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@Amnesty International's Human Rights Concerns in Ecuador

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Since the Republic of Ecuador submitted its second periodic report (under Article 40 of the International Covenant on Civil and Political Rights to the United Nations Human Rights Committee in August 1985), Amnesty International has closely monitored human rights under the governments of former President León Febres Cordero and current President Rodrigo Borja Cevallos.

Throughout the administration of former President León Febres Cordero Amnesty International was seriously concerned about numerous reports of detention through illegal procedures, incommunicado detention, torture, "disappearances" and extrajudicial executions. The organization was also concerned about the repeated failure to investigate allegations of human rights violations and the failure to bring to justice those responsible for such violations.

Amnesty International has continued to be concerned about human rights violations perpetrated during the present administration of President Rodrigo Borja Cevallos. In particular, the organization has been concerned about the widespread use of torture, particularly by the Servicio de Investigación Criminal (SIC), Criminal Investigation Service, a branch of the National Police and, in some cases, by the military. Amnesty International has also documented one "disappearance" case. Throughout the present administration Amnesty International has been concerned about the repeated failure to thoroughly and independently investigate cases of alleged human rights violations, and has noted that in those cases where investigations have been initiated, those responsible have not been convicted.

1. National and international human rights law

Ecuador has incorporated provisions against human rights violations into the revised Constitution of the Republic which came into force in August 1984 and the Penal Code. It has also signed or ratified international human rights instruments. Article 44 of the Constitution guarantees all individuals in Ecuador the exercise and enjoyment of the rights in these international instruments.

Article 19(1) of the Constitution affirms that: "... the state guarantees the inviolability of life and the integrity of the individual. There is no death penalty. Torture and all inhuman or degrading treatment are prohibited". Articles 19(4),(9) and (10) respectively guarantee the right to freedom of opinion and speech, the right to freedom of movement, and the right to lodge a complaint or petition before the authorities. Article 19(17) declares that the state guarantees the individual's freedom and security. In accordance with Article 19(17) nobody may be deprived of their liberty without a written order from a competent authority unless committing a crime in "delito flagrante", and nobody may be held without a charge or incommunicado for more than 24 hours [Article 19(17)(h)]; every person shall be informed

immediately of the cause for their detention [Article 19(17)(i)]; and every person who believes that they are illegally deprived of their liberty may seek protection through recourse to a habeas corpus petition [Article 19(17)(j)]. Article 20 of the Constitution affirms the obligation of the state to compensate individuals for any damage or harm inflicted upon them by government authorities.

The Penal Code, in Articles 180 to 187 on crimes against the liberty of the individual, specifies the range of penalties applicable to illegal and arbitrary arrest. Article 187 states that when an arrested or detained person has been tortured, the person responsible shall be punished with three to six years' imprisonment. The sentence shall be of six to nine years' imprisonment if the torture resulted in injuries as detailed in the Penal Code's chapter on injuries to the person. If the torture leads to death, Article 187 requires that the person responsible be sentenced to between 12 and 17 years' imprisonment. Article 204 sets out the punishment, including a term of imprisonment of two to five years, to be imposed on any authority which obtains a confession or declaration from a detainee through threats or torture. Article 205 defines as punishable with a term of imprisonment ranging from one to five years any authority which gives or executes an order to torture prisoners or detainees, or holds the detainee or prisoner incommunicado for a period beyond that which is allowed by law.

The Republic of Ecuador is party to a number of international human rights instruments. Article 44 declares that "the state guarantees every individual ... subject to its jurisdiction, free and effective exercise and enjoyment of the civil, political, economic, social and cultural rights enshrined in declarations, covenants, agreements and other international instruments in force". In March 1969 Ecuador ratified the International Covenant on Civil and Political Rights and its first Optional Protocol, as well as the International Covenant on Economic, Social and Cultural Rights, and in December 1977 ratified the American Convention on Human Rights. In July 1984 the government declared that it recognised as binding the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the American Convention. In May 1986 Ecuador signed the Inter-American Convention to Prevent and Punish Torture and in March 1988 it ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Amnesty International acknowledges that the provisions cited above, if fully and strictly adhered to, would ensure respect for fundamental human rights. However, the organization remains seriously concerned that human rights standards enshrined in law have been persistently flouted during the former and present governments, and that both administrations have failed, in the vast majority of cases, to thoroughly investigate and bring to justice the authorities alleged to have committed human rights violations.

