



Drug Law Reform in Ecuador: Building Momentum for a More Effective, Balanced and Realistic Approach

by Sandra G. Edwards and Coletta A. Youngers¹
May 2010

Across the hemisphere, frustration is growing with the failure of the “war on drugs.” Many Latin American countries face rising rates of drug consumption, despite harsh drug laws that have left prisons bursting at the seams. Typically, users and low-level dealers bear the brunt of the sanctions, while high-level actors with money and power carry on with impunity. In response, numerous countries are exploring alternative policies.

For example, in August 2009, Mexico enacted a law decriminalizing the possession of small quantities of drugs for personal use. That same month, the Argentine Supreme Court determined that imposing criminal sanctions for the possession of drugs for personal use is unconstitutional, a ruling that paves the way for pending legislation that would decriminalize the possession of all illicit drugs for personal consumption.² Brazilian officials are working on reforms that would advance legislative changes in 2002 and 2006 that partially decriminalize possession of drugs for personal use. In short, an incipient drug law reform movement appears to be gaining traction across the region and even in the United States. The Latin American Commission on Drugs and Democracy – led by former presidents of Brazil, Colombia and Mexico – has sparked debate across the region with its recommendations to treat

Key elements of effective drug law reform include:

- Decriminalizing drug consumption and treating it as a public health and social policy issue, rather than as a criminal justice problem;
- Developing alternatives to incarceration for low-level offenders; and
- Eliminating mandatory minimum sentencing and ensuring proportionality in punishment for drug-related offenses.

drug consumption as a matter of public health and for countries to consider the decriminalization of cannabis consumption.

In Ecuador, the Correa government's comprehensive justice sector reform project includes significant changes in drug legislation. The country has one of the most punitive drug laws in the hemisphere. In a perversion of justice, those accused of drug offenses are assumed guilty unless they can prove their innocence, mandatory minimum sentencing guidelines ensure excessively long sentences and arrest quotas have led to the imprisonment of growing numbers of those at the lowest end of the drug trafficking trade. By 2008, Ecuador's justice system had reached a breaking point, overwhelmed by huge caseloads of drug-related offenses, and prisons were bursting at the seams. The need for significant reforms was painfully clear. This brief explains why and how the Ecuadorian government arrived at its decision to undertake significant drug law reform and how, if implemented successfully, those reforms could result in more effective, just and humane national drug control policies, setting an example for the rest of the region.

Summary

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. 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 (only recently has this become an issue of debate, as described in greater detail below.) In a 2008 survey entitled National Survey Regarding Citizen Perceptions of Internal and External Security, drug trafficking was among the lowest of the perceived threats listed.³ But for nearly two decades, Ecuador has had one of the most draconian drug laws in Latin America, and U.S. economic assistance to Ecuador prioritized anti-drug funding to its security forces. The amount of U.S. aid flowing to Ecuadorian security forces ensured a high profile for anti-drug activities, to the detriment of other national priorities.

In short, Ecuador adopted counter-drug measures that did not correspond to the reality on the ground, but rather were a result of the imposition of U.S. international drug control policy in Latin America. When the U.S. government's Andean Initiative was launched in 1989, economic and military aid to the Andean region increased significantly, with assistance contingent on compliance with U.S. counternarcotics objectives and programs. 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. This was the context within which Ecuador developed Law 108, The Law on Narcotic Drugs and Psychotropic Substances (*Ley de Sustancias Estupefacientes y Psicotrópicas*).

Ecuadorian Law 108⁴ is extremely punitive, resulting in sentences disproportionate to the offense, contradicting due process guarantees and violating the constitutional rights of the accused. It has led to major injustices as drug cases are tried under a law that leaves little to no room for any accused to be found innocent. The focus on enforcement means that the success of Ecuador's drug policies has often been measured by how many individuals are in prison on drug charges. This has resulted in major prison over-crowding and a worsening of prison conditions due to an insufficient prison infrastructure, as government budgets have been unable to keep up with prison population growth. From 1993 to 2007, Ecuador's overall prison population grew from just under 9,000 to over 14,000 inmates⁵ with no expansion to its prison infrastructure. The emphasis on meeting arrest quotas also led to the targeting of the most vulnerable who are the easiest to arrest, while those actually in control of the trafficking keep themselves well hidden and well armed with unlimited resources at hand.

