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Our drug policy recommendations for Petro and Márquez



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Introduction

An analysis of drug policy over the past four years

Over the past four years, the drug policy implemented by the government's executive branch has been marked by a setback in terms of respect and guarantees for the rights of historically discriminated-against groups. In this context, the then government, led by President Iván Duque, prioritized the Ruta Futuro as a strategy to "tackle the drug problem" using five approaches: i) reducing the consumption of drugs and their impact; ii) reducing the availability of drugs; iii) disassembling and targeting criminal organizations; iv) targeting criminal economies and income; and v) territorial development and transitioning to licit economies.

In its implementation, it was evident that efforts were predominantly concentrated on the second approach, on the pretext of reducing the number of hectares of coca crops, the production of psychoactive substances, and achieving greater control of chemical substances.¹ The government allocated 95% of Ruta Futuro's total budget, the equivalent of \$4.2 trillion pesos,² to force manual eradication without consent, for terrestrial fumigation, to resume efforts at aerial fumigation with the pesticide glyphosate, and to advance strategies to control adulterants and precursor substances.

However, in the implementation of the policy, it became evident that there were a high number of social conflicts associated with eradication operations, which, according to the Ombudsman's Office, caused "rural communities to warn of the risks of mass displacement due to a lack of food security guarantees and a lack of components to ensure socio-economic stabilization."³ Furthermore, the government made multiple efforts to reactivate aerial fumigation with glyphosate, going against the Constitutional Court's decisions, and generating constant anxiety among communities threatened by the return to a strategy that not only violates human rights, but is also financially costly.

Meanwhile, from July 2018 to June 2022, the Colombian Congress played a fundamental role in the public debate and promoted many legislative initiatives to address issues related to the drug policy. Over the past four years, a total of 32 bills were introduced, the majority of which focused on human rights.⁴ Of these, it is worth highlighting the legislative act and bill to regulate the adult use of cannabis, the bill to regulate the use of coca leaf derivatives, and the bill to ban the use of glyphosate in Colombia. Despite these efforts, the vast majority of these bills were shelved.⁵ Consequently, it is important that this administration not only

¹ Ruta Futuro: Integral policy to tackle the drug problem. (2018). Available at: https://www.minjusticia.gov.co/programas-co/ODC/Documents/ruta_futuro/POLITICA_RUTA_FUTURO_ODC.pdf.

² Elementa DDHH (2022). Radiografía de política de drogas en Colombia 2018-2022. (Overview of the drug policy in Colombia 2018-2022). Available at: <https://elementaddhh.org/wp-content/uploads/2022/05/Informe-Radiografi%CC%81a-Poli%CC%81tica-de-Drogas-Colombia-2018-2022.pdf>

³ Response to the right to petition 20210040602833201 of August 10, 2021. Taken from: Elementa DDHH (2022). Radiografía de política de drogas en Colombia 2018-2022. Available at: <https://elementaddhh.org/wp-content/uploads/2022/05/Informe-Radiografi%CC%81a-Poli%CC%81tica-de-Drogas-Colombia-2018-2022.pdf>

⁴ Elementa DDHH (2022). Radiografía de política de drogas en Colombia 2018-2022. (Overview of the drug policy in Colombia 2018-2022). Available at: <https://elementaddhh.org/wp-content/uploads/2022/05/Informe-Radiografi%CC%81a-Poli%CC%81tica-de-Drogas-Colombia-2018-2022.pdf>

plays a role in the public agenda, but that it also obtains the backing of the majority of Congress to take steps towards the regulation of markets as an alternative to prohibition.

Lastly, the High Courts continued to exercise a role in the oversight of the constitution and laws, as well as situations that constituted a threat to fundamental rights. During the past four-year term, there were court rulings aimed at addressing aerial fumigation of glyphosate, traditional uses of coca leaf, the consumption of psychoactive substances (PAS) in public spaces, the existence or lack thereof of criminal liability related to PAS possession and the presumption of innocence as a principle of criminal proceedings.

Truth Commission Recommendations

The Commission for the Clarification of Truth, Coexistence and Non-Repetition (CEV) is part of the context in which the current government's drug policy will be developed. In fact, President Gustavo Petro stated that the documents, and in particular the recommendations, published by the CEV from June 28 onwards "will be effective"⁶ in his administration. The chapter "Findings and recommendations" contains a section dedicated to "Drug trafficking as a protagonist of the armed conflict and a factor in its persistence," in which different dimensions of the relationship between drug trafficking, drug policy, and the war are examined, keeping in mind that drug trafficking "is at the center of most important debates, not only about the war, but also about peace."

The Truth Commission's narrative focused on four aspects. Firstly, it defined drug trafficking as a model or system of accumulation of wealth and political power intertwined with the armed conflict, which results in the reinforcement of criminal and degrading practices that emerged from the war. It also stated that the political dimensions of the drug trade, i.e., the link between large sectors of society and drug trafficking structures, has acted as an obstacle to the country's democratization. Drug trafficking has not only fueled the country's armed actors, it has also financed local and national political forces through funding campaigns and controlling public institutions to benefit its own interests.

It is important to note that, for the Truth Commission, the current paradigm of the war on drugs has failed to produce effective results in terms of dismantling the drug trade as a political and economic system. On the contrary, it has produced a series of damaging impacts and rights violations for local farming (*campesino*)

⁵ Elementa DDHH (2022). Radiografía de política de drogas en Colombia 2018-2022. (Overview of the drug policy in Colombia 2018-2022). Available at: <https://elementaddhh.org/wp-content/uploads/2022/05/Informe-Radiografi%CC%81a-Poli%CC%81tica-de-Drogas-Colombia-2018-2022.pdf>.

⁶ El Espectador. Petro on the CEV report: "the recommendations will be effective." Available at: <https://www.elespectador.com/politica/petro-sobre-informe-de-la-cev-las-recomendaciones-se-converteran-eficaces-en-la-historia/>.

and ancestral communities within the context of the internal armed conflict. In other words, the prohibition policy fueled narratives that seek to criminalize populations and territories and justified violent operations that did not reduce illegal economies. Lastly, the Truth Commission states that drug trafficking is a “fundamental factor in the persistence” of the armed conflict, since, although it remains illegal, it continues to provide sufficient resources “to continue the war, corrupt institutions responsible for combatting it, and finance private armies to violently protect their interests.” In this regard, if the paradigm does not change by transitioning towards a policy that tackles the problem with an integrated regulatory approach, the country’s conflicts could remain in a permanent loop of repetition.

Subsequently, the Truth Commission recommended that the Colombian government transition towards the strict regulation of drugs and redesign its international drug policy. This recommendation assumes that advancing on both fronts is based on a recognition that the current consensus on prohibition is that it is inefficient, exacerbates social conflicts, and has caused profound damage to human rights, security and development. In order to prioritize short, medium, and long-term measures, the Truth Commission recommended, among other things, addressing coca crops and cocaine production from a human rights and development perspective, and not as a national security problem. It also recommended making the necessary institutional, regulatory, and budget changes to ensure that policy implementation regarding consumption is based exclusively on prevention and care. Furthermore, it recommends making criminal proceedings more rational by applying the principle of proportionality of the judicial response to the gravity of the crime and by concentrating its actions on actors in the supply chain who spur violence, launder money, and profit from illegal activities.

Drugs in the countryside

Glyphosate

Analysis

The Eradication of Illicit Crops Program (PECIG), which involved aerial fumigation using the pesticide Glyphosate, was suspended by the National Council of Narcotics in 2015, due to the IARC's classification of this substance as a probable carcinogen for humans. In Court Ruling T-236 of 2017, the Constitutional Court ordered the government not to resume aerial fumigation unless and until it complied with a participatory, adjudicative process that took objective, scientific evidence into account regarding the health and environmental risks of glyphosate. In response, ex-President Duque's government promoted the reinstatement of the PECIG through its Ruta Futuro drug policy.

In December 2019, the National Police presented a modification request to the PECIG Environmental Management Plan that had been suspended by the National Authority of Environmental Licenses (ANLA) in 2015. The request was approved by ANLA,⁷ but the Constitutional Court overturned this decision in Court Ruling T-413 of 2021, based on ANLA's failure to guarantee effective participation of the communities potentially affected by the proposed actions. In March 2022, the National Police made a request to modify the PECIG Environmental Management Plan⁸ focused solely on three municipalities in the department of Norte de Santander: El Zulia, Sardinata, and San José de Cúcuta.⁹ The public hearing related to this proceeding took place on May 31, 2022, and ANLA has yet to reach a final decision.¹⁰ This process has been ongoing at the same time as the issuance of Decree 380 of 2021, in which the national government attempted to regulate the management of environmental and health risks related to PECIG operations in order to comply with the conditions of Court Ruling T-236 of 2017. Currently, the State Council is reviewing a petition to invalidate this latter decree on the grounds of unconstitutionality.¹¹ Lastly, the Eradication of Illicit Crops through Land Fumigation with Glyphosate Program (PECAT), which has been in force since March 2017 when it was approved by the National Council of Narcotics and its Environmental Management Plan, is still operating today.¹²

⁷ ANLA. Decree 12009. December 30, 2019. Available at: <https://drive.google.com/file/d/1zEJ70uuNTlyG29FdM9JQRTKIUpBhNAfT/view>

⁸ National Police Anti-narcotics Directorate. General Environmental Management Plan for the Illicit Crop Eradication Program through Aerial Spraying Norte de Santander Bloc. Available at <https://www.anla.gov.co/proyectos-anla/proyectos-de-interes-en-evaluacion-pecig>

⁹ ANLA. Decree 02926. April 29, 2022. Available at: <https://drive.google.com/file/d/1hNRik0C3WL5g16IXA5x63f3TB6tqn0vA/view>

¹⁰ ANLA. Projects concerning the assessment of the Environmental Management Plan for the Eradication of Illicit Crops through Aerial Fumigation with the Pesticide Glyphosate Program (PECIG). Available at: <https://www.anla.gov.co/proyectos-anla/proyectos-de-interes-en-evaluacion-pecig>

¹¹ One lawsuit was filed by the Orlando Fals Borda Collective, and the other by several members of the House of Representatives and representatives from Putumayo. For more information visit: <https://www.cofb.org.co/noticias-ofb/noticias/interpusimos-demanda-de-nulidad-por-inconstitucionalidad-contras-el-decreto-380> y <https://www.camara.gov.co/se-radica-demanda-contras-decreto-de-aspersion-con-glifosato-en-el-pais>

