

Ecuador

Continued torture and ill-treatment of lesbian, gay, bisexual and transgender people

Introduction

Amnesty International is seriously concerned following new reports of homophobic harassment, torture, ill-treatment, and attempted extrajudicial executions by police officers in Ecuador since October 2000.

During the past few months Amnesty International has received reports of torture and ill-treatment, death threats and arbitrary detention of lesbian, gay, bisexual and transgender (LGBT) people in the city of Guayaquil. These reports occur in the context of the crime prevention plan called *Más Seguridad*, “More Security”, which came into effect on 14 September 2000 in Guayaquil and which granted the Metropolitan Police jurisdiction over matters of public security which appear to go beyond its mandate.

Local human rights organizations have reported that since the “More Security” plan came into effect there has been an increase of human rights violations against people because of their sexual orientation or gender identity¹. According to reports received by the organization, LGBT people, when detained by police, are allegedly accused of committing “outrages against decency” under the Ecuadorian Penal Code. These alleged offences cannot be punished with detention but with a fine. However, reports show that on many occasions people remain in

¹ Amnesty International has received reports from human rights organizations of at least 60 possible arbitrary detentions against LGBT people from October 2000 to February 2001, in Guayaquil.

detention for days, or even weeks. In addition, there have been allegations of police extortion in exchange for their release².

Amnesty International has also received reports of anonymous death threats against LGBT human rights defenders in Quito, the capital, and in Guayaquil, during the months of March and April 2001.

Amnesty International believes that these human rights violations are not being treated seriously by the Ecuadorian authorities and are therefore not being investigated; the perpetrators are not being brought to justice; the victims are not being protected, nor are they given access to redress for the crimes committed against them.

The Ecuadorian Constitution in Article 23, paragraph 3, states that all individuals shall be considered equal and shall enjoy the same rights, liberties and opportunities, without discrimination based on, amongst others, sexual orientation and health status³. Ironically the Ecuadorian Constitution is one of the few which explicitly includes “sexual orientation” in their non-discrimination provisions. Paragraph 5 of the same article guarantees everyone the right to freely develop their personality, with no other limitations other than those imposed by the legal system and the rights of others⁴.

In addition to the explicit anti-discriminatory provisions in Article 23, paragraph 3 of the Constitution of Ecuador, the Executive Decree which gives effect to the Ecuadorian Government National Human Rights Plan, signed on 24 June 1998, states in Article 26 that the

² It is alleged that members of the security forces frequently asked LGBT detainees for an amount of money in exchange for their release. The amount of money extorted varies from five to 10 dollars per victim.

³ Article 23 of the Ecuadorian Constitution, paragraph 3: “Equality before the law. Everybody will be considered equal and will enjoy the same rights, freedom and opportunities, without discrimination because of their birth, age, ethnic origin, colour, social background, language, religion, ideology, economic position, sexual orientation, health status, disability or difference of any kind” [unofficial translation]. *La igualdad ante la ley. Todas las personas serán consideradas iguales y gozarán de los mismos derechos, libertades y oportunidades, sin discriminación en razón de nacimiento, edad, etnia, color, origen social, idioma; religión, filiación política, posición económica, orientación sexual; estado de salud, discapacidad, o diferencia de cualquier otra índole.*

⁴ Article 23 of the Ecuadorian Constitution, paragraph 5: It is everybody’s rights to develop freely their personality, without any limitation other than those imposed by law and the rights of others [unofficial translation]. *El derecho a desarrollar libremente su personalidad, sin más limitaciones que las impuestas por el orden jurídico y los derechos de los demás.*

government shall verify that State security machinery and agents do not persecute and harass individuals on account of their sexual preferences⁵.

