**Contribution to the Report of the Office of the High Commissioner for Human Rights “on the implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights”, requested by the Human Rights Council in Resolution A/HRC/RES/37/42 adopted on 23 March 2018**

This contribution was prepared by the Centre for Legal and Social Studies (CELS). Since 1979 CELS has been working to promote and protect human rights in Argentina and around the globe by reporting human rights violations, advocating for public policies that respect and guarantee fundamental rights, and promoting legal and institutional reforms to improve the quality of democratic institutions. Through different strategies (independent monitoring of state actions, multidisciplinary research, strategic litigation, alliances, media outreach), CELS exposes structural patterns of human rights violations in democracy, often challenging the content, orientation and implementation of unjust public policies. Amongst other lines of work, CELS researches the impacts of drug policy on human rights at the national, regional and global level, linking its implementation to police practices, the criminal justice system and the conditions of imprisonment in the region, and promotes a shift towards a harm reduction paradigm with policies that are more protective of the most vulnerable sectors of society.

For the past thirty years, the international drug control system has laid emphasis on drug control through criminal punishment as well as on law enforcement and military action to combat drug trafficking. This kind of strategies have had a tremendous impact on many communities in Latin America, which are directly affected because of their geographic location along trafficking routes or drug crop areas, among other reasons. Despite the fact that this approach has cost the lives of thousands of people and brought along an increase in social and institutional violence, with practices such as torture and forced disappearances becoming commonplace in certain regions, there is little to be said with regard to its success in reducing the supply of illegal substances. At the same time, the region has experienced an increase in local consumption of certain drugs[[1]](#footnote-1). In recent years civil society organizations have found some alarming tendencies towards a deeper militarization of states’ responses to this phenomenon.

CELS has dedicated the last two years to an in depth research on the topic, so whereas there are other issues that connect drug policy and human rights, we believe it is this way that we can best contribute to this Report in relation to the Outcome Document resulted from the last UNGASS. Therefore, we would like to take this opportunity to draw attention to certain aspects of militarization of drug control efforts and highlight how they impact on the erosion of human rights in our region.

1. **SECTION 3: Operational recommendations on supply reduction and related measures; effective law enforcement; responses to drug-related crime; and countering money-laundering and promoting judicial cooperation**

Supply reduction strategies in Latin America imply a series of risks to the protection of human rights, especially when these measures become militarized by implicating local and foreign Armed Forces in drug control operations or training and equipping police forces with military weaponry and tactics to use in these operations. Law enforcement agencies face a number of challenges in order to respond effectively to drug-related crimes while also guaranteeing fundamental rights and freedoms.

***Militarization of drug control strategies (paragraphs 3.a and 3.b)***

Latin American Armed Forces have a longstanding history of intervention in domestic affairs, and in many countries they have kept several faculties to operate alongside police forces in matters such as drug control. Mexico and Colombia provide the clearest examples of this, as well as the Northern Triangle of Central America, but few exceptions can be made across the continent. When municipal or state police forces are considered corrupt and surpassed in their capability to process drug-related crimes, the use of Armed Forces for these operations increases. Whereas this deployment of military resources is usually planned as exceptional, it almost always ends up being institutionalized as permanent or extended indefinitely in time. One of the main consequences of military action in drug control is that it darkens the challenges that police forces must address: when governments resort to Armed Forces to act on domestic security issues, they overlook training the police properly to tackle these tasks. Therefore, because they rely on military resources, the police lose capability to deal with issues such as drug trafficking or border control. In this way, although the militarization of operations to control drug trafficking is justified mostly on the grounds of police corruption, it has not been accompanied by a profound police reform.

The increase of military presence in areas favourable to drug crops or transit zones, sometimes rural and isolated communities, has brought along an abrupt rise in complaints against military personnel for violations of human rights, including mistreatment and abuse, unfounded arrests, forced disappearances and arbitrary executions. This has been recognized by the former Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, and the former Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Juan Méndez[[2]](#footnote-2). Additionally, the Inter American Commission on Human Rights has expressed special concern for the situation in Mexico, where the national government’s militarized strategy to respond to the “War on Drugs” has led to an increase in social violence and a record number of human rights violations[[3]](#footnote-3).