¹² ANLA. Resolution 1524. December 12, 2016. Available at: <https://drive.google.com/file/d/1B-XXxVBbvCrh73eyTvo07yzcsh9poFnT/view>; Consejo Nacional de Estupefacentes. Resolución 1. 17 de marzo de 2017. Disponible en: https://drive.google.com/file/d/1k5S-ksHtP003QD96JD8Wtx1_hmEypXsb-/view

Challenges

Plans to reactivate aerial fumigation with glyphosate during the previous administration have ongoing serious implications both in terms of political will and regulation. On the one hand, the drug policy's approach has been to attack the availability of drugs through the possible reactivation of the PECIG program. This approach promotes governmental interests through means that put communities potentially affected by fumigation and their fundamental and collective rights at risk, while also threatening the ecological balance of ecosystems subject to these fumigations, and in particular, those protected areas affected by the displacement of illicit crops due to the use of glyphosate¹³. On the other hand, the possible reinstatement of the PECIG violates the provisions of the Peace Agreement, environmental regulations on risk management, and Court Rulings T-236 of 2017 and T-413 of 2021. Persistent prioritizing of the forced eradication of illicit crops over voluntary substitution ignores the sequential order of eradication methods established in section 4.1.3.2 of the Peace Agreement which was supported by the Constitutional Court in Decree 387 of 2019. Environmental regulations have not managed to guarantee the participation standards established by the Constitutional Court. Neither ANLA nor the National Police have made real efforts to ensure access to clear information, nor have they carried out two-way dialogues which would make participation in decision-making possible. Lastly, Decree 380 of 2021 created several loopholes in the regulations that the National Police seem to be taking advantage of. In contrast to the provisions of Court Ruling T-236 of 2017, it does not define a constitutionally acceptable risk level. Furthermore, it does not create an obligation to consult with affected communities prior to effectuating orders violating constitutional guarantees.

Recommendations

Among the incoming government's courses of action on glyphosate, there are at least three measures that must be prioritized. The first is to revoke Decree 380 of 2021 to prevent the planned modifications to the PECIG's Environmental Management Plans from going ahead and to avoid a possible and eventual reinstatement of the PECIG by future governments. The second is to ensure that either ANLA does not approve the request to modify the PECIG's Environmental Management Plan that is under review or that the National Police withdraw their request. In this case, we believe that the government must demand compliance with strict protocols that ensure that licit crops, persons, and strategic ecosystems are protected and not adversely affected. The government must also redirect PECIG funding to strengthening the National Comprehensive Program for the Substitution of Illicit Crops (Programa Nacional Integral de Sustitución de Cultivos Ilícitos - PNIS), and adhere to the sequential order of eradication methods. Thirdly, the government must create an anti-glyphosate legal protection mechanism to avoid the reinstatement of this policy. Consequently, we suggest proposing a bill

¹³ Rincón-Ruiz Alexander, Hyarold Leonardo Correa, Daniel Oswaldo León, and Stewart Williams. Coca Cultivation and Crop Eradication in Colombia: The Challenges of Integrating Rural Reality into Effective Anti-Drug Policy. *International Journal of Drug Policy* 33, July 2016. P. 56-65. Available at: <https://www.sciencedirect.com/science/article/abs/pii/S0955395916301931>.

that: (i) prohibits the use of glyphosate as an eradication method of illicit crops both by air and by land; and (ii) makes explicit the sequential rule established in section 4.1.3.2 of the Peace Agreement and in Decree 387 of 2019 of the Constitutional Court, in accordance with Legislative Act 02 of 2017.

PNIS

Analysis

The National Comprehensive Program for the Substitution of Illicit Crops (PNIS) arose from section 4.1 of the Peace Agreement and from Decree-Law 896 of 2017. Its main objective is to overcome conditions of poverty for farming (*campesino*) families and growers by implementing alternative economic community development through the voluntary substitution of illicit crops with legal productive projects in territories where the population currently depends on the coca economy. Of approximately 230,000 families dedicated to coca cultivation,¹⁴ 188,030 families signed collective association agreements.¹⁵ However, only 99,097 families have signed up for the program through individual agreements.¹⁶ Among these, 0.67% are suspended and 12.78% have been withdrawn.¹⁷ The associated families have fulfilled their obligations: they have eradicated 45,815 hectares of illicit crops, with a reported coca replanting rate of only 0.8%.¹⁸ However, the government has failed to fulfill its obligations. So far, only 1,986 families are implementing long-term productive projects¹⁹ and only 2% of the total number of beneficiaries receive comprehensive technical assistance.²⁰ Furthermore, the associated families' income has been significantly reduced: 91% experience some degree of food insecurity, and 12.6% experience severe food insecurity.²¹ In addition, 73% of villages with plots belonging to families that are part of the PNIS have been subject to manual forced eradication or PECAT operations, as well as high levels of insecurity in prioritized territories as a result of the program.²² Lastly, complementary substitution models have been structured in areas of particular environmental importance, such as "Formalizar para Sustituir" and "Territorios para la Conservación," which have created new obligations for associated families: the signing of conservation agreements and use contracts, and the structuring of productive projects related to permitted land use, among

¹⁴ El Espectador (2020). "Más de 230.000 familias campesinas dependen del cultivo de coca en Colombia" (More than 230,000 campesino families depend on coca cultivation in Colombia). Colombia+20. Available at: <https://www.elespectador.com/colombia/mas-regiones/mas-de-230000-familias-campesinas-dependen-del-cultivo-de-coca-en-colombia-articulo-919187/>.

¹⁵ Office of the Attorney General. Third Report to Congress on the Progress of the Implementation of the Peace Agreement. April 2020 - March 2021, p. 343.

¹⁶ Technical Secretariat of the International Verification Component CINEP/PPP-CERAC. Tenth Verification Report on the Implementation of the Final Peace Agreement in Colombia. 2021, p. 170.

¹⁷ Technical Secretariat of the International Verification Component CINEP/PPP-CERAC. Tenth Verification Report on the Implementation of the Final Peace Agreement in Colombia. 2021, p. 171.

¹⁸ Presidential Advisory Office on Stabilization and Consolidation. Substitution progresses with legality, diagnosis, progress, and PNIS planning. February 28, 2022, p. 14.

¹⁹ SIIP0. Indicator D.282.

²⁰ Kroc Institute for International Peace Studies. Five years of the implementation of the Final Agreement in Colombia: Achievements, challenges, and opportunities to increase implementation levels. December 2016-October 2021, p. 22.

²¹ United Nations Office on Drugs and Crime - UNODC. Report No. 23: Monitoring the implementation of the Immediate Care Plan - family component. December 31, 2020, p. 3.

²² Technical Secretariat of the International Verification Component CINEP/PPP-CERAC. Tenth Verification Report on the Implementation of the Final Peace Agreement in Colombia. 2021.

others. Similarly, guidelines to initiate the program's implementation in ethnic communities' collective territories are only in the consultation stages, despite there being 21,298 families that are part of the PNIS in these areas.²³

Challenges

Five years after the creation of the PNIS, many social organizations and communities that promoted this process now have little faith in the government and no longer see the program as a real option for transitioning to legal economies. The PNIS has not completely fulfilled its obligations to the families involved. In the case of growers and harvesters, the government has focused on fulfilling payments, but it has not yet managed to completely comply with the immediate family care plan and its components. There are alarming delays in deliveries of resources for productive projects and the quality of deliveries has been criticized. The implementation of community measures included in the Comprehensive Plans for Alternative Development (PISDA) is still lacking and in many cases still pending, as is the case with the majority of the Comprehensive Rural Reform commitments.

As a result, a major issue with the PNIS has been the fact that its beneficiaries have been impoverished and at present the majority of families involved in the program experience a high degree of food insecurity. Furthermore, many of the families that were able to affiliate with the program have been suspended or have withdrawn due to reasons unrelated to the fulfillment of their obligations and, in many cases, this is due to administrative issues or the program's lack of management capacity. Legal security issues also introduce new requirements that had not previously been agreed on and changes to certain conditions, especially in areas of particular environmental importance, have occurred due to modifications made in response to the agricultural bias of the PNIS. Lastly, the program's insufficient funding has affected the implementation of PNIS components and has hindered cooperation between the program's national and territorial organizations.

Recommendations

The incoming government must take urgent actions to prevent the PNIS from becoming a costly failure. The priority must be to fulfill the main objectives according to the provisions of the Peace Agreement, namely to improve the quality of life for rural populations and to sustainably reduce illicit crops. Consequently, several of the program's aspects must be redesigned. Firstly, it is vital that the Peace Agreement's understanding of the PNIS as part of the Comprehensive Rural Reform be reincorporated in the law since it is clear that the transition to licit economies must be supported by improving rural communities social and economic conditions. Secondly, funding for the program must be strengthened,

²³ Rubiano-Lizarazo, María Paula et al. ¿Cómo va la implementación del PNIS en las Zonas de Manejo Especial? Un análisis desde las voces campesinas de los departamentos de Guaviare y Putumayo (How is the implementation of the PNIS going in the Special Management Zones? An analysis from the perspective of the farming (*campesino*) community in the departments of Guaviare and Putumayo). CESED. April 2022, p. 8.

for example, via funds allocated for programs such as the PECIG and the PECAT, in compliance with the established order of eradication methods.

Thirdly, the emphasis must focus on the provision of technical assistance, support, and adequate tools for the development of productive projects that are sustainable over time. Until now, the government has prioritized payments for the components of the immediate care plan. The fourth aspect is to strengthen the association of farmers (*campesinos*) so that PNIS beneficiaries are no longer nuclear families but rather farmer (*campesino*) associations. This has as its objective the facilitation of the successful and sustainable implementation of productive projects. This also requires the strengthening, reactivation, and re-assessment of territorial participation and dialogue. For this, there must be assertive and coordinated communication among the program's various agencies. The fifth aspect is that the PNIS must transition to a regional model that targets specific problems and offers the most appropriate solutions using a territorial approach. Lastly, in areas of particular environmental importance, different agreements on substitution, use, and conservation must be harmonized with territorial planning instruments which ensure families legal security and legal support so that they can actively participate in two-way negotiations.

The Peace-Security Agenda

Analysis

The country is experiencing an increase in violence, caused by the regionalization of conflicts, the division of criminal justice entities after the signing of the Final Peace Agreement, and the persistence of illegal economies that fuel funding to armed actors. This particularly affects the PNIS and those who have supported its implementation.

