

# Connecting the Dots . . .

Human Rights, Illicit Cultivation and  
Alternative Development





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Girl in Afghan poppy field. TNI/Tom Kramer 2006.

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Subsequently an updated draft was submitted in August 2018 as a TNI contribution to the preparation of the report of the *United Nations High Commissioner for Human Rights on the implementation of the joint commitment of States to effectively address and counter the world drug problem with regard to human rights*. The Office of the High Commissioner for Human Rights (OHCHR) presented its report to the 39<sup>th</sup> session of the UN Human Rights Council (Geneva, 10–28 September), and at an intersessional meeting of the UN Commission on Narcotic Drugs (Vienna, 27 September) in the context of preparations for the review of the UN drug control strategy at its 62<sup>nd</sup> session in March 2019.

See: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/WorldDrugProblemHRC39.aspx>

This report draws on discussions at a workshop on *Human Rights and Illicit Cultivation*, which took place on 15 December 2017 in Chiang Rai (Thailand). The workshop was organized by the Transnational Institute (TNI) in collaboration with the GIZ Global Partnership on Drug Policies and Development (GPDPD), implemented on behalf of the Ministry for Economic Cooperation and Development of the Federal Republic of Germany. The event brought together experts and key stakeholders to discuss strategies for enhancing human rights compliance in policies targeting illicit cultivation, with a special focus on Myanmar and Colombia.

Several people provided valuable inputs to this report: special thanks go to Dania Putri (TNI) for her detailed notes on the Chiang Rai workshop; to Sofia Krauss (GIZ-GPDPD), Rebecca Schleifer (UNDP), Zaved Mahmood (OHCHR), Tom Blickman (TNI), Sofia Monsalve (FIAN), Coletta Youngers (WOLA/IDPC), Jennifer Franco (TNI) and Tom Kramer (TNI) for substantial comments on earlier drafts; to Coletta Youngers also for drafting the gender section; and to Katie Sandwell (TNI) for editing support. Responsibility for the final content of this report lies with TNI and the author alone.

## Key points

- Around the world, millions of farmers and other people living in rural areas depend on the cultivation of coca, opium poppy and cannabis to reduce food insecurity and to secure an adequate standard of living for themselves and their families.
- Gradual reduction, proper sequencing, tolerance for local culture and community participation were relatively common features in alternative development programmes until the mid-1980s. Today, in spite of the improved discourse around alternative development, the application of such principles in practice has become the exception rather than the rule.
- The UN drug control conventions have an inherent bias towards criminalisation and repressive law enforcement, establishing floors with no ceilings. However, the international human rights framework clearly establishes that, in the event of conflicts between obligations under the UN Charter and other international agreements, human rights obligations take precedence.
- Forced eradication in the absence of alternative livelihoods violates people's rights to live a life in dignity and to be free from hunger, as well as their right to an adequate standard of living. This represents, therefore, a policy option that is in conflict with international human rights law.
- Increases in illicit cultivation, as recently reported for Colombia and Afghanistan, tend to trigger a political response of more repression and eradication that risks making things worse, especially in circumstances where drugs and conflict dynamics are interconnected. Peace building and sustainable development both require time, sufficient resources and community ownership.
- The drug control treaties leave sufficient flexibility to allow states to refrain from forced crop eradication or incarceration of subsistence farmers, as they refer explicitly to providing measures for social reintegration and rural development "*as alternatives to conviction or punishment*".
- The dominance of repressive realities on the ground and the lack of commitment to alternative development by donors have turned the global discourse around alternative development largely into a "virtual reality", perpetuating the myth that a human rights-based and development-driven approach to illicit cultivation exists in practice.
- In spite of multiple references in international drugs policy documents to the importance of community involvement and a gender perspective, the space for serious dialogue, in which community representatives including women have substantial leeway for negotiation about the design and implementation of alternative development projects, is still very limited and often non-existent.
- Coca, opium poppy and cannabis have been grown for centuries for traditional medicinal, cultural and ceremonial purposes. The 1961 Single Convention on Narcotic Drugs' enshrinement of a zero-tolerance approach towards those practices and establishment of an obligation for states to abolish them represents a historical mistake rooted in colonial attitudes and cultural insensitivity.
- Countries truly committed to human rights protection in drugs policy must recognise that, when it comes to indigenous, cultural and religious rights, full compliance will require the amendment of, or derogation from, certain provisions in the drug control treaties.
- The expansion of licit uses of poppy, coca and cannabis offers opportunities for farmers to transition away from dependence on the illicit drugs market. Alternative development, human rights and fair trade principles need to be employed to secure a legitimate place for small farmers in the fast-growing legally regulated cannabis markets.
- The UN Guiding Principles on Alternative Development and the development chapter of the 2016 UNGASS outcome document should be implemented in coherence with the UN Tenure Guidelines, the Rights of Indigenous Peoples, the Rights of Peasants and the Sustainable Development Goals to ensure that "no one is left behind".



Girl in Afghan poppy field. TNI/Tom Kramer 2006.

## 1. Human rights and illicit cultivation

Around the world millions of farmers and other people living in rural areas are involved in the cultivation of crops used for the illicit production of narcotic drugs. Many of them depend on this illicit economy to reduce food insecurity, to buy essential household goods and to pay for health care and education. In many places, coca, opium poppy and cannabis have also been grown for centuries for traditional medicinal, cultural and ceremonial purposes.

The three UN drug control conventions (1961, 1971 and 1988) and subsequent UN Political Declarations and Action Plans (1998, 2009 and 2016) have established the international legal and policy framework for supply reduction measures directed towards the cultivation of these crops. Frequently, such measures have included forced eradication operations, which have led to violent confrontations with small-scale farmers of coca, cannabis and opium poppy, and to numerous human rights violations.

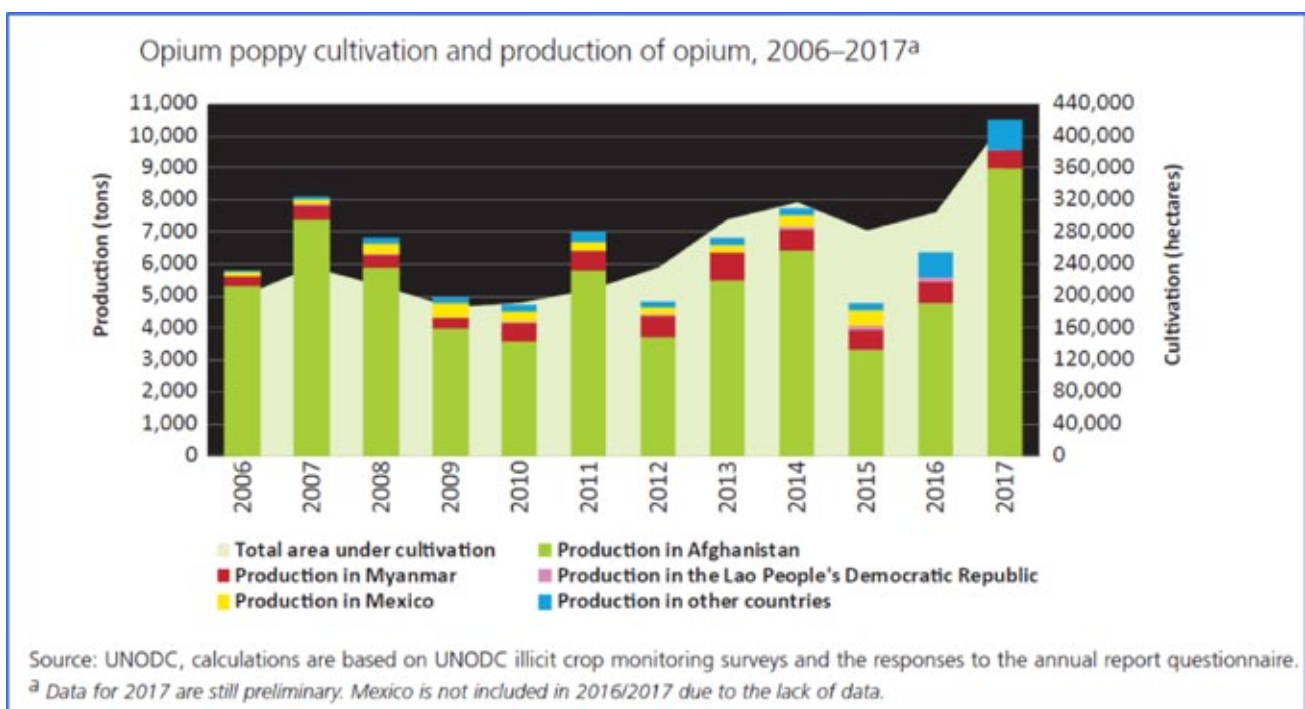
Alternative development (AD) programmes have been at the core of efforts to find a more humane balance between drug control obligations, supply reduction policy objectives, and the protection of the rights of people dependent on illicit cultivation for basic subsistence. However, the development of AD discourse, its funding support and its relationship with parallel ongoing—and better resourced—law enforcement and eradication operations, have encountered serious challenges. For many, according to Alimi in a recent article in the UN Bulletin on Narcotics, “*the difficult balancing between short-term objectives of illicit cultivation reduction and the longer-term approaches based on sustained development efforts has called into question the relevance and even the legitimacy of alternative development policies.*”<sup>1</sup>

Human rights arguments have thus far not played an important role in this discussion and bringing economic, social and cultural rights to the table as a critical issue could help to improve the terms of the debate. Over the past decade, UN agencies, policymakers and civil society groups have dedicated increasing attention to human rights violations associated with the criminalisation of people who use drugs, the transmission of HIV and hepatitis, forced treatment and drug detention centres, disproportionate sentences and mass incarceration of low-level drug offenders, the use of the death penalty for drug offences, extrajudicial killings, and the lack of access to controlled medicines in the developing world. Much less attention, however, has been paid to human rights protection for rural communities (small farmers, sharecroppers and day labourers) involved in the cultivation, harvesting, processing and trading of drug-linked crops.

*narcotic plants*". Article 14.2 specifies that such measures "shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment" (the ambiguities of this article will be discussed more in detail below).

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

*Reaffirming that the fight against illicit drugs must be pursued in accordance with the provisions of the international drug control treaties, on the basis of*



The only explicit mention of human rights in any of the three UN drug control treaties can be found in the 1988 Convention Against Trafficking of Narcotic Drugs and Psychotropic Substances and deals specifically with "measures to eradicate illicit cultivation of

the principle of shared responsibility, and requires an integrated and balanced approach in full conformity with the purposes and principles of the Charter of the United Nations and international law, and particularly with full respect for the

sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States and all human rights and fundamental freedoms.

The 2016 UNGASS Outcome Document, representing the most recent and most advanced global consensus on international drug control, is the first document of this kind to devote special sections to human rights and development, giving both issues more prominence in the global drugs debate. The section on development-oriented drug policy refers to “comprehensive strategies aimed at alleviating poverty and strengthening the rule of law” and to “ensuring the empowerment, ownership and responsibility of affected

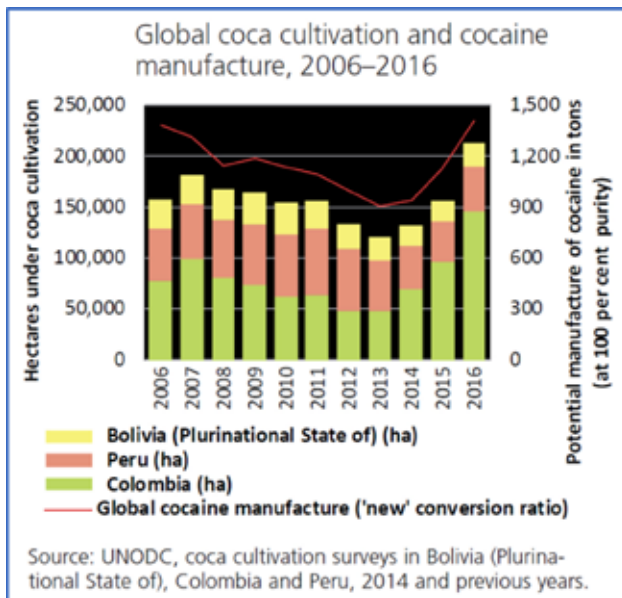
local communities, including farmers and their cooperatives, by taking into account the vulnerabilities and specific needs of communities affected by or at risk of illicit cultivation, ... with a view to contributing to the building of peaceful, inclusive and just societies, consistent with the Sustainable Development Goals and in compliance with relevant and applicable international and national law”. It also mentions “the use of relevant human development indicators” to measure the impact of alternative development programmes.<sup>2</sup>

The 1998 UNGASS already recognised that “[d]espite the adoption of international conventions promoting the prohibition of illicit drug crops, the problem of the illicit cultivation of the opium



Woman carving poppy pods in northern Myanmar. TNI/Tom Kramer 2004.





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

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

Däuble in Vienna at the launch of the report on World Drug Day: “Unfortunately, it shows a disturbing picture of the ever-growing production and consumption of drugs worldwide.”<sup>7</sup> The failure of the global drug control system to meet its targets adds urgency to pertinent questions about the human rights violations that frequently occur in the course of the unsuccessful attempts to meet them.

This report explores in detail what the 2016 UNGASS commitment “to respecting, protecting and promoting all human rights, fundamental freedoms and the inherent dignity of all individuals and the rule of law in the development and implementation of drug policies”<sup>8</sup> truly means for policies aiming to address the illicit cultivation of coca, opium poppy and cannabis.

