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# **Ecuador: Broken promises**

## **Impunity in the police court system continues**

### **I. Amnesty International's campaign to stop police courts being used to try human rights violations**

A year ago, on 30 October 2003, Amnesty International published a report entitled *Ecuador: With no independent and impartial justice there can be no rule of law*, in which it examined the regulatory and institutional structure of the Ecuadorian police court system, which is part of a 'special jurisdiction' that has judicial responsibility for prosecuting police officers, and analyzed how that jurisdiction had been facilitating and even, in some instances, causing impunity when dealing with serious human rights violations. The report also included five illustrative cases, including deaths in police custody and forced disappearances allegedly committed by members of the security forces.

On publishing the report, Amnesty International launched an international campaign in Ecuador to end the use of police jurisdiction to try cases of human rights violations allegedly committed by police officers. A delegation from the organization also travelled to the capital, Quito, where it met with several authorities, including a representative of the President of the Republic, members of the Human Rights Unit of the Ministry of Foreign Affairs, the then President of the Supreme Court, the President of the Constitutional Court, the President and other judges from the National Court of Police Justice (Corte Nacional de Justicia Policial), the Presidents of the Congressional Human Rights Commission and Commission of Civil and Criminal Matters (Comisión de lo Civil y lo Penal), the Attorney General (Ministra Fiscal), members of the Ombudsman's Office (Defensoría del Pueblo) and the Pichincha Bar Association (Colegio de Abogados de Pichincha), the Under-Secretary for Political Coordination (Subsecretario de Coordinación Política) who was representing the Ministry of the Interior and Police (Ministerio de Gobierno y Policía), and senior members of the National Police, including the Commander-in-Chief.

During its meetings and before presenting the report to the media and the general public, the delegation gave copies to the authorities and conveyed its main concerns regarding the use of police courts for trying human rights violations allegedly committed by members of the police. The delegates urged the authorities to make a clear commitment to remove all cases involving human rights violations from police jurisdiction, in accordance with international human rights standards the Ecuadorian State is committed to respecting as well as the 1998 Ecuadorian Constitution.

The Amnesty International delegation welcomed the positive response it received to the concerns raised regarding the use of special jurisdiction to prosecute human rights

violations. Almost all the authorities agreed with the organization's arguments and promised to take steps to ensure that human rights violations attributed to the police, such as torture and ill-treatment, would not be tried under the police court system. Only the leadership of the National Police, including the Head of the National Police, disagreed with Amnesty International's position.

The President of the Supreme Court, the President of the National Court of Police Justice and the Attorney General all promised to send clear directives to judges in both the ordinary justice system and the police system, as well as to prosecutors, indicating that all cases in which members of the police are accused of torture or ill-treatment should be dealt with under the ordinary justice system.

For their part, the Presidents of the Congressional Human Rights Commission and Commission for Civil and Criminal Matters promised to do everything in their power to ensure that legislation on "Jurisdictional Unity" ("Unidad Jurisdiccional"), which seeks to end jurisdictional conflicts between special jurisdiction and the ordinary court system by integrating the system of special jurisdiction into the ordinary system, would be passed as soon as possible.<sup>1</sup>

Despite the promises made to the Amnesty International delegation by most of the Ecuadorian authorities, so far, over one year later, no progress has been made. Two weeks after the Amnesty International campaign began, on 19 November 2003, eight civilians died and three others "disappeared" and are still missing after being arrested in a police operation in the city of Guayaquil. In December 2003, although a criminal prosecution was already under way in the ordinary courts, a parallel prosecution against the twenty officers involved in the operation was opened under police jurisdiction. In October 2004, the Guayaquil District Police Court (Corte Distrital de la Policía de Guayaquil) acquitted all the officers despite the existence of evidence indicating that the eight who died had been murdered and that the three detainees who

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<sup>1</sup> Temporary Provision No. 26 of the 1998 Constitution establishes that judges who are accountable to the Executive, especially "military and police judges", shall pass over to the Judiciary and that their incorporation shall take place by means of congressional laws, to which end appropriate draft laws should be submitted to Congress by the National Council for the Judiciary (Consejo Nacional de la Judicatura), the body responsible for governing, administering and disciplining the judiciary. The Temporary Provision states that, until such time as the said laws have been officially passed, police and military judges shall remain subject "to their own organic laws". In August 2001 a draft bill along these lines was submitted to the Ecuadorian Congress by the National Council of the Judiciary. The draft bill proposes the establishment of an area of justice specializing in police matters within the ordinary court system. This was the "Legal Reform Bill for Jurisdictional Unity", issued via Written Communication No. 545-SCNJ 2001 on 1 August 2001 and received on 20 August 2001.

“disappeared” had been taken to the Judicial Police headquarters in Guayaquil before they “disappeared”.<sup>2</sup>

From left to right César Mata Valenzuela, Jhonny Elías Gómez Balda, Jimmy Córdova Encalada and Carlos Andrade Almeida  
© Private.



#### **The police operation at the Fybeca Chemist’s**

On 19 November 2003, after being alerted to a probable robbery at a chemist’s belonging to the company Fybeca in Guayaquil, a police operation took place at the scene of the alleged crime. In the course of the operation, eight civilians who were inside the shop when the police burst in died. According to reports given to Amnesty International, those who died included a man employed as a messenger, Jimmy Córdova Encalada, and a customer, Carlos Andrade Almeida, who, according to his wife, had gone there to buy nappies for their three-month-old baby. However, the police said that they all died in an armed confrontation with police officers when trying to rob the chemist’s shop.

On the same day three men, Jhonny Elías Gómez Balda, César Augusto Mata Valenzuela and Edwin Daniel Vivar Palma, and one woman, Seidi Natalia Vélez Falcón, were also arrested in different parts of Guayaquil for their alleged involvement in the robbery. Following their arrest, the three men “disappeared”.

According to forensic reports, the bullets found in the eight civilians who died in the operation were of the same calibre as those used by the police and their position and angle of entry indicated that “most of the dead had been shot in the back”. The reports concluded that there was no exchange of gunfire between the people who were inside the chemist’s and the police who burst into the shop because “the weapons the police claim belonged to the deceased were not fired”. The same reports also state that some of the dead civilians “raised their arms to indicate surrender and others were finished off on the floor”.

With regard to the three men who “disappeared”, Jhonny Gómez Balda, César Mata Valenzuela and Edwin Vivar Palma, according to information provided by the Guayaquil Public Prosecutor’s Office, the police who participated in the operation said they had arrested “three people”, none of whom was Jhonny Gómez Balda, and that all three were later released by the senior officer in charge of the operation “after examining the detainees and seeing that they had nothing to do with the robbery”. According to the police, they were not transferred to a detention centre. So far, the police have only acknowledged the detention of Seidi Vélez Falcón, who is still being held for her alleged involvement in the robbery.

However, according to their relatives, the three “disappeared” men telephoned them from their mobile phones shortly after being arrested saying that they were at the headquarters of the Guayaquil Judicial Police. The wife of Jhonny Gómez Balda said that he told her: “I’m in the grounds of the PJ [Judicial Police] inside a red car, come here and go right through to the back, they’re going to kill me”. The brother of César Mata Valenzuela also said that the latter told him: “I’m being held at the PJ, round the back, make a lot of noise because they’re going to kill me”. When the niece of César Mata Valenzuela called him on his mobile phone, an unidentified voice said, “Go and get him at the morgue”. The same day, Edwin Vivar Palma apparently also telephoned his wife and told her, “I’m being held prisoner, I’m done for, save Seidi, look after my son, they’re going to take my mobile away”.

