



## The 'Iron Fist' of the Citizens' Revolution: The Punitive Turn of Ecuadorian Left-wing Politics

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### Abstract

The punitive turn in Ecuadorian left-wing politics embodies a fundamental contradiction. On the one hand it involved extending social rights and resisting neoliberalism. On the other hand, punitive criminal justice policies intensified. This paper explores what, how, when and why this occurred to explain the complexity of Ecuador's punitive turn under a period of twenty-first century socialism. Two eras of national policy will be compared. The first is known as the 'long neoliberal night' (the before); while the second is known as the 'Citizens' Revolution' (the present). The Citizens' Revolution replaced neoliberal policies with social development, infrastructure, services and programs alongside the more equitable distribution of wealth. In a first moment, it also deployed strategies and actions towards penal moderation. However, since 2010, it has changed dramatically, generating an astonishing punitive turn. The article concludes that law and order policies in Ecuador therefore do not fit Loïc Wacquant's (2013: 22) description of the 'neoliberal penal paradox'.

### Keywords

Incarceration rates; Ecuador; neoliberalism; punitive populism; socialism; democracy.

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### **Introduction: 'The Ecuadorian miracle'**

Despite being one of the first countries to return to the rule of law in 1979, Ecuador has not enjoyed a sustainable ending to any of its presidential periods in recent history. In 1981, the year that the rule of law was established, Jaime Roldós, the first civil president after several military governments, died in a mysterious plane crash. From 1984 to 1996, León Febres Cordero, Rodrigo Borja and Sixto Durán Ballén did conclude their administrations. However, from 1996 to 2006 there were three coups and ten presidents: Abdalá Bucaram, Rosalía Arteaga, Fabián Alarcón, Jamil Mahuad, Lucio Gutiérrez, Antonio Vargas, Carlos Solórzano, Gustavo Noboa, Alfredo Palacio, and finally, Rafael Correa.

The period was subsequently labelled the 'long neoliberal night' by the current government (Correa 2009: 37). Within this period there was a 'bank holiday' that caused hyperinflation and, more acutely, a severe economic crisis; the national currency, the Sucre, was converted into the American dollar; neoliberal law enforcement was designed by bankers; and there was an exodus of over three million Ecuadorians to countries like Spain and Italy. The constant schisms between voters has resulted in three constitutions in less than 29 years of democracy: the Constitution of 1979; the Constitution of the Republic of 1998; and, finally, the Constitution of the Republic of 2008, also often referred to as the 'Constitution of Montecristi'.

Rafael Correa's government reduced inequality, decreasing the Gini coefficient on income distribution (where 0 corresponds with perfect equality and 1 with perfect inequality) by 8 points (Correa 2014). From 2006 to 2013 poverty fell from 37.6 per cent to 25.6 per cent, while extreme poverty decreased to less than two digits, from 16.9 per cent to 8.6 per cent (Correa 2014). Additionally, vast educational, health, energy and road infrastructure improvements were undertaken by the political process known as the 'Citizens' Revolution'. The Citizens' Revolution's main platform was for State efficiency, meaning the return to a policy of constitutional administration. This policy had previously earned positive recognition for the government in addition to receiving international praise for economic development, which was coined 'the Ecuadorian miracle'.

Spreading social rights and the denial of neoliberalism are notoriously leftist political projects. In spite of this, contrasting punitive social control manifestations were also presented. Ecuador's politics at the time were complex and unique and did not fit Loïc Wacquant's (2013: 22) description of the 'neoliberal penal paradox', in which the *sine qua non* condition for increasing penalties is the State's impotence to confront neoliberalist economic advances. On the contrary, the Citizens' Revolution pleaded for a break with neoliberalism, to be replaced by infrastructure and services programs, not charity or through unpaid reemployment programs (workfare) in exchange for State income.

What, how, when, how much and why are some of the questions that will be addressed in this paper that seeks to describe and explain Ecuador's punitive turn. Two eras of national policy will be compared. The first is known as the 'long neoliberal night' (the before); while the second is known as the 'Citizens' Revolution' (the present). Additionally it is necessary to identify at least two phases during the Citizens' Revolution era, in which the attempted coup on 30 September 2010 by the National Police functioned as the defining line between the two.

### **Punishment during the 'long neoliberal night'**

The long neoliberal night is comprised of a period of (poor) governance between 1996 and 2006.<sup>3</sup> It is characterized by an economic crisis and concomitant political instability. The crisis and instability were accompanied by the implementation of neoliberalism, which reduced the position of the State due to significant external debt and a wave of privatization of public enterprises and services. The condition provoked State decapitalization, monetary devaluation, public debt and the submission to international financial capital, hyperinflation and alarmingly

high unemployment numbers, an exodus of its population to other countries, corruption, and a steady weakening of public institutions.

In 2000, during the boom that was favorable for the market economy, the national currency, the Sucre, was converted into the US dollar (equivalent to 25,000 Sucres). In the same year the European *scriptural-inquisitorial* procedural model was transformed into an Anglo-American *oral-accusatory* model. The promulgation of the new Code of Criminal Procedure<sup>4</sup> received over US\$1.5 million in funds as an initiative from the United States Agency for International Development (USAID) (Sarles 2001) and, in so doing, established itself as the emblem of judicial reform at the time. The changes in Ecuador coincided with a circuit of reforms that were implemented in other countries such as Guatemala (1994), Costa Rica (1998), El Salvador (1999), Paraguay (1999), Venezuela (1999) and Chile (2000).

The transfer of the new procedural theory penetrated the judicial structures underneath the system's concept. That is to say, it politically blamed the previous model for the administrative (dis)function (Schünemann 2002). In doing so, not only the American economic model was emulated but also its criminal procedural tradition (Langer 2008).<sup>5</sup> So, the reform began by securing the Official Investigation Model (Langer 2001) but, in less than a year, Ecuador had shielded its tax structure through the enactment of the *Organic Law of the Public Prosecutor's Office* in 2001. The Public Prosecutor's Office not only held a special position within the criminal justice system but also exerted influence on the media (Paladines 2009).

The penal reform was accompanied by a critical discourse on preventive detention. A year before its implementation, 69 per cent of the prison population had not been sentenced; that is, out of 8,520 detainees, only 2,507 had been convicted. After the reform, the first Assessment of the Criminal Procedural System in Ecuador (Fundación Esquel-USAID 2003) revealed that the percentage of detainees without a conviction increased by 7 per cent. This turnaround occurred despite the fact that, up until four years before the implementation of the criminal procedure reform, the incarceration rates had been on the decrease, down from 9,961 detainees in 1996 to 8,029 in 2000 (Table 1). The reform, however, checked the decrease. As will later be shown the incarceration rate varied between 64 and 104 per 100,000 inhabitants between 2002 and 2006. In other words, from the start of the reform, the trend in incarceration rates was upwards.