## 1.1 Human Rights Guidelines for Drug Control

Legal scholars have placed the international drug control treaties in the category of so-called “suppression conventions” that obligate states to criminalise certain forms of conduct under their domestic law “in order to suppress these ‘treaty crimes’ or ‘crimes of international concern’”, and the binding nature and global implementation of their provisions make such treaties “important legal mechanisms for the globalization of penal norms”.<sup>9</sup> However, as has been argued from a human rights perspective, “they offer no obligations or guidance on what is and is not an appropriate penal response. ... Floors have been established with no ceilings. In many cases, this is an invitation to governments to enact abusive laws and policies, especially in a global context where drugs and drug trafficking are defined as an existential threat to society and the stability of nations, and people who use drugs and those involved in the drug trade are stigmatized and vilified.”<sup>10</sup> Among the drafters of the 1988 Convention, there was “an awareness of the Convention’s potential for a negative human rights impact and that the Convention like all suppression

conventions is not self-regulating with regard to human rights. The parties to these conventions rely on external human rights norms in domestic and international law to soften their human rights impact.”<sup>11</sup>

Recently, international guidelines have been developed to promote human rights compliance in several policy areas, for example the *Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (‘the Bangkok Rules’)<sup>12</sup>, the *Guiding Principles on Business and Human Rights*,<sup>13</sup> the *Guiding Principles on Extreme Poverty and Human Rights*,<sup>14</sup> the *Standard Minimum Rules for the Treatment of Prisoners* (‘the Nelson Mandela Rules’),<sup>15</sup> and the *Yogyakarta Principles on international human rights standards in relation to sexual orientation and gender identity*.<sup>16</sup> In many cases, these documents have been used to influence legislative, judicial and policy decisions, and have proved to be effective tools for promoting human rights compliance among both state and non-state actors.<sup>17</sup>

Thus far, no international standards of human rights have been formulated in the field of drug control, let alone in the specific case of illicit cultivation.<sup>18</sup> To fill the gap, the United Nations Development Programme (UNDP) and the International Centre on

Human Rights and Drug Policy (ICHRDP) at the University of Essex initiated a project to elaborate *International Human Rights Guidelines on Drug Control*, including sections devoted to cultivation, rural development and indigenous uses of psychoactive plants.<sup>19</sup>

## 1.2 The flexibility of drug treaty provisions

Several key features of today’s drug control treaty regime, like the import-export certification mechanism, the administration of statistics on production, the requirements for medicinal and research purposes to balance global licit supply and demand, and the scheduling system, can be traced back to the 1912, 1925 and 1931 treaties. The main purpose of those pre-UN treaties, however, was to regulate international trade; none of them obliged countries to impose national controls on the cultivation of plants from which drugs could be extracted. Until 1961, “illicit cultivation” did not exist according to international law, even though several countries had already introduced laws at a national level that outlawed unlicensed cultivation of opium poppy and cannabis.<sup>20</sup> Following the Second World War and in the midst of global decolonization struggles, negotiations started to consolidate and strengthen the international regime by creating a new “Single Convention” under the auspices of the UN, replacing the earlier treaties. The British, Dutch and French colonial powers, who had previously resisted the imposition of stricter prohibition rules, had lost control of their profitable legal monopolies over opium, coca and cannabis production in their former colonies such as India, Burma, Indonesia, Morocco and Algeria.

Adolf Lande, a main drafter of the 1961 Single Convention, pointed out that the “most serious gap in the treaties in force was probably the lack of provisions for effective control of the cultivation

French cannabis (‘kif’) and tobacco monopoly in Morocco, 1910.





of plants for the production of the narcotic raw materials”.<sup>21</sup> The opening remarks on behalf of the UN Secretary General at the 1961 conference warned that “[t]he formulation of measures for the control of agricultural raw materials which would be both adequate and practicable was undoubtedly the most difficult part of the Conference’s task”.<sup>22</sup> The newly independent states were less successful than their former colonial rulers in resisting the US pressure to establish a global drug prohibition regime; the balance of power had shifted. After difficult negotiations, the Single Convention obliged countries to extend national control to the cultivation of opium poppy, coca and cannabis, to impose criminal sanctions on illicit cultivation and to ban all traditional uses.

The 1961 Single Convention, still the core of today’s UN drug control regime, requires states to “destroy the coca bushes if illegally cultivated” (Art. 26.2), and its 1972 amending protocol extends that provision to opium poppy and cannabis plants, obliging states

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

Those provisions provided the legal justification for the internationalisation of the “war on drugs”, first declared by President Nixon who installed in 1971 a special

committee with the task of “curtailing and eventually eliminating the flow of illegal narcotics and dangerous drugs into the United States from abroad”.<sup>23</sup> And in 1973 Nixon established the Drug Enforcement Administration (DEA) for an “all-out, global war on the drug menace” and to “fight it with all of the resources at our command”.<sup>24</sup> The escalation of the “war on drugs” in the following decades included large-scale eradication operations in the Southern source countries where most of the raw materials were cultivated, and US military “counternarcotics” operations especially in the Andean region. Consequently, rural communities involved in illicit cultivation became a key target for repression, and have since suffered from discrimination, stigmatisation, criminalisation, imprisonment, and the destruction of their livelihoods, often leading to the displacement of people and crops to new areas.

The treaties, however, do leave a certain

amount of latitude for states to apply less repressive policies and to align their drug policy with their human rights obligations. As already mentioned above, the 1988 Convention does specify that eradication measures “shall respect fundamental human rights” (Art. 14.2). Moreover, the 1961 (as amended) and 1988 conventions both assert that states should take “appropriate measures” to eradicate illicit cultivation. This wording is explained as follows by the Commentary on the 1972 Protocol where it was first introduced: “i.e., they are bound to take such measures as may be necessary, but only to the extent that they appear to be practical and can reasonably be expected of them under their special conditions”.<sup>25</sup>

The 1988 Convention also allows states “in appropriate cases of a minor nature” to “provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration” (Art. 3.4.c). Moreover, allowable measures may include support for “integrated

Cannabis cultivation in Utturakhan, India. TNI/Tom Bliczman September 2018.

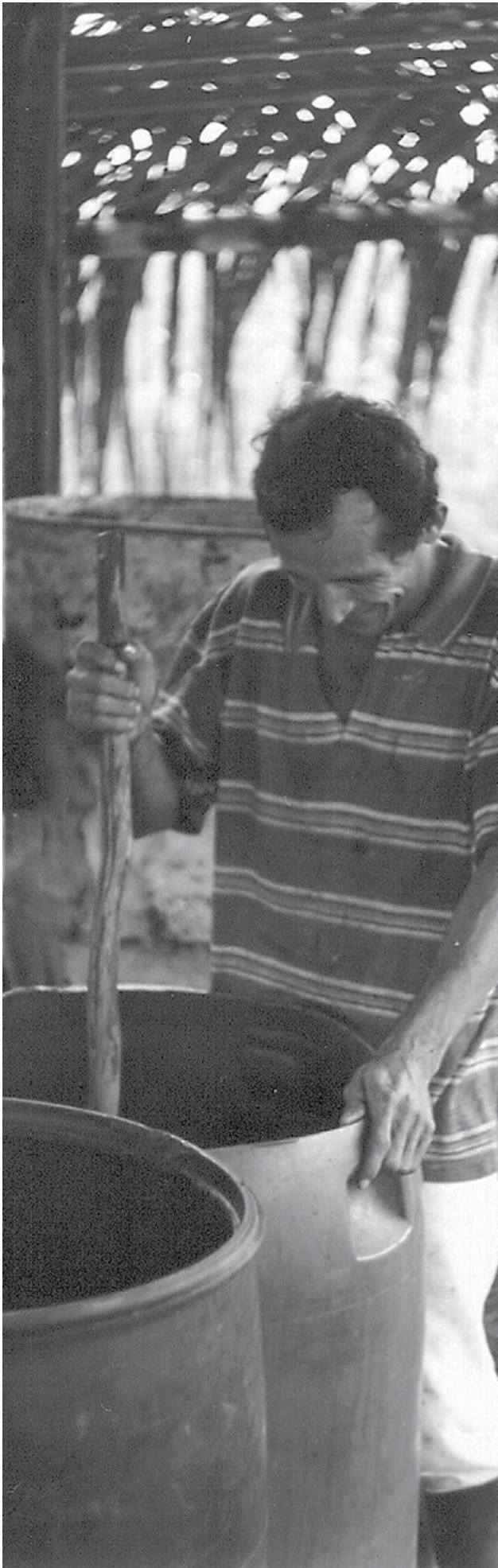




rural development leading to economically viable alternatives to illicit cultivation” (Art. 14.3.4a). As the Commentary explains, that subparagraph “creates no legal obligation on Parties, but draws attention to the need, in some countries and regions, for programmes of integrated rural development designed, in effect, to rebuild a local economy hitherto partly or entirely based on illicit cultivation”.<sup>26</sup>

This legal latitude enables states to consider alternative policy options in order to harmonize their drug policy as much as possible with their human rights obligations. As the UN Special Rapporteur on the Right to Health has underscored, when “the goals and approaches of the international drug control regime and international human rights regime conflict, it is clear that human rights

obligations should prevail. The General Assembly has consistently adopted resolutions declaring that international drug control must be carried out in conformity with the Charter, and ‘with full respect for human rights’”.<sup>27</sup> However, he concluded, despite the fact that the primary goal of the international drug control regime is the protection of the health and welfare of humankind, “consideration of human rights is absent in the treaties and has lacked priority among the implementing bodies. [...] it is clear that significantly more must be done to make human rights central to drug control”.<sup>28</sup>



## 2. An adequate standard of living

Fundamental human rights principles were already enshrined in international law in the UN Charter and in the Universal Declaration of Human Rights (UDHR) adopted by the General Assembly in December 1948. The 1961 Single Convention, however, preceded the adoption in 1966 of two covenants in which those basic principles were further elaborated. The International Covenant on Civil and Political Rights details rights such as the right to life, equality before the law, freedom of speech, the right to a fair trial, and freedom of religion, primarily meant to protect the individual from excesses of the state. The International Covenant on Economic, Social and Cultural Rights (ICESCR) details rights that the state is obliged to respect, promote and progressively fulfill “to the maximum of its available resources” (art. 2), including labour rights, the right to highest attainable standard of physical and mental health, the right to education, and the right to social security. Especially the ICESCR establishes in more detail a set of obligations that are directly relevant for policy measures addressing illicit cultivation. Crucially, the ICESCR also includes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” and “the fundamental right of everyone to be free from hunger” (art. 11).

There is no hierarchy among human rights. The Universal Declaration makes it clear that human rights of all kinds—economic, political, civil, cultural and social—are of equal validity and importance, “*indivisible and interdependent*”: “The principle of their indivisibility recognizes that no human right is inherently inferior to any other. Economic, social and cultural rights must be respected, protected and realized on an equal footing with civil and political rights. The principle of their

interdependence recognizes the difficulty (and, in many cases, the impossibility) of realizing any one human right in isolation.”<sup>29</sup> According to Louise Arbour, High Commissioner for Human Rights (2004–2008), “the congruence between human rights and development theory has never been more striking. Poverty and inequities between and within countries are now the gravest human rights concerns that we face.”<sup>30</sup>

After more than a decade of consultations with States, civil society organisations, UN agencies and communities living in poverty, the Human Rights Council adopted in 2012 the *Guiding Principles on Extreme Poverty and Human Rights*, which “are premised on the understanding that eradicating extreme poverty is not only a moral duty but also a legal obligation under existing international human rights law. Thus, the norms and principles of human rights law should play a major part in tackling poverty and guiding all public policies affecting persons living in poverty.”<sup>31</sup> According to the Guidelines, “Poverty is an urgent human rights concern in itself. It is both a cause and a consequence of human rights violations and an enabling condition for other violations. [...] Persons experiencing extreme poverty live in a

vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce one another.”<sup>32</sup>

## 2.1 Poverty and illicit cultivation

It is important to realise that profit from the illicit drugs trade does not flow exclusively to organised crime or “cartels”. For millions of the most impoverished people in marginalised urban and rural communities the drugs economy provides the only available livelihood option. It serves as an essential safety net and an underground survival economy, especially in conflict situations. A key question in this regard is under what circumstances taking refuge in the illegal drugs economy for subsistence reasons could be justified based on human rights arguments. People have the right to be free from hunger, to enjoy an adequate standard of living, to live a life in dignity, and to benefit from social security. When states fail in meeting their obligations to adopt appropriate measures towards the full realization of these basic rights, a strong argument can be made that they cannot

March supporting launch of COCCAM, Popayan, Colombia. TNI/Pien Metaal January 2017.



interfere when people as a consequence are forced to find their own ways to do so, even if that means their involvement in illicit cultivation in absence of viable licit alternatives.

It is not easy to estimate how many people worldwide are dependent on illicit cultivation to make ends meet. In 1998, UN sources estimated that “*about 700,000 families, or around 4 million people, depend on income derived from the cultivation of coca bush and opium poppy*”, based on a global hectarage of 280,000 hectares of illicit opium poppy and 220,000 hectares of coca in 1996.<sup>33</sup> Since then, however, illicit opiate and cocaine markets have grown substantially, reaching record levels today. Between 1996 and 2016, based on the very first and the latest World Drug Reports, illicit opium production doubled from 5,000 to 10,500 tons (from 420,000 hectares), “*easily the highest estimate recorded by UNODC since it started monitoring global opium production*”.<sup>34</sup> Global cocaine manufacture also reached its highest level ever in 2016, an estimated 1,410 tons compared to about 1,000 tons in 1996, though coca hectarage has remained relatively stable over the past two decades and the increase is mainly due to increased yields per hectare.<sup>35</sup> It is safe to say, therefore, that the number of people dependent on illicit cultivation today is considerably higher, a conclusion substantiated by recent national data from the main producing countries.