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<sup>2</sup> For further information about this case, see the box on pages 3 and 4 of this report.

According to his wife, when Edwin Vivar Palma was arrested, he was on his way to meet Seidi Vélez Falcón to help her find a job.

Relatives of Jhonny Gómez Balda reportedly identified a car that was parked inside the National Police Model Barracks (Cuartel Modelo de la Policía Nacional) as being the vehicle he was driving on the day of the incident. According to the same reports, Seidi Vélez Falcón also said she saw Jhonny Gómez Balda on 19 November 2003 in the PJ cells where they were both being held.

In November 2003, the relatives of the “disappeared” men and of the customer and messenger from the chemist’s shop who died during the police operation lodged complaints with the Public prosecutor’s office. As a result, criminal proceedings were started in the ordinary courts with regard to the “disappearance” of Jhonny Gómez Balda, César Mata Valenzuela and Edwin Vivar Palma. So far the outcome of those proceedings is not known. According to reports, no investigations have been opened in the ordinary courts in connection with the deaths of Jimmy Córdova Encalada, who worked at the chemist’s, or Carlos Andrade Almeida, the customer, despite the fact that over a year has passed since the complaints were lodged.

In December 2003, criminal proceedings were started in the police courts against the officers involved in the operation who were accused of “offences against the life and liberty of persons”. In October 2004, the Guayaquil District Police Court acquitted all the officers implicated in the case.

The Inter-American Commission on Human Rights, in December 2003, ordered the Ecuadorian State to adopt precautionary measures in favour of the three “disappeared” detainees as well as Seidi Natalia Vélez Falcón, who has reportedly not had access to a lawyer since she was arrested. The Commission also asked the Ecuadorian State to take steps to determine the whereabouts of the three men who remain “disappeared”. According to information provided to Amnesty International, so far the Ecuadorian State has not implemented any of these measures.

In April and May 2004, Amnesty International received reports that during those months the families of Jhonny Gómez Balda, Jimmy Córdova Encalada and Carlos Andrade Almeida were subjected to threats and intimidation. The organization urged the authorities to investigate the reports and protect the victims.

In April 2004, José Solís Solís, a journalist working for *El Universo*, a daily newspaper, also told the organization that he had received several threatening telephone calls and been followed by unknown individuals in Guayaquil. The threats made against him appear to be related to the coverage the newspaper gave to the case. Photographs taken by *El Universo* outside the chemist’s on the day of the incident show a man in handcuffs with his head covered being put into a van by the police. On seeing the pictures, the wife of Jhonny Gómez Balda, one of the three “disappeared” men, identified the man being arrested as her husband.

Cases such as the police operation at the Fybeca chemist’s shop in Guayaquil and the others included in this report clearly illustrate how the police justice system in Ecuador is helping to perpetuate impunity for serious violations of fundamental rights such as the right to life and personal integrity. The fact that the suspected murder of eight civilians and the “disappearance” of three detainees during a police operation have been prosecuted under police jurisdiction, despite the commitments made by the Ecuadorian authorities during the meetings held with Amnesty International in October 2003, also shows that, in practice, the Ecuadorian authorities lack the political will required to take effective action to confine, once and for all, police jurisdiction to the prosecution of offences committed in the line of duty (*delitos de función*).

One year on from Amnesty International's visit to Ecuador in October 2003, despite the promises made to the delegation during their meetings with the Presidents of the Supreme Court, Constitutional Court and National Court of Police Justice, as well as the Attorney General, that measures would be taken to ensure that cases in which members of the police had allegedly violated human rights would be tried under the ordinary justice system, as far as Amnesty International is aware, no directives have been sent to judges under the ordinary or police justice systems or to prosecutors instructing them that all cases involving alleged human rights violations should be prosecuted under ordinary jurisdiction.

Furthermore, no legislation has been passed in Congress to move towards "Jurisdictional Unity". Police jurisdiction is therefore still operating separately from the ordinary justice system and still lacking in independence and impartiality. These factors continue to undermine the social credibility of the justice system in Ecuador and to limit its effectiveness in fighting impunity, as illustrated in the case of the police operation at the Fybeca chemist's shop in Guayaquil and the other cases included in this report.

Amnesty International is also concerned that, according to reports, no significant progress has been made in any of the cases of serious human rights violations documented by the organization in the report entitled *Ecuador: With no independent and impartial justice there can be no rule of law*.<sup>3</sup>

## **II. Amnesty International's main concerns about the use of police courts to try human rights violations**

### **a) Offences committed in the line of duty and conflicts of jurisdiction between the special courts and the ordinary courts**

Until now, special jurisdiction in Ecuador, which includes both the police and military justice systems, has operated in parallel to the ordinary justice system. In clear contravention of the Constitution, it often conducts criminal proceedings in parallel to any that may have been started in the ordinary courts against members of the security forces accused of ordinary offences, including violations of fundamental rights.

According to the Constitution, it is the responsibility of special police jurisdiction to try offences (*infracciones*) committed while performing professional law enforcement tasks, in other words, offences committed in the line of duty ("*delitos de función*"),

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<sup>3</sup> See the appendix to this document.

while all other types of offence must be tried in the ordinary courts.<sup>4</sup> In this context, Amnesty International believes that it is not feasible for alleged human rights violations perpetrated by members of the police to be prosecuted under special jurisdiction. The organization believes that offences which constitute violations of human rights, such as murder and torture, should not be tried under special jurisdiction because they do not form part of the “professional” duties of the police and, therefore, should not be viewed as offences committed in the line of duty. The professional tasks of the police stem from what the Ecuadorian Constitution itself determines as being the basic mission of the National Police, namely, “(...) *to ensure security and public order*” (Article 183 of the Constitution). Therefore, given that the violating fundamental rights can in no way be seen as part of the “professional” duty of the Police, such offences should clearly be prosecuted within the ordinary justice system and not under police jurisdiction.<sup>5</sup>

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<sup>4</sup> Article 187 of the Ecuadorian Constitution states that “[m]embers of the security forces shall be subject to special jurisdiction for the trial of offences committed in the course of performing their professional tasks. In the case of ordinary offences, they shall be subject to ordinary justice”.

<sup>5</sup> The Constitutional Court ruled to this effect in 2003 when it found in favour of the ordinary justice system in a conflict of jurisdiction between military and ordinary jurisdiction in connection with a case of alleged embezzlement involving senior naval officers (See Judgment No. 002-2002-CC, issued on 19 February 2003 and published in the *Official Record (Registro Oficial)* on 26 February 2003, pp.21-28). In its ruling, the Constitutional Court stressed that article 187 of the Constitution only authorizes special jurisdiction for members of the security forces who have allegedly committed offences “in the exercise of their professional work”. The ruling clarifies that embezzlement is not a “strictly military” offence and that therefore, in general, when a case involves possible damage to state resources, “competence shall always lie with ordinary justice”. (Paragraphs 44 and 45 of the conclusions contained in the ruling handed down by the Constitutional Court in February 2003).



