



SANTO DAIME IN BRAZIL, BELGIUM AND THE NETHERLANDS

the transnationalization of a New Religious Movement and the legal issues related to its religious use of ayahuasca



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Preface and acknowledgements

- My history and involvement in Santo Daime

At the age of sixteen I came to learn about Santo Daime. There is much to say about the impact of this religious practice on my life. I didn't fully realize it yet then, but over time I learned that the ingestion of ayahuasca within that religious context responded to many of the most intimate difficulties and longings I experienced on a mental, emotional and spiritual level. My self-esteem and personal wellbeing have been positively affected and – having also passed through two pneumonias - my negative habits with regard to the use of alcohol, tobacco and cannabis had come to an end. A great part of this personal change can be attributed to the lessons I learned from participating in Santo Daime rituals (also called “works”). Fascinated by this profound discovery I took my backpack and went to Brazil to visit Santo Daime churches and learn more about this religious Doctrine that primarily advocates Jesus Christ and the Virgin Mary within a context that us Europeans would – to say the least – consider “peculiar”. At the time, the fact that I was a 17-year old, white, Belgian boy with a limited knowledge of the Portuguese language and Brazilian culture apparently did not stop me to explore the teachings of a tall, black, illiterate rubber tapper from Maranhão who made use of an indigenous beverage to contact the Divine. Thank God it didn't, because it was in Brazil that I came to understand that Santo Daime – to my humble opinion - is truly miraculous, and its teachings universal. I came to believe and experience that God's love penetrates everything. Conscious of the implications of this new-found belief in God, practiced and developed through the drinking of a psychoactive brew containing small amounts of DMT, I decided there and then to apply for Law school at the Free University of Brussels. This decision was actually made during a Santo Daime work in Térésopolis (Brazil), while singing the hymnals of Mestre Irineu. Five years later I graduated *Cum Laude* in International and European Law (with a profound interest in a diversity of Human Rights issues related to minorities), I learned to speak three new languages, experienced my fair share of heartbreaks and got pretty good at playing the guitar. Having participated in over a hundred-fifty Santo Daime works over the last eight years I can testify to the fact that – for me personally – this has not left any lasting negative effects on my physical, mental and spiritual health. On the contrary, it came to such a point where I dare to say that the only negative impact of Santo Daime on my life is the fact that it's (more recently considered) illegal, and that, if I were to “come out” for my religious identity, what awaits me is laughter, disbelief and/or suspicion. I say this because, up until this day, I am painfully aware of the many prejudices and taboo's that exist around the ingestion of ayahuasca. As such, aware of the negative impact this thesis might have on (my relationship with) my family, my professional career and/or Santo Daime, I feel a moral, ethical and religious obligation to try and “do my part”, as to inspire greater understanding and legitimacy for this religious practice in Western society.

- Problematization of the *insider* position

I am personally convinced that Santo Daime deserves a place in society, and is in dire need of respectful cooperation with authorities for that purpose. My position as a jurist, researcher and (religious) practitioner can be catalytic, in the sense that it can offer more information that might allow for the encounter of two opposite forces on an equal field of understanding and/or debate. It is my hope that this thesis will represent a small contribution in future decision-making processes with regard to Santo Daime, and perhaps ayahuasca in general. Nonetheless, my personal belief does raise serious questions on my capacity as a researcher to perform an objective academic study on the religious freedom of Santo Daime. During the draft period of my research proposal at CEDLA, various concerns had been expressed by the director, professors and students about my ethical responsibilities and objectivity. Academic scrutiny is of major importance, and I understood that a legal study on one's own religion can negatively impact the institutions' credibility. For this, I am very grateful for their openness and the opportunity to continuously discuss my position as an *insider* within my faculty and supervisor over the course of drafting the research proposal.

Loures de Assis – a *daimist* who has written a doctoral thesis on Santo Daime - notes that “the question is not in the way researchers see their selves, but in the relation between the techniques of organizing knowledge and the way persons organize the knowledge about themselves” (Loures de Assis, 2017, p31). As such, I understand it to be a moral and ethical obligation to be completely honest and clear about my involvement in Santo Daime, and I have organized this thesis in such a way that all the organized knowledge is verifiable and open to critique. Moreover, in order to guarantee objective verifiability of my study as fully as I can, I solely address issues that are policy-related through a historical and legal assessment of facts. In doing so I try to interfere as little as possible in the internal politics of the churches I study. This because, even though I consider Santo Daime to be my religion, I am not an official member of any of the churches of my research. During the discussions of my proposal it was easily assumed that I represent an entire homogenous group of believers and churches. Yet, this generalization did not take into account that my familiarity with the various branches of Santo Daime was still quite limited.

For the ICEFLU-churches (explained later) I was an *outsider-daimist* that came knocking on their door with a proposal to study their churches legal situation in a very sensitive moment. Perhaps surprising to me, they cooperated gladly and fully in this research. In Brazil, the openness of the ICEFLU churches towards me can partially be explained through my active participation in their Santo Daime works during my research. I saw that my fluent Brazilian-portuguese inspired confidence, and also that I have known this religious doctrine for about eight years, during which I obtained a law degree, etc.. . Still, since they had been subject to various academic studies in the past, at times it seemed certain questions I asked were responded with “ready-made answers”. Secondly, In one church of this study I have been introduced to Santo Daime,

where I have participated numerous times in the religious congregations during the past years. Still, my intentions to write a thesis had initially been received with a great deal of reluctance, discomfort and scepticism. This seemed to be mainly inspired by the worry of me embarking on a naïve quest to “liberate” Santo Daime, and also the fact that the legal situation of this church is very sensitive. Furthermore, past experiences with the law have not inspired much confidence and positivity. With the passing of time, their attitude changed and I have had the opportunity to ask all my research-related questions in cooperative manner. As such, both the initial reluctance of my faculty and my “outside”-relation with the churches I wished to study had put me in an extremely difficult and reflective position, where both seemed to seriously put into question “who” I am and “why” I do what I do. My *insider* position felt more like an *outsider* position, which forced me to take a good look at myself, asking myself the same questions others were posing.

There are always doubts on how an *insider* researcher might (sub)consciously distort data in order to create certain representations that favour – in this thesis - the legal case of the Santo Daime. I could be “ideologically contaminated” to a point where objectivity is no longer possible. To that regard, I can only encourage any reader to critically analyse my words while remaining aware of the sensitive and complex nature of the subject. In no way can I personally guarantee the honesty of the subjects of my research with regard to certain facts, nor does the information on the churches of this research reflect on the entire Santo Daime community. I wish to iterate that my sole objective with this thesis is to transcend the current argumentational paradigm in which (a highly needed) dialogue with public authorities concerning the ritual/religious use of ayhuasca is made impossible. It is in no way my intention to personally attack churches or authorities, nor to offend the public authorities responsible for the protection of public order and health. Yet, out of the conviction that all human beings enjoy the highest attainable standard of health, I do object to the criminalization of Santo Daime. In order to open up the possibility for response to certain conclusions and allegations, I have tried to contact the Belgian Federal Police and the Dutch Public Ministry for an interview and discussion on my findings. I have not had the opportunity to do so.¹ Though, I have been able to have a fruitful conversation about Santo Daime with a representative of the legal department of the Belgian Centre for Information and Advice on Harmful Sectarian Organizations.

¹ During a phone-call with the chief officer of the Belgian Federal Police’s unit responsible for the investigations on Santo Daime I was told to contact him through mail after the finalization of this thesis. Yet, I did not have the time to finalize well before the final deadline, making it impossible to enter into further dialogue on my findings within the context of this study.

- Acknowledgements

Out of profound gratitude for the life-lessons that Santo Daime has brought me and many others, I would like to dedicate this dissertation to Raimundo Irineu Serra. Furthermore, I would like to acknowledge the years of dedication, struggle and good-will of the various church leaders, Indigenous leaders, academics and scientists in the field of ayahuasca, which I had the pleasure and honour of getting to know a little better. I also express my heart-felt thanks to the CEDLA institute, which has remained academically curious and open while granting me the opportunity to pursue this study. This year as a CMP Master student has been enriching for me in many ways, and I wish to thank the entire CEDLA staff for their efforts to teach, discuss and learn together with students from diverse backgrounds and academic disciplines. Special thanks to my supervisor, Dr. Barbara Hogenboom, for her patience, advice and thoughtfulness during the period of writing this dissertation.

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Abbreviations and Figures

ADF: Ayahuasca Defense Fund

ANVISA: *Agência Nacional de Vigilância Sanitária* (“National Health Surveillance

CdSM: Céu da Santa Maria

CdV: Céu dos Ventos

CdU: Céu da União

CdCMI: Casa de Cura Mestre Irineu

CICLU – Alto Santo: Centro de Iluminação Cristã Luz Universal (“Universal Light Centre for Christian Illumination”) – Alto Santo

CLAREIA: Centre for the Legal Assessment of the Religious and Ethical Integration of Ayahuasca

CONAD: *Conselho Nacional de Políticas sobre Drogas* (“National Council on Drug Policies”)

CONFEN: *Conselho Federal de Entorpecentes* (“National Council on Narcotics”)

CRF: Circulo da Regeneração de Fé (“Circle of Regeneration of Faith”), also known as the Centro da Rainha da Floresta (“Queen of the Forest Centre”)

DIMED: *Divisão Nacional de Medicamentos* (“National Health Surveillance Agency”)

DMT: N,N-Dimethyltryptamine

ECHR: *European Convention on Human Rights*

ECtHR: *European Court of Human Rights*

GT: Grupo de Trabalho (“Working Group”)

GMT: *Grupo Multidisciplinar de Trabalho sobre a Ayahuasca* (“Multidisciplinary Working Group on Ayahuasca”)

HSO: *Harmful Sectarian Organization*

IBC: International Bioethics Committee

ICEERS: International Center for Ethnobotanical Education, Research and Service

ICEFLU: Igreja do Culto Eclético da Fluente Luz Universal (“Church of the Eclectic Cult of the Universal Flowing Light”)

INCB: International Narcotics Control Board

NRM: *New Religious Movement*

TNI: Transnational Institute

UDV: União do Vegetal

UN: United Nations

UNDRIP: UN Declaration on the Rights of Indigenous Peoples

UNESCO: *United Nations Educational, Scientific and Cultural Organization*

VCLT: Vienna Convention on the Law of Treaties Agency”)

1971 Convention: The UN Convention on Psychotropic Substances of 1971

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1. Introduction

1.1. Santo Daime and ayahuasca

Over the last two decades around 43 countries, of which 22 in the European Union, have become the hosts of the expanding Brazilian religion called Santo Daime (Labate & Loures de Assis, 2017; Blainey, 2013; Dawson, 2013). The churches of this religion use “ayahuasca” in their rituals, a natural liquid produced by the slow decoction of the Amazonian *Banisteriopsis caapi* vine together with the leaves of the *Psychotria Viridis* bush. The adepts of Santo Daime refer to ayahuasca as “Daime”, illustrating how this beverage is the central organizing principle of the religion as a whole (Blainey 2013; Polari de Alverga 1999). As such, it is an essential sacrament, a divine gift, within this syncretic Christian religious practice. Before its integration within Santo Daime, ayahuasca has been (and continues to be) one of the most important substances in the pharmacopoeias of Amazonian Folk healers, thereby constituting a century-old traditional medicine. Besides the indigenous use, it is also vital within the etnomedical repertoire of many *mestizo* peoples of the Amazon. Thus, depending on the geographical location and context of use, ayahuasca has many different names and is generally considered a sacred medicine, a plant teacher, or a sacrament by its users (Tupper, 2011). Yet, increasing attention for this beverage has also put ayahuasca in a rather negative daylight, both in Brazil as in Western society, being referred to as a “hallucinogenic”, a “psychoactive drug”, a “trip-thee”, etc... by authorities, media and non-users. As such, the main issue this thesis wants to explore is why and how Santo Daime has (had) such a hard time acquiring legitimacy as a genuine religious manifestation within Brazilian and Western society.

1.2. The global war on drugs and ayahuasca

1.2.1. The international drug control regime

The existence of the first (more) comprehensive national drug laws around the globe are a direct result of the transposition of the *Hague Opium Convention in 1912* (hereafter “Opium Convention”), which formally established narcotic’s control as a fundamental element of international law. Still, the first comprehensive mile-stone on drug control only came with the *Single Convention on Narcotics* of 1961 (hereafter “Single Convention”), which consolidated the existing variety of instruments and clearly marked addiction as an ‘evil’ which the international community has the ‘duty to combat’ (Single Convention, 1961). Together with the Single Convention the *International Narcotics Control Board* (hereafter “INCB”) was founded, a quasi-

judicial expert body serving as a monitoring body for the implementation of all UN drug control conventions. By 1970 no international consensus had yet been found on the control of psychotropic substances. A new instrument was established, called the *UN Convention on Psychotropic Substances of 1971* (hereafter the “1971 Convention”), as a response to the growing concern of the epidemic spread of the abuse of psychotropic substances (UN General Assembly, 1968).

The preamble specifically notes the concern for “public health and social problems resulting from the abuse” of such substances and iterates its determination to combat illicit traffic and restrict their use to legitimate purposes. This in order to “safeguard the health and welfare of mankind.” In practice the convention created four different Schedules of controlled substances, ranging from (the most restrictive) Schedule I to (the least restrictive) Schedule IV. Among a list of 31 substances LSD, MDMA, psilocybin, THC and DMT have been classified as a Schedule I controlled substance. In 1988, further mechanisms were created to control and monitor substances which are used in the manufacture of narcotic drugs and psychotropic substances in the *UN Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances* (hereafter “Illicit Traffic Convention”). Essential to all UN drug conventions is their exclusive prohibitionist character, meaning that any signing member state is obliged to criminalize activities involving internationally controlled substances, such as manufacturing, possession, transport, sale, etc... .²

1.2.2. DMT and ayahuasca under international law

The 1971 Convention represented a compromise between pharmaceutical interests to ensure the non-restriction of their products (and profit margins), and the interests of member states to reduce incidences of addiction to (or use of) new kinds of synthetic substances. Perhaps as a result of the power struggle between these two major interests, a joint report of ICEERS and TNI notes that “the entire discourse of the Conventions is permeated with the conviction that Western pharmaceutical preparations are more efficient and safer than the traditional

² Art 22 of the 1971 Convention states: 1. (a) *Subject to its constitutional limitations, each Party shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention, and shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty.*

preparations obtained from plant species” (Sánchez and Carlos Bouso, 2015, p8).³ These authors also note that the prohibition of DMT was more due to the alarm caused by recreational use of synthesized substances than to the perception that traditional uses of plant material in a ritual and religious context were a problem. Still, certain states like Peru, Mexico, the US and Canada noticed the possible implications of prohibiting active ingredients related to “sacred” plant material, and made reservations. Yet, these could only relate to “plants growing wild which contain psychotropic substances from among those in Schedule 1 and which are traditionally used by certain small, clearly determined groups in magical or religious rites”. (Art 32.4, 1971 Convention) Therefore, it is argued that the Conventions assume that traditional cultures, such as those using ayahuasca, will never extend their practices and influence to other populations and territories (Labate and Feeney, 2014; Sánchez and Carlos Bouso, 2015). Now, it is obvious that ayahuasca is used beyond the borders in which its traditional cultural and religious practice was conceived. As such, the diaspora of ayahuasca-activities constitute a challenge for the current drug control regime, which holds as axiomatic the proposition that only medical or scientific uses of controlled substances are legitimate reasons to ingest them (Tupper, 2011). Legally though, since Brazil did not make any reservations, the question remains whether natural plants containing DMT (such as the *Psychotria Viridis* leaf) and their decoctions (such as ayahuasca) actually are controlled substances. Ayahuasca contains a relatively small amount (of less than one gram) of DMT per liter, so its prohibition is not self-evident. Labate notes that the total prohibition of any material containing DMT would result in the eradication of over 200 plant species, and would force us to consider that DMT is also naturally present in animal and human tissue, including the brain, lungs and bodily fluids. (Labate, 2014).

1.3. International diaspora and commercialization

As Lowell and Adams note, “the Santo Daime religion winds through an array of relationships, practices and discourses including the making and consumption of ayahuasca, laws governing the use of mind-altering substances, international travel routes, spiritual cross-currents within Christian-dominated societies, the historical legacy of resource extraction in the Amazon and philosophical shifts relative to the place of humankind in the natural world” (Lowell and Adams,

³ ICEERS stands for “*International Center for Ethnobotanical Education, Research and Service.*” TNI stands for “*Transnational Insitute*”

2017, p145). For ritualistic purposes and due to the favorable climate and soil conditions, the beverage is made in (a.o.) Brazil before being exported towards other societies around the globe. Due to national anti-drug legislations prohibiting DMT, the international export and import of ayahuasca has already resulted in various criminal proceedings. The *Ayahuasca Defense Fund* (ADF) notes that between 1999 and 2008 only 10 such cases were known in five countries. Since then, legal cases have increased by 1100% and spread out over 23 countries (ADF, 2017). This includes Belgium and the Netherlands. A preliminary assessment of the official stances of the Public Ministries of both countries show that they believe to be safeguarding public health through the total criminalization of all ayahuasca-related practices. This brings us to another point. Santo Daime – even though it can be marked as the oldest - is not the only ayahuasca-related practice currently to be found in Europe. The last 5 to 10 years marks the beginning of an explosion of different ayahuasca-related activities in Europe and worldwide.

One of my contacts was aware of around nine cases which are currently pending at the Dutch Public Ministry, involving people/organizations demanding the return of confiscated ayahuasca. These confiscations – and possibly more - mostly took place at the international airport and, to my knowledge, only related to Santo Daime in two cases.⁴ This confirms a phenomenon that certain academics refer to as the “ayahuasca diaspora” (Labate 2017). Since ayahuasca has its historical and cultural roots in the Amazon, the latter stands for the fast spread of people and organizations offering ayahuasca outside its natural habitat (the Amazon). By doing so certain people and organizations contribute to the creation of an entrepreneurial ecosystem (Peluso 2017), mainly financed by westerners willing to pay substantial amounts of money for an experience (or even a training) with the beverage. When simply performing a search on Google, a dozen Dutch websites and facebook-pages can be found that offer ayahuasca-session outside any religious or therapeutically accredited context, where prices range from 140 euros to 999 euro’s depending on the organization and the chosen module. Certain organizations offer all-inclusive retreats with ayahuasca in Europe, with prices ranging up to 1500 euro’s. For public authorities, the entrepreneurial ecosystem around ayahuasca, together with the apparent concerns regarding public health, constitute substantial proof to prohibit ayahuasca on national level. This is a legitimate concern, which has recently been (re)iterated in both a

⁴ During the last two months of my research I became aware of two more confiscations, related to a Santo Daime church, and an invited indigenous spiritual leader, putting the number at 4.

Dutch and Belgian newspaper (Volkskrant and De Standaard, 2017). According to experts it's a matter of waiting for an accident, as a number of self-appointed shamans are unable to adequately act when a participant would have difficulties during their experience with the beverage. From the point of view of Santo Daime churches, the recent rising attention to the twofold concern of public health and commercialization of ayahuasca has exacerbated their relatively tolerated and/or legal presence of the past two decades. Both in Belgium and the Netherlands, Santo Daime has already been present since the 90ies. Now, as various safeguards exist within the churches to assure the health of participants, and the non-commercialization is one of the central ethical principles in their church, there is a genuine fear that judicial authorities will not differentiate Santo Daime from commercialized or unsafe ayahuasca-related activities.

1.4. **Theoretical debate and key concepts**

1.4.1. **The drug war paradigm**

As mentioned, the creation of a hegemonic international drug control regime of the 20th century constited a compromise between states and pharmaceutical interests. Yet, Tupper notes that this regime did not produce the anticipated termination of non-medical psychoactive substance use. Rather, the regime has “spawned ancillary harms” and “fostered a peculiar discursive frame deeply entrenched in much of civil society, a drug war paradigm that seems to preclude ready comprehension, appreciation, and toleration of entheogenic practices such as ceremonial ayahuasca drinking” (Tupper, 2011, p130).⁵ This falls in line with general critique among academics that the international drug control regime is set on the ‘drugs as a threat’ discourse, and that its pursuit of a drug-free world entails a zero-tolarence approach which, in practice, easily subordinates other primary goals of modern states and the UN itself. (Barret, 2010; Crick, 2012). The United Nations Office on Drugs and Crime (UNODC) submits that “a system appears to have been created in which those who fall into the web of addiction find themselves excluded and marginalised from the social mainstream, tainted with a moral stigma” (UNODC, 2008, p11; Barret, 2010, p141). Even though ayahuasca is not addictive, Tupper describes the drug war paradigm as a general belief system in which psychoactive substances (and its users) are “morally untenable”, thereby justifying extreme measures of

⁵ The term *entheogen* or *sacred plant* means “to generate god within” in Greek, and is used to denote “vision producing” substances employed “in shamanic or religious rites”. (Blainey, 2015)

social control, including the denial of human rights, surveillance, intimidation, arrests, etc... . The paradigm that established the moral untenability of practices involving entheogens simply presumes that such substances are hallucinogenic and/or inherently harmful. As such, their use is often criminalized or pathologized as abuse or addiction. Furthermore, it is presumed that these substances are imbued with agency, in the sense that they have the capacity to override human free will. (Tupper, 2011).

The most intrinsic characteristic of the drug war paradigm is perhaps the stereotypic categorization of all psychoactive substance used outside modern biomedical spheres. For example, little to no distinction is made between coca, opium, THC, DMT, psilocybin, etc..., which are generally considered to be inherently dangerous, posing a general and serious risk to public health. Yet, the scientific and rational foundations for these indistinct presumptions are often based on an absence of evidence, poor or outdated evidence and/or a lack of contextualization. To that regard, a group of European scientists concluded in 2009 that the scheduling of substances is not in line with the current scientific knowledge, making the discrepancy insurmountable unless the parameters completely changed. The current system is therefore considered to be unworkable, obsolete and counterproductive due to tensions and inconsistencies (Bewley-Taylor, 2013). Furthermore, as modern drug laws and policies are ontologically predicated by understanding drugs through a mere biochemical and psychopharmacological analysis, this results in the denial of the cultural construction of ayahuasca by its various users, who refer to the beverage as a medicine, a sacrament and a “plant teacher” (Tupper, 2008).

Various authors plead for alternative policies to counter the obvious weaknesses, tensions and negative consequences related to the current paradigm (Haden, 2004; Tupper, 2008; Barrett, 2010; Crick, 2012; Labate and Feeney, 2014). With particular regard to entheogens, it is already an immense challenge to shift the debate in modern Western drug policies and laws away from the threat based rhetoric, towards meeting the aims of the UN (being security, development and human rights). According to Barrett, this demands a relocation of individuals and communities to the centre of drug policy by considering appropriate responses on a more local and cultural level (Barrett, 2010). Tupper proposes a reconceptualization of ayahuasca as a “tool” instead of a “drug”, as to conceive the risks and benefits related to its practices in a more nuanced way (Tupper, 2008). Blainey offers a similar perspective, arguing that “the misuse of powerful psychoactive substances (i.e. outside of ritualized, clinical, or other normalized

contexts) would be akin to the misuse of any other tool, like driving a car without a driver's licence". As such, when properly used, the author laments that the current culture of prohibition fails to recognize the verdict of empirical scholarship that has "consistently shown that the psychophysical risks of these substances are demonstrably minimal" and "entheogens can function as psychiatric medicines and/or therapeutic sacraments" (Blainey, 2015, p299).

1.4.2. New Religious Movements (NRMs) and religious freedom

Yet, the challenge for the recognition of religious freedom for Santo Daime seems to be particularly difficult, as it is double-layered. Not only is ayahuasca a brew containing a prohibited substance, but is the religious freedom of a minority religious group, or a New Religious Movement (NRM), put to the test in Brazil and in Western societies. More particularly, it seems easy to confuse Santo Daime for being a "sect" or "cult", in the sense that this religious movement is likely to (intentionally or not) cause harm to individuals and society. It is true that such categorizations can dehumanize the adepts of a religion and have "become laden with pejorative connotations that skew people's abilities to judge a religious group on its own merits" (Olson, 2006, p97). Particularly when considering that a religion makes use of a psychoactive substance whose legal status is a highly debated one, it are exactly the courts of Western countries that play a major role in defining the religious rights of Santo Daime. This in a societal framework where security and religious freedom are gradually seen as incompatible and mutually exclusive terms (Ferrari, 2006).

1.4.3. The judicialization of religious freedom

The need for an objective assessment on the legitimacy of a (foreign) New Religious Movement and the correct application of specific anti-drug laws involves considerable discretion on the part of the judicial system, which carries a degree of ultimate authority and responsibility in determining acceptable behavior. Richardson refers to the "judicialization of religious freedom" to explain the important normative function of the courts in defining and enlarging the meaning of religious freedom in Western countries. He also warns that judges and jurors may act discriminatory toward religious minority groups, in particular that they are liable to accept questionable evidence in support of their own biases and prejudices towards such groups and their practices (Richardson, 2015 and 2016). To that regard Brems and Lavrysen note that the

correct use of information is a critical to prevent the alienation of minorities from legal and judicial authorities (Brems and Lavrysen, 2013). Even though limitations can be set on the religious freedom of NRM's in the reconciliation between different interests, the European Court of Human Rights emphasizes that "a balance must be achieved which ensures the fair treatment of people from minorities and avoids any abuse of a dominant position" (S.A.S. vs. France, 2014) This can be a particularly challenging exercise in the case of Santo Daime, where the drug war paradigm considers ayahuasca as a *prima facie* dangerous and harmful substance. As such, the key concepts that underline the theoretical debate on the legitimacy of the religious use of ayahuasca within the current international drug control regime, in this study, are (i) Drug war paradigm⁶, (ii) New Religious Movements and (Harmful) Sectarian Organizations, and (iii) Judicialization of religious freedom.

1.5. **Aims of this study**

In Brazil, Santo Daime is considered a legitimate and traditional religious practice. Having this in mind, the second chapter of this thesis starts with an overview of Santo Daime's history, with particular regard to the social and legal difficulties related to its use. This in order to understand better how the process leading up to legal recognition of Santo Daime relates to the above-mentioned drug war paradigm, and how this belief system has been relieved to give way to an alternative understanding on the risks and benefits on the religious use of ayahuasca. Since Santo Daime members are generally healthy individuals, many of whom credit ayahuasca for having inspired them to lead a more wholesome lifestyle, this contradicts and draws into question the current terminology of "addiction" and "abuse", relied upon in current drug legislation (Blainey, 2015). As such, it will be explored how the current Brazilian legal framework distinguishes between legitimate "use" and illegitimate "abuse" of this psychotropic substance.

