



# **Chapter 4:** **Drugs, development and the rights of indigenous groups**

## Chapter overview

There are clear links between development and illicit drug production, trafficking and consumption. Generally, drug control efforts have focused on drug law enforcement and prohibition in an effort to reduce the scale of the illicit drug market. Today, however, the drug trade is worth hundreds of billions of US dollars a year and affects all aspects of the world economy and the lives of vulnerable groups – while production, trafficking and drug dependence continue to be largely concentrated among some of the poorest and most marginalised communities across the world.

Efforts have been made to move towards a development-oriented approach to drug control at international level, with attempts to link up UN drug control debates with the Sustainable Development Goals. At national level, this has sometimes translated into policies seeking to improve governance, increase security, protect health, provide sustainable livelihoods and develop new goals and indicators to evaluate the success of drug policy. These issues will be explored in **Chapter 4.1**.

**Chapter 4.2** will further analyse the key aspects and challenges of providing sustainable liveli-

hoods in rural areas affected by illicit crop cultivation. The concept of sustainable livelihoods has evolved over time to encompass a broader development approach underpinned by the following considerations: the need to decriminalise farmers engaged in illicit crop cultivation and engage them as key partners in development programmes, the need to ensure proper sequencing in reducing illicit crop cultivation, to prioritise small-scale rural development and to integrate programmes into broader development plans, and the necessity of promoting good governance and the rule of law.

Finally, **Chapter 4.3** considers the need to protect the rights of indigenous groups, in particular their ancestral, traditional, cultural and religious right to grow and use internationally controlled plants. This chapter offers an overview of the jurisprudence, legislative exceptions, constitutional rules and legal regulatory regimes that have been established across the world to protect traditional uses of psychoactive plants for indigenous groups – and which may serve as guidance for policy makers as they seek to advance the human rights of indigenous people.

# 4.1

## A development-oriented approach to drug control

### Key recommendations

- A thorough review of drug laws and policies should be conducted in the context of the SDGs to ensure that drug control addresses the underlying social and economic drivers of engagement in the drug trade. This should include an analysis of how drug policies affect the capacity of communities, territories and countries to reach the SDG targets
- Drug policies should no longer aim at reducing the overall scale of the drug market but aspire to reduce the harms associated with these markets – including insecurity, corruption, violence, health harms, etc.
- Drug laws and policies should be reviewed to ensure access to essential medicines, as well as to harm reduction and treatment services
- Policies and practices in illicit crop cultivation areas should be revised to move away from forced eradication towards a long-term development approach focused on sustainable livelihoods
- Criminal sanctions should be removed for people who use drugs and small-scale farmers engaged in illicit crop cultivation, and proportionality of sentencing should be ensured for all drug offences
- A gender-sensitive approach to drug control should be adopted to address the specific vulnerabilities of women engaged in the drug trade
- Mechanisms to protect and promote human rights, as well as end impunity for human rights abuses, should be established and strengthened
- A new set of development-oriented metrics and indicators should be adopted to measure the success of drug control based on human development.

### Introduction

Until recently, the connection between drugs, drug policy and development has been largely ignored by both development agencies and UN drug control bodies. Yet, the relationship between drug control and development goals is undeniable, albeit a complex and multifaceted one. The sheer scale of the illicit drug market – estimated at between US\$449 to US\$674 billion a year, using the World Bank ranking table for 2014<sup>1</sup> – can affect many aspects of the world economy, such as shaping the creation of jobs, determining access to land and markets, swaying trends in banking, driving cross-border financial flows, affecting public services, as well as influencing political decisions.<sup>2</sup>

Today, millions of people survive because of the illicit drug trade – a context that development agencies and drugs agencies alike can no longer afford to ignore. In some areas of the world, such as in Afghanistan, Mali or Colombia, the division between licit and illicit economies has become blurred, with organised criminals providing the jobs, investment, stability and security that the state is unable to provide, while drug lords get elected onto local and national governments.<sup>3</sup> This can significantly impact upon the credibility and long-term stability of states, the provision of security and the creation of a strong licit economy.

Development-sensitive drug policies have generally been limited to alternative development programmes, while most drug control strategies have focused on law enforcement efforts that have tended to exacerbate poverty and marginalisation, and impede sustainable development.

In drug cultivation areas, crop eradication campaigns have led to the destruction of farmers' only means of subsistence, as well as of legal crops cultivated near coca and opium poppy fields. The use of chemical spraying has had a severe impact on the health of affected communities, as well as on the environment and fragile ecosystems, affecting food security, contaminating water supplies and causing



Ethnic Wa children in an opium field, Myanmar

long-term degradation of land and further deforestation to plant new crops.<sup>4</sup> Affected farmers, their families and sometimes entire communities are often left with no other choice but to move to more remote areas, where access to schools, employment and other health and social services may be unavailable – leading conflict and supply reduction efforts to spread to other territories and communities. Indigenous and ethnic communities are particularly affected by these policies.

Even when alternative development programmes have been established, they have focused on crop reduction rather than sustainable development as a primary goal, and as a result have failed to offer long-term investments, or to ensure local ownership, access to markets and infrastructure, or the meaningful engagement of farmers and indigenous groups as partners in development.<sup>5</sup>

Drug trafficking hubs usually emerge in fragile, conflict-affected and under-developed regions, where governance is weak, and organised crime groups are in a position to corrupt, influence or elude state institutions. In these areas, drug traffickers are in a position of power, offering the basic health, security and social services the local population needs, including employment in the illicit economy in exchange for free lodgings, transportation, information and a form of local cooperation that protects traffickers from law enforcement actions. In such contexts, the illicit drug trade is strongly woven into the very

fabric of communities.<sup>6</sup> A law enforcement-oriented approach that disregards this situation often ends up fuelling more violence (for example, in Mexico and Brazil), corruption, prison overcrowding, and exacerbating the poverty and social marginalisation of vulnerable communities.

Women are particularly vulnerable to engaging in illicit drug activities due to the gender inequality that continues to mark societies across the world, as well as gender discrimination in access to education and employment.<sup>7</sup> Their incarceration for lengthy periods of time for minor, non-violent drug offences (often as drug mules or micro-traffickers) has a significant impact on their lives, but also on that of their children and other dependents who are then left in a situation of dire poverty – with no other choice but to go to prison with their mother or to end up in the street.<sup>8</sup>

Drug use is a global phenomenon, yet drug-related harms are often concentrated in poor and marginalised areas, where access to harm reduction and drug dependence treatment services may be limited. The criminalisation of people who use drugs has led to significant stigma and discrimination, as well as widespread human rights abuses. Women who use drugs suffer an additional level of stigma in many regions of the world as they are seen as contravening the 'natural' roles of women in society as mothers and caretakers.<sup>9</sup> They also face heightened levels of violence. Tough drug law enforcement practices





A client speaking with a healthcare professional at an NSP at the Humanitarian Action Fund's mobile clinic in St. Petersburg, Russia, where the government remains strongly opposed to harm reduction

deter people from accessing the harm reduction, treatment and other healthcare that they need, affecting their health and well-being, but also leading to significant preventable health and social costs.

