



# Peace and reparations in legal drug markets in Colombia

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## ABSTRACT

Using the ‘war on drugs’ in Colombia as its case study, this paper reflects on the recent findings and recommendations of Colombia’s Truth Commission to make a case for a transformative approach to end ongoing cycles of drugs-related violence. In Colombia, the armed conflict and repressive prohibitionist drug policies are deeply entangled, and violence is ongoing. A peaceful future, we contend, requires thinking about a world in which we can live well *with* drugs. This would be a clear break from the goal of a ‘drug free’ world that has prevailed under the repressive prohibitionist regime. Legal regulation of drug markets is proposed here as a form of long-overdue reparations for victim groups in Colombia, which could address and repair past inequality and harms engendered by prohibition, and improve the living conditions of people involved in, and impacted by, illegal drug markets. Colombia, with its unique historical trajectory, has much to contribute towards future projections on the global legal regulation of drug markets. By positioning legal regulation of drug markets as reparation, this paper contributes to debates on drug policy reform and reparative justice, arguing that the two are very much connected.

## 1. Introduction

Using the ‘war on drugs’ in Colombia as its case study, this paper reflects on the recent findings of the Commission for the Clarification of Truth, Coexistence and Non-repetition (CEV), to make a case for a potentially transformative approach to end ongoing cycles of drug-related harm and violence. Despite the signing of a peace agreement in 2016, in Colombia violence continues to impact people’s everyday lives. The aim of this article is to discuss the CEV’s proposal for strict legal regulation of the drug market in Colombia (CEV, 2022d, p.668–675), and to position this recommendation as an important contribution to transitional justice and global drug policy reform. Moving away from policies based on prohibition and criminalisation calls for a fundamental reimagining of our relationship with psychoactive substances, and a break with prohibitionist aims which seek to eliminate drug production and consumption from society. We ought, as Koram asserts, recognise and question “*the slippage between waging war against plant life with the wars that have been waged against the bodies of racially subaltern subjects*” (2022, p.311). In Colombia, the logic, justification and tactics of the armed conflict and prohibitionist drug policies are deeply entangled. We argue that the transition to legal drug markets needs to be rooted in this experience in order to lay the foundations for peace. In this paper, we talk about legal and illegal drug markets as an umbrella term for the cannabis, coca and cocaine, and poppy and heroin industries. This is because, although the drug war in Colombia has historically been concentrated on coca and cocaine production, there are significant illegal cannabis and heroin markets in Colombia

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(Ministro de Justicia y del Derecho, 2023). Furthermore, much of the literature on the reparative potential of legal drug markets has focused on repairing the disproportionate harm caused to indigenous people and people of colour through cannabis prohibition (Koram, 2022; Valleriani, Lavalley, & McNeil, 2018; Rodríguez-Llach et al., 2022; Rolles et al., 2022). By opening up this discussion to the Colombian context this paper seeks to contribute to the debates on drug policy reform and reparative justice, and argues that the two are very much connected.

The structure of the text is as follows: in Section 2 we highlight the relevance of this paper to the Futures field and outline the key contributions it makes. In Section 3, we describe our methodology, and discuss the process of elaboration of the CEV's final report, where the authors all worked as researchers. In section 3.1. we offer a brief overview of the history of the 'war on drugs,' and armed conflict in Colombia to situate this work contextually. In section 3.2. we synthesise the contributions made by the CEV regarding how the 'war on drugs' has transformed Colombia's armed conflict, and in sections 3.2.1., 3.2.2., and 3.2.3., we draw the memories of people who spoke to the institution, to present the ways in which *campesinos* and people who use drugs have been harmed by drug war policies. These experiences formed the basis of the CEV's recommendation to transition towards a legally regulated drug market in order to reduce violence in Colombia. Section 3.3. discusses the reparative potential of a legally regulated drugs market as a conceptual framework beyond the traditional transitional justice process, and Section 3.4. and 3.5. situate this discussion in the Colombian context. Finally, Section 4 offers some concluding remarks.

## 2. Reparative futures

Drug policy scholarship has recently been arguing for the importance of more futures orientated work (Rhodes and Lancaster, 2021a). In particular, Rhodes and Lancaster draw attention to the limitations of "short-term, localised and reactive" orientations that have tended to characterise drug policy research and interventions (2021b, p.1), which merely extend the present and therefore reproduce harm. This reflects growing calls from researchers and civil society organisations for a better system to measure and evaluate drug policy (International Expert Group on Drug & Policy Metrics, 2017). Rhodes and Lancaster argue for a shift away from incremental interventions and towards "speculative" imaginings, in order to open-up multiple, alternative futures which would enable a break from the past (Rhodes and Lancaster, 2021b). This analysis, based on the CEV's proposal for legal cocaine regulation, draws on previous, speculative research, which is experimental and creative, to imagine a future, post-prohibition Colombia at peace. In 2009, Transform Drug Policy Foundation's, "After the War on Drugs: Blueprint for Regulation" laid out, for the first time, a set of practical and pragmatic options for a future regulatory system in the Global North for the commercialisation of non-medical drugs including alcohol, tobacco, cannabis, stimulants, psychedelics and depressants. As Savransky et al. remark, speculative futures engage with the unexpected, the seemingly impossible (2017, p.7). Published in 2009 before any national government had legalised cannabis for non-medical use, the guide was positioned as a "starting point, not a conclusion" (Rolles, 2009, p.11), and made ambitious proposals to legalise and regulate all drugs, despite this not being likely to occur, nor practically or economically viable at the time. More recently, in a speculative exercise to map various possible future scenarios in which countries legalise commercial markets for cocaine and heroin, Caulkins (2015) invokes the metaphor of a 'game' with 'players' and 'moves'. This exercise is intended to spark a discussion about the long-term impacts this policy change could engender across the world. Our analysis now seeks to position the debates about ending prohibition that are occurring in the Global South in this discussion. In other words, we ask, focusing on Colombia as the main cocaine producing country in the world and with a significant cannabis economy, what discussions are being had at the national level and what do they contribute to global - and largely English language - debates on the matter?