Since Santo Daime is a transnationalized religious phenomenon, the institutional framework is also transnational, creating ties between churches around the globe that operate within different legal systems. Understanding the legal processes and regulations that govern ayahuasca-religions in their country of origin (Brazil) subsequently allows for a concrete analysis

⁶ The general belief system which pervades the international drug control regime, in which psychoactive substances (and its users) are "*morally untenable*", which in turn justifies extreme measures of social control, such as infringements on human rights, surveillance, intimidation, arrest, etc... .

of legal cases concerning Santo Daime in Belgium and the Netherlands. Chapter 3 will explore if and to what extent Tupper is right in stating that today's dominant "discourses of the international drug control regime and its underlying drug war paradigm are (in)capable of representing the brew as anything other than an unequivocally bad, illegal drug" in Western society (Tupper, 2011, p144). To conclude, a contrast will be made between Brazil's policy approach towards ayahuasca and those in Belgium and the Netherlands, as part of Western society. The evidence used in legal proceedings will be compared to the actual academic/scientific knowledge and my own observations on the transnational institutional character of churches, to discuss and determine if and to what extent questionable evidence is allowed to support biases and prejudices towards ayahuasca and NRM's. Furthermore, before the conclusions, a brief exploratory overview is given on how the Belgian/Dutch Santo Daime churches are adapting, or have adapted, to legal difficulties.

Such a research can be summarized in the following two questions:

- What are the differences between the legal processes of (against) Santo Daime in Brazil, Belgium and the Netherlands
- How do and/or have Santo Daime churches responded to these legal issues in these countries?

1.6. Research subjects, methodology and choice of field research

In order to understand better the choice of research subjects, a brief historical overview of the expansion of Santo Daime is necessary.

1.6.1. Brief history

Historically, the religious community of Santo Daime (Portuguese for "Holy Give-Me") emerged from the rubber camps of Brazil's Amazonian hinterlands during the 1930s. Raimundo Irineu Serra, or also called *Mestre ("Master") Irineu*, is the founder of this religious doctrine. He claims to have received divine instructions after an encounter with the Virgin Mary during an ayahuasca-session with an indigenous healer. It is speculated that this indigenous healer might have been Samuel Piyanko, spiritual leader of the Ashaninka tribe. Santo Daime had become formally institutionalized in 1963 with the creation of the *Centro de Iluminação Cristã Luz Universal* ("Universal Light Centre for Christian Illumination"), better known by its abbreviation

CICLU.

After the passing of its founder in 1971, different groups have been formed in a process best compared to the branching of a tree. Starting at the roots of Santo Daime with CICLU, now there are 15 different institutionalized branches in Brazil alone, forming different legal entities while still remaining part of a tradition-bound religious community.⁷ One of the branches most important in this study formally registered as *Igreja do Culto Eclético da Fluente Luz Universal* (“*Church of the Eclectic Cult of the Universal Flowing Light*”), and is best known as ICEFLU. Formed by the charismatic leader and direct disciple of the founder, Sebastião Mota de Melo, it was this branch that has been primarily responsible for the internationalization of Santo Daime during the 1990s. Like in Brazil, differing opinions on leadership and religious practice have led to a further branching of the tree at (inter)national level. As the religious practice of Santo Daime naturally expanded to other continents, Belgium and the Netherlands were one of the first countries to have installed churches in the 90s. I focus on the four biggest churches, of which 3 are related to ICEFLU, and one works independently.

- ICEFLU churches

Céu dos Ventos (Den Haag) and **Céu da Santa Maria** (Amsterdam) are two churches situated in the Netherlands, and are the only two churches of my research that enjoy legal recognition. Both of the churches have been founded in 1999 and are led by Dutch people. **Céu da União** (Gent) is a Belgian church founded in 1985 by a Belgian woman. Currently it is led by another Belgian couple and their activities have been prohibited in Belgium after a criminal case in 2015. Afterwards, they continued to organize their congregations in the Netherlands. At the core of the organizational structure of ICEFLU lays their mother church, called **Céu do Mápia**, situated in Amazonas, Brazil. Founded in 1983, Mapiá is not just a church, but also a village with a religious community of over 700 people. ICEFLU’s institution is responsible for the daily functioning of the entire (trans)national structure, including the task of providing ayahuasca to their daughter-churches (affiliations) overseas.

⁷ For the genealogical overview of Santo Daime branches, see http://afamiliajuramidam.org/os_filhos_de_juramidam/genealogia.htm

- Casa de Cura Mestre Irineu (CdCMI)

This is a church led by a Brazilian/Belgian couple from Sorocaba (Brazil), where they learned all about Santo Daime in a church called **Céu Sagrado**. Having moved to Belgium around 2004, they started organizing Santo Daime works in Belgium around 2007. In 2011, the couple founded **Casa de Cura Mestre Irineu (CdCMI)** and started operating in Heinkenszand (Netherlands) in the hope to enjoy better legal protection. They are currently working closely together with Benki Piyanko, a spiritual leader of the **Ashaninka** tribe in Brazil. Interestingly, this is the grandson of Samuel Piyanko, the shaman who – reportedly - introduced Raimundo Irineu Serra to ayahuasca.

Infographic on the evolution of these different branches of Santo Daime:

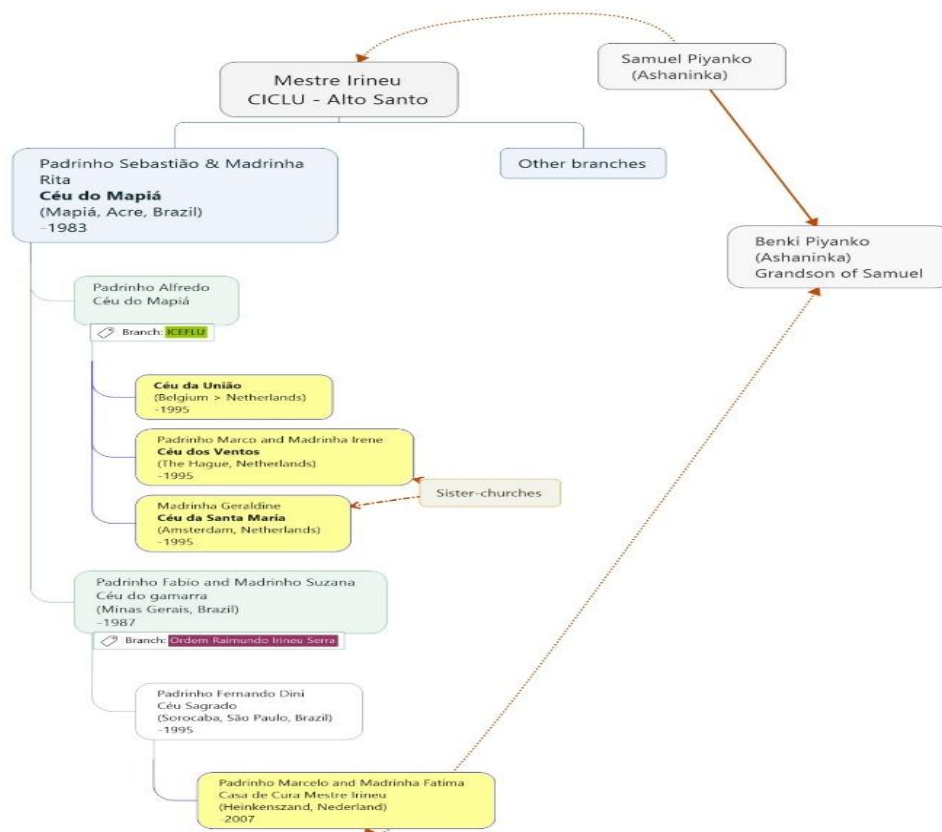


Figure 8: infographic on the history of the branches

1.6.2. Methodology

The first part of this thesis treats the history of Santo Daime in Brazil. Since its foundation takes place in the first half of the 20th century, the only available method for this part has been the study of the few academic literature and books available. Luckily, a comprehensive biography has been written on the life of Mestre Irineu, in which much information can be found. Ever since the passing of Mestre Irineu in 1971, and more so since the foundation of Céu do Mapiá, more information is available in academic studies and books. With regard to the legality of Santo Daime in Brazil, the existing academic research offered a good basis for conducted interviews with several members serving in respective functions of the churches. This gave me more insight in the current and historic legal recognition. Besides that, various information could be found on the internet and the website of ICEFLU, and I have had the opportunity to receive internal documentation with regard to its structure and functionings, especially with regard to international transport of ayahuasca. For the side of CdCMI, all the information gathered comes from field research, interviews, and the websites related to their activities, as no academic research has previously been done on this church.

For the analysis of legal cases in Europe (Belgium and the Netherlands), I derive my information mostly from court cases and other legal documents, interviews and personal presence at court hearings. To contextualize this information in the theoretical debates concerning “New Religious Movements” and the “war on drug paradigm”, academic research has been revised.

1.6.3. Field research

The field research has been conducted both in Belgium, the Netherlands and Brazil. A total of 24 (in)formal interviews have been conducted, and Annex 1 gives an overview on who, when and where. The field research in Belgium and the Netherlands mostly consisted of interviews at the homes or a coffee bar with the church leaders or fardados. My interest for this topic had been particularly sparked after a first informal talk with ICEFLU’s lawyer after the court hearing of January 24, 2017 in Haarlem, the Netherlands. During the construction of my proposal, between the period of March 23 and May 25, 2017, and after my return from Brazil, further interviews have been conducted. Whereas the essential (and used) information

derives from these interviews, a part of the knowledge I acquired for writing this thesis also stems from my personal observation and participation in the rituals of all the Santo Daime churches of the leaders I interviewed. I explain this personal involvement further.

The field research in Brazil, between May 25 and August 15, 2017, has taken me to five different states in Brazil, namely Rio de Janeiro, São Paulo, Minas Gerais, Acre and Amazonas. In this last state I visited the mother-church of ICEFLU, called Céu do Mapiá, the heart of the religious institution most responsible for the international expansion of Santo Daime. I decided to travel to Mapiá during the “June Festival” from 23 until 28 of June as this would increase my chances of being able to meet with the principal actors responsible for the institutional organization of ICEFLU, and so it did. Starting from Rio de Janeiro, a three-day travel (through air, land and water) took me to the community, where I arrived the 11th of June and stayed until the 28th of June. During my three week stay I had a chance to get to know the community, meet local residents, interview all relevant actors, participate in a *feitio* (the ritualistic process of preparing ayahuasca) and attend the official Santo Daime rituals (or “*works*” as it is referred to internally). Afterwards, I also visited CICLU – Alto Santo, the original church of Mestre Irineu, where I had the opportunity to exchange words with the Public Prosecutor of the State of Acre, who is also a *daimist*. Another noteworthy part of my trip, between July 18 and 25 took me to the private terrain of CdCMI in Sete Barras, São Paulo. A European group of 37 people had just arrived at the airport of São Paulo to participate in a *feitio* for one week. After visiting the lawyer and environmental consultant of ICEFLU in the center of São Paulo, I participated in the *feitio* and used the opportunity to understand better the history, institutional organization and “legal worries” of CdCMI.

2. Santo Daime in Brazil: A history of persecution and legal recognition

2.1. Raimundo Irineu Serra: Founder and *Mestre* of Santo Daime

2.1.1. The search for opportunity

May 26, 1930, marks the date of the first religious ritual of Santo Daime. Held in the outskirts of Rio Branco, the capital of the Brazilian State of Acre, most notable is that the ritual was officially opened and led by Raimundo Irineu Serra, commonly referred to as Mestre Irineu (or Master Irineu). Born in the town of Sao Vicente Férrer in 1890, in the north-east State of Maranhão, Irineu Serra, as a black man and grandson of slaves without formal education, decided to move towards the Amazonas around 1909 in pursuit of employment opportunities in the rubber-extraction. The demand for rubber on the international market suddenly exploded (coming to represent 40 percent of the Brazilian income through export) and a great migratory flow occurred from the north-east to the Amazon (Moreira and MacRae, 2011; Loures de Assis, 2017) This period, also referred to as the first national *rubber boom*, ended after the first decade of the 20th century. Brazil had lost its hegemony in rubber production after the British successfully “bio-pirated” rubber and planted it in Malaysia with less cost and more productivity. The immigrants of the north-east were often left in precarious health situations, having to deal with malaria, tuberculosis, malnutrition, leprosy, various dermatological problems, etc... for which indigenous shamanism was commonly the only option of treatment. It was in this socio-economic context that the configuration of Santo Daime came to take place, as this migratory process simultaneously stimulated an intense cultural and religious exchange between caboclos, Indigenous Peoples, settlers and the military (Loures de Assis, 2017).



Figure 9: Raimundo Irineu Serra

2.1.2. The initiation: ayahuasca’s indigenous roots.

In 1912 Irineu Serra arrived in Acre, having already worked in the rubber economy and in the *Comissão de Limites* (or Commission of Limits), the organ responsible for demarcating the territory of Acre, where he served as a frontiersman between 1910 and 1912. During his work as a frontiersman, he had moved regularly along the borderlands of Brazil, Peru and Bolivia

occupied by *mestiço* and indigenous communities within which ayahuasca was regularly consumed. It is generally understood that Irineu Serra's first ayahuasca experience took place within an indigenous ritual, but the testimonies with regard to which pajé (or healer) of which indigenous tribe introduced him to ayahuasca are not uniform. *Daimista* tradition tells of Irineu Serra's initiation in the ways of ayahuasca at the hands of Dom Pizango (also Don Pizon), a Peruvian *ayahuasquero* whose knowledge and practice claimed a direct line of descent from the mythical Incan king Huascar. Yet, Dawson subsequently points out that initiatory associations with the Incan heritage is beyond historical confirmation, and Moreira and MacRae further note that it is not sure whether the person (or spiritual entity) of Dom Pizango would be responsible for the initiation of Irineu Serra (Moreira and MacRae, 2011; Dawson, 2013).

Among the possibilities, more recently the voice of Benki Piyanko submerged in the discussion, who said that his (now deceased) grandfather, Samuel Piyanko, had first given ayahuasca to Mestre Irineu, who had stayed in the their village for a while and received a series of revelations (Labate and Coutinho, 2014). This testimony deserves due attention by academics, as it derives credibility from at least three points of view. Firstly, Samuel and Benki Piyanko are

Ashaninka (indigenous) people, whose origins lay in Peru and their ethnicity has historic relation with the Inca empire (Pimenta, 2005). Secondly, it needs to be understood which village Benki is talking about. The village of Benki is situated along the Amônia river near Marechal Taumaturgo, in Acre, at the border with Peru. A study explains that the Ashaninka have been

living there before the arrival of the



Figure 10: The Ashaninka of the Amônia river

seringueiros. However, an academic study shows that Samuel Piyanko, acknowledged by the

Ashaninka as a great chaman or *sheripiari*, supposedly only moved to the Amônia river at the end of the 1930s with his wife, and lived in the Ucayali region of Peru before that (Pimenta, 2015). Thirdly, one of the first hymnals of Mestre Irineu is called “Papai Samuel”. Although this might be reference to the biblical prophet Samuel, it might just as well be a reference to Samuel Piyanko. Other, to my opinion less credible, claims have risen as well. Therefore, not denying the legitimacy of any claim, it must also be considered that Irineu Serra could have become friends with various indigenous pajés after being initiated to ayahuasca by one of them. Between 1914 and 1918 he was single and free to frequently travel in the region to dedicate himself to knowing ayahuasca chiefs (*chefes ayahuasqueiros*) and learn how to make the beverage (Moreira and MacRae, 2011). It was during that time that the most important founding stories of Santo Daime occur, as they confirm Irineu Serra’s natural calling to become both a healer and *Mestre*. The most remarkable story has been told by Luiz Mendes do Nascimento, disciple of Master Irineu and highly respected across the Santo Daime community⁸. It goes as follows:

“The next time, after drinking the Daime [ayahuasca], he arranged himself so that he could see the moon. It was a full or almost full moon and the night was a clear, very beautiful, when the visions became strong, he looked toward the moon and saw her coming, until she came very close to him, before stopping at rooftop height. Within the moon he saw a beautiful woman seated. She was so visible that everything was defined to the smallest detail, even her eyebrows. She said to him: ‘Do you dare to call me Satan?’ (---) ‘Do you think that anyone else has ever seen what you are seeing now?’ (---) ‘What you are seeing no one ever saw, only you. Now you tell me, who do you think I am?’ Faced with such light, he said: ‘You are a Universal Goddess.’ ‘Then it is well [she said], now you are going to undertake a diet in order for you to receive what I have to give you.’ (---) After the diet, she came to him as clear as the light of day and said that she was ready to attend to his request. He asked that she make him one of the best healers in the world (---) [and] that she combine everything to do with healing in the drink [i.e. ayahuasca] (---) ‘It is already done [she said], everything is in your hands.’” (Dawson, 2013, p11)

Even though the founding stories are more rich and plenty, this one marks as fundamental in the sense that it affirms the common perception among *daimists* that the religious doctrine of Santo Daime is not invented, but is rather “received” from the ‘Universal Goddess’, also

⁸ See www.mestreirineu.org/luiz.htm

referred to as the 'White Moon', the 'Queen of the Forest', the 'Virgin Mary' and 'Our Lady of Immaculate Conception'.

2.1.3. *Circulo da Regeneração de Fé (CRF)* and persecutions.

During that same time, around 1913, Irineu Serra and two friends, André and Antônio Costa, had founded a religiously oriented group called *Circulo da Regeneração de Fé (CRF)*, or Circle of Regeneration of Faith), also known as the *Centro da Rainha da Floresta* (or Queen of the Forest Centre), where ayahuasca was used during the encounters. The reunions of CFR were already characterized by certain difficulties that become more present in the history of Santo Daime, namely its tense relationship with society and with authorities, mainly produced through the stigmatization of ayahuasca and its users (Loures de Assis, 2017). At the time, the police had an active repressive approach towards what was legally called "witchcraft", and the mere fact that black people were drinking ayahuasca - seen as a venomous substance - sufficed to define it as such. So, to avoid police raids they organized their reunions on various locations, even passing the border of Brazil into Peru and Bolivia. Yet, this strategy had not kept the police from intervening. In order to cover-up the real reason for their reunion, they would prepare the place in such a way that they could quickly close the session and act like they were dancing in order to mislead the police. However, this also had not worked every time. The persecution came to such an exacerbated level, that Irineu Serra took a shot in the hand while getting away from the Bolivian police who had raided a reunion of CRF. The gunshot wound left him a permanent scar that was even registered in his identity documentation, and was probably one of the main reasons for Irineu Serra to leave Brasileia for Rio Branco, Acre, where he settled indefinitely (Moreira and MacRae, 2011). Yet, while he had left Brasileia, he had also left CRF, for which two other reasons might have motivated him. Namely the lack of transparency in the accounting of CRF and/or disputes concerning leadership of the group (Loures de Assis, 2017).

2.1.4. The first Santo Daime church in Acre: CICLU (Alto Santo)

On the 2nd of January 1920, Irineu Serra arrived in Rio Branco and joined the Police Force three days later. As such, at the age of 29 years old, he enters military life for the third time. It also marks an important inversion of roles in his life, where he went from being persecuted by the police to becoming a member of that same institution. During the nine years he worked in the Police Force, he continued his study with ayahuasca discretely, on his own and free from

persecution, which was further facilitated by the natural abundance of the vine and leaf in the region. In the early 1930s, Irineu Serra retired with the rank of corporal from the territorial guard, and participated in the construction of a new settlement along with farmers and former rubber tappers. He opened his first Santo Daime rituals together with other people, and constructed his humble house according to a local technique generally known as *wattle und daub*. From 1930 until 1934, he worked in the administration of the governor's office, which he then left behind him to become a full-time farmer. From that moment on Irineu Serra came to be considered as *Mestre*, and the ritual repertoire of Santo Daime developed as to how it is known today. Still, even during the initial years of developing the ritual repertoire, he worked discretely and even hidden. His group further developed with a predominance of black and low-schooled people, many of whom came from the second rubber boom or the "Rubber War" that started in 1940. The international demand of rubber – reaching its peaks in WWII from 1942 until 1945 – had displaced around 55.000 people towards the Amazon for work. Due to the precarious and hard working conditions, these slave-workers were/are often referred to as "Rubber Soldiers". After 1945, the US, the UK and France had lost their interest in rubber, leading to a new crisis and exodus of former rubber soldiers to cities such as Rio Branco. (Moreira and MacRae, 2011; Loures de Assis, 2017).

During that time the values of order, patriotism, positivist scientism and white eugenics were preached throughout Brazil. Within this political-cultural framework, the community of Mestre Irineu, primarily constituted by blacks or mestizos, users of an indigenous beverage with supposed magical powers, became a victim of even more severe prejudice. Mestre Irineu was accused of being a "*macumbeiro*" (a worker of black magic) who put spells on people to manipulate and "own" them, of separating couples and taking the women for himself, etc... . Furthermore, accusations were made with explicit reference to articles 156, 157 and 158 of the Criminal Code which, at the time, forbade the practice of illegal medicine and magic, referring to *curandeirismo* (a general term for alternative healing practices) and the use of "venomous substances". In practice it even came to a point where forty heavily armed policemen had surrounded the house of him and his wife, after which the lieutenant entered, woke him up and put a gun to his head. This action, resulting in a quick in-and-out of jail, was based on the above-mentioned prejudices and false accusations. Luckily, during his work in the Police Force he and Manuel Fontenele de Castro became a good friends. Fontenele had a successful military career, even reaching the post of Colonel. This was later followed by a political career in which

he had been re-elected as Governor and General Secretary of the Federal State of Acre three times. When Mestre Irineu got sent to jail, Fontenele had sent an order to the local police stating that if they touched a hair on Mestre Irineu's head, they would have to deal with him (Moreira and MacRae, 2011). The growing popularity of Santo Daime combined with escalating persecution led Mestre Irineu to accept a donated piece of land by the then Governor of Acre, named Guiomar dos Santos, who had also been instrumental in safeguarding Mestre Irineu and his religious community from the attention of the local Police Force.

The donated land was named "Alto Santo", and today still serves as the headquarters of the original Santo Daime church *Centro de Iluminação Cristã Luz Universal (CICLU, or Universal Christian Light Illumination Centre)*, founded around 1940 (Blainey, 2013).

In the book of Moreira and MacRae it becomes further clear that, even though outbreaks of



Figure 11: Mestre Irineu during a Santo Daime ritual in "Alto Santo"

persecution continued to impact Mestre Irineu's community, during the years between 1940 and 1971 he had acquired some social capital with well-placed public figures which granted an increasing sense of security to Santo Daime as a religion. By the time of his passing, on 6 July 1971, Mestre Irineu's reputation across Rio Branco was that of both a folk healer and man of deep-seated wisdom. He had secured both an enduring religious legacy and widespread public respect; as evidenced by the many mourners at his funeral from different strata's in society, including government representatives and the high society of Rio Branco (Dawson, 2013).

Today, when visiting the Alto Santo community, I could take the public bus line called "Irineu Serra" towards his community, situated on the *Estrada Raimundo Irineu Serra* (Raimundo Irineu Serra Street). Upon arriving, the final resting place of Mestre Irineu could be visited, a beautiful and recently renovated tomb in marble. The new tomb was inaugurated in 2010, the same year that Mestre Irineu had received the prestigious title of "Acrean Citizen" by the Legislative Assembly (Moreira and MacRae, 2011). There is also an archive about him in the museum and,

since 2006, Alto Santo became a historical and cultural patrimony of the State of Acre, and an “area of environmental protection” (Oliveira, 2011). As such, the name of Raimundo Irineu Serra still echoes deeply in Acrean society and the religio-cultural legacy he left behind is honored with pride.

2.2. Sebastião Mota de Mello

2.2.1. Disciple of Mestre Irineu and founder of ICEFLU



Figure 12: Sebastião and Rita Mota de Mello (husband and wife)

Sebastião Mota de Mello was born in the Upper Juruá Valley of the state of Amazonas, and there became a renowned canoe maker and healing practitioner in the Spiritism of the Kardecist tradition.⁹ In 1957, he had moved to Acre with his family. Suffering from a long-term liver condition, he arrived seriously ill at the church of Mestre Irineu in 1965, and took part in a ritual called *Concentration*. According to Mota de Mello, he had been

miraculously cured during this first ritual (Mortimer, 2000). He immediately started to attend all the *works* of Mestre Irineu, and over time his sons, wife and other family members all becoming members of CICLU - Alto Santo. Still, from the land where Mota de Mello lived with his family, known as Colônia 5000 (or Colony 5000), it was a very long walk to Alto Santo, and they often arrived with hurt feet and dirt on their white clothes at church or back home. Regular participation was a substantial effort and Mestre Irineu gave them permission to both organize certain Santo Daime rituals and produce Daime (ayahuasca) on their land, half of which was then sent to Alto Santo. After the passing of Mestre Irineu, a dispute of leadership arose between Leôncio Gomes, the (then) new leader of CICLU - Alto Santo, and Mota de Mello. As a result, Mota de Mello established Colony 5000 as a completely independent *daimist*

⁹ Dawson, p20

community and claimed to succeed Mestre Irineu as the spiritual head of Santo Daime (Dawson, 2013). As such, Mota de Mello, also called Padrinho (Godfather) Sebastião by his followers, was the first one to break the hegemony of Alto Santo, reason for which Loures de



Figure 13: The daimist community Colony 5000, Padrinho Sebastião and Madrinha Rita in the middle

Assis refers to him as the great *trickster* of Santo Daime. From that point on many ‘Santo Daime churches’ have submerged, in which the multiple manifestations of this religious doctrine form a tense field of discussion and dispute with regard to tradition, legitimacy and narratives (Loures de Assis, 2017).

In any case, it is undeniable that Padrinho Sebastião is most responsible for the expansion of Santo Daime beyond its traditional borders of the Amazon region, as he adopted a very liberal, open and expansionist attitude towards newcomers from all parts of Brazil and the world. In 1974, envisaging greater legitimacy, this branch officially institutionalized their new religious organization under the acronym CEFLURIS (in English, *Eclectic Centre of Flowing Universal Light Raimundo Irineu Serra*). More recently they changed their name to ICEFLU (in English, *Church of*

the Eclectic Cult of the Fluent Universal Light) At the time, the people attending the Santo Daime rituals in Colony 5000 were growing fast in number, and the first non-Acrean and non-Brazilian visitors had also arrived in light of exploring the effects of this mysterious beverage called ayahuasca. This exploration of psychoactive substances by “immigrants” was characteristic to the countercultural movement of the 70s, and internally these groups of young “spiritual seekers” are generally referred as the ‘cabeludos’ (long-haired), the ‘sulistas’ (southerners) the ‘mochileiros’ (backpackers) or the ‘hippies’.