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 of 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. As a first step, President Correa issued a national pardon for micro-traffickers, implemented under strict criteria, which resulted in a decrease in prison overcrowding. The Ministry of Justice and Human Rights and the Ministry of Government are now in the process of proposing major reforms that would rectify the wrongs created by Law 108 and bring it in line with the new constitution. In addition to the drug law reform, significant institutional reforms are also underway and law enforcement efforts are being reoriented to target the upper echelons of drug trafficking organizations. These reforms are based on the premise that Ecuador's drug laws and policies must correspond to the country's own national reality, prioritizing security and the civil and human rights of Ecuador's citizens.

The Evolution of the U.S.-backed “War on Drugs” in Ecuador

In contrast to neighboring Peru and Colombia, Ecuador is not a significant cultivator of the coca leaf or any other crop used in the production of illegal drugs. According to the U.S. Department of State's March 2010 International Narcotics Control Strategy Report (INCSR), only 6 hectares of coca and less than one hectare of poppy plants were found and destroyed along the border with Colombia in 2009. (By comparison, U.S. estimates for coca cultivation in 2008 in Colombia and Peru were 119,000 hectares and 41,000 hectares, respectively; statistics for 2009 were not reported for these countries in the 2010 INCSR.) Significant quantities of drugs are not produced in Ecuador, and evidence indicates that drug consumption rates are also relatively low. At the same time, there is now debate as to whether there are more drugs transiting through Ecuador. 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.

In short, Ecuador is principally a bridge between the producing countries and the international market; it is a transit country for illicit drugs and precursor chemicals and serves as a center for money laundering. Drugs are imported, warehoused and then moved out of the country with profits laundered through various financial mechanisms. To date, as noted, the majority of those imprisoned for drug trafficking in Ecuador are from the bottom end of the drug trafficking train – not those managing and reaping the large profits from the drug trade.

At the end of the 1980s, makeshift laboratories clandestinely processing chemicals for the making of cocaine were discovered in Ecuador. In 1990, the government of Ecuador published two reports that indicated growing activity around the production of precursor chemicals for drugs and insinuated that thousands of Ecuadorians were benefitting from the drug trade. The government's alarming reports made headlines, but researchers such as Adrian Bonilla of FLACSO 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."⁶ 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. At the same time, the U.S. government began anti-drug training and coordination with the Ecuadorian police. This international cooperation, combined with internal politics and perceptions, created enormous pressure to "get tough" on drug traffickers as quickly as possible. In response, in 1991 the ID developed and passed Law 108, The Law of Narcotic Drugs and Psychotropic Substances. One government official commented that because of the powerful pressure both internally and internationally to get this law passed, it was pieced together so quickly that paragraphs were actually out of order, with sentences that often lacked logical coherence.⁷ The law was also later found to contain several articles and concepts that were unconstitutional. However, it did put the country in good standing with Washington.

Ecuador benefited, in part, from increasing U.S. attention and assistance to Colombia. 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. By 2004, it had increased to over \$42 million.⁸ In addition, the DEA established a presence in Ecuador via a special investigative unit (SIU). A 1999 bilateral agreement led to the establishment of a U.S. military Forward Operating Location (FOL) at the Manta airbase on Ecuador's southern coast. (The FOL proved to be extremely controversial within Ecuador, and the Correa government did not renew the agreement when it expired in 2009.⁹) While the amount of U.S. economic assistance pales in comparison to Ecuador's neighbors, it represented a significant increase for Ecuador.

