

# LEGAL APPROXIMATION TO FUMIGATIONS OF ILLEGAL CROPS IN COLOMBIA

The issue of coca, poppy and marihuana crops, considered as illegal, has been constantly addressed during the last decades, mainly because the eradication with chemicals through aerial fumigations has been the most used strategy for it. The latter in an outline where the attack to the offer of drugs, instead of developing systematically programs to prevent the compulsive abuse, attack narco-traffickers, fight the supply of chemicals and the laundry of the money from the business in the international financial system.

Because of it, and considering that currently the problem of fumigations has caused multiple consequences in Colombian security, as well as in human rights and impacts to the environment, we decided to address this issue in order to analyze some aspects from this complex problem.

First of all, it is important to take into account some data that allows to know better the reality. According to CAMBIO magazine *"during the last five years about 300.000 hectares have been fumigated without the environmental controls that the law requires"*<sup>1</sup>. On the other hand, the U.S. Embassy in Colombia reported that between December 19, 2000 and January 28, 2001 about 24,000 hectares were fumigated by aerial spreads in the Putumayo area<sup>2</sup>. These data corresponds with the Plan Colombia execution which, according to the Colombian National Police, has been one of the more efficient operations ever seen. In 44 days was fumigated the equivalent to 55% of the total area fumigated during 1999.

Thus, it is clear that this issue is not an easy one, considering that we are talking about several activities and huge national and international efforts, focused on the eradication of illegal crops and the control of narcotics.

## Impacts to health and the environment

There are several surveys and data that even though are not reflected in the reports of efficiency mentioned before, have to be considered because their importance. Such as the related to the complaints of health and environmental impacts generated in the fumigated regions. This is so, considering that "110 (65%) rural areas out of 170 in San Miguel and Valle del Guamués submitted complaints for damages from aerial fumigations, before the municipal prosecutors. During January and February of 2001, 1443 complaints were submitted in both municipalities, done by family heads; within those, 1164 (80%) reported that one or more of their family members were affected by illnesses caused by fumigations."<sup>3</sup>

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<sup>1</sup> CAMBIO Magazine, No. 404, March 19 to 26, 2001, "The Floro Effect" ("El efecto Floro")

<sup>2</sup> "Summary of Counter narcotics Operations in Putumayo, December 19, 2000 - January 28, 2001" Report prepared by the United States Embassy in Colombia, for Curt Weldom, U.S representative, quoted by Bernardo Pérez Salazar in the Fact Sheet "The effects of aerial fumigations in the municipalities of Valle del Guamués and San Miguel, Putumayo" December 2000 – February 2001

<sup>3</sup> SALAZAR Pérez, Bernardo, Fact Sheet "The effects of aerial fumigations in the municipalities of Valle del Guamués and San Miguel, Putumayo" December 2000 – February 2001

The National Ombudsman Office<sup>4</sup> in a report presented about this issue<sup>5</sup>, determined that not only illegal crops are being fumigated, but also legal crops (yucca, plantain, sugar cane, rice, among others) and even areas that are part of the substitution and volunteer eradication projects. These programs are supported in Colombia by several entities as PLANTE<sup>6</sup>, Municipal Offices for Agricultural Development and United Nations.

That is to say that, even though authorities said that they determined from the beginning the areas that were going to be fumigated, guaranteeing that the others won't be affected, it is clear that this has not been complied. Because as said before, food crops grow by peasants and indigenous communities had been fumigated, as well as important zones designated for the volunteer eradication programs, through the substitution of illegal crops.

On the other hand, different environmental impacts have been presented and even though they are not quantified in detail yet, it is known that they exist. This is the case, as the Ombudsman Office pointed in the report mentioned before, of the increasable deforestation in the remain forest, wild animals migrations, damages in water bodies and the formation of barriers in the streams due to the fallen leaves from the trees and other plants fumigated, which is obstructing the regular flow of waters, among other impacts. It is important to recall that the main target zone of fumigations is part of the Colombian Amazon, that is well known as one the most diverse regions in the planet, because there are some endemic species, some of them in danger of extinction.

The latter is only an example of the existent information that proves the damages that fumigations are causing. In addition, it is not possible to ignore the difficulties in obtaining the exact data, because there are no scientific protocols yet, that can help in gathering the information. However, facts talk by themselves, and considering that they have been verified even by the Ombudsman Office, it is not possible to ignore all the complaints that were presented. Particularly now, when the ignorance of the violated human rights is occurring at this very moment. Because in addition to the conflict and personal security problems, these persons have also suffered the lost of their legal crops, which is threatening its food security, and also compelling them to abandon their territories due to the lack of food.