## Legislative/policy issues involved

A development-oriented approach to drug control requires moving beyond a drug law enforcement-focused approach, with the objective of addressing the root causes of engagement in the illicit drug trade, such as poverty, inequality and weak governance. Although there are no simple solutions, below are some suggestions on how to address some of these underlying issues.

### Improving governance

Strengthening democratic governance and accountability, legislative oversight, transparency of public accounts, improving public spending on health and social services, promoting participatory processes for citizens (including for communities affected by drug policies),<sup>10</sup> and building the capacities of local authorities to deliver basic services are important steps towards reducing corruption and infiltration of government institutions by organised crime.<sup>11</sup>

Such policies should eventually aim at reinforcing the rule of law, improving citizen security, and ensuring adequate access to justice.<sup>12</sup> The latter should include revising the laws and policies which have led

to the mass incarceration of people who use drugs, subsistence farmers and low-level, non-violent drug offenders, to ensure proportionality of sentencing and promote alternatives to imprisonment (see Chapters 3.3 and 3.4 for more information). Improving governance also entails putting an end to impunity by building solid mechanisms to ensure that victims of human rights abuses resulting from drug control have adequate access to justice.

Initiatives resulting in higher levels of employment and income, more equitable access to land and other resources, and better protection against economic crises can also build resilience among vulnerable communities to limit their involvement in illicit activities.<sup>13</sup>

Sometimes, however, improving governance in the short term may only be guaranteed by granting organised criminals and traffickers concessions and compromises in order to reduce levels of violence and public disorder – this is sometimes the only way to strengthen governance mechanisms in the longer term.<sup>14</sup>

### Improving security

Development is simply impossible in a context of violence and insecurity. This is particularly the case in zones affected by, or coming out of, armed conflicts. In some instances, drug law enforcement efforts – especially where the military gets involved as a repressive tool against drug cultivators and traffickers – have tended to exacerbate insecurity and drug market-related violence. In areas where



Nor Yungas (Bolivia) coca leaf farmer sweeps up freshly picked leaves for taking to the legal market after being sun-dried on a slate patio, called a kachi in Aymara

state presence is only seen as a repressive machinery against the local population, the government can lose credibility in the face of organised crime groups which are often better able to provide safety and protection to the communities within which they operate. Improving human security in areas strongly affected by illicit drug production and trafficking should therefore be a top priority of a development-centred approach to drug control.<sup>15</sup>

Evidence clearly indicates that illicit drug markets are not inherently violent.<sup>16</sup> A number of strategies have led to a decrease in drug-related violence – a modernised drug law enforcement strategy can help shape the illicit markets in a way that is the least harmful for the local population, and most beneficial for supporting development efforts (see Chapter 3.5 for more details).

### Protecting health

Lack of access to health services can seriously hamper people's ability to access education and employment, and therefore to participate in a country's economy. The spread of infections such as HIV and hepatitis can also create a significant burden on a country's healthcare system and economy. Ensuring adequate access to harm reduction and evidence-based drug dependence treatment programmes is therefore an important component of a development-oriented approach to drug control (for more information, see Chapters 2.5 and 2.6). This also implies the removal of legislative and political barriers to accessing harm reduction and treatment

services – in particular the criminalisation of people who use drugs (see Chapter 3.1).

### Providing sustainable livelihoods

There is ample evidence to show the severe impacts of forced eradication campaigns on local populations. Laws and regulations should be urgently reviewed to ensure adequate access to natural resources and to a fair and equitable distribution of benefits arising from the sustainable use of biodiversity by local communities, including indigenous groups.

Fumigation campaigns should be immediately halted considering the lack of success achieved so far in reducing the scale of crops cultivated and the long-term impact of the use of chemicals on lands and communities, the displacement of affected groups as a result of the campaigns, and the deforestation of new areas (sometimes natural parks or other protected lands) to re-grow crops destined for the illicit drug market.

Finally, it is essential to recognise that in drug cultivation areas, people are currently only able to survive, not because they are targeted by development programmes, but because they have become part of the illicit drug economy. Alternative development programmes should be enshrined in a comprehensive development policy which includes protecting the environment, developing strong infrastructure and adequate access to legal markets, and engaging local communities as equal partners (see Chapter 4.2 for more information).

## Box 1 A drug policy enshrined in the Sustainable Development Goals<sup>17</sup>

In September 2015, governments met in New York to adopt the Sustainable Development Goals (SDGs).<sup>18</sup> These goals replace the Millennium Development Goals, which came to an end in 2015. The SDGs set out 17 ambitious goals that will frame the development agenda until 2030. Although internationally controlled substances are only mentioned once within these goals – as Target 3.5 to ‘Strengthen the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol’ – there is ample room to link drug control policies with the SDG targets.<sup>19</sup> However, there are a number of contradictions between the targets established by the SDGs and current drug policies.<sup>20</sup> The SDGs cannot be achieved unless drug control policies and strategies are subjected to thorough review:

**Goal 1: ‘End poverty in all its forms everywhere’:** Ending poverty will only be achieved if governments address the underlying social and economic factors that lead people to engage in the drug trade, instead of exacerbating cycles of poverty and marginalisation by destroying crops and incarcerating large segments of society for low-level and non-violent drug offences.

**Goal 2: ‘End hunger, achieve food security and improved nutrition and promote sustainable agriculture’:** Sustainable agriculture and food security will only be achieved when alternative development programmes are fully enshrined within a comprehensive and long-term development strategy in areas of concentrated illicit crop production, involving small-scale farmers and indigenous groups as equal partners in the design and implementation of these policies.

**Goal 3: ‘Ensure healthy lives and promote well-being for all at all ages’:** Ensuring ‘healthy lives and promoting the well-being for all at all ages’ will only be achieved when drug laws and policies are revised to ensure adequate and affordable access to internationally controlled substances, such as morphine for pain relief and palliative care. Similarly, universal health coverage will only be achieved if people who use drugs are able to access the harm reduction, treatment and other health services they need without fear of arrest or discrimination.

**Goal 5: ‘Achieve gender equality and empower all women and girls’:** Gender equality will only



Credit: CAFOD



be achieved if governments recognise the many factors of vulnerability that push women to engage in the drug trade.

