



# Special Update: Ecuador

WASHINGTON OFFICE ON LATIN AMERICA

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## *Illicit Drug Control Policies and Prisons: The Human Cost*

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Ecuador is not known as a significant producer or trafficker of illegal narcotics. It is, nevertheless, a prime example of how U.S. international counternarcotics policy has been adopted by countries throughout Latin America. It can serve as a case study for examining how other nations' policies, laws and judicial processes have been colored by the international war on drugs and the ramifications of their implementation. In Ecuador, draconian anti-drug legislation has largely affected poor, non-violent offenders while major drug traffickers themselves, more often than not, go free.

According to CONSEP, Ecuador's National Council for the Control of Narcotic Drugs and Psychotropic Substances, the principal concerns in Ecuador regarding illicit narcotics have been, historically, the laundering of drug profits and its use as a country of transit. In addition, as CONSEP states in its most recent *National Strategy to Combat Drugs*, "Much to its own chagrin, Ecuador has become a center of drug warehousing and distribution. And as an outgrowth of those activities, it is used to supply chemical substances to neighboring countries and to facilitate money-laundering".<sup>1</sup> Ecuador's location on the southern border of Colombia, which is both a major producer and trafficker of illegal narcotics, has exacerbated Ecuador's role as a country of transit where drugs are warehoused and then distributed internationally. The violence which accompanies these activities, such as encounters between law enforcement agencies and narco-traffickers, as well as competition among those coordinating the illegal transport of drugs, has also increased, especially on Ecuador's northern border with Colombia.

At the same time, Ecuador has no history of major social upheaval due to internal markets for illegal narcotics, nor is this presently a serious concern. Ecuador does not share inner-city realities with such countries as the Dominican Republic, Puerto Rico, Colombia or Brazil, whose cities often struggle with the urban violence and crime caused by a dynamic internal drug trade. Civil crimes, such as robbery and personal assault, and social ills, such as the disintegration of family units and urban blight, exist throughout Ecuador but their causes originate more from other economic and social realities. In other words, drugs are a *business* in Ecuador – the product imported, warehoused and then moved out of the country with profits laundered through various financial mechanisms – and, as such, the big issues of concern should be with those in charge of running the *business*.

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Unfortunately, counternarcotic measures adopted in Ecuador fail to address the actual dynamics of illegal narcotics in the country. These measures do not touch the major networks for the illegal transport of drugs nor the well-established mechanisms for money laundering found throughout Ecuador's economy. Ecuadorian anti-drug measures focus on numbers – how many people are imprisoned for drug offenses, the amount of illicit drugs confiscated, and the surface area of coca eradicated.<sup>2</sup> The measures have failed to have a major impact on either Ecuador's role in the drug trade or on the quantity, quality and price of illicit drugs flowing into the United States.

Ecuador is not the only country where the success of anti-drug policies in stemming the international flow of drugs can be questioned. The numbers game and body-count mentality have led to prisons becoming overcrowded with non-violent, low-level drug offenders in countries around the world. In Latin America, where both law enforcement and judicial institutions are extremely weak and permeated by corruption, major drug traffickers are rarely sanctioned while poor, low-level offenders fill the jails. The numbers of the latter are routinely pointed to by both the Ecuadorian and U.S. governments as indicators of success. The statistics mask the reality, while the illicit drug trade continues to flourish.

The negative consequences of this approach can be devastating for the families and communities affected. Harsh anti-drug legislation, encouraged by the U.S. government, is being taken up across the hemisphere. As in many countries, in Ecuador this legislation contravenes basic international norms and standards of due process and undermines already tenuous civil liberties; the smallest and most vulnerable offenders arrested on drug charges suffer the legal and practical denial of such civil rights as the presumption of innocence, the right to an adequate defense, and that their punishment be commensurate with the gravity of their crime.

