

Position Paper for Ngāti Kahu on Cannabis Reform

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The current state of Cannabis in New Zealand

Cannabis is widely used in New Zealand. According to a survey by the New Zealand Drug Foundation 12% of New Zealanders got high on marijuana in the past 12 months. They also cited longitudinal studies from both Dunedin and Christchurch that showed by the age of 21, 80% of New Zealanders have tried cannabis at least once.¹

Despite this, cannabis remains illegal in New Zealand. This position has significant negative effects on Māori as courts continue to convict and incarcerate Māori in large numbers often for low level offending. Greater than 50% of all people convicted on drugs charges, are convicted for low level offending such as the possession and or use of a drug or utensil.¹

In New Zealand, as with the rest of the world, there has been a softening of position towards cannabis. Wilkins and Sweetser published in the International Journal of Drug policy in 2012 that there has been a substantial decrease in arrests for cannabis use in New Zealand, despite maintained consumption.³ Police use a policy of discretion of when to arrest and charge for low level offenses.² However, this has led to a significantly disproportionate number of Māori being charged.

Māori received 42% of all drug convictions and 42% of low-level convictions in 2016, despite making up only 15% of the population.¹ In 2016 an in depth article was published in Stuff by Eugene Bingham and Paula Penfold. It used police and justice figures to show that, from 2010-2014, Maori made up over 50% per cent of prison sentences and 40% of prosecutions and convictions. However, during the same time, of those who were given pre-charge warnings (let off), Maori only made up 30% compared to 57% of Pakeha. Of those that went to court and were offered a diversion (let off), only 20% were Maori.⁴

This is in keeping with the international literature that minorities, indigenous people and the poor have been disproportionately negatively affected by the current drug policy of prohibition.⁵

Why is Cannabis illegal?

The United Nations Drug Control Convention is made up of 3 Conventions, the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. These conventions recommend the control of (nominal) narcotics.

Due process involves a report by the World Health Organisation (WHO) that is forwarded to the United Nations about the health effects and usage of a substance with recommendations about its control. Unfortunately, cannabis was placed into this Schedule, as a Schedule IV (the most restrictive) without the appropriate WHO review.

On the 12th - 16th November 2018, the WHO Expert Committee on Drug Dependence (ECDD) met in Geneva to conclude its review of cannabis and cannabis-related substances. This was the first time that the ECDD had carried out a full review of these substances since the International Drug Control Conventions were established in 1961 and 1971. The Committee recommended a more rational system of international control surrounding cannabis and cannabis-related substances that would prevent drug-related harms whilst ensuring that cannabis-derived pharmaceutical preparations are available for medical use. They recommended it be removed from Schedule IV, and for some cannabis substances to be removed from the Schedules all together.

The recommendations from the ECDD meeting are now endorsed by the WHO and have been forwarded to the UN Secretary General. They will be considered by the UN Commission on Narcotic Drugs in March 2019.

The Current state of Cannabis and Drug Control

The current international system for the control of drugs, the so called “War on Drugs” has failed. Rather than meeting the objectives of the three international drug conventions, current drug policies are reducing neither the demand nor the supply of illegal drugs, quite the contrary in fact, while increasing the power of organized crime.⁵

One of the unintended consequences of making drugs illegal is the strengthening of organised crime. A demand for drugs exists, and if it is not satisfied through legal means it will be satisfied by the illegal market. Prohibition has allowed criminal organizations to control the whole supply chain of drugs.

Every region in the world suffers: from violence induced by turf wars over production areas and transit routes, from corruption and connivance of state institutions, and from laundering of drug money, which damages the legal economy and the functioning of democratic institutions.

A fundamental question regarding illegal drugs is still rarely asked. ***Who should assume the control of these substances that bear serious risks for health – the state or organized crime?*** By making a drug ‘illegal’ the state gives up any ‘control’ of a substance, with respect to its purity, quality, distribution, profits and direct monitoring, usually to organised crime. All other substances in society that have the potential for harm are closely regulated by the government e.g. pharmaceuticals, chemicals, food, alcohol, tobacco etc. Only when the state regulates these industries are they able to minimise their potential risks to the population as was shown famously with the prohibition of alcohol in the United States, which ceded the complete ‘control’ of the drug to organised crime. This resulted in a significant increase in organized crime. History has shown us that the only responsible solution was regulation.

The Global Commission on Drug Policy

The Global Commission on Drug Policy was founded by the late Kofi Annan, the ex-Secretary General of the United Nations. In January 2011, he and a group of personalities from the Americas and Europe established the Global Commission. Membership grew to encompass commissioners from around the world. They included New Zealand's ex-Prime Minister Helen Clark, the ex-Prime ministers / Presidents of Brazil, Switzerland, Colombia, Poland, Chile, Nigeria, Greece, Timor-Lest, Portugal and Mexico, Nobel Peace Prize Laureates, Intellectuals, UN special Rapporteurs, as well as other experienced and well-known leaders from the political, economic and cultural arenas. They felt, and still feel, that they must advocate for drug policies based on scientific evidence, human rights, public health and safety, for all segments of the population.

The Global Commission's first report published in 2011 broke the taboo on the negative consequences of the so-called "war on drugs" and called for a paradigm shift: priority must be given to health and safety, allowing for measures that truly help people and communities. The three reports published in 2012, 2013 and 2015 explored in greater depth how the punitive approach to drugs and the criminalization of people who use drugs is responsible for the spreading of HIV/AIDS and hepatitis C, as well as for the lack of access to palliative care, pain medication, and other controlled essential medicines.

