



**Drug law reform in Latin America**

**Working document, Chapter Ecuador**

**A Short History of the Effects of Drug Policy and Its  
Implementation on Ecuador's Prison System**

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# A Short History of Ecuador's Drug Legislation and the Impact on its Prison Population

by Sandra G. Edwards

Ecuador, a small country on the Pacific Coast of South America, has never been known as a significant producer or trafficker of illicit drugs; nor has the country ever experienced the social convulsions that can result from high levels of drug abuse or the existence of a dynamic domestic drug market.<sup>1</sup> While Ecuador has become an important transit country for illicit drugs and precursor chemicals and for money laundering, the illicit drug trade has not been considered a major threat to the country's national security.<sup>2</sup> However, for nearly two decades, Ecuador has not only had one of the most draconian drug laws in Latin America, U.S. economic assistance to Ecuador has consistently prioritized drug control funding to its security forces.

Ecuador's drug law, Law 108, *The Law on Narcotic Drugs and Psychotropic Substances*, was not developed based on the reality on the ground, but rather was the result of international pressures and domestic politics. It is an extremely punitive law, resulting in sentences disproportionate to the offense, contradicting due process guarantees and violating the constitutional rights of the accused. Its focus on enforcement and the presence of U.S. pressure meant that the success of Ecuador's drug policies was measured by how many individuals were in prison on drug charges. This resulted in major prison over-crowding and a worsening of prison conditions.

Ecuadorian NGOs and academic institutions began to document the daily reality of injustice under Ecuador's drug law, the ever worsening prison conditions and the fact that Ecuador's role as a transit country had not diminished despite the increasing number of people behind bars. When President Rafael Correa took office in November 2006, the new administration began to take a serious look at the problems generated by Law 108. Ecuador has now begun the road toward reform. These reforms are based on the premise that Ecuador's drug laws and policies must correspond to the country's own national reality, and in line with its new Constitution, prioritizing the security and civil and human rights of Ecuador's citizens.

This paper analyzes the direct connections between Law 108 and Ecuador's worsening prison conditions up until the time of the present government. Although the law is still in force, the present government is the first to analyze the law's ramifications, define the problems within the country's prisons and develop proposals for legal and institutional reforms related to both drugs and prisons.

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1. According to the 2009 U.S. Department of State's annual International Narcotics Control Strategy Report (INCSR), only 10 hectares of coca were found and destroyed along the border with Colombia in 2008, in contrast to 36 hectares the prior year. By comparison, U.S. estimates for coca cultivation in 2008 in Colombia and Peru were 119,000 hectares and 41,000 hectares, respectively. In years previous to 2008, international organizations monitoring the level of coca production in the Andes consistently excluded Ecuador from its list of countries of concern. Also, drug trafficking was found to be among the lowest of the perceived threats listed in a national survey; *Encuesta Nacional sobre Percepciones de la Ciudadanía en Temas de Seguridad Interna y Externa*, Santiago Pérez Encuestadores, quoted in *Hacia una Nueva Política de Seguridad Interna y Externa, Seguridad, Soberanía y Democracia, Siglo XXI*, Ministerio Coordinador de Seguridad Interna y Externa, 2008, Anexo, p. 117.

2. Only recently has this become an issue of debate. According to the 2010 INCSR, the government of Ecuador seized 43.5 metric tons of cocaine in 2009, a 98 percent increase over 2008. This may indicate increased transshipment; however, it is also the result of the Correa government's strategy to reorient law enforcement efforts from focusing on arresting small-scale dealers and mules and instead prioritize efforts to interdict large drug shipments and dismantle drug trafficking organizations.

## Evolution of National Drug Policies

Starting with Ecuador's 1970 drug law, historical records indicate that although Ecuador's drug policies included drug control via law enforcement, the country prioritized the prevention of the abuse of illicit drugs as a public health issue. However, as international treaties under both the United Nations (UN) and the Organization of American States (OAS) became more prohibitionist - prioritizing drug issues as a concern for law enforcement rather than from a public health perspective - Ecuadorian drug policies tended to follow a similar direction.

*The Law of Control and Intervention in the Trafficking of Narcotics* of 1970 (including reforms of the law in 1972 and 1974) emphasized the public health aspects of the use of drugs, mandating that any person found under the influence of illicit drugs was to be taken directly to a hospital where it was to be determined if they were dependent on the drug. If found to be dependent, they were detained within a medical facility until they finished a rehabilitation program under the supervision of medical personnel.<sup>3</sup> The law's section dealing with enforcement placed the heaviest emphasis on penalties for growing plants which can be processed into controlled substances or selling chemicals that can be used to produce illicit drugs. Enforcement efforts were more focused on the supervision of pharmaceutical companies and pharmacies, defining which drugs could not be sold without a prescription.<sup>4</sup> There appeared to be little concern with informal trafficking by individuals or groups. *Ecuador's National Plan for the Prevention of the Improper Use of Drugs*, 1981 to 1985, even referred to the dangers of emphasizing enforcement over treatment and pointed to the importance of treating the issue of drug dependence as a result of specific social ills within Ecuadorian society.<sup>5</sup>

In 1987, a new law was passed by the Ecuadorian Congress called the *Law of Control and Intervention in the Trafficking of Narcotics and Psychotropic Substances*. Drug users were still not penalized with prison and continued to be required to undergo obligatory medical assessment and possible government ordered treatment if arrested under the influence. However, starting with this law, Ecuador's policies begin to reflect the more prohibitionist character of the international treaties developed around that time, especially the protocols to the 1961 UN Single Convention on Narcotic Drugs. Enforcement was given an almost equal role to that of prevention efforts. This law also began the use of harsh penalties for drug convictions, giving judges the possibility of mandating sentences from 12 to 16 years. However, such sentences were considered exceptional, were given only for the production or trafficking of a specified list of substances stated in the law, and they were applied only after taking into account the circumstances and the history of the accused. Marijuana was specifically given only one to five years' imprisonment with sentences differing in length according to the age of the accused (younger defendants received fewer possible years). However, all accused of drug trafficking were provided the right to post bail if permitted by the judge. The law also defined the responsibilities of the police in the undertaking of their investigations.<sup>6</sup> The law paralleled other Ecuadorian laws in its

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3. Ley de Control y Fiscalización del Trafico de Estupefacientes, 1970, Titulo 11, Artículos, 24 – 28; Decreto Supremo No. 909, Sept. 5, 1974; Registro No. 638, Sept. 13, 1974.

4. While this was a clear emphasis in the law at the time, in reality, until recent years, prescriptions have not been necessary in Ecuador to buy several of the drugs listed in the law as controlled substances.

5. *Plan Nacional de Prevención del Uso Indebido de Drogas*, Ministerios de Gobierno, Finanzas, Educación, Salud y Bienestar Social, Procuraduría General del Estado, División Nacional Contra el Trafico Ilícito de Estupefacientes, 1981-1985.

6. *Codificación de la Ley de Control y Fiscalización del Tráfico de Estupefacientes y Sustancias Psicotrópicas*, Registro Oficial, Año III, Quito, Martes 27 de Enero, 1987, Número 612.

use of the concept of innocent before proven guilty and provided all legal rights given any person accused of a crime in Ecuador.

Since 1970, the Ecuadorian government has developed five year national plans on the prevention of the misuse of controlled substances. The five year national plan corresponding to the 1987 law was to be implemented by an Inter-Ministerial Commission on Coordination. The law clearly indicated that the Ministry of Public Health was the presiding Ministry over this new Commission, indicating the continuing emphasis on public health that Ecuador's government placed on its drug control policies.

This emphasis and the more integrated approach represented by Ecuador's previous laws and national plans regarding the control and prevention of the use of illicit substances was completely reversed in Ecuador's subsequent drug law approved in 1991: *The Law of Narcotic Drugs and Psychotropic Substances*, Law 108. With the passage of Law 108, the country changed direction - from focusing on drugs as a public health issue to prioritizing the use of law enforcement. This new dynamic was not brought about by any major changes in drug consumption or trafficking trends in Ecuador, but by changing priorities directly influenced by international treaties on drug control and newly flowing funds offered by the United States for drug control programs.

### ***U.S. Influence on Ecuador's Drug Policies***

The influence of U.S. drug control assistance on how Law 108 was implemented cannot be underestimated. Starting in the 1980s, U.S. policymakers began to view illicit drugs as a threat to U.S. national security and prioritized attacking production overseas to stem the flow of drugs into the United States. U.S. economic and military assistance and trade benefits were made contingent on the implementation of drug policy programs designed in Washington, based on perceived U.S. interests rather than the realities on the ground where the policies were implemented. Countries that adopted the "war on drugs" were rewarded economically and politically; countries that wavered were threatened with cuts in U.S. assistance and trade.

Between 1996 and 1999, U.S. aid to Ecuador's military and police forces grew from just under \$3 million to just under \$13 million. In addition, during that time, the DEA (U.S. Drug Enforcement Administration) established a presence in Ecuador via a Special Investigative Unit (SIU).<sup>7</sup> As can be seen in Tables 1 and 2, U.S. drug control assistance peaked between the years 1999 and 2005, but it never returned to the much lower levels of the mid-nineties of two to four million dollars annually. The presence of this aid, therefore, has played an important role in bolstering the operational budgets of the Ecuadorian security forces for well over a decade. While the amount of U.S. drug control assistance to Ecuador pales in comparison to its neighbors, it represented a significant increase in resources for Ecuador's military and police units.

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7. The DEA continues to have an operational office in Ecuador.