In 2013, Uruguay became the first country in the world to introduce a nationwide legally regulated retail market for the production and supply of cannabis for non-medical use, shortly followed by Canada in 2018, yet the legalisation and regulation of other drugs remain challenging for many people and governments. Nonetheless, as Lancaster and Rhodes point out, Latin American governments have been calling for an end to prohibitionist approaches for over a decade (2021b, p4). In 2013, the Organization of American States (OAS) called for a new approach to the 'drug problem', including the legalisation of cannabis (OAS, 2013). According to the New York Times, doing so broke "the taboo on considering alternatives to the current prohibitionist approach" (Archibald, 2013). In Colombia, and in general across Latin America, an increasingly large number of activists, academics, politicians and communities affected by the illegal drugs trade are engaging in speculative research by advancing the debate about coca and cocaine regulation, and have been for a long time.<sup>1</sup>

Reparation is often described as offering material or symbolic measures which acknowledge that a rights violation has occurred and attempts to repair these harms (De Greiff, 2006; International Center for Transitional Justice, 2003). Critics of the traditional model of reparations often point to the futility of distributing compensation payments to victims in the context of trying to advance systemic change (Pasipanodya, 2008, pp.392–395). We are inspired by calls for deeper, structural reparations, which demand us to think about how to "remake the world system" (Táiwò, 2022, p.1). Below, we argue that drug policy reform in Colombia which seeks to prioritise the communities that have been disproportionately impacted by prohibition has the potential to end much of the violence associated with the 'war on drugs', and, crucially, it could also contribute to the advancement of a more just and inclusive society. This discussion is

<sup>1</sup> In Colombia there are national and regional collectives advocating for people's right to use these drugs, mainly in Medellín, Cali and Bogotá. Across Latin America, organisations including CELS, Instituto RIA, ReverdeSer Colectivo, SOMA, Andean Infonet, AlaOrillaDelRío, México Regula, Regulación por la Paz, Elementa DDHH, among many others, are campaigning for legal cocaine markets. In Colombia a coalition of organizations in Bogotá published the following recommendations to the government intended to reduce drugs-related harm and violence: <https://www.acciontecnicasocial.com/memorando-al-gobierno-nacional-sobre-la-nueva-politica-de-drogas/>

still very weak in Colombia, despite the recommendations made by the CEV. Drug-related violence has not been taken up by the wider transitional justice system. A fundamental step toward reimagining the future in the Colombian context requires, first and foremost, an acknowledgement of the harms experienced by *campesinos* and people who use drugs - primarily the poorest people in both urban and rural areas, in light of the violations they have suffered, as shown in the CEV's final report (CEV, 2022a; 2022b; 2022c; 2022d).

The transformative dimension of reparation goes beyond repairing the damage caused by past violence, it additionally attacks the conditions of exclusion and inequality that allowed the violation of rights to occur in the first place, and eventually includes communities in legal drugs markets as beneficiaries (CEV, 2022d, p.645). This promise of reparation is important not only academically, in terms of deepening new theoretical and methodological reflections, but it offers tangible, empirical and potentially transformative benefits for Colombia itself -where the current government of Gustavo Petro is embarking on a policy called 'Total Peace',<sup>2</sup> intended to peacefully reduce violence and dismantle drugs-trafficking structures. While legal regulation in Colombia depends on alterations to the United Nations treaty framework, it is also true that the global debate on drug policy reform is contingent on Colombia's transition to peace. These future scenarios require collaboration and shared discussions, but previous scholarly literature on drug policy reform and transitional justice has done little to connect the two. This article is an effort to do so.

### 3. Methods

Transitional Justice interventions have until now made little effort to address the role of drugs-related violence and law enforcement measures to eradicate drugs-trafficking (Koram, 2022). The Colombian CEV was the first truth commission to engage with drug policy.<sup>3</sup> Based on 14,000 interviews with over 27,000 people in Colombia and in exile abroad, including victims, military, political leaders and former combatants, as well as official political documents, the CEV final report concludes that the country's political conflict has not been helped, but rather has been exacerbated and transformed by the vast resources poured into fighting the 'war on drugs' over past decades. The proposal for this article arose from the work carried out by the team investigating the relationships between illegal drug economies, drug trafficking and drug policy in Colombia's armed conflict in the CEV. This work was carried out between September 2019 and August 2022, and formed the basis of the drugs-trafficking chapter in the Commission's final report (CEV, 2022d, pp.384–463), which was delivered to the country in June 2022. This article is the result of an analytical exercise that explores the impact of the CEV's recommendation on the debate about drug regulation in Colombia's transition from conflict to peace, and its potential to bring about a better future for communities affected by drug war-related violence.

Under decree 588 of 2017, the CEV was mandated with four main tasks: to research, write and publish a final report about the causes and consequences of the war; to organise spaces to promote recognition of responsibility and victimhood; activities to promote peaceful coexistence; and recommendations for the non-repetition of the armed conflict. The CEV's scope, therefore, was far greater than simply revealing and recognising past injustice and violence. Drug economies were central to the CEV's mandate, which explicitly called for an investigation into the relationship between Colombia's armed conflict and the cultivation of illegal crop production, trafficking and money laundering. Proposals for the non-repetition of the armed conflict were to be based on the findings of the final report. 'Persistence' became a focus point of the research, since much of the Commission's work was done in the midst of the reconfiguration of the armed conflict - which did not stop in 2016 with the signing of the peace accords - and which revolved around the repeated notion that "*drug trafficking is the key motor of conflict*" (El Tiempo, 2000). Understanding the role of 'drug trafficking' in the violence thus became a contemporary reflection on why, despite well-meaning efforts, peace agreements and negotiations, the war persists.

The research carried out by the team developed from the principle that drug policy is a strategy that imposes certain ways of thinking about society's relationship with illegal drugs. We would like to emphasise that in the analytical exercise of researching and writing the final report, we faced the challenge of leaving behind some commonplace 'myths,' or narratives, which simplify and reduce drugs-related violence to 'drug trafficking'. These understandings of drugs policy have been constructed and adopted by large parts of society and academia with great haste, for example, that the 'illegal markets' operate outside of the State, outside of 'the legal', without rules and that they are violent by nature (Astorga, 2004, 2007). Rather than assuming these as indisputable truths, the team sought to understand how the 'war on drugs,' and the myths surrounding it, have become so deeply integrated into geopolitical frameworks across the world (Kushlick, 2011); at what particular moments these markets intersect with the State, legal economies and violence; and how these purported dichotomies have become so resilient to critique. Rethinking about the past, questioning these drug policy narratives and myths, and recognising their role in contributing to the persistence of violence in Colombia today, we believe, can contribute to the imagining of a better future.