According to statements made in 2003 by officials 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) and Ecuador's National Direction for Social Rehabilitation (Dirección Nacional de Rehabilitación Social, DNRS), the fact that Ecuador was receiving large 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.¹⁰ For a national police force that chronically lacks material and economic resources, anti-drug aid offered by the United States had become an important resource.

The parameters for joint counternarcotics activities are laid out in annual bilateral agreements between the United States and Ecuador. While these have been kept strictly confidential, parts of the 2003 agreement were reported on 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."¹¹ 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 would meet 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 on drug charges. As a result, many innocent people landed behind bars.

Such requirements for a police force that suffers from weak infrastructure and lack of resources exacerbated a situation whereby Ecuador's security forces target those easiest to

detain. Prison statistics in Ecuador during the active years of cooperation with U.S. drug control policies show that a majority of those imprisoned under drug charges are from the most vulnerable and marginalized sectors of society: problematic drug users, the poor and women.¹⁰ It is rare to find a major drug dealer in one of Ecuador's prisons.

Law 108, a Study of Injustice

Law 108¹³ has little in common with Ecuador's existing penal code and was developed based on external legal principles such as mandatory minimums in sentencing. It created a penal and judicial structure that operates separately from Ecuador's overall judicial system. Many of the law's characteristics contradict the due process rights guaranteed in Ecuador's Constitution and leave those accused in a no-win situation, even if innocent of the charges.

Most egregiously, the internationally accepted concept of the presumption of innocence – one is innocent until proven guilty – is not inherent in the law. Law 108 contains a subtle concept called *inversión de prueba*, or inversion of proof. The law denies so many rights to the accused that in its de facto implementation, it transfers the burden of proof onto the accused. Those behind bars with no liberty or resources to present evidence of their innocence have little chance against the resources and control of the State to build a case for conviction.

Moreover, the accused rarely have access to an adequate legal defense. Attorneys who dare to defend those accused of a drug-related offense often face professional and personal stigmatization. Police publicly state that attorneys defending anyone accused of a drug offense are taking dirty money, supposedly from drug trafficking, and therefore are as guilty as the accused. Many attorneys have indicated that they would never risk their legal careers by taking drug cases; those who have done so are questioned by their colleagues as to why they are putting themselves in such a vulnerable position professionally. Furthermore, in 2006, it was ruled that no attorney, by law, could be considered for a judgeship if that attorney ever defended an accused drug dealer.

Of particular concern, mandatory minimum sentences were established, following the U.S. model, which violate basic principles of proportionality in sentencing and further undermine the independence of judges. No distinction is made between the smallest offenders – for example, first-time offenders, or “mules” in possession of small amounts – and high-level drug dealers. Cases are not examined as to their particular context and details; rather, all those convicted of drug distribution are subject to a mandatory minimum sentence, which was initially set at 10 years and was increased to 12 years by Congress in January 2003. A person carrying a few grams of marijuana could 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 could potentially be sentenced to a maximum of 25 years – a sentence that is higher than any other crime under Ecuadorian law (the maximum sentence for murder is 16 years).

The law places the penalties for possession of any amount of drugs on par with the penalties for serious, violent crimes. There are presently two categories of crime – crimes of reclusion and crimes of prison. 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. According to human rights lawyer Dr. Susy Garbay, “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.”¹⁴ Those accused of any drug offence cannot request bail, and a non-violent offender accused of trafficking a small amount of drugs – no matter the type of drug – could receive the same sentence, or sometimes even more harsh, than someone who commits the crimes of rape or murder.

In short, under Law 108, the accused are tried in a separate penal and judicial system in which they are not presumed innocent, do not have access to adequate legal representation, and face sanctions that are more often than not disproportionate to the crime committed.

Challenges to the Constitutionality of Law 108

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.¹⁵ As a result of the Collective’s work, the law was revised, reversing some of its most egregious elements. However, these did not take effect until 1997, and the fundamental thrust of the legislation, in which one is presumed guilty until proven innocent, remains in place.