In Colombia, according to the International Committee of the Red Cross (ICRC), there are currently six armed conflicts of a non-international character, concentrated in 12 departments.²⁴ Indepaz also reported that, as of September 2021, there were: 22 narco-paramilitary structures acting in 291 municipalities; 30 post-FARC structures divided into three blocs,²⁵ as well as two other entities with tendencies to act on behalf of others, namely Oliver Sinisterra and Guerrillas Unidas del Pacífico, and yet another two in the process of articulation (Frente 4 and 24) all acting in 123 municipalities; and, eight ELN war fronts with activity in 211 municipalities.²⁶ There is currently a struggle for illegal revenues, especially the cocaine economy, whose production reached 1,228 tons in 2020, with a yield of 7.9 kilograms for each hectare harvested.²⁷

²⁴ ICRC. (2022). Colombia: Living in the shadow of armed conflict. International Committee of the Red Cross. Available at: <https://www.icrc.org/en/document/colombia-humanitarian-challenges-2022-ihl>.

²⁵ Bloque Suroriental, Segunda, Marquetalia and Comando Coordinador de Occidente.

During 2021, actions committed by armed actors had serious humanitarian impacts with a significant increase in violence against the civilian population. According to ICRC figures, there was a 43% increase in the number of victims of explosive ordnance. Mass displacements affecting more than 29,000 people in 12 departments have also been reported, while over 40,000 people have individually reported being displaced.²⁸ The ICRC also reported that 19,210 people were confined as a result of the intensified armed actions and the presence of explosive ordnance in the territories. 57% of the total confined population were in the Chocó Department. This portrays a situation of great uncertainty due to multiple disputes between armed actors who see the civilian population as spoils of war, and who must win to obtain greater territorial control.

This atmosphere of violence is also expressed in the threats and killings of political and social leaders, particularly affecting those who have promoted the substitution program. According to Lucas Marín,²⁹ the substitution program had undesired effects in the increase of violence against social leaders. The PNIS increased the killings of social leaders by 481% and raised the probability of being victims of killings by 122%.³⁰

For their part, several Colombian cities (such as Barranquilla, Bogotá, Cartagena, Cúcuta, Medellín, to mention just the major ones) have been affected by insecurity linked to drug trafficking dynamics, especially the transport of psychoactive substances and drug dealing. These dynamics spur other problems, such as extortion, excessive borrowing, forced security services, the sex trade, the sexual exploitation of children and adolescents, procurement for prostitution, over-taxation of products to be marketed in working class neighborhood stores, and the improper collection of taxes. These illegal trades are controlled by local criminal groups, the vast majority of which take their orders from illegal armed groups either because they have been coopted, hired, or have been franchised to do so.

The dynamics in Medellín are good examples of this. In 2020, the Ombudsman's Office estimated that in the Valle de Aburrá, which includes Medellín, 140 armed organized crime groups of different levels operated in and controlled "85% of Medellín's territory." Among second-tier organizations, La Terraza, La Oficina de San Pablo, and La Oficina del Doce de Octubre (mainly in Comuna 10) are mentioned.³¹

The recent killings and dismemberment of bodies found in Bogotá are also a reflection of armed groups activities whose interests lie in trafficking psychoactive substances from the El Dorado airport and drug dealing for internal consump-

²⁶ González, L., Cabezas, J., & Zimmermann, P. (2021). Los focos del conflicto en Colombia: Informe sobre presencia de grupos armados (Colombia's hotspots of conflict: Report on the presence of armed groups), p. 116. Indepaz. Available at: <https://indepaz.org.co/wp-content/uploads/2021/10/INFORME-DE-GRUPOS-2021.pdf>.

²⁷ UNODC and the Colombian Government. (2021). Colombia: Monitoring of Territories Affected by Illicit Crops 2020, p. 179. Available at: https://www.unodc.org/documents/crop-monitoring/Colombia/Colombia_Monitoreo_de_territorios_afectados_por_cultivos_ilicitos_2020.pdf, p. 11.

²⁸ ICRC. (2022). Update on the humanitarian situation in Colombia. International Committee of the Red Cross. Available at: <https://www.icrc.org/es/document/actualizacion-sobre-la-situacion-humanitaria-en-colombia-2022>.

²⁹ Marín Llanes, L. (2022). The killing of social leaders: An unintended effect of Colombia's illicit crop substitution program. *International Journal of Drug Policy*, 101, 103550. Available at: <https://doi.org/10.1016/j.drugpo.2021.103550>.

³⁰ Marín Llanes, L. (2022). The killing of social leaders: An unintended effect of Colombia's illicit crop substitution program. *International Journal of Drug Policy*, 101, 103550. Available at: <https://doi.org/10.1016/j.drugpo.2021.103550>.

tion. A large part of the drugs that leave Bogotá are processed in the province of Soacha (municipalities of Soacha and Sibaté), which has become a processor of cocaine paste and an entry corridor for drugs to Bogotá.³²

Challenges

According to the Multiparty Evaluation of the Implementation of the Peace Agreement (Balance multipartidista de la implementación del Acuerdo de Paz), there is currently an “absence of a serious and rigorous policy on territorial security,”³³ which has had a significant impact on the security of areas where there are still coca crops. There is a fragmented security policy without clear implementation mechanisms which was worsened by Ivan Duque’s governmental policy of dealing only superficially with territorial security issues.³⁴ The policy for the protection of social leaders, implemented by Ivan Duque’s government, was based on a “limited diagnosis of the risk factors associated with social leadership, relating it mainly to drug trafficking.”³⁵ This is despite the Colombian government receiving technical information enabling it to understand the limitations of the approach used by the “war on drugs.”³⁶ One of the issues related to the territorial security policy is the duplication of functions within different agencies which generates confusion regarding the responsibilities of the Stabilization Department (Consejería de Estabilización) and the defense sector.³⁷ The Timely Action Plan (Plan de Acción Oportuna – PAO)³⁸ has been marked by coordination failures which affected the Ruta Futuro’s coca crop policy and eradication strategies, as well as participation in security provision proposals in municipalities where the PNIS is implemented. This ultimately resulted in an increase of risk for leaders of processes related to the substitution program.

Recommendations

On the issue of territorial security and the protection of social leaders, the

³¹ Early Warning No. 032 of July 17, 2020 in Caicedo, Luz Piedad (2022). *Implementación de la Resolución 1325 en Colombia durante 2020 (Implementation of Resolution 1325 in Colombia during the year 2020)*. Bogotá: Corporación Humanas.

³² Caicedo, Luz Piedad (2022). *Implementación de la Resolución 1325 en Colombia durante 2020 (Implementation of Resolution 1325 in Colombia during the year 2020)*. Bogotá: Corporación Humanas.

³³ Multiparty Commission for the Implementation of the Peace Agreement. (2022). No enreden la Paz: Balance multipartidista de la implementación del Acuerdo de Paz (Don’t mess with Peace: Multiparty Assessment of Peace Agreement Implementation), p. 477. Multiparty Commission for the Implementation of the Peace Agreement. Available at: <https://www.juanitaenelcongreso.com/post/no-enreden-la-paz-seguimiento-a-la-implementacion-del-acuerdo-de-paz>, p. 46.

³⁴ Multiparty Commission for the Implementation of the Peace Agreement. (2022). No enreden la Paz: Balance multipartidista de la implementación del Acuerdo de Paz (Don’t mess with Peace: Multiparty Assessment of Peace Agreement Implementation), p. 477. Multiparty Commission for the Implementation of the Peace Agreement. Available at: <https://www.juanitaenelcongreso.com/post/no-enreden-la-paz-seguimiento-a-la-implementacion-del-acuerdo-de-paz>, p. 46.

³⁵ Multiparty Commission for the Implementation of the Peace Agreement. (2022). No enreden la Paz: Balance multipartidista de la implementación del Acuerdo de Paz (Don’t mess with Peace: Multiparty Assessment of Peace Agreement Implementation), p. 477. Multiparty Commission for the Implementation of the Peace Agreement. Available at: <https://www.juanitaenelcongreso.com/post/no-enreden-la-paz-seguimiento-a-la-implementacion-del-acuerdo-de-paz>, p. 46.

³⁶ FIP. (2022). Aún no es tarde: Ideas y acciones mínimas para garantizar la seguridad en Colombia (It’s not too late: Ideas and minimum actions to guarantee security in Colombia), p. 42. Fundación Ideas para la Paz. https://ideaspaz.org/media/website/FIP_NE_AunNoesTardeSeguridad.pdf, p. 18.

³⁷ Multiparty Commission for the Implementation of the Peace Agreement. (2022). No enreden la Paz: Balance multipartidista de la implementación del Acuerdo de Paz (Don’t mess with Peace: Multiparty Assessment of Peace Agreement Implementation), p. 477. Multiparty Commission for the Implementation of the Peace Agreement. Available at: <https://www.juanitaenelcongreso.com/post/no-enreden-la-paz-seguimiento-a-la-implementacion-del-acuerdo-de-paz>, p. 47.

³⁸ Created by means of Decree 1138 of 2021 of the Ministry of Interior.

government must modify the PAO's functions to address the possibility of the Constitutional Court's issuing a decision to resume measures to implement the "Integral Security System for Exercising Policies" (Sistema Integral de Seguridad para el Ejercicio de la Política), established in section 2 of the AFP, in response to a petition made by social leaders which is currently under review.³⁹ Furthermore, it is important that the government establishes plans for the protection of leaders which includes the investigation, sanctioning, and prosecution of those who threaten human rights defenders.⁴⁰ The national government must also separate the security strategies found in territorial policies from the implementation of the substitution program, as well as establish mechanisms to avoid violence (by illegal actors or law enforcement agencies themselves) against leaders that participate in the PNIS.⁴¹

Regarding security in the cities, chains of command must be clearly identified as a strategy to dismantle the creation of power vacuums that lead to other entities seeking to take control and introducing illegal activities. It is also important to separate local criminal groups from illegal armed groups and identify illicit trade networks that are promoted by organizations with interests in the drug trade.

³⁹ Dejusticia. (2019). El Derecho a Defender Derechos: Representantes de movimientos sociales y organizaciones de DDHH presentamos tutela para exigir protección de nuestros líderes sociales (The Right to Defend Rights: Representatives of social movements and human rights organizations file tutela to demand protection for our social leaders). Dejusticia. Available at: <https://www.dejusticia.org/el-derecho-a-defender-derechos-representantes-de-movimientos-sociales-y-organizaciones-de-ddhh-presentamos-tutela-para-exigir-proteccion-de-nuestros-lideres-sociales/>.