**U.S. Economic Aid to Ecuador (in U.S. dollars)<sup>8</sup>**

**Table 1  
U.S. Military and Police Aid,  
Counter Narcotics Program 1996 -2010**

1996	2,223,000
1997	2,255,000
1998	4,586,000
1999	11,781,000
2000	25,064,000
2001	18,448,000
2002	34,959,000
2003	35,194,000
2004	41,502,000
2005	16,153,000
2006	13,888,000
2007	17,053,000
2008	14,265,000
2009	15,497,224
2010	12,555,898

**Table 2  
All Grant Aid, All Types, and Counter-  
Narcotics Programs 1996-2010**

1996	2,223,000
1997	2,305,000
1998	4,586,000
1999	12,201,000
2000	33,124,000
2001	18,500,000
2002	45,584,000
2003	51,365,000
2004	57,014,000
2005	31,453,000
2006	25,573,000
2007	25,453,000
2008	14,395,000
2009	15,653,000
2010	12,653,000

According to statements made in 2003 by officials of the National Council for the Control of Narcotic Drugs and Psychotropic Substances (CONSEP) and Ecuador's National Direction for Social Rehabilitation (DNRS), the fact that Ecuador was receiving such significant amounts of U.S. counter-drug aid had to be justified by those on the receiving end. A CONSEP official stated that Ecuadorian drug policy continued to overemphasize law enforcement because that is what most of the U.S. aid was earmarked for, while resources for justice and penal reform as well as prevention and treatment were scarce.<sup>9</sup> As the national police force chronically lacked material and economic resources, it quickly became dependent on the drug control assistance offered by the United States.

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8. Just the Facts, [http://justf.org/All\\_Grants\\_Country?year1=1996&year2=2011&funding=Counter-Narcotics+Programs&subregion=Andes&x=72&y=10](http://justf.org/All_Grants_Country?year1=1996&year2=2011&funding=Counter-Narcotics+Programs&subregion=Andes&x=72&y=10).

9. Author interview with Dr. Silvia Corrella and Dr. Fausto Viteri, director of Treatment and Rehabilitation, CONSEP, May 2003.

While the annual bilateral agreements on U.S.-Ecuadorian anti-drug cooperation are usually kept confidential, parts of the agreement reached in the 2003 review were reported in the Ecuadorian press. The accord stated the clear goal that Ecuador would improve its efforts against illegal drug trafficking. In exchange for funding, equipment and new police stations, Ecuador would implement air interdiction and destroy illicit crops and the production of illicit drugs through joint military and police operations. The accord included indicators for evaluating results: *the amount of illegal drugs impounded should rise by ten percent, the confiscation of arms and precursor chemicals should increase by fifteen percent and the number of persons detained and court hearings held for drug offenses should rise by twelve percent.*<sup>10</sup> These criteria assumed that the presence of illegal drugs was increasing in Ecuador, that the number of persons trafficking illegal drugs was growing and that all those arrested met the legal criteria to be tried for a drug offense. In order to fulfill their side of the agreement, Ecuador had to enter into the numbers game – more people in prison and more of them put there under drug charges. Ecuadorian police took this as their marching orders; their job, in exchange for continued economic aid, was to detain as many persons as possible under Law 108.

### **Law 108: Defining Ecuadorian Drug Policy for Two Decades**

During the 1980s as U.S. influence grew over the development of drug policies internationally, makeshift laboratories clandestinely processing chemicals for the making of cocaine were discovered in Ecuador. In 1990, the Ecuadorian government published two reports that indicated growing activity around the production of precursor chemicals for drugs and insinuated that thousands of Ecuadorians were benefiting from the drug trade. The government's alarming reports made headlines, but researchers pointed out that “no sources were cited, no methodology for calculating the findings was described and no scientific basis was set out to support their charts and conclusions.”<sup>11</sup> Despite such lack of evidence, the reports laid the groundwork for a growing perception that Ecuador was facing a very serious problem with drug trafficking.

The public perception that there was indeed a serious problem regarding illegal drugs in Ecuador began to play a heavy role in domestic politics. In 1990, political conflict was exacerbated between the president's party, the Democratic Left (ID), and the principal opposition party, the Social Christian Party (PSC), when the PSC accused the ID of being soft on crime and drug trafficking. International pressures, combined with internal politics and perceptions, created enormous pressure to “get tough” on drug traffickers as quickly as possible. In response, the ID developed and passed Law 108, *The Law of Narcotic Drugs and Psychotropic Substances*.<sup>12</sup>

Law 108 was developed via a patchwork process. Some statutes were taken directly from the text of the 1988 *U.N. Convention on the Illicit Traffic of Narcotic Drugs and Psychotropic Substances*. Other parts were pieced together from a commission comprised of representatives from several of Ecuador's governmental offices. The commission was so pressured by the deadline

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10. *FFAA y Policía Deben Mejorar su Lucha Antidrogas*, El Comercio, Quito, 12 octubre 2003, p. A7.

11. Translated from the Spanish by author. Bonilla, Adrian, *National Security Decision-Making in Ecuador: The Case of the War on Drugs*, doctoral dissertation, University of Miami, October 1992, p. 298. The atmosphere described in this paragraph is based on Dr. Bonilla's work.

12. *Ley de Sustancias Estupefacientes y Psicotrópicas*, Published in the Registro Oficial, número 523, 17 Septiembre, 1990. Later codified in Registro Suplemental, número 490, 27 December 2004.

they were given as well as by the politics surrounding the process that, when the proposed law was finally presented to congress, paragraphs were actually out of order, with sentences that lacked logical coherence. It was also missing the list of drugs considered illicit under the law. However, the congress passed it in the form in which it was presented. Once it was passed, it was shown to the Narcotics Affairs Section (NAS) at the U.S. embassy. Many of the suggestions by NAS, parts that had been left out in the rush, as well as comments sent after a review by the OAS's CICAD (Inter-American Drug Abuse Control Commission) were later incorporated into the law which was published in a second and corrected edition in the country's National Register.<sup>13</sup>

Due to the fact that Law 108 was based on an external legal model<sup>14</sup> and included input from various sources influenced by internal and international political priorities, much of the law contradicted Ecuador's constitution at the time as well as established norms inherent in Ecuador's existing legal code. Because of this, the law formed the basis for what essentially developed into a separate judicial structure for processing drug offenses. An Ecuadorian legal analyst commented that, despite the fact that the law was in contradiction to the judicial values inherent in Ecuador's Constitution as well as Ecuador's original code of justice, Law 108 is "*one of the laws most practiced by [Ecuador's] administration of penal justice, implemented via an enormous government apparatus that includes a specially trained police corps, its own infrastructures and an administrative body that manages all resources generated by the battle against drug trafficking.*"<sup>15</sup>

The judicial aspects of Law 108 became the primary tool that enabled Ecuadorian security forces to implement activities funded by U.S. drug control aid. However, as stated above, Law 108 also laid out the basis for the development of the administrative body that focused solely on drug issues. It specifically called for the establishment of the National Council for the Control of Narcotic Drugs and Psychotropic Substances (*Consejo Nacional para el Control de Drogas Narcóticas y Sustancias Psicotrópicas*, CONSEP). The establishment of a completely separate administrative body for drug control issues was a major change from Ecuador's previous administration of drug issues under the central government.

### *Law 108, an Obstruction to Justice*

Despite reform processes now taking place in Ecuador, Law 108 is still in force at this time. As noted, a number of aspects within Law 108 contradicted rights and due process guarantees set down in the Ecuadorian constitution. Some of those have been corrected while others remain in force.

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13. Author interview with Dr. Silvia Corella, director of the National Drug Observatory of Ecuador, CONSEP, May 2003 combined with another author interview with other CONSEP officials in February 2010. The newly corrected law was published in the National Register without being passed through Congress a second time.

14. Ecuador's legal system was at that time based on the Napoleonic model of law whereas much of the drug control legislation being proposed internationally at the time was based on an Anglo Saxon legal paradigm.

15. This quote is taken from a comment made by David Cordero Heredia who wrote, *La Ley de Drogas Vigente como Sistema Político Paralelo*, which clearly defines how Law 108 contradicts both International norms and Ecuador's Constitution. It can be found in, *Entre el Control Social y los Derechos Humanos, los retos de la política y la legislación de drogas*, Ministerio de Justicia y Derechos Humanos, Subsecretario de Desarrollo Normativo, April 2010.

One contradiction in the original version had to do with the concept of judicial independence. The law required that all judicial decisions handed down in drug cases be automatically reviewed by the Superior Court. It also included sanctions that could be applied by the reviewing Superior Court if the judge ruled in favor of a person accused of a drug offense and the Superior Court suspected that the decision was not well founded. This review process, including the potential for sanctions, was included in the new law as an attempt to circumvent judges being bought off by drug traffickers. The effect of the review on the judicial process, however, was to almost guarantee a guilty verdict. Judges were concerned that a decision in favor of the accused could be overturned by the Superior Court, that they could suffer sanctions, and that they would be suspected of having been bought off. It was much easier to simply find the accused guilty than to risk the repercussions.

Judicial independence was further undermined by the adoption of mandatory minimum sentencing, a mechanism commonly used at that time in the United States for drug-related crimes. In addition, no distinction is made between the smallest offenders – drug users, first-time offenders, or micro-traffickers in possession of small amounts – and high-level drug traffickers. All are subject to a mandatory minimum sentence of ten years (modified by congress in January 2003 to twelve years). A person carrying a few grams of marijuana can potentially serve the same 12 years as a person accused of selling a much larger amount of cocaine. Because the law includes various categories under which a person can be accused (such as possession, transport, trafficking, etc.), a person who is convicted under several categories at one time – which is unconstitutional but frequently happens - can potentially be sentenced to a maximum of 25 years; a sentence that is higher than for any other crime under Ecuadorian law (the maximum sentence for murder is 16 years). These sentencing guidelines contradict the legal principal of proportionality; that the length and type of sentence be proportionate to the offense.

Unlike Ecuador's previous drug legislation, the original version of Law 108 criminalized drug use, placing drug use, or dependence on its use, into the same category as drug production and trafficking. Even if the amount found on a person was small enough to be deemed for personal use only and the person was obviously dependent on the drug, he or she was automatically detained and subject to the mandatory minimum sentence in prison.

