



Reforms and Contradictions in Ecuador's Drug Policy

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On August 11, 2014 a sweeping new penal code went into effect in Ecuador, which includes significant revisions to the country's previous drug law and could result in the release of as many as 2,000 people from prison as more lenient sentences are put in place and potentially applied retroactively. The purpose of this memo is to review Ecuador's drug policy reforms, first examining the recently approved Organic Comprehensive Criminal Code (*Código Orgánico Integral Penal*, COIP)—specifically the modification of penalties, applying a principle of proportionality that distinguishes among different types of participation in drug-related crimes, and between these types of crimes and violent crimes. Second, the role of the state in these regulatory transformations is analyzed, including the internal contradictions in the Executive Branch and the recent changes in the president's rhetoric, which signal a return to a discourse that emphasizes a hardline approach. Finally, the legislative debate and the role that some civil society stakeholders have played in this process of change are described. In Ecuador, meaningful dialogue about reforms to the drug law and/or their implications has not taken place, and the progress that has been made is due to the government having opened a window of political opportunity, which could close again. Civil society activism is therefore important as a protector and guarantor of the ground that has been gained.

Introduction

Ecuador's current Organic Comprehensive Criminal Code (*Código Orgánico Integral Penal*, COIP) was approved in February 2014 through a process marked by intense controversy involving various social groups.¹ Debate and counterarguments over reforms to the drug law, however, were much less intense. Rather, they were characterized by support from a significant sector of the Executive Branch which created a series of opportunities that were leveraged by various stakeholders in both the government and civil society who were committed to human rights and to correcting the injustices created by the disproportional

penalties established in the Psychotropic and Narcotic Substances Law, known as “Law 108.”² As a result, most of the changes occurred without widespread public debate and were made from the *top down*. The process has not been free of tensions and contradictions among the various government stakeholders, however, and this has somewhat hampered the implementation and deepening of the reforms. This situation underscores the importance of actively involving Ecuadorian society in the reform process, in order to protect against the threat of a possible shift in the political winds. Despite the absence of a broader debate and the intrinsic reluctance to change, these modifications are an important step toward a more rational administration of drug-related penalties in Ecuador, where disproportionate punishment has caused significant social problems for at least two decades.³

COIP and drug law reform

In accordance with the provisions of the Ecuadorian Constitution of 2008, which in Article 364 decriminalized drug use and established that “addictions are a public health problem,” Chapter Three of the COIP, on *Delitos del Buen Vivir* (Crimes Related to Living Well), replaced the stipulations of Law 108 on types of crimes and penalties for activities related to controlled substances.⁴ With the clear intention of establishing more rational penalties, the Code differentiates between: (1) large-, medium- and small-scale traffickers of drugs and precursor chemicals, basing penalties on the person’s activities within the illicit drug production process; (2) traffickers and growers, distinguishing between farmers and organized crime groups involved in the production of illicit substances; (3) drug-related crimes and violent crimes, such as homicide or rape; and (4) users and small-scale traffickers,⁵ by establishing a table of maximum amounts for possession for personal use; it also implicitly raises the possibility of users supplying their own needs by growing plants.

The following table shows the crimes characterized in the COIP, with their respective penalties. The standardized prison term (which in Law 108 was 12 to 16 years, cumulative to a total of 25 years) has clearly been abandoned. It also establishes categories with differentiated penalties and the decriminalization of use.

Crimes related to production or illicit trafficking of substances listed as being subject to control (*)	Penalty (**)
Art. 219 Illicit production of substances subject to control	
1. Narcotic or psychotropic substances or prepared substances containing them	7 - 10 yrs
2. Specific chemicals and precursors	3 - 5 yrs
Art. 220 Illicit trafficking of controlled substances	
1. Narcotic and psychotropic substances, in the amounts indicated by scale	
a) Small scale	2 - 6 months
b) Medium scale	1 - 3 yrs
c) High scale	5 - 7 yrs
d) Large scale	10 - 13 yrs
2. Chemical precursors or specific chemical substances	5 - 7 yrs
The use of children in this crime constitutes an aggravating circumstance	7 yrs + 1/3 of sentence
Possession of drugs for personal use or consumption, in amounts established in the regulations, will not be punishable	
Art. 221 Organization and financing for production of substances with intent to sell	16 - 19 yrs
Art. 222 Planting or cultivation	1 - 3 yrs
Article 223- Provision of narcotic or psychotropic substances or prepared substances containing them	1 - 3 yrs
Article 224- Unwarranted prescription	1 - 3 yrs
Article 225- Bad faith actions to involve (someone) in drug crimes	5 - 7 yrs

* COIP, Third Chapter, “*Delitos contra los Derechos del Buen Vivir*,” Second Section.