Law 108 originally mandated that all judges’ decisions in drug cases were subject to review and even sanctions by a Superior Court. This review process was established purportedly to prevent false findings of innocence in cases where judges may have been paid off by the accused or by drug traffickers. The effect of the review, however, was to virtually guarantee a guilty verdict. Most 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 such repercussions.

The Ecuadorian Supreme Court reversed the requirement that all decisions in drug cases were subject to review by a higher court. However, despite this change to the law, judges – as with lawyers – still run the risk of becoming victims of political stigmatization by players both inside and outside the judicial system. In 1998, the U.S. government revoked the visa of one judge it considered to be making inappropriate decisions regarding drug cases. The visa cancellation sent a message that many judges took as another incentive to err on the side of guilty verdicts in drug cases rather than to risk one’s ability to travel to the United States.¹⁶

Another important change is that it is now possible to have sentences be commuted because of extenuating circumstances. Judges have also been given more flexibility in determining sentences for drug offenses; taking into account such factors as the absence of a criminal record or other mitigating circumstances, a judge may sentence a person found guilty of a drug offense to a lesser number of years than the mandatory minimum sentence. Nevertheless, political pressures within the judiciary make it unusual for a judge to issue sentences that are more than two or three years lower than the mandated minimums.

Finally, as a result of the legal reforms implemented in 1997, it is no longer required by law that those carrying small quantities of drugs for personal consumption be imprisoned. However, the problem with this change to the original law is that no specific quantities are specified as to what constitutes personal use in a context where prosecutors and judges are encouraged through a variety of other mechanisms to seek convictions. What might be an amount for personal use to one judge is enough for another judge to convict someone for trafficking. Also, the burden of proof is still on the accused to prove that they are users rather than dealers.

The Human and Social Costs of Law 108

By the year 2000, Ecuador suffered the consequences of a prison system that was plagued by overcrowding and lack of resources. The judicial system, already overwhelmed and understaffed, had reached a breaking point due to the huge increase in drug related cases. At different points in time between 1993 and 2007, over 40 percent of all prisoners in Ecuador were incarcerated on drug charges.¹⁷ Between 75 and 85 percent of all female prisoners in Ecuador were behind bars for a drug offense.

The prisons in Ecuador overflow with persons convicted of transiting small quantities of drugs. Although one finds an occasional middleman among those arrested on drug charges, low-level players became the vast majority of those imprisoned under Law 108. These people, often referred to as “mules,” are almost always poor and desperate for economic resources. They are often single mothers with children to support, minorities, the undereducated who cannot obtain employment, and others who sell drugs to main-

tain their habit. It is important to note that they are easily and quickly replaced as actors in the illicit drug trade.¹⁸

Such a focus has done enormous damage to many individuals and to Ecuadorian social well-being. Until recently, children of single mothers more often than not accompanied their mothers inside the prison, as there was nowhere else for them to live. Such situations raised questions regarding the future of these children and the kind of citizens they would become. Families are broken apart and those members on the outside are negatively affected both economically and emotionally. Small-time, often non-violent offenders are kept in prison for just under a decade in the majority of cases and for over a decade in many others. Being behind bars for long periods of time further marginalizes thousands of the detained so that when they finally do obtain their freedom, there is nothing left for them on the outside. Employment is even more difficult to find with a prison record. Opportunities to turn their lives around and to stay out of the lower echelons of the drug trade become further out of reach than before they were imprisoned.

The conditions within Ecuador's prisons deteriorated as the numbers game continued to be played by law enforcement officials. Law 108 practically guaranteed prison population growth as it left no room for legal findings of innocence and ensured extraordinarily long sentences inside prison walls. Hunger strikes and prisoner uprisings became the norm. At the same time, studies showed no reduction in the amount or quality of drugs transiting Ecuador. More and more individuals, organizations and academic institutions began to study the problem closely; their findings, slowly but surely, began to have an effect on internal policy debates.