### **Problems with the pesticide used**

Authorities affirmed that glyphosate (pesticide used in the fumigations) is not toxic and in fact is one of the most secure pesticides worldwide. But, even accepting the latter arguments, it is pertinent to quote an article from Dr. Elsa Nivia, Executive Director of RAPALMIRA (Colombian associate of PAN) in which she affirmed "***in Colombia glyphosate has been applied by aerial fumigations, to illegal crops and its surroundings, in a concentration 26 times higher. This situation gets even***

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<sup>4</sup> The Ombudsman Office is the one in charge of the protection and defense of human rights in Colombia. It is an independent authority that works for the enforcement of all the human rights in the country.

<sup>5</sup> Ombudsman Report No. 1 "Fumigations and Alternative Development Projects in Putumayo" (Fumigaciones y Proyectos de Desarrollo Alternativo en el Putumayo) February 9, 2001, Ombudsman Office for the Collective Rights and the Environment.

<sup>6</sup> National Plan for Alternative Development.

*worse with the addition of the surfactant Cosmo Flux 411F, which can even quadruplicate the biological action of glyphosate in the Roundup and other pesticides”<sup>7</sup>.*

Then, it is possible to conclude that spite the authorities speak about the control of the pesticide, particularly about the absence of harm, the reality is other, because of the difference between the characteristics and concentrations of the pesticide determined from the beginning and the ones actually applied, which obviously have caused that the damages done by the fumigations are worse.

Considering this, is eventually that the authorities could assure that glyphosate is harmfulness to human health and the environment. This guarantee is not truth anymore, because the pesticide is been fumigated with much more concentration, that added to surfactants, have significantly increased the risk of damages produced to the inhabitants as well as to the natural resources in the region.

### **Absence of Environmental License**

Other problem that is important to analyze is that the fumigations against coca and poppy plants crops do not have environmental permits. Despite the declarations from authorities involved in this activity, there is no doubt that Law 99, 1993 and Decree 1753, 1994 are clear when they determine that the production, import and manipulation of pesticides, as well as every project that can affect the National Natural Parks System requires an environmental license<sup>8</sup>. These requisites are applicable to the fumigations of illegal crops with chemical products, because they include pesticides, and also affect the National Parks System. There is no doubt that there are coca and poppy plant crops in several Natural Parks<sup>9</sup>, that are intended to eradicate. Regarding the latter, it is told that buffer zones of Puracé, Catatumbo, Paye and Barí parks, among others, are been affected by fumigations, but there are no official versions yet.

Nevertheless and spite the clear obligation of the environmental license, the Ministry of the Environment has determined that this requisite is not applicable to fumigations, because they consider that the activity started before the entrance into force of Law 99, 1993, so it is applicable the transition regime of the law. Because of this, the Ministry of the Environment determined that the National Office for Narcotics (Dirección Nacional de Estupefacientes -DNE-) is just complied to present and execute an Environmental Management Plan, but that is not necessary to go through all the procedure that an Environmental License requires (as the development, study and approve of an Environmental Impact Assessment by the Ministry of the Environment).

If the latter is accepted, the conclusion will be that without being complied to submit an environmental license, DNE has to have at least an EMP in which they have to determine how the activities were going to take place, used pesticides as well as every other impacts that can be caused and the way to mitigate them. But even though the country has been fumigated for almost a decade, until today none Environmental Management Plan, neither other environmental study, reviewed by the competent authorities has been approved and executed, as the law requires, and according to what the proper Ministry of the Environment determined since 1994.

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<sup>7</sup> NIVIA Elsa, “Aerial Fumigations are dangerous indeed, some aproximations” (Las Fumigaciones aéreas sobre los cultivos ilícitos si son peligrosas - Algunas Aproximaciones), May, 2001.

<sup>8</sup> Law 99, 1993, article 52, nums, 8 and 9 and Decree 1753, 1994, articles 7th and 8th.

<sup>9</sup> Environmental Auditory for the Eradication of Illegal Crops Program, October, 1999.

On the contrary, only until last year (2000) the DNE presented an EMP, that after the evaluation done by the Ministry of the Environment, required some modifies for its final approval. That is why the Ministry determined some particular aspects that were necessary to clarify and improve, but until today the study does not count with the approval, even though the fumigations are still under execution.

Anyway, it is important to recall that Plan Colombia, including fumigations within its execution, has to be considered as a new and independent activity from the fumigations that were done in the past. As a consequence of this, it is clear that the fumigations developed in Plan Colombia require an environmental license because they do not form part of activities started before the entering into force of Law 99, 1993, but are a different one, and because of this, it is not possible to apply the old regime.

### **Absence of Previous Consultation to Indigenous Communities**

The State of Colombia approved through Law 21, 1990, Covenant ILO 169 (International Labor Organization) in which it complies to apply the procedure of previous consultation process with indigenous and afro-Colombian communities, wherever a legislative or administrative measure can affect their territory. In this regard, the objective of the Covenant is to protect these communities that in some occasions are impacted by state or private activities in their lands, without taking into account, or be able to express their opinion regarding the measures that will be applied in their lands.

