



# Human Rights, Illicit Cultivation and Alternative Development: Connecting the Dots . . .

Discussion paper<sup>1</sup>

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## Introduction

The three UN drug control conventions (1961, 1971 and 1988) and subsequent UN Political Declarations and Action Plans (1998, 2009, 2016) have served as a basis for supply reduction measures towards the cultivation of crops used for the illicit production of narcotic drugs. Frequently, forced eradication operations have led to violent confrontations with small-scale farmers of coca, cannabis and opium poppy, and to numerous human rights violations. Alternative development (AD) programmes have been at the core of efforts to find a more humane balance between drug control obligations, supply reduction policy objectives, and the protection of the rights of people dependent on illicit cultivation for basic subsistence.

The development of the AD discourse, its funding support and its troubled relationship with ongoing—and better resourced—parallel law enforcement and eradication operations, have encountered serious challenges. For many, *“the difficult balancing between short-term objectives of illicit cultivation reduction and the longer-term approaches based on sustained development efforts has called into question the relevance and even the legitimacy of alternative development policies.”*<sup>2</sup> Human rights arguments have thus far not played an important role in this discussion and bringing economic, social and cultural rights more firmly to the table could change the terms of the debate.

Over the past decade, policymakers, civil society groups and UN agencies have dedicated increasing attention to human rights violations associated with the criminalisation of people who use drugs, the transmission of HIV and hepatitis, forced treatment and drug detention centres, mass incarceration of low-level drug offenders, the death penalty for drug offences, extrajudicial killings, and the lack of

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<sup>2</sup> Deborah Alimi, “Same script, different play: policy implications of the conceptual struggles around alternative development”, in: *Alternative development: practices and reflections*, Bulletin on Narcotics, vol. LXI, 2017, UNODC, Vienna 2018, p. 16. [http://www.unodc.org/documents/data-and-analysis/bulletin/2017/Bulletin\\_on\\_Narcotics\\_V1705843.pdf](http://www.unodc.org/documents/data-and-analysis/bulletin/2017/Bulletin_on_Narcotics_V1705843.pdf)

access to controlled medicines in the developing world. Much less attention, however, has been paid to human rights protection for rural communities (small farmers, sharecroppers and day labourers) involved in the cultivation, harvesting, processing and trading of drug-linked crops.

The only explicit mention of human rights in any of the three UN drug control treaties can be found in the 1988 Convention Against Trafficking of Narcotic Drugs and Psychotropic Substances and deals specifically with *“measures to eradicate illicit cultivation of narcotic plants”*. Article 14.2 specifies that such measures *“shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment”*.

Over the following decades, political declarations were adopted in which references to human rights progressively gained more attention. The 1998 UN General Assembly Special Session (UNGASS) on the World Drug Problem adopted an *Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development* that opens with the following preamble:

*Reaffirming* that the fight against illicit drugs must be pursued in accordance with the provisions of the international drug control treaties, on the basis of the principle of shared responsibility, and requires an integrated and balanced approach in full conformity with the purposes and principles of the Charter of the United Nations and international law, and particularly with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States and all human rights and fundamental freedoms

The 1998 UNGASS recognised that *“[d]espite the adoption of international conventions promoting the prohibition of illicit drug crops, the problem of the illicit cultivation of the opium poppy, the coca bush and the cannabis plant continues at alarming levels”*.<sup>3</sup> The Political Declaration therefore established the target of *“eliminating or reducing significantly the illicit cultivation of the coca bush, the cannabis plant and the opium poppy by the year 2008”*.<sup>4</sup> Despite the implementation of various supply reduction strategies, however, the phenomenon of illicit cultivation has continued to grow. While measures to limit cultivation sometimes led to reductions at local levels, the impacts on the massive and resilient global drugs market have been negligible. In the absence of notable progress by the 2008 target date, the 2009 Political Declaration extended the deadline by an additional decade, to 2019. It also reaffirmed that *“the ultimate goal of both demand and supply reduction strategies and sustainable development strategies is to minimize and eventually eliminate the availability and use of illicit drugs and psychotropic substances in order to ensure the health and welfare of humankind”*.<sup>5</sup>

In advance of the upcoming high-level review in March 2019, the findings of the latest World Drug Report have already shown that those targets again will not be met.<sup>6</sup> To the contrary, *“drug markets are expanding, with cocaine and opium production hitting absolute record highs”* according to UNODC Executive Director Yury Fedotov. *“The World Drug Report is the mirror in front of us”*, said German Ambassador Däuble in Vienna at the launch of the report on World Drug Day:

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<sup>3</sup> A/RES/S-20/4, UN General Assembly Special Session, *Measures to enhance international cooperation to counter the world drug problem, E - Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development*, General Assembly, 10 June 1998, paragraph 1.

<sup>4</sup> A/RES/S-20/2, UN General Assembly Special Session, *Political Declaration*, 10 June 1998, paragraph 19.

<sup>5</sup> E/CN.7/2009/12, Commission on Narcotic Drugs, *Political Declaration and Plan of Action on International Cooperation Towards an Integrated and Balanced Strategy to Counter the World Drug Problem*, High-level segment, Vienna, 11-12 March 2009, Political Declaration, para 2.

<sup>6</sup> UN News, *Cocaine and opium production worldwide hit ‘absolute record highs’ - major threat to public health says UN study*, 26 June 2018. <https://news.un.org/en/story/2018/06/1013072>

*“Unfortunately, it shows a disturbing picture of the ever-growing production and consumption of drugs worldwide.”*<sup>7</sup> The lack of effectiveness of the global drug control system to meet its targets adds urgency to pertinent questions about the human rights violations that frequently occur in the failing attempts to meet them.

The 2016 UNGASS Outcome Document, representing the most recent and most advanced global consensus on international drug control, for the first time devotes special sections to human rights and development, giving both issues more prominence in the global drugs debate. The section on development-oriented drug policy refers to *“comprehensive strategies aimed at alleviating poverty and strengthening the rule of law”* and to *“ensuring the empowerment, ownership and responsibility of affected local communities, including farmers and their cooperatives, by taking into account the vulnerabilities and specific needs of communities affected by or at risk of illicit cultivation, ... with a view to contributing to the building of peaceful, inclusive and just societies, consistent with the Sustainable Development Goals and in compliance with relevant and applicable international and national law”*. It also mentions *“the use of relevant human development indicators”* to measure the impact of alternative development programmes.<sup>8</sup>

In this discussion paper we want to explore in detail what the 2016 UNGASS commitment *“to respecting, protecting and promoting all human rights, fundamental freedoms and the inherent dignity of all individuals and the rule of law in the development and implementation of drug policies”*<sup>9</sup> truly means for policies addressing the illicit cultivation of coca, opium poppy and cannabis.

### **Human rights guidelines for drug control**

The drug treaties are so-called ‘suppression conventions’ that obligate states to criminalise certain forms of conduct under their domestic law *“in order to suppress these ‘treaty crimes’ or ‘crimes of international concern’”*, and given the global implementation of their provisions *“they are important legal mechanisms for the globalization of penal norms”*.<sup>10</sup> However, *“they offer no obligations or guidance on what is and is not an appropriate penal response. ... Floors have been established with no ceilings. In many cases, this is an invitation to governments to enact abusive laws and policies, especially in a global context where drugs and drug trafficking are defined as an existential threat to society and the stability of nations, and people who use drugs and those involved in the drug trade are stigmatized and vilified.”*<sup>11</sup> Among the drafters of the 1988 Convention, there was *“an awareness of the Convention’s potential for a negative human rights impact and that the Convention like all suppression conventions is not self-regulating with regard to human rights. The parties to these*

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<sup>7</sup> Ambassador Däuble (Germany), *Statement at the Launch of the United Nations World Drug Report 2018*, Vienna 26 June 2018. <https://wien-io.diplo.de/iow-en/news/statement-wdr/2112142>

<sup>8</sup> A/RES/S-30/1, *Our joint commitment to effectively addressing and countering the world drug problem, Chapter 7, Operational recommendations on alternative development; regional, interregional and international cooperation on development-oriented balanced drug control policy; addressing socioeconomic issues*, Resolution adopted by the General Assembly on 19 April 2016, paragraphs 7(a), (d) and (g). <http://undocs.org/en/A/RES/S-30/1>

<sup>9</sup> *Ibid.*, paragraph 4.

<sup>10</sup> Neil Boister, “Human rights protections in the suppression conventions,” *Human Rights Law Review*, Vol. 2, Issue 2, Autumn 2002, p. 199-200. <https://doi.org/10.1093/hrlr/2.2.199>

<sup>11</sup> Rick Lines, Richard Elliott, Julie Hannah, Rebecca Schleifer, Tenu Avafia, and Damon Barrett, “The Case for International Guidelines on Human Rights and Drug Control”, *Health and Human Rights Journal*, March 8, 2017. <https://www.hhrjournal.org/2017/03/the-case-for-international-guidelines-on-human-rights-and-drug-control/>

*conventions rely on external human rights norms in domestic and international law to soften their human rights impact.”<sup>12</sup>*

Recently, international guidelines have been developed to promote human rights compliance in several policy areas, for example the *Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (‘the Bangkok Rules’)<sup>13</sup>, the *Guiding Principles on Business and Human Rights*,<sup>14</sup> the *Guiding Principles on Extreme Poverty and Human Rights*,<sup>15</sup> the *Standard Minimum Rules for the Treatment of Prisoners* (‘the Nelson Mandela Rules’),<sup>16</sup> and the *Yogyakarta Principles on international human rights standards in relation to sexual orientation and gender identity*.<sup>17</sup> In many cases, these documents have been used to influence policy, legislative and judicial decisions, and have proved to be effective tools for promoting human rights compliance among both state and non-state actors.<sup>18</sup>

No international standards of human rights have been formulated in the field of drug control, let alone in the specific case of illicit cultivation.<sup>19</sup> To fill the gap, the *United Nations Development Programme* (UNDP) and the *International Centre on Human Rights and Drug Policy* (ICHRDP) at the University of Essex initiated a project to elaborate *International Human Rights Guidelines on Drug Control*, including sections devoted to cultivation, rural development and indigenous uses of psychoactive plants.<sup>20</sup>

### **Cultivation: the latitude of drug treaty provisions**

The 1961 Single Convention requires states to “*destroy the coca bushes if illegally cultivated*” (Art. 26.2), and its 1972 amending protocol extends that provision to opium poppy and cannabis plants, obliging states to “*take appropriate measures to seize any plants illicitly cultivated and to destroy them*” (Art. 22.2). The 1988 Trafficking Convention reinforces those provisions, saying that each state “*shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory*” (Art. 14.2). It also added the specific obligation for any state party to “*establish as criminal offences under its domestic law ... [the] cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs [for illicit purposes]*” (Art. 3.1.a.ii) and to make such offences “*liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation*” (Art. 3.4.a).

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<sup>12</sup> Boister, *Human rights protections in the suppression conventions* (2002), op. cit., p. 217.

<sup>13</sup> 2010, see <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf>

<sup>14</sup> 2011, see [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>15</sup> 2012, see [http://www.ohchr.org/Documents/Publications/OHCHR\\_ExtremePovertyandHumanRights\\_EN.pdf](http://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf)

<sup>16</sup> 2015, see [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/C.3/70/L.3](http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/70/L.3)

<sup>17</sup> 2017 (updated from 2006), see <https://yogyakartaprinciples.org/principles-en/>

<sup>18</sup> See, e.g., Inter-American Court of Human Rights, *Advisory Opinion on Gender Identity and Equality and Non-Discrimination of Same Sex Couples*, Advisory Opinion OC-24/17, November 24, 2017, para. 112 (citing Yogyakarta Principles); Supreme Court of India, *National Legal Services Authority vs. Union of India & Ors* on 15 April, 2014 (extensive discussion of Yogyakarta Principles and their application); ARC International, *The Principles in Action* (website tracking use of Yogyakarta Principles in Action), <http://ypinaction.org/yogyakarta-principles-10/>

<sup>19</sup> Ernestien Jensema, *Human rights and drug policy*, Transnational Institute 2017. Retrieved from <https://www.tni.org/en/briefing/human-rights-and-drug-policy>, 22 March 2018.

<sup>20</sup> The project receives support from the Swiss government and the German GIZ Global Partnership on Drug Policies and Development (GPPDP); several other UN agencies, including UNODC and OHCHR, and civil society organisations, including TNI, are involved in developing the guidelines which are planned to be released towards the end of 2018.

Those provisions provided the legal justification for the internationalisation of the “war on drugs”, including large-scale eradication operations, especially in the Andean region and Mexico. Consequently, marginalised rural communities involved in illicit cultivation (small farmers, day labourers, micro-traders) have suffered regular discrimination, stigmatisation, criminalisation and imprisonment, and the destruction or confiscation of their livelihoods, often leading to the displacement of people and crops to new areas.

The treaties do leave a certain amount of latitude for states to apply less repressive policies and to align their drug policy with their human rights obligations. After all, as already mentioned above, the 1988 Convention also specifies that eradication measures “*shall respect fundamental human rights*” (Art. 14.2). Moreover, the 1961 (as amended) and 1988 conventions both assert that states should take “appropriate measures” to eradicate illicit cultivation. This wording is explained as follows by the Commentary on the 1972 Protocol where it was first introduced: “*i.e., they are bound to take such measures as may be necessary, but only to the extent that they appear to be practical and can reasonably be expected of them under their special conditions*”.<sup>21</sup>

The 1988 Convention also allows states “*in appropriate cases of a minor nature*” to “*provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration*” (Art. 3.4.c). Moreover, allowable measures may include support for “*integrated rural development leading to economically viable alternatives to illicit cultivation*” (Art. 14.3.4a). As the Commentary explains, that subparagraph “*creates no legal obligation on Parties, but draws attention to the need, in some countries and regions, for programmes of integrated rural development designed, in effect, to rebuild a local economy hitherto partly or entirely based on illicit cultivation*”.<sup>22</sup>

This legal latitude enables states to weigh different policy options in order to harmonize their drug policy as much as possible with their human rights obligations. As the UN Special Rapporteur on the Right to Health has underscored, when “*the goals and approaches of the international drug control regime and international human rights regime conflict, it is clear that human rights obligations should prevail. The General Assembly has consistently adopted resolutions declaring that international drug control must be carried out in conformity with the Charter, and ‘with full respect for human rights’*”.<sup>23</sup> Despite the fact that the primary goal of the international drug control regime is the protection of the health and welfare of humankind, he added, “*consideration of human rights is absent in the treaties and has lacked priority among the implementing bodies. [...] it is clear that significantly more must be done to make human rights central to drug control*”.<sup>24</sup>

### **Adequate standard of living**

The International Covenant on Economic, Social and Cultural Rights (CESCR) guarantees “*the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions*” and “*the fundamental*

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<sup>21</sup> E/CN.7/588, *Commentary on the Protocol Amending the Single Convention on Narcotic Drugs, 1961, done at Geneva 25 March 1972*, United Nations, New York 1976, p. 70, para 7.

<sup>22</sup> E/CN.7/590, *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988*, United Nations, New York 1998, p. 302, section 14.18.

<sup>23</sup> A/65/255, General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, 6 August 2010, p. 6, para 10. <http://undocs.org/en/A/65/255>

<sup>24</sup> *Ibid.*, p. 6, paras 11 and 13.

*right of everyone to be free from hunger” (art. 11). After more than a decade of consultations with States, civil society organisations, UN agencies and communities living in poverty, the Human Rights Council adopted in 2012 the *Guiding Principles on Extreme Poverty and Human Rights*, which “are premised on the understanding that eradicating extreme poverty is not only a moral duty but also a legal obligation under existing international human rights law. Thus, the norms and principles of human rights law should play a major part in tackling poverty and guiding all public policies affecting persons living in poverty.”<sup>25</sup> According to the Guidelines, “Poverty is an urgent human rights concern in itself. It is both a cause and a consequence of human rights violations and an enabling condition for other violations. [...] Persons experiencing extreme poverty live in a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce one another.”<sup>26</sup>*

Profit from the illicit drugs trade does not flow exclusively to organised crime or ‘cartels’. For millions of the most impoverished people in marginalised urban and rural communities the drugs economy provides the only available livelihood option. It serves as an essential safety net and an underground survival economy, especially in conflict situations. An important question in this regard is under what circumstances taking refuge in the illegal drugs economy for subsistence reasons could be legitimised based on human rights arguments. People have the right to be free from hunger, to an adequate standard of living, to live a life in dignity, and to social security. When states fail in meeting their obligations to secure these rights, a strong argument can be made that they cannot interfere when people as a consequence are forced to find their own ways to do so, even if that means their involvement in illicit cultivation in absence of viable licit alternatives.