In the case of Myanmar, for example, UNODC indicated for 2015 a range between 135,000 to 221,000 households involved in poppy cultivation,<sup>36</sup> a number that may have decreased in the years after 2015 as the office recorded a 25% decrease in cultivation in Shan and Kachin states between 2015 and 2017 (from 54,500 to 41,000 hectares).<sup>37</sup> The crop monitoring survey by UNODC and the Colombian government estimated that 106,900 households were involved in cultivating 146,000 hectares of coca in 2016 –

with an average of 5 persons per household.<sup>38</sup> That number, however, appears to be too low when compared with data emerging from the *Programa Nacional Integral de Sustitución de cultivos ilícitos* (PNIS), implemented as part of the peace accords. According to PNIS director Eduardo Diaz, for example, by April 2018 already 123,000 families had signed up under collective agreements.<sup>39</sup>

For Afghanistan, former World Bank expert William Byrd estimated that the unprecedented amount of 328,000 hectares of opium poppy cultivated in 2017 provided around 590,000 full time equivalent (FTE) jobs for farming households.<sup>40</sup> Additionally, according to UNODC, “*opium poppy weeding and harvesting provided the equivalent of up to 354,000 full time jobs to local and migrant workers hired by farmers*” and that “*the sheer size of opium production in 2017 suggested that many more Afghans sustained themselves with some income from the onwards processing and trade with opiates*”.<sup>41</sup> On top of that, those deriving income directly from opium support the wider, licit rural economy: “*Afghan farmers purchase food, have medical expenses, and purchase daily needs products. These expenses – paid from opium money – benefited local bakers, butchers and other small-scale businesses in rural Afghanistan.*”<sup>42</sup>

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





in the Rif region depend on the cannabis economy.<sup>43</sup>

## 2.2 Forced eradication vs. proper sequencing

Forced eradication –the physical destruction of crops by police or military forces– has been one of the main instruments in enforcing the international drug control system. In the absence of alternative income opportunities, forced eradication amounts to a violation of the human rights of growers and their families to an adequate standard of living and to freedom from hunger. It is also in conflict with the 2012 Poverty Guidelines and has a negative effect on the realization of the first Sustainable Development Goal (SDG) to “End poverty in all its forms everywhere”.

In Shan State, for example, according to UNODC, “[o]pium poppy households seem to be primarily buying food from opium poppy income regardless of their location, indicating that some degree of food insecurity could be expected if opium poppy cultivation were eliminated without alternatives in place”.<sup>44</sup> In fact, this is precisely what was observed after the enforcement in

the early 2000s of the opium bans in northern Myanmar. The bans triggered a humanitarian crisis in the Kokang and Wa regions, two areas controlled by armed groups which at the time had a ceasefire agreement with the military government. More than a quarter of the Kokang population migrated out of the area in search of alternative livelihoods elsewhere while the Wa authorities, in anticipation of the ban, forcibly relocated tens of thousands of villagers to southern Shan State. The UN World Food Programme (WFP) was called in to provide emergency aid to address the acute food insecurity triggered by the opium bans.<sup>45</sup>

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

“Eradication prior to the establishment of alternative livelihoods pushes people deeper into poverty, and fosters human rights violations, social unrest, instability and violence, undermining already

tenuous government legitimacy and nascent institution building. Forced eradication can fuel local insurgencies and hence civil conflict and internal displacement. It also reinforces reliance on growing illicit crops, as farmers without other viable economic alternatives are forced to replant, and spreads the problems associated with the cultivation of such crops to new areas.”<sup>46</sup>

Several international and regional bodies have underscored the importance of proper sequencing. The intergovernmental expert working group on eradication and alternative development, convened by the UN Commission on Narcotic Drugs (CND) in 2008, recommended that member states “ensure that eradication is not undertaken until small-farmer households have adopted viable and sustainable livelihoods and that interventions are properly sequenced” and that donor countries “do not make development assistance conditional on reductions in illicit drug crop cultivation”.<sup>47</sup> The World Bank affirmed

in a report on Afghanistan that there is “a moral, political and economic case for having alternative livelihood programs in place before commencing eradication.”<sup>48</sup> The EU emphasized in a common position “that fundamental notions such as respect for human rights, empowerment, accountability, participation and non-discrimination of vulnerable groups should be integral parts of any approach to alternative development” and that forced eradication should only be an option “when ground conditions ensure that small-scale farmers have had access to alternative livelihoods for a sufficient time period”.<sup>49</sup>

The CND commissioned “a rigorous and comprehensive thematic evaluation ... for determining best practices in alternative development by assessing the impact of alternative development on both human development indicators and drug control objectives and by addressing the key development issues of poverty reduction, gender, environmental sustainability and conflict resolution”.<sup>50</sup> In 2005, the study concluded:<sup>51</sup>

Ground spraying of coca field, Colombia. El Tiempo, Bogotá, March 2016





- As growers of illicit crops accept participating in AD projects, they need to be allowed a transition period until AD activities (on- or off-farm) will prove to be suitable to their agro-ecological environment, local knowledge, and start generating income that will contribute to improve the quality of their lives.
  - In farmers' minds, conditionality tends toward associating AD with law-enforcement. This association can be fatal for AD; the two functions must always remain separate.
  - AD requires an appropriate policy-legal framework, one that allows illicit-crop growers to be treated first as candidates for development rather than as criminals. Drug-crop eradication on farms lacking viable alternatives undermines development.
  - Make elimination of illicit crops conditional on improvements in the lives and livelihoods of households. Do not make it a prerequisite for development assistance.
  - Illicit crops should be eradicated only when viable alternatives exist for households participating in alternative development. Successful alternative development requires proper sequencing.
- After difficult negotiations, the CND agreed in the 2009 Plan of Action that states should “[e]nsure, when considering taking eradication measures, that small-farmer households have adopted viable and sustainable livelihoods so that the measures may be properly sequenced in a sustainable fashion and appropriately coordinated”.<sup>52</sup> In practice, however, the principles of proper sequencing and non-conditionality are rarely applied. One of the few exceptions is Bolivia where “eradication is no longer a prerequisite for development assistance” since the government introduced a policy of community coca control and integrated development with coca.<sup>53</sup> But in the national strategies of Colombia and Peru, for example, “it is specified that prior (voluntary or forced) eradication is a precondition to participation in alternative development programmes”.<sup>54</sup> All US-funded AD programmes in those countries therefore required “that

coca crops be eradicated before economic and other forms of assistance can be provided to small farmers.”<sup>55</sup>

The UNODC Guidance Note on human rights, issued in 2011 to provide practical guidance to UNODC staff on the promotion and protection of human rights in the work of the Office, makes clear recommendations on this issue: “Advocate for proper sequencing in order to ensure that eradication programmes only take place when alternative income generating activities are in place” and “Development assistance should not be conditional on reductions on illicit crop cultivation”.<sup>56</sup> The Guidance Note also underscores that “UNODC responses to human rights concerns should be fully coordinated with the OHCHR, the UN country team and other UN agencies and stakeholders” and mentions as “a last resort” the withdrawal of support: “Where a UNODC programme is undeniably aiding or assisting a serious, ongoing human rights violation, the responsibility of UNODC to respect human rights

may require withdrawal of the particular support offered by that particular programme.”<sup>57</sup>

### 2.3 Aerial spraying

A particularly controversial method of eradication is the aerial spraying with herbicides, which was, until three years ago, undertaken in Colombia on a massive scale, using a highly concentrated glyphosate mixture. Between 1999 and 2015, about 1,800,000 hectares of coca fields were sprayed.<sup>58</sup> Glyphosate has been associated with serious risks to the environment and human health.<sup>59</sup> The Colombian Ombudsman’s Office received many thousands of complaints about the contamination and destruction of food crops, the pollution of drinking water sources and health problems (skin rashes, diarrhea, headaches and respiratory problems), severely impacting on the rights to food, water and health of those exposed.<sup>60</sup> Moreover, fumigations have been associated with deforestation and displacement, because it “diffuses coca production, shifting it to forests of ecological importance and to areas inhabited by low-income, especially Afro-Colombian and indigenous communities, which as a result are increasingly displaced”.<sup>61</sup>

In 2008, Ecuador filed a complaint at the International Court of Justice, claiming that “Colombia’s aerial spraying of toxic herbicides in border areas has caused serious disruption of the traditional way of life of indigenous communities who live, farm and hunt in the affected areas. Pollution damage has significantly harmed the natural resources and environment on which these communities depend”.<sup>62</sup> In its brief to the ICJ, Ecuador accused Colombia of violating several human rights provisions associated with the right to life: “These include the right to health, the right to food, the right to water, and the right to a healthy and decent environment.”<sup>63</sup> In 2013, the dispute was settled out of court when Colombia agreed to discontinue spraying



Test with drone spraying of coca field. Ministry of Defence, Colombia, June 2018.



close to the Ecuadorian border and to pay an unspecified amount of damage compensation to Ecuador.<sup>64</sup>

After the International Agency for Research on Cancer (a specialized WHO agency) reclassified glyphosate as a probable carcinogen,<sup>65</sup> the Colombian government in the midst of peace negotiations suspended aerial spraying operations in October 2015, following the “precautionary principle”. Ground spraying with glyphosate (manually from backpacks), however, was restarted in April 2016, and in April 2018 a new high-tech spraying vehicle was introduced. In June 2018 the Santos government authorised the use of herbicide-spraying drones, referencing new record levels of coca cultivation.<sup>66</sup>

In South Africa, in Eastern Cape, KwaZulu Natal and Limpopo provinces, and in the neighbouring country Swaziland, cannabis fields are aerielly sprayed with a glyphosate mixture.<sup>67</sup> Meanwhile, the Mexican

government, after a break of several years, resumed spraying poppy fields in the State of Guerrero in 2017, using the notorious herbicide paraquat and leading to complaints to the National Human Rights Commission.<sup>68</sup> The use of a paraquat formulation (Gramoxone) has also been reported in Morocco for ground spraying against cannabis cultivation.<sup>69</sup> Paraquat is banned in over 40 countries, including in the European Union, because of its severe toxicity and adverse health effects; the US Environmental Protection Agency has restricted its use and has proposed to prohibit application from hand-held and backpack equipment.<sup>70</sup>

The UN Special Rapporteurs on the right to health, rights of indigenous peoples and the right to food, have all expressed their concerns about aerial spraying, noting with particular concern its effects on the most vulnerable and marginalized people.<sup>71</sup>



### 3. Alternative development

Alternative development emerged in the context of efforts to find more humane responses to poor rural communities' dependency on illicit cultivation for subsistence. The original impetus was not rooted in the realization that forced eradication in absence of alternatives would be a violation of human rights but came rather from concerns that the effectiveness of eradication might be compromised if other livelihood opportunities could not be provided.

This dilemma was already identified in the late 1950s, even before the 1961 Single Convention, when the Moroccan government drew the attention of the CND to the importance of “finding alternate crops for cannabis”, for which they required “technical assistance in the form of agronomists specializing in crop substitution”.<sup>72</sup> The problem, according to the Moroccan representative, “was that thousands of people had for years been living on the cultivation of kif, and it was their main source of livelihood”.<sup>73</sup> The Food and Agriculture Organization (FAO) undertook a survey of the Rif region, “framed so as to facilitate the replacement of the former ‘kif’ (cannabis) cultivation in the region as part of the general re-development of agriculture and of re-forestation”.<sup>74</sup> Awaiting technical assistance, Morocco reported in 1961 it had started “to compensate growers for cannabis surrendered by them, and nearly 50 tons were purchased and destroyed under this scheme”.<sup>75</sup>

The concept was more systematically implemented in Thailand beginning in the 1960s, and over the decades the terminology employed evolved from “technical assistance” and “crop substitution” to “integrated rural development”, “alternative development”, “alternative livelihoods”, “development-oriented drug control” or “rural development in drug-producing areas”.<sup>76</sup> The 1998 UNGASS Action Plan defined alternative development as “a process to prevent and eliminate the

*illicit cultivation of plants containing narcotic drugs and psychotropic substances through specifically designed rural development measures ... recognizing the particular sociocultural characteristics of the target communities and groups, within the framework of a comprehensive and permanent solution to the problem of illicit drugs”, thus emphasizing drug supply reduction as the primary objective of AD. However, in a section on “innovative approaches to alternative development”, the Action Plan describes the intention “to promote lawful and sustainable socio-economic options for those communities and population groups that have resorted to illicit cultivation as their only viable means of obtaining a livelihood, contributing in an integrated way to the eradication of poverty”.<sup>77</sup>*

The issues outlined in sections above about proper sequencing, conditionality and the relationship of AD with law enforcement and forced eradication have plagued the concept and implementation of AD from the start. In its early days, in the poppy growing region in northern Thailand, successful AD programmes were mainly characterised by their emphasis on sustainable development, as opposed to crop eradication and/or substitution projects whose primary goal was to cut levels of illicit cultivation without dealing with the underlying socioeconomic causes of cultivation. Experiences from Thailand have shown that levels of illicit cultivation are more likely to decline when crop substitution is not (forcefully) imposed on farmers and when development assistance is provided without moral judgment. Above all, programmes succeed when people are given proper time and support to transition gradually from their dependence on illicit cultivation to alternative licit livelihoods. In Thailand, according to David Mansfield, “[e]radication has generally only been undertaken at the point when alternative sources of income exist”.<sup>78</sup>

The Thai authorities also “distinguished between commercial cultivation and conceded to a

*level of households production commensurate with the level of local consumption. Recognising that even if opium was to be abandoned as a source of income there would be medical, social and cultural reasons for household cultivation to continue on a small scale.”<sup>79</sup> Also in Laos local opium use was tolerated for a long time, and even in 2000 when a strict opium ban was enforced, the Lao government made a special provision authorizing small-scale poppy cultivation for elderly and long-term opium users, although this was abandoned a few years later.<sup>80</sup> In both countries, poppy cultivation has decreased over the decades, and it has practically disappeared in Thailand. However, a contributing factor may be the fact that cultivation partly moved across the border, in particular to conflict areas in Burma/Myanmar where protection against eradication was provided by ethnic armed groups.*

In the absence of effective alternative income generating programmes for the Moroccan Rif, cannabis cultivation has been largely condoned to this day within the historical cultivation areas of Ketama, Beni Seddat and Beni Khaled, although more recently appearing cultivation in other areas has been eradicated.<sup>81</sup> The Moroccan government has abstained from forced eradication in traditional areas because the consequences could lead to serious social conflict and would jeopardize the subsistence of vulnerable and marginalized communities. As such, one could argue, Morocco has implicitly used the room for manoeuvre allowed under international treaty obligations to undertake eradication measures only “to the extent that they appear to be practical and can reasonably be expected of them under their special conditions”.

