

Executive Summary¹

POSITION OF THE COLOMBIAN OMBUDSMAN OFFICE ON THE ERADICATION OF ILLICIT CROPS THROUGH AERIAL APPLICATION OF CHEMICALS²

RECOMMENDATION

The Ombudsman Office urges suspension of the aerial application of chemicals for the eradication of illicit crops in Colombia. The program should not be implemented before scientific studies are conducted and analyzed to determine the impact of the program on the environment, wildlife, and human health. Preventative measures must also be taken to address the risks associated with the program. These include compliance with standards for pesticide application, an epidemiological monitoring plan, an Environmental Management Plan that actually complies with the terms defined by the Ministry of the Environment, outside technical environmental auditing, and better mechanisms for inter-institutional coordination to prevent indiscriminate fumigation of small farmers' fields.

Current implementation of the aerial eradication program violates the Colombian Constitutional provisions regarding the right to health, the right to a healthy environment, and special protection of vulnerable groups. It also violates international environmental and human rights agreements. These violations are not justifiable, especially considering the fact that the program has not been effective in achieving its legitimate goal of fighting narcotic drug trafficking.

BACKGROUND OF PROGRAM

The first crop eradication took place with US support in Mexico in the 1970's. A similar program was started in Colombia in 1978 despite strong opposition from the National Institute of Natural Resources (INDERENA) and the fact that the US Congress prohibited American support of such plans in the late 1970's. This ban was lifted in 1981

¹ Prepared by the Interamerican Association for Environmental Defense (AIDA), in collaboration with the Colombian Ombudsman Office.

² Amicus Brief submitted by the Colombian Ombudsman Office in judicial proceedings seeking the suspension of the aerial fumigation coca-eradication program. The complete document (Spanish only) is available by request from delegadaambiente@hotmail.com or at <http://www.defensoria.org.co>

under the Reagan administration, and the US pressured Colombia to fumigate marijuana crops. Colombia refused to do so due to ecological and human health reasons until May of 1984, when Colombia accepted funds from the US for herbicides and authorized the eradication of illicit crops.

The National Council Narcotics (CNE) has been the authority in charge of the eradication program. In 1984, the CNE enlisted the National Institute of Health to study the effects of Glyphosate, the herbicide used in aerial eradication, on human health. The National Institute of Health advised against massive use of the chemical, recommending restrictions on aerial application and permanent monitoring. The CNE then requested a study from Ecoforest Ltd. based on a recommendation by the INDERENA. This organization categorically rejected the program based on predicted environmental impacts, which included contamination of water sources, adverse drift effect from aerial fumigation, and great danger to humans and wildlife. Private environmental and human rights groups also warned about the risks of aerial fumigation.

Despite these recommendations, the CNE began experimental use of Glyphosate on poppy fields. The decision was made without support or consultation with community groups or other state agencies. The experimental program was to be subject to monitoring and permanent evaluation, neither of which actually happened.

Resolution 001 was passed in 1994 to expand the program to coca and marijuana crops. The practice continued to be labeled experimental until the year 2000, when Resolution 0005 changed the status despite a lack of any technical or scientific grounds for doing so.

IMPLEMENTATION OF THE AERIAL ERADICATION PROGRAM VIOLATES THE COLOMBIAN CONSTITUTION

The aerial eradication program as currently implemented violates several provisions of the Colombian Constitution. The program is not proportional; it employs extreme and excessive means, yet has not been effective in decreasing the illicit crops grown. In addition, it has endangered the constitutionally protected rights of Colombians to health, a healthy environment, and special protection of vulnerable groups.

A. The Program is unconstitutional because it is not proportional; aerial eradication is not effective or proper in

achieving the legitimate goal of preventing narcotic drug trafficking.

The Ombudsman Office does not dispute the merit or legitimacy of the eradication program's stated goal, which is to fight narcotic drug trafficking and to fight crime. Achievement of these goals would benefit Colombian citizens, allowing them to enjoy peaceful and safe lives with normal societal development. Unfortunately, the means chosen to reach these ends are not proportional and therefore not constitutional.