In its 2014 report, *Taking Control: Pathways to Drug Policies That Work*, the Global Commission on Drug Policy presented five pathways for re-forming drug policies. These are: prioritizing public health; ensuring access to controlled medicines; decriminalizing personal use and possession; relying on alternatives to punishment for non-violent, low-level actors in illicit drug markets, and promoting longer-term socioeconomic development efforts to offer them a legitimate exit strategy; regulating the drug markets and rolling back organized crime and its corruptive and violent influence.

These pathways provide a roadmap for pragmatic policy changes, which will make the drug-related problems that the world faces today much more manageable.

In 2018 they produced, *Regulation: The Responsible Control of Drugs* which examines in detail how governments can take control of currently illegal drug markets through responsible regulation, thereby weakening criminal organizations that now profit from them.

This new report provides a practical roadmap that tackles the real implications and recognizes the difficulties of transitioning from illegal to legally regulated drug markets. It offers concrete answers regarding the organizational capacity of state institutions to regulate and control a legal market of potentially dangerous products. It highlights the challenges facing impoverished populations that constitute the "working class" of the illegal drug markets. It offers possible ways forward to deal with the risks inherent to the resilience of organized crime. Finally, this report calls for a reform of the prohibition-based international drug control system, which is compromising a universal and holistic approach to the "drug problem."

What Should We Do?

New Zealand's approach to drug control is currently in line with the internationally recognized failed position of the "War on Drugs" and thus needs to be overhauled. People with drug problems are treated in the justice system instead of the medical system. We know this is very expensive and punishes minorities and indigenous people disproportionately.⁵

The increasing body of evidence shows that there are better ways forward. This would involve the New Zealand Government taking back control of these drugs from organized crime by de-criminalising and regulating them. A start should be with cannabis.

The Cannabis Referendum Question

The wording of the referendum question itself, how it is framed and pitched, is critical. The wording needs to be as clear, concise and unambiguous as possible, requiring a simple YES or NO answer. E.g. ***Do you support the de-criminalisation and regulation of cannabis? Y/N***

Leading up to the referendum, there needs to be a multi-media rollout of evidence-based information and educational materials on the options and issues of prohibition, legalisation, decriminalisation and regulation, so that voters can cast an informed vote on the question when the time comes.

Conclusions

Ngāti Kahu's primary position and concern is – ***what is best for our whānau, hapū and iwi***. To that end:

1. In alignment with the evidence-based recommendations of the Global Commission on Drug Policy, Ngāti Kahu promote the de-criminalisation and regulation of cannabis.
2. We also urge education of our people and the wider New Zealand public about what is meant by de-criminalisation, legalisation and regulation. These are all variations on a similar theme but carry significantly different connotations. Legalisation or de-criminalisation alone infer lack of control over a substance, whereas regulation infers control.
3. In going into discussions about the referendum, Ngati Kāhu's position is clear on what we would like to see come out of it – i.e. de-criminalisation and regulation – and we urge that the question be written appropriately.
4. Ngāti Kahu take the position that those who use cannabis in a private, responsible and non-harmful way should not be at risk of prosecution and incarceration, and those who have drug problems should

be dealt with within the medical system, not within the legal system. Nor should they be subject to the whims of individual police.

5. Ngāti Kahu promote the weakening of organized crime within our communities. To do this, we are clear that we promote the de-criminalisation and regulation of cannabis.
6. Ngāti Kahu supports the personal use of cannabis and support the position of the Global Commission on Drug Policy with regards to the de-criminalisation and regulation of cannabis for personal use. We come to this position after reviewing the health effects of cannabis as per the extensive evidence-based review by the World Health Organisation as described in the WHO Expert Committee on Drug Dependence 40th Report 2018 and noting the effects on Māoridom under the current system of prohibition.
7. However, Ngāti Kahu has concerns about the appropriate regulations to be put in place, in particular with regard to the known and potentially irreversible negative effects cannabis has on the immature brain. To this end, Ngāti Kahu supports restricting the sale and use of cannabis to those over the age of 21.
8. Ngāti Kahu also has concerns to progress and protect our rights under *Te Tiriti o Waitangi (1840)*¹ as well as our rights under the *United Nations Declaration on the Rights of Indigenous Peoples – UNDRIP (2010)*.²

¹ *Ko Te Tuarua* (Rangiratanga) and *Ko Te Tuatoru* (Non-Discrimination)

² *UNDRIP Articles*: 1 (Human Rights), 2 (Equality), 3 (Self-Determination) 4 (Self-Government), 5 (Institutions), 7 (Life, Liberty and Security), 8 (Cultural Integrity), 12 (Spiritual and Religious Customs), 15 (Dignity and Diversity), 18 (Decision-Making), 19 (Good Faith Cooperation), 20 (Economic Activities), 23 (Economic and Social Development), 24 (Health), 25 (Relationship to the Environment), 26 (Land and Resources), 31 (Cultural and Intellectual Property), 32 (Resource Development), 34 (Institutions, Laws and Customs), 37 (Treaties and Agreements), 45 (Other Indigenous Rights), 46 (Respect for Human Rights).

References

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