In 1980, Padrinho Sebastião moved his community north onto a former rubber plantation known as Rio do Ouro, in the state of Amazonas. However, its occupation was disputed by an industrial corporation claiming ownership of the land, forcing the community to move someplace else. The hardships related to starting anew and moving from one location to another – definitely not easy in this region – was repeated. In 1983, the community had resettled 150 kilometers further and constructed a village from scratch, in the middle of the Amazon forest of the National Reserve of Inauini-Pauini, called Mapiá (Dawson, 2013). Today, this is the spiritual center of the Santo Daime movement of ICEFLU, receiving many visits from outsiders and managing the institutional aspects of the (inter)national religious expansion, but also the local institutional aspects of the village itself, which has around 700 residents.

2.2.2. The experimental phase

In distinguishing the new historic phase of Santo Daime at the hands of Padrinho Sebastião, I agree – in general terms – with the distinction Loures de Assis makes. He argues that the first phase can be called the *canonic phase*, represented by the life of Irineu Serra in which the doctrine’s liturgical and ritual structure is constructed, and hinarios (or hymnal books) and various sacred symbols are adopted. This is the phase where the core, the primordial canon of Santo Daime is established. The separation of Padrinho Sebastião from Alto Santo in 1974 marks the beginning of a new phase which he refers to as the *experimental phase* (Loures de Assis, 2017). There are various reasons for that. Labate rightly points out that the ICEFLU branch shows a characteristic of ‘miscibility’, meaning that their practice of Santo Daime was apt for “creative confluence, exchange, and mixing with multiple religions, incorporating elements of their cosmology and ritual practice” (Labate and Loures de Assis, 2017, p63). This, together with the highly charismatic personality of Mota De Mello, explains perhaps better why this branch was susceptible to their leading role in the international expansion of Santo Daime.

More particularly, it suffices to draw attention to the fact that the line of Padrinho Sebastião had a particular interpretation of the religious rituals inherited from Mestre Irineu, as they added to them ritual elements borrowed from Kardecist Spiritism and Afro-Brazilian religions. A particularly sensitive issue with regard to the legal and ethical legitimacy of Santo Daime is that Padrinho Sebastião also sanctified the consumption of cannabis, referring to it as “Santa Maria”.

2.2.3. The (inter)national expansion of Santo Daime

During a meeting in 1982, Sebastião Mota had agreed to allow affiliations and groups of Santo Daime in other parts of Brazil, and it was also decided to call their new mother-church Céu do Mapiá. Three pioneers had received 5 liters of Daime (ayahuasca) to initiate their works in the urban centres of the south-east region (Loures de Assis, 2017).¹⁰ As such, Santo Daime, which began among mostly poor, marginal Afro-Brazilians and mestizo’s was then spreading to white, middle-class populations in urban Brazil and, quickly after, other countries. Of course, Santo Daime was receiving increasing (negative and positive) attention as its character went from regional to national and international. By the time of Padrinho Sebastião’s death on January 20th, 1990 there were approximately ten “*daimist* communities” outside of the Amazon region, in Brazil. Interestingly, by that time Santo Daime had already reached other countries as well, including Belgium and the Netherlands. As such, “the rapid expansion of Santo Daime, both geographically and in terms of its broader social and political repercussions, has transformed this relatively small, localized, and tradition-bound religious community into a heterogeneous, transnational phenomenon” (Labate and Loures de Assis, 2017, p57). Originally conceived in the Amazon, Dawson notes that Santo Daime is now fully integrated in the alternative religious scene of Western-late modernity, and is orchestrated by an urban-professional ‘new middleclass’ majority. (Dawson, 2013).

¹⁰ Namely Fernando de La Rocque (anthropologist and founder of Céu do Planalto, Brasília), Paulo Roberto Silva e Souza (psychologist and founder of Céu do Mar, Rio de Janeiro) and Alex Polari de Alverga (writer and founder of Céu da Montanha, Rio de Janeiro)

2.3. Historic overview of the legal process of Santo Daime in Brazil

2.3.1. Reflections on the international prohibition of ayahuasca

As mentioned in the introduction, the question remains whether natural plants containing DMT (such as the *Psychotria Viridis* leaf) and their decoctions (such as ayahuasca) actually do fall under the 1971 convention. Brazil, Belgium and the Netherlands are all party to the Vienna Convention on the Law of Treaties (VCLT). This treaty lays out the international rules for interpreting treaties in good faith. It is clear out of their reading that preparatory works may be used as a supplementary means of interpretation to find out the “ordinary meaning to be given to the terms of the treaty in their context and in the light of its objective and purpose” (Article 31 and 32 of the VCLT). As such, the following articles and documents can help answer the question.

- Article 14(2) of the Illicit Traffic Convention

“each party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, ... , cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit use, where there is historic evidence of such use, ... “. Even though ayahuasca is not subject to any eradication policy, this article does offer a basis to understand the UN’s concern for fundamental human rights to use plants with psychotropic properties, like ayahuasca, which have been used for decades or centuries within indigenous and religious healing practices.

- The UN Conference for the adoption of a Protocol on Psychotropic Substances

In one of the plenary meetings leading up to the 1971 Convention, the American representative noted that it was not worth attempting to impose controls on biological substances from which psychotropic substances could be obtained (UN plenary meeting, 1971). It serves to remember that any attempt in doing so will likely have a devastating impact on biodiversity and animal/human life.

- Commentary on the Convention on Psychotropic Substances

This document provides the original commentary to the 1971 Convention, and is thus the key tool for interpreting its articles. In the commentary on article 32 of the convention it is

explained that “plants as such are not, and – it is submitted – are also not likely to be, listed in Schedule 1, but only some products obtained from plants. (...) Moreover, the cultivation of plants from which psychotropic substances are obtained is not controlled by the Vienna Convention.” Furthermore, it is noted that “the inclusion in Schedule I of the active principle of a substance (such as DMT or psilocybin) does not mean that the substance itself is also included therein if it is a substance clearly distinct from the substance constituting its active principle.” It then clarifies that “neither the crown (fruit, mescal button) of the Peyote cactus nor the roots of the plant *Mimosa Hostilis* (an infusion of the roots is used) nor *Psilocybe* mushrooms (beverages made from such mushrooms are used) themselves are included in Schedule I, but only their respective principles, mescaline, DMT and psilocybine (psilocine, psilotsin)” (UN Commentary 1971, p387).

- Letter of the INCB to the Dutch Public Ministry

In January 2001 the Chief Inspector of the Dutch Public Ministry, Dr. Lousberg, asked a formal question to the INCB concerning the traditional use of a controlled substance, in particular the use of ayahuasca in religious groups in the Netherlands. After a consultation by the INCB Secretariat with the Scientific Section and the Legal Advisory Section of the United Nations International Drug Control Programme (UNDCP), it was concluded that “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” (INCB, 2001).

Out of the above-mentioned, it is fairly obvious that the *Banisteriopsis caapi*, the *Psychotria viridis*, (the two plants used to make up the beverage) and ayahuasca itself (being a decoction clearly distinct from its active principle DMT) fall outside the scope of the convention and are not (intentionally) prohibited by international law. However, this does not stand in the way of national state’s deciding on “more strict or severe measures of control than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the protection of the public health and welfare” (1971 Convention, article 23). Also, as none of the above-mentioned interpretations are binding, any judge deciding on a case involving ayahuasca may choose to consider that the brew is prohibited.

2.3.2. Brazilian national drug framework

In Brazil, the Executive branch of the Federal Government has been authorized by law to classify drugs. As such, this task is performed by the Ministry of Health, currently named *Agência Nacional de Vigilância Sanitária* (ANVISA, or National Health Surveillance Agency) and previously named *Divisão Nacional de Medicamentos* (DIMED, or National Health Surveillance Agency). In the absence of explicit legal controls, it is the *Conselho Nacional de Políticas sobre Drogas* (CONAD, or National Council on Drug Policies) that helps guide the enforcement of Brazilian drug law through resolutions (Labate and Feeney, 2012). The religious use of ayahuasca is currently regulated through such a resolution.

2.3.3. The first nation-wide prohibition and liberation

As mentioned, the activities of Mestre Irineu had not been free of stigmatization and prosecution since its inception. From a highly vulnerable social position, it is said that his constant conciliatory posture towards government institutions significantly contributed to the survival of his religion. As the (regional) respectability for Mestre Irineu grew over time, so grew the respectability for Santo Daime. The two were intrinsically linked. As becomes clear in his biography, he considered the beverage, the way of preparing it, the doctrine, and the religious institution (which he was leading at the time) as a part of himself (Moreira and MacRae, 2011). However, the local respect for Santo Daime (still permeating Acrean culture today) was quickly put to the test on national and international level, as its practice and influence increased in other parts of Brazil during the '80ies. To this regard, it must be observed that legal issues regarding the religious use of ayahuasca nearly always included (or reflected on) two other ayahuasca-religions that were born in Acre, namely *União do Vegetal* (UDV) and *Barquinha*. The first national attention towards Santo Daime occurred in September 1981, when the Ministry of Justice decided to create a multidisciplinary commission consisting of, among others, a psychologist, an anthropologist, a historian, and a sociologist. This commission had to investigate the religions whose primary practice consists of the ceremonial use of ayahuasca. Even though the results of this commission were positive, in February 1985 DIMED added *Banisteriopsis caapi* to the list of psychoactive substances. Yet, this decision was taken without consent of the *Conselho Federal de Entorpecentes* (CONFEN, or National Council on Narcotics),

the predecessor of CONAD, and the organ to which DIMED answered. Strong reaction came from the UDV, who addressed a petition to CONFEN contesting the classification (Labate, 2014). They argued that not a single study had been done on ayahuasca use, and that the evaluation on the legitimacy of ayahuasca could not be solely based on a quick



Figure 14: Padrinho Sebastião is called on to explain his religious practices (between 1981 and 1983)

study of its chemical compounds (Belmonte Dos Santos, 2016).

As a reaction, through Resolution 04/85, CONFEN established an interdisciplinary *Grupo de Trabalho* (GT, or working group) to study the religious use of ayahuasca. The GT was led by Dr. Domingus Bernardo de Sá, a jurist who during many years was the main spokesperson of the CONFEN. It included representatives from several other government agencies and from different scientific fields such as history, anthropology, sociology, philosophy, theology, medicine and psychiatry (Küfner, Rabe and Sonczyk, 2007). Yet, at the very start of the research, Mr. Felipe Belmonte Dos Santos, the lawyer of the UDV, had received an official letter where CONFEN had signed and approved the prohibition of ayahuasca in Brazil. Reason being that ayahuasca may evolve into a synthetic drug, which would create more problems for the Federal Police. Dos Santos then advised the officials of CONFEN that the announcement of the prohibition should be accompanied by a communication to the Minister of Justice, asking for money to build prisons. He argued that a prohibition would not stop people from using ayahuasca, because it actually brings benefits, and as such should be incentivized (Belmonte Dos Santos, 2016). Afterwards, CONFEN had retracted their resolve to prohibit, and decided to visit the different communities of the ayahuasca-religions. At the start of 1986 then, the GT had recommended the provisional suspension on the ban of ayahuasca until they would finish their work. Finally, on August 26, 1987, the GT's final report recommended the permanent

declassification of B. Caapi from the list of prohibited substances, and authorized its “ritual and religious use” (Labate, 2014). The report specifically mentioned it did not treat the question on cannabis, and concluded, among others, the following:

“What is possible to affirm is that the search of a peculiar form of perception undertaken by the users of ayahuasca in their ‘works’ does not appear hallucinatory, if this term is taken to understand folly or mentally insane. Instead, in all the groups we visited, we observed a rigorously common project: the search for the sacred and self-knowledge. It is also not up to the GT to define whether the way sacredness or self-knowledge is experienced is illusory, reverie or fantasy, as meanings other than hallucinatory. (---) Moral and ethical behavior towards existing and recommended patterns in our society are, sometimes even in a very rigid way, observed in the different sects. Obedience to the law seemed always highlighted. The followers of the sects seem happy and tranquil people. Many testify to family reorganizations, a return of interest in work, an encounter with the self and God, etc... , through the religion and the beverage. The ritual use of the tea doesn’t seem to disturb or have adverse consequences on the social life of the followers of the different sects. On the contrary, it seems to guide them in searching social happiness within an ordered and working context” (CONFEN, 1987, p29).

For these reasons, and many more, CONFEN later approved the recommendation to declassify in an official meeting. DMT remained (and still remains) a prohibited substance in Brazil.

2.3.4. The Letter on Principles for Ayahuasca-using Entities: common compromise

In November 1991, the UDV internally established common procedures and ethical guidelines on the use of ayahuasca to further strengthen their (at the time, still vulnerable) legal and social legitimacy in Brazil. The reach of this document expanded beyond its original intent. One year later it was signed by representatives of seven of the main ayahuasca-using religious groups at the First International Ayahuasca Congress in Rio Branco, Acre, November 1992. Thus, interestingly, the groups had taken steps to self-regulate ayahuasca use through formal parameters, as had been constantly recommended by Dr. Domingos Bernardo de Sá, of the CONFEN commission (Labate, 2014). In the letter itself, which has no legal status, explicit statements are made against the inclusion of other substances in ayahuasca rituals and its commercialization. Beyond that, certain rules concerning the (ritual) forms of use are further elaborated, such as, for example, that no one can leave the church before the end of the ritual. Strangely, the letter was not adjusted for the inclusion of indigenous peoples and their use of ayahuasca. Nonetheless, this period of cooperation and mutual compromise between various

representative groups of ayahuasca-religions is characterized as the “*integrative phase*” (Loures de Assis, 2017).

2.3.5. Re-investigations on the religious use of ayahuasca

In 1992, the legal process suffered quite a hick-up when an anonymous complaint had been filed against ayahuasca churches.¹¹ This led to the formation of a new GT by CONFEN which, at the end of their analysis, qualified the complaint as “accusatory hysteria” and considered that there were no reasons to alter the previous decision of CONFEN of 1987. According to Labate, this report was practically a manifesto on religious tolerance and against the “fear of hallucination” (Labate, 2014). Nonetheless, ten years later, the continuing expansion and transnationalization of Santo Daime produced new complaints. A *Grupo Multidisciplinar de Trabalho sobre a Ayahuasca* (GMT, or Multidisciplinary Working Group on Ayahuasca) was established, which included government officials, researchers and representatives from the ayahuasca groups (Labate and Feeney, 2012). The six researchers, among others, came from disciplinary fields such as anthropology, pharmacology/biochemistry, psychiatry, and law. Furthermore, the GMT had the support of the *Secretaria Nacional Antidrogas* (National Anti-drug Secretary) and various advisors from CONAD, including Dr. Domingus Bernardo de Sá (CONAD, 2006). The GMT met periodically and produced their final report in 2006, which was later included in CONAD’s Resolution of 2010.

2.3.6. The 2010 CONAD resolution

In 2002, reference was already made to the Technical Note 003/2002 of the ANVISA, which affirms the legitimacy of the use of ayahuasca within cultural and spiritual rituals in Brazil. Yet, it also refers to the recent materials and warnings they have received which confirm the use of ayahuasca outside of permitted contexts, thereby justifying the required intensification of control by CONAD. (Labate, 2014). In this way, the GMT started by taking into account the historical process that led to the recognition of the legitimacy of ayahuasca-religions and, in light of the rising concerns around the ayahuasca diaspora and its “non-ethical” use, considered

¹¹ The complaint stated that (i) church members number some ten million fanatics concentrated in urban centers, (ii) the UDV mixed ayahuasca with LSD or similar drugs, (iii) adepts are initiated into slave labor and forced donations, (iv) children are terrified by horrific visions; and (v) these religions pose a threat to national security, as they could possibly be a counter-attack of the urban guerrillas. (Labate, 2014).

it a necessity to explore and construct further the deontology related to its use. The 2010 resolution is the result of that effort. Firstly, it is mentioned that the GMT expressed its recognition for its constitutional obligation to protect popular and indigenous manifestations and to guarantee the right to religious freedom. Interestingly, the legal grounds for recognizing the religious use of ayahuasca are not restricted to the national/constitutional level.

With regard to the question if ayahuasca is prohibited by international law, Brazil has openly accepted the INCB's non-binding interpretation that no plants or preparations from plants containing DMT are controlled by the 1971 convention. (CONAD, 2010; INCB, 2001). The inclusion of such a consideration on international level signals the influence, in Brazil, of the expansion and the use of ayahuasca abroad (Loures de Assis, 2017). Interestingly, on the national level, not only the constitutional obligation to respect the collective right to religious freedom is highlighted, but also the individual right to intimacy, private life and image of its users. As such, the personal autonomy of individuals who choose to drink ayahuasca in a legitimate religious setting is also granted a significant importance.

2.3.6.1. Deontological principles

For the exploration of the ethical principles related to ayahuasca use, the GMT had searched to consolidate and explore further the self-regulatory efforts made by certain groups of the ayahuasca-religions. Special attention was given to the 1991 *Letter on Principles for Ayahuasca-using Entities*, and after a year-long debate, priority had been given to the following principles:

1. Practices outside ritual context and/or the use of illicit psychoactive substances

The resolution clearly states that it intends to ratify the legitimacy of the religious use of ayahuasca as a rich, ancestral and cultural manifestation which, because of the relevance of its historic, anthropologic and social value deserves protection by Brazil. For this reason, the resolution tries to avoid practices that endanger the legitimacy of the traditionally recognized and protected religious use of the beverage. This includes, according to the resolution, the use of ayahuasca associated with illicit psychoactive substances and/or its use outside the ritual context.

2. Commercialization

The acts involving ayahuasca, from the harvesting/collection of plants and its preparation to its storage and ministrations, are recognized as acts of faith as long as they are done out of religious conviction. Once any act is done with the purpose of gaining profit, it becomes incompatible with the religious use that entities recognize as legitimate and responsible. Still, commercialization of ayahuasca must not be confused with the costs and payment of expenses related to the planting, harvesting, transportation and preparation of ayahuasca. Such maintenance costs are supported by the user community, and it is considered evident that they can vary depending on the region of production, the quantity of adepts, the facility (or difficulty) of acquiring the raw material (vine and leaf), whether the church has its own plantation or the material is found in native forests, etc... . It is mentioned that, historically, the costs have been shared through the member contributions that are paid to the religious institution. As such, the members are responsible for the maintenance of the religious organization, which includes expenses of the production of ayahuasca, and with the provision of regular accounts.

3. Sustainable and ethical ayahuasca production

It is considered that the religious entities should search to cultivate and prepare ayahuasca, in principle, for own use. They have to become auto-sustainable through the cultivation of their own plantation. In this process sustainability must be a priority, as the use of native plants from the Amazon Forest presumes ecological responsibility in the extraction of plant species. When the entity does not have its own cultivation of raw material, and there is no way of obtaining it in the native forest, it is possible to obtain it from a third party through payment of the costs and expenses. It must be avoided that groups or entities dedicate their activities mainly or exclusively to the production of ayahuasca for third parties, as this would be seen as commercialization.

4. Tourism and diffusion of information

Tourism as an act of commercialization – where the main objective is profit through the exploitation of the effects of ayahuasca - must be avoided. Then, with regard to the diffusion of information through publicity or other means of communication, it is considered essential that ayahuasca is not promoted as a panacea, meaning a (miraculous) solution or remedy for all

difficulties or diseases. Evidently, offering paid courses or workshops under such pretexts are strictly forbidden.

5. Therapeutic use

The resolution mentions that the therapeutic use traditionally attributed to ayahuasca within religious rituals is not therapy in the strict sense, as it is primarily seen as an act of faith without any proven relation between the cause and effect between ayahuasca and healing or the solution of problems. Therefore, the State does not intervene in the conduct of persons, groups or entities that make use of ayahuasca in a strictly religious context. Subsequently, CONAD recognizes that people use ayahuasca for strictly therapeutic purposes and confirms that such use is not regulated. Therefore, it recommends that the effectiveness of all therapeutic uses of ayahuasca (perhaps in combination with other substances) have to be proven by means of scientific research carried out by research centers linked to academic institutions, obeying scientific methodologies. This way, the recognition of the legitimacy of such practices can count on the support and proof of the scientific community.

6. Organization of entities

CONAD states that the responsible religious use of ayahuasca presupposes the presence of experienced persons who can deal with the various aspects of this practice, namely: the ability to discern the plant species and to prepare the drink, to recognize the appropriate moment to serve it, to discern the persons to whom its use is not recommended, in addition to all aspects connected to ritualistic use and according to their spiritual orientation. Therefore, in order to create an environment that inspires more confidence for the religious practitioners, CONAD recommends that groups formally organize themselves and legally register. This in turn consolidates the idea of responsibility, identity and social projection.

7. Proceedings for the reception of new adepts

Before giving ayahuasca to anyone, the church must take into account (i) previous mental issues, the (ii) current emotional state on the moment of use, and whether (iii) participants are not under the influence of drugs or other psychoactive substances. Furthermore, interested persons must be informed on all the conditions that are required to use ayahuasca. Prior to use, an interview must be conducted, orally or written, in order to determine the conditions of the

interested person and to give him/her all the necessary clarifications about the natural effects of the beverage. Once the ritual has started, CONAD recommends that participants are accompanied until the end of the ritual, and that the previously requested departure only be allowed in exceptional cases and with consent of the responsible.

2.3.7. The legal power of the CONAD resolution

Based on the research of Labate and Feeney, there seems to be no consensus on the exact legal power of this resolution. The provisions of this resolution can be seen as mere “recommendations”, in the sense that they do not establish the suggested mechanisms of control. Contrary to this, the resolution can also be seen as binding against Brazil’s drug control law, which in turn would sanction any deviation from the Resolution’s parameters by ayahuasca-religions or churches. The only consensus for the moment is that judges will determine how the resolution will be interpreted. The authors rightly point out that this could result in differing interpretations. Therefore, the legal process concerning the legitimate use of ayahuasca continues to be an on-going process (Labate and Feeney, 2014).

2.3.8. Polarization and international expansion

While Loures de Assis characterized the cooperative efforts in 1991, through the acceptance of the *Letter on Principles for Ayahuasca-using Entities*, as the *integrative phase*, this period – seemingly – lasted for about ten years. Although there have always been differences in opinion between the different ayahuasca religions and their branches, the same author argues that in 2001 polarization became more powerful, thereby marking the “*disruptive phase*” (Loures de Assis, 2017). It is mostly the traditionalist coalition of Alto Santo, Barquinha and UDV that heavily criticize the ICEFLU branch of Santo Daime (Labate, 2014). From a legal point of view, two main issues are worth mentioning. Firstly, ICEFLU has adopted the sacramental use of cannabis or “*Santa Maria*” within the ritual framework of Santo Daime, making it difficult to dissociate the search for legal recognition of the religious use of ayahuasca from the religious use of cannabis. This issue continues to generate immense internal dispute between ICEFLU and the more conservative branches of Santo Daime, UDV and Barquinha. The irreconcilable polarization can be attributed to the fact that Brazilian law prohibits the use of cannabis, and because the statutes of CICLU – Alto Santo, signed and approved by Mestre Irineu, prohibit its use (Ferreira Junior, 2017). Moreover, on March 8, 2006, Mrs. Gomes Serra, the widow of

Mestre Irineu who is currently still in charge of CICLU – Alto Santo, stated that “many became selfish and began to cultivate substances and doctrinal elements of diverse origins in deep disarray with the essence of the doctrine they knew while they were with Raimundo Irineu Serra.”¹²

To that regard, Alex Polari, a central figure in ICEFLU carrying a great part of the responsibility for, among others, the legal processes regarding ICEFLU churches, has told me that the internal differences potentially stand in the way for a common effort to regulate the export of ayahuasca. This is the second issue. Even though Mr. Polari advocated for export rules in the various processes and meetings of the GMT leading up to the current regulation, one of its “weaknesses” is that there are no formal rules on the export of ayahuasca towards the affiliations of ayahuasca-religions around the globe. This has already been slightly problematic when, in 2006, the federal health department of Canada had approved the use of ayahuasca by a Santo Daime church on the condition that official export-documentation could be provided by the Brazilian Government.¹³ Yet, the traditional branches, such as CICLU – Alto Santo, don’t have an immediate interest in regulating export, as they never instigated – nor intend to ever instigate - the expansion of Santo Daime. They simply want(ed) to secure the legal recognition of their religion in Brazil. Yet, the potential negative consequences of the global disordered and disorganized expansion of ayahuasca might have detrimental impacts on all ayahuasca-religions who carry a direct or indirect responsibility for the legal, ethical and institutional organization of their religious practices. This is plausible considering that commercialization and non-traditional use are phenomena that occur more easily in a non-regulated field of expansion, and are more likely to have negative results on individuals or society. Cosmo Lima de Souza, Attorney General of the Federal State of Acre and friend of the CICLU – Alto Santo line of Mestre Irineu has given an alarming talk at the World Ayahuasca Conference in Acre in 2016, stating that:

“...when the problems of irregular use happen, who responds before the authorities are the religious traditions. (---) I will not say that it is wrong to use ayahuasca in other ways. Our country is a free country, submitted to a constitution that ensure the freedom of worship. Whoever wants to use ayahuasca in a ritualistic way has every right to use her, but you have to observe the Brazilian law. You have to have a compromise with responsible use (---), you have

¹² <http://www.mestreirineu.org/peregrina.htm>

¹³ I note that on June 15th, 2017, the respective Santo Daime church in Canada has received an exemption by the federal health department to import and use ayahuasca, making their religious practice – and all the processes related to it - legal. (for more info see the website of Céu do Montréal: <http://santodaime.ca/>)

to have a minimum of patterns concerning safety and orientation that respond to the responsibility that the State demands in order to authorize the use of a psychoactive substance that contains DMT, which is forbidden by criminal law. If done contrarily to this, we will have an extremely serious regress. Why? Because this subject, the legalization of ayahuasca, is debated in the National Congress, which is retrograde and conservative, and we are at risk in having this beverage prohibited for Indians, for whites, for urban use, for use by rubber tappers, no matter what its use may be” (Lima De Souza, 2016).

Nonetheless, with regard to the export of ayahuasca in Brazil no significant problems have been registered up till now, as it is not considered an illegal substance. Also the churches I researched in Belgium and the Netherlands have not, over the past 20 years, suffered any significant problems with regard to the export of ayahuasca from Brazil, but rather with the import in their respective countries. Still, “whilst nations may interpret the 1971 Convention differently, or enact stricter drug laws, issues surrounding importation and exportation are emerging as significant concerns, which will continue to color the debate about regulation and expansion of ayahuasca use. Brazil may be able to play a role in calming international disputes by developing internal regulations concerning exportation of ayahuasca” (Labate and Feeney, 2012, p157).

