

## **Memorandum to the National Government on the new drug policy**

As academic and civil society organizations working on drug policy, we celebrate the spirit of reform the Government has expressed in this field. In this document, we present a series of recommendations aiming to save lives in Colombia, manage the risks related to psychoactive substances, and reduce the harm associated with the consumption and production of drugs, which we hope can contribute to and complement the Government's proposals. The recommendations are based on time horizons, sector-specific priorities, and the legal and institutional possibilities required to implement the desired drug policy changes.

A coherent communication strategy for Colombia's new drug policy is urgently needed. Therefore, we identify key actions for the first 100 days of government, the first 6 months, and the medium and long term. Our intention is to help organize these actions strategically. We will be in a transition period, and we must handle contradictions that may arise along the way. We prioritize reforms at the national level to position Colombia as an international benchmark on the path to a new drug policy. These are reforms that prioritize the rights of Colombians, and do not affect international relations.

The world is currently discussing new approaches to drug policy, which is why it is critical to raise awareness and educate Colombian society. This would help minimize the negative impacts of substances once reforms occur. According to the United Nations High Commissioner for Human Rights and the Truth Commission (CEV by its Spanish acronym), changing drug policy is a necessary step to achieve peace in Colombia. This is consistent with a growing academic literature that shows that prohibition has exacerbated Colombia's internal armed conflict and enabled it to endure for decades.

## **In the first 100 days of government**

### **Institutions**

- Create the following directorates: the first under the vice-ministry of rural development responsible for strengthening the local capacities and income generation opportunities in coca, cannabis, and poppy-producing areas; the second, responsible for harm reduction in the vice-ministry of public health and the provision of healthcare services; the third, responsible for drug policy in the National Planning Department (DNP by its Spanish acronym); the fourth should be created in the vice-ministry of multilateral affairs of the Ministry of Foreign Affairs. A new approach to drug policy needs a robust institutional framework with resources and capacity for high-level ministerial dialogue. In the meantime, the drug policy directorate of the Ministry of Justice must be strengthened, and all the ministries need to work jointly in the National Narcotics Council under the leadership of the President of the Republic and the Ministry of Justice. We recommend delegating the leadership and inter-institutional coordination functions to the DNP's sectoral directorate on a transitory basis while the National Narcotics Statute is reformed as proposed below.
- Promote the regulation of the adult use of cannabis with regulations in favor of indigenous and local, small farmers. The Government must organize the legislative initiatives that it will support and define a consistent narrative so that the two main bills (Gustavo Bolívar and Juan Carlos Losada, respectively) for the regulation of adult use cannabis are processed simultaneously and approved in the shortest possible time.
- Reactivate the alliance of congressmen committed to drug policy reform via Executive branch leadership. This will help combine the ongoing initiatives and establish a roadmap. Promote the reform of Article 49 of the Constitution by eliminating the phrase "The possession and consumption of narcotic or psychotropic substances are prohibited, except by medical prescription." It is necessary to reform this article for any legislative initiative aimed at regulating any psychoactive substance.
- Revoke Decree 380 of 2021, through which the control of environmental and health risks was regulated in the framework of eradicating illicit crops through aerial spraying.

- Prioritize the gathering of the National Narcotics Council, as the governing body of drug policy led by the President. The aim should be to define the national reform strategy that includes short-term institutional changes and achieving a high level of coordination, articulation, and institutional complementarity. It should also aim to define the roadmap for a new National Narcotics Statute, set and reform eradication methods, and enhance the generation of evidence from the Colombian Drug Observatory.
- Review the current mechanisms for approving ethnic products, including those based on coca leaves, which are currently reviewed by INVIMA, the National Narcotics Fund (FNE by its Spanish acronym), and ICA. To do this, it is necessary to assess the need for creating a new route in these entities including the participation of ethnic organizations.

