

ECUADOR

Amnesty International's concerns in Ecuador

Amnesty International has been monitoring Ecuador's human rights situation since the 1970's, but intensified its monitoring when the organization began to receive numerous reports of torture, "disappearances" and extrajudicial executions in the context of counter-insurgency operations against *Alfaro Vive, Carajo!* (AVC), and opposition group which carried out armed actions between 1985 and 1988.

Following the cessation of armed actions by the AVC, Amnesty International continued to receive reports of human rights violations by members of the security forces, the vast majority of them in relation to the torture and ill-treatment or killing of common crime suspects. In addition, but on a lesser scale, the organization continued to receive reports of deaths under torture and "disappearances".

Amnesty International's human rights concerns in Ecuador are outlined below and are illustrated with some case studies. In addition this report addresses two issues which undermine the protection of human rights in Ecuador: the prevalence of institutionalized impunity and the need for effective reforms designed to protect human rights.

Torture and other cruel, inhuman and degrading treatment

Over the years Amnesty International has received hundreds of reports of prisoners having been tortured or subjected to cruel, inhuman and degrading treatment in some of Ecuador's police and military establishments, and in establishments under the direction of the penitentiary authorities. The abuses include beatings, electric-shock treatment, asphyxiation as a result of hoods being placed over the heads of detainees into which gas is inserted, submersion in water, being suspended by the arms or thumbs, and acts of intimidation, including death threats. The majority of victims are Ecuadoreans. However, Amnesty International has also received reports of the torture and ill-treatment of foreign nationals.

Torture and ill-treatment by members of the National Police

The large majority of reports of torture and ill-treatment documented by Amnesty International during past years implicate members of the *Policía Nacional*, National Police, responsible for detaining and interrogating criminal suspects. The police attached to the former *Servicio de Investigación Criminal* (SIC), Criminal Investigation Service; the former *Oficina de Investigación del Delito* (OID), Criminal Investigation Office; and the present *Policía Técnica Judicial* (PTJ), Judicial Investigation Police, have all at some time been accused of torturing and ill-treating prisoners, in some cases with fatal consequences.

Cases of torture and ill-treatment by these branches of the National Police have been acknowledged by the authorities and have on occasions been followed by attempts to reform the police. However, for the most part these efforts have come to nothing. For example, the SIC was closed down by presidential order in September 1991, following an inquiry by a government-appointed international commission into the "disappearance", in January 1988, of teenage brothers Carlos Santiago and Pedro Andrés Restrepo. The commission concluded that members of the SIC were responsible for their torture, "disappearance" and subsequent deaths. In its conclusions the commission stated that the SIC's investigative methods included "systematic torture, arbitrary detention and the use of cruel and inhuman and degrading treatment". In the wake of the commission's report, the then President of Ecuador, Rodrigo Borja Cevallos, immediately dissolved the SIC and announced measures to reform the police by creating the PTJ, a force which was to consist of newly recruited and professionally trained criminal investigation officers under the control of the judiciary.

Despite the presidential announcement and some press reports indicating that steps were being taken to recruit new police officers, in 1993 Ecuador's former *Tribunal de Garantías Constitucionales* (TGC), Tribunal of Constitutional Guarantees, was obliged to inspect a police centre run in Quito under the direction of the OID. The OID was the body which had been created as an interim measure pending the setting up of the PTJ. The inspection was conducted because the TGC continued to receive complaints from victims, their families, and independent human rights organizations that detainees were regularly tortured and ill-treated in the police centre. Following the visit, the president of the TGC wrote to the Minister of Government and Police stating that the TGC had found torture instruments in the OID centre and "had no doubt that torture was practised there".

In July 1995, Dr Fernando Casares Carrera, then State Prosecutor General, informed an Amnesty International delegation visiting Ecuador at the time, that the PTJ remained under the overall control of the executive, and not the judiciary as initially conceived in 1991. He claimed that the government had thereby lost an opportunity to tackle persistent human rights violations by the police. Dr Casares' conclusions were corroborated by independent human rights organizations in Ecuador, in the sense that they informed Amnesty International that the vast majority of policemen which had made up the SIC were retained by the OID and subsequently passed into the ranks of the PTJ.

It is against this background of failed police reforms that Amnesty International has continued to receive reports implicating members of the PTJ in acts of torture, including death under torture, despite previous official announcements that this branch of the police would fully respect the human rights of detainees. For example, in February 1995 Vicente Muñoz Ruiz died under torture while in the custody of the PTJ in Guayaquil. Following arrest, he was taken by two policemen to a coastal inlet and forced into the water with his hands tied behind his back. He died after failing to respond to resuscitation when lifted out of the water. Several civilians and members of the police implicated in the detention and death of Vicente Muñoz were detained pending the outcome of a judicial investigation. In July 1996 a civilian judge ruled that there was no conclusive proof against three of the policemen and two civilians and ordered their release. In April 1997 one police officer was convicted by a civilian court and sentenced to six years in prison for his part in the death.