**Goal 15: ‘Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss’:** Halting land degradation will only be achieved if governments permanently put an end to aerial and manual fumigation campaigns. Protecting the homes of the indigenous population will not be achieved unless governments establish strong laws that protect the rights of indigenous groups to grow and use plants such as coca and opium for traditional and ancestral purposes.

**Goal 16: ‘Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective,**

**accountable and inclusive institutions at all levels’:** The provision of access to justice for all and the building of effective, accountable institutions will only be achieved when impunity for human rights violations related to drug law enforcement (such as extra-judicial killings, disappearances, etc.) comes to an end.

**Goal 17: ‘Strengthen the means of implementation and revitalize the global partnership for sustainable development’:** A global partnership for development will only be achieved when affected communities – including people who use drugs and small-scale farmers engaged in illicit crop production – are considered by governments as equal partners in the design and implementation of drug laws and policies at all levels of government. This goal underscores the necessity to remove criminal penalties for people who use drugs and small-scale farmers.

## Implementation issues involved

One of the main issues to consider for the implementation of a development-oriented approach to drug control is how success will be measured and evaluated. Traditionally, metrics and indicators used to measure success in drug control focused on *process* indicators such as numbers of seizures, hectares of illicit crops eradicated, numbers of people arrested and/or incarcerated. These indicators have done little to measure the real impact of drug control on development outcomes.

We propose the development of a new set of metrics and indicators that can truly measure the full spectrum of drug-related health issues, as well as the impact of drug policy on human rights, security and development. These could include:

- **Goals** that address the root causes of engagement in illicit drug production, distribution and consumption – for example:<sup>21</sup>
  - Reducing poverty
  - Improving food security and access to licit markets
  - Addressing land tenure issues
  - Improving security
  - Increasing gender equality
  - Reducing corruption and impunity
  - Improving community well-being via better

access to healthcare, education and employment, etc.

- **Indicators** based on the Human Development index<sup>22</sup> – which offers a useful set of tools that could be adapted on drug control. New indicators could include:<sup>23</sup>
  - % of people living above the poverty line in communities affected by the drug trade
  - % of people having access to land tenure in areas vulnerable to, or affected by, the drug trade
  - % of people having access to stable housing in communities affected by the drug trade
  - % of people having access to primary, secondary and higher education
  - % of people working in the licit economy
  - Number of people having access to healthcare information and services – including harm reduction and drug dependence treatment
  - Number of women who use drugs accessing harm reduction and drug dependence treatment services
  - Number of deaths by drug overdose
  - Incidence of HIV, hepatitis, tuberculosis among people who use drugs – and % of infection among people who use drugs compared to the general population
  - % of people suffering from moderate to severe



pain who have access to pain relief

- % of victims of human rights abuses initiating judicial proceedings against their perpetrators
- Number of people (disaggregated by gender) incarcerated for drug offences – and % of inmates (disaggregated by gender) condemned for drug offences within the overall prison population
- % of drug offenders who benefited from alternatives to incarceration and/or punishment
- Reduction in levels violence and corruption in areas affected by production and trafficking
- Reduction in the number of people displaced from their land due to crop eradication activities and other drug law enforcement efforts
- Mechanism(s) established for the participation of affected communities in policy making and implementation.

## Key resources

- Gutierrez, E. (2015), *Drugs and illicit practices: Assessing their impact on development and governance* (Christian Aid), <http://www.christianaid.org.uk/Images/Drugs-and-illicit-practices-Eric-Gutierrez-Oct-2015.pdf>
- Health Poverty Action & International Drug Policy

Consortium (November 2015), *Drug policy and the sustainable development goals*, <http://idpc.net/publications/2015/11/drug-policy-and-the-sustainable-development-goals>

- Martin, C. (February 2015), *Casualties of war: How the war on drugs is harming the world's poorest*, <http://idpc.net/publications/2015/02/casualties-of-war-how-the-war-on-drugs-is-harming-the-world-s-poorest>
- Melis, M. & Nougier, M. (October 2010), *IDPC Briefing Paper - Drug policy and development: How action against illicit drugs impacts on the Millennium Development Goals* (London: International Drug Policy Consortium), <http://idpc.net/publications/2010/10/idpc-briefing-drugs-and-development>
- United Nations Development Program (June 2015), *Addressing the development dimensions of drug policy*, <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/addressing-the-development-dimensions-of-drug-policy.html>

# 4.2

## Promoting sustainable livelihoods

### Key recommendations

- Decades of experience in promoting alternative development show that reducing the cultivation of coca and opium poppy crops is a long-term problem that needs a long-term solution, involving broader nation-building and development goals. Government strategies need to be based on promoting economic growth and providing basic services; democratic institution building and the rule of law; respect for human rights; and improved security in the impoverished rural areas where coca and poppy cultivation flourishes
- Forced eradication of crops deviated to illicit markets should be replaced by alternative livelihoods efforts, which should be mainstreamed into local, regional and national development plans and carried out in close collaboration with the intended beneficiaries
- The cultivation of crops destined for the illicit drug market should not be criminalised; and farmers should be involved as partners in promoting rural development
- Local communities should be involved in the design, implementation, monitoring and evaluation of development efforts. This includes community leadership, and the involvement of local organisations such as producer groups and the farmers themselves. Government officials can play a key role in mobilising, coordinating and supporting community participation
- Governments should advance towards regulatory models for coca, opium poppy and cannabis cultivation, respecting traditional and licit uses of such crops and allowing for small-scale and industrialised transformation into products for licit use
- Governments should protect biological, cultural and intellectual property rights with regards to the plants, seeds and other derivatives of the communities where these crops are traditionally cultivated and used
- Results should not be measured in terms of hectares of crops eradicated. Rather, alternative livelihoods programmes should be evaluated using human development and socio-economic indicators that measure the well-being of society.<sup>24</sup>

### Introduction

The Latin American countries of Colombia, Peru and Bolivia are the primary source of coca, the raw material for cocaine.<sup>25</sup> From 2002-2010, Colombia led the region in coca cultivation, though in recent years, Peru has emerged as the global leader in hectares of coca under cultivation. In 2013, the most recent year for which there is reliable data, the United Nations Office on Drugs and Crime (UNODC) reported that Colombia had 48,000 hectares to Peru's 49,800. Bolivia, meanwhile, has seen consistent reductions in recent years, dropping from 30,900 hectares in 2009 to 20,400 in 2014, likely due to its innovative

'social control' model, which prioritises cooperative coca reduction and sustainable development over forced eradication. The country has set a target of 20,000 hectares under cultivation to leave a supply of coca leaf for traditional and other licit uses.