### **Foreign Affairs**

- Start an immediate diplomatic negotiation with the United States of America (USA) led by the Foreign Affairs Minister and the Colombian Ambassador to review the goal of reducing coca crops to 50% by 2023, an objective that may affect Colombia's certification by the USA. In line with the recent White House guidelines, negotiations must aim at supporting two main goals: avoiding the expansion of crops and reducing the existing crops in environmentally strategic areas, in collective territories of ethnic communities and national parks. It should also propose new monitoring indicators. Negotiations must take place soon, considering the possible change in the composition of the USA Congress.
- Establish relations with the states of the USA that have regulations for cannabis and other substances to leverage market development and public health lessons.

### **Territory-led Development**

- Define the continuity, adjustments, and scope of the National Program for the Substitution of the Use of Illicit Crops (PNIS by its Spanish acronym) in coordination with the Comprehensive Municipal and Community Plans for Substitution and Alternative Development (PISDA by its acronym in Spanish) and the Development Plans with a Territorial Approach (PDET by its acronym in Spanish) and include lessons from the 6 years of its implementation. The main recommended adjustments are:

1. Bring back official rural and ethnic participation forums to determine new needs and regain confidence in the government. To carry out the adjustments required by the program, we recommend that the National Government launches and finances the PNIS participation strategies stemming from Decree 362 of 2018.
2. Apply the concept of gradually illicit crop reduction following the sequence of activities that the program has already agreed on.
3. Develop short-term agreements to reduce illicit crops based on community monitoring, utilizing the 2016 peace agreement's institutions and the commitments made through the Binding Regional Dialogues.
4. Implement the CEV's measures aimed at demilitarizing the relationship with coca-growing communities. Implement context analysis and, where relevant, identify high risk situations via the support of the Armed Forces in order to protect the lives of social leaders and communities vulnerable to violence.
5. For the upcoming agreements on controlling illicit crops, we recommend defining a comprehensive approach integrated with PDET processes. This call for interventions should aimed for overall territory-level development rather than only providing benefits to individual households.
6. Include land formalization in crop substitution interventions. These have proven to be effective in controlling the expansion of coca crops.
7. Focus the crop substitution program on two main goals: in the short term, containing the expansion of crops in environmentally strategic areas and ethnic territories; in the medium term, transitioning to a sustainable economy that contributes to conservation efforts in these territories.
8. Arrange land use contracts, conservation agreements, or other mechanisms aimed at environmental conservation. These actions should be led by PNIS and accompanied by environmental institutions.
9. Support entrepreneurial initiatives that promote the development of the market for alternative uses of the coca leaf.

### **Public health and society**

- Revoke Decree 1844 of 2018 that classifies the possession or carriage of substances such as marijuana, cocaine and others as anti-social behaviors.
- Promote the implementation of the Ten-Year Public Health Plan 2022-2031 approved by Resolution No. 1035 of 2022 from the Ministry of Health. This plan addresses the use of drugs as one key area of public health interest and harm reduction as one of their pillars.
- Allow the national use of dry cannabis flower for medicinal purposes as a phyto-therapeutic product, modifying article 2.8.11.32 of Decree 613 of 2017 to provide patients in Colombia with access to medical cannabis. Move forward with linking small farmers (Law 1787, Article 3, Paragraph 6) to other industry actors and strengthen the ability of the State to fulfill its obligation in assessing their participation in the supply system. Implement Decree 811 of 2021 that allows the export of dried medical cannabis flowers and issue the regulatory decree that allows the production of CBD-based food and beverages.

### **Criminal policy**

- Convene the National Criminal Policy Council to advise on legal reforms to rationalize the use of prison and promote alternatives to incarceration for minor non-violent drug offenses.
- Offer guidance from the Ministry of Justice regarding the administrative and penitentiary benefits for people convicted of minor crimes associated with drugs. Implement them immediately, keeping in mind that the only limitation is the delay in the process.

## **In the first 6 months**

### **Institutions**

- Design a drug policy training and development program for public officials, with special emphasis on the police force, employees in the public sector, teachers, and all those in charge of implementing the policies in the Ministries of Health and Justice, as well as officials of the Ministry of Foreign Affairs. The program should provide information on the shift in approaches to drug policy.
- Formally integrate experienced and relevant civil society organizations in the research and implementation of alerts used in the Early Warning System (SAT by its Spanish acronym) of the Colombian Drug Observatory.