Generally, military actions in drug control operations are carried out in coordination with local police or other civilian agencies. In recent years, several institutional reforms and new legislation came into force in many Latin American countries[[4]](#footnote-4) to facilitate militarization processes. In some cases, specific programs or institutions, made up of civilian and military personnel, were created for this purpose. Countries like Honduras, El Salvador and Guatemala created or strengthened police-military bodies, which are trained by and cooperate actively with Armed Forces in actions against drug trafficking, while others like Colombia have specific drug-control units within their Armed Forces. The extended use of these ‘special units’ undermines police capability to effectively carry out supply reduction measures and other drug control operations, and also acts against the professionalization of the Armed Forces on national defence matters which should be their primary concern.

These tendencies are associated with the progressive militarization of police forces across the region. The degree in which police forces cooperate with the military in areas like training, information exchange, equipment and weaponry sales or joint anti-drug, anti-terrorism or counter-insurgency operations proves a good indicator for police militarization. Moreover, special police units are trained to employ tactics with a greater level of violence than other law enforcement divisions, therefore their deployment for low complexity scenarios is particularly risky. The use of these elite units for police tasks has disproportionately affected vulnerable groups across the region, especially ethnic minorities and lower-class working communities, and has repeatedly resulted in human rights violations, including serious injuries and death[[5]](#footnote-5).

These interventions have not only proved to be ineffective to reduce drug-related crime, but also tend to perpetuate corruption, erode the professionalization of police forces and military institutions alike, and increase social and institutional violence while allowing for criminal organizations to continue operating and even expanding. What is more, these policies have not reduced the supply of illicit drugs. On the contrary: in the case of Colombia, after thousands of millions of dollars spent in the last fifteen years, coca production has rose to a new record level in 2016 according to the UNODC[[6]](#footnote-6). When compared to the declared goals of these measures, the militarization of drug control strategies has failed unequivocally.

***International cooperation (paragraphs 3.d, 3.e, 3.f and 3.g)***

The militarization processes underway in Latin American countries have been promoted by the United States (US) and other main actors such as Israel and Europe. The US has a great influence in defining the terms of police-military operations to control drug trafficking in the region and has funded these strategies for many years. Although domestically the US forbids by law the participation of the military in domestic security issues, through the Posse Comitatus Act, its foreign policy towards Latin America encourages this type of civilian-military collaboration. This perspective is based on the belief that, since there are no active inter-state conflicts in the continent, local Armed Forces are currently idle and should therefore be occupied in domestic security missions alongside the police. In consequence, thousands of millions of dollars are spent in training and equipment both for the military and other law enforcement agencies.

One of the most concerning aspects of this international cooperation channels is that they are gradually become more opaque, since US agencies are reducing their transparency obligations regarding foreign military operations and assistance[[7]](#footnote-7). There are no indicators to evaluate whether foreign assistance programs are actually achieving the results they pursue. Furthermore, a part of the budget allocated to anti-drug programs goes to unspecified countries, obscuring the process by which this budget is approved by Congress and giving way to discretionary action by different actors involved.

A wide array of evidence[[8]](#footnote-8) suggests that the system for training local personnel is disorganized and lacks supervision mechanisms. There is little to no way of knowing anything about the specific objectives and contents of each of the trainings, the people involved in imparting them or receiving them, nor about the way that this knowledge is applied at the national and sub-national level and the impact this has on local communities. One of the most important mechanisms to avoid imparting trainings to local units that have been involved in human rights violations is the legislation known as ‘Leahy Laws’. Introduced in 1990 and later permanently added to the Foreign Assistance Act, this legislation enforces a vetting process that is sometimes much too superficial.

United States Special Forces and the Southern Command, among other Latin American and European Armed Forces, organize and take part in joint exercises to strengthen military capacities in anti-drug or anti-terrorism operations - even in countries where military intervention in security issues such as these is strictly forbidden by law, such as Argentina or Chile. This is aggravated by the lack of accountability in relation to what happens during these events, what kind of doctrine is disseminated with respect to national security and the effects this produces in security strategies applied by national governments.

***Terrorism and the fight against drug trafficking (paragraphs 3.k and 3.p)***

Unlike other regions of the world, Latin America has no serious violence derived from political or religious extremism. Consequently, drug trafficking and other criminal networks or connected illicit markets have become a greater concern for local authorities. In the past few decades, the ‘hemispheric security’ narrative has built a conceptualization that links the trafficking of illegal substances to other forms of organized crime, notably terrorism. The implementation of security policies governed by this principle follows a tendency to associate these two phenomena under the notion of ‘narco-terrorism’.