It is not easy to estimate how many people worldwide are dependent on illicit cultivation to make ends meet. Back in 1998, UN sources estimated that “*about 700,000 families, or around 4 million people, depend on income derived from the cultivation of coca bush and opium poppy*”, based on a global hectarage of 280,000 hectares of illicit opium poppy and 220,000 hectares of coca in 1996.<sup>27</sup> Since then, however, illicit opiate and cocaine markets have grown substantially, reaching historical records today. Between 1996 and 2016, based on the very first and the latest World Drug Reports, illicit opium production doubled from 5,000 to 10,500 tons (from 420,000 hectares), “*easily the highest estimate recorded by UNODC since it started monitoring global opium production*”.<sup>28</sup> Also global cocaine manufacture in 2016 reached its highest level ever, an estimated 1,410 tons compared to about 1,000 tons in 1996, though coca hectarage has remained relatively stable over the past two decades and the increase is mainly due to increased yields per hectare.<sup>29</sup> It is safe to say, therefore, that the number of people dependent on illicit cultivation today is considerably higher, as can be illustrated by recent national data from the main producing countries.

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<sup>25</sup> A/HRC/21/39, *Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*, Human Rights Council, 18 July 2012, Preface, para 1. See <http://www.ohchr.org/EN/Issues/Poverty/Pages/DGPIIntroduction.aspx>, accessed on 18 June 2018.

<sup>26</sup> *Ibid.*, paragraphs 3 and 4.

<sup>27</sup> United Nations, *Alternative Development - Drug Control through Rural Development*, article prepared for the ACC Network on Rural Development and Food Security, September 1998, p. 1. [http://www.unodc.org/pdf/publications/alt-development\\_rural-development.pdf](http://www.unodc.org/pdf/publications/alt-development_rural-development.pdf)

<sup>28</sup> UNODC, *World Drug Report 2018*, June 2018, p. 8. Figures for 1996 were reported in the first *World Drug Report 1997*, p. 18, see <http://www.un.org/ga/20special/wdr/wdr.htm>

<sup>29</sup> *Ibidem.*

In the case of Myanmar, for example, UNODC indicated for 2015 a range between 135,000 to 221,000 households involved in poppy cultivation,<sup>30</sup> a number that may have decreased since the office recorded a 25% decrease in cultivation in Shan and Kachin states from 54,500 hectares in 2015 to 41,000 in 2017.<sup>31</sup> The crop monitoring survey by UNODC and the Colombian government estimated for 2016 that a number of 106,900 households were involved in cultivating 146,000 hectares of coca – with an average of 5 persons per household.<sup>32</sup> That number, however, appears to be too low when compared with data emerging from the *Programa Nacional Integral de Sustitución de cultivos ilícitos* (PNIS), implemented as part of the peace accords. According to PNIS director Eduardo Díaz, for example, by April 2018 already 123,000 families had signed up under collective agreements.<sup>33</sup>

For Afghanistan, former World Bank expert William Byrd estimated that the unprecedented amount of 328,000 hectares of opium poppy cultivated in 2017 provided around 590,000 full time equivalent (FTE) jobs for farming households.<sup>34</sup> Additionally, according to UNODC, “*opium poppy weeding and harvesting provided the equivalent of up to 354,000 full time jobs to local and migrant workers hired by farmers*” and that “*the sheer size of opium production in 2017 suggested that many more Afghans sustained themselves with some income from the onwards processing and trade with opiates*”.<sup>35</sup> On top of that, those deriving income directly from opium support the wider, licit rural economy: “*Afghan farmers purchase food, have medical expenses, and purchase daily needs products. These expenses - paid from opium money - benefited local bakers, butchers and other small-scale businesses in rural Afghanistan.*”<sup>36</sup>

The same holds true for Myanmar or Colombia, where also many more people derive part of their income directly from illicit cultivation as day labourers in harvesting, processing and trading, or benefit indirectly from the stimulating effects it has on the local licit rural economy. Finally, the above figures relate to opium and coca only, and a global estimate of people dependent on illicit cultivation would multiply if cannabis enters the equation. In Morocco alone, according to figures cited by the interior ministry, an estimated 90,000 households, or 760,000 people, depend for their livelihoods on cannabis production; other observers estimate that more than one million people in the Rif region depend on the cannabis economy.<sup>37</sup>

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<sup>30</sup> UNODC, *Southeast Asia Opium Survey 2015*, Regional Office for Southeast Asia and the Pacific, December 2015, p. 30.

<sup>31</sup> UNODC, *Myanmar Opium Survey 2017*, Regional Office for Southeast Asia and the Pacific, December 2017, p. 7.

<sup>32</sup> UNODC/Government of Colombia, *Colombia, Survey of territories affected by illicit crops – 2016*, August 2017, p. 11-12.

<sup>33</sup> Eduardo Díaz Uribe, *La sustitución de cultivos no fracasa ni se detiene*, El Tiempo, 6 de abril 2018. Out of the 123,000, 56,655 have signed individual substitution contracts covering 45,641 hectares. <http://www.eltiempo.com/opinion/la-sustitucion-de-cultivos-no-fracasa-ni-se-detiene-eduardo-diaz-uribe-201838> INDEPAZ estimated that there may be an additional 100,000 families involved in coca cultivation that are not part of the collective agreements, see: Camilo González Posso (INDEPAZ), *Balance de un año de implementación de la política de sustitución de cultivos de coca*, Revista Semillas, 2 de abril 2018. <http://www.semillas.org.co/es/balance-de-un-ao-de-implementacin-de-la-politica-de-sustitucin-de-cultivos-de-coca>

<sup>34</sup> Byrd, W.A., *Disease or Symptom? Afghanistan's burgeoning opium economy in 2017*, Afghanistan Research and Evaluation Unit 2017, p 1.

<sup>35</sup> UNODC, *Afghanistan opium survey 2017, Challenges to sustainable development, peace and security*, May 2018, p.7.

<sup>36</sup> Ibidem.

<sup>37</sup> Tom Blickman, *Morocco and Cannabis: Reduction, containment or acceptance*, TNI Drug Policy Briefing Nr. 49, March 2017, p. 2. [http://druglawreform.info/images/stories/documents/DPB\\_49\\_eng\\_web.pdf](http://druglawreform.info/images/stories/documents/DPB_49_eng_web.pdf)

## Forced eradication vs. “proper sequencing”

In the absence of alternative income opportunities, forced eradication amounts to a violation of the human rights of growers and their families to an adequate standard of living and freedom from hunger. It is also in conflict with the 2012 Poverty Guidelines and has a negative effect on the realization of the first Sustainable Development Goal (SDG) to “*End poverty in all its forms everywhere*”. In Shan State, for example, according to UNODC, “[o]pium poppy households seem to be primarily buying food from opium poppy income regardless of their location, indicating that some degree of food insecurity could be expected if opium poppy cultivation were eliminated without alternatives in place”.<sup>38</sup> In fact, that already happened after the enforcement of the opium bans in northern Myanmar, in the early 2000s in the Kokang and Wa regions, two areas controlled by ceasefire groups, triggering a humanitarian crisis. More than a quarter of the Kokang population migrated out of the area in search of alternative livelihoods elsewhere; while the Wa authorities, in anticipation of the ban, forcibly relocated tens of thousands of villagers to southern Shan State. The UN World Food Programme (WFP) was called in to provide emergency aid to address the acute food insecurity triggered by the opium bans.<sup>39</sup>

Human rights protection in the field of illicit cultivation and alternative development requires, in the first place, proper sequencing of interventions, which means that sustainable alternative livelihoods must be in place first. As noted in a 2009 report by the Washington Office on Latin America (WOLA):

“Eradication prior to the establishment of alternative livelihoods pushes people deeper into poverty, and fosters human rights violations, social unrest, instability and violence, undermining already tenuous government legitimacy and nascent institution building. Forced eradication can fuel local insurgencies and hence civil conflict and internal displacement. It also reinforces reliance on growing illicit crops, as farmers without other viable economic alternatives are forced to replant, and spreads the problems associated with the cultivation of such crops to new areas.”<sup>40</sup>

Several international and regional bodies have underscored the importance of proper sequencing. The intergovernmental expert working group on eradication and alternative development, convened by the UN Commission on Narcotic Drugs (CND) in 2008, recommended that donor countries “*do not make development assistance conditional on reductions in illicit drug crop cultivation*” and that member states “*ensure that eradication is not undertaken until small-farmer households have adopted viable and sustainable livelihoods and that interventions are properly sequenced.*”<sup>41</sup> The World Bank affirmed in a report on Afghanistan that there is “*a moral, political and economic case for having alternative livelihood programs in place before commencing eradication.*”<sup>42</sup> The EU

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<sup>38</sup> UNODC, *Evidence for enhancing resilience to opium poppy cultivation in Shan State, Myanmar - Implications for alternative development, peace, and stability*, UNODC Regional Office for Southeast Asia and the Pacific, March 2017, p. 47. [http://www.unodc.org/documents/crop-monitoring/sea/2016\\_Myanmar\\_Shan\\_Opium\\_Poppy\\_web.pdf](http://www.unodc.org/documents/crop-monitoring/sea/2016_Myanmar_Shan_Opium_Poppy_web.pdf)

<sup>39</sup> Martin Jelsma and Tom Kramer, *Downward Spiral - Banning Opium in Afghanistan and Burma*, TNI Drugs & Conflict Debate Paper 12, June 2005, p. 16. <http://www.druglawreform.info/images/stories/documents/debate12.pdf>

<sup>40</sup> Coletta Youngers and John Walsh, *Development First: A More Humane and Promising Approach to Reducing Cultivation of Crops for Illicit Markets*, Washington Office on Latin America (WOLA), December 2009, p. 28.

<sup>41</sup> UNODC/CND/2008/WG.3/2, Open-ended intergovernmental expert working group on international cooperation on the eradication of illicit drug crops and on alternative development Vienna, 2-4 July 2008, *Results attained by Member States in achieving the goals and targets set at the twentieth special session of the General Assembly, the limitations and problems encountered and the way forward: international cooperation on the eradication of illicit drug crops and on alternative development*, Note by the Secretariat, 20 May 2008, p.5.

<sup>42</sup> World Bank, *Afghanistan: State Building, Sustaining Growth, and Reducing Poverty*. A Country Economic Report, Poverty Reduction and Economic Management Sector Unit South Asia Region, World Bank, Report No. 29551-AF, 2004. <http://documents.worldbank.org/curated/en/609871468767734738/pdf/31673.pdf>

emphasized in a common position *“that fundamental notions such as respect for human rights, empowerment, accountability, participation and non-discrimination of vulnerable groups should be integral parts of any approach to alternative development”* and that forced eradication should only be an option *“when ground conditions ensure that small-scale farmers have had access to alternative livelihoods for a sufficient time period”*.<sup>43</sup>

The CND commissioned *“a rigorous and comprehensive thematic evaluation ... for determining best practices in alternative development by assessing the impact of alternative development on both human development indicators and drug control objectives and by addressing the key development issues of poverty reduction, gender, environmental sustainability and conflict resolution”*.<sup>44</sup> The study concluded in 2005:<sup>45</sup>

- As growers of illicit crops accept participating in AD projects, they need to be allowed a transition period until AD activities (on- or off-farm) will prove to be suitable to their agro-ecological environment, local knowledge, and start generating income that will contribute to improve the quality of their lives.
- In farmers’ minds, conditionality tends toward associating AD with law-enforcement. This association can be fatal for AD; the two functions must always remain separate.
- AD requires an appropriate policy-legal framework, one that allows illicit-crop growers to be treated first as candidates for development rather than as criminals. Drug-crop eradication on farms lacking viable alternatives undermines development.
- Make elimination of illicit crops conditional on improvements in the lives and livelihoods of households. Do not make it a prerequisite for development assistance.
- Illicit crops should be eradicated only when viable alternatives exist for households participating in alternative development. Successful alternative development requires proper sequencing.

After difficult negotiations, the CND agreed in the 2009 Plan of Action that states should *“[e]nsure, when considering taking eradication measures, that small-farmer households have adopted viable and sustainable livelihoods so that the measures may be properly sequenced in a sustainable fashion and appropriately coordinated”*.<sup>46</sup> In practice, however, that principle is rarely applied. One of the few exceptions is Bolivia where *“eradication is no longer a prerequisite for development assistance”* since the government introduced a policy of community coca control and integrated development with coca.<sup>47</sup> But in the national strategies of Colombia and Peru, for example, *“it is specified that prior (voluntary or forced) eradication is a precondition to participation in alternative development programmes”*.<sup>48</sup> All US-funded AD programmes in those countries therefore required *“that coca*

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<sup>43</sup> Council of the European Union, *The EU Approach on alternative Development*, Horizontal Working Party on Drugs, 9597/06, Brussels, 18 May 2006, p.4. <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209597%202006%20INIT>

<sup>44</sup> Commission on Narcotic Drugs, *The role of alternative development in drug control and development cooperation*, Resolution 45/14, 15 March 2002, paragraph 10. [http://www.unodc.org/documents/commissions/CND/Drug\\_Resolutions/2000-2009/2002/CND\\_Res-45-14.pdf](http://www.unodc.org/documents/commissions/CND/Drug_Resolutions/2000-2009/2002/CND_Res-45-14.pdf)

<sup>45</sup> UNODC, *Alternative Development: A Global Thematic Evaluation*, Final Synthesis Report, 2005, pp. vii and 16. [http://www.unodc.org/pdf/Alternative\\_Development\\_Evaluation\\_Dec-05.pdf](http://www.unodc.org/pdf/Alternative_Development_Evaluation_Dec-05.pdf)

<sup>46</sup> E/CN.7/2009/12, Commission on Narcotic Drugs, *Political Declaration and Plan of Action on International Cooperation Towards an Integrated and Balanced Strategy to Counter the World Drug Problem*, High-level segment, Vienna, 11-12 March 2009, Plan of Action, Part II, Supply reduction and related measures, Section D, International cooperation on eradicating the illicit cultivation of crops used for the production of narcotic drugs and psychotropic substances and on alternative development, para 47 (g).

<sup>47</sup> Linda Farthing and Kathryn Ledebur, *Habeas Coca, Bolivia’s Community Coca Control*, OSF Global Drug Policy Program, July 2015, p 20. <https://www.opensocietyfoundations.org/sites/default/files/habeas-coca-bolivas-community-coca-control-20150706.pdf>

<sup>48</sup> UNODC, *World Drug Report 2015*, Chapter II, Alternative Development, United Nations, May 2015, p. 103. [http://www.unodc.org/documents/wdr2015/WDR15\\_Chapter\\_2.pdf](http://www.unodc.org/documents/wdr2015/WDR15_Chapter_2.pdf)

*crops be eradicated before economic and other forms of assistance can be provided to small farmers.*<sup>49</sup>

## **Aerial spraying**

A particularly controversial method of eradication is the aerial spraying with herbicides, which was, until three years ago, undertaken in Colombia at a massive scale, using a highly concentrated glyphosate mixture. Between 1999 and 2015, about 1,800,000 hectares of coca fields were sprayed.<sup>50</sup> Glyphosate has been associated with serious risks to the environment and human health.<sup>51</sup> The Ombudsman's Office received many thousands of complaints about the contamination and destruction of food crops, the pollution of drinking water sources and health problems (skin rashes, diarrhea, headaches and respiratory problems), severely impacting on the rights to food, water and health of those exposed.<sup>52</sup> Moreover, fumigations have been associated with deforestation and displacement, because it *"diffuses coca production, shifting it to forests of ecological importance and to areas inhabited by low-income, especially Afro-Colombian and indigenous communities, which as a result are increasingly displaced"*.<sup>53</sup>

In 2008, Ecuador filed a complaint at the International Court of Justice, claiming that *"Colombia's aerial spraying of toxic herbicides in border areas has caused serious disruption of the traditional way of life of indigenous communities who live, farm and hunt in the affected areas. Pollution damage has significantly harmed the natural resources and environment on which these communities depend"*.<sup>54</sup> In its brief to the ICJ, Ecuador accused Colombia of violating several human rights provisions associated with the right to life: *"These include the right to health, the right to food, the right to water, and the right to a healthy and decent environment."*<sup>55</sup>

In October 2015, in the midst of peace negotiations and after the International Agency for Research on Cancer, a specialized WHO agency, reclassified glyphosate as a probable carcinogen,<sup>56</sup> the Colombian government following the "precautionary principle" suspended the aerial spraying operations. Ground spraying with glyphosate (manually from backpacks), however, restarted in April 2016, and in April 2018 a new high-tech spraying vehicle was introduced; and in June 2018 the

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<sup>49</sup> WOLA 2009, op. cit., p. 29.

<sup>50</sup> Edinson Arley Bolaños, *Cronología de una fumigación con glifosato fallida*, El Espectador, 2 July 2018. <https://colombia2020.elespectador.com/pais/cronologia-de-una-fumigacion-con-glifosato-fallida>

<sup>51</sup> See, for example: Riley, P., Cotter, J., Contiero, M. and Watts., M., *Herbicide Tolerance and GM crops. Why the world should be Ready to RoundUp glyphosate*, Greenpeace International and GM Freeze, Amsterdam/Barnsley 2011. <https://www.greenpeace.org/archive-international/en/publications/reports/Herbicide-tolerance-and-GM-crops/>

<sup>52</sup> Alexander Rincón-Ruiz and Giorgos Kallis, *Caught in the middle, Colombia's war on drugs and its effects on forest and people*, Geoforum, January 2013, p. 12. <http://dx.doi.org/10.1016/j.geoforum.2012.12.009>

<sup>53</sup> Ibid., p.2.

