

# Dejusticia

Inputs to the draft annotated outline  
CESCR Drug Policy - General Comment  
Drug Policy Team

## 1. Growers and ESCR impact

The cultivation of poppy, coca leaf, and cannabis engages around 4 million people in the global south, who rely on them for their livelihood as it is their only option for coping with the multidimensional poverty in which they live<sup>1</sup>. This deprivation of rights also results in limited access to public services, land, infrastructure, markets, and credit.

In Colombia, coca leaf peasants are typically impoverished. According to FIP and UNODC, 57% of the families who earn their livelihood from cultivating coca are living in monetary poverty (compared to 36% for rural monetary poverty), and 35% are in extreme poverty<sup>2</sup>. The average monthly net income per hectare of a coca grower is \$410,541<sup>3</sup>, which was equivalent to 56% of the minimum wage in 2018. The average size of coca cultivation is 0.5 hectares. Twenty-nine percent of coca-growing families are headed by a single woman, while 59% of families claim to be the owner of the land, although not all of them have a title to back up the claim, and 13% are tenant farmers.

The coca-growing territories are isolated regions. 48% of the families included in the PNIS declared that their plots had no road access. According to the survey conducted by FIP and UNODC on PNIS families, 52% of the families with road access indicated that they had good access, 49% indicated fair condition, and 35% indicated bad condition<sup>4</sup>. The average travel time between a farm and the urban zone in Colombia is 5.4 hours. In the case of areas where coca cultivation is present, this distance may be longer<sup>5</sup>.

In territories with a large presence of coca crops, there are low indices of local justice delivery, taxation, and Gini coefficients of property owners. In municipalities with a high or very high presence of coca, there tend to be higher homicide rates, infant mortality, and a higher percentage of the population deprived of water, higher rates of homicide and infant mortality, and a higher percentage of the population has access to water<sup>6</sup>.

---

<sup>1</sup> Buxton, J. (2015b). Drugs and Development: The Great Disconnect. *Global Drug Policy Observatory, Policy Report 2*, 66. <https://www.swansea.ac.uk/media/Drugs-and-Development-The-Great-Disconnect.pdf>, p. 7.

<sup>2</sup> FIP - UNODC. (2018). *¿Quiénes son las familias que viven en las zonas con cultivos de coca?* (p. 20). Fundación Ideas para la Paz - UNODC. [http://ideaspaz.org/media/website/FIP\\_familiascoca\\_final.pdf](http://ideaspaz.org/media/website/FIP_familiascoca_final.pdf), p. 10.

<sup>3</sup> 104 USD (tasa de cambio 31 de enero de 2024).

<sup>4</sup> FIP - UNODC. (2018). *¿Quiénes son las familias que viven en en las zonas con cultivos de coca?* (p. 20). Fundación Ideas para la Paz - UNODC. [http://ideaspaz.org/media/website/FIP\\_familiascoca\\_final.pdf](http://ideaspaz.org/media/website/FIP_familiascoca_final.pdf), p. 14.

<sup>5</sup> Lozano, I. & Restrepo, J.C. (2015). *El papel de la infraestructura rural en el desarrollo agrícola en Colombia*. Bogotá: Banco de la República, p. 125.

<sup>6</sup> Chaparro, S., & Cruz, L. (2017). *Coca, instituciones y desarrollo: Los retos de los municipios productores en el posacuerdo*. Dejusticia, p. 126.

Since 2017, the PNIS has been implemented as a result of the peace agreement between the Government and the FARC - EP. The PNIS recognizes the connection between the structural problems of the countryside and coca cultivation. However, the strategy has failed to bring about improvements in the quality of life in coca-growing territories. According to the Observatorio de Tierras, the implementation of the program has significantly reduced the income of its beneficiaries, as those who joined "stopped receiving an average of almost \$910,000 pesos", equivalent to USD 200<sup>7</sup>.

The current situation of the coca-growing peasantry is fragile, and it is even worse for families that grow coca leaf within protected areas. According to a survey of 16,814 households potentially benefiting from the PNIS, 52.7% of the households were living in poverty. However, the distribution of poverty is not equal among the different zones in which the families are located. In areas categorized as "not protected areas," 47.9% of households are in multidimensional poverty, while in National Park areas, 60.5% and forest reserves 56.4%<sup>8</sup>.

