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Ecuador: With no independent and impartial justice there can be no rule of law

I. INTRODUCTION

As an international organization promoting and protecting human rights, Amnesty International undertakes research and action aimed at preventing and ending serious abuses of fundamental rights such as the right to physical and mental integrity, the right to freedom of conscience and expression and the right to freedom from discrimination.

In this report, the organisation focuses on human rights violations committed by members of Ecuador's National Police Force (*Policía Nacional*). In many cases, these violations go unpunished and this is a cause of extreme concern for the organisation.

By means of its international human rights standards monitoring bodies, the international community indicates and recommends that police officers responsible for human rights violations should be tried by civil and ordinary courts. Amnesty International believes that, until this is the case, it will be impossible to bring impunity to an end in Ecuador.

Impunity is generally understood as "*the de jure or de facto impossibility of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims*".[1]

The general tendency is to talk of two broad types of impunity: one that takes place through action and one that is present in the law (regulatory impunity). The former is expressed in actions that hinder or prevent the effective prosecution of judicial proceedings such as, for example, a refusal on the part of the competent authorities to provide the means to identify those responsible for a crime, or even open threats to direct victims, their relatives, witnesses or lawyers. Regulatory impunity, on the other hand, is expressed through laws, decrees and formal legal structures that prevent those allegedly responsible for human rights violations from being duly investigated and brought to justice so that, where appropriate, their responsibility can be established and relevant punishments imposed.

Frequently, both appear as related and mutually reinforcing forms. However, it must be recalled that impunity is a complex multi-dimensional phenomenon which, apart from its strictly legal aspect, also comprises social, psychological, historical and often even economic aspects. When impunity is a common occurrence and becomes collectively tolerated, a kind of cultural acceptance occurs in which it is considered "normal" for human rights violations to

[1] Cf. JOINET, Louis: *"Set of Principles for the Protection and Promotion of Human Rights through action to combat Impunity",* contained in the "Final revised report on the question of the impunity of perpetrators of human rights violations (civil and political rights)", E/CN.4/Sub.2/1997/20/Rev.1 (English version); 2 October 1997.

go unpunished. When this situation occurs, the possibility of the violations being indefinitely repeated tends to become consolidated.

The elimination of impunity in a country requires numerous simultaneous tasks and sustained multi-disciplinary work including, alongside effective respect for national and international legislation on fundamental rights, a clear political will to ensure that those violating human rights are duly brought to justice and punished.

Amnesty International considers it essential to eliminate impunity in Ecuador without further delay. This is the spirit behind this report, which focuses primarily on an assessment of the regulatory and institutional structure of the current Police Justice system in Ecuador, which has been facilitating and even, on occasions, causing impunity with regard to serious human rights violations.

Over the last ten years, Amnesty International has received scores of complaints of serious human rights violations in which members of the Ecuadorian National Police Force were allegedly involved. The most common cases refer to torture and ill-treatment during or immediately after their arrest leading, on a number of occasions, to the death of the detainee. Information has also been received regarding extrajudicial executions and forced "disappearances" of people. A common characteristic is that members of the National Police Force who arrested the victim on suspicion of having committed a crime appear to be involved as the

Elías Elint López Pita and Luis Alberto Shinin Laso – Forced disappearance

On 6 November 2000, Elías Elint López Pita, owner of a seafood restaurant in Ambato, Tungurahua province, was arrested by the *Panamerican North* police checkpoint, in Ambato, while travelling by bus from Ambato to Esmeraldas province. He has not been seen since.

The day following his arrest, 7 November, the Public Prosecutor of the ordinary justice system who was investigating the arrest and "disappearance" of Elías López heard a statement from Luis Alberto Shinin Laso, who was in police custody. Luis Shinin told the Prosecutor that he had known Elías López from some time back and this latter had told him he had been arrested on suspicion of robbery and that he had been beaten by police officers. Shinin indicated that he had seen López in a place known as El Aula, within the Ambato police station. Luis Shinin was released on 14 November 2000 and, on leaving his place of detention, was kidnapped by unidentified armed men and taken by car to the outskirts of Ambato, where he was shot and thrown over a precipice. Luis Shinin survived the attack but, according to staff at the hospital where he was receiving treatment, on 17 November 2000 at least six armed men wearing balaclavas burst into the hospital and kidnapped him. He has not been seen since.

The case resulted in a conflict of jurisdiction between the ordinary courts and the police courts, which delayed proceedings until 15 June 2001, when the Supreme Court of Justice ruled in favour of the jurisdiction of the ordinary courts.

Once the Supreme Court of Justice (*Corte Superior de Justicia*) had decided that the case would be heard by the ordinary justice system, the family began to receive threats. In February 2002, ten police officers were found guilty of unintentional homicide, receiving sentences ranging from two to six years imprisonment for the forced disappearance of Elías López.. An appeal was lodged by those convicted and by the prosecution.

After many procedural steps, the Higher Court of Ambato (*Corte Superior*) sentenced two officers to six years in prison, another two – considered accomplices – to three years, and acquitted the remaining six defendants. The victim's family have lodged a final appeal (*recurso de casación*) regarding which there has not yet been a decision.

For the forced disappearance of Luis Shinin, on 28 April 2003, the Guaranda Criminal Court (*Tribunal Penal*) sentenced three of the eight police officers to between eight and sixteen years im prisonment for murder. The decision was challenged, and this appeal has not yet been ruled upon. A few days prior to this last ruling, the mother of Elías López, was again the victim of threats. On 26 April of this year, Teresa Gladys Pita Bravo received three anonymous phone calls from a person stating that *"if the final appeal ruling confirms the sentences"* of the police officers accused of kidnapping her son, then he knew where she and her family lived and would kill them *"one by one"*.

alleged perpetrators. These alleged perpetrators frequently evade an impartial and effective investigation and trial that would establish their responsibility one way or the other.

Aníbal Aguas – Death in custody
Aníbal Aguas died on 1 March 1997 while being held in custody by the National Police in the town of Machala. He had been arrested by police officers following an argument with the owner of a grocery store. In police custody, he was "tortured and savagely beaten" and, on arrival at the police station, he was already dead. His family immediately lodged a complaint and two police officers were accused of the crime. Because the alleged perpetrators were police officers, the police courts considered it their responsibility to try the defendants. The ordinary courts also began to consider the case but the judge was prohibited from the case and the police courts took responsibility. A year after having arrested the police officers allegedly involved, they were released as their cases had not been processed with the time established by law. On September 2000, the two police officers were sentenced to three years imprisonment for injury and murder. The family submitted an appeal against the decision and, in June 2001, they were sentenced to eight years imprisonment for the crime of murder under torture. The National Court of Police Justice (*Corte Nacional de Justicia Policial*) confirmed the sentence of eight years in December 2001. In May 2002, the judge ordered the arrest of the convicted men so that they could serve their sentence. However, without having bern arrested, the accused lodged a final appeal, which was rejected by the National Court of Police Justice in April 2003, rendering the eight-year sentence final. To date, the police officers have not been arrested and the relatives have received no reparation.