### ***A Short History of the Ecuadorian Counternarcotics Law***

In 1991, the Ecuadorian Congress put into effect Law 108, *The Law of Narcotic Drugs and Psychotropic Substances*. The law was passed in an atmosphere of profound concern regarding the vulnerability of Ecuador to the influence of Colombian drug cartels. Factories clandestinely processing chemicals for the making of cocaine had been discovered in Ecuador at the end of the 1980s. And, in 1990, the government of Ecuador published two reports which indicated extraordinary activity around the production of precursor chemicals for drugs as well as indicating that thousands of Ecuadorians economically benefited from the drug trade. Dr. Adrian Bonilla of the Latin American Faculty of Social Sciences (FLACSO) in Ecuador points out that, while the “data presented [in the reports] were both enormous and alarming” and were picked up widely by the press and quoted by the U.S. Department of State, “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>3</sup> Even so, the reports contributed to a sense that Ecuador was facing serious problems with drug trafficking.

Within the atmosphere described above, Law 108 was delivered to Congress. Nationally, at the time of the law's development, political conflict existed between the president's party – the Democrat-like ID (Democratic Left) – and the previous president's party – the Republican-like PSC (Social Christian Party). The ID was accused by the PSC of being soft on crime and soft on drug trafficking. Law 108 was to show Ecuador that, indeed, the ID was not soft on anything.<sup>4</sup> At the international level, the U.S. had begun coordinating with the Ecuadorian police on drug trafficking based on a 1985 bilateral treaty. This international cooperation combined with inter-

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nal politics created a great amount of pressure to get the law passed as quickly as possible. One government official commented that there was so much pressure both internally and internationally to get it passed that, according to some, it was pieced together so quickly that paragraphs were actually out of order with sentences that often lacked logical coherence.<sup>5</sup> As it turned out, the law also contained several articles which were unconstitutional under Ecuadorian law.

### ***Setbacks to Due Process***

There were a number of aspects within the law contradicting the rights and due process guaranteed by the Ecuadorian constitution. One of these was the concept of judicial independence. Law 108 required all judicial decisions made in drug cases to be reviewed by the Superior Court. It also indicated sanctions which could be applied against a judge by the reviewing Superior Court if the judge ruled favorably for 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, as most judges were deeply 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 in the United States for drug-related crimes. No distinction was made between the smallest offenders – drug users, first-time offenders, or “mules” in possession of small amounts – and high-level drug traffickers. All were subject to a mandatory minimum sentence of ten years (modified in January 2003 to twelve years by Congress). Law 108 also criminalized drug use, lumping it into the same basket 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 a drug addict, he or she was still subject to the mandatory minimum sentence.

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 code – *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. *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>6</sup> Therefore, drug offenders cannot request bail. The law in its original form also prohibited the commutation of sentences for extenuating circumstances, such as terminal illness, for drug offenders, even while others in prison for crimes of reclusion did have access to 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, it deals with accused drug offenders themselves very differently than those accused of other offenses (even other crimes of reclusion such as murder) – a person arrested on drug charges is 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>7</sup> This concept refers to the fact that the law, as a whole, 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.

One positive result of Law 108, however, was the establishment of the government office of CONSEP, the *National Council for the Control of Narcotic Drugs and Psychotropic Substances*. This brought all governmental activities having to do with illegal narcotics under one umbrella, including both supply and demand reduction activities. CONSEP facilitates anti-drug programs in coordination with various other government institutions depending on the area of implementation. It also established criteria for the licensing of both private and state-run drug treatment centers outside the prison system. Previously, licensing or formal controls over such centers did not exist, permitting the existence of treatment centers that offered subhuman conditions for housing addicts as well as very questionable methods of treatment. CONSEP also initiated the establishment of treatment centers and access to drug counselors within the prison system. Unfortunately, funding is insufficient to cover all these efforts. Although there are serious concerns regarding the strength and efficacy of CONSEP as an institution, it does offer an institutional space for debate and evaluation of Ecuador’s national drug control policies. Previous to CONSEP, there was no institution or government committee which attempted to address the issues surrounding illicit drugs in any comprehensive way.

### ***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.<sup>8</sup> They published a report on their action, including the fallacies on which the law had been based.

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.

