

# ECUADOR

## Arbitrary detention of transvestites

Amnesty International is seriously concerned about reports that nine transvestites sex workers were detained for over three weeks under charges which are not punishable with imprisonment. Amnesty International believes that they were detained solely because they are transvestites, that their detention was arbitrary and that during the time they were detained they became prisoners of conscience<sup>1</sup>. Whilst in detention the detainees were forced to have an HIV test. All are members of the *Asociación Coccinelle*, Coccinelle Association, a Guayaquil gay, lesbian and transgender NGO.

According to reports, early in the morning of 5 July 2000, seven transvestites were detained in the streets of the city of Guayaquil without arrest warrants by police officers and accused of committing a crime against decency, "*atentar contra la moral pública y faltamiento de palabra*". They were taken to the *Centro de Detención Provisional*, CDP, Provisional Detention Centre.

Three days later, on 8 July 2000, two other transvestites were detained by police officers accused of scandalous behaviour, drunkenness and outraging public morals, "*escándalo, ingerir licor en la vía pública y actos inmorales*". Both were also taken to the Provisional Detention Centre. According to reports, these two transvestites were detained with 47 other detainees under the same contravention, however, after two days the 47 other detainees were released.

Guayas' Chief of Police, *Intendente General de la Policía de Guayas*, requested that HIV tests be made in the *Instituto Nacional de Higiene*, INH, the National Hygiene Institute, on the transvestites. According to reports, although the INH refused to perform the HIV tests due to the fact that their professional ethics forbade from providing information as to the result of medical tests to anyone other than the person who requests the test.

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<sup>1</sup> AI defines "prisoner of conscience" as people detained anywhere for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic, birth or other status, who have not used or advocated violence.

On 12 July 2000, Guayas' Chief of Police contacted a private clinic to perform the HIV<sup>2</sup> tests. The blood samples for the HIV tests were taken in the Provisional Detention Centre, by staff of a private clinic. On 19 July 2000, the private clinic sent the results of the HIV tests to the police reporting that some of the test results were positive. The private clinic suggested to the Guayas' Chief of Police that they should have another test<sup>3</sup> to confirm the HIV tests results. The confirmation tests were never made. Guayas' Chief of Police instructed the private clinic to send the invoice for the tests to the families of the detainees and this information was disclosed to the press.

According to the Coccinelle Association representatives, when they went to try to arrange the release of the transvestites at the police station, they were told that the detainees would not be released until they had had an HIV test done and had paid for the costs incurred. On 10 July 2000, the Coccinelle Association submitted a *habeas corpus* on behalf of the detainees which was never replied to.

According to the Ecuadorean Penal Code, the alleged crimes committed by the nine transvestites are not punishable with imprisonment, but with a fine. The transvestites were released between the 21 and 27 July 2000.

## **BACKGROUND INFORMATION**

According to reports received by Amnesty International, the cases mentioned in this report are not isolated cases. Transvestites in Ecuador are subjected to persecution by the police and are being targeted for imprisonment, simply on the grounds of their sexual orientation.

On 28 June 2000, the Friends for life Foundation, *Fundación Amigos por la vida*, in Guayaquil, organised a march to celebrate Gay and Lesbian Pride. The event had been previously authorised by the authorities and brought together some 300 lesbians, gays and transvestites. However, at the march's starting point, they were ordered to disband by the Guayas' Chief of Police, reportedly, following orders from the Guayas Governor. According to reports, approximately 60 police officers surrounded the crowd, threw tear gas bombs and prevented the march from taking place.

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<sup>2</sup> The transvestites were subjected to the Micro Elisa HIV blood test.

<sup>3</sup> The Western Block test.

The Ecuadorian Constitution in article 23, paragraph 3, establishes 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 condition; as well

as paragraph 5 of the same article that guarantees for everyone the right to freely develop their personality, with no other limitations other than those imposed by the legal system and other people's rights<sup>4</sup>.

In November 1997, the Constitutional Tribunal decriminalized homosexual acts between consenting adults by removing Article 516 of Ecuador's Criminal Code, on the grounds that the Article contravened the Constitution.

**KEYWORDS:** TRANSGENDER ISSUES1 / AIDS/HIV1 / UNLAWFUL DETENTION / HOMOSEXUAL RIGHTS ACTIVISTS /

☛ **WHAT YOU CAN DO:**

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

- **expressing concern that transvestites in Ecuador are being detained arbitrarily;**
- **state that you are aware that in July 2000, at least nine transvestites were detained, at the Provisional Detention Centre, for at least three weeks under charges that only would incur a fine;**
- **urge the authorities to take steps to ensure that similar incidents do not occur in future;**
- **remind the Ecuadorian authorities that the Ecuadorian Constitution establishes that all individuals shall be considered equal and shall enjoy the same rights and opportunities;**
- **exhort the Ecuadorian authorities to give a clear signal to the police that they should not discriminate against people because of their sexual orientation**

*Please send appeals to:*

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<sup>4</sup> Article 23 of the Ecuadorian Constitution, paragraph 3: *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, sexo, etnia, color origen social, religión, filiación política, posición económica, orientación sexual, estado de salud, discapacidad o diferencia de cualquier otra índole.* Article 23 of the Ecuadorian Constitution, paragraph 5: *El derecho a desarrollar libremente su personalidad, sin más limitaciones que las impuestas por el orden jurídico y los derechos de los demás.*

<b><u>President</u></b>	<b><u>Minister of</u></b>
<b><u>Interior</u></b>	
<b>Dr Gustavo Noboa Bejarano</b>	<b>Dr. Juan Manrique</b>
<b>Martínez</b>	
<b>Presidente constitucional de la República</b>	<b>Ministro de Gobierno</b>
<b>del Ecuador</b>	<b>Ministerio de</b>
<b>Gobierno, Policía,</b>	<b>Cultos y</b>
<b>Palacio de Carondelet</b>	<b>Benalcázar y Espejo</b>
<b>Municipalidades</b>	<b>Quito</b>
<b>García Moreno 1043</b>	<b>ECUADOR</b>
<b>Quito</b>	<b>Fax: + 593 2 580 067</b>
<b>ECUADOR</b>	<b>Salutation: Sr. Ministro/Dear</b>
<b>Fax: + 593 2 580 735</b>	
<b>Salutation: Sr. Presidente/Mr. President</b>	
<b>Governor</b>	
<b><u>Head of the Public Ministry</u></b>	<b><u>Governor of Guayas</u></b>
<b>Dra. Mariana Yépez de Velasco</b>	<b>Ing. Joaquín Martínez</b>
<b>Amador</b>	
<b>Ministra fiscal de la Nación</b>	<b>Gobernación de Guayas</b>
<b>Robles 731 y Av. Amazonas</b>	<b>Malecom Simón Bolívar</b>
<b>Quito</b>	<b>Guayaquil</b>
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<b>Fax + 593 2 580 067</b>	<b>Fax: + 593 2 534261</b>
<b>Salutation: Sra. Ministra/Dear Attorney General</b>	<b>Salutation: Sr. Gobernador/Dear</b>
<b>Governor</b>	
<b><i>Send copies to:</i></b>	
<b>Comité Permanente por la Defensa de los DDHH</b>	
<b>Casilla: 09 01 4128</b>	
<b>Guayaquil</b>	
<b>Ecuador</b>	
<b>Email: cdhgye@telconet.net</b>	

This document has been sent to Amnesty International North Andean and Ecuador RAN Coordinators as well as Gay, Lesbian Bisexual and Transgender as well as to Amnesty International Sections for action by groups. Please check with the South America Team at the address below if sending appeals after February 2001.

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