⁴⁰ Dejusticia. (2019). El Derecho a Defender Derechos: Representantes de movimientos sociales y organizaciones de DDHH presentamos tutela para exigir protección de nuestros líderes sociales (The Right to Defend Rights: Representatives of social movements and human rights organizations file tutela to demand protection for our social leaders). Dejusticia. Available at: <https://www.dejusticia.org/el-derecho-a-defender-derechos-representantes-de-movimientos-sociales-y-organizaciones-de-ddhh-presentamos-tutela-para-exigir-proteccion-de-nuestros-lideres-sociales/>.

⁴¹ Somos Defensores Program. (2020). La sustitución voluntaria siembra paz: Agresiones a personas defensoras de derechos humanos y población campesina vinculadas a cultivos de uso ilícito (Voluntary substitution sows peace: Aggressions against human rights defenders and campesino population linked to illicit crop cultivation), p. 93. Somos Defensores Program. Available at: https://drive.google.com/file/d/1GiYkYUsiEyAJ9IH_fneN90zh2XLg1f5L/view, p. 90.

Consumption of psychoactive substances

Prevention in schools

Analysis

The thought of underage children using legal and illegal psychoactive substances (PAS) is undoubtedly something that evokes concern and fear due to structural, family, social, and educational implications, among others. However, this is undoubtedly a reality.

Increasing the age of first-time PAS consumption through fear tactics has proven to be a failed strategy. According to the National Study of PAS Consumption in Colombia's school-aged population (2016)⁴², first-time PAS consumption age among the population between 12 and 18 years old is 13.1 years. Alcohol, marijuana, inhalants, cocaine, and non-prescription tranquilizers are the most prevalent substances among school-aged students. In addition, 70.2% believe that buying alcohol, for example, is easy despite being banned for minors.

In this regard, fear and prohibition have not worked as strategies to prevent minors from early PAS use. Instead, they have caused an increase in stigmatization and exclusion.

Challenges

Awareness of the importance of health education and prevention programs must increase. This is not a justification for PAS consumption, rather it defends giving appropriate attention to programs using scientific evidence and information consistent with the population's life prospects and interests.

Recommendations

Based on the above, addressing consumption among underage users could benefit from (i) reevaluating tactics which manipulate children and adolescents to promote prohibitionist narratives⁴³ and instead promoting mental health information as a prophylactic against the use of PAS; (ii) promoting research on the health of minors using clinical and ethical protocols; (iii) including subjects associated with strengthening healthy practices of daily living in children and adolescents in the curriculum and Institutional Educational Plan, for example, establishing boundaries and managing emotions; and (iv) creating programs for parents and teachers to provide information and support.

⁴² Drug Observatory of Colombia, the Ministry of Justice and Law, the Ministry of Education, and the Ministry of Health and Social Protection, and the Inter-American Drug Abuse Control Commission (CICAD). National Study of PAS consumption among the school-aged population in Colombia. Available at: https://www.unodc.org/documents/colombia/2018/Junio/C003142016_estudio_consumo_escolares_2016.pdf.

⁴³ Acción Técnica Social. (2020). La mentira de la protección de la niñez con la que hasta hoy nos venden el prohibicionismo (The lie of child protection they still use to sell us prohibitionism). Available at: <https://www.echelecabeza.com/la-mentira-de-la-proteccion-de-la-ninez-con-la-que-hasta-hoy-nos-venden-el-prohibicionismo/>.

Harm reduction

Analysis

Over the past few years, the strategy regarding legal and illegal psychoactive substance (PAS) use in Colombia has seen significant transformations due to the integration of a harm and risk reduction approach. Nevertheless, governmental interventions in the matter and data collection of PAS users have fallen short. Although the importance of channeling efforts to strengthen programs which address legal and illegal PAS use through a harm and risk reduction approach has been included in official documents,⁴⁴ the strategy has been presented in an explanatory manner, depriving it of the meaning and values that come with actually applying it. In this sense, there is an emphasis on the fact that prevention must go beyond simply delaying the age of first-time drug use and scenarios such as “the reduction of the first instance of substance abuse, the reduction of the consumption period or the reduction in the severity of the abuse”⁴⁵ are envisioned. In this regard, the target is no longer exclusively abstinence but also considers the user’s functional situation, rooted in the harm and risk reduction approach.⁴⁶

Harm and risk reduction is based on the recognition that 13.2%⁴⁷ of people who use PAS present complex patterns of drug consumption and may experience a combination of effects which could be categorized as a disorder requiring differential support. However, 86.8% of PAS users do not have issues resulting from that use or do not wish to or are not able to stop their consumption.⁴⁸ Thus, interventions for them should not be focused on abstinence, but rather on the minimization of the impact of use.

As part of the Integral Policy for the Prevention and Attention of Psychoactive Substance Consumption in 2019,⁴⁹ Iván Duque’s administration changed the public policy established in 2007 by removing harm reduction as one of the four major focuses for the reduction of PAS consumption and its impact, and relegating it to a mere action point. However, the strategies implemented have been insufficient in terms of the four pillars of public health intervention (accessibility, opportunity, belonging, and continuity), and have used an excessive approach on overcoming drug use where the only viable option is abstinence, thus closing the door to intervention alternatives from a harm reduction approach with meaning and values.⁵⁰ In fact, González (2017)⁵¹ found that the administrative entities of

⁴⁴ Ministry of Health (2019). “Resolution 089 of 2019.” (2017). “Plan Nacional para la Promoción de la Salud, la Prevención, y la Atención del Consumo de Sustancias Psicoactivas 2014 -2017” (National Plan for the Promotion of Health, Prevention, and Care of Psychoactive Substance Use 2014 -2017). Taken from: Deliberar. (2022). “Claves para una política integral para la prevención y atención del consumo de sustancias psicoactivas” (Integral Policy for the Prevention and Attention of Psychoactive Substance Consumption). Available at: Claves para Política de Atención al Consumo de SPA (deliberar.org)

⁴⁵ Ministry of Justice and Law, UNODC, ICBF (2019). Guía para la formulación de estrategias de prevención del uso de sustancias psicoactivas en los adolescentes del sistema de responsabilidad penal (Guide for the formulation of strategies to prevent the use of psychoactive substances in adolescents in the criminal liability system), p.34. Available at: https://www.icbf.gov.co/sites/default/files/guia_prevencion_uso_sustancias_psicoactivas_-_19_de_agosto.pdf

⁴⁶ This approach is recognized nationally by the 2007 National Policy for the Reduction of Psychoactive Substances and their Impact.

⁴⁷ United Nations Office on Drugs and Crime (UNODC). 2020. World drug report.

⁴⁸ UNDP (2015). “Políticas de Control de Drogas y Desarrollo Humano” (Drug Control and Human Development Policy). Taken from: Deliberar. (2022). “Claves para una política integral para la prevención y atención del consumo de sustancias psicoactivas” (Integral Policy for the Prevention and Attention of Psychoactive Substance Consumption). Available at: Claves para Política de Atención al Consumo de SPA (deliberar.org)

⁴⁹ Acción Técnica Social (ATS). Public policy for drugs attention during Ivan Duque’s administration. Available at: <https://www.acciontecnicasocial.com/politica-publica-de-drogas-de-duque/>

benefit plans only contract with programs where the therapeutic target is abstinence, i.e. overcoming and abandoning PAS consumption. Thus, any programs which envision a harm reduction approach would not get contracts with the insurance entity.

Similarly, it was found that resources allocated to address PAS use during the past four years are tiny compared with other sectors of drug policy, representing only 3% of the total amount allocated.⁵² This is not to even delve into the fact that government has failed to consult with PAS consumers as required by the health participation policy⁵³.

Challenges

This overview makes it clear that there are many problems that have arisen around the effective and sustained implementation of the harm and risk reduction approach, which also has implications for public health and human rights issues, where the solution would require the dismantling of elements that have proven problematic during the past four-year term. The government must consolidate connections and coordination among all institutions that address the PAS consumption phenomenon: The Ministry of Health and Social Protection, the Colombian Institution of Family Welfare (ICBF), the Criminal Liability System for Adolescents, Public Health Secretaries, institutions that serve PAS users in conditions of homelessness, the Ministry of Education, and insurance entities, among others. Similarly, the different types of PAS use must be institutionally recognized, as well as the differential impacts of each substance and the need to create needs-based, scientifically-proven programs. At the same time, room must be found for the construction of strategies that specifically include users, recognizing them as active subjects with agency who demand their freedom to use substances without being pathologized or criminalized.

Similarly, restrictive approaches focused solely on abstinence must be removed as strategies. To accomplish this, the negative impacts of these approaches must be recognized in terms of human rights and access to healthcare services, public health offerings, services provided⁵⁴ by insurance companies, effect on quality of life, and discrimination against PAS users.

Lastly, institutions, groups, communities, and organizations who attend to over-

⁵⁰ Deliberar. (2022). "Claves para una política integral para la prevención y atención del consumo de sustancias psicoactivas" (Integral Policy for the Prevention and Attention of Psychoactive Substance Consumption). Available at: [Claves para Política de Atención al Consumo de SPA \(deliberar.org\)](https://deliberar.org/).

⁵¹ González G et al. (2017). "Enfrentando el problema emergente de consumo de heroína en Colombia: los nuevos programas de tratamiento asistido con metadona" (Confronting the emerging problem of heroin use in Colombia: new methadone-assisted treatment programs). *Revista Colombiana de Psiquiatría* (Colombian Journal of Psychiatry).

⁵² Elementa DDHH (2022). Radiografía de política de drogas en Colombia 2018-2022 (Overview of the drug policy in Colombia 2018-2022). Available at: <https://elementaddhh.org/wp-content/uploads/2022/05/Informe-Radiografi%CC%81a-Poli%CC%81tica-de-Drogas-Colombia-2018-2022.pdf>.