2.3.9. Indigenous Peoples

In general, Santo Daime is valued as a Christian doctrine while simultaneously being valued for its indigenous origins, thereby making it indeed a unique and authentic Brazilian and Amazonian religion. It’s fairly safe to assume that Mestre Irineu had learned about ayahuasca by the hands of an indigenous *ayahuasqueiro*, and the indigenous aspect of Santo Daime is often evoked rhetorically to grant more legitimacy to its practice. During my research, I was told that “the Doctrine [Santo Daime] was received by Mestre Irineu, but the beverage [ayahuasca] was received by the Indigenous”. This profoundly moved me, as it is true that the legal processes concerning “traditional ayahuasca religions” have not fully included indigenous tribes of the Amazon for whom this beverage is an essential part of the ancestral, spiritual and cultural heritage. It is only since the first decade of this millenium that the indigenous became involved in the urban ayahuasca scene. Various tribes started to realize multicultural festivals in their villages, attracting tourists and realizing *workshops* with ayahuasca for non-indigenous people. In general, it can be said that the ayahuasca scene is increasingly characterized by the Peruvian model, where retreats and ceremonies are promoted by caboclos and indians for the

middle class and foreigners, and Christian ayahuasca-churches lose their dominance. (Labate and Coutinho, 2014).

Yet, the inclusion of “Indigenous ayahuasqueiros” in the urban scenery is also marked by certain problems, such as the current trend of commercialization by unexperienced people pretending to be shamans. The politics of use in Brazil include the practice with ayahuasca in a religious context in urban centers and in indigenous communities. Yet, practice and discourse are often dissociated today, as any person that can put marks on his face, learn how to mix a powder with tobacco, and has access to a bottle of ayahuasca even without being indian, can present himself outside of Acre as a shaman. During the World Ayahuasca Conference, the Public Prosecutor of Acre considered this as a disrespect towards the idea of shamanism, towards indigenous culture, and towards the politics of use of ayahuasca in Brazil (Lima de Souza, 2016). Yet, there are actual Indigenous Peoples that started to integrate in the public debates on ayahuasca, which had not happened in the past fifteen to twenty-five years. One of the debates, as I have mentioned in the beginning of the historical chapter, is the claim for responsibility for having introduced ayahuasca to Mestre Irineu. A notable figure to that regard is Benki Piyanko of the Ashaninka tribe, who had also shook up the more recent debate on the patrimonialisation of ayahuasca in Brazil by stating that the indigenous are “the true centuries-old bearers of the traditional knowledge related to so-called sacred plants” (Labate and Coutinho, 2016, p234).

As efforts were made by the more traditional branches of the ayahuasca-religions (CICLU – Alto Santo, UDV and Barquinha) to make the beverage, just as in Peru, an immaterial cultural patrimony of the nation, statements such as these reflect the call for inclusion in decision-making processes (Loures de Assis, 2017). This issue, among others, has been addressed by both traditional ayahuasca churches and indigenous peoples in the World Ayahuasca Conference 2016, and the conclusions of both groups can be read in Annex 2. These debates are ongoing, and however interesting and pertinent for the strengthening of the legal situation of ayahuasca in Brazil, it is not within the scope of this thesis to elaborate on them. Rather, I would like to point out that indigenous peoples not only enjoy legal rights concerning the use of ayahuasca in Brazil, but also internationally. In the UN Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007), the General Assembly of the UN recognizes the “urgent need to respect and promote the inherent rights of indigenous peoples which derive from (---) their cultures, spiritual traditions, histories and philosophies.” Article 11 of the declaration then states that

“Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as (---) ceremonies.” Article 12 elaborates further that they have “the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies.”¹⁴ Also, in referring to traditional medicine systems of indigenous peoples and their ethical implications, the *International Bioethics Committee* (IBC) of the UNESCO notes that the correct application of UNDRIP depends on the consideration of two principles from the *Universal Declaration on Bioethics and Human Rights* adopted by the UNESCO General Conference in 2005. On the one hand, the right of every human to enjoy “the highest attainable standard of health” (art. 14). On the other hand, the explicit need to respect “cultural diversity and pluralism” (art. 12), which necessarily includes “respect for traditional knowledge” (Art. 17) (IBC, 2013).

¹⁴ Since ayahuasca forms part of the spiritual and religious tradition of certain Amazonian tribes, and since this is considered to be a traditional medicine, article 24 also mentions that “Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals.” Article 31 then takes a similar turn by stating they “have the right to maintain, control, protect and develop (---) their traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including (---) medicines, knowledge of the properties of fauna and flora, oral traditions, (---).” Finally, article 34 reaffirms that “Indigenous peoples have the right to promote, develop and maintain (---) their distinctive customs, spirituality, traditions, (---), practices, (---) in accordance with international human rights standards.”



Figure 15: Tatá Yawanawa, the oldest pajé (shaman) of the Yawanawá community, who opened the Conference with the following words: "I would like to ask the Great Spirit (-) that from this event we may become brothers". Tatá passed away shortly after



Figure 17: Benki Piyāko talking at the World Ayahuasca Conference



Figure 16: Prominent scholars, researchers and specialists discussing the question "of who is ayahuasca?"

2.4. Conclusions

When looking at the historical processes of acquiring societal legitimacy through legal recognition for the religious use of ayahuasca in Brazil, it is clear that an strenuous road has been walked. From the beginning, Raimundo Irineu Serra was confronted with various types of allegations shedding a negative light on him and/or his religious practice. In a time where a (Christian) doctrine taught by a black man through the use of an Indigenous beverage confronted the contemporary values within Acrean society, Mestre Irineu could nonetheless count on essential support of prominent figures within local and regional governments to safeguard his religious freedom. Originating and practiced within Acre, it was only during the expansion of Santo Daime on national level that more formal procedures for legal recognition became inevitable as both public media and national authorities expressed serious concerns. The first media coverage clearly worried about a sectarian organization using illicit substances for unholy purposes, even implying that collective suicide might become an issue (Ferreira Junior, 2017). After a small convulsion in 1985, where national authorities invalidly decided on the prohibition of ayahuasca despite a positive outcome of the commission's investigations, it is remarkable that Brazil has completely broken with the general belief system that entheogens are hallucinogenic and/or inherently harmful (Tupper, 2011).

To counter an ontologically rigid understanding of ayahuasca, multidisciplinary working groups (GMT's) have been created to investigate its religious and "traditional" use. In line with academic recommendations, the diversity of scientific and academic angles through which Santo Daime has been studied resulted in the recognition of ayahuasca as a "tool", traditionally used for the search for the sacred and self-knowledge. In doing so it was clearly denounced that its users hallucinate while objectively exploring its risks and benefits. (CONFEN, 1987; Tupper, 2008; Blainey, 2015). After a long process of around 25 years of cooperative dialogue and discussions between (nearly) all relevant parties, the CONAD resolution of 2010 is the fruit of that collaborative effort, and bases a great part of its deontological rules on the past self-regulatory efforts of ayahuasca-religions. Interestingly, the first reports characterize Santo Daime as a "sect". Yet, different than what might be assumed in Western societies, this word had been used neutrally and did not skew the GMT's ability to judge ayahuasca religions on their own merits (Olson, 2006). More recently then, Brazilian Indigenous tribes have also become involved in the ayahuasca scene, thereby raising serious demands on their involvement in the ongoing discussions and formal proceedings around the patrimonialization of ayahuasca.

In all the proceedings discussed, what is remarkable is that not only the drug war paradigm has been broken since the start, but that there can be no talk about the judicialization of religious freedom. The core freedom for the religious and traditional use of ayahuasca in Brazil has been warranted outside the courts. Yet, as mentioned, the judiciary might still have some kind of normative function on complementary rules and interpretations in the future, f.e. with regard to the international export to affiliated churches. These observations stand in stark contrast with what can generally be expected in Western societies confronted with the same questions. Will the drug war paradigm not be so deeply entrenched in the current understanding of (inter)national drug legislation as to perceive ayahuasca as anything other than a prohibited hallucinogenic substance within Western society? Will Santo Daime be seen as a legitimate religion or a “sect”, and to what extent will there be a dialogue between authorities, the churches and scientific/academic community to explore the questions surrounding this issue? In other words, how does the process for legal recognition of Santo Daime in Western society differ from that in Brazil? The next chapter tends to analyze these questions with specific attention to Belgium and the Netherlands.

3. The legal cases of Santo Daime in Belgium and the Netherlands

3.1. Some primary considerations

3.1.1. The issue of sectarian organizations and New Religious Movements (NRMs)

Even though the values promoted by Santo Daime are essentially Christian, both the ritual setting and ayahuasca use are “foreign” elements that have no reference to the cultural framework of Belgium or the Netherlands. It comes without a surprise that many people, at first glance, see a “sect using drugs”. Yet, a government sponsored research in the Netherlands concluded that NRMs in general do not constitute a grave danger for public (mental) health.¹⁵ Various scientific research has complemented the available information about NRMs and sectarian organizations, further enriching this debate. The entirety of available information has recently been analyzed in a report commissioned by the Dutch Ministry of Safety and Justice, Centre for Scientific Research and Documentation. This report makes clear that a single definition of what a “sect” constitutes does not exist, and that the word only came to have a negative connotation through media and other scientific publications (Van Wijk a.o., 2013). From what I understood of Giumbelli’s anthropological study on the freedom of religion in Brazil and France, the lack of definition on what a “sect” constitutes can be explained through the lack of clear terms that are supposed to set the limits of what freedom of religion constitutes. These terms are constructed on a case by case basis through (historical) processes which, depending on the different (f)actors, socially construct these limits within a given society (Giumbelli, 2002).

To that regard, European states are sovereign in developing a system of relations with religious groups and organizations in which religious liberty can find its expression. Yet, these limits must respect the European Human Rights system, which does not give a common European definition of religious communities and their freedoms (Ferrari, 2006). This subsequently leads to an amalgam of different situations within each European country, where the provisions towards New Religious Movements (NRMs) challenge the general framework on freedom of religion established on European level. The socially constructed limits on religious freedom only became more stringent after September 11, whereas before this date “sects” represented the exception in a fairly stable situation. Now, Ferrari notes that the legislative and administrative

¹⁵ A NRM can be seen as (i) a group of people, (ii) that follow/followed a leader, (iii) that have their own, recognizable religious/spiritual ideology, and (iv) is of recent date, roughly since WWII. (Van Wijk a.o., 2013)

provisions towards NRMs sit uncomfortably with the European system of relations between law and religion in certain countries (Ferrari, 2006). Various authors critically refer to France, Germany and Belgium as particularly rigorous in their control, surveillance and persecution of “sects” (Fautré, 2010; Blainey, 2013; Richardson, 2015). The Netherlands, in general, seem to be more open and tolerant towards NRM’s.

- **Harmful Sectarian Organizations (HSOs)**

In light of the question how NRMs can pose a threat to society, the Belgian side of the story allows for an interesting perspective, and envelops nearly the same considerations made in the Dutch reports. A Belgian Parliamentary Commission of Investigation was instigated in 1996, in the aftermath of a collective suicide of seventy-four members of the *Temple Solaire* in Switzerland, a sect of which one of the two leaders was Belgian (Belgian Chamber of Representatives, 1997). According to Torfs this report - charmingly called *‘Parliamentary inquiry to develop a policy to combat illegal sects and the danger they pose to society and to persons, especially minors’* - is characterized by a genuinely negative attitude towards NRMs (Torfs, 2005). Still, it made certain recommendations resulting in a law of June 2, 1998, which created both a Center of Information¹⁶ and an Administrative Co-ordination Unit. Also, this law provides the current operational definition of what a HSO is, namely “a group with a philosophical or religious vocation, or pretending so, which, in its organisation and practice, delivers itself to harmful illegal activities, harms individuals, or damages human dignity.” It then further clarifies in the second paragraph that “the harmful nature of a sectarian organization is examined on the basis of the principles contained in the Constitution, the laws, the decrees, and regulations, and the international conventions for the protection of human rights ratified by Belgium” (Article 2).

This definition is potentially very dangerous, as certain general rules that seem neutral at face value might put NRM’s – often religious minorities – in a(n) (seemingly) illegal situation to begin with. Such is the case with the prohibition of DMT and the religious activities of Santo Daime. Furthermore, such definitions “focus mainly on the harm these movements can provoke, but, in doing so, they end up with definitions that apply equally well to other groups and organisations, including the mainstream religions” (Ferrari, 2006, p6). Luckily the article also warrants the respect for international obligations, and thus a human rights-based assessment, which might

¹⁶ Fully named the “Information and Advice Center Concerning Harmful Sectarian Organizations”

avoid overly rapid stigmatizations of NRMs. Also, during the discussion held by the parliamentary commission, a (non-exhaustive) set of criteria were discussed which would allow the authorities to qualify an organization as a HSO.¹⁷ The ex-chairman of the Center of Information notes that these criteria should be considered as indicators for a global evaluation (DENAUX, 2002). In response to the increasing attention for NRMs and HSOs, and following an advice of the Center of Information, a new article has been introduced in the Belgian penal code which criminalizes the abuse of “weak and vulnerable persons”. (IASSO 2011-2012, p21).¹⁸

3.1.2. Santo Daime: a NRM or a HSO?

From what I have observed in the available academic research and witnessed in churches, the religious practice of Santo Daime constitutes a genuine NRM and not a HSO. Giving a commentary on each criteria seems unnecessary and overly time consuming, as the entirety of this study – together with the already available research and books on Santo Daime - can add

¹⁷ The criteria:

- Misleading or abusive recruiting methods
- The use of mental manipulation
- Physical or mental (psychological) mistreatment inflicted upon the followers or upon their family members
- The deprivation of adequate medical care for the followers or their family members
- Violence, especially of sexual nature, towards the followers, their family, or third party or even children
- The imposed separation of followers from their families, their spouses, their children, their relatives and their friends
- The kidnapping or removal of children from their parents
- The denial of liberty to leave the movement
- Disproportionate financial demands, fraud and misappropriation of funds and possessions to the detriment of the followers
- The abusive exploitation of the work provided by the members
- The complete separation from democratic society, presented as evil
- The goal of destroying society to profit the movement
- The use of illegal methods to usurp power

¹⁸ The newly introduced article prohibits any situation where a patient/visitor/adept might be encouraged “to act or refrain from an act seriously affecting his/her physical or mental integrity or his/her patrimony” (Belgian Penal Code, article 442quater).

value to that testimony.¹⁹ Furthermore, during a meeting with a legal representative of the Belgian Advice Center on HSO's, at no time has Santo Daime been depicted as a HSO. Instead it was explicitly stated that more scientific evidence is needed to consider ayahuasca as dangerous to public health, and that in these terms "the real danger is the massif criminalization of such practices". The representative underlined that today "providers" of ayahuasca are automatically seen as drug-dealers, and its "users" as drug users, making it difficult for the latter to inform the police in case something went wrong. As such, I would consider that the most imminent potential danger is that – especially in the absence of any legal recognition and/or framework – any individual might choose to "start up" a Santo Daime church under false pretexts. Having this in mind, I advise caution in projecting the harmful actions of a single person on an entire religious community construed of people who are genuinely trying to live (up to) their religious beliefs and ideals. Any Santo Daime church can become a HSO, but Santo Daime in itself is not. Just as one pedophile priest doesn't make the Holy See a pedophile organization, and just as one Muslim terrorist doesn't make the entire Muslim community terrorists.

3.1.3. The European Convention on Human Rights

The potential harmfulness of the use of ayahuasca by Santo Daime shows an intrinsic relation between questions of (i) drug control, (ii) NRMs and HSOs and (iii) human rights law, the latter being identified as a normative counterweight to the drug conventions. (Barrett, 2010; Elliot, Csete, Kerr, & Wood, 2005). Both the Belgian and Dutch constitution protect the right to religious freedom, a right that is also enshrined in International and European Law, such as article 18 of the *International Covenant on Civil and Political Rights* and article 9 of the *European Convention of Human Rights (ECHR)*. This last Convention came into force after WWII, in 1953, and finds direct applicability in both countries, meaning that its norms prevail over national regulations. To ensure that the rights set out in the ECHR are applied by its member states, the convention established a *European Court of Human Rights (ECtHR)*. This Court serves as a last-resort for groups or individuals whose religious rights have (supposedly) been disrespected by member states. A wealth of information is to be found in its cases, and in the

¹⁹ It's interesting to note that the Belgian Information Center has published a study about ayahuasca in the annex of their 2009-2010 annual report. Reference will be made to this study in the next chapter

academic research around its cases, as this court sets the standards for the protection of religious freedom in Europe.

3.1.3.1. The Right to Religious Freedom within European society: a democratic, pluralist and inclusive search for balance through dialogue and compromise

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” (art. 9 ECHR)

With regard to religious freedom, a recent case involving the face veil ban in France confirms what the European Court has said many times before (S.A.S vs. France, 2014). Namely, that article 9 “is one of the foundations of a ‘democratic society’ within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life. (---) The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.” For this reason, the European Court further explained that a “pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity”. In the European Court’s view pluralism does not only entail a respect or mere tolerance of diversity, but also requires a more active and inclusive approach (Ouald Chaib, 2015). Surely, limitations can be imposed on diversity in order to reconcile the interest of various groups while simultaneously ensuring respect for everyone’s beliefs. Still, it is emphasized that “a balance must be achieved which ensures the fair treatment of people from minorities and avoids any abuse of a dominant position”.

The balance must be achieved through fair treatment, indicating that the general principles under article 9 contains an inclusive approach at the procedural level (Ouald Chaib, 2015). With regard to this procedural aspect the European Court (in this same recent case) says that “it is precisely this constant search for a balance between the fundamental rights of each individual

which constitutes the foundation of a democratic society”, and that “pluralism and democracy must also be based on dialogue and a spirit of compromise”. As part of the general principles the European Court emphasizes the State’s duty of neutrality and impartiality, which “is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed” (Eweida and Others vs. the UK, 2013). As such, it is not up to a court to enter into any sort of interpretation of religious questions by expressing a value judgement on convictions or practices. This is especially important in cases involving less known religions with “atypical” practices, such as Santo Daime.

3.2. The legal case of Santo Daime in Belgium

3.2.1. The apprehension of César

In 2011 the facilitator of an ayahuasca meditation group in Belgium, called César, had come into contact with the police after certain members lodged a complaint on “abuse of confidence” with the Federal Police in July. The reason behind this was the non-compliance with regard to an agreement on how a collected amount of money would be spent on the buying of a collective land in Brazil. Interestingly, one of the persons who filed the complaint had told me that the anti-terrorism division of the federal police, which has a separate group for “harmful sectarian organizations” (hereafter HSO-police), was well aware of the existence of César’s activities. The decision to associate “sects” and terrorist organisations, giving the same police directorate the task to fight against both of them, can be seen as an example Belgium’s rigorous control, surveillance and persecution of NRM’s. In October 2011 the HSO-police had then raided an ayahuasca meditation and detained César. The detention of César that followed led to a series of consequences, as he informed the authorities on the existence and the activities of certain groups using ayahuasca, including the Santo Daime churches in Belgium. Amongst them were CdU and Casa de Cura Mestre Irineu (CdCMI). After the apprehension of César, the case concerning abuse of confidence had been dropped by the complainants.

3.2.2. Casa de Cura Mestre Irineu (CdCMI) : move to the Netherlands

A few days after César's apprehension CdCMI immediately registered their church as a legal entity in the Netherlands and decided to end all their church activities in Belgium. According to Fatima, about three months after officially registering CdCMI in the Netherlands, Marcelo – who still lived and worked in Belgium – was called upon by the Belgian HSO-police. The HSO-police explicitly told him that ayahuasca was illegal because of the forbidden nature of DMT. When Marcelo explained this was his religion, they replied that he had every right to practice his religion, but not to drink and distribute ayahuasca. Marcelo further explained that he never knew that ayahuasca was illegal, referring to the fact that he had various pictures of him and Fatima during Santo Daime rituals on facebook and that the ayahuasca had always arrived at his address through international mail. He also invited the Federal Police to come to the church, in the case they would wish to know more about ayahuasca and Santo Daime. This invitation had not been pursued, and the Federal Police conducted a house search at Fatima and Marcelo's house. According to Marcelo, this moment felt like sacrilege, similar to a situation where the police would search for Holy Books to burn.



Figure 18: Group foto of Casa de Cura Mestre Irineu (CdCMI)

Obviously the previous event is problematic. A strong message of exclusion is communicated by none other than the police division responsible for terrorism and harmful sectarian organization. Marcelo was told that ayahuasca is illegal without reference to any legal precedent that might support this statement. As I have shown in Annex 3, there is no indication whatsoever - based on the preparatory works on the international and national drug laws - that ayahuasca is prohibited and/or constitutes a danger to public health. *A fortiori* because it is a non-addictive substance. It is only a judge that can decide whether Santo Daime is illegal or not

and, at that time, no judgement had been passed yet. Furthermore, by indicating that Marcelo could continue to practice his religion without ayahuasca, the Federal Police shows a lack of understanding on what Santo Daime constitutes for its practitioners, who carry deep and existential convictions on the holy nature of their sacrament.

This event implies that Santo Daime is considered a harmful sectarian organization, meaning that its organization and practice “delivers itself to harmful illegal activities, harms individuals, or damages human dignity.” Yet, no reference had been made to any of the indicative criteria set out by the Information Centre.²⁰ Of course, it is entirely understandable that doubts may arise on whether Santo Daime constitutes a harmful activity. Even though safeguards exist within article 19 of the Belgian constitution²¹ and article 9 of the ECHR, the chief of the HSO-police rightly observes that crimes must be adequately addressed in a democracy, regardless of the existence of particular beliefs (Lesciauskas, 2016). Still, this does not give the HSO-police authority to decide that a certain action is considered a crime under law when there is no legal certainty nor precedent on the matter. More so because the consumption of ayahuasca within Santo Daime is a religiously inspired act with no imminent threat to public or individual health, and no risk for addiction.

3.2.3. The stance of the Public Ministry and the HSO-Police

It is clear that both the Belgian Public Ministry and HSO-police are well aware of the fact that ayahuasca is being used in and out of the context of Santo Daime.²² From the part of the HSO-police, CdCMI’s case shows that ayahuasca is considered illegal because of the prohibition of its active ingredient (DMT). This interpretation makes any ayahuasca-related practice illegal, even religious and traditional indigenous use. From the side of the Public Ministry, the annual report

²⁰ See footnote 18.

²¹ Article 19 of the Belgian Constitution: “*Freedom of worship, its public practice and freedom to demonstrate one’s opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.*”

²² A powerpoint presentation of Mr. Lesciauskas, confirms this concern, mentioning that ayahuasca (i) contains DMT and (can) cause hallucinogenic effects; (ii) is being used in the context of the Santo Daime religion; (iii) is being used for therapeutic means outside the Santo Daime rituals; (iv) can be bought through the internet; (v) is artisanally prepared (danger during the fermentation process, bacterial contamination); (vi) is being presented as a replacement for chemical anti-depressants and is; (vii) being used without precautionary measures (no indication of any instruction manual, contra-indication...) (found and last viewed on December 17, 2017:

<http://slideplayer.nl/slide/2832110/>)

of 2012 mentions that the Federal Prosecution held a meeting on the 7th of May, titled ‘*Sectarian movement which engages in the distribution of ayahuasca (drugs)*’ (Belgian Public Ministry, 2012). It is likely that a reference is made to Santo Daime, or that “sectarian movement” is a catch-all category for all groups who organize around the consumption of ayahuasca. Lastly, and perhaps most shockingly, the Public Ministry communicated to a Belgian newspaper that invoking religious freedom to use ayahuasca is too simple: “what if tomorrow there is a religion claiming that the use of heroine is essential?” (Het Laatste Nieuws, 2015). This is a clear example of the ontological rigidity in drug policy, based on the belief that all “drugs” are equally harmful, dangerous and addictive. (Tupper, 2008) Following this reasoning within the current Belgian regulation, if a substance is considered a dangerous drug, then the religion using it is a sectarian organization. Apparently, both the HSO-Police and the Public Ministry adhere to this belief, stemming forth out of a drug war paradigm which puts Santo Daime in an impossible position to begin with.

3.2.4. The legal case concerning Céu da União (CdU)

3.2.4.1. Confiscation, criminal charges and their impact

After César’s apprehension in October 2011, information had also been passed on to the Federal Police about CdU. Soon after, two shipments of ayahuasca coming from ICEFLU were supposed to arrive at his address, which was clearly visible on the transportation documents. Instead, the church leader of CdU (hereafter Mr. X) was notified of its confiscation and the criminal charges against him and the non-profit organization that institutionalized his church activities since 1995, called ASAF (Anthropology Study-center of Amazon Forest).²³ On March 31, 2014, the Court of First Instance of Bruges had confirmed the criminal charges, being the Import, possession, delivery and sale of ayahuasca in violation of the Drug Law of 1921 and the Royal Decree of 1998 (See Annex 3). Mr. X characterized the prior investigations by the HSO-police as “intimidating”, as they exercised substantial pressure to give them a list of the names of people who were attending his church. Due to the fear for legal repercussions (for example, the loss of employment and stigmatization in the family or on the job market) many members had stopped attending the rituals and left the church. As such, Mr. X only gave them a list of

²³ The church is (was) institutionalized through a non-profit organization as the Belgian law is not conducive to the institutionalization of non-recognized religious organizations.

people who expressly wished to be known to the police. The number of people attending the rituals went from around fifty to eight.

3.2.4.2. The court cases

For those interested in reading an analysis of the Belgian court cases, where I have analyzed how the court's argumentations correspond with the (academic/scientific) reports to which it refers, see Annex 4. The general conclusions to my analysis of these court cases are the following.

3.2.4.3. General conclusions

An extensive analysis on the argumentations of the Belgian courts show that a value judgement had already been passed on Santo Daime before any real assessment on the facts of the case was made. The court seemed to depart from the idea that Mr. X was guilty of using, importing and possessing a harmful substance, and that Santo Daime served as a justification for these illegal acts. Then, ayahuasca was classified as a prohibited substance under national and international law, in complete neglect of the intention behind the current drug legislation. Subsequently, it was up to the courts to assess whether ayahuasca actually constituted a danger to public health. The tone was rapidly set, as the first argument claimed that "the users of this tea hallucinate", without any subsequent proof or explanation thereof. Afterwards, it becomes easy to understand the way the court has gathered arguments and information for the case. Firstly, all the information gathered from scientific reports and hearings of witnesses had been framed in such a way that emphasis is laid on the (potentially) negative effects of ayahuasca. It is clear that the court did not check certain information on its (f)actuality, this probably to strengthen the arguments that confirm their (clear) bias towards ayahuasca use. As such, very few attention is given to the necessary nuance and positive (scientific) information that allow for a (more) objective assessment of the case. By lack of willingness to understand science and genuine religious beliefs, the court did not offer any possibility of cooperation or alternatives to prohibition.

