



Elimination of the ministry of justice and its impact on the penitentiary crisis in Ecuador in 2019 to 2022

Eliminación del ministerio de justicia y su incidencia en la crisis penitenciaria del Ecuador en los años 2019 a 2022

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ABSTRACT

Throughout Ecuador's history, the penitentiary system has not been seen as a necessity when reforming public policies. Some rehabilitation and social reinsertion measures have been discussed or addressed, such as socio-educational measures and even technical careers that help the social reinsertion of persons deprived of liberty. The penitentiary system has been under the eye of the hurricane and criticism, since it did not comply with the minimum standards required by national and international organizations such as the Inter-American Commission on Human Rights and Human Rights Watch. International treaties that according to the Constitution of the Republic of Ecuador have a parallel hierarchy to it and therefore are binding for our internal legal system.

RESUMEN

A lo largo de la historia del Ecuador, el sistema penitenciario no ha sido visto como una necesidad al momento de reformar las políticas públicas. Algunas medidas de rehabilitación y reinserción social sí han sido debatidas o tratadas, como por ejemplo medidas socioeducativas e incluso carreras técnicas que ayuden a la reinserción social de las personas privadas de libertad. El sistema penitenciario ha estado bajo el ojo del huracán y de la crítica, ya que este no cumplía con los estándares mínimos que organismos nacionales e internacionales tales como la Comisión Interamericana de Derechos Humanos y Human Rights Watch exigían. Tratados internacionales que según la Constitución de la República del Ecuador tienen una jerarquía paralela a la misma y por ende son vinculantes para nuestro ordenamiento jurídico interno.

Keywords / Palabras clave

ministry, justice, rehabilitation, rehabilitation, social reintegration, disposal

ministerio, justicia, rehabilitación, reinserción social, eliminación

Introduction

The constant uncertainty in which we live due to the lack of security that our country is currently experiencing has become a topic of debate within the communication and political agenda (UNITED NATIONS NEWS, 2022). Every day without exception, the security aspect is something that concerns us all as a country. Undoubtedly, the situation of insecurity is often propitiated from prisons that function in many cases as a kind of "criminal operation centers" from where materially originate many antisocial acts that occur in the cities. This aspect, linked to the crisis affecting rehabilitation centers due to overcrowding and lack of socio-educational measures, worsens with the passage of time and simulates a bomb with a countdown that seems to explode every time an attempt is made to take action to control it. The prison issue is important because as a State we have been pointed out at the international level by multiple watchdogs in terms of Human Rights and social rehabilitation such as: Amnesty International, United Nations, Inter-American Commission on Human Rights who maintain that Ecuador is a territory that does not provide the necessary guarantees for the rehabilitation and social

reintegration of persons deprived of liberty who are within the prison system. (UNITED NATIONS, 2021).

Materials and Methods

The materials and methods used for this research work were qualitative in nature. A study was made based on the penitentiary crises in which our country has been involved, in relation to the public policies and responsibilities that the Ministry of Justice, Human Rights and Worship had until a few years ago in our country. Sources such as doctrine, jurisprudence, press releases and bulletins of the different State secretariats assigned to the system of social rehabilitation of persons deprived of liberty were used.

Results

The discussion of this scientific article is subsumed to the suppression of the Ministry of Justice, Human Rights and Worship as a State institution in Ecuador, and how the elimination of this State entity became one of the detonating factors of the penitentiary reality that is currently experienced in our country. At the conclusion of this scientific article we will try to determine whether or not the reincorporation of a ministry similar to this one can help to control the current penitentiary crisis and also to propose possible viable solutions to this problem.

Background analysis regarding the Ministry of Justice, Human Rights and Worship.

In 2007, the need arose for the National Government to implement public policies related to the rehabilitation and social reintegration of persons deprived of liberty. In those years, Ecuador, a country composed of 22 provinces, had 35 prisons, all of which, without exception, were built more than 40 years ago. Structurally, these facilities did not comply with the purposes established by the United Nations and Human Rights Watch for the fulfillment of the purposes of the prison system, which are those of deterring and rehabilitating a person who commits an anti-juridical conduct. (FLACSO, 2016) (UNITED NATIONS, 2021).

Thus, with the enactment of decree number 748-2007 issued by the former President of the Republic Rafael Correa Delgado, the creation of the Ministry of Justice and Human Rights was established, which among its functions was to establish and implement public policies around the rehabilitation and social reintegration of persons deprived of liberty. This was based on the imperative need to regain control of rehabilitation centers with respect to internal security, in addition to the rehabilitation and social reinsertion of those who had committed a crime (PRESIDENCIADELECUADOR, 2007).