Amnesty International is concerned that these ground-breaking equal rights and non-discrimination provisions are not implemented in practice. In Ecuador, as in many parts of the world, LGBT people are still not treated as equal in dignity and rights. Homosexuality continues to be considered a sin or an illness, a crime, a social or ideological deviation or a betrayal of one's culture. Whereas most human rights violations are usually denied by governments, the repression that LGBT people face is often justified in the name of culture, religion or public health. Homophobia is one of many forms of identity-based discrimination which leads to LGBT people being seen as less than human.

Amnesty International believes that the persecution of people for their sexual identity is a violation of their fundamental human rights. The Universal Declaration of Human Rights states that "all members of the human family have equal and inalienable rights", and that all are entitled to all the rights and freedoms it contains, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"⁶. If the denial of rights to any social group is tolerated, the entire structure of human rights protection is undermined as well as the rights of all humanity. The Ecuadorian Constitution, based on the Universal Declaration of Human Rights, reinforces the idea that all individuals shall be considered equal and shall enjoy the same rights, liberties and opportunities, without discrimination based on, amongst others, sexual orientation and health status.

In October 2000, Amnesty International launched a *12-Point Program for the Prevention of Torture by Agents of the State* as a program of measures to prevent the torture and ill-treatment of people who are in governmental custody. Amnesty International calls on the Ecuadorian government to implement this 12-Point Program⁷ and, in addition, the recommendations included at the end of this document for the protection of LGBT people in Ecuador.

⁵ Article 26 of the Ecuadorian National Human Rights Plan: To ensure that government agencies and state security agents do not persecute and harass people because of their sexual orientation [unofficial translation]. *Velar porque los mecanismos y agentes de seguridad del Estado no ejecuten acciones de persecucion y hostigamiento a las personas por sus opciones sexuales.*

⁶ Article 1 and 3 of the Universal Declaration of Human Rights.

⁷ Please see appendix 1, page 14.

CASES OF HUMAN RIGHTS VIOLATIONS AGAINST LGBT PEOPLE

Nº1: Sexual violence and other ill-treatment by police officers in the context of the “More Security” plan

On 29 October 2000, according to reports, at around 3am, a police team of four (a National Police officer, two Metropolitan police officers and a driver), all of them members of the “More Security” plan, arrived in a council truck at “Out Side”, an LGBT disco in Guayaquil, where a Halloween fancy-dress party was taking place. The sub-lieutenant of this police team burst in, shooting three times at the disco’s door lock. The doors of clubs and discos in Guayaquil and Ecuador in general are reportedly locked in the late evening due to the high level of crime in the city. Following the forced entry of the police officers, they proceeded to detain an employee who was in the disco’s ticket office, insulting him, beating him up and taking him to the truck.

The sub-lieutenant then went back into the disco. “Tomás” (not his real name), one of the people at the disco, asked the sub-lieutenant what was happening: “I asked him respectfully what was happening? ... and that was enough for him to attack me, pushing me so that I fell down the stairs. He carried on beating me and insulting me for being gay”. *“Le pregunté muy respetuosamente ‘disculpe oficial, qué sucede? Siendo motivo suficiente para que me agrediera empujándome y haciéndome caer por las escaleras y continuó golpeándome e insultándome por homosexual.”*⁸

“Tomás” was taken away in the truck together with a disco employee. A few blocks away the van stopped and both men were forced to lie face down in the vehicle. “Tomás” was kicked and beaten until his face bled. At the police headquarters he was told to stand with his legs apart and hit several times with a broomstick. While he was being hit the police officer said: “Queer, son of a bitch, that’s the way you like it. Look at this tart, he is enjoying it”, *“Maricón hijo de puta así es como te gusta ponerte. Miren este zorro está encantado así”*⁹. Another police officer involved in the arrest reportedly threatened to kill him if he reported the beating. Both men were released without charge two days later.

⁸ Statement by “Tomas” [name withheld] to the *Comité Permanente por la Defensa de los Derechos Humanos*, Guayaquil, Ecuador.

⁹ Idem footnote above.