Over the years, Amnesty International has contacted the authorities of the different governments about these cases, demanding that they be impartially and independently investigated, that those responsible be brought to justice, that the victims and their families be given reparation and that the necessary measures be taken to ensure that such serious violations are not repeated and that the fundamental right to the physical integrity and life of people is respected. However, these requests have received no appropriate response and both national human rights organizations and Amnesty International continue to receive information from people who have been tortured and ill-treated in a persistent climate of impunity.

Joffre Aroca Palma – Death in custody

Joffre Aroca Palma was arrested by a police patrol in Guayaquil on 27 February 2001, whilst in the company of other young people waiting for a bus. Hours later, his body was discovered in the vicinity of the *Estadio Monumental* of that city. According to the medical forensic report, the victim died as a result of a bullet wound that punctured his right lung and heart. According to information received, four police officers, two from the National Police and two from the Metropolitan Police, intercepted Joffre Aroca demanding identification and they then proceeded to search him. Because of his complaints, the police arrested him and put him in their van. The police van apparently changed direction and went to the *Estadio Monumental* instead of the police station in the north-west of the city. Once in the vicinity of the Stadium, the officers stopped the vehicle and the two officers from the National Police got out, taking the detainee with them. Minutes later, one of the officers returned to the van and, after a shot was heard, the second police officer also returned to the vehicle.

A week after the body was discovered, one of the Metropolitan police officers who was present at the time denounced the incident to his superior and the two members of the National Police allegedly involved in the events were arrested for murder and accessory to murder respectively. The case was dealt with through the police courts. Custody on remand was ordered for one of the officers, and he was held at a police station. Shortly afterwards, he escaped but was recaptured. However, one year later, due to delays in the trial, he was released. While at liberty, a ruling sentencing him to eight years imprisonment was passed, a decision that was confirmed by the National Court of Police Justice. However, to date the officer has not been arrested in order to serve this sentence. The second auxiliary police officer did not appear before the judge when called to trial for the crime of concealment. The trial had to be suspended and his capture was ordered. To date, neither of the two police officers have been recaptured, nor has the family received reparation.

The national human rights movement concurs with Amnesty International in that:

a) There are widespread human rights violations, such as torture and mistreatment, on the part of the National Police Force.

b) There is an "*esprit de corps*" in the Police Court system that results in the covering up and illicit protection of police officers allegedly responsible for crimes. For example, there have been cases in which evidence has been concealed or delayed and the course of justice perverted. In addition, incomplete technical reports have been issued, and evidence offered by the direct victims or their families and friends has been dismissed on insufficient grounds. Confidential case information has also been revealed to the alleged perpetrators, a situation that has made their prosecution difficult, if not impossible.

c) Within the Police Court system, there are delays in trial proceedings such that the time limit authorized by the Constitution as the maximum possible for remand until trial is exceeded, requiring the freeing of the defendants. [2] These circumstances make the escape of those accused much easier, along with their de facto dissociation from the trials, and similarly the material impossibility of effectively applying whatever sentence may be appropriate. In many cases, remand prisoners and those serving sentences are held at police facilities,[3] which in practice means it is easier for the respective members of that institution to fail to implement requirements relating to the person's deprivation of freedom, and this can lead to escapes from those facilities.

Police escapes from police buildings
Detention within police facilities makes it easier for police officers accused of human rights violations to avoid justice.

One of the two police officers accused in the alleged murder of the brothers Carlos and Pedro Mera Jaramillo and the attempted murder of Pedro Geovanny Baque Tuárez in February 1999 escaped in June 2000 from the premises of the Judicial Police of Portoviejo (*Policía Judicial*), where he was being held having been sentenced to 10 years imprisonment for the murder of Yuri Washington Collantes Pin. The same police officer was also accused of murdering Jorge Walter Macias Menéndez.

According to information, on 30 October 2001, a police officer accused of having murdered Luis Andrés Arévalo Anzules in March of that year when he berated him for hitting a child escaped.
In December 2001, another police officer escaped from the offices of the Judicial Police in Cuenca where he was being held for allegedly knocking down Franklyn Ulloa and Jesús Galarza while under the influence of alcohol.

[2] Article 24.8 of the Constitution states: *"Preventive imprisonment may not exceed six months for crimes punished through imprisonment [prisión], or a years in trials of punished through internment [reclusion]. If these periods are exceeded, the order of preventive imprisonment will become ineffective, under the responsibility of the judge accountable for the trial"* (Flanz G. H., *Constitutions of the Countries of the World,* 1999).

[3] One regulation applied in this respect is the National Police Criminal Code, article 60 of which states, *"The prison sentence will be from three months to five years. A sentence no greater than one year will be served in the police station indicated by the respective judge.*
Officers will serve sentences of more than one year in a special prison to be established by the relevant judge.
Officers sentenced to imprisonment may not be involved in work that is incompatible with the dignity of

These circumstances are a consequence, among other things, of a design and conception that seeks to justify the extensive and inappropriate presence of the Police Court system, as described below.

II. SPECIAL JURISDICTION: An essential but still insufficient constitutional demarcation.

On its website entitled "*The National Police and Human Rights*", the General Command of the National Police Force specifies the need to *"(…) fulfil and ensure fulfilment of constitutional standards guaranteeing the validity of people's rights,* [and that this] *has been, is and will remain an imperative for the Police Force which, in fact, is charged by constitutional mandate with guaranteeing security and public order (…); not complying in its real dimension with this mandate would have the consequence of real social disruption harmful to the legal interests of the people. Legal interests are none other than the people's rights enshrined in the Political Constitutions of the countries of the world".* [4]

This commitment on the part of the National Police is essential for the promotion and protection of human rights in Ecuador. Nonetheless, Amnesty International believes that this commitment cannot be accomplished whilst complaints of human rights violations continue to be prosecuted through the Police Court system.

Problems of impunity within the jurisdictional structures of the police in Ecuador are far from new. More than a decade ago, for example, attention was drawn to torture as a "method" of police investigation and intimidation, impunity appearing to be a growing phenomenon both in relation to crimes against public property and in relation to *"human rights violations committed by members of the security forces".*[5]

Moreover, in its *Report on the Human Rights Situation in Ecuador* approved in October 1996, the Inter-American Commission on Human Rights also warned of "*the practice of bringing those members of the police and armed forces accused of violating human rights to justice before their respective courts of special jurisdiction rather than the ordinary civil courts".*[6] In this respect, the Inter-American Commission's report notes that there is a "*misuse of tribunal s of special jurisdiction",* and expresses concern because "[*p]olice and military defendants*

their professional capacity.
Officers sentenced to imprisonment of no more than one year will have the right to 30% of their salary, provided the sentence is not for robbery, falsehood or embezzlement of State funds.
Troop personnel will serve sentences of more than one year in a special prison, and will be require to do the work established or to be established in the relevant regulations."

[4] www.dhnte.org.br/direitos/novapolicia/Policia_DH/equador2.htm, last viewed 28 July 2003.