Cultivation of the opium poppy, the raw material for opium and heroin, has shifted over time. The Golden Triangle of Thailand, Lao People's Democratic Republic, and Myanmar once produced more than 70% of the world's opium, most of which was refined into heroin. Since 1998, dramatic decreases in opium cultivation have taken place in the Golden Triangle; cultivation is now concentrated in what is



Opium poppy field in Afghanistan

known as the Golden Crescent, the poppy-growing areas in and around Afghanistan. According to the UNODC,<sup>26</sup> in 2014 Afghanistan had 224,000 hectares of poppy under cultivation, followed by Myanmar with 57,600. As Afghanistan increased cultivation by over 100% since 1999, alternative livelihoods programmes in South East Asia contributed to important gains. Thailand has effectively eliminated its small poppy crops, and Lao People's Democratic Republic has seen considerable reductions as well, with 6,200 hectares in 2014. Myanmar saw marked reductions from a peak of 128,642 hectares in 2000 to 24,000 in 2006, but has recently seen a rise in cultivation.

Supply reduction efforts have typically been measured according to the areas of crops cultivated, the amounts of cocaine and opium produced, and the number of hectares eradicated. These figures, however, are not without controversy. While the UN data on cultivation tends to be the most accurate, the US Office of National Drug Control Policy (ONDCP) also publishes its own annual cultivation estimates.<sup>27</sup> The ONDCP figures are far more opaque, and are published without any explanation of methodology. Their findings are particularly questionable in their divergence from the UNODC figures in Bolivia, where the ONDCP has retroactively changed estimates from years prior.<sup>28</sup> Some of their post-facto adjustments include changing potential cocaine production estimates, again without any explanation for methodology. In Colombia, the ONDCP brought forward its regular release date for coca cultivation estimates to point to an increase in cultivation, at a time when the country debated ending the harmful practice of aerial spraying.<sup>29</sup> It is also important to point out that as crop yields and pro-

duction techniques have improved, less cultivation is needed, rendering eradication indicators increasingly irrelevant.

Efforts to reduce the cultivation of crops destined for the illicit drug market have been a cornerstone of the supply-side approach to drug control and are closely aligned with national and public security objectives. They have mainly consisted of forced crop eradication campaigns, which rely on manual eradication or aerial spraying and are conducted without the consent of the growers.

Decades of evidence show that, while this approach may achieve short-term reductions in cultivation of crops such as coca or opium poppy, in the medium- to long-term farmers, lacking other viable sources of cash income, are forced to replant. As a result, cultivation can be spread to new areas. In addition, crop eradication campaigns are associated with violence, conflict, and displacement, as well as a number of health, environmental and socio-economic harms.<sup>30</sup>

In short, forced eradication has pushed some of the world's poorest people deeper into poverty and is counter-productive. Even when conducted hand-in-hand with alternative development programmes, eradication campaigns undermine cooperation with the local community, which in turn compromises the effectiveness of the development agenda. In other words, it causes distrust between donors, state agencies and recipient communities, and undermines the very development efforts needed to wean subsistence farmers off the cultivation of crops destined for the illicit drug market. The criminalisation of cultivation and hence of small farmers is tantamount to the criminalisation of poverty.



## Legislative/policy issues involved

The cultivation of crops that are used to produce internationally controlled substances tends to take place in very remote and extremely poor regions of the world where there is often little or no effective state presence. It also tends to be in areas where conflict and violence are rampant. The fundamental drivers of such cultivation are poverty and insecurity: farmers living in extreme poverty see cultivation of opium poppy, coca or cannabis as a means of providing some income to complement subsistence-level agriculture. Simply put, it is a way for basic needs to be met. The United Nations Development Program (UNDP) points out that: 'Conditions of scarcity, displacement, state neglect, economic and geographic isolation and livelihoods insecurity, including in situations of conflict, increase the vulnerability of peasants and poor farmers to engaging in drug crop production.'<sup>31</sup>

In recognition of this, several decades ago policy makers began incorporating 'crop substitution' programmes into drug control efforts, usually carried out hand-in-hand with forced eradication. However, little attention was paid to the problems that led farmers to resort to cultivation in the first place, such as lack of roads and transportation infrastructure, lack of access to credit and markets, etc. This led to the development of the concept of 'alternative development', a more integrated approach. That, in turn, subsequently evolved towards the principle of 'alternative livelihoods', which focuses on improving the overall quality of life in these rural areas. Today these efforts

are referred to by many terms such as 'development in a drugs environment', 'development-oriented drug control' or even 'food security'. These efforts seek to promote equitable economic development in the rural areas used for illicit crop cultivation.

This approach recognises that farmers will only be able to reduce their dependence on income from coca and poppy crops if they are provided with alternative livelihoods through long-term multi-sectorial development. It is designed to improve the overall quality of life of farmers, including: ensuring food security and access to land; improved access to healthcare, education and housing; the development of infrastructure and other public services; and both on-farm and off-farm income generation.<sup>32</sup> Such programmes are no longer purely focused on reducing the production of crops destined for the illicit drug market, but are incorporated, or mainstreamed, into comprehensive strategies for rural development and economic growth. Specifically, they call for embedding strategies for reducing coca and opium poppy crops in local, regional and national development initiatives.

## Implementation issues involved

This broader concept of alternative development is now widely recognised and is enshrined in the UN International principles on alternative development.<sup>33</sup> However, not all countries implement these policies in the same way; indeed, many, such as Peru and Colombia, continue to prioritise forced



Field of coca crops fumigated in Guaviare, Colombia

Credit: Adam Schaffer, WOLA

eradication. In a major setback for small-scale farmers, in 2015 the Peruvian government implemented a legal reform that criminalises growers who replant following forced eradication with three to eight years in prison.

The following reforms should be put into place to ensure that alternative development achieves its desired outcomes of reducing cultivation of such crops while improving the livelihoods of vulnerable farmers.

### **Decriminalising crop cultivation**

The criminalisation of subsistence farmers involved in the cultivation of crops destined for the illicit drug market has caused significant harm, often impacting on entire communities. Although some claim that the decriminalisation of these farmers is contrary to the international drug control treaties, their continued punishment constitutes a breach of international human rights law and a significant barrier to development. In 2012, the Colombian parliament initiated discussions on a bill that aimed to decriminalise the cultivation of crops destined for the illicit drug market.<sup>34</sup> Although this bill is on hold, discussions have continued and constitute a key challenge in the peace discussions between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC). In the framework of the peace process, cultivators of crops destined for the illicit drug market have proposed the creation of an organisation to support the creation of a mechanism to regulate the cultivation of such crops.<sup>35</sup>

### **Ensuring proper sequencing**

In order to avoid the replanting described above, viable, sustainable livelihoods must be in place prior to significant crop reductions. Once economic development has taken root and alternative sources of income are in place, governments and international donor agencies can work with local communities to encourage the gradual elimination of crops used to produce internationally controlled substances. Crop reductions should always be voluntary and conducted in collaboration with the local community. Both Thailand (see Box 1) and Bolivia (see Box 3) provide examples of how a focus on economic development and proper sequencing has led to steady reductions in the cultivation of opium poppy and coca crops, respectively.