⁵³ Ministry of Health. Resolution 2063 of 2017. Available at: https://www.minsalud.gov.co/Normatividad_Nuevo/Resolución%20No.%202063%20de%202017.pdf

⁵⁴ González G et al. (2017). "Enfrentando el problema emergente de consumo de heroína en Colombia: los nuevos programas de tratamiento asistido con metadona" (Confronting the emerging problem of heroin use in Colombia: new methadone-assisted treatment programs). *Revista Colombiana de Psiquiatría* (Colombian Journal of Psychiatry).

dose cases, must stock up on naloxone and methadone. Supervised consumption areas must also be provided on an open-door basis so that users who inject substances and consume smokable forms of cocaine have access to harm reduction and protection strategies using a gender-based approach. Substance analysis services, access to the required minimum of drinking water, and rest areas in party and entertainment spaces should be promoted as concrete ways to manage risks and pleasures.

Recommendations

These recommendations, therefore, are aimed at improving health services and increasing respect for PAS users' rights in their communities. For this reason, harm and risk reduction funding strategies and systems must be expanded, and there must be adequate information available on the reality of PAS uses. In addition, the epidemiological surveillance system must be coordinated within different sectors and institutions to include an early warning system in order to have comprehensive, accurate, contextual, and updated information. All of this must be done employing strict methodological standards and with sufficient transparency to enable citizen control and evidence-based decision-making and public policy.⁵⁵

The prevention, harm reduction, and care strategies must also resolutely address and integrate the consumption of legal substances such as nicotine and alcohol which have the greatest economic impact on the healthcare system (nicotine) and have the highest social impact indicators (alcohol). The fact that they are legal must not distract attention from the harm they cause. Similarly, the consumption of legal and illegal PAS in rural areas, where illicit crops are grown and processed, must be immediately addressed. Now that armed controllers such as the FARC are no longer present, the consumption of alcohol, cocaine, coca paste, and "tusibí" has increased among younger demographics. This is also a result of the historic absence of governmental oversight in these territories.

To remedy this, clear and functional guidelines must be created for the development of harm and risk reduction programs which include holistic attention to all aspects of PAS use: social determinants, psychosocial influence, community attention, consumption patterns, substance analysis, and a gender- and age-based approach. Similarly, the early warning system must be strengthened, integrating information from civil society organizations substance analysis services. Finally, a greater percentage of the drug policy budget must be devoted to PAS use services and harm and risk reduction strategies.

⁵⁵ Deliberar. (2022). "Claves para una política integral para la prevención y atención del consumo de sustancias psicoactivas" (Integral Policy for the Prevention and Attention of Psychoactive Substance Consumption). Available at: [Claves para Política de Atención al Consumo de SPA \(deliberar.org\)](https://deliberar.org/).

An abyss of pain

Analysis

One of the main objectives of the international drug control system is to guarantee the availability of and access to these substances for medical purposes. Furthermore, the WHO has placed these substances on its list of “essential” medicines. However, the barriers imposed by excessive drug control, together with ignorance, opiophobia, and the stigma attached to controlled substances, has resulted in both a national and global failure to reach this objective. Global inequality is abysmal: according to a report by The Lancet⁵⁶, of the 298 million metric tons of morphine-equivalent opioids distributed in the world each year, only 0.1 metric tons are distributed to low-income countries.

Opioid medicines used as severe or chronic pain relief and end of life palliative care, as well as for the relief of heroin withdrawal symptoms, are scarce for the population who need it most, resulting in avoidable pain.

Challenges

Despite the existence of regulatory frameworks related to these medicines in the Health Benefits Plan (Law 1733 of 2014 and Law 1566 of 2012), and the order for the availability of 24/7 pharmacies for dispensing opioids across the entire country, there is still a pain crisis.

Although there has been a significant increase in the consumption of morphine milligram equivalents over the past few years in Colombia, from 3mg/per capita in 2005 to 17mg/ per capita in 2015, according to the most recent National Opioids Survey (Encuesta Nacional de Opioides),⁵⁷ this consumption is concentrated in large and medium sized cities. This shows that there is a national pain-relief gap.

Recommendations

The new government must prioritize the National Narcotics Fund's understanding of the needs of the health sector, patients, and their care givers, in order to collectively find solutions to overcome existing barriers to the availability of and access to opioid medicines.

⁵⁶ The Lancet (2018). The Lancet Commission on Palliative Care and Pain Relief—findings, recommendations, and future directions. Available at: [https://www.thelancet.com/journals/langlo/article/PIIS2214-109X\(18\)30082-2/fulltext](https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(18)30082-2/fulltext).

⁵⁷ Colombian Palliative Care Observatory (2018). National Opioid Survey. Available at: <https://occp.com.co/dominios/medicamentos-y-tecnologias/>.

Incarceration

Analysis

The drug prohibition policy which favors the use of criminal law to tackle the production and trafficking of narcotics puts huge pressure on the penitentiary system. The population incarcerated for drug crimes significantly increased between 2000 and 2015. While the general population grew by 19% in this period, the incarcerated population grew by 141.8%, and the population deprived of liberty for drug offenses by 289.2%.⁵⁸ According to INPEC data, as of July 2019, 13.2% (25,684 people) of the incarcerated population had been imprisoned for drug crimes.⁵⁹ The criminal policy's punitive approach regarding trafficking forms part of the human rights violations of persons deprived of liberty (PDL). Court ruling T-388 of 2013 declared an "unconstitutional state of affairs" based on its finding that the country's prisons had become establishments of massive and wide-spread human rights violations against PDL. The Court found that the penitentiary crisis was not only caused by overcrowding (for which it had already declared an "unconstitutional state of affairs" in 1998⁶⁰), but also because the system was at the limit of its capacity to guarantee the effective enjoyment of rights to health, hygiene, food, and water, among others. In Court Ruling T-762 of 2015, the court actually stated that one of the causes of the crisis is the "reactive, populist, inconsiderate, volatile, incoherent" nature of criminal policy which is "subordinated to security policy." Similarly, it stated that "the historical management of the country's criminal policy has contributed to the perpetuation of mass violations of fundamental rights of persons deprived of liberty and currently prevents the incarceration's re-socialization purpose." In its Tenth Report, the Civil Society Monitoring Commission for Court Ruling T-388 of 2013 highlighted that the Colombian State continues to breach orders related to criminal policy, "with which they continue to deepen, exacerbate, normalize, and perpetuate massive and widespread violation of the fundamental rights of persons deprived of liberty and a criminal policy incompatible with the Political Constitution."⁶¹ The disproportionate use of preventative detention and increase in drug crime sentences is linked to the nature of this criminal policy.

Challenges

There is evidence from the Criminal and Penitentiary Policy Department of the Ministry of Justice that criminal laws are disproportionately used to incarcerate drug offenders. The limited employment of alternatives to incarceration for persons who commit minor and non-violent drug offenses demonstrates an irrational use of the prison system. Pre-trial detention has become more prevalent since 2000, when "it was the procedure for 21.9% of the criminal offenses of the

⁵⁸ Uprimny, R., Chaparro, S., & Cruz, L. (2017). Delitos de drogas y sobredosis carcelaria en Colombia (Drug offenses and prison overdose in Colombia). Dejusticia. <https://www.dejusticia.org/wp-content/uploads/2017/07/Delitos-de-drogas-y-sobredosis-carcelaria-en-Colombia-Version-final-PDF-para-WEB.pdf>, p. 48.

⁵⁹ Hernández, J. (2020). *La paradoja punitiva: Las medidas alternativas al encarcelamiento y la política criminal inflacionaria en Colombia* (The punitive paradox: Alternative measures to incarceration and inflationary criminal policy in Colombia.). Dejusticia. <https://www.dejusticia.org/publication/la-paradoja-punitiva/>, p. 66.

⁶⁰ Court Ruling T-153 of 1998.

⁶¹ Civil Society Monitoring Commission for Court Ruling T-388 of 2013. (2022). *Décimo informe de seguimiento al Estado de Cosas Inconstitucional del Sistema Penitenciario y Carcelario* (Tenth Follow-Up Report on the Unconstitutional State of Affairs of the Penitentiary and Prison System), p. 98. Civil Society Monitoring Commission for Court Ruling T-388 of 2013. <https://www.humanas.org.co/wp-content/uploads/2022/04/CSST-388-X-Informe-de-Seguimiento-Versio%CC%81n-Final-1.pdf>, p. 13.

Criminal Code (103 criminal offenses out of 471); by 2016, it was the course of action for 390 of the 631 criminal offenses, i.e., for 61.8% of crimes laid out in the law.⁶² Currently, it is difficult to apply alternatives to incarceration to persons convicted of drug crimes since they must, by law, spend 3/5 of their sentence in prison. However, governmental entities responsible for directing or implementing criminal policy have not made the necessary legislative changes to reduce disproportionate incarceration. The filing of presidential objections to Bill 093 of 2019 (Senate) and 498 of 2020 (House of Representatives), which established community service as an alternative to prison for women who commit crimes “associated with marginalization that affect maintaining the household,”⁶³ proves that during Iván Duque’s administration there were no serious attempts to adapt to the Constitutional Court’s decisions on criminal policy. On July 6, 2022, the Constitutional Court announced Court Ruling C-256 of 2022,⁶⁴ in which it declared the president’s objections were without foundation. However, even though notified of the ruling, the new President has not enacted the law.

Recommendations

We propose three general measures to respond both to the disproportionality of sentencing for criminal drug offenses and to the absence of alternatives to incarceration for crimes related to drug trafficking. Firstly, the government, together with the Criminal Policy Council (Consejo de Política Criminal), must promote reforms to the criminal code and to the criminal proceedings code to reduce non-violent drug offense sentences, decriminalize certain practices such as coca, marijuana, and poppy cultivation for small producers, and remove restrictions on the use of incarceration alternatives.⁶⁵ Secondly, necessary reforms must be carried out to prevent minor, non-violent drug crime offenders involved in the lowest levels of the market, from being sent to prison and, instead, divert them into a public support network designed to prevent further offenses by addressing the socio-economic factors that led them to commit these offenses. We recommend that the Colombian State mitigate the excessive imposition of criminal penalties on the population who are involved in minor and non-violent drug trafficking activities. These measures must include a differential approach for the sectors of the population who have been disproportionately affected by the current policies. Lastly, the President must, based on receiving notification of Court Ruling C-256 of 2022, enact and begin the implementation of community service, instead of incarceration, for women who committed minor and non-violent crimes established in Bill 093 of 2019 (Senate) and 498 of 2020 (House of Representatives). Lastly, we emphasize the need to provide a structural response to the ECI that seriously affects the rights of persons deprived of liberty.

⁶² Cita, R., & González, I. (2017). *La proporcionalidad de las penas en la legislación penal colombiana* (The proportionality of penalties in Colombian criminal legislation). Observatory of Criminal Policy. <https://www.politicacriminal.gov.co/Portals/0/documento/LaPro-poPenLeCol.pdf?ver=2017-03-29-110809-953>, p. 215.