** Under the COIP, penalties can be accumulated consecutively to a maximum of 40 years.

Under Art. 220, penalties are based on a table of maximum amounts prepared by the CONSEP Board of Directors,⁶ which was issued on 10 July. The table regulates small-, medium-, high- and large-scale trafficking for seven substances—four narcotic and three psychotropic, as follows.

**Tables of amounts of narcotic and psychotropic substances
for sanctioning illicit trafficking at small, medium, high, and large scale**

Narcotic Substances								
	Heroin		Cocaine base paste		Cocaine hydrochloride		Marijuana	
	Min	Max	Min	Max	Min	Max	Min	Max
Small Scale	>0	1	>0	50	>0	50	>0	300
Medium Scale	>1	5	>50	500	>50	2000	>300	2000
High Scale	>5	20	>500	2000	>2000	5000	>2000	10000
Large Scale	>20		>2000		>5000		>10000	

Psychotropic Substances						
	Amphetamines		Methylenedioxyamphetamine (MDA)		Ecstasy	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
Small Scale	>0	2.5	>0	2.5	>0	2.5
Medium Scale	>2.5	5	>2.5	5	>2.5	5
High Scale	>5.0	12.5	>5.0	12.5	>5.0	12.5
Large Scale	>12.5		>12.5		>12.5	

Source: Oficio No. CONSEP-SE-2014-0579-0, submitted by CONSEP to the Public' Defender's Office (*Defensoría Pública*), dated 10 July 2014.
Effective as of August 2014.

For the “small scale” category, the amounts defined in the preceding table range from 0 grams to a specific limit. This contradicts the provisions of COIP Art. 228, which permits possession of maximum allowable quantities of such substances for personal use⁷ (see next table).⁸

This overlap between the amounts corresponding to small-scale trafficking and maximum allowable quantities for personal use also has two contradictory dimensions.⁹ One allows the release from prison of people who have been sentenced, according to Law 108, under a legal principle established in Ecuador known as the “principle of favorability,” by which people who have received a certain penalty can benefit from a subsequent, less severe law, including sentence reduction, as in this case. In other words, the sentences in the new law can be applied retroactively. The second dimension of the contradiction is negative and could exacerbate the penalty (although with lighter sentences, according to current regulations) for users or consumers.

Given this situation, the table of maximum amounts for personal use may serve as a guide for the courts, so their decisions do not criminalize drug users. Training for judges and police is therefore crucial to keep Law 108 from persisting in practice.

**Maximum allowable amounts for possession
of drugs for personal use**

Substances	Amounts (in grams, net wt.)
Marijuana	10
Cocaine base paste	2
Cocaine hydrochloride	1
Heroin	0.1
3.4-methylenedioxyamphetamine (MDA)	0.015
3.4 methylenedioxyamphetamine (MDMA)	0.015
Amphetamines	0.04

Source: Registro Oficial No. 19, dated 20 June 2013.
Effective as of August 2014.

The role of the Executive Branch

President Rafael Correa’s actions and statements, as well as initiatives by agencies such as CONSEP, the Ministry of Public Health and the Ministry of Justice, have resulted in changes in Ecuadorian drug regulations.

Since the president took office in 2007, his foreign policy has stressed national sovereignty. He took a series of steps to distance the country from some international financial institutions,¹⁰ as well as from the U.S. government, because he believed they seriously interfered with the country’s sovereign policies. In 2007, President Correa declared the International Monetary Fund representative *persona non grata*.¹¹ In 2009, he expelled a diplomat from the U.S. Embassy¹² and he subsequently launched a process of reorganization and control of U.S. military and police assistance to integrate it into regular, formal Ecuadorian channels and bring it into line with international law.¹³ An effort has therefore been made to eliminate security-related cooperation relationships that were not regulated by the national government, as had been the practice in the past. In 2009, an agreement by which Ecuador ceded a military base to the United States expired; the Correa administration took advantage of that situation and decided not to renew the commitment, following provisions of the country’s new Constitution, which was drafted while he was in office.

Later, in 2013, the Ecuadorian government unilaterally withdrew from the Andean trade preferences system (ATPDEA),¹⁴ and in 2014, 20 U.S. military officers were asked to leave the country. Given the current tensions between Quito and Washington, the U.S. Agency for

International Development (USAID) is scheduled to leave the country at the end of September this year.¹⁵ According to media reports, the U.S. government has announced that the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) will withdraw at the same time.¹⁶ The quest for self-determination and distancing from U.S. hegemony in the so-called "war on drugs" has influenced the reform of Ecuador's drug legislation.