From a public health perspective, the most important risk is the combination of ayahuasca with serotonergic pharmaceuticals, which can theoretically result in death. Although there are various safeguards put in place by the Santo Daime churches in general, none of them were

considered sufficient to guarantee public health.²⁴ The fact that, in the long history of nearly a hundred years of ayahuasca use in Santo Daime, no one has ever died from it, also doesn't seem to warrant its safety. The mere theoretical possibility of a risk outweighs the practical reality of the matter and the safeguarding efforts set in place by the church. The same goes for the toxicity of ayahuasca. The most recent and widely recognized scientific consensus is that (repeated) ayahuasca use by healthy human beings, within a ritual setting, does not result in toxicity nor any other health issues. On the contrary, quite positive results have been published. Yet, in complete disregard for the practical reality, the court chooses to emphasize that "real" studies have proven the toxicity of ayahuasca, making reference to a nearly 15-year old study in which strong doses of harmaline were administered to rats or mice. To strengthen their argument, reference was also made to an expert report of a clinical toxicologist that warns for possible toxic effects. Yet, the court conveniently fails to mention the conclusions of that same report, stating that ayahuasca is not a threat to public health within Santo Daime. The same kind of approach towards evidence goes for the reference to effects such as rise in blood pressure, of heart rate and respiration, body temperature, pupil dialation, etc... The court indicates that these are proven negative effects, yet fails to mention that the same study observes that these effects "remain within normal parameters".

Finally then, the court makes some legitimate remarks, such as the fact that non-standardized preparations of ayahuasca make it impossible to always have the same level of toxicity. It also, quite rightly, refers to the fact that the fridge in which the churches' ayahuasca was stored was not locked and that third parties could have easy access to the beverage. These are facts that can be mitigated easily through cooperation between Santo Daime churches and the authorities (by, for example, leaving a sample of ayahuasca after each importation for a toxicological check, and by putting a lock on the fridge).

3.2.4.4. Procedural (in)justice

The reasons why the court has shown such disregard for nuance and dialogue might be explained by the lack of respect towards practitioners of Santo Daime, in general, as potential holders of deep, existential convictions. It seems that they simply didn't take the belief

²⁴ including (i) an intake-conversation during which two doctors on stand-by that are called when there is a possible contra-indication, (ii) a signed declaration of the participant stating he/she doesn't take contra-indicated medication and has received and understood all given information.

seriously, and considered that religious freedom was ostensibly invoked to justify drug (ab)use. All the statements of the defendants that the courts refer to lack contextual nuance and are used to shine a negative light on ayahuasca or Santo Daime. From the statements made by the courts and the initial bias that ayahuasca users hallucinate, to the way information has been manipulated to over-emphasize health risks and neglect important (positive) conclusions, the court has shown a serious lack of neutrality in assessing a matter concerned with public health and religious freedom. The way the defendant was treated sent a clear message of exclusion and prohibition. Especially the moment where the judge has entered into a theological assessment of Santo Daime, stating that ayahuasca is not essential, and antipathetically proposed a non-comparable alternative to Mr. X by stating – in open court - that he could “subscribe to yoga”. Such a lack of respect and understanding explain why Mr. X lamented that his faith in justice has seriously weakened since the start of this legal procedure.

3.2.5. CdMI and CdU in the Netherlands: legal limbo

After both the activities of CdCMI and CdU have been either expelled from the country or prohibited, both churches registered their Santo Daime churches in the Netherlands. The general understanding of people and academics is that in the Netherlands Santo Daime is legal (f.e. Labate and Loures, 2017).²⁵ Yet, this assumption is in blatant contrast with the current situation, where only two Santo Daime churches enjoy legal recognition, namely CdV and CdSM, and even these two churches are continuously facing legal difficulties. The Public Ministry is set on the total prohibition of ayahuasca and, as I will show, there is a chance that Santo Daime will be prohibited after fifteen years of its legitimate presence in the Netherlands. The case of Santo Daime in the next chapter is more complex than Belgium. The next chapter tries to give an overview. In order to be able to follow, the [infographic in Annex 5](#) is helpful when it becomes a bit complicated.

²⁵ This chapter states *“In Holland, for example, where daime use is not prohibited, churches are highly structured and institutionalized, with a significant membership and group identity”*.

3.3. The legal cases of Santo Daime in the Netherlands

3.3.1. The raid on CdSM: the first steps to legal recognition for Santo Daime

The two ICEFLU churches active in the Netherlands have enjoyed legal recognition since 2001. The process that led to this legal recognition started two years earlier, in October 1999, when the Dutch police raided an ongoing ritual and seized around seventeen and a half liters of ayahuasca. It is written that Dutch police had been tipped off by the German police, who had just two weeks before raided an international Santo Daime meeting near Weimar (Balzer, 2005). Just as CdCMI, a German Santo Daime church went into exile to the Netherlands, though following even more extreme events. (Labate and Feeney, 2014) More specifically, in Germany around 100 police officers, including a special federal taskforce with black masks and machine guns, had raided the campsite of an event where a Brazilian delegation of the church was present. This resulted in various arrests, interrogations, the seizure of papers and documents, and the confiscation of 62 liters of ayahuasca.²⁶ Yet, an article in the Dutch newspaper *Trouw* mentioned that the tip actually came from Europol, Europe's law enforcement agency responsible for helping in the fight against serious international crime (such as drug trafficking and terrorism). Due to this tip on a "dangerous Brazilian drugsect", various heavily armed arrest teams had intervened in Germany, France, Spain and the Netherlands, locking up various members of Santo Daime. The Dutch public prosecutor declared that it was a case involving the use of hard drugs under the guise of a religious conviction (Trouw, 2001). This raised a scandal in Amsterdam, including a public demonstration and media coverage. The church leaders of CdV told me that the attitude of the prosecutor quickly changed as they understood it was not a criminal organization, but a genuine NRM. Consequently, the office of the public prosecutor had offered to drop the case only days after the raid. Together with their lawyer, the Santo Daime church decided not to accept this proposal, as they wanted a clear verdict from the judiciary stating their religious freedom. From October 1999 until May 2001 CdSM and CdV had continued to gather in church-like settings without being able to consume ayahuasca, which had been confiscated. This was until the district court of Amsterdam had

²⁶ For more info on the German case, see the website of the Ayahuasca Defense Fund (ADF): <http://ayahuascadefense.com/index.php/national-legal-status/>

reached a decision on the case on May 21, 2001.



*Figure 19: Santo Daime in the Netherlands (CdSM & CdV)
with Alfredo Mota de Mello (son of Padrinho Sebastião and current president of ICEFLU)*

3.3.2. Fijneman case (ICEFLU)

In this case, four expert reports were consulted. The judge took account of the Brazilian origin of Santo Daime (in the year 1920) and showed it understood the eclectic nature of its practice, combining Indian and African influences with Christian values and ideas. He took account of the fact that Mrs. Fijneman was the founder of a church which is part of ICEFLU, which has its mother church in Mapiá and governed their relation with affiliations through the “Articles of Association”. Like this, it was recognized that Santo Daime’s main objective is to “examine, study and put into practice the Doctrine of Santo Daime and by means of its work and rituals to awaken the divine spark in mankind, with a view to integration with Divinity.” The judge learned that Santo Daime fits perfectly in the categorization of syncretic religions that have arisen since the 19th century and have combined traditional usages of “psychoactive substances, particularly hallucinogens” with Christian religious ideas, which has been “an integral part of many pre-industrial cultures.”

No value judgement is made about Santo Daime based on personal opinions, but rather on expert opinions and the Articles of Association of ICEFLU. The judge noted – rightly so – that “the Santo Daime Church cannot do without this substance” and that its consumption always takes place communally, within a ritual framework. The judge granted extra weight to this fact since the police intervention, according to the reporting officer, obviously took place in religious setting, more particularly a church with an altar. Even so, the Public Prosecution Service argued that a restriction of the right to practice Santo Daime was justified for reasons of public health, because of the inclusion of DMT in the 1971 Convention and the Opium Law. However, the judge cleared out that “the court must assess in concrete terms whether in the present case public health does in fact justify a restriction of religious freedom” (District Court of Amsterdam, 2001).²⁷ And so, it is made clear that the existence of a prohibition through law is insufficient to justify an infringement on the right to religious freedom.²⁸ Even though DMT is forbidden, it must be proven that the use of ayahuasca within Santo Daime constitutes such a risk for public health that prohibition is the only means to achieving this legitimate aim. For this, the expert report – written at the request of the supervisory judge – of Professor Dr. F.A. de Wolff, clinical chemist and toxicologist, was drawn into the legal battlefield. In the report, it is detailed that ayahuasca can have some unwanted effects of mild nature, such as nausea, but also more serious symptoms of toxicity, such as raised blood pressure and heartbeat. Still, the court follows the report’s final considerations, namely:

- ayahuasca may involve health risks in individual cases
- the information provided by the Santo Daime church is in general correct and adequate
- the limited availability of ayahuasca and the strictly regulated circumstances in which its consumption takes place constitutes protection against abuse

²⁷ See f.e.: ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, §119; ECtHR, *United Communist Party of Turkey*, § 47; ECtHR, *Partidul Comunistilor (Nepececristi) and Ungureanu v. Romania*, § 49; ECtHR, *Moscow Branch of the Salvation Army v. Russia*, §76 and ECtHR, *Svyato-Mykhailivska Parafiya v. Ukraine*, §138: “the Court must look at the interference complained of in the light of the case as a whole and determine whether it was “proportionate to the legitimate aim pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in the Convention and, moreover, that they based their decisions on an acceptable assessment of the relevant facts.”

²⁸ This has also been stated by the European Court, f.e. in ECtHR, *Manuassakis v. Greece*, §38: “*However, the court doesn’t consider it necessary to rule on the question whether the interference in issue was “prescribed by law” in this instance because, in any event, it was incompatible with article 9 of the Convention on other grounds.*”

- it is not plausible, on the basis of existent scientific knowledge, that ayahuasca consumption forms a threat to public health (De Wolff, 2000).

Therefore, it was decided that the information provided about ayahuasca and the controlled use within a religious community constitutes a sufficient safeguard against unacceptable health risks in cases where its consumption is inadvisable. The judge argued that the Public Prosecution had not put forward any concrete facts and circumstances that would prove a considerable danger to public health in this specific case. In sum, the religious freedom of Santo Daime had been established for the ICEFLU church in the Netherlands. This included CdSM and CdV, the two churches already openly active on Dutch territory.

3.3.3. The search for cooperation

In the spirit of cooperation, the churches' lawyer – in agreement with the church leaders – had sent letters to the Public Ministry on three different occasions in the year of 2001.²⁹ Reason being that they wanted to reach a mutually beneficial agreement on an insightful arrangement and registration on the import of the ayahuasca that would be used within their churches, which was now allowed by the court. They had not received any response, and so continued to import ayahuasca through air transport in the private luggage of church members, accompanied with official documents of ICEFLU.

3.3.4. Fränklin-Beentjes case

In 1999, the raid in the church of CdSM was not the only action the police had undertaken. On March 2, 1999, police officers had searched the house of Mrs. Fränklin-Beentjes (hereafter “Mrs. Beentjes”), where they had found ten jerrycans, each containing twelve liters of ayahuasca. Even though the proceedings had been discontinued, she had not received back the confiscated ayahuasca and lodged a notice of complaint with the Amsterdam Court of Appeal requesting return of the ten jerrycans, stating that this was necessary to practice her religion, Santo Daime. In this appeal her lawyer basically took over the entire defense that led to a positive outcome in the *fijneman* case, in 2001. However, there is one statement she made during a hearing on December 14, 2005, that complicated this case instantaneously, namely the following:

²⁹ On August 23, November 1 and December 11, 2001.

“With the liquid ayahuasca people can be healed. I can also practice my religion without ayahuasca. Using ayahuasca helps to create a spiritual experience. (---) There are four works each month. The liquid may only be used in the [Santo Daime] churches during ceremonies. It may not be taken home. My husband lives in the Amazon area and practices his religion and treats incurable and terminal patients with, amongst others, ayahuasca. He has been doing this for forty years and it has never led to problems” (author’s own underlining) (Court of Appeal of Amsterdam, 2006).

3.3.4.1. (Non-essential) Ayahuasca in a religious practice

On January 25, 2006, the Court of Appeal of Amsterdam dismissed the complaint. This judgement becomes interestingly problematic with regard to two elements. Firstly, the court – just as the Belgian courts - neglected the final conclusions of Dr. De Wolff’s expert report and stated that “the use of ayahuasca can have unwanted effects of mild nature, such as nausea, but also more serious symptoms of toxicity, such as raised blood pressure and heartbeat. To this extent, the court takes over this report and makes it its own. The use of ayahuasca is therefore a danger to public health.”. The court further considered that the limitation of Mrs. Beentjes religious freedom cannot be regarded as disproportionate as she had stated that ayahuasca is not essential for practicing her religion. In making this judgement, the court is – perhaps unwittingly - entering into a theological assessment on whether ayahuasca is essential to Santo Daime. According to the ECtHR, a personal or collective conviction can only benefit protection under article 9 if it has attained a “certain level of cogency, seriousness, cohesion and importance. Provided that this condition is satisfied, the State’s duty of neutrality and impartiality is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed” (Eweida a.o. vs. the United Kingdom, 2013). To this light, in exceptional cases, the ECtHR has accepted the possibility of questioning, through factual findings, whether an applicant’s religious claims are genuine and sincerely held (Skugar a.o. vs. Russia, 2009).

As such, the court is allowed to question the religious belief of Mrs. Beentjes through factual findings (like her statement), but it should have separated the personal convictions of the plaintiff from the collective conviction specific to members of the Santo Daime community, which had already attained a significant level of cogency, seriousness, cohesion and importance at the time. Right now, in just one sentence, confusion is created on whether the court

concluded that ayahuasca was not essential to Santo Daime because someone said so. Yet, if a person says ayahuasca is not essential to his/her religion, and his/her religion is Santo Daime, this comes down to a *contradictio in terminis* and an assessment should be made whether his/her religious convictions are genuine and sincerely held. Still, it is good to remember that the court already found ayahuasca to be a danger to public health. So whether Mrs. Beentjes was practicing Santo Daime or not, it seems likely – and legally logical - that the court would have dismissed the complaint anyway.

3.3.4.2. Advisory opinion of the Procurator General

After this judgement Mrs. Beentjes signed an “appeal on points of law” to the judgement of the Court of Appeal of Amsterdam.³⁰ The Procurator General at the Supreme Court stated that the judiciary was not empowered to set aside the general prohibition of DMT solely because the particular circumstances in which the substance was being used did not – to its judging – constitute a danger to public health in that concrete situation.³¹ Such a statement is – again – highly problematic. The Public Ministry basically says that any practice involving ayahuasca is illegitimate, and judges don’t have the power to decide whether ayahuasca can be permitted taking into account the specific circumstances of a case.³² As will become clear, the public prosecution will keep up this line of thought, by which they are *ipso jure* never able to consider any religious practice relating to ayahuasca as legal.

3.3.4.3. Appeal on points of law

On the 9th of January 2007, in the appeal, The Supreme Court argues that the appealed judgement of the Court of Amsterdam is correct in the sense that the circumstance that ayahuasca does not, or barely constitutes a danger for public health cannot set aside its general prohibition. Of course such a reasoning is wrong, abstract, contradictory, and blatantly in violation with the real purpose of article 9 ECHR. Afterwards, extra weight is added to its decision because of Mrs. Beentjes’s statement that ayahuasca is not essential for her religion, and that therefore the judgement of the Court of Appeal of Amsterdam was not

³⁰ This means that the Supreme Court had to check whether the relevant legal principles had been applied to the law in question. In the run-up to this process.

³¹ <http://www.wetboek-online.nl/jurisprudentie/ljnAZ2497.html>, lid 3.10.

³² Specific circumstance can be, for example, the actual health implications within specific religious, therapeutic, and/or indigenous contexts

“disproportionate”. As such, it is not sure whether the Supreme Court would have reached the same conclusion if Mrs. Beentjes would have considered ayahuasca essential to her religion. The reasoning of the Court does not allow for a clear appreciation of that question, more so because of the imprecise application of the general principles of art. 9 ECHR. Even more confusion was added through the statement that “the religion adhered to by the complainant and professed in the Amsterdam church is protected by article 9 ECHR.” Since ayahuasca is essential to Santo Daime, but not to the religion of Mrs. Beentjes, which religion is the Court referring to?

3.3.5. The (new) attitude of the Public Ministry

3.3.5.1. Import problems for CdSM and CdV: *Valousek* case

In December 2008, a member (fardado) of the church of CdSM, Mr. Valousek, got charged with the import of DMT after travelling from Rio de Janeiro to Amsterdam with around 40 liters of ayahuasca. Although he was accompanied by all the administrative documents concerning the transport of ayahuasca, and it was meant for the ritual use within a legally recognized church (CdSM), the Public Ministry has decided to confiscate. In adhering to the logic that ayahuasca is forbidden because of the prohibition of DMT, they referred to the case of Mrs. Beentjes at the Supreme Court (discussed above). Yet, on 26 March 2009 the District Court of Haarlem, deciding on the case, noted the following:

“On account of the Public Prosecutor Service, it was argued that the restriction of the right of the accused to a free performance of his religion is justified from a viewpoint of public health, with reference to the Supreme Court judgement dated 9 January 2007. The Public Prosecutor concluded on the basis of the judgement that the Supreme Court seems to distance itself from the actual review of the creation of the dangerous situation when using DMT in specific circumstances, such as in a religious context” (District Court of Haarlem, 2009).

However, the court argued – rightly so – that the ECHR demands a concrete examination on whether public health justified a restriction of freedom of religion. Since the Public Prosecutor had not invoked, nor made clear from further facts, views and/or circumstances that the conclusion of Dr. De Wolff would no longer be valid, the court naturally arrived at the same conclusions as in the *Fijneman Case* of 2001. Furthermore, Mrs. Fijneman had received the opportunity to explain – as a witness under oath - how the transportation of ayahuasca is done by the church, and what safeguards have been installed as to ensure that ayahuasca remains

within the church. The court concluded that “the import of the ayahuasca tea is assured with safeguards and that no notable health risks are attached to the ritual consumption of the ayahuasca tea within the closed gatherings of the church community, the Court is of the opinion that the protection of freedom of religion must be granted a greater weight in this case” (District Court of Haarlem, 2009).

3.3.5.2. The continued search for cooperation

After this judgement the legal position of Santo Daime had been reaffirmed. For this reason, their council had again sent a letter to the Public Ministry, asking for a mutually beneficial agreement which includes an insightful arrangement and registration on the import of the ayahuasca that would be used within their churches. Again, this letter remained unanswered.

3.3.5.3. The appeal procedure

The unresponsiveness towards the request for mutual agreement can be explained through the fact that Public Prosecutor filed an appeal, which had been judged by the Court of Appeal of Amsterdam on February 24, 2012. This is the same court that judged the appeal in the case of Mrs. Beentjes, although its conclusions – based on a concrete assessment of each case – are different. Here again, the Public Ministry held that no concrete testing would be possible, so that the infringement of the right to religious freedom can be based on the sole fact that this has been anticipated by a (general) law. These arguments are based on the Supreme Court case concerning Mrs. Beentjes. Yet, the Court of Appeal stated that the Supreme Court attached importance to the statement of Mrs. Beentjes and that its considerations have to be viewed in that light. The court then allowed for factual evidence to see whether Mrs. Beentjes – as she claimed herself - was actually part of ICEFLU. During the trial, the executive director of the Brazilian mother-church Céu do Mapiá (ICEFLU), Alex Polari, had flown over to the Netherlands to testify the following: “I am member of the highest doctrinal council within the Santo Daime church. (---) I know Mrs. Beentjes as the wife of a Brazilian that lives here in the Netherlands. Her church is not part of the official Santo Daime church ICEFLU” (Van der Plas, 2017). Therefore, the defence had “made a reasonable case for the fact that (---) The present case under consideration, (---) does involve a member of the Santo Daime church, and for him the consumption of the ayahuasca tea is essential for professing his religion.” The court thereby saw “no impediment for a concrete testing” and explicitly stated that it “follows from the

sentences of the ECtHR with regard to article 9 ECHR that an assessment of the necessity of the infringement in the concrete cannot be omitted” (Court of Appeal of Amsterdam, 2012). The religious freedom of Santo Daime had been reaffirmed.

3.3.6. Mrs Beentjes at the European Court of Human Rights

In the meantime, Mrs Beentjes had filed an application concerning her case to the ECtHR, which had been declared inadmissible based on the fact that it was manifestly ill-founded. This means that the ECtHR considered that a preliminary examination of the case did not disclose any appearance of a violation of the rights guaranteed by the Convention (Council of Europe – ECtHR, 2011). When considering whether the prohibition was “*necessary in a democratic society*”, the ECtHR mentioned that the authorities were entitled to consider that the prohibition of the possession for use of DMT was necessary. For this, it briefly refers to paragraph 7 of the judgement, which mentions that ayahuasca can provoke “gastrointestinal reactions, such as nausea and vomiting”. It also states that more serious symptoms of acute toxicity can occur, such as “hypertension and increased body temperature, a rapid pulse rate and hyperventilation, sensory impairment in the limbs and difficulty walking.” Afterwards the court notes that the illicit nature of DMT is not only reflected in the Opium Law but also in binding international law. Thus, based on these sole two reasons, the court decides on the inadmissibility of the application on the alleged violation of art. 9. Furthermore, Mrs Beentjes invoked a violation of art. 14, meaning that the state would be discriminating against her. She compared her religion to the established Roman Catholic Church and the Protestant Church in the Netherlands, who are allowed to perform rituals involving the sacramental use of wine. However, the court considered that “wine is not subject to the repressive regulatory regime of the Opium Act” and that “the rites referred to differ significantly from those practiced by the applicants, most notably – for present purposes – in that participants neither intend nor expect to partake of psychoactive substances to the point of intoxication” (Franklin-Beentjes and CEFLU- Luz da Floresta v. the Netherlands, 2007).

This last conclusion on art. 14 obviously makes sense. The sacramental use of wine and ayahuasca are two entirely different, non-comparable uses of different substances in different contexts. However, the conclusion on art. 9 is highly questionable. With regard to the questions on gastrointestinal reactions and toxicity, the court satisfies itself by referring to nearly all the same effects that Dr. De Wolff had mentioned in his expert report. Yet, in the report he

concluded that, within the context of Santo Daime, ayahuasca could not be considered a danger to public health. Does this mean the ECtHR neglected this conclusion and considers ayahuasca to be a danger to public health? It doesn't. It simply means that the court considered that the authorities were (and are) entitled to consider that ayahuasca might be a danger to public health, and thereby distances itself from a concrete examination of the case. Like this, the court – perhaps unwittingly and poorly informed – grants an extremely wide margin of appreciation to the Dutch authorities in considering ayahuasca as a schedule I drug, even in the context of its religious use in Santo Daime. It failed to take note of the fact that ayahuasca is not internationally prohibited and did not answer the question whether its prohibition is proportionate to the legitimate aim pursued. Then again, this might very well be because of the lack of substance of the application, where the lawyer of Mrs. Beentjes seems to have poorly informed the ECtHR on the international legal status of ayahuasca and the practically non-existent health implications of its use within a responsible and controlled ritual context. To that regard, the judge had not much to go on from the start, and his consideration of the manifestly ill-founded character of the application, although highly disputable, is understandable. In a way, the Santo Daime churches can breathe a sigh of relief that the ECtHR did not accept the application. Like this, the road might still be open for genuine Santo Daime churches to one day present an adequately informed application before the court, which then might result in a thorough and concrete assessment of the legal right to practice their religion. If that day would come, I highly recommend the ECtHR to remain open and receptive to such an application.

3.3.7. The legal battle continues: *Van Dorsten (a.o.) Case*

According to the lawyer of ICEFLU in the Netherlands, ever since the procedure of Februari 24, 2012, before the Court of Appeal in Amsterdam, the Public Ministry has confiscated ayahuasca destined for CdV and/or CdSM six times. At the time of writing, in four of those six cases the District Court of Haarlem had ordered the ayahuasca to be returned to the churches. These returns, confirming the religious freedom of Santo Daime, were based on the fact that Public Prosecution has not given any information on new developments or insights that would cast doubt on the conclusion of Dr. De Wolff. Furthermore the court had assessed the specific circumstances concerning the transport, storage, possession and use of ayahuasca within the Santo Daime church of CdV and CdSM. It pointed out the following:

- “In the Santo Daime church there are about 100 members in the Netherlands.
- The ayahuasca tea is only used together during church services.
- Based on the number of services per year, the number of members of a local church and the average number of visitors, ICEFLU Brazil calculates how many liters of the ayahuasca tea are needed annually.
- For each transport, the relevant ICEFLU member receives documents that indicate clearly who travels and when, where the ayahuasca tea comes from, the quality and quantity of the tea being transported and the destination of the tea: which local church and to whom (church leader) the tea is handed over. Like this, the church leaders know how much ayahuasca tea is on its way.
- The storage of ayahuasca tea is kept exclusively under the supervision of the church leaders
- The ayahuasca tea is weighed and correctly stored and registered in the administration.
- The participants who drink ayahuasca tea at the church have gone through an introduction in which (medical) contraindications are excluded and the motivation to participate is questioned. Care is taken to ensure that participants know that they drink the tea within a ritual setting that is part of a spiritual tradition; that the tea is a holy sacrament; What the difference is with other forms of ayahuasca use and that they are expected to act respectfully towards the ritual, the form of the ritual and the other participants. Of every person who comes to a ritual for the first time, the personal administrative data is registered and they are requested to sign a declaration in which they declare to have received and understood the given information
- Of every worship service the following information is kept:
 - in what kind of ceremony is the ayahuasca tea was served;
 - Which tea has been served: from which shipment and what concentration;
 - how much tea is served;
 - how many people had participated;
 - and how many of the participants were either guests or official members” (District Court of Haarlem, 2016).

3.3.7.1. The continuing confiscation of ayahuasca

In two cases, the churches – at the time of writing - will still file a complaint. As such, the continuing repressive attitude of the Public Ministry puts the Santo Daime churches of CdV and CdSM in a strange situation, where courts grant them the possibility to retrieve their sacrament

at the Prosecutor's office after each confiscation. This still allows them to practice their religion. However, both the church leaders of CdV and CdSM had mentioned that the ayahuasca is not stored properly, and that this feels like a "desacralization" of their sacrament. In particular, Marco Hadjidakis, the church leader of CdV, told me that once they had retrieved 20 liters of ayahuasca from the Prosecutor's office, which became unconsumable due to fermentation after improper storage. Besides this fact, it goes without saying that legal representation is a costly matter, and that the legal cases drain the resources of these churches. Like this, the legal recognition that was granted in the *Fijneman Case* of 2001 has still not resulted in a situation where they can practice their religion in a fully cooperative, transparent, and respectful way. Fifteen years after this first landmark case, Mrs Fijneman passed away, leaving a great mark in the history of Santo Daime, as she was very loved and respected in her church and by a great part of the Santo Daime community. As such, CdSM is currently led by Liesbeth Van Dorsten, who told me that the church simply continues to import ayahuasca as before:

"If you get arrested at Schiphol Airport you're in bad luck, because they don't let you through. Or seldom. It has to be someone who is not aware of the Public Prosecution's policy, or they don't see it, because not everyone gets checked. (---) All we can do is pray. We just want it to go well. It seems like we are doing something illegal, but that is not true. Their [the Public Ministry's] actions are illegal in taking it [ayahuasca] away from us."