Because of the idea that law enforcement agencies are incapable of confronting this ‘hybrid threat’, the intersection between the “War on Drugs” and the “War on Terror” has boosted military action on these matters - it is this complexity that gives way to the erosion of the limits between domestic security and external defence. This juxtaposition is especially prominent in countries such as Peru and Colombia, where internal conflicts prolonged for decades have led armed groups like Shining Path and the FARC to establish connections with coca cultivation and trafficking, and occupy territories now classified as transit routes. These same areas have thus been the target of constant military presence, which in turn only helped to escalate the conflict and resulted in serious human rights violations for the people of the rural and indigenous communities set in these territories.

Even without precise certainties about what risks these ‘narco-terrorist threats’ pose to the security of the citizens, many countries like Brazil, Peru and Argentina[[9]](#footnote-9) have adopted new legislation that allows the military to take down aircrafts suspected to be trafficking illicit drugs. These potentially lethal regulations are a blunt violation of the right to life and to a fair trial[[10]](#footnote-10), and constitute a serious preoccupation for human rights groups across the region.

***Use of military equipment for drug control operations (paragraph 3.m)***

The militarization previously described has called for an important amount of equipment and weaponry for Armed Forces and civilian law enforcement agencies. According to data compiled by the Security Assistance Monitor[[11]](#footnote-11), between 2009 and 2015 the United States alone sold military equipment and guns to Latin American countries for a total value of over 5 million dollars, most of which went to Mexico and Colombia. In many cases these sales were authorized and made effective on the grounds of “combating drug trafficking” and other cross-border crimes. Being part of a region that has some of the highest homicide rates in the world, Latin American countries have dealt with gun proliferation and armed violence for decades, with grave consequences for human rights. Illegal trafficking of guns across borders is fostered by the acquisition of weapons that, while originally entered legally, easily slip into the illicit market and become part of the very problem these measures are intended to resolve. Military equipment and heavy weaponry purchased on behalf of the “War on Drugs” undoubtedly represents a risk to aggravate the violence that already affects the region and has historically impacted on vulnerable groups in a disproportionate way.

1. **SECTION 4: Operational recommendations on cross-cutting issues: drugs and human rights, youth, children, women and communities**

Taking into consideration the current overcrowding of most of Latin American countries’ prisons and the inhumane conditions in which the prison population lives, we will focus our contribution on two specific problems: on one hand, the overuse of pre-trial detention for drug-related crimes and, on the other hand, the extension of arbitrary arrests -especially of young people, drug users and small actors in the chain. While human rights concerns associated with drug policy are more diverse, including the proportionality of sentences, criminalization of personal consumption, the incarceration of women for low-level offences or the right to access to health of consumers, we will address this two topics here and refer to our previous work to cover the rest[[12]](#footnote-12).

***Pre-trial detention for drug-related crimes (paragraphs 4.b, 4.j and 4.m)***

The right to be presumed innocent and liberty as a rule during the judicial process have both been affected by the overuse of pre-trial detention for drug-related practices. Countries like Brazil, Mexico and Peru enforce legislation that automatically places any person detained for drug-related offences in pre-trial detention for the duration of the criminal case against them. Since the law makes preventive detention mandatory in this cases, this goes directly against the evaluation of ‘procedural risks’ that are supposed to serve as the only grounds for its use. This has been declared contrary to the Inter-American system of human rights by the Inter American Commission on Human Rights[[13]](#footnote-13). According to the IACHR[[14]](#footnote-14), the proportion of people in pre-trial detention in Latin America deprived of their liberty for drug-related crimes is relevant. Drug-related offences were among the crimes that made up the main part of the prison population in 2012 in countries as varied as Bolivia, Colombia, Peru, Ecuador, Argentina and Venezuela. This particularly affects women: in 2012 almost 70% of women detained in Chile were in prison for drug-related crimes.

On the issue of alternatives to pre-trial detention, in 2017 the IACHR noted that the use of “drug courts” adopted by countries like Costa Rica, Guatemala, Chile and Panama as a non-custodial measure for minor crimes committed by problematic or dependent use, or for drug consumption or possession for personal use, failed to respond to a public health approach and did not tackle the mistreatment and human rights violations that occur in treatment centres, which are rarely investigated properly and promptly. Additionally, the Commission urged the States to “keep the persons who have engaged in such conduct from being subjected to custodial measures and entering the criminal justice system” seeing as “that there is no clear relationship between a harsher criminal justice policy and lower levels of drug use”[[15]](#footnote-15).

