FROM WAR TO CARING FOR PEOPLE

DRUG POLICIES IN SOUTH AMERICA AFTER UNGASS

FRIEDRICH EBERT STIFTUNG

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This edition was printed under the care of Manuel Carballa, in the city of Montevideo, in the month of August 2016.

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PROLOGUE

After a century of policies focused on the fight against drugs, which followed a strategy focused on prohibitionism, with justified expectations we attended the United Nations General Assembly Special Session on Drugs (UNGASS 2016), in pursuance of Resolution 67/193, on 20th December 2012, and that of 70/181, on 17th December 2015.

It was an historic opportunity to put the reclamations of the misnamed *producing countries* in open discussion, unheeded decades ago, in time of a war of global reach decided by the United States and some Western powers.

South America has been at the crossroads between the actors who were empowered whilst the dogma of prohibition was imposed. The South American Council on the *Global Drug Problem* has been an excellent and legitimate setting to shed light on the claims that will be key when agreeing global governance on drugs.

With the passing of years, the phenomenon of drug trafficking has become more complex and has outpaced the ability of States to deal with it, for not even the most prosperous and industrialized can call themselves victors. While the problem becomes increasingly complex due to the increasing number of consumers, the appearance of new drugs with vertiginous destructive potential, the sophistication of the criminal industry that controls distribution channels appealing to violence, the appearance of the so-called couriers. Added to the insurmountable contradiction is ever-increasing access to illegal drugs while, on the other hand, evident restrictions on the use of medicines.

How to manage a problem of such proportions based on moral prejudices and without any scientific expertise? Only by appealing to multilateralism that begins, in the case of UNASUR, as the channel of greater legitimacy for the resolution of problems when there are several divergent views.

UNGASS 2016 represented an important advance in the transfer of the discussion from the muddy field of morality and Manichaeism to the fertile ground of reason, with a handhold on scientific evidence accumulated in recent decades to show the urgent need to rethink the fight.

These national or regional positions that feed on history, culture, customs, and, in general, the traits of

nations that, without distinction, are concerned about the issue, should result in a minimal consensus regarding the principles for more effective control, while ensuring access to medicines and unconditional respect for human rights and the rule of law.

The resolution approved by United Nations Economic and Social Council after UNGASS 2016 contains new features with historical assets, achieved by South American countries that have insisted on a change in addressing this issue, as expressed in the *South American Council's position for the global drug problem* on 31st August 2015, a consensus position that is a milestone in the history of regional governance on drugs.

Reiterating the unconditional commitment to the respect, the protection, and the promotion of human rights, fundamental freedoms, and the rule of law should be pillars around which the problem of the struggle against drugs is approached. This implies that people, as citizens, have guarantees and that, following the maxim implicit premise of humanism in full respect of international human rights instruments, must always be the purpose and goal of any action taken on behalf of an ideal that shelters all nations.

In this sense, the important role to be played by both civil society and academia is recognized, meaning there is room in the discussion for effective participation of affected populations in the formulation, implementation, and production of scientific evidence used for supporting the assessment of public policies of drug control.

The broad view of the causes of problems constitutes another advance of the Resolution. The multiplicity of causes is recognized, as are its effects on health, violation of rights, justice, public safety and the pauperization of social and economic conditions.

As such, shared responsibility should be the course of action at the multilateral level. The imposition of a unilateral dogma should remain in the background. Regional organizations and forums are an incentive for that principle, as they gather and channel positions in areas of the world which allow for recognition of disparate sensitivities towards the problem. Drug trafficking and its related crimes require the participation of all nations, as its transnational logic defies the often-arbitrary course of the borders between States. Hence, in UNGASS 2016 regional systems were ordered to set up mechanisms of control on the crimes which are strengthened by drugs.

The UNASUR proposal to seek alternative ways of regulating the weak links in the chain of drugs (consumers, peasant farmers, small time traffickers) is «legitimized» if, simultaneously, the strengthening of mechanisms to combat organized crime is considered –as proposed by the South American Council in the *Global Drug Problem*.

Looking ahead, it is essential that the proportionality permeates the systems and penal codes so that the sanctions are related to the dimensions of the conduct that they intend to punish. Ignoring or underestimating this principle will mean a setback in the idea of a justice that manages to give everyone his due. In UNGASS 2016 the

need to not relent until such proportionality is achieved was underscored.

All of this should not ignore the right to health, which leads to access to medicines, another of the nodal issues of UNGASS 2016. In recent years, the pharmaceutical industry's voracious appetite for higher profits has prevented millions of sufferers worldwide from exercising that right fully. The express commitment to achieve, by 2030, an end to epidemics such as AIDS and tuberculosis should not, therefore, go unnoticed, as well as a more effective combatting of hepatitis and other transmittable diseases linked to drug abuse.

There is still, however, a long way to go. UNGASS 2016 was not conceived to end a chapter in the history of the global governance of drugs, but to inaugurate what should be a new era. Its result invites us to optimism, not only for the real possibilities of change, but also for the strength with which the South Americans arrived, arising from a concerted position within UNASUR'S South American Council for the *global drug problem*. It will not be easy, but we will continue to insist on the purpose of humanizing control of drugs, in tune with the principles that have allowed us to advance in the appropriation of human rights, individual guarantees, and the full enjoyment of access to health, fundamental principles of UNASUR.

For this reason, UNASUR is preparing a *post UNGASS* 2016 position, to be taken into consideration by its decision-making bodies. In this position we will not only pick up on the progress made in UNGASS 2016 (defense of human rights as a benchmark in the fight against drugs, public health as a right to be protected, territorial autonomy), but we will propose steps to bring us together after the implementation of what was agreed at UNGASS 2016. There opened the way for different perspectives to address the phenomenon, leaving aside the way of war whose failure was *vox populi* in the pre-assembly debate.

Ernesto Samper
General Secretary of UNASUR

INTRODUCTION

Considering the complex challenges that the *global drug problem* represents for countries in the region, on 5th December 2014 heads of State and the government of UNASUR adopted a resolution to exhort the South American Council on the *Global Drug Problem* to «begin studying an alternative to the fight against drugs to be presented as the region's position in the 2016 Global Drugs Summit convened by the United Nations as in various preparatory meetings».

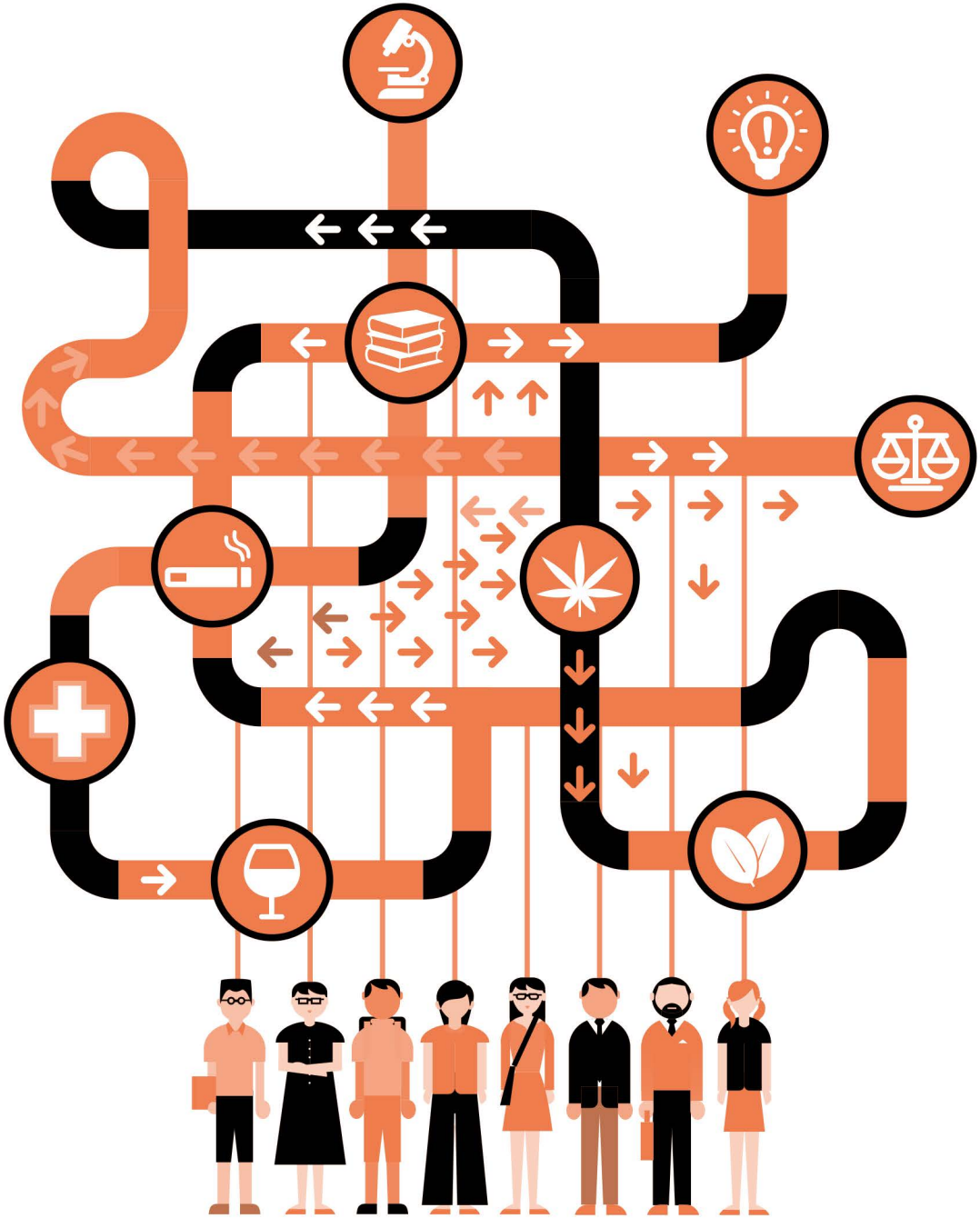
Complying with the mandate of the Member States, the General Secretariat threw itself into the development of a wide regional debate ahead of UNGASS 2016, to account for the phenomenon of the use of drugs at a regional level, reflecting its collateral effects and the global dimension of the problem.

The implementation of a comprehensive approach —based on respect for human rights and protection of ethnic and cultural diversity recognized in the Declaration of Indigenous Peoples of the United Nations— has been the instrument promoted by UNASUR to address the issue in general and the effects of the imposing of rules and sanctions on the identity and culture of the previous called *producer countries* —as occurred in the treatment given to the native peoples of the Andes in relation to the ancestral use of the coca leaf.

The lack of information and understanding of the traditional or ancestral uses of diverse plants, the low systemization of epidemiological information, and the insufficient dissemination of constitutional, jurisdictional, legal, and political mechanisms that govern the phenomenon hinder the design and the implementation of strategies promoted by the UNGASS declaration, reprising UNASUR'S position on the issue.

The following pages describe the pre-UNGASS regional debate process and present a comparative analysis of the proposals carried forward by UNASUR and the reflection of these in the emerging final declaration of the Special Session of the UN General Assembly in 2016.

At the same time, incorporating the points of view of academic, political, and social actors (including epidemiological and qualitative approaches), they make



an approach to the *state of the art* of legal frameworks, policies, and characteristics of drug use in the region.

The publication is the product of a long process of institutional cooperation between UNASUR, government actors, civil society, academics, and investigators. It presents an overview of the reality of drug use from information gathered by drug observatories in member states, supplemented with data about existing legal frameworks and recommendations of United Nations organisms on human rights, health, and development, among others.

Without claiming to be complete, it aims to stimulate and deepen the approach of the phenomenon to open new horizons of investigation and reflection that will help the region to advance in fairer and more humane drug policies.

UNASUR and Friedrich Ebert Stiftung (FES) have been facilitators of this process, which had the support of multiple actors from the member States, from multilateral organisms (particularly from various United Nations agencies), from civil society, and from academic entities and research centers from the region and around the world.

The material was produced by a technical team, coordinated by the sociologist Julio Calzada, FES consultant to UNASUR. Participating was sociologist Natalia Lacruz, technical assistance was provided by FES consultancy and the UNASUR Drug Observatories Network of Member States project team, coordinated by sociologist Martín Collazo and comprising political scientist Louise Levayer and anthropologist Marcelo Rossal.

UNASUR'S VISION OF THE GLOBAL DRUG PROBLEM

THE PROCESS TO UNGASS: A COLLECTIVE CONSTRUCTION

The *global drug problem*, including economic and social determinants such as political, monetary, and environmental costs, constitutes an ever more complex, dynamic, and multi-causal phenomenon, which generates negative effects on health, democratic coexistence, and human development.

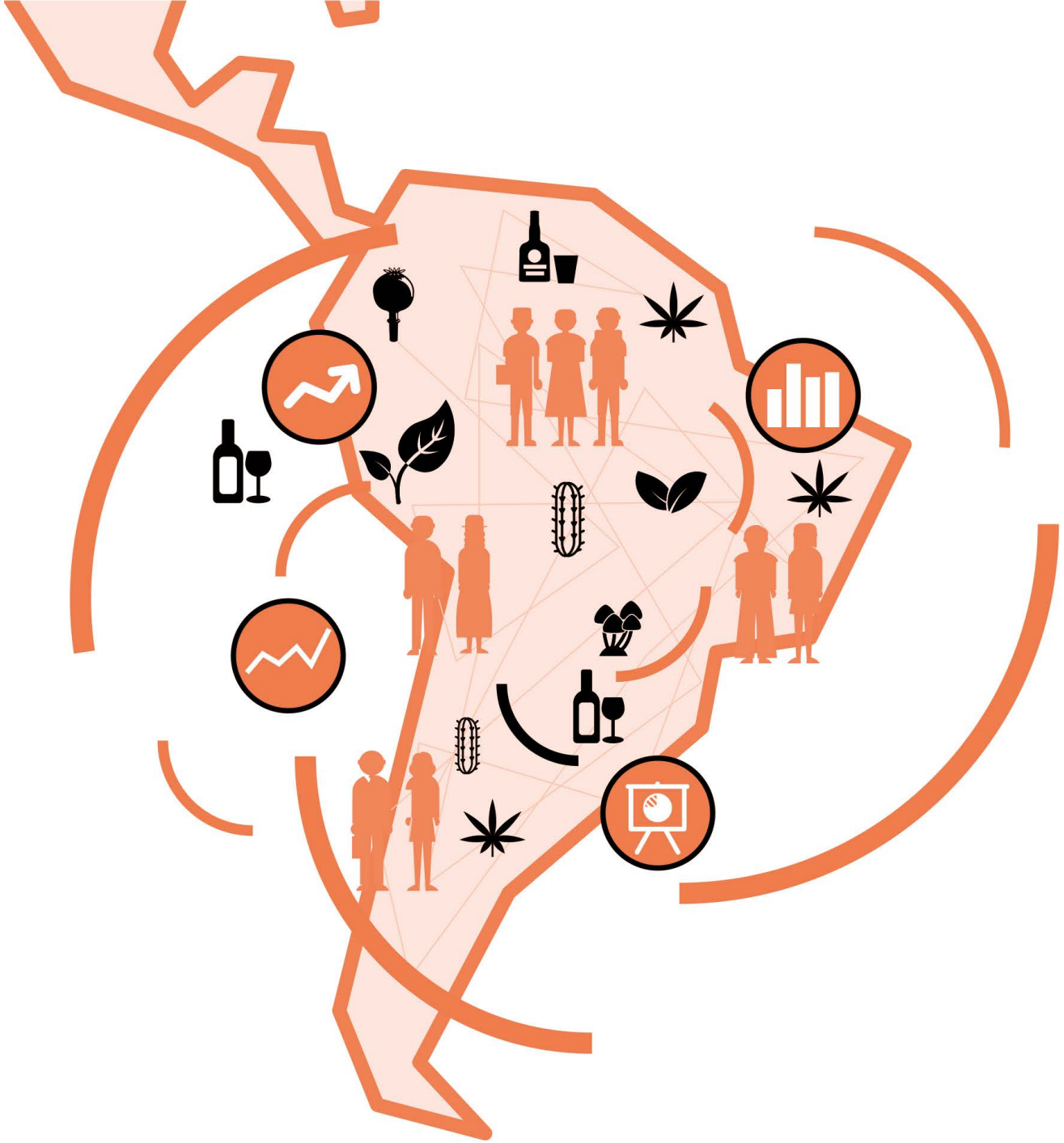
Since 2008, various evaluation processes have been developed by United Nations entities, regional or independent observatories, to measure compliance with the goals outlined in the 1998 UNGASS on drugs phenomenon. The reports allowed for conclusion that, after ten years of implementation of global, regional, and national plans aimed at eliminating or reducing production and use of drugs, the result has been the opposite to the one proposed.

In a context in which there are different conceptions competing over the nature of the phenomenon of drugs, at the request of Mexico, Guatemala, and Colombia, the UN agreed to hold a special session of the United Nations General Assembly to address the issue. And it resulted in a fruitful global, regional, and national debate between 2013 and April 2016, which involved a transformation on the view of the roots of the phenomenon and the ways to overcome it.

On the other hand, it does not escape any citizen of the region that South America has been and is one of the geographical areas of the planet most affected by the phenomenon of the *global drug problem*. As such, UNASUR took on the challenge of the debate with greater responsibility, from an integrated look at the different visions and sensibilities that exist in the region.