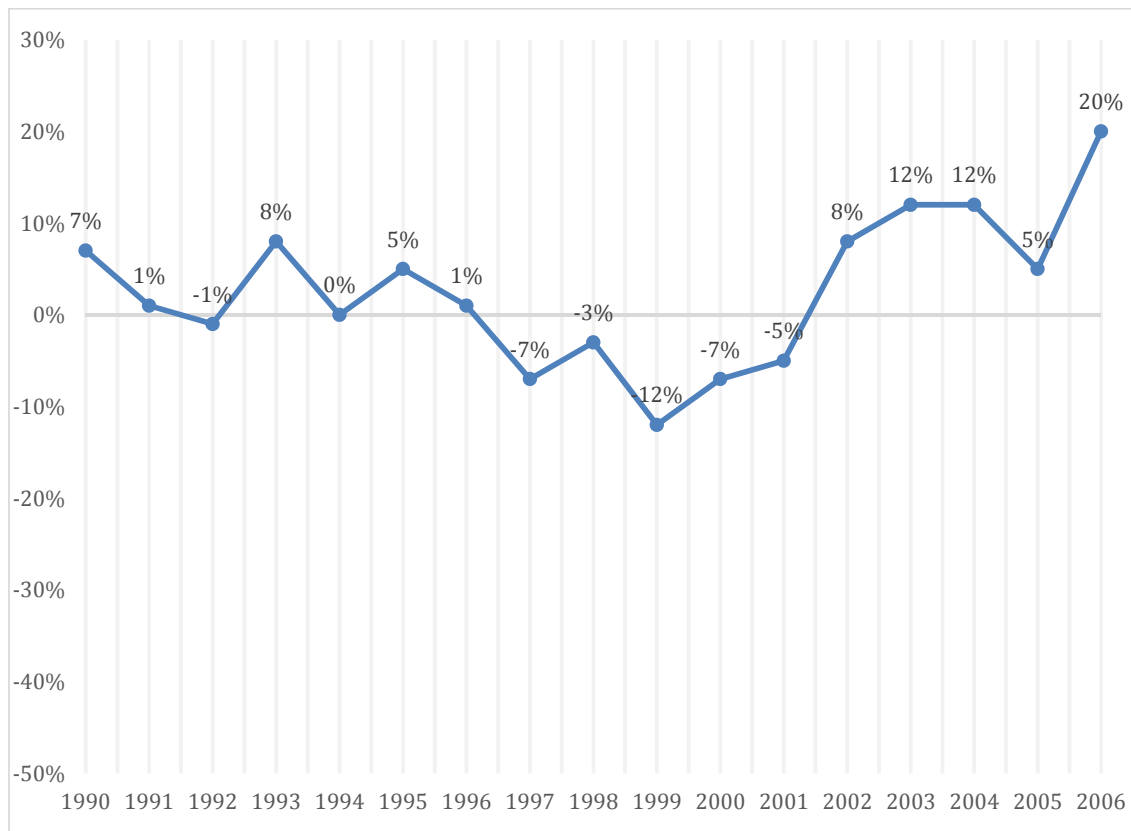
**Table 1: Prison population ten years before the 2000 criminal procedure reform**

Year	Sentenced	Percentage	Not sentenced	Percentage	Total detainees
1990	2275	29.63	5,404	70.37	7,679
1991	2373	30.10	5,511	69.90	7,884
1992	2473	30.96	5,525	69.17	7,998
1993	2845	32.25	6,000	67.75	8,856
1994	2745	30.29	6,319	69.72	9,064
1995	3225	33.43	6,451	66.57	9,646
1996	3078	31.86	6,883	71.36	9,961
1997	3094	30.94	6,412	67.46	9,506
1998	2405	26.56	6,650	73.44	9,439
1999	2507	30.60	5,688	69.40	8,520
2000	2946	36.70	5,083	63.31	8,029

Source: Dirección Nacional de Rehabilitación Social (DNRS) (2010)

Meanwhile, the Penal Code of 1938 had remained almost unchanged, thus preserving classic 'social defense' offenses that criminalized begging, vagrancy and homosexuality. However, one year after the enactment of the criminal procedure reform in 2001, punishments were increased for certain crimes. Law No. 2001-47, for example, increased the maximum penalty, which, since the Liberal Revolution in 1895 when the death penalty was abolished, had remained at a maximum of sixteen years for homicide (Raub 1986). The new punishment scale increased the maximum penalty to 25 years, to be accumulated up to 35 years of imprisonment.<sup>6</sup> Then in 2005, along with the penalty increase for murder, penalties hardened for rape cases,<sup>7</sup> crimes that fell under the Law on Narcotic and Psychotropic Substances (Act 108), and others, such as aggravated robbery resulting in death.

Moreover, the long neoliberal night between 2000 and 2006 hardened preventative detention measures (see Figure 1). On 13 January 2003 an exception was established in the chapter in which the most severe precautionary measure was established. Through the so-called 'firm detention measure' an amendment was made to Law 2003-101 which established that provisional arrest could be extended indefinitely. The amendment violated the Constitution of 1998, which, under paragraph 8 of Article 24, outlawed preventative imprisonment of more than six months and, in extreme cases, one year. Some months earlier, the media had insinuated that the use of this reasonable period resulted in the release of 'criminals';<sup>8</sup> removing the procedural statute that violated the constitution therefore became difficult. Three years elapsed before the Constitutional Court declared Law 2003-101 – a law that allowed for arrests without a reasonable detention timeframe and for arrests without even being firmly condemned<sup>9</sup> – to be unconstitutional. Its resolution, however, had no retroactive effects.



**Figure 1: Movement (per cent) in persons incarcerated in Ecuador, 1990-2006**

Source: Carranza (2012)

### **Punishment during the 'Citizens' Revolution'**

For years, oil companies, international cooperation, traditional parties, financial groups and interference from other nations had had their impact on the Ecuadorian economy. A young 'outsider' economist, Rafael Correa Delgado, broke through with a new discourse that promised to 'restore hope amongst Ecuadorians'. Under his leadership the Citizens' Revolution, which proposed State recovery through a new institutional framework aimed at (de)corporatization, was born. When Delgado became president of the republic in 2006, he formed a Constituent Assembly in the city of Montecristi. On 20 October 2008 Ecuador released a new constitution that inaugurated 'Good Living' or *Sumak Kawsay* as a social pact, recognizing norms and policies for groups that had historically been vulnerable, among which were persons deprived of their liberty.<sup>10</sup> Within this context the Citizen's Revolution's criminal policy was developed, which later came to be differentiated as passing through two opposing phases. Firstly, during the first three years of government (2007-2009), there was the so-called 'State Guarantee' phase, characterized by the deepening of the constitutional State with regard to rights and justice. Secondly, from 2010 onwards, there was the so-called 'Police State' which was characterized by penalty inflation. The structures and agencies that were emphasized in criminal policy in each phase will be described here. They differed to the point that a contradiction deepened, which revealed the punitive turn of the left-wing in the Ecuadorian government.

