

## DRUG POLITCS IN ECUADOR

### The unfinished path towards rationalization

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Ecuador has gone through an unlimited number of change, at least in black and white, as far as drug policy is concerned, all this entered the actual governmental process realized by the Country Alliance (Alianza País).

The process of re-thinking the drug policy in the country, towards an attempt of rationalization, of the concetps, theories and categories, is initiated with the Constitutional Assembly of Montecristi, in the middle of which the President Rafael Correa proposes to release, by means of pardon, 2221 persons<sup>1</sup> accused of *drug mules*<sup>2</sup>, out of these less than 1% were repeat offenders<sup>3</sup>. Besides, by initiative of some citizens' groups, the article 364 is included in the Constitution which says:

*"Addictions are a problem of public health. The State has to develop coordinated programs of information and control of consumption of alcohol, tobacco and narcotic and psychotropic substances; as well as offering treatments and rehabilitation to temporary, regular and problematic consumers. Under no circumstances will its criminalization be allowed, nor will the constitutional rights be violated. The State will control and regulate the publicity of alcohol and tobacco."*<sup>4</sup>

From that year onwards the organization *Ecuador Cannabico* emerges, created in 2008, in the Faculty of Social Communication of the Central University, as a study group that takes the form of an informative and organized blog in 2009, and calls the first march for the legalization of marihuana in Quito, 1 May 2009, the same that has been maintained till today.

On 20 Junio 2013, the National Council of Narcotic and Psychotropic Substances (CONSEP), due to the social pressure of those years, issues the Resolution 001 CONSEP-CD-2013<sup>5</sup>, the same that contains a Table of Maximum Dosis of Consumption<sup>6</sup>, referential to the system of Justice<sup>7</sup>.

On 26 July 2013, Ecuador Cannábico and the organization Diabluma presented a lawsuit on the unconstitutional nature of the Law 108 (Law on Narcotic and Psychotropic Substances), that continued in force, the same that criminalized the sowing, cultivation, harvest, transport and possession of the

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TNI – "Indulto de Mulas en Ecuador". Disponible en: <http://www.druglawreform.info/es/component/flexicontent/item/319-indulto-de-mulas-en-ecuador>

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EL UNIVERSO, "Correa pedirá indulto para mulas del narcotráfico. Disponible en: <http://www.eluniverso.com/2007/12/22/0001/8/19541214074D4DD1AC8D68AF2EB764F7.html>

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<http://vaderetrorref.blogspot.com/2012/09/20080704-indulto-de-rafael-correa-las.html>

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ASAMBLEA NACIONAL, "Constitución" Disponible en: [http://www.asambleanacional.gov.ec/documentos/constitucion\\_de\\_bolsillo.pdf](http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf)

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PDFCAST, "Registro Oficial N° 19" Disponible en: <http://pdfcast.org/pdf/registro-oficial-sup2>

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ECUADOR CANNÁBICO, "Dosis máximas. Resolución del CONSEPN° 19" Disponible en: <http://ecuadorcannabico.blogspot.com/2013/06/dosis-maximas-resolucion-del-consep-y.html>

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ECUADOR CANNÁBICO, "La nueva tabla de dosis máxima es una referencia para los jueces" Disponible en: <http://ecuadorcannabico.blogspot.com/2013/06/la-nueva-tabla-para-consumo-de-drogas.html>

substances with psychoactive attributes, categorized as subject to audit.<sup>8</sup>

That same year, after 19 November, the Ombudsman of Ecuador organized the “First International Meeting for a Political and Legislative Alternative to the War against Drugs”, fundamental in the progressive thinking in favour of penal abolition, the same that would join forces to achieve progress in the construction of the COIP (Código Orgánico Integral Penal; Organic Comprehensive Penal Code).

In the frame of the creation of the COIP, several sectors of society, as well as appropriate technical institutions, were received by the Board of the Commission of Justice of the National Assembly headed by Mauro Andino<sup>9</sup>, finally the new code is approved in 2014, in which regarding substantial issues, there is progress in the Proportionality of punishments (Artículos 220, 222), the Decriminalization of the possession and the Quantities admissible for personal use and consumption (Artículos 219, 228), but the most controversial was the Decriminalization of the self-cultivation without commercial objectives (Artículo 222)<sup>10</sup>.

In a report with the title “Reforms and Contradictions in the drug policies of Ecuador”, the Defenders of Human Rights in the Americas (WOLA), say that “Issues such as the decriminalization of consumption, the decriminalization of self-cultivation, the proportionality of the punishments in relation to other crimes and the function of the role the division of labour has in drug trafficking, without any doubt will alleviate the pressure that exists in Ecuadorian prisons, and they will allow the release of thousands of persons unfairly convicted, and will allow the adequate penalization of citizens according to their level of responsibility in drug trafficking activities<sup>11</sup>.”

From this point onwards we can talk about a counter-reform<sup>12</sup> in the drug policy, strategy based on the mass media, factual “conservative” powers, democratic populism and models of implementation/imposition for Latin America.

