9. Drug policies: Arcane, ineffective and contrary to human rights protection*

The human rights community has increasingly drawn into its portfolio of advocacy and research activities the grave and systematic injustices resulting from the implementation of counter narcotics laws and strategies. Alongside NGOs in North America and Europe, Latin American human rights organizations have been at the forefront of this strategic shift. This mirrors the more progressive position that a number of Latin American governments have recently adopted vis-à-vis the international system for the control of narcotic drugs, which is administered through the offices of the United Nations Office on Drugs and Crime (UNODC).

This contribution to the CELS annual report situates the importance of human rights advocacy on drug policy reform in broader historical context. It examines the reinforcing harms that result directly from repressive and punitive drug policies and from the lack of accountability for the negative impacts of counter narcotics programs, which - by the metrics of the UNODC itself - have been a resounding failure.

In recognition of the unacceptable costs of the drug war, the 2019 UN General Assembly Special Session on the Drug Problem (UNGASS) was brought forward three years to April 2016 on the initiative of Colombia, Guatemala and Mexico. The UNGASS was requested to:

> Conduct an in-depth review analyzing all available options, including regulatory or market measures, in order to establish a new paradigm that would impede the flow of resources to organized crime groups.

This was not achieved. Instead, the outcome document reflected a broken consensus on global drug policy and deep international division over strategy for addressing the drug trade and drug related harms. The period until the 2019 UN high level session must therefore be one of sustained advocacy around the urgency of drug policy reform.

Those involved in the drug trade as consumers, producers or traffickers rarely elicit public sympathy. They are easily written off as deserving of the violence,

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illness, deprivation and incarceration that is linked to engagement in illegal activities and dangerous behaviors. But it is argued here that *counter narcotics policies* not only create and exacerbate the risks to individuals, they snowball the highly negative impacts of anti-drug efforts into the wider family, community and society. This in turn undermines prospects for development, security and democracy at local, national and international level. Latin America has been a primary theatre of coercive counter narcotics efforts and the region serves as a cogent example of the corrosive effects on the credibility, legitimacy and accountability of public institutions, including criminal justice systems and the police, of punitive enforcement and draconian criminalization strategies.

One does not have to be involved in the drug economy to be deleteriously affected by violent and militarized efforts to forcibly suppress the drug trade. From a rights perspective, it is a matter of grave concern that anti-drug strategies enable the state to renege on basic obligations to citizens – usually the most vulnerable and marginalized in society – including through the denial of treatment, services, and access to justice. That the implementation of counter narcotics policies reinforces racial, gendered and socio-economic inequality, as well as imposing disproportionately high enforcement costs on countries of the Global South underscores the urgency of policy change.

This critique is framed around four key characteristics of this most unique of international public policy areas. The arcane nature of the drug control framework is addressed first, with institutional path dependence highlighted as a key factor explaining the failures of drug policy and also the challenges facing the reform lobby. Using UNODC metrics, the record of the international control framework is then assessed and found to be deeply problematic. The flaws underpinning guiding principles are outlined as an explanation as to why current approaches cannot succeed, before the remarkably isolated and 'silo' nature of drug policy actors and institutions within the wider UN system is considered.

1.1 The Historical Context of 'Narcotic' Drug Control

The assumptions and principles of drug policy are now over a century old. This is quite extraordinary. In no other area of government intervention for the 'public good' – from education to public health, from housing to public transport, is strategy and policy embedded in nineteenth century approaches.

Contemporary drug policy is primarily framed by a landmark meeting convened in 1909 at the initiative of the US government. Held in Shanghai, China, this brought the 'great powers' of the day together to consider controls on the import and export of opium. At that point opium, alongside substances such as other opium poppy plant derivatives (morphine and heroin) as well as cocaine and cannabis were freely traded commodities shipped from rural economies in the Global South to refinement, manufacture and consumption hubs in the industrializing North.

These 'narcotics' had historically occupied a pivotal position in early international trading systems, with opium in particular underwriting some of the costs of Spanish, Dutch and in particular British imperialism in Latin America and South Asia. The value of these substances in the nineteenth century lay in their medicinal use in an age of rapid industrialization and urbanization, and before the advent of a professionalized health service. Widely available and routinely dispensed to children as well as adults, opium, cocaine and cannabis based products were marketed by the emerging pharmaceutical sector as tinctures, lozenges, syrups and injecting solutions and purported to cure a range of infectious disease and illness.

However, the US federal government was hostile to a trade, which unlike the European powers, the country had no vested interest in. There was also a strongly moral dimension to the US position, informed by the puritan ideology of the American prohibition movement. Emerging in the 1860s as a more radical element of the European temperance movement, US prohibition organizations viewed the use of intoxicating substances as immoral and 'foreign'. Moreover, in an age of the 'white man's burden' and an assumed responsibility to Christianize Asia, the McKinley and successor Roosevelt administrations worked with the crumbling Chinese Empire to establish an international system of opium export and import regulations.

The resulting 1912 International Opium Convention of The Hague was the first international drug treaty. It laid the foundations for a seismic shift in the responsibilities of the state, which was now required to regulate personal behavior by controlling domestic manufacture and consumption of dangerous substances. The 1912 Convention was the world's first international model of regulatory collaboration, with thirteen drug treaties following through to 1990. These gradually expanded the range and number of substances under the control regime and the policing and reporting requirements of signatory

states. As such, the 1909 Shanghai conference set the intellectual and institutional direction of the drug control system and approaches that operate today. To put it another way, we respond to the complex, transnational challenges of intravenous drug use (IDU) related HIV/AIDS, internet-based drug sales and drug funded international organized crime through a framework devised by imperial powers at a time when women could not vote or wear trousers, when nose size was seen to determine intelligence, and when addiction was understood as a problem of 'godlessness'.

The 1961 Single Convention, the most important accord in the international treaty framework, elaborates these principles as operational and binding on signatory states in order to protect the "health and wellbeing of mankind." In its language (which strongly emphasizes the 'evil' of drugs), the 1961 Convention reflects an important shift in international drug control after the Second World War. Positioned as a global power following the defeat of the Axis countries in 1945, the US was able to impose a more restrictive international control framework and more draconian responses to control violations.

The evolution of the treaty framework was underpinned by an expansion and increased specialization of drug control agencies and institutions, both within the United Nations and also at national level. This re-orientation steered the international system away from the earlier, pre-war model of regulation – as overseen by the League of Nations and advocated by European powers, toward the US preference for prohibition.