In the area of domestic policy, the current government has shown several signs of its intention and will to change, in light of the problems caused by past strategies to confront drug-related problems. The first signal was the measure known as the "drug mule pardon," implemented in July 2008. This applied to people sentenced for trafficking, transporting, acquiring or carrying illegal substances who were first-time offenders, had been found in possession of two kilograms or less, and had completed at least 10 percent (or one year) of their sentence.¹⁷ This measure had several positive outcomes, including the release from prison of 2,221 people who had been incarcerated for small-scale drug trafficking and the resulting reduction of prison overcrowding. The low recidivism rate—around 1 percent¹⁸—of those who were pardoned also demonstrated the measure's success. At the political level, this pardon revealed the extreme harshness of the drug control legislation imposed on countries in the Andean region since the 1980s¹⁹ and pointed to the need to modify the current legal framework and transform the excessively punitive mindset that had taken root in the country. The following year, in 2009, a second important signal was sent when the Ministry of Justice began drafting the COIP, which from the very beginning included the drug-related reforms described above.

Some observers say President Correa has played a strategic role in the process of change, because of his statements in support of decriminalization of personal use through the establishment of a table of maximum amounts for possession; cultivation for personal use; proportional penalties; and the like.²⁰ Recently, however, signs have emerged of a shift in the president's original position, as reflected in a radio address on June 21, 2014,²¹ in which he unexpectedly returned to "heavy-handed" rhetoric on drug use among adolescents in schools, encouraging the punishment of minors involved in the use or sale of illicit substances. As a result, on July 15, 2014 (just 24 days after that address), the "Preventive Revolution" campaign was launched in schools in the Province of Guayas. With this campaign, the police intensified efforts to prevent drug use and dealing by entering schools and searching students' personal belongings.²²

In his radio address, President Correa also announced a reform of CONSEP, which would place it directly under the Office of the President. Until that change is made, an inter-agency committee will be established, consisting of various ministries and led by the president himself, to respond more efficiently to drug-related problems, which he described as "the country's most important problems, after the problems of poverty."²³ Finally, he stated that the various ministries will receive budget allocations to combat drugs, and that each ministry involved has been ordered to make fighting drugs a priority. As Ecuador's pre-electoral scenario heats up, this change is probably related to the 2016 elections, in which the president will run for re-election, and to Ecuadorian voters' wide acceptance of hardline approaches.

Despite this odd return to heavy-handed rhetoric, the government has provided several opportunities for reforming the legal framework for drug control, and some Executive Branch agencies—including CONSEP, the Ministry of Health and, with less clarity, the Ministry of Justice—have taken advantage of them. As the agency responsible for guiding the country’s drug policy, CONSEP has supported reforms on several fronts. In the political arena, the council took a stand in support of harm reduction-oriented policies;²⁴ it also produced information for decision-making (such as studies, reports, books, and statistics, among others), which could provide input for a broader, objective debate. The council has also spoken out on social demands,²⁵ calling for them to be considered in processes of change.

The Ministry of Public Health has also taken a harm reduction stance²⁶ and has established a certain degree of coordination with the CONSEP Executive Secretariat, of which it is a member. Its efforts led to the definition of the thresholds that have served as a reference for the decriminalization of the possession of drugs for personal use.

The Ministry of Public Health has also begun to take responsibility for the control and regulation of private rehabilitation centers in the country and the creation of a public network of such centers. The Ecuadorian government has historically stayed out of the business of providing rehabilitation services for people with dependence problems, as well as methods or protocols for treatment and oversight of private services.²⁷ Although there is currently a small state assistance network for people with drug dependency issues, consisting of 15 treatment centers,²⁸ the gap left by the public sector has been filled by private operators, who have long been outside the control of health authorities. Ecuador is estimated to have more than 200 therapeutic communities, 123 of which have operating licenses from health authorities, while the rest operate clandestinely.²⁹

Because of this situation, in 2009, the Ministry of Public Health took over the regulation and control of rehabilitation and detoxification centers, which originally fell under CONSEP, on the grounds that the Constitution establishes that addictions are a public health problem.³⁰ With this mission, the Ministry of Public Health issued Resolution 767 of May 11, 2012, promulgating rules for the “Regulation of Recovery Centers for Treatment of Persons with Addictions to or Dependence on Psychoactive Substances.” These measures have had some significant outcomes, such as shutting down approximately 20 institutions for reasons such as failure to comply with regulations or recently established treatment protocols, inadequate facilities or violations of patients’ rights and physical integrity.³¹ They also have facilitated the release of people who were committed to such facilities against their will, a figure that could be as high as 500, according to press reports. These measures have called attention to problems related to the privatization and the clandestine nature of therapeutic treatment for drug dependency in Ecuadorian society. The Ministry of Public Health plans to respond to the need for treatment by establishing 20 additional public rehabilitation centers throughout the country.³²