In March 1997 Aníbal Aguas died while in the custody of the PTJ in the town of Machala, province of Los Ríos. According to a police report, Aníbal Aguas died as a result of knocking his head

against a patrol car as he was being placed in the back seat. However, relatives claimed he died after being driven away and tortured. A civilian examining judge initially ordered the detention of four policemen implicated in his death but later released three of them and referred the case to a police court. A petition filed before the *Tribunal Constitucional*, Constitutional Tribunal, to have the case transferred back into the jurisdiction of the civilian courts remained pending at the end of 1997.

Torture and ill-treatment by members of the military

Amnesty International has also received reports of torture and ill-treatment committed by members of the Ecuadorean armed forces.

For example, in one high-profile case, 30 people, all but one of them Colombian nationals, were tortured and threatened with death, following their detention by the army in December 1993. The victims had been detained in connection with an ambush of an Ecuadorean border patrol by Colombian guerrillas, on the river Putumayo, in which 11 police and soldiers were killed. Nineteen detainees were released within 48 hours, but the other 11 were held incommunicado by the military for between six and 10 days. The 11 were blindfolded, kicked, suspended, sprayed with gas, doused with a strong disinfectant, given electric shocks and subjected to mock executions. Carmen Bolaños Mora, the only female detainee, was reportedly raped until she lost consciousness. All 11, prior to their transfer into police custody, admitted under torture to having participated in the ambush. Indeed, a state prosecutor who investigated the allegations against the 11 concluded in a report that “those responsible for their torture [were] members of the Ecuadorean army”. Human rights lawyers representing the 11 protested their innocence. At the end of August 1996 four of the 11 detainees were released by a judge who ruled there was no case against them. In September 1997 the remaining seven were also released. Their release followed a ruling by the Supreme Court of Justice which overturned their convictions and sentences handed down the previous February by the Napo Criminal Court. However, the judicial authorities failed to bring to justice those responsible for the torture of the 11 by the army, despite the conclusions arrived at by the state prosecutor. In addition, Amnesty International does not know of any investigation having been initiated into the allegations of torture of the other 19 Putumayo peasants released within 48 hours of their detention.

Torture and ill-treatment by penitentiary personnel

Amnesty International is also concerned about the widespread practice of torture and other cruel, inhuman and degrading treatment in Ecuador’s prisons known as Social Rehabilitation Centres. In 1990 the former *Tribunal de Garantías Constitucionales* (TGC), Tribunal of Constitutional Guarantees, published a prison report, based on an investigation by the TGC’s Human Rights Commission, into the conditions prevailing in 20 Social Rehabilitation Centres. In the report the TGC’s Human Rights Commission made reference to “the despotic treatment and abuse of authority by officials and prison guards who attack inmates with sticks and clubs, and who regard this treatment as a normal way of securing discipline”.

The TGC’s Human Rights Commission went on to illustrate such treatment by reporting that 50 inmates in Quito’s Prison No. 2, had testified against, “several prison guards [who] dedicated themselves to the awful task of committing abuses, ill-treatment and torture”, and that “the stick and the club are

commonplace, [and] human dignity is not respected". The TGC's Human Rights Commission also asserted that "the attitude of abuse is backed by the very authorities in charge of the [Social Rehabilitation Centres]".

The TGC's Human Rights Commission concluded, *inter alia*, that "the treatment meted out to inmates, far from complying with legal requirements, violate every principle enshrined in the Constitution and International Treaties on the respect for human life". The Human Rights Commission made a number of recommendations to the penitentiary authorities and the National Congress designed to reform the penitentiary system.

Amnesty International is not aware of such recommendations having been taken up. Indeed, since the Report was published the organization has continued to receive reports of torture and other cruel, inhuman and degrading treatment suffered by inmates in Ecuador's prisons.

For example, in March 1997 armed police entered the García Moreno Prison in Quito and were alleged to have assaulted several inmates by using sticks and pipes. The authorities claimed the police were responding to a prison uprising. However, the prisoners claimed the incursion and abuses occurred after they started a peaceful hunger-strike. Amnesty International appealed to the authorities to conduct an independent inquiry into the allegations, and to make the findings public. The authorities replied claiming that an inquiry had been conducted which indicated that the prisoners had not been ill-treated. However, the report of the inquiry was not made public.