[5] Cf. ANDEAN COMMISSION OF JURISTS: *"Democracia, Derechos Humanos y Administración de Justicia en la Región Andina"*. Ed. CAJ; Lima; March 1994; p. 104.

[6] INTER-AMERICAN COMMISSION ON HUMAN RIGHTS "Report on the Situation of Human Rights in Ecuador". OEA/Ser.L/V/II.96. Doc. rev.2; Washington; 24 April 1997; p.11.

are frequently tried in special courts in relation to charges concerning common crimes." In its report, the Commission refers to a report presented in November 1995 by the Under-Secretary of Police to the President of the Congressional Commission on Human Rights regarding legal actions via special courts, in which it indicated, *"that almost none of them had resulted in the issuance of a sentence.* [And that o]*f the 4,568 cases initiated since 1985, only 46 had resulted in provisional sentences, and only 5 had resulted in final sentences. The majority remained in process or have been archived. More than 50 have been declared prescribed"*. [7]

Finally, the Inter-American Commission recommended that the Ecuadorian State adopt the necessary measures to "*limit the application of the special jurisdiction of police and military courts to those crimes of a specifically police or military nature, and to ensure that all cases of human rights violations are submitted to the ordinary courts"*.[8]

The recommendations of the Inter-American Commission on Human Rights were not implemented. However, following the crisis that resulted from the removal from office of ex-President Bucaram in 1997, a Constituent National Assembly was established with a mandate to reform the Political Constitution of the Republic. Having embarked upon its task in November 1997 and concluded it in mid-1998, one of the Assembly's most controversial debates was on the role of the law enforcement forces, and particularly the National Police. There were proposals to integrate the National Police into the Armed Forces, under the control of the Ministry of Defence.[9] Another proposal was to create a Ministry of Police, which would allow for far greater autonomy.

This confrontation of positions, which culminated in a physical clash between police and brigade members and military troops at the doors of the National Assembly in March 1998,[10] resulted in the current drafting of the Ecuadorian Constitution, which states that the law enforcement forces are made up of the Armed Forces and National Police, allocating this latter the fundamental task of "*guaranteeing security and public order*".[11] And, in terms of our analysis, article 187 of the Constitution establishes that, *"The members of the armed forced shall be subject to special jurisdiction for the judgement of the infractions commit during the exercise of their professional labours. In the case of common infractions, they are subject to ordinary justice"*.

Although the Constitution speaks strictly in the singular of a "Special Jurisdiction", it should be noted that, in the context of the law enforcement forces in Ecuador, there is one military court system and another Police Court system, both separate from the ordinary justice system

[7] Op. cit; p. 32.
[8] Op. cit; p. 16 and 34 respectively.
[9] "EL COMERCIO" NEWSPAPER: 16 February 1998.
[10] LEDGARD, Denise and Raúl Mendoza: *"Seguridad Ciudadana. Cambios Necesarios."* Ed. CAJ; Lima; July 1999; p. 207.
[11] LEDGARD, Denise and Raúl Mendoza: *"Seguridad Ciudadana. Cambios Necesarios."* Ed. CAJ; Lima; July 1999; p. 207.

that corresponds to other Ecuadorian citizens. This separation of jurisdictions (autonomous judicial areas with their own authorities) is apparent in many Latin American countries.[12]

In the Ecuadorian constitutional code – as in some others – the competence or authority of the Special Jurisdiction to hear a case is established not only by the fact that the alleged perpetrator is a member of the Armed Forces or Police but also, and fundamentally, by the nature of the crime committed. Specifically, the Ecuadorian Constitution states that offences committed during exercise of the professional duties of the law enforcement forces fall within the sphere of the relevant Special Jurisdiction.

As can be seen, the 1998 Constitution is clear and conclusive with reference to the limitations of the Special Jurisdiction. This is a decisive step towards addressing the need for violations of fundamental rights and common crimes in general to be tried and ruled on by the ordinary justice system and not the Police Court system. With this, an important aspect that facilitates and even creates the phenomenon of impunity when dealing with members of the National Police has already been addressed.

However, as will be seen in the following chapter, this decisive step has been insufficient due to contradictions between the Constitution and the Police Codes, which mean that in practice the monopolizes crimes not considered as offences committed during the exercise of the professional duties of the National Police.

[12] For example:
-Colombia, whose constitution states that "[c]rimes committed by soldiers in active service and in relation to that service, will be tried by Court Martial or Military Court, in accordance with the prescriptions of the Military Criminal Code" (article 221).
-Nicaragua, whose constitution states that "[c]rimes and offences that are strictly military and committed by members of the army and police force will be heard by military courts established by law. Common crimes and offences committed by soldiers and police officers will be heard by ordinary courts. In no case may civilians be judged by military courts" (article 93, second, third and fourth paragraphs).
-Paraguay, whose constitution states that "[m]ilitary courts will only judge crimes or infractions of a military nature, described as such by the law and committed by soldiers in active service. Appeals may be heard by the ordinary justice system. When it relates to an action provided for and punished both by common criminal law and military criminal law, it will not be considered as a military crime unless committed by a soldier in active service and exercising military duties. In case of doubt as to whether the crime is military or common, it will be considered as common (…)" article 174.
-Peru, whose constitution states that "in the case of an offence committed in the line of duty, members of the Armed Forces and National Police will be subject to their respective jurisdiction and to the Military Justice Code. (…) article 173, first paragraph.
-Uruguay, whose constitution states that, "military jurisdiction is limited to military crimes, and during a state of war. Common crimes committed by soldiers in times of peace, wherever they may be committed, will be subject to the ordinary justice system" article 253.

III. OFFENCES COMMITTED IN THE LINE OF DUTY (DELITOS DE FUNCIÓN): Clear contradictions between the constitutional mandate and the police codes

Amnesty International believes there is a lack of coherence, and hence contradictions, between that which is established in the Ecuadorian Constitution and legislation of a lesser legal weight such as the Codes - which have the rank of law - and various of their resulting regulations in terms of which jurisdiction, ordinary or special, members of the National Police should be subject to.

The National Police Criminal Code is one such example. This, clearly, characterises unlawful acts such as Desertion, Abandonment of Post, Insulting a Superior Officer and similar as offences that may be committed during the exercise of professional police duty.

However, the National Police Criminal Code also includes crimes that are clearly beyond such exercise such as, to name but a few – Torture (articles 145 and 153), Murder of a Wife or Relative (article 230), Instigation to Suicide (article 231), Simple Homicide or Murder (articles 227 and 228), Homicide in Sports Practices (article 238), Adulterous Practices (article 258), Violations of Public Morality and Sexual Offences (articles 259 and 270), Bigamy (article 275), Usury (articles 313 and 315) and Misappropriation of Water (article 312).

Amnesty International considers that crimes such as, for example, homicide, torture or bigamy are not compatible with the fundamental mission of the National Police which, as clearly specified in article 183 of the Constitution, consists of "*(…) guaranteeing public law and order"*. If the mission of the Police is to guarantee public law and order, crimes such as violations of public morality and sexual offences or murder and torture cannot be offences committed during the exercise of the professional duties of the National Police and must therefore not be subject to special jurisdiction.