There appears to have been no legitimate motive for the raid on the disco. According to the testimony given by the owner of “Out Side”¹⁰, the sub-lieutenant said to him that “this is a council operation”, “*era un operativo de la intendencia*”. The sub-lieutenant asked the owner of “Out Side” for the entertainment licence. The owner replied that, as in every business, the licence is stuck on the front door. The sub-lieutenant asked for the original licence. After the owner of the disco gave him the original licence, the sub-lieutenant went inside the disco and forced everybody to leave the place, shouting and pushing the clientele. As he left the disco he took with him the original licence.

On 7 November 2000, the owner of “Out Side” filed a complaint before the *Intendente General de la Policía Nacional*, General Administrator of the National Police and to the *Comandante del Cuarto Distrito de la Policía Nacional*, National Police 4th District Commander, prompting an investigation by the Internal Affairs Department, known as P2. On 6 December 2000, the victims presented their testimony at the National Police Headquarters, the *Cuartel Modelo*. On 6 January 2001, the police investigators’ report concluded that it was not possible to corroborate the complaints because of the lack of evidence.

According to reports, this was not the only time that the sub-lieutenant is alleged to have ill-treated LGBT people¹¹. On the same night of the above mentioned incident, it is reported that the sub-lieutenant waited outside “Judha”, another LGBT disco in Guayaquil. He followed a taxi which contained two men who had left the disco. He ordered the taxi driver to stop and the two men to get out of the car. One of them resisted and was taken to the National Police Headquarters in Guayaquil, where he was punched and beaten with a broom stick as well as being kicked in his testicles. He was then threatened with death if he reported what had happened to him. He still fears for his life and does not want his name to be known.

Nº 2: Alleged cases of attempted extrajudicial execution by police officers

Amnesty International is seriously concerned at reports of attempted extrajudicial executions against LGBT people. On 9 November 2000, according to reports, a transvestite was detained by police truck nº 38 of the “More Security” plan, in the centre of Guayaquil, for no other apparent reason than her gender identity. She was taken to police post

¹⁰ Statement by the owner of the disco “Out Side” to the *Comité Permanente por la Defensa de los Derechos Humanos*.

¹¹ The sub-lieutenant involved in this case has also been charged with the extrajudicial execution of Joffre Aroca Palma on 27 February 2001.

n° 35 and was forced to clean the police and civilian vehicles parked within the police precinct. Once she finished washing the cars, a police officer tried to hit her breasts with a short police club. She stated that she had silicone implants in her breasts and if he continued she would make a complaint against him. She was then taken to the bridge called *5 Junio*, and the police officer attempted to force her to jump into the *Salado* estuary.

In a separate incident, according to reports, police truck n° 106 of the “More Security” plan detained four homosexuals in the centre of Guayaquil, on 15 November 2000. They were taken to the *5 Junio* bridge, beaten on their hands and feet and forced to jump into the *Salado* estuary. Fortunately, since they could swim, they all survived.

N° 3: Intimidation and death threats by a police officer

Amnesty International has received reports that on 19 January 2001, a delegation of the Ecuadorian Sexual Minorities Foundation, *Fundación Ecuatoriana de Minorías Sexuales*, FEMIS, led by Henry Rodríguez Lozano, went to the National Police Headquarters in Guayaquil to identify police officers who had been ill-treating LGBT people. As they were entering the National Police headquarters a police officer, who had reportedly ill-treated LGBT people in December 2000, approached and threatened the delegation. “I will go where you usually meet and I will shoot you ... we ought to shoot a few queers and take them to the *Perimetral*¹², “*voy a llegar donde ustedes paran y les voy a dar plomo ... lo que se debería hacer es matar a un poco de maricones y llevarlos a la Perimetral*”. The delegation reported the incident to police investigators. The police officer was called by the police investigators and in their presence, he allegedly pointed at Henry Rodríguez Lozano and said: “I’m going to shoot you, I will kill you, you queer”, “*a ti te voy a correr bala, te voy a matar maricón*”.