2. Amnesty International's concerns during the administration of former President León Febres Cordero

During most of the 1984-88 administration of former President León Febres Cordero the government was repeatedly criticized by the Ecuadorian legislature and both domestic and international human rights organizations for gross human rights violations, particularly illegal detention procedures, incommunicado detention, torture, "disappearances" and extrajudicial executions.

A pattern of detention procedures not previously observed in Ecuador emerged in the course of 1985. Political suspects were detained without warrant, detentions were initially denied, and, during sometimes prolonged periods of unacknowledged detention, the filing of habeas corpus petitions failed to establish the legal status and location of detainees or to protect them. While prisoners generally were unaccounted for for no more than a week during interrogation, some were held for longer before their detentions were formally acknowledged. Three detainees reported to Amnesty International remained unaccounted for at the end of 1985, months after their reported arrests. To Amnesty International's knowledge, they remain "disappeared".

Those detained during the administration of León Febres Cordero included student and trade union activists, supporters of left-wing political opposition groups and refugees from neighbouring Colombia. Many were detained on suspicion of involvement with the Alfaro Vive, Carajo (AVC), Alfaro Lives, Damn it, guerrilla group responsible for a series of bank robberies and other armed assaults, and for a number of kidnappings.

Although most interrogations of political prisoners were carried out in the National Police establishments particularly at the SIC headquarters in Quito, the capital, and other major cities, some prisoners suspected of links to AVC were transferred to military custody for more prolonged interrogation. These captives were frequently blindfolded, sometimes with adhesive tape, and taken to an interrogation centre outside the capital. A number of former prisoners believed the centre to be located at an army barracks in Conocoto, in the Valle de los Chillos. Suspects were interrogated and many were then returned to the Quito area and left on the city's outskirts, without their arrests ever having been acknowledged or charges brought. Systematic torture of such detainees, including the use of electric shocks, near-drowning and beatings, were reported to be practised by both National Police and military intelligence interrogators.

During 1986 Amnesty International's concerns centred on evidence of torture and the use of detention practices under which political suspects were held incommunicado and had their detention denied. Political suspects frequently "disappeared" temporarily: detentions were generally acknowledged by the arresting authorities only after interrogation, or immediately before release or transfer to the custody of the prison service and the courts. The government also failed to institute full and independent inquiries into these violations and to bring to justice the perpetrators.

In May 1986 Amnesty International published a summary of its evidence of torture (see Appendix 1 - Amnesty International Newsletter, May 1986, volume XVI, number 5), including detailed testimonies and medical affidavits. Detainees in the custody of police and military agencies in major cities were frequently reported to have been hooded or blindfolded, systematically beaten, sexually abused, and subjected to near-drowning and to electric shocks. Threats to relatives were also reported. Several prisoners testified that they had received medical attention for bruises, abrasions and swellings before being transferred from incommunicado detention, apparently to reduce the physical evidence of ill-treatment. However, in a number of cases medical examinations found evidence of injuries consistent with prisoners' allegations of torture.

Suspects were often seized without warrant and their detention denied while they were being interrogated, usually for between 24 and 72 hours. A number of prisoners testified to having been seized by agents of the SIC, briefly interrogated, and then transferred to secret military interrogation centres. Many of the victims were alleged by the authorities to be collaborators with AVC, or relatives of alleged members of the group.

In September 1987 Congress brought impeachment proceedings against the Interior Minister, Luis Robles Plaza, who was accused of responsibility for extrajudicial executions, torture and "disappearances" committed by the police under his authority. Evidence of more than 100 extrajudicial executions, 180 cases of torture and some 200 other human rights violations committed by police since 1984 was submitted to Congress during the impeachment proceedings. The proceedings led to a congressional motion of censure, which held that Interior Minister Luis Robles should accept responsibility for the extrajudicial executions, torture and "disappearances" committed by the police. Under the Constitution, a censured government minister is required to resign. The Interior Minister, however, initially refused to do so. Subsequent calls for his dismissal by both the Supreme Court of Justice and the Tribunal de Garantías Constitucionales, Tribunal for Constitutional Guarantees, were rejected by President León Febres Cordero. However, in January 1988 Interior Minister Luis Robles eventually resigned.

Throughout the remainder of former President León Febres Cordero's term of office, which ended in August 1988, Amnesty International continued to receive reports of torture and ill-treatment by members of the SIC, and by some military units. Autopsy reports identified internal injuries and asphyxiation as the causes of death of several prisoners who were believed to have died following torture in SIC custody.

