

REDUCING FEMALE INCARCERATION THE 2008 NATIONAL PARDON IN ECUADOR

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In 2008, in response to its prison overcrowding crisis, Ecuador pardoned over 2,300 people convicted of low-level drug offences, about 30% of whom were women. The pardon had an immediate positive effect on reducing the country's prison population, especially in the women's prison, *El Inca*. However, this was only a temporary benefit for lack of a reform of Ecuador's drug law, which eventually took place in 2014.

Context and Description

The Narcotic and Psychotropic Substances Law that was in effect from 1970 to 2014 in Ecuador was one of the harshest drug laws in Latin America. It contributed to an increasing prison population, in a penitentiary system that did not have the capacity to bear such a large number of prisoners. In 2007, Ecuador's prisons were faced with overcrowding reaching 157%, and 18,000 prisoners occupied facilities that had been built to accommodate 7,000 people. Of those incarcerated, 40% were in prison for drug offenses.²

Although women only made up about 7% of the total prison population in 2015,³ in recent years the percentage of women incarcerated for drug offenses was consistently higher than that of men, ranging between 65 and 79% of the female prison population. In 2009, 80% of all women incarcerated at *El Inca*, the country's biggest women's prison, were incarcerated for drug offenses.⁴ In general, these women were micro-traffickers, dealers selling small amounts of drugs, or "human

couriers" transporting drugs for someone else or for a criminal network.

In response to the profound humanitarian crisis affecting the country's prison system, on July 4, 2008, the Constituent Assembly approved a measure granting a national pardon for people convicted of illicit drug trafficking, transportation, acquisition, or possession. This was granted on the condition that those being pardoned met the following requirements: they had been declared guilty, had no prior criminal record, had been accused of a crime involving two kilos or less of drugs, and had served at least 10% – or at least one year – of their prison sentence.

The pardon benefited 2,300 people, 30% of whom were women.

Results and Impact

According to official figures, the pardon benefited around 2,300 people.⁵ Although no disaggregated data is available, it is estimated that roughly 30% of the people who benefited from the pardon were women – that is,



Woman incarcerated in *El Inca* prison, Ecuador. Source: César Acuña

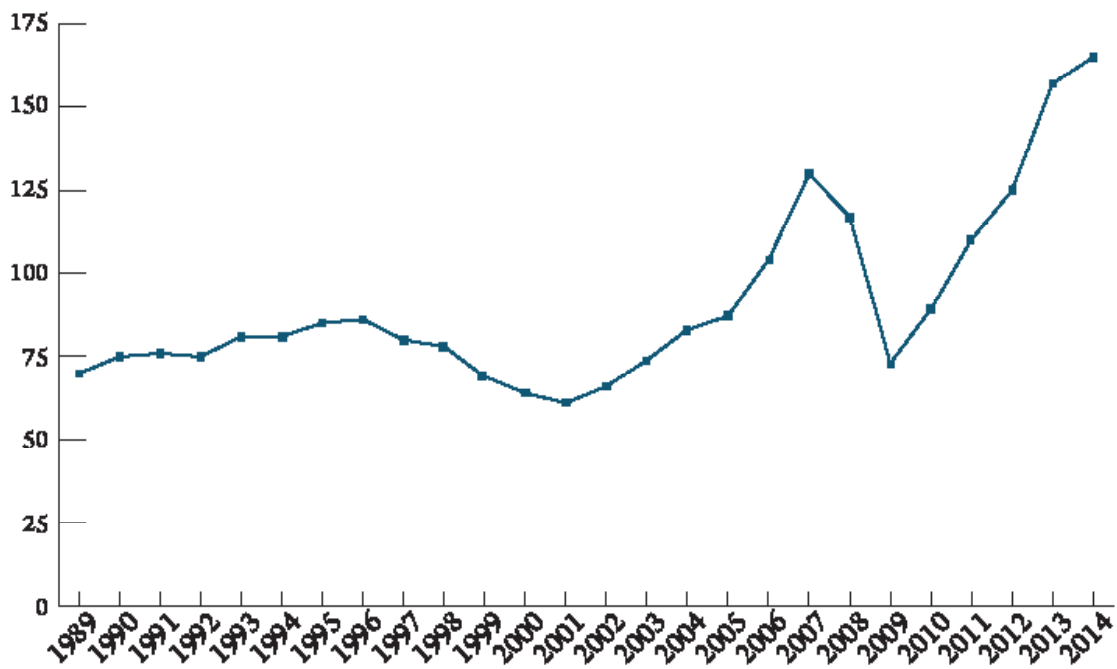
producing a decline from 18,675 people incarcerated in 2007 to 10,881 in 2009."⁷

