

TWO STEPS FORWARD, ONE STEP BACK PROPORTIONALITY OF SENTENCING IN ECUADOR

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Coletta Youngers¹

In 2014, Ecuador adopted a new criminal code which ensures more proportionate penalties for drug offenses, establishing different thresholds for levels of drug trafficking. The reform drastically reduced the sentence lengths for low-level drug offenses, and led to the release of more than 446 women. A year later, however, Ecuador took a step backward by significantly reducing the thresholds for what qualified as low, medium, and large-scale drug trafficking.

Context and Description

On August 11, 2014, the Organic Comprehensive Criminal Code (*Código Orgánico Integral Penal*, COIP) came into force in Ecuador, revising the previous drug law – which was considered one of the harshest in the region, despite the fact that Ecuador is a transit, rather than a producing, country. The COIP left behind "44 years of punitive and disproportionate drug policies that never reflected the national reality, but responded to foreign influence instead."²

Apart from ratifying the article of the 2008 Constitution that decriminalized drug use, the new criminal code introduced the concept of proportionality in sentencing. This is in contrast to the previous law which imposed the same prison sentence for all drug-related offences (from 12 to 25 years). The new code distinguishes between large, medium, and small-scale drug traffickers, between traffickers and growers, between violent and non-violent offenses, and finally between traffickers and users, via a table of maximum amounts set

for possession for personal use. The following sentences were established for trafficking:

- Low scale: 2 to 6 months in prison
- Medium scale: 1 to 3 years in prison
- High scale: 5 to 7 years in prison
- Large scale: 10 to 13 years in prison

For each category, the COIP establishes thresholds to distinguish between the different levels of trafficking (see Table 1).

At the same time, the National Council for the Control of Narcotic and Psychotropic Substances (*Consejo Nacional de Control de Sustancias Estupefacientes y Psicotrópicas*, CONSEP) which, at that time, was the main drug control agency,³ issued a resolution establishing thresholds to avoid the prosecution of people who use drugs, indicating the amounts of drugs one could possess for personal use.

The new criminal code ensures more proportionate penalties for vulnerable people involved in the illicit drug trade.

Table 1. COIP's thresholds to distinguish between the different types of drug trafficking (2014)

NARCOTIC DRUGS								
Drug Scale	Heroin (g)		Cocaine paste (g)		Cocaine (g)		Cannabis (g)	
	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX
Low	0	1	0	50	0	50	0	300
Medium	>1	5	>50	500	>50	2,000	>300	2,000
High	>5	20	>500	>2,000	>2,000	5,000	>2,000	10,000
Large	>20		>2,000		>5,000		>10,000	

PSYCHOTROPIC DRUGS						
Drug Scale	Amphetamine (g)		MDA (g)		MDMA (g)	
	MIN	MAX	MIN	MAX	MIN	MAX
Low	0	2.5	0	2.5	0	2.5
Medium	>2.5	5	>2.5	5	>2.5	5
High	>5	12.5	>5	12.5	>5	12.5
Large	>12.5		>12.5		>12.5	

Source: COIP and Resolution No. 002 CONSEP-CD-2014⁴

Results and Impact

The COIP dramatically reduced sentences for low-level drug offenses. The principle of favorability allowed for the COIP to be applied retroactively, leading to the release of more than 2,200 people from Ecuador's prisons after the Code was adopted. It is impossible to calculate how many people avoided entering

the criminal justice system as a result of this legislative change, but this was most likely a significant number.

The impact of the reform was particularly important for incarcerated women: 21% of the 2,200 people released were women. Before the implementation of the new criminal code, nearly 80% of the female prison population in Ecuador was incarcerated for drug offenses. In August 2015, a year after the COIP came into force, the percentage of women incarcerated for drug offenses dropped to 43% – in other words, it fell by almost half.⁵ According to Jorge Vicente Paladines, "more than 466 women were released thanks to the principle of favorability."⁶



Source: Jessamine Bartley-Matthews

However, after a year of implementation of the COIP, Ecuador's drug policy took a step backward. This was the result of a campaign by the media and some political sectors to

Table 2. COIP’s new thresholds to distinguish between the different types of drug trafficking (2015)

NARCOTIC DRUGS								
Drug \ Scale	Heroin (g)		Cocaine paste (g)		Cocaine (g)		Cannabis (g)	
	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX
Low	0	0.1	0	2	0	1	0	20
Medium	>0.1	0.2	>2	50	>1	50	>20	300
High	>0.2	20	>50	>2,000	>50	5,000	>300	10,000
Large	>20		>2,000		>5,000		>10,000	

PSYCHOTROPIC DRUGS						
Drug \ Scale	Amphetamine (g)		MDA (g)		MDMA (g)	
	MIN	MAX	MIN	MAX	MIN	MAX
Low	0	0.09	0	0.09	0	0.09
Medium	>0.09	2.5	>0.09	2.5	>0.09	2.5
High	>2.5	12.5	>2.5	12.5	>2.5	12.5
Large	>12.5		>12.5		>12.5	

Source: Resolution No. 001-CONSEP-CD-2015⁷

try and link the COIP to a supposed increase in heroin use and trafficking, although there was no evidence to sustain these assertions. On September 5, 2015, the same government that had reduced sentences to differentiate small-scale traffickers proposed an increase in the criminal sanctions included within the criminal code, along with a significant reduction in the thresholds that defined low, medium, high, and large-scale trafficking (see Table 2).

It is currently more difficult to obtain statistical information about the country’s prison population. The impact of the rollback in Ecuador’s drug legislation in terms of numbers incarcerated therefore remains to be seen. However, there is a clear risk that the prison population will grow again with the increased imprisonment of people for minor drug offenses, including people who use drugs

– a trend that may once again overload the country’s prisons.

Key Resources

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

Meneses Sotomayor, M.C., *Ecuador: El impacto de las reformas en el encarcelamiento de mujeres por delitos de drogas*, WOLA, 16 September 2015, <https://www.wola.org/es/analisis/ecuador-el-impacto-de-las-reformas-en-el-encarcelamiento-de-mujeres-por-delitos-de-drogas/>

Paladines, J.V., *Nuevas penas para delitos de drogas en Ecuador*, IDPC Blog, 28 October 2015, <http://idpc.net/es/publications/2015/10/nuevas-penas-para-delitos-de-drogas-en-ecuador>

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Endnotes

1. Senior Fellow, WOLA.
2. Meneses Sotomayor, M.C., *Ecuador: El impacto de las reformas en el encarcelamiento de mujeres por delitos de drogas*, WOLA, September 16, 2015, <https://www.wola.org/es/analisis/ecuador-el-impacto-de-las-reformas-en-el-encarcelamiento-de-mujeres-por-delitos-de-drogas/>
3. The Organic Law for the Prevention of Drugs (*La Ley Orgánica de Prevención de Drogas*), approved in 2015, replaced the CONSEP, which had reported
4. Paladines, J.V., *Cárcel y drogas en Ecuador: el castigo de los más débiles*, CEDD, p. 26, <http://www.drogasyderecho.org/files/ECUADOR.pdf>
5. Meneses Sotomayor, M.C., *Ecuador: El impacto de las reformas en el encarcelamiento de mujeres por delitos de drogas*.
6. Paladines, J.V., *Cárcel y drogas en Ecuador: el castigo de los más débiles*, CEDD, p. 28, <http://www.drogasyderecho.org/files/ECUADOR.pdf>
7. *Ibid*, pp. 32-33.

to the Attorney General's Office, with the Technical Drugs Secretariat (*la Secretaría Técnica de Drogas*), which reports to the Office of the Presidency.

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](#).