***Arbitrary arrests (paragraphs 4.c, 4.f and 4.o)***

Military deployment for drug-control operations has also resulted in arbitrary detentions and occasionally mistreatment and torture of the detainees. In Mexico, people have been forced by military officers through continued torture and sexual abuse to acknowledge they were part of drug cartels, photographed next to bags of cocaine and weapons for distribution to the national press, and falsely accused of the crime of organized delinquency[[16]](#footnote-16). A connection between massive raids conducted by the military and arbitrary arrests has also been reported by civil society organizations and sometimes state agencies in Honduras, El Salvador, Brazil and Peru, to name a few examples. These detentions only contribute to enlarge the prison population and to expose an ever-expanding number of people to the violence of incarceration[[17]](#footnote-17).

Arbitrary arrests are part of a wider variety of police and military practices to harass mostly young people from poor neighbourhoods and shanty towns. For these young people, especially boys, drug consumption is a factor that worsens their relationships with law enforcement agencies. In many cases the detention opens the door for more serious abuses like threats, beatings, theft of their personal belongings, evidence fabrication and long judicial processes for crimes they did not commit[[18]](#footnote-18) and in worse cases even torture and death[[19]](#footnote-19). In different countries across Latin America, most of drug-related arrests correspond consistently to cases of possession of small amounts of marijuana, or people who were caught *in flagrante* while using drugs, but hardly ever correspond to large-scale trafficking or dealing. In Argentina, between 2012 and 2015 around 38% of all drug-law related arrests were for simple possession[[20]](#footnote-20).