<b>Crimes committed</b>	<b>1975</b>	<b>1995</b>
<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 %

<b>Cases “heard” by criminal courts</b>	<b>1993</b>
<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 country of transit, crimes against persons and property in Ecuador did not originate from a turbulent internal drug market but from other economic and social dynamics within Ecuadorian society. Therefore, argued the Lawyers’ Collective, justice system resources were disproportionately focused on drug offenses, instead of on other crimes that posed greater threats to citizen security and caused greater damage to society.<sup>9</sup>

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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, 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 to have sentences 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 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 give more than two or three years less than the congressionally-mandated minimum.

Finally, it is no longer required by law that drug users be imprisoned for being addicted to illicit drugs. One cannot be arrested simply for being "high." Also, if one is arrested for possession of a very small amount of drugs but states that the drugs are for personal use only, he or she can now be offered the legal option of being tested for addiction by both a physician and a psychologist. If the amount is small enough and a physician and psychologist find that the accused has a dependency on drugs, s/he will be released. The problem with this change to the original law is that no specific amount is stated in the law as to how small an amount indicates possible personal use. 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. This new aspect of the law offers, at best, a slight possibility of legal relief and, at worst, is a fairly useless new addition to the law.

### ***The Human Costs of Law 108***

Those without the resources to secure adequate legal defense can find it virtually impossible to prove their innocence. The long lapse between when the courts ruled certain aspects of Law 108 unconstitutional and when those aspects actually stopped being applied had an impact on the law's later implementation – the law as originally written had already fomented clear judicial attitudes toward drug offenders which did not change when the law was modified to remove the unconstitutional elements. The reality remains as well, that if you are caught with drugs, or with someone with drugs, you are guilty. The burden is on the accused to prove otherwise.

Anyone accused of a crime but who lacks the resources to hire his or her own attorney has the constitutional right to a public defender. However, the public defender's office has no funding – civil and human rights workers at the jails have received written notice from the government that the office is not functioning.<sup>10</sup> Meanwhile, judges have the right to name an "official legal advisor," which most judges do if there is no attorney present for the case. However, these advisors, taken from a list of private practitioners, more often than not do not show up for hearings, or they might simply review the case for a few minutes before the hearing. There is no incentive for attorneys to take these cases, nor are there consequences for failing to give them adequate attention. Official legal advisors do not answer to the public defender's office and are not subject to any kind of governmental supervision. This program does not function well enough to fulfill the rights of the accused to a competent defense.

Although judges are no longer subject to reviews by a superior court nor to having sanctions imposed for favorable decisions in drug cases, those who find accused drug offenders inno-

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cent may themselves become the victims of political stigmatization by players both inside and outside the system. In the late 1990s, the United States revoked the visa of one judge they considered to be making inappropriate decisions regarding drug cases. Whether deserved or not, the visa cancellation sent a message that many judges took as another incentive to err on the side of a guilty verdict rather than to risk one's ability to travel north.<sup>11</sup>

Attorneys who choose to represent those accused of drug offenses may also suffer stigmatization. Police have publicly said that these attorneys 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 are questioned by their colleagues as to why they are putting themselves in such a vulnerable position professionally. Even so, one respected and successful attorney stated that the perceived consequences are really more myth than reality; he has had the courage to take on drug cases over the years and says that during that time he received only one threatening phone call from the police. Nevertheless, he also notes that, in practice, the stigma scares off potential attorneys for accused drug offenders; while in law school, more than one of his professors strongly advised students against taking on the defense of those accused of a drug offense.<sup>12</sup>

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, especially accused foreigners, for their own personal gain. 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>13</sup>

Of particular concern is the fact that Law 108 still treats all drug offenses as equal.<sup>14</sup> No distinction is made between an international narcotrafficker and a single mother working as a "mule" caught carrying two grams of an illegal drug. Moreover, the Ecuadorian Congress (under pressure from the very conservative Christian Social Party, PSC, on an anti-crime citizen security campaign) recently raised the mandatory minimum sentence for any drug offense from ten years to twelve.

