labate, 2004a). In this sense, given the tension between traditional use by organized religious groups (institutionalized forms of religion) and the so-called “post-modern individualized spirituality” (*religious stances*), it is important to understand the regulatory process for the consumption of ayahuasca in Brazil and the extent of “religious” recognition in its use, which we will now address.

The Regulation Process for the Use of Ayahuasca in Brazil

Initially, it must be said that in Brazil, contrary to the USA where the subject was the object of deliberation by the Supreme Court, there have not been any judicial decisions in regard to legal questions related to the consumption of ayahuasca. The existing regulations have been established through a Resolution from CONAD (National Anti-drug Council), after the performance of studies and debates that included the participation of specialists and representatives from ayahuasca religious entities, where a “code of conduct” or a deontology for the religious use of ayahuasca was elaborated.

As is well known, in the USA, after various attempts by the government to prohibit the Brazilian ayahuasca organization União do Vegetal and its members from practicing their religion with the use of the tea, the matter reached the United States Supreme Court in the case of *Gonzales vs. O Centro Espírita Beneficente União do Vegetal*. The Court handed down a unanimous decision in favor of the right to religious freedom prescribed in the U.S. Constitution, despite having rejected the argument that the 1971 Vienna Convention excluded substances used in the preparation of the controlled drug lists, considering that the plants containing the prohibited substances were also prohibited. Thus, the argument equating ayahuasca to peyote prevailed, peyote being a controlled substance used by indigenous tribes in the U.S. that is considered an exception to the general rule due to its religious-ritualistic use. The argument that prevailed in that country, therefore, was not the exclusion of the substances on the list of prohibited substances from which the tea was made, but freedom of religion.⁹

On the other hand, in Brazil, while freedom of religion is also widely accepted, the majority of specialists disagree with this interpretation about the prohibition of substances from which the tea is made, as the INCB (International Narcotics Control Board) has already stated that:

...no plant (natural material) containing DMT is currently controlled by the 1971 convention on psychotropic substances. Consequently, preparations (for ex. extractions) made from these plants, including ayahuasca, are not under international control and, therefore, are not subject to any of the articles of the 1971 Convention. (Schaepe, 2001)

It is understood here that only DMT (N-Dymethyltryptamine) is included in the list of substances banned by the 1971 Vienna Convention, but not the plant that contains it. Therefore, if not all of the plants containing controlled substances are banned by the Convention, only those specifically listed on the Table may be considered “controlled” or banned, which is not the case with those used to extract ayahuasca tea. Nevertheless, this question continues to be very controversial, both in the international sphere, in the definition of the current position of the INCB, and in the legislation of European countries.¹⁰

In Brazil, in 1986 there was a temporary suspension of the plant species used to make ayahuasca tea from the list of banned substances contained in Decree nº 02/85 of DIMED,¹¹ becoming permanent in 1987, and again confirmed in 1992. It was a long regulatory process, with progress and advances, that continued to be subject to

constant questioning due to the inexistence of a strict law regulating the use of these substances.

The process of legalization of ayahuasca goes back to 1985, when the first workgroup was created and concluded that the consumption of ayahuasca tea was done with no known social damage. Another noteworthy historical fact that occurred during this process was the elaboration of the Declaration of Principles of the Religious Groups that consume the Tea Hoasca¹² for the purpose of establishing common procedures and ethical principles for its consumption (see Labate, 2005). Despite the fact that it has no legal *status*, it represents an interesting proposal for self-regulation considered by specialists to be the best form of social control over the substance.¹³

The process of legalization of the use of ayahuasca suffered a setback when, in 1992, because of an anonymous complaint, it was decided that the question should be reexamined, and a new workgroup was appointed which, at the end of its work, considered the earlier CONFEN decision to be correct based on its report edited by Domingos Bernardo de Sá. With the creation of SENAD – National Anti-drug Agency – a new workgroup¹⁴ was created in December of 2002, with the objective of proposing rules regarding the social control of the use of ayahuasca tea, but this group was never convened.