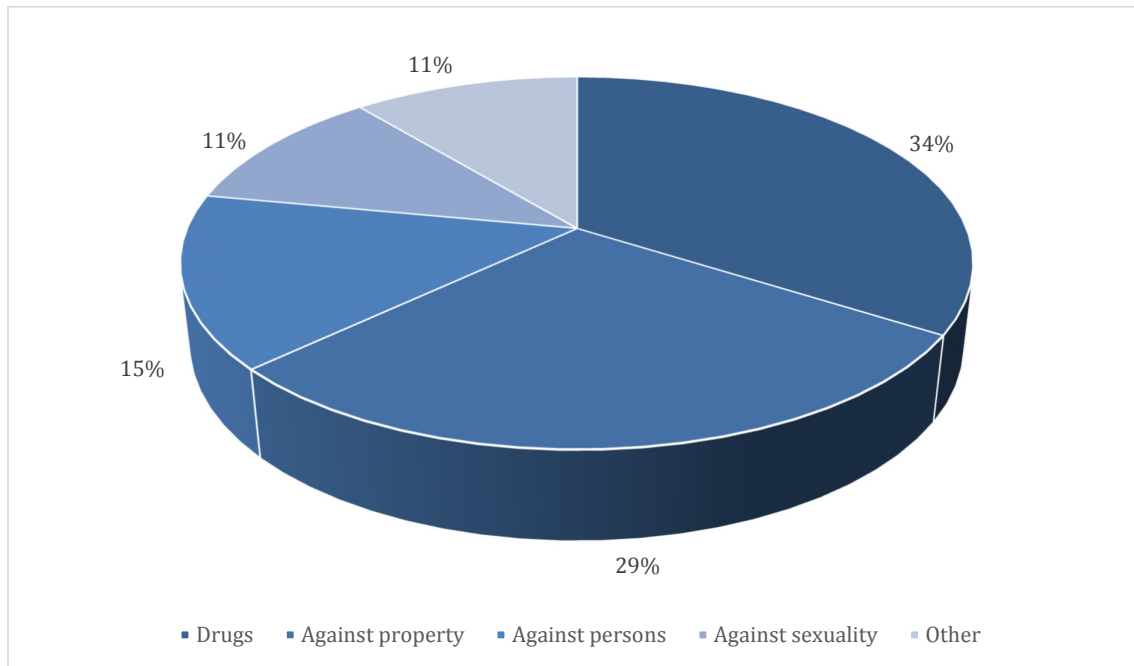
#### ***The first phase: State Guarantees***

In an attempt to generate institutional renewal from scratch, the elections in 2006 led to the presidency of Rafael Correa without any pro-government deputies.<sup>11</sup> The intention was to provoke political separation from the 'old power' in order to introduce a new chapter. It began with the convocation of a Constituent Assembly in 2007 in order to achieve the de-legitimization of the traditional political parties. In the constitutional debate, the young government proposed granting a general pardon to so-called 'drug-mules'. On 4 July 2008 – coinciding with Independence Day in the United States – the Constituent Assembly suspended the punishments of prisoners who had carried up to 2,000 grams of any illegal drug.<sup>12</sup> The pardon resulted in the release of 2,223 individuals, of which less than 2 per cent relapsed (Defensoría Pública del Ecuador [Public Defender's Office] 2010). The ruling mainly benefited detained women, where the majority of those in prison had been sentenced for this type of crime.<sup>13</sup> Rafael Correa therefore pointed out:

We will request a general pardon from the Constituent Assembly for drug mules, men and women, and the drug law will also be revised, there where it has no relation to crime ... The Law [108] was adopted in the early nineties after the United States imposed it on all Latin American countries, and here as always our legislators, our leaders took it with enthusiasm. (El Universo 2007)<sup>14</sup>

The initiative questioned criminal drug policy by showing that much of the penal system is aimed at investigating and punishing the weakest links, with serious suspicions that a significant number of detainees could be mere consumers (Paladines 2014a). In 2009, for example, one year after the implementation of the general pardon, more than 34 per cent of the prison population in Ecuador had been arrested for drug related offenses (Figure 2). Drug offenses were accountable for the largest incarceration component.

But criminal policy began to provoke by focusing on one of the most aberrant phenomena within the punitive discourse. Specifically, the Constituent Assembly adopted the constitutional principle that prohibited the criminalization of drug users. In other words, what in other countries was defined in jurisprudence or public policy, in Ecuador became established under Article 364 of the new Constitution, which stated:



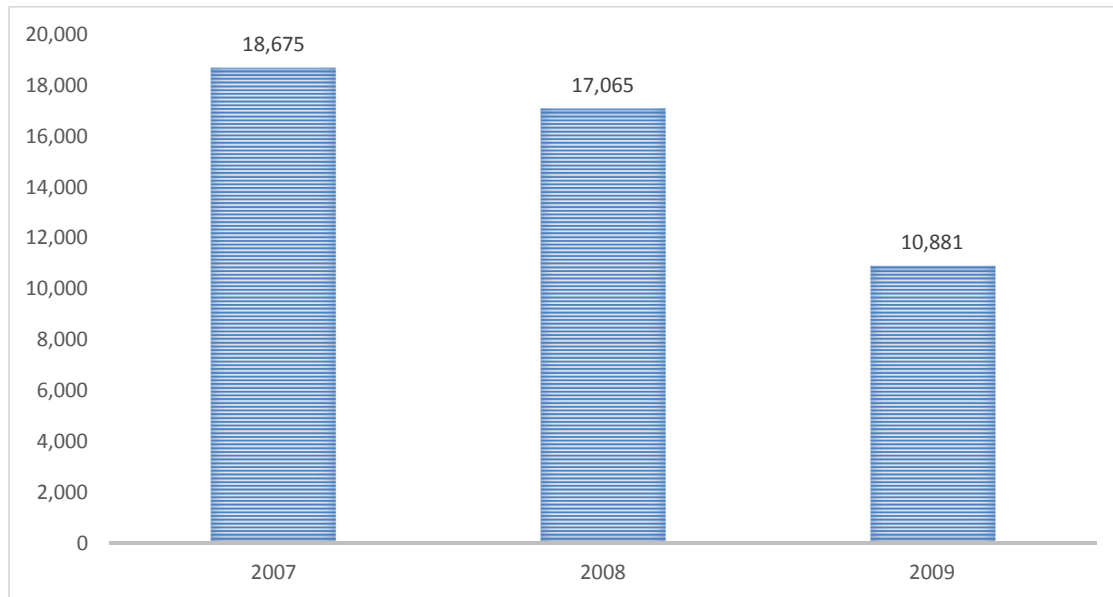
**Figure 2: Prison population per type of offense in Ecuador, 2009**

Source: Sistema de Gestión de la Defensa Pública (SGDP) (2009)

Addiction is a public health issue. The State shall be responsible for the development of coordinated programs that aim to inform, prevent and control the use of alcohol, narcotic and psychotropic substances; as well as offer treatment and rehabilitation for occasional, regular and problem users. *In no case should they be criminalized nor should their constitutional rights be violated* [emphasis added].

By promoting Guarantee institutions,<sup>15</sup> the new constitution created an innovative articulation of the role between State and society. In November 2007 the Ministry of Justice and Human Rights was created to manage and develop penitentiary policy which historically had fallen under the responsibilities of the Home Office.<sup>16</sup> Additionally, to fill the institutional vacuum, the Ecuadorian Public Defense Office was created in August 2007 and obtained recognition and constitutional autonomy in 2008. From 2008 to 2014, the Ecuadorian Public Defense Office increased its number of staff to 767 Public Defenders nationwide (Defensoría Pública del Ecuador [Public Defender's Office] 2014).