<sup>54</sup> International Court of Justice, *Case Concerning Aerial Herbicide Spraying, Ecuador v. Colombia, Memorial of Ecuador*, Volume I, 28 April 2009, p. 342. <http://www.icj-cij.org/files/case-related/138/17540.pdf>

<sup>55</sup> Ibid. p. 344. In September 2013, the dispute was settled out of court when Colombia agreed to discontinue spraying close to the Ecuadorian border and to pay an unspecified amount of damage compensation to Ecuador, see <https://www.icj-cij.org/en/case/138>

<sup>56</sup> Guyton, K.Z., Loomis, D., Grosse, Y., El Ghissassi, F., Benbrahim-Tallaa, L., Guha, N., Scoccianti, C., Mattock, H. and Straif, K., on behalf of the International Agency for Research on Cancer, Monograph Working Group, 'Carcinogenicity of tetrachlorvinphos, parathion, malathion, diazinon, and glyphosate', *Lancet Oncology*, May 2015, vol. 16, no. 5, p. 490–491, <https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045%2815%2970134-8/abstract>

Santos government authorised the use of herbicide-spraying drones to curb new record levels of coca cultivation.<sup>57</sup>

In South Africa, cannabis fields are sprayed with a glyphosate mixture in Eastern Cape, KwaZulu Natal and Limpopo provinces, as well as in neighbouring country, Swaziland.<sup>58</sup> Meanwhile, the Mexican government, after a break of several years, resumed spraying poppy fields in the State of Guerrero in 2017, using the notorious herbicide paraquat, leading to complaints to the National Human Rights Commission.<sup>59</sup> The use of a paraquat formulation (Gramoxone) has also been reported in Morocco in ground spraying against cannabis cultivation.<sup>60</sup> Paraquat is banned in over 40 countries, including in the European Union, because of its severe toxicity and adverse health effects; the US Environmental Protection Agency has restricted its use and has proposed to prohibit application from hand-held and backpack equipment.<sup>61</sup>

The UN Special Rapporteurs on the right to health, rights of indigenous peoples and the right to food, have all expressed their concerns about aerial spraying, noting particular concern with its effects on the most vulnerable and marginalized people.<sup>62</sup>

## Alternative development

Alternative development emerged as an attempt to find a more humane response to poor rural communities dependent on illicit cultivation for their subsistence. The original impetus was not rooted in the realization that forced eradication in absence of alternatives would be a violation of human rights but came from concern that its effectiveness might be compromised if other livelihood opportunities could not be provided. The dilemma was already identified in the late 1950s, even before the 1961 Single Convention, when the Moroccan government drew the attention of the CND to the importance of “*finding alternate crops for cannabis*”, for which they required “*technical assistance in the form of agronomists specializing in crop substitution*”.<sup>63</sup> The problem, according to

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<sup>57</sup> AP News, *Colombia to use herbicide drones against record coca harvest*, 22 June 2018, <https://www.apnews.com/bd0044bcecbf4eae857725ca2644d0c7>; EFE, *Colombia sumará drones a su flota tecnológica para erradicar cultivos de coca*, San Luis (Colombia), 23 de junio 2018. <https://www.efe.com/efe/america/portada/colombia-sumara-drones-a-su-flota-tecnologica-para-erradicar-cultivos-de-coca/20000064-3659179>

<sup>58</sup> Fields of Green for All, *Cannabis: Forced Crop Eradication in South Africa*, report prepared for the Global Forum of Producers of Prohibited Plants, Heemskerk, The Netherlands 19-22 January 2016. <https://www.daggacouple.co.za/wp-content/uploads/2013/09/FGA-Report-on-Cannabis-Crop-Eradication-in-SA.pdf>

<sup>59</sup> Inés Giménez, *Fumigaciones antidrogas matan la Montaña de Guerrero*, Contralínea, 25 April 2018.

<sup>60</sup> Tom Blickman, *Morocco and Cannabis: Reduction, containment or acceptance*, TNI Policy briefing Nr. 49, 15 March 2017, p. 6-7. <https://www.tni.org/en/publication/morocco-and-cannabis>

<sup>61</sup> Richard Isenring (compilation), *Poisoning and adverse health effects caused by paraquat among agricultural workers and the public – A bibliography of documented evidence*, Public Eye, Pesticide Action Network UK and Pesticide Action Network Asia-Pacific, February 2017. [https://www.publiceye.ch/fileadmin/files/documents/Syngenta/Paraquat/PE\\_Paraquat\\_2-17\\_def.pdf](https://www.publiceye.ch/fileadmin/files/documents/Syngenta/Paraquat/PE_Paraquat_2-17_def.pdf)

<sup>62</sup> See: A/HRC/4/32/Add.2, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Mission to Ecuador (25 April-4 May 2006)*, 28 December 2006, paras. 28-34; A/HRC/7/11/Add.3, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Preliminary Note on the Mission to Ecuador and Colombia*, 4 March 2008, paras. 17-18; A/HRC/4/30/Add.1, *Report of the Special Rapporteur on the Right to Food, Jean Ziegler, Addendum: Communications Sent to Governments and Other Actors and Replies Received*, 18 May 2007, paras. 15, 17.

<sup>63</sup> E/CN.7/333, Commission on Narcotic Drugs, *Report to the Economic and Social Council on the twelfth session of the Commission, held in Geneva from 29 April to 31 May 1957*, Economic and Social Council, Official Records, 24<sup>th</sup> Session, Supplement No. 10, p. 43, para 426.

the Moroccan representative, *"was that thousands of people had for years been living on the cultivation of kif, and it was their main source of livelihood"*.<sup>64</sup> The Food and Agriculture Organization (FAO) undertook a survey of the Rif region, *"framed so as to facilitate the replacement of the former 'kif' (cannabis) cultivation in the region as part of the general re-development of agriculture and of re-afforestation"*.<sup>65</sup> Awaiting technical assistance, Morocco reported in 1961 it had started *"to compensate growers for cannabis surrendered by them, and nearly 50 tons were purchased and destroyed under this scheme"*.<sup>66</sup>

The concept was more systematically first implemented in Thailand in the 1960s, and over the decades the terminology in the debate evolved from "technical assistance" and "crop substitution" to "integrated rural development", "alternative development", "alternative livelihoods", "development-oriented drug control" or "rural development in drug-producing areas".<sup>67</sup> The 1998 UNGASS Action Plan defined alternative development as *"a process to prevent and eliminate the illicit cultivation of plants containing narcotic drugs and psychotropic substances through specifically designed rural development measures ... recognizing the particular sociocultural characteristics of the target communities and groups, within the framework of a comprehensive and permanent solution to the problem of illicit drugs"*, thus emphasizing drug supply reduction as the primary objective of AD. However, in a section on *"innovative approaches to alternative development"*, the Action Plan describes the intention *"to promote lawful and sustainable socio-economic options for those communities and population groups that have resorted to illicit cultivation as their only viable means of obtaining a livelihood, contributing in an integrated way to the eradication of poverty"*.<sup>68</sup>

The issues outlined in sections above about proper sequencing, drug control conditionality and the relationship of AD with law enforcement and forced eradication have plagued the AD concept from the start. In its early days, in the poppy growing region in northern Thailand, successful AD programmes were mainly characterised by their emphasis on sustainable development, as opposed to crop eradication and/or substitution projects whose primary goal is to cut levels of illicit cultivation rather than dealing with the underlying socioeconomic causes of cultivation. Experiences from Thailand have shown that levels of illicit cultivation are more likely to decline when crop substitution is not (forcefully) imposed on farmers and development assistance is provided without moral judgment. And above all, when people are given proper time and support to transition gradually from their dependence on illicit cultivation to alternative licit livelihoods. In Thailand, *"[e]radication has generally only been undertaken at the point when alternative sources of income exist"*, according to David Mansfield.<sup>69</sup>

The Thai authorities also *"distinguished between commercial cultivation and conceded to a level of households production commensurate with the level of local consumption. Recognising that even if*

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<sup>64</sup> E/CN.7/354, Commission on Narcotic Drugs, *Report to the Economic and Social Council on the thirteenth session (28 April - 30 May 1958)*, Economic and Social Council, Official Records, 26<sup>th</sup> Session, Supplement No. 9, p. 28, para 248.

<sup>65</sup> E/CN.7/411, Commission on Narcotic Drugs, *Report of the sixteenth Session (24 April - 10 May 1961)*, Economic and Social Council, Official Records, 32<sup>nd</sup> Session, Supplement No. 9, p. 31, para 226.

<sup>66</sup> *Ibid.*, p. 15, para 103.

<sup>67</sup> UNODC, *World Drug Report 2015*, Chapter II, Alternative Development, United Nations, May 2015, p. 78. [http://www.unodc.org/documents/wdr2015/WDR15\\_Chapter\\_2.pdf](http://www.unodc.org/documents/wdr2015/WDR15_Chapter_2.pdf)

<sup>68</sup> A/RES/S-20/4, UN General Assembly Special Session, *Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development*, *General Assembly*, 8 September 1998, para 17.

<sup>69</sup> David Mansfield, *Alternative development: the modern thrust of supply-side policy*, Occasional Papers, Bulletin of Narcotics, Vol. VI, Nos 1&2, 1999, p.6. [http://www.unodc.org/pdf/Alternative%20Development/AD\\_BulletinNarcotics.pdf](http://www.unodc.org/pdf/Alternative%20Development/AD_BulletinNarcotics.pdf)

*opium was to be abandoned as a source of income there would be medical, social and cultural reasons for household cultivation to continue on a small scale.*"<sup>70</sup> Also in Laos local opium use was tolerated for a long time, and even in 2000 when a strict opium ban was enforced, the Lao government made a special provision authorizing small-scale poppy cultivation for elderly and long-term opium users, which was abandoned a few years later.<sup>71</sup> In both countries, poppy cultivation has decreased over the decades, and has practically disappeared in Thailand, although aided by the fact that it partly moved across the border, in particular to conflict areas in Burma/Myanmar where protection against eradication was provided by rebel ethnic armed groups.

In the absence of effective alternative income generating programmes for the Moroccan Rif, until this day illicit cannabis cultivation has been largely condoned in the historical cultivation areas of Ketama, Beni Seddat and Beni Khaled, while more recent cultivation in commercial agricultural areas has been eradicated.<sup>72</sup> The Moroccan government has indeed abstained from forced eradication in traditional areas because the consequences could lead to serious social conflict and would jeopardize the subsistence of vulnerable and marginalized communities. As such, one could argue, Morocco has implicitly used the room for manoeuvre allowed under the treaty obligations to only undertake eradication measures *"to the extent that they appear to be practical and can reasonably be expected of them under their special conditions"*.

Graduality, proper sequencing, tolerance for local culture and negotiating with local communities were relatively common features in AD projects in the 1980s in Pakistan and the Andean region as well. UNODC (then UNDCP) described their key characteristics at the time as follows: *"In a first phase which generally lasts two years, the objective is simultaneously to prevent further expansion of the illicit cultivation and to establish a climate of confidence with the target populations and their natural leaders. In this phase negotiations are begun between the populations and the project representatives on the assistance which will be provided in exchange not for the elimination of the illicit crop, but for stopping its expansion. [...] In a second phase, the strategy involves negotiating an increased assistance in return for gradual decrease and eventual total elimination of illicit cultivation."*<sup>73</sup>

Best practices and lessons learned in that era have nurtured the global AD debate and served to improve the AD concept, and still today Thailand is often referred to as perhaps the best and most successful example. On the ground, however, the AD terrain was largely lost to the "war on drugs" that took off end 1980s and continued to escalate throughout the 1990s with dramatic consequences for rural communities in the main coca and opium producing countries in Latin America and Asia. AD was pushed back into a defensive mode, struggling to protect the shrinking space for more humane policies towards illicit cultivation. In today's practices, contrary to the improving discourse, graduality, proper sequencing, tolerance for local culture and meaningful participation of small farmers, unfortunately, have become the exception rather than the rule.

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<sup>70</sup> Ibid., p. 6.

<sup>71</sup> Tom Kramer, Ernestien Jensema, Martin Jelsma and Tom Blickman, *Bouncing Back, Relapse in the Golden Triangle*, TNI, Amsterdam 2014, p. 74. <https://www.tni.org/en/publication/bouncing-back>

<sup>72</sup> Tom Blickman, *Morocco and Cannabis* (2017), op. cit.

<sup>73</sup> UNDCP, *Alternative Development as an Instrument of Drug Abuse Control*, Technical Information Paper No. 5, 7 September 1993, p. 17. [http://www.unodc.org/pdf/Alternative%20Development/AD\\_DrugControllInstrument.pdf](http://www.unodc.org/pdf/Alternative%20Development/AD_DrugControllInstrument.pdf)

## Free trade vs. fair prices

At the same time, the neo-liberal trend in international economic policies did not provide an enabling environment for AD either. According to Mansfield, “[i]t would certainly seem counter intuitive to suggest that the removal of agricultural subsidies and the imposition of severe budget constraints under the auspices of the Structural Adjustment Policies of the International Monetary Fund and World Bank, will have assisted governments of source nations in their efforts to increase agricultural incomes and improve the socio-economic, political and legal environment in which licit income earning opportunities might flourish.”<sup>74</sup>

The end of commodity agreements regulating international trade in raw materials through an export quotas system, aimed to prevent excessive price fluctuations and to stabilize international commodity markets, had dramatic impacts that in some cases directly contributed to significant increases in illicit cultivation. In 1985, for example, the International Tin Council disintegrated, leading to a virtual breakdown of the Bolivian economy. As a result, thousands of jobless tin-miners migrated to the sub-tropical Chapare region and started growing coca to survive.<sup>75</sup> Similarly, thousands of bankrupted small coffee growers in Colombia turned to coca or poppy cultivation when coffee-prices plunged following the collapse of the International Coffee Agreement in 1989. “We cannot afford to talk idealistically of crop substitution in the case of the coca leaf while sabotaging Colombian farmers’ main cash crop and the country’s largest export”, said President Barco in a dramatic speech to the General Assembly that same year, adding that Colombia needed alternative development assistance, “but even more important is the adoption of commercial and trade measures which allow our economy greater access to markets in the industrialized countries and fair prices for our exports”.<sup>76</sup>

A causal relationship has also been established between the dismantling of the EU-Caribbean preferential trade agreement for bananas and the increase of cannabis cultivation on Jamaica and the Windward Islands, especially Saint Vincent and the Grenadines and Saint Lucia. The Eastern Caribbean banana industry has been dominated by small-scale, family-run banana farms, unable to compete in a free market with the giant plantations in Central and South America, many run by US transnational companies often paying workers as little as one US dollar a day.<sup>77</sup> In the second half of the 1990s, the US, instigated by Chiquita company, challenged the EU preferential treatment before the newly established World Trade Organization (WTO) who “ruled against the agreement’s core aspects as an affront to free trade and the principle of ‘non-discrimination’” and granted the US permission to apply sanctions against the EU.<sup>78</sup>

A European Commission memo at the time warned that if the US strategy would be successful, it “would lead directly to the destruction of the Caribbean banana industry and would consequently provoke severe economic hardship and political instability in a region already struggling against

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<sup>74</sup> David Mansfield (1999), op. cit., p. 4.

<sup>75</sup> Tom Blickman, *Caught in the Crossfire: Developing countries, the UNDCP, and the war on drugs*, Transnational Institute (TNI) & Catholic Institute for International Relations (CIIR), June 1998.  
<http://druglawreform.info/images/stories/documents/caught-in-the-crossfire.pdf>

<sup>76</sup> A/44/PV.13, *Address by Mr Virgilio Barco Vargas, President of the Republic of Colombia*. General Assembly, New York, 29 September 1989, p.21. <http://undocs.org/en/A/44/PV.13>

<sup>77</sup> Gavin Fridell, “The Case against Cheap Bananas: Lessons from the EU-Caribbean Banana Agreement”, in: *Critical Sociology*, Vol. 37, nr. 3, 2010, pp. 285–307. DOI: 10.1177/0896920510379447

<sup>78</sup> *Ibid.*, p. 289.

