

2021

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Recommended Citation

Baron, Lily (2021) "The Chemical War on Drugs: Why a U.S.-Backed Program to Fumigate Coca Fields in Colombia Would Violate the Right to Health," *Human Rights Brief*. Vol. 25: Iss. 1, Article 6.
Available at: <https://digitalcommons.wcl.american.edu/hrbrief/vol25/iss1/6>

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THE CHEMICAL WAR ON DRUGS: WHY A U.S.- BACKED PROGRAM TO FUMIGATE COCA FIELDS IN COLOMBIA WOULD VIOLATE THE RIGHT TO HEALTH

*by Lily Baron**

In December 2020, Colombian officials announced that a U.S.-backed program to eradicate illegal coca cultivation by aerially fumigating coca fields with glyphosate—a program previously suspended for public health reasons in 2015—will recommence.¹ By restarting the program, however, Colombia will directly harm the health not only of the illicit coca growers, but of nearby communities who are indiscriminately impacted by the spray.² Colombia would therefore violate the right to health recognized by Article 12 of the International Covenant on Econom-

ic, Social and Cultural Rights (ICESCR)³ and Article 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).⁴ Colombia would directly violate the affected farmers' and communities' right to health because the aerial fumigation program involves spraying glyphosate, an herbicide proven to cause various diseases,⁵ threaten food security,⁶ and contaminate water.⁷

Colombia first introduced aerial fumigation in the 1990s as part of its efforts to control cocaine production.⁸ Heavily supported by the United States and its "War on Drugs," the aerial fumigation program became a crucial component of "Plan Colombia," a multibillion-dollar U.S. effort to assist Colombia in its decades-long fight against drug trafficking by

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¹ *Colombia Poised to Restart Coca Spraying, a Failed 'Drug War' Policy*, ADVOC. FOR HUM. RTS. IN THE AMERICAS (Dec. 19, 2020), <https://www.wola.org/2020/12/colombia-poised-restart-coca-spraying-failed-drug-war/> [hereinafter *Colombia Poised to Restart Coca Spraying*].

² See generally Connor Paige, *The Victims of Colombia Aerial Fumigation*, COLOM. REPS. (Apr. 4, 2014), <https://colombiareports.com/victims-aerial-fumigation/> (explaining that the livelihoods and health of Colombia's small-scale farmers are threatened by aerial glyphosate spraying yet remain one of the most overlooked groups affected by the continuing drug conflict).

³ International Covenant on Economic, Social and Cultural Rights art. 12, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

⁴ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights art. 10, *opened for signature* Nov. 17, 1988, O.A.S.T.S. No. 69, 28 I.L.M. 161 [hereinafter Protocol of San Salvador], <https://www.cidh.oas.org/Basicos/English/basic5.Prot.Sn%20Salv.htm> [https://perma.cc/8Q7K-Y5KF].

⁵ *Colombia Poised to Restart Coca Spraying*, *supra* note 1; Letter from The Washington Office on Latin America et al. to Members of Congress of the Republic of Colombia et al. (Nov. 30, 2020), https://colombiapeace.org/files/201130_coca_letter_eng.pdf.

⁶ Margaux Maxwell, *Indigenous Communities in Post-FARC Colombia Struggle to Destigmatize Sacred Coca Leaf*, MONGABAY (Jan. 23, 2019), <https://news.mongabay.com/2019/01/indigenous-communities-in-post-farc-colombia-struggle-to-destigmatize-sacred-leaf/>.

⁷ Gideon Lasco, *Dealing with Coca—Both Traditional Beverage and Illicit Drug Precursor*, DISCOVER MAG. (Feb. 7, 2020, 4:45 PM), <https://www.discovermagazine.com/health/dealing-with-coca-both-traditional-beverage-and-illicit-drug-precursor>.