However, despite the clarity of the Constitution on this point, conflicts of jurisdiction frequently arise to determine whether police personnel accused of serious human rights violations should be tried under special or ordinary jurisdiction.<sup>6</sup> In many such cases, the authorities in the ordinary justice system have taken the view that jurisdiction belongs to the police courts.

In the opinion of the organization, the evident contradictions between the Constitution and Police Codes in force in the country, which include offences that have nothing to do with police duties, such as

torture,<sup>7</sup> simple homicide and murder,<sup>8</sup> and indecent or sexual assault (*atentados contra el pudor y delitos sexuales*),<sup>9</sup> mean that in practice the police justice system seizes jurisdiction for offences that do not constitute offences committed while performing the professional duties of members of the National Police. In this context, in cases of serious human rights violations, the authorities from the ordinary justice system often prefer the police regulations to be applied and, using arguments that are

**Edison Enrique Hidalgo Chinguad**

In October 2003, while visiting the country, Amnesty International delegates learned of the case of Edison Enrique Hidalgo Chinguad who was allegedly tortured by police after being arrested on 10 January 2003 in the village of Santo Domingo de los Colorados, Pichincha province.

According to the testimony given to the delegates by the victim, the police arrested Edison Hidalgo Chinguad while he was waiting for a bus to go home. They reportedly accused him of being an accomplice in a robbery and of having attacked a police officer, although no arrest warrant had been issued for him and he was not committing an offence at the time of his arrest.

According to the testimony of Edison Hidalgo Chinguad, the police proceeded to force him into a police van where he was verbally and physically assaulted, with police kicking and stamping all over his body and face.

Upon arrival at the Provisional Detention Centre at police headquarters, other officers carried on hitting and kicking him all over the face and body. Having placed a plastic bucket on his head and forcing him to kneel, officers hit him with a stick. According to the testimony of Edison Hidalgo Chinguad, he was also forced to sign a police report accusing him of participating in a robbery and assaulting a police officer. It also reportedly said that he had resisted arrest and slipped on the pavement and that that was the reason why he had bruises on his body and face.

Edison Hidalgo Chinguad was released on 13 January 2003 after paying a fine. On 26 January he had to undergo an operation for a “fracture of the left testicle”, said to have been caused by the blows he received while in police custody.

Four days after his release, Edison Hidalgo Chinguad lodged a complaint with the Public prosecutor’s office regarding the torture and ill-treatment to which he was reportedly subjected. However, no news has been received of any investigation carried out by that office.

On the other hand, according to information given to Amnesty International by the National Court of Police Justice in July 2004, proceedings against three police officers were also started under special jurisdiction. According to the same source, the case is under preliminary investigation at the First District Police Court.

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<sup>6</sup> The term ‘conflict of jurisdiction’ (*contienda de competencia*) refers to a judicial debate, in this case between the ordinary justice system and the police justice system, to determine which of them is competent to try a particular case.

<sup>7</sup> Articles 145 and 153 of the Police Criminal Code.

<sup>8</sup> Articles 227 and 228 of the Police Criminal Code.

<sup>9</sup> Articles 259 and 270 of the Police Criminal Code.

in breach of the correct application of the Constitution, rule that competence lies with the special police jurisdiction.

Amnesty International believes that, when conflicts of jurisdiction arise, the ordinary justice system should take charge of such cases and not withdraw or stand down in favour of special police jurisdiction when the offences allegedly committed by members of the security forces constitute human rights violations or ordinary offences in general.<sup>10</sup>

Back in 1996, the Inter-American Commission on Human Rights, in its Report on the Situation of Human Rights in Ecuador, drew attention to “the practice of trying members of the police and armed forces accused of human rights violations under their respective instances of special jurisdiction rather than the ordinary civilian tribunals”.<sup>11</sup> The Inter-American Commission said in the same report that there was “misuse of tribunals of special jurisdiction” and expressed concern because “[p]olice and military defendants are frequently tried in special courts in relation to charges concerning common crimes”.<sup>12</sup>

In the same document, the Inter-American Commission also recommended that the Ecuadorian State take the necessary measures “to limit the application of the special jurisdiction of police and military tribunals to those crimes of a specific police or military nature, and to ensure that all cases of human rights violations are submitted to the ordinary courts”.<sup>13</sup>

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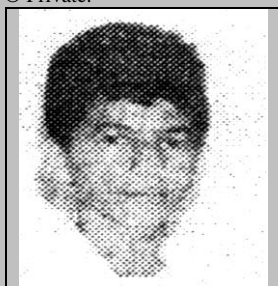
<sup>10</sup> Article 274 of the Ecuadorian Constitution states that “any judge or court, in the cases it hears, can declare a legal precept that is contrary to the norms of the Constitution or international treaties and conventions to be inapplicable, either pursuant to the law or at the request of a party”. In addition, under Article 17 of the Constitution, it is an obligation to ensure “the free and effective exercise and enjoyment of the human rights established in this Constitution and in the declarations, covenants, conventions and other international instruments that are in force”.

<sup>11</sup> Inter-American Commission on Human Rights, *Report on the situation of human rights in Ecuador*, OEA/Ser.L/V/II.96. Doc. rev.2, Washington, 24 April 1997, p.11.

<sup>12</sup> Op. cit., p.35.

<sup>13</sup> Op. cit., pp. 17 and 36 respectively.

Fausto Mendoza Gildes, aged 16  
© Private.



**Fausto Mendoza Giler (a minor) and Diógenes Mendoza Bravo**

On 19 March 2000, Fausto Mendoza Giler and his father, Diógenes Mendoza Bravo, were travelling in a van along the perimeter road in Guayaquil when, according to information given to Amnesty International

in October 2003, a vehicle belonging to the National Police Special Operations Group (Grupo de Operaciones Especiales de la Policía Nacional, GOE), came past them. Apparently without saying a word, the police officers travelling in the GOE vehicle started

shooting at the van, wounding Diógenes Mendoza in the right arm. Immediately afterwards, they reportedly proceeded to arrest Diógenes and Fausto Mendoza and assault both of them.

Reports received by the organization state that Fausto Mendoza Giler apparently died as a result of blows inflicted by the police officers who arrested him. According to medical reports, the young man suffered a haemorrhage, cerebral oedema, subdural hematoma and cranio-encephalic trauma.

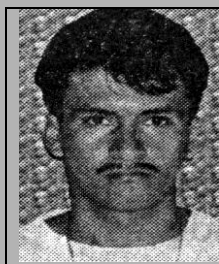
According to reports given to Amnesty International by the National Court of Police Justice in July 2004, the case was being dealt with under police jurisdiction where, on 9 September 2002, the prosecutor at the Second District Police Court charged four police officers with murdering Fausto Mendoza Giler and wounding Diógenes Mendoza Bravo. According to the same reports, on 10 February 2003, following several appeals, the Second District Police Court ruled against the police officers who had requested that the case be dismissed. At present, according to the information sent by the National Court of Police Justice, the case remains open in the police courts but so far none of the accused has been arrested.