Finally, in November of 2004, CONAD Resolution no. 05/04 was approved, which, in addition to creating the Multidisciplinary Workgroup (GMT)¹⁵ on Ayahuasca, consolidated the legitimacy of the ritual-religious use of ayahuasca, guaranteed the use of the tea by persons under the age of 18 with parental approval, and by pregnant women, at their own responsibility. Thus, this resolution highlighted the need for incentives for research on the therapeutic uses of ayahuasca, guaranteed the religious use of the tea, and recognized the importance of the knowledge acquired by the groups that use it in the construction of legal regulation on its use.

In terms of cultural recognition of ayahuasca, Brazil has advanced greatly during recent years, with a request for recognition of the use of ayahuasca tea in religious rituals as a Brazilian cultural heritage being studied by Iphan (Brazilian National Institute for Historical and Artistic Heritage) as has already occurred in Peru. In July of 2008, Peru declared “the traditional knowledge and use of ayahuasca practiced by the indigenous communities in its Amazonian forest” to be a cultural heritage of the nation.

The Report by the Ayahuasca Workgroup

The final report of the Workgroup was concluded on November 23, 2006, thus occurring after the effective date of the new Brazilian drug law. The report proclaimed basic principles for the use of ayahuasca tea as a way to prevent its improper use, “seeking to emphasize and consolidate practices which for the entities themselves represent proper and responsible religious use” (MacRae, 2008, p. 300). As positive points, it reaffirmed previous conclusions, saying that “for many decades the use of ayahuasca has occurred without resulting in any identifiable social damage,” as well as the fact that specialists have recognized the “religious use of

ayahuasca as a rich and ancestral cultural manifestation [that], precisely for the relevance of its historical, anthropological and social value” (CONAD, 2006, p. 7).

A controversial question arises when restrictions are put on the consumption of the tea for “practices considered to be outside of the traditional religious use,” with the following situations having been cited as “non-desireable”: the use of ayahuasca associated with illicit psychoactive substances, such as *Cannabis* or alcohol, and its “use outside of the ritualistic environment,” however, what exactly is meant by the “ritualistic environment” was not clearly defined, which could cause a certain amount of legal ambiguity. In fact, considering the expansion of the consumption of ayahuasca to other frontiers, both domestic (in the case of the urban neo-ayahuasqueros) and international (consumption in other countries), there remains a doubt about whether this regulation will also affect other types of consumers that do not fit into the strict category of “religious or ritualistic use,” as is the case with “psychonauts.”¹⁶ These restrictions, in our understanding, significantly limit the types of use that are allowed, and could end up excluding other types of users who do not fit into the categories of “religious” or “traditional.” For this reason, we would consider it better if the regulation referred to ritual uses in a broader sense, in order to include “non-traditional”¹⁷ groups in the regulation.

According to Anthony Giddens’ (2001) analysis, when speaking of the notion of tradition “it is a myth to think that traditions are impervious to change. Traditions evolve gradually with the passage of time, but they may also be transformed or altered very quickly.” For Giddens, it would be a grave error to require that a system of symbols and religious practices must be “centuries old.” To the contrary, he says, the abandonment of tradition is at the heart of the cosmopolitan global society of our time (p.48). We live, after all, in a cosmopolitan world in which there are an increasing number of people who have regular contact with others who think differently than they do. Therefore, how can we justify, in the globalized society of the 21st Century, that only the traditional use of ayahuasca may be allowed?

Even if the reasons for advocating the imposition of more rigid social control on the consumption of ayahuasca are understandable, with the declared objective being to limit its expansion to alternative uses outside the strict control of the representative entities, we feel that such limitations infringe upon the freedom of cultural and religious expression. In this regard, we point out that among the Workgroup’s recommendations is the prohibition of its commercialization outside the “ritualistic” context, that trade in the tea should be done only in order to cover costs, and that marketing to third parties is not considered recommendable. In the words of the report “the cultivation, preparation and ministration for the purpose of generating profit is incompatible with the religious use that the entities recognize as legitimate and responsible.” However, such a restriction of profit should not be confused with covering costs, which according to the official text, include the harvesting of plants, their transport and preparation, taken as “maintenance costs,” which should be supported by the user community. This does not prohibit, however, that part of this production may be diverted to consumption by third-parties, provided that people, groups or entities do not dedicate themselves exclusively, or primarily, to supplying third-parties, in a manner that turns it into a “business.”