Prisoners held on criminal charges in the major prisons in Guayaquil (Penitenciaría del Litoral), Quito (Penal García Moreno) and Esmeraldas (Cárcel Pública de Esmeraldas) were reportedly subject to frequent beatings by guards and by prisoners granted special privileges. In February 1988 three inmates at the Guayaquil Prison testified to a

congressional committee and to the Superior Court about the use of torture there and provided detailed accounts of execution-style killings of nine prisoners in 1986 and 1987. The nine had been among 20 prisoners the authorities said had been killed "trying to escape".

The three prisoners who testified later received death threats. The inquiries conducted by the congressional committee and the Superior Court are not known to have progressed.

Throughout the 1984-88 period of former President León Febres Cordero separate military and police courts exercised near-exclusive jurisdiction over cases involving torture and death in custody. No convictions for these abuses are known to have been imposed during that period.

3. Amnesty International's concerns during the administration of President Rodrigo Borja Cevallos

The period since President Rodrigo Borja Cevallos took office in August 1988 has been marked by a considerable reduction in the number of politically-motivated detentions such as occurred during his predecessor's administration. However, Amnesty International remains concerned about reports that torture has been frequently used by police officers against people accused of criminal offences and by members of the armed forces against military personnel also accused of common crimes. The organization has also been concerned about the failure of the authorities to investigate torture allegations thoroughly and bring to justice those responsible for torture.

Despite legal prohibitions on torture, Amnesty International has continued to receive reports of the torture or ill-treatment of criminal suspects by the police, mainly by the SIC. In some cases people have reportedly died in custody as a result of ill-treatment and torture. Information received by Amnesty International suggests that torture has commonly been used by the police as a means of seeking information or confessions from criminal suspects. The most common forms of torture reported to Amnesty International include beatings and kicks while victims are hung from their thumbs or wrists, beatings on the soles of their feet, near-asphyxiation by injecting tear-gas into a bag held over the victim's head, and the application of electricity to sensitive parts of the body. Some women detainees are also alleged to have been raped or threatened with rape.

On 30 November 1989 Amnesty International wrote to President Borja Cevallos, detailing the cases of eight prisoners - five of whom had been held by the SIC - who in 1989 were reported to have been subjected to torture. In May 1990 Amnesty International published a report about the cases of 22 prisoners, including four of the cases raised with the government in November 1989, all of whom are alleged to have been tortured or ill-treated,

20 of them while in the custody of the SIC. (See Appendix 2 - Ecuador: Torture Continues, Amnesty International Index: AMR 28/02/90).

On 10 August 1990 the Permanent Mission of Ecuador to the United Nations in Geneva responded to both the November letter and the May report. It reiterated the government's commitment to implement fully national and international law relating to human rights and stated that the government was implementing programs and reforms which sought to improve the organization and modus operandi of the National Police force and the SIC. In its response the government provided information about each of the cases raised by Amnesty International. The organization welcomed the government's response. However, it contained little to indicate that thorough and impartial inquiries had been initiated by the authorities into the torture allegations in question. In eight cases, the response made no reference to the existence of torture allegations. In the case of Saulo Cuesta, for example, there was nothing to suggest that any official investigation has been conducted into allegations that the prisoner, following his arrest on 24 February 1989 by police agents dressed in civilian clothing, had been taken to a detention centre of the SIC in the province of Pichincha and severely tortured. He was alleged to have been hung by his thumbs and beaten on his ears and blindfolded. A medical certificate issued stated that he had sustained bruising to the ears and multiple abrasions.

Amnesty International also remains concerned about the apparent lack of impartiality of the investigations ordered by the authorities. For example, Gerardo Tascón was arrested in Quito on 28 June 1989 and taken to the headquarters of the SIC. In a testimony he subsequently gave to a human rights organization, he alleged that torture was applied to his testicles and that he had been held incommunicado until 3 July 1989. A medical examination found that he had suffered post-traumatic orchitis (inflammation of the testicles) and bruising of the scrotum.

In its response to Amnesty International on this case, the government said that no allegations of torture had been received by the authorities, but that nevertheless an investigation had been initiated and a report sent to a criminal court. Amnesty International has since received reports that the investigation into the alleged torture of Gerardo Tascón has been conducted by a police captain who, together with the alleged torturer, was initially involved in submitting a report on the detention and interrogation of the detainee.