Graduality, proper sequencing, non-conditionality, tolerance for local culture and negotiating with local communities were relatively common features in AD projects in the 1980s including in Pakistan and in the Andean region. UNODC (then UNDCP) described their key characteristics at the time

as follows: *“In a first phase which generally lasts two years, the objective is simultaneously to prevent further expansion of the illicit cultivation and to establish a climate of confidence with the target populations and their natural leaders. In this phase negotiations are begun between the populations and the project representatives on the assistance which will be provided in exchange not for the elimination of the illicit crop, but for stopping its expansion. [...] In a second phase, the strategy involves negotiating an increased assistance in return for gradual decrease and eventual total elimination of illicit cultivation.”*<sup>82</sup>

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

### 3.1 Free trade vs. fair prices

In addition to the escalation of the US “war on drugs”, the stricter criminalization requirements of the 1988 Convention and the 1998 UNGASS target to eliminate or significantly reduce illicit cultivation globally within ten years, the neo-liberal trend in international economic policies appears to have further undermined the implementation of AD strategies. According to Mansfield, “[i]t would certainly seem counter intuitive to suggest

*that the removal of agricultural subsidies and the imposition of severe budget constraints under the auspices of the Structural Adjustment Policies of the International Monetary Fund and World Bank, will have assisted governments of source nations in their efforts to increase agricultural incomes and improve the socio-economic, political and legal environment in which licit income earning opportunities might flourish.”*<sup>83</sup>

The end of commodity agreements that regulated international trade in raw materials through an export quotas system—with the aim of preventing excessive price fluctuations and stabilizing international commodity markets—had dramatic impacts that in some cases directly contributed to significant increases in illicit cultivation. In 1985, for example, the International Tin Council disintegrated, leading to a virtual breakdown of the Bolivian economy. As a result, thousands of jobless tin-miners migrated to the sub-tropical Chapare region and started growing coca to survive.<sup>84</sup> Similarly, thousands of bankrupted small coffee growers in Colombia turned to coca or poppy cultivation when coffee-prices plunged following the collapse of the International Coffee Agreement in 1989. *“We cannot afford to talk idealistically of crop substitution in the case of the coca leaf while sabotaging Colombian farmers’ main cash crop and the country’s largest export”*, said President Barco in a dramatic speech to the General Assembly that same year, adding that Colombia needed alternative development assistance, *“but even more important is the adoption of commercial and trade measures which allow our economy greater access to markets in the industrialized countries and fair prices for our exports”*.<sup>85</sup>

A causal relationship has also been established between the dismantling of the EU-Caribbean preferential trade agreement for bananas and the increase of cannabis cultivation on Jamaica and the Windward Islands, especially Saint Vincent and the Grenadines and Saint Lucia. The Eastern Caribbean banana industry has historically been dominated by small-scale,





family-run banana farms, unable to compete in a free market with the giant plantations in Central and South America, many of which are run by US transnational companies often paying workers as little as one US dollar a day.<sup>86</sup> In the second half of the 1990s, the US, instigated by Chiquita company, challenged the EU preferential treatment before the newly established World Trade Organization (WTO) who “ruled against the agreement’s core aspects as an affront to free trade and the principle of ‘non-discrimination’” and granted the US permission to apply sanctions against the EU.<sup>87</sup>

A European Commission memo at the time warned that if the US strategy was successful, it “would lead directly to the destruction of the Caribbean banana industry and would consequently provoke severe economic hardship and political instability in a region already struggling against considerable difficulty and deprivation”, and that the 25,000 banana producers in the Windward Islands “will look for alternative sources of income. Unfortunately, the most obvious replacement for bananas is drugs”.<sup>88</sup> Over the following decade, the preferential banana regime was gradually dismantled and—as predicted—many banana growers shifted to cannabis. “*Marijuana is the*

*new 21st century banana,*” St. Vincent Foreign Minister Camillo Gonsalves said in 2014, and local growers confirmed that *ganja*, as it is called there, “has schooled children, built homes and allowed residents to survive the economic fallout from the once profitable banana industry.”<sup>89</sup>

### 3.2 Guiding Principles on alternative development

The 2013 *United Nations Guiding Principles on Alternative Development*<sup>89</sup> adopted disappointingly weak references to human rights, stating that “programmes in the areas where crops are cultivated for illicit drug production and manufacture should be undertaken with a clear understanding of the overall objectives, as appropriate, of eliminating or significantly and measurably reducing the supply of drugs while promoting comprehensive development and social inclusion, alleviating poverty and strengthening social development, the rule of law, security and stability at the country and regional levels, taking into account the promotion and protection of human rights.”<sup>90</sup> The wording “taking into account” obscures the fact that the protection of human rights is an international legal obligation for all states. The guidelines request that states,

## Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

The overall stated objective of the Tenure Guidelines is to improve tenure of land, fisheries and forests *“for the benefit of all, with an emphasis on vulnerable and marginalized people”* (1.1). This stated intent can be interpreted to prioritise not only small farmers, but especially those whose access to basic human rights is undermined or insecure. Section 3A on “General Principles” covers several topics with particular significance for people involved in illicit cultivation: to recognize and respect all legitimate tenure rights holders (3.1.1); to protect legitimate tenure rights from threats and infringements (3.1.2); to promote and facilitate enjoyment and full realization of legitimate tenure rights (3.1.3); to provide access to justice when there is infringement (3.1.4); and to prevent tenure disputes, violent conflicts and corruption (3.1.5).

The guidelines underscore that also *“Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. [...] States, in accordance with their international obligations, should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises. Where transnational corporations are involved, their home States have roles to play in assisting both those corporations and host States to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights”* (3.2).

Section 4 stipulates that *“States should provide legal recognition for legitimate tenure rights not currently protected by law”* (4.4), significant for circumstances where illicit cultivation occurs in the context of customary tenure systems or in ethnic areas that are targeted as “vacant” land for (re)allocation to big investors. A related article says that *“States should ensure that people are not arbitrarily evicted and that their legitimate tenure rights are not otherwise extinguished or infringed”* (4.5).

Section 5 refers to the obligation of States to provide the legal and policy frameworks related to tenure that *“reflect the social, cultural, economic and environmental significance of land, fisheries and forests. States should provide frameworks that are non-discriminatory and promote social equity and gender equality”* (5.3). Specific provisions are devoted to women’s rights and participatory processes: *“States should consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights, and take measures to ensure that legal and policy frameworks provide adequate protection for women and that laws that recognize women’s tenure rights are implemented and enforced. States should ensure that women can legally enter into contracts concerning tenure rights on the basis of equality with men and should strive to provide legal services and other assistance to enable women to defend their tenure interests”* (5.4). And, *“States should develop relevant policies, laws and procedures through participatory processes involving all affected parties, ensuring that both men and women are included from the outset”* (5.5).

international agencies, development donors and civil society apply their utmost efforts to “address basic human needs, in full conformity with the three drug conventions and relevant human rights instruments, in order to promote the welfare of targeted communities”, but this request is accompanied by the escape clause “as appropriate”.<sup>91</sup>

While the elaboration of the AD Guiding Principles began as an inclusive process, civil society including farmers’ organisations and indigenous peoples were excluded from the final stage of political negotiations among diplomats and drug control officials in Vienna and Lima. Also, no consultations took place with the specialized development and human rights entities of the UN system, an omission that helps to explain several weaknesses in the final document. No reference is made, for example, to the 1986 Declaration on the Right to Development, which says: “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”.<sup>92</sup> Or to the Tenure Guidelines endorsed by the UN Committee on World Food Security in May 2012, which underscore that “States should strive to ensure responsible governance of tenure because land, fisheries and forests are central for the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth”.<sup>93</sup>

The final version of the AD guidelines as adopted in Lima in November 2012 and subsequently—without further debate—ratified by the General Assembly in October 2013, once again positioned alternative development as “complementary” to “illicit crop elimination”, to be implemented “in line with the three drug control conventions”.<sup>94</sup> References to “traditional use” were eliminated from the draft, and only the role of the CND, UNODC

and INCB “as the United Nations organs with prime responsibility for drug control matters” was underscored, leaving out any mention of UNDP or other relevant agencies, according to Coletta Youngers “in stark contrast to the tone of the discussions in Thailand” where the initial guidelines were drafted.<sup>95</sup>

In spite of all this, the AD Guiding Principles still contain several innovative elements reflecting on-going efforts—especially by the German and Thai governments in collaboration with UNODC—to keep promoting and improving the AD concept as a more humane and more sustainable approach to addressing the underlying root causes of illicit cultivation.<sup>96</sup> Similarly, the development section of the 2016 UNGASS Outcome Document moved the debate forward in a positive direction.<sup>97</sup>

### 3.3 Gender and alternative development<sup>98</sup>

The rights of women are enshrined in various UN documents and bodies, including the 1945 UN Charter and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted by the General Assembly in 1979.<sup>99</sup> The drug control conventions do not take gender into account. However, the Political Declaration adopted at the 1998 UNGASS on drugs calls on member states to “ensure that women and men benefit equally, and without any discrimination, from strategies directed against the world drug problem”.<sup>100</sup> The corresponding Action Plan states that alternative development programmes should “incorporate a gender dimension by ensuring equal conditions for women and men to participate in the development process, including design and implementation.”<sup>101</sup> That resulted in the Independent Consultants report published by UNODC (then UNDCP), *Guidelines on Gender Mainstreaming in Alternative Development*.<sup>102</sup> Though it was published in January 2000, it continues to be one of the few

official documents on this topic. Jumping forward to the 2016 UNGASS, the final chapter of the Outcome Document that addresses the alternative development issue goes no further than the language used at the time of the 1998 UNGASS of “ensuring that both men and women benefit equally”. However, the chapter on operational recommendations on cross-cutting issues calls for mainstreaming “a gender perspective into and ensure the involvement of women in all stages of the development, implementation, monitoring and evaluation of drug policies and programmes, develop and disseminate gender-sensitive and age-appropriate measures that take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem and, as States parties, implement the Convention on the Elimination of All Forms of Discrimination against Women.”<sup>103</sup>

Nonetheless, little research is available on the role of women in the cultivation of crops for the illicit market, or the gender dimensions of alternative development programmes more broadly. More recently, important work has

been carried out by NGOs in Colombia, both to bring women cultivators together to empower their own organizations and their role in community organizations more broadly,<sup>104</sup> and to document the particular challenges faced by women in remote rural areas where crops are cultivated for illicit markets.<sup>105</sup>

Men and women living in areas where drug crops are cultivated are among the most marginalized and poorest people in society, and conflict and violence may be an inescapable reality of their daily lives. However, women face even greater socioeconomic challenges than their male counterparts and may be the victims of gender-based violence. In the absence of policies and laws—whether statutory or customary—that explicitly recognize rights to land for women, women are also likely to have less access to land, and single woman households face much greater challenges to make ends meet. Because of the discrimination women face in patriarchal societies, they often lack property rights, and access to credit and economic opportunities

Meeting of the Myanmar Opium Farmers Forum. TNI/Tom Kramer May 2017.



more broadly, greatly limiting their social mobility. They have even less access to education and gender-appropriate health care.

Women living in these areas have to balance their domestic responsibilities with economic activities in order to put food on the table for their families. They are most responsible for caring for children and elderly parents and for the domestic responsibilities of the household, work which is generally not remunerated or valued economically. At the same time, they must contribute to the household income. In areas where crops for the illicit market are cultivated, women carry out various basic tasks such as “planting, harvesting, transporting seeds and inputs for productions, providing domestic services and taking charge of preparing food, and transporting small amounts of the product, among others.”<sup>106</sup> These women face the additional stigma of earning an income from what may be an illicit activity (depending on the country) and hence being viewed as criminals.