1. See: United Nations Office on Drugs and Crime (2017). *World Drug Report 2017*. Available at: <https://www.unodc.org/wdr2017/index.html> [↑](#footnote-ref-1)
2. Sessions 25° and 28° of the United Nations Human Rights Council, Reports A/HRC/26/36 of 1 April 2014 and A/HRC/28/68/Add.3 of 29 December 2014. [↑](#footnote-ref-2)
3. Inter-American Commission on Human Rights (2015). *Human Rights Situation in Mexico*. OEA/Ser.L/V/II, Official Documents Series, Document number 44/15, 31 December 2015. See: <http://www.oas.org/en/iachr/reports/pdfs/mexico2016-en.pdf> [↑](#footnote-ref-3)
4. This has happened, for example, in Mexico, Colombia, Peru, Guatemala, Honduras, El Salvador and Brazil. [↑](#footnote-ref-4)
5. Some cases include the death of eight people during a drug raid conducted by an elite unit of the Civil National Police of Guatemala in march 2015 (see: <http://revistafactum.com/en-la-intimidad-del-escuadron-de-la-muerte-de-la-policia/>); the beatings and mistreatment to detainees held by the Honduran ‘Fuerza de Seguridad Inter Institucional’ (FUSINA) after the protests against fraud during the general elections of 2017 (see: <http://www.ohchr.org/Documents/Countries/HN/2017ReportElectionsHRViolations_Honduras_SP.pdf>) or the death of Alan Stefano Tapia during a forced entry of the Grupo Especial de Operaciones Federales (GEOF) in a low-income neighbourhood in the city of Buenos Aires, Argentina (see: <https://www.cels.org.ar/web/capitulos/el-sistema-de-seguridad-como-ambito-de-reproduccion-de-violencias-y-desigualdad/>). For examples in the United States, see the American Civil Liberties Union’s report ‘*War Comes Home*” (2014), available online at: <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf>. [↑](#footnote-ref-5)
6. United Nations Office on Drugs and Crime (2017). Colombia. Monitoreo de territorios afectados por cultivos ilícitos en 2016. In collaboration with the Government of Colombia. July of 2017. See: <https://www.unodc.org/documents/colombia/2017/julio/CENSO_2017_WEB_baja.pdf> [↑](#footnote-ref-6)
7. This becomes evident with the increasing budget allocated to the military branch of the government, especially the US Department of Defence. For example, the Department of Defence went from controlling 20% of all foreign-military training funds in 2001 to being responsible for almost 60% of these funds in 2015. See Jackson, Rose (2017). “*Untangling the Web. A Blueprint for Reforming American Security Sector Assistance*”. Open Society Foundations, January of 2017. [↑](#footnote-ref-7)
8. Annual reports by the State Department’s foreign military training programs (available at <https://www.state.gov/t/pm/rls/rpt/fmtrpt/>) are often vague and have information missing or inconsistently reported. This was also noted by the International Security Advisory Board’s Report on Security Capacity Building in 2013. This Federal Advisory Committee recommended the State Department to “develop and employ a systematic and comprehensive monitoring and evaluation effort for its security capacity building programs” that measures “effectiveness against defined goals in terms of basic national objectives, not just value for money or inputs provided”. See the report online: <https://www.state.gov/documents/organization/202920.pdf> [↑](#footnote-ref-8)
9. Other countries that have this kind of legislation are Bolivia, Venezuela, Honduras, Colombia, Peru and Paraguay. [↑](#footnote-ref-9)
10. In Peru, the Air Bridge Denial Program, developed jointly by the government of Peru and the Central Intelligence Agency (CIA) of the United States, was interrupted in 2001 after an airplane with North American missionaries was mistakenly identified as a suspicious aircraft and was shot down by the Peruvian Air Force. As a result, two people were killed, even though there were no illicit elements or activities related to the aircraft. The program was resumed a few years later. [↑](#footnote-ref-10)
11. For more information on the data, please see: <http://securityassistance.org/> [↑](#footnote-ref-11)
12. CELS, *The impact of drug policy in human rights. The experience in the Americas*, 2015. [↑](#footnote-ref-12)
13. Inter-American Commission on Human Rights, “Report on the Use of Pre-trial Detention in the Americas”, December 2013. See online: [www.oas.org/es/cidh/ppl/informes/pdfs/informe-pp-2013-es.pdf](http://www.oas.org/es/cidh/ppl/informes/pdfs/informe-pp-2013-es.pdf) [↑](#footnote-ref-13)
14. Inter-American Commission on Human Rights Rapporteurship on the Rights of Persons Deprived of Liberty (2013). *Informe sobre el uso de la prisión preventiva en las Américas*. OEA/Ser.L/V/II., Official Documents Series, Document number 46/13, 30 December 2013. See: <http://www.oas.org/es/cidh/ppl/informes/pdfs/informe-pp-2013-es.pdf> [↑](#footnote-ref-14)
15. Inter-American Commission on Human Rights Rapporteurship on the Rights of Persons Deprived of Liberty (2017). *Measures to Reduce Pre-trial Detention*. OEA/Ser.L/V/II.163, Official Documents Series, Document number 105, 3 July 2017. See: <http://www.oas.org/en/iachr/reports/pdfs/PretrialDetention.pdf> [↑](#footnote-ref-15)
16. On the salient case of Claudia Medina Tamariz, please see: <http://centroprodh.org.mx/> [↑](#footnote-ref-16)
17. For more information on this issue, please see CELS, *The impact of drug policy in human rights. The experience in the Americas*, 2015. See online: <http://www.cels.org.ar/common/drug%20policy%20impact%20in%20the%20americas.pdf> [↑](#footnote-ref-17)
18. For reference to these practices in Argentina, please see CELS, *Hostigados. Violencia y arbitrariedad policial en los barrios populares*, 2016. See online: <https://www.cels.org.ar/web/wp-content/uploads/2016/12/Hostigados.pdf> [↑](#footnote-ref-18)
19. In Argentina, William Vargas González was filmed while being tortured by a group of seven prison guards in a penitentiary in the province of Mendoza in 2010. He was deprived of liberty for growing cannabis - although in the trial it could not be proved that he commercialized it, he was sentenced to serve three years in prison for simple possession. William was handcuffed and forced on to his knees while he received brutal beatings and humiliation by the guards. Three years after this episode, Miguel Ángel Durrels, a 29-year-old horse groom, was detained in the Buenos Aires province in September of 2013 for possessing 78 grams of marijuana and was taken to a police station not suitable for this purpose, where he was held for over 12 hours. He was later found dead in his cell, hung by an electrical cable, and his body showed evidence of having been struck in the face and the chest. [↑](#footnote-ref-19)
20. Procuraduría de Narcocriminalidad, Ministerio Público Fiscal de la Nación. For the data, please see: <https://pes.mpf.gov.ar/> [↑](#footnote-ref-20)