<sup>2</sup> Total Peace (Paz Total in Spanish) is the peace process under Gustavo's Petro government involving different armed groups with various ideological backgrounds, such as the FARC-EP dissidents or organized high-impact crime structures, aimed at achieving their submission to justice and subsequent dismantling (Congreso de Colombia, 2022).

<sup>3</sup> The Peruvian truth commission included a chapter titled "Drug trafficking, internal armed conflict and corruption" in their final report (Volume V "Representative histories of violence"). In another document, "Explaining the internal armed conflict", the role of drug trafficking in the conflict is unclear and the topic of 'war on drugs' does not appear either. Nevertheless, whether or not the topic of drugs is addressed by a truth commission is somewhat arbitrary as each country has its own trajectory, but what is important is how different truth commissions have understood illegal drug economies, "drug trafficking" and the counter-drug policy, within their efforts to reconstruct what happened in their armed conflicts. Both the Peruvian and Guatemalan truth commissions offer useful experiences for thinking about the place of drugs-trafficking and the 'war on drugs' within armed conflict.

In addition to the CEV's final report, three complementary case studies were researched by the authors and published by the CEV at the same time, which document the harm of these policies for communities along the supply chain: "The militarization of State-citizen relations in the 'war on drugs': violence from extractivism to territorial consolidation in La Macarena" (CEV, 2022b)<sup>4</sup>; "The 'war on drugs' to the drug war: drug consumption and drug users in the violence and persistence of the Colombian armed conflict" (CEV, 2022c); and, "The 1996 coca *campesinos*' mobilisation: subjects and territories in dispute in the Colombian armed conflict" (CEV, 2022a). In section 3.2, we discuss and reflect on the main contributions of the report and these supporting case studies.

Despite the important contribution made by the CEV, the relationship between prohibition and the armed conflict in Colombia is still contested. This text offers insight into some of the communicating vessels between the two, and the impacts experienced by rural communities living in illegal drug production regions and people who use drugs. Below we describe the CEV experience in more detail and critically discuss its recommendation to transition away from prohibition in order to end violence. This is a speculative exercise because it demands a process of deliberation, dialogue and imagining about what possible futures might arise (Savransky et al., 2017; Rhodes & Lancaster, 2021b). It is worth noting that, in addition to their work at the CEV, the authors have been actively engaged in advocating on different issues including peace, human rights, land reforms, drug policy and harm reduction, intended to improve the living conditions of both rural and drug user communities invariably. Our analysis is not limited to the CEV experience, but is based on insights gained over the years from engagement and work with diverse groups affected by drug prohibition.

### 3.1. Context and previous research

The global drug control regime is increasingly understood through the lens of European colonialism and American imperialism through which it was formulated and implemented. This environment excluded key voices from the Global South, notably indigenous people for whom the coca plant is sacred, and the contemporary impacts of drug prohibition are a product of this colonial agenda, characterised by racist and xenophobic attitudes towards these communities (Daniels et al., 2021). Drug prohibition is enshrined in the 1961 Single Convention on Narcotic Drugs, which aims to eliminate drug production, supply and use through coordinated international action. The preamble states a concern that "*addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind*". This global regime helped to set the scene for an ideological commitment to fight this 'evil'. It continues to be used as a tool of Western Imperial power to advance and sustain the systematic exploitation of people, land and resources which were established under colonial control and continue to dominate today (Bewley-Taylor, 2002; Buxton, 2008, 2015; Koram, 2019; Daniels et al., 2021).

In 1971, former United States president, Richard Nixon, identified "drug abuse" as "public enemy number one" and declared the 'war on drugs' for the first time. This rhetoric served to consolidate the idea that it was possible to eliminate the drug market through military means, justifying a massive investment in security in order to combat both psychoactive substances and the people involved in their production, supply and consumption. Through the 'war on drugs', the administrations of Nixon and Reagan also indirectly intensified anti-Black policies, resulting in a marked increase of black people in prisons and the perpetuation of structural racism within the criminal justice system (John & Lewis, 2020)

Nixon's words resonated with his allies in the South, including Colombia, and served to consolidate a number of counter-drug and security programmes, and transform understandings of the internal enemy (CEV, 2022d). However, given the fears of left-wing insurgency in Colombia, counterinsurgency efforts and the 'war on drugs' discourses were conflated. In this context, vulnerable communities emerged as central actors in the conflict, due to an escalation of violence in zones with guerrilla presence or because of their participation in the illegal drug economies. The 'war on drugs' and prohibitionism constructed certain narratives about these territories and the communities living in them, that justified violence, nor did it resolve the issue of the cocaine economy (Ibid). In the following section (3.2.) we discuss the role of the 'war on drugs' on Colombia's armed conflict in greater detail.

In November 2016, representatives of the Colombian state and the FARC-EP signed the final peace agreement which was designed to end the protracted conflict and reconcile enduring internal ruptures and divisions throughout Colombian society. Following the 2016 signing of the peace accords, Colombia embarked upon a period of 'transition' intended to bring about peace in the country. Despite debates about the meaning of such 'transitions' (Castillejo Cuéllar, 2017), it consolidated a narrative about the causes and consequences of armed conflict in Colombia, and the role of drugs. For example, point 4 on the agreement, the proposed "Solution to the problem of illicit drugs", has the aim of eradicating coca cultivation and offering a substitution program<sup>5</sup> for peasants willing to transition from coca to legal crops (Office of the High Commissioner for Peace, 2016, p.98). The peace agreement also established an institutional framework to address 50 years of war: the Comprehensive System of Truth, Justice, Reparation, and Non-Repetition (SIVJRNRR) created mechanisms to reconstruct the truth about what happened in the conflict and to secure victims' rights. These mechanisms include the Commission for the Clarification of Truth, Coexistence, and Non-Repetition (CEV), the Special Jurisdiction for Peace (JEP), a Search Unit to locate disappeared people, as well as reparation measures (Decree 588 of 2017).

The CEV was tasked to analyse the state model, the responsibility of different actors, the international dimension of conflict, land dispossession and, as we note above, the relationship between Colombia's armed conflict and the cultivation of illegal crop production, trafficking and laundering. The implementation of the commitments agreed began in 2017, yet non-compliance continues to

<sup>4</sup> All translations are the authors' own unless otherwise stated.