A VISION OF CONSENSUS

Since the conformation of the South American Council on the *Global Drug Problem* (CSPMD), countries in the region have adopted initiatives with alternative focuses



and oriented to the effective protection of the human being, in accordance with their own realities. Accordingly, the heads of State and Government of UNASUR adopted, on 5th December 2014, in the city of Quito, a resolution in which they urged the Council to «begin studying an alternative to the fight against drugs to be present as a position of the region at the next World Summit on Drugs in the year 2016 convened by the United Nations, and in various preparatory meetings».

The CSPMD–UNASUR, with the support of the General Secretary, took this recommendation and decided that the region should take a significant role in the global debate. From an *ad hoc* group convened by the General Secretary for to tackle the subject, the countries of the region agreed to the conformation of a special group that would make the resolution adopted on 5th December 2014 possible. As a result, the First Extraordinary Council on the *Global Drug Problem* met in Montevideo on 9th February 2015.

During this meeting, the countries agreed the importance of having an agreed position at UNGASS 2016 and agreed to the expansion of the *ad hoc* group, made up of a special group which worked between the months of February and August 2015.

During this time UNASUR'S CSPMD undertook a process of debate and exchange that culminated in the development of *UNASUR'S Regional Vision of the South American Council on the Global Drug Problem for UNGASS 2016*, in it's core aspects it covers six themes:

1. The perspective of human rights as a transversal element in all drug policies;
2. The public health approach focused on people and their circumstances;
3. A vision of the development of policies of an integral, balanced, and sustainable nature;
4. Social, cultural, and economic development with an approach made from territories and their particularities;
5. The strengthening of democracy and the rule of law;
6. The importance of regional and international cooperation.

1. The perspective of human rights as a transversal element in all drug policies

On this axis, the South American Council's declaration on the *Global Drugs Problem* reaffirms:

> the human being as the linchpin in drugs policies, to the extent that the ultimate aim of conventions is to achieve the health and wellbeing of humanity, as well as promoting and guaranteeing respect for human rights.

At the same time, the declaration recognizes and highlights that initiatives centered on dignity and human rights have been launched in the region

> recognizing that social, cultural, and economic plurality of the region's countries should permit the formulation of balanced and integral policies, privileging preventative measures in the approach to all the components of the *global drug problem*.

Sustains that

> the policies to tackle the *global drug problem* should be developed under full respect for civil, political, economic, social, and cultural rights, and the law in a healthy and adequate environment, within national legislations, in agreement with existing international law.

For this, a strategy is proposed to incorporate

> a transversal approach to human rights that ensures the access for people to health, social care, education, work, and justice, through measures that consider their environment and foster their well-being.

To achieve these purposes, UNASUR'S CSPMD proposes the elimination of institutional practices that can generate prejudices or attitudes of discrimination, marginalization, and stigmatization of drug consumers. States that:

> the focus on gender and the attention to vulnerable groups must be transversal and a priority in drug policies, with special emphasis on the approach of prevention, treatment, and rehabilitation, and social inclusion of protected subjects and vulnerable groups, in order to ensure and guarantee human rights, in the promotion of equality and non-discrimination.

Reaffirming the general perspective of human rights, the declaration bets on applying

> the principle of proportionality of penalties including crimes related to drugs, in accordance with the legislation of each State and international law, to adopt alternative measures and/or penalties to the deprivation of liberty for minor offences related to drugs; according to the UN conventions on drugs, thus avoiding impunity.

From this same perspective, delving into those particular aspects that characterize the territories of UNASUR countries, «within respect of human rights and respect for the rights of indigenous peoples» the need arises to «protect ethnic and cultural diversity, recognized in the *Declaration of Indigenous Peoples of the United Nations*».

2. The public health approach focused on people and their circumstances

Consistent with international instruments on health, drugs, and human rights, and understanding the perspective of public health from social conditions, UNASUR proposes

> to guarantee the right to health of drug users, with full access to treatment, which serves and respects their freedoms and fundamental rights, within national and international rules.

To achieve this, it states that

> consumption of drugs should not be criminalized, given that it limits the possibility that drug users can resort to the exis-

ting treatment on offer, as well as access to work, education, among other rights.

In function of the old-age tradition of the use of natural substances for palliative and/or healing purposes, and considering the substance concerned, UNASUR reaffirms the need to

guarantee the access to controlled substances for medical or scientific use in accordance with national legislations and the three international conventions on drug control.

For this it recommends considering reclassification of substances subject to international drug control regime under the 1961 Single Convention on Narcotic Drugs («when such substances are included in the essential drug list of the World Health Organization, in order to facilitate access to appropriate medical treatment») and strengthening the measures which improve equitable access to the use of drugs for medical and scientific ends.

At the same time it invites

to continue and deepen research on narcotic drugs and psychotropic substances, for medical and scientific purposes, undertaken by institutions and universities in accordance with the United Nations Conventions on Drugs and each State's legislation.

UNASUR recognizes

that drug consumption constitutes a matter of public health» and that States must ensure that y policies for reduction in demand contemplate: a gender perspective; needs, with special attention to vulnerable groups and subjects of special protection; rehabilitation and social inclusion of those affected by problematic drug consumption, as well as strategies to avoid their marginalization, stigmatization, and discrimination.

On the other hand, UNASUR makes a call to member States and the entire international community to:

—[destine] the necessary resources to development of policies and effective national and local strategies for prevention, early intervention, treatment, rehabilitation, and social inclusion, among others, and to reduce deaths, HIV infections, other transmittable diseases, and the negative consequences produced by problematic drug consumption.

—strengthen health systems, through effective and continued training of professionals, experts, and workers involved in the implementation of initiatives to reduce demand for drugs, and attention, treatment, and rehabilitation of people with problematic drug consumption.

Considering the need to «strengthen universal, selective, and targeted prevention programs in school, family, and work environments, privileging territorial and community perspectives », UNASUR highlights that

> prevention policies must include as essential elements different levels of intervention, which, following hte lifecycle, must take into consideration cultural, social, and economic conditions of the population groups to which they are directed.

Reaffirming the primacy of the perspective of human rights, UNASUR clarifies emphatically the will to «promote the elimination of compulsive treatment».

3. A vision of the development of policies of an integral, balanced, and sustainable nature

Certain effects of the phenomenon of drug use are no strangers to UNASUR, such as the health impacts of problematic use (on an individual, family, and community level); the social consequences of the absence or weakening of the rights of people to security and coexistence; the impact of drug trafficking and the resulting exponential growth in regional and global organized crimes.

Nor is the realization that global, regional, and national governance on drugs has not been able to control and reduce its use, production, and commercialization of drugs. Consequently, the institutionality of many States has been weakened by the growth of corruption.

Accordingly, UNASUR understood that the process of preparation and debate ahead of UNGASS implied

> an open, frank, and realistic debate on the assessment of achievements and the ways to address the existing and emerging challenges of the *global drug problem*, in particular the measures to achieve an effective balance between the reduction of supply and demand, and how to approach the key causes and consequences, including those in the fields of health, social, human rights, economy, justice, and security.

This democratic and inclusive debate should

> strengthen a comprehensive, balanced, multidisciplinary, and sustainable approach, given that the available evidence notes that the best results of drug policies, while multi-causal phenomenon, are based on the balanced development of all its components, among which are the reduction of demand, the reduction of supply, integral and sustainable alternative development, including preventative, judicial cooperation, and international cooperation.

A significant aspect was promoting that these components were considered on an equal footing, without preeminence over each another. States were encouraged to strengthen «the development of permanent academic and scientific research, that can support the formulation of public policies on drugs».

While the categories of producing, trafficking, and consuming countries have no value as features of the phenomenon in the second decade of the XXI century, some micro-regions of UNASUR have been strongly affected by the production of primary materials for the production of substances for non-medical use.

Thus it must be assumed that «the problem of small growers, means taking into account and addressing the social dimension of the phenomenon». As such, UNASUR considers it essential to continue programs and measures of alternative development, including preventive, which aim to address and mitigate the factors that cause poverty, inequality, social exclusion, and environmental degradation. For this, it proposes

> strengthening cooperation to promote programs of alternative development [...] favoring social inclusion, which allow facing and reversing the vulnerability of the sectors affected by production and illegal trafficking of drugs and, in particular, propitiating balanced and complete care of them, taking into account the guiding principles of the United Nations on alternative development..

4. Social, cultural, and economic development from the territories and their particularities

Given that the *global drug problem* can be analyzed from diverse factors or dimensions, UNASUR proposes:

> Drug policies should take into account economic and social factors that promote and maintain the *global drug problem*, which requires consideration of a territorial focus closely linked to development policies, promoting the articulation of national and local government interventions.

The implementation of these policies must offer

> comprehensive and sustainable responses that contemplate, as well as interdiction, interventions that promote social development, tackling territories affected by the production and illegal trafficking of drugs.

Such responses must be contingent with the realities of the affected territories, and their preparation should involve

> the active participation of all community actors, to strengthen the response of the States to tackle this phenomenon and contribute to improving the quality of life of the population, guaranteeing the full exercise of their rights, so that our societies find optimum conditions that allow them to live with health, dignity, peace, security, and wellbeing.

5. The strengthening of democracy and the rule of law

With the conviction that the strengthening of democracy and the rule of law will play a fundamental role in the construction of each one of the countries, UNASUR reaffirms

> its commitment to tackle the *global drug problem*, in accordance with International Law of Human Rights, in the framework of three international conventions on drugs, Public International Law, the United Nations Charter, and other relevant international instruments, the respect of sovereignty, territorial integrity of States, non-interference in internal affairs, and mutual respect among States.

To achieve the objectives of strengthening of democracy and the rule of law, it reaffirms the validity of «democratic institutionality and policies of prevention and the fight against corruption», promoting «policies of social inclusion as a way of strengthening citizen participation, democracy, and the rule of law» and «citizen participation in the design, formulation, and implementation of public policies on drugs».

It also highlights the need for initiatives based on scientific evidence and encourages «the exchange of experiences and cooperation, with a view to identifying measures to address the needs of victims of violence associated with the illegal trafficking of drugs».

6. The importance of regional and international cooperation

UNASUR understands global policies on drugs as part of a complex network of agreements that tend to regulate the drug use in a way that stops them causing irremediable damage to health and the wellbeing of humanity. As such, it proposes the need to adopt measures to:

- strengthen coordination and cooperation between police, investigative, and judicial organizations in the effective prosecution of organized crime, for the purpose of optimizing the resources that States invest.
- promoting the development of actions, as mucho n a national as international level, which allow for the identification and dismantling of organized criminal groups involved in all activities related to drug trafficking and related crimes.
- prevent the diversion of precursors and chemical substances used for the illicit manufacture of drugs.
- improve the responses of States to meet new psychoactive substances through the promotion of increased forensic capacity and scientific investigation, analysis, and exchange of information.

To face the challenge of achieving a firm policy against money laundering, corruption, illegal arms trafficking, and human trafficking

> international cooperation, Exchange of information, better practices and lessons learned are essential, based on mutual trust between States; as well as the strengthening of judicial cooperation and technical assistance.

Based on these premises, UNASUR reaffirms the validity of the *principle of common and shared responsibility* and invites the «strengthening of international cooperation within the United Nations drug conventions».

Finally, in the process of democratic debate without taboo subjects that preceded UNGASS 2016, the UNASUR region understand that it has, in terms of the suffering endured and the efforts undertaken, the moral authority to highlight the need to:

> improve coordination and harmony between the different agencies of the United Nations system, including the

Commission on Narcotic Drugs (CND), the main United Nations organ on drugs, the International Narcotics Control Board (INCB), World Health Organization (WHO), the United Nations Office on Drugs and Crime (UNODC), in coordination with the Human Rights Council, the United Nations Development Programme (UNDP), the United Nations Educational, Scientific, and Cultural Organization (UNESCO).

UNASUR POST-UNGASS

TOWARDS A COMPREHENSIVE, AND SUSTAINABLE REGIONAL DRUGS POLICY

In the process of dialogue and debate pre-UNGASS the perception that the focus of the war on drugs had not achieved the expected results was ratified. So it was expressed by regional organizations such as ECLAC, UNASUR, and MERCOSUR. Thus, the need for drugs policy to take a new focus was put on the agenda on a global and regional level.

In the search for a comprehensive and humane response, based on the parameters of rights and freedoms and in the institutionality that global society has development in the last 50 years, the entire United Nations system has a lot to contribute to the drugs policies that need to be developed in the future.

On the other hand, the debate on drug policies that will take place in the 2016-2019 period will surely mark the next 20 years of work on the subject. It is therefore necessary to deepen reflection and dialogue so that the design and implementation of policies related to the drugs phenomenon are committed with the full enjoyment of human rights and the set of United Nations instruments on the subject.

Over the following pages we will undertake a general analysis on the where the vision of UNASUR on the *global drugs problem* matches the declaration adopted in UNGASS 2016 to account for the necessary convergence and intersectoriality of policies that, from concerted, gradual, and selective actions, will make significant advances in addressing the problem.

THE VISION OF UNASUR AND THE UNGASS 2016 DECLARATION

Next we will highlight some relevant convergent aspects between the UNASUR declaration to the United Nations Special Session on the *global drugs problem* and the declaration of UNGASS 2016.[1]

1 The documents used were: United Nations (2016) *Our joint commitment to effectively address and counter the world drug problem.* Econom-

Ratification of treaties and conventions

Both declarations sustain that tackling the phenomenon must be done within the three conventions on drugs, in accordance with the United Nations Charter, international law, and international instruments of human rights.

An aspect of fundamental importance in the UNASUR region is the recognition of the principle of non-intervention and non-interference in State's internal affairs. The ratification of this aspect in the UNGASS declaration shows explicit support for the region's historic position. Both documents express and promote policies that are designed and implemented in accordance with the reality of each State and developed within the principles of equal rights and mutual respect between States.

These agreements act as the framework for debating criteria for controlling supply, reducing demand, and international cooperation, as well as for analyzing new and renewed focuses or alternative paths in development in different countries in the region and which, from the perspective of human rights, place emphasis on public health, development, and social participation.

UNGASS DECLARATION	UNASUR DECLARATION
We reaffirm our commitment to the goals and objectives of the three international drug control conventions [...] p.1 [...] that all aspects of demand reduction and related measures, supply reduction and related measures, and international cooperation are addressed in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights, with full respect for the sovereignty and territorial integrity of States, the principle of non - intervention in the internal affairs of States, all human rights, fundamental freedoms, the inherent dignity of all individuals and the principles of equal rights and mutual respect among States; p.2	The UNASUR Member States have expressed their commitment to addressing the world drug problem, in conformity with International Human Rights Law, within the framework of the three international conventions on drugs, International Public Law, the United Nations Charter and other relevant instruments, respect for the sovereignty and territorial integrity of the States, non-interference in internal affairs, and mutual respect among the States (p.1)

A critical look on the evolution of the phenomenon, achievements, and challenges

Both declarations recognize advances in the approach to the *global drugs problem*, but also identify challenges that must be addresses. These consensus prove that the objectives proposed in 1988 in relation to the existence of a world free of drugs have not been achieved and that today our societies face phenomenon and issues that were not raised when drawing up the three conventions that today given the framework for the policies that have been developed.

ic and Social Council. Commission on Narcotic Drugs. Vienna; UNASUR. (2015). *Regional Vison of the South American Council on the Global Drug Problem of UNASUR for UNGASS 2016*. Serie Bitácora. Documentos UNASUR, Volumen I, n.° 1.

The possible achievements of the current drugs policy are overshadowed by the development of organized crime and its ties to the financial system —among other causes— along with growing corruption that affected the institutionality of States and possibilities to strengthen democracy and the rule of law.

While the UNGASS document expressed that the problem «continues to pose challenges to health, security, and welfare of humanity» and ratifies the need to «redouble efforts», UNASUR highlights the recent adoption of initiatives with alternative focuses «oriented to the effective protection of human beings, in accordance with their own realities».

Incorporation of the perspective of human rights and the focus on public health

One of the most relevant aspects in the process of debate in UNASUR ahead of UNGASS and the contents of the final declaration of the United Nations Special Assembly on the *global drugs problem* in 2016, involves the consensus in relation to the incorporation of the **perspective of human rights** in the design and implementation of drugs policies.

Said incorporation recognizes the relationship of the phenomenon with social, economic, and cultural dimensions and aspects, requiring them to bet on full enjoyment of individual and political rights.

UNASUR DECLARATION	UNGASS DECLARATION
UNASUR observes with special attention that, despite achievements, States continue to face the major challenges that remain in addressing the global drug problem. Countries in the region have recently adopted important initiatives with alternative focuses oriented to the effective protection of human beings, in accordance with their own realities. (p. 29).	We recognize that, whilst tangible progress has been made in some areas, the global drug problem continues to pose challenges for health, security, and welfare of humanity, and we resolve to redouble our efforts on a national and international level, and further enhance international cooperation to address these challenges (p. 2).

UNASUR DECLARATION	UNGASS DECLARATION
The global drugs problem, including its economic and social determinants, as well as its political, economic, social, and environmental costs, constitutes an ever more complex, dynamic, and multi-causal phenomenon, which generates negative effects on health, social coexistence, and democracy, in human development and implications in citizen security (p. 28).	We reaffirm the need to treat the fundamental causes and consequences of the global drug problem, including those in the areas of social, economic, health, human rights, justice, public safety, and the application of the law. (p. 5).