*considerable difficulty and deprivation*”, and that the 25,000 banana producers in the Windward Islands “*will look for alternative sources of income. Unfortunately, the most obvious replacement for bananas is drugs*”.<sup>79</sup> Over the following decade, the preferential banana regime was gradually dismantled and—as predicted—many banana growers shifted to cannabis. “*Marijuana is the new 21st century banana*,” St. Vincent Foreign Minister Camillo Gonsalves said in 2014, and local growers confirmed that *ganja*, as it is called there, “*has schooled children, built homes and allowed residents to survive the economic fallout from the once profitable banana industry*.”<sup>80</sup>

## AD Guiding Principles

The 2013 *United Nations Guiding Principles on Alternative Development* adopted disappointingly weak references to human rights, stating that “*programmes in the areas where crops are cultivated for illicit drug production and manufacture should be undertaken with a clear understanding of the overall objectives, as appropriate, of eliminating or significantly and measurably reducing the supply of drugs while promoting comprehensive development and social inclusion, alleviating poverty and strengthening social development, the rule of law, security and stability at the country and regional levels, taking into account the promotion and protection of human rights*.”<sup>81</sup> The wording “*taking into account*” obscures the fact that the protection of human rights is an international legal obligation for all states. States, international agencies, development donors and civil society are requested to apply their utmost efforts to “*address basic human needs, in full conformity with the three drug conventions and relevant human rights instruments, in order to promote the welfare of targeted communities*”, but accompanied with the escape clause “*as appropriate*”.<sup>82</sup>

While the elaboration of the AD Guiding Principles started off as an inclusive process, civil society including farmers’ organisations and indigenous peoples were excluded from the final stage of political negotiations in Vienna and Lima, which took place primarily among diplomats and drug control officials. Also, no consultations took place with the specialized development and human rights entities of the UN system, an omission that explains a number of weaknesses in the final document. No reference is made, for example, to the Declaration on the Right to Development, which says: “*The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized*”.<sup>83</sup> Or to the Tenure Guidelines endorsed by the UN Committee on World Food Security in May 2012, underscoring that “*States should strive to ensure responsible governance of tenure because land, fisheries and forests are central for the realization of human rights, food security,*

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<sup>79</sup> MEMO/97/28, *EC fact sheet on Caribbean bananas and the WTO*, European Commission, Brussels, 18 March 1997. [http://europa.eu/rapid/press-release\\_MEMO-97-28\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-97-28_en.htm?locale=en)

<sup>80</sup> Jacqueline Charles, *Caribbean countries consider loosening marijuana laws*, Miami Herald, 29 March 2014 <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article2087895.html> Camillo Gonsalves was Permanent Representative to the UN from 2007-2013, then Foreign Minister and since 2017 Minister of Finance.

<sup>81</sup> A/RES/68/196, *United Nations Guiding Principles on Alternative Development*, Resolution adopted by the General Assembly on 18 December 2013, Appendix, International Guiding Principles on Alternative Development, paragraph 10.

<sup>82</sup> *Ibid.* paragraph 18.

<sup>83</sup> A/RES/41/128, *Declaration on the Right to Development*, Resolution adopted by the General Assembly on 4 December 1986, paragraph 1.

*poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth”.*<sup>84</sup>

The final version of the guidelines as adopted in Lima in November 2012 and subsequently—without further debate—ratified by the General Assembly in October 2013, once again placed alternative development as “*complementary*” to “*illicit crop elimination*”, to be implemented “*in line with the three drug control conventions*”.<sup>85</sup> Also, “*in stark contrast to the tone of the discussions in Thailand*” where the guidelines were drafted, references to “*traditional use*” were eliminated from the draft, and only the role of the CND, UNODC and INCB “*as the United Nations organs with prime responsibility for drug control matters*” was underscored, leaving out any mention of UNDP or other relevant agencies.<sup>86</sup> In spite of all this, the AD Guiding Principles still contain several innovative elements reflecting on-going efforts especially by the German and Thai governments in collaboration with UNODC to keep promoting and improving the AD concept as a more humane and more sustainable alternative approach to address the underlying root causes of illicit cultivation.<sup>87</sup> Similarly, the development section of the 2016 UNGASS Outcome Document moved the debate forward in a positive direction.<sup>88</sup>

### **Gender and alternative development<sup>89</sup>**

The rights of women are enshrined in various UN documents and bodies, including the 1945 UN Charter and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted by the General Assembly in 1979.<sup>90</sup> The drug control conventions do not take gender into account. However, the Political Declaration adopted at the 1998 UNGASS on drugs calls on member states to “*ensure that women and men benefit equally, and without any discrimination, from strategies directed against the world drug problem*”.<sup>91</sup> The corresponding Action Plan states that alternative development programmes should “*incorporate a gender dimension by ensuring equal conditions for women and men to participate in the development process, including design and implementation*.”<sup>92</sup> That resulted in the Independent Consultants report published by

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<sup>84</sup> Committee on World Food Security, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, FAO 2012, paragraph 4.1.

<http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

<sup>85</sup> A/RES/68/196, *United Nations Guiding Principles on Alternative Development*, op. cit., paragraph 8.

<sup>86</sup> Coletta Youngers, *UN International Guiding Principles on Alternative Development: Part II*, web commentary, November 21, 2012. <http://druglawreform.info/en/issues/alternative-development/item/4118-un-international-guiding-principles-on-alternative-development-part-ii>

<sup>87</sup> See “2013 United Nations Guiding Principles on Alternative Development”, in: *World Drug Report 2015*, Alternative Development, Annex I, UNODC, May 2015, p. 5-6. [http://www.unodc.org/wdr2015/field/WDR15\\_Chapter\\_2\\_Annex.pdf](http://www.unodc.org/wdr2015/field/WDR15_Chapter_2_Annex.pdf)

<sup>88</sup> James Bridge et. al., *Edging forward: How the UN’s language on drugs has advanced since 1990*, IDPC/TNI/GDPO, September 2017, p. 8-10. <https://idpc.net/publications/2017/09/edging-forward-how-the-un-s-language-on-drugs-has-advanced-since-1990>

<sup>89</sup> Coletta Youngers drafted this section of the briefing paper.

<sup>90</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

<sup>91</sup> A/RES/S-20/2, UN General Assembly Special Session, *Political Declaration*, 10 June 1998, paragraph 4.

<sup>92</sup> A/RES/S-20/4, UN General Assembly Special Session, *Measures to enhance international cooperation to counter the world drug problem, E - Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development*, General Assembly, 10 June 1998, paragraph 18 (e).

UNODC (then UNDCP), *Guidelines on Gender Mainstreaming in Alternative Development*.<sup>93</sup> Though it was published in January 2000, it continues to be one of the few official documents on this topic.

Jumping forward to the 2016 UNGASS, the final chapter of the Outcome Document that addresses the alternative development issue goes no further than the 1998 UNGASS, with language “ensuring that both men and women benefit equally.” However, Chapter 4 on operational recommendations on cross-cutting issues calls for mainstreaming “a gender perspective into and ensure the involvement of women in all stages of the development, implementation, monitoring and evaluation of drug policies and programmes, develop and disseminate gender-sensitive and age-appropriate measures that take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem and, as States parties, implement the Convention on the Elimination of All Forms of Discrimination against Women.”<sup>94</sup>

Nonetheless, little research is available on the role of women in the cultivation of crops for the illicit market, or the gender dimensions of alternative development programmes more broadly. More recently, important work has been carried out by NGOs in Colombia, both to bring women cultivators together to empower their own organizations and their role in community organizations more broadly,<sup>95</sup> and to document the particular challenges faced by women in remote rural areas where crops are cultivated for illicit markets.<sup>96</sup>

Men and women living in areas where drug crops are cultivated are among the most marginalized and poorest sectors of society, and conflict and violence may be a facet of daily life. However, women face even greater socioeconomic challenges than their male counterparts and may be the victims of gender-based violence. They have even less access to education and gender-appropriate health care. Because of the discrimination women face in patriarchal societies, they often lack access to property rights, credit and to economic opportunities more broadly, greatly limiting their social mobility.

Women living in these areas have to balance their domestic responsibilities with economic activities in order to put food on the table for their families. They are most responsible for caring for children and elderly parents and carrying out the domestic responsibilities of the household, though that work is not generally valued economically. At the same time, they must contribute to the household income. In areas where crops for the illicit market are cultivated, women carry out various lower-level tasks, such as “planting, harvesting, transporting seeds and inputs for productions, providing domestic services and taking charge of preparing food, and transporting small amounts of the

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<sup>93</sup> UNDCP, *Guidelines on Gender Mainstreaming in Alternative Development*, Independent Consultants report, January 2000. [https://www.unodc.org/pdf/Alternative%20Development/GenderMainstreaming\\_Eng.pdf](https://www.unodc.org/pdf/Alternative%20Development/GenderMainstreaming_Eng.pdf)

<sup>94</sup> A/RES/S-30/1, *Our joint commitment to effectively addressing and countering the world drug problem, Chapter 4, Operational recommendations on cross-cutting issues: drugs and human rights, youth, children, women and communities*, Resolution adopted by the General Assembly on 19 April 2016, para 4 (g).

<sup>95</sup> Encuentro de Mujeres Coccaleras del Sur de Colombia, *Porque las mujeres colombianas nos oponemos a cualquier guerra, incluida la guerra contra las drogas*, Comunicado promulgado por 75 mujeres provenientes de municipios de Caquetá, Cauca, Meta, Nariño y Putumayo, respaldadas por 17 organizaciones de mujeres, Puerto Asís, 18 de marzo de 2017. [https://www.humanas.org.co/alfa/dat\\_particular/ar/ar\\_41466\\_q\\_declaracion\\_final.pdf](https://www.humanas.org.co/alfa/dat_particular/ar/ar_41466_q_declaracion_final.pdf)

<sup>96</sup> See Ana Jimena Bautista, Luis Felipe Cruz, Margarita Martínez Osorio, Isabel Pereira, Lucía Ramírez Bolívar, *Voces desde el cocal: mujeres que construyen territorio*, Dejusticia, Bogotá, 4 de julio 2018, <https://www.dejusticia.org/publication/voces-desde-el-cocal-mujeres-que-construyen-territorio/>; and Irina Cuesta Astroz, Gélica Mazzoldi Díaz, Aura María Durán Díaz, *Mujeres y la economía coccalera en el Putumayo: roles, prácticas y riesgos*, Fundación Ideas para la Paz / ONU Mujeres, FIP Serie Informes No. 28, Bogotá, Noviembre 2017, <http://cdn.ideaspaz.org/media/website/document/5a21a1163faf3.pdf>

*product, among others.*<sup>97</sup> These women face the additional stigma of earning an income from what may be an illicit activity (depending on the country) and hence are viewed as criminals.

In some cases, women have been able to secure an income stream directly from coca cultivation, either as single heads of households or by having a separate plot of land that they farm in addition to that of the family, giving them some independence. The additional income generated by coca cultivation allows women to provide for the family's basic needs and invest in their children's education, health care, improved housing and the like. Hence, it is particularly important that alternative development programs take into account the specific needs of women and ensure that a significant portion of the benefits go directly to them.

In the case of the PNIS crop substitution programme in Colombia referred to above, a primary complaint from women about the programme was that it initially only provided the cash subsidy to one person in the family, almost always the man. Research carried out by the Colombian NGO *Dejusticia* reveals that few of the community accords signed as part of the PNIS program incorporate a gender perspective; only 17 percent state that women's participation should be ensured. *Dejusticia* concludes: *"Today, women coca growers face a situation where their source of sustenance is being eradicated, while no immediate solutions exist for surviving during the transition, or structural changes that allow for overcoming poverty and vulnerability in rural areas."*<sup>98</sup>

The Committee on the Elimination of Discrimination against Women adopted in 2016 specific recommendations on the rights of rural women, spelling out many issues that are highly relevant for the situation of women involved in illicit cultivation or alternative development programmes. For example, that states should *"[p]romote their empowerment and ensure their economic and social independence"*, and *"ensure that rural women are equal before the law and have the same legal capacity as men in civil matters, including to conclude contracts and administer property independent of their husband or any male guardian"*.<sup>99</sup>

## **Drugs, conflict and access to land**

Closely inter-related conflict and poverty issues are the main underlying causes of illicit cultivation in the principal producing countries, especially in Afghanistan, Myanmar and Colombia. Armed conflicts frequently lead to the displacement of people, who struggle to make ends meet and often end up relying on the informal survival economy, including illicit poppy and coca cultivation. Most farmers resort to illicit cultivation primarily due to the higher value of these crops in comparison with others; because it facilitates access to land and credit; and because the compact and non-perishable nature of the product (coca paste or opium) helps to mitigate the risks of agricultural products in remote areas lacking basic infrastructure (i.e. products spoiling before they can be brought to market). In areas where armed conflict persists, coca and poppy sometimes also serve as cash crops which farmers can (or are obliged to) use to obtain "protection" from armed groups. Under such circumstances, the illicit drugs economy often represents the only viable livelihood available.

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<sup>97</sup> Working Group on Women, Drug Policies, and Incarceration, *Women, Drug Policies, and Incarceration: A Guide for Policy Reform in Latin America and the Caribbean*, WOLA, IDPC, Dejusticia, CIM/OAS, February 2016, p. 29. <http://www.oas.org/en/cim/docs/womendrugincarceration-en.pdf>

<sup>98</sup> Dejusticia 2018, *Voces desde el coca* (op. cit.), p. 172-173.

<sup>99</sup> CEDAW/C/GC/34, Convention on the Elimination of All Forms of Discrimination against Women, *General recommendation No. 34 on the rights of rural women*, Committee on the Elimination of Discrimination against Women, 7 March 2016, paragraphs 17 (b) and 31. <http://undocs.org/en/CEDAW/C/GC/34>

Policies related to the illicit cultivation of coca, cannabis and opium poppy are intimately linked to land governance issues. Rural communities — especially in indigenous territories — often have their own customary systems of land management, which often rely on communal ownership or management of land and associated resources. These traditional practices, rarely acknowledged in policymaking, are increasingly threatened by corporate-funded land grabs, while land availability continues to drop as the scale of extractive industries and mega infrastructure projects expand. Furthermore, in many cases, land used by farmers for illicit cultivation is not officially registered, making it extremely difficult for them to obtain credit or other forms of assistance. This context means that it is vital to consider the differences between landowners, on the one hand, and (formally) landless subsistence farmers, share-croppers and land labourers on the other hand. The latter are generally more vulnerable to human rights violations, and less able to access government support and benefit from development interventions.

The lack of peace and stability in remote rural regions of Myanmar and Colombia contributes to the marginalisation, insecurity and exploitation of local communities. Territorial control and the presence of non-state armed groups commonly prevent government agencies from providing security or delivering public goods and services. Even when state actors have access to such regions, they may constitute an additional factor in the conflict, adding to the insecurity rather than operating for the greater benefit and protection of local communities. In Shan State, for example, poppy growers are often ‘taxed’ by multiple armed actors and are ultimately left with only small amounts to feed their own families. In Colombia, especially in areas formerly controlled by the FARC, the entrance of new armed groups fighting for control of land and illicit resources has led to a dramatic upsurge in the number of assassinations of social leaders and human rights defenders, including many local farmers and indigenous leaders involved in government-sponsored substitution projects. The National Ombudsman as well as the Inter-American Commission on Human Rights (IACHR) have expressed their concerns over the government’s failure to protect the right to life of its citizens in the face of these complex local conflict dynamics.<sup>100</sup>

In Colombia, the 2016 peace accords between the government and the FARC contained a full chapter with proposals to address the drugs-related aspects of the armed conflict.<sup>101</sup> The peace agreement introduced the new PNIS scheme of “voluntary substitution” already referred to above, aiming to reduce illicit coca cultivation by 50,000 hectares within a year. Coca growers are eligible for financial and technical assistance under certain conditions. They must: 1) sign a contract that they will discontinue their coca cultivation; 2) declare the details of the areas they own and/or manage as illicit plantations; and 3) uproot their coca plants themselves. After receiving a first instalment of two million pesos (about US\$700), the family has 60 days to clear their field, and once

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<sup>100</sup> Defensoría del Pueblo, *En más de dos años ocurrieron 282 homicidios de líderes sociales y defensores de derechos humanos en Colombia*, Bogotá, 1 March 2018; Inter-American Commission on Human Rights, *IACHR Urges Colombia to Adopt Urgent Measures to Protect Human Rights Defenders and Social Leaders*, 27 March 2018. [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/065.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/065.asp)

<sup>101</sup> *Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace*, Signed 24 November 2016, Chapter 4: Solution to the Illicit Drugs Problem. <http://www.altocomisionadoparalapaz.gov.co/Prensa/documentos-y-publicaciones/Documents/Acuerdo-Final-ing-web.pdf>

verified, each family will receive a total of 36 million pesos spread over two years (about US\$12,600).<sup>102</sup>

Farmers organisations and observers have pointed out many shortcomings of the scheme, noting, for example, its problematic reliance on cash-based compensation rather than structural agrarian reform, the lack of infrastructural investments in the areas, and the fact that the imposition of the contractual requirements and the continued threat of forced eradication compromise the “voluntary” nature of the measures as originally foreseen in the peace accords.<sup>103</sup> As currently implemented, the programme’s short-term strict conditionality terms defy lessons learned about proper sequencing, gradual reductions and community participation, and risks to violate the right to an adequate standard of living of the communities involved.