A very disturbing characteristic of the law is its definition under the Ecuadorian criminal code, which places the possession of any amount of drugs on a par with serious, violent crimes. There are two categories of crime in the Ecuadorian code – *crimes of reclusion* and *crimes of prison*.<sup>16</sup> Crimes of reclusion usually involve violence and require immediate detention with no right to bail, while crimes of prison allow the accused the right to immediate bail and the opportunity to remain at liberty before and during the trial. *All drug charges, no matter the amounts involved or the circumstances of the arrest, are considered crimes of reclusion on the same punitive level as first-degree murder, armed robbery, rape and kidnapping*.<sup>17</sup> Therefore, drug offenders cannot request bail. The law in its original form also prohibited the commutation of sentences for

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16. This has changed with parts of legal code reform proposals – such as judiciary procedures – that have already been passed by the National Assembly. However, again Law 108, as it pertains to drug arrests is still in force.

17. Author interview with Dr. Suzy Garbay, coordinator of legal department, INREDH (Regional Institute for Human Rights Support), Quito, Ecuador, June 2003.



extenuating circumstances (such as terminal illness) for drug offenders, even while others in prison for crimes of reclusion did have this right.

One of the most egregious contradictions to the Ecuadorian constitution is the presumption of guilt inherent in the law. Apart from treating drug offenses differently from others of seemingly similar magnitude by defining them as crimes of reclusion, accused drug offenders (in contrast to those accused of other crimes of reclusion such as murder) are presumed to be guilty even before their hearing takes place. This presumption of guilt until proven innocent is not overtly written into the law, but its many unconstitutional aspects make up what many attorneys call an “*inversión de prueba*” (inversion of proof).<sup>18</sup> This is because the law denies so many rights to the accused that in its *de facto* implementation, it transfers the burden of proof onto the accused rather than placing it with the state prosecutor as is done for all other crimes and as stipulated in the constitution.

In 1995, The Lawyers’ Collective, a coalition of civil rights and criminal attorneys, presented a petition (*acción de amparo*) to the Ecuadorian Supreme Court questioning those parts of Law 108 deemed unconstitutional and its overuse by the courts in comparison with other crimes.<sup>19</sup> As can be seen in Tables 3 and 4, the report noted that from 1975 to 1995, crimes committed against property and persons (robberies and assaults) increased greatly, while drug offenses actually decreased. However, because of the exigencies of Law 108, in 1993, most cases heard in criminal courts concerned drug offenses, while the percentage of cases brought to trial for crimes against property and persons was much smaller, despite their relative increase.

**Table 3**

Crimes committed	1975	1995
<i>Crimes against property</i>	23.4 %	64.3 %*
<i>Crimes against persons</i>	0.4 %	15.6 %
<i>Drug offenses</i>	13.5 %	8.5 %
<i>Other</i>	62.7 %	11.6 %

**Table 4**

Cases “heard” by criminal courts	1993
<i>Crimes against property</i>	38.8 %
<i>Crimes against persons</i>	12.4 %
<i>Drug offenses</i>	46.8 %
<i>Other</i>	2.0 %

\*1994

Source: Colectivo de Abogados, “Por los Derechos de las Personas,” Ecuador, 1995, pp. 7–8.

Keeping in mind that Ecuador’s historical issues with drug trafficking were money-laundering and its use as a transit country, the Collective’s study underlined the fact that the actual threats to citizen safety were crimes against persons and property in which drugs played no part; yet justice sector resources were disproportionately focused on drug offenses.<sup>20</sup>

<sup>18</sup>*Inversión de prueba* is the term commonly used among attorneys who have worked with this law. Dr. Alejandro Ponce, Dr. Suzy Garbay and even a CONSEP attorney developing the new version of the law all make reference to this concept.

<sup>19</sup>The Collective was comprised of the following people: Dr. Pilar Sacoto de Merlyn, Dr. Ernesto Albán Gómez, Dr. Alberto Wray, Dr. Alejandro Ponce Villacís, Dr. Judith Salgado, Dr. Gayne Villagómez, Dr. Ramiro Avila Santamaría, Dr. Gonzalo Miñaca, Dr. René Larenas Loor, Dr. Farith Simon and Sister Elsie Monge.

<sup>20</sup>Colectivo de Abogados, *Por los Derechos de las Personas*, Ecuador, 1995, p. 8.

The study and its conclusions were confirmed more than a decade later when legal analyst, Farith Simón,<sup>21</sup> looked at judicial cases from 2007. He found that cases dealing with homicides and other violent crimes - the type of crimes that would most likely be a threat to the safety of Ecuadorean citizens - received less attention from the courts than did drug cases. When comparing the number of cases processed by judges hearing drug cases, the percentage of cases reaching a legal conclusion (the accused being acquitted or receiving a sentence) were much higher than the percentage for cases that dealt with offenses other than drugs. As shown in Table 5, while cases involving violent crimes made up over 16 percent of all legal complaints and drug offenses only 0.47 percent, Ecuador's judicial system found substantiation for just under 13 percent of legal complaints having to do with a violent crime yet accepted to legally process 100 percent of accusations regarding drug offenses. Then, once the offenses were processed by Ecuador's judicial system, less than 4 percent of all cases involving violent crimes were actually resolved (the accused given a sentence), yet more than 54 percent of those accused of a drug offense were eventually sentenced.

**Table 5** <sup>22</sup>

**Legal Complaints, Accepted Cases and Sentences for Specific Offenses 2007**

<b>Type of Offense</b>	<b>% of Total Legal Complaints</b>	<b>% of legal complaints accepted as cases by judiciary</b>	<b>Sentences Issued</b>	<b>Percentage of Sentences issued in accepted cases</b>
<b>Homicides, assaults, etc.</b>	11.77	4.42	375	<b>1.6</b>
<b>Sexual and domestic violence</b>	5.13	8.09	320	<b>3.14</b>
<b>Drugs</b>	0.47	104.48	507	<b>54.11</b>

Source: Simon, 2010

*Modifications to Law 108*

As a result of the work of the Lawyers' Collective in the mid-nineties, the law was revised, reversing some of its most egregious elements. However, those changes did not take effect until 1997, and the fundamental thrust of the legislation, in which one is presumed guilty until proven innocent, has remained in place. Judges' decisions in drug cases are no longer automatically reviewed by a higher court, nor can a judge be sanctioned for ruling in favor of the accused. It is now possible for sentences to be commuted because of extenuating circumstances. Judges have also recovered their right to independently determine sentences for drug offenses; taking into account such factors as the absence of a criminal record or other mitigating circumstances, a

21. Legal analyst and professor of law at the University San Francisco de Quito.

22. Table done by Pásara, Luis based on work by Simón, Farith, *El impacto de la reforma procesal penal en la seguridad ciudadana*, www.unifr.ch/ddp1/derechopenal/articulos/a\_20100304\_01.pdf, p. 8

judge may sentence a person found guilty of a drug offense to a lesser number of years than the mandatory minimum sentence. However, political pressures and the deeply embedded stigma against lenience for drug offenses make it highly unusual for a judge to give more than two or three years less than the congressionally-mandated minimum of twelve years. The dismissal of accusations and the findings of innocence are still very rare.

Attorneys who choose to represent those accused of drug offenses are also stigmatized. Police publicly state that such attorneys are taking dirty money, supposedly from drug trafficking, and therefore are as guilty as the accused. Many attorneys claim that they would never risk their legal careers by taking drug cases; those who have are questioned by their colleagues as to their motives for putting themselves in such a vulnerable position professionally.

The result of this legal, political and social stigmatization is that many of the accused go without legitimate legal representation. Scores of people accused of drug offenses have paid thousands of dollars to less reputable attorneys who have few scruples and little legal talent, but take advantage of those imprisoned on drug charges. This is especially true of detained foreigners who are thought to have access to economic resources. Based on the history of the implementation of Law 108, many of these attorneys assume that a guilty verdict is a foregone conclusion and thus rarely devote much time to the defense of any one client. Instead they attempt to get as many of these clients as possible, going through the process with them and marking time until the sentence is handed down.<sup>23</sup>

Another change in the revision of the law is that drug users are no longer placed in the same category as traffickers and producers; consumption of drugs is no longer a crime. However, no amount is specified as to what indicates personal use – in a context in which prosecutors and judges are encouraged to seek convictions. What might be an amount for personal use for one judge may be enough for another to convict someone for trafficking. Also, a person found in possession of drugs is still immediately detained and the burden of proof is on the accused to prove that they are users rather than dealers.

### *The Problem of Preventative Detention*

A recurring problem in Ecuador is the use of preventative detention (*prisión preventiva*). Intended as a precautionary measure to be used in extreme cases, in Ecuador preventative detention became the norm. Whenever a person was arrested, he or she was immediately detained. If charged with a drug offense, preventative detention was granted almost automatically and the accused could be held indefinitely.

In 1996, the OAS's Inter-American Court of Human Rights handed down a decision in the case of Rafael Suárez Rosero. Suárez Rosero was arrested in 1992 as part of a police-planned drug sting operation. He was picked up after a neighbor accused him of having drugs. Though no drugs were found on him, he was nevertheless detained and placed under preventative detention. He was in prison for over four years without a trial. The Inter-American Court accepted his case and in their decision found against the state of Ecuador. The court ruled that in the case of Suárez Rosero, Ecuador had not respected and implemented the following international and

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23. Author interview with Dr. Judith Salgado, May 2003.

constitutional rights: the right for the detained to be in communication with family; the presumption of innocence, and the right to Habeas Corpus. The Court also requested the state of Ecuador to adopt measures within their internal legislation which would require that preventative detention be applied only for a limited period of time. The Court was quoted as saying, “he (Suárez Rosero) has been held in preventive detention for a longer period than he would have served if he had been tried and convicted.”<sup>24</sup>

Similar rulings were handed down in other cases heard by the Inter-American Court.<sup>25</sup> In its 1997 report on the Situation of Human Rights in Ecuador, the OAS’s Inter-American Commission on Human Rights stated, “*The most serious problem that the Commission has identified, with respect to the right to liberty, is the arbitrary and illegal application of preventative detention, which has resulted in a situation where about 70% of detainees are without a conviction. This situation continues to this day and can be added to the delays in [judicial] processes, the venality of the judges and the miserable situation of Ecuador’s prison system.*”<sup>26</sup>

The issue of preventative detention was finally reformed in Ecuador’s 1998 Constitution which included the constitutional requirement that preventative detention could not last longer than six months for *crimes of prison* and one year for *crimes of reclusion*. If this new constitutional right had been implemented, hundreds, if not thousands, who had been detained without a sentence for longer than six months or a year would have been released from prison. However, even after this new constitutional right had been codified, those accused of a drug offense continued to be detained without trial.