On the other hand, the regulation of the exportation of ayahuasca is not addressed, as this is not under CONAD's scope of authority, and for this reason that question is left to the National Agency for Sanitary Supervision – ANVISA, which has indicated a favorable perspective towards resolution of the question, as related by MacRae (2008). Going further, the proposed regulation only recognized ritualistic use, not the therapeutic use of ayahuasca, although it had recommended investment in research in this area, as the members of the group believed that this question should be the object of further study before the practice can be approved.

A very controversial point in the aforementioned report was the recommendation that the religious practice should be done collectively, meaning in an institutionalized format, and that the groups should be incorporated in order to allow “the users to engage in the religious practice in an environment of trust.” This would indicate the apparent lack of recognition of individual or private religious use, or collective use “without institutionalization.” This point is related to the controversial request for the registration of ayahuasca religious entities made at the beginning of the Workgroup's activities, which was criticized at the time,¹⁸ with the subsequent clarification that fulfillment of this request was optional and not an obligation. In the end, more than one hundred were registered (CONAD, 2006). To a certain extent, it was perceived on the part of Brazilian drug control agencies at that time that there was a tendency toward the institutionalization of the consumption of ayahuasca for the purpose of regulating its use. This was confirmed in the final report, but the measure was never unanimous among the specialists.

In this regard, it is expressly stated in the final report that social control should be done through formal institutions :

While the act of solitary and isolated faith is recognized, religious practice usually develops collectively. It is recommended that the groups incorporate themselves into formal organizations, with legal status, consolidating the idea of responsibility, identity and social projection that allows the users to practice their religion in an environment of trust (CONAD, 2006).

Nevertheless, we understand that this recommendation cannot be sustained legally by the broad principle of religious freedom, given that an individual's spiritual expression may not be limited to institutionalized forms of churches or determined religious cults registered in a legal office, and would configure improper intervention of the State in the sphere of individual religious expression.

The report also demonstrated concern with tourism for the consumption of ayahuasca and with publicity considered “misleading” in regard to its use. According to MacRae (2008, my translation), a member of the aforementioned commission, the greatest concern was in regard to the

...production and the transport of the drink, its sale (including via Internet) to individuals with little commitment to traditional rituals, the distinction between an “ayahuasca tourism” promoted for profit by entities that are often foreign and promote the psychoactive, spiritual and curative properties of ayahuasca, and expeditions of a religious pilgrimage type, by members of urban ayahuasca drinking groups (mainly the CEFLURIS) to ayahuasca communities along their “lines,” situated in the Amazon forest.

Also among the positive points of the report, we should mention the self-sustainability of the production of the drink by the religious entities that are encouraged to cultivate their own harvest.

In addition, the report maintained the recommendation that the use of the tea by minors under the age of eighteen should be the concern of parents or guardians in the exercise of their family responsibilities, as well as not opposing its consumption by pregnant women, leaving the responsibility for such use to the women themselves, measures with which we are in full agreement because they recognize the freedom of the social body in the control of the consumption of the substance, respecting the nuclear family. On the other hand, the report recommends that ayahuasca not be furnished to people with mental illnesses or who are under the effect of alcoholic drinks or other psychoactive substances, in light of the risks inherent in these practices.

Thus, after having seen the basic principles contained in the new Brazilian Drug law, and reviewed the question of the process of legalization of ayahuasca in its cultural and religious-ritualistic context, we must now analyze the scope of the protection for religious freedom and its implications in the case of ayahuasca from a constitutional perspective, complementing the criticisms already made in regard to the final report.