Large-scale agricultural concessions for mono-crop plantations have also been associated with land grabs and loss of access to land for small farmers. Public-private partnerships can play a constructive role in development projects under certain conditions, with private companies providing capital and technical assistance in delivering services or infrastructural projects like building roads and bridges, establishing processing plants and accessing international markets for AD products. Nonetheless, experiences with large-scale commercial rubber or oil-palm plantations established under an AD rationale in Myanmar and Colombia have also demonstrated significant negative human rights impacts. Their profit-driven nature has led to impacts including land grabs and displacement of people. In northern Myanmar, large-scale agro-investments under the opium crop substitution programme have focused more on investors’ economic returns than on providing alternative livelihoods for ex-poppy growers, and have in some cases actually contributed to a significant increase in dispossession of local communities’ land and loss of livelihoods.<sup>104</sup>

### Proportionality of sentences

The drug control conventions allow for decriminalisation of illicit cultivation for personal use, a flexibility used in the current Colombian legislation to exempt the cultivation of up to 20 plants of coca, cannabis, or opium poppy from criminal sanctions.<sup>105</sup> In Laos, as already mentioned, government authorities temporarily allowed for the cultivation of opium poppy for personal use among elderly opium users. And, in several countries, including Spain, Uruguay, Jamaica, Canada and several States in the US, cultivation of cannabis for personal use is decriminalised, with a threshold

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<sup>102</sup> Juan Carlos Garzón and Manuela Suárez, *¿En qué va la sustitución de cultivos ilícitos? El balance de 2017 y lo que viene en 2018*, Fundación Ideas para la Paz, Bogotá, February 2018. <http://www.ideaspaz.org/publications/posts/1654> According to President Santos, by the end of April 69,000 individual contracts had been signed and 39,000 families had started to receive payments in return for self-eradicating a total of 30,000 hectares; see *Declaración del Presidente de la República Juan Manuel Santos al término del Gabinete para el Posconflicto*, Bogotá, 30 April 2018.

<http://es.presidencia.gov.co/Paginas/presidencia.aspx>

<sup>103</sup> WOLA/TNI/OCCDI, *Diálogo Informal Sobre “Avances y Desafíos en la Implementación del Punto 4 del Acuerdo de Paz”*, Bogotá, Colombia – 11 de noviembre de 2017, <https://www.wola.org/es/analisis/dialogo-informal-sobre-avances-y-desafios-en-la-implementation-del-punto-4-del-acuerdo-de-paz/> See also: Martin Jelsma and Coletta Youngers, *Coca and the Colombian Peace Accords: A Commentary on the Pilot Substitution Project in Briceño*, 10 August 2017.

<https://www.wola.org/analysis/coca-colombian-peace-accords-commentary-pilot-substitution-project-briceno/>

<sup>104</sup> Kevin Woods and Tom Kramer, *Financing Dispossession: China’s Opium Substitution Programme in Northern Burma*, TNI 2012, p. 81. <https://www.tni.org/en/publication/financing-dispossession>

<sup>105</sup> Ley 599 de 2000 (*Código Penal*), art. 375; Ley 30 de 1986 (*Estatuto Nacional de Estupefacientes*), art. 2(ñ). The drugs law defines a “plantation” as: “the plurality of plants, in number greater than twenty (20) from which drugs can be extracted that cause dependence”. No sanctions are established for cultivation of 20 plants or less.

usually varying from four to six plants.<sup>106</sup> Beyond the level of personal use, however, the treaties require states to make illicit cultivation a criminal offence. Attempts to introduce at least the principle of proportionality of sentences, differentiating between small-scale and commercial levels of cultivation, have not been very successful to date.

In the Colombian peace accords the government and the FARC agreed to a special judicial treatment for small-scale farmers, *“to process the legislative amendments required to allow the waiver on a transitional basis of the exercise of penal action or proceed to the termination of the penal sanction against small-scale farmers who are or have been linked to the cultivation of crops used for illicit purposes when, within a time limit of 1 year, starting from the entry into force of the new regulation, they formally declare before the competent authorities their decision to renounce the cultivation or maintenance of crops used for illicit purposes”*.<sup>107</sup> The original draft of the law, elaborated by the Ministry of Justice and the Law, defined as a threshold for small-scale cultivation: 3.8 hectares for coca, 0.384 hectare for opium poppy and 840 square metres for cannabis.<sup>108</sup> After criticism from the Attorney General, the threshold for coca was brought down to 1.78 ha.<sup>109</sup> The law proposal mentions as its primary rationale, *“the flexibilization of criminal law for the weak links in the chain, which implies that small farmers have a differential criminal justice treatment that privileges non-judicialization and non-custodial measures”*, aiming to *“reduce the harms caused by the penal treatment and redirect the institutional efforts towards the fight against the criminal organizations dedicated to drug trafficking”*.<sup>110</sup> The Attorney General obstructed passage of the law using the fast-track legislative procedure to accommodate the implementing the peace accords; it is unclear if and when the adapted draft law could be adopted by Congress.<sup>111</sup>

Criminal sanctions for cultivation, conservation and financing of illicit plantations in Colombia are extremely high, for small amounts from 21-100 plants 5 to 9 years imprisonment and for higher amounts between 8 and 16 years, plus high fines. The second draft of the new law abandons the measurement in plants and introduces the new thresholds with slightly lower sentences for small producers: between 18 square metres and 1.78 ha of coca, between 19-840 square metres of cannabis and between 0.8 square metres and 0.34 ha of poppy, would be sanctioned with 4-7 years.<sup>112</sup> Given the fact that illicit earnings yielded at the upper limit of that range still would not

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<sup>106</sup> See Beau Kilmer, Kristy Kruithof, Mafalda Pardal, Jonathan P. Caulkins, Jennifer Rubin, *Multinational overview of cannabis production regimes*, Rand Europe/WODC 2013, [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR500/RR510/RAND\\_RR510.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR500/RR510/RAND_RR510.pdf). In Canada, Bill C-45, coming into effect on October 17th, 2018, allows growing up to four cannabis plants per residence for personal use, see <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-45/royal-assent>

<sup>107</sup> *Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace*, 24 November 2016, paragraph 4.1.3.4.

<sup>108</sup> El Tiempo, *Podría haber excarcelación por cultivos de coca de hasta 3,8 hectáreas*, *La polémica propuesta está en un proyecto de despenalización presentado por el Gobierno*, 26 de octubre 2017

<sup>109</sup> Lucía Ramírez Bolívar, *Continúa la batalla por el tratamiento penal diferenciado para pequeños cultivadores*, El Espectador, 14 April 2018. <https://colombia2020.elespectador.com/opinion/continua-la-batalla-por-el-tratamiento-penal-diferenciado-para-pequenos-cultivadores>

<sup>110</sup> Ministro de Justicia y del Derecho, Enrique Gil Botero, *Ley Número ... de 2017 por medio de la cual se Desarrolla el Tratamiento Penal Diferenciado para Pequeños Cultivadores y Cultivadoras, de Acuerdo con las Disposiciones del Artículo 5 Transitorio del Acto Legislativo 01 de 2017 y el Numeral 4.1.3.4 del Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, draft proposal for legislation, 24 October 2017, pp. 38-39. <http://www.camara.gov.co/pequenos-cultivadores>

<sup>111</sup> Salomón Majjub Avendaño, *Implementación del Punto 4 del Acuerdo de Paz*, Fundación Heinrich Böll, Ideas Verdes, Número 4, Bogotá, Diciembre 2017, [https://co.boell.org/sites/default/files/20180214\\_ideasverdes\\_no4\\_completo\\_web.pdf](https://co.boell.org/sites/default/files/20180214_ideasverdes_no4_completo_web.pdf)

<sup>112</sup> Ministro de Justicia y del Derecho, Enrique Gil Botero, *Ley Número ... de 2017 por medio de la cual se Desarrolla el Tratamiento Penal Diferenciado para Pequeños Cultivadores y Cultivadoras, de Acuerdo con las Disposiciones del Artículo 5*

exceed two minimum wages, which was the basis for the calculation of the threshold of small growers “whose cultivation areas are barely viable to ensure the subsistence of their family”,<sup>113</sup> those sanctions are still disproportionately high and irreconcilable with the right to an adequate standard of living, the right to be free from hunger, and other relevant human rights.

If adopted, only those who agree to enter the PNIS substitution programme would be granted the temporary waiver mentioned above. However, if they don’t fully comply with the PNIS conditions, for example if they replant even a small amount of coca after having received compensation, their penalty will be increased to the old levels of 8-16 years imprisonment and the fine can go up to an amount equivalent to no less than 2,250 times the monthly minimum wage. Breach of a PNIS contract “with the consequent impact on the confidence that the illicit crop substitution program should generate” thus becomes an aggravating circumstance that doubles the farmer’s punishment to completely disproportionate levels. It seems that this deterrence against returning to illicit cultivation is applied even in cases where the PNIS scheme does not manage to establish sustainable alternative livelihoods.

The possibility of a breach of contract from State side in that sense seems not to be considered in a reciprocal manner, in spite of the embarrassing history of previously failed substitution schemes and broken pacts and promises. The past two decades in Colombia have been a vicious cycle of mobilisations of farmers and indigenous communities culminating in agreements that subsequently required new protests to demand compliance from the government; many protest leaders have been assassinated in the process.<sup>114</sup> Those agreements included, for example, a differentiation between “industrial crops” on the one hand and “subsistence cultivation” of less than three hectares on the other hand which would be exempted from aerial spraying; and “manual eradication pacts” to which nearly 40,000 families signed up back in 2001.<sup>115</sup>

The official Colombian figures for arrests, prosecution and imprisonment of farmers are very low, with an average of around 200 arrests per year over the last decade, with a peak of 900 in the year 2009, and a low of 62 in 2017. According to the National Penitentiary and Prison Institute (INPEC), in January 2018 only 255 persons were held in prison for cultivation offences.<sup>116</sup> However, that seems to be a gross underestimate, since there is a huge grey area between strictly cultivation offences and the broad category of ‘trafficking, manufacturing and possession’ for which INPEC reports a number of over 24,000 in prison in early 2018.<sup>117</sup> Most people arrested on drug offences in rural areas are prosecuted for trafficking or possession (carrying coca paste) or processing (coca paste labs,

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*Transitorio del Acto Legislativo 01 de 2017 y el Numeral 4.1.3.4 del Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, 2nd adapted draft proposal for legislation, 20 March 2018, *Exposición de motivos*, Capítulo IV, *Tratamiento penal diferencial para pequeños cultivadores*, pp. 30-42.

<sup>113</sup> *Ibidem*, p. 36.

<sup>114</sup> Pedro Arenas, *Un Estado incumplido con los campesinos*, *Semanario Voz*, Bogotá 25 septiembre, 2013.

<http://semanariovoz.com/un-estado-incumplido-con-los-campesinos/>

<sup>115</sup> Ricardo Vargas Meza, *Desarrollo Alternativo en Colombia y Participación Social: propuestas hacia un cambio de estrategia*, DIAL - Diálogo Inter-Agencial en Colombia, Bogotá, Colombia, Septiembre de 2010, ISBN 978-958-99184-5-6, pp. 10-39. [viva.org.co/cajavirtual/svc0231/articulo1109\\_231.pdf](http://viva.org.co/cajavirtual/svc0231/articulo1109_231.pdf)

<sup>116</sup> *Ibidem*, pp. 25-30.

<sup>117</sup> See Instituto Nacional Penitenciario y Carcelario (INPEC) statistics at: <http://www.inpec.gov.co/estadisticas-tableros-estadisticos>

precursors), or in fact for protests against forced eradication. Many of these are small farmers, harvesters or day labourers.<sup>118</sup>

Myanmar also maintains heavy penalties for illicit cultivation, which were maintained despite a recent drug law reform process. Few farmers are arrested and prosecuted solely for cultivation, but most poppy farmers in Myanmar are also involved in harvesting, storing, transporting and selling opium – similar to the way in which many in Colombia are involved in coca harvesting, coca paste production, transport and selling. According to a TNI commentary:

“The amended Law does not introduce any change to address the situation of small-scale subsistence poppy farmers, and poppy cultivation remains punishable with a minimum of 5 to 10 years of imprisonment, regardless of the quantity cultivated or the circumstances of the offence. As the Government’s new National Drug Control Policy recognises, most people who grow opium in Myanmar are not criminals but poor small-scale farmers who cultivate poppy as a way to survive. Prescribing long-term prison penalties without addressing poverty, food insecurity, armed conflict, lack of basic infrastructure, land grabbing or the absence of viable employment opportunities, to name only a few of the difficulties faced by farmers, is both iniquitous and unrealistic. Instead, the Government should urgently take measures that can lead, in the absence of sustainable alternative livelihood options, to a *de facto* elimination of prison penalties for small-scale subsistence cultivation.”<sup>119</sup>

### **Cultural, indigenous and religious rights**

Traditional cultural, medicinal and ceremonial uses of coca, opium and cannabis have a long history and are still widespread in many places around the world today among indigenous peoples, minorities and religious groups. There is an undeniable conflict between the obligations imposed by the UN drug control system and indigenous rights. When the UN drug control treaty regime was established, the rights of indigenous peoples had not yet acquired the recognition in international law that they have today. Indigenous peoples and communities had no say in the negotiation of the drug treaties, while today consultation and consent are accepted principles in relation to all matters of law and policy that impact indigenous peoples. While the General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, no mention of the Declaration or its guiding principles was made in the subsequent 2009 Political Declaration on the World Drug Problem. The 2016 UNGASS Outcome Document includes a weak reference to UNDRIP, but it nonetheless failed to address the crux of the matter: the 1961 Single Convention on Narcotic Drugs requires the suppression of traditional, cultural and ceremonial uses of coca, cannabis and opium poppy, while such uses are protected under international human rights law relating to cultural, religious and indigenous rights.

The Single Convention allowed “*transitional reservations*” for the traditional uses of opium, coca leaf and cannabis (article 49), but by December 1989 the chewing of coca leaf, the use of cannabis in religious ceremonies, and all other non-medical indigenous practices involving these plants were to be abolished. The 1971 Convention on Psychotropic Substances addresses another range of substances than the 1961 treaty, and departs slightly from the zero-tolerance regime imposed for

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<sup>118</sup> Pedro Arenas and Darío González, *Vicios Penales, Cultivadores de coca, amapola y marihuana, en la hora de su despenalización*, Observatorio colombiano de cultivadores y cultivos declarados ilícitos – INDEPAZ, Bogotá, julio de 2015. <http://files.idpc.net/library/Vicios-Penales-colombia-2015-indepaz.pdf>

<sup>119</sup> Renaud Cachia, *Will Myanmar complete its transition towards an evidence-based approach to drug control?*, A Myanmar Commentary, Transnational Institute, 20 March 2018. <https://www.tni.org/en/article/will-myanmar-complete-its-transition-towards-an-evidence-based-approach-to-drug-control>

“narcotic drugs” by leaving legal space for the use of “psychotropic substances” in religious ceremonies, specifically for the *peyote* cactus (containing mescaline), hallucinogenic mushrooms (containing psilocybin) and *ayahuasca* (containing DMT). Exceptions for religious rites are specifically allowed under article 32.4, but, more importantly, plants containing psychotropic substances were not brought under international control; only the extracted alkaloids are included in the 1971 Schedules.<sup>120</sup> The same principle applies to *khat* (whose active ingredients *cathinone* and *cathine* are included in the 1971 schedules) and to *ephedra* (whose active ingredient *ephedrine* is scheduled as a precursor to methamphetamine under the 1988 Convention). Farmers cultivating *khat* in East Africa or *ephedra* in China or Central Asia have therefore never suffered repression comparable to those cultivating coca, cannabis or opium poppy.

Diplomatic efforts to apply that principle to coca leaf and to secure a similar exception for traditional coca use, led to the inclusion of the earlier mentioned paragraph in the 1988 Trafficking Convention stating that measures to eradicate the illicit cultivation of coca, opium poppy and cannabis “*shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use*” (article 14.2). Bolivia, Peru and Colombia sponsored an amendment in the name of twelve countries which received support from several more states, including Ecuador who considered it to be “*important to respect the traditional uses of coca by the indigenous inhabitants*”.<sup>121</sup> However, other states expressed concern that the exception “*might be used as a justification for not implementing illicit crop replacement programmes*” and requested to add “*where permitted pursuant to the Single Convention on Narcotic Drugs, 1961, or the Convention on Psychotropic Substances*”.<sup>122</sup> Instead, a preceding paragraph was added to the same article, specifying that any measures under the 1988 Convention “*shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and psychotropic substances*” under the 1961 and 1971 treaties (article 14.1).

This is further reinforced by article 25 on “*Non-derogation from earlier treaty rights and obligations*”, which is “*intended to ensure that no provision of the 1988 Convention will weaken in any way a corresponding provision in the earlier conventions*”.<sup>123</sup> Therefore, while the insertion of the first and only mention of human rights across the three drug conventions is politically significant, the legal standing of the 1988 paragraph is contentious at best. Bolivia and Peru, therefore, formally deposited reservations against the fact that the treaty requires cultivation to be established as a criminal offence “*without drawing the necessary clear distinction between licit and illicit cultivation*” (Peru); and Colombia, upon ratification, declared that “*treatment under the Convention of the cultivation of the coca leaf as a criminal offence must be harmonized with a policy of alternative*

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<sup>120</sup> David Bewley-Taylor and Martin Jelsma, “Regime change: Re-visiting the 1961 Single Convention on Narcotic Drugs”, in: *International Journal of Drug Policy*, 23 (2012), p. 79. doi:10.1016/j.drugpo.2011.08.003

<sup>121</sup> E/CONF.82/16/Add.1, United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Vienna, 25 November-20 December 1988, Officials Records, Vol. II, p. 297, para 18. Other states supporting the Andean countries included the Bahamas, Costa Rica, Cuba, Guatemala, India, Jamaica, Mexico, Panama and Paraguay.