### **Foreign policy**

- Prepare the participation of the Vice Presidency of Colombia in the Commission on Narcotic Drugs that will take place in Vienna in March 2023. Propose a vision articulated with the National Development Plan's short-, medium-, and long-term objectives.
- Restart regional leadership in drug policy reform debates in the OAS. Lead the Andean Conference proposed by the President in Lima within the framework of the CAN summit, and the Latin American Drug Conference with the participation of Heads of State in Colombia in February 2023.
- Strengthen Colombia's diplomatic team in New York, Vienna, Washington, and Geneva to achieve greater technical capacity, coordination, and leadership in drug policy and the protection of human rights. This would increase advocacy capacity in the United Nations Organization and other multilateral bodies.

### **Territory-led Development**

- Establish the roadmap for rural development strategies and crop substitution programs. These should aim for transforming territories controlled by the National Liberation Army, Organized Armed Groups, and/or Organized Residual Armed Groups to avoid exposing communities to higher levels of violence.

### **Public health and society**

- Implement chemical tests to analyze the samples of cannabis and other psychoactive substances available on the market, as well as consumption practices. This program

should be led by the Ministry and the Secretariats of Health in coordination with academia, civil society, and consumers. The strategy would contribute to better public health decisions. It is important to note that the samples used in the analysis come from consumers and not seizures.

- Design a risk and pleasure management strategy (e.g. substances analysis, a vital minimum of water, the 8 C's of responsible consumption, and recovery zones, among others) aiming to reduce risks, prevent adolescent consumption, and differentiate substance use disorders from non-problematic consumption. This strategy must include illegal and legal substances, including alcohol and nicotine, and must include urban and rural areas, with special emphasis on coca and marijuana-growing territories.

### **Regulation**

- Direct the use of licenses for cannabis production toward the protection of public health. This implies ensuring the quality of the substances and prioritizing the participation of longtime producers in the market as a reparation mechanism for communities affected by the war on drugs. These licenses should be issued only for a limited period of time.
- Design a system for adult use in the cannabis market that prevents the excessive issuance of licenses at the same market level. This would help to avoid informality and assure quality.
- Promote debate on the regulation of cocaine for recreational consumption through the creation of a commission of experts. The commission should include associations of substance users, civil society organizations working on the issue of drugs, think tanks and academic research, associations of growers and farmers, and entrepreneurs of the cannabis ecosystem. The commission should propose a detailed design of a regulated market for psychoactive substances.
- Eliminate the manufacturing license for non-psychoactive derivatives added to Decree 811 of 2021 by the former government, hindering the activities of small and medium growers.

### **Prison policy**

- Sign and enact Bill 093 of 2019 in the Senate - 498 of 2020 in the Chamber, which adopts alternative measures of imprisonment for public utility service for women who

commit minor non-violent crimes as soon as sentence C-256-22 is notified. Implement the necessary mechanisms to acquaint judges and the Judicial Branch with this Bill.

- Design and implement the public policy of Employability, Education, and Training in a coordinated manner between the Ministries of Labor, the Ministry of Education, and the Ministry of Commerce mentioned in Article 6 of the Bill.

**Police force**

- Carry out a comprehensive review and deliver periodic public reports on the Ministry of National Defense budget on drug policy. This would help determine the need to redirect spending as well as identify sectors with the most resources and those that will be defunded.



## In the mid-term

### Institutions

- Draft and introduce a new National Narcotics and Psychoactive Substances Statute that provides the guiding policy framework for this issue and protects institutional designs from political whims. The Statute should lay out an institutional structure with the ability to partake in higher National Government spheres while guaranteeing its independence and personnel stability. The organization's structure should include an entity with the leadership and capabilities needed to coordinate ministerial directorates.
- Enhance the capacity of the Drugs Observatory to contribute to evidence-based decision-making in the DNP, ministries, and regulatory discussions. The Observatory should quantify the current and potential market size for alternative uses for coca leaf and cocaine, among others.
- Delegate the National Survey on the consumption of Psychotropic Substances to the National Administrative Department of Statistics thus ensuring the survey is periodically implemented. The survey should incorporate other information beyond public health by following successful international experiences. Data must be comparable over time.