There has been no proof that aerial eradication has led to decreased land area being used for cultivation of illicit crops of coca, marijuana, or poppies. As the resources spent on aerial eradication have grown, so has the number of hectares used to grow illicit crops. For example, data from the National Director of Narcotics (DNE) show that coca cultivation increased from 78,200 hectares in 1998 to more than 163,000 hectares in 2000. Similarly, despite the fact that the national government claims a decrease in illicit crops in the last year, the US CIA data indicate that they actually increased by 25% from March 2001 to March 2002.

Even when the fumigation is successful in destroying drug crops, the effect is usually that the growers move to another region and re-plant. This has been observed in plantations moving from Bolivia and Peru to Colombia, and more recently to Ecuador. The relocation results in harmful deforestation and other environmental effects, but it does not lead to a net decrease in the drug trade.

B. The aerial eradication program violates constitutionally guaranteed rights to health.

The Colombian Constitution recognizes health as a fundamental right of citizens in Articles 2 and 11. Article 49 states that it is the responsibility of the State to ensure that this right is not infringed. Aerial eradication of illicit crops is endangering the health of Colombians, and health authorities are not fulfilling their responsibility to protect the health of the people.

Scientific data is terribly inadequate regarding the human health effects of Glyphosate, the active ingredient of the fumigation mixture. Aerial application of Glyphosate to kill entire crops is far from the normal use of the substance, which is close-range application for the purpose of killing weeds that interfere with crops. The CNE developed rules relative to the sale, transport, and use of the mixture, but the guidelines for height, speed, and class of aircraft are not followed in practice. The

function of the National Council on Pesticides is to investigate and establish reference parameters for controlling the effects of pesticides on human health and the environment. The Ombudsman Office requested that the Ministry of Health use the National Council of Pesticides to establish reference parameters for controlling the fumigation and its impacts, but when the Council finally met six years after the request, it did not consider the eradication program.

While the government insists that the mixture used in the aerial eradication program is not toxic based on certain Glyphosate studies, there are many conflicting data. A Japanese study on Roundup, a weed killer whose active ingredient is Glyphosate, showed that its acute effects on humans include abdominal pain, diarrhea, vomiting, lung congestion, and pneumonia. The US EPA classed Glyphosate as a group E substance (meaning there is no evidence of it being a human carcinogen) with a warning that the classification is only based on evidence to date and that it is not to be interpreted as a definite conclusion. Swiss scientists assigned a risk factor of 2.3 to Glyphosate for non-Hodgkin's lymphoma, meaning that the likelihood of developing the disease is 2.3 times more likely as a result of exposure to the chemical. There are questions surrounding the mutagenic and teratogenic effects of the chemical, as well as on the effects it might have on the plants and animals used as food by people. Finally, there is no information about the health effects of the other chemicals present in the fumigation mixture.

The lack of certainty surrounding this substance means that it is impossible to confirm or deny whether it is responsible for the increased medical problems experienced by people living on or near fumigated land. The problems that have increased include allergy symptoms, skin rashes, fever, headaches, diarrhea, vomiting, abdominal pain, and dizziness. Combined with the questions about the toxicity of the mixed ingredients, the fact that medical complaints have increased in fumigated areas provides sufficient justification for suspension of the program until the proper studies have been done.

The necessary health studies have not been carried out because of negligence by the authorities. The CNE has the power to destroy illicit crops under Article 91 of Law 30 (1986), but the same law requires the endorsement of the agencies in charge of health and the environment before authorization of eradication programs. The Ministry of Health did not endorse the program; its 1992 ratification was based on the condition that a health plan be implemented, which never happened. The health plan provided for the determination and reduction of the

effects of Glyphosate on human health through a five-year monitoring plan conducted by an inter-disciplinary team. The plan was also to include epidemiological studies and the definition of emergency procedures. As a result of the CNE's failure to implement the health plan, there have been no studies that would allow health authorities to affirm the safety of the chemicals in the eradication program, nor any that would make it possible to design emergency plans to deal with health problems arising from the aerial application.

C. Execution of the aerial eradication program violates constitutionally guaranteed protection of the environment.

Articles 79 and 80 of the Colombian Constitution explicitly state the right of all citizens to the enjoyment of a healthy environment, the right to participate in decisions affecting the environment, and the State's responsibility to protect the environment and natural resources. Contrary to upholding these rights and defending the environment, the implementation of the aerial eradication program has not complied with Colombian environmental law and has harmed the environment.