<sup>122</sup> *Ibid.*, p. 297, para 17, and p. 198, para 28 (Italy).

<sup>123</sup> E/CN.7/590, *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*: Done at Vienna on 20 December 1988, New York, United Nations, 1998, p. 396, Section 25.7.

*development, taking into account the rights of the indigenous communities involved and the protection of the environment”.*<sup>124</sup>

The UNDRIP reinforces in more detail the basic cultural rights embedded in the Universal Declaration of Human Rights (article 27) and the 1966 International Covenant on Economic, Social and Cultural Rights (article 15). The UNDRIP establishes that indigenous peoples have the right “*not to be subjected to forced assimilation or destruction of their culture*” (article 8), “*to practice and revitalize their cultural traditions and customs*” (article 11), “*to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities*” (article 20) and “*to maintain, control, protect and develop their cultural heritage*” (article 31).<sup>125</sup> According to Julian Burger, former coordinator of the OHCHR Indigenous Peoples and Minorities Unit, this “*gives indigenous peoples the possibility of continuing to produce crops and plants that they have traditionally grown for their own religious, medicinal, or customary purposes, and which constitute a part of their cultural practice and identity.*”<sup>126</sup>

The International Labour Organization (ILO), a “tripartite” UN agency bringing together governments, employers and workers, was the first international body to protect and promote the economic, social and cultural rights of indigenous peoples. The ILO is responsible for the Indigenous and Tribal Peoples Convention (No. 169), adopted by the International Labour Conference (ILC) in 1989 and ratified by 23 countries creating legally binding obligations.<sup>127</sup> The Convention states:

“The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”<sup>128</sup>

“*No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention*” and “*the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected*”.<sup>129</sup> The ILO Convention makes specific reference to “*subsistence economy and traditional*

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<sup>124</sup> United Nations Treaty Collection, Chapter VI, Narcotic Drugs And Psychotropic Substances, 19. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988, *Declarations and Reservations*, Bolivia, Colombia and Peru. [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-19&chapter=6&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&clang=_en#EndDec)

<sup>125</sup> A/RES/61/295, *United Nations Declaration on the Rights of Indigenous Peoples*, adopted by the General Assembly on 13 September 2007. It was adopted by a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions. Since then, all four countries voting against have reversed their position and now support the Declaration. <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

<sup>126</sup> Julian Burger and Mary Kapron, “Drug Policy and Indigenous Peoples”, in: *Health and Human Rights Journal*, June 2017, Vol. 19, Nr. 1, p. 273. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473056/>

<sup>127</sup> Argentina, Bolivia, Brazil, Central African Republic, Chile, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Luxembourg, Mexico, The Netherlands, Nepal, Nicaragua, Norway, Paraguay, Peru, Spain and Venezuela. See: *Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, ILO webpage (visited 3 August 2018). [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312314](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314)

<sup>128</sup> *Ibid.*, Art. 7.

<sup>129</sup> *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its 76<sup>th</sup> session, Entry into force: 5 September 1991, Articles 3.2 and 5(a).

*activities of the peoples concerned” which “shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development”.*<sup>130</sup>

The 2016 UNGASS Outcome Document repeats the 1988 wording about “*traditional licit uses*” and asks to “*take into account, as appropriate and in accordance with national legislation*” the UNDRIP, however the document completely undermines this point by adding “*in accordance with the three international drug control conventions*”.<sup>131</sup> This is a contradiction in terms, particularly as the UN Permanent Forum on Indigenous Issues has ruled that certain provisions of the 1961 Convention “*are inconsistent with the rights of indigenous peoples to maintain their traditional health and cultural practices*” and recommends that those treaty articles “*be amended and/or repealed*”.<sup>132</sup> The UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, said in his UNGASS statement that the language regarding indigenous rights in the outcome document was “*ambiguous*” and that “*it would have been better if it were clearly indicated that indigenous peoples should be allowed to use drugs in their traditional, cultural or religious practices when there is historical basis for this*”.<sup>133</sup>

Of course, the nature of poppy cultivation in rural communities in Myanmar has changed over the past five decades: what previously used to be part of small-scale traditional agricultural and cultural practices has transformed into a commercial activity associated with the illicit heroin trade in the wider region. The same holds true for the coca economy in the Andean region: while widespread traditional uses in Bolivia and Peru, and on a smaller scale among indigenous communities in Colombia, have a very long history, the majority of coca cultivation today—especially in Colombia—is linked to the global illicit cocaine market. Similarly, in the Moroccan Rif region where *kif* has been used traditionally for many centuries, most of the cannabis produced as hashish today is destined for the illicit European market. But these global market changes cannot be used to deny the persistence of traditional cultures that have legitimate arguments to reclaim their rights related to cultural and ceremonial uses of these psychoactive plants.

“*Cultural rights are an integral part of human rights and, like other rights, are universal, indivisible and interdependent*”,<sup>134</sup> but the UN drug control system continues to oblige states to pursue policies which violate cultural, religious and indigenous rights. The INCB, for example, urged Bolivia in 2008 to “*initiate action without delay with a view to eliminating uses of coca, including coca leaf chewing, that are contrary to the 1961 Convention*”.<sup>135</sup> And in its latest report the Board reminded Jamaica that “*only the medical and scientific use of cannabis is authorized and that use for any other*

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<sup>130</sup> Ibid., Art.23.

<sup>131</sup> General Assembly, *Our joint commitment to effectively addressing and countering the world drug problem*, Outcome document of the 2016 United Nations General Assembly Special Session on the world drug problem, New York, 19-21 April 2016, p. 15, paragraph 4(i). <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

<sup>132</sup> E/C.19/2009/14, *Permanent Forum on Indigenous Issues, Report on the eighth session (18-29 May 2009)*, Economic and Social Council Official Records, Supplement No. 23, p. 13, paragraph 89. [http://www.un.org/esa/socdev/unpfii/documents/E\\_C\\_19\\_2009\\_14\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/E_C_19_2009_14_en.pdf)

<sup>133</sup> *Statement by Mr. Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights*, 30th Special Session on World Drug Problem, General Assembly, 20 Apr 2016, Round Table 3, Cross-cutting issues: drugs and human rights, youth, women, children and communities, UN Web TV, video, <http://webtv.un.org/meetings-events/general-assembly/watch/round-table-3-30th-special-session-on-world-drug-problem-general-assembly/4855628109001> at minute 42:18.

<sup>134</sup> E/C.12/GC/21, UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)*, 21 December 2009, para 1. <http://www.refworld.org/docid/4ed35bae2.html>

<sup>135</sup> E/INCB/2007/1, *Report of the International Narcotics Control Board for 2007*, INCB, March 2008, p. 108, recommendation 7. [http://www.incb.org/documents/Publications/AnnualReports/AR2007/AR\\_07\\_Chapter\\_IV.pdf](http://www.incb.org/documents/Publications/AnnualReports/AR2007/AR_07_Chapter_IV.pdf)

*purposes, including religious, is not permitted*".<sup>136</sup> According to the CARICOM Regional Commission on Marijuana, however, cannabis *"is inextricably linked with the historical continuum and cultural identity of the CARICOM region"*, and with regard to Rastafarians the Commission writes that *"cannabis is integral to this religion's identity and prohibitions on its use constitutes an extreme invasion on their right to freedom of religion"*.<sup>137</sup>

At the General Assembly High-Level Thematic Debate in 2015, Mark Golding, Jamaican Minister of Justice said that *"we have, sadly, [...] oppressed indigenous groups that have constitutional rights that must be respected"*; *"Jamaica would like to see the existing treaty regime afford greater autonomy to individual State Parties in the design of domestic policies and laws, especially in relation to cannabis. Our constitutional arrangements, and our social, cultural and historic conditions and traditions, require us to be able to fashion our own rules in this regard, in the interest of social justice and a coherent and inclusive society."*<sup>138</sup> And at the 2016 UNGASS, Minister of Foreign Affairs, Kamina Johnson-Smith stated that Jamaica is *"disappointed that the [outcome] document does not allow countries sufficient flexibility to design our domestic policies to fit national circumstances, including the recognition of traditional uses of cannabis in our societies and as a religious sacrament."*<sup>139</sup>

## **The rights of peasants**

A process has been going on for about a decade at the Human Rights Council to elaborate a Declaration on the Rights of Peasants and Other People Working in Rural Areas, promoted by farmers' organisations and a group of countries from Latin America, Africa and Asia.<sup>140</sup> An open-ended inter-governmental working group was established in 2012 by HRC resolution 21/19 *"to find a comprehensive, human rights-centred development paradigm for examining the existing protection measures for people living and working in rural areas and identifying any possible protection gaps"*.<sup>141</sup> Starting point for the working group was a study undertaken by the HRC Advisory Committee which included a preliminary draft declaration.<sup>142</sup> In the drafting process, elements were drawn from the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Rights of Indigenous People, the Committee on

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<sup>136</sup> E/INCB/2017/1, *Report of the International Narcotics Control Board for 2017*, INCB, March 2018, p. 36, para 188.

[http://www.incb.org/documents/Publications/AnnualReports/AR2017/Annual\\_Report/E\\_2017\\_AR\\_ebook.pdf](http://www.incb.org/documents/Publications/AnnualReports/AR2017/Annual_Report/E_2017_AR_ebook.pdf)

<sup>137</sup> CARICOM Regional Commission on Marijuana, *Report to the Caribbean Community Heads of Government: Waiting to Exhale - Safeguarding our Future through Responsible Socio-Legal Policy on Marijuana*, August 2018, p. 17, para 3.3, and p. 19, para 3.13. <https://caricom.org/media-center/communications/news-from-the-community/final-report-report-of-the-caricom-regional-commission-on-marijuana>

<sup>138</sup> Mark Golding, Minister of Justice (Jamaica), *Statement at the General Assembly High-Level Thematic Debate in support of the process towards the 2016 Special Session of the General Assembly on the World Drug Problem*, UN, New York, 7 May 2015. <https://www.un.int/jamaica/sites/www.un.int/files/Jamaica/worlddrugproblem.pdf>

<sup>139</sup> A/S-30/PV.1, United Nations General Assembly Thirtieth special session, *Official Records*, 1st plenary meeting Tuesday, 19 April 2016, 10 a.m. New York, p. 14.

<sup>140</sup> La Via Campesina (a global peasant movement of some 180 organisations in 80 countries - [viacampesina.org](http://viacampesina.org)), FIAN (FoodFirst Information and Action Network, an international human rights organisation focused on the right to food - [fian.org](http://fian.org)), and Bolivia (who's ambassador in Geneva, Angélica Navarro Llanos, chaired the first meeting of the working group), have played a particularly important role in getting the process off the ground.

<sup>141</sup> A/HRC/26/48, *Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas*, Human Rights Council, 26<sup>th</sup> Session, 11 March 2014, p. 3. <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/26/48&Lang=E>

<sup>142</sup> A/HRC/19/75, *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*, Human Rights Council, 19<sup>th</sup> Session, 24 February 2012. <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/19/75&Lang=E>

World Food Security's tenure guidelines, the CEDAW recommendation on the rights of rural women, and the International Treaty on Plant Genetic Resources for Food and Agriculture. The latter FAO treaty includes a special section on "Farmers' Rights", calling for the "*protection of traditional knowledge relevant to plant genetic resources for food and agriculture*" and the "*the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resource*".<sup>143</sup>

The working group submitted a revised draft declaration in February 2018, underscoring the "*need for greater protection of the human rights of peasants and other people working in rural areas, and for a coherent interpretation and application of existing international human rights norms and standards*".<sup>144</sup> The international human rights framework around food, agriculture, land, poverty, development, and women in rural areas, remains fragmented, according to FIAN International: "*The Declaration specifies and concretizes the existing framework with regards to its application to rural people, providing critical guidance to enhance national efforts and international cooperation to improve the conditions of peasants and other people working in rural areas, and to protect their rights in the light of current challenges*".<sup>145</sup>

Consensus has not been reached, despite the working group's appreciation for "*the constructive negotiation, participation and active engagement of governments, regional and political groups, civil society, intergovernmental organizations, experts and relevant stakeholders, particularly representatives of peasants and other people working in rural areas*".<sup>146</sup> The EU considers that the draft goes beyond giving practical guidance regarding the compliance of States with their existing obligations and "*expressed concern about creating new rights in a non-binding document*" and that "*divergent views persisted including on extraterritoriality, the right to seeds and biodiversity*".<sup>147</sup> Once adopted by the HRC, the declaration will be an important reference to advance the discussion about human rights compliance in policies around illicit cultivation, as most of the key issues are addressed in very explicit terms:

- "Without disregarding specific legislation on indigenous peoples, before adopting and implementing legislation and policies, international agreements and other decision-making processes that may affect the rights of peasants and other people working in rural areas, States shall consult and cooperate in good faith with peasants and other people working in rural areas through their own representative institutions [...] ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes" (Art. 2.3)
- "States shall ensure that peasant women and other women working in rural areas enjoy without discrimination all the human rights and fundamental freedoms set out in the present declaration and in

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<sup>143</sup> Food and Agriculture Organization, *International Treaty on Plant Genetic Resources for Food and Agriculture*, FAO 2009, Article 9 - Farmers' Rights. The treaty was adopted by the 31<sup>st</sup> Session of the Conference of the Food and Agriculture Organization of the United Nations on 3 November 2001 and entered into force on 29 June 2004. <http://www.fao.org/3/a-i0510e.pdf>

<sup>144</sup> A/HRC/WG.15/5.2, *Revised draft United Nations declaration on the rights of peasants and other people working in rural areas*, Open-ended intergovernmental working group on the rights of peasants and other people working in rural areas, 5<sup>th</sup> session, 9-13 April 2018, Human Rights Council, 12 February 2018, preamble. [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/WG.15/5/2](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/WG.15/5/2)

<sup>145</sup> *Oral statement of FIAN International during the fifth session of the inter-governmental working group for a UN Declaration on the Rights of Peasants and Other People Working in Rural Areas*, FIAN International – General Statement, 9 April 2018. <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPLeasants/Session5/FIAN.docx>

<sup>146</sup> Human Rights Council, *Report of the open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas*, Draft report, 13 April 2018, p. 16.

<https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPLeasants/Session5/DraftReportWGPLeasantsSession5.doc>

<sup>147</sup> *Ibid.*, p. 4.

other international human rights instruments, including the rights [...] (g) To have equal access to agricultural credit and loans, marketing facilities and appropriate technology; (h) To equal access to, use of and control over land and natural resources, including inheritance thereof, independently of their civil and marital status and of particular tenure systems, and equal or priority treatment in land and agrarian reform and in land resettlement schemes” (Art. 4.2)

- “States shall take measures to ensure that any exploitation of the natural resources that peasants and other people working in rural areas traditionally hold or use is permitted” (Art. 5.2)
- “States shall provide peasants and other people working in rural areas with effective mechanisms for the prevention of and redress for any action that has the aim or effect of violating their human rights, dispossessing them of their land and natural resources or of depriving them of their means of subsistence and integrity” (Art. 12.5)
- “Peasants and other people working in rural areas have the right to a decent income and livelihood for themselves and their families, and to facilitated access to the means of production necessary to achieve them” (Art. 16.1)
- “States shall take all measures to ensure that their rural development, agricultural, environmental, trade and investment policies and programmes contribute effectively to protecting and strengthening local livelihood options and to the transition to environmentally sustainable modes of agricultural production” (Art. 16.4)
- “States shall prohibit forced eviction, the demolition of houses, the destruction of agricultural areas and the arbitrary confiscation or expropriation of land and other natural resources, including as a punitive measure or as a means or method of war” (Art. 17.4)
- “States shall take measures to restore access to land and other natural resources to those peasants and other people working in rural areas that have been displaced by natural disasters and/or armed conflict” (Art. 17.5)
- “They also have the right to maintain their traditional agrarian, pastoral and agroecological systems upon which their subsistence and the renewal of biodiversity depend” (Art. 20.1)
- “States shall recognize the rights of peasants and other people working in rural areas to social security, including social insurance, and, in accordance with national circumstances, should establish or maintain their social protection floors comprising basic social security guarantees” (Art. 22.3)
- “Peasants and other people working in rural areas have the right to use and protect their traditional medicines and to maintain their health practices, including access to and conservation of their plants, animals and minerals for medicinal use” (Art. 23.2)

The particular vulnerability regarding human rights violations of peasants and other people working in rural areas who are involved in illicit cultivation has not surfaced in the negotiations and is not addressed explicitly in the declaration. All the rights laid down in the declaration, however, equally apply to them, in spite of the wording that the *“exercise of the rights set forth in the present declaration shall be subject only to such limitations as are determined by law”*. That article continues saying *“and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others”* (Art. 28.1). Peasants or others involved in illicit cultivation do not lose their human rights.