Signatory states assumed the "duty to not permit possession" of drugs controlled under the 1961 treaty (Article 33) and to "adopt measures as will ensure that […] possession […] shall be a punishable offence" (Article 36). Indicative of the trend of deepening the existing model, the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances set out that:

> Each party shall adopt such measures as may be necessary to establish a criminal offence under its domestic law […] the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption Article 3).

In relation to trafficking, "Serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty" (Article 36).

With regard to the cultivation of narcotic drug crops, concentrated at that time in Turkey, Thailand and India in the case of the opium poppy, and Peru and Bolivia in the case of coca, the 1961 Single Convention established a requirement to uproot and destroy illegally cultivated narcotic crops in line with the ambition that:

> The quasi-medical use of opium must be abolished within 15 years […] coca leaf chewing must be abolished within twenty-five years […] the use of cannabis for other than medical and scientific purposes must be discontinued as soon as possible but in any case within twenty-five years from the coming into force of this Convention (Article 45).

Importantly no compensation was provided to those countries that had historically relied on the cultivation of these crops, despite strong lobbying from Bolivia and Peru and their emphasis on preserving indigenous rights to coca cultivation and chewing. In relation to opium poppy, the 1961 Single Convention acknowledged the crucial role of opioids in pain relief and medication, but established a restrictive framework of state control of opium cultivation by a select number of countries, with non-cultivating states bound to a complex system of import limitations, checks and requirement submissions overseen by the International Narcotics Control Board (INCB, Article 21). However, the overall thrust was toward cultivation limitation, with Article 22 setting out that:

> Whenever the prevailing conditions in the country or a territory of a Party render the prohibition of the cultivation of the opium poppy, the coca bush or the cannabis plant the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic, the Party concerned shall prohibit cultivation […] A Party prohibiting cultivation of the opium poppy or the cannabis plant shall take appropriate measures to seize any plants illicitly cultivated and to destroy them, except for small quantities required by the Party for scientific or research purposes."

While forging multilateral commitment to a more robust model of international drug control within the new United Nations, the US also operated unilaterally and militarily to prevent drugs manufactured in 'producer states' from being trafficked into its territory. In 1971 a "war on drugs" was declared by President Richard Nixon, a securitization of weeds and shrubs that rendered Latin America the primary focus of US supply containment efforts. Executive measures subsequently introduced by President Ronald Reagan's renewed 'drug war' in the mid-1980s punished states deemed non-compliant with US counter narcotics efforts, including through the annual State Department certification exercise[1] that determined access to bilateral lending.

The treaty system is historically rooted. This has created a form of path dependence in that the principles as embodied in the 1912 opium treaty remain as pertinent today as they were over a century ago. These include an emphasis on: *supply side containment*, with producer countries assuming responsibility for preventing the supply of dangerous drugs to consumers in 'demand' countries; *interdiction and seizure* to disrupt the drug market; *enforcement* of national level anti-drug legislation through policing, surveillance and incarceration; and *international collaboration* to uphold and implement counter narcotics efforts and consensus around the ideology of *drug prohibition* and the goal of a world free of dangerous drugs.

These founding precepts remain the basis for evaluating the performance of states and compliance with the treaty system, including through reporting of interdiction, seizures, cultivation eradication and arrest rates. Strategy has also remained remarkably unchanged regardless of the manifold and complex changes in the international drug trade and drug markets – most particularly in the post-Cold War era of globalization, and despite the blurring over recent decades of the delineation between 'producer' and 'consumer' states, a dynamic linked to the rise of synthetic drug markets and hydroponic cannabis cultivation.

[1] Approved in 1986 by Congress, the narcotics certification process requires the State Department to annually issue a list of major drug-producing and drug-transiting countries. Listed countries must certify that they are fully cooperating with U.S. anti-narcotics efforts and complying with the UN drug control conventions or otherwise face sanctions. These include mostly a suspension from U.S. foreign assistance and/or U.S. opposition to loans from multilateral development banks for the non-complying countries.

1.2 Results

Ordinarily, the policy process assumes that the design and implementation of policy interventions is configured, evaluated and modified around verifiable indicators leading to goal achievement – or at least progress toward policy objectives; that metrics link to output and not just activities, and that relevant stakeholders are engaged in the policy process. This is not the case for drug policy, which has remained static in policy and principle despite evidence that targets for reducing the manufacture, trafficking and consumption of narcotic drugs have been recurrently missed, year after year, decade after decade.

More people participate in drug market exchanges than at any previous point in the history of the control system. This is despite the high cost of engagement in the illegal trade, including the possible deprivation of liberty, the loss of access to employment, children and housing and, in the most draconian of cases, capital punishment and the loss of life.

Looking specifically at patterns of consumption, an estimated 247 million people used drugs at least once in 2014 (1 in 20 people aged 15-64), part of an upward trend since 2009 when there was an estimated 210 million users according to the annual UNODC produced World Drug Report. In relative terms, this is a small percentage of the global population when compared to arguably more pressing issues of illiteracy (affecting 785 million adults), hunger (925 million people), poverty (1 in 5 people) and conflict and state fragility (1.5 billion people). But as a metric by which the performance of the drug control regime should be judged, and considering annual global expenditures on counter narcotics total an estimated US$100 billion per year, the consumption figures are demonstrative of institutional failure.

For a regime committed to the health and wellbeing of mankind, problematic statistics for the UNODC include 207,400 drug-related deaths in 2014 (mainly linked to overdose), that 29 million drug users are estimated to suffer from some form of drug use disorder, and that of the 12 million people who inject drugs 14 percent are living with HIV. Not only are more people consuming illegal drugs, the range of substances available is now more diverse, cheaper and purer than has ever previously been the case.

The demography of drug use is also evolving – women and girls are an increasingly important element of drug markets – at both the manufacture

and consumption ends of the chain; individuals are being initiated into drug use at a younger age, and data on drug 'careers' demonstrate that consumers are using drugs for a longer period of time and also engaging in patterns of polydrug use. The geography of drug markets has also undergone redefinition. The Global South – traditionally the hub of drug crop cultivation, drug manufacture and outward trafficking – now constitutes an ever expanding consumer market, while the North is conversely assuming a more significant role in narcotic manufacture – specifically in relation to cannabis and synthetic drugs. With consumption and manufacture expanding both South and North of the globe, the overall trend is of a larger, more complex, integrated and sophisticated criminal market valued in the last comprehensive estimate by the UNODC (2003) at an estimated US$ 321.6 billion per year or 0.9 percent of global GDP.