The general comment should recognize the impacts of drug policy and the illegal economy on the rights of rural populations, especially the right to an adequate standard of living and the right to a healthy environment. Attention should also be paid to aligning environmental protection efforts with human rights-based drug policies, preventing the harmful mistakes of the war on drugs into environmental conservation strategies.

## 2. Harm reduction from the global south

In South America there are no specific regulatory frameworks for harm reduction programs. This lack of regulation exposes these initiatives to police and judicial harassment<sup>9</sup>. While some legal frameworks can be found in countries like Argentina<sup>10</sup> or Ecuador<sup>11</sup>, the programs appear to be limited and inadequate. Most initiatives are provided by civil society, but they are not strong enough due to the lack of funding.

---

<sup>7</sup> Machuca, D. (2021). *La Paz con hambre y bala está muy difícil: Reporte de seguimiento a la implementación del PNIS* (p. 87). Observatorio de Restitución y Regulación de Derechos de Propiedad Agraria. <https://www.observatoriode tierras.org/wp-content/uploads/2022/01/La-paz-con-hambre-y-bala-est%C3%A1-muy-dif%C3%ADcil.pdf>, p. 35.

<sup>8</sup> Rubiano-Lizarazo, J., Marín Llanes, L., Dávalos, E., Hernández, E., & Vélez, M. A. (2022). *Caracterización de los hogares vinculados al Programa Nacional Integral de Sustitución de Cultivos Ilícitos (PNIS) en Zonas de Manejo Especial* (30; Documento temático, p. 46). Centro de Estudios sobre Seguridad y Drogas. <https://cesed.uniandes.edu.co/wp-content/uploads/2022/06/Caracterizacion-hogares-PNIS-en-ZME-Final.pdf>, p. 13.

<sup>9</sup> Cruz Olivera, L; Castillo, D. (2022). *Cordillera Fest: barreras policiales a la reducción de riesgos y daños*. Dejusticia, available on: <https://www.dejusticia.org/column/cordillera-fest-barreras-policiales-a-la-reduccion-de-riesgos-y-danos/>

<sup>10</sup> Argentina, Law n. 26.934: Plan Integral para el Abordaje de los Consumo Problemático. Available on: <https://servicios.infoleg.gob.ar/infolegInternet/anexos/230000-234999/230505/norma.htm>

<sup>11</sup> Ecuador, Law n. 0 de 2015: Ley orgánica de prevención integral del fenómeno socio económico de las drogas y de la regulación y control del uso de sustancias catalogadas sujetas a fiscalización. Available on: [https://www.controlsanitario.gob.ec/wp-content/uploads/downloads/2021/01/Ley-Organica-de-Prevencion-Integral-del-Fenomeno-Socio-Economico-de-las-drogas-y-de-regulacion-y-control-del-uso-de-sustancias-catalogadas-sujetas-a-fiscalizacion\\_Ley-0.pdf](https://www.controlsanitario.gob.ec/wp-content/uploads/downloads/2021/01/Ley-Organica-de-Prevencion-Integral-del-Fenomeno-Socio-Economico-de-las-drogas-y-de-regulacion-y-control-del-uso-de-sustancias-catalogadas-sujetas-a-fiscalizacion_Ley-0.pdf)

Since the most harm reduction interventions have been developed in the Global North with a focus on heroin use, there is a need to establish harm reduction strategies for smokable cocaine (known in Latin America like *basuco*, *paco*, *pasta* or *pitillo*<sup>12</sup>) in order to protect the right to health of people who use this substance.

Different substances are referred to as smokable cocaine, but it's important to understand that this term is not only for the drug itself, but also for the way in which these substances are consumed<sup>13</sup>. However, there are two similar substances: semi-refined cocaine (pasta base) and free-base cocaine ("crack")<sup>14</sup>. Even though countries like Bolivia or Colombia have coexisted with smokable cocaines for four decades, there is a dearth of research on the market, the composition and how these substances are used by millions of people.