Deaths resulting from the use of firearms by the security forces

Several deaths resulting from the use of firearms by the security forces in the context of anti-crime operations and the control of public demonstrations against government policies have been documented by Amnesty International.

For example, in 1993 eight people were killed in circumstances which suggested they may have been extrajudicially executed. Five of the victims, Wilmer Zambrano Vélez, brothers José Miguel and Segundo Olmedo Caceido, Fernando Calderón Chico, and Antonia Mera de Molineros, were killed in March in three separate incidents which occurred during combined efforts by the police and army to control organized crime in Guayaquil city. The authorities said that the victims had all died as a result of armed confrontations with the security forces, but relatives alleged they had been extrajudicially executed. For instance, the husband of Antonia Mera de Molineros alleged that the police forcibly entered his home, held him at gunpoint, and then shot his 65-year-old wife in cold blood as she emerged from her room.

Three brothers, Orestes, Enrique and Fredy Cañola, were arrested in April 1993 in the town of Viche, Esmeraldas province, following a fight involving a policeman who later died. The brothers were taken to the police station in Viche, and then put into a vehicle to be taken to a police station in Esmeraldas town. However, they never arrived: their bodies were found in a cemetery in Esmeraldas, reportedly with bullet wounds and bruising.

In 1997, at least two people were shot in circumstances suggesting that they may have been extrajudicially executed. In February, Pedro Pablo Armas, a Quito-based taxi driver, stopped his vehicle while his passenger loaded the boot. According to reports, a policeman whose vehicle the taxi was obstructing approached Pedro Armas, hit him in the face, drew a gun and shot him dead. The policeman was reportedly dismissed from the force but later readmitted. In September, five police officers conducting an anti-drugs operation broke into a house in the district of La Tola, Quito. According to the police, José Miguel Manrique Morales, a 16-year-old student, was accidentally shot by one of the police officers during a struggle. However, a witness claimed that a policeman took him to a back yard and deliberately shot him. He died hours later. A judicial warrant ordering the policeman's detention was reportedly obstructed by police authorities, who claimed jurisdiction over the case. A civilian High Court eventually ruled that the case be referred into the jurisdiction of the police courts. By the end of 1997 those responsible for the killing had not been brought to trial.

At least six men were reported to have been extrajudicially executed during the course of 1997. In one incident, in January, the authorities claimed that Vicente Vargas, Carlos Obregón and Juan Jiménez were shot dead by police while attempting to escape from a prison in the city of Guayaquil. However, after a video was broadcast on national television showing the police capturing the fugitives, human rights defenders claimed all three were extrajudicially executed. Four policemen were investigated by a civilian court on charges of homicide, but subsequently the case was transferred into the jurisdiction of a police court. By the end of the year those responsible for these killings had not been convicted.

“Disappearances”

Amnesty International has documented occasional cases of “disappearance” in Ecuador during the 1990s, including five during the course of 1997 alone.

Angel Heriberto Hinojosa “disappeared” in January 1997, following his abduction near Quito, the capital, by a uniformed policeman and two civilians. He was bundled into a red car with no number plates. The incident was witnessed by a friend of the victim who managed to escape. The following May, Marco Bienvenida Palma was reportedly detained in the city of Manta, Manabí province, by military intelligence agents investigating the sale of weapons. His family claimed to have received information that he was later seen in the Ministry of Defence. In July 1997, Jeremías Ramírez, a Colombian national, and two unidentified friends “disappeared” after being detained in Quito by men who identified themselves as members of the police. Following the filing of successful *habeas corpus* petitions, the municipal authorities ordered the release of Marco Bienvenida Palma and Jeremías Ramírez. However, the Secretariat of the Armed Forces and the police denied having detained them. The whereabouts of all five men remained unknown by the end of 1997.

Impunity

Over the past years Amnesty International has made repeated reference in its reports to the practice of institutionalized impunity which prevails in Ecuador. Hundreds of complaints about human rights violations filed before the authorities remain unresolved. These include the deaths of at least 25

men, women and children shot by police during a mass protest by workers and their families at the Aztra sugar mill over 20 years ago, in October 1977; the torture, "disappearance" or extrajudicial execution over a four-year period by members of the police and armed forces of scores of people suspected of belonging to the armed opposition group *Alfaro Vive, Carajo!* (AVC); and the torture and ill-treatment of scores of criminal suspects held in police custody or in penitentiary establishments.

None of the attempts by the Ecuadorean authorities to create and implement mechanisms by which these and other past cases are investigated and those responsible are brought to justice have come to fruition. For example, in 1991, in the wake of the report published by the international commission charged with investigating the "disappearance" of the Restrepo brothers, former president Rodrigo Borja extended the mandate of the commission to include the investigation of other past human rights violations by the security forces. However, Amnesty International subsequently learned that the projected investigation was never put into effect.