The Ministry of Justice has played a less-than-clear role on legal reforms related to drugs, taking a poorly defined stance on activities related to illicit substances. This is largely due to

the constant turnover of ministers and to the personalized handling of political agendas. In 2009, the Ministry of Justice played a key role in the design of a proposal for reform of the drug law; in subsequent years, however, appointment of a new minister led to a change in approach and the ministry became an opponent of legal reforms.³³

On internal contradictions and the limits to a harm reduction approach

Despite the changes in Ecuador's drug laws, some institutions have clearly been reluctant to accept the transformations, which has limited progress. Significant contradictions within the government have kept changes from being made more smoothly and quickly.

In the health sector, legal inconsistencies also hinder change. For example, the Health Law that took effect in 2006 prohibits the recreational use of narcotic and psychotropic substances and authorizes their use only for medicinal purposes (Art. 51). Although that is understandable, because the law was approved years before the new Constitution and the COIP, Art. 116 of the new draft Health Code repeats almost word for word the text of the law it is to replace.³⁴ These laws clearly conflict with a harm reduction approach, maintaining a prohibitive stance based on abstinence, the goal of which is to avoid drug use by any means possible.

Following the same logic, the Ministry of Education issued Ministerial Agreement 208-13, dated July 8, 2013, creating the *National Education System free of tobacco, alcohol, narcotics, hallucinogens or any type of psychotropic or narcotic substances*; the fourth article states:

Determine that in educational establishments, no one can keep on their person or in their clothing, bags, daypack, or other place any amount of substances referred to in this Ministerial Agreement. If any member of the educational community finds such substances, regardless of the amount, he or she will immediately inform the highest authorities of the establishment and the nearest specialized police unit or agent, who will be responsible for confiscating the substances and implementing the corresponding procedure, notwithstanding taking the actions established in Articles 326 and 327 of the Code for Children and Adolescents.

Unlike other laws, this norm marks a return to criminalizing adolescent drug users, maintaining a punitive status quo that targets a vulnerable population group. This measure resulted in the launch of a national campaign involving searches of schools where there were reports of small-scale drug dealing and allowed for the National Police to be involved in these interventions. The campaign initially targeted 88 schools³⁵ nationwide, but that figure has increased to 2,800 schools in the province of Guayas alone, as part of the "Preventive Revolution." Of the schools where the operations have taken place, events at two of the country's largest—one in Guayaquil³⁶ and the other in Quito—merit mention. In the former, the media reported that drug dealing networks were found in the school, while in the second, only a scant amount of marijuana was confiscated in the search (14.5 grams³⁷). It is important to keep these figures in mind to show that despite the reforms that have been implemented, there is still an effort to link drug use among adolescents to drug-dealing

networks;³⁸ in short, some sectors are reluctant to abandon the use of force and seek more appropriate alternative measures. In addition to Ecuador's pre-electoral political climate, what happened in the schools has likely encouraged the president's rhetoric about security, leading him to propose a punitive approach on the grounds of protecting young people, an approach widely accepted by a society immersed in a culture of fear.³⁹

Because the National Police and the Judiciary have not adopted the harm reduction approach established by the new legal framework, the penalization of users and people who cultivate for personal use thus remains in effect. For the police, the definition of thresholds for possession for personal consumption constitutes a rule that is exempt from interpretation, which makes anyone who exceeds the permitted quantities, even by a small amount, potentially susceptible to being considered a dealer.⁴⁰ Ecuador's criminal justice system also has a structure that allows the police to strongly influence the judicial process. It is more feasible to obtain a conviction in drug cases because of the emphasis judges place on police reports, which are often the only piece of evidence in trials, although they tend to be subjective, lacking in clarity and strongly marked by a punitive mindset.⁴¹

The Judiciary also seems to be far from taking a harm reduction approach. Despite the decriminalization of drug use, which took effect with the 2008 Constitution and was reinforced recently by COIP Art. 220, some members of the Judiciary persist in violating the rights of users and those who cultivate for personal use, with measures such as preventive detention and the *de facto* establishment of drug courts. The report prepared by Sandra Edwards in 2010⁴² stated that preventive detention was a generally recurring problem in Ecuador's judicial and criminal justice system; in the specific case of drug crimes, the abuse of this measure resulted in the incarceration of users for periods far longer than a year (the maximum time in prison for a person under this provision). Although drug use was decriminalized in 2008, the situation has not changed, as the iconic case of Angel Pilamunga shows; he was arrested and sentenced to eight years in prison for growing 12 marijuana plants for personal use. The Public Defender's Office represented the detainee, arguing several violations of the Criminal Procedures Code. Nevertheless, on January 28, 2014, the court upheld the sentence.⁴³ Despite these examples, changes are expected in this area as a result of the mandatory use of the threshold tables for transport and possession and the differentiation in the scales stipulated in Art. 220, which took effect in August 2014.