<sup>5</sup> The National Comprehensive Program for the Substitution of Illicit Crops (PNIS) was established as part of the Peace Agreement with the goal of replacing coca crops with legal alternatives, enhancing comprehensive rural reform and to work in conjunction with land reform and other points in the agreement to promote regional development and alleviate poverty in coca-growing communities.

characterise much of these agreements today (Isacson, 2021).

### 3.2. Drug policy and victim blaming in Colombia's armed conflict

This section synthesises the main contributions made by the CEV, which form its recommendation to legalise and regulate drugs in Colombia. We discuss how law enforcement's efforts to eliminate drug markets has been counterproductive: as the CEV's findings reveal, it has strengthened them, while stigmatising people involved in the production, supply and use of illegal drugs, and producing ongoing cycles of violence. In particular, we show (sections 3.2.2. and 3.2.3.) that *campesinos* and people who use drugs are victims of structural and direct violence within Colombia's armed conflict for which they are deserving of reparations. This exercise shows the need for greater connections between drug policy reform and transitional justice in Colombia, in order to reduce violence and ensure better living conditions for these victim groups.

The success of speculative interventions is dependent on participatory engagement, including among non-scientist experts, say Lancaster and Rhodes (2021b), p.4). Indeed, specific regional needs and realities in Colombia coupled with the unique and unprecedented regulatory challenges posed by cocaine regulation, require local knowledge and actors to lead the reform process and ensure that interventions are built in to benefit the communities most affected by drug prohibition. This section draws on the memories of people living in regions where coca and cannabis are grown, and people who use illegal drugs and their families, who spoke with the CEV about their experiences of armed conflict. Historically, these experiences have been ignored, refuted or denied in accounts of Colombia's past, in narratives which tend to blame these groups as responsible for fuelling drugs-related violence, and thus somewhat deserving of said rights violations and harm. The current transitional juncture in Colombia has enabled these stories to be heard by the public; they have contributed to the reconstruction of Colombia's historical memory of the armed conflict, and thus constitute a form of reparation for victims through advancing the right to individual and collective 'truths' of the armed conflict; meanwhile, they have also contributed to the debate about legalising drugs in Colombia.

#### 3.2.1. Asymmetric distribution of violence and profits: armed regulation of the cocaine and cannabis economies in the context of armed actors

What role do the Colombian State, armed actors and the producers of illegal drugs play in the armed regulation of the illegal drug market in the post-agreement period in Colombia? What are the connections between illegal markets and ongoing cycles of war? These questions guided the CEV research on drugs and armed conflict (2022d). The relationship between violence and illegality is assumed to be automatic, natural and inevitable. Illegality itself is considered an anomaly that must be eliminated (Kushlick, 2011) and in Colombia, it has long been assumed that the engine of the conflict is 'drug trafficking'. Nevertheless, the analysis undertaken by the research team focused on uncovering where, when and towards whom this violence is exercised. This work provided a more nuanced account into the role of actors in the Colombian armed conflict; an analysis of 'criminal' violence versus the 'political' armed conflict uncovered crucial links between drug markets and armed conflict beyond the simple "financing" argument. The CEV report shows that often when this violence is expressed, repressive drug policy is the protagonist, imposing a moralising and stigmatising discourse on those involved in the production, supply and use of illegal drugs, and promoting the use of repressive apparatuses and security interventions with ever greater technology and investment (CEV, 2022d).

Rather than being drawn into emotive debates on drug policy, the relationship between violence and illegality is better explained by the political economies of the cocaine, cannabis and heroin markets. To uncover and explain these connections, the research focused on understanding the role of these markets in Colombia societies: how they work, the actors involved in them, and how their levels of violence fluctuate. A key finding of the CEV report reveals what can be considered as the unequal distribution of rents and profits, i.e., that those who make the least profit from illegal drug markets tend to suffer the most violence (the producers and users) while those who make the most profit tend to suffer the least violence (CEV, 2022d). Anthropologist Paul Farmer's (1996, 2004) conceptualisation of structural violence is useful here. Farmer's model of structural violence shows how political and economic orders exclude and ultimately kill people, particularly the world's poorest. This unequal distribution of profits and violence in illegal drug markets speaks to Farmer's findings, which reveal the poorest communities in the world to be the principal victims of structural violence (1996, p.280). The current armed regulation of the market - of which prohibitionist drug policy plays a key part - encourages the use of repression and direct violence against these communities.

Work published after the publication of the CEV's final report has developed these ideas, insisting on the capitalist character of this market and the involvement of the State. Ciro Rodriguez (2023) argues that by recognising the origin, nature and character of the contradictions in these markets - which are models of capital accumulation - what is disputed or how agreements are reached are revealed, and in this sense, the structural violence at play. This is what is conceived as *regulation*; the processes of institutional construction that have been going through a period of change since 2016 - from the experience of the peace accords to the contemporary policy of 'Total Peace,' which defines the State's approach to illegal markets and violence. Addressing the 'regulation' of these economies, where the State is a central and organising actor - and not in spite of, but because of its power to make the market illegal - is fundamental to understand the role of institutional responses in the scaling up or down of violence in illegal environments (Farmer, 2004).

#### 3.2.2. Stigmatisation, criminalisation and systematic persecution of people who use drugs

As previously mentioned, the report produced by the CEV argues that drug prohibition converted anyone involved in the production, supply or use of illegal drugs into 'criminals,' which served to justify serious acts of violence against them in the armed conflict, while also delegitimising and marginalising the political struggle of armed groups and social movements. This section summarises the CEV's findings regarding drug use and armed conflict, and makes the case that poor and marginalised people who use

drugs have been stigmatised and persecuted within the war, and should therefore be recognised as victims.

A key finding of the CEV research reveals that groups on all sides of Colombia's conflict carried out 'discrimination crimes' (CEV, 2022c, p.15). These are systematic human rights violations perpetrated against stigmatised people and territories – including people who use drugs – as a mechanism to accrue political capital among key elements of the wider population. This practice, which included murder, disappearance, forced labour and extreme violence, has been approved and even applauded by many who deem it a valid and desirable way to deal with people considered 'disposable', 'flawed' and 'dangerous'. This is directly connected to the prohibitionist narrative that purports drug use is 'immoral' and that people who use drugs are 'criminals'. So much so, that the common denominator to refer to the killings of people who use drugs has historically been "social cleansing". Unfortunately, this is even mentioned in state-sponsored historical memory reports (Perea Restrepo, 2015).