Soon the general pardon, the construction of Guarantee institutions, the policies and the legal reforms began to have an effect by reducing incarceration rates. Added to this was the expiration of preventative detention for thousands of detainees who had not been convicted, in addition to the implementation of 'prison benefits' such as pre-liberties and sentence reduction. The State Guarantee reduced the prison population by more than 40 per cent, from a rate of 130 (in 2007) to 73 (in 2009) detainees per 100,000 inhabitants. Thus, the imprisonment trend diminished in absolute numbers from 18,675 detainees to 10,881 (see Figure 3). The State recovery and criticism of the neoliberal model began to make sense, as demonstrated in lower levels of punitivism.



**Figure 3: Number of persons incarcerated in Ecuador, 2007-2009**

Source: Ministerio de Justicia, Derechos Humanos y Cultos [Ministry of Justice, Human Rights and Affairs] (2013b)

For the first time the State Guarantee set a precedent by remembering the crimes committed against humanity, especially during the presidential term of León Febres Cordero (1984-1988). These developments are in line with Samuel Huntington's (2000) 'third wave of democratization'; that is, the transition that devolves upon new rulers when expressing judgment about the human rights violations of their predecessors. The Doctrine of National Security was implemented in Latin America to combat communism at the start of the 1960s, and Ecuador experienced a spectacular resurgence in forms of State violence between 1984 and 1988. Thus, during Rafael Correa's first term of government, a Truth Commission was formed to investigate crimes against humanity committed during that period.<sup>17</sup> The report inferred a high level of involvement – nearly 50 per cent – of both passive and active personnel within the law enforcement agency. The commission therefore stated:

The main conclusion that can be drawn from the presented results is that it has become evident that these State actors chose to move away from the legal system and instrumented perverse forms of violence in an intent to take the application of the law into their own hands, in an inadmissible misunderstanding that violence is a resource of justice. In most cases, they did so under the State policy applied under León Febres Cordero's government which encouraged and supported repressive systematic solutions to deal with issues of social unrest; in others, over the course of various governments through sporadic actions – in expressions of autonomy that are presumed to have respect for the legal order – members of the Police and the Armed Forces equally violated citizens' rights and the protection of human rights. (Comisión de la Verdad [Truth Commission] 2010: 121)

The State Guarantee revised criminal law in March 2009.<sup>18</sup> The National Assembly advocated for a reform that reduced penalties for crimes against property as well as introducing preventive detention.<sup>19</sup> Additionally, a new criminal policy program was devised under the Constitution of Montecristi's 'criminal law program', which converted theft into a violation if the total financial amount was less than the equivalent of three months of basic pay according to workers' rights. Furthermore, twelve personal precautionary measures were established in relation to preventative detention in order to prevent judicial abuse; and the crime of 'check writing without

the provision of funds' was decriminalized and established instead as a classic type of crime which transgressed the Constitutional 'no imprisonment for debt' principle (Paladines 2010).

The reform, which was published in the Official Register 555 of 24 March 2009, brought about other issues. These included, amongst others, new organic principles and procedural safeguards such as minimal intervention and due process; the reconfiguration of the competences of procedural participants; the change from the nomenclature of judges and the criminal court to judge' and criminal court' guarantees, as well as from accused to indicted; and the change from public action to private action against certain crimes. The State Guarantees culminated the year of 2009 with the publication of the Preliminary Organic Code of Criminal Guarantees (OCCG). In addition to reducing punishment, the OCCG managed to establish an impressive bridge between substantive, adjectival and executive criminal laws. Guided by the minimum criminal law trend, it gathered together more than 730 criminal laws and formulated them in the national law. The draft legitimized the governance of academic, social and political spaces to renew orthodox punishment from a Garantist paradigm and from a legitimate base.

### ***The second phase: The Police State***

The second phase is marked by events that emerged from the attempted coup of 30 September 2010. The scenario – according to official sources – was initiated by a general police riot and the alleged kidnapping of the president from a hospital for possible assassination. It is still not clear who the instigators were, despite dozens of ongoing criminal proceedings.<sup>20</sup> Whereas previously it was the armed forces that had overthrown democratic governments, this time, 31 years after the restoration of the rule of law in Ecuador, it was the nation's police that generated a conjuncture with similar effects.<sup>21</sup>

Months before, the media and politicians of the opposition had entered into a full-blown campaign against the 2009 legislative reform. The government was accused of encouraging crime and promoting impunity, which was accompanied by press releases that exacerbated occurrences of robberies and homicides.<sup>22</sup> The criticism of the reduction of punishments in relation to crimes against property, as well as preventative detention alternatives, was echoed by some authorities that were aligned to the government. These authorities generally questioned the maturity of the reform, as stressed, for example, by the then Attorney General, Washington Pesantez,<sup>23</sup> who claimed to be close to the president.

While differing positions were presented within the government in relation to punishment, the citizenry – especially the middle class – found itself in a punitive discourse generated by the media, which began to assume a level of social significance (Garland 2006). It appeared that the middle class, in addition to having expanded, began to share the moral panic of the upper class. Patterns similar to the responses to the 2009 reform began to appear: the political project of the Citizen's Revolution was threatened because it distorted the wealth distribution benefits, rewarding criminals; the middle class began to share the selfishness of the upper classes in relation to the ownership of private property instead of adopting humane and compassionate values; and it seemed that victimization was more likely to occur in their class than before (Garland 2007).

The National Assembly, stimulated by the Executive, retracted from the 2009 reform a year after its execution. After its publication in the Official Register 160 of 29 March 2010, the counter reform proposed: i) a modification to consider theft a misdemeanour irrespective of the amount; ii) establishment of a count and a register of all prosecuted prisoners in order to exempt the preventative detention fiscal petition; and iii) a penalty increase for murder if committed against members of the Army or Police. The discrediting of the 2009 legislative reform tied the conflict to the new constitution. It was the president of the Republic who argued that the Constitution of Montecristi had surpassed its own Garantist standards, and therefore approached a state of



'hypergarantism'.<sup>24</sup> The criticism led Rafael Correa to call for a referendum to reduce some of the guarantees, including the principle that established preventive detention as a 'last resort'. The tirade did not focus on the abuse of preventive detention but rather the abuse of alternative measures, which made it necessary for the government to reform the judicial function. It is in this 2011 context that, after holding the portfolio of justice, Dr José Serrano Salgado arrived at the Home Office. This was the man who would later incarnate the 'Iron Fist' against insecurity and crime within the government.<sup>25</sup>

On 7 May 2011 the referendum took place. Among other constitutional amendments, it enabled the establishment of a Transitional Judicial Council of (TJC). The TJC was established for eighteen months under the presidential motto that it was necessary to 'reach into the courts'.<sup>26</sup> The council was composed of members appointed by the executive, the legislative, and the Transparency and Social Control power. Its jurisdiction also constituted of the reorganization of the judiciary, both with regard to infrastructure and the bureaucracy. Among the missions that stood out was the more expeditious acting of criminal justice through at least two central policies: a) the elimination of failed hearings; and b) the creation of 'Interinstitutional *Flagrante Delicto* Units' (Flagrancy Units) to avoid impunity.