In January of this year, the PSC also successfully proposed new legislation which created the legal concept of *prisión en firme*, which permits indefinite pre-trial detention. The legislation was developed in response to growing concern that accused drug offenders were beginning to use their right to *habeas corpus*, asking to be released if they had not been tried nor sentenced within a year of being detained. One drug-related case of long-term imprisonment without trial had gone to the Inter-American Court of the Organization of American States (OAS), which not only ruled that the accused should be released but that the Ecuadorian government owed monetary compensation to the accused for unjust imprisonment. In response, the PSC pushed through the legislation making it "legal" to hold a person indefinitely if a judge finds that there is enough evidence to detain that person as charged until a trial can be held.

A challenge to the constitutionality of this legislation has been submitted to the Ecuadorian Supreme Court which, to date, has lain unattended. In the meantime, the legislation continues to be applied. Some in the legal advocacy community are discussing returning to the Inter-American Court to challenge the new law's constitutionality.

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If one could compare the numbers of those convicted for money-laundering and large-scale trafficking as opposed to possession (such as mules) and small street sales, the efficacy of present law enforcement policies in tackling Ecuador's principal drug problems could be examined.<sup>15</sup> While such numbers are not currently available, both legal and prison professionals, when asked what they thought such an analysis would reveal, said that there is no doubt in their minds that the majority of those imprisoned under drug charges are mules, small street dealers and innocents.<sup>16</sup> An article in one of Ecuador's main newspapers states that counternarcotics police working in the province of the capital city detain an average of twenty-five people a week. The article clearly states that the majority of these people are "mules".<sup>17</sup> These "mules" tend to be poor and vulnerable enough to be tempted by the money to be made for transporting drugs from one place to another. Mules are expendable and can be replaced. In any case, the increased incarceration of "mules" has not resulted in any concrete reduction of drugs going in and out of Ecuador.

There are also a substantial number of cases, especially in the women's prisons, where drugs have been planted on the unsuspecting or extremely naive. Ecuador, as a country of transit, has numerous traffickers of illicit drugs on the lookout for travelers passing through on their way to the North. If the traffickers are not successful in bribing travelers to move their product, they may try to work some type of scam on them. Foreigners (again, mostly women), falling for these scams are caught at the airport in "possession" of the drugs. They then find themselves facing long prison terms in a foreign jail with no recourse for their defense, as they did indeed have drugs in their luggage. INREDH, the Regional Institute for Human Rights Assistance, has found it difficult to offer hope to such inmates as, again, if one is found with drugs, one is guilty.<sup>18</sup> There are, of course, foreigners who willingly act as paid "mules," but they, like anyone caught with drugs in Ecuador, are then subject to the mandatory minimum sentence, can claim few civil rights and must try to survive the difficult prison conditions found in the country.

In sum, as in other Andean countries, the bulk of those in prison serving out their sentence or awaiting trial are not the large drug traffickers, but those accused of more minor drug-related offenses, and usually from the poorest and most vulnerable sectors of society. The highest human costs can be seen within the women's jails. At the end of 2002, over sixty-seven percent of all women imprisoned in Ecuador had not been sentenced or were still pending a final trial or sentence.<sup>19</sup> Over seventy percent of all women imprisoned in Ecuador are imprisoned under drug charges, rising to nearly eighty percent in Quito.<sup>20</sup>

The conditions in the women's jails differ throughout Ecuador, but for the most part all prisoners are expected to provide themselves with their own necessities, whether through buying them at the small kiosks inside the prison that sell toilet articles and some foodstuffs, or with supplies brought by visitors. The food provided by the prison system has very low nutritional value, so that those without family, friends or other outside resources, including foreigners, are often unable to meet their basic needs. Overcrowding throughout the country's jails worsens every year, squeezing more bodies into cells. Sexual abuse by male guards is not uncommon and drugs tend to be available if a prisoner has the resources.

The majority of women living under such prison conditions are mules, usually poor, and often single mothers or young foreigners. For the most part, they are not major drug traffickers or criminals who pose a serious threat to society. Many have infants or even school age children living with them inside the prisons as they have no other options for their care. This raises the

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question regarding the quality of these children's future, as well as that of prisoners' children who live outside the prison with no mother present at all.