This reasoning is in line with the scope of a ruling passed in early 2003 by the Constitutional Court of Ecuador.[13] The issue in this case referred primarily to a conflict of jurisdiction between a Special Jurisdiction – in this case the Military Justice System – and the jurisdiction of the ordinary justice system. The case was one of a possible crime of embezzlement committed during a naval helicopter purchase in which high-ranking officers had allegedly 'favoured' the foreign sales company.

The Court ruled in favour of the ordinary justice system In its ruling, the Court specified that article 187 of the Constitution only authorises Special Jurisdiction for members of law enforcement forces who have committed offences "*during the exercise of their professional labours"*. In other words, it was made clear in the ruling that the crime of embezzlement was not *"of a strictly military nature"* and so, in general, when actions refer to a possible

[13] See Ruling No. 002-2002-CC, passed on 19 February 2003 and published in the Official Registry on 26 February 2003, p. 21 to 28.

appropriation of State resources *"the appropriate jurisdiction will always be the ordinary justice system"*.[14]

The Ecuadorian Constitutional Court is not the only court on the continent to have ruled on what cases a Police or Military Court can reasonably hear and on those crimes that must necessarily be prosecuted and judged by the ordinary justice system.

For example, in 1997, the Colombian Constitutional Court passed judgment in response to joint statements on the part of those defending the use of Special Jurisdiction for all crimes committed by police officers, whether because the unlawful act was committed during the working hours of the officer or because the alleged perpetrator of the offence was a member of the National Police Force.[15] In this case, the Court specified that *"(…) the mere fact that the crime is committed within the working hours of a member of the law enforcement forces, whether in distinctive uniform or not, using officially provided instruments or, all in all, exploiting his or her position, is insufficient for it to be tried by a military criminal court. (…) The mere fact that a person is involved in the law enforcement forces does not give his or her criminal intentions the nature of a law enforcement forces' mission. They will continue to be a simple criminal desire attributable to a person, unconnected with the public service of defence and security and which, on a level of strict equality, will need to be investigated and punished according to ordinary criminal law."*

The ruling of the Colombian Constitutional Court is also emphatic in specifying that, in cases of crimes against humanity such as torture and forced disappearance, *(…) the case must be referred to the ordinary justice system, given the total contradiction between the crime and the constitutional mission of the Law Enforcement Forces."*

For these same reasons, Amnesty International considers that the National Police Criminal Code is in contradiction with the Constitution of the Republic of Ecuador, which only permits Special Jurisdiction for crimes committed during the exercise of the tasks of law enforcement. It is therefore essential that the National Police Criminal Code be immediately modified, along with the Organic Law of the National Police, the Criminal Procedure Code of the National Police and other similar regulatory texts, regulations and so on.

These amendments must ensure that, when determining offences committed in the line of duty (*delitos de función*) within these regulations, they correspond only and exclusively to the fundamental mission of the National Police which is, as already noted, *"that of guaranteeing public safety and order"*. Recent standards reiterate this obligation. Thus Principle 34 of the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity recalls that, "*In order to avoid military courts, in those countries where they have not yet been abolished, helping to perpetuate impunity by virtue of a lack of independence resulting from the chain of command to which all or some of their members are subject, their jurisdiction must be limited solely to specifically military offences committed by*

[14] Forty-fourth and forty-fifth paragraphs of the legal basis of the ruling of the Constitutional Court of February 2003.

[15] Ruling No. C-358/97, 5 August 1997 of the Colombian Constitutional Court.

military personnel, excluding human rights violations, (…) *which shall come under the jurisdiction of the ordinary domestic courts* (…)".[16]

IV. THE ORGANIC STRUCTURE OF POLICE JURISDICTION AND THE IMPOSSIBILITY OF ITS INDEPENDENCE

The Ecuadorian State demands respect for legal rules and what is generally termed the rule of law. Not in vain does the first article of the Constitution begin by noting that, *"Ecuador is governed by the rule of law*". The rule of law is based on the fact that there must be general rules, applied when necessary, and equally to people with no discrimination. In comparison with absolutist regimes and periods in which the mere will of the executive power is imposed, under the rule of law the imposition of interests that run counter to these commonly applied rules is unacceptable and any transgression is likely to be punished.

Neil MacCormick, in "*Derecho, el Imperio del Derecho y Democracia"* explains that "*the different State powers* [under the rule of law] *must be held by different people, mutually independent in institutional terms, in order to guarantee that each one is able to a certain extent, to monitor the due performance of the functions of the others*"[17]. Similarly, during discussions on the drafting of the United Nations Universal Declaration of Human Rights, emphasis was placed on the fact that, under the rule of law, *"every action had to be justified and that every individual could be called upon to answer for his action"*.[18] The recent Inter-American Democratic Charter, adopted by acclamation on 11 September 2001 specifies that, "*among other things (…), the separation of powers and independence of the branches of government are essential elements of a representative democracy*".[19]

In this context, the organs of justice administration in Ecuador must act impartially when applying appropriate legal rules, avoiding privileges that run counter to such rules and, of course, eradicating all forms of impunity, which is the highest form of privilege for an offender. In order to fulfil these tasks, one basic requirement is that the judicial system is independent, that is, that its decisions are impartial and based only on the relevant legal rules and not on interests, pressure and/or threats from power groups of any kind.

Bearing in mind these parameters, Amnesty International considers that the regulatory design of the Police Court system in Ecuador prevents it from acting with impartiality and independence, as will be examined below.

[16] United Nations document E/CN/4/Sub.2/1997/20/Rev.1, Principle 34

[17] Mac Cormick, Neil*, "Derecho, el Imperio del Derecho y Democracia"* in La Crisis del Derecho y sus Alternativas, Ed. Consejo General del Poder Judicial, Madrid, 1995, p. 391.

[18] Morsink, Johannes, "The Universal Declaration of Human Rights: Origins, Drafting and Intent", quoted in Amnesty International, "Combating Torture: a manual for action", London, 2003, p. 268.

[19] AG/RES. 1 (XXVIII-E/01).

a) The general jurisdictional design of the Police Court system

The Ecuadorian system of Police Courts has three levels of authority by which to process cases relating to criminal offences committed by police officers. The first stage or First Instance comprises a Preliminary (*Sumario*) stage, during which the crime is investigated and a Plenary (*Plenario*) stage during which the case is considered and analysed by the parties in court and a first-level judgement passed. Then, if an appeal is lodged, there is an Initial Appeal or Second Instance (*Segunda Instancia*) stage during which the appeal is heard and ruled upon. Finally, there is the Third and Final Instance (*Tercera y Última Instancia*) or Final Appeal stage in which, provided the party in question has lodged an appeal, the decision of the previous stage is examined and ruled upon definitively.