Beyond that both documents insert perspective of gender and age in the drugs strategies and policies, both declarations promote recommendations oriented towards vulnerable populations, indigenous peoples, and those living in poverty (both in urban and rural contexts) which reaffirm the promotion and defense of human rights in all its magnitude.

Focus on gender and attention to vulnerable groups

The impact of the drugs phenomenon on gender and the most vulnerable groups in society is an important point of agreement between the contents of the UNASUR vision and the corresponding UNGASS declaration.

The incorporation of the focus of gender in the UNGASS declaration —a subject on which the United Nations has a wide experience through UN WOMEN— will allow a more clear and decisive intersectoral approach on the diverse problems that concern girls and women in a specific way. Among these, exploitation along the entire chain of plantation, production, trade, and distribution of drugs is highlighted.

On the other hand, the countries that in previous decades concentrated the largest drug markets were particularly hard on the formerly called *producing countries*, imposing on them rules and sanctions that strongly affected their identity and culture, as happened with the treatment given to indigenous peoples of the Andes in relation to the ancestral use of coca leaves.

Therefore, the agreement to guarantee respect for human rights when designing and implementing measures to prevent illegal growing and the application of a comprehensive approach to the problem of small growers is of vital importance for the whole region, in particular the Andean peoples.

We must highlight the experience of the *social control of crops* carried out by the Plurinational State of Bolivia

UNASUR DECLARATION	UNGASS DECLARATION
The focus on gender and attention to vulnerable groups must be transversal and a priority in drugs policies, with special emphasis on the approach to prevention, treatment, rehabilitation, and social inclusion of protected subjects and vulnerable groups, in order to ensure and guarantee their human rights, in the promotion of equality and non-discrimination. p.33.	We recognize the importance of adequately incorporating perspectives of gender and age in programs and policies related to drugs; p.3. Continue to identify and address factors of protection and rish and the conditions that continue making women and girls vulnerable to exploitation and participation in drug trafficking, … as well as "encourage that specific needs and possible multiple factors that make women imprisoned for crimes related to drugs vulnerable" p.16 (d)
In the framework of respect for human rights and respect for the rights of indigenous peoples, protecting ethnic and cultural diversity, recognized in the United Nations Declaration on Indigenous Peoples. p.33.	Guarantee that the measures adopted to prevent illegal growing and eradication of plants used in the production of narcotic drugs and psychotropic substances respect fundamental human rights, take into due account traditional legal uses, when historical data on such use exists, and the protection of the environment, in accordance with the three treaties on international drug control, and also take into account, as appropriate and in accordance with national legislation, the United Nations Declaration on the Rights of Indigenous Peoples. P.17

and the peace process in Colombia are clear references to the experiences of control of illegal crops and approaches that bet on social, cultural, environmental, and economic viability of the people who inhabit the so-called *growing areas*.

Criminality, corruption, criminal law, and deprivation of liberty

In addressing the criminality associated with the phenomenon of drugs the disproportionality of penalties has gained an important place. As has the lack of equity, in applying hardness to the weakest links in the chain and benevolence to the strongest.

In this regard there is a precise statement from the region and from UNGASS so that —in accordance with constitutional, legal, and judicial traditions of each State— the principle of proportionality of penalties is advanced, according to the seriousness of the crime.

In UNGASS 2016 important agreements were made in relation to maximizing the effectiveness of measures of application of the law against organized criminal groups and people implicated in crimes related to drugs (p. 13). The declaration also reflects agreement with the UNASUR recommendation to adopt alternative measures to deprivation of liberty for certain drug-related offences.

On the other hand, regarding measures to prevent, detect, and sanction corruption, both documents highlight the need to respond and/or strengthen strategies to tackle it from comprehensive and multidisciplinary approaches.

UNASUR DECLARATION	UNGASS DECLARATION
Ensure the application of the *principle of proportionality* of penalties including in crimes related to drugs (p. 33). In accordance with legislation in each State, International Law, International Human Rights Law, *adopt measures and/or alternative penalties to the deprivation of liberty* for minor offences related to drugs, in accordance with the United Nations conventions on drugs, thus avoiding impunity (p. 33).	Promote proportionate national policies, practices, and guidelines about the imposing of penalties on offences related to drugs, *so that the severity of the penalty is proportional to the seriousness of the offence* and taking into account both mitigating and aggravating factors, including the circumstances listed in Article 3 of the 1998 Convention and other applicable provisions of international law, in accordance with national legislation (p. 17). Encourage the development, adoption, and application, taking into due account national constitutional, judicial, and administrative systems of *alternative or complementary measures which respect the conviction or sentence where appropriate* (Tokyo Rules) (p. 17).

Different multilateral organisms and the United Nations have developed and financed institutions, guidelines, programs, and actions that tackle the phenomenon of corruption in relation to illegal drug trafficking. However, the development of information and communication technologies (ITC) has forced States to consider, as the UNGASS declaration highlights, the importance of convergence of regulatory frameworks, the development of institutions

of control that cooperate, and the articulation of state and private actors and civil society.

UNASUR DECLARATION	UNGASS DECLARATION
The UNASUR countries recognize the need for States to strengthen their strategies to prevent, detect, and sanction corruption as a complementary tool to combat illegal drug trafficking and its related crimes (p. 31).	Responding to the serious challenges posed by the ever greater links between drug trafficking and, corruption, and other forms of organized crime, such as human trafficking, arms trafficking, cybercrime, money laundering, and in some cases terrorism, including money laundering tied to financing of terrorism, through a consistent comprehensive and multidisciplinary approach, in promoting and supporting the collection of reliable data, investigation, and, when relevant, the exchange of intelligence and analysis in order to develop effective policies and interventions (p. 13).

International cooperation

In the face of a phenomenon of global reach, international cooperation is called to play an important role. This aspect was considered by UNASUR in its contributions to debate prior to UNGASS 2016, where it expressed that:

> strengthening international cooperation within the United Nations drug conventions is a central component in the efforts to tackle the *global drug problem*, and to combat money laundering, corruption, illegal arms trade, human trafficking, and related crimes (p. 41).

In a similar way, the UNGASS declaration proposes

> to encourage the use of existing sub-regional, regional, and international mechanisms of cooperation to combat all the crimes related to drugs in all their forms, wherever they are committed, including, in some cases, violent crimes related to gangs, for example, increasing international cooperation to effectively combat and dismantle organized criminal group, including those who operate on a transnational level (p. 14).

For this it suggests

> strengthening and utilizing international, regional, and sub-regional networks for the purpose of exchanging information of interest to detect and combat drug trafficking, the diversion of precursors, money laundering, etc. (p. 14).

However, international cooperation is not limited to the development of complementary guidelines, oversight of the financial system, or penal control. Its role is key when promoting, energizing, and supporting policies, programs, and initiatives that involve forms of comprehensive development in rural and urban areas that have been captured by different links in the drug trafficking chain.

UNASUR proposes the strengthening of cooperation to promote sustainable and comprehensive alternative development programs, including preventative ones, favoring social inclusion so as to address and reverse the

vulnerability of the sectors affected by production and trafficking of illegal drugs and, in particular, promoting balanced and comprehensive attention, taking into account the guiding principles of the United Nations on Alternative Development (p.38).

On the other hand, betting on similar objectives, the UNGASS declaration maintains the need to bolster regional and international cooperation in support of sustainable programs of alternative development, including, as appropriate, preventative alternative development, in close collaboration with all relevant stakeholders in a local, national, and international level, and define and exchange best practices for applying the Guiding Principles of the United Nations on Alternative Development (p. 25).

Medical and scientific uses of controlled substances

The complex regulatory structure of the three interventional conventions on drugs and psychotropic substances, the United Nations charter, the covenants and conventions on health, and the international instruments on human rights are aimed at guaranteeing access to medicines to all humanity, many of which are derived from substances under international control.

The agreement between UNASUR and the UNGASS declaration on the approach to this issue is expressed, in summary, in these recommendations:

UNASUR DECLARATION	UNGASS DECLARATION
[...] guarantee access to controlled substances for medical and scientific use in accordance with national legislations and the three international conventions on narcotic drugs control (p. 34).	We reiterate our firm commitment to improve access to controlled substances for medical and scientific purposes, properly removing the obstacles that hinder this, including relations with legislation, regulatory systems, health care systems, affordability, training of health professionals, education, creating awareness, estimates, forecasts, and reports, the reference values corresponding to the consumption of controlled substances, and international cooperation and coordination (p.9).

Likewise, among the UNASUR recommendations on the medical and scientific use of controlled substances, the need is expressed to strengthen measures that improve equitable access to the use of drugs for medical and scientific purposes. The UNGASS agreements point to the same objective, recommending

> speeding up the granting of import and export authorizations of controlled substances for medical and scientific purposes; tackling on a national and international level questions about affordability of substances with medical purposes; establishing national systems of management of the supply of controlled substances (selection, procurement, distribution);

> strengthening capacities of authorities to anticipate needs of controlled substances, etc. (pp. 9-10).

On the other hand, the UNASUR declaration appeals to consider the reclassification of substances subject to the international drug control regime (p. 34) and the UNGASS document recommends to continue regularly updating the World Health Organization's model list of essential drugs (p. 9-11).

Comprehensive and balanced drug policies from a focus on human rights and development

The challenges posed in the section «Ratification of treaties and conventions» confirm the importance of policies that respect sovereignty and territorial integrity of States and the principle of non-intervention in a State's internal affairs.

As a consequence, in the framework of the United Nations charter, international law, and the Universal Declaration of Human Rights, countries are encouraged to carry forward policies that respond to their national realities and their legal and constitutional frameworks.

This conceptualization accounts for the need and the right which assists States to design policies that go beyond the margins of the regulatory frameworks and oversight to venture into comprehensive responses to the complex phenomenon. Therefore, both declarations recommend repeatedly the development of comprehensive policies.

UNASUR'S vision highlights that the multi-causality of the phenomenon requires the adoption of approaches that integrate respect for human rights, public health, and social inclusion. As such, it proposes that drugs policies contemplate diverse components (reduction of supply and demand of drugs, comprehensive and sustainable alternative development, judicial cooperation, and international cooperation).

The UNGASS declaration reaffirms the need to consider the components or dimensions referred to by UNASUR, and recognizes the importance of broad and balanced policies to tackle the fundamental causes and consequences of the problem.

It also proposes «paying adequate attention to people, families, communities, and society in general, with a view to promoting and protecting health, security, and wellbeing of all humanity» (p. 3) and recommends, among other aspects, «intensifying efforts in the context of sustainable development programs » (p. 22).

In the framework of the pre-UNGASS debate, UNASUR emphasized the promotion of programs and measures of alternative, comprehensive, and sustainable development, including preventive, that aim to eliminate the factors that cause poverty, inequality, social exclusion, and environmental deterioration, to, among

UNASUR DECLARATION	UNGASS DECLARATION
All the focuses of policies on drugs must be understood as responses to the challenges that we face in relation to all aspects of the global drug problem, in particular as a socioeconomic phenomenon, always based on respect for human rights, interculturality, scientific evidence, public health, and social inclusion, framed in the United Nations Conventions on drugs and the international framework on drug control (p. 30). In our region, initiatives centered on dignity and human rights have been launched, recognizing that social, cultural, and economic plurality in countries of the region must allow the development of balanced and comprehensive policies that privilege preventative measures in tackling all the components of the global drug problem (p. 29).	We reaffirm the need to treat the fundamental causes and consequences of the global drug problem, including those of social, economic, health, human rights, justice, and public safety areas, and the application of the law, consistent with the principle of common and shared responsibility, and we recognize the importance of the intervention of broad and balanced policies, including in the area of the promotion of sustainable and viable livelihoods (p. 5). Exploring ways to strengthen the perspective of development within the framework of broad, comprehensive, and balanced national policies and programs, in order to address the causes and consequences related to growing, manufacturing, production, and illegal trafficking of drugs, through, among other things, the elimination of risk factors that affect communities and society, among which may be counted the lack of services, the needs in infrastructure, the violence related with drugs, exclusion, marginalization, and social disintegration, in order to help promote peaceful and inclusive societies (p. 26).

others, prevent the involvement of the population in activities tied to the production and illegal trafficking of drugs (p. 38).

Regarding the UNGASS declaration's proposal to study the possibility of developing and executing such programs (p. 24) and recommendation to make interventions oriented to development, ensuring at the same time that both men and women equally benefit, among other things, through job opportunities, improvements in infrastructure and public services, and, as appropriate, the concession of access and titles to land for farmers and local communities, which also will contribute to the prevention, reduction, or elimination of illegal growing and other illegal activities related to drugs (p. 26).

The breadth of issues outlined in both declarations about comprehensive and sustainable development (particularly in the UNGASS declaration) reflects the importance of the issue in the design and implementation of drugs policies.

The relevance that the contributions made by diverse United Nations agencies -such as UNDP, the United Nations Office of the High Commissioner for Human Rights, WHO, UN Women, UN AIDS, among others- had on the regional and global debate in the lead up to UNGASS can be seen in the UNGASS debate when it expresses

> We welcome the 2030 Agenda for Sustainable Development and we observe that efforts to achieve the Sustainable Development Objectives and deal effectively with

> the *global drug problem* are complementary and mutually reinforcing (p. 3).

The recommendations of the United Nations member states also promote

> the investigation by States, among other others, through cooperation with the United Nations Office on Drugs and Crime and other United Nations entities and international and regional organizations, academic institutions, and civil society entities, for the purpose of better understanding the factors that contribute to illegal growing, taking into account local and regional particularities, and improving the evaluation of repercussions of the programs of alternative development [...] through the use of relevant human development indicators and criteria related to sustainable development and other parameters, under the Sustainable Development Goals (p.26).

These concordant views open an inclusive perspective which enables the design and implementation of convergent policies on drugs, as proposed by diverse United Nations agencies in February 2016, when convened by the General Secretary of UNASUR in the framework of the regional debate process. In that meeting, representatives from the UNDP, the office of the High Commissioner for Human Rights, UNESCO and UNAIDS explained the need to

UNASUR DECLARATION	UNGASS DECLARATION
Reaffirm the validity of the application of measures of comprehensive and sustainable alternative development, including preventive, as an efficient strategy to prevent and control illegal crops. Thus recognizing the importance of continuing to implement the Guiding Principles of the United Nations on Alternative Development. P.38. Accept the problems of small farmers, in a comprehensive way, meaning take into consideration and deal with the social dimensions of the phenomenon. P.38.	Combat the illegal growth of plants used to illegally produce and manufacture drugs and tackle related factors through the application of broad strategies destined to alleviate poverty and strengthen and rule of law, and create institutions, public services, and responsible, efficient, and inclusive institutional frameworks, as appropriate, and promote sustainable development aimed at improving the wellbeing of the affected and vulnerable populations through legal alternatives; p.24 Encourage the search for viable economic alternatives, in particular for the communities affected or at-risk from the illegal production of rugs and other illegal activities related to drugs in rural and urban settings, Encourage the development of inclusive economic growth, promote initiatives that contribute to the eradication of poverty and sustainable social and economic development, establish measures of rural development that improve infrastructure and inclusion and social protection, ... and consider the possibility of adopting voluntary measures to promote products from alternative development, including preventive alternative development (...) within broad and balanced strategies of the fight against drugs. P. 24

move forward with UNASUR in the joint design of the drugs policies.

Convergence and intersectorality for a regional drugs policy

Within the framework of the United Nations, the peoples of the world have been equipped with an agenda that is expressed through the Sustainable Development Goals (SDG), which have made explicit the complex relationship between drug trafficking and human development.

Focused on giving favorable responses on the right to health, peace and security, employment, equity, and sustainable development, the difficulty of advancing the SDG becomes clear if responses that take into account the negative impacts of current drug policies are not generated.

The new focus on drugs policy should poses the need to change the performance metrics and move from the measuring of fumigated hectares to the number of families that have achieved sustainable livelihoods through new forms of agricultural production or through their insertion into the world of production and employment in the cities.

It is necessary to stop highlighting the number of substances impounded and achieve the reduction in the prevalence of people at risk and social disadvantage and the increase in coverage of primary health care, as well as health benefits for users of medical services.

It is also necessary that the number of prison population may be accompanied by numbers of people who have achieved social and cultural inclusion and develop a dignified life.

To achieve important transformations in the focus and approach, it is necessary to mainstream the perspective of human rights to all the policies that account for the phenomenon. It is necessary to strengthen the approach to the social conditions of health, apply a gender focus, reformulate policies and strategies to prevent violence and crime; promote democratic governance and full rule of law. For this, drug policies must not negatively affect the development of communities, but facilitate sustainable and comprehensive development.

The focus on public health involves considering the social conditions of the phenomenon and the development of policies based in evidence with a relevant participation of United Nations agencies specialized in the subject, such as the WHO and the PAHO.

Said agencies have identified that just a minority of those who consume (10 %) are dependent users. Although diverse surveys on the prevalence realize the impact of the phenomenon on a populational level, there is great difficulty in identifying the character of the uses and there is not always a distinction made between experimental, abusive, problematic use, etc., which causes problems when establishing treatment demands.