### **Including farmers as key partners in development programmes**

Alternative livelihoods programmes require that small-scale farmers should no longer be considered as criminals but should instead be viewed as key

## **Box 1 The Thai alternative livelihoods model<sup>36</sup>**

Beginning in 1969, the Thai government sought to integrate highland communities into national life and therefore carried out sustained economic development activities over a 30-year period. Over time, it became clear that agricultural alternatives alone were insufficient. As a result, increasing emphasis was placed on providing social services such as healthcare services and schools, as well as infrastructure development such as roads, electricity and water supplies. Alternative livelihoods programmes were integrated into local, regional and national development plans. This led to steady improvement in farmers' quality of life, and increased opportunities for off-farm employment. A focus on local community participation emerged over time.

The Thai experience points to the importance of proper sequencing. Efforts for crop reduction only started in 1984, after about 15 years of sustained economic development. While some forced eradication did take place initially, the adoption of proper sequencing allowed farmers to reduce poppy cultivation gradually, as other sources of income developed, avoiding the problem of re-planting that inevitably frustrates crop eradication efforts. Although the entire process took about 30 years, the results of the Thai strategy have proved sustainable; however, on the negative side, there has been an increase in methamphetamine use and production in the region since the 1990s.<sup>37</sup>

The Thai experience also underscores the importance of local institution building and community involvement in the design, implementation, monitoring and evaluation of development efforts. Local know-how became the basis for problem solving, and local leadership was fully integrated into project implementation.

stakeholders in the design and implementation of the development programmes that affect them (see Box 2).<sup>38</sup> The involvement of farmers is necessary, both because local farmers have a better knowledge and understanding of the local geographical conditions, and in order to protect the rights and cultural



Nutritionist Maria Eugenia Tenorio displaying her recipes using coca "flour" (finely ground leaves) at the 2004 Coca y Soberania Fair in El Alto, Bolivia

traditions of local communities (see Chapter 4.3). As evident in the Thai experience, community buy-in and involvement is also a key factor in ensuring project success and continuity (see Box 1).

### Prioritising small-scale rural development

Decades of neo-liberal and pro-urban economic development models, free-trade agreements and government efforts to promote agro-business have proven to be seriously detrimental to the world's rural poor. Rural development efforts should prioritise promoting sustainable production on small farms, advance land reform, promote crop diversification, and encourage the development of domestic processing industries, and regulate imports and exports in order to protect vulnerable populations and resources.<sup>39</sup> They should also respect the rights, customs and farming practices of indigenous peoples.

### Promote good governance and the rule of law

Nation building and promoting good governance and the rule of law are also essential components of an alternative livelihoods approach. These are particularly necessary to foster the legitimacy and credibility of the government in areas where state presence is often limited to security and/or eradication forces. A growing body of academic literature now points to the absence of violent conflict as a pre-condition for sustainable development and drug control efforts (see Chapter 4.1 for more details).<sup>44</sup>

### Integrating alternative development into local, regional and national development plans

Alternative livelihoods goals should be integrated at all levels and should in particular incorporate those involved in rural development, including multilateral and international development agencies, relevant government ministries, regional and local officials, and community and civil society organisations. Some donor agencies refer to this as

## Box 2 Farmers' involvement in decision making processes

The participation of subsistence farmers in the elaboration and implementation of drug policies and development programmes in illicit crop cultivation areas remains a major challenge, as in most areas of the world this group remains heavily criminalised. However, attempts have been made across the world to improve farmers' participation in the decision making processes that affect them.

In Bolivia, for example, subsistence farmers are now involved as key strategic partners by the government in coca reduction strategies, as part of an approach based on social control (see Box 3).<sup>40</sup> Similarly, in Colombia coca farmers have been heavily engaged in the peace talks between the Colombian government and the FARC, and a bill is currently being discussed to decriminalise the cultivation of crops destined for the illicit drug market.<sup>41</sup>

In South Asia, community participation has been a major factor of success for the Thai alternative development programme (see Box 1). In Myanmar, however, opium farmers continue to be excluded, criminalised and harassed by the police and military. In September 2015, opium farmers and representatives from the Kayah State, Shan State, Kachin State and Chin State, came together in Upper Myanmar to adopt a statement highlighting the issues they face and calling for reform.<sup>42</sup>

At global level, the International Forum of Producers of Crops Declared Illicit (FMPCDI in Spanish) adopted a political declaration calling for farmers to be able to 'take part in debates, decision making at all levels, with their own governments, donors and the UN'.<sup>43</sup>

'mainstreaming counternarcotics into development programs'.<sup>47</sup>

### Using human development indicators

To date, most crop eradication and alternative development projects have primarily evaluated their success by reductions in the cultivation of crops destined for the illicit drug market. However, in an evaluation report to the Commission on Narcotic Drugs (CND) in 2008, the UNODC stated that, 'there is little proof that the eradications reduce illicit cultivation



### Box 3 The Bolivian economic development model<sup>45</sup>

Upon taking office in 2006, President Evo Morales extended a cooperative coca reduction programme, which had been in place since October 2004. The policy allows each registered coca grower to cultivate one *cato* of coca, which is 1,600 square meters or about one-third the size of a football field. Any coca grown beyond that is subject to elimination. The government has put into place a sophisticated coca monitoring system that includes land titling, a biometric registry of growers authorised to grow the *cato*, periodic measurements of coca fields, and implementation of a sophisticated database, SIS-COCA. Local coca grower unions work with government officials to ensure compliance with the *cato* agreement, a policy known as ‘cooperative coca reduction’.

Allowing limited coca cultivation – and thereby ensuring a steady flow of cash income – has allowed farmers to risk investing in other economic income generating activities. At the same time, the Morales administration has invested

in transportation infrastructure (including an international airport), education and health-care, improving the overall quality of life of local residents. The government is also investing in productive enterprises, such as fisheries and agricultural products such as pineapples.

To date, this approach has produced positive results and the possibility of long-term reductions in coca cultivation, while virtually eliminating the violence and social conflict associated with the forced coca eradication campaigns pursued by previous governments. For the fourth consecutive year, the UNODC reported a decline in coca cultivation in Bolivia; the country has achieved a 34% net reduction in coca cultivation between 2010 and 2014.<sup>46</sup> Bolivia now lags far behind Peru and Colombia in its supply of the coca leaf.