Amnesty International is concerned because, as a consequence of the conflicts of jurisdiction that take place between the ordinary courts and the police courts over cases of serious human rights violations, trials are drawn out so that the maximum time limit for preventive detention authorized in the Constitution is exceeded, thereby giving the defendants the right to be released once the time limit has passed.<sup>14</sup> This makes it possible for the accused to escape and to be effectively disengaged from the proceedings. It also makes it materially impossible to properly enforce whatever sentences may be appropriate, thereby helping to perpetuate a climate of impunity in which the right to justice is denied to the victims of human rights violations and their relatives.

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<sup>14</sup> Article 24.8, paragraph 1, of the Constitution reads as follows, “Preventive detention shall not exceed six months in the case of offences punishable by short-term imprisonment (prisión) or one year in the case of offences punishable by long-term imprisonment (reclusión). If these time limits are exceeded, the preventive detention order shall be lifted, responsibility for doing so lying with the judge trying the case.”

Carlos Lara Silva (above)  
David Delgado Galarza, aged 16 (below)  
© Private



**Carlos Arístides Lara Silva and David Eduardo Delgado Galarza (a minor)**

According to information given to Amnesty International in October 2003, on 29 December 2001, five members of the National Police arrested Carlos Arístides Lara Silva and David Eduardo Delgado Galarza, a minor, south of Guayaquil at the Río Guayas del Guasmo Sur Cooperative. On 1 January 2002, according to the same reports, the bodies of both detainees were found in the area of El Fortín north-west of Guayaquil. The bodies displayed clear signs of torture as well as bullet wounds.

The families of the victims reported the “disappearance” of Carlos Lara Silva and David Delgado Galarza to the public prosecutor’s office on 31 December 2001. However, on 17 January 2002, the case was passed to police jurisdiction.



According to information given to Amnesty International by the National Court of Police Justice in July 2004, a police judge found two of the five police officers involved guilty of murder while the other three were found guilty of aiding and abetting. Later, on appeal, the Second District Police Court accused the latter of joint responsibility for murder. Following several other appeals, in February 2004, the National Court of Police Justice sentenced the first two to 16 years’ imprisonment for the killing of Carlos Lara Silva and David Delgado Galarza and, of the three accused of being jointly responsible, one was sentenced to eight years’ imprisonment as an accomplice and the other two to two years’ corrective detention as accessories. However, in January 2003 before the trial against them concluded in February 2004, the five were released after being held in custody for

over a year, in accordance with Article 24 (8) of the Constitution. According to reports, after passing sentence, the National Court of Police Justice did not order the recapture of any of the officers. The relatives of the victims suspect that the police officers concerned may have fled the country.

Amnesty International also received reports that relatives of the victims suffered intimidation. On 23 May 2003, when the mothers of Carlos Lara Silva and David Delgado Galarza were outside the Fourth Police District Court building, a grey van reportedly drove past them. According to witnesses, there were four people in the vehicle, one of whom shouted out “you will be the next ones to die”.

## **b) Lack of independence and impartiality in the police justice system**

Amnesty International believes that the regulatory and jurisdictional design of the police justice system in Ecuador does not allow it to act independently and impartially, thereby violating the right of everyone to be tried by a “competent, independent and impartial” tribunal or judge, as established both in article 8.1 of the American Convention on Human Rights and article 4.1 of the International Covenant on Civil and Political Rights.<sup>15</sup>

As indicated in the United Nations Basic Principles on the Independence of the Judiciary, judges shall decide matters before them impartially, on the basis of facts

<sup>15</sup> Ecuador ratified the American Convention on Human Rights on 28 December 1977 and the International Covenant on Civil and Political Rights on 6 March 1969.

and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.<sup>16</sup> In Amnesty International's opinion, the police justice system does not meet the required criteria of independence and impartiality because those participating within it, both judges and prosecutors, are subordinate and accountable not only to the executive branch of government but also to their superiors within the police hierarchy.

For example, one aspect of the regulatory and jurisdictional design of the police justice system which limits its independence and impartiality is the fact that judges within police jurisdiction belong to the security forces. The judges involved in the first instance in the police court system, both at the preliminary (*sumario*) and plenary (*plenario*) stages, which span the investigation stage of a case until initial judgment is passed, are all police officers on active service, that is to say, that they are subordinate to the organizational hierarchy of the police force and, as specified in the Constitution, have a duty of obedience to the chain of command headed by the President of the Republic.<sup>17</sup>

For its part, the Judicial Police, the body in charge of investigating crimes and apprehending any alleged perpetrators within the National Police, is also made up of police officers on active service in the same institution, meaning that they have to obey orders given by superior officers within the hierarchy and that they may sometimes have personal links with those who are probably responsible for the crimes in question, thereby possibly compromising the independence and impartiality of the investigations.

Furthermore, the District Police Courts (*Cortes Distritales Policiales*), the next level of jurisdiction responsible for hearing appeals, and the National Court of Police Justice, the court of last resort, are made up mainly of members of the National Police on "passive service", a status which means that they receive the treatment and consideration befitting the rank they attained within the National Police of which they are "reserve forces" ("*fuerza de reserva*"), therefore retaining clear links with it.

In addition, according to the Organic Law of the National Police, the institution, including the police justice system, is answerable to the Ministry of the Interior and Police, Worship and Municipalities (*Ministerio de Gobierno y Policía, Culto y*

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<sup>16</sup> Article 2 of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

<sup>17</sup> Article 184 of the Constitution states the following: "[t]he forces of order have a duty to the State. The President of the Republic shall be their highest authority (...)".

Municipalidades).<sup>18</sup> The same law states that the National Police as a whole is “organized in a hierarchical disciplinary system”,<sup>19</sup> with the President of the Republic as “the highest authority” and the Ministry of the Interior and the Commander-in-Chief of the Police both specific organs to which it is hierarchically subordinate.<sup>20</sup> The police justice system is therefore shown to be essentially an administrative structure within the executive branch of government rather than a proper independent jurisdictional entity.

In addition to the fact that the actors within the police justice system are answerable and subordinate to the executive as well as to the institution’s own hierarchy, judges and prosecutors are appointed for a period of two years with the possibility, but not certainty, of being reappointed. The relatively transitory nature of the appointments makes it unlikely that, if a person wishes to continue doing the job for a significantly long period, he or she will hand down decisions or judgments that might adversely affect the interests or image of the police force itself and/or those of the executive in general.

A misconceived “esprit de corps” that exists within the police also often results in cover-ups and the unlawful protection of police officers believed to be responsible for serious human rights violations, thereby jeopardizing the independence and impartiality of police jurisdiction. Amnesty International has received reports of cases in which evidence has been concealed, investigations delayed and the course of justice perverted. This “esprit de corps” has sometimes also led to the issuing of incomplete technical reports in which evidence has been omitted or changed so that evidence provided by the victims themselves or their relatives and friends has been dismissed as inadequate.

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<sup>18</sup> Article 7 of the Organic Law of the National Police states that “the National Police consists of the following bodies: a) directorial, b) supervisory, c) advisory, d) operational, e) judicial and e) attached bodies”.

<sup>19</sup> Article 2 of the Organic Law of the National Police.

<sup>20</sup> Articles 6 and 8 of the Organic Law of the National Police.

The organization has also received many reports that police officers directly involved in human rights violations or their colleagues have threatened or intimidated the victims of such crimes and their relatives and lawyers as well as witnesses and journalists from the national media who have reported alleged violations of fundamental rights or the legal proceedings that have been opened against the alleged perpetrators.