Meanwhile, according to Jorge Paladines, some judges are doing, in a *de facto* manner, what is proposed by drug courts,⁴⁴ offering an alternative by which those accused of possession of small amounts of drugs voluntarily declare themselves "addicts," resulting in the conditional suspension of criminal proceedings in exchange for the defendant submitting to treatment for rehabilitation. According to Paladines, the gravity of this practice lies in its violation of the principle of presumption of innocence, as well as the rights of persons who freely decide to use drugs. Furthermore, data linking drug use to the commission of crimes is then incorrect.⁴⁵

The irony of this situation is that the state has a team (although still insufficient) of lawyers who function as public defenders, many of whom have played an important role in defending and freeing people detained by Ecuadorian police and Judiciary officials. Nationwide,

between 2007 and March 19 of this year, the Public Defender's Office assisted 15,532 people accused of drug-related crimes. To date, 1,956 people have been freed after being proven innocent in trials;⁴⁶ nevertheless, 5,000 people remain incarcerated on such charges. Ironically, one part of the state defends the population from the actions of another part of the same state.

The legislative debate

During the current administration (2013-2017), the majority in the National Assembly is aligned with the government, with 113 of the 137 representatives belonging to *Alianza País*, President Correa's political movement. That majority facilitates coordination with the president's office for the approval of legislation; the legislature's blocking of Executive Branch initiatives in Ecuador is a thing of the past. The political opposition, however, maintains that the country lacks a system of checks and balances among the branches of government, arguing that the legislature is now subordinate to the Executive Branch.

It was the Executive Branch that submitted the COIP initiative to the National Assembly for debate and approval. The legislation faced strong opposition from some sectors of society, as noted above. Debate in the full National Assembly was less intense, however, and it won majority approval (113 votes in favor, all from *Alianza País*). Drug-related regulations were not debated in the full Assembly as other, more controversial issues displaced them and because the structure of parliamentary debate did not allow it.⁴⁷ However, in the Commission on Justice and Structure of the State, which was responsible for analyzing the COIP, there was an opportunity for various stakeholders to present their opinions, proposals, and objections regarding drug law reforms in the COIP. Although it could be said that this debate did not allow for meaningful grassroots participation, it nonetheless provided a venue for various sectors with opposing views, such as pro-legalization advocates and the National Police, to contribute to the debate.

Civil society

Groups that favor legalization and the decriminalization of drug use undoubtedly have taken advantage of the political opportunities opened by the government to introduce their own concerns into the legal reform process. For the *Diablo Uma* collective, pressure brought to bear by civil society in the National Assembly over the past three years made it possible to include points such as decriminalization of cultivation for personal use. According to Gabu Buitrón,⁴⁸ a member of that collective, the first draft of COIP included cultivation for personal use, but it was eliminated in the second draft of the law.⁴⁹ With assistance from the Public Defender's Office and CONSEP, advocates managed to get this point included in the text that was finally approved, in Art. 222, which penalizes the planting and cultivation of illicit substances for commercial purposes.

Some organizations are currently working to create cannabis clubs, a non-market scheme that gives consumers access to supply without risk of incarceration. This proposal stems from the legal vacuum caused when consumers are forced to resort to illicit markets to

obtain drugs. Supporters hope for legalization of a collective form of supply that does not violate the law and does not promote drug markets.

Conclusions

Ecuador has clearly taken a step forward in a more rational approach to penalties for drug-related crimes. Issues such as decriminalization of drug use, decriminalization of cultivation for personal use, proportionality of sentences in comparison to those for other crimes, and consideration of the role played in the division of labor in drug trafficking will unquestionably allow for more appropriate punishment, help to alleviate pressure on Ecuadorian prisons, and could lead to the release of thousands of people who have been unfairly convicted or have received unjust sentences.

Although a significant sector of the government has worked to solidify these advances, another sector within the state has gone in the opposite direction, trying to maintain the punitive status quo. And although there was no debate between society and the state, there also was no rigorous debate within the government. It could be said, therefore, that in Ecuador there has been no serious dialogue about drug law reforms and their implications. The lack of reflection, publicizing of positions and debate has led to many contradictions in the consolidation of the regulatory changes, especially in Ecuador's criminal justice system. As noted above, it seems that one part of the state amends what another has done. One positive interpretation suggests that this could be an imbalance characteristic of processes of change, and that more time is needed to get the government machinery moving down the new path.