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

In the case of the PNIS crop substitution programme in Colombia referred to above, a primary complaint from women has been that it initially only provided the cash subsidy to one person in the family, almost always the



Meeting Myanmar Opium Farmers Forum. TNI/Ernestien Jensema May 2018.

man. Research carried out by the Colombian NGO *Dejusticia* reveals that few of the community accords signed as part of the PNIS program incorporate a gender perspective; only 17 percent state that women’s participation should be ensured. *Dejusticia* concludes: “Today, women coca growers face a situation where their source of sustenance is being eradicated, while no immediate solutions exist for surviving during the transition, or structural changes that allow for overcoming poverty and vulnerability in rural areas.”<sup>107</sup>

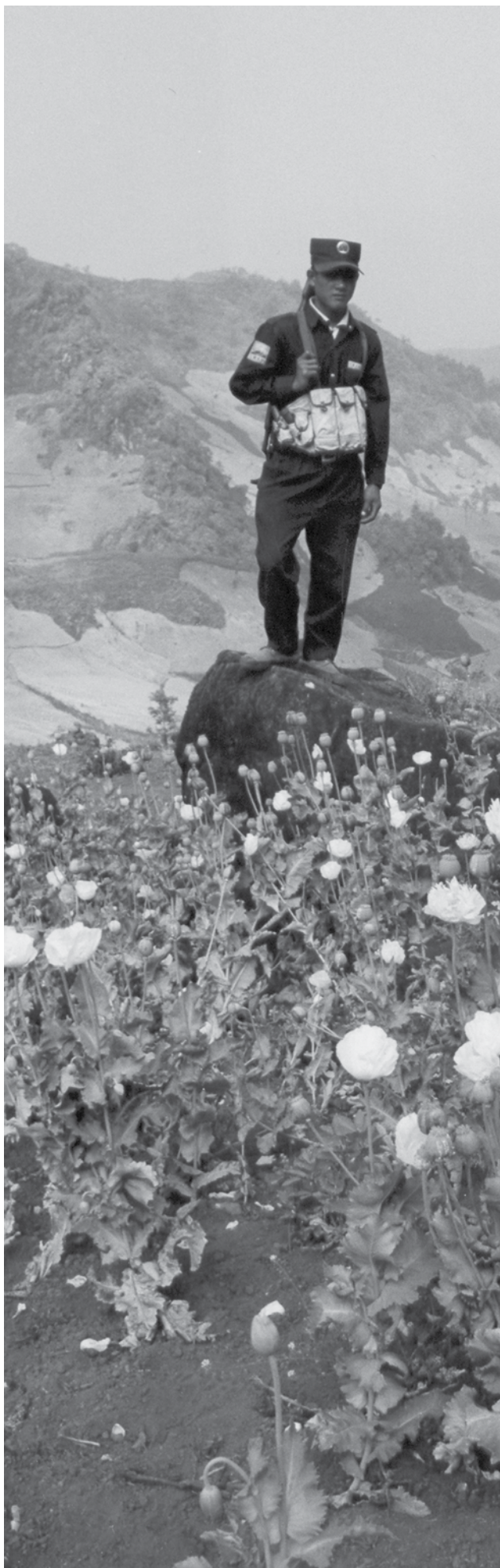
The Committee on the Elimination of Discrimination against Women adopted in 2016 specific recommendations on the rights of rural women, spelling out many issues that are highly relevant for the situation of women involved in illicit cultivation or alternative development programmes. For example, that states should “[p]romote their empowerment and ensure their economic and social independence”, and “ensure that rural women are equal before the law and have the same legal capacity as men in civil matters, including to conclude contracts and administer property independent of their husband or any male guardian”.<sup>108</sup>

## 4. Drugs, conflict and access to land

Closely inter-connected issues related to conflict and poverty are the main underlying causes of illicit cultivation in the principal producing countries, especially in Afghanistan, Myanmar and Colombia. Armed conflicts frequently lead to the displacement of people, who struggle to make ends meet and often end up relying on the informal survival economy, including illicit poppy and coca cultivation. Most farmers who resort to illicit cultivation do so primarily due to the higher cash value of these crops in comparison with others that could be grown on the small amount of available land, and because the higher guaranteed return on investment facilitates access to land for share-croppers and access to loans from informal credit providers or local drug traders. The compact and non-perishable nature of the product (coca paste or opium) also helps to mitigate the risk of post-harvest losses in remote areas lacking basic infrastructure (i.e. products spoiling before they can be brought to market). There are also specific advantages for communities in conflict areas: the nature of the products makes them suitable to carry along when they need to flee from violence, and often buyers come to the village directly, so people do not need to travel through dangerous areas and risk losing their products or their lives. In areas where armed conflict persists, coca and poppy sometimes also serve as cash crops which farmers can (or are obliged to) use to obtain “protection” from armed groups. Under such circumstances, the illicit drugs economy often represents the only viable livelihood available.

Policies related to the illicit cultivation of coca, cannabis and opium poppy are intimately linked to land governance issues. Rural communities—especially in indigenous territories—often have their own customary systems of land management, which frequently rely on traditional

Wa soldier in poppy field before the ban, northern Myanmar. TNI/Tom Kramer 2004.



communal ownership or management of land and associated resources. These traditional practices, rarely acknowledged in statutory laws or national policymaking, are increasingly threatened by state-sponsored and corporate-funded land grabs. Much of the increasing economic interest in land since the mid-2000s has targeted especially these areas because under national land laws they tend to fall in the category of so-called state or public land, considered—often erroneously—to be vacant, idle, marginal land available for reallocation to profitable investments. As the scale of extractive industries and mega-infrastructure projects expands, land under customary systems (and related traditional agroforestry and farming practices) thus continues to shrink.

In many cases, land used by farmers for illicit cultivation is not officially registered, either because the land is managed under a traditional tenure system or due to a history of displacement, which makes it extremely difficult for them to access formal credit schemes or other forms of government assistance. This context means that it is vital to consider the differences between those accorded legal rights to own or use land under national law, on the one hand, and those considered by the government to be informal land users or squatters on the other hand. The latter category is diverse and may include indigenous communities, subsistence farmers without legal property rights, share-croppers and day-labourers. These groups are generally more vulnerable to human rights violations, and less able to access government support or benefit from development interventions.

The lack of peace and stability in remote rural regions of Myanmar and Colombia, among other countries, contributes to the marginalisation, insecurity and exploitation of local communities. Territorial control and the presence of non-state armed groups commonly prevent government agencies from providing security or delivering public goods

and services. Even when state actors have access to such regions, they may constitute an additional factor in the conflict, adding to the insecurity rather than operating for the greater benefit and protection of local communities.

In Myanmar's Shan State, for example, poppy growers are "taxed" by multiple armed actors (including the national army) and are ultimately left with only a small income to feed their families. They often complain that, despite paying these informal taxes, they still run the risk of having their fields eradicated by local authorities. In addition, different conflict actors have different—and often conflicting—drug policies, creating further insecurity for local communities. Complicating the situation is the large number of *pyithusit* ("people's militias"), who are mainly involved in economic activities and are formally under control of the Myanmar national army. They are currently the main producers of heroin and methamphetamine in the country, and also stimulate the population in their areas to grow opium. Several armed opposition groups, mostly formed along ethnic lines, are also active in opium cultivation areas. While some of these groups tacitly allow communities to grow poppy, and tax it, other groups have adopted strong anti-drug policies, including eradicating opium fields and arresting drug users and traders. These policies have regularly brought them into conflict with other groups, especially the *pyithusit*. Several ethnic armed groups want to discuss the drugs issue as part of the agenda of the current peace talks in Myanmar, but no agreement has been reached yet and the future of the peace process is currently uncertain.

The ready availability of drugs (especially opium, heroin and methamphetamine) in ethnic communities in conflict areas in northern Myanmar and the high numbers of injecting drug users among them have led to accusation that the central government is using 'drugs as a weapon of war' against



them. In response, some of them have taken the law into their own hands and created a vigilante group that arrests drug users and traders and also eradicates opium fields, locally known as ‘Patjasan’. Their militant approach, which includes beating drug users and forcing them to detox in closed settings without adequate support, has also led to open conflict with communities from poppy growing areas in which people have been killed and wounded. While the movement has been praised by some local activists for trying to address drug problems, they have also been criticised for violating human rights and failing to provide meaningful services to drug users and opium farmers.<sup>109</sup>

In Colombia, especially in areas formerly controlled by the FARC, the entrance of new armed groups fighting for control of land and illicit resources has led to a dramatic upsurge in the number of assassinations of social leaders and human rights defenders, including many local farmers and indigenous leaders involved in government-sponsored substitution projects. The Colombian National

Ombudsman as well as the Inter-American Commission on Human Rights (IACHR) have expressed their concerns over the government’s failure to protect the right to life of its citizens in the face of these complex local conflict dynamics.<sup>110</sup> The 2016 peace accords between the government and the FARC contained a full chapter on proposals to address the drugs-related aspects of the armed conflict.<sup>111</sup> The peace agreement introduced the new PNIS scheme of “voluntary substitution” already referred to above, aiming to reduce illicit coca cultivation by 50,000 hectares within a year. Under the scheme, coca growers are eligible for financial and technical assistance under certain conditions. They must: 1) sign a contract that they will discontinue their coca cultivation; 2) declare the details of the areas they own and/or manage as illicit plantations; and 3) uproot their coca plants themselves. After receiving a first instalment of two million pesos (about US\$700), the family has 60 days to clear their field, and once verified, each family will receive a total of 36 million pesos spread over two years (about US\$12,600).<sup>112</sup>



Farmers organisations and observers have pointed out many shortcomings of the scheme, noting, for example, its problematic reliance on cash-based compensation rather than structural agrarian reform, the lack of infrastructural investments in the affected areas, and the fact that the imposition of the contractual requirements and the continued threat of forced eradication compromise the “voluntary” nature of the measures as originally foreseen in the peace accords.<sup>113</sup> As currently implemented, the programme’s short-term strict conditionality terms flout lessons learned about proper sequencing, gradual reductions and community participation, and risk violating the right to an adequate standard of living of the communities involved.

Large-scale agricultural concessions for mono-crop plantations have also been associated with land grabs and loss of access to land for small farmers. Public-private partnerships can play a constructive role in development projects under certain conditions, with private companies providing capital and technical assistance in delivering services or implementing infrastructure projects like building roads and bridges, or establishing processing plants, and in accessing international markets for AD products. Nonetheless, experiences with large-scale commercial rubber or oil-palm plantations established under an AD rationale in Myanmar and Colombia have also demonstrated the potential for significant negative human rights impacts. Their profit-driven nature has led to impacts including land grabs and displacement of people. In northern Myanmar, large-scale agro-investments under the opium crop substitution programme have focused more on investors’ economic returns than on providing alternative livelihoods for ex-poppy growers, and have, in some cases, actually contributed to a significant increase in dispossession of local communities’ land and loss of livelihoods.<sup>114</sup>

#### 4.1 Proportionality of sentences

The drug control conventions allow for decriminalisation of illicit cultivation for personal use, a flexibility used in the current Colombian legislation to exempt the cultivation of up to 20 plants of coca, cannabis, or opium poppy from criminal sanctions.<sup>115</sup> In Laos, as already mentioned, government authorities temporarily allowed for the cultivation of opium poppy for personal use among elderly opium users. And, in several countries, including Spain, Uruguay, Jamaica, Canada (as of October 2018) and several States in the US, cultivation of cannabis for personal use is decriminalised, with a threshold usually varying from four to six plants.<sup>116</sup> Beyond the level of personal use, however, the treaties require states to make illicit cultivation a criminal offence. Attempts to introduce at least the principle of proportionality of sentences, differentiating between small-scale and commercial levels of cultivation, have not been very successful to date.

In the Colombian peace accords the government and the FARC agreed to a special judicial treatment for small-scale farmers, “to process the legislative amendments required to allow the waiver on a transitional basis of the exercise of penal action or proceed to the termination of the penal sanction against small-scale farmers who are or have been linked to the cultivation of crops used for illicit purposes when, within a time limit of 1 year, starting from the entry into force of the new regulation, they formally declare before the competent authorities their decision to renounce the cultivation or maintenance of crops used for illicit purposes”.<sup>117</sup> The original draft of the law, elaborated by the Ministry of Justice and the Law, defined as a threshold for small-scale cultivation: 3.8 hectares for coca, 0.384 hectare for opium poppy and 840 square metres for cannabis.<sup>118</sup> After criticism from the Attorney General, the threshold for coca was brought down to 1.78 ha.<sup>119</sup> The law proposal mentions as its primary

rationale, “the flexibilization of criminal law for the weak links in the chain, which implies that small farmers have a differential criminal justice treatment that privileges non-judicialization and non-custodial measures”, aiming to “reduce the harms caused by the penal treatment and redirect the institutional efforts towards the fight against the criminal organizations dedicated to drug trafficking”.<sup>120</sup> The Attorney General obstructed passage of the law using the fast-track legislative procedure to accommodate the implementing the peace accords; it is unclear if and when the adapted draft law could be adopted by Congress.<sup>121</sup>

Criminal sanctions for cultivation, conservation and financing of illicit plantations in Colombia are extremely high, for small amounts from 21-100 plants 5 to 9 years imprisonment and, for higher amounts, between 8 and 16 years, plus high fines. The second draft of the new law abandons the measurement in plants and introduces the new thresholds with slightly lower sentences for small producers: between 18 square metres and 1.78 ha of coca, between 19-840 square metres of cannabis and between 0.8 square metres and 0.34 ha of poppy, would

be sanctioned with 4-7 years.<sup>122</sup> Given the fact that illicit earnings yielded at the upper limit of that range still would not exceed two minimum wages, which was the basis for the calculation of the threshold of small growers “whose cultivation areas are barely viable to ensure the subsistence of their family”<sup>123</sup> those sanctions are still disproportionately high and irreconcilable with the right to an adequate standard of living, the right to be free from hunger, and other relevant human rights.

If the law is adopted, only those who agree to enter the PNIS substitution programme would be granted the temporary waiver mentioned above. However, if they don’t fully comply with the PNIS conditions, for example if they replant even a small amount of coca after having received compensation, their penalty would be increased to the previous levels of 8-16 years imprisonment and the fine could increase to an amount equivalent to no less than 2,250 times the monthly minimum wage. Breach of a PNIS contract “with the consequent impact on the confidence that the illicit crop substitution program should generate” thus becomes an aggravating circumstance that doubles the farmer’s

Forum of Traditional Producers of Coca Leaf, Lima, Peru, April 2005. TNI/Pien Metaal.



punishment to completely disproportionate levels. It seems that this deterrence against returning to illicit cultivation is applied even in cases where the PNIS scheme does not manage to establish sustainable alternative livelihoods.