3.3.7.2. The continued search for cooperation and a preemptive lawsuit

After the last judgements of the District Court of Haarlem on September 8, 2016, the legal position of Santo Daime had (again) been reaffirmed. Their council had again sent a letter to the Public Ministry, asking for a mutually beneficial agreement which, for the third time, remained unanswered. That is why, CdV and CdSVM decided to file a preemptive lawsuit at the same court asking for a court order that would prevent the Public Ministry from repeatedly confiscating their ayahuasca (District Court of Haarlem, 2017).³³

The churches argued that the continued confiscation is irreconcilable with the already four positive court rulings on the religious freedom of CdSM and CdV, especially after the continued

³³ Although it was the same court that had to judge this case, it was in a different room, as the preemptive lawsuit is a civil procedure distinct from the previously discussed criminal procedures.

propositions for cooperation over the past 15 years. However, the court argued that, in this case, it is not up to a civil court to preemptively exclude the presumption of guilt and limit the prerogatives of the Public Ministry to seize ayahuasca, as – the court considered to be – enshrined in national criminal law through the criminalization of DMT. The court argued that the religious right of CdV and CdSM is sufficiently warranted through the fact that they can retrieve the ayahuasca before a criminal court, on a case by case basis, each time it is confiscated. The churches did not appeal and considered it preferable to await the decision of the Court of Appeal of Amsterdam in the criminal case (due in January 2018), before taking any further legal steps.

3.3.8. Appeal: The “make it or break it” case for Santo Daime in the Netherlands

The Prosecutor has signed an appeal to the judgements of September 8, 2016, which the Court of Appeal of Amsterdam will judge altogether near the end of January 2018. It will be the third time that this Court of Appeal is judging a case concerning ayahuasca in the context of Santo Daime. The first time was in 2006, with the case of Mrs. Beentjes, where the court had decided on the inadmissibility of her appeal. This can thus be characterized as a “negative” precedent. The second time was in 2012, in the case of Mr. Valousek, where the religious freedom of CdV and CdSM was confirmed. This can be characterized as a “positive” precedent. Again, for an easy overview see Annex 5. The Court of Appeal of Amsterdam will have to consider whether, in 2012, it was correct in assuming that a concrete assessment of each case is necessary. Then, it will have to make the same reflection on the judgements of September 8, 2016 by the District Court of Haarlem.

3.4. Conclusions

Firstly, this chapter confirms that the current legislative provisions around drugs and HSO’s can be used and interpreted to subject a NRM to control, surveillance and persecution on the basis that ayahuasca is forbidden, dangerous, harmful and even addictive. This is largely based on the fact that ayahuasca contains DMT, confirming that the drug war paradigm is a deeply established belief system within national authorities responsible for the protection of public health in Western society. The incapability of representing ayahuasca as “anything other than an unequivocally bad, illegal drug”, in fact, constitutes an extremely far-fetched interpretation

that does not find any basis in the current scientific consensus (Tupper, 2011). After 10 to 25 years of harmless activity, the Public Ministries suddenly actively oppose the religious practice of Santo Daime. As such, their religious freedom is “judicialized”, in the sense that they rely on the neutrality and impartiality of the courts to achieve a balance between public health and religious freedom or, more general, between the drug control regime and human right law. Yet, in Belgium CdCMI had even been denied the possibility of a fair trial as the HSO-police classified their practice as illegal without the support of any legal precedent.³⁴

Three years later, the first case concerning Santo Daime in Belgium serves as a prime example of how questionable evidence can be accepted to support biases and prejudices (Richardson, 2015 and 2016). *Daimists* were considered to “hallucinate”, no actual proof had been given on any considerable and/or long-term health issues related to repeated ayahuasca consumption, and the judges highlighted ostensible pieces of information that support prohibition. The judges repeated the Public Ministry’s arguments that ayahuasca is forbidden by law, with disregard for the true intentions behind both international and Belgian drug legislation. Moreover, an appeal judge offered a non-comparable alternative to the church leader which borders to mockery, stating that he could go practice yoga instead. Lastly, and just as the HSO-Police, the judges sloppily argued that ayahuasca is not essential to Santo Daime. Such a theological assessment – forbidden by the ECtHR - implies that its sacramental use is not a genuine religious expression. And so, by lack of taking a religious minority seriously and the untrustworthy interpretation of scientific facts, the courts considered Santo Daime to be a religious practice that endangers public health without any consideration of the existence of less restrictive measures than prohibition. The incorrect use of information led to the alienation of Santo Daime from Belgian society, and both churches of my study moved to the Netherlands as a last-resort. (Brems and Lavrysen, 2013).

While practically none of the Belgian authorities have been able to step outside the drug war paradigm and address the legal situation of Santo Daime with respect for the general principles enshrined in article 9 ECHR, the Dutch cases indicate a different reality. In 2001, the religious freedom of Santo Daime had been established in court, with due consideration for expert

³⁴ It serves to mention that article 6 ECHR states: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. (---) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”

reports in the fields of toxicology, theology, history, etc... .The judge concluded that ayahuasca is essential to Santo Daime, implying that it is being used as a “tool” which facilitates the integration with Divinity through examination, study and practice. This reconceptualization allowed for a genuine multidisciplinary analysis to contextualize ayahuasca outside the drug war paradigm and conceive its risks and benefits objectively. (Tupper, 2008; Blainey, 2015). Still, later years mark a continuing struggle between the Public Ministry and the churches, as their sacrament is continuously confiscated at the airports. This situation exacerbated together with a seemingly chaotic diaspora of the beverage and its commercialization. Nonetheless, – in accordance with European human rights case law – the courts continue to consider that, in light of the case as a whole, the prohibition of Santo Daime is a disproportionate interference with religious freedom. Yet, after fifteen years the recent procedures continue to challenge the seemingly established legality of CdSM and CdV, and the judgement of the Court of Appeal in January 2018 will constitute an important counterpoint. As the current legality of Santo Daime only applies to two churches, the question remains whether the coming judgement will open the way for legal recognition of churches that currently operate in a legal limbo, such as CdCMI and CdU. By lack of any cooperation to establish any framework, it serves to quickly explore which efforts are being undertaken by the churches to remedy their social legitimacy.

3.5. Recent developments

3.5.1. Current self-regulatory efforts: CLAREIA

In a response to the current ayahuasca diaspora and the legal issues that the churches of CdSM and CdU face, the church leaders have been meeting up with legal experts and interested church members to discuss the creation of a foundation. The statutes of the foundation are still being made, and its name is set on CLAREIA, the *Centre for the Legal Assessment of the Religious and Ethical Integration of Ayahuasca*. As the name indicates, the goal of the foundation is to assess all the legal and ethical requirements considered essential for any religious group to be able to use ayahuasca in the Netherlands. As mentioned, this effort stems forth out of the rising preoccupation that ayahuasca is being commercialized and served in contexts that don't foresee a minimum of safeguards and/or wish to invoke religious freedom ostensibly. These situations did not present themselves a decade ago, when the Santo Daime churches had already obtained legal recognition. In the explanation of their motives for this self-regulatory effort, the churches express a particular concern for the methods of the Public

Ministry to combat the current “hype” around ayahuasca. The method of complete prohibition undermines the established freedoms of their churches without making a distinction between the sacred (religious, non-commercial) and profane (recreational, commercial) use of ayahuasca.

Furthermore, in the legal cases discussed above, the courts seem to accept that any “church” is covered by article 9 ECHR, without a clearly determined assessment on what a religion does and does not constitute, and whether the church is part of it. For example, the Supreme Court simply accepted that Mrs. Beentjes religion was covered by article 9, but considered that ayahuasca was not essential to it. Then what religion was at stake in this case? Ambiguity continues to exist in all legal proceedings, and the foundation aims to make clear what Santo Daime constitutes. By lack of cooperation with public authority, CLAREIA serves as a “umbrella foundation” assembling all legitimate churches of ayahuasca-religions in the protection of their shared interest to practice their belief within a legally and ethically sound framework. Only the churches that fulfill the requirements of the foundation can become members, thereby serving a triple purpose, namely: (i) the protection of legitimate ayahuasca groups/churches that (ii) abide by ethical and legal standards to safeguard the sacred character of ayahuasca and (iii) offer full cooperation to authorities. A great overlap can be observed with the Brazilian legislation on the religious use of ayahuasca (the CONAD resolution of 2010). However, substantial efforts have been made to contextualize the requirements according to European Human Rights law, more specifically the case law of the ECtHR with regard to religious freedom. As such, the requirements in general are more concrete and more demanding than the Brazilian legislation.

The foundation makes a distinction between full members and aspirant-members. The latter are members that ensure respect for the “hard requirements” and commit to meet the “soft requirements” within a maximum period of three years. The so-called hard requirements concern the fact that the member-group must:

1. be part of a legitimate religion³⁵
2. be registered as a legal entity

³⁵ Only for this question, a two-page list of criteria and considerations are given, based on jurisprudence concerning article 9 ECHR and article 18 ICCPR (International Covenant on Civil and Political Rights), and information from the UN Human Rights Committee, more particularly its General Comment 22.

3. be prepared to offer full cooperation to the authorities
4. exclude any kind of commercialization of ayahuasca and be prepared to provide insight in their financial accounting to confirm this, and
5. must not commend ayahuasca as a substitute for regular medical and psychological care, nor obstruct the access to such care.

These hard requirements are all further explained and studied in detail, particularly the question on “what” commercialization is and what not. A board of legal experts is appointed and any church fulfilling these criteria can become an aspirant member. Then, the new member has three years time to fulfill the other requirements set out by the foundation. These so-called soft requirements relate to the:

1. use of ayahuasca as a central element of the religious practice,
2. continuity in their religious organization and practice
3. use of import-documents that state who is importing ayahuasca for which legal entity and which amount
4. bookkeeping related to ayahuasca
5. storage of ayahuasca
6. intake-conversations and screening of people participating for the first time
7. guidance of people during and after the rituals
8. different goals the financial contributions can serve.
9. pursuit of protecting the Amazon forest and its local populations, and the need to monitor that the cultivation and production of ayahuasca as to not affect this/them.
10. support of academic and scientific research on the (effects of the) (religious) use of ayahuasca.
11. promotion of putting the rituals under the guidance of people who are authorized by official representants of traditional religious branches.

Then, mechanisms are created to, on a yearly basis or after an incident/request, ensure that the requirements are met on a continuous basis, and rules are established on the exclusion of groups from the foundation when requirements are no longer met.

3.5.2. The confiscation of ayahuasca from CdCMI and Benki Piyanko

CdCMI is a legally registered Santo Daime church with its own ecological cultivation and production process of ayahuasca. Yet, by having registered their Santo Daime church as a legal entity, they still don't enjoy the same full legal recognition that is granted to the ICEFLU-churches CdV and CdSM. Since their registration in 2011, they have imported their sacrament in exactly the same way as CdV and CdSM, and practically have the same safeguards in place with regard to ayahuasca-bookkeeping. Yet, this year two confiscations took place. Firstly, a member of CdCMI was stopped at the airport with eight liters of ayahuasca after coming back from the *feitio* in July 2017. Secondly, Benki Piyãko was officially invited to attend the COP23 UN Climate Change Conference in Bonn, Germany. Before attending the conference, CdCMI had jointly arranged a weekend of ceremonies where Benki would further teach his indigenous healing knowledge within the institutional framework of CdCMI. For this, Benki flew over to Amsterdam with ayahuasca he had made in his village. Yet, upon arrival his wife and him were detained, spent the night in police custody and their ayahuasca had been confiscated.

Born in 1974 as an Ashaninka, his grandfather, Samuel, had called him *Wenki* ("Warrior of life") and selected him to become a shaman, transmitting centuries-old knowledge on an extensive pharmacopeia and their (ritual) uses to jointly restore bodily and spiritual balance (UNESCO IBC, 2013). At the age of 18 years old he left his territory for the first time to participate in the Rio ECO92 conference, as Ambassador of Indigenous Peoples, and afterward studied forestry in arboriculture techniques at the university. He started to engage in huge projects that concerned his people, such as the defense of the Ashaninka land from illegal loggers for which he received the National Award for the Defense of Human Rights in Brazil, in 2004. Applying his indigenous knowledge on nature and resource management, he developed educational centers for local communities to improve land management techniques while preserving their unique ecosystem and improving peaceful co-existence between indigenous and non-indigenous communities. The Yorenka Atame Center ("Knowledge of the Primeval Forest Center"), which has benefited over 4000 people earned him the prestigious Chico Mendes Award. His continuous efforts to reforest deserted and damaged areas on the border of Brazil and Peru in cooperation with local communities resulted in the planting of more than two

million trees. For the entirety of his actions, the city of Weimar has granted him the Human Rights Award of 2013.

Figure 20: Benki Piyãko (holding the microphone), A spokesperson for the Amazonian Indigenous Peoples



Much more can be said about Benki and the Ashaninka on national and international level. What is important to know for this study is that Benki Piyãko is not a “fake shaman”, but rather a world-renowned spiritual and political leader of his people of which CdCMI has received the authorization to start practicing “Ashaninka meditations” conform his guidelines. Benki has visited CdCMI at least on five different occasions in the past three years in order to offer more personal guidance and instructions on his practice and vision on the traditional use of ayahuasca.

3.5.3. House of Indians Foundation

In september 2012, CdCMI had the privilege to welcome chief Biraci and his wife, Putany (one of the first female pajé’s) of the Yawanawa tribe, whom Fatima and Marcelo had invited during a previous visit in Acre, Brazil. They participated in a “weekend of ceremonies” in CdCMI and shared their traditional knowledge on the use of ayahuasca.³⁶ During this time, many ideas had been exchanged on environmental issues as well, mainly the recycling of waste material. A meeting had been arranged between Biraci, Putany and the Minister of Environment of Brussels. They also visited a primary school in Brussels to share their life story with children,

³⁶ A video of this Santo Daime work can be viewed here: <https://www.youtube.com/watch?v=scqSaQUhgl5>

and had been interviewed on Belgian television to discuss their view on society.³⁷ Having had various contacts with indigenous leaders, the idea had grown with Marcelo to create a foundation that would better connect Europe with the Amazon and its indigenous inhabitants. This idea had grown informally, after having installed two water distributors that sterilize and filter water at the Yawanawa “New Hope” village (Aldeia Nova Esperança), on a voluntary basis. This would counter the excessive use of bottled water and the subsequent plastic waste in the forest. The idea of *House of Indians* started to take shape and the foundation has been inaugurated in the Netherlands in December 2014, in the presence of Benki Piyanko (Ashaninka tribe), Luiz Puwe (Puyanawa tribe) and Walter Shipibo (Shipibo tribe). The foundation formally registered in June 2015.

From 2013 until now, various projects have been developed, mostly in the Puyanawa and Ashaninka tribes, such as the installation of solar panels, of GPS systems and photo devices. The GPS systems were put in the trunks of trees so that illegal loggers could be easily traced, and the photo devices were put on the side of the river to see who is going up and downstream (also for tracking illegal activities). Furthermore, three “solar pumps” have been installed in the Ashaninka village, allowing for great quantities of water to be pumped out of the river for the daily use of the Ashaninka

peoples. Besides the strictly ecological and technological aspects of their work, the statutes of *House of Indians* mention they wish to “preserve and promote the culture and



Figure 21: the logo of House of Indians

traditions of the Amazonian peoples, and the preservation of material and immaterial heritage of these indigenous peoples, which includes the preservation of their holy plants, traditional medicine and sjamanism”. Furthermore, their goal is to “enhance cultural exchange and offer psychological and logistical support to Amazonian peoples during their visit to Europe”. In relation to these goals, various visits to schools, conferences and cultural projects have been organized together with Indigenous leaders visiting Europe. It was during one of these

³⁷ Videos of these events can be viewed here:
<https://www.youtube.com/watch?v=zzOKVGGwwxg>
https://www.youtube.com/watch?v=Jvzmml_7zBo

conferences, in 2015, that I first attended a conference of Benki Piyãko at the faculty of pharmacy of the University of Ghent, during which he explained different types of medicinal practices. Besides this, reforestation efforts have been made and, perhaps most interestingly, in 2017 the first ecological supermarket in Brazil has been constructed in Marechal Thaumaturgo, the nearest village to the Ashaninka tribe. In the “TrocTroc Supermercado”, residents can exchange plastic bottles and aluminium cans for food, thereby combatting pollution in the city. According to Fatima, the foundation and all its projects depend on the monthly contributions of members of the foundation and on personal donations by people who want to contribute to a certain project. As such, even though most of the members of the foundation are members of CdCMI, the finances should be well separated. It is the hope of the members of CdCMI that this foundation also serves as an example that meaningful and positive projects stem forth out of a Santo Daimé church, thereby strengthening their image and social legitimacy as responsible citizens. More information can be found on their website.³⁸

³⁸ <http://www.houseofindians.org/>

4. Conclusions and recommendations

4.1. Main findings

The stigmatization of the use of ayahuasca seems to be at least a century-old phenomenon. Despite having suffered severe persecution on false accusatory grounds in Brazil, the first chapter shows that Raimundo Irineu Serra developed his religious practice with ayahuasca from around 1912 until 1971. In this period, the legitimacy of a black man using an indigenous beverage was “questioned” mostly on local and regional level, as it collided with contemporary values. Accusations of witchcraft, black magic, the use of venomous substances and the practice of illegal medicine (*curandeirismo*) were not uncommon. Such prejudice-induced accusations have led to threats by the police, imprisonment, and even a runaway in which Irineu Serra suffered a gunshot wound. Through time, he came to be more respected and is now widely remembered as a man with deep-seated wisdom, a *Mestre*. Santo Daime constitutes the religious doctrine which he has consolidated throughout nearly 60 years of his life, and it has left a permanent mark on Acre and the Amazonian religious traditions of Brazil. Sebastião Mota de Mello, a charismatic disciple of Mestre Irineu, subsequently rose the flag of Santo Daime for the world to see. During the 80s many people from outside the Amazon region came to know about Santo Daime and ayahuasca, and the first churches were founded outside, in or near urban centers outside the Amazon region. From there on, Santo Daime came to be practiced globally, and quickly resulted in the foundation of churches around the globe, including in Belgium and the Netherlands. In the absence of any formal export regulation in Brazil, little to no problems have arisen in the export of ayahuasca from the international airports of (mostly) São Paulo or Rio de Janeiro. This can be explained by the fact that ayahuasca is not considered a prohibited substance in Brazil. However, problems do arise in the countries of import.

Both the Public Ministries of Belgium and the Netherlands hold a clear zero-tolerance approach towards ayahuasca, resulting in criminal charges for all those who are “caught” importing. Yet, this dissertation contributes to the knowledge that the legal and scientific foundation for this repressive policy is often flawed, outdated and even religiously prosecutorial. Since Santo Daime is a NRM using a “prohibited” psychoactive substance, the correct application of human rights law serves as a crucial normative counterweight to the current drug control regime (Barrett, 2010; Elliot, Csete, Kerr, & Wood, 2005). To that regard, Belgium has been a particularly bad student. In 2011, CdCMI had been expelled from the country by the Federal

Police's unit responsible for terrorism and HSO's, and this without legal certainty nor judicial precedent on the matter. Three years later, Santo Daime has been prohibited by the Belgian judiciary, in a case which can be severely criticized. Both cases resulted in the alienation of a religious minority from Belgian society on very questionable grounds, and both churches continue(d) their religious practice in the Netherlands. (Brems and Lavrysen, 2013) This because, since 2001, the Dutch courts always considered that the prohibition of Santo Daime is a disproportionate interference with religious freedom. Yet, up until now this only means that two specific churches (CdV and CdSM) enjoy legal recognition, putting all other Santo Daime churches active on Dutch territory in a legal limbo. Sixteen years later the struggle still continues as the Public Ministry continues confiscating ayahuasca destined for CdSM and CdV, and is out to completely prohibit all ayahuasca-related activities.

4.2. Lessons from the comparative research

As Tupper rightly notes, the drug war paradigm makes drug laws and policies "ontologically predicated" by understanding ayahuasca through a mere biochemical and psychopharmacological analysis (Tupper, 2008). Considering that DMT is internationally prohibited, this research confirms that, by analogy, authorities in Brazil, Belgium and the Netherlands have at least been tempted to consider also ayahuascas as prohibited. In Brazil, the risks related to such a constricted understanding of "drugs" was exactly one of the arguments that led to the initial creation of multidisciplinary working groups (GTs and GMTs) to investigate the religious use of ayahuasca. In line with academic recommendations, the diversity of scientific and academic perspectives through which Santo Daime has been investigated between 1985 and 2010, resulted early on in the recognition of ayahuasca as a "tool" rather than a "drug", traditionally used for the search for the sacred and self-knowledge, thereby clearly denouncing that its users hallucinate. (CONFEN, 1987; Tupper, 2008; Blainey, 2015). Contrary to what can be expected in Western society, reports repeatedly used the term "sect" without skewing the ability of researchers to neutrally and objectively describe a new religious movement on its own merits. (Olson, 2006) In fact, certain members of the G(M)Ts even participated in Santo Daime rituals to better understand their research object/subjects. As such, it is interesting to note that Brazil has completely broken with the general belief system that entheogens are hallucinogenic and/or inherently harmful, and this through a progressive, human rights oriented approach involving (nearly) all relevant parties (Tupper, 2011; Labate and Feeney, 2014). The entire process successfully and respectfully countered assumptions made in the first media coverages, which sensationally pictured Santo Daime as a sectarian

organization using illicit substances for carnal purposes, and fueled the fear for collective suicides (Ferreira Junior, 2017).

As a result, the current CONAD resolution of 2010 regulates the use of ayahuasca in Brazil and – partly in light of the current ayahuasca diaspora – shows understanding for the need to distinguish and protect genuine expressions of faith. It does so by intensifying its control of potential non-authorized use of ayahuasca outside of organized communities. A great part of the current deontological rules find their origin in, and further elaborate on, the past self-regulatory efforts of ayahuasca-religions. In recognition of the legitimacy of religious and traditional use, Brazil, as a signatory State to the 1971 Convention and having made no reservations, openly accepted the INCB's interpretation that ayahuasca falls outside the scope of the international drug control regime. Most recently then, serious demands have been raised by the Indigenous of Brazil – previously excluded from most processes - on their involvement in the ongoing discussions and formal proceedings around the patrimonialization of ayahuasca. Remarkable in light of this study, is that not only the drug war paradigm has been broken right from the start, but that all the processes around regulation took place outside the sphere of the judiciary. The core freedom to the religious and traditional use of ayahuasca in Brazil has been warranted outside the courts. Yet, as mentioned, the judiciary might still have some kind of normative function in interpreting the current regulation and defining its limits. Especially since Santo Daime continues to expand, the lack of any export provisions in the current Brazilian regulation might possibly result in legal cases at the national level.

The entire history in Brazil stands in stark contrast with the realities in Belgium and the Netherlands. First of all, it is true that the religious freedom of Santo Daime is judicialized in these countries, and that their courts carry a high degree of ultimate authority in deciding whether it is acceptable for a NRM to use ayahuasca (Richardson, 2016). My research shows that the current legislative provisions around drug control and HSO's can be used and interpreted to subject a NRM to control, surveillance and persecution on the basis that ayahuasca is forbidden, dangerous, harmful and even addictive. Such actions are always justified by the fact that ayahuasca contains DMT. To that regard, this study confirms that Belgium has been particularly rigorous in its actions and implicitly characterized Santo Daime as a HSO (Fautré, 2010; Blainey, 2013; Richardson, 2015). The Public Ministry and the division of the Belgian Federal Police responsible for terrorism and HSO's have either stated that ayahuasca is not essential to Santo Daime, that Santo Daime is a "sect" and/or that ayahuasca is forbidden due to its active ingredient DMT (even comparing it to heroine). Yet, legal analysis shows that such conclusions were impossible to make in 2011, when the HSO-police denied a

fair trial to CdCMI to contest these assumptions. Three years later, in the first court case concerning Santo Daime in Belgium, *daimists* were assumed to “hallucinate” while no actual proof had been given thereof, nor of any considerable and/or long-term health issues related to repeated use of ayahuasca. Only those pieces of information were highlighted that ostensibly supported prohibition, to the point where it is possible to speak of manipulation of information. With disregard for the true intentions behind both international and Belgian drug legislation, ayahuasca was considered to be prohibited by the drug control regime. Right after stripping away the religious freedom of CdV, a church already present in Belgium for nearly twenty years, the appeal judge derisively told the church leader that he could go practice Yoga. A non-comparable alternative that was accompanied by a final theological assessment of the judge, implying that the sacramental use of ayahuasca is not a genuine religious expression. And so, in lacking to take the grievances of a religious minority seriously, and without any consideration of the existence of less restrictive measures than prohibition, this court case allowed for questionable evidence to support the biases and prejudices of its judges (Richardson, 2015 and 2016). This naturally led to the alienation of Santo Daime from Belgian society. (Brems and Lavrysen, 2013) Both Belgian churches of my study moved to the Netherlands as a last-resort. One might say they are in exile.

My research on the legal cases in Belgium confirms the general observations Tupper has made concerning the drug war paradigm. Contrary to Brazilian society, this paradigm can indeed be seen as a deeply established belief system within national authorities responsible for the protection of public health in Western society. Yet, the incapability of representing ayahuasca as “anything other than an unequivocally bad, illegal drug”, in fact, constitutes an extremely far-fetched interpretation that does not find any basis in the current scientific consensus. Consequently, it nearly automatically results in the categorization of Santo Daime as a HSO (Tupper, 2011). This *nota bene* with disregard for a procedurally fair approach as demanded by European human rights law, in particular the general principles laid down in (case law concerning) article 6 and 9 ECHR. While Brazil and Belgium constitute opposites in the way processes for recognition of Santo have been handled, the Netherlands finds itself shaping an arduous road in between for the past sixteen years. Courts earnestly try to strike a balance between religious freedom and public health. Since 2001, judges repeatedly concluded that ayahuasca is essential to Santo Daime, implying that it is being used as a “tool” which facilitates the integration with Divinity through examination, study and practice. This reconceptualization allowed for a genuine multidisciplinary analysis to contextualize ayahuasca outside the drug war paradigm and conceive its risks and benefits objectively (Tupper, 2008; Blainey, 2015). Just

as in Brazil, only the initial contact between European and national authorities, media and Santo Daime provoked its impassioned characterization as a harmful “drug sect”. This assumption was quickly dismantled in court by judges who closely observed article 9 ECHR and paid genuine attention to expert reports from multiple disciplines.