There are not many studies about the chemical composition of smokable cocaines in the Americas, but the available data have shown a great variability in composition, appearances, purity and ways of adulteration of these substances<sup>15</sup>. This variety of composition and lack of information are problems for providing intervention based on pharmacological substitution<sup>16</sup>. However, there are some interesting treatment experiences using cannabis or coca leaf.

Users of smoked cocaine can be found in all social classes, but people of lower socio-economic status are the most visible population<sup>17</sup> to law enforcement authorities. These are the users who consume in public places and are subject to legal prosecution. The common profile of people who used these substances are adult men living in poverty without education or formal employment. While there are women who use smokable cocaine as well,, female use is more stigmatized and tends to occur in private spaces<sup>18</sup>.

This use is still associated with homeless people, creating a harmful stigma that makes it difficult to improve access to caring and health services. There is a correlation between the socio-economic background of visible "public" users and their social vulnerability<sup>19</sup>. For example, in Bogotá (Colombia) the 57.8% of people living on streets use *basuco*<sup>20</sup>. The use of smokable cocaine often begins when someone has experienced traumatic or violent events, or has become homeless or displaced. Most homeless people are not on the street because they smoke cocaine, but they get acquainted with *basuco* once they are homeless<sup>21</sup>.

---

<sup>12</sup> Cortés, E. & Metaal, P. (2019). Smokable cocaine markets in Latin America and the Caribbean. A call for sustainable policy response. Transnational Institute. Available on: [https://www.tni.org/files/publication-downloads/tni-smokablecocaine\\_eng\\_web-def.pdf](https://www.tni.org/files/publication-downloads/tni-smokablecocaine_eng_web-def.pdf) p. 11.

<sup>13</sup> Ibid, p. 4

<sup>14</sup> Ibid, p. 7

<sup>15</sup> Ibid, pp. 11-13.

<sup>16</sup> Ibid, p. 13.

<sup>17</sup> Ibid, p. 13.

<sup>18</sup> Ibid, pp. 15-17.

<sup>19</sup> Ibid, p. 16.

<sup>20</sup> Secretaría Distrital de Integración Social. *VII Censo de habitantes de calle de Bogotá (2017)*. [https://old.integracionsocial.gov.co/anexos/documentos/2019documentos/26122019\\_Libro%20VII%20Censo%20habitante%20de%20calle.pdf](https://old.integracionsocial.gov.co/anexos/documentos/2019documentos/26122019_Libro%20VII%20Censo%20habitante%20de%20calle.pdf), p.38.

<sup>21</sup> Cortés, E. & Metaal, P. (2019). Smokable cocaine markets in Latin America and the Caribbean. A call for sustainable policy response. Transnational Institute. Available on: [https://www.tni.org/files/publication-downloads/tni-smokablecocaine\\_eng\\_web-def.pdf](https://www.tni.org/files/publication-downloads/tni-smokablecocaine_eng_web-def.pdf) p. 16.

There are health risks associated with smokable cocaine, but both marginalization and criminalization of users produce even more negative consequences<sup>22</sup>. User communities are among the most difficult populations to reach for health services, and often lack access to even the most basic services. That's why low-threshold services should be one of the first measures or approaches taken to reach people who smoke cocaine.

The main challenge for harm reduction services is to provide comprehensive care. This means that programs should involve healthcare and social networks, housing programs, job offers and education opportunities<sup>23</sup>. This is because the underlying causes of the problematic smokable cocaine use go far beyond the effects of the substance itself<sup>24</sup>.

Regarding pharmacological substitution, for example, in Colombia there are two regulatory frameworks (Law 1733 of 2014 and Law 1566 of 2012) that include opioid medications, used to relieve severe or chronic pain and for methadone maintenance programs for people who use heroin, but they are hardly available to the population that needs them.

### **3. The case for reparations**

The case for reparations for drug war harms is starting to be demanded. This has taken root especially within two types of processes: (i) cannabis regulation and the demand for reparations for those harmed by cannabis prohibition to be part of the emerging market; and (ii) transitional justice mechanisms in countries where prohibition and armed violence have caused human rights violations.