The CEV found that people who use drugs were profiled, targeted and killed by the military and then presented as 'false positives' or guerrilla soldiers killed in combat, as a result of perverse incentives within the armed forces to defeat the enemy and achieve military objectives (2022c, p.25). In other words, the lives of people who use drugs have been disregarded and discriminated against to the point of becoming military targets in Colombia's armed conflict.

The report also documents how the lack of an integral response by state institutions to address the issue of drug consumption has led to the exploitation and co-optation of young people by some armed groups to sell drugs (Ibid, p.28). In Colombia, as in many parts of the world, young people in marginal and poor areas are extremely vulnerable to the dynamics of violence and recruitment; they are approached and groomed by armed groups who offer them drugs in return. Many then become dependent and therefore permanent clients, who are easier to recruit and force into undesirable jobs. Across Colombia, in the absence of responsible state regulation, controlling drug use became a task for the armed groups (Ibid, p.15). The CEV report acknowledges that many of these young people end up dead, at the hands of the same individuals who first gave them drugs to consume, seeking to 'clean' the area, gain community support and legitimise their presence in different regions (Ibid, p.28).

The signing of the peace agreement did not end violence against people using drugs, despite proposing a new, integrated approach to address drug use with input from relevant health and education authorities, which prioritises the health and human rights of people who use drugs, over stigmatisation and criminal sanctions (Office of the High Commissioner for Peace, 2016, p.116). Pamphlets with death threats to people who use drugs that have been shared during the post-agreement period making a recurring call to attack drug users in different regions (CEV, 2022c, p.46). On the 25 August 2023, in Mocoa, in Colombia's Putumayo department, four young men aged between 17 and 21 were murdered for reportedly having smoked cannabis in the vicinity of an educational institution (El País, 2023). Less than a month later, on 18 September 2023, four more people were killed, supposedly for the sale and consumption of illegal drugs in the same area. Threats had been made through pamphlets circulating on social media networks, announcing 'social cleansing' (Cambio, 2023).

### 3.2.3. The consolidation of civilian-military strategies in the 'war on drugs': the impacts on campesinos and ecosystems

This section summarises the CEV's findings regarding the militarisation of drug policy and makes the case that people living in drug production zones should be recognised as victims. The CEV identified multiple harmful consequences engendered by the implementation of interdiction and militarisation policies carried out under the umbrella of the 'war on drugs' and the counterinsurgency war. These consequences include forced displacement, forced abortions and miscarriages caused by fumigation, imprisonment, military control of territories and a full-blown war against the peasantry. Despite well-documented evidence of its harmful effects, Colombia is the only country with coca crops that has forcibly implemented glyphosate fumigation as an attempt to control the expansion of illicit crops. Some analysts have even referred to this state action a "chemical war against the peasantry" (O'Shaughnessy and Branford, 2005).

The accusations against rural inhabitants as being "guerrilla allies" or "narco-cultivators" have legitimised the State's abuses against *campesinos* due to their involvement in "illegal activities". This has also justified military intervention in coca-growing peasant territories through civil-military and counterinsurgency strategies. In fact, the history of militarisation in regions designated as 'red zones', 'guerrilla zones' or regions 'abandoned by the state' has been based on discourses and practices that legitimise violence against its inhabitants. The discourse of "bringing in the state" or "conquering the territory" (Ramírez, 2011), constructs certain images of regions with illicit crops that promote dehumanising identities about *campesinos*. Consequently, these territories have become a laboratory for the 'war on drugs' and the counterinsurgency war (CEV, 2022b). The CEV found that militarised efforts to eliminate drug trafficking have materialised in a series of security policies implemented through Plan Colombia, Plan Patriota, and culminating in the Macarena Integral Consolidation Plan, all intended to "bring the state" to areas with emerging conflicts over land and guerrilla groups (Ramírez, 2011).

From the 1980s onwards, heated debates about coca crop control strategies focused on the effects of glyphosate on people's health and the environment (CEV, 2022d). During the 1990s, coca growers marched to demand a halt to fumigations, plans for substitution and citizenship (Ramírez, 2011; CEV, 2022a). An important actor in this process was the United States, which exerted pressure on the authorities to continue aerial fumigations and found a Colombian elite willing to follow its instructions. These actions had direct consequences on *campesinos*, resulting not only in forced displacement but also in the propagation of narratives that positioned them as agents allied with the "narco-guerrillas".

Therefore, the CEV considered *campesinos* as victims whose rights have been violated as consequence of drug policy within Colombia's armed conflict for four key reasons: 1) fumigations with glyphosate caused damage to the environment and the health of rural inhabitants; 2) the eradication of coca crops led to the forced displacement of communities in coca-growing areas; 3) drug policy formed part of militarisation strategies combined with counterinsurgency strategies that generated human rights violations and new directions in the war against the FARC-EP; 4) fumigations generated damage against citizens' productive projects, food and subsistence

crops and the economic rights of communities dependent on coca crops (CEV, 2022a; 2022b). Again, the ‘war on drugs’ has stigmatised the *campesino* communities and justified violence against them as a necessary means to eliminate drugs from society. In 2017, the emblematic Tandil massacre of coca growers by the security forces in the midst of a forced eradication operation has still not received an appropriate response from the government (CEV, 2022d, p.224).

While the CEV made an important contribution to the analysis of the role of global drug control structures in fragile and violent contexts, the debate has not significantly advanced in the rest of the Colombian transitional justice system. Another emblematic case is that of ASOCAZUL, an association of *campesinos* in the south of Colombia’s Bolivar department, who were participating in a community project to transition from coca to cocoa when they were sprayed by the anti-narcotics unit, despite calls by the peasants of this association to demand that their properties should remain outside the operations. The chemical poisoning of their land represented an unprecedented humanitarian crisis for this region, the end of their community project, and the seizure of the association by the bank that had offered the resources for the cocoa enterprise. Since then, they have sought reparations from the Colombian state, but have never been recognized as victims. Their case was sent to the Special Jurisdiction for Peace (henceforth the JEP), Colombia’s peace court, to see if it would be accepted as a crime punishable with the context of the armed conflict, but they have yet to receive satisfactory answers (Alzate González, 2022). No ‘macro’<sup>6</sup> cases of drug policy and state responsibility are under discussion in the JEP (JEP, 2022).