Two weeks later, on 2 February 2001, Henry Rodríguez was intercepted by a “More Security” patrol in the centre of Guayaquil. The patrol included three Metropolitan police officers and the National Police officer who had threatened him on 19 January 2001. The latter was carrying a baseball bat. This officer allegedly said “I told you that I didn’t want to see you here, go before I beat you, now I am patrolling the area”, “*te dije que no te quería ver por aquí, te largas antes que te corra palo, ahora estoy de guardia*”.

N° 4: Torture and ill-treatment of transvestites by Metropolitan Police officers

¹² The *Perimetral* is a ring road in the city of Guayaquil where bodies of people with criminal records have been found shot dead.

On 22 February 2001, according to reports, five transvestites, David Moreira Mora (Talia), Alberto García Gabela (Carolina), Jair Ulloa Rodríguez (Kasandra) and Daniel Díaz Quinde (Joselin), José Francisco Quesada Ochoa (Ivana), were detained at 11 pm by police officers of the “More Security” plan, in Guayaquil. They were taken to the *Cuartel de la Policía Metropolitana*, the headquarters of the Metropolitan Police. Whilst in detention they were severely ill-treated.

Talia was allegedly beaten around the head with a fire extinguisher and lost consciousness. Police officers took her to the casualty department at the Hospital Luis Vernaza. She spent two hours in the hospital until she recovered consciousness and was then removed from the hospital by police officers with a drip still in her arm, in spite of objections made by the doctor. The police officers ignored the doctor’s recommendation and took her back to the Metropolitan Police headquarters. She was held *incomunicado* and released two days later. The other four were detained for two days before being released.

Nº 5: Anonymous death threats

On 23 March 2001, Quitogay, an LGBT organization based in the capital, Quito, received an e-mail which read: “after hard investigative work, we know who you are, how you live and where you work, in fact all the bullshit you are involved in ... [we] have resolved to exterminate the human rubbish that you are, so our country will be seen as an example in the world, and we won’t have to run into perverted queers”, “*luego de arduas jornadas de investigación podemos saber quienes son ustedes, como viven y en que trabajan, sobre todo las huevadas en las que andan metidos ...se ha resuelto... se elimine esta basura humana ... así este país sea bien visto y un ejemplo para el mundo, y no andemos por ahí topándonos con tanto maricón pervertido*”¹³.

The message called LGBT people “mentally disturbed, queers and human rubbish” “*desequilibrados mentales, maricones and basura humana*” and blamed LGBT people for spreading disease.

The sender claimed to be an anti-gay group which was going to achieve “a total social cleansing in all the *Quitogay* sectors ... [LGBT] people will be shot in the arse when they don’t expect it ... our objective is to exterminate this plague of queers ... we are well organized ... to achieve this social cleansing ... because this is the way we have to live, without you and without the risk that our children will follow your cursed example”, “*...la limpieza sera total y en todos los sectores de Quitogay...donde menos lo esperen, les van a meter un tiro por el culo...el*

¹³ Urgent Action 73/01, Fear for Safety/Death threats, AMR 28/010/2001, 29 March 2001.

objetivo es eliminar toda esta plaga de maricones ... [nosotros] estamos bien organizados ... para efectuar esta limpieza total ... porque así se debe vivir sin ustedes y sin el riesgo de que nuestros niños sigan su maldito ejemplo.

Although the threat is directed at *Quitogay* and at the LGBT people in Quito, the message also refers to a “social cleansing of the whole country”.