Because drug offenses under Law 108 were placed under the same category as the most serious of crimes – *crimes of reclusion* - judges continued to order preventative detention for at least a year for most, if not all, accused of drug offenses. However, because Ecuador’s judicial and penal systems did not function effectively on any level, many of those detained under preventative detention were often detained without trial for well *over* a year with little to no consequences for the judicial or penal officials responsible for their cases. Even so, because of international observations and the changes to the 1998 Constitution, there was some fear that there would be further international recriminations for the abuse of preventative detention. Therefore, the conservative Social Christian Party (PSC) responded by proposing a legal measure called *secure detention (prisión en firme)*, which was approved as law in 2003. This mechanism circumvented the constitutional time limit placed on preventative detention by stating that if a person has received a legal summons to trial within the required time period, the summons itself then served as a substitute for the trial – a trial, which, in reality, usually never took place within the legally mandated time limit. The following year, *secure detention* was ruled unconstitutional, but by then judges had simply continued to implement what was, *de facto*, preventative detention with no acknowledgement of its constitutional time limits. Preventive detention for crimes of reclusion for up to one year continues to be allowed under present law.

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24. Suárez Rosero Case, *Provisional Measures in the Matter of Ecuador*, Order of the Court of 28 June 1996, Inter-American Court of Human Rights.

25. Case of Tibi (2004), Case of Acosta Calderón (2005) and Case of Chaparro Álvarez, (2007), Most of the cases, such as Suárez Rosero, clearly found against the legal abuses in Law 108. However, the Court’s decision also included findings against measures used not only in conjunction with Law 108, but generally within Ecuador’s judicial system such as the abuse of preventative detention, the lack of access to the right of Habeas Corpus, police abuse of detainees and abuses taking place within Ecuador’s prison system.

26. <http://www.cidh.org/countryrep/Ecuador-sp/Capitulo%207.htm>

The implementation of Law 108, the use of indefinite preventative detention and *secure detention* combined with the prioritization by Ecuador's internal security forces on the arrest and detention of large numbers of persons on drug charges, took a tremendous toll on the courts and Ecuador's prisons. The judicial system, already overwhelmed and under staffed, reached a breaking point due to the huge increase in drug-related cases. This in turn resulted in extreme overcrowding throughout Ecuador's prisons, which became centres for warehousing thousands of persons whose human and civil rights were ignored.

## The Human Cost

In a 2008 evaluation of Ecuador's prison infrastructure, Ecuador's Minister of Justice at the time stated, "*it is an obsolete construction [model], too small for the population it holds, dysfunctional as it does not offer sufficient space in which to develop beneficial activities and does not guarantee, by any standards, true access to the most basic of human rights such as work, education and health. Frankly, it has functioned under the most repressive standards and is simply a human warehouse.*"<sup>27</sup>

As Law 108 went into effect, more and more bodies were being warehoused in a system that had not undertaken adequate updates for decades. As can be seen in the graph below, the prison population more than doubled over a period of slightly less than two decades.<sup>28</sup> By 2007, 106 out of every one-hundred thousand Ecuadorians were incarcerated.<sup>29</sup> In August 2007, the percentage of prison overcrowding in Ecuador (the number of persons incarcerated vs. the number of persons for which the prison system was built) was 157 percent. That same year, there were 18,000 persons detained in a prison infrastructure that was built to hold 7,000 inmates.<sup>30</sup> According to the UN Office on Drugs and Crime, in August 2008 Ecuador had the highest percentage of prison overcrowding in Latin America.<sup>31</sup>

Between 2000 and 2002, the government responded to what was finally understood as an emergency situation. Two times the government declared what was called a *two for one* relief for detainees in all Ecuadorian prisons. If a detainee had a record of good behavior and had served at least half of his or her sentence, they could become eligible to have each year of their sentence served counted as two years. This basically cut sentences in half. However, after each *two for one* relief was implemented there was a public outcry that criminals were being freed. Therefore, this kind of legal relief was not implemented again until 2008, when a national reform of both Ecuador's prisons and judicial system was begun.

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<sup>27</sup> Nestor Arbito Chica, Ministerio de Justicia y Derechos Humanos, *Consturuyendo el Cambio*, No. 1, Año 1, December 2009, p. 6.

<sup>28</sup> Ecuador's population, in turn, did *not* double during that time: in 1990 the population was nine and a half million, in 2007, it was thirteen and a half million.

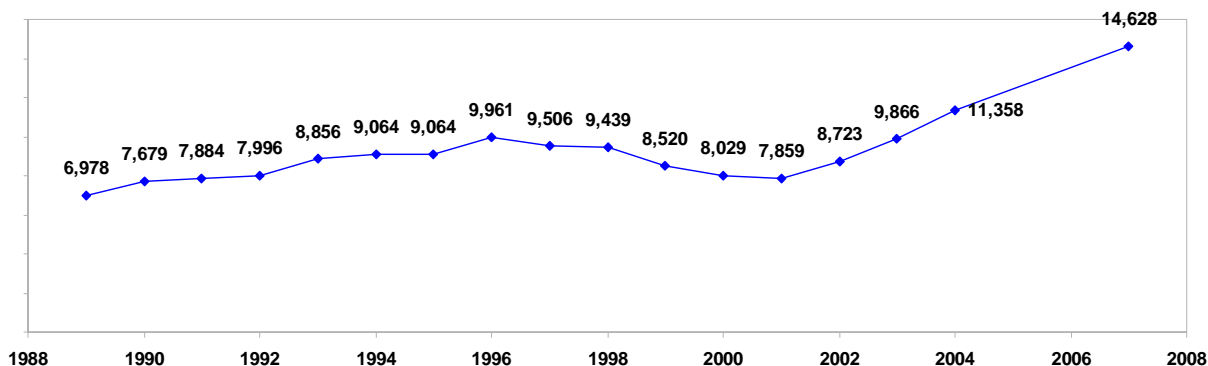
<sup>29</sup> Taken from the government sponsored study, Nuñez Vega, Ponton, Ponton, Estrella, *Análisis de la ley de drogas desde una perspectiva socio-política: Diagnóstico de la ley de sustancias estupefacientes y psicotrópicas*, 31 octubre 2008, p.68.

<sup>30</sup> Ministerio de Justicia y Derechos Humanos, Unidad Transitoria de Gestión de Defensoría Pública Penal, *Comparison of prison reality before and after the establishment of the Public Defenders Office*, 31 December 2009.

<sup>31</sup> Taken from the Ecuadorian newspaper, *El Universo*, "Grave riesgo de sida en cárceles de Ecuador por el hacinamiento" August 11, 2008,

<http://www.eluniverso.com/2008/08/11/0001/10/A66828FE800D47438A8537591FC4A73D.html>

## Growth of Ecuadorian Prison Population 1989-2007



Source: Pontón y Torres (2007), data 1989-2006.  
National Direction of Social Rehabilitation, data 2007

Until just over a year ago, Ecuador's prisons were known internationally as places where even the most basic of human needs often went unmet. According to a 2005 report from the U.N. Committee against Torture, "*The Committee deeply deplores the situation in [Ecuador's] detention centres and especially in social rehabilitation centres where prisoners' human rights are constantly violated. The overcrowding, corruption and poor physical conditions prevailing in prisons, and especially the lack of hygiene, proper food and appropriate medical care, constitute violations of rights which are protected under the Convention (art. 11).*"<sup>32</sup>

Ecuador's prison system has been administered by the National Direction for Social Rehabilitation, or DNRS, for decades. As prison conditions began to worsen, DNRS became known as a bureaucracy out of control with little internal organization. It was administered by multiple directors who came and went, depending on the political connections any one of them had at the time. It also became known for its *clientelism*, where one received a job through personal or family connections rather than professional qualifications.<sup>33</sup>

The majority of detainees in Ecuadorian prisons are expected to buy their own food, clothes, toiletries (even toilet paper) and medications. If food is provided, it is of extremely poor quality. According to the prison census from 2008, 90 percent of prisoners had to spend their own money for food, personal hygiene, and cleaning supplies.<sup>34</sup> On the national level, 22 percent of Ecuador's prison population often did not receive even one meal a day, while 24 percent received only one to two meals a day.<sup>35</sup> Most prisoners continue to depend on their families to either bring them money or the items they need. If persons are not from the area where they are detained or are foreigners arrested in Ecuador, they have to depend on funds sent from home or find a means to barter or earn money on the inside.

32. U.N. Committee against Torture, *Consideration of Reports Submitted by State Parties Under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, Ecuador*, November 2005, Thirty-fifth Session, number 24 under *Principal subjects of concern and recommendations*, p. 5, [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/86774a529a09d5fcc1257122002dd258/\\$FILE/G0640362.DOC](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/86774a529a09d5fcc1257122002dd258/$FILE/G0640362.DOC)

33. Various interviews in 2003, 2005 and 2009 with officials at CONSEP and former DNRS employees.

34. Office of the Public Defender, *Censo Penitenciario* (Prison Census), Producto 1, May 2008 pp.42, 43.

35. *Ibid.* pp. 45, 47.