⁸ Joshua Collins, *Colombia to Resume Fumigating Its Coca Fields with Glyphosate*, SIERRA CLUB (June 16, 2020), <https://www.sierraclub.org/sierra/colombia-resume-fumigating-its-coca-fields-glyphosate>.

cutting-off cocaine production at its source⁹ while, arguably, justifying the United States' continued intervention in Colombia.¹⁰

During the first twenty-five years of Colombia's aerial glyphosate spraying program, U.S. contractor pilots and Colombian police sprayed the chemical onto 4.42 million acres of Colombian territory, an area larger than Connecticut.¹¹ Nonetheless, in 2015, Colombia produced an estimated 649 tons of cocaine—the same level of production as 2001, when Plan Colombia was just getting started.¹² Despite its long reign and significant geographic reach, the program only proved capable of yielding short-term results in eradicating the cultivation of coca.¹³ It instead found notoriety because of the consequences of glyphosate's effects on human health.¹⁴

Colombia was first forced to narrow the geographic scope of its aerial glyphosate spraying program in 2005 as a consequence of a massive wave of protests by Quechua communities in Ecuador who were

experiencing collateral damage from the chemical from across the border.¹⁵ In 2002, the Health Office of Sucubíos, Ecuador reported an increase in skin problems among community members, especially children; the timing of which coincided with Colombia's commencement of aerial glyphosate spraying on the other side of the San Miguel River.¹⁶ Quechua communities, including residents of Nueva Loja near the San Miguel River, began filing complaints with human rights organizations and the Ecuadorian government.¹⁷ Galvanized by these complaints, Ecuador eventually negotiated an agreement with Colombia in which the Colombian government agreed to stop spraying glyphosate within ten kilometers of their shared border.¹⁸

Colombia later suspended its aerial glyphosate spraying program completely in 2015 after years of protests from some of its own citizens, primarily farmworkers and activists who asserted that the herbicide had been negatively impacting the health of those living in Colombia's rural farmlands since the program's start in 1996.¹⁹ The protests culminated in the Constitutional Court of Colombia's 2017 ban on glyphosate spraying, aimed at protecting the Afro-Colombian population that had been affected

⁹ William Neuman, *Defying U.S., Colombia Halts Aerial Spraying of Crops Used to Make Cocaine*, N.Y. TIMES (May 14, 2015), <https://www.nytimes.com/2015/05/15/world/americas/colombia-halts-us-backed-spraying-of-illegal-coca-crops.html>.

¹⁰ See generally Grace Lee, *Imperialism by Another Name: The US "War on Drugs" in Colombia* (Aug. 22, 2017) (University of Toronto) (on file with the E-International Relations Database) (arguing that the U.S. War on Drugs in Colombia provides the United States with an outlet to ensure the preservation of a pro-U.S. government through the use of military tactics, thereby preserving its strategic capitalist interests in the region).

¹¹ Adam Isacson, *Restarting Aerial Fumigation of Drug Crops in Colombia Is a Mistake*, ADVOC. FOR HUM. RTS. IN THE AMERICAS (Mar. 7, 2019), <https://www.wola.org/analysis/restarting-aerial-fumigation-of-drug-crops-in-colombia-is-a-mistake/> [hereinafter *Restarting Aerial Fumigation*].

¹² Lucy Sheriff, *A Push to Legalize Coca Leaf Production in Colombia*, THE WORLD (July 6, 2018, 10:30 AM), <https://www.pri.org/stories/2018-07-06/push-legalize-coca-leaf-production-colombia>.

¹³ *Restarting Aerial Fumigation*, *supra* note 11.

¹⁴ See, e.g., Adriana Camacho & Daniel Mejía, *The Health Consequences of Spraying Illicit Crops: The Case of Colombia*, CTR. FOR GLOB. DEV. 1, 5 (2015) (exploring the causal effects of aerial glyphosate spraying on human health).

¹⁵ See generally Ecuador: "Collateral Damage" from Aerial Spraying on the Northern Border, EL TRANSNAT'L INST. (Dec. 1, 2003), <https://www.tni.org/es/node/12061> (discussing aerial glyphosate spraying's collateral damage in Ecuador and consequent response by civil society).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Ángela Meléndez, *Ecuador-Colombia Settlement Won't End Spraying*, INTER PRESS SERV. (Oct. 28, 2013), <http://www.ipsnews.net/2013/10/ecuador-colombia-settlement-wont-end-spraying/>.

