

# ECUADOR

## PEDRO BAQUE TUÁREZ AND THE JARAMILLO BROTHERS ANOTHER CASE OF HUMAN RIGHTS' IMPUNITY

Amnesty International is seriously concerned about the extrajudicial execution of two brothers, Pedro and Carlos Jaramillo Mera, and the attempted extrajudicial execution of Pedro Geovanny Baque Tuárez. In particular, the organization is concerned about the fact that judicial proceedings were started against some members of the police who had been charged with these crimes over a year ago, but that the trial does not appear to be moving forward. As a consequence, nobody has been convicted and neither Pedro Baque nor the relatives of the Jaramillo brothers have received appropriate reparation.

The case of Pedro Baque and the Jaramillo brothers is only another example of the many cases of human rights violations by members of the security forces in Ecuador which remain unresolved. Amnesty International believes that these cases demonstrate that there is a vicious circle of impunity still in place in the country.

According to reports, Pedro Baque Tuárez and the Jaramillo brothers were intercepted by a police van containing eight members of the Ecuadorian National Police on 11 February 1999, in the sector of Guabito, Portoviejo, Manabí Province. After ordering them to stop and while Pedro Baque and the Jaramillo brothers had their hands up, one of the policemen shot Pedro Jaramillo, killing him on the spot. Carlos Jaramillo and Pedro Baque were then taken handcuffed and blindfolded to a property belonging to the police at Km. 26 on the Jipijapa Montecristo road where the police officers proceeded to beat them. The agents shot and killed Carlos Jaramillo. They also shot Pedro Baque, causing a perforation to his abdomen and wounding him in the left arm, cheekbones and jaw. Believing that he was dead, the policemen left him there.

Five members of the Ecuadorian National Police were charged with these crimes and are at present in preventive custody by order of the *Corte Superior de Justicia*, High Court of Justice of Portoviejo, Manabí Province.

On 12 January 2000, the president of the High Court of Justice of Portoviejo transferred the case to a police court in Guayaquil, Guayas Province, claiming that the case did not fall within the jurisdiction of the ordinary courts.

In this context, Amnesty International wrote to President Gustavo Noboa Bejarano in February 2000. The organization believes that the fact that police courts have jurisdiction over such cases is one of the main factors contributing to impunity. The organization believes that the police courts are neither independent nor impartial and that members of the police who are responsible for committing human rights violations should be brought to trial in civilian courts in accordance with UN international standards. The United Nations Special Rapporteur on Torture concluded in 1990 that special tribunals such as military or police courts "make no sense at all in cases where members of the security forces have seriously violated a civilian's basic human rights. Such an act is an offence against the public civil order and, consequently, should be tried by a civilian court"<sup>1</sup> Likewise, the United Nations Human Rights Committee, when defining States' obligations under the International Covenant on Civil and Political Rights (ICCPR) to bring to trial members of the police and military who commit human rights violations, has repeatedly said that such cases should be heard in ordinary civilian courts<sup>2</sup>.

Six months after the case was referred to the police courts, the Supreme Court of Justice decided that it should be judged by a civilian court following an appeal by Pedro Baque and the Jaramillo family's lawyers and transferred the case back to the High Court of Justice of Portoviejo. Amnesty International welcomed the decision of the Supreme Court of Justice to transfer the case back to the ordinary courts, however, the organization remains concerned that no judge has yet been designated to this case.

In addition, as this case illustrates, the fact that there is often a dispute of jurisdictional competence between the police and military and civil courts delays the course of the legal proceedings and results in many victims of human rights violations' having to wait for years to have access to justice.

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<sup>1</sup> E/CN.4/1990/17, *Infra.* 271, p.83

<sup>2</sup> Ecuador ratified the International Covenant on Civil and Political Rights in March 1969.

The five police officers charged with the attack against Pedro Baque and the Jaramillo brothers who have been in preventive custody for more than a year could now be released according to article 24.8 of Ecuador's Constitution which states that preventive custody cannot be extended for more than a year<sup>3</sup>. The five members of the police force have been detained since August 1999. Amnesty International believes that in cases where preventive custody is essential, the Ecuadorian authorities must provide the judicial system with the appropriate instruments to guarantee a fair trial within the preventive custody time limit stipulated by the Constitution.

There are also concerns that on 14 June 2000 a police corporal reportedly involved in the killing of Pedro and Carlos Jaramillo and the attempted killing of Pedro Baque escaped from the National Police Station where he was being held. The policeman, who had been previously sentenced to 16 years' imprisonment for the extrajudicial execution of a civilian and the attempted extrajudicial execution of two other persons, was being held in the police station pending the resolution of an appeal by his lawyer which had delayed his transfer to a prison centre.

Furthermore, the organization is also concerned that not all those who were allegedly involved in these crimes have been charged. Amnesty International has received reports which indicate that another of the police officers with a rank of major reportedly involved in the killings of the Jaramillo brothers and the attempted extrajudicial execution of Pedro Baque continues in active service. In July the organization was informed that the police major officer had been transferred to Quito, the capital. According to reports, the major has been placed in a post of high responsibility in the *Dirección Nacional de Inteligencia* (National Intelligence Directorate).

Delays in the judicial proceedings show no apparent will to bring all those responsible for human rights violations to justice and make a mockery of the respect for human rights that Ecuador claims to have adhered to through the international human rights standards it has ratified. In addition, since the extrajudicial execution of the Jaramillo brothers and the attempted extrajudicial execution of Pedro Baque, those looking for justice have been constantly harassed and intimidated.