In 2007, when this Ministry was created, Ecuador had a prison population of approximately 12,000 inmates who were serving their sentences in centers with dilapidated infrastructures that did not have the minimum facilities required for the vital subsistence of a human being (PROAÑO, 2016). The average space that a person deprived of liberty had in a social rehabilitation center was only 12 m² per person, which translates into overcrowding. (SOCIEDAD.ORG, 2022).

It was understood that simply having facilities that would allow sentenced persons to serve their sentences was not enough, as the State would only fulfill half of the equation and rehabilitation and social reinsertion would be left aside. This is why, among other functions that the new Ministry of Justice and Human Rights was entrusted with by decree, was to implement public policies in favor of the social rehabilitation of persons deprived of liberty. (PRESIDENCIADELECUADOR, 2007).

Undoubtedly, the establishment of a Ministry to contribute to the fulfillment of the goals of a social rehabilitation system was a great achievement for the reality of the prison system in our country. Until then, Ecuador had no institutional framework, programs or projects in the area of reinsertion and social rehabilitation that would allow it to achieve tangible results in the short, medium and long term. Undoubtedly, the development and implementation of public policies on social rehabilitation was and remains a complex issue that we must face as a country from all functions of the State.

It was then necessary to set clear lines of compliance and concrete objectives to be met under certain conditions and in strict observance of both national and international human rights standards ratified in Ecuador. (FLACSO, 2016) One of the strongest and most important reasons why the Ministry of Justice and Human Rights was created is that Ecuador, with the inadequacy of the social rehabilitation system,

did not meet minimum requirements for protection and monitoring of the minimum guarantees of persons deprived of liberty. (IACHR, 2022).

Public Policies Implemented by the Ministry of Justice, Human Rights and Worship.

Undoubtedly, the main project of the Ministry of Justice, Human Rights and Worship was to improve the country's social rehabilitation system. Since the penitentiary rehabilitation system required the help and intervention of the National Police and the Judicial Function, the Ministry needed to issue all the necessary policies so that both the police and the judicial function would work together to improve the rehabilitation system in an integral manner. Likewise, the Ministry by regulating the policies of that institution had to manage and make known to the executive the budgetary needs required to improve the penitentiary system (FLACSO, 2016).

The policies issued by this Ministry were essential to improve the social rehabilitation system, coordinating with other ministries such as education and public health so that their projects would become inputs for the social rehabilitation process of persons deprived of liberty, a reality that is not present today because it is not an entity with equal hierarchy. This ministry provided concrete follow-up on the issues of reparations ordered in the sentence: (a) Compensation; (b) Restitution; (c) Rehabilitation; (d) Satisfaction; and (e) Guarantee of non-repetition. (IACHR, 2021).

This follow-up culminated in a binding report that was added to the cases and served as an input to determine whether the sentence had been served or not. These reports were useful for the judge in the case to have a much clearer input when making a determination regarding compliance with the sentence as well as legal benefits for the defendants. (SOCIEDAD.ORG, 2022)

The Ministry of Justice, Human Rights and Worship was also the coordinating institution for other agendas of vital importance in Human Rights issues. This State institution directed the councils for equality and the eradication of violence against vulnerable groups such as the LGBTI community and the female population. With its suppression, these two councils, which sought to eradicate issues of violence and thus contribute to the establishment of human rights policies, were left in the hands of other State agencies (IACHR, 2021). (IACHR, 2021).

The structure of the Ministry of Justice, Human Rights and Worship was organized by zones and provinces whose dependencies functioned in relation to other institutions that make up the National Government of Ecuador. This ministry operated with a legal structure that allowed it to develop complex policies and activities. Today, the National Service for the Comprehensive Care of Adults Deprived of their Liberty and Adolescent Offenders cannot carry out complex coordination activities since it does not have the status of a ministry with broad functions, but is simply classified as an institution that only provides a service to the country. (IACHR, 2022)

The functions of this service today must be subordinated to the decisions established by the Ministry of the Interior. This ministry must approve or not any type of project that is required to be established in relation to the social rehabilitation system. (IACHR, 2022) Its zonal and provincial operation recognized its autonomy to make decisions regarding the hiring of personnel and staffing and implementation of the different needs in the daily recurrence of its activities, according to the needs that each zone or each province has as the case may be. (MINISTRY OF JUSTICE, 2016)

Nowadays, all these necessary implementations for the fulfillment of the rehabilitation and social reintegration of persons deprived of liberty must be made by the National System of Integral Care for adults deprived of liberty and adolescent offenders. Currently, these decisions on hiring staff and provision of materials is also subordinated to the will of the Ministry of the Interior, which is the one that coordinates and regulates the SNAI. (SNAI, 2013)

The Ministry of Justice, while it existed for approximately 11 years, had the power to provide the necessary supplies for the different workshops offered to persons deprived of liberty as socio-educational measures. At this point it should be noted that thousands of persons deprived of liberty and especially adolescent offenders in correctional centers nationwide were beneficiaries of these socio-educational courses and workshops. (DEFENSORIA PUBLICA, 2021).