This obligation must be complied by Colombian State in the case of indigenous communities affected by the spread of illegal crops, because many of the areas under fumigations are located in the frontier (or even within) indigenous territories. In fact as was said before, the activities have directly affected them, because the territories in which they are located, have been fumigated, destroying food crops and affected their health as well.

In this order of ideas, even though it is evident that the Colombian State has the obligation to develop the previous consultation process, duty that the indigenous communities recall in several occasions to the competent authorities, including the Ministry of the Environment, the procedure never took place.

With this, in addition to the ignorance of the indigenous' fundamental rights, as well as the international obligation that the Colombian State acquired in exercise of its sovereignty, a valuable opportunity was lost, related to the participation of indigenous in the search of other options to eradicate and substitute the use of illegal crops. On the contrary, the authorities choose to impose by the force aerial spreads with pesticides, causing significant human and environmental consequences and destroying the efforts addressed precisely to find options to solve the problems that the whole country is facing.

### **Violation of other International Treaties**

In addition to the latter, and only with the intention to consider some international treaties that are also being ignored by the fumigations of illegal crops, it is important to recall the following. When Colombia ratified the United Nations Convention Against Illicit Traffic in Narcotics Drugs and

Psychotropic Substances<sup>10</sup>, it complies that *"the measures adopted (to avoid illegal crops) shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment."*<sup>11</sup>

Considering that the latter was not clearly enough, when Gaviria's government deposited the Convention ratification instrument declared that *"therefore, Colombian State reserves its right to independently evaluate the ecological impacts of policies against narcotraffic, because those who have negative effects over ecosystems are against the Constitution"*.<sup>12</sup>

Without doubt the will to eradicate illegal crops was expressed, as long as natural resources in the country won't be affected. By no means, the ignorance of fundamental human rights of those who in a way or another can be involved in the eradication process. According to what was said before, but mainly considering the current situation, fumigations are against this compromise because they are causing significant impacts to the environment, ignoring the indigenous peoples' rights and as well as other inhabitants' human rights.

In addition, Colombia is also a Party to the Biological Diversity Convention,<sup>13</sup> that establishes as main objective, the conservation of the biological diversity and the sustainable use of its components, as well as fair and equitable participation in its benefits.<sup>14</sup> Besides, it is determined that each State, according with its possibilities, shall support the protection of the biological protection in its territory, trying to have a sustainable exploitation without risking its existence.

Unfortunately, this obligation is also ignored, causing the destruction of natural resources, that has been accelerated by activities conducted by the proper government and its agents, instead of motivating the rational exploitation and protection of them.

## Final Reflections

Therefore, considering the elements discussed in the present article, it is clear that chemical fumigations to coca and poppy illegal crops are generating more damages than benefits. In fact, the Department of State of the United States Government, according to a study published in August 2000 recognizes that the fight against illegal crops in Colombia has been a failure.<sup>15</sup>

Taking this into account, we can conclude that it is illogic that national and foreign authorities insist in execute an eradication policy that until today has failed –not only in Colombia but also in the rest of the world-. That in addition, is generating serious human rights violations as well as accelerated the destruction of natural resources in the region. This means that instead of doing a deep and objective

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<sup>10</sup> Convention ratified through Law 67, 1993 and declared constitutional by the Constitutional Court in Sentence C-176, 1994.

<sup>11</sup> Article 14 of the UN Convention on Illicit Traffic of Narcotics and Psychotropic Substances, December, 1988.

<sup>12</sup> Ratification Instrument for the Convention, countersigned by the Ministry of Foreign Affairs on May 9, 1994.

<sup>13</sup> Approved by the Colombian Congress in Law 165, 1994.

<sup>14</sup> Convention on Biological Diversity, article 1. Río de Janeiro, June, 1992. Ratified by Colombia through Law 165, 1994.

<sup>15</sup> EL TIEMPO, Bogotá, Colombia. August 30, 2000. Pg. 1-11.

evaluation of that policy, looking for the mistakes and possible alternatives to develop, the authorities insist now more than ever, in implementing a series of strategies that are making worse the social and security conflict, and also increasing the irreversible environmental damages in a region that is internationally well known for its valuable resources and for being unique in the world.

Because of this, it is desirable that the authorities will seriously question about the benefits or damages that this strategy is causing. Considering diverse alternatives of eradication, substitution and different uses that crops considered illegal can have. Through this it will be possible to protect the human rights of peasants and indigenous peoples, and at the same time, enforce the right to a healthy environment of every person in Colombia. And finally, preserve and enjoy valuable ecosystems, as the Colombian Amazon and the Andean region in this case.

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