In September 1996, the *Congreso Nacional*, National Congress, set up a special commission to investigate allegations of police corruption and human rights violations made public by a former policeman who claimed to have participated in counter-insurgency operations by the SIC during the years when the AVC was active. According to these allegations, a police "death squad" had been responsible for the torture, "disappearance", and extrajudicial execution of suspected members of the AVC. The former policeman claimed some victims had been buried in unmarked graves in a police precinct in Pusuquí, near Quito, and close to the Cuenca–Girón highway. The authorities visited the sites but, in the absence of precise locations, did not order excavations.

Also in September 1996, the Ministry of Government and Police established the *Comisión Verdad y Justicia*, Truth and Justice Commission, to investigate unresolved cases of human rights violations which had taken place over the previous 16 years (since 1979, when military rule ended), and to have its findings referred to the courts. By the end of 1996 the Commission was reported to have received information on almost 300 such cases. The Commission investigated reports of unmarked graves in the Fumisa police precinct, near the town of Quevedo, province of Los Ríos, said to contain the remains of scores of peasants who had died under torture or been summarily executed during the 1970s. Both the congressional and Truth and Justice commissions were expected to publish their findings sometime in 1997. However, within five months of commencing their work (by February 1997, when President Abdalá Bucaram was removed from office by the National Congress) both the Truth and Justice Commission and the congressional commission ceased to function. The failure of both commissions to publish any findings further consolidated the impunity surrounding hundreds of unresolved cases of torture, "disappearance" and killings.

Amnesty International believes that the failure to tackle the impunity which surrounds the vast majority of human rights violations by Ecuadorean state agents, whether *de facto* or legally sanctioned impunity (as in cases where state agents avail themselves of Ecuador's statute of limitations by way of escaping justice), is one of the major obstacles to improving the protection of human rights in Ecuador.

Reforms designed to strengthen the protection of human rights

The attempt initiated in 1991 to introduce practical steps designed to tackle human rights violations by the police responsible for criminal investigations have had little if any practical effect in Ecuador, as has been demonstrated by the failed attempts to reform this branch of the police referred to above (see pages 1-2 above).

During the course of 1995 a number of constitutional reforms designed to strengthen the protection of human rights were approved by the National Congress. These provisions allowed for the establishment of an Ombudsman's Office; for the right of individuals to file a petition of *amparo*; for the replacement of the TGC by a new body known as the *Tribunal Constitucional* (TC), Constitutional Tribunal; for the right of all persons to have access to a defence lawyer during an investigation by the police, representative of the Public Ministry, or any other State authority; for the payment of compensation to persons who suffer an unlawful judicial sentence; and for the State to accept civil responsibility for all cases of judicial error arising from an act of unlawful imprisonment, or from the alleged violation of those standards designed to protect individual liberty and security.

However, these constitutional provisions have had an uneven practical impact on the protection of human rights in Ecuador. For example, the TC began to process petitions and complaints in 1997. However, whereas under the TGC's regulations a complaint or petition could be filed before it by only one citizen, now the signature of 1000 citizens is required for a petition or complaint to be admitted by the TC. In a landmark decision regarding sexual orientation, in November 1997 the TC decriminalized homosexual acts between consenting adults by removing article 516 of Ecuador's Criminal Code, on the grounds that the article contravened the Constitution.

Another development is reflected in the approval by the National Congress, in January 1997, of a law regulating the work of Ecuador's first ever *Defensoría del Pueblo*, Office of the Ombudsman. This was followed in April 1997 by the appointment of an Ombudsman to head the Office. However, the following June the Ombudsman resigned in protest at Congress' decision to reduce his four-year term of office by ending it in August 1998, and because the authorities had not made sufficient resources available for the Office to be effective. By the end of 1997 the Ombudsman had not been replaced and Amnesty International has been informed that the Office remained inoperative.

The provision incorporated into the Constitution for upholding the right of all persons to have access to a defence lawyer when under investigation by the police or any other official authority has had little if any practical effect. The extremely limited number of public defenders (in 1997 there were only four for the entire jurisdiction of Pichincha, including the capital Quito) means that the vast majority of detainees and prisoners, particularly those with limited economic means, continue not having access to a lawyer. The inability of individuals to exercise this right to prompt judicial protection is compounded by serious delays by the judicial system in processing cases, including addressing complaints about human rights violations attributed to the security forces and other authorities.