Furthermore, since the police officers concerned are often held in custody or are serving their sentences in police establishments,<sup>21</sup> the “esprit de corps” between members of the police has reportedly helped to ensure that, in practice, arrangements regarding their imprisonment are not complied with and led

#### **Wilmer Lucio León Murillo**

Wilmer Lucio León Murillo was arrested by police together with three other individuals on 21 July 2003 when they were travelling in a car in the town of Quevedo, Los Ríos province.

According to the testimony of Wilmer León Murillo given to Amnesty International in October 2003, the police officers pushed them into a police vehicle, covering their heads with their own shirts, and took them to an unidentified open space on the outskirts of Quevedo. Once there, they covered their eyes with newspaper and adhesive tape. According to Wilmer León Murillo, the police officers kicked and punched him. They also tied him up and forced him to lie on a cement floor where he was held down by two officers while a third covered his mouth and squirted water up his nose with a hose until he lost consciousness. Some hours later, Wilmer León Murillo and the other detainees were taken to a police station and later released after a prosecutor established that there was no evidence against them and that their arrest had been unlawful.

Since 24 July 2003 when Wilmer León Murillo reported the events described above, he has been threatened on several occasions, the last time being 26 October 2003.

Amnesty International was informed by Wilmer León Murillo that an investigation against the police officers who allegedly tortured and ill-treated him had been opened in the ordinary courts. However, in November 2003, the prosecutor in charge of the case stood down in favour of police jurisdiction on the grounds that the accused were police officers on active service and the charges against them related to offences specified in police legislation.

According to information given to the organization by the National Court of Police Justice in July 2004, criminal proceedings for unlawful arrest, abuse of power and bodily harm have been opened under police jurisdiction against two police officers. The police court in charge of the case is said to be studying whether it is authorized to hear the case or whether it should declare itself incompetent. The two detainees are reportedly being held in custody in cells belonging to the Guayas Judicial Police.

<sup>21</sup> A relevant rule in this regard is article 60 of the National Police Criminal Code which states: “A sentence of imprisonment (prisión) shall last between three months and five years. Imprisonment of less than one year shall be served **in the barracks specified by the relevant judge**. Officers shall serve any sentence of over one year in **a special prison** to be determined by the corresponding judge. Officers sentenced to imprisonment should not be assigned to work that is incompatible with the dignity of their professional status. Officers serving a prison sentence of less than one year shall have the right to receive 30% of their salary, as long as the sentence is not due to conviction for theft, fraud or misappropriation of tax funds. Members of the rank and file shall serve sentences of over one year in a special prison and shall be obliged to undertake whatever work has been or may be established in the relevant regulations”. The text in bold is the responsibility of Amnesty International.

to escapes taking place, often with the complicity of members of the police establishment in which those concerned are being held.<sup>22</sup>

The design of the ordinary justice system, on the other hand, while not itself without problems that have often limited its effectiveness in resolving serious cases of human rights violation, is more in line with the parameters of independence and impartiality that seek to ensure that justice is not arbitrary. The following are some of the criteria and mechanisms which offer guarantees that the ordinary justice system in Ecuador can operate independently and impartially: a) civilian judges are answerable solely to the Constitution and the law; b) the existence of a National Council for the Judiciary (Consejo Nacional de la Judicatura), which is independent of the executive and acts as the governing, administrative and disciplinary body of the judiciary; c) access to the position of judge (except in the case of the Supreme Court) is based on competitive examination and qualification, thereby encouraging selection of the most suitable candidates; d) the possibility of having a proper legal career which means that judges do not feel vulnerable in their posts in the face of “de facto” authorities who try to arbitrarily impose their interests; and e) the fact that trials tend to be public.<sup>23</sup>

### **III. Amnesty International action since October 2003**

Since October 2003 when Amnesty International launched the international campaign to put an end to the use of special police jurisdiction to prosecute human rights violations allegedly committed by members of the security forces in Ecuador, members of the organization throughout the world have written to the Ecuadorian authorities calling on them to take the necessary steps to ensure that such cases are tried in the ordinary courts. The authorities addressed include the President of the Republic, the Minister of the Interior and Police, the Attorney General, the Presidents of the Congressional Human Rights Commission and Commission of Civil and Criminal Affairs, the President of the National Court of Police Justice and the Commander-in-Chief of the National Police. So far none of them has replied.

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<sup>22</sup> For further details of Amnesty International’s concerns regarding the use of police courts in Ecuador to prosecute alleged human rights violations perpetrated by the police, see *Ecuador: With no independent and impartial justice there can be no rule of law*, AMR 28/010/2003, October 2003.

<sup>23</sup> Cf. Article 24 of the Ecuadorian Constitution. There are still enormous problems in the ordinary justice system with the constant backlog of cases, the ineffective monitoring of individuals and the obsolescence of many laws and procedures, as well as others which have been discussed for over ten years. See, for example, Bucheli Mera, Rodrigo, *Justicia Penal en el Ecuador (Criminal Justice in Ecuador)*, Editorial Jurídica del Ecuador, Quito, pp.144-145.



In January 2004, Amnesty International also wrote to all the authorities with whom the delegation which visited the country in October 2003 met in order to remind them of the commitments they made during the meetings and draw their attention to cases of alleged violations of fundamental rights documented by the delegates during their visit, including cases of torture and ill-treatment and “disappearance”, some of which are included in this report. The organization urged the authorities to undertake thorough, independent and impartial investigations of the cases in question and to bring the perpetrators to justice in the ordinary courts. Amnesty International also called on the Commander-in-Chief of the National Police to send an urgent, clear and unequivocal message to all members of the police stating that violations of fundamental rights by members of the police would not be tolerated and that, should they occur, those responsible would be brought to justice in the ordinary courts.

**Luis Alberto Sabando Vélez and Lenin Cedeño Treviño**

On 29 September 2004, according to information sent to Amnesty International, Luis Alberto Sabando Vélez and Lenin Cedeño Treviño were arrested by police in Buena Fe, Los Ríos province. According to the police, the next day Luis Sabando Vélez escaped when he was being transferred wearing handcuffs in the custody of four police officers. So far his whereabouts is not known.

Amnesty International believes that Luis Sabando Vélez has “disappeared”. Lenin Cedeño Treviño is still said to be in police custody but the organization does not know whether he has had access to a lawyer.

The two detainees were reportedly travelling in a car belonging to Lenin Cedeño Treviño when armed police ordered them to stop. The police officers searched the vehicle and arrested the two men after finding a weapon that belonged to Lenin Cedeño Treviño. The two were taken to the preventive detention centre in the town of Quevedo. Although Lenin Cedeño Treviño had a license for the weapon and he showed it to the police, the two were accused of illegally possessing a firearm.

On 30 September 2004, when the mother of Luis Sabando Vélez went to the detention centre to visit her son, the police told her that he had escaped when they were taking him to the town of Buena Fe to assist with the police inquiries into the charges against them. When his mother asked how a man who was handcuffed could have escaped from four police officers, they did not answer. That same day, the family of Luis Sabando Vélez lodged a complaint regarding his “disappearance” with the Public prosecutor’s office.

On 4 October 2004, the mother of Luis Sabando Vélez returned to the Public prosecutor’s office where she was told by a prosecutor that a police report dated 1 October had been received saying that her son and Lenin Cedeño Treviño had been arrested in connection with a robbery and a murder. However, the offences in question were not reported until 30 September when the two men were already in police custody.