On 3 April 2001, the group *Juventud Arco Iris*, Rainbow Youth, which is part of the *Fundación Amigos por la Vida*, Friends for Life Foundation, FAV, an LGBT rights organization based in Guayaquil, received a death threat¹⁴. Neptali Arias Zambrano, FAV director and Christian Landeta, Rainbow Youth Coordinator, were also threatened in the message. Rainbow Youth promotes safe sex practices and gives free health advice to prevent the spread of AIDS. The message compares Ecuador’s two main cities, Quito and Guayaquil, to Sodom and Gomorrah, promising to clean both cities of “queers”. The message ends acknowledging that Rainbow Youth is organising an event on 6 April 2001, and promising that they will show what they are capable of doing with the “queers” they will capture. However, Rainbow Youth spokesperson reported that the event was successful. Almost 100 people attended this event and no homophobic incidents were reported by the organisers. Friends for Life Foundation received at least five telephone threats in the last two weeks of April. An anonymous male caller said “we are keeping an eye on you”, *los estamos vigilando*. The anonymous death threats received in Guayaquil city occurred at the same time as the closing down of all LGBT bars and discos by council authorities.

Amnesty international has received reports that death threats have been received by other LGBT organizations. On 5 April 2001, an email message was sent to Orlando Montoya, leader of *Equidad*, an LGBT organization based in Quito¹⁵. The email’s subject box read: “Death”, *Muerte*, accused him of being an “ideologist of human scum” and promised that “he will be the first”, “*Orlando Montoya mentalizador de la escoria humana serás el primero*”. Further death threats were received by *Quitogay* on 10 April 2001, in which the writer expressed that “as we have announced before, we have some more time left this month [April] to start this social cleansing”, *como lo hemos anunciado tenemos muchos días de este mes para dar inicio a la limpieza ...*

Authorities response to LGBT complaints

¹⁴ Urgent Action update, Fear for safety/Death threats, AMR 28/012/2001, 4 April 2001.

¹⁵ Urgent Action update, Fear for safety/Death threats, AMR 28/014/2001, 1 May 2001.

LGBT organizations have reported to the Ecuadorian authorities cases of human rights violations against LGBT people in the past few months. On 23 January 2001, four *directores del municipio*, Guayaquil local authorities directors, wrote to Dr. Jaime Nebot Saadi, Guayaquil Mayor, reporting the complaints made by Guayaquil human rights organizations. In the letter the directors stated that homosexuality is a deviation¹⁶, and that although homosexuality had been decriminalised in Ecuador, deliberate acts of homosexuality in several streets of the city constitute an outrage against decency¹⁷.

It is Amnesty International's opinion that this letter demonstrates a clear prejudice against homosexuality, first referring to it as an illness, as a "deviation", and then stating that its public manifestation should be punished as a crime.

Amnesty International acknowledges that, on other occasions Ecuadorian authorities have taken some steps to protect LGBT people. For example, on 5 February 2001, the *Ministro Fiscal Distrital del Guayas y Galápagos*, the Guayas and Galápagos District Attorney General, wrote to the *Ministra Fiscal General*, Attorney General, in relation to the harassment of LGBT people by the police. In the letter, the Guayas and Galapagos District Attorney General reported to the Attorney General that he had informed the *Intendente General de Guayas*, Guayas Province Chief of Police, copied to the *Comandante del Regimiento de Policía de Guayas*, Commander of Guayas Police Regiment N° 2, and to the Public Health Police Headquarters, that homosexuality had been decriminalised in November 1997. In view of this he asked them to inform their personnel of this resolution and to instruct them to avoid committing abuses against LGBT people¹⁸. However, Amnesty International is seriously concerned at the lack of investigation into the abuses described above, which have been reported to the authorities by LGBT rights groups despite the risk of reprisals faced by them. Amnesty International fears that this impunity may contribute to further violence against LGBT people. Ecuadorian authorities must send a clear message that human rights abuses against LGBT people will not be tolerated.

RECOMMENDATIONS

¹⁶ In December 1991, the World Health Organization, WHO, deleted homosexuality as an illness in the International Classification of Diseases (chapter V, code 302). This decision did not come into force before January 1993 (ICD-10-version).

¹⁷ For the full text of the letter in English and Spanish, please see appendix 2, pages 17 and 18.