Crucial to an understanding of the disproportionate impact of drug policy strategy on the people and countries of the Global South, it should be noted that the orientation of the international system is toward the control of naturally occurring narcotic substances, which is to say drugs such as opium, cocaine and cannabis that are plant based (the opium poppy, the coca leaf and the cannabis *sativa* plant). While this type of 'organic' narcotic substance was traditionally dominant in the illicit market, the contemporary period has seen a boom in chemically manufactured synthetic drugs, referred to as Amphetamine Type Substances (ATS), hallucinogens and psychedelics such as amphetamine, methamphetamine, Ecstasy MDMA, LSD and also a raft of new psychoactive substances (NPS or legal highs) that are typically chemical copies of naturally occurring drugs such as synthetic cannabinoids, but which skirt controls through minor molecular modification that take them outside of the remit of the control framework. According to the UNODC, NPS are: "proliferating at an unprecedented rate, posing a significant risk to public health and a challenge to drug policy" with 102 countries reporting a total of 644 NPS to the UNODC between 2008 and 2015.

To underscore the scale of shifts in illicit drug markets and the rise of ATS manufacture and consumption, it is useful to examine the data provided by the UNODC despite – as discussed below –problems with the reliability of reporting information provided to international drug control authorities. While cannabis has remained overwhelmingly the most widely consumed controlled substance, ATS are the second most prevalent category of drug. In its 2014 Global Synthetic Drugs Assessment the UNODC acknowledged that:

> ATS were firmly established on global illicit drug markets and that use levels often exceeded those of heroin and/or cocaine [...] surging ATS seizures point to a rapid expansion of the global market, with total ATS seizures rising by more than 80 percent to more than 135 tons in 2012.

The growth of the ATS market, with key manufacture sites in North America and Europe, is displacing the traditional importance of both the cocaine and opioid supply chains although importantly, these latter drugs continue to be at the forefront of eradication and interdiction operations. This underscores the path dependent nature of the control model and its lack of adaptability in a dynamic environment. According to figures in the 2012 World Drug Report, those reporting annual cocaine use in the 15-64 age group was half the number reporting ATS use (excluding MDMA) at 13.7 million and 26.2 million people respectively. At 15.9 million, the figures for opioid use also trailed ATS.

In the case of narcotic drug crop cultivation there has been no progress in advancing the supply reduction schedule of fifteen and twenty five years set out in the 1961 Single Convention. Opium production in Afghanistan increased 43 percent in 2015 due to an estimated 10 percent increase in the cultivation area to 201,000 hectares, the highest level in over two decades. Including estimates for Colombia, Mexico, Guatemala, Pakistan, Laos, Myanmar, Thailand and Vietnam, the total area under opium poppy cultivation in 2015 was an estimated 281,100 hectares with 4,770 tons of potential opium production. Coca cultivation has seen a modest decline from 158,000 hectares in 2004 to 132,300 hectares in 2014, of which 20,400 hectares was reported in Bolivia, 69,000 hectares in Colombia and 42,900 hectares in Peru with potential manufacture of pure cocaine estimated in 2014 – a full thirty years over the 1961 Single Convention schedule - of 943 tons.

These figures are deeply problematic, not only because they underscore goals have not been met, but because they are unreliable and fail to present a full picture of counter narcotics policy impacts. For nearly half a century, the drug control regime has focused on a narrow set of indicators to determine the progress and performance of national governments. This includes illicit drug price, purity and availability; arrest and incarceration rates; volume and type of drug seizures and eradication rates for drug crop cultivation. However, there are a host of factors that make reporting imprecise, including the different methodologies used by countries, the difficulty of obtaining truthful

information in a context of punitive enforcement (for example around consumption), the validity of extrapolating drug market size and trends from seizure rates; and the hidden nature of cultivation, manufacture and trafficking. The skewing of the regime to the advantage of the Global North also means that while we may have vast – if somewhat misleading information on raw narcotic cultivation levels, information on synthetic manufacture – including in the Global North, is thin. Moreover, in contrast to other public policy processes, a range of stakeholders are discounted from drug policy design, monitoring and evaluation, including for example drug users and drug crop cultivators – criminalization serving as a key factor of exclusion. As a result, the evidence base of drug policy interventions is weak and configured around assumptions of motivating behaviors and reasons for engagement in the drug trade.

Outputs and impacts do not form part of the UNODC metrics and as a result, negative externalities of counter narcotics enforcement are not captured. For example, while reported eradication demonstrates progress for the achievement of national or UNODC goals on cultivation reduction, the human impacts in terms of displacement or loss of livelihoods are not assessed and cannot therefore be mitigated. Similarly, the impacts on a dependent child of the incarceration of a drug using or trafficking parent is not measured in performance indicators, nor is the violence used by the security sector in accounting for arrest or seizure rates in anti-drug operations. Current metrics further encourage accelerated enforcement actions in order to meet annual and half yearly reporting requirements. At the same time, and underscoring the historical roots of the control model, target failure is frequently justified – including by the UNODC itself, through recourse to moral argument – that drug control is an inherently good thing whatever the results. This moral persuasion in turn legitimizes crude and indefensible strategies. For example, the response of some national level drug agencies and regional organizations to the ongoing presence and growth of drug markets has been to step up the policing of drug markets. This has repeatedly been the case in US counter narcotics strategy both domestically and overseas – with particularly deleterious ramifications for Latin America. More recently, the Philippines stands as the most extreme example of this lurch toward brutal suppression. In the year following the election of President Rodrigo Duterte in May 2016 on a platform of confronting violent crime, an estimated 6,000 people have been killed by paramilitaries and vigilantes in the so-called Oplan Tokhang or Philippine Drug War. In January 2017, Duterte's office published a so-called

narco-list of local mayors, police officers and public officials, with Duterte threatening:

> Look for your name in the narco-list. Son of a whore, if your name is there, you have a problem. I will really kill you.

The president has exhorted Filipinos:

> If you know of any addicts, go ahead and kill them yourself as getting their parents to do it would be too painful.