Regarding general prison conditions for both men and women, a U.S. State Department 2002 human rights report on Ecuador also notes that overcrowding is a chronic problem. It goes on to state 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>21</sup>

### *U.S. Assistance*

U.S. economic assistance programs are dramatically skewed towards military and police law enforcement efforts; very little aid is provided for strengthening and reforming the justice sector. Nearly all of the \$36.6 million in U.S. military and police aid received by Ecuador in 2003 was allocated to counternarcotics programs. In addition, out of a total of \$46 million in economic and social aid given to Ecuador for that same year, \$16 million was channeled through the State Department's Bureau of International Narcotics Control.<sup>22</sup> Meanwhile, \$3,552,000 was designated for justice reform programs implemented by USAID.<sup>23</sup>

It should also be noted that the Drug Enforcement Administration (DEA) has had a long and active presence in the country. Ecuador is one of seven Latin American countries in which the DEA has established special investigative units (SIU). National police officers are screened by the DEA and then sent to the United States for training. The units return to Ecuador and work both on their own and in coordination with the DEA.

An Ecuadorian newspaper recently reported on a new formal agreement signed between the United States and Ecuador that has the objective of Ecuador improving its work against illegal drug trafficking. In exchange for funding, equipment and new police stations, Ecuador will implement air interdiction and destroy illicit crops and the production of illicit drugs through joint military and police operations. The accord contains 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>24</sup> While some of these benchmarks may make sense in trying to stem the flow of illegal drugs, the application of a body count mentality toward accused drug offenders has been shown to be ineffective as well as result in a high incidence of injustices.

According to officials in CONSEP and in the National Direction for Social Rehabilitation (the government body in charge of the Ecuadorian prison system), such large amounts of counternarcotics aid must be justified by those on the receiving end. It is their opinion that Ecuadorian drug policy continues to overemphasize law enforcement because that is what most of the aid has been earmarked for, while resources for justice and penal reform as well as prevention and treatment are scarce.<sup>25</sup> They comment that the national police also feel that they must deliver on the expectations accompanying their funding and hence prioritize drug offenses over other kinds of crimes. It also cannot be denied that, to a national police force which chronically suffers a lack of material and economic resources, the aid offered by the United States for anti-drug work plays a large role in the subsistence of Ecuador's national police.



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## ***Future Developments – A Plan for Improvement?***

CONSEP is developing a new drug control law that will be presented to the Ecuadorian Congress in the near future. Those involved in its development state that their aim is to create a more just drug law which would better target major drug traffickers instead of imprisoning hundreds of small-time offenders.<sup>26</sup> Of particular note, the draft legislation includes a differentiation in sentences based on the quantity of drugs found on or with the accused. Under the draft proposal, those caught with small quantities could be given a minimum of three to five years and would have the right to post bail. However, even the revised legislation is likely to maintain some restrictions on due process guarantees. When asked if the proposed law would maintain the presumption of guilt, one CONSEP attorney working on it responded, “absolutely.” He claims that without the “inversion of proof” concept, there would be little chance for a favorable nod from U.S. counterparts, nor would it be likely to pass Ecuador’s Congress.<sup>27</sup>

In order to make the positive changes in the law more attractive to legislators, the proposed law provides a counterweight by raising the mandatory minimum sentence for the possession of large quantities of drugs to twenty-five years with no right to bail. Whether or not the proposed legislation will be adopted is far from clear. As in the United States, many in the Ecuadorian Congress fear being perceived as “soft on drugs” and see harsh anti-drug legislation as an easy way to respond to public concerns about the increase in crimes against persons and property.

