

ECUADOR

Killers of Consuelo Benavides may escape conviction and punishment

In December 1985 teacher Consuelo Benavides Cevallos was detained by Ecuadorian marines and allegedly extrajudicially executed.¹ In August 1995, four months short of the tenth anniversary of the killing of Consuelo Benavides, the trial of some of those implicated in her death was opened before the Supreme Court of Justice. However, the trial may be closed prior to the Supreme Court of Justice ever reaching a verdict as to the guilt or otherwise of the persons being tried. Furthermore, those alleged to be implicated in the death of Consuelo Benavides may never be convicted and punished. The reason for these two possible outcomes is that, under Ecuadorian law, murder cases not resolved within ten years of the commission of the crime can be definitively closed by the courts.

The Consuelo Benavides case has become a test-case for the defence of human rights in Ecuador. In the event of the case being closed without those responsible for her death being convicted and punished, Amnesty International would be profoundly dismayed, since it would help to consolidate the deep sense of impunity which surrounds the vast majority of unresolved human rights violations in Ecuador.

It is in this context that the organization wrote on 4 September 1995 to President Sixto Durán Ballén. The complete text of the letter, made public by Amnesty International on 8 September 1995, is reproduced below.

¹ From January 1986 through to September 1995 Amnesty International published the following documents on the Consuelo Benavides case: *Ecuador: "Disappearance" - Señorita Consuelo Benavides Cevallos, teacher, aged 33*, Urgent Action 13/86, AI Index: AMR 28/04/86, 22 January 1986; *Ecuador: Further information on the "disappearance" of teacher and sociologist Consuelo Benavides Cevallos*, AI Index AMR 28/08/86, 30 April 1986; *Ecuador: Multiparty congressional commission ends its investigation into "disappearance" of Consuelo Benavides*, AI Index AMR 28/01/89, January 1989; *Ecuador: Señorita Consuelo Benavides Cevallos, a teacher - Further information on Urgent Action 13/86* (see above), AI Index AMR 28/02/89, 30 January 1989; *Ecuador: Human rights test-case in danger of being shelved*, News Service 167/95, AI Index AMR 28/08/95, 8 September 1995; and *Ecuador: Amnistía Internacional alarmada por lentitud judicial en el caso Consuelo Benavides*, press communiqué, (published without an AI Index number), 8 September 1995. The case of Consuelo Benavides is also featured in *Ecuador: Judicial authorities fail to clarify human rights crimes*, News Service 128/95, AI Index AMR 28/06/95, 11 July 1995; and in eight out of nine *Amnesty International Reports* published in 1987 through to 1995 (the exception is the *Amnesty International Report 1992*).

Ref.: TG AMR 28/95.20

President Sixto Durán Ballén
President of the Republic of Ecuador
Palacio de Gobierno
Quito
Ecuador

4 September 1995

Dear President Durán Ballén,

I am taking the opportunity to raise with you Amnesty International's profound concern about the current status surrounding a case of alleged "disappearance" followed by extrajudicial execution. I am referring to the case of teacher Consuelo Benavides Cevallos, of prominent importance in the fight against impunity surrounding many past cases of human rights violations in Ecuador.

In January 1986 Amnesty International took up the case of Consuelo Benavides, following allegations that she had "disappeared" after having been detained by members of the Ecuadorian navy on 4 December 1985. Shortly afterwards the organization wrote to the Ecuadorian authorities requesting a full and independent investigation into these allegations. During the course of 1986 the organization learned that Consuelo Benavides had been detained with peasant leader Serapio Ordóñez, who was later released, but not before he had apparently been tortured by members of the navy. Serapio Ordóñez testified to having seen Consuelo Benavides in detention. Amnesty International also learned that on 13 December 1985, nine days after Consuelo Benavides was detained, the body of a woman was found near the Esmeraldas - La Tola highway. The woman had apparently been shot several times. However, it was not until 30 November 1988, almost three years later, that the official identification of the body as that of Consuelo Benavides was made public.

In August 1994 the then president of the Supreme Court of Justice ordered trial proceedings to be opened in relation to those members of the navy and police accused of being implicated in the Consuelo Benavides case. However, as you may know, prior to the opening of the trial in August 1995 significant delays took place. Indeed, Amnesty International is concerned that if there are any further delays, the trial may end with the people implicated in the death of Consuelo Benavides not being punished. A number of recent developments surrounding the case give rise to this concern.

Firstly, the organization understands that lawyers representing the accused appealed against the Supreme Court of Justice's order referred to above. Apparently the aim behind the appeal was to delay the opening of the trial, thereby increasing the chances of the lawyers invoking a statute of limitations in Ecuador's Penal Code which would have the effect of having the case closed.

Secondly, Amnesty International has learned that on 26 March 1995 one of the persons implicated in the Consuelo Benavides case, a navy captain, escaped from a high security military detention centre in Quito. The captain currently faces charges of having murdered Consuelo Benavides. Ecuadorian human rights organizations have alleged that the escape was contrived. Amnesty International is not in a position to verify or otherwise this allegation. However, the organization is concerned that lawyers representing the other defendants in the Consuelo Benavides case may use the fact of the escape as an additional element in arguing that the opening of the trial be postponed. Apparently the lawyers could use the escape as a further excuse to delay the trial moving forward, by arguing that the absence of the navy captain from the trial precludes the possibility of him being cross examined as a key witness, and that it therefore should not continue until such time as he is redetained.