The Bolivia model shows that it is possible to regulate cultivation, improve people’s living standards, and promote traditional and licit uses of the coca leaf, while seeking to prevent the deviation of coca to the illicit market.



Credit: Caroline S. Conzelmann

Aymara women collectively harvest the coca leaf in Bolivia’s Nor Yungas province

in the long term as the crops move somewhere else', adding that, 'alternative development must be evaluated through indicators of development and not technically as a function of illicit production statistics'.<sup>48</sup> Improved indicators include measuring improvements in education, health, employment, income generation and the like (see Chapter 4.1 for more details on development indicators).

## Key resources

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# 4.3

## Rights of indigenous groups

### Key recommendations

- Governments should repair the discrepancies between the UN drug conventions and international human rights agreements, to ensure that the rights of indigenous peoples are upheld and fully protected
- Indigenous communities should be meaningfully involved in the design and implementation of any policies and regulations that affect them
- Governments should set up data collection mechanisms to review the impact of drug policies and in particular drug law enforcement strategies on indigenous groups, and review any harmful drug law, policy or practice
- The historical, cultural and traditional character and potential benefits of plants controlled at the national and international level should be recognised
- Where the use of psychoactive substances is part of people's traditional and religious practices, the right to cultivate, trade and use such plants for these purposes should be allowed and protected
- Aerial fumigation campaigns should be immediately stopped as they cause significant harm on the health of farmers and indigenous communities, and on the environment. Any crop reduction or alternative development programme should be undertaken in full collaboration and partnership with affected communities, and take specific care to protect the rights of indigenous people, including access to and use of their lands and natural resources in a way that is respectful of their culture and traditions.

### Introduction

The 1989 International Labor Organization's Convention concerning Indigenous and Tribal Peoples in Independent Countries<sup>49</sup> defines indigenous people as those who, 'on account of their descent from the populations which inhabited the country at the time of conquest, colonisation, or the establishment of present state boundaries and who, irrespective of their legal status, retain some, or all, of their own social, economic, cultural and political institutions'; or 'tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.'

In practical terms, this means that in addition to the universal human rights recognised in international conventions (see Policy principle 2), indigenous people enjoy specific rights that protect their identity, culture, traditions, habitat, language and access to ancestral lands. These rights are enshrined in the 2007 UN Declaration on the Rights of Indigenous Peoples<sup>50</sup> which notably recognises indigenous peoples' right to self-determination and autonomy; to maintain, protect and develop cultural manifestations of the past, present and future, as well as their cultural heritage, traditional knowledge and manifestations of their science, technology and culture (articles 11 and 31); to maintain their traditional medicines and healing practices (article 24); to participate in decision making in matters that would affect their rights (article 18); and to the conservation and protection of the environment and the productive capacity of their lands or territories and resources (article 29).

For generations, people worldwide have used psychoactive plants such as coca, cannabis, opium, kratom (*Mitragyna speciosa*), khat (*Catha edulis*), peyote (*Lophophora williamsii*), chamico (*Datura ferox*), San Pedro (*Echinopsis pachanoi*), *Salvia Divinorum* and ayahuasca or yahé (*Banisteriopsis caapi*), among many others, for traditional, cultural and religious purposes. In the Andean region and Amazon basin,





Morning mist in a Yungas coca field outside of Coroico, Bolivia

for example, the coca leaf has a wide application in social, religious, spiritual and medical areas for indigenous people, and is also used by the general population. Similarly in India, cannabis and opium have been bound to faith and mysticism in Hindu and Islamic traditions for centuries, and are enshrined in countless cultural practices. In Jamaica, cannabis has played a central part in the religious ceremonies of the Rastafarian community (see Box 1). Other plants, such as khat in Eastern Africa and kratom in South East Asia, have also been used for traditional and social purposes for centuries. Some of these substances have also been employed medicinally, especially for the treatment of rheumatism, migraine, malaria, cholera and other gastrointestinal complaints, to reduce pain from opioid withdrawal symptoms, and to facilitate births and surgery.<sup>51</sup> These plants can also provide food grain, oil seed or fibre for manufacturing products.

However, and despite the significant advances in international human rights law to protect traditional and medicinal practices of indigenous populations, those involved in the cultivation and use of plants destined for the illicit drug market have been criminalised, marginalised and discriminated against by harsh drug laws and policies.

Regions where crops destined for the illicit drug market thrive are usually characterised by extreme poverty, state abandonment, limited infrastructure, restricted access to basic services, and often conflicts. Instead of addressing these underlying issues, governments have tended to focus on forced crop eradication campaigns. In the Andean region, for instance, these campaigns have caused wide-

spread damage to the health, habitat and traditions of coca-growing indigenous communities<sup>52</sup> – and only serve to remove vulnerable communities' only means of subsistence in a context of market-driven crop prices, where many licit crop alternatives are not profitable enough to ensure survival, hence exacerbating their poverty.<sup>53</sup>

In some countries, violent clashes have erupted between armed groups fighting for control of the drug trade and between those armed groups and drug law enforcement agencies, placing local affected communities in the crossfire. Forced eradication campaigns have exacerbated the harms caused by armed conflict, impacting particularly on indigenous groups. For instance, Plan Colombia launched in 1999 has not only had disastrous consequences on the lives, health, environment and economy of indigenous people and farmers, but has also put them in the crossfire between government forces, insurgent groups and paramilitaries fighting to control the territory. The plan did not achieve an overall reduction in cocaine production in Colombia, but has led instead to a serious humanitarian crisis, contributing heavily to the displacement of 3.6 to 5.2 million people<sup>54</sup> and increased levels of poverty and insecurity. Colombia's constitutional court estimated that at least 27 indigenous groups were at risk of disappearing as a result of armed conflict.<sup>55</sup>

In locations where alternative development programmes have been implemented, no local knowledge, know-how or cultural traditions have been contemplated or considered, and indigenous groups have been excluded from these programmes. Furthermore, land grabbing processes and macroeco-

conomic 'development' projects such as monoculture, hydroelectric dams, open mining and petrol and gas exploitation in ancestral territories affect indigenous people's access to medicinal plants which are often grown within the native biodiversity of their territory<sup>56</sup> – jeopardising indigenous people's access to health, cultural and spiritual practices. It is essential that these programmes are developed in collaboration with affected populations after a careful assessment of the local cultivation possibilities and market access, and with full respect for the rights and traditions of indigenous people (see Chapter 4.2).