Like the endorsement from the Ministry of Health, the endorsement required by Law 30 (1986) from environmental organizations was contingent on certain conditions that were ultimately not followed by the CNE. The National Institute of Natural Resources (INDERENA) and the Colombian Agricultural Institute (ICA) recommended a manual herbicide application procedure, asked to be consulted about which plots to treat, and expressed concern that environmental standards be followed. As discussed below, the authorities in charge of the fumigation program failed to comply with these recommendations.

Law 99 established Colombia's most important environmental laws in 1993. This legislation stresses prevention and control of environmental damage, requiring licenses and management plans. Because aerial eradication was authorized by the CNE in January of 1992, these requirements were not applicable to the program. Approval also came before the creation of a Ministry of the Environment, which occurred in 1994. However, the newly created Ministry of the Environment did have the power to request an Environmental Management Plan of the CNE, which it exercised in August of 1996. The plan was to state specific techniques, timelines, and logistical, personnel, and equipment requirements needed for the mitigation, compensation, prevention, management, and monitoring of environmental impacts. After a series of incomplete and/or inadequate submissions and delay tactics on the

part of the CNE, the Ministry of the Environment in November 2001 finally approved an Environmental Management Plan.

Unfortunately, this Environmental Management Plan is riddled with deficiencies. First, the plan is supposed to consider the eradication of coca, poppy, and marijuana crops, but it does not include details of the parameters to be followed for marijuana. Second, Edict 558 (1996) from the Ministry of the Environment states that the plan must include programs to control human health impacts; for this, studies on the chemicals utilized would have to be conducted taking the biophysical conditions of the treated regions into account. The CNE's plan includes no such studies, alluding only to international Glyphosate toxicity studies. The plan also does not include any mechanisms for citizen participation, which are mandated both by Edict 558 and the Colombian Constitution. The plan lacks an outline of concrete actions to be taken. Instead, measures are phrased as suggestions or proposals without definition or detail. Finally, the plan does not clearly state the individuals or groups responsible for carrying out actions, thereby diluting responsibility. The Ombudsman Office brought the shortcomings of the Plan to the attention of the Ministry of the Environment in December 2001, and is presently awaiting a response.

Another concern is that the CNE has not complied with several of the obligations imposed on it by Resolution 005 (2000), which changed the status of the aerial eradication program from experimental to non-experimental. Under this resolution, the CNE assumed the obligation of contracting with an outside source for technical auditing. Funds were approved for this purpose in August 2001, but the bidding process has been proceeding sporadically since then. Lack of auditing has led to low prioritization of environmental control measures. The CNE was also required to seek consultation from environmental organizations, NGO's, and authorities such as the ICA to characterize the land to be fumigated. In practice, the CNE has only conferred with a few of the organizations or has done so outside of the specified time limits. Finally, Article 12 of the resolution required resources to be spent for social, economic, and ecological rehabilitation programs for fumigated regions. There seems to have been no action in this respect.

Obligations established by the Ministry of the Environment in Resolution 341 (2001) have also been ignored by the CNE. One such responsibility was the characterization of lands to be sprayed on a 1:25,000 scale map. The CNE claimed that this was not economically feasible or technically justified. The CNE did not develop a contingency plan for dealing with spills, an inspection program, a verification system, or a

compensation program for damages as ordered. It also did not evaluate the amount of Glyphosate present in soil and water for specified times after fumigation. The Ombudsman Office believes that this is all evidence of the authorities failure to fulfill their duty to protect the environment in spite of formal requirements, and that without studies and an analysis of the environmental impact of eradication, the program should be suspended.

With the disregard for all environmental standards and controls discussed above, it is not surprising that the Ombudsman Office has verified many negative environmental impacts of the program in fumigated areas. A major concern is the damage done to legal crops accidentally sprayed or affected by drift of the chemicals. In fact, in November of 2001 there were 1198 complaints registered with the Ombudsman Office related to adverse effects of fumigation on wheat crops. In addition, aquatic life has been contaminated, and decayed vegetation has caused soil properties to change. Finally, eradicating illicit crops has led plantation operators to move from region to region and country to country, causing more deforestation and irreversible damage to fragile ecosystems.

D. The aerial eradication program violates constitutionally mandated special protection of vulnerable groups including small farmers and minors.