According to the Organic Law of the National Police, announced in June 1998, the First Instance is made up of the District Tribunals and Criminal Tribunals (*Juzgados de Distrito* and *Tribunales Penales*), which have a public prosecutor within each court. The former are responsible for the Preliminary stage and the latter for the Plenary stage, which culminates in the passing of the first-level judgment.

The District Police Courts (*Cortes Distritales Policiales*) form the courts of the Second Instance, and they hear appeals against decisions made by the courts of the First Instance. They include a District Public Prosecutor (*Ministro Fiscal de Distrito*). The court of the Third and Final Instance is the National Court of Police Justice (*Corte Nacional de Justicia Policial*), which hears final appeals on the decisions of the court of the Second Instance and which includes a national-level Police Public Prosecutor (*Ministro Fiscal de Policía*).[20]

One key aspect of the way in which these courts work is the appointment or nomination procedure. At the level of the First Instance, the Police District Judges (*Jueces de Distrito Policial*) must be police officers holding the rank of Sub-Lieutenant or higher and in active service. They must hold the professional qualification of Lawyer or Doctor of Jurisprudence.[21] In all cases they are appointed by the higher level, that is, by the District Police Courts, on the basis of *"a shortlist sent by the General Commander"* of the police force.[22] Appointment of these judges is for two years, with the possibility of re-election.

The Criminal Police Tribunals, also at the level of First Instance, are also made up of three judges. Two o them are senior officers in active service holding the qualification of Lawyer or Doctor in Jurisprudence and one officer of the court, who is also a police officer. As District Judges, they are appointed by the respective District Court from shortlists provided by the General Commander of the police force. Their mandate is for two years with the

[20] Articles 12, 67,72, 75, 78, 79 and 80 of the Organic Law of the National Police

[21] In line with the current regulations on education in Ecuador, the qualification of Lawyer is a professional one whilst the degree and qualification of Doctor in Jurisprudence is an academic one that can only be gained after following a course of special studies and other requirements, once the qualification of Lawyer has been obtained.

[22] Article 78 of the Organic Law of the National Police.

possibility of re-election.[23] The Presidency of these courts is always held by *"the most senior officer in terms of rank and age"*. [24]

At the level of Second Instance, the District Police Courts are each made up of five members. Three are Generals or senior officers in passive service. Passive service is the status given to police officers once they have retired. This does not mean they lose "*their status or professional position",* as they may constitute *"the country's reserve security police force"*.[25] In passive service, police officers receive *"the treatment and consideration that befits their position",* as they may be *"called into action in times of national emergency"*.[26]

Of the three officers in passive service, at least one must be a Lawyer or Doctor of Jurisprudence. The other two members are civilians and must also hold one of these two qualifications and have exercised a legal profession or been a member of the judiciary or have held a university professorship for at least ten years. The five members are appointed by the National Court of Police Justice, also on the basis of a shortlist provided by the General Commander, and remain in post for two years with the possibility of re-election.[27] As in the previous case, the Presidency of the District Courts must always be held by *"the most senior officer in terms of rank and age"*.[28]

The Third and Final Instance comprises just one National Court of Police Justice (*Corte Nacional de Justicia Policial*), made up of five Minister Judges (*Ministro Jueces*). Three are *"Generals in passive service",* at least one of which must be a Doctor in Jurisprudence. The remaining two members are civilians and, in addition to holding the qualification of Doctor of Jurisprudence, must have exercised a legal profession or been a member of the judiciary or held a university professorship for at least fifteen years. The appointment of all these positions is the responsibility of the President of the Republic, and, to this end, the General Commander provides him with a list of Generals in passive service. As in the previous cases, the Minister Judges hold their office for two years, with the possibility of re-election, and the Presidency is always held by *"the most senior officer in terms of rank and age"*.[29]

The Public Ministry of the Police (*Ministerio Público de la Policía*), for its part, comprises Public Prosecutors who are "*employees of the justice system in active service appointed by the General Commander"* and who hold their post for two years with the possibility of re-election. The District Public Prosecutors (*Ministros Fiscales de Distrito*) must fulfil the same requirements as members of the District Courts and are appointed by the Police Public

[23] Article 76 of the Organic Law of the National Police.
[24] Article 77 of the Organic Law of the National Police.
[25] Articles 63 and 64 of the National Police Personnel Law.
[26] Articles 73 and 75 of the General Regulations of the National Police Personnel Law.
[27] Article 72 of the Organic Law of the National Police.
[28] Article 73 of the Organic Law of the National Police.
[29] Articles 69 and 70 of the Organic Law of the National Police.

Prosecutor (*Ministro Fiscal de Policía*) on the basis of a shortlist sent by the General Commander. They hold their office for two years, with the possibility of re-election.[30]

Appointment of the Police Public Prosecutor (*Ministro Fiscal de la Policía*), also for two years and with a similar possibility of re-election, is by the President of the Republic from a shortlist provided by the General Commander. The appointee must fulfil the same requirements as the State Public Prosecutor (*Ministro Fiscal General del Estado*) acting within the ordinary justice system, that is, be more than 45 years of age, hold the qualification of Doctor of Jurisprudence and have exercised the profession of lawyer or served as a judge or held a university professorship for at least fifteen years.[31]

In addition, it should be noted that the auxiliary body is the Judicial Police, responsible for investigating violations of criminal law and for arresting those allegedly responsible. This body is made up of officers from the police force itself.[32]

Finally, it should be noted that the system of Police Courts as a whole comes under the administrative supervision of the Ministry of the Interior, Police, Worship and Municipalities (*Ministro de Gobierno y Policía, Culto y Municipalidades*). Article 13c of the Organic Law of the National Police specifies that one of the tasks of the Ministry of the Interior is to "supervise the administration of police justice".

In Amnesty International's opinion, the jurisdictional design of the Police Court system, as stated above, prevents the independence of this system when exercising its jurisdictional activities. The judges involved in the Preliminary and Plenary Stages, who shape the essential elements of each case from the investigative stage through to the passing of the initial judgment, are all police officers in active service. In other words, they are people who, without prejudice to their legal training, are in a subordinate position and, as indicated by the Constitution, have a duty of obedience to the chain of command headed by the President of the Republic.

Moreover, the higher level courts that hear possible appeals, the District Police Courts and National Court of Police Justice, are primarily made up of members of the National Police in retirement. This status, as already indicated, offers them treatment and consideration on the basis of the seniority attained within the police force, of which they form a *"reserve force"* and for which reason they must be assumed to be linked to it.

The declared constitutional mandate of subordination of the National Police (and hence its court jurisdiction) to the Executive Power is also expressed in the Organic Law of the National Police in terms of the appointment of the main authorities of the police justice system. Almost all of them, including the Prosecutors, are appointed from shortlists issued by the General Police Commander.[33] With regard to the upper echelons or highest level of the

[30] Article 80 of the Organic Law of the National Police.
[31] Article 218 in line with article 201 of the Constitution.
[32] Article 56 of the Organic Law of the National Police.
[33] In addition, it will be recalled that the Public Prosecutors are appointed directly by this Commander.

structure, their appointment by the President of the Republic is also on the basis of a shortlist of retired officers provided by the General Command.