## Legislative/policy issues involved

The 1961 Single Convention on Narcotic Drugs has classified three psychoactive plants – cannabis, coca and opium poppy – as subject to controls that limit their production, distribution, trade and use to medical and scientific purposes. The premise behind this policy is that it would be impossible to achieve a significant reduction in the illicit production of internationally controlled substances so long as large-scale local consumption of raw materials for these drugs continued. This led to pressure on producing countries to end traditional usage of these plants. Opium poppy, cannabis and coca were placed under the same strict levels of control as extracted and concentrated alkaloids such as heroin and cocaine, under Schedule I of the 1961 Convention – with a deadline of 15 years for the abolition of opium smoking, and 25 years for coca leaf chewing and cannabis use (article 49, para. 2).<sup>57</sup>

The 1971 UN Convention on Psychotropic Substances does not control any plant, but does impose controls on several of the active ingredients of some plants. This is the case for mescaline, contained in peyote and the San Pedro cactus; for psilocybin and psilocin, responsible for the stimulating effect of khat; for DMT, the psychedelic compound in ayahuasca; and for THC, the psychoactive constituent of cannabis, among others.<sup>58</sup> This level of control creates confusion for substances such as khat, peyote or ayahuasca, since some of their psychoactive compounds are internationally controlled, but the plants themselves remain outside the remit of the conventions. As for cannabis, the plant species itself (cannabis and cannabis resin) is included in Schedule I of the 1961 Convention, but THC is scheduled in the 1971 Convention – also leading to inconsistencies for drug control.

Article 32, para. 4 of the 1971 Convention states that: 'A State on whose territory there are plants growing wild which contain psychotropic substances from among those in Schedule I and which are traditionally used by certain small, clearly determined groups in magical or religious rites, may, at the time of signature, ratification or accession, make reservations concerning these plants'<sup>59</sup> – thereby allowing member states to make a reservation to allow the traditional use of some plants in delimited geographic locations, during ceremonies or rituals. These provisions are important as they have been used in some countries to legitimise the use of ayahuasca, for example in Brazil, Peru, Colombia, or among the 'Ceju do Montreal' Church members in Canada,<sup>69</sup> as will be further discussed below.



Ayahuasca brewing

Credit: Creative Commons Paul Hessel



## Box 1 The right of Rastafarians to use cannabis in Jamaica

Cannabis (known in Jamaica as ganja) is regarded as sacred by members of Jamaica's Rastafarian community. The plant was first introduced in Jamaica in the 19<sup>th</sup> century, originating from India, and quickly gained popularity as a recreative and medicinal herb. Its use spread among poor communities in the 1930s with the founding of the Rastafarian religion, a spiritual movement based on the Old Testament and Pan-Africanism.<sup>60</sup> Of all the herbs, cannabis occupies a special, spiritual place in the Rastafari celebrations. First and foremost is its place in the ceremonial rituals held five or six times a year, known as a nyabinghi, or 'binghi'. But for Rastafarians, the herb is part of a way of life. The plant is often smoked, but can also be drunk or eaten. Knowledge about Rastafarian culture and traditions – drawn directly from testimonies among the Rastafarian community – was collated in a report by the National Commission on Ganja published in 2001, in which the Commission recommended the decriminalisation of the plant.<sup>61</sup> As a community, the Rastafari have been advocating for cannabis legalisation, or at the very least for a removal of its criminal status, for over half a century.

It was not until April 2015, however, that the Jamaican government adopted the Dangerous

Drug (Amendment) Act, amending Section 7(c) of para. 6. This reform constitutes a positive attempt at protecting the religious and cultural rights of the Rastafarian community. The amendment authorises cannabis sacramental use by any person aged above 18 adhering to the Rastafarian faith, or to a Rastafarian organisation. Members of the Rastafarian community can also apply for authorisation to cultivate cannabis for religious purposes as a sacrament in adherence to the Rastafarian faith. Finally, they can apply for an event to be declared exempt from cannabis prohibition rules, as long as the event is primarily organised for the purpose of the celebration of the Rastafarian faith.<sup>62</sup>

The amendment is broader in scope, also decriminalising the possession of up to 2 ounces (56g) of cannabis, as well as possession for medical and therapeutic purposes as recommended or prescribed by a registered medical doctor or health practitioner. However, the Rastafarian community benefits from broader rights in terms of cultivation and use than the broader community, demonstrating a clear attempt at protecting the cultural and ancient traditions of this community.



Rastafari Rootzfest 2015 in Jamaica

Credit: Creative Commons Beverly Xuen Thomsson



## Box 2 Bolivia, coca leaf chewing and the protection of indigenous culture



Credit: Ali Margeaux Pfenninger

Aymara yatiri (shaman) performing a coca leaf reading on the summit of Mt. Uchumachi near Coroico, Bolivia on the winter solstice or Aymara New Year

Coca has been sacred to the indigenous peoples of the Andean region for thousands of years. In Bolivia, the Quechua and Aymara peoples make up the majority of the rural population, and use of the coca leaf is widespread among them. The practice is associated with social and cultural solidarity, economic activity and work, medicinal factors (such as adding nutrients to the diet and providing protection against altitude sickness or stomach pains), and spirituality, restoring the balance between natural and spiritual realms.<sup>63</sup> For those involved in coca cultivation, this activity often constitutes their only means of subsistence.

The first Western attempts at prohibiting coca came with colonisation in the 16<sup>th</sup> century, when the Catholic church became aware of the plant's role in native religious ritual. An agreement with coca was achieved, however, recognising the plant as a means of first necessity – this agreement lasted until the 20<sup>th</sup> century. Following World War II, the UN led a drive for 'modernisation', which identified the practice of coca chewing as being primitive and outmoded. A report of the ECOSOC Coca Leaf Inquiry Commission published in 1950, supported the assumption that coca chewing was a harmful habit, a form of 'drug addiction' and a degenerative moral agent causing malnutrition.<sup>64</sup> This report resulted in the scheduling of the coca leaf in the same schedule as for cocaine and heroin in the 1961 Single Convention on Narcotic Drugs (Schedule I) and a provision for the abolition of coca chewing within 25 years. Since then, the report has been criticised for being biased, scientifically flawed, culturally insensitive and even racist. A 1995 study by the World Health Organisation

(WHO) concluded that the 'use of coca leaves appears to have no negative health effects and has positive therapeutic, sacred and social functions for indigenous Andean populations.'<sup>65</sup> This study, however, was never made public.

The international prohibition of the coca leaf demonstrates a clear misunderstanding of indigenous customs and traditions. Andean and Amazonian coca consumers often feel ignored, insulted and humiliated by the call by the international community and the UN to abolish what they consider to be a healthy ancestral tradition.