Amnesty International has called on the Attorney-General to investigate the alleged “disappearance” of Luis Alberto Sabando Vélez and to release Lenin Cedeño Treviño unless he is charged with a recognized criminal offence. The organization has also written to the Minister of the Interior and Police and the Commander-in-Chief of the National Police expressing its concern at the alleged “disappearance” of Luis Alberto Sabando Vélez while in police custody and urging them to ensure that Lenin Cedeño Treviño is humanely treated while in police custody and that he be given immediate access to a lawyer and his family. There has not yet been any response from any of these authorities.

In November 2003 and May 2004, Amnesty International issued actions relating to human rights violations reportedly carried out by police in the course of an operation at the Fybeca chemist's shop in Guayaquil, as well as to the security and personal safety of the relatives of the victims and of a journalist from the newspaper *El Universo* who was threatened, apparently in connection with his coverage of events during the police operation.<sup>24</sup>

In October 2004, the organization took action with regard to the security and personal safety of Luis Alberto Sabando Vélez and Lenin Cedeño Treviño, who were arrested on 29 September 2004 by police. The day after he was arrested, Luis Sabando Vélez “disappeared”. So far his whereabouts is not known. Lenin Cedeño Treviño is reportedly still in police custody, although it is not known whether he has had access to a lawyer since he was arrested.<sup>25</sup>

In July 2004, an Amnesty International delegation held further meetings with the President of the National Court of Police Justice and a legal advisor representing the Attorney General in order to present the organization's concerns once again and see what progress had been made with regard to the cases which since October 2003, according to information provided to the delegates, had been transferred from the ordinary courts to the police courts despite the commitments made by both authorities that all cases of human rights violations, such as torture and ill-treatment, including those in which the alleged perpetrators were members of the security forces, would be tried under ordinary jurisdiction.

During the delegation's meeting with the President of the National Court of Police Justice, the latter again said that he shared the organization's concerns and stressed that the police courts supported the “Jurisdictional Unity” required by the Constitution although he pointed out that it was now the responsibility of the National Congress to ensure that the necessary legislation is passed for it to be put into practice as stipulated in the Constitution. He also gave Amnesty International information on the legal proceedings currently under way in the police courts for alleged human rights violations and about which the organization had expressed concern in previous communications sent to his office.

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<sup>24</sup> See Urgent Action UA 344/03, AMR 28/014/2003, 24 November 2003, and updates AMR 28/015/2003 of 26 November 2003 and AMR 28/015/2004 of 5 May 2004. For further information on this case, see the box on pp.3-4 of this report.

<sup>25</sup> See Urgent Action UA 288/04, AMR 28/019/2004, 12 October 2004. For further information on this case, see the box on p.14 of this report.

The Attorney General's Office agreed to send information on the cases of human rights violations allegedly committed by members of the police currently under investigation in the ordinary courts. Amnesty International once again urged the Attorney General, through her representative, to ensure that prosecutors do not stand down in favour of the police courts in any of these cases. However, so far the organization has not received any communication from the Attorney General's Office in this regard.

#### **Julio César Matute Guerra**

According to reports given to Amnesty International in October 2003, Julio César Matute Guerra died after being shot by police in Guayaquil on 31 May 2000. The officers had reportedly mistaken him for someone suspected of stealing cars.

Julio Matute Guerra was driving his van towards the north of the city when a patrol car from the Guayas traffic police (Comisión de Tránsito de Guayas, CTG) started pursuing him. According to the same reports, during the pursuit, the van which Julio Matute Guerra was driving crashed into a house, at which point the police officers started shooting at him. He died shortly afterwards from the bullet wounds.

Amnesty International received information from the National Court of Police Justice in July 2004 saying that the case was being dealt with under police jurisdiction and that a police judge had charged six police officers with the death of Julio Matute Guerra. According to the same source, in August 2002, a police court dismissed the case against four of the accused but confirmed the charges brought against the other two who are both traffic police. However, no further information was given about the outcome of the proceedings brought against the two.

Amnesty International is not aware of any proceedings having been started under ordinary jurisdiction against the officers implicated in the death of Julio Matute Guerra.

## **IV. Conclusion**

Amnesty International believes that, through its Constitution and the international human rights treaties it has ratified, the Ecuadorian State has made a clear and strong pledge to respect human rights. This pledge has been publicly reiterated on many occasions by the Ecuadorian authorities and is reflected in the design of the country's National Human Rights Plan,<sup>26</sup> one of the aims of which, among others, is to "ensure that systems of detention, investigation (...) banish the practice of torture and physical and moral ill-treatment as a means of investigation and punishment" and in which "the Government commits itself to supporting: (...) [p]unishment of human rights violations and the State's pledge to eradicate impunity".<sup>27</sup>

<sup>26</sup> The National Human Rights Plan for Ecuador (Plan Nacional de Derechos Humanos de Ecuador) was approved on 18 June 1998 by means of Executive Decree No. 1527.

<sup>27</sup> Comisión Permanente de Evaluación Seguimiento y Ajuste de Planes Operativos de Derechos Humanos, *Planes Operativos de Derechos Humanos del Ecuador*, p.22.

However, despite these pledges, the organization believes that it will not be possible for the effective promotion and protection of human rights to become a reality in Ecuador as long as in practice it continues to operate a police justice system, the design and use of which openly run counter to the fundamental human rights principles enshrined in the Constitution and international human rights standards.

In Amnesty International's opinion, the existence of special jurisdictions to try ordinary offences, including human rights violations, not only violates the principles of independence and impartiality recognized in international human rights standards but also denies the right to equality guaranteed in both the American Convention on Human Rights and the International Covenant on Civil and Political Rights, both of which state that everyone is "entitled, without discrimination, to equal protection of the law".<sup>28</sup> Special jurisdictions involve granting privileges to certain types of people so that, as a result of their status as members of the security forces, they enjoy the right to be treated differently to other citizens in the eyes of the law.

The use of the ordinary justice system to try members of the police accused of ordinary offences would guarantee the principle of equal protection of the law without adversely affecting the protection of the rights of the police officers accused of such crimes. Like anyone else accused of an offence, they would still have the right to be presumed innocent and to present an appropriate defence, as guaranteed in both the Ecuadorian Constitution and the international human rights standards Ecuador has ratified.

If the Ecuadorian authorities are truly committed to protecting and promoting the human rights of all persons without distinction, it is crucial that they abolish without delay the use of special jurisdiction to try cases of human rights violations and that they take urgent steps to end the impunity to which such jurisdiction contributes.

Amnesty International believes that only when the Ecuadorian authorities act on their pledges will they demonstrate to Ecuadorian society and the international community that the human rights obligations assumed by the Ecuadorian State are not merely empty promises. Only if they do so will it be possible to move towards building a country in which the fundamental rights of all people are protected and an end can be brought to the vicious circle of impunity in which the failure to punish human rights violations creates a climate that favours the recurrence of such violations.

In this context, the organization once again calls on the Ecuadorian authorities to implement the following recommendations as soon as possible in order to stop members of the National Police committing human rights violations and to ensure that,

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<sup>28</sup> Article 24 of the American Convention on Human Rights. See also article 26 of the International Covenant on Civil and Political Rights.

if they do so, the rights of the victims and their families to truth, justice, reparation and non-recurrence are guaranteed.