According to Dr. Silvia Corrella,<sup>28</sup> studies that document the efficacy and impact of current policy are sorely lacking, yet could be quite useful as new laws are considered. “The National Observatory should be producing documentation that serves as the basis for the development of both national and international policies, but there are too few resources for such work.”<sup>29</sup> According to Dr. Corrella, international funding is too heavily slanted toward law enforcement efforts, with very little going for research, documentation, analysis or treatment.<sup>30</sup>

CONSEP’s *National Strategy to Combat Drugs 1999–2000* consistently stresses the need for more funding for research and analysis in order to develop effective policies for Ecuador, and argues for a better balance between law enforcement and prevention. It states, “The number of prevention activities and of traffickers arrested . . . are not the measure of success . . . . The current plan recognizes that the various phenomena involved in drug use and trafficking form an integrated whole . . . . In regard to supply, . . . law enforcement actions will naturally take precedence. In regard to demand, information, education, environment and therapy should be emphasized. The two sides of the coin should not be confused.”<sup>31</sup>

### ***Recommendations***

Documentation and analysis should be a priority of all the governments involved in international drug control. With a clearer analysis of the problem, more effective (and perhaps less expensive) responses can then be developed. Multilateral spaces such as CICAD should be used to more openly debate the predominance of drug policies which overemphasize law enforcement, and the concentration of international funding on law enforcement for drug control over other security issues. The concrete results of the past decades of drug control policies, including its effects on the judicial and prison systems of the Americas, should be clearly identified, presented and debated.

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U.S. economic assistance to Ecuador should be directed towards strengthening the rule of law in Ecuador rather than focusing so strongly on trying to build special counter-drug police units or capacities. Legal and judicial institutions should be strengthened as a whole, rather than pouring large quantities of funds into one area of one department of police work. The availability of so much money in one specific area can create bias in defining the problem and lead to the formulation of responses that are inappropriate, as well as to corruption. Funding the development of effective and accountable civilian police, prosecutors and judiciaries would likely do more to curb drug-related crime while meeting the public security needs of Ecuadorians. In addition, the U.S. government should support only those legislative and policy reforms that guarantee the rights to civil liberties and due process of law.

It is much easier to point the finger at the monster of drug trafficking as the cause of society's problems instead of looking at such root causes as poverty, injustice and the unequal distribution of resources. It is much simpler to praise the national police for capturing hundreds of pounds of illegal drugs than to examine the evidence that shows that, to date, such seizures have had little to no impact on the amount, price, or purity of drugs reaching the United States. And it makes much better press to announce the increase of mandatory minimum sentences to stop the scourge of drugs than to announce that the national judicial system might need a complete overhaul or to go through mounds of documents to analyze social indicators which might lead to the development of good government policy.

Four concrete steps should be taken to right these wrongs:

- Ecuadorian law should be brought into compliance with international due process norms and standards;
- Punishments should be commensurate with the gravity of the crimes committed, and mandatory minimum sentencing should be eliminated;
- Anti-narcotics enforcement efforts should focus on dismantling drug-trafficking networks and organizations and putting dangerous criminals behind bars; and
- The U.S. government should provide significantly more economic assistance to programs that promote the strengthening of the rule of law in Ecuador.

*Edited by Coletta A. Youngers and Eileen Rosin*

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During the course of her human rights work, she has visited several prisons in Ecuador, including the Tulcan prison on the Ecuador/Colombian border. She also led workshops in the women's prison in Quito, *El Inca*, where she had the opportunity to get to know the women, most of whom are imprisoned on drug charges.

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### NOTES

<sup>1</sup> Government of Ecuador, CONSEP (National Council for the Control of Narcotic Drugs and Psychotropic Substances), *National Strategy to Combat Drugs 1999-2003*, p. 20. <[http://www.cicad.oas.org/Fortalecimiento\\_Institucional/planes\\_nacionales/ecuador-en.pdf](http://www.cicad.oas.org/Fortalecimiento_Institucional/planes_nacionales/ecuador-en.pdf)>.

<sup>2</sup> Very little coca is actually grown in Ecuador, and what little there is, can mostly be found on the northern border.

<sup>3</sup> Translated from the 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.

<sup>4</sup> Author interview with Dr. Judith Salgado, director of the Program in International Human Rights Law, Universidad Andina Simon Bolívar, Quito, May 2003.

<sup>5</sup> Author interview with Dr. Silvia Corella, director of the National Drug Observatory of Ecuador, CONSEP, May 2003.

<sup>6</sup> Author interview with Dr. Susy Garbay, coordinator of legal department, INREDH (Regional Institute for Human Rights Support), Quito, Ecuador, June 2003.