On 5 September 2015, Rafael Correa Delgado, President, changes his opinion on drug policy, publically on the link 440, and says: “We will totally rectify this ill-fated table to have zero tolerance in the drugs that harm our children...”<sup>13</sup>. This decision was based on the mediation with his voters who, frightened by the mass media, expressed their concern about drugs in the dialogues arranged by the government in 2015<sup>14</sup>.

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ECUADOR CANNÁBICO, “Demanda de inconstitucionalidad a la ley 108” Disponible en: <http://ecuadorcannabico.blogspot.com/2013/08/demanda-de-inconstitucionalidad-la-ley.html>

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MAURO ANDINO, “Comisión de Justicia aprueba informe para segundo debate del COIP” Disponible en: <http://www.mauroandino.com/comision-de-justicia-aprueba-informe-para-segundo-debate-del-proyecto-de-codigo-organico-integral-penal/>

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ASAMBLEA NACIONAL, “Código Orgánico Integral Penal” Disponible en: <http://www.asambleanacional.gob.ec/es/system/files/document.pdf>

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WOLA, “Reformas y contradicciones en la política de drogas de Ecuador” Disponible en: [http://www.wola.org/sites/default/files/Drug%20Policy/Informe\\_debate%20de%20drogas\\_\\_FINAL\\_%20PARA%20PUBLICAR.pdf](http://www.wola.org/sites/default/files/Drug%20Policy/Informe_debate%20de%20drogas__FINAL_%20PARA%20PUBLICAR.pdf)

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PENSAMIENTO PENAL, “Jorge Paladines” Disponible en: <http://www.pensamientopenal.com.ar/autores/jorge-vicente-paladines>

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EL UNIVERSO, “El presidente anuncia reformas al COIP” Disponible en: <http://www.eluniverso.com/noticias/2015/09/05/nota/5105744/presidente-anuncia-reformas-codigo-penal-incrementar-sancion>

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ECUADOR INMEDIATO, “La Atención por drogas se incrementó 81% en un año” Disponible en: [http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news\\_user\\_view&id=2818787897](http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=2818787897)

With this reforms of the COIP were approved which, in the case of substances, meant the end of the rationalization with an increase and adding up of punishments, reduction of quantities, contradiction between tables of consumption and traffick, hence a new nebulous territory for possession, which has left a door open for the violation of the principle of innocence for the most vulnerables<sup>15</sup>, increasing the airs of the police sector that has not detained repression, intimidation, extortion and capture without the due process, even in the case of underaged persons<sup>16</sup>.

In 2016 the "Organic Law of Comprehensive Prevention of the Socio-economic phenomenon of Drugs and Control of the Use of Substances cataloged as subject to Audit"<sup>17</sup> enters in force y su reglamento<sup>18</sup>, the same that has left apart the self-cultivation as well as the decriminalization of possession and quantities admissible for personal use and consumption, in spite of these being their functions as provided for by the constitutional articles and the COIP.

All these setbacks have gone together with others that not necessarily have to do with substances, in other social and labour rights there have been setbacks as well, but even more worrying is the absolute contradiction with the initial discourse of the same regime and the same personality.

The cannabis organizations are considering other possibilities to explain what is happening. They do not discard that bigger powers, of imposition, such as the TLC, the transnationals of seeds, the pharmaceutical industry or even the oil industry are behind the implementation of a model that suits them, a model with which they do not lose markets, and which at the same time does not allow us to be free and chose, decide or even cultivate plants as noble as cannabis with their active medical ingredients.

At this moment contradictions exist between their proper policies when they were progressive to when they are prohibitionists, this leave us with a panorama of the same victims, and the same numbers, apart from the sensation that power only dialogues with power.

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TNI – "Duros contra los débiles, débiles contra los duros". Disponible en: <http://druglawreform.info/es/informacion-por-pais/america-latina/ecuador/item/6553-qduros-contra-los-debiles-y-debiles-contra-los-durosq>

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ECUADOR INMEDIATO, "4500 personas detenidas por microtráfico de drogas en establecimientos educativos" Disponible en: [http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news\\_user\\_view&id=2818788710](http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=2818788710)

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ASAMBLEA NACIONAL, "Ley Orgánica de Prevención Integral del Fenómeno Socio Económico de las Drogas y Control del Uso de Sustancias Catalogadas Sujetas a Fiscalización" Disponible en: <http://www.asambleanacional.gob.ec/es/multimedios-legislativos/38842-ley-organica-de-prevencion-integral-del>

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CONTROL SANITARIO, "Reglamento a la Ley Orgánica de Prevención Integral del Fenómeno Socio Económico de las Drogas y Control del Uso de Sustancias Catalogadas Sujetas a Fiscalización" Disponible en: <http://www.controlsanitario.gob.ec/wp-content/uploads/downloads/2016/05/Decreto-951-Reglamento-a-la-Ley-de-Drogas-Lexis.pdf>