The Philippines is at one end of the spectrum, but the government response is not without precedent either in terms of strategy or casualties. But the historical experience demonstrates that no matter the brutality, the drug 'war' – be it of high or low intensity - cannot succeed. Efforts to suppress drug markets have been recurrently counterproductive, catalyzing dynamic effects of fragmentation, relocation and innovation. To understand why this is the case, it is useful to return to the founding principles of the control model and the ideology of prohibition.

1.3 Strategic Flaws

Drug prohibition is based on the postulation that successful eradication of drug crops and interdiction of drug traffic will elevate the cost of diminished supply, pushing consumers out of the market; and that punitive criminal justice frameworks will disincentivize participation in the trade, forcing narcotic drug crop cultivators and drug producers into legal employment. A second assumption is the presence, structure and functioning of a capable deterrent nation state, predicated on the Westphalian system of a sovereign entity with demarcated borders, territorial integrity and governance of a defined citizenship. Within this conceptualization, there is a neat and unproblematic distinction between the good, rational and formal state and its institutions on the one hand – all bounded and operating within the rule of law, and the violent, corrupt and ultimately repressible criminal trade on the other. Neither operating assumption is valid.

As has been documented by the experience of other prohibitions (sex work, alcohol, tobacco, coffee) criminalization generates a lucrative illegal trade. In the case of dependence inducing substances, markets have proved resilient.

This is due to the inelastic nature of demand, with some consumers acceding to pay escalating costs, while the value added by prohibition to illicit narcotic plant cultivation and drug manufacture incentivizes supply. These factors offset the costs of punishment at all levels in the production and distribution chain.

One step forward in the drug 'war' is offset by the logic and inevitability of two steps back – a successful seizure diminishes supply, in turn elevating price and increasing the incentives for actors to enter the supply chain. The possibility of large rents for those willing to engage in criminal supply has recurrently fueled violent competition for vacated territory and markets - Mexico serving as a particularly bloody example of this type of incentivization. This includes among state actors, with the military, police and other elements of the security sector and criminal justice system susceptible to lucrative collusion and protection rackets. Conversely the militarization of enforcement encouraged by bilateral frameworks ranging from Blast Furnace in Bolivia (1986) through to Plan Colombia (1998), Plan Mexico (2007) and the Central American Regional Security Initiative (2008) has resulted in human rights abuses that include execution, torture, arbitrary detention and rape in the context of security sector impunity, inadequate civilian oversight of counter narcotics actors and the recruitment of paramilitary forces into dedicated counter narcotics units.

The loss of market share in a particular drug - or the elevation of interdiction risk – frequently reorients criminal supply to a different drug type. There are multiple examples of this dynamic, for example the shift from cannabis to cocaine supply between Colombia and the US in the 1970s and more recently the supplanting of opioid markets with methamphetamine in South Asia. Alternatively, if drug trade values are low, criminal organizations diversify into other forms of illegal revenue generation such as money laundering, racketeering and people trafficking.

Similarly, the displacement of drug kingpins and 'decapitation' of large criminal organizations, as pursued with vigor by the US during Ronald Reagan's renewed drug war, has not forced drug cartels or their supply networks into oblivion. Rather, in what has been referred to as the 'hydra' syndrome, 'decapitated' organizations have sprouted multiple smaller heads, boutique *cartelitos* and new, more agile criminal alliances that reduce the

threats to their operations and profits by diversifying portfolios and maintaining flexible structures.

A further result of drug control 'success' is market fragmentation and substitution. This has been the experience across all aspects of the supply and consumption chain. For the nine out of ten drug users that the UNODC acknowledge to be non-problematic, shortage of a preferred drug will trigger shifts into different or new drug types; demand for cocaine in London, New York or Rio is not terminated by a large scale seizure. Consumers instead seek out new suppliers or modify drug preferences to match availability - this trend of shift and substitution more recently underpinning the growth of the NPS market. The UK cannabis market presents an interesting case of substitution. Following a reduction in imports from traditional supply countries in Lebanon, Morocco, India and Afghanistan in the 1990s, domestic production with the use of hydroponic growing kits accelerated. Not only did UK counter narcotics operations generate a novel domestic import substitution strategy, it also stimulated the emergence of a high potency cannabis or 'skunk' market based on the import and cultivation of genetically modified and selectively bred cannabis strains.

In terms of trafficking, interdiction and seizure similarly fragments and transforms supply routes and operations. In the South American case, Nixon's 'Operation Intercept' that imposed controls and searches of land transportation between Mexico and the US encouraged Colombian traffickers to diversify drug type – away from bulky and smelly cannabis into a new and at that point relatively unknown drug – cocaine; to change transportation – from land freight to air and shipping; and to alter routes – away from Mexican entry points into the US detouring instead through the Caribbean and the Pacific Ocean. Efforts to avoid detection and accelerate the movement of drugs through supply chains has constantly stimulated innovation in transportation technologies, for example the use of mini submarines, the impregnation of textiles and food stuffs with liquid cocaine and the use of mules when the risks of bulk trafficking are seen to be high.

As with problems of fragmentation and adaptation observed in the response of the consumption and trafficking aspects of the trade to enforcement efforts, drug crop cultivation similarly demonstrates a 'balloon effect'. Squeeze drug crop cultivation in one geographic region of a country and as with the squeezing of a balloon at one end, cultivation – like the air in a balloon – shifts

to another region. Squeeze a whole cultivating country in its entirety and cultivation relocates across borders and regions. The two approaches have been pursued by the international community to meet the cultivation reduction schedules of the 1961 Single Convention: eradication and alternative development (AD). Neither has been successful. The former is associated with coercion rather than being voluntarily undertaken by cultivator communities and has most usually been conducted by the security sector (domestic or external) or other state sponsored agents. Latin America has extensive experience of militarized eradication exercises, focused in Bolivia, Peru and Colombia from the 1980s onwards, while in South Asia, regimes in PDR Laos and Afghanistan have also undertaken coercive eradication campaigns of opium poppy.

The 1990s marked something of a step change within the control regime. Following a much lauded model of opium poppy cultivation reduction in Thailand sponsored by the late King Boumibol and the Thai Royal Highlands Project in the 1970s, the concept of alternative development was embraced by the United Nations in the 1998 Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development. This defined AD as:

> A process to prevent and eliminate the illicit cultivation of plants containing […] through specifically designed rural development measures in the context of sustained national economic growth and sustainable development efforts […] recognizing the particular socio-cultural characteristics of the target communities and groups, within the framework of a comprehensive and permanent solution to the problem of illicit drugs.