So, as with the Permanent Justice Units of Colombia, a new procedural management model for *in flagrante delicto* crime detention management was implemented in Ecuador on 29 October 2012. The main characteristics of the Flagrancy Units were the reconfiguration of the role of the institutions responsible for detention management to start with the communication between the police agencies and other Judicial agencies,<sup>27</sup> and new litigation protocols – 'management models' – by way of a new judicial culture that was prone to the use of special procedures (Paladines 2013). The TJC held:

The main objective of this project [Interinstitutional *Flagrante Delicto* Units] is to multiply the number of cases that go to trial and respond to the citizens' clamor to reduce impunity and contribute to improve security. (Comisión de la Verdad [Truth Commission] 2013: 185)

The rapid increase of the incarceration rate, became even further engrained due to the establishment of the Flagrancy Units and the Iron Fist of the Home Office to combat crime. At the same time the efficiency of the police force was taken for granted. In less than four years, the incarceration rate per 100,000 inhabitants increased from 73 (in 2010) to 165 (in 2014), an increase of over 120 per cent. In absolute numbers this meant that, in 2014, there were 13,155 prisoners more than in 2010 (see Figure 4), a peak that was even greater than the one experienced during the rise of the long neoliberal night between 2000 and 2006. In fact, the number of registered prisoners in 2014 was an all-time record for the Ecuadorian republic.

The increase in the incarceration rate also coincided with a reduction in the homicide rate. According to the Ministries of Interior and Security, the reduction reached plausible levels, decreasing from 18.88 (2008), 18.74 (2009) 17.57 (2010), 15.36 (2011), 12.40 (2012) and 10.87 (2013) to 8.30 (2014) per 100,000 inhabitants (Coordinator of the Ministry of Security, CEASI Statistics 2014).<sup>28</sup> This reduction did not seek to justify the increase in the prison population, given that most prisoners are not detained for murder cases. However, Interior Minister José Serrano did attribute the reduction in homicides to police procedures, especially in the field of counter-narcotics:



**Figure 4: Number of registered prisoners in Ecuador, 2010-2014**

Source: Ministry of Justice, Human Rights and Affairs

On an international level it is the general rule that the more drug seizures there are the more crime continues, here in Ecuador we are breaking that rule because since increasing the number of drug seizures, fewer murders have occurred. (Ministerio del Interior [Home Office] 2015)<sup>29</sup>

The phase of the Police State has been characterized by the modernization of prisons. The Justice portfolio responded to the growth of the prison sector by adopting a costly and challenging policy in line with the Republican administrations of the United States (Wacquant 2010). This was essentially through the construction of three major regional detention centers at Guayaquil (Guayas), Latacunga (Cotopaxi) and Turi (Azuay), with a total cost of US\$370 million. These prisons had the capacity to accommodate around 40,000 prisoners and were aimed at averting possible overcrowding by increasing the quotas and prison spaces.<sup>30</sup> Several rumors were circulating about the new prison infrastructure. The truth is that detainees were not allowed to wear normal clothing (Wacquant 2013); additionally a cafeteria was provided in an attempt to avoid the use of money and illegal access to goods.

In the same vein, the justice portfolio created a new security level of liberty deprivation – coined the ‘special maximum security’ – in order to regulate life within Ecuadorian prisons. The justice portfolio was able to implement the new level through the enactment of the Ecuadorian Penitentiary Management Model in May 2013 which covered topics that had previously not been included in Article 694 of the Integral Organic Criminal Code (IOCC). As a consequence, prisoners held in these special maximum security wings faced even more restrictions than those with maximum, medium and minimum security. Table 2 provides an outline of a typical daily activity schedule.

**Table 2: Activities schedule, Monday to Friday, in Ecuador's special maximum security wings**

<i>Time</i>	<i>Activity</i>
06:00	Lights turned on. Stretching exercises in the bedrooms.
06:30	Personal hygiene and cleaning of the bedrooms.
07:00	Attendance list is passed around in the bedrooms. In case an absence is noted the established protocol is put into action.
08:00	Breakfast is served in the bedrooms. The prisoners hand in their dishes and/or utensils.
09:00	Start of activities organized by the Treatment and Education team. Only those individuals can leave their bedroom that have a specific treatment activity, for the time that this activity takes up. When the activity is completed the prisoner returns to their bedroom.
12:00	Lunch is served in the bedroom. The prisoners hand in their dishes and/or utensils.
14:00	Start of activities organized by the Treatment and Education team. Only those individuals can leave their bedroom that have a specific treatment activity, for the time that this activity takes up. When the activity is completed the prisoner returns to their bedroom.
17:00	Bedrooms are closed for personal hygiene.
18:00	A light meal is served in the bedrooms. The prisoners hand in their dishes and/or utensils.
18:30	Attendance list is passed around in the bedrooms. In case an absence is noted the established protocol is put into action.
19:00	Stretching exercises in the bedrooms and personal hygiene.
21:00	Lights turned off.

Source: Ministerio de Justicia, Derechos Humanos y Cultos [Ministry of Justice, Human Rights and Affairs] (2013a)

The normative penal device of the State Police at the time was the Integral Organic Penal Code (Código Orgánico Integral Penal or COIP),<sup>31</sup> which was based on a preliminary draft prepared in 2009 but with a more punitive twist. It brought together 270 crimes and over a 100 traffic violations within a climate of punitive hardening (see Table 3). In addition, it legitimized undercover investigations in Article 640 which established the so-called 'direct proceedings'. These proceedings established a 10-day timeframe to trial and the possible sentencing of individuals for committing flagrancy cases to a maximum punishment of five years' imprisonment. The COIP came into force on 10 August 2014, the date that the First Cry of Independence is celebrated in Ecuador. The COIP became the penal symbol of the Citizens' Revolution because it promised an Iron Fist against offenders by increasing the maximum cumulative sentence to 40 years in prison.

**Table 3: Comparison of sentence enforcement between new and old criminal laws**

<i>Penal Code</i>	<i>Integral Organic Penal Code</i>
ROBBERY 1-5 years prison (Article 551)	ROBBERY 5-7 years deprivation of liberty (Article 189)
FRAUD 1 -5 years prison (Article 560)	FRAUD 5-7 years deprivation of liberty (Article 187)
SEXUAL ASSAULT 6 months to 2 years prison (Article 511A)	SEXUAL ASSAULT 1-3 years deprivation of liberty (Article 166)
MURDER 16-25 years imprisonment (Article 450)	ASSASSINATION 22-26 years deprivation of liberty (Article 143)

Source: Ministerio de Justicia, Derechos Humanos y Cultos [Ministry of Justice, Human Rights and Affairs] (2014)

However, a contradiction was presented.<sup>32</sup> The chapter that discussed one of the few penal reductions – but with a symbolic effect on international and domestic policy – was dismantled. The COIP had significantly reduced the sentences for drug-related crimes by establishing four scales in Article 220 which broke with the rigid punitivism of Law 108, for which the penalty historically had been 12-16 years in prison. New penalties were established: 2-6 months for trafficking on a minimum scale; 1-3 years for medium-scale trafficking; 5-7 years for trafficking on a high scale; and 10-13 years for trafficking on a large scale. Each scale had a threshold based on the type of illicit drug in relation to the weight in grams, in order to prevent the criminal justice system from applying disproportionate punishments without differentiating between the types of trafficking in which the offender was involved. This reform allowed 2,148 prisoners who had been convicted for drug-related crimes to regain their freedom, by virtue of the application of the lenity principle (Defensoría Pública del Ecuador [Public Defenders Office] 2015).