¹⁹ *Colombia Peace Update: April 17, 2021*, ADVOC. FOR HUM. RTS. IN THE AMERICAS (Apr. 17, 2021), <https://colombiapeace.org/colombia-peace-update-april-17-2021/>; Stefano Pozzebon, *Colombia Wants to Resume Spraying a Toxic Chemical to Fight Cocaine. Critics Say It's Too Risky*, CNN (Aug. 28, 2020), <https://www.cnn.com/2020/08/28/americas/colombia-aerial-fumigation-cocaine-intl/index.html>.

by fumigation in N6vita, a municipality of Colombia's Choc6 Department.²⁰ In its ruling, the Court stated that the government would need to show that spraying was safe to be able to relaunch the program.²¹

Following a meeting with then-U.S. President Donald Trump in 2020, Colombian President Iv6n Duque announced that the aerial fumigation program would recommence.²² One year later, after meeting with officials from the Biden administration, President Duque issued a decree²³ specifying his government's plans for reviving the aerial fumigation program and, within days, obtained approval from the environmental licensing authority.²⁴ Although the U.S. House of Representatives has since passed a bill banning the use of U.S. Department of Defense funds for the aerial spraying of coca, a significant portion of the funding has always been and still is provided by the U.S. Department of State.²⁵ With U.S. funding still on the table, approval from the environmental licensing authority, and support from President Duque, the decision whether to recommence the program now rests with Colombia's National Drug Council (CNE), the decision-making body capable of reversing the program's 2015 suspension.²⁶

Even if the CNE grants approval and the program moves forward, glyphosate spraying would still violate affected communities' right to health as

recognized by various international legal instruments. The right to health is elucidated in the ICESCR, which Colombia ratified in 1969, as well as the Protocol of San Salvador, which Colombia acceded to in 1997.²⁷ Article 12 of the ICESCR provides "[t]he State Parties to the Present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."²⁸ This right is also reiterated in Article 10 of the Protocol of San Salvador.²⁹ Colombia is required to take the steps necessary to meet its Article 12 obligations, including those required to improve "all aspects of environmental and industrial hygiene" and for "the prevention, treatment[,] and control of epidemic, endemic, occupational[,] and other diseases."³⁰ By deciding to spray glyphosate by air, which will inevitably have a negative impact on the health of coca farmers, food crop farmers, and local communities alike, Colombia would not be taking steps to prevent, treat, or control diseases. Rather, it would directly contribute to them.

There is a proven correlation between glyphosate and respiratory diseases,³¹ miscarriages,³² skin disorders,³³ birth defects,³⁴ neuro disorders,³⁵ and neurodegenerative diseases.³⁶ The Constitutional Court of

²⁰ Corte Constitucional [C.C.] [Constitutional Court], abril 21, 2017, Sentencia T-236/17, Gaceta de la Corte Constitucional [G.C.C.] (Colom.) <https://www.corteconstitucional.gov.co/Relatoria/autos/2019/A387-19.htm>; Andr6s Berm6dez Li6vano, *Colombia Will Spray Chinese Glyphosate to Control Coca*, *DIALOGO CHINO* (Aug. 1, 2019), <https://dialogochino.net/en/agriculture/29391-colombia-will-spray-chinese-glyphosate-to-control-coca/>.

²¹ Pozzebon, *supra* note 19.

²² *Colombia Poised to Restart Coca Spraying*, *supra* note 1.

²³ Decreto 380, abril 21, 2021, Diario Oficial [D.O.] (Colom.).

²⁴ *Colombia Peace Update: April 17, 2021*, *supra* note 19.