This shift to a more development and participatory approach emphasized negotiation with drug crop cultivators in efforts to support and formalize non-drug related economic activities.

The limitations of AD are multiple, ranging from a lack of adequate financing, underestimation of the complexities of rural development, neglect of the central role of cultivation in the livelihoods strategies of cultivator communities and, most fundamentally, the weak evidence base for the AD programs that have been undertaken. A key assumption has recurrently been that cultivation is driven by greed and simplistic profit motivations. The

failure to engage with the insecurities facing cultivators and the reasons for their reliance on narcotic crops has led to inappropriate and usually unsustainable programs that serve only to displace and perpetuate engagement in the drug trade.

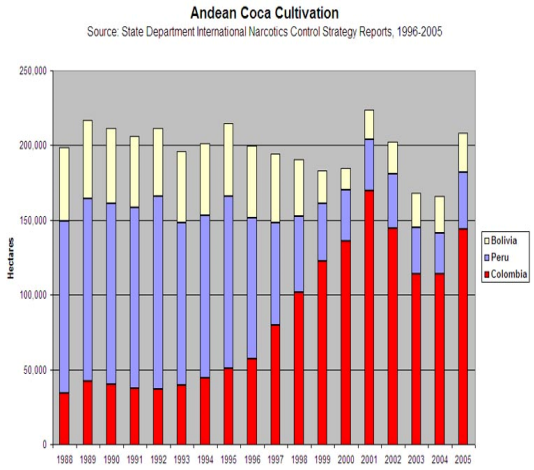
The poverty and insecurity of cultivator communities combined with the profit made at each stage of the transition from raw plant material cultivated in key countries of the Global South to refined end product retailed in the Global North is a key dynamic undermining ambitions of reduced cultivation volumes. As detailed by the Organization of American States in specific relation to the cocaine markets of the Americas, the bulk of the value added in these distribution chains is realized in the Global North, with the US accounting for 90 percent of the retail income generated by global cocaine sales while the Global South 'producers' bear enforcement costs.

The profit generated by criminalization, alongside the dynamic of sustained demand, ensures that while there may be progress in reducing cultivation levels in one locality or country, at the global level volumes remain unchanged or increased due to the dynamics of the 'balloon effect'. As outlined by one prominent expert:

> It is less plausible that successes even in a few nations could substantially reduce global production of either opium or coca. The reasoning is simple and rests largely on the fact that production costs (both cultivation and refining) constitute a trivial share of the retail price of drugs in the major Western markets [...] the costs of the coca leaf that goes into a gram of cocaine is usually less than $0.50; the retail price of that same gram sold at retail in the West is more than $100.25.

The 'balloon effect' is evidenced in the Andean coca cultivation regions of South America, Colombia displaced Peru and Bolivia as the leading coca and cocaine supply source in the 1990s following coercive eradication efforts in the latter two countries and as demonstrated in table 8. In turn eradication in Colombia in the 2000s and 2010s shifted cultivation and production back to Peru.

Table 2: Andean Coca Cultivation Dynamics



Patterns of cultivation displacement within state territories (the mercury effect) are persistent, spanning from the 1950s with the emergence of Jalisco, Nayarit and Michoacán as key opium sites in Mexico following eradication efforts in Sinaloa, to five decades later with the relocation of coca cultivation from Caquetá and Guaviare to Putumayo, Cauca and Viachada following eradication operations in Colombia.

Efforts to achieve reductions in the cultivation and production of drugs has led to extraordinary levels of violence. These have been most acutely felt in the countries of the Global South, with populations exposed to violence and coercion from state actors and criminal organizations. Mexico is the most salient example of the costs inflicted on societies by militarized counter narcotics enforcement efforts, with a surge in 'drug war deaths' following the deployment of the Mexican military to confront criminal organizations after 2007. According to data from the Mexican Prosecutor General's Office, drug related war deaths increased from 2,554 in 2007 to 15,273 in 2010 with a cumulative figure over 120,000 by 2016.

More broadly the conduct of eradication and counter narcotics operations in a context of security sector impunity has exposed communities to elevated levels of insecurity. An estimated 260,000 households (1.2 million people) faced starvation and death from treatable disease during opium cultivation bans and eradication exercises in Burma in the mid-2000s. In Laos, external pressure to achieve zero cultivation by 2005 led to a 45 percent decrease in

cultivation in 2003-2004 at the cost of widespread hunger. In Bolivia, forced eradication programs in the early 2000s pushed 50,000 families into severe economic difficulties, resulting in malnutrition and recourse to illegal income-generating activities such as prostitution and migrant labor. Coercive eradication can also lead to displacement, as in the cases of Colombia, with an estimated five million displaced people (15 percent of the population), and Laos with 65,000 displaced hill people.

Chemical spraying of narcotic plants and the forced relocation of populations has caused environmental and ecological damage, affecting alternative agricultures, husbandry, and human health. Underscoring the counterproductive impacts of these supply containment approaches, threats to livelihoods has led cultivator communities to forge alliances with insurgent, rebel, or criminal groups for their own protection. This raises important questions about the incompatibility of drug policy with development objectives, including the Sustainable Development Goals, and with fundamental human rights including freedom from fear, hunger and the threat of violence – as discussed in the final section below.

1.4 Drug Control as a Silo

According to Paul Hunt, former Special Rapporteur on the Right to Health:

> The UN drug control bodies rarely mention human rights, while the UN human rights mechanisms rarely mention drug control. The two speak different languages and hold different priorities.

The extent to which the treaty framework and drug policy legitimizes human rights abuses in order to achieve prohibition policy objectives is a cause of contentious debate. For example, Article 36 of the 1961 Single Convention allows that "alternatives to conviction/punishment can be applied" in relation to drug possession offences and further that national drug laws be subject to the "constitutional limitations" of member states[2]. For example in Colombia

[2] These are the cases of Colombia (Constitutional Court Ruling C-221 on 5 May 1994 and after the constitutional reform, the court issued a new ruling C-491 in 2012) and Argentina (The "Arriola" Ruling of the Supreme Court of Argentina on 25 August 2009). In Brazil, paragraph 4 of article 33 in the 2006 Law on Narcotics allowed for replacing a prison sentence with alternative punishments. It was considered in the Supreme Federal Tribunal decision in September 2010 which ruled in favor of a person possessing 13.4g of cocaine and determined that this prohibition was unconstitutional. The ruling established that a possibility of substitution should be addressed on a case-by-case basis.

and Argentina, national courts have found aspects of existing national drug laws unconstitutional. As such, defenders of the *status quo* maintain, it is not the policy that is problematic but rather the punitive behavior of some nation states.