Yet, after a period of silence, and just as in Belgium, the Public Ministry started to characterize ayahuasca as nationally and internationally prohibited because of the forbidden nature of DMT. This is likely related to the chaotic spread of commercialized ayahuasca practices, widely available through the internet. Even so, Santo Daime churches are particularly affected by this sudden zero-tolerance approach as their ayahuasca continues to be confiscated at the border regardless of their legal status. In practice this repressive attitude can, as is the case in Belgium, lead to the subordination of other primary goals of the state than public health, namely the right to manifest one’s religion (Barret, 2010; Crick, 2012). It also denies, *prima facie*, any legitimacy to spiritual leaders of Brazilian Indigenous tribes who fly over to Europe carrying ayahuasca, following an official invitation to share, teach or perform their traditional healing ceremonies. It should not be forgotten that a significant range of human rights pertain to the Indigenous, which should be analyzed and respected to the fullest. In sum, after sixteen years, recent procedures continue to challenge the seemingly established respect for the religious use of ayahuasca. In particular, the upcoming judgement of the Court of Appeal in January 2018 will constitute an important turning point in the legal history of Santo Daime. It will either put an end to the repressive attitude of the Public Ministry, or else the religious activities of Santo Daime will suffer a loss of legitimacy. Aware of their weak minority position, and similar to the process in Brazil, the Dutch ICEFLU churches have created a foundation to self-regulate the religious use of ayahuasca. By doing so, they hope this will strengthen their trustworthiness and legitimacy while offering a platform that broadens the current religious freedom of CdSM and CdV to all genuine Santo Daime churches currently operating in legal limbo.

4.3. Recommendations

Over twenty years ago, when the Brazilian government wanted to criminalize ayahuasca, the lawyer of the UDV, Mr. Felipe Belmonte Dos Santos, had rightly pointed out that the prohibition of something genuinely beneficial and good for people goes against natural law. From my observations, national authorities are likely to become both responsible for the violation of the right to religious freedom of Santo Daime and the co-creation of more police actions, more criminal cases and – quite paradoxically – less guarantees for the safeguarding of public health. Ayahuasca will likely continue to be consumed without the possibility to establish and control

compliance with ethical standards. This was also one of the major worries of Christophe Héroufousse, the legal advisor of the Belgian Information and Advice Centre on Harmful Sectarian Organizations. Furthermore, Santo Daime will be sent underground, thereby operating in the same legal limbo as commercialized ayahuasca activities. This will result in the creation of “drug routes”, used both by diverse “legitimate” and “illegitimate” ayahuasca importers, which the authorities will likely prosecute as a homogeneous group. The fact that over the past decade legal cases around the globe have skyrocketed to 1100% compared to the decade before, is indicative to the assumption that a new kind of drug war will be created (ADF, 2017). Also, it is possible that the legal cases stemming forth from total prohibition will backlash on, or pressure, the legal certainties established for the traditional use of ayahuasca in Brazil and other Latin American countries. Surely, the complete prohibition of ayahuasca doesn’t allow for mitigation and control of a situation that clearly requires so. What is also clear is that the current paradigm only further marginalizes religious (*daimists*) and ethnic (Indigenous Peoples) minorities. The story is still unfolding, and it befits a genuine democratic, pluralist and inclusive society to search for ways establish the necessary and sought after dialogue in a frank spirit of compromise and understanding. The creation of a legal framework around Santo Daime is imperative. In considering the entirety of my study, I would like to already recommend that western authorities take an example from Brazil and:

- Study the use of ayahuasca from multidisciplinary perspectives and in cooperation with the churches, allowing for such information to become part of the evidence in decision-making processes and to be assessed objectively and impartially.
- Recognize that the traditional and religious use of ayahuasca does not constitute a danger to public health within the context of Santo Daime and, to that regard:
 - Incentivize and sponsor future academic and scientific research
 - If possible, drink ayahuasca at least once before making a decision about it.
- Help the Santo Daime churches achieve a mutually beneficial agreement with regard to ethical and legal standards for safeguarding the health of individuals and the non-commercialization of their sacrament.
- Understand that Santo Daime is not the only legitimate context in which ayahuasca is used, and be prepared to enter in dialogue to establish rules on how to accommodate, among others, spiritual leaders of Brazilian indigenous tribes who have been invited to share their traditional knowledge within legally registered entities.

Particularly in the Netherlands, it deserves recommendation that the courts in the Netherlands:

- (Re)affirm the religious freedom of Santo Daime
- Oblige the Public Ministry to stop confiscating ayahuasca of the Santo Daime church and respond to the letters of cooperation that have been sent by CdSM and CdV to the authorities over the past 15 years, by establishing a mutually beneficial agreement.
- Over time, allows for the complete legal registration of genuine Santo Daime churches who are currently operating in a legal limbo, perhaps in cooperation with the new foundation CLAREIA.
- Order the return of confiscated ayahuasca from genuine, yet non-recognized, Santo Daime churches and Indigenous leaders, perhaps in cooperation with an organization such as the ADF.

Particularly for Belgian authorities, it deserves recommendation that:

- The HSO-police recognizes that it had no authority in sending a Santo Daime church out of the country without legal precedent, and that this constituted a grave human rights violation.
- Recognition is given that Belgian judges have acted in a manifestly biased and religiously prosecutorial way by accepting flawed, outdated and wrongly positioned evidence in their decisions.
- Dialogue remains open as to discuss future recognition of Santo Daime as a legitimate religious manifestation, acting always in accordance with the general principles of article 9 ECHR.

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Annex 1: Overview of conducted interviews during field research

Belgium and the Netherlands (March 23 – May 25 / September 1 – October 22):

- Informal conversation with Mrs. Van der Plas (Haarlem, Netherlands), Lawyer of ICEFLU, (January 24, 2017).
- Interview *anonymous* (Belgium), church leader of Céu da União (ICEFLU) (March 23, 2017)
- Interview Jan Willem Houthoff (The Netherlands, Zuntphen), retired judge and daimist of Céu da Santa Maria, (April 4, 2017)
- Interview Marco and Irene Hadjidakis, church leaders of Céu dos Ventos (ICEFLU) (April 21, 2017)
- Interview Liesbeth Van Dorsten (The Netherlands, Amsterdam), church commander of Céu da Santa Maria, (May 5, 2017)
- Interview Luiz Puwe (Netherlands, Heinkenszand), spiritual leader of the Puyanawa tribe, (May 20, 2017)
- Interview *anonymous* (Belgium, Brussels), church member of Casa de Cura Mestre Irineu, (September 7, 2017)
- Interview Fatima Camargo (Brussels, Belgium), Church leader of Casa de Cura Mestre Irineu, (September 18, 2017).
- Informal interview *anonymous* (Brussels, Belgium), Informant concerning the legal case of César (October 2017)
- Registered statements Benki Piyãko (The Netherlands), Spiritual leader of the Ashaninka tribe, (October 22, 2017)

Brazil (May 25 – August 15):

- Interview Fabio and Suzana Pedalino (Brazil, MG, Caxambu), Church leaders of Céu do Gamarra, (June 1, 2017)
- Interview Zé Ricardo (Brazil, RJ, Térésopolis), Church leader of Céu do Dedo de Deus, (June 7, 2017).
- Interview Wilson (?) (Brazil, Amazonas, Mapiá), president of the resident's association of Mapiá, (June 15, 2017).

- Interview Christian Curti (Brazil, Amazonas, Mapiá), Administrator and fiscal counselor of ICEFLU, (June 17, 2017).
- Interview Alex Polari (Brazil, Amazonas, Mapiá), Administrator and legal counselor of ICEFLU, (June 19, 2017).
- Informal talk with Alfredo Mota de Mello (Brazil, Amazonas, Mapiá), President of ICEFLU, (June 25, 2017)
- Interview Mauro José Farias (Brazil, Amazonas, Mapiá), secretary of ICEFLU (June 27, 2017)
- Luis Fernando Nobre (Brazil, Amazonas, Mapiá), treasurer of ICEFLU, (June 28, 2017)
- Informal conversation with Peregrina Gomes Serra (Brazil, Acre, Rio Branco), Widow of Raimundo Irineu Serra and church leader of CICLU – Alto Santo, (June 30, 2017)
- Informal conversation with Cosmo Lima de Souza (Brazil, Acre, Rio Branco), Public Prosecutor of the State of Acre and daimist, (June 30, 2017)
- Interview Paula Caubianco and Barbarah Israel (Brazil, São Paulo), lawyer and consultant for ICEFLU, (July 11, 2017)
- Interview Luciano Dini (Brazil, Sorocaba), Church leader of Céu Sagrado, (July 14, 2017)
- Informal interviews and registered statements Marcelo Valladão (Sete Barras, Brazil), Church leader of Casa de Cura Mestre Irineu, (July 18-25, 2017).
- Mail conversations with Cosmo Lima de Souza, Public Prosecutor of the State of Acre and daimist, (between November 21 and December 6, 2017).

Annex 2: Concluding letters World Ayahuasca Conference 2016

LETTER FROM THE TRADITIONALIST CENTRES FOR THE II WORLD AYAHUASCA CONFERENCE³⁹

Firstly, we would like to thank the organisers of this conference for the honour of receiving an invitation to participate, which was sent to us through the Chamber of Ayahuasca Culture of the Municipality of Rio Branco. For us, this invitation is recognition of the work and teachings of our founding Mestres, through whom we seek to ensure that they continue to be a reference of respectability for the religious use of Ayahuasca. We also appreciate the autonomy that we have had to be able to report our experiences and present our principles and criteria, for the excellent and organised conduct of the event and the cordiality and respect we with which we were treated.

We would like to thank the representatives of the indigenous people, their spiritual leaders and communities, that are true guardians of the forest and heirs of the cultures and traditions that have developed in it since the times of their ancestors. We also thank the other religious denominations and all the people and organisations that have Ayahuasca as a significant reference in their lives and works, for the brotherly debate and respectful conviviality, even at times when differences or disagreements were exposed. We thank the scientists, researchers and students of Ayahuasca for sharing with us and with all conference participants the results of their studies.

During our participation at this conference, we have tried to present – clearly and simply – who we are and what we do. We understand that stating our identity and maintaining our principles does not offend the rights of any person, organisation or community. We do not consider ourselves to be superior, nor do we cultivate enmity with anyone. If we have, at any time, had any differences or disagreements, our intention has always been, and continues to be, to maintain an honest and transparent relationship, without omitting our principles and values. Our Mestres teach us consistency between words and practice, to keep us on the path of Truth.

For this reason, we reaffirm – on this occasion, as on others – the principles that govern us. And we feel the duty to warn of the risks and problems that may occur when the practices are not followed with the care that we consider necessary for the use and distribution of Ayahuasca. This care, which is recognised today and recommended by the Brazilian state in the legislation of several official organisations, was already outlined 25 years ago in the Charter of Principles of religious organisations that use Ayahuasca in 1991. Among others, we want to highlight three points:

³⁹ Source: <http://www.ayaconference.com/index.php/conclusoes?lang=en>

- a) The public identity of the centre or church that uses Ayahuasca, with the autonomy and self-determination to think, act and organise itself freely, without supervision or restriction. This freedom corresponds to the responsibility to assume their actions toward society, the public authorities and the laws in force in the country.
- b) The exclusive use of Ayahuasca – made of cipó (Banisteriopsis Caapi), leaf (Psychotria Viridis), and water – without adding or associating any substance in its preparation and distribution.
- c) No form of marketing. The members of each centre or church bear the costs of maintaining its institutions, including the preparation of Ayahuasca, without passing these costs on to non-members.

Experience has taught us that the observation of these principles reduces the risk of problems and brings benefits.

The health of our communities is proof of this. With such principles, we want to talk to everyone, especially with the indigenous communities, whose traditions claim, since their origins, similar principles of care and respect toward Ayahuasca and toward the forest in which it is born.

After decades of predatory exploitation of the two plant species that are used to make Ayahuasca, the compromise of the Amazonian Forest is obvious. This shows the need to unite with actions to protect, map the impacts already made and recover, in the short term. We call on all users of Ayahuasca, especially those who live outside Amazonia, to raise awareness of the need and importance of ethical, environmental and social responsibility in the production and distribution of Ayahuasca, in the face of international expansion and the economic pressures involved in the process.

We believe that the conquest of freedom for the religious utilization of Ayahuasca in Brazil was made possible by the existence of the communities and peoples – amongst which we include ourselves – who demonstrated balance and responsibility, credibility and social legitimacy. Other communities from other countries can conquer all this and more. Our contribution is to show our experience and the excellence of the teachings of Mestre Irineu, Mestre Daniel and Mestre Gabriel, to whom we ask to give us the light of wisdom and to bless you all.

We are grateful for the respect and attention.

Centro de Iluminação Cristã Luz Universal (Ciclu)/Alto Santo
 Centro Rainha da Floresta (CRF)
 Centro de Iluminação Cristã Luz Universal Juramidã (Ciclujur)
 Centro Eclético Flor do Lótus Iluminado Maria Marques Vieira (Ceflimmavi)
 Centro Espírita Beneficente União do Vegetal (UDV)
 Centro Espírita e Culto de Oração Casa de Jesus – Fonte de Luz
 Centro Espírita Obras de Caridade Príncipe Espadarte

Rio Branco, 22nd October 2016

**OPEN LETTER FROM THE INDIGENOUS
PEOPLE OF ACRE, BRAZIL**

*NIXI PAE, HUNI PAE, UNI PAE, KAMARÃBI,
KAMALANBI, SHURI, YAJÉ, KAAPI...*

(different names for ayahuasca, used by the different tribes)

FOR THE II WORLD AYAHUASCA CONFERENCE

We, the undersigned, present at this conference, belong to the Yawanawa, Shanenawa, Jaminawa, Huni kuĩ, Apurinã, Manchinery, Katukina, Nukini, Puyanawa, Ashaninka, Madja, Jamamadi, Nawa, Shawãdawa, Apolima-Arara, Jaminawa-Arara and Kuntawa indigenous communities, in the State of Acre and South of Amazonia since our ancestors, are 17 indigenous communities from 36 indigenous lands recognised by the federal government, speakers of the languages Pano, Aruak and Arawa, totally an estimated population of 23,000 indigenous people, distributed across approximately 230 villages. It is worth remembering that these lands are located in 11 of the 22 municipalities in Acre.

THE II WORLD AYAHUASCA CONFERENCE was held in the city of Rio Branco, Acre from 17th – 21st October 2016, the main objective of which was: “to promote a space for dialogue, sharing and learning, synergy and collaboration, while respecting the cultural diversity of the traditions of Ayahuasca”.

However, we realise from the presentation of the first table, made up of indigenous representatives, that the “dialogue, sharing and learning, synergy and collaboration” that is the main objective of this conference, would not take place between indigenous and plenary debaters, given the short amount of time available for this purpose, envisioned by the organisers.

Thus, we express our point of view with the following questions:

1. Even though this event has a large number of indigenous participants, we are not feeling included in it’s creation and organisation.

2. Through of a largely indigenous dialogue, we the participants of this conference will not take any decision relating to the matters raised during this event, especially those of a more relevant nature, such as cultural heritage, records, without first:

A) promoting the holding of indigenous meetings in which all those with knowledge of the plants (cipó and folha) are present, with whom the sacred drink known as Ayahuasca is prepared, in the presence of the institutions, those responsible and those involved in the discussions over cultural heritage, with the aim of discussing the subject in more depth, because during their fragmented approach at the conference, it was not clear for indigenous communities exactly what this means.

B) Create a Technical Group (TG) to be coordinated and guided by the indigenous communities to carry out consultations regarding those knowledgeable about Ayahuasca and Decree no. 5.051 of 19th April

2004, which states that Brazil must respect Convention 169 of the International Labor Organization – ILO, and consult the indigenous communities before the works (in advance) so that these communities can choose to be consulted (free) and still have to take all the information that exists on the venture (informed).

C) form a board of ethics to discuss the subject of the origin and define criteria for the use and cultural heritage of Ayahuasca, and from this perspective and understanding, hold meetings with churches and other sects that use this sacred drink. In this way, we can present our position on the issues on the agenda.

D) We require a guarantee of participation of indigenous peoples in other Brazilian states that use the sacred drink in the discussion about cultural heritage;

E) We also require the right to participate in and plan future World Ayahuasca Conferences;

F) Finally, we require that the World Ayahuasca Conferences and the public and private institutions, discussing the subject should recognise the traditions for the use, healing and preparation by the spiritual leaders of the indigenous communities.

Finally, we would like to reaffirm that we are willing to build a common future with respect to the diversity of use of the indigenous peoples and to collaborate in all the processes for the progress of discussions for the use and the right to the consecration of the drink for all mankind.

In this sense, we would like to thank the effort of ICEERS, UFAC, the indigenous communities and organisations for the organisation of the II World Ayahuasca Conference to integrate and unite all the players in the Ayahuasca universe.

Haux, Haux!

Rio Branco, 22nd October 2016

Annex 3: Exploring the *ratio legis* of the Belgian drug legislation

- **Belgian national drug: DMT and ayahuasca**

The Law of 21 february 1921 on the trading of poisons, sedatives and narcotics, disinfectants and antiseptics (own translation, hereafter “Drug Law”) was the first drug law in Belgium, which served as an instrument to fulfill its obligations under the Opium Convention. The Belgian Senate’s report is clear about its sole intention to control and limit production, import, export and sale of opium, morphine and cocaine so that its use becomes strictly medical and legitimate (Belgian Senate, 1921). The Drug Law is a general law, also called a “framework law”, governing general principles, responsibilities and procedures. The advantage of such a law is that it creates a broad legal basis where - within the given frame – its provisions can be further detailed without having to go through the legal procedures of a regular law. Like this, in Belgium a general law is further implemented through Royal Decrees and Ministerial Decrees. Until 1975 Belgium’s national drug policy, in the absence of any pressing need, did not evolve much. The Law of 9 July 1975 renewed and updated the Drug Law and, together with other novelties, included psychotropic substances in the national legislation. The Drug Law has undergone some fundamental improvements in 2003 and 2014, where it attempts to continuously adapt to pressing societal needs concerning drugs and public health. Now, an interesting question for this thesis is the following. Did Belgium, in accordance with article 23 of the 1971 Convention decide on more strict or severe measures of control on DMT or ayahuasca in its national legislation?

Current article 1 of the Drug Law states that “the King can arrange and supervise, in the interest of hygiene and public health, import, export, manufacture, storage, i.e. storage under the required conditions, labeling, transport, possession, brokerage, selling and sale, delivery or purchase, for payment of free of charge, of poisons, sedatives, narcotics, disinfectants and antiseptics, as well as the cultivation of plants from which these substances can be drawn.” To which the second paragraph states that “the King can exercise the same powers with regard to psychotropic substances other than narcotics and sedatives, that may cause dependence (own underlining).” In 2009 an explicit reference was added to article 23 of the 1971 Convention, stating that “the King may apply stricter measures than those required” by the Convention (Belgian law of December 23,2009). One might assume that this implies that these provisions give a free-card to the King in its powers to regulate substances through Royal Decrees. However, to reach that conclusion it needs to be clear what the general principles laid out in the Drug Law are, because Royal Decrees can only regulate within the “framework” established by a general law. Thus, it is necessary to analyze the *ratio legis* of the Drug Law, best performed through an analysis of its ‘preparatory works’ and its ‘memorandums of understanding’.

- **Ratio Legis of the Drug Law**

Starting with the most recent change of the Drug Law in 2014, the memorandum of understanding explicitly states that “the present project does not want to make any changes to the philosophy of the law or the drug policy, under which the fight against production and trade in illegal drugs are the primary aim of the repressive approach”. Signed by the Minister of Public Health and the Minister of Justice, there is an express wish and affirmation to leave the original *ratio legis* untouched. Out of this affirmation, they created a legal framework that would better react to the new and large influx of “a new generation of psychoactive substances” (Belgian Chamber of Representatives, 2013).⁴⁰ As explained in the footnote, this new legislation does envisage to regulate ayahuasca, a decoction of two natural plants whose form of preparation has remained static for centuries, and in which the DMT molecule is never subject to manipulation. Rather, it attempts to react to an innovative drug manufacturing market trying to avoid criminal prosecution. Hence, to discover whether the *ratio legis* would allow for the inclusion of ayahuasca we can explore further the past. In 2003 another major change occurred in the Drug Law resulting in, among others, the inclusion and prohibition of precursors. These are “substances that can be used for the illegal preparation of narcotics and psychotropes”. The memorandum of understanding states that the most important goals are “(i) the decline of the amount of civilians with drug dependency, (ii) a decline of physical and psychosocial problems caused by drug dependency and (iii) a decline of negative consequences of the drug phenomenon in society (among others the social unrest) (own translation)” (Belgian Chamber of Representatives, 2003). Explicit reference is made to the correlation of drug dependency and its individually and socially negative consequences as the main goal of the law.

When looking further in the past, at the first major change to the Drug Law in 1975 aiming to include psychotropic substances as a result of the 1971 Convention, the memorandum of understanding of the Belgian Senate affirms the following statement in its commentary on article 1: “this provision has the aim to include in the law the other psychotropic substances that can cause dependency and are made available to the public as a result of scientific progress” (Belgian Senate, 1971). Taking into consideration

⁴⁰ It further notes that the lack of flexibility of the national drug legislations – among others because of the nominative list of controlled substances – “stimulates considerably the inventiveness and chemical creativity of drug producers. By bringing new sedative and psychotropic substances on the market, they keep holding a considerable part of the market outside the scope of criminal law (own translation).” With regard to psychoactive substances, the memorandum refers to European Monitoring Centre on Drugs and Drug Addiction Early Warning System Final Report Belgium 2012, a report that does not contain any reference to ayahuasca. Unsurprisingly, since ayahuasca (and its active element DMT) is not subject to inventive improvements or adaptations by its producers, it would not be explicitly considered by this new law.

the explanations given by the representatives who have shaped the Belgian national drug legislation, the *ratio legis* of the Drug Law become much clearer. In fact, it affirms and elaborates further on the current article 1, paragraph 2 of the Drug Law, stating that the King can exercise the powers mentioned in paragraph 1, with regard to psychotropic substances that may cause dependence. As such, a Royal Decree can only apply stricter measures than the 1971 convention if the restriction applies to a substance that (i) can cause a dependency which either results in (i-a) physical and psychosocial problems (individual criterion) or (i-b) has an impact on social order (broad, collective criterion). In either of the cases, it seems that the negative consequences must spring forth out of drug dependency. Furthermore, it is (ii) made available to the public through scientific progress (own underlining). In conclusion, the question that needs to be answered is the following: Is ayahuasca addictive? If it does cause dependency, a royal decree may give further effect to the Drug Law and take more restrictive measures through the prohibition of ayahuasca (when it has proven negative consequences on individual life or society). If ayahuasca is not addictive and the Belgian government would want to prohibit its use on grounds of public health, they should – theoretically - instigate a legislative procedure and do so through a new and regular law, not a royal decree. Of course, any judge can simply choose to interpret that the 1971 Convention prohibits ayahuasca and avoid the unravelling of the Belgian legal limbo towards it. If anything, this analysis shows us that the consumption of ayahuasca is a relatively new phenomenon in Belgian society, one on which the legislative authorities did not reflect on yet.

Annex 4: an analysis of the legal case on Santo Daime by the Belgian courts

The court's assessment: Court of First Instance

- **Setting the tone**

The court starts by recognizing the fact that ayahuasca is essential to the Santo Daime religion. However, it does so from a slightly offensive position. The first paragraph of its assessment goes as follows: "Defendants did not dispute too have imported, possessed and delivered ayahuasca tea, containing DMT, from Brazil, and this in the context of their religious beliefs, inspired by Santo Daime, in which the consumption of the ayahuasca tea belongs to the essential sacred sacrament of the worship ." As such, instead of objectively treating these two facts separately, the defendants are seemingly put into a position where they did not "dispute" having done something "wrong", namely the importation, possession and delivery of ayahuasca/DMT. The fact that they did so because of their religious beliefs is subsequently not treated as an informative fact, but rather as a justification for their prima facie illegal acts. Stating this might seem a bit senseless, however, I believe it to be important in order to show the sensitivity of cases concerning religious freedom and the - perhaps unconscious - prejudices that might infiltrate the reasoning of judges unfamiliar with ayahuasca or entheogens in general. Instead of using the words "did not dispute", the judge could have just mentioned that "defendants have imported... in the context of their religious beliefs... ."

- **The legality of ayahuasca**

Consequently, the defense had mentioned that the aim or *ratio legis* behind the ban on psychotropic substances evidently was public health and the fight against addiction and dependency. It argued that the Drug Law only prohibited DMT in its synthetic form and that ayahuasca is not prohibited by the Drug Law nor by Royal Decree. As I have studied in Annex 3 this is a legally correct assessment, in the sense that – according to the *ratio legis* of the Belgian drug laws - a Royal Decree could only prohibit ayahuasca if it were proven to be addictive and had negative consequences on individual life and society. The defense further noted that Mr Schaepe, the former secretary of the INCB, had declared that ayahuasca is not prohibited by the 1971 Convention. The court replies to that very briefly. it notes that article 1.1 of the Royal Decree mentions that psychotropic substances are "the substances referred to in Articles 2, 25 and 3 of that decree (in this case DMT), their salts and the preparations in which these substances or their salts are processed". It then mentions that "there is no limitation to only the synthetic form of these substances." As such, the judge considers ayahuasca to be prohibited by Royal Decree, thereby denying the initial goals of the Drug Law in the absence of any assessment whether

ayahuasca is actually addictive or harmful to public health in the context of Santo Daime.⁴¹ As such, following the ratio legis of the Drug Law, stating that ayahuasca is prohibited by Royal Decree already implies that it is addictive and harmful. As such, the assessment on the legality of ayahuasca starts off compromised due to the fact that it is *a priori* considered (or rather, stigmatized) as an addictive drug. Furthermore, nothing is said on the international legal status of ayahuasca, as the judges contented their selves with their own legally inadequate review of the Royal Decree of 1998 in relation to the Drug Law.