## **V. Recommendations**

### **1. Commitment to protecting and promoting human rights.**

- The Ecuadorian authorities at all levels should send a clear and decisive message to the security forces that human rights violations will not be tolerated under any circumstances and that, if they do occur, those responsible will be tried under ordinary jurisdiction and punished in accordance with the gravity of the offence.
- The Ecuadorian authorities should call on the population to denounce any violation of their human rights committed by the security forces, including acts of intimidation and death threats targeted at complainants or witnesses. The authorities should take all necessary steps to ensure that all such complaints are dealt with impartially, independently and effectively.

### **2. Independent investigations**

- The Ecuadorian authorities should ensure that all complaints and reports of human rights violations, including acts of intimidation and death threats targeted against complainants and witnesses as well as complaints about the passivity of the police when investigating other human rights abuses, are the object of immediate, impartial and effective investigations carried out by a body that is independent of those allegedly responsible for such offences and the institutions to which they belong. The methods and conclusions of any such investigations should be made public.
- The authorities should take all necessary measures to ensure that the independence and impartiality of investigations into human rights violations are not compromised, including by taking whatever steps are necessary to prevent police personnel on active service who are suspected of having committing human rights violations from escaping justice or compromising the impartiality and independence of the investigations.
- The authorities should ensure that complainants, witnesses and any other people at risk are given effective protection from possible intimidation and reprisals.

### **3. Impartial and independent trials under ordinary jurisdiction**

- The Ecuadorian authorities should ensure that, from now on, the existing police justice system intervenes solely in the case of offences committed in the line of duty, namely, offences committed when carrying out professional duties or work that befit the National Police.<sup>29</sup>

- In the case of offences listed in the Ordinary Criminal Code (Código Penal Ordinario), the National Police, in particular, and the Ecuadorian authorities, in general, should encourage and make it possible for the ordinary courts to assume jurisdiction.

- The legislative power should take immediate action to amend the National Police Criminal Code, the Organic Law of the National Police, the National Police Code of Criminal Procedure and any other supplementary and/or related regulations or rules of procedure so that the sole and exclusive remit of the police justice system is to try offences committed in the line of duty. It should be spelled out in all relevant legal regulations that, as a matter of course, any criminal offences which are not deemed to be offences committed in the line of duty should be tried under ordinary jurisdiction.

- The legislative power should taken all necessary steps as soon as possible to move towards standardizing and implementing “Jurisdictional Unity” so that what is known at present as ‘special jurisdiction’ is incorporated into the judiciary, thereby providing the basis for it to become impartial and independent of the executive branch of government and the police and military institutional hierarchy

- The Attorney General’s Office (Fiscalía General del Estado) should ensure that its prosecutors and public officials are aware that human rights violations committed by the security forces should be tried in the ordinary courts of justice.<sup>30</sup>

- The senior authorities within the judiciary should ensure that judges, magistrates and all justice officials prosecute all cases in which members of the security forces have been accused of committing human rights violations speedily, independently and impartially.

- The Higher Courts, the Supreme Court of Justice and the Constitutional Court should develop a policy on jurisdiction that is consistent with the Constitution and the relevant international treaties so that, in cases of human rights violations that

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<sup>29</sup> Although it has not been the subject of this report, Amnesty International believes that the same should apply to the current military jurisdiction and anyone who commits an offence while on active service in the armed forces.

<sup>30</sup> Amnesty International believes that this should also apply to human rights violations attributed to members of the Armed Forces.

may have been committed by members of the security forces, jurisdiction is invariably awarded to the ordinary justice system.<sup>31</sup>

#### **4. The right to reparation**

- The Ecuadorian authorities should ensure that direct and indirect victims of human rights violations have the right to receive immediate reparation from the State, including restitution, fair and adequate compensation and appropriate medical care and rehabilitation.

#### **5. Safeguards during the period of detention and questioning.**

- The Ecuadorian authorities, especially the security forces, should ensure that anyone who is arrested is informed of his or her rights without delay, including the right to make complaints about the treatment received and the right to have the legality of the arrest established immediately by a judge.

- The Ecuadorian authorities should make sure that prison conditions comply with international norms and standards for the treatment of prisoners<sup>32</sup> and take account of the specific needs of members of particularly vulnerable groups.

- The authorities should ensure that regular, independent inspection visits are carried out, without prior warning and without any restrictions, to all detention centres.

#### **6. International Treaties**

- The Ecuadorian Government should ensure as a matter of priority that the rights enshrined in the international human rights treaties to which Ecuador is a party<sup>33</sup> are respected in practice and that the treaties it has not yet ratified are ratified.<sup>34</sup>

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<sup>31</sup> Amnesty International believes that the same should apply to human rights violations attributed to members of the Armed Forces.

<sup>32</sup> For example, the United Nations Standard Minimum Rules for the Treatment of Prisoners, United Nations Basic Principles for the Treatment of Prisoners, United Nations Body of Principles for the Protection of all Persons under any Form of Detention and Imprisonment, United Nations Declaration on the Protection of all Persons from Enforced Disappearance and United Nations Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty.

<sup>33</sup> The International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention against Torture and other Cruel, Inhuman or Degrading Treatment [or Punishment], Convention on the Prevention and Punishment of the Crime of Genocide, Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child, International Covenant on the Protection of the Rights of All Migrant Workers and Members of their Families, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Optional Protocol to the International Covenant on Civil and Political Rights, Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at

- The Ecuadorian Government should also implement the recommendations made by international human rights bodies such as the United Nations Human Rights Committee, the Inter-American Commission on Human Rights and Inter-American Court of Human Rights of the Organisation of American States and other similar bodies, as well as those made by rapporteurs and other international mechanisms specializing in the subject.

- The Ecuadorian Government should make sure that it continues to submit periodic reports to the international mechanisms which evaluate the progress made by the Ecuadorian State in implementing the international human rights treaties it has ratified. In particular, the Ecuadorian Government should submit any reports which are overdue at the earliest possible opportunity. These include the sixth periodic report to the Committee monitoring the progress made in implementing the Convention on the Elimination of All Forms of Discrimination against Women and the fifth periodic report concerning the progress made in implementing the International Covenant on Civil and Political Rights, both of which are two years overdue.

#### **7. Promote professionalism and respect for human rights within the police**

- The Ecuadorian Government should ensure that all police personnel receive human rights training that is based on international and regional human rights standards and is practical and appropriate for police work. Police training should be geared towards guaranteeing the highest possible level of professionalism and respect for human rights standards, including by devoting proper attention to the duty to respect the human rights of vulnerable groups such as women and children.

- It should ensure that human rights training is a permanent component of police training programmes at all levels and that the commitment to human rights training is reflected in police planning and budgets.

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the abolition of the death penalty, American Convention on Human Rights, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém Do Pará”), Inter-American Convention to Prevent and Punish Torture, Protocol to the American Convention on Human Rights to Abolish the Death Penalty, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”) and the Rome Statute of the International Criminal Court.

<sup>34</sup> These include the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and the Inter-American Convention on Forced Disappearance of Persons.