The empirical evidence signals that the region's health systems where not created to tackle this issue and lack the experience and/or sufficient qualifications to develop adequate responses. As such, systemic policies

of reduction of risks and damages have not been brought forward, and the results of the policies that have been implemented have not been evaluated.

Basis for consensus: a gradual, selective, and concerted policy

As we have seen, the convergence of the UNASUR and UNGASS declarations expresses the need for a regional policy based on gradualness, selectivity, and agreement, parameters on which it will be necessary to construct agreements and develop regional policies-post-UNGASS.

Gradualness: it is not about shooting down in one stroke everything that has been done over the past five decades on drug polices, but overcoming the antimony of models and the inevitable refuge in fundamentalisms of various kinds.

It is not about substituting deregulated illegal markets —where the State has not managed to completely penetrate the dynamics of production, circulation, and dispensing of internationally controlled substances— for deregulated legal markets, dominated by industrial corporations where the State abdicates its regulatory powers on health, quality, and prices of the goods in free circulation.

Gradualness must be marked by the experience of the development of policies in the region, supported in an interpretation by the United Nations instruments on drugs and other regional and global instruments of human rights, health, and sustainable development.

In this decade, significant and gradual changes have been made on drug policy. By way of example, in Ecuador mules were differentiated from large exporters. In Bolivia a policy of social control on crops was implemented and good results were achieved in relation to the cultural use of the coca leaf. The treatment given to marijuana in Uruguay, Colombia, and Chile has involved debates in the different powers and ambits of the State (from the Executive Power to municipalities) and has allowed for the development of new focuses on the reduction of demand and regulation of supply.

This revision drugs policies, which has been taking place in several countries in the region, facilitated the realization of the regional consensus expressed in the *Regional Vision of the South American Council on the global drug problem of UNASUR for UNGASS 2016* and gives a possible framework for the development of future drugs policies.

This gradualness has the State as the principle actor that does not abdicate its leadership role in the implementation and articulation of policies, and that leads the passage of hegemony of punitive policies to those that focus on people and their circumstances, from a perspective of human rights and a focus on public health.

Selectivity: is about making significant steps and introducing diverse views in the understanding of the phenomenon that enhance the importance of the nuances of each situation. As we will see, patterns of use of diverse character (recreational, cultural, ritual and/or religious, and) coexist, and the treatment or approach

towards the patterns of consumption cannot be the same in the case of an addiction or experimental, recreational, religious, or medicinal use.

The criteria of selectivity should apply to regulatory aspects and criminal policy related with the treatment of different links in the chain of plantation, production, distribution, dispensing, and acquisition of substances. It is necessary to tackle in a differential way the weak links in the chain (peasant farmers, captive employees of production centers, small distributors) and strong links (owners of the distribution logic, financial system entities that make the laundering of capital possible; corrupt officials who enable the circulation of substances, people, capital, among others).

Agreement: we are in a time of transition between policies given —that arise from a rigid interpretation of the conventions on drugs— towards concerted policies, which interpret the conventions in a flexible way within a framework of development of national and regional policies.

In the concerted policies, the focus stops being on control of supply *per se* and the axis is made up of people and their social, cultural, economic, and sanitary circumstances. This change opens the possibility that the reality can been seen in a different way and that the policies involve human rights perspectives and international instruments as an ethical framework.

Finally, we must highlight that these bases of gradualness, selectivity, and agreement on the regional drugs agenda bet on transforming the security agenda into an agenda for social inclusion.

TOWARD A DRUGS AGENDA AS AN AGENDA FOR SOCIAL DEVELOPMENT AND INCLUSION

The emphasis on criminal policies left the drug control agencies (national, regional, and global) in an isolated, autonomous work situation, with low levels of interaction and less coordination with other agencies, in particular those focused on the promotion of development.

Although in recent years alternative development policies have been an important instrument to give an alternative response to the phenomenon, in particular in countries which produce the primary materials for production of substances (coca and poppy plants, fundamentally), they have had a limited impact and in some cases have displaced the planting, production, and distribution sites to areas that were not previously involved in the phenomenon.

As a result, to achieve societies in which sustainable development and inclusion prevail, the eradication of poverty must be posed as a central objective in the policies and strategies.

Within a gradual and selective vision, the agenda must incorporate risk management and damage reduction in the fields of plantation, production, and distribution of controlled substances. For this, it is important to consider existing good practices, such as the social

control of coca crops brought forward by the Plurinational State of Bolivia, which, by demilitarizing control strategies, has managed to significantly reduce the violence associated with the phase of plantation, production, and distribution of coca leaves and their derivatives.

On the other hand, the Sustainable Development Goals (SDG) agreed by the United Nations General Assembly in September 2015 are a very relevant tool to focus drugs policies on the basis of a new perspective, as, among the 17 SDG, 13 are related to the need for convergence with drug policies.

The document agreed by the South American Council on the *Global Drug Problem* (CSPMD), *UNASUR's Regional Vision of the South American Council on the Global Drug Problem for UNGASS 2016*, proposes the need for United Nations agencies to work together. On this basis, it is possible that a rich process of exchange of ideas and proposals be opened in UNASUR that, from a new CSPMD action plan, can carry forward initiatives aimed a transforming desires into realities, as different United Nations agencies participate actively in the pre-UNGASS debate and have expression their willingness to give continuity to this involvement.

To advance in this direction, the region has no need to wait for the global system to take the initiative and make steps towards these objectives. It is possible to advance in the search for agreement and intersectorality of policies from the region's strengths and resources, counting on the support of the United Nations system as a whole. Therefore, it is essential to both innovate both in the way the phenomenon is viewed as in the design of intervention tools.

Counting on a regional drugs agenda equals counting on an agenda of development and social inclusion built from the convergence of actors (from the state, regional and municipal governments, scientific and academic centers of investigation, civil society, from the areas of education, health, justice, and security) that, applying a territorial perspective, can identify and implement possible answers.

NOTES FOR THE DEVELOPMENT OF POLICIES BASED ON EVIDENCE

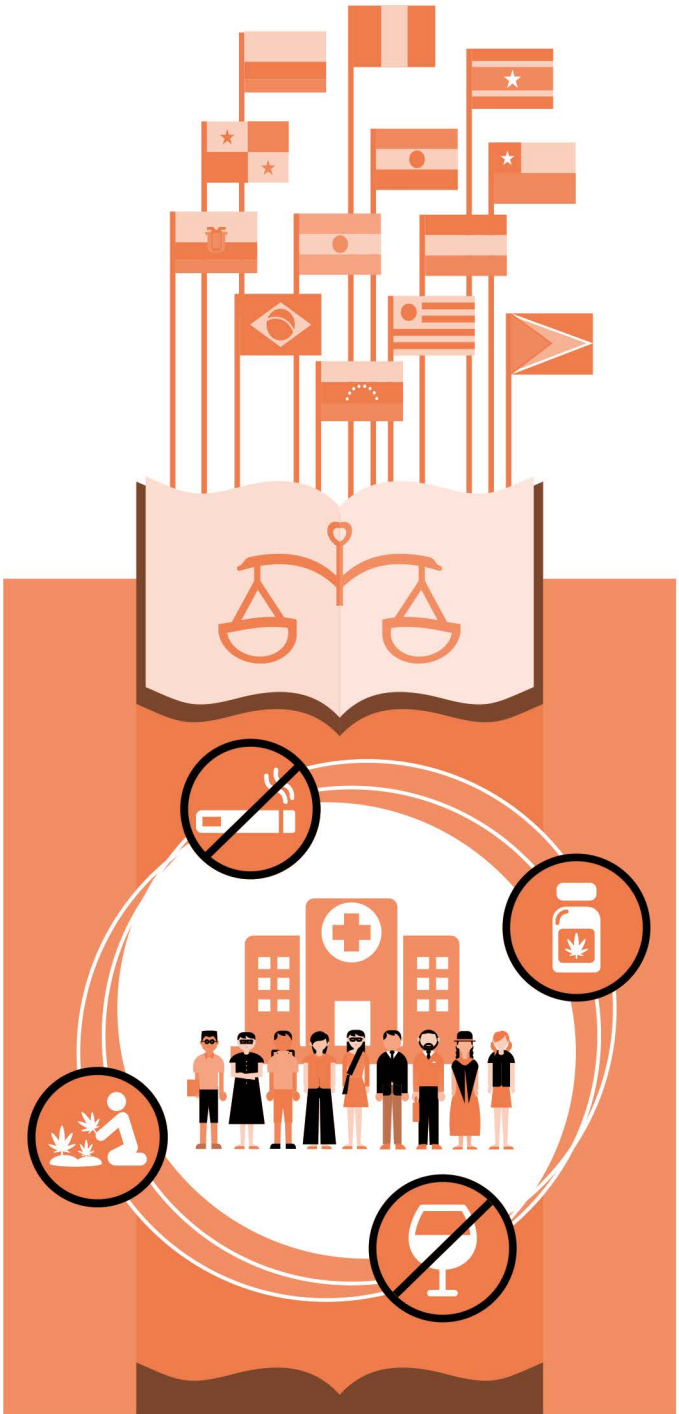
POLICIES, LEGAL FRAMEWORKS AND DRUG USE IN THE UNASUR REGION

The extensive debate the region held throughout the journey to UNGASS 2016 confirmed the need to build objectives, targets and indicators when bringing forward policies to tackle drug use. This implies overcoming the partial focus that for more than five decades considered the prevalence of substance use and control of supply as the most relevant figures to address the issue.

The scientific, academic and political challenge when designing future policies is to incorporate into strategies and action plans the aspects that UNGASS 2016 highlighted in its closing declaration: the human rights perspective, the Sustainable Development Goals, the focus on public health, and gender considerations. However, promoting the inclusion of these points does not contradict nor underestimate the increased regional efforts to use reliable information to design and implement policies based on evidence.

Using contributions from the Network of Observatories project, financed by UNASUR's Common Initiatives Fund – which is linked to the management of diverse epidemiological data, through which the CSPMD elaborates its own indicators in line with the reality of the region and each member state – we will present the institutional, political and knowledge-based resources the region uses to develop drug-related policies.

We will briefly describe the legal frameworks and regulations, as well as the attributes of the resources and drug policies developed up to now, and review the information produced by the national drug observatories and other academic and scientific investigation organisms in the region.



RESOURCES, PLANS AND STRATEGIES TO ADDRESS DRUG USE IN THE REGION

Public Health Resources

According to the preliminary analysis of the regional status elaborated by PAHO-WHO[2], through the application of the *Atlas of resources for the prevention and treatment of disorders related to substance use (2014)*[3] , the public health and social services sector is identified as the principal service provider. However, public sector support is most relevant in outpatient treatments. In other areas of attention, though the state remains the main participant, actors such as NGOs play an important role that also extends to the area of prevention.

The information available about the public health resources for drug use in the region indicates that:

- In 50% of South American countries there is a regulatory framework to offer prevention and treatment services.
- There have been advances in the protection of human rights via the approval of reference documents and instruments to protect substance users (especially with respect to the confidentiality of clinical information obtained from those who seek attention and the offer of court supervised treatment as an alternative to incarceration).
- Specific items in the budget for public health and other areas of government have been assigned to finance the prevention and treatment of problems related to substance use.
- Measures to mitigate the adverse consequences of substance use (harm reduction) have been implemented.
- There have been education and training programs designed and implemented for human resources in distinct areas.
- 60% of the countries have at least one establishment offering services to detect and treat HIV. In the case of Hepatitis, 52.1% of countries perform detection tests, 34.7% administer vaccines, and a similar percentage offer treatments.

On the other hand, in terms of the quality of implementation of services in South American countries, we must point out that the programs for harm reduction are still under developed. Access is very limited for the most vulnerable populations and financing is unclear (the distribution of condoms and immediate medical attention are the only harm reduction programs reported as available in Central and South America).

2 *Report on Public Health Resources for Psychoactive Substance Use in the Region of the Americas. PAHO-WHO,* Rodríguez, J.; Alfonzo, L. (coord.).

3 Includes information provided by 24 countries, representing 86% of the population of the Americas. The countries were grouped in four sub-regions: North America: Canada and United States; Central America and Latin Caribbean: Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Panama and Dominican Republic; South America: Argentina, Brazil, Chile, Paraguay, Peru and Uruguay; English Caribbean: Antigua and Barbuda, Barbados, Belize, Granada, Guyana, Jamaica, Trinidad and Tobago, St Lucia and Suriname.

In terms of programs of special attention for populations considered at high risk of problems related to substance use (those living in poverty, women, children and adolescents, detainees, etc.), 66.7% of South American countries offer treatment for minors, but there is no service for women.

The region has accumulated experience in the implementation of preventative programs directed predominately at the youth population inside the formal education system. The programs with the widest distribution are those implemented through the media (82.6%), in schools (87%), workplaces (82.6%) as well as community and parent programs (77.3%, respectively). Despite this, available data reflect the existence of programs but do not mention their geographic or population coverage, nor the duration or continuity of the initiatives.

The resources for prevention and treatment are concentrated in capitals and large cities, leaving populations that live in high-risk contexts, such as indigenous groups and rural communities, without adequate coverage. At the same time, the services for people with problems due to substance use are not connected to the general health network or other relevant services, making access and attention more difficult, especially for populations with medical, psychological or social problems.

Finally, the lack of systemized information about the attention needed and the services offered makes planning and evaluation more difficult and it is necessary to improve information mechanisms and epidemiological monitoring.

Most countries in the region have people trained to attend the problems related to substance use. However, it is not known in detail what their ratio is in terms of the number of people requiring attention, not their level of sufficiency in qualitative and quantitative terms to satisfy the needs of the target population.

Plans and Strategies

It is possible to affirm the existence of implicit and explicit drug policies, both in the region and globally. Implicit policies address the set of actions, plans, programs, and strategies that in practice account for the drug phenomenon. These policies are focused on the control of supply via regulatory control and are implemented by police bodies and the state justice system per the legal and constitutional regulations of each country.

On the other hand, we refer to explicit policies when the State has proposed or implemented strategies that deal with the set of intervening factors in the phenomenon, based on international accords: health promotion; universal, selective, and targeted prevention; primary health care; social integration; international cooperation; a fair and proportionate crime policy, among other factors. In this regard, ten of the twelve UNASUR countries have developed and implemented strategies that consider at least a significant number of the factors mentioned above.

In most countries of the region there are national plans and policies (with a defined government body, usually the Health Ministry) that address the use of psychoactive substances and serve as a reference point for promotion, prevention, treatment, and rehabilitation measures. However, it is essential to encourage the broad involvement of sectors from both government and civil society in the development and implementation of national strategies, plans, and policies.

Among the regional advances in recent decades, we highlight that the concept that conditions related to psychoactive substances are a health problem has gained ground in the world of healthcare and in public opinion. This consideration implies protecting the right of all people affected by substance use to adequate public services in terms of quality and coverage.

LEGAL FRAMEWORKS FOR DRUG USE IN THE REGION

Drugs can have diverse functions in people's lives: religious, ritual, recreational, health purposes (the same drug can even have various functions). Despite this, even though in general terms the use of drugs is not penalized, possession and/or sale of them can be.

The tools of the State to restrict the access to and use of substances take the character of *criminal legislation* (policies based on prohibition) or *regulatory legislation* (policies based on control). In the latter case, regulations are directed at controlling availability through limiting access, and include tokens for points of sale, marking out zones for users, and high taxes to raise the market price.

On the other hand, not all drugs are subject to international control. This is a fundamental point when analyzing the impact they may have in social, cultural, and health terms.

International Legal Framework for Narcotic Drugs

Though it does not include all narcotic drugs nor all substances (natural or otherwise) that can alter a person's emotional or conscious state, the international system of drug control is outlined in three United Nations conventions: The 1961 Single Convention on Narcotic Drugs and its 1972 Protocol, the 1971 Convention of Psychotropic Substances, and the 1988 Convention against the Illicit Trafficking of Narcotic Drugs and Psychotropic Substances.

The conventions outline a set of norms and organisms to generate an international system of drug control that simultaneously prohibits recreational use and guarantees their availability for medical and scientific uses. For this, the conventions have created a group of bodies designed to control the application of the orders they impose: The Commission for Narcotic Drugs (CND), The International Narcotics Control Board (INCB), and the UN Office on Drugs and Crime (UNODC).

This framework establishes schedules that organize substances based on criteria of risk indicators. As an

example, according to article 2, 5 (b) of the 1961 Single Convention, for the narcotic drugs included in Schedule IV, which includes cannabis, the parties:

> Shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug.

Article 7 of the 1971 Convention expresses that parties "shall prohibit all use, except for scientific and very limited medical purposes, the substances on the Schedule I".

In terms of the substance on Schedules II, III, and IV, it recommends that parties limit the use for these same purposes "by such measures as it considers appropriate the manufacture, export, import, distribution and stocks of, trade in, and use and possession of" (article 5).

In the 1988 Convention, possession for personal consumption is not included in the list of activities that party States should consider as criminal offences (article 3, 1, a). However, it is mentioned separately in article 3, 2):

> Subject to its constitutional purposes and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase, or cultivation of narcotic drugs or psychotropic substances for personal consumption.

As such, even though the conventions indicate that States should prohibit consumption and possession for personal consumption, they do not oblige them to consider these criminal offences, leaving room for each country to apply the conventions per its regulations and legal system.