- **Religious Freedom vs. Public Health: general considerations**

The defense naturally also argued that the use of ayahuasca within Santo Daime was protected by article 9 ECHR. Considering that there are no significant health risks related to its consumption, they argued that greater weight should be granted to their religious freedom than to the prohibition for public health reasons. They supported this statement by referring to scientific literature, the positive precedents in the Netherlands, and the fact that ayahuasca is consumed in a controlled setting. Yet, the court argued that DMT, which is found in ayahuasca, is a hallucinogenic drug that irrefutably constitutes a danger for public health. This conclusion was based on the following arguments:

“The criminal information shows that the users of this tea hallucinate, that DMT initially has negative psychological reactions or psychotic episodes of transient nature, that they often vomit (as can be seen from the available buckets), that it is advised against to drink the tea in combination with alcohol and with many very common foods, including yeast, cheese, meat, fruit, chocolate, ... as they increase the risk of increased blood pressure, nausea and headache, that the tea may not be combined with certain medication, including nasal sprays, sleepers, medicines for migraine and allergies, antidepressants, .. , that people with heart problems or epilepsy do cannot participate in the ritual, that numerous sources warn against the crossed use of ayahuasca tea with other psychotropic substances (also alcohol and pharmaceutical drugs) and point out the dangerous interaction of the combined use with other narcotic drugs, especially antidepressants known as Selective Serotonin Reuptake Inhibitor (SSRI), which can lead to serotonergic syndrome with severe consequences and possibly death.”

To reach these conclusions, two documents have been used. Firstly an expert report had been laid down by the defense, called “*Ayahuasca use in a ritual, religious context*”, written by Ciska Wittouck, a researcher at the Institute for International Research on Criminal Policy of the University of Ghent. This report was written under the auspices of Professor psychiatrist Dr. Kurt Audenaert (hereafter “report 1”). Secondly, the court makes reference to the 2009-2010 report of the *Information and Advice Center*

⁴¹ Note that later in the judgement the judge refers to the fact that, considering the current scientific knowledge, the risk of dependency on ayahuasca is minimal.

Concerning Harmful Sectarian Organizations, which had done research on ayahuasca use (hereafter “report 2”). Also, reference is made to the information brochure that is given to participants during the intake-conversation (hereafter “info 3”). Out of reading these reports, it is clear the court has laid emphasis on the negativity of ayahuasca by taking certain facts out of their context, or by not mentioning them. In order to gain more perspective, I will dissect the pieces of information that the court gives in its judgement, and analyze whether their analysis corresponds the conclusions in the scientific research to which they refer.

1. *The criminal information shows that the users of this tea hallucinate*

The only report referring to hallucinations directly is report 1. Which, in its introduction states the following:

“DMT, the chemical name of the main ingredient of ayahuasca, belongs to the group of hallucinogens, these are means that “have a strong influence on the feeling, on consciousness and perception. They deform what we perceive through our senses (hear, see, smell, feel, taste) and cause hallucinations.”

According to the Cambridge dictionary, a hallucination is “an experience in which you see, hear, feel, or smell something that does not exist, usually because you are ill or have taken a drug”.⁴² As such it is explained that DMT, in general, is considered a hallucinogen, which might cause the above-mentioned cognitive effect. Without entering into a philosophical debate on whether it is possible to experience something that doesn’t exist, it serves to say that this information is given by the authors of the expert report as an introductory explanation on DMT, before any assessment is done on ayahuasca itself. In the crux of their study, which follows in the chapter “effects of ayahuasca: overview of literature”, an actual assessment is made on the cognitive effects of the beverage ayahuasca. The following is mentioned: “Cognitive effects [related to ayahuasca] are the complex thinking processes, like getting perceived insights in often complex thinking processes, a state of increased consciousness and a tendency to alleged increased introspection, wherein one remains conscious of the environment and coherent speech remains intact” This is the only information that has been given on the cognitive effects of ayahuasca in report 1, and it does not mention that the use of ayahuasca invokes hallucinations. One remains conscious of his/her environment and can coherently communicate with other persons. The fact that (perceived) insights might be obtained on complex thinking processes doesn’t seem to be all that negative either.

Report 2 does mention something interesting related to the visual effects: “Ayahuasca also has the central and, in this case, sought-after effect that it strongly stimulates mental imaging. The visions can

⁴² <https://dictionary.cambridge.org/dictionary/english/hallucination>

be of elemental nature (observations of geometric and luminous nature), and can be more extensive and related to organic, botanical or cosmological themes (e.g. images of nature presented as human beings, or move, the transformation of the person in something else, the given that the I-person occurs in a universe populated by mythological entities,...). Here, the report talks about “visions”, meaning “the faculty or state of being able to see” or “an experience of seeing someone or something in a dream or trance, or as a supernatural apparition”.⁴³ Of course, a delicate point is reached here. A sceptic might argue that the mere possibility of seeing mythological entities in a vision through the ingestion of a psychoactive substance might cross the boundaries of the acceptable in a democratic society. Still, countless stories in human history recount the apparition of entities to people in visions, and many religions find faith and guidance in such stories. Santo Daime is not an exception. It is said that, during the ingestion of ayahuasca, the Virgin Mary appeared to Mestre Irineu in a vision, and that she had passed on to him the doctrinal teachings of Santo Daime. In the Catholic church and among Christians, the apparition of Jesus Christ to Mary Magdalene is something that won't be denied as a hallucinatory experience any time soon. Even though skeptics might argue so, I would emphasize that everyone has the right to their (religious) belief in such supernatural phenomena. If the ingestion of ayahuasca within a safe, controlled and ritual setting could invoke such an experience without negative health implications, and, as report 1 mentions, “one remains conscious of the environment and coherent speech remains intact”, then limiting the right of someone to have such an experience would fall without good reason. Report 2 also mentions that participants “do not consider these visions to be hallucinations (---), but as the experience of what some describe as a hyper-reality, a fundamental reality that lays at the basis of the other reality of our daily lives.”

From the way the court has argued that ayahuasca-users hallucinate it becomes clear that the neutrality of the judge towards ayahuasca use might be seriously affected. This is the argument that initiates the entire reasoning of the court, emphasizing the questionable “negative” effect of ayahuasca on one's cognitive faculties. Strangely, the court does not substantiate this statement with further proof. Rather, attention is given to unrelated psychological and physical effects of ayahuasca.

2. *DMT initially has negative psychological reactions or psychotic episodes of transient nature, and people often vomit*

This is correct information, which can be retrieved in report 1 and 2. Report 1 mentions the following: “In terms of immediate psychological effects, DMT may initially instigate negative psychological or psychotic episodes of transient nature. They usually disappear spontaneously after a few hours. Like this, northern Europeans who have experience with ayahuasca indicate that about half an hour after the

⁴³ <https://en.oxforddictionaries.com/definition/vision>

ingestion of the ayahuasca-beverage they had frightening experiences such as loss of control, a changed perception, physical symptoms such as chills and tremors, a feeling of vulnerability, a feeling of confusion, paranoid feelings and re-experience of former negative life experiences; who often end up in vomiting. After this (short) period of fear, the users, as also described in a scientific article experience a shift from "hell to heaven", and the participants came into a state of consciousness with an enhanced awareness that was experienced as pleasant."

Report 2 also explains that ayahuasca stimulates the nervus vagalis which influences the digestive system and can result in vomiting. Other research mentions that these main adverse effects, such as nausea and vomiting, "are not considered adverse reactions by session participants, where they are understood as potential therapeutic effects (---). The 'purge' [vomiting] is understood as a physical and psychological cleansing from internal conflicts that may distress the participant, and is considered an essential part of the therapeutic effects" (Luna, 2011). If anything, report 1 mentions that these emetic effects are, in fact, one of the main reasons why ayahuasca does not have a potential for recreational use.

3. *it is advised against to drink the tea in combination with alcohol and with many very common foods, including yeast, cheese, meat, fruit, chocolate, ... as they increase the risk of increased blood pressure, nausea and headache.*

This information comes from info 3, and is also correct. Concerning the above mentioned food items, the website⁴⁴ states the following: "Twenty-four hours before the ritual it is advised to avoid the following food items. They contain tyramine and therefore risk a high increase of blood pressure." As such, the people who are participating to a ritual are advised against the use of certain food items as their combination with ayahuasca constitutes a possible risk of increased blood pressure. However, all the scientific studies – including report 1 and 2 - mention that the observed blood pressure during ayahuasca use remain within normal parameters. Does this also apply when people have, for example, eaten cheese before? No considerations is made, and no answer is given to this.

4. *that the tea may not be combined with certain medication, including nasal sprays, sleepers, medicines for migraine and allergies, antidepressants, .., that people with heart problems or epilepsy do cannot participate in the ritual, that numerous sources warn against the crossed use of ayahuasca tea with other psychotropic substances (also alcohol and pharmaceutical drugs) and point out the dangerous interaction of the combined use with other narcotic drugs,*

⁴⁴ <http://www.santodaime.be/gezondheidsinformatie/>

especially antidepressants known as Selective Serotonin Reuptake Inhibitor (SSRI), which can lead to serotonergic syndrome with severe consequences and possibly death.

This is also true. Significant attention should be paid to the contra-indications of certain psychological disorder or pharmaceuticals in combination with ayahuasca use. To that regard, it is important to start off by mentioning that CdV provides people with all the necessary information on their website, which is repeated during the intake conversation prior to participation in a ritual. Participants also sing a declaration that they do not take certain medications, that they participate under their own free will, and they have adequately been informed on the risks. In case of doubt on medical or psychological contra-indications, two (traditional) doctors were on standby 24/7 in case of doubt or questions by either the interviewer or the participant. As such, CdU had, to the best of their abilities, provides for guarantees that ayahuasca could be safely consumed within a ritual context.

Regarding the existing possible risks, it is safe to assume that nasal spray use won't have the same negative effect on health as the combined use of anti-depressants with ayahuasca. Thus, the degree of seriousness with regard to health implications of certain medication should be taken into account. The risk that obviously requires particular attention is the "serotonergic syndrome with severe consequences and possibly death." The International Center for Ethnobotanical Education, Research and Service (ICEERS) explains the following: "The alkaloids present in ayahuasca interact with the serotonergic system in different ways: the beta-carbolines, for example harmine, are inhibitors of the MAO enzyme, which has its role in the degradation of serotonin and other neurotransmitters. Therefore, the use of ayahuasca in combination with other serotonergic pharmaceuticals, such as antidepressants, can potentially cause adverse reactions such as the 'serotonin syndrome', which theoretically can have serious consequences for one's health. While the possibility of such adverse event occurring has not been confirmed, we advise that people that receiving treatment with medication (including natural products), or under the effect of any drug that acts on the serotonergic system, are extremely cautious when considering taking ayahuasca."⁴⁵

As such, the combined use of ayahuasca with serotonergic pharmaceuticals are advised against from a medical point of view. This is, of course, an important fact that requires due consideration. Besides the fact that a person using anti-depressants would not be allowed to participate in a Santo Daime ritual, there is still a possibility that a person might lie during their intake-conversation and falsely sign a declaration that he/she is not using medication. Even in that case, the theoretical risk of serious adverse effects related to the 'serotonin syndrome' has in fact never occurred in practice. Report 1 further indicates that "apart from the finding that indigenous peoples have a long tradition in the use of ayahuasca and that, from this, it can be made up that it can be used in a safe manner, so far few clinical

⁴⁵ <http://iceers.org/more-about-ayahuasca.php>

data has been collected that forms a solid scientific basis to prove this preparation does not present a danger to humans.” To that regard, it is noteworthy that thousands of people have been practicing Santo Daime (or other ayahuasca-related activities) for the last few decades (in and out Brazil), and not a single case has proven that the theoretical possibility of “death through ayahuasca use” can become a practical reality. There have been few (sensationalist) articles implying that ayahuasca might be the cause of someone’s death. These allegations always lacked any verification of facts or substantial evidence to support the statement.⁴⁶ Over the past 30 years, there has – to my knowledge - never been any hospitalization due to the use of ayahuasca in Santo Daime churches of Belgium and the Netherlands. Lastly, the general conclusion of report 1 state that “generally, from this study, it is concluded that the ritual use of ayahuasca is not associated with psychosocial problems usually associated with drug use or – abuse, such as difficulties with regard to employment, finance, health and general well-being.”

- Religious Freedom and Public Health: toxicity of ayahuasca

Next in its judgement, the court refers to a report of the Royal Academy of Medicine of Belgium (hereafter, Royal Academy), which in turn refers to information of the “French national commission on narcotics and psychotropes”. Through this information, the court argues that it is possible to prove that ayahuasca has “psycho-active effects”, “significant somatic effects”, and that “neurotoxicity has been demonstrated in animals”. For this reason, the court states, the French legislator has posed a ban on the plants of which ayahuasca is made, as well as the substances found in ayahuasca. That ayahuasca has psycho-active and somatic effects is clear from the previous considerations, and they arguably fall within normal and acceptable limits when taking the necessary precautions. What is new and relevant is the fact that the court and the Royal Academy imply that ayahuasca use might have (negative) (neuro)toxic effects on human beings. When looking up the document of the French Commission, it becomes clear that neurotoxic effects had been observed in animals after “strong doses of harmaline (10 mg/kg)” (Commission nationale des stupéfiants et des psychotropes, 2001). No reference is made as to which animals were subject to this study. However, in light of general scientific practices it is safe to assume it were rats or mice. Also, no reference is made as to the repetitiveness in which harmaline had been administered to these animals.

Was it only once, or was it once a week, day or hour? Was the amount of administered harmaline in proportion with the amount of harmaline found in ayahuasca? The fact that the french report talks about a “strong dose” does not inspire much confidence on whether the conclusions can be drawn to

⁴⁶ For an analysis on whether ayahuasca can lead to death, the following article of Emily Sinclair (PhD candidate in Anthropology at Durkheim University) is interesting: <http://chacrana.net/can-people-really-die-from-drinking-ayahuasca-as-announced-in-the-media/>

humans consuming ayahuasca on a non-daily, yet repetitive basis. The Royal Academy seemed to recognize this when it stated that “the available elements indicate that the ritual use of ayahuasca probably does not involve an elevated risk of acute toxicity.” Yet, it also stated that, because of the repeated use of ayahuasca by certain groups, it is “necessary to worry about the risk on chronic poisoning, genotoxicity/cancer risks, and reprotoxic risks.” Of course, the court jumped on this statement to justify its considerations, and it further stated:

“The Royal Academy concludes to emphasize the potential (and real according to some cases described in the literature) toxicity of preparations based on ayahuasca, pointing out that it is currently impossible to determine the degree of toxicity of the non-standardized and insufficiently studied preparations, both at the chemical and toxicological level, and suggested, out of concern for public health, that legal preventive measures should be taken.”

As such, the only “real” case of toxicity to which is being referred to in the study of the Royal Academy was one where a high dose of harmaline was given to animals (presumably rats or mice). It is very doubtful whether this says anything about ayahuasca’s toxicity on the human body, making the court’s arguments entirely speculative. In its technical report of 2017, signed by ten doctors, ICEERS writes the following: “Although ayahuasca is psychoactive, this does not mean that the doses that are usually ingested in sessions produce organic or brain toxicity. (---) Regarding the effects of ayahuasca in the organism, studies performed with volunteers both in the laboratory (---) and in natural contexts (---) show that ayahuasca is physiologically safe.” The technical report concludes that “both the currently available scientific evidence on the acute and long-term effects of ayahuasca and the studies that employed it as a therapeutic tool with psychiatric populations suggest that ayahuasca is a substance with an acceptable physiological and psychological safety profile and with therapeutic potential” (Carlos Bouso, a.o., 2017). Furthermore, Report 2 mentions that “it can’t be proven that healthy people who have been ritually using ayahuasca for many years become physically or mentally dependent on it, nor can a heightened toxicity be observed”.

All this information was already available at the time of the court’s judgement. Nonetheless, the court rightly points out the impossibility to determine the degree of toxicity of ayahuasca. However, it then uses this as a reason for prohibition based on public health reasons, failing to consider that there are possible and easy solutions for that, such as the demand for Santo Daime churches to standardize their production process and/or to leave samples for analysis of each imported quantity of ayahuasca. Yet, this would require the court to consider a cooperation between national authorities and a religious organization they had *prima facie* characterized as drug users that hallucinate.

- Final considerations of the court

The court ended its assessment of the case by stating that the prohibition of ayahuasca is foreseen by law and that it was a necessary – and thus permitted – measure. They argued this as follows:

“The fact that defendants argue that the use of the ayahuasca tea is so strictly regulated within their community of faith sufficiently proves that they are aware of dealing with a dangerous product.” Then it mentions a list of facts through which it becomes evident that CdV was aware of the potential danger of ayahuasca:

- “the fact that the intake procedure states all substances (including food and medicine as mentioned above) that users should not combine with the tea.
- the fact that they advise against the participation of people with certain conditions,
- the fact that they contact doctors who are at the disposal of the religious movement if there is any doubt on whether a person can take the tea (when using medication).
- The fact that the intake form mentions, under item 4, that the users should search eye contact if they do not feel well
- the fact that there is always supervision by two persons, called 'fiscals', that have to guide people who are unwell.”

Then, the court adds that the following facts are not of any nature to change its decision to prohibit ayahuasca:

- “That the risk of dependency on ayahuasca is considered minimal in the current state of the science,
- that the users of the tea declare to undergo beneficial and even therapeutic effects through the use of the tea,
- that risks would be limited due to the controlled setting, where defendants were aware of the potential risks to health and indeed attempt to control / restrict these,
- that the effects on health are temporary and so far no adverse side effects have given rise to hospital admissions.” (Correcial Court of Bruges, 2014).

The appeal case: Court of Appeal Gent (2015)

On the appeal of the case not much has changed in the court’s reasoning. Firstly, the court considered that ayahuasca was not only prohibited by the Royal Decree 1998, but also by the 1971 Convention. Without any regard to the communications of the INCB or the preparatory works, the judge mentions that “the Convention provides for the most stringent conditions (---) with regard to the use, the

possession and the import of substances on List 1". As I explain in chapter 2.3.1. and Annex 3, this is a blatant misinterpretation of both national and international law. It then argues that, contradictory to what the defense argued, the use of ayahuasca can hold dangers for public health. For this, it considers that the arguments of the court of First Instance were sufficient, and repeats these. It's thus interesting to note that the Court of Appeal finds it acceptable to also consider, without any clear scientific assessment thereof, that ayahuasca users hallucinate.

- **Further considerations with regard to health**

- **Toxicity**

The further considerations made by the court start of with a reference to Report 2, by the Information and Advice Center Concerning Harmful Sectarian Organizations. It is mentioned that negative consequences are apparent in this research, such as the rise in blood pressure, of heart rate and respiration, body temperature, mydriasis (dilatation of pupils) and a rise in the hormone level of cortisol. Unfortunately, it comes to no surprise that the court had failed to mention something that Report 2 stated that "these measurements remain within the normal parameters".

To strengthen its argument, the court refers to the report of Dr. De Wolff in which he warned for the possibility of more serious symptoms of (acute) toxicity, which include, again, a rise in blood pressure and body temperature, accelerated heart rate and respiration, loss of feeling in the limbs and uncertain bowel activity. Yet, in doing so they completely avert from the scientific conclusions this doctor made on the end of his assessment on the whole of the case concerning Santo Daime, namely that:

- ayahuasca may involve health risks in individual cases
- the information provided by the Santo Daime church is in general correct and adequate
- the limited availability of ayahuasca and the strictly regulated circumstances in which its consumption takes place constitutes protection against abuse
- it is not plausible, on the basis of existent scientific knowledge, that ayahuasca consumption forms a threat to public health. (De Wolff, 2000)

With explicit regard to toxicity, reference is again made to the report of the Royal Academy to emphasize "the potential (and real according to some cases described in the literature) toxicity of preparations based on ayahuasca". Again, this in complete disregard for the conclusion of report 2, stating that "it can't be proven that healthy people who have been ritually using ayahuasca for many years become physically or mentally dependent on it, nor can a heightened toxicity be observed". As mentioned before, the only case where "real" toxicity has been proven relates to a laboratory study where they administered a high dose of harmaline (10 mg/kg) to mice or rats, over 15 years ago.

- **Fear and prolonged psychotic reactions**

Interestingly, the court of First Instance referred to “psychotic episodes of transient nature”. It is generally known that the use of ayahuasca is not something one should do lightly. This exactly because many testify being confronted with their own inner conflicts, past trauma’s, unresolved emotional issues, etc... . Thus, it is correct that ayahuasca use can invoke feelings of fear, panic, and helplessness, which constitutes a legitimate concern for courts. Yet, in reference to the information in report 2, the court mentions that the psychotic effects of ayahuasca would not be of brief and transient nature (as noted by the first court), but might also result in prolonged psychotic issues. This would be a serious problem indeed. Yet, to substantiate this “fact” the court is using information that refers to hallucinogens in general. This information might thus relate to the use of ayahuasca, but just as well to the use of DMT, LSD or psilocybin in its chemical form outside any controlled, ritual setting, perhaps without the necessary dietary precautions, or even in combination with other drugs. The court simply has no way of knowing whether this information can be assumed to be true in the context of Santo Daime. That is why Report 2, right under this information the court is using, further mentioned “in the case of ayahuasca, the effects of these psychopathological reactions appear to be rather rare in an adult and even in adolescents, although no specific and detailed studies exist that would enable a precise evaluation thereof.” The court failed to mention this.

With regard to the experience of ayahuasca itself, the court continues to grant weight to the fact that the visions with ayahuasca can cause (extreme) fear. For this it refers to a statement of one of the church members that actually confirmed that ayahuasca can highlight certain trauma’s from the past. The court then notes the following: “this contains risks”. Yet, it doesn’t mention which risks exactly, and fails to consider that both report 1 and the expert report of Dr. De Wolff conclude that ayahuasca contains no significant health risk in a controlled ritual setting such as the Santo Daime church. Not a single assessment is made as to how a controlled ritual setting might mitigate certain risks.

- **Toxicity and non-standardized natural preparations**

The court further notes that the words of Dr. De Wolff in his expert report: “Just like the desired effects of ayahuasca, the toxic effects depend on the dose used. In preparations of a natural origin - such as ayahuasca - the dose is always hard to define. The concentration of agents may vary as a result of, inter alia, the composition of the soil, seasons, and the method of preparation. Without a chemical analysis, it is impossible to give a decisive answer as to the nature and quantity of agents in a preparation.” Thus, this is reason enough for the court to conclude that, “without chemical analysis it is never possible to give an account of the nature and amount of active substances in a preparation.” To that regard, Dr. De Wolff stated that “with the aid of the few data the literature has to offer, and the analysis report

provided by the laboratory of the Amsterdam-Amstelland Police Force, a reasonably reliable estimate of the doses of DMT used in the case under review can be made” (De Wolff, 2000).

As such, there seems to be no reason whatsoever why a cooperation would not be possible between the churches and the national authorities in Belgium. In 2003 CdV had already communicated to the Minister of Health that they were always prepared for further information and offer full cooperation. A single chemical analysis of a sample of the imported ayahuasca would suffice to offer a “reasonably reliable estimate” on the doses of DMT in the preparation. According to my observations, it is fairly easy to standardize the production process of ayahuasca, and churches would be more than willing to adopt certain measures if this would allow them to continue practicing their religion.

- **The defendant knew the health risks**

Furthermore, the court argued that there was no sufficient control on the import and storage of ayahuasca, as it was stored in Mr. X’s house in a separate fridge which was not locked. Strangely, the court did not argue why this would mean there is insufficient control on import, as I don’t see the correlation between an unlocked fridge and importation problems. It further stated that “the only worry for the defendant was the maintenance of flavor and color of the product. This shows even more that he is insufficiently conscious of the health risks related to this product, and on the risk of the accessibility of the product to a third party.” To contextualize this statement, Mr. X had told me that during the legal process it became very clear that they wanted to finish quickly with this case, and that it seemed that any arguments to make an end to Santo Daime would suffice. My current observations on the legal reasoning of the court can indeed – to a great extent – detect a serious bias towards the use of ayahuasca in the judges of the courts. For this reason, he explained to me that he wished to anticipate the argument that it is impossible to preserve ayahuasca without it becoming bad. However, statement was interpreted negatively. This does not invalidate the court’s point that the fridge (located in the scullery) was not locked, and that its accessibility for third parties must be better guaranteed. Yet, it seems a bit far-fetched to say that Mr. X is not aware of the health risks related to ayahuasca based on a single statement, without taking into account all the guarantees that were put in place by the church to protect the health of participants.

Furthermore, the court mentions the letter of 2003, in which Mr. X asks the Minister of Health to confirm the religious freedom of his church and asked the permission to import ayahuasca. From this letter, the court argues that he was “aware that he was committing a forbidden act”. This is quite the statement as well, considering that there was no certainty whatsoever on the legal status of ayahuasca before this court case. As such, a letter in which the defendant asked for some legal certainty on the matter is now considered an admission of guilt. It is indeed doubtful whether it was correct to assume that the unresponsiveness of the Minister of Health implied a positive answer, but there is no possible

way to legitimately assume that Mr. X was aware he was committing illegal acts.

▪ **The court's (implicit) theological assessment on Santo Daime**

Near the end of its judgement, the court suddenly notes that the defendants argue that ayahuasca is an essential, holy sacrament of the worship services of Santo Daime, without which it would not be possible to truly practice their religion. Right after, the court mentions that “Mrs. Y, secretary of ASAF declared (---) the tea is a tool so that everything goes faster. You can achieve the same with, for example, meditation, but that would take you 10 years while you can achieve the same with Santo Daime in one year.” Without any further words, the court clearly wishes to imply that ayahuasca is not essential to the religion of Santo Daime. Clearly the court is overstepping its boundaries here. In no way is it possible to extract from that statement that ayahuasca is not essential to Santo Daime. Rather, the court seems to argue that, because you can go meditate for 10 years, you shouldn't go to Santo Daime. According to Mr. X, a judge stated he could “subscribe to yoga” near the end of the hearing. It is heartening to observe that the judge considered that Mr. X would need to fill an existential void after the prohibition of his religious practice. Yet, the court should be very careful that the suggested alternative is at least comparable to the way the applicant has to or wants to manifest his religion (Ouald Chaib, 2015). It does not require much explanation to acknowledge the manifest incomparability between yoga and Santo Daime. As such, the judge provided Mr. X with a non-comparable alternative that further emphasizes the judge's negative bias and ignorance towards what Santo Daime means to its adepts. It is very doubtful whether this suggestion came from the good of the judge's heart.

Cassation

On September 6, 2016 the Belgian court of cassation took over nearly the same reasoning as the Court of Appeal and agreed that the charges against Mr. X in light of the drug legislation were not disproportionate with regard to the right to religious freedom, because of the serious danger ayahuasca use means for the public health. As there are no significant changes to the court's reasoning, there is no need to go over this arrest.

Annex 5: Timeline/overview legal cases in the Netherlands