²⁵ Adriaan Alsema, *US House Blocks Defense Funds for Colombia's Coca Spraying*, *COLOM. REPORTS* (Sept. 24, 2021), <https://colombiareports.com/us-house-blocks-funds-for-colombias-coca-spraying/>.

²⁶ *Colombia Peace Update: April 17, 2021*, *supra* note 19.

²⁷ ICESCR, *supra* note 3; Protocol of San Salvador, *supra* note 4.

²⁸ ICESCR, *supra* note 3, art. 12.

²⁹ Protocol of San Salvador, *supra* note 4.

³⁰ ICESCR, *supra* note 3, art. 12.

³¹ Kata Kar6th, *Pandemic Upends Colombia's Controversial Drug War Plan to Resume Aerial Spraying*, *SCIENCE MAG.* (June 11, 2020, 11:15 AM), <https://www.sciencemag.org/news/2020/06/pandemic-upends-colombia-s-controversial-drug-war-plan-resume-aerial-spraying> (citing Adriana Camacho & Daniel Mej6a, *The Health Consequences of Spraying Illicit Crops: The Case of Colombia*, 54 J. HEALTH & ECON. 147, 148 (July 2017)).

³² Letter from The Washington Office on Latin America et al., *supra* note 5.

³³ Kar6th, *supra* note 31 (citing Adriana Camacho & Daniel Mej6a, *The Health Consequences of Spraying Illicit Crops: The Case of Colombia*, 54 J. HEALTH & ECON. 147, 148 (July 2017)).

³⁴ *Id.*

³⁵ Camacho & Mej6a, *supra* note 14, at 5.

³⁶ *Id.*

Colombia even cited these maladies in its decision to ban glyphosate spraying in 2017.³⁷ There is also vigorous debate over whether glyphosate is a carcinogen. According to the World Health Organization (WHO) and the International Agency for Research on Cancer (IARC), glyphosate is “probably carcinogenic.”³⁸ In spite of this information from the WHO and IARC, as well as its own domestic court decisions,³⁹ the United States maintains there is not enough evidence proving glyphosate causes cancer and continues to pressure President Duque to reinvigorate the aerial fumigation program as part of its Plan Colombia and the “War on Drugs.”⁴⁰ Notably, the United States attempts to substantiate its assertion that glyphosate is safe by citing research commissioned by none other than Monsanto, the company that originally patented the herbicide.⁴¹

There is also readily available anecdotal evidence, which describes the impacts of glyphosate on human health and safety in Colombia. For example, one individual from Crucito who was in his rice paddy

when his field was indiscriminately fumigated now has skin problems and eyesight issues.⁴² Another farmer from Antioquia who worked in coca fields during aerial fumigations in the early 2000s noted that the herbicide would fall on the field like a toxic fog, causing irritation so painful that workers’ skin would start to bleed.⁴³

Colombia is further evading its duty to mitigate these known health risks by failing to warn farmworkers of impending fumigation, in spite of Monsanto’s recommendation that those exposed to glyphosate prepare themselves by wearing personal protective equipment (PPE).⁴⁴ Monsanto’s recommendation aligns with General Comment No. 14 to the ICESCR, which provides that as part of State Parties’ obligations, they must improve “all aspects of environmental and industrial hygiene,” as well as prevent and reduce the population’s exposure to harmful substances, including harmful chemicals that directly or indirectly impact human health.⁴⁵ However, to be effective at eradicating coca production, aerial fumigation must occur precipitously.⁴⁶ Otherwise, coca growers would have time to deploy the many techniques they have developed to mitigate the effects of glyphosate on their crops, such as spraying molasses on the plants to prevent the herbicide from penetrating the foliage or cutting the stems so that the plants can grow back and be harvested a few months later.⁴⁷ Because of these considerations, providing workers with warnings so that they can wear PPE would be counter to the aerial fumigation program’s goal: ending illegal coca cultivation.⁴⁸

³⁷ Corte Constitucional [C.C.] [Constitutional Court], abril 21, 2017, Sentencia T-236/17, Gaceta de la Corte Constitucional [G.C.C.] (Colom.).