The UNASUR States are all signatories to the three conventions and two countries have formulated reservations for plants with traditional use. Peru, on adhering to the 1971 Convention in 1980, formulated a specific reservation for ayahuasca – which contains DMT, a substance included in Schedule I – and the San Pedro cactus, which includes mescaline. Bolivia left the 1961 Convention in 2011 and then resigned on 2013 with a reservation about the eradication of coca-leaf chewing.

In its 2014 report, the INCB reiterates:

> One of the fundamental principles on which the international drug control system is based, one expressed both in the 1961 Convention and the 1971 Convention on Psychotropic Substances, is that of the limitation of the use of narcotic drugs and psychotropic substances for medical and scientific purposes.

The document also affirms that: "this legal obligation is absolute and leaves no room for interpretation". Nevertheless, on December 10, 2013, Uruguay adopted Law 19,172, which regulates the market for marijuana in the country, for both medical and non-medical uses, such as scientific investigation. The Uruguayan government defended the law as a public health measure based on

the respect for human rights, the management of risks and harm reduction.

It is important to highlight that in recent years the way in which the system of conventions has contributed to the development of legislation and public policies that in some cases do not fully respect human rights has been documented[4]. As such, UNASUR has underlined the need to align the international system for drug control with the instruments for human rights.

Among the rights most affected by a rigid and restrictive interpretation of the UN conventions are the rights to healthcare, the rights of children and adolescents, the right to not be subjected to cruel, inhuman, or degrading treatment or punishment, the right to not be an object of discrimination, the right to due process and a fair trial and the rights of indigenous people to practice their culture and traditions.

Legal Frameworks in UNASUR States

Controlled Substances

The national legal frameworks have recently evolved with comprehensive new laws on narcotic drugs (in Ecuador, Venezuela), specific laws (for example, on cannabis in Uruguay), presidential decrees or judicial rulings that establish a legal precedent (the case of Argentina).

Consumption and possession for personal use

Most countries in the region have decriminalized the possession of narcotic drugs for personal consumption, some through relatively recent judicial changes. In Argentina and Colombia, Supreme Court rulings pushed the legal framework towards decriminalization based on the principles of proportionality, individual freedoms, and respect for human rights. However, some cases have generated legal uncertainty as the applicable measures are contradictory.

The criminalization of those who use prohibited substances, and punishment with prison sentences, is being discarded in the continent in favor of alternative measures or effective decriminalization. However, there

4 Damon Barrett, *Reflections on Human Rights and International Drug Control* (Towards a Human Rights Framework), in Governingthe Global Drug Wars, London School of Economics, Ideas, Special Report SR014, October 2012, available at ‹http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR014_Spanish/SR-014-Espa %C3 %B1ol-Barrett.pdf›. Diego García-Sayán, *Narcotráfico y Derechos Humanos*, Iniciativa Latinoamericana sobre Drogas y Democracia, consulted on 24/02/2016: available at ‹http://drogasedemocracia.org/Arquivos/narcotrafico%20y%20DDHH_Say%C3%A1n.pdf›.
For more information on the human rights impact of the global drugs problem, see the contributions of the States and civil society on resolution 2828 of the UN Council for Human Rights: ‹http://www.ohchr.org/EN/HRBodies/HRC/Pages/WorldDrugProblem.aspx›.

TABLE 1. PRINCIPLE LEGAL INSTRUMENTS FOR DRUGS IN UNASUR COUNTRIES *

LEGAL TOOL	ARGENTINA	BOLIVIA	BRAZIL	CHILE	COLOMBIA	ECUADOR
Constitution	No specific mention.	Art. 384 of the Constitution (2009) – coca leaf.	Art. 5 (XLIII), 144 (1, II),196, 227 (3, VII), 243 of the Constitution (1988) – trafficking and RRD.	No specific mention.	Art. 49 of the Constitution (1991), modified by the Legislative Act 2 of 2009 – personal use.	Art. 364 of the Constitution (2008) – health and decriminalized personal use.
Primary legal instrument in force	Law 23,737 (1989) Arriola ruling (2009)	Law 1,008 (1988)	Law 11,343 (2006)	Law 20,000 (2005)	Law 30 (1986)	Organic Law for Drug Prevention (2015)
Others	Law 26052 (2005) -partial defederalized criminal jurisdictions for narcotic drugs. Mental Health Law 22,914 (2010)		Criminal Code Law 8072 (1990) on Heinous Crimes.	Decree 867 (2008) which regulates Law 20,000. Decree 84 (2015) on medicinal cannabis.	Constitutional Court sentence 1994 C-221 and sentence C-574 in 2011 – on decriminalization of consumption. Decree 2467 (2015) – medicinal cannabis.	Organic Criminal Procedure Code (2014) Resolutions by CONSEP (01/2013 – 02/2014 – 01/2015)

GUYANA	PARAGUAY	PERU	SURINAME	URUGUAY	VENEZUELA
Art. 139 (1, h) of the Constitution (1988) – obligatory treatment for addicts.	Art. 71 of the Constitution (1992) – trafficking, uses, prevention and rehabilitation.	Art. 8 y 2 (24, f) of the Constitution – trafficking	No specific mention.	No specific mention.	No specific mention.
Narcotic drugs and psychotropic substances (control) act. Cap 35:11 (1988).	Law 1,340 (1988)	Law 28,002 (2003)	Narcotic drugs law (1998)	Law decree 14,294 (1974) modified by Law 17,016 (1998), modified by Law 19,172 (2013)	Organic Drugs Law 36,510 (2010)
	Decree 1,806 (2009).	Criminal Code (art. 296-303).	Criminal Code	Law 19,007 (2012) on trafficking cocaine paste	

* Without attempting to create an exhaustive list, we highlight the most relevant legal instruments on the subject in each country.

is still a debate over whether to fix thresholds of possession as an objective criteria to define what quantity of a substance corresponds to personal use.

The following table shows the variation in criteria used by the countries in the region to determine whether possession qualifies as being destined for personal use.

TABLE 2. ***LEGAL STATUS ON POSSESSION FOR PERSONAL USE***

	LEGAL SITUATION	MEASURES, SANCTIONS, OR PRISON SENTENCES
Argentina	Criminalized according to the law in force. Decriminalized according to the Arriola ruling	Law: one month to two years in prison (art.14, law 23,737). Possibility for curative security measures for addicts and educational measures for occasional users (art.16-17). Arriola ruling: no sanction.
Brazil	Decriminalized with alternative measures. Shared use of illegal drugs.	Possession for personal use (art.28, ley 11,343) 1) warning over the effects of drugs 2) community service 3) educational measure; if the person does not accept, a fine. Shared use art. 33: Six months to one year in prison + possible measures of art. 28
Chile	Partial decriminalization.	No penalty if it is exclusively for personal use and in a private environment. Use and possession in public spaces an offence: "Mandatory attendance at drug prevention program for 70 days or rehabilitation treatment for a period of up to 108 days in institutions authorized by the relevant Health Service" and/or fines, participation in community service, and possible suspension of driver's license (art. 50, law 20,000)
Colombia	According to the constitution reform of art. 49 in 2009, it is prohibited but can be sanctioned with alternative measures. Decriminalized according to 1994 Constitutional Court sentence.	According to the 2009 reform: "administrative measures and treatment of an educational, preventative, or therapeutic order", "with informed consent of the user" No sanction according to the Constitutional Court, which in 2001 declared itself unable to enforce the 2009 reform.
Ecuador	Decriminalized in the Constitution and by law.	None.
Guyana	Criminalized	Depending on the criminal sentence (*summary* or *indictment*): fine + 3 to 10 years in prison.\ Possession in places where there are children can be punished by life in prison (Art.4. Narcotic Drugs and Psychotropic Substances (Control) Act)
Paraguay	Decriminalized.	No prison sentence. Possibility of mandatory admittance to drug dependency centers. (art. 28 y 29, law 1,340).
Peru	Decriminalized.	None.
Suriname	No data.	No data.
Uruguay	Decriminalized.	None.
Venezuela	Decriminalized, with alternative measures.	"Mandatory rehabilitation treatment in a specialized center" and possible "social security measures" (social re-integration, observation, and/or community service).

Source: Compiled based on available data and laws.

TABLE 3. CRITERIA TO DEFINE POSSESSION FOR PERSONAL USE

	ARGENTINA	BOLIVIA	BRAZIL	CHILE	COLOMBIA
Legal benchmark	Law 23,727, art. 14 (1989).	Law 1,008, art. 49 (1988)	Law 11,343, art. 28 (2006).	Law 20,000, art. 4 (2005)	Constitutional Court sentence (1994)
Details	"Scant quantity and other circumstances", "unequivocally appear that possession is for personal use"	The minimum quantity for immediate personal consumption shall be determined based on prior judgement of two specialists from a public drug dependency institute.	Contextual analysis by the judge: "judge will assess the nature and quantity of the substance seized, the location and conditions under which the action developed, the personal and social circumstance, as well as the conduct and record of the individual".	The user must prove that the substances "are for a medical treatment or for exclusive personal use in the near future". It is not considered personal use "when the quality or purity of the drug being held, transported, stored, or carried cannot be rationally supposed to be for the described uses or when the circumstances of possession, transportation, storage, or carry imply the intention to traffic.	Objective criteria for quantities were approved by the 1994 Constitutional Court sentence on art. 2 j) of Law 30. It is not considered personal use if the intention is distribution or sale of any quantity.
Set quantities	No	No	No	No	Yes

	ECUADOR	GUYANA	PARAGUAY	PERU	SURINAM	URUGUAY	VENEZUELA
Legal benchmark	Outlined in Organic Criminal Code, art.220 y art. 228 (2014). Resolutions by CONSEP (2013).	Narcotic Drugs and Psychotropic Substances (Control) Act Art. 5 (2).	Law 1,340 art.30 (1988).	Criminal Code art.299 modified by art.1 of Law 28002 (2003).	n/d	Art. 31 of law 14294 modified by art.7 of law 19.172 (2013).	Art.131 of law 37,510 (2010).
Details	CONSEP establishes maximum quantities for certain drugs under which possession is considered to be for personal use and cannot be criminalized.	The article fixes limits for various substances, above which "it is the task of the accused to prove that they are in possession of narcotics for uses other than trafficking"	"Possession sufficient for daily use, an amount to be determined, in each case, by a forensic doctor and specialist from the Ministry of Public Health and Social Welfare and another provided by the accused if requested, at their expense". It then defines a series of quantities to be considered for personal use.	The possession of drugs for personal and immediate consumption is no punishable if the quantity does not exceed that indicated in table 3.	n/d	Fixed quantity set for possession of cannabis for personal use. For other drugs: "the legal quantity destined for personal use will be determined by the judge applying reasoned judgement.	The benchmark is the day, supply for personal use is not considered possible. The quantity should be inferior to levels possible for overdose "the judge will rationally and scientifically assess the quantity that constitutes a dose for personal consumption"
Set quantities	Yes.		Yes.	Yes.	n/d	Yes.	No.

TABLE 4. QUANTITY THRESHOLDS CORRESPONDING TO PERSONAL USE

	COLOMBIA	ECUADOR	PARAGUAY	PERU	URUGUAY	GUYANA
Marijuana	< 20 gr	10 gr	< 10 gr	< 8gr	40 gr. (higher quantities will be evaluated according to judge's reasonable assessment) and 480 gr. For home storage.	15 gr
Hashish or marijuana resin	< 5 gr	X	X	< 2gr (n.s)	X	15 gr
Cocaine paste	< 1 gr (n.s)	2 gr	< 2 gr (n.s)	< 5gr	X	X
Cocaine (hydrochloride)	< 1gr	1 gr	< 2gr	< 2 gr	X	1 gr
Heroine	X	0,1 gr	< 2gr	X	X	2 gr
Opium	X	X	X	< 1gr	X	55gr (3gr morphine)
mdma	X	0,015 gr	X	X	X	X
mda	X	0,015 gr	X	X	X	X
Amphetamines	X	0,040 gr	X	X	X	X
Methaqualone	< 2gr	X	X	X	X	x

x = The quantity for personal use is not stipulated.
n.s =Not specified as such but deduced as per the classification of substances (e.g. For Colombia, the figure for cocaine paste was extracted from the quantity set for personal use of "cocaine and derivatives".

Source: Table compiled based on available data/existing laws.

Diverse laws establish objective criteria for the quantities that should be considered for personal use. As the table on limits for personal use reflects, these quantities and the substances included in legislation are not harmonized across countries.

Special Measures for Cocaine and Smokable Forms of Cocaine

In the last 15 years, the consumption of smokable cocaine (cocaine paste, crack, or *paco*) has emerged as a major concern for authorities and the public. This phenome-

non has been spread by the mainstream media – often with a sensationalist and stigmatizing slant – and has been identified more as an issue of security than one of public health, which has led to specific laws (as in the case of Uruguay) and/or public policies related to these substances (as in Brazil).

In Uruguay, law 19,007, approved in 2012, increases the penalties that can be applied to those selling cocaine paste[5]. It guarantees a minimum two-year sentence and systematically holds those indicted for this crime on remand. The bill formed part of a package of 15 measures presented by the government of President José Mujica to improve security and coexistence, among them a proposal to regulate the market for cannabis, which was implemented with Law 19,172, adopted in December 2013.

In Brazil, Law 10,216 for Mental Health (2001) establishes the conditions for the mandatory admittance of people with mental illness, though it does not refer to drug users specifically. However, it has been used to proceed with the forced admittance of homeless crack users, particularly in 2012 in Rio de Janeiro and San Paulo. [6]

Legal Frameworks for Alcohol

At an international level, in terms of alcohol consumption, the Global Strategy to Reduce the Harmful Use of Alcohol (WHO, 2010) and the Plan of Action to Reduce the Harmful Use of Alcohol by the Pan American Health Organization (WHO, 2011) are not binding for individual countries but serve as a guide to develop policies.

In the last ten years, with the goal of limiting the social and health problems associated with alcohol consumption, most UNASUR countries tightened the rules regulating its sale, marketing, and consumption. The measures have aimed to lower the tolerance for using alcohol when driving vehicles, to restrict the areas of consumption and times at which it can be sold, and to deploy tools for prevention and providing information about the risks of consumption.

In nearly all countries in the region it is prohibited to sell alcohol to minors under the age of 18. In Paraguay, this restriction applies to those under 20 and in Guyana it is permitted at the age of 16, though consumption in a public establishment is only allowed from age 18.

As the information on the restrictions on the sale and use of alcohol laid out in table 5 indicates, most countries in the region have recently lowered the threshold

5 The law is applied to "All forms of cocaine in its base form or smokable, including cocaine paste"

6 Luciana Boiteux (2013), *Liberdades Individuais, Direitos Humanos e a internação forçada em massa de usuários de drogas (2013)*, Revista Brasileira de Estudos Constitucionais [recurso eletrônico]. Belo Horizonte, v. 7, n. 25, Jan./abr. 2013.

LAWS IN THE MAKING

Chile. A bill to decriminalize consumption and cultivation for personal use: Parliament is debating a bill to decriminalize consumption and cultivation for personal use, authorizing adults to carry up to 2 grams of marijuana in public (it was initially 10 grams) and reducing the number of plants one person may own (initially 6). It does not permit consumption in public.

Brazil. *The decriminalization of consumption and possession for personal use:* The Federal Supreme Court is examining the constitutionality of article 28 of Law 11,343, which classifies possession for personal use and establishes alternative options to incarceration for the perpetrator. The arguments in favor of decriminalizing possession for personal use are that individual consumption is just a form of self-harm that does not affect the rest of society and is safeguarded by the constitutional right to develop one's own personality. For those who defend article 28, its constitutionality is based on the idea that public health is the protected legal right and that drug use affects all of society and not just the individual consumer.

Colombia. *Law on Medicinal Cannabis.* Law 80 on medicinal marijuana, sponsored by Senator Juan Manuel Galán, was approved by senators in December 2015 and by the House of Representatives in May 2016. It includes licenses to produce cannabis and its medicinal derivatives (extracts, oils); regulations for the production of non-medicinal derivatives (soap, creams, etcetera); taxes to finance programs to prevent drug use in schools; the development of medicinal cannabis production in areas such as Cauca as part of a policy of alternative development for indigenous and rural communities.

for alcohol when driving, and some (Brazil, Uruguay, Paraguay) have adopted zero-tolerance measures.

Legal Frameworks for Tobacco

In the last ten years, there have been important changes in legislation for the use of tobacco across the region. Almost all countries have adopted similar measures based on the recommendations presented in the World Health Organization (WHO)'s Framework Convention on Tobacco Control (FCTC) to which all the States in the region are signatories.

This Convention, adopted in 2003 and in force since 2005, aims to reduce the consumption of tobacco, which had reached high levels of prevalence on a global scale.