A year after the COIP had come into effect, President Rafael Correa regretted reducing the sentences for drug related crimes, which broke with the consistency generated from the six major steps that positioned the Ecuadorian policy as ‘counter-hegemonic’. These steps were: the clemency for ‘drug mules’; the prohibition of the criminalization of drug consumers under Article 364 of the new Constitution; the refusal to renew the Advanced Operations Centre of the United States in Manta; the removal of tariff privileges (ATPDEA) in the US to maintain the ‘war on drugs’ in Ecuador; the construction of thresholds (tables) to decriminalize drug consumption in a factual manner; and sentence reduction for small scale traffickers under the COIP. But the president's message was different this time:

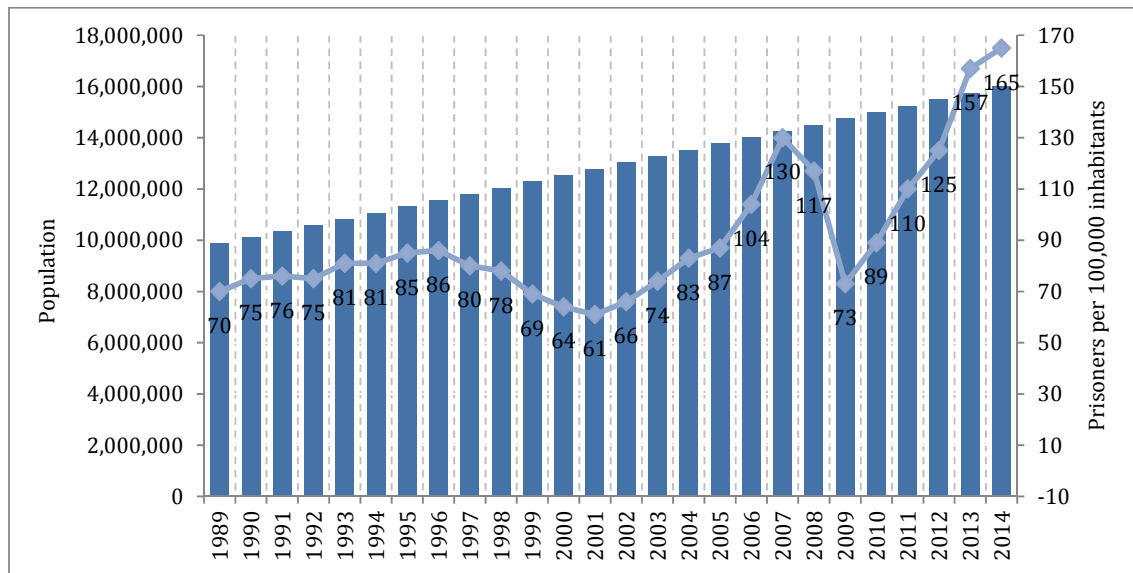
Do we want to stop drug use amongst our youth? Then it will be necessary to imprison the micro-traffickers ... I have demanded that there will be harsher sanctions for micro-traffickers ... I have asked for the [sentencing] threshold to become much more strict in cases that involve H [heroin], which is destroying our youth, and that the minimal dose becomes zero. And even beyond the issues of doses, [the offender] should go to jail for more than a year and there should be preventative detention, so that these people won't return to the streets and poison our youth ... We will fully rectify this bad and mistaken threshold [of trafficking], so that we can have a ‘zero tolerance’ policy when it comes to heroin. (*El Comercio* 2015)

The counter-reform increased punishments for drug offenses and reversed the path set by the government to respond to the prohibitionist paradigm on drugs with more proportionate measures. The strategy once again became 'act strong against the weak and weak against the strong' (Paladines 2015; Samper 2015). The government thereby restored the supposed order in 'urban pathologies' that point to the consumption of drugs as the central social issue (Wacquant 2013). The punitive increase in relation to drugs also implied a policy awareness of families suffering from the drug addictions of their children, even though there is no solid evidence to link these issues with the reform that reduced the punishments at the time (Paladines 2015).

**Conclusion: 'There are no miracles'**

The transformation in Ecuador has been attributed to the Citizens' Revolution by virtue of new economic and political strategies that attempted to make capitalism a more inclusive system. In this regard, Ecuador did not initially present the economic and political conditions that Wacquant, among others, requires to generate a punitive turn in criminal justice policy... During the first phase of the Citizens' Revolution punitivism was substantially reduced due to the construction of a political space in which guarantee institutions prevailed. In the second phase this approach was dismantled. The punitive turn of Ecuadorian left-wing politics embodies a fundamental contradiction. On the one hand it involved extending social rights and resisting neoliberalism, and on the other intensifying punitive criminal justice policies, which led to the increase in the prison population from 2010.

Hence, two opposing directions presented themselves in the punitive behaviour of the Citizens' Revolution. This political division in the approach to crime control post-2009 can also be observed in the annual statistics for incarceration rates per 100,000 inhabitants. The growth curve reveals an alarming increase towards punitiveness from 2010 onward (see Figure 5). This means that, although there had been punitive increases before 2009, it is only from 2010 onward that the curve shows a break with former patterns.



**Figure 5: Incarceration rate per 100,000 inhabitants in Ecuador and the punitive turn of the Citizen's Revolution**

Source: Dirección Nacional de Rehabilitación Social (DNRS) (2001)

Which events or scenarios could generate this distinctive division? The answer alludes to the attempted coup on 30 September 2010 that endangered the democratic stability of the country.

The Citizens' Revolution had changed course. From this time on the punitive turn begins to take shape due to the aspirations of Ecuadorian left-wing elements who had seemingly been ignored by the government.

This interpretation of events leaves us with many questions. Was the Iron Fist a deliberate strategy of the Citizens' Revolution or was it a response to an insecurity crisis without clear objectives? Were economic analysts not concerned with the construction of a punitive agenda and left it to its own device? Did the modernization of the state increase the performance or delays of the prison system? Is it smart to maintain Iron Fist policies for the next elections (to win votes)? The State repression is independent of the economic model so do approaches to punitivism influence the economy? Is the punitive increase a moral punishment for the citizens who did not adopt Citizens' Revolution values? Is punitivism corporatized by the agencies that resist change? Did Ecuador never leave neoliberalism to begin with or did it return to it by means of the punitive shift? In an effort to promote further discussions, and by way of conclusion, I will try to answer each of these questions.

If the quality of democracy is measured by the ability of the State to provide public safety, then policy responds to the population's need to feel more secure. The adoption of more repressive methods is often characterized as the best way to achieve this. Therefore, any action that finds the subjective public safety of its inhabitants in increased incarceration rates is deliberate. Hence, the increase of crime poses a threat to a government's stability and creates a space in which Iron Fist policies become more popular, both among the rich and the poor.

The government of Rafael Correa is characterized by the formation of an efficient team of economists who had no presence in criminal policy decisions. There was therefore no deep ideological connection about the role of institutions of punishment in the Citizens' Revolution, which suggests that there was no coherent anti-neoliberal discourse in both the judicial reform and the Public Safety Program.