Religious Freedom and Cultural Expression

At this point we will address, in general terms, the protection of religious freedom afforded by the Brazilian Constitution. As is well known, it is within democratic regimes that freedom encounters its greatest dimension, given that it is a basic presupposition that this form of government guarantees the protection of human rights. The Constitution proclaims the fundamental rights of man in categories, and defines the values and principles that will be the foundation of the entire system of law, which should be founded on a premise of human dignity. Among the rights proclaimed is freedom, which is the basis for the other rights. Individual freedom constitutes the first form of freedom for man, and from it come the rest: physical freedom (of movement and circulation); freedom of thought (with all of its freedoms: opinion, religion, information, artistic, communication of knowledge); freedom of collective expression (to meet, of association); in addition to freedom of professional pursuit and freedom of economic opportunity.¹⁹ It must be noted that, as a result of the dispositions in art. 5^o of the Brazilian Federal Constitution, in its paragraph II: “no one will be obliged to do or not do anything if not by virtue of the law,” or in other words, freedom is the base point, it is the general rule, with prohibition (or its restriction) the exception.

In this broad sense of freedom, it is religious freedom that interests us. It is included among the spiritual freedoms, with its exteriorization a form of manifestation of thought that is composed of three forms of expression: freedom of belief, freedom of worship, and freedom of religious organization. In the Brazilian Constitution, artical 5^o, paragraph VI declares the unassailable freedom of conscience and belief; and in paragraph VIII it states that “no one will be deprived of their rights because of their religious beliefs.” This viewpoint includes the freedom of religious

choice, to choose to be a part of any religious group as well as to choose not to belong to any. This is the *individual right to profess or express one's religiousness in an individual manner*.

In regard to freedom of worship, this is exteriorized in the practice of rites, ceremonies, manifestations, meetings, and fidelity to the habits and traditions of a chosen religion. Article 5^o, paragraph VI contains a disposition in this regard that guarantees the free exercise of religious cults and the protection of their sites of worship and their liturgies. And the freedom of religious organization covers the free establishment of and organization of churches and their relationships with the State, being that, in Brazil, the principle of separation of Church and State has been the rule since the establishment of the Republic (Silva, 2003). The Brazilian Federal Constitution of 1988 also declares the right to freedom of cultural expression, and it is the State's duty to guarantee the full exercise of cultural rights and access to sources of national culture, as well as to support and encourage popular, indigenous, and Afro-Brazilian cultural manifestations, among other groups that were a part of the process of creating Brazilian civilization, pursuant to the dispositions contained in art. 215 and the 1^o of the CFB/88.²⁰

On the same subject of the guarantee of religious freedom, the European Convention on Human Rights and Fundamental Freedoms, in its article 9^o, addresses freedom of belief in a broad manner, including in regard to forms of manifestation or expression of individual religiousness. We must also cite the International Covenant on Civil and Political Rights, which is very similar to the previously mentioned convention, and which considers religious freedom, in its article 18, to be an absolute right that cannot be suspended even in a state of emergency (art. 4^o). The American Convention on Human Rights, known as the Pact of San Jose, also defines, in its art. 12, the right to freedom of conscience and religion.

With the right to freedom of religion established as a fundamental right, we must define the premise of the multicultural conception of human rights of Boaventura de Souza Santos. For Santos de Souza (1997), human rights "when conceived of as universal human rights, will tend to operate as a kind of top-down form of globalization," but, in order to operate in a cosmopolitan way, or as a bottom-up globalization, human rights "must be reconceived as multicultural." He concludes that "increasing consciousness of cultural incompleteness as much as possible is one of the most important tasks for the construction of a multicultural conception of human rights" (p. 79-96). Based on this multicultural and cosmopolitan conception of human rights, we can present our final considerations on the question of the current regulation of ayahuasca, and its cultural and ritualistic aspects, from the perspective of the Brazilian Constitution.

Final Considerations

In the opinion of Santos (1997) with regard to the consumption of psychoactive substances, the typical use of ayahuasca in the Amazon, like the chewing of the coca leaf in Bolívia, constitutes an example of "localized globalism," typical of peripheral countries, as opposed to "globalized localism," specialties of countries considered

“central.” However, with globalization we observe the exportation of certain cultures to faroff regions, as is the case with North-American *fast food*, or their cinema, but there is a difficulty in accepting the exportation of typical products or cultures from peripheral countries to the rest of the world, such as ayahuasca tea, or coca leaves.