### 3.3. Legalisation, the future and the question of reparations

In this section we discuss in greater detail the recommendation made by the CEV’s to transition towards a legally regulated drug market, and the potential of this policy change to improve the living conditions for *campesinos* and people who use drugs in Colombia. We are interested in opening up a debate about what a legally regulated drugs market could look like in Colombia (Caulkins, 2015). We also explore the significance of this contribution to global discussions about legalising drugs. This is situated in a discussion about future-making – a future post-prohibition world in particular -, how this is thought about in the Global North and how it is discussed in the Global South.

Today, the outdated institutions of the global drug control regime - the three United Nations (UN) drug treaties 1961, 1971 and 1988 and the UN agencies that sit behind them -UNODC and the International Narcotics Control Board (INCB) - are being challenged as never before. Uruguay, Canada and many US states now have legally regulated markets for adult use of cannabis. Nonetheless, developments in policy reform have not yet gleaned significant benefits for the marginalised communities who have borne the brunt of prohibition-based drug policies (Title, 2021). A concern is that if drug law reforms are not actively decolonised and built around principles of social equity and reparative justice, they may serve to entrench power imbalances and privilege, and leave intact laws that have disproportionately harmed people who use drugs and *campesinos* within the context of Colombia’s armed conflict.

As legal cannabis regulation gathers pace internationally, drug policy reform activists, academics and policy makers are increasingly exploring its potential to advance reparative racial and social justice (Valleriani, Lavalley, & McNeil, 2018; IDPC, 2020; Koram, 2022; Rolles et al., 2022). Until now, this work has tended to focus on the disproportionate criminalisation and economic exclusion of people of colour associated with prohibition. But drug law reform is not an end in itself; and intrinsic in this exercise is the idea that reparations will need to imagine and build a new world (Koram, 2022; Táiwò, 2022). There are many questions being raised about the potential of legal regulation to help to create a fairer and more just society: Can legally regulated markets promote public health, human rights, social and reparative justice? Can they create economic opportunities for excluded and marginalised populations? Are those who suffered the brunt of prohibition benefiting from the new economy (Transform Drugs, 2022)? In other words, will Colombians - in particular *campesinos* and people who use drugs - be better off under legalisation than prohibition?. Colombia, with its unique historical trajectory, has much to contribute towards future projections on the global legal regulation of cocaine.

Imagining a more equal and inclusive future for *campesinos* and people who use drugs in Colombia requires engaging with historic injustice and dismantling the existing structures - in this case, drug prohibition - that allowed such transgressions to occur. Indeed, for reparation to be transformative, it must go beyond the reparation of the damage caused by the injustice and attack the conditions of exclusion and inequality that facilitated the violence in the first place (CEV, 2022d, p.643). Strict legal regulation of the drug market offers the potential to address and repair harms engendered by prohibition, but it also presents the very real risk of exacerbating and accelerating inequalities. As Koram has eloquently argued, “*simply folding the regulation of transnational cannabis trade into existing international economic law does not eradicate the structures of exploitation and violence that were enacted through the drug war, especially as prohibition always operated in a co-dependent relationship with neoliberalism*” (2022, p.302). Unless policy makers make a concerted effort to put reparative and social justice at the heart of drug policy reform, legalisation risks advancing the existing, exclusionary dynamics of global capitalism. International experience suggests that this is not inevitable (Valleriani et al., 2018). As we have argued throughout this paper, illegal drug markets are intrinsic to the process of capital expansion in Colombia. When imagining future scenarios, both the violence generated by capitalist markets and the violence created through prohibition and the ‘war on drugs’ which, as Ciro Rodriguez (2022) and the CEV report states, has promoted violent armed regulation of the illegal drug market, will need to be addressed. In this future imagining, we consider reparations to be a central element.

In New York, the creative reimagining of cannabis policy through the lenses of immigration, housing, employment, child welfare, and other consequences of criminalisation on African Americans in particular, has sought to position the recently regulated cannabis

<sup>6</sup> The ‘macro case’s’ constitute the most serious and wide-reaching harms in the Colombian conflict.

market<sup>7</sup> as an inclusive industry rooted in racial and economic justice (Frederique, 2023). Establishing social equity programmes and priority provision of licenses for minority groups and people negatively impacted by cannabis prohibition, the automatic expungement of criminal records, and reinvestment of profits in disproportionately impacted communities, are some of the reparative measures introduced in the New York Marijuana Regulation & Taxation Act (Office of Cannabis Management, 2023). It is too early to say whether these policies are sufficient to truly repair the harms suffered by Black communities as a result of the ‘war on drugs’ and help create a more just society, but the outlook is promising.

Below, we ask how legal regulation of the illegal drug economies in Colombia could provide an opportunity for people from communities whose livelihoods have been devastated for generations by prohibition, the policing of illegal drugs and armed conflict, to receive a substantial wealth transfer from, and inclusion in, the multi-billion legal industry. A post-prohibition future in Colombia cannot be determined by the Global North and needs to take into account the relevant experiences of armed conflict discussed in this chapter. As mentioned, our analysis builds on the recommendations made by the CEV to transition towards the strict legal regulation of all drugs and to promote an international debate on the issue (2022d, p.825). This experience not only attends to the challenge of preventing large monopolies from taking over the market, but also of making this transition compensate those who have been the main victims of the ‘war on drugs’.

### 3.4. The reparative potential of strict legal regulation in contexts of armed conflict

There is debate within the literature on reparations about the preferred frameworks that could be implemented for evaluating reparations policies – in particular, racial, social, and economic justice initiatives - in terms of drug policy reform (Koram, 2022). Monetary compensation does not seem to be a suitable mechanism for addressing the long-term, disproportionate impacts of drug law enforcement and militarisation in Colombia, in the way they might have worked for other reparations claimants in other transitional justice settings. We now ask: how could legal regulation address past and present violence in Colombia’s armed conflict, support the country’s transition from conflict to peace, and be reparative? This is significant, since the proposal for a legally regulated drugs market made by the CEV, and our analysis, comes from Colombia, contributing to a debate that, for the most part, has taken place outside the county’s borders and without recognising the particularities of the processes of illegal drug production and war in the country.