According to data from the Human Rights Observatory, several of the socio-educational policies that were implemented with the Ministry of Justice in the country's prisons, currently no longer function, do not exist or are carried out in a precarious manner, since the abandonment of public policies included the fact that the places and entities responsible for providing these socio-educational measures do so

without the necessary materials or inputs for their realization (IACHR, 2022). (IACHR, 2022) It is the right time then to analyze whether or not there are other organizations similar to the extinct Ministry of Justice, Human Rights and Worship at the regional level, which work fulfilling the functions that this former State agency had. We will begin with our neighboring countries such as Colombia and Peru; in the case of Colombia, the coordinating institution in all areas of rehabilitation and social reinsertion is the Colombian Ministry of Justice and Law (MINISTRY OF JUSTICE AND LAW, 2023).

This ministry has an institution that is responsible for the control and operation of the entire prison system in that country: The National Penitentiary and Prison Institute (INPEC). This institution is in charge of establishing and implementing the public policies established by the Ministry of Justice and Law of Colombia within all the social rehabilitation systems of this country. On the other hand, Peru has a ministry called Ministry of Justice and Human Rights, which has among other functions to establish guidelines and public policies for the protection of human rights, civil integrity and the integrity of the State. This institution, as in the Colombian case, is in charge of several institutions, among them the National Penitentiary Institute (INPE) (JUSTICIA, 2023). The INPE is in charge of making State security policies viable, since this institution is responsible for maintaining social order and protecting the State, in accordance with the objectives, functions and missions of the Peruvian Ministry of Justice and Human Rights. With these examples we can see how at the regional level some countries have similar structures for managing rehabilitation and social reinsertion systems.

Taking as a reference the aforementioned institutions in Colombia and Peru we can note a great similarity, first a ministry or secretary of state with a higher rank, the Ministry of Justice and Human Rights in Peru and the Ministry of Justice and Law in Colombia. These ministerial institutions are in turn attached to two institutions established for specific purposes of rehabilitation and social reintegration, INPE and INPEC respectively. This similarity was also shared by Ecuador until the elimination of the Ministry of Justice, Human Rights and Worship in 2018.

One of the factors to be analyzed is the non-existence of an entity that articulates and makes effective all public policies related to rehabilitation and social reinsertion. The doctrine in many cases tells us that social rehabilitation, being a matter of coercion by the State,

and social reinsertion as a duty inherent to it, should be taken as a public policy of all powers and not only at the governmental level. Therefore, in the absence of a ministry that can relate and plan with different institutions that make up the Ecuadorian state in favor of persons deprived of liberty and victims of various crimes, the SNAI is insufficient to meet all the needs that these responsibilities of rehabilitation and social reintegration generate. It is understood that, in order to have effective rehabilitation and social reinsertion policies, these should be as broad as possible, thus ensuring that persons deprived of liberty who have served a sentence of conviction do not reoffend. This non-recidivism can only be achieved through the establishment of concrete objectives and public policies that in one way or another contribute to their fulfillment.

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Conclusions

Based on all the analysis carried out within this document, as well as all the ideas developed, we can conclude that:

It is necessary the existence of a coordinating entity much more complex than an institution catalogued as a system that can strengthen the institutional framework and allow the fulfillment of the objectives of rehabilitation and social reinsertion of persons deprived of liberty in the entire penitentiary and correctional system of Ecuador with strict observance of the legislation on Human Rights.

The abandonment of public policies within the social rehabilitation system of Ecuador, generates among other things the little or no presence of the State, within the rehabilitation and correctional centers at national level, which in one way or another generates that the State loses the monopolization of control of these places throughout the national territory, which in turn triggers the unfortunate events that are of national significance. Social rehabilitation as a path towards the reinsertion of persons deprived of liberty can only be established if there are public policies and objective technical decisions necessary for the fulfillment of short, medium and long term goals, which requires a strong and much more complex institutional framework than the current one.