⁶³ Youngers, C. (2022). Colombia pondrá en marcha una ley de alternativas al encarcelamiento para las mujeres cabeza de hogar (Colombia will implement a law on alternatives to incarceration for women heads of a household). WOLA. <https://www.wola.org/es/analisis/colombia-ley-alternativas-encarcelamiento-mujeres-cabeza-hogar/>

⁶⁴ Available at: <https://www.corteconstitucional.gov.co/comunicados/Comunicado%2022%20-%20Julio%206%20de%202022.pdf>

⁶⁵ Uprimny, R., Chaparro, S., & Cruz, L. (2017). Delitos de drogas y sobredosis carcelaria en Colombia (Drug offenses and prison overdose in Colombia). Dejusticia. <https://www.dejusticia.org/wp-content/uploads/2017/07/Delitos-de-drogas-y-sobredosis-carcelaria-en-Colombia-Version-final-PDF-para-WEB.pdf>, p. 82.

Police code

Analysis

When it comes to the notion of “personal dose” there are ambiguities between the concept of “free personal development” and the constitutional prohibition in article 49 of the Constitution. To begin with, Law 1801 of 2016 imposes sanctions on 16 types of conduct related to the possession or use of drugs in public spaces. The consequences of these sanctions include the destruction or confiscation of the substances, the obligation to participate in community programs or educational activities, and referrals to drug addiction service centers in accordance with Law 1566 of 2012.⁶⁶ The consumption of drugs, including for “personal use”, in educational institutions or its perimeters results in a criminal penalty (art 34, no. 1 and 3). Furthermore, article 140, section 7, of this law prohibits the consumption of psychoactive substances and alcoholic beverages in public spaces. However, the Constitutional Court, through Court Ruling C-253 of 2019, declared this general prohibition unconstitutional for denying autonomy and liberty to individuals. Consequently, only the prohibition against consuming prohibited substances in public spaces remains in force, generating uncertainty over whether the prohibition applies to drugs or not. This ambiguity extends to the possession of drugs, since article 140, section 8 of Law 1801 of 2016 also prohibits the possession of prohibited substances in public spaces. Therefore, although there is an established amount for personal use, in practice, individuals who use drugs can consume them in public spaces, but not carry them. Lastly, Decree 1844 of 2018 reinforces this administrative criminalization of personal use, by enabling police officers to confiscate the substance when its purpose is not personal use and, as a result, resort to the immediate oral process of article 222 of Law 1081 of 2016.

Challenges

The administrative criminalization of drug use, associated with the prohibitionist policy and legal framework that governs Colombia, poses multiple problems. These measures are very ineffective and do not focus on dismantling large criminal networks who profit from the drug trade. Instead, they promote the persecution and stigmatization of individual users by putting them in contact with the policing system for the simple act of using drugs.⁶⁷ Thus, this approach places substances as risks to protected legal assets and views people who use drugs as “criminals.” Moreover, these measures may discriminate against users on the basis of their socio-economic status, since users who must buy substances on the streets are more at risk than users who can afford to pay for them to be delivered.

Currently, there is a contradictory legal framework that allows the use, but not the possession, of drugs in the majority of public spaces under the rubric of “personal use”. There are also laws that place people who use drugs in a position of vulnerability due to the extensive powers given to police officers, and the broad

⁶⁶ Art. 33, no. 2; art. 34, no. 1, 2, 3, and 4; art. 38, no. 5, paragraph b and no. 6, paragraph a; art. 39, no. 1; art. 134, no. 8; art. 140, no. 7 and 8.

⁶⁷ Cruz, Luis Felipe and Pereira, Isabel. *Laberintos de prohibición y regulación: los grises de la marihuana en Colombia* (Labyrinths of prohibition and regulation: the gray area of marijuana in Colombia). Editorial Dejusticia: Bogotá. 2021, p. 70.

discretion on sanctions that can be imposed in each case.⁶⁸ Lastly, Law 1801 of 2016 establishes corrective measures that, in practice, function as sanctions which can be applied disproportionately with regard to the offenses committed, as it gives police officers the power to order the payment of a fine up to eight times the daily minimum wage, in some cases, and to even refer the person to a drug addiction treatment center. This wide discretionary power could give rise to extortion and rights violations against people who use drugs.

Recommendations

There are two actions that the new government can take in relation to the administrative criminalization of drug use. Firstly, Decree 1844 of 2019 must be revoked in order to avoid the prosecution of consumers of drugs for personal use in public spaces, and to begin to dismantle the government's belligerent attitude towards these individuals. Secondly, a draft bill should be established to modify Law 1801 of 2016 that would eliminate the uncertainties and ambiguities surrounding the protection of personal use in public spaces. At the very least, this initiative should: (i) eliminate the general prohibition against possessing psychoactive substances in public spaces, clearly indicating the legality of carrying drugs for personal use which comply with the established personal use quantities and defined doses depending on the user's addiction state; (ii) modify and specify factual conditions that must exist before a police officer can enforce a corrective measure related to the use and possession of drugs in public spaces; (iii) modify penalties for conduct related to the use and possession of drugs in public spaces so that they are proportional to the offenses committed; and, lastly, (iv) establish corrective measures only for conduct that affects or poses risks for legal assets, instead of basing penalties on a view that considers the simple consumption or possession of drugs as dangerous, and therefore, punishable.

⁶⁸ Cruz, Luis Felipe and Pereira, Isabel. *Laberintos de prohibición y regulación: los grises de la marihuana en Colombia* (Labyrinths of prohibition and regulation: the gray area of marijuana in Colombia). Editorial Dejusticia: Bogotá. 2021, p. 69

Regulation

Medicinal, scientific, and industrial uses of cannabis

Analysis

The medicinal cannabis market in Colombia has existed for nearly 10 years. Law 30 of 1986 paved the way by providing that “the production, manufacturing, exportation, importation, distribution, trade, use, and possession of narcotics, as well as the cultivation of plants used to produce these will be limited to medical and scientific purposes.” However, it was not until 2015 that the government regulated these uses through Decree 2467 and the first licenses for the production and manufacture of cannabis derivatives were granted to four Colombian companies (Cannalivio, Pideka, Ecomedics, and Econabis), one Canadian company (Cannavida), and one Colombian-Canadian company (Pharmacielo).⁶⁹ From this time forward, and with the issuance of Law 1787 of 2016, the industry has grown, albeit slowly, due to the government’s indifference to regulating important issues such as the exportation of dried cannabis flowers for medical, industrial and nutritional purposes. The government only issued one decree (613 of 2017) and one resolution (227 of 2022) over the course of four years regarding cannabis, leaving important issues pending, such as the medicinal use of dried cannabis flowers in Colombia, the exportation of psychoactive derivatives for industrial or nutritional use, and the regulation of CBD for dietary supplements, among others. It is worth noting that, although medicinal cannabis exports amounted to over US \$5 million in 2021 and currently provides 2,000 jobs,⁷⁰ it is estimated that the market could reach much higher figures in less than a decade if it is given the necessary support and regulation.⁷¹

Challenges

In light of this situation, many challenges are presented for this next four-year presidential term. Rodrigo Arcila, President of the Colombian Cannabis Industry Association (Asocolcanna) confirmed that the regulation of cannabis for industrial purposes has made it possible to enter the cosmetic, food and beverage markets, and that Colombia can produce raw materials for the global pharmaceutical industry such as oils, resins, and essences. However, he stated that issues such as the lack of leverage within the financial system and excessive bureaucracy and licensing delays are some of the major obstacles the industry has faced.⁷²

In addition, in the Northern Cauca region, cannabis grower communities affected by the conflict have drawn attention to the fact that they are not receiving the benefits of this medical cannabis boom, and it appears that a handful of multina-

⁶⁹ Camilo Castañeda & Ingrid Ballesteros (2019). “El viaje del cannabis medicinal en Colombia ¿Cómo empezó esta historia?” (The medical cannabis journey in Colombia. How did this story begin?). Available at: El viaje del cannabis medicinal en Colombia ¿cómo empezó esta historia? (neuroeconomix.com)

⁷⁰ Economy Editorial in El Espectador (08/19/2021). “En 2030 el cannabis medicinal aportaría más de US\$1.700 millones en exportaciones” (By 2030, medicinal cannabis will contribute over US \$1.7 billion in exports). Available at: En 2030 el cannabis medicinal aportaría más de US\$1.700 millones en exportaciones | EL ESPECTADOR.

⁷¹ Ibid.

⁷² Silvana Gómez & Mariana Guerrero. (04/12/2022). “Cannabis en Colombia una construcción (Cannabis in Colombia, a construction).” Available at: Cannabis en Colombia: una industria aún en construcción | Revista Portafolio | Portafolio.

tional and large scale Colombian companies are reaping all of the benefits of its regulation.⁷³ Considering that cannabis and hemp regulation for industrial purposes is relatively recent, the government must also take these emerging markets into account when advocating for benefits for small growers, so that legal cannabis markets become a driving force for social justice, especially with regards to the communities most affected by the “war on drugs.”

Recommendations

Thus, it is important for the new government to propose a policy on the medicinal, scientific, and industrial uses of cannabis on two fronts: (i) strengthening the medicinal and industrial cannabis industry; and (ii) implementing measures to establish this industry as a driving force for social justice among the communities most affected by the conflict. Promoting scientific research and governmental coordination with cannabis growers and companies will be fundamental to ensuring that our position in the market is not limited to dried flower exportation or the production of raw materials, but rather enables us to become leaders in the production of end products in both medicinal and industrial markets. This transformation will also require improved coordination between the industry and the medical community so that health professionals prescribe cannabis or cannabis-derived medicines, which also must be included in the Obligatory Healthcare Plan (POS). Financial backing should also be promoted and the Banco Agrario should be given the tools to grant credits and bank funds without requiring excessive paperwork and red tape to small and medium-sized growers and entrepreneurs. Processes and times for approving licenses should also be simplified, which will require improvements in the entities responsible for approvals and, perhaps, a restructuring of these entities in order to simplify these processes.

It is also important to go forward with any pending regulations from the previous government such as the regulation of CBD for dietary supplements, regulation of dried cannabis flowers for medicinal uses in Colombia, and the implementation of assistance programs to communities who have historically been economically dependent on illegal cannabis crops, which would enable them to participate in legal markets, either through community associations which receive technical and economic assistance from the government, or through alliances with corporations.