To this must be added the fact that the appointments are for a two-year period and with only a possible (and not necessary) renewal. Because of the possible brevity of post, it is improbable that, if one wishes to remain in post for any significant length of time, decisions or rulings will be passed that could have an adverse effect on the interests and image of the Executive Power in general.

Amnesty International considers that the fact that the Police Court system is subject to the control and supervision of the Ministry of the Interior, Police, Worship and Municipalities is also indicative of its subordination. Complaints against judges with regard, for example, to undue procedural delays leading to the release of those allegedly responsible for serious human rights violations and who are being held on remand[34] must be resolved by a senior representative of the Executive who, due to his political position, will pass ruling giving first priority to the needs, interests and aims of his State function, without adhering exclusively to the Constitution and laws, which are the only reference points governing a judge in the ordinary justice system.

It should also be noted that the Organic Law of the National Police stresses that the entire institution[35] is responsible to the Ministry of the Interior, reiterating that the police force as a whole is *"organised in a hierarchical disciplinary system"*.[36] In this context, articles 6 and 8 of the Organic Law of the National Police also specify that, apart from the fact that the President of the Republic forms the *"highest authority"* institutionally; both the Ministry of the Interior and the General Police Command are specific bodies, to whom hierarchical subordination is understood to be kept. The police justice system appears to be primarily an *"administrative* [structure] *of the Executive Power",* rather than a properly jurisdictional body.

It must be recalled that the Judicial Police, as the body responsible for investigating criminal actions and arresting those allegedly responsible within the National Police, is made up of active members of that same institution. In other words, these officers have to deal not only with investigative guidelines and procedures and arresting of suspects but also with orders from their superior officers who, on some occasions, could have links of a personal nature with the likely authors of a criminal action.

Lastly, it should be noted that the Law on Judicial Function of the National Police notes among the powers and duties of the judges that of *"justifying to their superiors orally or in*

[34] Article 24.8 of the Constitution specifies that: *"Preventive imprisonment may not exceed six months for crimes punished through imprisonment [prisión], or a years in trials of punished through internment [reclusion]. If these periods are exceeded, the order of preventive imprisonment will become ineffective, under the responsibility of the judge accountable for the trial"* (Flanz G. H., *Constitutions of the Countries of the World,* 1999).

[35] Article 7 of the Organic Law of the National Police notes that *"the National Police is made up of the following bodies: a) Managing; b) Superior; c) Advisory; d) Operational; e) Court; and f) Attached bodies".*

[36] Article 2 of the Organic Law of the National Police.

writing the validity and justice of their rulings".[37] This suggests little independence, admitting in the regulations that a judge of the police justice system could find himself in a position of having to justify his decisions to his superiors. It is reasonable that a judge or a court's decision may be reversed or confirmed by a higher level jurisdictional body but the possibility, beyond a court decision per se, of having to justify or defend his position to a higher authority is unacceptable.

Given the above context, Amnesty International considers that independence within the Police Court system, a basic requirement for jurisdictional activity, is impossible. There do not exist the reasonable conditions for judges within this system to decide *"matters before them impartiality, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason"* as specified in the UN Basic Principles on the Independence of the Judiciary.[38]

b) Conflicts of competency between the special jurisdiction and the ordinary justice system.

As has been seen, a special police jurisdiction (and another military one) continues to exist alongside the ordinary justice system in Ecuador. As has been shown, through the examples in this report, there is often a legal debate as to whether certain criminal cases should be heard by the Police Court system or the ordinary justice system. These debates take place through a special procedure known as conflict of jurisdiction (*contienda de competencia).*

In Ecuador, jurisdictional conflicts between courts of the two different judicial systems are resolved by the highest level court of the Ordinary Court system.[39] The Constitutional Court, on the other hand, rules on jurisdiction when there is a need to interpret constitutional articles whose scope is under dispute between the Police Court system and the ordinary court system.

[37] Article 3 of the Law on the Judicial Function of the National Police.

[38] Principle 2 of the "Basic Principles on Independence of the Judiciary", adopted by the Seventh UN Congress on the Prevention of Crime and Treatment of Offenders, held in Milan from 26 August to 6 September 1985 and endorsed by UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

[39] The Supreme Court of Ordinary Justice thus resolves a conflict between an ordinary judge and a police one.

It is of great concern to Amnesty International that, given the persistence of police regulations contradicting the Constitution in terms of offences committed in the line of duty (*delitos de función*), such as the National Police Criminal Code, it is common for the ordinary justice system authorities to accept the police regulations as applicable and rule, in some cases of serious human rights violations, for example, that they fall within the competence of the Special Police Jurisdiction. In these cases, the ordinary justice system itself contradicts the Constitution.

In Amnesty International's opinion, it is essential that the ordinary justice system should act in accordance with the Constitution and in accordance with international human rights standards and criteria, clearly opting for the ordinary courts when the offences committed by the law enforcement forces are common crimes, as noted in article 187 of the Constitution.[40]

Kléver Abad Calva – Death in custody

Kléver Abad was arrested on 2 July 2002 by police officers on the Lago Agrio-Shushufindi road in Sucumbíos province and accused of transporting white gasoline. According to reports received by Amnesty International, Kléver Abad was taken to the rural police station in Shushufindi canton where it was decided he should be transferred to the town of Lago Agrio. When his family heard of his arrest, they went immediately to the police station in Lago Agrio where they were informed hours later that Kléver Abad had thrown himself into the river Aguarico on the journey from the rural police station to Lago Agrio and that nobody had seen him since. The family spent days searching the vicinity of the river.

Twenty-four days after his arrest, the body of Kléver Abad was found in the river. The body presented two bullet holes, one in the gluteus, the other in the stomach. Faced with the discovery of the body, the Provincial Commander of the Sucumbíos police station, questioned the victim's identity. DNA tests confirmed, however, that these were the remains of Kléver Abad.

The public prosecutor who began the investigation within the ordinary justice system in August 2002 was prohibited from continuing the case with the argument that *"In the main analysis of the case it is established that, on the day of the events, the accused* [members of the National Police] *(...)were undertaking police duties, and so these citizens cannot be tried by a Judge that is not of their jurisdiction, and so I am disqualified from continuing to prosecute the case and I stipulate that all the work be handed over to the General Commander of the National Police for the appropriate formalities"*.

On 24 September 2002, the family wrote to the then Minister of Government and Police informing him and complaining that the public prosecutor in Sucumbíos had been disqualified from the case, but they received no reply. In February 2003, an Amnesty International delegation visiting the country met with members of the Human Rights Unit of the Ministry of Government and Police and delivered a copy of the letter the Abad family had sent to the Minister in September 2002. The delegation expressed concern that the case was being tried through the Police Court system, and requested a response both to the family and to the organisation on developments in the case. To date, neither the family nor Amnesty International has received any response. Moreover, to date the family has been unable to gain access to the file in the Quito Police Court.