³⁸ Letter from The Washington Office on Latin America et al., *supra* note 5; Charles M. Benbrook, *How did the US EPA and IARC Reach Diametrically Opposed Conclusions on the Genotoxicity of Glyphosate-Based Herbicides?*, 31 ENV’T SCI. EUROPE 1, 2 (Jan. 14, 2019).

³⁹ Adam Isacson, *The Costs of Restarting Aerial Coca Spraying in Colombia*, ADVOC. FOR HUM. RTS. IN THE AMERICAS (Feb. 11, 2020), <https://www.wola.org/analysis/costs-restarting-aerial-spraying-coca-colombia/>; *Judge Reduces \$2B Award in Monsanto Roundup Case to \$87M*, L.A. TIMES (Jul. 26, 2019), <https://www.latimes.com/business/story/2019-07-26/monsanto-roundup-cancer-lawsuit-award>.

⁴⁰ Michael Krumholtz, *Colombia on the Verge of Restarting Aerial Fumigation with Glyphosate*, LATIN AM. REPS. (Feb. 15, 2021), <https://latinamericareports.com/colombia-on-the-verge-of-restarting-aerial-fumigation-with-glyphosate/5467/>.

⁴¹ *Id.*

⁴² Jacobo Garcia, *Colombians See Pros, Cons in Ban on Anti-Coca Spray*, DAILY HAMPSHIRE GAZETTE (May 22, 2015), <https://www.gazettenet.com/Archives/2015/05/cocaspray-hg-051515>; Jaya Nayar, *Aerial Fumigation in Colombia: The Bad and the Ugly*, HARV. INT’L REV. (Dec. 9, 2020), <https://hir.harvard.edu/aerial-fumigation-in-colombia-the-bad-and-the-ugly/>.

⁴³ Pozzebon, *supra* note 19.

⁴⁴ *Id.*

⁴⁵ CESCR, General Comment No. 14, ¶ 15, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

⁴⁶ See Camacho & Mejía, *supra* note 14 at 6–7.

⁴⁷ See *id.*

⁴⁸ Pozzebon, *supra* note 19.

However, failing to ensure that those who come in contact with glyphosate by providing warnings or PPE is in itself a violation of Article 12. By spraying glyphosate without warning, the Colombian government is acting counter to its obligation to improve aspects of environmental and industrial hygiene as well as prevent the population's exposure to harmful chemicals that impact their health. Instead, the government is willfully spraying a harmful chemical proven to cause damage to human health onto rural communities and farmworkers, many of whom, ironically, are actually cultivating *legal* crops nearby.⁴⁹

In a similar vein, glyphosate spraying endangers the food security of affected communities.⁵⁰ General Comment No. 14 to the ICESCR notes that the right to health is closely related to and dependent upon the realization of other rights, including the right to food and to adequate nutrition.⁵¹ Although highly sophisticated precision instruments are used to determine spray targets, there is evidence of destruction of legal crops.⁵² Because glyphosate is sprayed from planes, the chemical is largely left to the mercy of the wind⁵³ and often comes into contact with food sources like avocado and corn, thereby drastically impacting communities' food security.⁵⁴ Between 2001 and 2002, the Colombian government received over 6,500 complaints of damage to legal food crops caused by aerial fumigation.⁵⁵ For example, one women-owned cooperative in Putumayo lost their pineapple crop after it was mistaken for coca.⁵⁶ Another farmer found himself unable to feed his family and was forced to relocate after his food crops were destroyed.⁵⁷ These affected individuals and their communities are the same ones being urged to shift

their livelihoods away from coca production to other legal crops, which the government then indiscriminately decimates while trying to curtail coca production.⁵⁸ Unfortunately, the impact may be long-lasting: the replanting process for many of the destroyed food crops requires a large initial investment of time and money, and the crops may take years to mature.⁵⁹

In addition to its harmful effects on food security, the aerial fumigation program also impacts health by threatening nearby water sources.⁶⁰ According to General Comment No. 15 to the ICESCR, water is a public good fundamental for life and health.⁶¹ Glyphosate is highly soluble in water and can enter aquatic systems through spraying.⁶² Studies demonstrate that the herbicide has previously contaminated ground and surface waters in many countries.⁶³ There is also evidence of the harms to human health caused by these contaminated water sources. One study from Brazil, for example, demonstrated that a region receiving water contaminated with glyphosate experienced a marked increase in its infant mortality rate.⁶⁴ By spraying glyphosate, which indiscriminately affects water supplies, Colombia is violating Article 12 of the ICESCR.