President Rafael Correa and the Constituent Assembly

In November 2006, Rafael Correa was elected president and soon thereafter he obtained congressional approval to hold new elections to choose members of a National Constituent Assembly, whose purpose was to write a new constitution. The Constituent Assembly had a sprinkling of representatives from traditional parties, but it was comprised mostly of representatives from social movements and academia, with the President's PAIS Alliance holding the majority of seats.

The Assembly was broken down into 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 inhumane conditions and overcrowding, and noted the high percentage of persons incarcerated under Law 108. In its official report to the General 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."¹⁹

Alleviating Prison Overcrowding

Included with the Task Force's report to the full Constituent Assembly was a proposal for a national pardon for all persons who had been sentenced for trafficking, transport, acquisition or possession of illegal substances and met the following criteria: that the prisoner had already received his or her sentence, that the sentence was his or her first offense, that the amount of the illegal substance involved in the conviction offense was two kilograms or less, and that the prisoner had completed at least 10 percent (or at least a year) of his or her sentence.²⁰ The proposal was approved by the Constituent Assembly and became law on July 4, 2008.²¹

The process of implementing the pardon was not as smooth as envisioned by the Assembly. The same judicial system that was responsible for allowing hundreds of accused to remain imprisoned without trial was the same judiciary that was responsible for implementing the pardon. The process was supposed to be free of cost to those imprisoned and undertaken with the help of prison officials. However, it turned out to be complicated, and many prisoners were told they had to pay an attorney to obtain a pardon. There were several legal documents needed to prove that a prisoner met the criteria necessary to receive the pardon. Often these documents were spread across several institutions within Ecuador's judicial system. Eligible prisoners often did not even know where to find the required documents, and if they did, they had to ask or pay for someone on the outside to physically go obtain a particular document. And even then, that person on the outside often had to have the properly signed papers to obtain the necessary document. In one prison, frustration with the difficult and time consuming process rose to such a level that a prison riot broke out. Two hundred and eighty persons inside the prison for visiting day were taken hostage for hours.²² While many had to wait long periods of time before they were able to complete the required process, according to the Public Defender's Office (Defensoría Pública Penal), 2,300 persons who had been imprisoned under Law 108 were ultimately pardoned.

In addition, the Constituent Assembly later implemented a measure to give power to the appropriate governmental bodies to grant a reduction of up to 50 percent to sentences of

prisoners meeting specific criteria.²³ Although the potential for sentence reduction covered all crimes, it was especially a welcome reform by the large percentage of women serving long sentences for drug offenses and who did not qualify for the pardon. This effort, which came to be known as the two for one rule, combined with the pardon for micro-traffickers, helped greatly in diminishing prison overcrowding in Ecuador.

In the Quito women's prison, El Inca, where almost 80 percent of inmates were convicted of drug offenses, the pardon combined with the two for one rule led to greatly improved living conditions. So many women were given liberty under the temporary reforms 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.

Drug Law Reform

The two legal actions put in motion by the National Constituent Assembly were only the first small steps in a much larger reform process. While those actions 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 are 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 2008.²⁴ 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.²⁵ In order to assure that such rights are respected, the government had no choice but 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. 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."²⁶

In its effort to bring Ecuador's penal code in line with the 2008 constitution, Ecuador's Ministry of Justice and Human Rights has proposed a complete overhaul of the judicial system, including the codes which typify particular offenses, the procedures used to determine guilt or innocence, and the type and implementation of penalties. According to these proposed reforms, offenses related to illegal substances will no longer be treated under a separate system with its own classification of offenses, separate procedures and

unique sentencing structure. These reforms to Ecuador's penal code and judicial mechanisms represent an attempt to treat all crimes and misdemeanors in as fair and equitable a manner as possible. In the proposed legislation, distinctions are made between large-scale drug trafficking, street corner dealing, and different levels of participation in drug production and trafficking. Sentencing guidelines are based on the gravity of the crime committed. The proposed legislation also stipulates the amounts of substances that constitute personal consumption, which would not be illegal. Finally, the proposed reforms also reinstate the discretionary power of judges - that they should take into account individual circumstances in the determination of sentencing.