Nevertheless, the recent change in the president's rhetoric is noteworthy, because it signals a return to a conservative mindset that criminalizes all drug-related activities, including drug use, with special emphasis on adolescent users. In an ideal democracy, changes in a society's legal norms should be safeguarded by civil society, through debate and activism. In Ecuador, however, although there is incipient social mobilization against *de facto* criminalization and punishment of drug use, it is still weak, and there is not yet widespread dialogue that informs citizens, builds consensus and encourages public activism in defense of the progress made with regards to legal reforms.

For example, no discussion has taken place in the country on the usefulness and appropriateness of the thresholds to determine appropriate quantities for personal use. Their establishment definitely constitutes a regulatory advance, but "there are no 'magic numbers' in drug policy and that this tool brings its own complications and pit-falls;"⁵⁰ therefore, threshold quantities should be flexible, viable, and reviewed periodically, and should be used as a tool for determining intention, guilt, and harm.⁵¹ To keep them from becoming a straitjacket, constant monitoring and evaluation of their usefulness is crucial, always with an eye toward the possibility of reform based on the involvement of different sectors, both government and civil society. There also has been no discussion of the appropriateness of the police searches in schools or of the possible consequences of an overlap between the tables of maximum amounts for possession for personal consumption and minimum and maximum amounts used to differentiate scales of illicit trafficking.

Finally, though Ecuador is one of the first countries in Latin America to make significant reforms to its drug law, this has not gone hand in hand with a willingness of certain sectors of government to consolidate those changes. Much remains to be done in the training of police, judiciary officials, and officials in other ministries, some of which are related to Ecuadorian children and adolescents. After the change in legislation comes the struggle to transform popular mindsets and society's attitude toward the issue of drugs.

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¹ Among the most notable cases are those of doctors, who objected to Art. 146, under which malpractice resulting in the death of a patient is considered murder, punishable by one to three years in prison. Another group consisted of large, mid-size, and small businesses, which objected to the Executive Branch's proposal of a penalty of one to three years in prison for those who were behind on social security payments for their employees. Feminist groups also disagreed with aspects of the COIP, speaking out against the continued penalization of abortion.

² Law 108 was promulgated in 1990 and underwent subsequent modifications. For at least two decades, it was the main legal instrument in the "war on drugs" in Ecuador. One of its main characteristics is that it standardized drug-related penalties to between 12 and 16 years in prison, regardless of the infraction; under this law, a drug trafficker and a user of illicit substances could receive the same sentence. The law also made possession of any amount of drugs equivalent to serious violent crimes, such as murder (8 to 12 years) or rape (12 to 16 years), and punished drug crimes more harshly than terrorism (four to eight years) or kidnapping (three to six years).

³ A detailed breakdown can be found in *Sandra G. Edwards. 2010. "A short history of Ecuador's drug legislation and its impact on its prison population." In: Systems Overload: Drug Laws and Prisons in Latin America.* WOLA and TNI.

http://www.wola.org/publications/systems_overload_drug_laws_and_prisons_in_latin_america_0

⁴ This implies that Law 108 remains in force with regard to: 1) the National Council on Control of Narcotic and Psychotropic Substances (*Consejo Nacional de Control de Sustancias Estupefacientes y Psicotrópicas*, CONSEP); 2) the prevention and control of activities related to the production and trafficking of controlled substances; and 3) the retention, seizure and confiscation of goods. This law originally regulated the "Abuse of Substances Subject to Oversight and the Rehabilitation of Affected Persons;" that responsibility was assumed by the ministry of Public Health through Ministerial Agreement 767. This point will be addressed in a subsequent section.

⁵ Paladines. 2013. "La (des)proporcionalidad en la ley y la justicia antidrogas en Ecuador." In: Paladines. 2013. *El Equilibrio Perdido: drogas y proporcionalidad en las justicias de América.* Defensoría Pública del Ecuador. For more information, see studies by the Colectivo de Estudios Drogas y Derecho,

www.drogasyderecho.org

⁶ The members of CONSEP are the Attorney General's Office and the ministries of Interior, Education, Public Health, Social Welfare, National Defense and Foreign Relations.

⁷ In Registro Oficial No. 19 dated 20 June 2013, CONSEP accepted the table of maximum allowable amounts for possession and use prepared by the Ministry of Public Health in 2012. This table was part of the more extensive "Technical Study of Psychotropic and Narcotic Substances."

⁸ According to the attorney general, this table currently serves as a guide for judges; it will become mandatory in August 2014, when the COIP takes effect. "La nueva tabla para consumo de drogas es una guía para jueces." Daily *El Telégrafo*. 18 June 2013. At: <http://www.telegrafo.com.ec/justicia/item/la-nueva-tabla-para-consumo-de-drogas-es-una-guia-para-jueces.html>

⁹ Email conversation with Jorge Paladines. Adviser to the Public Defender's Office. 15 July 2014.