In order to repair this historical error, Bolivia made an attempt at amending the 1961 Convention to remove the obligation to ban coca leaf chewing – an initiative that was blocked by a coalition led by the USA. As a response, in June 2011, Bolivia withdrew from the 1961 Convention, announcing its intention to re-accede with a reservation to align its treaty obligations with its constitution.<sup>66</sup> Bolivia re-acceded the Convention on 10 January 2013, its reservation stating that: 'The Plurinational State of Bolivia reserves the right to allow in its territory: traditional coca leaf chewing; the consumption and use of the coca leaf in its natural state for cultural and medicinal purposes; its use in infusions; and also the cultivation, trade and possession of the coca leaf to the extent necessary for these licit purposes.'<sup>67</sup> Since then, Bolivia has developed an innovative community control approach to coca production, with a strong focus on partnership working with coca producing communities to ensure that subsistence farmers are not affected by a sudden and forced removal of their means of subsistence (see Chapter 4.2).<sup>68</sup>

Another condition for the traditional use of internationally controlled plants was stipulated in article 14, para. 2 of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which provides that drug policies should ‘respect fundamental human rights’ and ‘take due account of traditional licit uses, where there is historical evidence of such use’. However, this clearly contradicts the obligations included in articles 14.1 and 25 of the 1988 Convention, which state that the treaty’s provisions should not derogate from any obligations under the previous drug control treaties, including the 1961 obligation to abolish any traditional uses of coca, opium and cannabis.<sup>70</sup> This lack of clarity around traditional uses of these plants has enabled governments to place strict control mechanisms on cannabis, coca and opium, but also on traditional psychoactive plants that have not been classified by the UN, such as khat and kratom. In order to ensure that the rights of indigenous groups are adequately protected, there should be an explicit recognition of the traditional use of internationally controlled substances – and the UN drug control conventions should be revised to accommodate this obligation.

## Implementation issues involved

### Indigenous rights protected in courts

In exceptional cases, jurisprudence has recognised the rights of indigenous people to use internationally controlled plants to protect their traditional cultural and religious rights. This was the case, for instance, in Italy where a drug conviction was reversed on appeal on the grounds that the lower court had not considered the religious rights of a Rastafarian defendant to use cannabis.<sup>71</sup> Similarly, in March 2015, the Oral Tribunal of Arica in Chile recognised the right to use the coca leaf for cultural purposes.<sup>72</sup>

### Legal exceptions to protect indigenous rights

Some governments have revised their drug laws and policies – often as a result of favourable court decisions – in order to include provisions within their national legal systems to allow the traditional use of certain psychoactive plants, under specific circumstances.

This is the case for example in Canada, where Section 56 of the Canadian Controlled Drugs and Substances Act stipulates that: ‘The Minister may, on such terms and conditions as the Minister deems necessary, exempt any person or class of persons or any controlled substance or precursor or any class

## Box 3 Khat: The dangers of prohibition

Khat has been used for hundreds – if not thousands – of years in the highlands of Eastern Africa and Southern Arabia. Traditionally, khat has been chewed communally, after work or on social occasions, in public spaces or dedicated rooms in private houses. Global khat markets have been driven by demand from diaspora populations settling in Europe, particularly from Somalia. So far, there has been little cross-over from migrants to the mainstream European population – khat use remains concentrated among Eastern African migrant communities who consume khat in commercial establishments, and communal centres where social and community bonds remain strong. This enables consumers to control the quality of the khat they use and to perpetuate cultural and social traditions among their community.

A number of studies have demonstrated that the potential for dependence associated with khat, and the physical and mental health risks related to khat use, remain very low.<sup>73</sup> Evidence also suggests that prohibiting khat use can lead to a number of negative consequences, including expanding the isolation and vulnerability of immigrant populations, and impacting negatively on livelihoods and economic development in producer countries.<sup>74</sup>

For instance, the recent prohibition of khat in the UK – adopted against the expert advice of the scientific community<sup>75</sup> (see Chapter 2.1) – is likely to generate an important illicit criminal market, and may alienate certain ethnic minorities in the country.<sup>76</sup> Beyond the UK itself, the ban had devastating impacts on khat producing areas in Africa, in particular in Kenya.<sup>77</sup>

thereof from the application of all or any of the provisions of the Act or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.<sup>78</sup> Although this exemption is rarely applied to protect indigenous rights, an exception was made for the import and use of ayahuasca by the Ceu do Montreal followers a small group of religious leaders using ayashuasca (which they call Daime) for traditional purposes.<sup>79</sup>

A similar rule exists in Section 1307.31 of the US Code of Federal Regulations with regards to peyote – a small, spineless cactus containing the psychoactive alkaloid mescaline (controlled under the 1971 Convention), which is used by members of the Native American Church during religious ceremonies. The rule states that: ‘The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church’. As for Canada, this provision is limited in scope, but it effectively enables Native Americans to perpetuate their religious traditions and rituals by using peyote without fear of prosecution.

Peru, Colombia and Argentina also have domestic legal exemptions for a coca leaf market. Indeed, Peru has always maintained an internal legal coca market under the state monopoly of the National Coca Enterprise, ENACO.<sup>80</sup> Peru has also recognised the traditional use of ayahuasca as part of its cultural heritage.<sup>81</sup> Colombia introduced specific exemptions for coca in indigenous territories.<sup>82</sup> As for Argentina, in 1989 it introduced the following provision in Article 15 of its Criminal Law, N23.737: ‘The possession and consumption of the coca leaf in its natural state, destined for the practice of “coqueo” or chewing, or its use as an infusion, will not be considered as possession or consumption of narcotics’.<sup>83</sup>

The latest country to date to have adopted an exception to its drug law is Jamaica, with regards to the right of Rastafarians to use cannabis in their religious ceremonies (see Box 1).

### Constitutional protections of indigenous rights

Bolivia is no doubt the country that has gone furthest in seeking to protect the rights of indigenous groups to produce and use coca for traditional purposes. In 2009, Bolivia adopted a new constitution, in which it recognised the traditional use of the coca leaf as a cultural heritage,<sup>84</sup> therefore ensuring that the right of Bolivian indigenous communities and all its citizens to chew coca is protected (see Box 2).

### Regulating plants not placed under international control

As mentioned above, some plants containing psychoactive substances are not included in the UN

drug control conventions, therefore placing no obligations on governments to schedule them – but some did nonetheless. This is the case, for instance, for kratom, khat and ayahuasca. Kratom is currently prohibited under national laws in several Asian countries (including Thailand, Australia or Myanmar), while the national legal status for khat varies considerably from country to country. As for ayahuasca, there are three broad legal statuses for the plant: 1- countries in which there is a legal vacuum, and where the plant’s status might be decided by court decision and jurisprudence; 2- countries where the plant is specifically prohibited (as is the case in France); and 3- countries that allow and sometimes regulate certain uses of ayahuasca, while other uses remain outside the remit of the law (for example in Peru).<sup>85</sup>

## Key resources

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