The Citizens' Revolution focused on State recovery in its political program. This was carried out by the modernization of penal institutions through costly infrastructure for courts and by the introduction of Flagrancy Units. Accordingly, penitentiary modernization had never been as visible as during two governmental terms. The first was that of the ultraconservative Gabriel García Moreno (1859-1875); and the second that of President Rafael Correa Delgado (2007 to present). Instead of reflecting upon the potential effect of having more prisons, construction was boosted to levels that had never been seen before. This occurred as part of the baroque politics at the time (Echeverría 1998: 48), meaning politics operated under the belief system that punishment will 'continue to be good'. The maintenance and upgrading of the prison infrastructure responds to a medieval political pathology to isolate the 'bad' from the 'good'. Thus the request for a general amnesty of prisoners, after the visit of Pope Francisco to Ecuador, was not accepted by the government, even though they had been granted during the pope's visits to Bolivia and Cuba.

The government of Rafael Correa has also been characterized by decision-making through opinion polls, a political marketing tool that had generated him electoral gain. However, passing all policies through opinion polls can also mortgage any idea for change. It is possible that the phase of punitive increase that passed through Ecuador found support in the culture of punishment of its inhabitants, who in the end register their sense of (in)security to reward or punish with their votes. In other words, any Iron Fist decision is believed to be supported in the electorate. However, there is no correlation between punitivity and providing a sense of security to society as revealed in the polls and (lack of) loyalty of the electorate to a political party. The recent sectional elections of February 2014 showed that governments – even with a large penal apparatus aimed at providing public safety and decreasing homicide rates – can still lose, as

happened with the electoral defeat in many districts including the capital of the republic and the country's largest city, Guayaquil.

Punitivism is not a phenomenon that can simply be explained by economic variables. Even though the Citizen's Revolution was expressed through strong programs that reduced the levels of inequality and poverty, the fact that there were 'less poor' did not generate patterns of decarceration. On the contrary, with an interesting socio-economic program that aimed to reduce poverty and inequality, the Citizen's Revolution also generated increasing incarceration rates at a level that had never been seen before. It could be argued that penal institutions thus fulfilled an efficient role in avoiding impunity. However, the number of incarcerated individuals can not necessarily be explained by this logic, but rather by the possible dysfunction of penal institutions that do not stop, but rather increase, selective imprisonment. This could be clarified by the following simple metaphor: the best hospital is not the one that cures most patients but, rather, the one that prevents more diseases.

One of the latent dilemmas of this work – which, for the time being, does not allow any claims to be made – is to know whether improvement in the conditions of the lives of Ecuadorians has created a zero tolerance climate in relation to crime. The very term 'crime' is related to the social imaginaries which are also portrayed daily through media sources, in which crimes against property are highlighted more than other types of crimes. So, because of the growth of the middle class, it now represents a greater purchasing power as a proportion of society. Therefore the idea of 'the good life' becomes more distant from the notion of solidarity which is related to socialism; rather, it presents as a way to defend private property at any cost and to punish those who seek to snatch their unbridled capitalism.

Proposals to reduce punitivism were met with differing positions within the same government. This suggests that criminal policy is a battlefield when attempting to defuse the punitive climate. The agency that stands out within the Iron Fist political climate is the Police. That also allows us to observe its corporate character; that is to say, the defense of their interests in the field of citizen security after 30 September 2010 in which the logic to arrest was confirmed by the logic to sentence. This is where the government possibly did not sufficiently consider recognised concepts in order to refocus criminal policy, especially after having given the security management to a ministry that was responsible for functions of the same agency. In addition, it does not seem that there has been an exhaustive police reform in Ecuador; for example, there have been only a few reforms in relation to police personnel.<sup>33</sup>

Finally, the binary code neoliberalism/socialism of the twenty-first century reflects a break with the past. If, on the one hand, socialism in the twenty-first century is a leap towards a more inclusive society, then the ongoing increase in the incarceration rate creates the notion that there are still individuals that are excluded. However, on the other hand, the Citizens' Revolution's punitive discourse reveals a code of inclusion/exclusion, sparking suspicions that neoliberalism might not be completely something of the past.

Five years after 30 September 2010, the international price of a barrel of oil plummeted.<sup>34</sup> In order to deal with the crisis the government began to look to the International Monetary Fund to apply for credit. This created room for the classic neoliberal recipes, such as the privatization of profitable public enterprises and the elimination of State subsidies.<sup>35</sup> Despite the downturn and the crisis, the Citizens' Revolution maintained that the distribution of wealth continued to improve, even though it had created the need to govern the poor by way of punishment (Wacquant 2013). Thus the most important characteristic of neoliberalism, where the police and penitentiary remain the only institutions that will never be dismantled (Escalante 2015), persists in Ecuador.