¹⁰ "Correa niega acercamiento con el Banco Mundial y el FMI." Daily *Hoy*. 5 June 2014. At: <http://www.hoy.com.ec/noticias-ecuador/correa-niega-acercamiento-con-el-banco-mundial-y-el-fmi-607711.html>

¹¹ Ibid.

¹² "Presidente de Ecuador ordena expulsión de diplomático de Estados Unidos por carta considerada insolente." 29 February 2009. At:

www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id-

[97489&umt=presidente_ecuador_ordena_expulsion_diplomatico_eeuu_por_carta_considerada_insolente](#)

¹³ “Cooperación en materia de seguridad entre Ecuador y EEUU ‘seguirá atendándose,’ dice el presidente Rafael Correa.” FLACSO ANDES. At: <http://www.andes.info.ec/es/noticias/cooperacion-materia-seguridad-entre-ecuador-eeuu-seguira-atendandose-dice-presidente>

¹⁴ “Ecuador renuncia unilateralmente al ATPDEA de Estados Unidos.” 27 June 2013. At: <http://www.eluniverso.com/noticias/2013/06/27/nota/1083461/ecuador-renuncia-unilateralmente-atpdea-eeuu>

¹⁵ “Estados Unidos dice que USAID se va porque en dos años no se ha podido llegar a un acuerdo con Ecuador.” 16 December 2013. At: <http://www.eluniverso.com/noticias/2013/12/16/nota/1927521/eeuu-dice-que-usaid-se-va-porque-dos-anos-no-se-ha-podido-llegar>

¹⁶ Charles Parkinson, “Retirada de Ecuador crea el más reciente agujero en las operaciones antinarcóticos de Estados Unidos.” InSight Crime, 8 May 2014. At: <http://es.insightcrime.org/noticias-del-dia/retirada-ecuador-crea-reciente-agujero-en-operaciones-antinarcoticos-esadounidenses>

¹⁷ Sandra G. Edwards. 2010. Op. Cit.

¹⁸ “Indulto en Ecuador permitió liberación de 2.221 'mulas' del narcotráfico.” Daily Hoy. 11 July 2009. At: <http://www.hoy.com.ec/noticias-ecuador/indulto-en-ecuador-permitio-liberacion-de-2-221-mulas-del-narcotrafico-357722.html>

¹⁹ Metaal. 2009. “El indulto a las mulas.” TNI, WOLA. At:

www.tni.org/sites/www.tni.org/files/download/dlr1s.pdf

²⁰ Interview with Gabu Buitrón. Associate consultant to the Diabla Uma collective. 23 May 2014.

²¹ Broadcast (*enlace ciudadano*) 378 can be heard at: www.presidencia.gob.ec

²² “Acción Policial antidrogas en los colegios.” Daily *El Comercio*. 16 July 2014. At: http://www.elcomercio.com/actualidad/narcoticos-colegios-drogas-dinapen-estudiantes.html?utm_source=Email&utm_medium=newsletter&utm_campaign=Sintesis-16%2F07%2F14_2014_07_16_16&utm_content=Actualidad_&emst=RiaQXxOghg_30547_157169_11#.U8abezhtNJs.facebook

²³ Broadcast (*enlace ciudadano*) 378. Op. Cit

²⁴ An example of CONSEP’s position in support of the harm reduction policy can be found in the text, CONSEP. n/d. “La Prevención del Uso y Consumo de Drogas desde una visión integral. Referente Teórico.”

²⁵ Interview with Gabu Buitrón. Op. Cit.

²⁶ See speech by Ecuadorian Minister of Public Health Carina Vance at the First International Conference on policy and legislative alternatives to the war on drugs, held in Quito on 19 and 20 November 2013. At: <http://youtu.be/S26gqqg1SXM>

²⁷ Jorge Paladines. 2014. “La respuesta sanitaria frente al uso ilícito de drogas en Ecuador.” CEDD-Ecuador, www.drogasyderecho.org.

²⁸ “Rehabilitación, solo hay 15 centros públicos.” Daily *La Hora Nacional*, 1 December 2014. At: www.lahora.com.ec/index.php/noticias/show/1101599765/1/Rehabilitación_sólo_hay_15_centros_públicos.html

²⁹ “Entrevista a Carina Vance, Ministra de Salud Pública. En 2012 el MSP registró 123 centros de rehabilitación legales en Ecuador.” Daily *El Telégrafo*. 19 July 2013. At: www.telegrafo.com.ec/sociedad/item/en-2012-el-msp-registro-123-centros-de-rehabilitacion-legales-en-ecuador.html

³⁰ Resolución Defensorial No. 109-44037-44099-44968-CNDHIG-2009-JVE, dated 18 December 2009.