<sup>7</sup> *Inversión de prueba* is the term commonly used among attorneys who have worked with this law. Dr. Alejandro Ponce, Dr. Susy Garbay and even the CONSEP attorney developing the new version of the law all make reference to this concept.

<sup>8</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>9</sup> Colectivo de Abogados, "Por los Derechos de las Personas," Ecuador, 1995, p. 8.

<sup>10</sup> Author interview with Dr. Suzy Garbay, INREDH attorney, May 2003.

<sup>11</sup> David Aquilla Lawrence, "Whose Due Process; A U.S. Anti-Drug Probe in Ecuador Faces Scrutiny," *Christian Science Monitor*, 30 October–5 November 1998.

<sup>12</sup> Author interview with Dr. Alejandro Ponce, May 2003.

<sup>13</sup> Author interview with Dr. Judith Salgado, May 2003.

<sup>14</sup> The one strange exception is when someone is accused as an accessory to a cover-up; this charge carries a two to five year sentence.

<sup>15</sup> In order to produce such numbers, it would be necessary to go to the Superior Court and examine each judgment handed down in cases of drug accusations and then collate them according to specific charge. To obtain this information for only one month of judicial decisions would take an estimated two weeks of a researcher's time. CONSEP does not have the personnel to do such research.

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- <sup>16</sup> From author interviews with Dr. Judith Salgado (UASB), Dr. Adrian Bonilla (FLACSO), Dr. Alejandro Ponce (private attorney), Dr. Suzy Garbay (INREDH), and Dr. Fausto Viteri (CONSEP), May 2003.
- <sup>17</sup> “Los Operativos Policiales no Frenan los Delitos,” *El Comercio*, Quito, 11 October 2003, p. A8.
- <sup>18</sup> The author, having encountered many women foreigners facing just such a situation, has consulted with attorneys for those who do not speak Spanish. The result is mostly the same – when a person is caught with drugs, there is basically nothing to be done.
- <sup>19</sup> Dirección Nacional de Rehabilitación Social, *Boletín Estadístico 2002*, p. 22.
- <sup>20</sup> *Ibid.*, p. 24.
- <sup>21</sup> Bureau of Democracy, Human Rights and Labor, U.S. State Department, *Country Reports on Human Rights Practices 2002, Ecuador*, released 31 March 2003, <<http://www.state.gov/g/drl/rls/hrrpt/2002/18330.htm>>, accessed 28 Oct. 2003.
- <sup>22</sup> Data from “Just the Facts,” on-line database of the Center for International Policy, <<http://www.ciponline.org/facts/ec.htm>>.
- <sup>23</sup> U.S. Agency for International Development, *Congressional Budget Justification 2004, Latin America and the Caribbean, Ecuador*, p. 12, <[http://www.usaid.gov/policy/budget/cbj2004/latin\\_america\\_caribbean/ecuador.pdf](http://www.usaid.gov/policy/budget/cbj2004/latin_america_caribbean/ecuador.pdf)>, accessed 28 Oct. 2003.
- <sup>24</sup> “FFAA y Policía Deben Mejorar su Lucha Antidrogas,” *El Comercio*, Quito, 12 October 2003, p. A7.
- <sup>25</sup> Author interview with Dr. Silvia Corrella and Dr. Fausto Viteri, director of Treatment and Rehabilitation, CONSEP, May 2003.
- <sup>26</sup> Author interviews with Dr. Silvia Corrella and Dr. Patricio Yanchanpaxi (separately), CONSEP, May 2003.
- <sup>27</sup> Author interview with Dr. Patricio Yanchanpaxi, CONSEP, May 2003.
- <sup>28</sup> Dr. Corrella works for CONSEP and is the director of the National Observatory on Drugs (a program sponsored by the Organization of American States’ Inter-American Drug Abuse Control Commission, or CICAD).
- <sup>29</sup> Author interview with Dr. Silvia Corrella, CONSEP, May 2003.
- <sup>30</sup> *Ibid.*
- <sup>31</sup> Government of Ecuador, CONSEP, *op. cit.*, p. 22.