¹⁸ For the full text of the letter in English and Spanish, please see appendix 3, pages 19 and 20.

In view of the pattern of human rights violations against LGBT people and the lack of effective response by the authorities, Amnesty International is making the following recommendations to the Ecuadorian government:

Condemn discrimination

The Ecuadorian authorities must send a clear signal to police enforcement officials and other government agencies stating that discrimination will not be tolerated, including discrimination of people because of their sexual orientation or gender identity.

Government officials should initiate and support public anti-discrimination campaigns to raise awareness of the need to protect the rights of all people, including LGBT people, to be free from torture, ill-treatment and any other abuses.

Condemn torture, ill-treatment or any other cruel, inhuman or degrading treatment

The Ecuadorian authorities must send a clear signal that torture, ill-treatment or any other cruel, inhuman or degrading treatment will not be tolerated in any case, including cases of LGBT people and that perpetrators will be prosecuted.

Officials at the highest level should condemn torture and make clear that any act of torture or ill-treatment, whoever the victim, will not be tolerated. They should refrain from any public statement or order which could reasonably be interpreted as a licence to torture or ill-treat people because of their sexual identity. Those who make such statements should be held accountable for instigating, inciting or abetting torture.

Provide safeguards in custody

Ensure that all law enforcement personnel, prison staff, medical personnel and other relevant officials are trained in how to protect LGBT people against torture or ill-treatment or any other cruel, inhuman or degrading treatment.

Take effective measures to prevent rape and other sexual violence against LGBT people in custody. Rape in police or prison custody should always be recognized as an act of torture. Female prisoners should be held separately from male prisoners. They should not be supervised by male members of staff and female security personnel should be present during their interrogation.

End impunity

The Ecuadorian authorities should ensure that all allegations and reports of torture or ill-treatment and other cruel, inhuman or degrading treatment, on account of real or perceived sexual identity, are promptly and impartially investigated and those responsible brought to justice.

Protection of human rights defenders

The Ecuadorian government should support the work of organizations working against LGBT people's abuses discrimination and enable them to carry out their work without fear or unjustifiable restriction¹⁹.

It also should ensure adequate protection of human rights defenders at risk because of their work on issues of gender and sexual identity. Their work should be supported and they should be consulted on policy initiatives to combat torture and ill-treatment.

KEYWORDS:KEYWORDS: TORTURE/ILL-TREATMENT1 / SEXUAL ORIENTATION1 / TRANSGENDER ISSUES / ATTEMPTED KILLING / HARASSMENT / POLICE / INDEPENDENCE OF JUDICIARY

¹⁹ In a resolution adopted in June 1999, the General Assembly of the Organization of American States (OAS) stated its intention to implement the United Nations (UN) Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The resolution called on member states to provide "Human Rights Defenders with the necessary guarantees and facilities to continue freely carrying out their work of promoting and protecting human rights", as well as to adopt "the necessary steps to guarantee their life, liberty, and integrity".

K WHAT YOU CAN DO:

Please send courteously-worded faxes or airmail letters of inquiry preferably in Spanish to the authorities listed below:

- expressing serious concern at the high number of reports of torture, ill-treatment and arbitrary detention of people because of their sexual orientation or gender identity in Ecuador;
- urge the authorities to take steps to ensure that similar incidents do not occur in future and to send a clear message that ill-treatment, torture and discrimination will not be tolerated;
- remind the authorities that the Ecuadorian Constitution establishes that all individuals shall be considered equal and shall enjoy the same rights and opportunities and explicitly prohibits discrimination based on sexual orientation;
- urge the authorities to investigate these allegations, make public the results and bring the perpetrators to justice;
- ask the authorities to do everything in their power to allow LGBT human rights defenders to carry out their legitimate human rights work without fear of arrest, ill-treatment or other abuses and to protect LGBT people, their organizations and LGBT human rights defenders.