In a survey conducted during the 2008 prison census, 68 percent of inmates rated the health care in the prisons as bad to very bad. Most medication has to be paid for by the detainees and that is only if one can convince the prison medical staff that he or she needs it. One experience in a prison in Tulcán (a city on the Ecuadorian-Colombian border) exemplifies the seriousness of the situation. A Colombian man who had suffered epilepsy all his life did not have family nearby to bring him his medication or the money to buy it on a continuous basis. After being detained for over a year, his seizures had reached a point where they were happening almost every hour. His fellow inmates did what they could to help him avoid harm to himself during his seizures.<sup>36</sup> Another example is a case that the Inter-American Court on Human Rights which has recently accepted of an Ecuadorian, Pedro Vera, who was detained in 1993. He was shot by the police and never given proper medical attention. He died of his wounds while in detention.<sup>37</sup>

When looking at the national annual budgets for Ecuador's prison system, it becomes clear why the basic services for food and health were in such an abysmal state. A recent government sponsored study includes a table that shows the national budget for Ecuador's prison system over a period of three years. The table divides the budget allocations by the number of detainees in Ecuador's prisons and finds that, for the year 2007, just under \$2.00 a day was budgeted for each person. From that \$2.00, only 68 cents was spent daily on food for each detainee.<sup>38</sup> In the beginning of 2010, the National Direction for Social Rehabilitation increased the budget for meals to US\$2.00 per day per inmate.

**Table 6**  
**Government Spending in the Prisons**

Year	2005	%	2006	%	2007	%
Assigned Budget	31,331,159.06		42,509,988.46		38,383,176.71	
Personnel	15,221,258.70	62.5%	21,823,522.00	62.1%	22,385,062.33	66.8%
Food	2,932,496.70	12.0%	6,256,253.54	17.8%	4,238,382.60	12.6%
Health	51,750.02	0.2%	87,220.63	.2%	156,844.24	.5%
Reinsertion Programs	6,136,789.00	25.2%	6,998,962.06	19.9%	6,728,087.14	20.1%
Total Expenditures	24,342,294.20	100%	35,165,857.88	100%	3,508,376.31	

Over the past few decades, human rights violations of detainees were all too frequent and are still found to a lesser degree. In the prison census of 2008, it was found that punishments included isolation and physical abuse. The census reports mistreatment, verbal abuse, abuse of authority

36. Interviews by author during visit to the Tulcán prison, in 2002 for consultancy with Catholic Relief Services, Ecuador.

37. See press release by the Inter-American Court, *IACHR Takes Cases Involving Ecuador and Peru to the Inter-American Court*, <https://www.cidh.oas.org/Comunicados/English/2010/23-10eng.htm>.

38. Estrella, Pontón, Pontón y Nuñez (coordinador de investigación), *Análisis de la ley de drogas desde una perspectiva socio-política: Diagnóstico de la ley de sustancias estupefacientes y psicotrópicas*, Quito, 31 octubre, 2008, p76, Table 12.



and demands for money in return for what should have been provided any detainee free of cost. Again, in the U.N. Committee against Torture's 2005 report, "*The Committee notes with concern the allegations that a large number of prisoners have been tortured while being held incommunicado.*" Further on in that same report, "*Some lawyers have claimed that they are prevented from talking with their clients in the offices of the judicial police, and even that visits to prisoners by independent private doctors have been prevented. It is also alleged that victims [detainees] have been denied access to their own lawyers.*"<sup>39</sup> Finally, it should also be noted that Ecuadorian prisons are not differentiated by categories such as maximum or minimum security prisons. A 2002 U.S. State Department human rights report on Ecuador notes that there are no separate facilities for repeat offenders or dangerous criminals, nor are pretrial detainees held separately from convicted prisoners, and that prison authorities routinely investigated deaths in custody.<sup>40</sup>

### *Profiles of Detainees*

The 2008 census of Ecuador's prisons found that in May of that year, 34 percent of all detainees in Ecuador were imprisoned under drug charges. However, during that same year, if one looked only at prisons in urban areas where the drug control police operate, the percentage of those detained for drug offenses went as high as 45 percent.<sup>41</sup> Starting in 1991 and examining the types of crimes for which persons were accused and detained each year until 2007, the percentage of persons detained on charges of committing a drug offense is consistently one of the highest percentages.<sup>42</sup> At several points between 1993 and 2007, almost fifty percent of all prisoners in Ecuador were incarcerated on drug charges.<sup>43</sup>

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39. U.N. Committee against Torture, *Consideration of Reports Submitted by State Parties Under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture*, Ecuador, November 2005, Thirty-fifth Session. number 21 under *Principal subjects of concern and recommendations*, p. 4, [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/86774a529a09d5fcc1257122002dd258/\\$FILE/G0640362.DOC](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/86774a529a09d5fcc1257122002dd258/$FILE/G0640362.DOC)

40. Bureau of Democracy, Human Rights and Labor, U.S. State Department, *Country Reports on Human Rights Practices 2002, Ecuador*, 31 March 2003, <http://www.state.gov/g/drl/rls/hrrpt/2002/18330.htm> , accessed 28 Oct. 2003.

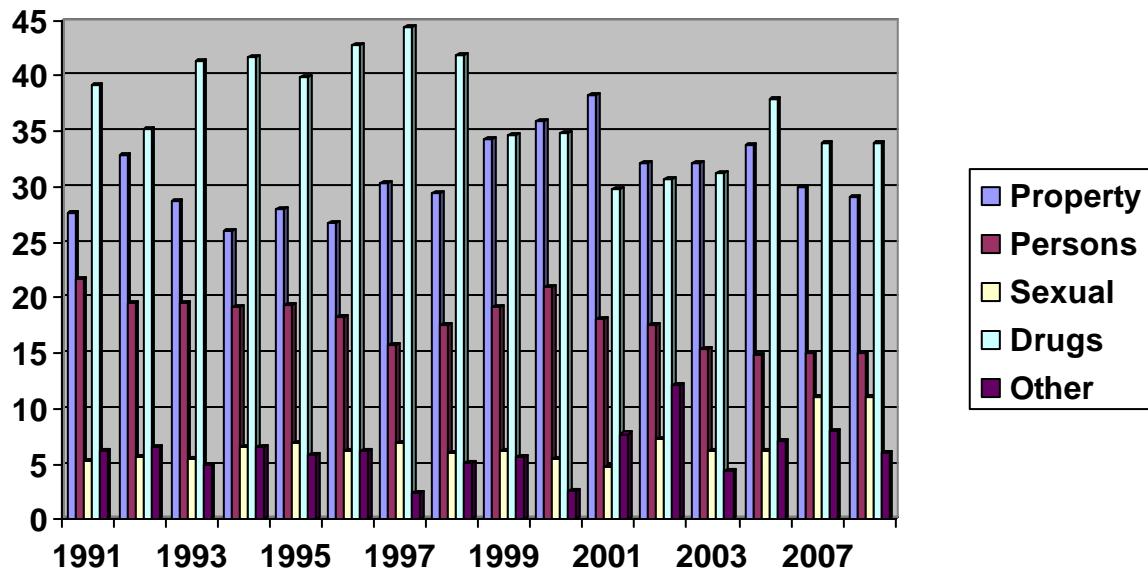
41. Censo Penitenciario (Prison Census), Office of the Public Defender, Producto 1, population characteristics by region, May 2008.

42. González, Marco (editor), *Boletín Estadístico 2004-2005*, Dirección Nacional de Rehabilitación Social, Censo Penitenciario (Prison Census), Office of the Public Defender, May 2008. For men, the highest percentage are detained for crimes against property with micro trafficking as the second highest. For women, micro trafficking is consistently the highest.

43. Dirección Nacional de Rehabilitación Social, *Distribución Poblacional Penitenciaria por Tendencias Delictivas Periodo: 1989-2004, 2007*.



**Chart I**  
**Crimes against property & persons; sexual offenses & drug offenses**



DNRS officials were reportedly frustrated that the number of inmates rose as a result of the police’s response to U.S.-mandated arrest quotas,<sup>44</sup> yet there was no proportional increase in its budget.<sup>45</sup> As a recent Minister of Justice stated, *“Perhaps the greatest harm caused by this abandonment [of the prisons] is not only the lack of funding, but that it has created something even more prejudicial: a divorce between society as a whole and that part of itself made up of citizens completing their sentences in confinement. This divorce reached the extreme, on the one hand, of making invisible those who are imprisoned and, on the other hand, making us more aware of a society increasingly separated from its own problems.”*<sup>46</sup>

One of the reasons Ecuador’s prison population remains invisible is that it is made up of persons taken from society’s most marginalized and, therefore, most vulnerable sectors. Prison statistics show that a majority of those imprisoned under drug charges are problematic drug users, the poor, and members of minority groups. Women are disproportionately represented; DNRS

44. In multiple interviews that the author did in preparation for this report as well as for an article for WOLA, in 2003, government officials, academics as well as judges and lawyers referred to yearly quotas determined by the U.S. regarding the number of persons to be imprisoned under drug charges. Although each of those persons was pressed by the author for some kind of documentation of such a required quota, none could refer to anything in writing. However, the statement was made so often that, even if it cannot be documented, it is a concrete perception held by many working directly with these issues in Ecuador. The perception itself appears to be based on the reality of the high numbers of persons arrested under drug charges vs. the reality that crimes against persons and property are much more common in Ecuadorian society.

45. In an interview with the author in 2003, the then director of DNRS complained of having just attended a meeting with the anti-narcotics police at the offices of NAS (Narcotics Affairs Section) in the U.S. embassy where the police were congratulated for the increase in the numbers of persons arrested under drug charges, but nothing was said regarding the issue of resources for the prisons now housing that rise in numbers.

46. Arbito Chica, Nestor, Minister of Justice and Human Rights, 2009-2010 preface in the brochure, *Construyendo el Cambio*, Ministry of Justice and Human Rights, December 2009, pg 2.

statistics show several years where up to 80 percent of all women imprisoned in Ecuador were there on drug charges.<sup>47</sup> A police force that suffers from weak infrastructure and lack of resources tends to target those easiest to detain. It is still rare to find a major drug dealer in one of Ecuador's prisons.