⁷³ Nicolás Achury González. (07/26/2022). “El “falso Boom” de cannabis medicinal que se prometió en el norte del Cauca” (The “false boom” of medicinal cannabis promised in Northern Cauca). Available at: El “falso boom” de cannabis medicinal que se prometió en el norte del Cauca | EL ESPECTADOR.

Adult-use cannabis

Analysis

Regulation of adult-use cannabis is proposed as the next necessary step in redeveloping a drug policy rooted in respect for human rights. However, regulated legalization, which has been promoted by civil society and certain political fronts, faces a major obstacle in the Congress of the Republic as four bills seeking this objective have been introduced and debated over the past four years and not one has survived beyond the second debate.⁷⁴ The Congress that took office on July 20 appears to have a different point of view. However, if Congress approves the regulation of adult-use cannabis in Colombia, concerns remain as to whether implementation of the approved proposals will learn from the mistakes of other countries who have taken the same step and from the mistakes within Colombia regarding regulation of medicinal cannabis. It is important that this regulation not only present economic opportunities for the country, but that it also serve as an instrument for reparation and compensation for communities most affected by prohibition,⁷⁵ as well as being a genuine step in building a drug policy rooted in respect for human rights.

Challenges

In 2009, the Congress of the Republic approved a provision that went on to become one of the biggest obstacles for adult-use cannabis regulation in Colombia. Article 49 of Legislative Act 002 of 2009 of the Colombian Constitution included an explicit prohibition against the possession and consumption of any PAS that is not medically prescribed. This will be the first obstacle the Congress must overcome in order to regulate adult-use cannabis, since any regulation that does not consider the modification of said article will be hugely limited by its unconstitutional character. Therefore, Congress must first approve a legislative act that removes this prohibition from Article 49 of the Constitution, and subsequently propose a bill that extensively develops adult-use regulation.

In terms of the regulation's content, there are also many challenges. To begin with, it is important to learn from what has happened so far in terms of medicinal cannabis regulation, and seek legal and governmental measures to ensure that the market for adult-use cannabis is not just accessible to large companies who have the necessary resources to pay for the countless licenses required. Adult-use cannabis regulations must present an opportunity for farming (*campesino*) communities, ethnic groups, and small and medium growers that have not been able to access and benefit from the medicinal cannabis market to participate in licit economies based on adult-use cannabis, especially those who were victims of prohibitionist policies. In these cases, their participation in the adult-use cannabis market would also be a form of reparation and compensation. Furthermore, the regulations' content must also strike a balance in terms of taxation which

⁷⁴ Elementa DDHH (2022). Radiografía de política de drogas en Colombia 2018-2022 (Overview of the drug policy in Colombia 2018-2022). Available at: <https://elementaddhh.org/wp-content/uploads/2022/05/Informe-Radiografi%CC%81a-Poli%CC%81ti-ca-de-Drogas-Colombia-2018-2022.pdf>.

⁷⁵ Cruz Oliveira, Luis Felipe and Pereira Arana, Isabel. Laberintos de prohibición y regulación. Los grises de la marihuana en Colombia. (Labyrinths of prohibition and regulation: the gray area of marijuana in Colombia). *Dejusticia*. 2021, p. 156.

results in a price that is low enough to incentivize buyers to move to the legal cannabis market while also allowing a sufficient flow of economic benefits to the government which can be directed towards funding policies for the prevention of early age consumption and harm and risk reduction programs.

Recommendations

To tackle the aforementioned challenges, it is important that measures are taken into account in the regulation of adult-use cannabis which (i) attract buyers, sellers, and growers to transition from illicit economies to licit economies; (ii) guarantee a fair market that favors distribution of the legal market's benefits among the communities most affected by prohibition—growers, people convicted of drug-related crimes, and drug users, among others—and (iii) create campaigns to de-stigmatize adult use of cannabis and provide information from a risk and harm reduction perspective.

Concerning the first point, there must be a balance in terms of the taxation of adult-use cannabis. It needs to be a percentage that generates sufficient income for the nation to be redistributed in development policies for the communities most affected by prohibition and harm and risk reduction measures, but at the same time allows medical cannabis to maintain a competitive price when compared with alternative markets. In addition, criminal reform, such as the elimination of criminal records for people who have been convicted of cannabis trafficking crimes, may help sellers and growers that had previously taken part in the illegal cannabis⁷⁶ market to transition to the legal market without fear of persecution by the authorities.

With regards to the second point, the licensing request process for growing and selling cannabis for adult use should be simple, non-bureaucratic, and straightforward. This is to make it easier for small- and medium-sized producers and growers to enter the market and benefit from the opportunities it provides, ensuring that large companies and multinationals are not those who are controlling it. Similarly, the government must provide free technical, financial, and educational assistance to the groups affected by prohibition and who are looking to enter this market. Their participation must also be promoted through associations which make it easier to comply with requirements in the licensing process, allowing them to adopt a leading role in the legal adult-use cannabis market.

Lastly, it is important that the income received by the State is directed to harm and risk reduction campaigns and development policies which target communities who have been affected by prohibition. It is also of great importance that drug policy reform include widespread educational campaigns which target the entire population and seek to eradicate the stereotypes produced by prohibition

⁷⁶ Elementa DDHH, Dejusticia, and Acciones para el Cambio. Principios para una regulación responsable del uso adulto del Cannabis en Colombia (Foundations for a responsible regulation of adult-use cannabis in Colombia). Available at: <https://elementaddhh.org/wp-content/uploads/2021/03/Principios-para-una-regulacio%CC%8In-responsable-del-uso-adulto-del-cannabis-en-Colombia-digital.pdf>, p. 27-28.

within the society, especially distinguishing between problematic and non-problematic consumption, as well as addressing structural reforms in terms of rural and agricultural development, peace building, differential approaches, and scientific development.⁷⁷

Coca leaves

Analysis

Few plants have been victims of prohibition the way coca has. In Colombia, decades of prohibitionist propaganda have meant that a large sector of the population sees this plant as “la mata que mata” (the plant that kills), despite the progress made by civil society activism and growers themselves, such as the company Coca Nasa, which has been commercializing nutritional products derived from coca leaves since 2000. Since that time, high court rulings have protected the indigenous communities’ rights to cultivate coca. However, these rights have still not been fully guaranteed due to attempts by entities such as the National Institute for Food and Drug Surveillance (INVIMA) to ban commercialization outside of indigenous reserves. As a consequence, companies like Coca Nasa have had to fight for the little space in the market they have today by means of legal claims and lawsuits, while governments have maintained coca eradication at the center of their drug policies, albeit with varying methods. In 2020, a group of congress members led by Feliciano Valencia and Iván Marulanda filed in the Senate the first bill in Colombian history that seeks to regulate coca and its derivatives. Although it was approved by a narrow majority in its first debate, the discussion that took place in the commission made it clear that its approval in the plenary session would not be easy.

Challenges

The path to the regulation of coca and its derivatives is not straightforward. Colombia must learn from the successes and failures of neighboring countries that have promulgated such regulations, such as Peru and Bolivia. However, the unique challenges facing this country must also be recognized. The stigmatization of the coca plant as a result of prohibitionist policies is perhaps the first obstacle for its regulation. Moreover, the international stance against coca does not allow for an easy transition towards regulation, unlike the case of cannabis due to the classification of this plant in international lists. It is particularly difficult to overcome this issue, as there is a lack of research on the medicinal, homeopathic, and nutritional benefits of coca.

Recommendations

⁷⁷ Cruz Oliveira, Luis Felipe and Pereira Arana, Isabel. Laberintos de prohibición y regulación. Los grises de la marihuana en Colombia. (Labyrinths of prohibition and regulation: the gray area of marijuana in Colombia). *Dejusticia*. 2021, p. 147- 151.

In accordance with the above, it is important for the government to implement educational campaigns to de-stigmatize the plant, as well as promote research on its medicinal, homeopathic, and nutritional uses. It is also important to bring the regulation of plants other than cannabis to the international debate arena, although it is also understood that there are many complexities to proposing this debate at the international level. Nevertheless, it is necessary to create opportunities for this discussion and, since it is one of the main victims of prohibition, Colombia has the legitimacy to do so. This process requires continued dialogue with indigenous communities who hold ancestral connections to this plant, and respect for their knowledge and traditional uses must be the pillar of any regulation.

In terms of regulation of the cocaine market, the government needs to push for debate at the international level. For this, the recommendations set out in the Truth Commission's final report will be of a great importance in leading regional dialogues and staging an international conference to objectively examine the "war on drugs,"⁷⁸ as provided for by the peace agreement signed by the extinct guerrilla group, the FARC.⁷⁹ The government must take the lead in scientific research on the benefits of coca and its derivatives, while promoting the adoption of harm and risk reduction policies as an alternative to zero-tolerance drug policies that have not had any success in over 50 years. In this regard, reaching international and regional agreements on the issue could lead to the creation of a legal international or regional market that is economically and environmentally sustainable, based on principles of social justice, reparations for the social groups most affected by prohibition, and re-envisioning the relationship people have with plants and illegalized substances.

Lastly, we recommend that the government and Congress propose a bill to decriminalize the financing and cultivation of coca by small producers. The number of hectares that defines a family as small producers must be agreed upon in consultation with *campesino* organizations.

⁷⁸ Commission for the Clarification of Truth, Coexistence, and Non-Repetition. *Hay futuro si hay Verdad*. (If there is truth, there is a future). Final Report. Findings and Recommendations. Bogotá, June 28, 2022, p. 826.

⁷⁹ Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace. Section 4.3.5.

Colombia on the international stage

Promoting regional and international debate

Analysis

Historically, Latin America has been blamed for problems related to the global supply of drugs. It has subsequently become a target for international efforts to free the world of drugs by attacking the issue at its “source.”⁸⁰ The evidence indicates that these efforts have failed, and that after more than 50 years, the region is home to the highest concentration of international drug trafficking and is extremely affected by transnational criminal groups related to drug trafficking, high levels of violence, and human rights violations.⁸¹ All of this exists against a backdrop of widespread inequality, violence, corruption, social unrest, and environmental threats. In contrast, it is also a region that has taken fundamental steps to decriminalize PAS users, regulate substances, and pardon persons deprived of liberty for non-violent drug offenses.