PLEASE SEND APPEALS TO:

President

Dr. Gustavo Noboa Bejarano
Presidente Constitucional de la República
del Ecuador
Palacio de Carondelet, García Moreno 1043
Quito, ECUADOR
Fax: + 593 2 58 07 35
Salutation: Sr. Presidente/Mr. President
Email: despresi@presidencia.ec-gov.net

Head of the Public Ministry

Dra. Mariana Yépez de Velasco
Ministra Fiscal General de la Nación
Ministerio Fiscal General del Estado
Robles 731 y Av. Amazonas
Quito, ECUADOR
Fax + 593 2 56 03 55/ 58 00 67
Salutation: Sra. Ministra/Dear Attorney
General

Head of the National Police

General Inspector
Dr. Mario Romel Cevallos Moreno
Comandante General de la Policía Nacional
Comandancia General de la Policía Nacional
Ramírez Dávalos 612 y Av. 10 de Agosto
Quito, ECUADOR
Fax: + 593 2 50 60 66
Salutation: Señor Comandante General
/Dear Commander-in-Chief

Minister of Interior

Dr. Juan Manrique Martínez
Ministro de Gobierno
Ministerio de Gobierno, Policía
Cultos y Municipalidades
Benalcázar y Espejo
Quito, ECUADOR
Fax: + 593 2 58 00 67 / 58 33 97 / 95 50 66
Salutation: Sr. Ministro/Dear Minister

Governor of Guayas Province

Ing. Joaquín Martínez Amador
Gobernador de la Provincia de Guayas
Gobernación de Guayas
Malecón Simón Bolívar
Guayaquil, ECUADOR
Fax: + 593 2 53 42 61
Salutation: Sr. Gobernador/Dear Governor

Head of National Police Guayas Province

Coronel de Policía de E.M.
Marco Cuvero Vélez
Comandante Provincial de la Policía Nacional
Comandancia Provincial Regimiento n° 2 de la
Policía Nacional
Cuartel Modelo, Av. de las Américas
Guayaquil, ECUADOR
Fax + 593 2 29 28 09
Salutation: Sr. Comandante/Dear Colonel

Mayor of Guayaquil

Ab. Jaime Nebot Saadi
Alcalde de Guayaquil
Palacio Municipal
Pichincha entre Clemente Ballén y 10 de
Agosto
Guayaquil, ECUADOR
Fax: + 593 4 52 60 55
Salutation: Sr. Alcalde/Dear Mayor

Head of Metropolitan Police Guayaquil

Gral. R. Eduardo Díaz
Director de la Policía Metropolitana
Palacio Municipal
Pichincha entre Clemente Ballén y 10 de
Agosto
Guayaquil, ECUADOR
Fax: + 593 4 56 35 76
Salutation: Sr Director/Dear General

Appendix n° 1

Amnesty International's 12-Point Program for the Prevention of Torture by Agents of the State

1. Condemn torture

The highest authorities should demonstrate their total opposition to torture. They should condemn torture unreservedly whenever it occurs. They should make clear to all members of the police, military and other security forces that torture will never be tolerated.

2. Ensure access to prisoners

The governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

3. No secret detention

The government should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers and the courts. Effective judicial remedies should be available at all times to enable relatives and lawyers to find out immediately where a prisoner is held and under what authority and to ensure the prisoner's safety.

4. Provide safeguards during detention and interrogation

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture and order release if the detention is unlawful. A lawyer should be present during interrogations. The government should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

5. Prohibit torture in law

Governments should adopt laws for the prohibition and prevention of torture incorporating the main elements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and the essential safeguards for its prevention must not be suspended under any circumstances, including states of war or other public emergency.

6. Investigate

All complaints and reports of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The methods and findings of such investigations should be made public. Officials suspected of committing torture should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

7. Prosecute

Those responsible for torture must be brought to justice. This principle should apply wherever alleged torturers happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime. Governments must exercise universal jurisdiction over alleged torturers or extradite them, and cooperate with each other in such criminal proceedings. Trials must be fair. An order from a superior officer must never be accepted as a justification for torture.