Returning to 2008, when 34 percent of all detainees were held under drug charges, the next largest group was detained for crimes against property.<sup>48</sup> According to the present director of the Public Defender's office, Ernesto Pazmiño, the majority of those crimes were micro-trafficking and petty theft. The fact that 63 percent of all detainees were imprisoned on charges of either micro-trafficking or theft<sup>49</sup> has led Pazmiño to conclude that the crimes most often committed in Ecuador are those which would, in some way, bring economic benefit. Paraphrasing Pazmiño, "*If I steal, if I work as a mule [transporting small quantities], it is because I need to survive. These statistics are a consequence of the elevated levels of poverty [in Ecuador]; there is a direct connection. I would say that here [Ecuador] there is an intimate relation between poverty, delinquency and imprisonment. It is very sobering to visit the prisons and find only the faces of the poor.*"<sup>50</sup> As one woman imprisoned on drug charges stated, "If we are really involved in major drug trafficking, wouldn't we be wealthy? Where are the profits from selling all those drugs? We are on the lowest rung of the business and what little we earned is now gone."<sup>51</sup>

Looking at both the levels of education and the occupations of the general population of detainees in Ecuador's prisons, one can safely make the assumption that the majority of Ecuador's prison population is of lower education and previously worked in the non-professional sector. In 2004, 50.5 percent of all detainees had no determined occupation at the time of their arrest. Forty nine percent stated that they had a defined occupation but were unemployed.<sup>52</sup> Of those with a defined occupation, the majority considered themselves to be craftsmen (carpentry, construction, etc.). In terms of education, that same year, less than 45 percent had completed only the primary level of instruction and just under 44 percent had completed high school.<sup>53</sup> Also, in 2004, around 40 percent of all detainees were between the ages of eighteen and twenty-eight.<sup>54</sup> Four years later in 2008, the common profile of a detainee in any prison in Ecuador was generally the same as that of a detainee in 2004.<sup>55</sup>

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47. DNRS statistics also reflect that the highest percent of prisoners in general are unemployed with less than a secondary education. Boletín Estadístico 2002-2003, 2004-2005, Oficio No. DNRS-GP-228-2009, Public Defender's Office, Penitentiary Census, 2008.

48. Public Defender's Office, *Penitentiary Census*, 2008.

49. Although quoting statistics from the 2008 census, Pazmiño's study of Ecuador's penal system has convinced him that 2008 is no exception regarding the high percentages of prisoners held for either micro-trafficking or robbery. Proof of this can be found looking at the Boletín Estadístico of the DNRS from the years 1989 thru 2005 as well as the DNRS statistics now being organized by the Ministry of Justice and Human Rights, Office of Social Rehabilitation.

50. Author interview with Dr. Ernesto Pazmiño, director of the Public Defenders Office, 17 March 2010.

51. Author interview with woman in El Inca charged unconstitutionally for the same offense three times and living out a sentence of 25 years.

52. González, Marco (editor), *Boletín Estadístico 2004-2005*, Dirección Nacional de Rehabilitación Social pp. 30,31.

53. Ibid. pp. 22, 23.

54. Ibid. pp.26, 27.

55. Ibid., p. 24.

Being poor also ensures that, once detained, it is highly unlikely that the detainee can afford legal defense. According to previous constitutions in Ecuador, anyone accused of a crime but lacking the resources to hire his or her own attorney had the right to a public defender. However, until 2008, what was designated as the public defender's office had next to no funding and a total of 30 attorneys to serve the entire country.<sup>56</sup> At that time, judges had the right to name an "official legal advisor." However, the advisors, taken from a list of private practitioners, often did not show up for hearings, or they might simply review the case for a few minutes before the hearing. There was no incentive for attorneys to take cases, nor were there consequences for failing to give them adequate attention. Official legal advisors did not answer to the public defender's office and were not subject to any kind of governmental supervision. Obviously, the program did not function and did not fulfill the rights of the accused to a competent defense.

Looking at the economic and educational profile of the typical detainee in Ecuador and then at the percentages of detainees arrested under drug charges, it is not difficult to reach the conclusion that those arrested under Law 108 are not the major drug traffickers involved in the upper echelons of the billion dollar business of moving drugs internationally. Although Ecuador's anti-narcotic police saw themselves fulfilling their duty in the implementation of Ecuador's agreement with the United States in the fight against illicit drugs, the reality was that they tended to target the most vulnerable and the least able to defend themselves. This reality resulted in the warehousing of thousands of small-time traffickers. However, once a micro-trafficker is arrested, the major drug traffickers can have a new seller on the street the very next day. This approach has not resulted in fewer drugs passing through Ecuador, but rather in unsafe and dilapidated prisons overflowing with the poor, marginalized and most vulnerable of Ecuador's society.

### *The Feminization of Drug-Related Crime*

Ecuador is a country with one of the largest gaps between the wealthy and the poor in Latin American. In 2007, income share of the highest ten percent of Ecuador's population was 43.3 percent, while income share by the lowest ten percent was 1.2 percent.<sup>57</sup> As a result, much of its population is in a constant struggle to make ends meet. This is especially true for women who, in Ecuador, have fewer opportunities for employment than their male counterparts. In 2000 and 2007, the unemployment rate for women was double that of men.<sup>58</sup> At the same time, according to the Economic Commission for Latin America and the Caribbean, in 2005 and 2007, women were the sole wage earners for more than 30 percent of Ecuador's urban households with children and for just under 30 percent of rural households with children.<sup>59</sup>

As has been shown, for almost fifteen years, persons accused of drug offenses have made up from 35 percent to 44 percent of Ecuador's total prison population. However, for women in Ecuador, the percentage for incarceration on drug charges is consistently higher. During the same fifteen year period mentioned above, 65 to 79 percent of Ecuador's female prison popu-

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56. Author interview with Ernesto Pazmiño, director of Office of the Public Defender, 17 March 2010.

57 <http://data.worldbank.org/indicator>

58. World Bank Report – Data and Statistics – Ecuador, 2009.

59. Economic Commission on Latin America, CEPSTAT (Comisión Económica para América Latina y el Caribe) – ECLAC/CEPAL, <http://websie.eclac.cl/sisgen/ConsultaIntegrada.asp?idAplicacion=11&idTema=195&idIndicador=1176>

lation was detained on drug charges.<sup>60</sup> In 1980, there were 296 women imprisoned in all of Ecuador. By 2004, there was a female prison population of 1,029 and in 2008, 1,422 women were detained in Ecuador's prisons.<sup>61</sup> Before Law 108, the number of women imprisoned in Ecuador was negligible and the common charge was robbery.<sup>62</sup> In contrast, by 2009, 80 percent of all women held in Ecuador's largest female prison, *El Inca*, were detained on drug charges.<sup>63</sup>

Women are exceptionally vulnerable to falling into micro-trafficking. They play a role on the lowest rung of drug trafficking, usually as *mules* or micro-traffickers, and can be found in prisons throughout the world. According to the director of the Office of the Public Defender, Ernesto Pazmiño, there are multiple secondary effects as a result of this reality. Many mules or micro-traffickers are mothers who have fallen into the transiting of drugs for \$200 to \$300, "*We have demonstrated -- we did a study with the press -- that mules, principally women who have been imprisoned for drugs, have underage children on the outside. When the mother returns home, she encounters her daughters at twelve, sixteen years of age as prostitutes because they had no other way [to earn a living]. The boys were found to have entered into delinquency.*"<sup>64</sup> Once incarcerated and convicted, opportunities for women to turn their lives around and to stay out of the lower echelons of the drug trade become even further out of reach.

Women are more vulnerable to becoming *mules* and/or micro-traffickers not only because of high unemployment rates and economic responsibilities to their children, but also because they can fall prey to husbands, lovers or male abusers who force them, either physically or verbally, into doing just this "one favor" for them. While there are no concrete statistics regarding the percentage of women arrested as mules who were forced into the role of transporting drugs, there is empirical evidence through countless interviews with women imprisoned under Law 108. Some women testify to the fact that their lives or their children's lives were threatened. Others testify to having their husbands or partners threaten to leave them and their children without economic support if they did not transport the drugs. There are also a number of cases where drugs were placed either into their bag or other objects they were carrying without their knowledge. However, even those who were carrying without knowledge, under Law 108 (where one is guilty solely based on the fact that the drugs were found on their person) they are now serving eight to twelve year sentences.<sup>65</sup>

Women are also, in some ways, more vulnerable to abuse once detained. In the largest women's prison in Ecuador, *El Inca*, it is not unusual for at least 50 percent of *El Inca*'s prison guards to be men.<sup>66</sup> While both men and women guards have been known to demand bribes in return for rights that prisoners should be receiving anyway (such as access to medical care, receipt of food or money from family members), male guards often demand sexual favors from female detainees

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60. Dirección Nacional de Rehabilitación Social, *Distribución Poblacional Penitenciaria por Tendencias Delictivas* Período: 1989-2004, pp. 14, 20.

61. Nuñez, Jorge, *Efectos del modelo carcelario hacia las drogas ilegales en el sistema de cárceles de Ecuador*, FLACSO, 2005 and *Penitentiary Census of 2008*.

62. *Ibid*, Nuñez, Jorge.

63. From author's interview with Washington Yaranga, 6 December 2009.

64. Author interview with Ernesto Pazmiño, Director of the Office of the Public Defender, 17 March 2010.

65. See Torres, Andreina above. Also, numerous author interviews with women incarcerated in Ecuador from 2002 through 2010.

66. In 2005, 28 of the guards working in *El Inca* were men while 38 were women.

in return for access to services or other necessities. Until two years ago, guards could call for a full body search at any time, supposedly looking for drugs or other contraband. Full body searches included a vaginal search which was sometimes done by male guards to female detainees. Full body searches were also used by guards as punishment for certain kinds of infractions.

Ecuadorian law does not allow for pregnant women to be held in a prison facility but to be placed under house arrest. After delivery of the baby, mother and baby are then incarcerated. Often, however, pregnant women are detained within a prison because she either does not have a home to go to or is a foreigner and has no family in Ecuador with whom she can live. Therefore, it is not uncommon for births to happen while a woman is incarcerated. She is taken to a state hospital for the birth or, if there is not time, women have actually given birth inside the prison.