- It should ensure that the criteria for obtaining promotion within the police include the need to demonstrate professional police conduct that is consistent with international and regional human rights standards.
- It should take steps to improve the working conditions of the police and the resources available to them so that they can carry out their duties in a professional manner.

### **APPENDIX**

Below are some examples of the serious human rights violations reportedly committed by members of the Ecuadorian police which were documented by Amnesty International in the report entitled *Ecuador: With no independent and impartial justice there can be no “rule of law”*. So far, all these cases remain unpunished.

#### **Elías Elint López Pita and Luis Alberto Shinín Laso – Forced disappearance and threats**

Elías Elint López Pita was arrested in Ambato on 6 November 2000 when he was travelling by bus from Ambato to Esmeraldas province. There is no news of his whereabouts.

The day after his arrest, 7 November, the public prosecutor from the ordinary justice system who was investigating the arrest and “disappearance” of Elías López Pita took a statement from Luis Alberto Shinín Laso, who was in police custody. Luis Shinín Laso told the prosecutor that he had known Elías López Pita for some time and that López had told him he had been arrested on suspicion of robbery and that he had been beaten by police officers. Shinín Laso said that he had seen López Pita in a place known as El Aula, inside Ambato police station. Luis Shinín Laso was released on 14 November 2000 but, on leaving his place of detention, he was kidnapped by unidentified armed men and taken by car to the outskirts of Ambato where he was shot and thrown over a precipice. Luis Shinín Laso survived the attack but, according to staff at the hospital where he was receiving treatment, on 17 November 2000 at least six armed men wearing balaclavas burst into the hospital and kidnapped him. He has not been seen since.

Following numerous legal procedures and a conflict of jurisdiction which was eventually settled in favour of the ordinary courts, the Higher Court of Ambato (*Corte Superior*) sentenced two officers to six years’ imprisonment for the unintentional homicide of Elías López Pita and another two – deemed to be accomplices – to three years. The remaining six defendants were acquitted. The victim’s family, which has been subjected to serious intimidation since the case was transferred to the ordinary justice system, lodged a final appeal (*recurso de casación*) but, according to reports, so far no decision has been made.

As far as the forced disappearance of Luis Shinín Laso is concerned, on 28 April 2003, the Guaranda Criminal Court (*Tribunal Penal*) sentenced three of the eight police officers to between eight and sixteen years’ imprisonment for murder. The sentence was challenged but so far no ruling has been made. A few days before sentence was passed, the mother of Elías López Pita, was again threatened. So far, there has

reportedly been no investigation carried out into the intimidation of the families of the victims.

### **Aníbal Aguas – Death in custody**

Aníbal Aguas died on 1 March 1997 while being held in custody by the National Police in the town of Machala.

His relatives lodged a complaint immediately and charges were brought against two police officers. Since the alleged perpetrators were members of the police, a dispute over jurisdiction took place because the police courts believed that responsibility for trying the accused lay with them. In the end, the ordinary courts stood down in favour of the police courts.

A year after the police officers allegedly involved in the incident were arrested, they were released in accordance with the law. In September 2000, two police officers were sentenced to three years' imprisonment for causing injury and death. The relatives appealed against the sentence and in June 2001 the two were sentenced to eight years' imprisonment for death under torture. The sentence was confirmed by the National Court of Police Justice in April 2003.

So far, after more than seven years, the police officers have not been arrested and the relatives have not received any form of reparation.

Joffre Aroca Palma  
© Private



### **Joffre Aroca Palma – Death in custody**

Joffre Aroca Palma was arrested by a police patrol in Guayaquil on 27 February 2001. Hours later, his body was discovered in the vicinity of the Estadio Monumental in the same city. According to the forensic report, the victim died as a result of a bullet wound that punctured his right lung and heart. According to information received by the organization, two officers from the National Police and two from the Metropolitan Police arrested Joffre Aroca Palma and put him into a van. The police van reportedly set off towards the Estadio Monumental instead of going to the Judicial Police barracks. Once in the vicinity of the stadium, the officers parked the vehicle and the two National Police officers got out taking the detainee with them. Minutes later one of the officers returned to the van and, after a gunshot was heard, the second officer also returned to the vehicle.

A week after the body was discovered, one of the Metropolitan police officers who was present at the time reported the incident to his superior and the two members of the National Police allegedly involved were arrested for murder and accessory to murder respectively. The case was dealt with under police jurisdiction. After being remanded in custody, one of the officers was held at a police station. Shortly afterwards, he escaped but was recaptured. However, one year later, due to delays in the trial, he was released. While at liberty, he was notified that he had been sentenced to eight years' imprisonment. However, to date the officer has not been arrested in order to serve his sentence.

The second police officer failed to appear in court when summoned to trial for concealment. The trial therefore had to be adjourned. So far, three years after the killing of Joffre Aroca Palma, neither of the two police officers has been recaptured and it is feared that they may have left the country. Furthermore, the relatives of Joffre Aroca Palma have not received any form of reparation.

#### **Kléver Abad Calva – Death in custody**

Kléver Abad Calva was arrested by police officers on 2 July 2002 on the Lago Agrio-Shushufindi road in Sucumbíos province and accused of transporting white gasoline. When his family heard of his arrest, they immediately went to the police station in Lago Agrio where, a few hours later, they were told that Kléver Abad Calva had thrown himself into the river Aguarico on the journey from the rural police station in Shushufindi, where he had been taken following his arrest, to the city of Lago Agrio and that he had not been seen since. Twenty-four days after his arrest, the body of Kléver Abad Calva was found in the river. There were two bullet wounds in the body, one in the gluteus and the other in the stomach.

The public prosecutor who began the investigation under ordinary jurisdiction in August 2002 disqualified himself from the case. On 24 September 2002, the family wrote to the then Minister of the Interior and Police to complain about the fact that the public prosecutor in Sucumbíos had stood down from the case but they received no reply. In February 2003, an Amnesty International delegation visiting the country met with members of the Human Rights Unit of the Ministry of the Interior and Police and handed over a copy of the letter the Abad Calva family had sent to the Minister in September 2002. The delegation expressed concern that the case was being tried in the police court system and asked for both the family and the organization to be kept informed of developments in the case. To date, neither the family nor Amnesty International has received any response and the case remains undecided in the Quito Police Court. No reference to developments in the proceedings being conducted under

police jurisdiction was contained in the information given to the organization by the President of the National Court of Police Justice in July 2004.

**Juan Carlos Jahuaco – Death in custody**

Juan Carlos Jahuaco was arrested by members of the National Police in Quito on 24 March 2001 on suspicion of stealing a cassette player from a car. Two days later, his family found him in the mortuary. According to the police, after he was arrested, he was put without handcuffs in the back of a patrol car with the police officers sitting in front. It was under these circumstances that, according to the police, Juan Carlos Jahuaco escaped by jumping into a stream. However, according to relatives, there was forensic evidence to suggest that he died from being beaten.

An investigation into the death of Juan Carlos Jahuaco began in the ordinary courts. However, in May 2002, the Higher Court that was hearing the case declared the entire proceedings to be invalid on the grounds that the accused police officers had committed the alleged murder in the course of their duties and referred the case to the police courts. At the time of writing and more than three years later, the case has still to be decided. No reference to developments in the proceedings being conducted under police jurisdiction was contained in the information given to the organization by the President of the National Court of Police Justice in July 2004.