We believe that the authorized ritualistic-religious use of this tea cannot remain restricted to its original or “traditional” communities, because this presents the danger of limiting freedom of religion and even of stigmatizing certain cultures or religions by restricting them to their geographic frontiers. Particularly in light of the accelerated process of globalization that surrounds us, the cosmopolitan society in which we live, and the ease of communication, a small community in the Amazon region with its own religious tradition cannot remain isolated from the world because it is influencing and being influenced by other actors and other cultures.

In this regard, the absence of regulation over the exportation of the plants that are used to make ayahuasca tea results in the failure to consider the right to free cultural expression and exchange of ideas, religions, and traditions in a globalized world. This is another reason why this limitation on the commercialization of the tea must be reconsidered, not as a commercial market to be exploited economically, but as a product of a culture that has become globalized and should be recognized as such. The decision of the United States Supreme Court guaranteeing the free exercise of the religious practices of the União do Vegetal in that country cannot be ignored, making regulation of the exportation of this product an essential question that must be addressed.

This conclusion is reinforced when taking into consideration the principles that guide the Brazilian drug policy system, those that address “the fundamental rights of human beings, especially in regard to their autonomy and freedom,” and “the diversity and peculiarities of existing populations,” as well as “the promotion of ethical and cultural values and the citizenship of the Brazilian people,” which support these conclusions. In the same manner, the idea accepted by Brazil of the need to “avoid practices considered outside of religious or traditional use,” or “of a ritualistic environment,” for its use to be permitted, reflect to a certain extent a prejudice against individual, or non-institutionalized, expressions of a determined faith. Such a prejudice limits religious freedom, as well as the autonomy and freedom of the individual, in a manner that is unacceptable. After all, it is not the State’s function to deliberate about the type of faith each individual has or how that person chooses to profess it.

Furthermore, the option of the Workgroup established by the agency with authority over the control of drugs in Brazil to institutionalize the ritualistic-religious use of ayahuasca implies a limitation on the right to the expression of religious freedom. This is because it does not tolerate non-institutionalized private, individual, or collective ritual, as if this would not also represent a cultural and religious expression of an individual’s faith. Therefore, we criticize the demand that “religious practice should be developed collectively,” because this would violate the principle of privacy or intimacy. Free individual or collective expression of culture, religion or faith constitutes not only a right, but the only true form of expression. On the other hand, the recommendation that groups be legally registered could represent a controversial process of encouraging the bureaucratization of the use of ayahuasca.

Such a recommendation is ironic, at least from a historical point of view, considering the humble origin of most of the ayahuasca religious groups. It is as if the State would be able to confer religious legitimacy only through the granting of registration as a legal entity.

Summarizing, we recognize that there is a tension that exists between the traditional use of ayahuasca by institutionalized religious organizations recognized as legitimate by the current Brazilian system, and the difficulties present in the regulation of the so-called post-modern forms of individual spirituality. Nevertheless, from a legal perspective, we have no doubts in affirming that the free exercise of religious and cultural freedom, a right granted by the Brazilian Constitution and included in international and regional treaties protecting human rights, should be broad and include all forms of expression, even those that are not necessarily institutionalized. In our opinion, current Brazilian regulation is correct in excluding the plants that are used in making ayahuasca tea from the list of banned substances, and reaffirming religious freedom in Brazil as a fundamental right. However, the interpretation of this right should be broad, and include any and all religious and/or cultural uses. This would render unacceptable the demand for the institutionalization of its use as a requirement for exercising this freedom, by creating a limitation to a fundamental right, and restricting the extent of this constitutional protection.

To be sure, we do consider the regulation of the use of ayahuasca in Brazil to be a great advance, both because of its recognition of the right to religious expression and cultural diversity and because it recognizes all of the difficulties that arise in the attempt to regulate the religious or cultural use of a psychoactive substance in a world where drugs are taboo. However, it is our understanding that there is still a long road to travel until we have firmly established constitutional protections for religious and cultural freedom, as well as collective and individual expression, in regard to ayahuasca in Brazil and the globalized world.