Amnesty International has been repeatedly informed by Ecuadorean human rights organizations that delays in the civilian judicial system, combined with the fact that cases of human rights violations by the police and the armed forces are almost invariably transferred by the ordinary courts into the jurisdiction of the police and military courts respectively, means that in practice state agents implicated in human rights abuses often escape justice.

Many of the problems surrounding the protection of human rights in Ecuador outlined above find corroboration in a report by the Inter-American Commission on Human Rights published in April 1997 (see *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96 Doc.10 rev 1).

Amnesty International has learned that Ecuador's Ministry of Foreign Affairs, through its *Dirección General de Asuntos Humanitarios y Medio Ambiente*, General Directorate for Humanitarian and Environmental Affairs, has drawn up a *Proyecto del Plan Nacional de Acción de Derechos Humanos del Ecuador*, Ecuador's Draft National Action Plan for the Protection of Human Rights. This Draft Plan, dated June 1997, outlines in general terms the parameters of a policy designed to uphold international and regional standards for the protection of human rights. The Draft Plan briefly refers to many of the problems outlined above and sets out a number of proposals covering, *inter alia*, the rights of prisoners, children, women, indigenous people, racial minorities and foreign nationals, the elderly and the disabled. The Draft Plan also makes brief reference to proposals for the training of the police, the dismissal of police personnel accused of human rights violations and criminal prosecutions against them, and for tackling impunity.

Amnesty International has received information that the Draft Plan was formally made available in December 1997 to some of Ecuador's representatives of civil society, including non-governmental human rights organizations, with a view to them participating in a process which will take the Plan forward. However, the organization is unaware as to precisely what official status the Plan is to be given, including whether it is the intention to submit a final version to the Executive for its approval and publication by the government, or whether it will include proposals for legislative reform, such that these proposals would require being submitted for consideration and approval by the National Congress.

Amnesty International welcomes the initiative of the Ecuadorean authorities to draw up a National Plan of Action for the Protection of Human Rights and hopes that the Plan is translated into effective practical mechanisms designed to uphold international and regional human rights standards. Indeed, to implement such a Plan would be in keeping with the Vienna Declaration and Programme of Action adopted by the international community, including Ecuador, at the United Nations (UN) World Conference on Human Rights in June 1993. However, Amnesty International believes the Plan, in its final version, requires clearer targets than those proposed in the Draft Plan, and should include appropriate timetables for action, including mechanisms for monitoring implementation of the Plan.

Amnesty International has also learned that a Constituent Assembly commenced work in January 1998 to prepare a new Constitution for Ecuador and that the new Constitution could come into effect before August 1998, when a new President of the Republic and new deputies to the National Congress will take office, following elections programmed to take place in May.

Amnesty International has noted that, according to Article 137 of the Constitution at present in force in Ecuador, any international treaty and agreement is accorded no value whatsoever if it contradicts provisions in the Constitution or seeks to change the Constitution's provisions. In short, international human rights treaties could be rendered subordinate to the Constitution.

The organization is concerned, therefore, that this article, should it be retained in its present or similar form in the new Constitution, could serve to negate the spirit and wording of international human rights covenants, conventions and treaties.

Conclusions and recommendations

Amnesty International believes that the protection of human rights in Ecuador is in need of an urgent and thorough review by the Ecuadorean authorities, a review which requires the implementation of mechanisms designed to uphold these rights in practice.

Amnesty International recommends:

! That the authorities take the necessary steps to bring Ecuador's legislative, administrative, judicial and other measures for the protection of human rights into line with international and regional human rights standards;

! That the members of the Constituent Assembly include an article in the new Constitution which grants international and regional treaties for the protection of human rights the status of constitutional law;

! That the authorities approve legislation which ensures that human rights violations by members of the security forces are promptly and effectively referred to the ordinary courts;

! That the National Plan of Action for the Protection of Human Rights include an explicit commitment to the following paragraphs of the Vienna Declaration and Programme of Action adopted at the 1993 UN World Conference on Human Rights:

- Paragraph I,13 (eliminating all violations of human rights and their causes and creating favourable conditions for the full and effective enjoyment of these rights);

- Paragraph II,57 (putting an immediate end to torture);

- Paragraph II,60 (abrogating legislation leading to impunity);

- Paragraph II,62 (taking effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of "disappearances");

- Paragraph II,83 (incorporating standards as contained in international human rights instruments in domestic legislation and strengthening national structures, institutions and organs of society for promoting and safeguarding human rights);

! That the National Plan of Action for the Protection of Human Rights include clearer targets and appropriate timetables for action, including mechanisms for monitoring implementation of the Plan through annual reviews in which both official institutions and civil society may participate.