However, the national pardon was only a temporary measure to deal with prison overcrowding, since it was not accompanied by reforms necessary to reduce the flow of women (and men) entering the country's prisons. As Figure 1 shows, the immediate result was an increase in the prison population during the years following the pardon.

approximately 650 people.⁶ The impact of the measure was not only felt among the direct beneficiaries and their families, it also resulted in a significant reduction in the country's prison population. According to Jorge Vicente Paladines, Ecuador went from an average of 130 prisoners per 100,000 inhabitants in 2007 to fewer than 73 for every 100,000 inhabitants in 2009. In addition, "the pardon paved the way for the use of other penitentiary benefits and a reduction in the use of pretrial detention,

The positive – but temporary – impact of Ecuador's pardon underscores the importance of accompanying these emergency measures with structural, political, and/or legislative changes that will ensure more proportionate sentencing, and will therefore have a sustained impact on incarceration rates. In 2014, a new criminal code – the Organic Comprehensive Criminal Code (*Código Orgánico Integral Penal, COIP*) – came into force in Ecuador; however, key elements

Figure 1. Incarceration Rate per 100,000 People



Source: Ministry of Justice and Public Defender's Office

of the reform were rolled back in 2015 (for more information, see Briefing No. 5 of this series: "*Two Steps Forward, One Step Back: Proportionality of Sentencing in Ecuador*").

Key Resources

Metaal, P. & Youngers, C. Eds., *Systems overload: Drug laws and prisons in Latin America*, WOLA & TNI, 2010, https://www.wola.org/sites/default/files/downloadable/Drug%20Policy/2011/TNIWOLA-Systems_Overload-def.pdf

Edwards, S., "A Short History of Ecuador's Drug Legislation and the Impact on its Prison Population." In: Metaal, P. & Youngers, C. Eds., *Systems Overload: Drug Laws and Prisons in Latin America*, WOLA & TNI, 2010, https://www.wola.org/sites/default/files/downloadable/Drug%20Policy/2011/TNIWOLA-Systems_Overload-def.pdf

Paladines, J.V., *Cárcel y drogas en Ecuador: el castigo de los más débiles*, CEDD, <http://www.drogasyderecho.org/files/ECUADOR.pdf>

Washington Office on Latin America, *Drugs and Prisons in Ecuador*, July 9, 2010, <https://www.wola.org/analysis/drugs-and-prisons-in-ecuador/>

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Endnotes

1. Senior Fellow, Washington Office on Latin America (WOLA).
2. Edwards, S., "A Short History of Ecuador's Drug Legislation and the Impact on its Prison Population." In: Metaal, P. & Youngers, C. Eds., *Systems Overload: Drug Laws and Prisons in Latin America*, WOLA & TNI, 2010, https://www.wola.org/sites/default/files/downloadable/Drug%20Policy/2011/TNIWOLA-Systems_Overload-def.pdf
3. Boiteux, Luciana, *The Incarceration of Women for Drug Offenses*, CEDD, p. 2, 2015.
4. *Ibid*, p. 57.
5. Edwards, S., "A Short History of Ecuador's Drug Legislation and the Impact on its Prison Population," p. 59.
6. Written correspondence with Jorge Paladines, December 5, 2016.
7. Paladines, J.V., *Cárcel y drogas en Ecuador: el castigo de los más débiles*, CEDD, p. 15, <http://www.drogasyderecho.org/files/ECUADOR.pdf>
8. *Ibid*, p. 16.
9. *Ibid*, p. 20.

Disclaimer: The opinions set out in this briefing are those of the author(s) and do not necessarily reflect the official position of the CIM/OAS.

*This series aims to share examples of innovative approaches that incorporate a gender perspective and the principles of public health and human rights into drug policy. Such innovations will have the best possible outcomes only when they are accompanied by more fundamental drug law and policy reform. However, in the absence of broader reforms, or carried out in conjunction with such reforms, these innovations can help break the vicious cycles of poverty, social exclusion, drug use, involvement in the drug trade, and incarceration that plague so many poor communities across the Americas today. Global Innovative Approaches is a tool that accompanies the publication *Women, Drug Policies and Incarceration: A Guide for Policy Reform in Latin America and the Caribbean*.*