The government is also implementing changes to the institutional structures under which the issues of illegal drugs are handled. The Correa government has stated that it wants to prioritize a humane approach and to do that, officials are distinguishing between separate areas of concern and tasking them to different ministries. The issues of addiction, prevention, rehabilitation and reinsertion are no longer to be the responsibility of a separate institution that deals only with illicit drugs, but are defined as public health issues and will become a central responsibility of the Ministry of Health. The Ministry of Health will 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 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, has responsibility for interdiction and is focusing specifically on organized crime, including major drug trafficking cartels and their leaders. While these principal areas of concern are each designated under specific ministries, the reform mandates that each ministry coordinate with the others and then work through shared government institutions responsible for the implementation of the policies, including the courts, local governments, universities, the Superintendent of Banks and other appropriate agencies.

The Future of the Drug Law Reform Process

The proposed judicial reforms, including changes in drug-related legislation, reflect a multi-level, coordinated approach that is a more realistic and promises to be more effective in responding to the complex problems inherent in dealing with drug-related issues. They were developed through a long process of study, review and discussion with various experts in Ecuador and around the world; however, and perhaps most importantly, they were developed based on Ecuador's own national reality.

The authors of the reform take pride in the fact that the process reflects Ecuador's sovereignty and that its origins are rooted in the country's new Constitution. As one of the attorneys working on the new penal code stated, it has not gone unnoticed that the

national pardon, the first step in the long road toward reforms, was signed on July 4th, U.S. Independence Day. To this attorney, that first step of pardoning victims suffering under a draconian law based on U.S. priorities was also a fitting first step marking Ecuador's independence from such external influences and the beginning of the development of public policies based on the country's own political, social and economic dynamics.²⁷

At the same time, there is no guarantee that either the broader reforms or the specific drug legislation as written will be passed by the Ecuadorian National Assembly. Although the President's political movement holds a majority within the congress, the issue of drug policy is still a political hot potato.

Moreover, like the national pardon that preceded the proposed reforms, there will be challenges in ironing out the problems of implementation, particularly with regard to the roles of the judiciary and the security forces. One major problem is the enforcement mindset that surrounds the control of illegal substances and the institutional cultures that have developed over almost two decades of implementing Law 108 through the use of Ecuador's security forces. And the fact remains that to detain those in the upper echelons of organized criminal networks involved with drug trafficking requires forces that are much better prepared, better equipped and with more resources than what Ecuador's police have at hand. However, if the drug law reforms are approved, they could potentially serve as a model for other countries seeking more effective drug policies that are also in line with international human rights and due process standards, having a ripple effect across the region.

NOTES

1. Sandra G. Edwards has lived in Ecuador since 1991, working for international NGOs and as an independent consultant in human rights, forced migration and drug policy issues. She is a member of the TNI-WOLA research team on drugs and incarceration in Latin America. Coletta A. Youngers is a Senior Fellow at the Washington Office on Latin America.

2. Decriminalization of drugs means considering the acts related to drug consumption, such as the possession of small quantities, no longer as crimes punishable with arrest, detention or incarceration. In strict legal terms, these acts remain illegal, but administrative sanctions or referral to health services are used instead.

3. "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, pg. 117.

4. Ley de sustancias estupefacientes y psicotrópicas http://www.consep.gov.ec/index.php?option=com_content&view=article&id=99%3Abase-legal&catid=1%3Aalta-prioridad&Itemid=1. This is the 2004 version of Law 108 after it was amended based on the 1995 petition presented by the Lawyers Collective regarding those points of the Law which were unconstitutional.

5. Pontón, Jenny y Andreina Torres, 2007, "Cárceles del Ecuador: los efectos de la criminalización por drogas", en *Revista URVIO No.1, FLACSO Sede Ecuador* quoted in Jorge Núñez Vega, Investigative

Coordinator, *Análisis de la ley de drogas desde una perspectiva socio-política*, October 2008. Research team included Carla Estrella, Daniel Pontón, Jenny Pontón, and Jorge Núñez Vega, p. 73.