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- <sup>1</sup> I appreciate the selfless help of Max Paredes for the development of the quantitative information as well as the patient and substantiated observations from Máximo Sozzo.
- <sup>2</sup> This article was originally published in Spanish (available at [http://biblioteca.clacso.edu.ar/clacso/gt/20160404115404/Postneoliberalismo\\_penalidad.pdf](http://biblioteca.clacso.edu.ar/clacso/gt/20160404115404/Postneoliberalismo_penalidad.pdf)) and was translated for this special issue.
- <sup>3</sup> In 1996, during the administration of President Sixto Durán Ballén, a neoliberal model was implemented that was characterized by the adoption of the famous State Modernization laws, better known as 'Trolley 1' and 'Trolley 2'.
- <sup>4</sup> The new Code of Criminal Procedure came into force in January 2000.
- <sup>5</sup> As a symbol of good relations with the United States, its embassy in Quito gave their traditional building located on 'Av. Patria y 12 de Octubre' to the Attorney General of Ecuador, during Washington Pesantez presidential term.
- <sup>6</sup> Art. 2 [Law No. 2001-47]. Replaced Article 53 [Criminal Code], by the following: 'Art. 53. The long-term imprisonments, which are carried out in the State Social Rehabilitation Centers, are divided into: a) ordinary, 4-8 years and 8-12 years; b) extraordinary, 12-16 years; and c) special, from 16-25 years [emphasis added]'.
- <sup>7</sup> Amendment to Article 513 of the Penal Code published in the Official Register No. 45 of 23 June 2005.
- <sup>8</sup> The pressure of the media has conditioned much of the legislative work, both in the long neoliberal night and the Citizens' Revolution (see Paladines 2008).
- <sup>9</sup> Resolution No. 002-2005-TC published in the Supplement of the Official Register No. 382 of 23 October 2006.
- <sup>10</sup> For the first time persons deprived of their liberty were recognised as a priority group under the constitution in Ecuador, as stated in Article 51.
- <sup>11</sup> The 2006 presidential elections were established through a ballot. In the first round, the billionaire businessman Alvaro Noboa took first place with 26 per cent of the vote. However, in the second round Rafael Correa won with a majority of 56.67 per cent of the valid votes.
- <sup>12</sup> With regard to the pardons for drug related crimes, Ecuador was one of the pioneers in 2008, followed by Peru in 2009, Bolivia in 2013 and the United States in 2014.
- <sup>13</sup> In 2008, between 65 and 79 per cent of the total female prison population was detained for drug offenses (Edwards 2010).
- <sup>14</sup> On 14 April 2007, Rafael Correa publicly announced the arrest of his father as a teenager for drug trafficking in the United States. See: <http://www.eluniverso.com/2007/12/22/0001/8/19541214074D4DD1AC8D68AF2EB764F7.html>.
- <sup>15</sup> The new constitution created penitentiary judiciary guarantees (Art. 203) and recognized the power of indigenous justice to resolve conflicts (Art. 171).
- <sup>16</sup> The Ministry of Justice and Human Rights of Ecuador (now also of Religious Affairs) has, since its creation, had as its Minister, Gustavo Jalkh (2007-2009), Nestor Arbito (2009-2010), José Serrano (2010-2012), Johanna Heaviness (2012-2013), Lenin Lara (2013-2014) and Ledy Zúñiga (2014), who is the current Minister.
- <sup>17</sup> By presidential decree 305, Rafael Correa created the Truth Commission on the 3 May 2007 with the aim to investigate and clarify the violent acts and violations against human rights, specifically between 1984 and 1988, which is the governmental period of President Leon Febres Cordero. Between 1984 and 2008 the Truth Commission recorded 118 cases, bringing together 456 victims of which 269 were illegally deprived of their liberty, 365 were victims of torture, 86 were victims of sexual violence, 26 had experienced attacks against their life, 68 were victims of extrajudicial executions and 17 were victims of enforced disappearances. Of these, 68 per cent occurred during the governmental period of Febres Cordero (Comisión de la Verdad (Truth Commission 2010)).
- <sup>18</sup> Before 2009 there were 44 amendments to the criminal code and 13 to the new New Criminal Procedural Code of 2000.
- <sup>19</sup> The assembly members of the Civil and Penal Commission who promoted the reform were: Mauro Andino, Rosana Alvarado, Vicente Taiano, Félix Alcívar, Teresa Benavidez, Julio Logroño, Cesar Gracia and María Paula Romo, president of the commission.
- <sup>20</sup> The current Attorney General's Office has been emphatic in pointing out the inappropriate data collection after 30 September 2010, due to the subordination of the State Prosecutors Office to the Police. In other words there has been an apparent lack of impartiality of police officers, which has been termed the 'colonization of researchers' (Fiscalía General del Estado (State Attorney General) 2015: 140).
- <sup>21</sup> The government of Rafael Correa began a nationwide process of devolution of powers, whose normative symbol is called the Organic Code of Territorial Organization, Autonomy and Decentralization (OCTOAD). Through this law, the police legally ceased to maintain competition in the field of transit. Nevertheless, the Ecuadorian police has been characterized as being *elephantine*, meaning, to concentrate on many functions. Namely, the police held community policing functions (UPC); National Traffic Police (PNT); counter-narcotics police (DNA); Judicial Police (PJ); Police for boys, girls and adolescents (DINAPEN); in addition to elite groups such as GIR, GEMA, ULCO, GOE and CMO.
- <sup>22</sup> To read more about the press releases, see for example the newspaper *El Comercio*, Judicial Writing, 'Most theft cases end in impunity', published 21 April 2009.



- <sup>23</sup>See <http://www.lahora.com.ec/index.php/noticias/show/860720/-1/home/goRegional/Quito#.Vb82jP2HfIU>.
- <sup>24</sup>See: <http://www.telegrafo.com.ec/noticias/informacion-general/item/gobierno-reflexiona-reforma-constitucional-por-hipergarantismo.html> (accessed 28 September 2012).
- <sup>25</sup>José Serrano Salgado is a lawyer from the city of Cuenca. During his youth he was active in the Socialist Party and created Human Rights defense groups. Before becoming part of the Interior portfolio, and during the government of Rafael Correa, he was the deputy secretary of the Ministry of Non-Renewable Natural Resources, Secretary of Transparency (anti-corruption) and Minister of Justice. In the Interior Ministry he developed reward scheme to locate fugitives. The 'Most Wanted' Campaign consisted of a plan to create financial incentives for any individual that would provide information – *informants reward* – that contributed to the arrest of sought individuals by law enforcement agencies, even though some of them had no formal conviction. This campaign was also characterized by the publishing of fugitives' photos along with their epithets or alias, even to the point of classifying individuals into 'race' categories. See: <http://www.ministeriointerior.gob.ec/tag/los-mas-buscados/> (accessed 4 May 2013).
- <sup>26</sup>See: <http://www.eluniverso.com/2011/01/09/1/1355/si-queremos-meter-manos-cortes.html> (accessed 17 December 2011). The reform and the judicial policy was questioned about its independence in a controversial study by Luis Pásara, with the title 'The judicial independence of the Ecuadorian justice reform' (2014).
- <sup>27</sup>Part of the coordination of law enforcement agencies, with judges in the Flagrancy Units, is dependent on new information and communication technologies implemented in the fight against crime. In late 2011, the expensive 'Integrated Security Service ECU-911' was implemented under the concept of 'integral security'. The operation of the National Police, the Armed Forces, the Fire Departments, the National Commission of Ground Transit and Transportation, the Ministry of Public Health, the Ecuadorian Social Security Institute, the National Secretariat for Risk Management, the Ecuadorian Red Cross and other local bodies responsible for dealing with emergencies of citizenship were brought together under this service.
- <sup>28</sup>The methodology to calculate the homicide rate has not been made public. It is, therefore, unknown whether the construction of this information comes from autopsy reports, death certificates, tax instructions, court rulings, press reports or police reports.
- <sup>29</sup>ee: <http://www.ministeriointerior.gob.ec/36167/> (accessed 18 March 2015).
- <sup>30</sup> The current Minister of Justice, Ledy Zúñiga said that overcrowding was reduced to 0.24 per cent in the last four years, by virtue of the construction of new prisons. See: <http://www.telegrafo.com.ec/justicia/item/el-hacinamiento-carcelario-se-redujo-a-024-en-4-anos.html> (accessed 26 March 2015).
- <sup>31</sup>The COIP was published in the Supplement of the Official Register No. 180 of 10 February 2014 and came into full effect on 10 August of the same year.
- <sup>32</sup>Since the start of reform that reduced drug penalties in the COIP, the State remained divided. The body responsible for drug policy (CONSEP), the Ministry of Health and the Public Defender's Office, were at the forefront of reform. It also focused on underscoring the delays that occurred in the release of the persons who were eligible for the lenity principle or the more benign subsequent law (See Paladines 2014b: 7-12).
- <sup>33</sup>In recent years some 'institutional cleansing' processes have been developed within the police. However, with a police force of over 40,000 employees, it has not been a complete reform, but rather waves of layoffs related to the corruption allegations by the Minister of the Interior. See: <http://www.elcomercio.com/actualidad/policia-baja-uniformados-ecuador-ministeriointerior.html> (accessed 10 July 2014).
- <sup>34</sup>See: <http://www.eluniverso.com/noticias/2015/09/24/nota/5144378/correa-yo-siempre-dije-que-economia-no-hay-milagros> (accessed 24 September 2015).
- <sup>35</sup>See: <http://www.elcomercio.com/tv/gobierno-alianza-publico-privada-inversion.html> (accessed 25 November 2015).

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