References

- AMNESTY INTERNATIONAL (2022). *AMNESTY INTERNATIONAL*. Retrieved from AMNESTY INTERNATIONAL:
https://adsdatabase.ohchr.org/IssueLibrary/CLAU DIO%20GALLARDO%20Y%20JORG E%20NUNEZ%20VEGA_Una%20Lectura%20cuan titativa%20del%20sistema%20de%20de%20ocarceles%20en%20Ecuador.pdf.
- IACHR. (JUNE 2021). *RAPPORTEURSHIP ON THE RIGHTS OF WOMEN*. Retrieved from RELATORIA SOBRE LOS DERECHOS DE LA MUJER:
<https://www.cidh.oas.org/women/acceso07/cap1.htm>
- IACHR. (FEBRUARY 2022). *IACHR*. Retrieved from IACHR:
https://www.oas.org/es/cidh/informes/pdfs/Informe-PPL-Ecuador_VF.pdf
- IACHR. (JUNE 2022). *IACHR*. Retrieved from IACHR:
https://www.oas.org/es/cidh/informes/pdfs/Informe-PPL-Ecuador_VF.pdf
- PUBLIC DEFENDER'S OFFICE (JUNE 22, 2021). *PUBLIC DEFENDER'S OFFICE*. Retrieved from DEFENSORIA PUBLICA:
https://www.defensoria.gob.ec/?epkb_post_type_1=que-son-social-educational-measures
- FLACSO (2016). *FLACSO*. Retrieved from FLACSO:
<https://repositorio.flacsoandes.edu.ec/bitstream/10469/2355/1/BFLACSO-CS1.pdf>
- GK, R. (October 2022). *GK Magazine*. Retrieved from GK Magazine: <https://gk.city/2022/06/02/ministerio-interior-gestion-carceles-snai-viceministerio/>
- INEC. (OCTOBER 2022). *NATIONAL INSTITUTE OF STATISTICS AND SENSES*. Retrieved from INSTITUTO NACIONAL DE ESTADÍSTICAS Y SENSOS :
https://www.ecuadorencifras.gob.ec/documentos/web-inec/Sites/microsites_viewers/
- JUSTICE, M. D. (2023). *MINISTRY OF HUMAN RIGHTS AND JUSTICE*. Retrieved from IMPE: <https://www.gob.pe/minjus>

MINISTRY OF INTERNAL AFFAIRS . (DECEMBER 2022).
MINISTRY OF THE INTERIOR . Retrieved from
 MINISTERIO DE INTERIOR :
 WWW.MINISTERIODEL INTERIOR.GOB.EC

MINISTRY OF JUSTICE (FEBRUARY 2016). *MINISTRY OF JUSTICE*. Retrieved from MINISTRY OF JUSTICE:
<https://www.atencionintegral.gob.ec/wp-content/uploads/2019/09/31.-Estatuto-General-de-Procesos-del-MJDHC.pdf>.

MINISTRY OF JUSTICE AND LAW (2023). *IMPEC COLOMBIA*. Retrieved from IMPEC COLOMBIA:
<https://www.minjusticia.gov.co/>

UNITED NATIONS (DECEMBER 2, 2021). *UNITED NATIONS*. Retrieved from UNITED NATIONS:
<https://www.ohchr.org/es/press-releases/2021/12/ecuador-has-obligation-ensure-security-inside-prisons-un-experts>

UNITED NATIONS (OCTOBER 2022). *UNITED NATIONS*. Retrieved from UNITED NATIONS:
https://www.unodc.org/documents/justice-and-prison-reform/Brochure_on_the_UN_Standard_Minimum_the_Nelson_Mandela_Rules- S.pdf

UNITED NATIONS NEWS (MAY 2022). Retrieved from UNITED NATIONS NEWS:
<https://news.un.org/es/story/2022/05/1508422>

PRESIDENCIADELECUADOR (AUGUST 2007). *PRESIDENCY OF ECUADOR*. Retrieved from PRESIDENCIA DE LECUADOR:
https://minka.presidencia.gob.ec/portal/usuarios_externos.jsf

PROAÑO, E. C. (2016). *EVOLUTION OF THE PENITENTIARY SYSTEM*. QUITO: PUCE. REPUBLICA, P. D. (MAY 2022). *COSEPE MEETINGS*. Retrieved from COSEPE
<https://www.presidencia.gob.ec/consejo-de-seguridad-publica-y-del-estado-cosepe/>

UASB Journals. (JUL 2018). *Revistas UASB*. Retrieved from Revistas UASB:
[evistas.uasb.edu.ec/index.php/foro/article/view/695/644](http://revistas.uasb.edu.ec/index.php/foro/article/view/695/644).
 SNAI. (DECEMBER 2013). *NATIONAL SERVICE OF INTEGRAL ATTENTION TO PERSONS DEPRIVED OF*

LIBERTY. Retrieved from SERVICIO NACIONAL DE ATENCION INTEGRAL A PERSONAS PRIVADAS DE LIBERTAD: https://www.atencionintegral.gob.ec/wp-content/uploads/2019/09/CRS_REGIONAL_GUAYAS-3.pdf