### Foreign policy

- Celebrate the International Conference on drug policy reform stipulated in the Peace Agreement, leveraging the support of academic and civil society organizations.
- Sign *inter se* agreements with countries where regulatory measures have been adopted on psychoactive substances to test pilots that harmonize drug policy and human rights. These pilots enable producing countries to legally export these substances without breaking international conventions. The information gathered from the pilots is essential to develop the reforms required in production, trade, and consumption regulation. We propose a first *inter se* agreement between Colombia, Peru, and Bolivia for coca leaf products.
- Learn from international experiences on the regulation of the production and use of substances that have resulted in the reduction of consumption risk. European countries like Switzerland, Portugal, and some states in the USA have successful cases. It is

possible to replicate those measures to save lives along the supply system linking consumption to trade and production.

- Lead discussions in regional and international summits on the traffic of substances, money laundering, extradition, and consumption, including those focusing on the growth of cocaine and crack use in source countries.

### **Public health and society**

- Run pilots for supervised drug consumption sites and, where relevant, state-controlled dispensation of psychoactive substances.
- Design a strategy to reduce or eliminate access barriers to pain-management, end-of-life, and opioid substitution therapy, which are currently highly restricted. The strategy is to be designed by the Ministry of Health and deployed by the FNE through the secretariats of health and the rotating narcotics funds.
- Encourage research on substances declared illegal such as psilocybin, LSD, and MDMA, among others, for therapeutic applications, following the lead in other countries. This can be achieved through by creating a leaner administrative process.

### **Criminal policy**

- Set new success indicators for drug policy at the National Narcotics Council, providing guidelines to the directorates at ministries and the DNP.
- Design and adopt human rights protocols aligned with Constitutional Court jurisprudence for supply control.
- Adopt the necessary modifications at the National Criminal Policy Council, the Criminal Code, and the National Narcotics Statute, enabling the implementation of new out-of-jail alternative measures for minor felonies related to psychoactive substances.
- Draft and submit the Coca Leaf Bill to decriminalize small crop producers and recognize traditional ethnic uses. The bill must develop regulations required to enable trade and research in alternative coca leaf applications. Assign resources and inform public policy to develop products and markets based on coca leaves. This would contribute to progress in areas such as gradual eradication and territory-led development.
- Modify and clarify the proposal for entities that manage and allocate assets currently handled by the Special Assets Society (SAE by its Spanish acronym). It is necessary to

explore the reform proposed to Law 1708 - 2014 (Asset Forfeiture Law), which withholds the administration of assets not yet forfeited by the SAE. However, the SAE should gather social organizations expert on drugs issues (consumption, farming, substitution) to establish new criteria for accessing assets seized from trafficking. These criteria should focus on reparations for communities affected by the war on drugs, research, prevention, harm reduction, and public health-focused consumption services.

### **Law Enforcement**

- Redirect law enforcement efforts from supply-control duties towards improving citizen security, patrolling, dismantling criminal organizations and money laundering networks

## **In the long-term**

- Lead the review of international conventions on drug policy from the Ministry of Foreign Affairs. It is necessary for Colombia's foreign policy on drugs to shift towards drug regulation.
- Connect drug policy reform with the Government's “total peace” proposal. It is key to assess this proposal's impact on drug policy decisions and define which organizations should join this initiative.
- Define the concept of an individual and/or a community affected by the war on drugs and drug trafficking. There are active legal processes involving communities affected by the war on drugs at the State's Council and the Interamerican Court of Human Rights. The government's reforms and narrative needs to incorporate a reparation approach.
- Keep a record of the current government's experience on adult-use cannabis regulation to provide a guide for legal cocaine regulation inside Colombia as well as for legal export markets.

## **Signatory organizations:**

- Centro de Estudios sobre Seguridad y Drogas (CESED) – Universidad de Los Andes
- Corporación Acción Técnica Social (ATS)
- Elementa DDHH
- Centro de Estudios de Derecho Justicia y Sociedad - Dejusticia
- Corporación Viso Mutop
- Fundación Ideas para la Paz (FIP)