6. Translated from Spanish by author. Dr. Adrian Bonilla, "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.

7. Author interview with Dr. Silvia Corella, director of the National Drug Observatory of Ecuador, CONSEP, May 2003.

8. Just the Facts, *A Civilians Guide to US Defense and Security Assistance to Latin America and the Caribbean*, U.S. Aid to Ecuador, All Programs, 1996 to 2008:

<http://justf.org/Country?country=Ecuador&year1=1996&year2=2008&funding=All+Programs&x=56&y=12>

9. For additional information see, Sandra G. Edwards, *The U.S. Forward Operating Location in Manta: The Ecuadorian Perspective*, WOLA, March 30, 2007;

<http://www.wola.org/media/March%202007%20Manta%20Memo.pdf>.

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

11. "FFAA y Policía Deben Mejorar su Lucha Antidrogas," *El Comercio*, Quito, 12 October 2003, p. A7.

12. Statistics from the Dirección Nacional de Rehabilitación Social (DNRS) have shown several years where up to 80 percent of all women imprisoned in Ecuador were there under drug charges. DNRS statistics also reflect that a majority of prisoners are unemployed with less than a secondary education. *Boletín Estadístico 2002-2003, 2004-2005*, Oficio No. DNRS-GP-228-2009.

13. For additional information, see: Sandra G. Edwards, *Illicit Drug Control Policies and Prisons: The Human Cost*, WOLA, November 2003 http://www.wola.org/media/Ecuador/ddhr_ecuador_memo4.pdf.

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

15. 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 Loo, Dr. Farith Simon and Sister Elsie Monge. The Collective's findings were published in the report by the Colectivo de Abogados, *Por los Derechos de las Personas*, 1995.

16. David Aquilla Lawrence, "Whose Due Process; A U.S. Anti-Drug Probe in Ecuador Faces Scrutiny," *Christian Science Monitor*, 30 October–5 November 1998.

17. Dirección Nacional de Rehabilitación Social, *Distribución Poblacional Penitenciaria por Tendencias Delictivas Periodo: 1989-2004, 2007, and 2008*.

18. John Walsh, *Are We There Yet? Measuring Progress in the U.S. War on Drugs in Latin America*, WOLA Drug War Monitor, December 2004, Pg. 7.

19. *Revista Judicial*, Registro Oficial No. 378 - Jueves 10 de Julio de 2008 Suplemento http://www.derechoecuador.com/index.php?option=com_content&task=view&id=4568. Next to last Resolution on the Register of a list of all the Constituent Assembly's Resolutions made into law by President Correa.

20. *Ibid.*

21. For more information on this measure see, Pien Metaal, *Pardon for Mules in Ecuador, a Sound Proposal*, Series on Legislative Reform of Drug Policies, No. 1 , Transnational Institute and the Washington Office on Latin America, February 2009, <http://www.tni.org/sites/tniclone.test.koumbit.net/files/download/dlr1.pdf>.
22. “Reos se toman cárceles para exigir el indulto,” *El Universo*, 31 de julio, 2008, <http://www.eluniverso.com/2008/07/31/0001/10/39D988A6C0F54FC7AA07B35CE0F95592.html>.
23. Asamblea aprueba Ley Reformatoria a Código de Ejecución de Penas, *Ecuadorinmediato.com*, 22 July 2008, http://www.ecuadorinmediato.com/Noticias/news_user_view/ecuadorinmediato_noticias--83370.
24. On September 28, 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.
25. Constitution of the Republic of Ecuador, 2008, Title II Rights, Chapter eight, Rights to Protection, Articles 75 thru 82.
26. Constitution of the Republic of Ecuador, 2008, Title VII Rule of Living Well, Second Section, Health, Article 364.
27. Author’s interview, November 2009.