Article 13 of the Colombian Constitution promises special protection to those groups marginalized or in positions of weakness because of their economic, physical, or mental condition. One group that would be considered vulnerable in such a context is the poor, small farmers, many of indigenous or African decent, trying to provide subsistence for their families. The Ombudsman Office believes that chemical eradication should not be used on farmers with small plots of coca, marijuana, or poppies depended upon for family support. Alternative plans should be developed for this group including sustainable socioeconomic options.

While all the relevant organizations, including the CNE, seem to agree on the need for differentiation between these vulnerable groups and large-scale commercial growers of illicit crops, there have been inconsistent definitions as to what constitutes a "small farmer." Law 30 (1996) and Law 599 (2000) defined a small farmer as one with less than 20 illegal plants. The CNE makes the distinction at two hectares. Other groups draw the boundary at between three and five hectares of illegal crops.

There is a serious lack of communication and coordination between those in charge of the aerial eradication program and alternative development projects. In many cases, small farms are fumigated in spite of signed voluntary eradication pacts. Many of the small farmers have lost faith in the authorities because indiscriminate fumigations have destroyed their legitimate crops as well. Plan Colombia has a special program to indemnify small farmers who are the victims of misdirected fumigation, but it is highly inadequate. The program only addresses short-term needs and it has been poorly implemented, partly due to armed conflict in the region making the work extremely dangerous.

Children are another vulnerable group expressly protected by the Colombian Constitution (Article 44) as well as by international agreements. The children in regions targeted for aerial eradication often start out at a health disadvantage, with unsafe water supplies, malnourishment, high infant mortality, etc. The health impacts of the fumigation seem to be even more severe for children than for adults. According to parents in fumigated regions, children experience symptoms of poisoning after the chemicals are sprayed including vomiting, diarrhea, rashes, and respiratory problems.

There have been at least three cases where parents believe that their child's death was a direct result of fumigation. The Ombudsman Office requested that officials conduct tests in these cases to determine the presence of Glyphosate or other chemicals in the bodies, but the authorities claimed not to have the technology to do such evaluations. This uncertainty coupled with the lack of studies considering possible health effects of the chemical, which seem to be aggravated in children, is enough reason to suspend the aerial eradication program. In addition, there is uncertainty about the possible effects of herbicides on fetal development. Some data from Colombia indicate that fumigated areas are subject to a higher frequency of birth defects and premature births.

THE AERIAL ERADICATION PROGRAM VIOLATES INTERNATIONAL ENVIRONMENTAL AND HUMAN RIGHTS AGREEMENTS

Colombia has signed numerous international environmental treaties, including the Stockholm Declaration (1972), the Rio Declaration (1992), RAMSAR (1971), the Convention on International Commerce of Endangered Plant and Wildlife (1973), and many others. These agreements tend to emphasize prevention of environmental harm in a

way similar to Colombian law itself. The relatively recent Rio Declaration, for example, mandates prevention of environmental harm even in the absence of scientific certainty when the concern for serious or irreversible environmental damage is reasonable. It is the position of the Ombudsman Office that the aerial eradication program is a highly appropriate situation for invoking this Precautionary Principle. There is considerable lack of scientific certainty about the environmental impacts of Glyphosate and the other chemicals used in fumigation, and the Ombudsman Office has already verified some negative environmental impacts as discussed above. The program should be suspended in order to comply with the Rio Declaration and other international treaties.

Another area where international decrees are being violated by aerial eradication is in human rights, especially those associated with children. These include the Geneva Declaration (1924) and various pacts adopted by the General Assembly of the United Nations in 1989. As discussed above, the fumigation program puts children at special risk because of their fragility, thereby breaching these agreements.

CONCLUSION

In conclusion, it is the position of the Ombudsman Office that the current implementation method of the Colombian program for aerial eradication of illicit crops is unconstitutional. Not only is the program ineffective in decreasing the amount of land used for coca, marijuana, and poppy cultivation, but it also violates Constitutional articles protecting human health, the environment, and vulnerable groups. The program also contradicts many of the international environmental and human rights treaties to which Colombia is a party. The program should be suspended until the necessary studies are conducted to determine the health and environmental impacts of fumigation and until mitigation/control measures are implemented.