Colombia remains the only coca-producing country in the world to use aerial glyphosate spraying as part of its anti-drug program.⁶⁵ Over the course of twenty-two years, Colombia has fumigated more than 800

⁴⁹ *Id.*

⁵⁰ Letter from The Washington Office on Latin America et al., *supra* note 5.

⁵¹ General Comment No. 14, *supra* note 45, ¶¶ 3, 11.

⁵² *The Aerial Eradication of Illicit Crops*, EL TRANSNAT'L INST. (Sept. 25, 2001), <https://www.tni.org/es/node/6115>.

⁵³ Paige, *supra* note 2.

⁵⁴ Maxwell, *supra* note 6.

⁵⁵ Nayar, *supra* note 42.

⁵⁶ Paige, *supra* note 2.

⁵⁷ *Id.*

⁵⁸ Letter from The Washington Office on Latin America et al., *supra* note 5.

⁵⁹ Lasco, *supra* note 7.

⁶⁰ Letter from The Washington Office on Latin America et al., *supra* note 5.

⁶¹ CESCR, General Comment No. 15, ¶ 1, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).

⁶² FOOD & AGRIC. ORG. OF THE U.N., FAO SPECIFICATIONS AND EVALUATIONS FOR PLANT PROTECTION PRODUCTS 28 (2000/2001); *The Aerial Eradication of Illicit Crops*, *supra* note 52.

⁶³ *The Aerial Eradication of Illicit Crops*, *supra* note 52.

⁶⁴ Mateus Dias, Rudi Rocha & Rodrigo R. Soares, *Down the River: Glyphosate Use in Agriculture and Birth Outcomes of Surrounding Populations* (Latin American and the Caribbean Econ. Ass'n, Working Paper No. 0024, 2020).

⁶⁵ Collins, *supra* note 8.

hectares of coca without significantly diminishing the rate of coca production.⁶⁶ Instead, the aerial fumigation program has led to a devastating ecological impact, indirectly exacerbating deforestation,⁶⁷ destroying non-illegal crops, killing animals essential to the ecosystem,⁶⁸ and ultimately putting the food security of affected communities at risk, while simultaneously hampering these communities' ability to find alternatives to coca production.⁶⁹

Although it was the United States that encouraged President Duque to recommence the aerial glyphosate spraying program, it is Colombia that is responsible for upholding the right to health as set forth in the ICESCR and Protocol of San Salvador.⁷⁰ While other coca growing countries like Bolivia and Peru have fought back against the arguably culturally myopic and neo-colonial enforcement of the United States' "War on Drugs" policies, Colombia has historically joined U.S. efforts.⁷¹ Only by halting Colombia's aerial fumigation program indefinitely and redirecting its efforts to eradicate cocaine production will Colombia be able to ensure its compliance with the right to health.

⁶⁶ *Colombia Poised to Restart Coca Spraying*, *supra* note 1.

⁶⁷ Collins, *supra* note 8.

⁶⁸ Letter from The Washington Office on Latin America et al., *supra* note 5.

⁶⁹ *Id.*

⁷⁰ *Colombia Poised to Restart Coca Spraying*, *supra* note 1.

⁷¹ Ocean Malandra, *How Coca Leaf Became Colombia's New Superfood*, VICE (Oct. 29, 2017, 12:00 PM), <https://www.vice.com/en/article/jpka94/how-coca-leaf-became-colombias-new-superfood>.