[40] Article 187 of the Constitution specifies that *"(…) In the case of common infractions* [committed by members of the law enforcement force] *they are subject to the ordinary justice"*. (Flanz G. H., *Constitutions of the Countries of the World,* 1999).

Juan Carlos Jahuaco – Death in custody

Juan Carlos Jahuaco was arrested on 24 March 2001 in Quito by members of the National Police, under suspicion of having stolen a cassette player from a car. Two days later, his family found him in the mortuary. According to the Police, on arresting him they placed him unhandcuffed in the back the patrol car while the police officers sat in front. It was under these circumstances that, according to the police, Juan Carlos Jahuaco escaped, jumping into a stream. However, according to relatives, there was forensic evidence that he died from a beating.

The investigation into the death of Juan Carlos Jahuaco began in the ordinary courts. However, in May 2002, the Higher Court that was hearing the case declared all work invalid arguing that the accused police officers had committed the alleged murder during the exercise of their duties and sent the case to the Police Jurisdiction. At the date of writing this report, the Police Judge of the first instance had declared the Preliminary stage of proceedings concluded. Amnesty International has no knowledge of the prosecutor's report for this trial.

The current Ecuadorian Constitution proposes an alternative mean of eliminating jurisdictional conflicts between the Special Jurisdiction and the ordinary court system, which involves integrating the Special Jurisdiction into the ordinary justice system. This integration is known as "Jurisdictional Unity" (*Unidad Jurisdiccional*) and is specified in Temporary Provision No. 26 of the Constitution. The Provision essentially establishes that the judges reporting to the Executive Power should transfer over to the Judiciary, noting expressly *"military and police judges",* and that the integration should take place by means of congressional laws, to which end the National Council for the Judiciary (*Consejo Nacional de la Judicatura*) [41] should present the relevant draft laws to this legislative body. The Temporary Provision states that, until the official passing of these laws, the police and military judges will continue to be subject *"to their own organic laws"*.

In August 2001, the National Council for the Judiciary presented a draft bill to the Ecuadorian Congress on the "Jurisdictional Unity" referred to in this Temporary Provision.[42] This draft bill proposes establishing an area of specialised police justice within the ordinary court system. The highest court of this specialised area of justice would be the Supreme Court of Justice, which is unique and common to the whole country, and which would only hear extraordinary appeals of nullification and review.

Congress has not taken a decision on this draft bill and the Military and Police Jurisdictions continue to exist separately from the ordinary justice system. It is essential that, when the "Jurisdictional Unity" is formalised by means of legislation approved by Congress, an independent and impartial judicial system is consolidated that will enable a deep social credibility to be gained with regard to justice administration in Ecuador, and which will thus be an effective instrument in the fight against impunity.

[41] This body is, according to article 206 of the Constitution, responsible for the government, administration and discipline of the Judiciary.

[42] This was the *"Legal Reform Bill for Jurisdictional Unity",* issued via Written Communication No. 545-SCNJ 2001 1 August 2001 and received on 20 of that month and year.

IV. OUTSTANDING DEBTS IN TERMS OF THE EFFECTIVE FULFILMENT OF INTERNATIONAL HUMAN RIGHTS STANDARDS AND PRINCIPLES

The Ecuadorian State has a strong and clear commitment to human rights, through its Constitution and through the international human rights treaties it has ratified. The Ecuadorian Constitution is clear and conclusive in specifying that, given their superior level, international human rights treaties must not be contradicted by legal precepts of a lower level. Thus article 274 of the Constitution states that, *"any judge or tribunal, sua sponte or upon the petition of a party, may declare that a legal principle contrary to the norms of the Constitution or international treaties or agreements is inapplicable in the lawsuit of which he or it takes cognizance*(…)*."*

On the basis of the Constitution, it can be understood that the Ecuadorian authorities must also abide by the recommendations and decisions of international human rights monitoring and supervisory bodies, given that article 4.4 of the Constitution emphasises that, *"Ecuador, in its relations with the international community: (…) Encourages…the strengthening of its bodies"*, which clearly occurs when it abides by and makes its decisions or recommendations effective.

However, Amnesty International considers that the design and use of the Police Court system is in contradiction with international human rights treaties. Both the American Convention on Human Rights, article 8.1, and the International Covenant on Civil and Political Rights, article 14.1, states that everyone has the right to be heard by a *"competent, independent and impartial"* court or judge.[43]

Emphasis on the obligation to have impartial and independent courts is also clear in opinions and criteria emanating from the international human rights supervisory and monitoring bodies. In 1984, the UN Human Rights Committee, the body responsible for monitoring fulfilment of the International Covenant on Civil and Political Rights, had already indicated that *"*(…) *States parties should specify the relevant constitutional and legislative texts which provide for the establishment of the courts and ensure that they are independent, impartial and competent, in particular with regard to the manner in which judges are appointed* (…)*, and the actual independence of the judiciary from the executive branch and the legislative.* (…) *The Committee notes the existence, in many countries, of military or special courts* (…) *In some countries such military and special courts do not afford the strict guarantees of the proper administration of justice* (…)*".*[44]

[43] The American Convention on Human Rights was ratified by Ecuador in December 1977 and the International Covenant on Civil and Political Rights was ratified by Ecuador in March 1969.

[44] Doc. UNO, HR1/GEN/1Rev. 5, General Comment 13, "*Equality before the courts and the right of all people to be tried publicly before a competent court established by Law (Article 14),* CCPR, 1984 Period of Sessions, paragraphs 3 and 4

It should also be noted that the existence of Special Jurisdictions for certain types of people implies situations of privilege that run counter to the principle and norms of equality. If, unlike the general public who must be tried by the ordinary justice system when they commit common crimes, there is a category of people who, without reasonable basis, enjoy the right to a different jurisdiction and treatment even though they have committed the same crimes, the right to equality is undoubtedly denied.

A cornerstone of the rule of law is that all people must be treated equally without distinction. International human rights law is based on this fundamental principle. Thus, for example, the American Convention on Human Rights and the International Covenant on Civil and Political Rights specify that all people *"have the right without discrimination to equal protection from the law"*.[45]

Since the 1990s, international human rights bodies have been more emphatic with regard the use of special courts. In 1990, the UN Special Rapporteur on Torture concluded that special courts, such as police and military jurisdictions *"make[s] no sense at all in cases where the security forces have seriously violated a civilian's basic human rights. Such an offence against the public order and, consequently should be tried by a civil court."*[46]

The emphasis international human rights law places on restricting the competence of courts of special jurisdiction to crimes committed by members of the law enforcement forces while exercising their professional duties is intimately related to the emphasis human rights bodies place on the State's obligation to prevent and combat impunity. This is because impunity often prevails when there are special jurisdictions for prosecuting offences involving violations of fundamental rights committed by members of the security forces.

Amnesty International considers that, to combat the phenomenon of impunity effectively in Ecuador, it is essential that all members of the police force committing violations of fundamental rights and other crimes outside the sphere of police activity must be tried by the ordinary justice system.