TABLE 5: RESTRICTIONS (NATIONAL O FEDERAL) ON THE CONSUMPTION AND SALE OF ALCOHOL (1)

	AGE AT WHICH SALE IS AUTHORIZED	CONSUMPTION IN PUBLIC AUTHORIZED	LIMIT FOR DRIVING GR/L	LIMITS ON SELLING HOURS	RESTRICTIONS ON TV ADVERTISING
Argentina	18	Yes	0.5	No	Partial
Bolivia	18	No	0.5	Partial	Partial
Brazil	18	Yes	0	No	Partial
Chile	18	No	0.3	Partial	None
Colombia	18	Yes	0.2	No	None
Ecuador	18	Yes	0.3	Partial	Prohibited
Guyana	16*	n/d	n/d	Partial**	None**
Paraguay	20	No	0.001	No	Partial
Peru	18	No	0.3	Partial	Partial
Suriname	18	n/d	n/d	No**	None**
Uruguay	18	Yes	0	Partial	None
Venezuela	18	n/d	n/d	Partial	Prohibited**

(1) The information corresponds to national or federal legislation. However, some regulations may be more restrictive at a state, provincial o municipal level.
* 16 for sale and 18 for consumption in public establishments.
** 2012 data from the WHO, presented in the *Regional Status Report on Alcohol and Health in the Americas, Pan American Health Organization (PAHA) and World Health Organization (WHO – Regional Office for the Americas), 2015.*

Source: Compiled based on available data/existing laws

The Convention seeks to guarantee the right of all people to the highest possible healthcare and lays out legislative positions and comprehensive public policies.

The principle measures that party States are committed too are the complete prohibition of advertising, the establishment of spaces free of smoke in all closed public places, the inclusion of messages and images warning against use on cigarette packs, the prohibition of free distribution or the sale of individual cigarettes or small packs.

TABLE 6: MEASURES ADOPTED BY UNASUR COUNTRIES BASED ON THE RECOMMENDATIONS OF THE WHO FCTC.

	TAXES	CLOSED PUBLIC AREAS FREE OF SMOKE	PROHIBITION OF TOBACCO ADVERTISING	PACKS WITH WARNING MESSAGES AND IMAGES
Argentina	69%	Yes.	Yes.	Yes.
Bolivia	41%	Partial.	Yes.	Yes.
Brazil	75-81%	Yes.	Yes.	Yes.
Chile	83%	Yes.	Yes.	Yes.
Colombia	55%	Yes.	Yes.	Yes.
Ecuador	68%	Yes.	Yes.	Yes.
Guyana	n/d	Only in health and education facilities.	No.	Partial.
Paraguay	16%	Yes.	Yes.	Yes.
Peru	40%	Yes.	Partial.	Yes.
Suriname	n/d	Yes.	Yes.	Yes.
Uruguay	70%	Yes.	Yes.	Yes.
Venezuela	70%	Yes.	Yes.	Yes.

Source: Compiled based on existing laws and the latest reports presented by each country to the WHO on the application of FCTC (2014), available here: http://apps.who.int/fctc/implementation/database/

The FCTC also suggests that State impose high levels of tax and recommends that they a set at around 70% of the product's retail price.

Uruguay was the first country in the region to establish national legislation based on the Convention and was congratulated by the WHO on May 31, 2015, World No Tobacco Day, for contributing to a reduction in the number of deaths and illnesses caused by tobacco.

In countries that adopted measures to regulate the tobacco market around ten years ago, studies reveal a clear decrease in the prevalence of consumption. According to the WHO, the implementation of these measures represented "a paradigm shift in the development of a regulating strategy to address addictive substances".

It is encouraging to see how policies to reduce demand and regulate supply can have an important

impact on levels of consumption. The bet on more information and education for users, alongside public health measures with an emphasis on primary healthcare and control of supply and advertising, has delivered positive results and can inspire public policies for other substances.

However, countries have come across several obstacles and challenges to adopting the legislation that allows for the types of comprehensive and effective policies that contribute to a significant reduction in tobacco use. Multinational tobacco companies have exerted a great deal of political and economic pressure at all levels to impede or limit the reach of new legislation, including lawsuits against the States that, which the goal of protecting public health, have regulated the tobacco market.

On the other hand, tobacco production is an economic activity that offers work opportunities to a wide sector of the region's population. As such, policies to control tobacco must consider – as indicated in the WHO FCTC – forms of alternative development that offers sustainability to peasant farmers and rural workers who are connected to tobacco production and will undeniably be affected by moves to regulate this drug's market.

Even though the region has advanced national legal frameworks to control tobacco and protect public health, the challenge is focused on their effective implementation and in the control and evaluation of these policies.

In Paraguay, a group of tobacco companies filed an injunction in 2010 against decrees 4,106 and 4,174, which regulated articles of Law 2,969, adopted in 2006 to enforce the FCTC. A judge ruled to suspend the entry into force of the measures contained in the decrees and in 2011 a new bill was presented without considering the key commitments of the FCTC. This bill was vetoed by President Fernando Lugo and in 2015 a new law was approved that promotes the comprehensive application of the FCTC.

The Philip Morris company, based in Switzerland, initiated a lawsuit against the Oriental Republic of Uruguay in 2010. It sued the country for 25 million dollars alleging the violation of a bilateral investment treaty between Switzerland and Uruguay due to measures that obligated the company the withdraw seven of the twelve brands it had in the country and dedicate 80% of the cigarette packs to warning messages and images.

Legal status of medicinal cannabis in the region

In the year 2015, several of the region's countries opened legislation to the medicinal use of cannabis. The regulations adopted have a diverse reach in terms of plantation, production, distribution, dispensation, acquisition and uses, and have been designed based on the scientific evidence that in recent decades has acknowledged the medicinal properties of cannabis.

The opening of regulation to cannabis for medicinal and therapeutic uses is linked to the role taken by users and their families alongside diverse academic and political actors and, in more than a few cases, the leading role of the mainstream media, such as in Brazil, where it played a key part. The approach has been to increase sensitivity among the community and for patients, relatives and/or organized movements to spread information to boost awareness of the right to access the benefits that cannabis can offer those who suffer certain illnesses.

Given the need to rely on a greater number of scientific studies to have in-depth knowledge of the medicinal uses of CBD and other components of cannabis, Argentina, Chile, Colombia, and Uruguay recently pushed ahead with these types of investigations.

Even though in **Argentina** there are no regulations for the medical use of cannabis, in August 2015, based on an injunction filed by a person with HIV against the City of Buenos Aires government in 2012, a judge authorized the importation of cannabis for compassionate use by the patient. The government must request authorization from ANMAT for the medical product to be allowed into the country, in accordance with the medical team that is treating the patient.

In **Brazil**, during 2014 and 2015 a series of decisions permitted a move towards regulations to import CBD for refractory epilepsy. This process was driven and supported by a strong movement of organizations of parents of children with epilepsy, particularly in the *Repense* campaign and the release of the movie *Ilegal*, which had a strong impact on public opinion in terms of destigmatizing the substance and showing its potential benefits in certain pathologies.

In January 2015, The National Agency for Sanitary Control (ANVISA) took CBD off the list of banned substances in Brazil and approved a regulatory initiative to permit and control its importation, as there is not yet any domestic production of the substance. Even though the importation is subsidized by the government and covered by insurance companies, a doctor's prescription and a permit from ANVISA are required to obtain the substance.

In **Colombia** decree 2467 was approved on 22nd December 2015. It regulates, exclusively for medicinal and scientific uses, the granting of licenses to possess seeds to plant cannabis, the cultivation of cannabis and the manufacturing and export of cannabis derivatives. The decree also reaffirms the possibility for private cultivation for personal use without a license.

ABLE 7. *LEGAL STATUS OF MEDICINAL CANNABIS*

	ARGENTINA	BRAZIL	COLOMBIA	CHILE	URUGUAY
Measure	Court ruling	Administrative decision by ANVISA	Decree	Decree	Law 19172 and regulating decree
Date	August 2015.	January 2015	December 2015	December 2015	December 2013 with regulation in February 2015
Legal status of medicinal cannabis	Illegal. Court ruling permitted importation of medicine derived from cannabis for a patient.	Illegal except for CBD under medical prescription and with ANVISA approval.	Legal	Legal	Legal
Authorizes: Medicine derived from cannabis	Yes	Only based on cannabidiol	Yes	Yes	Yes
Authorizes: Plant in its vegetal state	No	No.	Yes	Yes	Yes
Domestic production	No, only imports.	No, only imports	Yes, with a license	Yes	Yes, with a license.

In **Chile**, presidential decree 84/2015, approved in December 2015, modified the previous laws to permit "the use of cannabis and its derivative for scientific and clinical investigations and in medical treatments". The decree removes cannabis from Schedule I of narcotic drugs and places it in Schedule II. Chile has a crop of 6,000 plants used to produce medicinal cannabis that will also be included in scientific investigations.

In **Uruguay,** Law 19,172 from December 2013 and its regulating decree on medicinal cannabis, adopted on 4th February 2015, authorizes the plantation, cultivation, harvest, storage, and trade of cannabis destined for investigations or to develop special plants (cannabis herb or a mix of cannabis herbs, psychoactive or otherwise) or specialist pharmaceutical drugs (medicines based on one or more substances contained in a cannabis plant, psychoactive or otherwise) for medicinal use.

TABELA 7. SITUAÇÃO LEGAL DA CANNABIS MEDICINAL

	ARGENTINA	BRASIL	COLÔMBIA	CHILE	URUGUAI
Medida	Sentença judicial	Decisão administrativa da ANVISA	Decreto	Decreto	Lei 19.172 e decreto regulamentar
Data	Agosto de 2015	Janeiro de 2015	Dezembro de 2015	Dezembro de 2015	Dezembro de 2013 com regulamentação em fevereiro de 2015
Situação legal da cannabis medicinal	Ilegal. Sentença judicial que permitiu a importação de medicamentos à base de cannabis para um paciente	Ilegal, com exceção do CBD mediante receita médica e aprovação da ANVISA	Legal	Legal	Legal
Autoriza: medicamento à base de cannabis	Sim	Apenas à base de canabidiol	Sim	Sim	Sim
Autoriza: planta em estado vegetal	Não	Não	Sim	Sim	Sim
Produção nacional	Não, somente importação	Não, somente importação	Sim, mediante licença	Sim	Sim, mediante licença

Legal framework for hallucinogenic plants for traditional, ritual, or religious use[7]

In South America, there is an extended and diverse use of certain plants, some of them characterized as hallucinogenic, for traditional, ritual and religious purposes. These practices saw significant growth in recent decades, alongside a diversification in the contexts in which they are used, and although some countries – Brazil in particular – have developed some regulations, the cultivation and use of these plants still suffers from a legal gap in the region.

Though some of the main active components of these plants for traditional use are included in the

7 Main source: Constanza Sánchez and José Carlos Bouso, *Ayahuasca: From the Amazon to the Global Village*, TNI – Drug Policy Briefings 43, December 2015, consulted on 11/02/2016 in: <https://www.tni.org/files/publication-downloads/dpb_43_eng_web_19122015.pdf>

list of substances controlled by international conventions, the plants used in these contexts are not subject to the same control, as the only ones controlled are cannabis, poppy, and the coca bush (1961 UN Single Convention)

Article 32, paragraph 4 of the 1971 Convention on Psychotropic Substances allows the possibility of reservations from those States in which plants containing psychotropic substances "are traditionally used by certain small, clearly defined groups in magical or religious rites". However, this does not constitute an obligation to formulate a reservation, as according to the commentary of the 1971 Convention "the ongoing tolerance of the use of the hallucinogenic substances mentioned in the 1971 Conference does not require the formulation of a reservation".

The 1988 Convention talks of legal traditional uses with "historic evidence" and frames this type of consumption as a part of human rights. In this sense, the INCB noted in its 2010 report that:

> Some active ingredients with stimulating or hallucinogenic effects contained in certain plants are subject to control in virtue of the 1971 Convention, but currently no plants are controlled by this or the 1988 Convention. Neither are preparations (such as decoctions for oral consumption) made from the plants that contain these active ingredients subject to international control.

The INCB lists some examples of these plants or vegetative materials that are present in the region:

> Khat (*Cathaedulis*), whose active ingredients cathinone and cathine are included in Schedules I and III of the 1971 Convention; ayahuasca, a preparation of plants from the Amazon basin, principally *Banisteriopsis caapi* (a jungle vine) and another plant rich in tryptamine (*Psychotriaviridis*) which contains several psychoactive alkaloids like DMT; peyote (*Lophophorawilliamsii*), which contains mescaline; hallucinogenic mushrooms (*Psilocybe*), which contains psilocybin and psilocin; ephedra, which contains ephedrine.

Given the absence of international control, in its 2010 and 2012 reports the INCB called for "governments of countries in which these vegetative materials can be the object of improper use or trafficking" to remain alert to "everything that happens", and recommends the adoption of "appropriate measures" at a national level when the situation requires.

Some countries in the region have developed certain regulations for the cultivation and use of these plants, and in South America the establishment of legal pluralism (often via the national constitutions) has been key to recognize the fundamental rights of populations to maintain and develop their distinct social practices.

Brazil began to regulate the use of ayahuasca more than 30 years ago, but still doesn't have a specific law.

In 1986, based on different investigations carried out in the country, the plants used to make ayahuasca were removed from the list of the Medicines Division (DIMED). This provisional decision was confirmed in 1992 after analyzing the results of complementary investigations. In 2004, the CONAD (National Drug Policy Council) legally recognized the legitimate use of ayahuasca for religious purposes and in the same year created a multidisciplinary group to study ayahuasca to further increase understanding of its uses and properties.

In 2010, CONAD adopted a resolution containing the final report the work group published in 2006, which legitimized the use of ayahuasca.

As mentioned, in 1980 Peru emitted a reservation over the traditional use of ayahuasca and the San Pedro cactus upon adhering to the 1971 UN Convention. Since 2008, it has also recognized the use of ayahuasca as part of the nation's cultural heritage through a resolution by the National Culture Institute which affirms:

> The practice of ritual ayahuasca ceremonies constitutes one of the fundamental pillars of the identity of Amazonian people and [...] its ancestral use in traditional rituals, guaranteeing cultural continuity, is linked to the therapeutic virtues of the plant.

With this resolution, the government of Peru "seeks to protect the traditional use and sacred character of the ayahuasca ritual, differentiating it from decontextualized Western uses that are consumerist and have commercial goals."

As such, the Peruvian law on Narcotic Drugs (Law 30 from 1986) calls for special regulation for the cultivation and consumption of substances by indigenous peoples according to their traditional practices.

> Art. 7. —The National Narcotic Drugs Council will regulate the cultivation of plants that produce narcotic drugs and the consumption of them by indigenous populations, according to the uses and practice derived from their tradition and culture.

Colombia has not regulated the use of ayahuasca (yage) nor other plants for traditional use, but it does recognize indigenous authorities (councils) that can emit resolutions on the subject. In 2010, the country also recognized the Yarupari ceremony, in which the use of ayahuasca is central, as part of the nation's intangible cultural heritage, and in 2011 UNESCO recognized it as an intangible cultural heritage of humanity.

In **Chile,** there is no national regulation but a 2012 legal case – the Manto Wasi ruling – addresses the legal status of ayahuasca use. The court gave a sentence that rejected the accusation that the people involved were traffickers and even underscored the positive effects ayahuasca had for the group using it, legitimizing its therapeutic use and recognizing it as a substance not subject to control. As a result, the Public Health Minis-

try declared its willingness to work on a bill to prohibit the plant, but this was never adopted.

In other countries in the region hallucinogenic plants for traditional, ritual or religious use (power plants) have not been the object of regulation or debate, even though the traditional, ritual or religious use of these plants exists.

On the other hand, the INCB recommendations and regulations in Colombia and Peru do not recognize the new uses of hallucinogenic plants as legitimate. As such, practices considered by the users to be ritual, religious, spiritual or medicinal are left without regulation and control and can bring risks if carried out without adequate knowledge of the plant and its effects, the risks and potential harm of its use, and the setting in which it is used, among others.

Finally, the legal pluralism developed in distinct South American constitutions and its recognition of the right of use and customs of distinct populations, offers a part to protect the citizens' rights to develop new traditions based on previous ones, as in the case of *neo-shamanic* religious practices anchored in thousand-year-old knowledge from our region but with a global reach.

THE STATUS OF THOSE PEOPLE INCARCERATED FOR CRIMES RELATED TO DRUG LEGISLATION

The prison population in UNASUR countries is above one million with 60% (607,731) found in Brazil, the country that holds a little less than half the total population of the region.

ALTERNATIVES TO INCARCERATION

With the backing of the Colombian government, the Inter-American Drug Abuse Control Commission of the Organization of American States (OAS) created a work group on alternatives to imprisonment, which formed recommendations for governments of the region based on empirical evidence, a focus on public health and human rights, and compatibility with the international regime for drug control.

The proposals – designed to be used and applied according to the realities of each country – include alternatives to incarceration during the criminal process; alternatives for the prison population and alternatives to limit entry into the criminal justice system.

To summarize, the strategic proposals include; a) decriminalizing the consumption of drugs; b) a shift from the justice system to the systems of social services and public health; c) reducing the prison population (with measures other than incarceration); d) proportionality (the punishment for a specific offence reflects that damage caused to society); e) the observation and evaluation of alternative adopted as part of public policy.

Source: *Technical report on alternatives to incarceration for drug-related offences.* CICAD, 2015.