However, the record of implementation is one of systematic and egregious rights abuses, with drug control bodies inexplicably exempt from international rights obligations. The drug issue has been problematized as a security issue. This 'securitization' has institutionalized the role of the security sector in the implementation and evaluation of drug policy. It is the police, military, intelligence, customs, criminal justice and penal system actors that determine and dominate drug policy, not health, education or development actors or, as discussed above, stakeholders in civil society, the drug user community or drug crop cultivators. The system is inherently skewed toward punitive enforcement, criminalization and stigmatization and this has in turn disproportionately focused on the most marginalized, vulnerable and disadvantaged in local communities and global society. The easiest to apprehend are those at the bottom end of the chain, the low hanging fruit that are most usually engaged in the drug trade due to desperation, the lack of alternatives or due to pressure. As a result, the impacts of drug policy enforcement serve to reinforce structural inequalities configured around gender, race and class. As discussed in research by WOLA and the International Drugs Policy Consortium on incarcerated female drug offenders in South America:

> Even though they bear the brunt of punitive policies, these women rarely pose a threat to society. Most are arrested for low-level yet high-risk tasks (small-scale drug dealing or transporting drugs); they become involved as a result of poverty, or at times due to coercion by a partner or relative. Their incarceration contributes little if anything to dismantling illegal drug markets or improving public security. To the contrary, prison tends to worsen the situation, further limiting their chances of finding decent and legal employment when released from prison, thus perpetuating a vicious cycle of poverty, involvement in drug markets, and incarceration.

For participation in any stage of the illicit drug chain, the penalties are severe, but most particularly trafficking following from the 1988 Convention. As previously outlined, this permits more strict or severe measures if deemed

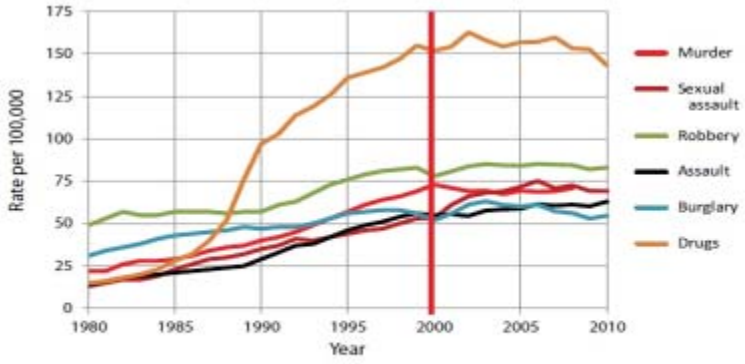
"desirable or necessary for the prevention or suppression of illicit traffic" (Article 24). Following from this convention, there has been an increase in the number of countries sanctioning the death penalty for trafficking offences, with a handful of countries: China, Iran, Singapore, Indonesia, Saudi Arabia and Thailand accounting for the bulk of these executions. As outlined by Gallahue:

> In 1979, it is estimated that ten countries prescribed the death penalty for drugs. By 1985, that number had risen to 22. By 2000, the number of states that imposed the death penalty for drugs had risen to 36. All of this occurred while governments in most of the world were abolishing the death penalty for all crimes at a historically unprecedented rate.

These draconian approaches to drug control operate in country contexts in which access to a fair trial cannot be guaranteed and where the authoritarian profile of national government raises concerns as to the use of politically motivated drug charges against regime opponents and minority groups. Ultimately, recourse to such inhumane measures has not reduced the flow of drugs. For example, in the case of Iran, heroin and amphetamine seizures have continued to increase in line with a rise in state executions for drug related offences at over 600 people per year.

Just as executing people for trafficking has not led to any discernible decline in drug flows, similarly draconian sentencing processes and incarceration rates have not diminished production, trafficking or use. The most frequently cited example here is that of the United States, which has the largest prison population in the world at 698 people per 100,000. By comparison, the rate in Russia is 446 per 100,000 while in China the figure is 119 per 100,000. The country's drug law initiatives of the mid-1980s lay behind the staggering escalation of the US federal and state prison population, with the overwhelming majority of these cases relating to non-violent possession offences.

Table 3: US Combined State Incarceration Rate



SOURCE: Beck and Blumstein (2012).

The high rates of incarceration of African America men for drug related offences is disproportionate both to this groups size within the general population and drug use levels. African Americans comprise 14 percent of regular drug users, but are 37 percent of those arrested for drug offenses. For Alexander, drug laws and their enforcement should be understood as a new incarnation of the infamous Jim Crow laws of racialized social control. While the lifetime likelihood of imprisonment for all men in the US is a ratio of 1:9, for African Americans and Latino men the rate is 1:3 and 1:6 respectively. By contrast for white men the figure is 1:17. For all US women, the rate is 1:56, but as with figures for male incarceration, African American and Latina women have a far higher likelihood of imprisonment at 1:18 and 1:45 respectively with a ratio of 1:111 for white women. The work of the Prison Policy Initiative demonstrates a tripling of female incarceration rates between 1980 and 1990 in the US, in line with the national trend of a steep increase in the prison population for drug related offences.

The targeting of racial minority groups in drug enforcement is certainly not unique to the US. The work of Release demonstrates that in the UK, enforcement is unfairly focused on Black and Asian communities, despite – and as in the US, drug use rates being lower than in the majority white community. Black and Asian people are stopped and searched for drugs at a disproportionately higher rate than white people (respectively 6.3 percent and 2.5 percent the rate of white people), and again mirroring the US experience, are subject to harsher penalties or sentencing for drug related offences. In London, black people are charged for possession of cannabis at five times the rate of white people and Metropolitan police figures for

2009/10 show that 78 percent of black people caught in possession of cocaine were charged compared to 44 percent of whites. Conversely, only 22 percent of black people were given a caution compared with 56 percent of whites.

The impacts of racialized drug wars are multiple and reinforcing. They delegitimize policing, erode community confidence in state authorities and they perpetuate patterns of exclusion and stigmatization. As has been evidenced in the US case, the incarceration of one in three African American men has fragmenting social effects on families, depriving households of breadwinners and children of fathers. This perpetuates the inter-generational transmission of poverty and marginalization.