### **Licit uses and legal regulation**

With regard to all three plants controlled under the Single Convention, the cultivation for medical and scientific purposes is allowed, and several other exceptions are specifically mentioned: for example, coca cultivation for its use as a flavouring agent, poppy cultivation for horticultural and culinary purposes (poppy seeds), and cannabis cultivation for industrial purposes (hemp fibre, seeds).<sup>148</sup> In the case of cannabis, a special exemption was made by excluding the leaves of the

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<sup>148</sup> 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol. Article 27.1: *“The Parties may permit the use of coca leaves for the preparation of a flavouring agent, which shall not contain any alkaloids, and, to the extent*

cannabis plants from international control, allowing cultivation for producing psychoactive drinks derived from the leaves (*bhang*, widely consumed in India).

All these exceptions are widely used. Global licit production of opiates in 2016 amounted to roughly 650 metric tons, for which around 94,000 hectares of opium poppy were cultivated; estimated requirements for 2018 are around 146,000 hectares.<sup>149</sup> Most licit poppy cultivation takes place nowadays on industrial-scale plantations in Australia, France and Spain, but especially in Turkey and India, many small farmers are still licensed to cultivate. In the case of coca leaf, for 2016, Peru reported to the INCB a licit export volume of 136 tons (mainly to the US as a flavouring agent for Coca Cola). Bolivia provided estimates to the Board about licit cultivation of 14,705 hectares with a preliminary production estimate of 23,217 tons of coca leaf, since the “cultivation of coca bush in that country for the chewing of coca leaf and the consumption and use of coca leaf in its natural state for cultural and medicinal purposes, such as preparing infusions, is allowed in accordance with the reservation expressed in 2013, when the country reaccessed to the 1961 Convention”.<sup>150</sup>

The licit use of cannabis, according to the INCB, has been increasing considerably: “Since 2000, more and more countries have started to use cannabis and cannabis extracts for medical purposes, as well as for scientific research. In 2000, total licit production was 1.4 tons; by 2016 it had increased to 211.3 tons.”<sup>151</sup> While medicinal use of cannabis has been legal for quite some time in several US states, some European countries and in Israel, for example, in recent years the medical cannabis market is booming; almost every month another country joins the trend. Rapid expansion is taking place across Europe (Germany, Greece, Czech Republic, Poland, Slovenia, Luxembourg, Switzerland) and Latin America (Uruguay, Colombia, Chile, Argentina, Mexico, Peru), in spite of many shortcomings in the regulatory framework in most of those countries. The trend now starts to become visible in the Caribbean, Africa and Asia as well, in countries such as Jamaica, St Vincent and the Grenadines, India, South Africa and Thailand.<sup>152</sup>

This trend opens opportunities for small farmers currently producing for the illicit market to shift towards the legal market, representing, for many, a more viable alternative than crop substitution. “Small-scale farmers involved in cannabis cultivation for subsistence purposes should be involved in the decision-making processes to enable the incorporation of their needs, and should receive technical assistance so they can participate in the ‘business’ of medicinal cannabis.”<sup>153</sup> The medical cannabis regulation recently introduced in Colombia, for example, requires licensed companies to

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necessary for such use, may permit the production, import, export, trade in and possession of such leaves”; Article 28.2: “This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes”; the seeds of all three plants are not placed under international control, allowing also the cultivation of opium poppy for the production of poppy seeds and oil for culinary purposes.

<sup>149</sup> INCB, *Report 2017, Estimated World Requirements for 2018 - Statistics for 2016*, part IV, Statistical information on narcotic drugs, pp. 149-159. [http://www.incb.org/documents/Narcotic-Drugs/Technical-Publications/2017/12\\_Part\\_4\\_Tables\\_EFS.pdf](http://www.incb.org/documents/Narcotic-Drugs/Technical-Publications/2017/12_Part_4_Tables_EFS.pdf)

<sup>150</sup> INCB, *Report 2017, Estimated World Requirements for 2018 - Statistics for 2016*, Part II, Comments on the reported statistics on narcotic drugs, p. 22. [http://www.incb.org/documents/Narcotic-Drugs/Technical-Publications/2017/7\\_Part\\_2\\_comments\\_E.pdf](http://www.incb.org/documents/Narcotic-Drugs/Technical-Publications/2017/7_Part_2_comments_E.pdf)

<sup>151</sup> *Ibid.*, p. 21.

<sup>152</sup> See: Sofia Aguilar, Víctor Gutiérrez, Lisa Sánchez and Marie Nougier, *Medicinal cannabis policies and practices around the world*, IDPC/MUCD Briefing Paper, April 2018.

<https://idpc.net/publications/2018/04/medicinal-cannabis-policies-and-practices-around-the-world>

<sup>153</sup> *Ibid.*, p. 11.

acquire, in the first five years, at least 10 per cent of their raw cannabis material from small farmers.<sup>154</sup>

In Jamaica, the Cannabis Licencing Authority (CLA) introduced in May 2016 a tiered licensing system for medical *ganja*, meant to “*enfranchise the small farmers who had previously been subject to significant punitive action by law enforcement agencies*”.<sup>155</sup> In both cases, there are difficult hurdles to overcome for small farmers to actually enter these schemes in practice, but they do represent important first attempts to use the rapidly opening licit spaces in the global cannabis market as an “alternative development” opportunity for small farmers currently producing for the illicit market. Also in Thailand, the medical cannabis programme intends to “*sustainably improve the quality of life for Thailand’s highland communities*”.<sup>156</sup> The ambitious aim is to cultivate cannabis on 5,000 hectares within five years, hoping that this is the beginning of an industry that will “*add at least 1% to Thailand’s US \$400 billion-dollar GDP*”.<sup>157</sup>

These are all licit uses within the confines of the drug control treaty framework, but a number of countries have started to open up “licit” spaces under national law that transcend the legal boundaries of the drug conventions. Bolivia was the first country to derogate from the 1961 provisions with regard to coca leaf, by withdrawing from the treaty and re-acceding with a reservation that allows cultivation for any use of coca in its natural form. As argued above, those treaty provisions are highly questionable in light of human rights obligations in the field of indigenous and cultural rights, so Bolivia was able to make a strong and legally convincing case to defend the step they took.<sup>158</sup> At the same time, Bolivia’s coca reservation opens up the possibility for licit uses of coca beyond the strictly “traditional” or “indigenous” uses. Expanding those wider uses of coca products as a mild natural stimulant, including opening up international markets for coca tea, coca flour (*mambe, ipadú*), coca-based energy drinks or liquors, and a variety of other products, has been defended in the context of Bolivia’s “integrated development with coca” strategy, and the government is actively exploring export opportunities.

Expanding the realm of licit coca uses is also explicitly mentioned in the Colombian peace agreement which says that “*the policy must maintain the recognition of the ancestral and traditional uses of the coca leaf, as part of the cultural identity of the indigenous community and the possibility of use of crops used for illicit purposes for medical or scientific purposes and other legitimate uses that are*

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<sup>154</sup> Ministerio de Salud y Protección Social, *Decreto 0613 de 2017, Por el cual se reglamenta la Ley 1787 de 2016 y se subroga el Título 11 de la Parte 8 del Libro 2 del Decreto 780 de 2016, en relación con el acceso seguro de informado al uso médico y científico del cannabis*, Bogotá, 10 April 2017, p. 32. Art. 2.8.11.10.6.

<https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/DIJ/decreto-613-de-2017.pdf>

<sup>155</sup> Simon Jones, Roy Porter and Chris Bishop, *The implementation of medical ganja in Jamaica*, International Journal on Drug Policy, April 2017, Volume 42, Pages 115–117. <https://doi.org/10.1016/j.drugpo.2017.02.002>

<sup>156</sup> Avinash Tharoor, *Thailand Authorises Country’s First Medical Cannabis Programme*, *TalkingDrugs*, 1 May 2018.

<https://www.talkingdrugs.org/thailand-medical-cannabis-approved>

<sup>157</sup> Thai Cannabis Corporation, *Thailand Enters the Legal Cannabis Industry*, Press Release, Chiang Mai, Thailand, 26 April 2018. <https://thaicannabiscorporation.com/2018/04/26/thailand-enters-the-legal-cannabis-industry-press-release/>

<sup>158</sup> TNI/WOLA, *Bolivia wins a rightful victory on the coca leaf: Creates positive example for modernizing the UN drug conventions*, press release, 15 January 2013. <https://www.tni.org/en/article/bolivia-wins-a-rightful-victory-on-the-coca-leaf-0> See also: Martin Jelsma, *Bolivia’s denunciation of the 1961 Single Convention on Narcotic Drugs*, Backgrounder, TNI, 30 June 2011. <http://druglawreform.info/en/issues/unscheduling-the-coca-leaf/item/2596-bolivias-denunciation-of-the-1961-single-convention-on-narcotic-drugs->

*established.*<sup>159</sup> An initial step in that direction was taken by the decree that simplifies the procedure to register coca or cannabis products as “phyto-pharmacological” herbal medicines.<sup>160</sup>

Uruguay and Canada, as well as ten US states, have now started to break away from cannabis-related treaty obligations, allowing and regulating cultivation and use for purposes other than medical and scientific use. Uruguay, the first country to take that step in 2013, has strongly based its decision to legally regulate the cannabis market on human rights arguments, arguing it would enhance the protection of the health and safety of its citizens.<sup>161</sup> Uruguay’s argument that human rights protection takes precedence over drug control requirements and provides solid arguments for policy choices in favour of legal regulation has found support from lawyers.<sup>162</sup> In his report to the General Assembly, also the UN Special Rapporteur on the Right to Health considered that there is a need to consider alternatives to the current drug control system, a regulatory framework which protects the rights of people who use and are dependent on drugs while minimizing associated harms. *“The proposed framework additionally would allow traditional, cultural use of drugs, whose public health impact has been shown to be very limited, such as coca leaves in Bolivia and various forms of cannabis in India. The existing regime has deprived millions of people of their livelihoods and denied traditional usage of drugs because of prohibitions on cultivation and extremely harmful eradication methods used to limit production. These sanctions are unwarranted and unhelpful in restricting drug use.”*<sup>163</sup>

*“Embracing cannabis/marijuana as a means of economic development is not without its challenges however”,* according to the CARICOM marijuana commission: *“A serious concern is that a new system could place economic power and benefit too much in the hands of large, foreign business concerns, to the detriment of several stakeholders, including small farmers [...] cannabis has fuelled important economic gains and livelihoods for small farmers and traders, who now fear that liberalisation and legalisation might dis-empower them”.*<sup>164</sup>

## Conclusions

There are clear tensions between current drug control approaches and human rights compliance, and it *“is imperative that the international drug control system [...] and the complex international human rights system that has evolved since 1948, cease to behave as though they exist in parallel*

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<sup>159</sup> *Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace*, Signed 24 November 2016, Chapter 4: Solution to the Illicit Drugs Problem. <http://www.altocomisionadoparalapaz.gov.co/Prensa/documentos-y-publicaciones/Documents/Acuerdo-Final-ing-web.pdf>

<sup>160</sup> *Invima le abre el camino a la medicina natural y tradicional*, El Espectador, 16 July 2018.

<https://www.elespectador.com/noticias/salud/invima-le-abre-el-camino-la-medicina-natural-y-tradicional-articulo-798576>

<sup>161</sup> Martin Jelsma, Neil Boister, David Bewley-Taylor, Malgosia Fitzmaurice and John Walsh, *Balancing Treaty Stability and Change: Inter se modification of the UN drug control conventions to facilitate cannabis regulation*, GDPO/WOLA/TNI Policy Report, March 2018, pp. 9-11. <https://www.tni.org/en/publication/balancing-treaty-stability-and-change>

<sup>162</sup> See, for example, P.H.P.M.C. van Kempen and M.I. Federova, *International Law and Cannabis II. Regulation of cannabis cultivation and trade for recreational use: positive human rights obligations versus UN Narcotic Drugs Conventions*, Deventer: Wolters Kluwer 2016. [https://www.ru.nl/public/pages/584978/boek\\_-\\_van\\_kempen\\_fedorova\\_-\\_internationaal\\_recht\\_en\\_cannabis\\_ii\\_-\\_2016\\_-\\_def.pdf](https://www.ru.nl/public/pages/584978/boek_-_van_kempen_fedorova_-_internationaal_recht_en_cannabis_ii_-_2016_-_def.pdf)

<sup>163</sup> A/65/255, General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, 6 August 2010, p. 24, para 75. <http://undocs.org/en/A/65/255>

<sup>164</sup> CARICOM Regional Commission on Marijuana, *Report to the Caribbean Community Heads of Government: Waiting to Exhale - Safeguarding our Future through Responsible Socio-Legal Policy on Marijuana*, August 2018, p. 56, paras 10.17 and 10.19. <https://caricom.org/media-center/communications/news-from-the-community/final-report-report-of-the-caricom-regional-commission-on-marijuana>

universes”.<sup>165</sup> In its Annual Report for 2017, the “INCB strongly urges Governments to adopt humane and balanced drug policies that reflect a human rights-based approach”; “Without due consideration of human rights, there are devastating consequences”, according to INCB President Viroj Sumyai.<sup>166</sup>

Supply reduction policies are frequently implemented in ways that violate the human rights of subsistence growers of coca, cannabis and opium poppy, due to forced eradication and ill-designed crop substitution programmes, which result in repercussions such as the loss of livelihoods, stigmatisation and marginalisation of small-scale producers, extortion practices, imprisonment, displacement, environmental degradation, and the criminalisation of indigenous and traditional cultural practices. As has been recognised now in many policy documents, “development assistance in illicit drug crop producing areas should be undertaken in full compliance with the overall aims of human rights protection, poverty alleviation, conflict prevention and resolution, peace building and human security.”<sup>167</sup>

Each year, the General Assembly adopts an omnibus resolution on the “world drug problem”, and since the 2016 UNGASS, two noteworthy changes appeared in the text that illustrate the increased importance of human rights compliance in drugs policy. Firstly, while earlier version always underscored the core relevance of the three drug conventions, these past two years the omnibus resolution states that those treaties “and other relevant international instruments constitute the cornerstone of the international drug control system” (emphasis added). Secondly, the annually re-appearing paragraph that says that all aspects of drug control must be addressed in full conformity with the principles of the UN Charter and the Universal Declaration of Human Rights, and with full respect for all human rights and fundamental freedoms, now refers to the “unwavering commitment” of the General Assembly to ensure those principles.<sup>168</sup>

In envisioning the way forward for aligning drug policies around illicit cultivation with human rights obligations, policy makers could draw upon lessons learned in successful drug policy reforms on the consumption side of the spectrum, especially as pertains to decriminalisation, harm reduction, proportionality of sentences, alternatives to incarceration and involvement of affected populations in policy making. Ultimately, in some cases, it will also require challenging certain inconsistencies and outdated paradigms of the drug control treaty regime that pose irreconcilable obstacles for truly harmonizing drug control and human rights obligations. Especially with regards to indigenous rights, there is an undeniable conflict between international human rights obligations and the UN drug control treaties, and the General Assembly passed up a critical opportunity to correct this at the 2016 UNGASS.

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<sup>165</sup> Paul Hunt, *Human Rights, Health and Harm Reduction: States’ Amnesia and Parallel Universes*, keynote speech at Harm Reduction International’s 19th International Conference in Barcelona, Spain, on 11 May 2008, p. 9.

<https://www.hri.global/files/2010/06/16/HumanRightsHealthAndHarmReduction.pdf> Paul Hunt was an elected independent expert of the UN Committee on Economic, Social and Cultural Rights (1999-2002) and served as UN Special Rapporteur on the right to the highest attainable standard of health (2002-2008).

<sup>166</sup> *Report of the International Narcotics Control Board for 2017*, INCB 2018, Foreword, p. iii.

[http://www.incb.org/documents/Publications/AnnualReports/AR2017/Annual\\_Report\\_chapters/Foreword\\_2017.pdf](http://www.incb.org/documents/Publications/AnnualReports/AR2017/Annual_Report_chapters/Foreword_2017.pdf)

<sup>167</sup> UNODC/CND/2008/WG.3/CRP.4, *Key points identified by EU experts to be included in the conclusion of the open-ended intergovernmental expert working group on international cooperation on the eradication of illicit drug and on alternative development*, EU Presidency Paper, 4 July 2008.

[http://www.ungassondrugs.org/images/stories/UNODC\\_CND2008WG3\\_CRP4.pdf](http://www.ungassondrugs.org/images/stories/UNODC_CND2008WG3_CRP4.pdf)

<sup>168</sup> A/RES/72/198, *International cooperation to address and counter the world drug problem*, Resolution 72/198, adopted by the General Assembly on 19 December 2017. The same language appeared in Resolution 71/211, adopted by the General Assembly on 19 December 2016.

### *Human rights obligations*

The drug conventions have an in-built bias to criminalisation and repressive law enforcement, establishing floors with no ceilings. *“Their reliance on domestic protection of human rights labours under the deliberate delusion that such protection exists”*, according to Boister, adding that in other policy areas the lack of protection has prompted individuals to rely directly on international human rights instruments. Hence, also *“[i]nternational drug control law may be forced in the future to expressly incorporate human rights protections as individuals exercise their rights under general human rights law, thus exposing the absence of protections in the drug conventions and the inadequacy of the protections provided by general international human rights instruments.”*<sup>169</sup>

In recent years, resolutions adopted by the CND and the Human Rights Council have pledged to actively promote human rights compliance in drug control. The 2016 UNGASS outcome document gave more prominence to human rights principles in drug policy, and most recently the General Assembly expressed the *“unwavering commitment”* of the international community to adhere to those principles. It needs to be clear that these promises relate to international legal obligations rather than optional policy measures governments can choose to take or not. UN member states are bound by their obligations under the Charter of the United Nations to promote *“universal respect for, and observance of, human rights and fundamental freedoms.”* The Charter explicitly states that in the event of conflicts between states’ obligations under the Charter and other international agreements, their Charter obligations take precedence.