-
- 1 I would like to thank Beatriz Labate for our intellectual discussions in regard to the text and for her insightful comments and debates.
 - 2 In regard to classification of drug control models, we refer the reader to our work in which we propose a classification into analytical models for the evaluation of countries' drug policies. Cf. Boiteux, 2006.
 - 3 By decarceration we mean the impossibility of the imposition of the penalty of imprisonment, while keeping the offense on the list of crimes. This means, as the Federal Supreme Tribunal of Brazil has already stated, there has been no decriminalization, meaning that under the law the fact continues to be considered a crime.
 - 4 We use here the definition of principle provided by Bandeira de Mello (2007, p. 817-818).
 - 5 "Ayahuasca" comes from the Quéchua language and in Portuguese it is sometimes referred to as "cord (vine, liana) of the dead (the soul, the spirits)," as cited in Luna (1986). Additionally, there are other names that are used with greater or lesser frequency according to the region.
 - 6 MacRae, Edward. *Guided by the moon: shamanism and the ritual use of ayahuasca in the Santo Daime religion in Brazil*. English edition published on the internet at: http://www.neip.info/downloads/t_edw2.pdf.
 - 7 For a list of these religions, see: Labate & Araújo (2004).

- 8 In this sense, Camurça (1996, p. 85; cited by Labate, 2004a), states that the movement that is known as “New Age” is characterized as syncretistic, itinerant and mistaken by other religions, being an “individual experimental religiousness,” typical of the modern age and its subjectivism.
- 9 To find out more about this, cf. Bronfman, Jeffrey. The early history of the UDV in the United States, and the foundation of American Law; and Haber, Roy. The Santo Daime road to seeking religious freedom in the USA, both published in this volume.
- 10 Such subjects are developed by other contributions to this volume
- 11 Resolution n° 04/85 of CONFEN created a workgroup and Resolution n° 06, of February 4, 1986, from the same agency, determined the temporary suspension of the interdiction of the use of ayahuasca. In a meeting in September 1987, through approval by the plenary session of the former Federal Drug Council, the exclusion of the drink and the plant species that are used to extract it from the DIMED lists became definitive. Thus, the provisional suspension became definitive
- 12 It should be noted that UDV – União do Vegetal – removed its name from the Declaration of Principles in 1996.
- 13 In this sense, MacRae (1999) and the report to COFEN by Sá, Domingos Bernardo de.
- 14 Defined by Resolution n° 26, of December 31, 2002.
- 15 The Group was multidisciplinary, made up of an anthropologist (Edward John Baptista das Neves MacRae), a pharmacologist/biochemist (Isac Germano Karniol), a social scientist (Roberta Salazar Uchoa), a psychiatrist (Dartiu Xavier da Silveira Filho) a jurist (Ester Kosovski) and six members, invited by CONAD, representing religious groups that use ayahuasca, chosen by their peers.
- 16 Cf. definition of psychonaut in Labate (2004a)
- 17 In regard to “non-traditional” groups, see Labate (2004a)
- 18 MacRae (2008) clarified that “in regard to the National Registration of Entities Using Ayahuasca, it was stated that this should not serve as a mechanism for State control over the constitutional right to freedom of religious belief (art. 5°, VI, Federal Constitution), nor should it infringe on the individual right to privacy, private life or image of users (art. 5°, X, Federal Constitution). In this respect, a consensus was reached that responding or not to the registration was at the option of the entities.” A elaboração das políticas públicas Brasileiros em relação ao uso religioso da ayahuasca. In: Labate, Goulart, Fiore, MacRae & Carneiro (Eds.) (2008). *Drogas e Cultura: novas perspectivas*. Salvador: EDUFBA/MinC.
- 19 This division was found in Silva (2003).
- 20 CFB/88: Art. 215. The State guarantees everyone the full exercise of cultural rights and access to sources of national culture, and will support and encourage the appreciation and propagation of cultural manifestations. § 1° - The State will protect popular, indigenous, and Afro-Brazilian cultural manifestations, along with those of other groups that were a part of the process of creating Brazilian civilization.