The possibility of a breach of contract from State side in that sense seems not to be considered in a reciprocal manner, in spite of the embarrassing history of failed substitution schemes and broken pacts and promises. The past two decades in Colombia have been a vicious cycle of mobilisations of farmers and indigenous communities culminating in agreements that subsequently required new protests to demand compliance from the government; many protest leaders have been assassinated in the process.<sup>124</sup>

Those agreements included, for example, a differentiation between “industrial crops” and “subsistence cultivation” of less than three hectares, which would be exempted from aerial spraying; and “manual eradication pacts” to which nearly 40,000 families signed up in 2001.<sup>125</sup>

The official Colombian figures for arrests, prosecution and imprisonment of farmers are very low, with an average of around 200 arrests per year over the last decade, with a peak of 900 in the year 2009, and a low of 62 in 2017. According to the National Penitentiary and Prison Institute (INPEC), in January 2018 only 255 persons were held in prison for cultivation offences.<sup>126</sup> However, that seems to be a gross underestimate, since there is a huge grey area between strictly cultivation offences and the broad category of ‘trafficking, manufacturing and possession’ for which INPEC reports a number of over 24,000 in prison in early 2018.<sup>127</sup> Most people arrested on drug offences in rural areas are prosecuted for trafficking or possession (carrying coca paste) or processing (coca paste labs, precursors), or in fact for protests against forced eradication. Many of these are small farmers, harvesters or day labourers.<sup>128</sup>

Myanmar also maintains heavy penalties for illicit cultivation, which were maintained despite a recent drug law reform process. Few farmers are arrested and prosecuted solely for cultivation, but most poppy farmers in Myanmar are, of necessity, also involved in harvesting, storing, transporting and selling opium – similar to the way in which many in Colombia are involved in coca harvesting, coca paste production, transport and selling. In recent years, several farmers have been arrested with raw opium just after the harvest, and charged with possession for trafficking purposes. Some of them have been sentenced to long prison terms but in most cases the strict laws have been used as coercive measure to solicit bribes and informal taxes. According to a TNI commentary:

“The amended Law does not introduce any change to address the situation of small-scale subsistence poppy farmers, and poppy cultivation remains punishable with a minimum of 5 to 10 years of imprisonment, regardless of the quantity cultivated or the circumstances of the offence. As the Government’s new National Drug Control Policy recognises, most people who grow opium in Myanmar are not criminals but poor small-scale farmers who cultivate poppy as a way to survive. Prescribing long-term prison penalties without addressing poverty, food insecurity, armed conflict, lack of basic infrastructure, land grabbing or the absence of viable employment opportunities, to name only a few of the difficulties faced by farmers, is both iniquitous and unrealistic. Instead, the Government should urgently take measures that can lead, in the absence of sustainable alternative livelihood options, to a *de facto* elimination of prison penalties for small-scale subsistence cultivation.”<sup>129</sup>

## 5. Cultural, indigenous and religious rights

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

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

Bolivian President Evo Morales at the UN General Assembly with coca leaves, September 2006.



drugs” by leaving legal space for the use of “psychotropic substances” in religious ceremonies, specifically for the *peyote* cactus (containing mescaline), hallucinogenic mushrooms (containing psilocybin) and *ayahuasca* (containing DMT). Exceptions for religious rites are specifically allowed under article 32.4, but, more importantly, plants containing psychotropic substances were not brought under international control; only the extracted alkaloids are included in the 1971 Schedules.<sup>130</sup> The same principle applies to *khat* (whose active ingredients *cathinone* and *cathine* are included in the 1971 schedules) and to *ephedra* (whose active ingredient *ephedrine* is scheduled as a precursor to methamphetamine under the 1988 Convention). Farmers cultivating *khat* in East Africa or *ephedra* in China or Central Asia have therefore never suffered repression comparable to those cultivating coca, cannabis or opium poppy.

Diplomatic efforts to apply that principle to coca leaf and to secure a similar exception for traditional coca use, led to the inclusion of the earlier mentioned paragraph in the 1988 Trafficking Convention stating that measures to eradicate the illicit cultivation of coca, opium poppy and cannabis “shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use” (article 14.2). Bolivia, Peru and Colombia sponsored an amendment in the name of twelve countries which received support from several more states including Ecuador who considered it to be “important to respect the traditional uses of coca by the indigenous inhabitants”.<sup>131</sup> However, other states expressed concern that the exception “might be used as a justification for not implementing illicit crop replacement programmes” and requested to add “where permitted pursuant to the Single Convention on Narcotic Drugs, 1961, or the Convention on Psychotropic Substances”.<sup>132</sup> Instead, a preceding paragraph was added to the same article, specifying that any measures under the 1988

Convention “shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and psychotropic substances” under the 1961 and 1971 treaties (article 14.1).

This is further reinforced by article 25 on “Non-derogation from earlier treaty rights and obligations”, which is “intended to ensure that no provision of the 1988 Convention will weaken in any way a corresponding provision in the earlier conventions”.<sup>133</sup> Therefore, while the insertion of the first and only mention of human rights across the three drug conventions is politically significant, the legal standing of the 1988 paragraph is contentious at best. Bolivia and Peru, therefore, formally submitted reservations against the fact that the treaty requires cultivation to be established as a criminal offence “without drawing the necessary clear distinction between licit and illicit cultivation” (Peru); and Colombia, upon ratification, declared that “treatment under the Convention of the cultivation of the coca leaf as a criminal offence must be harmonized with a policy of alternative development, taking into account the rights of the indigenous communities involved and the protection of the environment”.<sup>134</sup>

The UNDRIP elaborates in more detail the basic cultural rights embedded in the Universal Declaration of Human Rights (article 27) and the International Covenant on Economic, Social and Cultural Rights (article 15). The UNDRIP establishes that indigenous peoples have the right “not to be subjected to forced assimilation or destruction of their culture” (article 8), “to practice and revitalize their cultural traditions and customs” (article 11), “to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities” (article 20) and “to maintain, control, protect and develop their cultural heritage” (article 31).<sup>135</sup> According to Julian Burger, former coordinator of the OHCHR Indigenous Peoples and Minorities Unit, this “gives indigenous peoples the possibility

*of continuing to produce crops and plants that they have traditionally grown for their own religious, medicinal, or customary purposes, and which constitute a part of their cultural practice and identity.”*<sup>136</sup>

The International Labour Organization (ILO), a “tripartite” UN agency bringing together governments, employers and workers, was the first international body to protect and promote the economic, social and cultural rights of indigenous peoples. The ILO is responsible for the Indigenous and Tribal Peoples Convention (No. 169), adopted by the International Labour Conference (ILC) in 1989 and ratified by 23 countries, creating legally binding obligations.<sup>137</sup> The Convention states:

“The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”<sup>138</sup>

*“No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention” and “the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected”.*<sup>139</sup> The ILO Convention makes specific reference to “*subsistence economy and traditional activities of the peoples concerned*” which “*shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development*”.<sup>140</sup>

The 2016 UNGASS Outcome Document repeats the 1988 wording about “*traditional licit uses*”

and asks to “*take into account, as appropriate and in accordance with national legislation*” the UNDRIP, but completely undermines this point by adding “*in accordance with the three international drug control conventions*”.<sup>141</sup> This is a contradiction in terms, particularly as the UN Permanent Forum on Indigenous Issues has ruled that certain provisions of the 1961 Convention “*are inconsistent with the rights of indigenous peoples to maintain their traditional health and cultural practices*” and recommends that those treaty articles “*be amended and/or repealed*”.<sup>142</sup> The UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, said in his UNGASS statement that the language regarding indigenous rights in the outcome document was “*ambiguous*” and that “*it would have been better if it were clearly indicated that indigenous peoples should be allowed to use drugs in their traditional, cultural or religious practices when there is historical basis for this*”.<sup>143</sup>

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

“*Cultural rights are an integral part of human rights and, like other rights, are universal,*



*indivisible and interdependent*”, according to the UN Committee on Economic, Social and Cultural Rights,<sup>144</sup> but the UN drug control system continues to oblige states to pursue policies that violate cultural, religious and indigenous rights. The INCB, for example, urged Bolivia in 2008 to *“initiate action without delay with a view to eliminating uses of coca, including coca leaf chewing, that are contrary to the 1961 Convention”*.<sup>145</sup> And in its latest report the Board reminded Jamaica that *“only the medical and scientific use of cannabis is authorized and that use for any other purposes, including religious, is not permitted”*.<sup>146</sup> According to the CARICOM Regional Commission on Marijuana, however, cannabis *“is inextricably linked with the historical continuum and cultural identity of the CARICOM region”*, and, with regard to Rastafarians, the Commission writes that *“cannabis is integral to this religion’s identity and prohibitions on its use constitutes an extreme invasion on their right to freedom of religion”*.<sup>147</sup>

At the General Assembly High-Level Thematic Debate in 2015, Mark Golding, Jamaican Minister of Justice said that *“we have, sadly,*

*[...] oppressed indigenous groups that have constitutional rights that must be respected”*; *“Jamaica would like to see the existing treaty regime afford greater autonomy to individual State Parties in the design of domestic policies and laws, especially in relation to cannabis. Our constitutional arrangements, and our social, cultural and historic conditions and traditions, require us to be able to fashion our own rules in this regard, in the interest of social justice and a coherent and inclusive society.”*<sup>148</sup> And at the 2016 UNGASS, Minister of Foreign Affairs, Kamina Johnson-Smith stated that Jamaica is *“disappointed that the [outcome] document does not allow countries sufficient flexibility to design our domestic policies to fit national circumstances, including the recognition of traditional uses of cannabis in our societies and as a religious sacrament.”*<sup>149</sup>

## 5.1 The rights of peasants

During the last ten years the UN Human Rights Council (HRC) has been hosting a process to elaborate a Declaration on the Rights of

HRC 2018 SEPT 2018 LAST TEMPLATE

L.16 - United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas

YES	AFGHANISTAN	ABST	GERMANY	ABST	REPUBLIC OF KOREA
YES	ANGOLA	NO	HUNGARY	YES	RWANDA
NO	AUSTRALIA	ABST	ICELAND	YES	SAUDI ARABIA
ABST	BELGIUM	YES	IRAQ	YES	SENEGAL
ABST	BRAZIL	ABST	JAPAN	ABST	SLOVAKIA
YES	BURUNDI	YES	KENYA	ABST	SLOVENIA
YES	CHILE	YES	KYRGYZSTAN	YES	SOUTH AFRICA
YES	CHINA	YES	MEXICO	ABST	SPAIN
YES	COTE D'IVOIRE	YES	MONGOLIA	YES	SWITZERLAND
ABST	CROATIA	YES	NEPAL	YES	TOGO
YES	CUBA	YES	NIGERIA	YES	TUNISIA
YES	DEMOCRATIC REPUBLIC OF CONGO	YES	PAKISTAN	YES	UKRAINE
YES	ECUADOR	YES	PANAMA	YES	UNITED ARAB EMIRATES
YES	EGYPT	YES	PERU	NO	UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
YES	ETHIOPIA	YES	PHILIPPINES	YES	VENEZUELA (BOLIVARIAN REPUBLIC OF)
ABST	GEORGIA	YES	QATAR		
	YES	33	ABST	11	NO
					3

Peasants and Other People Working in Rural Areas, which has been promoted by farmers' organisations and a group of countries from Latin America, Africa and Asia.<sup>150</sup> An open-ended inter-governmental working group was established in 2012 by HRC resolution 21/19 with a mandate "to find a comprehensive, human rights-centred development paradigm for examining the existing protection measures for people living and working in rural areas and identifying any possible protection gaps".<sup>151</sup> The starting point for the working group was a study undertaken by the HRC Advisory Committee which included a preliminary draft declaration.<sup>152</sup> During the drafting process, elements were drawn from the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Rights of Indigenous Peoples, the voluntary guidelines on the responsible governance of tenure of land, fisheries and forests (adopted by the Committee on World Food Security), the CEDAW recommendation on the rights of rural women, and the International Treaty on Plant Genetic Resources for Food and Agriculture. The latter FAO treaty includes a special section on "Farmers' Rights", calling for the "protection of traditional knowledge relevant to plant genetic resources for food and agriculture"

and the "the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resource".<sup>153</sup>

Following extensive consultation and negotiation, the working group submitted a revised draft declaration in February 2018, underscoring the "need for greater protection of the human rights of peasants and other people working in rural areas, and for a coherent interpretation and application of existing international human rights norms and standards".<sup>154</sup> The international human rights framework around food, agriculture, land, poverty, development, and women in rural areas, remains fragmented, according to FIAN International: "The Declaration specifies and concretizes the existing framework with regards to its application to rural people, providing critical guidance to enhance national efforts and international cooperation to improve the conditions of peasants and other people working in rural areas, and to protect their rights in the light of current challenges".<sup>155</sup>

Consensus on the text of the declaration has not been reached, despite the working group's appreciation for "the constructive negotiation, participation and active engagement



of governments, regional and political groups, civil society, intergovernmental organizations, experts and relevant stakeholders, particularly representatives of peasants and other people working in rural areas”.<sup>156</sup> The EU considered that the draft went beyond giving practical guidance regarding the compliance of States with their existing obligations and formally expressed concern about “creating new rights in a non-binding document” and that “divergent views persisted including on extraterritoriality, the right to seeds and biodiversity”.<sup>157</sup>

The HRC adopted the final draft by vote on September 28<sup>th</sup>, with 33 votes in favour, three against (Australia, Hungary and the UK) and 11 abstentions, and recommended that the General Assembly adopts the declaration as well.<sup>158</sup> The declaration will be an important reference for the discussion about human rights compliance in policies around illicit cultivation, as most of the key issues in this

area are addressed in very explicit terms (see text box).

The particular vulnerability to human rights violations of peasants and other people working in rural areas who are involved in illicit cultivation has not surfaced in the negotiations and is not addressed explicitly in the declaration. Peasants or others involved in illicit cultivation do not lose their human rights, however, so all the rights laid down in the declaration equally apply to them. According to the final text: “The exercise of the rights set forth in the present declaration shall be subject only to such limitations as are determined by law compliant with international human rights obligations. Any such limitations shall be non-discriminatory and necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others, and for meeting the just and most compelling requirements of a democratic society” (Art. 28.2).