Until two years ago, those women who had nowhere to place their children when arrested often had their children living with them inside the prison. In 2004, 392 children lived with either their mothers or their fathers inside Ecuadorian prisons. However, the number living with their fathers was in the single digits.<sup>67</sup> While the numbers fluctuated over the years, in 2008, there were still 184 children living with their mothers inside prison. Those children were between the ages of newborn all the way up to 16 years old.<sup>68</sup> These children sometimes developed emotional problems and, after leaving prison once their mothers were released, often represented one more social problem introduced into Ecuadorian society.

A closer look at Ecuador's largest women's prison, *El Inca*, provides insights into the consequences of more and more women detained under Law 108. After the Ecuadorian Congress approved the legal measure, *secure detention*, and the *two for one* relief was discontinued, overcrowding took a steep climb inside *El Inca*. By 2004, *El Inca*, a prison that was built for 234 detainees, held 660 women and 220 children from the ages of newborn to 16. As the present director of *El Inca* states, "*When I arrived here two and a half years ago (...) there were at least 3 persons per bed in cells with two beds. I found adolescent prisoners below the legal age of 18. Drugs and alcohol were commonly found throughout the prison. Prisoners were simply warehoused and corruption was rampant. The policy was lock them up and nobody deal with them.*"<sup>69</sup>

Although both men and women act as mules transporting drugs to other countries, since Law 108 has been in effect, among foreigners a higher percentage of females than males are detained. According to a study done by Jorge Nuñez, at the beginning of the 1980s, statistics regarding the size of Ecuador's prison population did not even include a category for the number of foreigners detained. However, by 2004, 10.4 percent of male detainees were non-Ecuadorian, while over 23 percent of female detainees were non-Ecuadorian. Ninety percent of all foreigners detained that year were held under charges for a drug offense. Sixty percent of all detained foreigners were from Colombia.<sup>70</sup>

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67. González, Marco (editor), *Boletín Estadístico 2004-2005*, Dirección Nacional de Rehabilitación Social p. 58.

68. *Penitentiary Census*, Office of the Public Defender, 2008, pp. 46 - 47.

69. Author interview with Dr. Washington Yaranga, Director of El Inca, December 2009.

70. Nuñez, Jorge, *Efectos del modelo carcelario hacia las drogas ilegales en el sistema de cárceles de Ecuador*, FLACSO, 2005 Also, author's calculations based on González, Marco (editor), *Boletín Estadístico 2004-2005*, Dirección Nacional de Rehabilitación Social pp. 34-37.

## Prison and Drug Policy Reform under President Correa

As overcrowding worsened in Ecuador's prison system, detainees began to organize themselves to demand better treatment and respect for their civil and human rights. Interestingly, although Ecuador's prison system was rife with corruption and human rights abuses, it had always offered detainees a mechanism that allowed them to elect, from their own ranks, a president and members for a detainee committee. Although the committees were often themselves guilty of corruption, in the face of worsening conditions, these committees evolved into mechanisms used by detainees to advocate for their rights and for improvements to their living conditions. Between 2004 and 2007, certain committees in the larger cities in Ecuador started to organize demonstrations, including hunger strikes and even taking over prisons by force. There were no fatalities in the takeovers (as has happened in other Latin American countries), but they did increase to the point where they could no longer be ignored.

In late 2006, the new director of *El Inca*, Washington Yaranga, began allowing the media inside the prison to film and interview the detainees. Once the media got a foot in the door, the public perception, at least of women prisoners, slowly began to change. And the detainee committees started to take advantage of their opportunities with the media. Some women sewed their mouths closed and went on a hunger strike. In one men's prison, they staged a crucifixion, literally tying a detainee on a cross to symbolize their suffering. The living conditions, not only inside *El Inca*, but also inside other prisons in Ecuador, became the topic for newspaper stories as well as television news shows. One television news show (*La TV*) interviewed two women detained under drug charges who told their stories of why and how they fell into micro-trafficking. The women were given a sympathetic presentation on the show and its host clearly differentiated between their offense of being small-scale traffickers and major drug trafficking.

The media coverage began to create a more propitious environment for the reform of Law 108, but the election of President Rafael Correa in November of 2006 also became another turning point. Upon entering office, Correa took on a complete overhaul of Ecuador's governmental institutions and one of the most important changes was the establishment of the Ministry of Justice and Human Rights (MJHR). The principal objectives to be implemented by MJHR are listed in Article 3 of the Presidential Decree that established the new Ministry. Within those objectives were key tasks that, if effectively carried out, would constitute major changes for the thousands imprisoned under Law 108. Those tasks and responsibilities include the development of concrete reforms of the laws now in force, with the objective of improving the existing systems of penal justice and social rehabilitation; supervision of Ecuador's national penitentiary system to resolve the present crisis and avoid future crises which put at risk the physical and emotional integrity of detainees; the establishment of a public defender's office; coordination with CONSEP; supervision of all processes of foreign repatriation; and the design and implementation of a statistical study of Ecuador's national penitentiary system.<sup>71</sup>

In 2007, in response to the growing unrest throughout Ecuador's penal system, Correa and others in his government personally visited several prisons. The gravity of the problem quickly became clear. In August of that same year, Correa signed a decree stating that the national system of

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71. Decreto Ministerio de Justicia y Derechos Humanos de la Oficina Presidencial, Rafael Correa, noviembre 2007.

social rehabilitation was now declared in a state of emergency.<sup>72</sup> The decree called for an overall evaluation of the entire system including, among other items, the lack of legal aid, the number of detainees with and without sentences, a study of the infrastructure needs and the quality of prison administration. It also reiterated a call for a census to be done of the entire prison population, creating a portrait of the typical detainee on which reforms could be based.

One of the immediate results of the decree and the action plan developed in its wake was the creation of what is called the Transitory Unit for the Administration of a Public Penal Defender (*Unidad Transitoria de Gestión de Defensoría Pública Penal*). The Public Defender's Office was set up as a temporary body under the MJHR. However, at some point in 2010 it is to become a separate unit within the Ecuadorian government, working in coordination with that ministry. The Public Defender's Office was placed in charge of conducting the national prison census, which has been completed. The Public Defender's Office now has 220 young attorneys working on the defense of any detainee who cannot afford a lawyer. In the two years that this office has existed, it has greatly decreased the number of persons detained without a sentence. This was done not only through the Public Defender's resources, but also through the accreditation of qualifying legal clinics operating under NGOs and universities. Through the actions of the Public Defender's Office, prison overcrowding was reduced from 157 percent to 54 percent.<sup>73</sup>

Also, an office was formed within the MJHR that assumed responsibility for all applications for repatriation to the home countries of foreigners imprisoned in Ecuador. Based on the 1983 Council of Europe Strasbourg Convention on the Transfer of Sentenced Persons (to which Ecuador is a signatory), as well as bilateral treaties that Ecuador has with Peru, Paraguay, Colombia and Spain, many foreigners sentenced for a crime under Ecuadorian law can apply to be transferred to serve out the rest of their sentence in their home countries. Up until a few years ago, those sentenced for a drug offense did not have access to the right to transfer under these treaties. This new measure allowed hundreds of foreigners to return home to serve out their sentences and aided, to a certain extent, in lessening overcrowding in Ecuador's prisons. At the same time, there are still many countries, mostly in Africa and Asia, that are not signatories to such treaties and hence citizens from these countries are still imprisoned in Ecuador.

#### *A New Constitution and a Fresh start*

During the time of the institutional changes described above, Correa obtained congressional approval to hold elections to choose members for a National Constituent Assembly to write a new constitution. After the elections were held, the members elected to the Constituent Assembly were a sprinkling of representatives from traditional parties, a strong showing of candidates from social movements and academia and a majority from the President's PAIS Alliance.

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72. Presidential Decree, el Consejo Nacional de Rehabilitacion Social, 14 de agosto del 2007, <http://www.edicioneslegales.com/novedades/consejo.htm>.

73. Ministerio de Justicia y Derechos Humanos, Unidad Transitoria de Gestión de Defensoría Pública Penal, *Comparison of prison reality before and after the establishment of the Public Defenders Office*, 31 December 2009.

The Assembly formed working groups focusing on specific areas such as human and civil rights (including the status of such minority communities as indigenous and Afro-Ecuadorians), the use of natural resources, freedoms of the press and communication, as well as other areas of national concern. Members of the *Task Force on Legislation and Fiscal Affairs* undertook a review of prisons, the country's penal code and the judiciary. Visiting prisons across the country, the Task Force observed the inhumane conditions and overcrowding, and noted the high percentage of persons incarcerated under Law 108. In its official report to the whole of the Constituent Assembly, this Task Force pointed out the draconian nature of Law 108, and noted that the law did not distinguish between types of drugs or amounts and resulted in sentences that were often grossly disproportionate to the crimes committed. Their report also included the fact that, "(...) *the Inter-American Court of Human Rights has found that [Law 108] results in unjust harm to persons... that the loss of liberty [caused by the law] engenders social and economic disintegration and destabilization of families, especially in cases where the children of female offenders are also imprisoned in Social Rehabilitation Centers.*"<sup>74</sup>

The prison visits by members of the Constituent Assembly combined with sympathetic media coverage created a window of opportunity for the development of a national pardon proposed by the Task Force that would cover all persons who had been sentenced for trafficking, transport, acquisition or possession of illegal substances and met the following criteria: the prisoner had been convicted, it was a first-time offense, the amount of the illegal substance involved was two kilograms or less, and the prisoner had completed at least 10 percent (or at least a year) of the sentence.<sup>75</sup> The proposal was approved by the Constituent Assembly and went into effect on July 4, 2008.<sup>76</sup> According to the Public Defender's Office, 2,300 people were released through the pardon. As of March 2010, the recidivism rate for those released was under one percent.<sup>77</sup>

In addition, the Constituent Assembly later reinstated the *two for one* relief that had previously been applied years before. Although the *two for one* sentence reduction covered all crimes, it was especially welcomed by the large percentage of women serving long sentences for drug offenses and who did not qualify for the pardon. This measure combined with the pardon for micro-traffickers helped greatly in diminishing prison overcrowding in Ecuador. In *El Inca*, the pardon combined with the *two for one* relief led to greatly improved living conditions. So many women were released under the temporary relief measures that each prisoner had their own bed where three used to sleep together. In addition, the level of violence diminished greatly and access to what services existed improved tremendously.