It is clearly necessary to undertake legal reforms, but it is also important to implement which is clearly authorised by the Constitution of the Republic and stated in International Human Rights Law applicable and binding on Ecuador immediately: that it is for the ordinary justice system to try common crimes committed by members of the forces of law and order.

The design of the ordinary justice system is more in line with the requirements of independence and impartiality that are essential when striving for an authentic justice system that is not arbitrary. Of the criteria and mechanisms aimed at ensuring the independence o the Ecuadorian ordinary court system can be mentioned: a) the already stated subordination of the judges only to the Constitution and the law; b) the existence of a National Council for the Judiciary as a body to govern, administer and discipline the judiciary; c) access to the position

[45] Article 24 of the Inter-American Convention on Human Rights and article 26 of the International Covenant on Civil and Political Rights.
[46] Doc. UNO, E/CN.4/1990/17, p. 83

of judge, apart from at the supreme level, via competitive examination and merit, which encourages selection of the most appropriate candidates; d) the opportunity for a genuine court career that prevents a situation of judges' vulnerability in post in relation to "*de facto*" powers trying to arbitrarily impose their interests and e) the trend towards publishing judgments.[47]

It is in this direction that the fight against impunity could be more effective. The tasks that this requires will need not only a similar desire and behaviour on the part of the government or State authorities in general but also a desire on the part of the National Police itself and all people and bodies interested in a justice administration that respects and promotes the human rights of all.

V. Recommendations

Amnesty International hopes that the Ecuadorian authorities will concur with the concerns stated in this report and take into account the following recommendations to resolve the impunity prevailing in the country.

1.

2. **Commitment to the protection and promotion of human rights.**

- The Ecuadorian authorities must send a clear and decisive message to the people that human rights violations committed by members of the security forces will not be tolerated and that those allegedly responsible for these violations will be independently and impartially investigated and all those responsible punished.

- The Ecuadorian authorities must call on the population to denounce any violation of their human rights by the security forces, undertaking to implement the necessary measures to ensure that complaints will be dealt with impartially, independently and effectively.

- The Ecuadorian authorities must implement a programme of public campaigns with the aim of encouraging the people to demand their fundamental right to life and physical integrity.

3. Police Court system

- The Ecuadorian authorities must immediately ensure that the current Police Court system intervenes only when it is a case of offences committed in the line of duty, that is, offences

[47] The ordinary justice system still has many problems. There continue to be longstanding problems that need to be dealt with effectively, such as the constant accumulation of trials, the lack of effectiveness of controls on individuals and the obsolete nature of many laws and procedures, among others. Bucheli Mera, Rodrigo, op. cit, p. 144 and 145

committed during the exercise of the professional duties or tasks of the National Police Force.[48]

- The National Police, in particular, and all Ecuadorian authorities, in general, must promote and encourage crimes listed in the Ordinary Criminal Code to be tried before the ordinary justice system.

- There must be immediate amendments made to the National Police Criminal Code, the Organic Law of the National Police, the Criminal Procedure Code of the National Police and other similar regulatory texts and regulations, such that the police justice system is empowered only and exclusively to judge offences committed in the line of duty. The respective legal regulations will need to state that all criminal offences not considered as offences committed in the line of duty must, as a matter of course, be tried via the ordinary court system.

- the State Public Prosecutor's Office (*Fiscalía General del Estado*), in particular, must ensure that its public prosecutors and employees are aware that human rights violations committed by the security forces must be tried via the ordinary justice system.

- The highest authorities of the judiciary must ensure that judges, magistrates and all their civil servants prosecute cases in which members of the security forces are accused of human rights violations speedily, independently and impartially.

- The Higher Courts, the Supreme Court of Justice and the Constitutional Court must develop a jurisdictional line that is consistent with the Constitution and the respective international treaties, such that in cases of human rights violations that may have been committed by members of the forces of law and order, competence is invariably given to the ordinary justice system.

4. Safeguards during the period of detention and interrogation.

- The Ecuadorian authorities, in particular the forces of law and order, must ensure that all people arrested are informed of their rights without delay, including the right to make complaints regarding treatment received and the right to have a judge rapidly establish the legality of the arrest.

- The Ecuadorian authorities must guarantee that prison conditions fulfil international norms and standards for the treatment of detainees[49] and take into account the specific needs of members of particularly vulnerable groups.

[48] Although this is not the focus of this report, we believe the same criterion could be used in relation to the current military jurisdiction and to possible offenders in the armed forces.

[49] For example the United Nations Standard Minimum Rules for the Treatment of Prisoners, the United Nations Basic Principles for the Treatment of Prisoners, United Nations Body of Principles for the Protection of all Persons under any Form of Detention and Imprisonment, United Nations Declaration on the Protection of all Persons from Enforced Disappearance and United Nations Standard Minimum

- The authorities must ensure that regular, independent inspection visits are carried out, without prior warning and without any restrictions, in all detention centres.

4. Independent investigation

- The Ecuadorian authorities must ensure that all complaints and reports of human rights violations must be the object of immediate, impartial and effective investigation, under the responsibility of a body that is independent from those allegedly responsible for the crimes and the institutions to which they belong. The methods and conclusions of these investigations must be made public.

- The National Police must ensure that any officer suspected of having committed human rights violations must be suspended from active service while investigations aimed at establishing responsibility are carried out.

- The authorities must guarantee that complainants, witnesses and others who may be in danger receive protection from intimidation and reprisals.

5. The right to reparation

- The Ecuadorian authorities must ensure that the victims of human rights violations and their dependents have the right to receive immediate reparation from the State, including restitution, fair and adequate compensation and appropriate medical care and rehabilitation.

6. International Treaties

- It must be a priority of the Ecuadorian government to ensure that, in practice, the rights enshrined in the international human rights treaties to which Ecuador is a party[50] are respected and that it ratifies those treaties it has not yet done.

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for the Protection of Juveniles Deprived of their Liberty.

[50] International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention against Torture and other Cruel, Inhuman or Degrading Treatment; Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Elimination of all Forms of Discrimination against Women; International Convention on the Elimination of all forms of Racial Discrimination; Convention on the Rights of the Child; International Convention on the Protection of the Rights of Migrant Workers and their Families; Facultative Protocol to the Convention on the Rights of the Child on children in armed conflict; Optional Protocol to the International Covenant on Civil and Political Rights; Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty; American Convention on Human Rights; Inter-American Convention to Prevent, Punish and Eradicate Violence against Women "Belem Do Para Convention"; Inter-American Convention to Prevent and Punish Torture, Protocol to the American Convention on Human Rights to Abolish the Death Penalty; Additional Protocol to the American Convention on Human Rights in the area of

- The Ecuadorian government must also implement the recommendations made by international human rights bodies such as the UN Human Rights Committee, the Inter-American Commission and Court of Human Rights of the Organisation of American States and other similar bodies, along with the statements made by the rapporteurs and other international mechanisms specialised in the area.

Economic, Social and Cultural Rights "San Salvador Protocol"; and the Rome Statute of the International Criminal Court.