Cannabis harvest in Mpondoland, South Africa. TNI/Pien Metaal May 2018.



## United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas

- “Without disregarding specific legislation on indigenous peoples, before adopting and implementing legislation and policies, international agreements and other decision-making processes that may affect the rights of peasants and other people working in rural areas, States shall consult and cooperate in good faith with peasants and other people working in rural areas through their own representative institutions, engaging with and seeking the support of peasants and other people working in rural areas who could be affected by decisions before those decisions are made, and responding to their contributions, taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.” (2.3)
- “States shall ensure that peasant women and other women working in rural areas enjoy without discrimination all the human rights and fundamental freedoms set out in the present declaration and in other international human rights instruments, including the rights: [...] (g) To have equal access to agricultural credit and loans, marketing facilities and appropriate technology; (h) To equal access to, use of and management of land and natural resources and equal or priority treatment in land and agrarian reform and in land resettlement schemes” (4.2)
- “States shall take measures to ensure that any exploitation affecting the natural resources that peasants and other people working in rural areas traditionally hold or use is permitted based on, but not limited to: (a) A duly conducted social and environmental impact assessment; (b) Consultations in good faith, in accordance with article 2.3 of the present declaration; (c) Modalities for the fair and equitable sharing of the benefits of such exploitation that have been established on mutually agreed terms between those exploiting the natural resources and the peasants and other people working in rural areas.” (5.2)
- “States shall provide peasants and other people working in rural areas with effective mechanisms for the prevention of and redress for any action that has the aim or effect of violating their human rights, arbitrarily dispossessing them of their land and natural resources or of depriving them of their means of subsistence and integrity, and for any form of forced sedentarization or population displacement.” (12.5)
- “Peasants and other people working in rural areas have the right to an adequate standard of living for themselves and their families, and to facilitated access to

the means of production necessary to achieve them, including production tools, technical assistance, credit, insurance and other financial services. They also have the right to engage freely, individually and/or collectively, in association with others or as a community, in traditional ways of farming, fishing, livestock rearing and forestry, and to develop community-based commercialization systems.” (16.1)

- “States shall take all appropriate measures to ensure that their rural development, agricultural, environmental, trade and investment policies and programmes contribute effectively to protecting and strengthening local livelihood options and to the transition to sustainable modes of agricultural production” (16.4)
- “States shall prohibit arbitrary and unlawful forced eviction, the destruction of agricultural areas and the confiscation or expropriation of land and other natural resources, including as a punitive measure or as a means or method of war.” (17.4)
- “Peasants and other people working in rural areas who were arbitrarily or unlawfully deprived of their lands have the right, individually and/or collectively, in association with others or as a community, to return to their land of which they were arbitrarily or unlawfully deprived, including in cases of natural disasters and/or armed conflict and to have restored their access to the natural resources used in their activities and necessary for the enjoyment of adequate living conditions, whenever possible or to receive just, fair and lawful compensation when their return is not possible.” (17.5)
- “States shall take appropriate measures in order to promote and protect the traditional knowledge, innovation and practices of peasants and other people working in rural areas, including traditional agrarian, pastoral, forestry, fisheries, livestock and agroecological systems relevant to the conservation and sustainable use of biological diversity.” (20.2)
- “States shall recognize the rights of peasants and other people working in rural areas to social security, including social insurance, and, in accordance with national circumstances, should establish or maintain their social protection floors comprising basic social security guarantees. The guarantees should ensure at a minimum that, over the life cycle, all in need have access to essential health care and to basic income security, which together secure effective access to goods and services defined as necessary at the national level.” (22.3)
- “Peasants and other people working in rural areas have the right to use and protect their traditional medicines and to maintain their health practices, including access to and conservation of their plants, animals and minerals for medicinal use.” (23.2)

## 5.2 Licit uses and legal regulation

Cultivation for medical and scientific purposes is allowed for all three plants controlled under the Single Convention, and several other exceptions are specifically mentioned in the treaty. For example, coca cultivation for its use as a flavouring agent, poppy cultivation for horticultural and culinary purposes (poppy seeds), and cannabis cultivation for industrial purposes (hemp fibre, seeds).<sup>159</sup> In the case of cannabis, a special exemption was made by excluding the leaves of the cannabis plant from international control, allowing cultivation for the production of psychoactive drinks derived from the leaves (*bhang*, widely consumed in India).

All of these exceptions are widely used. Global licit production of opiates in 2016 amounted to roughly 650 metric tons, for which around 94,000 hectares of opium poppy were cultivated; the estimated global requirements for 2018 are around 146,000 hectares.<sup>160</sup> Most licit poppy cultivation today takes place on industrial-scale plantations in Australia, France and Spain where the whole poppy plant is harvested, and the alkaloids are subsequently extracted from poppy straw concentrate. In Turkey and India, however, many small farmers are still licensed to cultivate poppy for the pharmaceutical industry; only in India the harvesting is done manually in the form of opium tapping. In the case of coca leaf, for 2016, Peru reported to the INCB a licit export volume of 136 tons (mainly to the US as a flavouring agent for Coca Cola). Bolivia provided estimates to the Board showing licit cultivation of 14,705 hectares with a preliminary production estimate of 23,217 tons of coca leaf, since the “cultivation of coca bush in that country for the chewing of coca leaf and the consumption and use of coca leaf in its natural state for cultural and medicinal purposes, such as preparing infusions, is allowed in accordance with the reservation expressed in 2013, when the country reaccessed to the 1961 Convention”.<sup>161</sup>



Coca thee at a market in Bogotá, Colombia. TNI/Martin Jelsma June 2017.

The licit use of cannabis, according to the INCB, has been increasing considerably: “Since 2000, more and more countries have started to use cannabis and cannabis extracts for medical purposes, as well as for scientific research. In 2000, total licit production was 1.4 tons; by 2016 it had increased to 211.3 tons.”<sup>162</sup> While medicinal use of cannabis has been legal for quite some time in several US states, some European countries and in Israel, for example, the medical cannabis market has been booming in recent years; almost every month another country joins the trend. Rapid expansion is taking place across Europe (Germany, Greece, Czech Republic, Poland, Slovenia, Luxembourg, Switzerland) and Latin America (Uruguay, Colombia, Chile, Argentina, Mexico, Peru), in spite of many shortcomings in the regulatory frameworks in place in most of these countries. This trend is now also beginning to become visible in the Caribbean, Africa and Asia, in countries such as Jamaica, St Vincent and the Grenadines, India, South Africa and Thailand.<sup>163</sup>

This trend opens opportunities for small farmers currently producing for the illicit market to shift towards the legal market, representing, for many, a more viable alternative than crop substitution. “*Small-scale farmers involved in cannabis cultivation for subsistence purposes should be involved in the decision-making processes to enable the incorporation of their needs, and should receive technical assistance so they can participate in the ‘business’ of medicinal cannabis.*”<sup>164</sup> Medical cannabis regulation recently introduced in Colombia, for example, requires licensed companies to acquire, in the first five years, at least 10 per cent of their raw cannabis material from small farmers.<sup>165</sup>

In Jamaica, the Cannabis Licencing Authority (CLA) introduced in May 2016 a tiered licensing system for medical *ganja*, meant to “*enfranchise the small farmers who had previously been subject to significant punitive action by law enforcement agencies*”.<sup>166</sup> In both cases, there are difficult hurdles for small farmers to overcome in order to enter these schemes in practice, but they nonetheless represent important first attempts to use the rapidly opening licit spaces in the global cannabis market as an “alternative development” opportunity for small farmers currently producing for the illicit market. Also in Thailand, the medical cannabis programme intends to “*sustainably improve the quality of life for Thailand’s highland communities*”.<sup>167</sup> The ambitious aim is to cultivate cannabis on 5,000 hectares within five years, hoping that this is the beginning of an industry that will “*add at least 1% to Thailand’s US \$400 billion-dollar GDP*”.<sup>168</sup>

These are all licit uses within the confines of the drug control treaty framework, but a number of countries have also started to open up “licit” spaces under national law that transcend the legal boundaries of the international drug conventions. Bolivia was the first country to derogate from the 1961 provisions with regard to coca leaf,

by withdrawing from the treaty and re-acceding in 2013 with a reservation that allows coca cultivation for any use “in its natural form”. As argued above, the treaty provisions prohibiting this kind of traditional or cultural uses are highly questionable in light of human rights obligations in the field of indigenous and cultural rights, so Bolivia was able to make a strong and legally convincing case to defend this step.<sup>169</sup> At the same time, Bolivia’s coca reservation opens up the possibility for licit uses of coca beyond the strictly “traditional” or “indigenous” uses. Expanding wider uses of coca products as a mild natural stimulant, including opening up international markets for coca tea, coca flour (*mambe, ipadú*), coca-based energy drinks or liquors, and a variety of other products, has been defended in the context of Bolivia’s “integrated development with coca” strategy, and the government is actively exploring export opportunities.



Westmoreland Hemp and Ganja Farmers Association, Jamaica. TNI/Martin Jelsma August 2018.

Expanding the realm of licit coca uses is also explicitly mentioned in the Colombian peace agreement which says that *“the policy must maintain the recognition of the ancestral and traditional uses of the coca leaf, as part of the cultural identity of the indigenous community and the possibility of use of crops used for illicit purposes for medical or scientific purposes and other legitimate uses that are established.”*<sup>170</sup>

A decree simplifying the procedure to register coca or cannabis products as “phyto-pharmacological” herbal medicines represented an initial step in that direction.<sup>171</sup>

Uruguay and Canada, as well as ten US states, have now started to break away from cannabis-related treaty obligations, allowing and regulating cultivation and use of cannabis for purposes other than medical and scientific use. Uruguay, the first country to take that step in 2013, based its decision to legally regulate the cannabis market on human rights, arguing that regulation would enhance the protection of the health and safety of its citizens.<sup>172</sup> Uruguay’s argument that human rights protection takes precedence over drug control requirements, and can provide solid grounds for policies favouring legal regulation, has found support from lawyers.<sup>173</sup> Further, in his report to the General Assembly, the

UN Special Rapporteur on the Right to Health affirmed that there is a need to consider alternatives to the current drug control system and develop a regulatory framework that protects the rights of people who use and are dependent on drugs while minimizing associated harms. *“The proposed framework additionally would allow traditional, cultural use of drugs, whose public health impact has been shown to be very limited, such as coca leaves in Bolivia and various forms of cannabis in India. The existing regime has deprived millions of people of their livelihoods and denied traditional usage of drugs because of prohibitions on cultivation and extremely harmful eradication methods used to limit production. These sanctions are unwarranted and unhelpful in restricting drug use.”*<sup>174</sup>

*“Embracing cannabis/marijuana as a means of economic development is not without its challenges however”, according to the CARICOM marijuana commission: “A serious concern is that a new system could place economic power and benefit too much in the hands of large, foreign business concerns, to the detriment of several stakeholders, including small farmers [...] cannabis has fuelled important economic gains and livelihoods for small farmers and traders, who now fear that liberalisation and legalisation might dis-empower them”.*<sup>175</sup>

Opium harvest in Afghanistan, TNI/Tom Kramer 2006.





Coca and cannabis cultivation in Toribio, Colombia. TNI/Martin Jelsma 2017.

Visit to a Jamaican cannabis field during an exchange visit of farmers from Colombia, Morocco, Jamaica and Saint Vincent. TNI/Martin Jelsma August 2018.



## 6. Conclusions and recommendations

There are clear tensions between current drug control approaches and states' human rights obligations. As the UN Special rapporteur on the right to health, Paul Hunt, has argued, it *"is imperative that the international drug control system [...] and the complex international human rights system that has evolved since 1948, cease to behave as though they exist in parallel universes"*.<sup>176</sup> Including the INCB, the "custodian" of the UN drug control treaties, has spoken out on the need to respect human rights when implementing drug control measures. In its Annual Report for 2017, the INCB *"strongly urges Governments to adopt humane and balanced drug policies that reflect a human rights-based approach"*; *"Without due consideration of human rights, there are devastating consequences"*, according to INCB President Viroj Sumyai.<sup>177</sup>

The need to respect human rights in drug control policies has now been widely accepted. An important EU policy document for instance states that: *"development assistance in illicit drug crop producing areas should be undertaken in full compliance with the overall aims of human rights protection, poverty alleviation, conflict prevention and resolution, peace building and human security."*<sup>178</sup> However, until today, supply reduction policies are still frequently implemented in ways that violate the human rights of subsistence growers of coca, cannabis and opium poppy, due to forced eradication and ill-designed crop substitution programmes, which result in repercussions such as the loss of livelihoods, stigmatisation and marginalisation of small-scale producers, extortion, imprisonment, displacement, environmental degradation, and the criminalisation of indigenous and traditional cultural practices.