The detrimental consequences for families and for children are also manifest in the impact of rising female incarceration for drug related offences. As discussed in the WOLA and IDPC research on South America:

> The use of prison as a response to drugs has had a disproportionately negative impact on women. In Argentina, Brazil, and Costa Rica, more than 60 percent of the female prison population is incarcerated for drug-related offenses. Many of them have low levels of education, live in poverty, and are the primary caregivers of dependent persons—children, young people, the elderly, and the disabled [...] The incarceration of women—caregivers in particular—can have devastating consequences for their families and communities. In the absence of strong social protection networks, their dependents are exposed to situations of abandonment and marginality. Indeed, women's incarceration may, paradoxically, increase the likelihood of persons in their care consuming drugs or becoming involved in illegal trafficking networks. This, in turn, increases the demand on governments to provide social services, an area that is often neglected.

Table 4: Female Incarceration in the Americas

Country	Number of Women Incarcerated for Drug Crimes	Year	Percentage of Women Incarcerated for Drug Crimes	Year
Argentina	790 (federal)	2013	65%	December 2012
Brazil	16,489	June 2013	60.6%	June 2013
Colombia	3,830	2014	45%	2014
Costa Rica	944	December 2011	75.5%	December 2011
Chile	1,889	April 2015	57.2%	April 2015
Ecuador	709	2015	43%	2015
Mexico	528 (federal)	2014	44.8%	August 2014
	1,547 (local)	2013	14.2%	May 2013
Peru	2,679	2014	60.6%	2014
Uruguay	126	2014	29.5%	2014

The gendered impacts of drug policy on women are further seen in the lack of access to treatment services and in the inappropriateness of services that may be provided. The stigmatization of drug use, and the perception of drug using women as 'fallen' puts them at risk of losing access to their children and reproductive capacities - including through coerced sterilization, while women's vulnerability to abusive male partners increases the potential for sexual transmission of drug related disease from male drug users. Drug policy remains profoundly insensitive to the differential gendered impacts of implementation and enforcement, and fails to meaningfully engage with gender mainstreaming or gender rights based approaches as advocated for example in the UN Convention on the Elimination of All Forms of Discrimination against Women or the Bangkok Rules for the treatment of female offenders.

This in turn links to the deeply problematic public health impacts of the drug policy regime and enforcement as recently detailed in a 2016 Lancet report. This highlights that while the 1961 Single Convention sets out as motivated by concern for "the health and welfare of mankind", and with the treaty

framework committing ratifying states to "take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved", policy remains skewed toward criminalization approaches in terms of strategy and funding for drug control.

The provision of harm reduction services such as access to clean injecting needles, opioid substitution or maintenance therapy and to drugs and services to prevent or reverse overdose remains chronically low, underfunded and politically contested. This is despite a slew of evidence demonstrating that these programs contain the spread of drug injecting related HIV Aids and Hepatitis C infection, that they do not encourage initiation into or an increase in drug use, that they are highly effective in enabling drug users to stabilize their lives, that they can serve as a gateway to other services, and that they are cost effective. In a 2004 position paper, WHO/UNODC/UNAIDS set out that every dollar invested in harm reduction:

> May yield a return of between $4 and $7 on reduced drug-related crime, criminal justice costs and theft alone. When savings related to health care are included, total savings can exceed costs by a ratio of 12:1.

And yet a serious funding gap persists. While an estimated US$2.3 billion was needed in 2015 to implement harm reduction interventions for people who inject drugs in low and middle income countries, where 58 percent of HIV positive people live, only US$160 million was invested by international donors, amounting to 7 percent of need. This figure compares with the annual US$100 billion spending on control through criminalization and enforcement. Prisons are a particularly vulnerable site for HIV/AIDS, with prison populations having a higher prevalence rate than the general adult population in many countries. In South Africa and the US, the prevalence rate is 2.5 times higher than the national population, while in Ukraine and Argentina, the ratio is a staggering 15 and 10 times. Given the twin problems of rising incarceration and denial / underfunding of harm reduction services, this is an alarming neglect of public health issue.

Rather than ensuring access to treatment and care, drug policy denies health rights by creating barriers. This is most particularly represented by the lack of access to essential medicines, another facet of drug policy that disproportionately impacts low and middle income countries. An extremely

high rate of people worldwide have no or insufficient access to treatment for pain related to terminal illness and pain such as that related to cancer and HIV Aids. Access to and use of pain alleviating opioid analgesics such as medical morphine - as recommended as an essential medicine by the World Health Organization is limited by:

> The persistence of myths, restrictive regulations, insufficient investment in the training of health professionals—resulting in weak understanding of pain relief and drug dependence—and related failure of supply and distribution systems.

An estimated 5.5 million terminal cancer patients and 1 million people with end-stage AIDS have no access to pain relieving medicines. This is within the context of generic oral morphine costing $0.01/mg and yet in 32 of the 54 countries in Africa morphine for pain relief is not available. By contrast, six high income countries account for 79 percent of global medical morphine consumption.

This is integral to the characteristic of international drug control as a suppression regime. The 'dual use' dilemma of controlled substances being both medicines of essential use but also potential abuse has more recently led to a lobby by China to tighten the controls on access to ketamine, a drug that is a central medicine in human and veterinary practice in many countries of the Global South.

In relation to each of the issue areas discussed above, there is ongoing and systematic violation of substantive human rights. On pain treatment for example, the UN Special Rapporteur on Torture set out in 2009 that:

> The de facto denial of access to pain relief, if it causes severe pain and suffering, constitutes cruel, inhuman, or degrading treatment or punishment.

The right to health in international law as set out in the UN Covenant on Economic, Social and Cultural Rights (1966) is routinely violated by drug control strategies that erode the state's obligation for the prevention, treatment and control of disease, and in creating conditions that ensure medical service and medical attention in the event of sickness. Principles for the provision of health services on the basis of non-discrimination and which

are voluntary, confidential and non-coercive as set out in General Comment by the UN Commission on Economic, Social, Cultural Rights, General Comment (2000) is routinely violated in relation to drug using populations.