It is time to spell out what this means for policies addressing the illicit cultivation of coca, opium poppy and cannabis. Long-standing debates in international drug policy forums, especially in the CND in Vienna, seem to have reached a stalemate on issues such as proper sequencing in alternative development versus forced eradication, or the ultimate zero-tolerant goal of a drug-free world versus harm reduction policies and respect for traditional, cultural and religious uses. To move beyond the current stalemate the terms of those debates need to shift away from the misperception that they are about policy differences and that states are free to make their own choice. International human rights law obliges states to make certain choices in those debates, and drug control officials and diplomats in Vienna are not entitled to negotiate basic human rights principles away for the sake of upholding a global drug control consensus.

### *Proper sequencing and proportionality of sentences*

In spite of the rigid nature of the drug control conventions with regard to illicit cultivation, several legal and policy options are available to distinguish between subsistence-level and commercial cultivation that can reduce the criminalisation of small-scale farmers. As explained above, the treaty obligation to take *“appropriate measures”* to eradicate illicit cultivation, allows States the flexibility to only take such measures *“to the extent that they appear to be practical and can reasonably be expected of them under their special conditions”*. A range of alternative policy options can be identified to better align drug policy addressing illicit cultivation with human rights obligations.

Forced eradication in absence of alternative livelihoods violates people’s rights to an adequate standard of living, to live a life in dignity, to be free from hunger, etcetera, and represents therefore

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<sup>169</sup> Neil Boister, *Penal Aspects of the UN Drug Conventions*, Kluwer Law International, The Hague, 2001, ISBN 90-411-1546-3, pp. 528-529.

a policy option that is not allowed under international human rights law. The drug control conventions do leave sufficient flexibility for proper sequencing, as they refer explicitly to the possibility to provide “*as alternatives to conviction or punishment*” measures of social reintegration and rural development “*in appropriate cases of a minor nature*”. Even though the drug conventions do have a strong and questionable bias to criminalisation and eradication, the relevant treaty articles allow states to refrain from forced eradication in absence of alternative livelihood options, and from incarceration or other disproportional sanctions for subsistence farmers. Very few countries, however, have used this treaty latitude to make clear distinctions in the law between subsistence-level and commercial-scale cultivation, or to exempt people involved in the illicit drug economy for reasons of survival (in cultivation, harvesting, processing or low-level trading) from criminal prosecution.

#### *AD: rhetoric vs. reality*

The AD discourse has moved forward in a promising direction, but unfortunately, practices on the ground have not followed suit. Over time, in fact the disconnect between an improving AD discourse and repressive practices only seems to have grown worse. In spite of clear outcomes of in-depth evaluations and many statements of well-intended principles,<sup>170</sup> reversed sequencing and conditionality is overwhelmingly the norm in AD practices on the ground today and very few exceptions can be found. GIZ summarised the key principles for AD, based on all the lessons learned over the past decades, as follows:

“AD is about reducing the dependency of farmers on illicit drug economies in the long term, not about a short-term reduction in the supply of illicit drug. [...] AD should not be combined with forced eradication. Combining AD with eradication has not proven to yield sustainable results regarding the volume of coca or opium poppy cultivation, since eradication efforts are neutralised by the displacement of crops and the migration of farmers and day-labourers. [...] AD should not be made conditional on prior drug crop eradication: Implementing development programmes in a drug producing area should not be made dependent on whether and to what extent drug crop areas have been previously eradicated. [...] The reduction of drug crops should be a consequence of development processes and not a requirement.”<sup>171</sup>

The main challenge for AD today is how to ensure that those basic principles are actually being implemented. The other disturbing fact is that funding for AD has in fact been declining, contrary to the greater commitment expressed in UN declarations, including in the 2013 UN Guiding Principles on Alternative Development and the 2016 UNGASS. The World Drug Report alerted about this worrying trend in a special chapter on AD:

“Despite the amount of attention given to alternative development at the international level, there is a disconnect between international rhetoric and funding. Alternative development features prominently in documents of the Commission on Narcotic Drugs and the special sessions of the General Assembly on the world drug problem, but the funding for it has decreased considerably in the last few years. The twentieth special session of the General Assembly in 1998 triggered renewed impetus in funding alternative development in the spirit of “shared responsibility”, but overall gross disbursements of alternative development funds from OECD countries have declined by 71 per cent

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<sup>170</sup> For a collections of AD documents, see: <http://www.unodc.org/unodc/en/alternative-development/publications.html>

<sup>171</sup> Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, *Rethinking the Approach of Alternative Development, Principles and Standards of Rural Development in Drug Producing Areas*, 4<sup>th</sup> edition, Eschborn, Germany, October 2016, pp. 10-11. <https://snrd-asia.org/rethinking-the-approach-of-alternative-development/>

since the adoption of the 2009 Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem.”<sup>172</sup>

The dominance of repressive realities on the ground and the lack of donor commitment, have turned the global AD debate and references to AD in UN documents largely into a virtual reality. The two issues are closely related: the development community for good reasons has kept distance from the persistent mixing between AD and controversial eradication and law enforcement practices. As long as human rights protection of the involved communities doesn't become a priority in AD policies and projects, few international donor agencies and development NGOs will be willing to embrace the concept. Instead, they prefer to do rural development in those areas without the controversies that linking it with drug control objectives usually bring along. If the current disconnect between AD rhetoric and implementation cannot be overcome, the virtual reality created around it risks becoming complicit in the associated human rights violations. The AD discourse would then mainly serve to perpetuate the myth that a humane, human rights-based and development approach to communities involved in illicit cultivation exists in practice.

### *AD and peace building*

The biggest source countries for cocaine and heroin, Colombia and Afghanistan, have both been plagued with armed conflict for decades and are in critical stages of complex conflict resolution efforts. The most recent estimates of illicit cultivation in both cases have reached new records, adding pressure to apply even harsher drug control measures, including aerial spraying operations in Colombia and military airstrikes against opium stashes and processing facilities in Afghanistan. The Pavlovian political response to increased levels of illicit cultivation continues to be to increase repression and eradication, contrary to all the evidence from the past about the ineffectiveness and undermining impact on peace building efforts. In fact, only policies and projects based on principles of sustainable development, peace building and human rights protection, and implemented in close collaboration with local communities, offer any real chance to change such complex local conflict dynamics. But they require time, sufficient resources and local community ownership: experiences have shown that quick fixes and tight deadlines, especially in the area of alternative development and peace building, won't work and run a significant risk of making things worse rather than better.

The Afghanistan Research and Evaluation Unit (AREU) recommended: *“First, don't overreact. While alarming, 2017 represents a continuation, albeit with great accentuation, of the expanding trend of the past 7-8 years. Panicked, drastic, knee-jerk reaction such as attempts at massive eradication of poppy fields, let alone aerial spraying, would lead to worse problems than the expansion of the drug industry itself. [...] Second, don't treat only the symptoms without addressing the underlying disease. Attacking the “easiest” targets in the drug industry—farmers cultivating opium poppy, and destroying their standing crop—has been and will continue to be counterproductive.”* Additionally, AREU advised to manage expectations: *“As long as the current security situation and trends remain what they are, and resources for development are constrained, [...] it must be recognized that not*

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<sup>172</sup> UNODC, *World Drug Report 2015*, Chapter II, Alternative Development, United Nations, May 2015, p. 118. [http://www.unodc.org/documents/wdr2015/WDR15\\_Chapter\\_2.pdf](http://www.unodc.org/documents/wdr2015/WDR15_Chapter_2.pdf)

*much can be done in the short run.” And finally, that “development is the only sustainable remedy, but it is complex and takes a long time, [...] measured in decades rather than years.”<sup>173</sup>*

### *Community participation*

The slogan “*Nothing about us without us*” has guided the participation of affected communities in the design and implementation of HIV/AIDS policies and programmes. In comparison, meaningful participation of rural and indigenous communities dependent on illicit cultivation lags far behind. The illegal nature of their economic activities and the resulting criminalisation of members of these communities obviously hinders trust building and open dialogue. The drug control imperative that usually comes along with AD projects also often limits the space for dialogue. The “voluntary substitution pacts” in Colombia, for example, are based on non-negotiable terms and conditions: “take it or leave it” (and in the latter case face forced eradication). The general tendency in AD project implementation is still to view farmers and their families as passive recipients of aid instead of “*ensuring the empowerment, ownership and responsibility of affected communities, including farmers and their cooperatives*” as committed to in the 2016 UNGASS.

In the report on one of the very first international conferences aimed to discuss and improve the AD concept, in 2002 in Feldafing, Germany, I was quoted saying: “A ‘*participatory approach*’ means more than just consulting communities about their wishes. It requires serious dialogue in which these communities are allowed to have substantial leeway for negotiation.”<sup>174</sup> Sixteen years later, that still has not become a reality for the majority of coca, poppy and cannabis farmers, in spite of the adoption of the 2009 Action Plan, the AD Guiding Principles and the 2016 UNGASS outcome document, all including multiple references to the importance of a participatory approach.

Of course, there are good examples where communities have been able to participate in the design and implementation of local projects. Rarely, however, have they been able to participate at the policy making level, and only relatively recently it has become more accepted to include farmers’ representatives in UN conferences where policies that affect them are being debated. It is important to put best practices prominently in the spotlight; at the same time, however, limiting farmers participation in international forums to representatives of the relatively few successful AD projects, risks to add to the creation of the virtual reality referred to above. The voices of the far majority that have never received any assistance at all or that have returned to illicit cultivation after frustrating experiences with ill-designed and short-term projects, also need to be heard.

### *Gender*

Although women’s rights are enshrined in UN documents such as the 1945 UN Charter and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the rights of rural women in areas of illicit cultivation receive scant attention in drug-related documents. The landmark resolution, *Mainstreaming a gender perspective in drug-related policies and programmes*,

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<sup>173</sup> Byrd, W.A., *Disease or Symptom? Afghanistan’s burgeoning opium economy in 2017*, Afghanistan Research and Evaluation Unit, November 2017, pp. 3-4. <https://areu.org.af/wp-content/uploads/2017/11/1733E-Disease-Symptom-PN.pdf>

<sup>174</sup> BMZ/GTZ/DSE/UNODCCP, *The Role of Alternative Development in Drug Control and Development Cooperation*, International Conference 7-12 January 2002, Feldafing, Germany, p.25. [http://www.unodc.org/pdf/Alternative%20Development/RoleAD\\_DrugControl\\_Development.pdf](http://www.unodc.org/pdf/Alternative%20Development/RoleAD_DrugControl_Development.pdf)

approved at the March 2016 CND, also makes no mention of rural women.<sup>175</sup> However, in its 2016 *General recommendation No. 34 on the rights of rural women*, the Committee on the Elimination of Discrimination against Women provides a blueprint for incorporating a gender perspective into alternative development programmes, highlighting that:

“States parties should promote inclusive and sustainable economic development that enables rural women to enjoy their rights and [...] Ensure that they are able to benefit effectively and directly from economic and social programmes by involving them in the design and development of all relevant plans and strategies, such as those relating to health, education, employment and social security.”<sup>176</sup>

The Committee recommendations, as well as the recent research in Colombia referred to above, underscore the importance of including women in the design, implementation, monitoring and evaluation of alternative development programmes; empowering women to play leadership roles in their communities; and addressing the specific needs of girls and women such as access to childcare services, and gender-appropriate health care. Education and other skills-building programmes should be both economically and geographically accessible, rural women must have access to quality land and credit, and the formation of women’s cooperative associations should be encouraged. Finally, a portion of alternative development funds should be designated for strategic projects identified by women and any funding and support should be provided directly to them. Ultimately, all drug policies must be constructed with an eye toward promoting gender equality and ending gender-related violence.

#### *Indigenous peoples and cultural rights*

The 1988 Convention, the 2009 Political Declaration and the 2016 UNGASS Outcome Document all failed to take the necessary steps to align drug policy with long-established cultural and religious rights and with the more recently reached international consensus about the rights of indigenous peoples. Several spokespersons from the UN human rights system, quoted in the section above, have pointed out the incompatibility of certain drug treaty provisions with human rights obligations. Also according to Richard Lines, “[t]he obligation contained in Article 49 of the 1961 Convention is perhaps the clearest example of regime conflict between the drug control and human rights legal systems, as it has the effect of creating a State obligation to eradicate a traditional practice of cultural significance to indigenous peoples.”<sup>177</sup>

This contradicts the 2016 UNGASS outcome document’s assertion that the drug control conventions “allow for sufficient flexibility for States parties to design and implement national drug policies according to their priorities and needs, consistent with the principle of common and shared responsibility and applicable international law”.<sup>178</sup> Ultimately, countries truly committed to human rights protection in drug control have to accept the fact that when it comes to indigenous, cultural

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<sup>175</sup> E/CN.7/2016/L.8, Commission on Narcotic Drugs, *Mainstreaming a gender perspective in drug-related policies and programmes*, Resolution 59/5.

[https://www.unodc.org/documents/commissions/CND/CND\\_Sessions/CND\\_59/Resolution\\_59\\_5.pdf](https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_59/Resolution_59_5.pdf)

<sup>176</sup> CEDAW/C/GC/34, Convention on the Elimination of All Forms of Discrimination against Women, *General recommendation No. 34 on the rights of rural women*, Committee on the Elimination of Discrimination against Women, 7 March 2016, para 17. <http://undocs.org/en/CEDAW/C/GC/34>

<sup>177</sup> Richard Lines, *Drug Control and Human Rights in International Law*, Cambridge University Press, July 2017, p. 102. doi:10.1017/9781316759707

<sup>178</sup> A/RES/S-30/1, *Our joint commitment to effectively addressing and countering the world drug problem*, Resolution adopted by the General Assembly on 19 April 2016. <http://undocs.org/en/A/RES/S-30/1>

and religious rights, full compliance will require the amendment of certain treaty provisions, or in the absence of achievable consensus, the derogation from those treaty obligations by means of reservations or *inter se* treaty modification.<sup>179</sup>

### *Licit uses*

It is important to correct the misconception that “psychoactive plants are prohibited”: all of them have recognised licit uses, and several of them, like khat, kratom and ephedra, have never been placed under international control. Clearer distinctions in levels of control between plants and extracted alkaloids, and allowing milder natural herbal substances on the market, may change the dynamics and reduce the harms of the illicit drugs market.

Licit uses of poppy, coca and cannabis may well offer additional opportunities to move farmers away from the current illicit drugs market. Several of those—especially medical use—fall perfectly within the existing treaty framework, but there is a clear policy trend towards further stretching the present limits of latitude, especially in the cases of coca and cannabis. For all those existing and opening licit spaces, it is imperative that small farmers from Southern countries are not left behind. Alternative development, human rights and fair trade principles need to secure a legitimate place for small growers in these fast-growing licit markets. It would be extremely unfair, now that regulated markets for recreational cannabis are being created in several countries, to cut out the farmers who have been dependent for their livelihoods on supplying the illicit markets in those countries for decades, and to allow Northern commercial business interests to capture the emerging licit industry.

### *Leave no one behind*

Kate Gilmore, OHCHR Deputy High Commissioner, when introducing in April 2018 the latest draft of the Declaration on the Rights of Peasants and Other People Working in Rural Areas referred to the 2030 Agenda for Sustainable Development and its promise to “leave no one behind”, warning that “*if its delivery is not grounded in international human rights law, standards, principles and norms that are enshrined in the SDGs, the benefits of implementation will not flow to all.*” The Universal Declaration on Human Rights, she said, “*makes clear that those are not optional promises; they are not ideological; not to be exercised at the discretion of power but rather as the obligations of power. Promises that no one is to be left behind by discrimination nor poverty; or left out through marginalization; or forgotten because their truths are inconvenient to the privileged. Yet, those universal promises have not been upheld. Peasants and other people working in rural areas have been left behind.*”<sup>180</sup> And that is certainly the case for those of them dependent on illicit cultivation.

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Transnational Institute  
August 2018

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<sup>179</sup> Martin Jelsma, Neil Boister, David Bewley-Taylor, Malgosia Fitzmaurice and John Walsh, *Balancing Treaty Stability and Change, Inter se modification of the UN drug control conventions to facilitate cannabis regulation*, WOLA/TNI/GDPO Policy Briefing, March 2018. [https://www.tni.org/files/publication-downloads/balancing\\_treaty\\_stability\\_and\\_change.pdf](https://www.tni.org/files/publication-downloads/balancing_treaty_stability_and_change.pdf)

<sup>180</sup> Open-ended Intergovernmental Working Group on the rights of peasants and other people working in rural areas, *Opening statement by Kate Gilmore, Deputy High Commissioner OHCHR*, Fifth session, Geneva, 9-13 April 2018. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23014&LangID=E>