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<sup>3</sup> Article 24.8 states that: *la prisión preventiva no podrá exceder de seis meses, en las causas por delitos sancionados con prisión, ni de un año, en delitos sancionados con reclusión. Si se excedieren esos plazos, la orden de prisión preventiva quedará sin efecto, bajo la responsabilidad del juez que conoce la causa*" (Preventive prison cannot exceed six months for less serious offences charged with imprisonment [sentences of five years or less], or one year for more serious offences charged with imprisonment [sentences of ten years or more]. If the preventive prison exceeds this time limit the order of detention will no longer apply, under the responsibility of the judge in charge of the case). Translation by Amnesty International.

### **Intimidation of relatives of victim and lawyers**

Amnesty International has expressed on several occasions serious concerns that after the killing of the Jaramillo brothers and the attack against Pedro Baque, the latter and the families and lawyers of the victims received death threats. After the Interamerican Commission for Human Rights of the Organization of American States (OAS) expressed its concern about this case, the Ecuadorian authorities decided to take measures to guarantee the life and physical integrity of Pedro Baque and his family. Pedro Baque was offered the protection of the Ecuadorian Air Force in Quito. In addition, his parents have also been offered military protection.

Amnesty International welcomed the decision to protect Pedro Baque and his family made by the Ecuadorian authorities. However, the organization has remained concerned for the safety of the lawyers representing the families of the victims and their families. Since April 2000, the organization received several reports which indicated that the harassment and intimidation of those involved in the private prosecution in this case continue. On 20 April 2000, the lawyers in charge of Pedro Baque's case, Julio Peláez and Alberto Palacios, and the lawyer of the Jaramillo family, Harold Moreira Zambrano, were threatened by police officers in a courthouse in Guayas Province, where a witness to the murders and attempted murder was testifying before the judge.

In addition, in June 2000, Amnesty International received information that threats and intimidatory messages and calls against the three lawyers and the families of the victims were still being received and that those subjected to them continued to fear for their safety and their family's.

The latest attempt to intimidate the lawyers representing the victims in this case took place on 10 July 2000, when lawyer Harold Moreira was informed that the police major involved in the attack against Pedro Baque and the Jaramillo brothers had accused lawyer Julio Peláez of paying a former convict to kill him. Julio Peláez saw this as an attempt to damage his reputation and remove him from the case. After this incident, Julio Peláez asked for military protection before the *Procurador General del Estado*, Attorney General. To date lawyer Julio Peláez remains under military protection. Amnesty International welcomes the decision of the Attorney General to

grant him protection. The other two lawyers acting for the victims' families are also now under military protection.

However Amnesty International continues to be concerned for the safety of all those involved in this case, particularly after receiving reports which indicate that at the end of August 2000 Pedro Baque's brother received several threatening phone calls at home.

### **Background information**

Deaths resulting from the use of firearms by the Ecuadorian security forces in the context of anti-crime operations have been of concern to Amnesty International for several years. Some of these crimes bear the hallmarks of extrajudicial executions. The organization has urged the authorities to ensure that these human rights violations are promptly and impartially investigated and that those responsible are brought to justice.

In addition, Amnesty International has documented numerous reports of intimidation of human rights lawyers and witnesses to human rights violations and their families in Ecuador. Ecuador has consistently failed to implement the United Nations (UN) Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, endorsed by the UN General Assembly in December 1989, and protect witnesses of human rights violations. Article 15 of these Principles clearly states that, "Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations."

#### **☞ WHAT CAN YOU DO?**

**Please send letters to the authorities listed below:**

- **expressing concern at the delay in bringing all those responsible for the alleged extrajudicial execution of Pedro and Carlos Jaramillo and the attempted extrajudicial execution of Pedro Baque to justice;**

- **welcoming the judicial decision to transfer the case to a civilian court, but expressing concern at reports that the case has not yet been assigned to a civil judge;**
- **mentioning that cases of human rights violations committed by members of the security forces should be tried under civilian courts as stated by the United Nations Human Rights Committee and the United Nations Special Rapporteur on Torture;**
- **requesting that they ensure that all those responsible for the extrajudicial execution of Pedro and Carlos Jaramillo and the attempted extrajudicial execution of Pedro Baque receive an adequate sentence according to their involvement in these grave human rights violations, and that the victims or their relatives receive appropriate reparation;**
- **welcoming the decision taken by the Ecuadorian authorities to protect Pedro Baque, his parents and lawyers, as well as the Jaramillo family's lawyer;**
- **expressing concern for the safety of Pedro Baque's brother, who, according to reports, has received death threats and intimidatory phone calls;**
- **requesting that all necessary steps be taken to guaranty his safety.**

## **AUTHORITIES**

### **President of the Republic of Ecuador**

**Dr. Gustavo Noboa Bejarano**  
**Presidente Constitucional de la República**  
**del Ecuador**  
**Palacio de Carondelet**  
**García Moreno 1043**

**Quito**  
**ECUADOR**  
**Fax: (593-2) 580-735**  
**Salutation: Señor Presidente/Dear President.**

**Minister of Interior and Police**  
**Dr. Juan Manrique Martínez**  
**Ministro de Gobierno, Policía,**  
**Justicia, Cultos y Municipalidades**  
**Ministerio de Gobierno y Policía**  
**Benalcázar y Espejo**  
**Quito**  
**ECUADOR**  
**Fax: (593-2) 580-067**  
**Salutation: Señor Ministro/Dear Minister.**

**Attorney General**  
**Dra. Mariana Yépez de Velasco**  
**Ministra Fiscal General de la Nación**  
**Robles 731 y Av. Amazonas**  
**Quito**  
**ECUADOR**  
**Fax: (593-2) 560-355**  
**Salutation: Señora Ministra/Dear Minister.**

<b>KEYWORDS: POLICE1 / IMPUNITY1 / EXTRA-JUDICIAL EXECUTION / HARASSMENT / ADDRESSES</b>
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