8. No use of statements extracted under torture

The government should ensure that statements and other evidence obtained through torture may not be invoked in any proceedings, except against a person accused of torture.

9. Provide effective training

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture is a criminal act. Officials should be instructed that they have the right and duty to refuse to obey any order to torture.

10. Provide reparation

Victims of torture and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

11. Ratify international treaties

All governments should ratify without reservations international treaties containing safeguards against torture, including the UN Convention against Torture with declarations providing for individual and inter-state complaints. Governments should comply with the recommendations of international bodies and experts on the prevention of torture.

12. Exercise international responsibility

Governments should use all available channels to intercede with the governments of countries where torture is reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture. Governments must not forcibly return a person to a country where he or she risks being tortured.

Appendix n°2

GUAYAQUIL MUNICIPAL AUTHORITY

Ref: DJV-2001-185

Guayaquil, 23 January 2001

Mr. Jaime Nebot Saadi
Mayor of Guayaquil

Dear Sir,

With reference to official communication AG-2001-00167 of 3 January 2001, regarding official communication No 030 Femis of 28 December 2000, in which representatives of the Ecuadorian Sexual Minorities Foundation, FEMIS, report acts of harassment allegedly committed by personnel involved in Operation "More Security", we wish to inform you of the following.

Although it is true that Homosexuality (A sexual deviation which consists of having sexual relations with another person of the same sex), as classified under Article 516 of the Penal Code, is no longer punishable as a criminal offence, deliberate acts of homosexuality in several streets of the city constitute an outrage against decency and public morals as provided by law. Moreover, the action taken by the municipal authorities to contribute to the suppression of such acts has always been in support of the Guayas Police Headquarters, as this is the body responsible by law for handling and resolving such matters.

Operation MORE SECURITY has in particular the sacred mission of combating crime in the city. Its task is specific and limited to this purpose. If it results in acts of violence, those affected by any action of this kind should therefore indicate more specifically who the assailants are so that a thorough investigation can be initiated and, where appropriate, those responsible punished for any abuses they may have committed.

Yours sincerely,

Rafael Izurieta Brito
Director of Justice and Policing

Gustavo Zuniga Gebert
Director of Urban and Rural Sanitation

General (retired) Eduardo Diaz G.
Director of the Metropolitan Police

Alvaro Solozano Ycaza
Director of Use of Public Spaces and
Highways

CC:

Luis Perez Merino, Director of Town-Planning, Valuation and Registry
Gustavo Zuniga G., Director of Urban and Rural Sanitation
Files

Appendix 2

Appendix n°3

REPUBLIC OF ECUADOR
PUBLIC MINISTRY
GUAYAS AND GALAPAGOS DISTRICT ATTORNEY GENERAL'S OFFICE

Ref: 0145-MFD-G

Guayaquil, 6 February 2001

Dr. Mariana Yopez de Velasco
ATTORNEY GENERAL
Quito

Dear Madam,

With regard to communications 0000156-SGMP and 0000396-SGMP, dated 10 and 26 January 2001 respectively, both signed by Dr Mercedes Jimenez de Vega, Secretary General of the Public Ministry, I write to inform you that I have sent official communication 0138-MFD G, dated 5 February 2001, to the Guayas Chief of Police, copied to the Commander of Guayas Police Regiment No 2 and to the Public Health Police Headquarters, informing him that "...by Resolution 106-1-97, Official Record 203-S, 27-11-97, homosexuality was decriminalized, for which reason I ask that you instruct the personnel under your command not to commit arbitrary acts or abuses against such persons", a copy of which is attached for your information.

Yours sincerely,
God, Fatherland and Freedom

Dr. Walter Tomsich Perez
Guayas and Galapagos District Attorney General

Enc: as above

007-002

Appendix 3