ABLE 8. GENERAL AND FEMALE POPULATION INCARCERATED FOR DRUGS OFFENCES

	TOTAL PRISON POPULATION	POPULATION IN FOR DRUGS	% TOTAL IN FOR DRUGS	TOTAL FEMALE POPULATION	FEMALE POPULATION IN FOR DRUGS	% FEMALES IN FOR DRUGS
Argentina	69,060 (2014)	7,278 (2014)	10.54% (2014)	2,989 (2014)	790*** (d2012)	65%*** (d2012)
Bolivia	14,415 (2013)	3.939 (2013)	27.33% (2013)	1,724 (2012)	828 (estim.2012)	48% (2012)
Brazil	607,731 (2014)	164,087 (estim.2014)	27%* (2014)	37,380** (2014)	25,418 (estim.2014)	68%* (2014)
Chile	44,319 (2014)	5,761 (estim.2014)	13.34%* (2014)	3,276 (2014)	1,339 (estim.2014)	40.88%* (2014)
Colombia	110,195 (2014)	**23,141 (2014)**	**21% (2014)**	**8,379 (2014)**	**3,830 (2014)**	**46% (2014)**
Ecuador	24,447 (2015)	**4,156 (2015)**	**17% (2015)**	**1,636 (2015)**	**709 (2015)**	**43% (2015)**
Peru	72,592 (2015)	16,851 (2015)	23.21% (2015)	4,369 (2015)	2,628 (2015)	60.01% (2015)
Uruguay	9,771 (2013)	1,265 (2013)	12.9% (2013)	645 (2013)	205 (2013)	24% (2013)
Venezuela	50,229 (2014)	**12,482 (2014)**	**24.85% (2014)**	**2,942 (2014)**	/	/

* In the sources consulted drug offences appeared in this percentage of cases. As such, the same person could be registered in different categories according to the crime committed.

** Only prison system, does not include police precincts, which in 2013 had 2,336 detainees.

*** The source for females incarcerated for drug offences comes from a report by CEDD (2015), which uses figures from federal prisons (see list of sources in bibliography).

Estim: Calculation based on available figures. Highlighted figures: (Cifras resaltadas:)Pérez Correa, Catalina (coord.) (2015). The Incarceration of Women for Drug Offenses Research Consortium on Drugs and the Law (CEDD).

Source for Bolivian figures: Instituto Nacional de Estadísticas; Informe sobre el uso de la prisión preventiva en las Américas, OEA-CIDH 2013, p. 22.

Figure: CEDD report 2015

This figure of a million detainees represents nearly 15% of the global prison population and corresponds to less than half the prison population of the US, which reaches 2.2 million (33% of the global prison population).

25% of people incarcerated in UNASUR countries are detained for drug-related offences. In the last two decades, drug laws have made a significant contribution to the general increase in the prison population. In several countries remand detention is used and bail denied for drug crimes, contributing to overcrowding in jails.

Among those imprisoned for drugs, the majority committed offences associated with micro-trafficking and make up the lowest level of the supply chain. They are generally of a low socio-economic level, have limited

WOMEN, INCARCERATION, AND DRUGS

Among the characteristics of the female prison population for drug-related offenses we highlight that:

The majority experienced discrimination or violence before their incarceration.

- The crimes they commit to obtain drugs for consumption and offences related to their production, distribution, supply, and sale are usually related to social exclusion, poverty and gender violence. The majority have little or no education, live in poverty and are responsible for dependents, whether children, youngsters, elderly people or those with disabilities.
- The majority of those involved in the drugs trade in the region are at the lowest level of the chain of organized crime: small-scale sellers, messengers or transporters of drugs. They are easily replaced and their detention has no impact on reducing drug trafficking or improving citizen security, nor tackling the violence or the corruption that the illicit trade generates.
- Among the groups of women most prone to discrimination in the application of drug laws we highlight: indigenous, afro-descendants or those with diverse sexual orientations, identities, or expressions of gender. As an example, in Brazil, around 55% of incarcerated women are afro-descendants.

Source: WOLA et. Al. (coord.). *Women, drug policies and incarceration. A Guide for Policy Reform in Latin American and the Caribbean*. 2015.

education, and are young; in countries like Brazil, the black population is over-represented.

We should highlight that drug laws impinge especially on women. The number of women incarcerated has spiked in the last 15 years. Today they represent 6.4% of the prison population in UNASUR (more than 64,000). Drug-related offences, and especially micro-trafficking, are the primary motive for incarceration. Though the figures vary among countries, between 40% and 70% of women were imprisoned for drugs. For the general prison population (male and female), this percentage lies between 10% and 35%.

We do not have data that identifies the female prison population incarcerated for drug-related offences for Guyana, Paraguay, or Suriname.

EPIDEMIOLOGICAL DATA AND INFORMATION FOR DESIGNING POLICY

Just as the levels of economic development, population sizes and institutional structures display the diffe-

TABLE 9. DATA ON PREVALENCE OF USE ACCORDING TO SPECIALIST STATE ORGANIZATIONS

COUNTRY	DATA SOURCE	GENERAL POPULATION	SCHOOL POPULATION	UNIVERSITY STUDENTS
Argentina	Argentine Drugs Observatory –SEDRONAR (*)	2011	2014	
Bolivia	Bolivian Drugs Observatory, National Council for the Fight against Illegal Drug Trafficking (CONALTID) (*)	2014	2008	2012
Brazil	National Secretariat for Drug Policy (SENAD)	2005	2010	2010
Chile	Chilean Drugs Observatory, National Service for the Prevention of and Rehabilitation from Drugs and Alcohol Consumption (SENDA)	2014	2013	
Colombia	Colombian Drugs Observatory, Ministry for Law and Justice.	2013	2011	2012
Ecuador	Ecuadorian Drugs Observatory, National Council for the Control of Narcotic Drugs and Psychoactive Substances (CONSEP)	2013	2012	2012
Guyana	Ministry of Home Affairs (*)		2013	
Paraguay	Paraguayan Drugs Observatory, National Drugs Secretariat (SENAD)	2003	2005	2014
Peru	Peruvian Drugs Observatory, National Commission for Life and Development without Drugs (DEVIDA) (*)	2010	2012	2012
Suriname	National Drugs Council (NAR) Bureau of National Security (*)	2007	2006	
Uruguay	Uruguayan Drugs Observatory, National Drugs Board (JND)	2015	2014	2015
Venezuela	Venezuelan Drugs Observatory, National Anti-drugs Office (ONA) (*)	2011	2009	2014

*Data from cicad report 2015

rent characteristics of the region's countries, so the patterns of drug consumption can also be considered a distinctive trait of each UNASUR nation. Though we will present the data on the prevalence of use of different drugs, which will allow us to compare how the phenomenon is manifest in each country, it is important to also consider that this diversity also exists within their borders.

Although we will not analyze figures according to the type of environment (rural or urban), gender, race or ethnicity, it is east to predict a great diversity in countries like Brazil, which covers nearly 50% of the region.

The data sources used to provide indicators for the prevalence of consumption correspond to national studies of the general population, the school population (middle school level) and university students, all conducted by the official institutes responsible for the area in each country.

The available information shows different dates for latest updates (both for the general and school populations). Some general population surveys date back to 2003 or 2005 (Paraguay and Brazil, respectively) while in cases like Chile and Uruguay the figures come from recent surveys (2014, 2015). As a result, the ability to develop and regional view of drug use is heavily impacted by how current the available information is.

With regard the university student population, we note that Bolivia, Colombia, Ecuador and Peru participated in the same project as part of the Andean community, revealing information on drug consumption between 2009 and 2012. Similar designs were used in surveys of university students in Brazil, Venezuela and Uruguay.

Most the studies use similar methodologies when designing the survey and collecting information (generally those outlined by CICAD-OAS) and only a few countries have data on trends (with at least three comparable periodic studies) of consumption in their respective territories. Consequently, it is difficult to analyze the evolution of consumption at both a national and regional level.

On the other hand, the use of drugs in the region cannot be reduced solely to a description of the frequency and pattern with which substances are consumed. Information on the volume of substance that one dose implies, the perception of risk associated with use, the availability and quality of the substances are some of the variables that should be considered to obtain a more precise view of the regional reality.

Nevertheless, given the range of methods and tools for gathering information, we will consider as key figures the *prevalence of consumption at least once during a lifetime, the prevalence of consumption in the last 12 months* (recent user), and the *prevalence of consumption in the last month* (current user)

As studies of university students do not exist for every UNASUR country, we will use the data from university studies sporadically in certain sections of analysis while comparisons of the prevalence of use have been made using only data referring to general and school populations.

Prevalence and Type of Consumption

This section presents an introductory description of data showing usage of the drugs most consumed in the region (alcohol, tobacco, marijuana, cocaine) and some of the relevant characteristics of those drugs that, while having significantly lower levels of consumption merit special consideration (smokable forms of cocaine, ecstasy, etcetera), or whose traditional, ritual or religious use is a characteristic of some countries in the region.

In summary, alcohol and tobacco are two psychoactive substances used extensively (both in the general population and among adolescents and youth) while cannabis is consumed less but still far more than cocaine and has an incipient medicinal use in region.

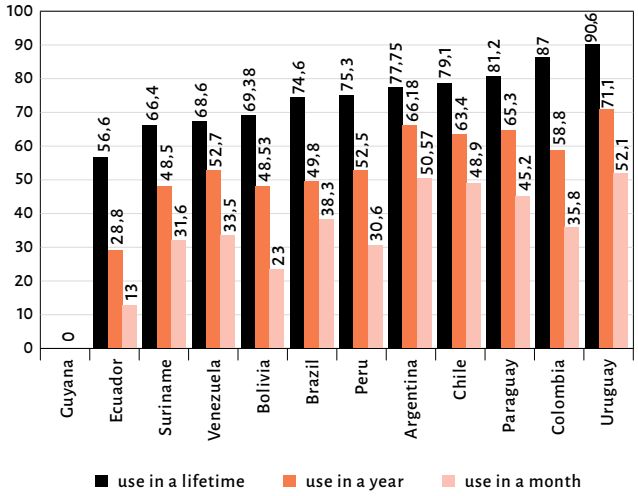
Broadly speaking, in countries in the south of the continent like Chile, Uruguay and Argentina, national surveys supervised by public institutions have registered increases in the use of substances among the general population, while Guyana is the only country that provides no data.[8] Brazil, Paraguay, Suriname present information prior to 2005 and for that reason it is impossible to analyze and compare the variations of use in a lifetime, a month or a year across all countries.

Alcohol

Alcohol is the psychoactive substance most used in South America. Chart 1, which corresponds to the general population, shows that across the region more than half of those older than 15 have consumed alcohol once in their lives.

Ecuador (13%), Bolivia (23%) and Peru (30.6%) are the countries with the lowest prevalence of alcohol use in the last month, while Uruguay (52.1%), Argentina (50.6%) and Chile (48.9%) register the highest rates of consumption in the last 30 days.

CHART 1. PREVALENCE OF ALCOHOL USE IN A LIFETIME, YEAR, AND MONTH AMONG THE GENERAL POPULATION OF UNASUR COUNTRIES.

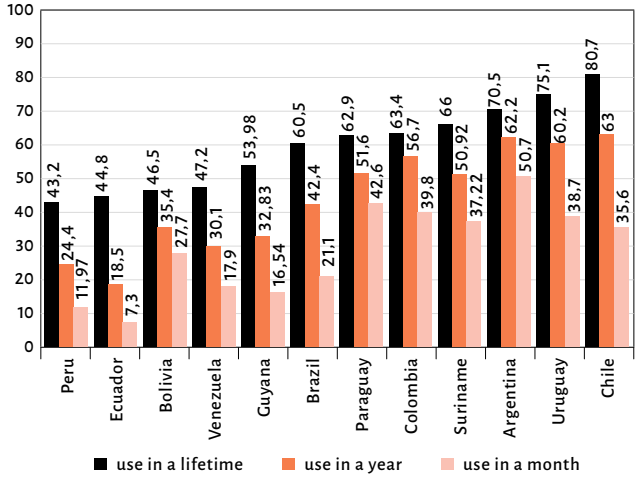


Source: Compiled based on the official data available.

Chart 2 shows that alcohol use is also extensive in the region's school population between the ages of 13 and 17. Of note are the cases of Ecuador (7.3%) and Peru (12%), which have the lowest percentages of alcohol use over a lifetime, while Argentina (50.7%), Paraguay (42.6%) and Colombia (39.8%) register the highest rates of alcohol use in the month before the survey.

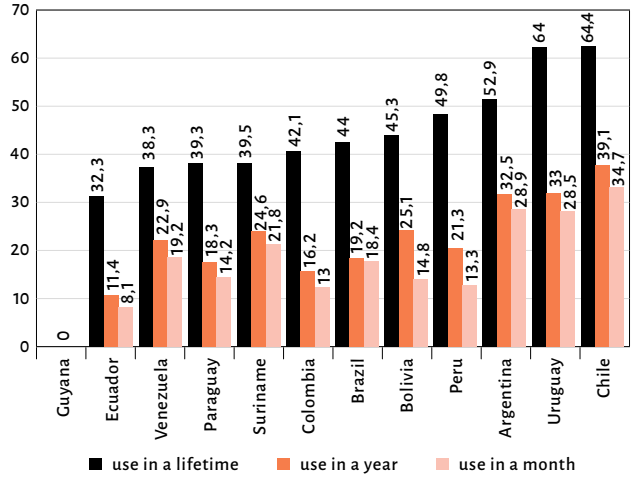
8 According to CICAD-OAS' September 2015 report Guyana has started a process of planning and coordination for a Household Survey on Drug Consumption, in collaboration with the Ministry of Public Security and the Guyana Bureau of Statistics.

CHART 2. PREVALENCE OF ALCOHOL USE IN A LIFETIME, YEAR AND MONTH AMONG THE SCHOOL POPULATION AGED BETWEEN 13 AND 17 IN UNASUR COUNTRIES



Source: Compiled based on the official data available.

CHART 3. PREVALENCE OF TOBACCO USE IN A LIFETIME, YEAR, AND MONTH AMONG GENERAL POPULATION OF UNASUR COUNTRIES



Source: Compiled based on the official data available.

With regard the data on alcohol use disclosed and analyzed above, it is important to note that there is no official information about which type of alcohol drink is consumed (quantity or strength) nor about the context in which it is consumed.

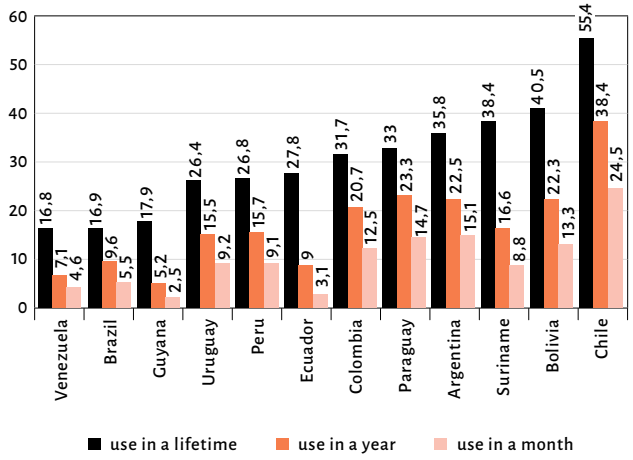
Tobacco

Tobacco is widely used in UNSAR countries. According to figures from chart 3, its high potential to generate a physical dependency and its effects on the dopaminergic system affects one in three people in Chile, Uruguay and Argentina who said they have used it in the month prior to the survey. However, in the rest of the region it is used by one in six people (on average).

According to chart 4, looking only at the school population, Uruguay (9.2%) and Argentina (15.1%) have similar usage rates within the month before the survey to the rest of the region. However, in these countries the prevalence of tobacco use declined between 2011 and 2014.

In the last decade, the use of tobacco has been affected by market regulations based on four key tools: restricting the places in which it can be sold, the creation

CHART 4. PREVALENCE OF TOBACCO USE IN A LIFETIME, YEAR AND MONTH AMONG THE SCHOOL POPULATION AGED BETWEEN 13 AND 17 IN UNASUR COUNTRIES



Source: Compiled based on the official data available.

of areas in which it cannot be used, the progressive restrictions on advertising (limiting the development of brands and marketing) and price restrictions linked to the application of high taxes.

As chart 4 shows, Chile stands out for its high prevalence of tobacco use among the school population. 55.4% of Chilean students declared having tried tobacco one in their lives, 38.4% had consumed it in the year before the study and one in four had used tobacco in the last month.

On the other hand, Venezuela (7.1%), Ecuador (9%) and Brazil (9.6%) are the countries showing the lowest prevalence of tobacco use among the school population in the month prior to the survey.

Cannabis

The South American country with the highest prevalence of cannabis use is Chile, where it is possible to estimate that one in three people (among both the general population and school population) have tried cannabis once in their lives. 28.3% of Chilean adolescents said they had used cannabis in the last twelve months and 17.1% claimed to have done so in the month prior to the survey.

The country with the second highest prevalence of cannabis use is Uruguay, where recent data from the general population (2015) indicate that one in five people had used it once it their lives and one in ten had consumed in the previous month.

In third place lies a group of countries including Colombia, Argentina, Suriname and Brazil, where around one in ten people had tried cannabis. In Ecuador, Venezuela, Bolivia, and Paraguay the lifetime usage rates are below 6%.

On the other hand, in contrast to what occurs with alcohol, tobacco, and cocaine, the prevalence of cannabis use registered among the school population is higher than that for the general population.

