

ECUADOR

@The Putumayo case

Defendants' statements obtained under torture may possibly be used as evidence

Amnesty International is seriously concerned that "confessions" obtained under torture may be used in the trial of seven people accused of having been involved in the killing, in December 1993, of 11 members of the Ecuadorian security forces. A court document made available to the defence and signed by the *Ministro Fiscal de Pichincha*, Pichincha state prosecutor, who recommended the seven be put on trial, indicates that members of the Ecuadorian army "were responsible for the torture of the accused". The accused – six Colombians and one Ecuadorian – have claimed that they were forced under torture into "confessing" that they had been involved in the killings.

In addition, the organization has received credible and consistent evidence to suggest that the accused were also tortured at the headquarters of the *Oficina de Investigación del Delito*, OI, Office of Crime Investigation, in Quito, following their transfer by the army into police custody. Although the Pichincha state prosecutor claims that the statements made while in police custody were made "freely and voluntarily", all seven defendants coincide in their claim that they were also tortured while in the custody of the OI.

For a court to use as admissible evidence self-incriminating statements obtained from criminal suspects during, or as a result of, torture or ill-treatment, is contrary to human rights standards enshrined in the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), and the American Convention on Human Rights

(ACHR)¹. Ecuador ratified the ICCPR in 1969, the Convention against Torture in 1988 and the ACHR in 1977.

The events which led to the seven defendants being charged with criminal offences began when, on 16 December 1993, an armed unit of the guerrilla group *Fuerzas Armadas Revolucionarias de Colombia*, FARC, Revolutionary Armed Forces of Colombia, ambushed an Ecuadorian river patrol navigating the river Putumayo which marks the frontier between the two countries. Eleven Ecuadorian members of the security forces died as a result. In the days that followed the Ecuadorian military detained some 30 people in connection with the attack, all of whom were reported to have been tortured and ill-treated². Nineteen of those detained were released within days without charges. The remaining 11 were held in incommunicado detention by the Ecuadorian military for between six and ten days.

On 27 December 1993 the 11 detainees were transferred by the military into the custody of the OID in Quito. Two days later they were remanded into the custody of detention centres, also in Quito, pending further police investigations and the initiation of a judicial investigation into the case. Separate reports issued by official forensic doctors in January and February 1994 concluded that the injuries which the detainees presented were sustained during the period when they were in military custody.

In April 1994 the 11 suspects testified before a judge that they were subjected to repeated acts of torture by members of the military. All eleven also testified that they had been tortured during their detention in the OID, prior to signing self-incriminating statements. In August 1994 another judge ruled that there was not a case to answer in relation to four of the 11 defendants and ordered their unconditional release.

In December 1994 the Pichincha state prosecutor issued a report submitted to the High Court, in which he stated that there existed "compelling evidence pointing to the

¹ Should statements made under duress by the seven Putumayo defendants be admitted by the court as evidence, Amnesty International believes the proceedings would be in violation of article 14.3 (g) of the ICCPR, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantee(s), in full equality: Not to be compelled to testify against himself or to confess guilt"; of article 15 of the Convention against Torture, which states: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made"; and of articles 8.2 (g) and 8.3 of the ACHR. Article 8.2 (g) reads: "[...] During the proceedings, every person is entitled, with full equality, to the following minimum guarantee[s]: the right not to be compelled to be a witness against himself or to plead guilty [...]." Article 8.3 reads: "A confession of guilt by the accused shall be valid only if it is made without coercion of any kind."

²Please refer to the following document on this case: *Ecuador: Colombians tortured and threatened with death*, AI Index: AMR 28/01/94, published in February 1994.

criminal responsibility of the accused" who remained in detention, and acknowledging that the accused had been tortured. In the report the Pichincha state prosecutor stated that "those responsible for the torture of the accused are members of the Ecuadorian army" (Amnesty International's emphasis). Despite this unequivocal statement, the prosecutor sought to minimize the significance of the "torture" to which the accused had been subjected, when he concluded:

"It is evidently clear that the accused were ill-treated, since they were left with physical signs of having been so treated. These signs have been duly recognized during their medical examinations, but in any case they are not as serious as claimed by the accused, since nearly all of them, as the forensic doctors ... stated, presented injuries which rendered them unfit for less than three days. In addition, these doctors were categorical in their claim that the injuries were sustained ...before they were ... transferred into the custody of the [OID headquarters in Quito] of the National Police, thus discarding claims [made by the accused] that their pre-trial statements [rendered during the police interrogation stage] were obtained under torture." (Amnesty International's emphasis)

Despite this conclusion, Amnesty International believes that the accused may also have been tortured in the OID headquarters.

Amnesty International believes that torture is a gross violation of the fundamental right to the physical and mental integrity of the individual. Torture is unacceptable under all circumstances, in all places and at all times. Amnesty International also believes that torture is a crime and a violation of fundamental human rights, the gravity of which cannot be minimized. The organization believes that allegations of torture should always be investigated by an independent body and the perpetrators brought to justice.

Amnesty International has written to the *Ministro Juez de la Cuarta Sala de la Corte Superior de Justicia de Quito*, a high court judge presiding over the *audiencia de estrados*, a judicial hearing due to open on 22 March 1995. The organization requested the judge to take into account the present document. The organization has reminded the judge that he is under an obligation to adhere to international fair trial standards to which Ecuador is party.

BACKGROUND

Amnesty International has long standing concerns about the use of torture by members of the security forces in Ecuador. In June 1993, six months prior to the Putumayo suspects being held at the OID headquarters in Quito, the President of the

Tribunal of Constitutional Guarantees (TGC), wrote to the then Minister of Government and Police, Roberto Dunn Barreiro, informing him that a commission he (the President of the TGC) headed found a number of torture appliances at the OID headquarters. The letter from the President of the TGC concluded that "...there is no doubt as to the presumption that torture practices continue to be used [in the OID headquarters]".

However, in November 1993, a month before the Putumayo suspects were transferred into the custody of the OID in Quito, Amnesty International received further reports of torture being carried out there, this time against the prisoner Danilo Jara. According to reports Danilo Jara was kept handcuffed and blindfolded at the OID, had a bag forced over his head into which tear gas was pumped, and had his head submerged in a water tank. The information also indicates that Danilo Jara was hung from his feet, had electricity applied to him, and had his testicles squeezed. A forensic doctor attached to the *Procuraduría General del Estado*, Office of the General Attorney of the State, saw Danilo Jara in the *Centro de Rehabilitación de Varones No. 2*, Male Rehabilitation Centre No. 2. On 9 November the forensic doctor is reported to have told an independent human rights organization that Danilo Jara had been "severely beaten".³

³Please refer to the following Urgent Action: *Ecuador: Danilo Jara - Torture and ill-treatment*, UA 403/93, AI Index: AMR 28/10/93, published on 15 November 1993.