Each year, the General Assembly adopts an omnibus resolution on the "world drug problem", and since the 2016 UNGASS, two



noteworthy changes appeared in the text that illustrate the increased importance of human rights compliance in drugs policy. Firstly, while earlier versions always underscored the core relevance of the three drug conventions, for these past two years the omnibus resolution has stated that those treaties “*and other relevant international instruments constitute the cornerstone of the international drug control system*” (emphasis added). Secondly, the annually recurring paragraph stating that all aspects of drug control must be addressed in full conformity with the principles of the UN Charter and the Universal Declaration of Human Rights, and with full respect for all human rights and fundamental freedoms, now refers to the “*unwavering commitment*” of the General Assembly to ensure those principles.<sup>179</sup>

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

## Human rights obligations

The drug conventions have an inherent bias towards criminalisation and repressive law enforcement, establishing floors with no ceilings. “*Their reliance on domestic protection*

*of human rights labours under the deliberate delusion that such protection exists*”, according to Neil Boister in his authoritative book on “Penal Aspects of the UN Drug Conventions”, who adds that in other policy areas the lack of protection has prompted individuals to rely directly on international human rights instruments.<sup>180</sup> Hence, also “[i]nternational drug control law may be forced in the future to expressly incorporate human rights protections as individuals exercise their rights under general human rights law, thus exposing the absence of protections in the drug conventions and the inadequacy of the protections provided by general international human rights instruments.”<sup>181</sup>

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

It is time, therefore, to spell out what this means for policies addressing the illicit cultivation of coca, opium poppy and cannabis. Long-standing debates in international drug policy forums, especially at the CND in Vienna, seem to have reached a stalemate on issues such as proper sequencing in alternative development versus forced eradication; the ultimate zero-tolerance

goal of a “drug-free world” versus harm reduction policies; and respect for traditional, cultural and religious uses. To move beyond the current stalemate, states must realize that these debates are not about policy differences where states are free to make their own choices. International human rights law obliges states to make certain choices in these debates, and drug control officials and diplomats in Vienna are not empowered to negotiate away basic human rights principles for the sake of maintaining a global consensus on drug control. In the words of the UN Special Rapporteurs on globalization and its impact on the full enjoyment of all human rights, countries “are subjected to a primary obligation to promote and protect human rights and [...] those obligations cannot be negotiated away when States function in another forum.”<sup>182</sup>

### Proper sequencing and proportionality of sentences

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

Forced eradication in absence of alternative livelihoods violates people’s rights to live a life in dignity, to be free from hunger, and their right to an adequate standard of living, among others, and represents therefore a policy option that is not allowed

under international human rights law. The drug control conventions do leave sufficient flexibility for proper sequencing, as they refer explicitly to the possibility of providing “*as alternatives to conviction or punishment*” measures for social reintegration and rural development “*in appropriate cases of a minor nature*”. Even though the drug conventions do have a strong and problematic bias towards criminalisation and eradication, the relevant treaty articles do allow states to refrain from forced eradication in the absence of alternative livelihood options, and from incarceration or other disproportionate sanctions for subsistence farmers. Very few countries, however, have used this latitude to make clear distinctions in the law between subsistence-level and commercial-scale cultivation, or to exempt people involved in the illicit drug economy (in cultivation, harvesting, processing or low-level trading) for reasons of survival from criminal prosecution.

### Alternative Development: rhetoric vs. reality

Over the years, the discourse around AD has moved forward in a promising direction, providing arguments in favour of more development-led drug control interventions, but, unfortunately, practices on the ground have not followed suit. Over time, in fact, the disconnect between improving AD discourse and repressive practice only seems to have grown worse. In spite of clear outcomes from in-depth evaluations and many statements of well-intended principles,<sup>183</sup> reversed sequencing and conditionality (eradication first) is overwhelmingly the norm in AD practices on the ground today, with very few exceptions to be found. GIZ summarised the key principles for AD, based on the lessons of the past decades, as follows:

“AD is about reducing the dependency of farmers on illicit drug economies in the long term, not about a short-

term reduction in the supply of illicit drug. [...] AD should not be combined with forced eradication. Combining AD with eradication has not proven to yield sustainable results regarding the volume of coca or opium poppy cultivation, since eradication efforts are neutralised by the displacement of crops and the migration of farmers and day-labourers. [...] AD should not be made conditional on prior drug crop eradication: Implementing development programmes in a drug producing area should not be made dependent on whether and to what extent drug crop areas have been previously eradicated. [...] The reduction of drug crops should be a consequence of development processes and not a requirement.”<sup>184</sup>

The main challenge for AD today is how to ensure that those basic principles are implemented. Disturbingly, moreover, funding for AD has been limited, and has in fact even been declining, in spite of the greater commitment expressed in UN declarations, including the 2013 UN Guiding Principles on Alternative Development and the 2016 UNGASS outcome document. The 2015 World Drug Report raised the alarm about this worrying trend in a special chapter on AD:

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

funds from OECD countries have declined by 71 per cent since the adoption of the 2009 Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem.”<sup>185</sup>

The dominance of repressive realities on the ground and the lack of donor commitment have turned the global AD debate, and references to AD in UN documents, largely into a virtual reality. The two issues are closely related: the development community, for good reasons, has kept its distance from most AD projects, which are plagued by persistent mixing with controversial eradication and law enforcement practices. As long as human rights protection of the involved communities is not a priority in AD policies and projects, few international donor agencies or development NGOs will be willing to embrace the concept. Instead, they will continue to undertake rural development programmes in these areas without any explicit linkage to controversial drug control objectives, or invest instead in areas where drug issues do not play a significant role. If the current disconnect between AD rhetoric and implementation cannot be overcome, the “virtual reality” created under the AD banner risks providing a cover for human rights abuses being carried out in the name of drug control. AD discourse would then mainly serve to perpetuate the myth that a humane, human rights-based and development-driven approach to communities involved in illicit cultivation exists in practice.

## AD and peace building

The biggest source countries for cocaine and heroin, Colombia and Afghanistan, have both been plagued with armed conflict for decades and are at critical stages in their complex conflict resolution efforts. In both cases the most recent estimates of illicit cultivation



have reached record levels, creating pressure to apply even harsher drug control measures, such as aerial spraying operations in Colombia and military airstrikes against opium stashes and processing facilities in Afghanistan. The Pavlovian political response to reports about increased levels of illicit cultivation continues to be increased repression and eradication, contrary to a huge body of evidence showing the ineffectiveness of these responses, and their role in undermining peace building and sustainable development goals. In fact, only policies and projects based on the principles of sustainable development, peace building and human rights protection, and implemented in close collaboration with local communities, offer any real chance to transform such complex local conflict dynamics. But these solutions require time, sufficient resources and local community ownership. Experiences have shown that quick fixes and tight deadlines, especially in the area of alternative development and peace building, won't work and run a significant risk of making things worse rather than better.

The Afghanistan Research and Evaluation Unit (AREU) recommended the following in response to the latest survey that showed a

large increase in opium cultivation: *“First, don’t overreact. While alarming, 2017 represents a continuation, albeit with great accentuation, of the expanding trend of the past 7–8 years. Panicked, drastic, knee-jerk reaction such as attempts at massive eradication of poppy fields, let alone aerial spraying, would lead to worse problems than the expansion of the drug industry itself. [...] Second, don’t treat only the symptoms without addressing the underlying disease. Attacking the “easiest” targets in the drug industry—farmers cultivating opium poppy, and destroying their standing crop—has been and will continue to be counterproductive.”* Additionally, AREU advised to manage expectations: *“As long as the current security situation and trends remain what they are, and resources for development are constrained, [...] it must be recognized that not much can be done in the short run.”* And finally, that *“development is the only sustainable remedy, but it is complex and takes a long time, [...] measured in decades rather than years.”*<sup>186</sup>

### Community participation

The slogan *“Nothing about us without us”* has guided the participation of affected communities in the design and implementation of HIV/AIDS policies and

programmes. In comparison, meaningful participation of rural and indigenous communities dependent on illicit cultivation lags far behind. The illegal nature of their economic activities and the resulting criminalisation of members of these communities obviously hinders trust building and open dialogue. The drug control imperative that usually comes along with AD projects also often limits the space for dialogue. The “voluntary substitution pacts” in Colombia, for example, are based on non-negotiable terms and conditions: “take it or leave it” (and in the latter case face forced eradication). The general tendency in AD project implementation is still to view farmers and their families as passive recipients of aid instead of “ensuring the empowerment, ownership and responsibility of affected communities, including farmers and their cooperatives” as committed to in the 2016 UNGASS.

In the report on one of the very first international conferences which aimed to discuss and improve the AD concept, in 2002 in Feldafing, Germany, the author of this report was quoted saying: “A ‘participatory approach’ means more than just consulting communities about their wishes. It requires serious dialogue in which these communities are allowed to have substantial leeway for negotiation.”<sup>187</sup> Sixteen years later, that still has not become a reality for the majority of coca, poppy and cannabis farmers, in spite of the adoption of the 2009 Action Plan, the AD Guiding Principles and the 2016 UNGASS outcome document, all of which include multiple references to the importance of a participatory approach.

Of course, there are good examples where communities have been able to participate in the design and implementation of local projects. Rarely, however, have they been able to participate at the policy making level, and only relatively recently it has become more accepted to include farmers’ representatives

in UN conferences where policies that affect them are being debated. It is important to put best practices prominently in the spotlight. At the same time, however, limiting farmers participation in international forums to representatives of the relatively few successful AD projects, risks contributing to the creation of the “virtual reality” referred to above. In these discussions it is crucial to also hear the voices of the vast majority who have never received any assistance at all, or who have returned to illicit cultivation after frustrating experiences with ill-designed and short-term projects.

## Gender

Although women’s rights are enshrined in UN documents such as the 1945 UN Charter and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the rights of rural women in relation to illicit cultivation receive scant attention in drug-related documents. The landmark resolution, *Mainstreaming a gender perspective in drug-related policies and programmes*, approved at the March 2016 CND, also makes no mention of rural women.<sup>188</sup> However, in its 2016 *General recommendation No. 34 on the rights of rural women*, the Committee on the Elimination of Discrimination against Women provides a blueprint for incorporating a gender perspective into alternative development programmes, highlighting that:

“States parties should promote inclusive and sustainable economic development that enables rural women to enjoy their rights and [...] Ensure that they are able to benefit effectively and directly from economic and social programmes by involving them in the design and development of all relevant plans and strategies, such as those relating to health, education, employment and social security.”<sup>189</sup>

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

promoting gender equality and ending gender-related violence.

## Indigenous peoples and cultural rights

The 1988 Convention, the 2009 Political Declaration and the 2016 UNGASS Outcome Document all failed to take the necessary steps to align drug policy with long-established cultural and religious rights and with the more recently reached international consensus about the rights of indigenous peoples. Several spokespersons from the UN human rights system, as quoted above, have pointed out the incompatibility of certain drug treaty provisions with human rights obligations. Also according to Richard Lines, "*[t]he obligation contained in Article 49 of the 1961 Convention is perhaps the clearest example of regime conflict between the drug control and human rights legal*

Seven Colombian farmers were shot dead by security forces on 5 October 2017 during a protest against coca eradication in Tumaco, Nariño. Drawing by Marco Pinto, Bogotá 6/10/2017.



systems, as it has the effect of creating a State obligation to eradicate a traditional practice of cultural significance to indigenous peoples.”<sup>190</sup>

This contradicts the 2016 UNGASS outcome document’s assertion that the drug control conventions “allow for sufficient flexibility for States parties to design and implement national drug policies according to their priorities and needs, consistent with the principle of common and shared responsibility and applicable international law”.<sup>191</sup> Ultimately, countries truly committed to human rights protection in drug control have to accept the fact that when it comes to indigenous, cultural and religious rights, full compliance will require the amendment of certain treaty provisions, or, in the absence of achievable consensus on such amendments, the derogation from those treaty obligations by means of reservations or *inter se* treaty modification.<sup>192</sup>

## Licit uses

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

Licit uses of poppy, coca and cannabis may well offer additional opportunities to move farmers away from the current illicit drugs market. Several of those fall within the existing treaty framework, such as the attempts in Colombia, Jamaica and Saint Vincent to involve small growers in the medical cannabis market, and the debate in Mexico about bringing part of the illicit poppy cultivation into the legal sphere of pharmaceutical opiates. But there is also a clear trend towards policies that go beyond

the present limits of latitude, especially in the cases of coca and cannabis. It is imperative that small farmers from Southern countries are not left behind in that process and, instead, are given privileged access to existing and opening licit spaces. Alternative development, human rights and fair trade principles need to secure a legitimate place for small growers in these fast-growing licit markets. It would be extremely unfair, now that regulated markets for recreational cannabis are being created in several countries, to cut out the farmers who have been dependent for their livelihoods on supplying the illicit markets in those countries for decades, and to allow Northern commercial business interests to capture the emerging licit industry.

## Leave no one behind

Kate Gilmore, OHCHR Deputy High Commissioner, when introducing in April 2018 the draft of the Declaration on the Rights of Peasants and Other People Working in Rural Areas, referred to the 2030 Agenda for Sustainable Development and its promise to “leave no one behind”, warning that “if its delivery is not grounded in international human rights law, standards, principles and norms that are enshrined in the SDGs, the benefits of implementation will not flow to all.” The Universal Declaration on Human Rights, she said, “makes clear that those are not optional promises; they are not ideological; not to be exercised at the discretion of power but rather as the obligations of power. Promises that no one is to be left behind by discrimination nor poverty; or left out through marginalization; or forgotten because their truths are inconvenient to the privileged. Yet, those universal promises have not been upheld. Peasants and other people working in rural areas have been left behind.”<sup>193</sup> And that is certainly the case for those of them dependent on illicit cultivation. It is time to give human rights protection its appropriate place as the heart and core of drug policy and alternative development.

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Around the world millions of farmers and rural workers depend on the cultivation of crops used for illicit drugs production to reduce food insecurity and to secure an adequate standard of living for themselves and their families. Furthermore, coca, opium poppy and cannabis have been grown for centuries for traditional medicinal, cultural and ceremonial purposes. Forced eradication operations have frequently led to violent confrontations and human rights violations. Alternative development programmes have been at the core of efforts to find a more humane policy towards people dependent on illicit cultivation for basic subsistence, but have encountered serious challenges.

Human rights arguments have thus far not played an important role in this discussion and bringing economic, social and cultural rights to the table as a critical issue could help to meaningfully advance the debate. This report explores in detail what the 2016 UNGASS commitment *“to respecting, protecting and promoting all human rights, fundamental freedoms and the inherent dignity of all individuals and the rule of law in the development and implementation of drug policies”* truly means for policies addressing the cultivation of coca, opium poppy and cannabis.



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