Not only has the implementation of drug policy sat in a silo relative to human rights instruments, the UNODC has similarly been insulated from the best practice and recommendations of other UN and international bodies such as the WHO, UNAIDS and most recently, the OHCHR and United Nations Development Program, the latter recognizing the development dimensions of drug policy in a landmark 2015 publication. Under resolution 28/28 of 2015, the OHCHR recognised for the first time a link between drug policies and human rights. The decriminalization of drug use was cited as a necessary step to reduce barriers to health, and to improve HIV prevention. The resolution cited the lack of consent for addiction and dependency treatments, some of which involved deprivation of liberty and the use of automatic pretrial and arbitrary detention, and that drug related crimes cannot be considered 'most serious crimes' justifying the death sentence. The lack of proportionality in sentencing for drug related offences was highlighted and impacts on due process. Racial and ethnic discrimination and the gendered impacts of drug policy enforcement on women were recognized, as was the violation of indigenous rights and traditional practices involving the use of controlled drugs.

Running through the raft of international human rights treaties and instruments, from freedom from torture and cruel and degrading treatment, to cultural and indigenous rights, from the rights of children to the right to health and non-discriminatory practice, we see a constant clash of treaty obligations, with states routinely abrogating their obligations and responsibilities in order to fight a multi-billion dollar global trade in weeds, shrubs and chemicals.

Conclusion: Prospects for Change

In April 2016, the United Nations General Assembly convened a special session (UNGASS) to consider the global drug issue. The meeting, brought forward three years from the scheduled special session in 2019, was initiated by three Latin American countries Colombia, Guatemala and Mexico motivated by the perceived disproportionality of financial and social costs of counter narcotics strategy on the Global South. The forwarding of the meeting

further reflected the growing breach within the international system. While on the one hand, some countries that include Portugal, Uruguay, Bolivia, Switzerland and the Czech Republic, along with a number of US states, have embraced liberalization measures that include decriminalization and legalization of drug use and reduced controls on the cultivation of narcotic drugs (coca and cannabis), other states including Russia, China and South East Asian states such as Indonesia and more recently the Philippines and Cambodia, have been moving in a more repressive direction.

Latin American countries played an important role in the build up to the UNGASS, with the research produced by the OAS evidencing the burden that the international regime imposes on countries of the Global South. This reformist position built on three decades of frustrated efforts by Latin American countries to carve a path separate from an interventionist and draconian US posture. As early as 1986, the OAS issued the Inter-American Program of Action of Rio de Janeiro against the Illicit Use and Production of Narcotic Drugs and Psychotropic Substances and Traffic, which set out that drug control policies in the region should be consistent with human rights, culturally and environmentally sensitive, that they should improve standards of living and quality of life, and be included in the socioeconomic development policies of member states. Following the principles established by the Rio programme, the 1996 OAS Anti-Drug Strategy of the Hemisphere emphasised the shared responsibilities between 'producer' and 'consumer' countries, it stressed national sovereignty in drug policy and called attention to the socio-economic dimensions of the drug trade. In leading the debate on reform options, Latin American countries had high expectations of the UNGASS, which was framed by UNODC Executive Director Yury Fedotov as an opportunity for open and inclusive dialogue on policy options.

For advocates of drug policy reform, the UNGASS did result in some progress. For example, there was a tacit acceptance of harm reduction with recognition of "medication-assisted therapy programmes" and "injecting equipment programmes." The socio economic drivers of drug crop cultivation as well as trafficking and production were acknowledged, as was the global pain crisis of lack of access to essential medicines. Nevertheless, there was no progress on condemning – or ending, the use of the death sentence for drug related offences. Cannabis legalization issues were bypassed as was the need for new metrics to evaluate drug policy, while a request for regular reporting on human rights observance in drug policy implementation disappeared from the

UNGASS resolution. Structural problems, including arms trafficking and money laundering received negligible attention and criticism of the institutions of drug control were bypassed. Moreover, the thrust of the UNGASS was toward promoting a society free of drug abuse in which progress – no matter the evident cost – was seen to have been achieved. Most saliently, any discussion of drug treaty reform was skirted, with states instead maintaining an uncomfortable and an ultimately unsustainable position of 'flexibility' in treaty implementation.

While the treaties were seen to present "sufficient flexibility for States parties to design and implement national drug policies according to their priorities and needs" – conceding the right of states to pursue drug policy reform strategies, the flip side of this position is that flexibility simultaneously allows other states to pursue more repressive approaches. Indicative of this direction of drug policy travel, in its statement at the 59th Session of the Commission on Narcotic Drugs Vienna on March 14, 2016, the Association of South East Asian Nations (ASEAN) group set out that that: "We are acutely aware of the disastrous effects of drugs, not just on the drug abuser and the society at large, but also on national security and development. We are committed to suppress and eliminate the scourge of drugs to achieve the vision of Drug-Free ASEAN." In October 2016 the ASEAN Work Plan on Securing Communities Against Illicit Drugs 2016-2025 was adopted by the 5th ASEAN Ministerial Meeting on Drug Matters in Singapore. The Plan stressed that: "the region's ultimate goal shall be to achieve a 'Drug-Free ASEAN', including through 'strengthening national capacities of law enforcement and regulatory agency personnel.' During this period, and as set out earlier in this article, over 6,000 people have been subject to extrajudicial execution in the Philippines, while in Cambodia over 1,000 people were arrested in the first two weeks of the government's 2017 crackdown on the drug trade.

Looking forward, the next important moment for the UN is 2019 when the current Plan of Action comes to an end. To date there has been little progress in the determination of different regional positions going into the event, or high level institutional acknowledgement of the fraying consensus around drug policy. The international political context is also shifting and this is to the detriment of reform initiatives. Latin America countries may not be positioned to play the important role in driving reform debates as they have done over previous decades. A swing to the right in countries such as Brazil and Argentina, preoccupation with the hemispheric trade and political impacts of

the Donald Trump may combine to preclude the articulation of a united hemispheric lobby for drug regime change. And in a period of norm regress and the rise of populist authoritarian governments the language has once again become one of morality and conservative values. There are profound concerns as to violation of fundamentals of human rights such as freedom of torture, rights of asylum and in this landscape, opportunities for promoting rights based approaches in drug policy are diminishing. But for those concerned with advancing – or at least institutionalizing fundamental rights and freedoms, drug policy reform, and the 2019 UN session will be a focus for renewed pressure for change. There is the opportunity to articulate an advanced and evidenced based body of rights based recommendations and for these to address the silo nature of drug policy by configuring around the 2030 Agenda for Sustainable Development. Ultimately our experience is that there can never be a ban on illicit drug use – only on safe drug use, and that current approaches do more harm than good.