In Colombia, both the possibility of a regulated cannabis market for adult use, and the set in motion of transitional justice mechanisms have put forth an emerging debate on how could drug war harms be repaired, and in relation to this General Comment, how does it relate to impacts caused to social, economic and cultural rights.

But while the emergence of the debate has the potential to place victims at the center and bring accountability, truth, reparations, and guarantees of non repetition, there remain a number of questions, both conceptually and empirically on the scope and applicability of restorative justice to drug war harms. Some of these questions include determining the actors who bear responsibilities of the harms and are also called to repair and restore rights, while also accounting for the complex issue of transnational responsibility from the US funded drug policies in Colombia as well as many contexts. Questions also arise on how to deal with non-state perpetrators, how to assess the harms both at an individual and community level, and how to leverage reparations and guarantees for non repetition alongside broader drug policy reform efforts.

Some clues can be found through the present processes in Colombia and its landmark Peace Agreement between the Colombian Government and the FARC, which included a drug policy

---

<sup>22</sup> Ibid, p. 21.

<sup>23</sup> Ibid, p. 26.

<sup>24</sup> Ibid, p. 26

chapter, and so did the findings and recommendations from the Truth Commission, with the final report published in June, 2022. In parallel, a number of cases on specific drug policy harms by aerial spraying from glyphosate have reached both national and international courts, cases in which families and communities are seeking reparations to health and ecological damages, as well as measures of non-repetition.

The Colombian Truth Commission<sup>25</sup> presented its final report<sup>26</sup> and a report on Findings and recommendations, which include a drug policy section titled “Drug trafficking as a protagonist of armed conflict and a factor for its persistence”<sup>27</sup>.

In the main findings, the Truth Commission states that (i) the fight against drugs and its policies constitutes *a persistence factor to conflict and violence in Colombia*, with negative impacts at a political, economic, social and environmental level; (ii) drug trafficking is not only a criminal enterprise, but a main protagonist of Colombia’s armed conflict and a source of its persistence, due to its deep entrenchment with national political, economic and social life. These two findings are of course intertwined: every actor of war in Colombia was in some way related to drug trafficking, either directly or indirectly, and these interactions were determinant in the escalation, degradation and course of war itself.<sup>28</sup>

Drug trafficking had its counterpart - the war on drugs - and both were central parts of conflict dynamics and war degradation. This war on drugs or anti-drugs policies created two internal enemies: narco-guerrilla and peasant coca growing populations, targeted as a ‘narco-grower’, but the drug lords themselves continued to weave themselves into local political orders and elites as part of their accumulation of power.

Four central elements are transversal to this chapter, according to Commission:

---

<sup>25</sup> The Commission for the Clarification of Truth, Coexistence and Non-Repetition (CEV, for its short acronym in Spanish), is part of the integral transitional justice system created by the 2016 Peace Agreement between the Colombian Government and FARC-EP. The other two institutions of the system are the Special Jurisdiction for Peace (JEP) and the Search Unit for the Displaced (UPBD). CEV had a mandate for three years, and was granted an extension of seven months by the Constitutional Court, due to the delays that the COVID pandemic inflicted on its work. It has 11 members - the Commissioners -. Two of them passed away, and one of them resigned just months before the final report came out.

The Commission finalized by August 28, and a tracking and monitoring Commission is put in place for seven years to ensure the legacy of the findings and the recommendations are being implemented.

<sup>26</sup> The full report is available in Spanish here: <https://www.comisiondelaverdad.co/hallazgos-y-recomendaciones>

<sup>27</sup> The sources of this chapter are a mix of affected communities, perpetrators, bureaucrats, government officials, and social movements. Also, de-classified archives of both national and US institutions were analyzed. A detailed description of sources can be found on the footnote of page 394.

<sup>28</sup> Pp. 820-829

(i) The criminal model of power and wealth accumulation, sustained by the exercise of violence and represented in drug trafficking has permeated some sectors of the elite, but also all levels of society - from production to licit economic flows. As a result, the model was intertwined with conflict itself and reinforced degraded criminal practices.

(ii) The political dimensions of drug trafficking have hindered the country's democratization processes. Besides the funding that this activity provided for armies, it also financed local and national political groups, distorting the democratic processes and corrupting state institutions.