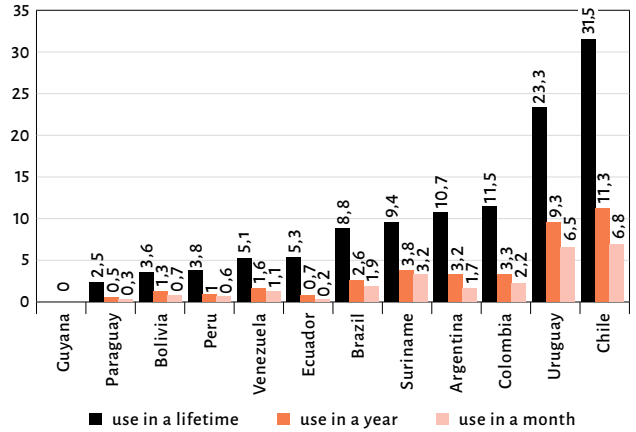
The distance between Chile and the rest of the region increases when viewing the prevalence of cannabis use among the school population, as indicated by chart 6. However, it is important to note that this country has

REGULATING THE CANNABIS MARKET

In recent years, Uruguay has moved towards regulating the cannabis market after the standardization/legitimization/legalization of cannabis use and through a policy of state control that seeks to regulate the conditions for use, aligning them with those for substances such as tobacco and alcohol. The data from two surveys on drug consumption carried out in 2015 (The Sixth National Household Survey on Drug Consumption and The Pilot Study on Drug Consumption Among University Students) indicate that:

- 39% of cannabis users had mostly consumed 'weed' (the dried flowers) and not hashish (which implies that the cannabis consumed was of higher quality and strength);
- 67.5% of university students obtained cannabis in the black market and the remaining 32.5% did so through their own cultivation or one obtained from a friend/acquaintance/relative;
- 81% of students that had consumed it in the previous 12 months said that the regulation of cannabis would not influence their personal use.

CHART 5. PREVALENCE OF CANNABIS USE IN A LIFETIME, YEAR, AND MONTH AMONG THE GENERAL POPULATION IN UNASUR COUNTRIES



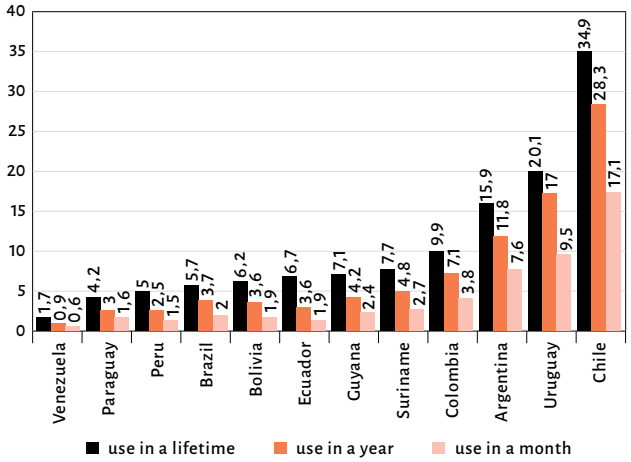
Source: Compiled based on the official data available.

high levels of school enrollment, particularly among adolescents between 15 and 17, the age group in which more experimentation with substances occurs.

The available information on the Chilean school population is dated from 2013 and shows that *use in a lifetime* reaches 34.9%, while *use in the last year* hits 28.3% and *use in the last month* stands at 17.1%. Uruguay, Argentina, and Colombia have usage rates in a lifetime of 20.1%, 15.9%, and 9.9%, respectively.

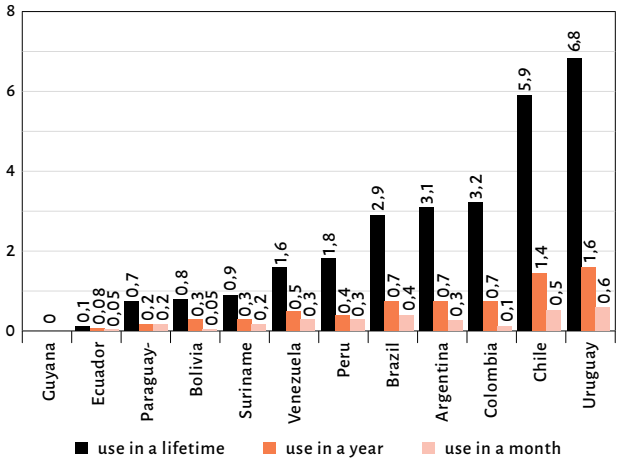
As with other substances, there is no official information about the characteristics of the black market for

CHART 6. PREVALENCE OF CANNABIS USE IN A LIFETIME, YEAR AND MONTH AMONG THE SCHOOL POPULATION AGED BETWEEN 13 AND 17 IN UNASUR COUNTRIES



Source: Compiled based on the official data available

CHART 7. PREVALENCE OF COCAINE USE IN A LIFETIME, YEAR AND MONTH AMONG THE GENERAL POPULATION IN UNASUR COUNTRIES



Source: Compiled based on the official data available.

cannabis in the region (quality, strength, price), of interest when regulating access. However, some available data indicate that the quality of the substance in the region is very low and that both the strength and price are significantly below those registered in European and US markets.

Cocaine

In terms of cocaine, among UNASUR countries the highest prevalence of use in a lifetime among the general population is found in Uruguay (6.8%) and Chile (5.9%), where six out of every 100 people have tried cocaine once in their lifetime and five out of every 1,000 had consumed in the month before being surveyed.

However, given that cocaine use has a more negative social image than the other substances, it is possible that the rate of unreported use is higher than for some legal drugs.

When considering only the secondary school population, the prevalence of cocaine use in a lifetime, in the last year or in the last month reaches similar levels to those for the general population. Chile maintains higher rates than other countries in the region, while Uruguay

SMOKABLE FORMS OF COCAINE: CRACK IN BRAZIL

An investigation carried out in 2014 was the first national scientific study to provide information on the use of smokable forms of cocaine in Brazil. Among the principal findings we highlight that.

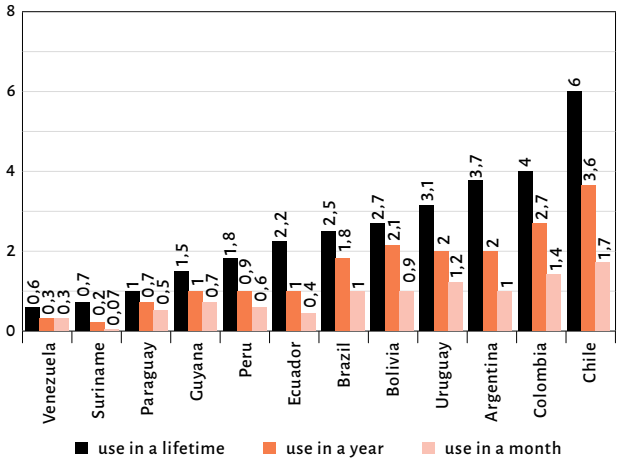
Estimates on the number of people resident in the main state capitals of the country and the federal district that consume crack or similar substances on a regular basis represented approximated 0.81% of the reference population (the total number of residents in the cities studied).

Some results showed differences to conventional wisdom, such as the frequency in which substances are used and the desire of most users to enter a treatment program for chemical dependencies.

Crack users are characterized by two historic indicators of a social disadvantage from birth or in the years preceding drug abuse: the fact they are not white (80% of those interviewed) and that they are uneducated.

Source: National inquiry on the use of crack: *who are the users of crack and similar substances in Brazilian capitals?* Francisco Inácio Bastos, Neilane Bertoni.

CHART 8. PREVALENCE OF CANNABIS USE IN A LIFETIME, YEAR AND MONTH AMONG THE SCHOOL POPULATION AGED BETWEEN 13 AND 17 IN UNASUR COUNTRIES



Source: Compiled based on the official data available.

falls closer to those registered in Colombia, Argentina, Bolivia and Brazil.

On the other hand, data presented from a study completed in 2012 on the university populations in Andean countries (Bolivia, Ecuador, Colombia and Peru) reveal that the prevalence of cocaine use in the previous year varied from 3.5% to 15.2%. The average for the four countries stood at 4.8% in 2009 and by 2012 had increased significantly to 7.9%.

Regarding the studies on the use of substances subjected to international control, we note that countries

such as Chile, Argentina, Colombia or Uruguay have developed an important degree of systemization in terms of information gathering. This could have a positive impact in reducing the bias away from 'non-responses' in a survey that would acknowledge the use of illegal drugs.

Other drugs

The category for *new psychoactive substances* (NPS) covers what the literature on the subject calls *designer drugs*, legal highs, herbal highs, bath salts, products in pills, crystals or other forms, made using chemical products and reactive laboratory products, etcetera.

The use of the term *new* does not necessarily refer to inventions – several of these substances were manufactured more than 40 years ago – but rather to substances that have appeared recently in the market and are not covered by the 1961 Single Convention on Narcotic Drugs nor the 1971 Convention of Psychotropic Substances, but that can still be considered a threat to public health.

The prevalence of use of these types of psychoactive substances is still low. Observational analysis reveals the existence of groups of users that experiment with a wide variety of substances such as ecstasy, LSD, amphetamines or opiates.

Diverse investigations and programs are oriented towards risk management and harm reduction and involve the testing of substances at parties. Multiple studies are focusing on these types of drugs and aiming to identify problems of adulteration.

Hallucinogenic Substances for Traditional, Recreational, Ritual, or Religious Use

According to the categorizations that have a consensus in the academic world, these substances can be classed based on their impact on the central nervous system as: stimulants, energizers, depressants, hallucinogens, visionary or psychedelic. However, diverse anthropological, psychological or psycho-anthropological standpoints defend the value of the users' perspectives in the labeling of substances and their use.

It is impossible to not view the world from a set of beliefs and with some inevitable ethnocentrism. However, since nearly a century ago we have been incorporating – with advances and setbacks – respect for cultural diversity, with different beliefs and rituals.

This is the platform for a necessary intercultural dialogue in the field drug policies, as proposed by the Plurinational State of Bolivia regarding the ancestral use of the coca leaf, recognized by the international community when it accepted – with objections – the reincorporation of Bolivia to the Conventions on Drugs.

In the case of certain substances that are found in or come from plant species, users from different cultures have called them *power plants* and many were used by indigenous peoples in South America. Thus, approa-

What is healthy or harmful, sacred or diabolical, changes according to beliefs. In Western Judeo-Christian cultures, wine has a clear sacramental value, but it is prohibited in the Islamic world and nobody refutes the enormous health problems caused by alcohol abuse.

Across South America there are shamanistic groups that use power plants, some of which have psychotropic elements listed in the relevant UN Schedules. These power plants are used in the context of shamanic rituals that originated in Indo-American cultures.

From an essentialist (fixed) view of cultural identities and traditions, it would be possible to say that the participation in shamanic cults is only legitimate for indigenous peoples. This ethnocentric vision could view the incorporation of a Western citizen in these cults as illegitimate, even though it is acceptable for Indo-American people to participate in monotheistic cults such as Christianity or Islam.

As such, South American beliefs constitute a broad field that is a heritage of humanity. Among these beliefs, the distinct contemporary aspects of shamanism (also called neo-shamanism by some specialists) defend the region as a homeland, with the Amazon as a special region.

ching the subject with an inclusive methodology and incorporating the users' views, we will also refer to them in this way in this section, maintaining respect for the practices and beliefs of others and understanding the validity of their categorization as such.

These *power plants* – both those whose use and circulation are controlled and those which are not – could contain substances that, consumed in rituals or associated with traditions, beliefs and/or the search for healing, have an intoxicating effect.

The *Achuar* of Ecuadorian Amazon and Two Brazilian Cults

Within the different UNASUR members live distinct cultures and cults that practice shamanistic rituals that include the use of *power plants*. To illustrate this, we will review the characteristics of two of them: the healing ritual of the *Achuar* people of Ecuador and the cults of União do Vegetal (UDV) and Igreja do Santo Daime in Brazil.

Regarding the ritual use of ayahuasca by the Achuar people of Ecuador, Phillippe Descola (2005) describes:

> Tunki started to drink the *Natem* (ayahuasca) nearly half an hour ago, using the formula designed by the shamanic priests; he has not stopped playing his musical bow, his eyes lost in a cloud of serene meditation. His patient is sat silently at his feet on a small kutank […].
> […] Tunki starts to blow the acrid smoke of a large cigar, prepared by the patient crumbling a tobacco stone onto a banana leaf, over the body of Wisui. Then he seizes the shinki-shinki, a handful of rustling leaves prepared specially for the purpose, and begins to rub them rhythmically over the painful parts of the body. This first phase of the cure is designed to anaesthetize the painful darts lodged inside Wisui's body: doped by the smoke and cooled by the draught produced by the soporific movement of the shinki-shinki, they grow numb with cold, lose their virulence and become easier to dislodge. Tunki begins to whistle through his teeth a little tune to the rhythm of his sweeping movements (Descola, 2005)

For the achuar (and other peoples that use power plants), the ayahuasca and tobacco are connected to songs, physical techniques and contact with distinct elements of nature. As with the use of psychoactive substances, in general, the effect is more than just pharmacological.

Among the Amazonian tribes that use ayahuasca there are also religions that use power plants.[9] In Brazil, the two most known are the União do Vegetal (UDV), which has existed for several decades, and the Igreja do Santo Daime, whose mentor, the master Raimundo Irineu Serra,[10] founded the Santo Daime doctrine. Its origins date back to the first half of the 20th century in the Brazilian state today known as Acre.

How is the ayahuasca prepared by these groups?

According to Henman (1986):

> Regardless of the varieties of plants used, the preparation methods are relatively standard and involve the conceptualization of several grades of strength, or *pontos*, that the drink approaches during the cooking process. In the UDV, the *oasca* is prepared in advance of the ceremonial occasions in which it is used; it is cooked in large aluminum pots with as much as 20-liter capacity, and which contain the beaten *Banisteriopsis* stems and fresh *Psychotria* leaves laid in a series of alternating layers. Expertise in this process involves a certain amount of direct experimentation: visual appearance, taste and effect are used to recognize the various *pontos* as they are achieved.
> Typically, the same liquid is used for the three successive batches of fresh plant material; at the end, the liquid acquires the consistency of a thick brown concentrate, which is passed through cloth sieves to filter any fibrous residues. Different strengths – as

9 The *tucano* or *tukano* are a South American indigenous people that live in Colombia and Brazil. Their use of ayahuasca is known through the descriptions by Gerardo Reichel-Dolmatoff (1971).

10 See ‹http://www.mestreirineu.org/index.html›.

THE CAMINO ROJO CUTTING THROUGH URUGUAYAN SECULARISM

In a country characterized by its strong secularity, there are still different groups that use *power plants*: the Camino Rojo, Santo Daime, Sol de Nueva Aurora, the Centro Holístico Ayariri (Apud, 2013). Among these groups, the Camino Rojo – which has its origins in the Lakote traditions of North America – is known for using several substances in its rituals, proposing a path to healing and personal growth that includes the use of power plants (some of which possess mescaline, like the *peyote* o San Pedro) and other plants such as tobacco that also have ritualistic importance.

The use of these power plants (or sacred plants) is a fundamental part of the beliefs and rituals of Camino Rojo, as the *medicine men and women* (who perform a role similar to that of a shaman) recognized the power of ayahuasca and use it to guide healing ceremonies.

well as different ratios of the plants themselves – are recognized in the final drink. Some samples are stored for several years in tightly-sealed bottles, a fact that defies conventional wisdom on the short shelf-life of *oasca* preparations.

The moment in the UDV ritual in which the ayahuasca is drunk is described by Henman in the following way:

> The officiating *Mestre* demands the attention of members, who are arranged with the higher-ranking individuals at the central table, and the others on benches against the walls. All stand in silence as he recites a short prayer, then the glasses are poured out and each member comes forward to the head of the table to drink his or her dose. The order of serving is determined by the internal hierarchy of the group, with the Mestres and Conselheiros drinking first, and being served larger doses then the novices. Individual prayers, like a grace before meals, are recited by some of the participants before drinking.

Among the differences between the cuts of União do Vegetal (UDV) and the Igreja do Santo Daime, Henman (1986) highlights the ritual use of the *Santa María* (cannabis) by the latter, while the UDV prohibits the use of other substances, legal or otherwise. In the Daime cult, indigenous beliefs and knowledge converge with spiritualism, afro-Brazilian religion and various aspects of Christianism.

The cults, originating from the Brazilian jungle, have spread across America and reached Europe in the 1990s, as noted by Groisman (2013), who conducted a detailed investigation into the expansion on Santo Daime in Holland.

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FROM WAR TO CARING FOR PEOPLE

DRUG POLICIES IN SOUTH AMERICA AFTER UNGASS

South America has been and is one of the geographical areas of the planet most affected by the phenomenon characterized as the *global drug problem*. Notwithstanding this, there is limited epidemiological data, lack of information and understanding of the traditional or ancestral uses of various plants, and there has been insufficient dissemination of the constitutional, judicial, legal, and policy mechanisms that govern this phenomenon.

Thus, with the objective of developing a regional vision, in 2015 UNASUR began a process of discussion and exchange that opened new horizons contemplating the social, cultural, and economic plurality of the countries of the region, considering human beings to be the linchpins.

This publication provides interesting information on uses and policies in the region outlining achievements and challenges to advance the implementation of more fair and humane drug policies.

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