The Colombian State has taken on a leading role in international and regional debates on international drug control regimes, demonstrating its first-hand experience and evidence-based reflections regarding successes and failures as a result of this policy.⁸² Over the last four years under Iván Duque’s administration, the government maintained the status quo at the regional and international level, and not only in terms of drugs. Relations with neighboring states were also overshadowed by a strong ideology which neglected fundamental issues such as security, migration and trade agreements.⁸³

Challenges

There are enormous and profound challenges regarding this issue and Colombia is the best equipped country to take the initiative and begin a dialogue on the paradigm shifts needed to address the drug situation. It has the authority and is legitimized by its history fighting against drug trafficking and in favor of peace.⁸⁴ It is essential to move towards the re-building of international agreements that support prohibition and delineate interventions on drugs, under a new international consensus and on the basis of three premises: acceptance that eliminating PAS use by means of repression is impossible; recognition of the prevalence of human rights treaties and covenants regarding its drug counterparts; and the possibility of awarding autonomy to each government so that decisions can be

⁸⁰ John Walsh (2022). “Las consecuencias catastróficas de la prohibición de las drogas en las Américas” (The catastrophic consequences of drug prohibition in the Americas). Available at: https://www.wola.org/wp-content/uploads/2022/07/Consecuencias-Catastroficas_WOLA_Julio-2022.pdf

⁸¹ UNODC (2021). “Visión estratégica de UNODC para América Latina y el Caribe 2022-2025” (UNODC’s Strategic Vision for Latin America and the Caribbean 2022-2025). Available at: https://www.unodc.org/res/strategy/ESTRATEGIA_LATAM_2022_2025_ENE17_ESP_EDsigned.pdf

⁸² Acciones para el Cambio. (2019). “La experiencia de Colombia en materia de política de drogas en la última década” (Colombia’s experience with drug policy over the last decade). Available at: [informe-espanol.pdf \(elementaddhh.org\)](https://www.elementaddhh.org/informe-espanol.pdf)

⁸³ Nicolás Marín & Paula Ardila. (2021). “¿Dónde queda Colombia con la política internacional de Duque?” (Where is Colombia in Duque’s foreign policy?). Available at: [La política exterior de Duque: ¿Dónde queda Colombia? | EL ESPECTADOR](https://www.elspectador.com.co/articulo/3594444)

⁸⁴ Sonia Eljach. (2022). “Hacia la regulación de drogas ilícitas: blindajes internacionales contra el cambio” (Towards regulation of illicit drugs: international obstacles on the path to change). Available at: [Hacia la regulación de las drogas ilícitas: blindajes internacionales contra el cambio | EL ESPECTADOR](https://www.elspectador.com.co/articulo/3594444)

made in accordance with their specific context.⁸⁵ This requires the recognition that prohibition is an alternative policy, not an immutable condition.⁸⁶

In the same way, a multilateral assessment of anti-drug policies in the region must be promoted, whereby each country participates on equal terms, moving away from unilateralism where assessment and “certification” processes are carried out by the United States. It is important to promote an evidence-based discussion rooted in the experience of countries affected by prohibition and one that limits the use of dogmatic positions that resist any change to drug policy and avoid substantial debate.⁸⁷

Recommendations

First and foremost, recommendations for making progress in overcoming drug policy challenges at the regional and international level entail the Colombian State recovering its leading role in assessing drug policy in international and regional settings.⁸⁸ In this way, it must be able to advocate for the rebuilding and strengthening of diplomatic relations with neighboring countries and integrate the consequences of illegal drug trafficking into the cooperation agenda. In the short term, this will enable coordinated efforts to relieve vulnerable populations of violations.

The current government is fortunate in that the Biden administration is rethinking its anti-narcotics strategy in Colombia.⁸⁹ This may be better aligned with the Final Peace Agreement’s implementation objectives. In this sense, it will be fundamental for Colombia’s diplomacy to concentrate its efforts in reaching an agreement on improved metrics to measure the drug policy’s success. This will no longer be based on eradicated or planted hectares, but on the improvement of living conditions for *campesino* families, as well as the optimization of strategies at high-value points in the chain. It will also be of great importance to begin a dialogue on cannabis regulation experiences across the continent, which, in the long term, will pave the way for a dialogue on cocaine regulation.

⁸⁵ Ibid.

⁸⁶ John Walsh. (2022). “Las consecuencias catastróficas de la prohibición de las drogas en las Américas” (The catastrophic consequences of drug prohibition in the Americas). Available at: [Consecuencias Catastróficas_WOLA_Julio 2022](#)

⁸⁷ Socorro Ramírez. (2017). “Debate drogas: nuevas ideas y actores” (Drug Debate: New Ideas and Stakeholders). Available at: <https://repository.urosario.edu.co/handle/10336/16263>

⁸⁸ Acciones para el Cambio. (2019). “La experiencia de Colombia en materia de política de drogas en la última década” (Colombia’s experience with drug policy over the last decade). Available at: [informe-espanol.pdf \(elementaddhh.org\)](#)

⁸⁹ ONDCP Welcomes New Holistic U.S.-Colombia Counternarcotics Metrics. (2022). Available at: <https://www.whitehouse.gov/ondcp/briefing-room/2022/05/04/ondcp-welcomes-new-holistic-u-s-colombia-counternarcotics-metrics/>.

Promoting civil society participation

Analysis

Civil society has played a key role in the most important processes of Colombia's recent history. Organizations have enabled richer, more profound debates, with technical precision regarding issues concerning drug policy. Their reflections and research have risen to the challenges and changes in the country's political dynamics, advocating for the protection of human rights, victims, territories, vulnerable populations, agents of change, and for a shift towards evidence-based strategies.

Countless interventions have been made before the high courts on the most problematic elements of drug policies in the country. These include the use of glyphosate⁹⁰ and the criminalization of the minimum dose,⁹¹ which have reached successful conclusions in terms of the protection and guarantee of rights. Similarly, the coordination of civil society organizations has resulted in new opportunities for participation in advisory spaces, for the construction of public policy and for international public discussion forums on drug policy. Civil society organizations promoted more progressive and innovative interventions, such as substance analysis⁹² and needle exchange programs, which were in some cases adopted by the government. For victims of the "war on drugs," organized society has provided grower communities and PAS users with a means to demand their rights and make their voices heard on daily violations caused by failed strategies.

Challenges

With all that has transpired, what would appear to be a cordial relationship between State institutions and civil society is no more than a façade. Organizations have had to open spaces for public discussion with multiple limitations, and often against the State itself. Challenges in this matter are rooted in an honest assessment of the role of civil society organizations in drug policy transformation which will open the door to effective participation of these groups in strategic planning carried out by the government. In addition, it will prevent violence against, stigmatization, and legal prosecution of members of these organizations. In this way, collective exercises on harm and risk reduction can be carried out and victims organizations demands can be gathered.

Recommendations

It is recommended that effective participation of civil society organizations as external agents be integrated into strategic planning mechanisms for public policies, as well as into legally binding processes in the planning, evaluation, and monitoring fields. Likewise, civil society organizations must have guaranteed

⁹⁰ Elementa DDHH statement as part of the writ for protection process regarding fundamental participation rights violations on the Environmental Management Plan for the Eradication of Illicit Crops Program by Aerial Spraying with Glyphosate. Available at: [Intervención-T-8020871-Acción-de-Tutela.pdf \(elementaddhh.org\)](#)

⁹¹ Dejusticia's statement on the decree that strengthened police powers to sanction PAS possession. Available at: [Carta_Organizaciones-Decreto-Decomiso-Dosis-Personal.pdf \(dejusticia.org\)](#)

⁹² Echele Cabeza Report. 2021. Available at: <https://www.echelecabeza.com/informe-de-analisis-de-sustancias-2021-echele-cabeza/>

access to information from public institutions and policies, all databases and information obtained and generated on the production, commercialization, and use of PAS. This will enable greater transparency and provide the information necessary to compare and contrast the indicators and results of different interventions.

Evidence as a tool for advocacy

Analysis

Scientific knowledge and evidence are not something that has been incorporated into the analysis and discussion of drug policy in Colombia. The evidence that is currently available has not been sufficient to convince decision makers to try different strategies. This includes evidence that shows aerial spraying with glyphosate has not managed to stop the persistence of coca crops, evidence that shows that capturing drug dealers does not lead to the reduction of PAS availability on the streets, and evidence that shows that extradition does not resolve the issue of the involvement of illegal armed organizations in drug trafficking. This also does not take into account the victims' right to know the truth.

In effect, the Colombian State, and its last administration in particular, have closed the door to any discussion based on rigorous scientific evidence. Instead, it has resorted to the dogmatism of the "war on drugs", attaching all of its drug strategies to indicators that justify its status quo policies.⁹³ In contrast, a State that facilitates sensible dialogue on drugs is capable of moving beyond the same old failed strategies to better address the issue of prohibition.

Challenges

The challenges facing the country in this matter consist primarily of ensuring that dialogues take place as part of all policy planning procedures and bills that seek to address the issue of drugs and drug trafficking. This is to ensure that the history of dogmatism does not repeat itself. Similarly, it is important to effectively integrate scientific institutions and the evidence they produce as part of future bills on drug issues. It is particularly important to integrate findings on the impacts on vulnerable populations: *campesino* communities, PAS users, youth, racialized people, and women.

In this regard, decision makers must assist in defining criteria based on scientific rigor using processes of impartial peer review and competing sources, while welcoming scientific knowledge from non-Western schools of thought, as well

⁹³ John Walsh. (2022). "Las consecuencias catastróficas de la prohibición de las drogas en las Américas" (The catastrophic consequences of drug prohibition in the Americas). Available at: https://www.wola.org/wp-content/uploads/2022/07/Consecuencias-Catastroficas_WOLA-Julio-2022.pdf

as popular and ancestral wisdom.

Recommendations

We recommend comparing and aligning current proposals on public policy and legislation with the body of evidence that has accumulated over the past few years. The inclusion of international WHO guidelines on health and the reclassification of substances is also recommended. Similarly, drug policy success indicators must be reevaluated, going beyond measuring processes to measuring impacts, through an evaluation of progress on reducing violence associated with illegal markets, dismantling criminal groups by reducing their sources of income, and focusing on economic and social development in cultivation zones and the health conditions of drug users.⁹⁴

⁹⁴ Acciones para el Cambio. (2019). "La experiencia de Colombia en materia de política de drogas en la última década" (Colombia's experience with drug policy over the last decade). Available at: [informe-espanol.pdf \(elementaddhh.org\)](#)



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