³¹ “Rehabilitación, solo hay 15 centros públicos.” Daily *La Hora Nacional*. Op. Cit.

³² Interview with CONSEP Executive Secretary Rodrigo Vélez. Op. Cit.

³³ Interview with Jorge Paladines, 6 July 2014.

³⁴ Text of current Public Health Law, Art. 51: “The production, commercialization, distribution and *consumption* of narcotic and psychotropic and other addictive substances are prohibited, except for therapeutic use and by medical prescription, which will be controlled by the national health authority in accordance with the provisions of the relevant legislation.”

Text of the draft Organic Health Code. Art. 116: “The production, commercialization, distribution and consumption of narcotic and psychotropic and other addictive substances are prohibited, except for those utilized for therapeutic purposes and by medical prescription; such prescriptions will be controlled by the National Health Authority, in accordance with the provisions of the relevant legislation.”

³⁵ “La Policía intervendrá 88 colegios por microtráfico.” Daily *El Telégrafo*. 25 April 2014. At: <http://www.telegrafo.com.ec/justicia/item/la-policia-intervendra-88-colegios-por-microtrafico.html>

³⁶ This policy was accompanied by an intensive media campaign that highlighted the police’s effectiveness at finding illegal drugs in some of the country’s schools. Most cases involved the coincidental appearance of small packets of marijuana outside the schools, which were identified as places where dealing occurred openly. See: <http://www.ecuavisa.com/articulo/noticias/nacional/36041-colegio-aguirre-abad-es-intervenido-por-microtrafico-de-drogas> (retrieved 10/13/13)

³⁷ “La Policía intervendrá 88 colegios por microtráfico.” Daily *El Comercio*. Op. Cit.

³⁸ Besides the searches of schools, surprise raids are also being conducted during large parties that attract young people, known as *caídas*, where adolescents allegedly are encouraged to consume drugs and alcohol and have sex. These types of operations are conducted jointly with the police unit that specializes in matters involving children and adolescents (DINAPEN). See: “Las ‘caídas’ se dan en lugares improvisados.” Daily *El Comercio*. 16 July 2014. At:

<http://www.elcomercio.com/actualidad/seguridad/caidas-se-dan-lugares-improvisados.html>

³⁹ On the opinion of some groups that support the police operations in schools, see “El cabo suelto del plan contra el microtráfico.” Daily *Expreso*. 15 July 2014. At:

<http://expreso.ec/expreso/plantillas/nota.aspx?idart=6646184&idcat=19308&tipo=2>

⁴⁰ As Police Academy (*Escuela Superior de la Policía*) professor Edwin Merlo notes, “Unfortunately, the use of narcotics is an illness, which leads the drug-dependent person to seek a larger quantity to remain calm. It is uncontrollable, and the person therefore seeks strategies or deceit to obtain larger amounts. It is difficult to recognize whether the person is really a dealer, because the evidence will be found when the person is arrested. What is advisable in these cases is that the dependent person respect the law and carry the amounts that are permitted.” “Vacíos para diferencia el uso y la venta de drogas.” Daily *El Comercio*. 26 March 2014. At: www.elcomercio.com.ec/seguridad/vacios-legales-uso-venta-droga-ecuador_0_1108689147.html

⁴¹ Paladines. 2013. Op. Cit.

⁴² Sandra G. Edwards. 2010. Op. Cit.

⁴³ The cassation hearing for the Pilamunga case is available at:

<https://www.youtube.com/watch?v=59Qs-LOCzho>

⁴⁴ Interview with Jorge Paladines, 22 May 2014. Op. Cit.

⁴⁵ Paladines. 2013. Op. Cit.

⁴⁶ “Vacíos para diferencia el uso y la venta de drogas.” Daily *El Comercio*. Op. Cit.

⁴⁷ Jorge Paladines explained that in the 1980s, legislation was debated article by article. The National Assembly now debates the entire piece of legislation; the COIP, which consists of three volumes, was debated volume by volume, speeding up consideration of a piece of legislation that consists of nearly 1,000 articles.

⁴⁸ Interview with Gabu Buitrón. Op. Cit.

⁴⁹ It is important to note that in Ecuador, laws are debated twice in the full Assembly; the draft legislation is approved or rejected during a third debate.

⁵⁰ Genevieve Harris. 2011. "Conviction by numbers: Threshold quantities for drug policy." Series on legislative reform of drug policies No.14. TNI and IDPC, www.tni.org/sites/www.tni.org/files/download/dlr14_0.pdf

⁵¹ Genevieve Harris. 2011. Ibid.