Finally, Amnesty International is concerned for the safety of Nelly Benavides, one of Consuelo Benavides' sisters. The concern arises because of a series of break-ins into the home in Quito of Nelly Benavides. The latest of these break-ins was on 5 April 1995. Over the years Nelly Benavides, her parents, brothers, and sisters, and Ecuadorian human rights defenders, have played a crucial role in keeping the Consuelo Benavides case before the Ecuadorian and international community. As a result of this latest break-in, many of Nelly Benavides' personal belongings were stolen, including a computer used in the preparation of press releases, reports and letters calling for those responsible for her sister's death to be brought to trial. In a hand-written letter sent to Amnesty International two days after this last break-in Nelly Benavides stated that she had been left "worried by the pain, suffering and impotence" and with a feeling of "real danger", because of the break-ins and threats she has received.

Amnesty International fears that the break-ins and threats constitute an attempt by persons who may be linked to the alleged perpetrators to dissuade Nelly Benavides from campaigning to bring to trial those responsible for her sister's death. The organization also fears that repeated delays in the trial opening and hearings may eventually result in the accused being favoured by a judicial decision to have the case definitively closed. Should this be the outcome, Amnesty International would be profoundly dismayed, since it would help to consolidate the deep sense of impunity which surrounds the Consuelo Benavides case and other past cases of human rights violations which at present remain unclarified.

May I thus take this opportunity to remind you of certain provisions contained in international human rights standards which are specifically designed to ensure that cases of gross human rights violations, such as in the Consuelo Benavides case, do not suffer the kind of outcome predicted for it. I refer specifically to article 13, paragraphs 1, 3, 5 and 6; article 17; and article 18, paragraph 1, of the United Nations (UN) Declaration on the Protection of All Persons from Enforced Disappearance, adopted without a vote by the UN General Assembly on 18 December 1992. I textually cite these articles in an appendix to the letter.

I would particularly draw your attention to article 17 (2) of the Declaration. This article -- expressly linked to article 2 of the International Covenant on Civil and Political Rights (ICCPR) -- puts forward the hypothesis that statutes of limitation in relation to cases of "disappearance" should be suspended. As you know, Ecuador ratified the ICCPR in 1994.

Several articles in the ICCPR are especially relevant to the Consuelo Benavides case, since they oblige each State Party to provide effective remedies in the event of fundamental human rights having been violated. Furthermore, among the rights included in the ICCPR are the right to life (article 6.1) and, in the event of a person being detained by an authority, the right to be treated with humanity and with respect for his or her inherent dignity (article 10.1). Both these rights would appear to have been violated in the case of Consuelo Benavides.

I would also respectfully request that you take all the necessary steps to ensure the security and protection of Nelly Benavides and her family; of the two lawyers representing the Benavides family, Dr César Banda Batallas and Dr Alejandro Ponce Villacís; of the witnesses, be they civilians or members of the security forces, who have testified against those implicated in Consuelo Benavides' death; and of Sister Elsie Monge, president of the Ecumenic Commission for Human Rights, and the staff of this organization. Finally, I would also appreciate receiving from you assurances that the defence and protection of fundamental human rights in Ecuador remain a central and permanent item of your government's agenda, and that this agenda includes and adherence by the Ecuadorian authorities to national and international human rights standards.

The importance of the Consuelo Benavides case, both for her relatives and for the future of the human rights cause in your country, has led me to make public my letter to you. By the same token I have also decided to copy this letter to those people listed at the end of this letter.

As you may know an Amnesty International delegate recently visited Ecuador to carry out research into the organization's concerns in your country. I will write to you soon with our observations. Let me end by stating Amnesty International's wish to open a fruitful dialogue on ways to advance the protection and promotion of human rights in Ecuador.

Yours sincerely,

Javier Zúñiga Mejía Borja
Program Director - America

Enclosure: Appendix: text of international human rights standards referred to in letter
cc:

- Mr Bacre Ndyaye, United Nations special rapporteur on extrajudicial, summary or arbitrary executions
- Dr Edith Márquez, Inter-American Commission on Human Rights executive secretary
- Sr Abraham Romero, Minister of Government and Police
- General Alfonso Alarcón, Minister of National Defence
- Dr Fernando Casares Carrerra, State Attorney General
- Dr Carlos Solórzano Constantine, president of the Supreme Court of Justice
- Dr Fabián Alarcón, president of Congress.

APPENDIX**Text of international human rights standards referred to in letter****Declaration on the Protection of All Persons from Enforced Disappearance**

(Adopted by the United Nations General Assembly on 18 December 1992)

Article 13 (1):

Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

Article 13 (3):

Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

Article 13 (5):

Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or the investigation procedure is appropriately punished.

Article 13 (6):

An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 17 (1):

Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

Article 17 (2):

When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.

Article 17 (3):

Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

Article 18 (1):

Persons who have, or are alleged to have, committed offences referred to in article 4, paragraph 1 *, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.

International Covenant on Civil and Political Rights
(Ratified by the Republic of Ecuador in 1984)

Article 2 (3):

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 6 (1):

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 10 (1):

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

* Article 4(1):

All acts of enforced disappearance shall be offences under the criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.