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74. *Proyecto de resolución aprobado con el informe de mayoría sobre el indulto de las personas que transportan pequeñas cantidades de sustancias psicotrópicas y estupefacientes*, Revista Judicial, Registro Oficial No. 378, Jueves 10 de Julio de 2008, Suplemento. *Resolución para el indulto de las personas que transportan pequeñas cantidades de sustancias psicotrópicas y estupefacientes* [http://www.derechoecuador.com/index.php?option=com\\_content&task=view&id=4568](http://www.derechoecuador.com/index.php?option=com_content&task=view&id=4568). Author's translation. Next to last Resolution on the Register of a list of all the Constituent Assembly's Resolutions made into law by President Correa.

75. Ibid.

76. For more information on this measure see, Metaal, Pien, *Drugs and Prisons, Pardon for Mules in Ecuador, a Sound Proposal*, Series on Legislative Reform of Drug Policies, No. 1, TransNational Institute and Washington Office on Latin America, February 2009, <http://www.tni.org/sites/tniclone.test.koumbit.net/files/download/dlr1.pdf>.

77. *Numerico de Personas Privadas de Libertad Indultadas por Drogas, Casos Reingresos Registrados*, Source: Centers of Social Rehabilitation, Planning Dept, Office of the Public Defender.



The two legal measures adopted by the National Constituent Assembly were only the first small steps in a much larger reform process. While those measures were a temporary response to the emergency situation that had developed within Ecuador's prisons, the Assembly recognized that the causes behind the situation in Ecuador's prison were rooted in problems within Ecuador's penal code, especially in Law 108 and its implementation. The Assembly Task Force stated that an overall reform was necessary to confront the humanitarian crisis facing Ecuador's prison system as well as to ensure a more equitable system of justice in Ecuador.

The constitution written by the National Constituent Assembly was passed by public referendum in September 2008.<sup>78</sup> In its chapter on rights to protection under the law, the new constitution includes articles that list certain rights that must be guaranteed under Ecuador's penal code.<sup>79</sup> In order to assure that such rights are respected, the government started a process to undertake a full re-writing of the nation's penal code, not only in relation to the transport of illicit substances, but in relation to all crimes against individuals, property and the State.<sup>80</sup> Also, Article 364 in the Constitution's section on health states: "*Addictions are a public health problem. It is the State's responsibility to develop coordinated information, prevention and control programs for alcohol, tobacco, and psychotropic and narcotic substances; as well as offer treatment and rehabilitation for occasional, habitual, and problematic users. Under no circumstance shall they be criminalized nor their constitutional rights violated.*"<sup>81</sup>

### *Proposals for Reform and Concrete Changes*

In its effort to bring Ecuador's penal code in line with the 2008 constitution, the MJHR proposed a complete overhaul of its judicial system, including the codes which typify particular offenses, the procedures used to determine guilt or innocence, and the type and implementation of penalties. The new Constitution is a "rights based" document which means that its implementation must first and foremost take into account the rights of Ecuadorian citizens in the application of its laws. The MJHR undertook a long process of study, review and discussion with various Ecuadorian and international experts and has developed a *Proposal for the Integrated Reform of the Law of Narcotic Drugs and Psychotropic Substances*.<sup>82</sup> According to the legal reforms originally proposed, offenses related to illegal substances would no longer be treated under a separate system with its own classification of offenses, separate procedures and unique sentencing structure. In the proposed legislation, distinctions were made between large-scale drug trafficking, street corner dealing, and different levels of participation in drug production and trafficking.

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78. On 28 September 2008, a national referendum was held in Ecuador to approve or reject the Constitution written by the National Constituent Assembly. The Constitution was approved with 64 percent in favor and 28 percent opposed.

79. Constitution of the Republic of Ecuador, 2008, Title II *Rights*, Chapter eight, *Rights to Protection*, Articles 75 thru 82.

80. This process was stymied as of July 2010. At that date, the reform of the drug law was still in process, but the reform process for the overall penal code has taken a very different direction.

81. Constitution of the Republic of Ecuador, 2008, Title VII *Rule of Living Well*, Second Section, *Health*, Article 364.

82. The *Proyecto de reforma integral a la ley de sustancias estupefacientes y psicotrópicas* which was developed by the Ministry of Justice and Human Rights, had not been made public at the time of this paper. However, the general description of its content in this paper come directly from the Ministry's proposals.

Proposed institutional reforms break down the issues of illicit drugs into separate areas of concern, assigning them to different ministries. The issues of addiction, prevention, rehabilitation and reinsertion would be defined as public health issues and would become a central responsibility of the Ministry of Health. The Ministry of Health would also be responsible for the management of controlled substances. Because many micro-traffickers enter into the world of illegal drugs due to economic realities, the restructuring proposal also includes preventative measures to promote economic and social opportunities, under the purview of the Ministry of Economic and Social Inclusion. The Ministry of Government (under which security forces operate) would continue its responsibility for interdiction, but would focus specifically on organized crime, including major drug trafficking cartels and their leaders. The new proposal also includes a body under the central government that would act as the facilitator of this multi-faceted approach.

Other institutional reforms are based directly on Ecuador's new Constitution which includes a section that deals specifically with the social rehabilitation of detainees. Articles 201 through 203 cover the human rights of those detained and lay out the government's responsibilities. The Sub-secretary for Social Rehabilitation under the MJHR is planning a complete overhaul of Ecuador's prison system. It recently completed construction plans for seven new prisons and the rehabilitation of six older prisons. Already 563 new cells have been built. Once all are constructed, the prisons will be broken down into centers for detainees whose cases are still being processed and separate centers for those who have been sentenced.

DNRS will be reorganized and renamed to reflect the new concept of *integrated attention for persons deprived of liberty*, which involves new internal norms, use of space and training of personnel. The Ministry's sub-secretariat has already developed a new curriculum for the professionalization of prison guards. This curriculum will be implemented by a public university that the Ministry has contracted to carry out a three year program that all guards will be required to complete before being employed or, for existing guards, to retain their positions. The objective is that within five years all guards working within the Ecuadorian prison system will be professionally trained. Various ministries are involved in programs to promote rehabilitation. For example, the Ministry of Education would be responsible for designing a program for literacy, the Ministry of Health would design a program for detainees dependent on drugs and the Ministry of Sports would design programs for physical exercise. The hope is that this new approach will lessen the separation of the national prison structure from Ecuadorian society, integrating it via public policies that affect both prison populations as well as the society as a whole.<sup>83</sup>

Despite these positive advances, internal political debates may still prevent at least some of the reforms from going forward. Due to major changes in Ecuador's political environment, at the time of this writing the original reform process of the overall penal code has been put on hold, and there are reports that the National Assembly may consider even more repressive legislative proposals regarding criminal offenses. Those working on the reforms being developed specifically around the drug law have had to regroup and pull in other government players into the

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83. Author interview with Sub-Secretary of Social Rehabilitation, Gustavo Peñafiel and MJHR publications *Constuyendo el Cambio*, 2009 and *Plan Interinstitucional de Atención para las Personas Privados de Libertad*, 2009-2013.

process in order to keep that reform process afloat. Three inter-agency and inter-ministerial commissions have been formed to work on drug law reform proposals in order to reignite the process and gain the support of those government officials who must sign off on them before presented to the Assembly.

## **Conclusions**

While many of the reforms proposed for Ecuador's prison system are already in place, the fact remains that, as of July 2010 the proposed drug legislation had not yet been presented to the Ecuadorian National Assembly and may not be presented for another six months. Even once presented, the new law may not be approved as written. There are growing concerns regarding a rise in violent crime in Ecuador and the public and press often do not differentiate drug offenses from violent crime. Some members of the National Assembly will have political concerns about how the reforms will play to their constituents. Moreover, like the national pardon that preceded the proposed reforms, even if approved there will be challenges in ironing out the problems of implementation, particularly with regard to the roles of the judiciary and the security forces.

In the meantime, Law 108 is still in effect and prisons continue to fill with micro-traffickers and mules. In some of Ecuador's prisons one can already feel a difference in the environment; there is less tension, things are running more smoothly and the repression has lifted. However, in others, such changes are hard to perceive. And after almost two decades of implementing Law 108, Ecuador's police, judges and military continue to perceive anyone seen involved in the drug trade as a hardened criminal. Because Law 108 is still in effect and under that law drug offenses remain crimes of reclusion, preventative detention continues to be imposed for at least the legal limit of a year. However, many of those detained under preventative detention are in prison for more than a year without trial as their cases have fallen through the cracks of a still ineffective judicial system. While security forces have recently improved in the seizure of large quantities of drugs transiting through Ecuador (as well as finding more processing labs on Ecuador's border with Colombia)<sup>84</sup>, they still consider the number of arrests on drug charges to be a concrete indication of the value of their work against drug trafficking.

With Ecuador's history of unstable governments and political winds changing overnight, it is hard to predict if any of the positive reforms targeting a judiciary that has been dysfunctional for decades and a prison system that became known as one of the worst in Latin America will actually be implemented before a new government is either installed or elected. At the same time, this is the first government to even attempt such far-reaching, integrated and well developed proposals. One can only hope that their rationale is sound enough and the need for change clear enough that the reform process will continue.

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84. El Comercio, *EE.UU. reconoce el trabajo antidrogas*, 13 febrero 2010 and El Comercio, *Ecuador lidera lucha antidrogas*, 14 febrero 2010.