The recommendations made by the CEV, based on the memories, experiences and voices of victims and experts with whom it listened to and consulted, fundamentally challenge the conceptualisation of the drug problem as a matter of national security, and broadly outline how to address the violence related to illegal drug production, supply and consumption through a strictly regulated legal market. This implies thinking about future scenarios, in particular, a future in which society can coexist in peace alongside cannabis, cocaine and heroin, for which drug policy reform is necessary to eliminate one of the key structural drivers of conflict in the country and reduce violence (CEV, 2022d). The CEV final report calls on Colombia to lead this paradigm shift “*with the legitimacy and strength that comes from being one of the countries that has suffered the most from the violent consequences of the war on drugs*” (2022d, p.670). This qualifier is fundamental because thinking around strict legal regulation in Colombia demands a substantially different exercise than the adoption of policies that have been introduced in other countries or for other drugs. The conditions of armed conflict and its entanglement with the illegal drug economies which have been violently regulated by armed groups under the prohibitionist paradigm, require unique paths towards regulation which are rooted in this experience, in order to move towards peace. For this reason, it is imperative that the wider transitional justice apparatus in Colombia pays greater attention to drug policy reform, because its analysis thus far has been fragmentary.

In this regard, we would like to emphasise five central points for discussion in our country and in the world, which will allow us to articulate reparative future perspectives.<sup>8</sup> An important first step is to recognise both of these groups as victims of armed conflict, acknowledge the violence they have experienced as a result of drug prohibition and criminalisation, and that they are therefore deserving of reparation. This is in line with guidelines for building a social equity framework into the emerging legal cannabis industry in the United States: “*begin by acknowledging that government policies created the harms associated with the war on drugs and thus it is the responsibility of government to repair them*” (Title, 2021, p.5) Although this point was made by the CEV, the wider transitional justice system in Colombia has not yet recognised their victimhood status. To this end, *campesinos* involved in the cultivation and production of illegal drugs, who, as shown in sections 3.2.2. and 3.2.3., have traditionally been scapegoated as criminals and drug-traffickers, are in a transition process towards being recognised as victims (Dejusticia, 2022). However, the penal code has not changed, public policies continue to be at the mercy of the government of the day, which puts this population at risk.

A second point, in addition to promoting the transition towards a legally regulated drugs market, the recommendations made by the CEV to prevent the repetition of violence include calls for the immediate demilitarisation of drug policy; the implementation of institutional adjustments towards a harm-reduction-based framework for drug consumption; and, to enable research on the different uses of plants, and; alternative measures to imprisonment (2022e, pp.672-674). This implies intervening in the doctrine and strategy of the country’s armed forces, whose key strategic objective has been the fight against illegal drugs, since 1998 with the arrival of Plan Colombia. These are all focus points for regulation in the Colombian context which could be transformative for victims but may not apply to all regulatory scenarios globally.

<sup>7</sup> On March 31, 2021, New York State legalised recreational cannabis for adult-use by passing the Marijuana Regulation & Taxation Act (MRTA)

<sup>8</sup> Some basic principles for discussing the legal regulation of cocaine were expressed in the context of Colombia’s 2020 congressional hearing, as follows: <http://alaorilladelrio.com/2020/10/23/mercado-de-cocaina-justo-soberano-descentralizado-y-regional/>

The third point draws on the need for collaborative thinking and participation in future making activities, as called for by scholars in the futures field ((Savransky et al., 2017) p.12) The CEV report does not go into specific detail on the possible regulatory models for the production and commercialisation of different psychoactive substances. Since there are no contemporary precedents of a legal cocaine market in the world, this will require the creative, concerted and consensual imagining of a new, post-prohibition world, based on human rights, public health and harm reduction, and counting on the effective participation of communities and social organisations in its design, implementation and evaluation (Caulkins, 2015). To this end, the country's *campesino* organisations have been speaking out to reduce violence and exploitation in cannabis and cocaine economies and to guarantee participation in future drug regulation processes. A key demand of theirs is that coca, poppy and cannabis farmers be recognised as political subjects of rights, subject of special constitutional protection, and for the immediate termination of all forms of eradication (Convención Nacional Campesina, 2022).<sup>9</sup>

Campesinos who cultivate and produce illegal drugs across Colombia are heterogeneous. They have developed and proposed multiple alternatives for reducing violence and for the legal transition of these economies. One possibility is compliance with the country's current crop substitution programme (PNIS) as it stands, another is its re-structuring/renegotiation and concerted implementation, and thirdly, other strategies that are based on alternative plans to gradually abandoning coca cultivation. Farmers are also advocating for institutional and legislative readjustments that will guarantee a preferential focus on the coca, poppy and cannabis-growing regions, to ensure that people currently involved in the illegal market will be the ones who receive licenses and whose communities benefit from reform (Convención Nacional Campesina, 2022).

Additionally, a fourth point concerns the recommendations made by the CEV to identify the urgent need to revise short-sighted drug policy indicators which have tended to focus on repression, eradication and punishment (International Expert Group on Drug & Policy Metrics, 2017; Rhodes & Lancaster, 2021b). Going forwards, researchers and activists have called for "holistic assessments" to measure how drug policies impact on human rights, development and violence, as well as their long-term effects on the living conditions and well-being of vulnerable and marginalised communities (International Expert Group on Drug & Policy Metrics, 2017, p.17). Scholars and civil society organisations have proposed specific relevant indicators, including a reduction in violence, the protection of social leaders and their communities, and environmental protection in a way that reduces deforestation in areas affected by illegal drug crops, as additional metrics by which to assess drug policy (Vélez et al., 2023).

Finally, reparations should include expungements of criminal records for offenses which will be legal in a post-prohibition world, and investments into communities which have been harmed by drug prohibition and drug war violence. Such investments ought also to include government-supported programs which maximise opportunities for said communities to participate in the emerging legal industries, while simultaneously minimising structural barriers to licenses and employment that may not be equally accessible, as well as formal training programmes and investments in the infrastructure of these communities (Title, 2021). In Colombia, the majority of small-scale, traditional indigenous cannabis growers and *campesinos* have been excluded from the legal medicinal cannabis market, while many of the organisations who have benefited have come from the Global North. Requirements for licenses have been very onerous, so *campesinos* have struggled to meet the demands, and have not been able to afford the fees or the time required (Avellaneda & Roa, 2020). Future planning must learn from this experience and adapt investments and social equity programmes to the Colombian context to prevent it from happening again.