(iii) The current war on drugs approach has been a failure for Colombia. While it did not dismantle the criminal, political and economic manifestations of drug trafficking, it activated criminalization narratives on entire populations and communities with the use of violence and strategies such as glyphosate spraying with negative consequences on people and nature.

(iv) Drug trafficking is a key factor of persistence and will remain so as long as prohibition is the norm, providing for resources for war making. As long as the problem is not addressed with a regulatory approach, armed conflict will continue to be recycled.

The chapter closes with an important call and warning:

"If Colombia does not find, as a society, a substantive and nationally and internationally negotiated solution to the problem of drug trafficking, armed conflict will continue. The Commission considers that it is necessary to recognize and rethink the problem of drug trafficking and find political, economic, ethical and legal ways out in substantive debates and consensus processes that allow the understanding, regulation and economic, social and political integration of that activity." (CEV, 2022, page 457, Author's translation)

From its findings, the Truth Commission provides an array of recommendations, of which it is important to focus on the following: (i) transition towards legal and strict regulation and (ii) international cooperation on drug policies. The basis for moving forward in both aspects is *the recognition and consensus that current drug policies are inefficient, are a driving factor for conflict, and have generated profound harms to human rights, security and development.*

#### (i) Transition to legal regulation

This is a recommendation framed in the short term and directed to the National Government, through its Congress, Attorney General and Judicial branch. While it aims to implement a substantive change in drug policies that can lead to legal regulation, it is also encompassed by other actions to be carried out within the limitations of current drug policies (prohibition), that can lead to better outcomes and in alignment with constitutional principles and human rights.

Concretely, the short term recommendations are:

- Lead and promote the international debate to modify the global drug prohibition regime and move towards a regulatory regime. An international conference on this regard that was included in the Peace Agreement, is due to be celebrated.
- Generate spaces for exchange and dialogue with local and ethnic authorities and other stakeholders, to ensure participation in the policy process for drug policies.

- Create spaces for recognition and dialogue with communities so that they can share their testimonies on the environmental, social, cultural and political impacts of drug trafficking and prohibition, and means to address and overcome those impacts.
- Address coca production from a human rights and development lens, and not from a national security framework.

Two main actions derive from this:

- Demilitarize the State's response to coca cultivation and the communities in which it takes place, and definitely renounce, on the basis of evidence, glyphosate spraying.
  - Redesign strategies to address coca, cannabis and poppy crops with the participation of peasant and ethnic communities involved. This includes fulfilling the commitments made under the National Substitution Program (PNIS)
- Carry out the necessary institutional adjustments to ensure that drug use policies focus on prevention and attention.
  - Review the indicators used to measure drug policy success.
  - Respect and preserve the traditional knowledge of indigenous, afro descendants and peasants, to ensure just and equitable access to benefits derived from regulation.
  - Ensure funding for interdisciplinary research on alternative uses for coca leaf and marihuana.
  - Rationalize the use of criminal sanctions, enforce alternatives to incarceration, and promote release of incarcerated populations for minor offenses.

#### (ii) International cooperation

This is a recommendation framed in the short term and directed to the National Government, through its Ministry of Foreign Affairs, to reformulate its international policy towards drugs, in particular with the US Government. This reformulation will allow the country and the global debate to move forward towards legal regulation and also make the field of international cooperation more transparent.

#### 4. Regulation from the perspective of production . IPA

When considering the development of legal frameworks for the adult use of cannabis and other substances, it is important to recognize that these regulations cannot be divorced from the historical context of the war on drugs, nor can they be separated from the legacy that peasant communities have inherited.

The importance of recognizing peasants' rights in regulatory processes and their participation in fair-trade markets cannot be overstated. Applying fair-trade principles to illicit plant growers is crucial for protecting the conditions that enable peasant populations to improve their living standards by creating value. These processes can be facilitated by promoting associative and community schemes that include clear mechanisms for sharing the benefits derived from the production, transformation, and commercialization of regulated plant products<sup>29</sup>.

---

<sup>29</sup> Coalición de Acciones Para el Cambio. (2019). *Principios para una regulación responsable del uso adulto del cannabis en Colombia* (p. 35). Coalición de Acciones Para el Cambio.