### 3.5. Challenges of legalising drugs in Colombia and limitations to its reparative potential

There is evidently a growing, important debate about the future of global drug policy (Global Commission on Drug Policy, 2021; Office of the United Nations High Commissioner for Human Rights OHCHR, 2023). These projections could have enormous territorial consequences, with significant impacts in producer countries such as Colombia. Unpicking this conjuncture enriches the analytical possibilities about the future as well as the real possibilities for change. The transitional situation in Colombia is an example of this.

One of the central contributions of this change is the reparative dimension. As we discuss in Section 3.3., the reparative potential of legal regulation of the drug market is not a given. Risks of over commercialisation and not paying attention to the specific conflict-related realities in Colombia pose very real threats to a more just, inclusive and peaceful future for farmers and people who use drugs, if new policies replicate the inequalities and exploitation of the global capitalist economy and to fail to reduce violence.

The recommendations made by the CEV are limited by difficulties encountered during the research process to uncover the 'truth of drug-trafficking'; that is, the involvement of elites, public officials, contractors, electoral polling companies and the U.S. government in the dynamics of the "war on drugs" in Colombia. A considerable amount of drug policy decision-making has been facilitated by actors who have directly benefited from these policies. Their interests in maintaining the illegal drugs market now present a challenge for drug policy reform in the country (Sáenz Rovner, 2021). Clearly, it is of vital importance that all actors, mainly victims, are meaningfully consulted in the design and implementation of new policies, but also including those responsible for ongoing violence. We can only begin to think about reparations and futures when the population does not have the threat of violence hanging over its head.

Legal regulation is not a silver bullet that can single handedly end violence in Colombia and repair all historical harms caused by drug prohibition. It must also be accompanied by immediate measures, based on a human rights, sustainable development and harm reduction, to address structural problems such as rural inequality, the agrarian problem and to mitigate reprisals from non-state armed

<sup>9</sup> The CEV report called for an immediate end to the militarised, forceful eradication of coca crops, in order to help reduce rural violence and improve state-citizen relations. However, despite the evidence presented, this destructive policy remains in force in Colombia, and continues to harm the socio-economic lives of *campesinos* and their communities.

actors currently regulating the drugs-market. Additionally, we must stop talking about a ‘solution’ to the ‘drug problem’ - which only serves to further the discriminatory and stigmatising rhetoric against groups that have been marginalised by prohibition.

#### 4. Conclusion

This article offers engagement with the key findings of Colombia’s CEV final report as a starting point for imagining and building “reparative futures,” in particular, a post-prohibitionist future in Colombia. We draw on the memories of harms inflicted upon inhabitants in regions where illegal drugs are grown and produced as well as people who use drugs in Colombia - which form the basis for the CEV’s proposal for legal regulation of the drugs market - which is offered as a means to reduce violence and to repair historical harms engendered by prohibition in the context of the armed conflict. In doing so, the article seeks to open up the discussion about the relationship between transitional justice and the ‘war on drugs’ in Colombia, through a critical analysis of recent debates on drugs policy and armed conflict in the country, and the state of the global discussion on legal regulation.

The stigmatisation and constant persecution of both groups are expressions of ongoing violence in Colombia which undermine and threaten the country’s transitional justice processes and possibilities of peace. Such dynamics limit any strategy aimed at ‘solving’ the harm caused by drugs and drug policy and will be an irremediable challenge while the ‘war on drugs’ remains in place. It is important that transitional justice processes in Colombia pays greater attention to drug policy and recognises both of these groups as victims. This entails normative adjustments including: changes in criminal policy that consider the vulnerability of victims involved in the illegal drugs market; recognition and accountability regarding those who have really benefited from maintaining prohibitionist policy and militarisation strategies; the full participation of Colombian communities in a new drug policy design and implementation that prioritises human rights over interdiction strategies; and non-repetition, which implies a new drug-policy paradigm developed around legal regulation that seeks to take violence and exploitation out of the market.

Colombia’s experience after the signing of the peace accords is fundamental. The country is witnessing the reconfiguration of the drugs market, primarily due to the reincorporation of the FARC-EP into civilian life, a key actor in the regulation of this market, which left a considerable vacuum in many Colombian territories (Ciro Rodríguez, 2023). This includes high levels of violence, which although not reaching the levels of the war period, are impacting social leaders and communities in coca and cannabis areas (INDEPAZ, 2023). In parallel, a new discursive drug policy paradigm has been consolidated that hopes to move away from repression (Office of the High Commissioner for Peace, 2016). Added to this is the impact of the legalization of medicinal cannabis in 2016, and the current debate in Congress about regulation of recreational cannabis for adult use. What once might have been considered impossible - a legally regulated drugs market in Colombia - is now a plausible reality.

Thinking about future scenarios requires us to think about a world *with* drugs, since at present, the goal of a drug free world is the one that has prevailed (UNDCP, 1998). The construction of the CEV’s final report, the case studies and the recommendations made towards ending violence, occurred at a transcendental moment in the history of the country, one that signified the ‘end’ of the war, the construction of a future that could lead towards peace or towards further violence, and also a strong process of global criticism of the “war on drugs”. The publication of the CEV’s final report and its conclusions and its acknowledgement by the presidency of Gustavo Petro (2022–2026) marks a key moment: in his inaugural speech and in subsequent discourses on an international stage, he denounced “the failure of the war on drugs” and called for the need for a new policy (Noticias Caracol, 2022). By August 2022, many conditions for change were in place; yet one year later, in 2023, the panorama is no longer so clear. In this precarious scenario, future planning becomes more important than ever.

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**Sánchez Sammy:** Conceptualization, Data curation, Formal analysis, Investigation, Methodology, Writing – original draft, Writing – review & editing. **Ryder Mary:** Conceptualization, Data curation, Formal analysis, Investigation, Methodology, Project administration, Writing – original draft, Writing – review & editing. **Ciro Estefanía:** Conceptualization, Data curation, Formal analysis, Investigation, Methodology, Project administration, Writing – original draft, Writing – review & editing.

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