An Amnesty International delegation visited Ecuador in September 1990 and met a range of government and other officials including the President of the Tribunal for Constitutional Guarantees, the Director of the Human Rights Department in the Foreign Ministry, and the Minister of Government and Police. They informed Amnesty International of the government's commitment to the eradication of torture while noting that the government has publicly acknowledged the use of torture by the police in specific cases. The authorities informed the Amnesty International delegation that the government had

begun implementing a program of reforms and training of the National Police, including the SIC. Amnesty International welcomed this policy as a step towards the prevention of torture.

Since September 1990 the organization has continued to receive information of alleged torture and ill-treatment perpetrated by the military and the SIC. These cases include the alleged torture by the armed forces of three soldiers under detention, relating to separate incidents in May-June 1989 and in February and March 1990 (see Appendix 3 - Ecuador: Torture in Military Barracks and Institutes, Amnesty International Index: AMR 28/06/90). The cases of alleged torture and ill-treatment by the SIC of four persons - two in December 1990, one in April 1991, and one in June 1991, cases which Amnesty International requested the authorities to investigate - are testimony to the continuing use of illegal interrogation methods which the organization has been reporting on during the previous and present administrations (see Appendix 4 - Ecuador: Torture and Ill-Treatment: Edison Roberto Sarasti and Eddy Pablo Rivadeneira, Amnesty International Index: AMR 28/02/91; Appendix 5 - Ecuador: Torture: Isaac Rómulo Bustos Bermúdez, Amnesty International Index: AMR 28/01/91 and AMR 28/04/91; and Appendix 6 - Ecuador: Torture of Indian Leader, Amnesty International Index: AMR 28/03/91).

The present administration has repeatedly stressed to Amnesty International that it investigates all denunciations of alleged torture it receives and that should evidence of violations be found, the perpetrators are referred to the judiciary for sanctioning. The government has also stated that judges dealing with torture cases determine the compensation due to the victim or victim's family. However, in September 1990 Amnesty International was informed by the Director of the Human Rights Department in the Foreign Ministry that police and prison personnel found responsible for human rights violations were only suspended, dismissed or transferred from their posts. Amnesty International was unable to obtain any information from the government that torture cases had been fully and independently investigated, the alleged perpetrators taken to trial, and those found responsible for the violations punished according to the relevant articles contained in the Penal Code. The organization has also not received any concrete information indicating that the victims, or victims' families, have received compensation.

Amnesty International is also concerned about the present government's repeated failure to address directly the issue of torture in specific cases raised by the organization. Many of the government's responses deflect or ignore the requests for investigation, instead giving details of the past criminal record of the detainee and imputing his or her continuing involvement in criminal activities by way of an explanation for their detention. In addition, Amnesty International has not received full information about those torture cases it raised with the authorities in which the government claimed it had initiated an investigation, including the cases of Héctor Mejía and five of his fellow workers allegedly tortured by the SIC in June 1989, and the case of René Sangolquí allegedly tortured in May 1990, also by

the SIC. Amnesty International received a reply from the government regarding the alleged torture and subsequent death of Gonzalo Quintero Mina, in July 1989, while in custody of the SIC in Nueva Loja, Sucumbios province. However, the information supplied by the authorities made no reference whatsoever to an independent investigation into the alleged torture. Instead, the government indicated that Gonzalo Quintero had been detained by the police for suspected theft, had become ill and transferred to hospital, and that an official autopsy concluded that he had died as a result of a pulmonary collapse and cardio-respiratory arrest. The government did not supply a copy of the autopsy.

The organization is also concerned that an investigation by a multi-party congressional committee initiated during the present administration into the "disappearance" and subsequent death of teacher Consuelo Benavides in 1985 has not led to the trial of the navy and police officers named by the committee as responsible for her killing. According to a Supreme Court resolution, the case was not taken forward judicially because it was not within its competence to do so. With the exception of one case - the "disappearance" of the Restrepo brothers in January 1988 - the present government has also failed to clarify the fate of people who "disappeared" during the course of the previous administration. Amnesty International has also not received information which clarifies the fate of César Morocho who "disappeared" on 2 October 1990, following numerous anonymous telephone calls threatening him with death, and for whom the government stated that it had initiated investigations (see Appendix 7 - Ecuador: Fear of "Disappearance": César Morocho, Amnesty International Index: AMR 28/05/90).

4. The special international commission of inquiry into the "disappearance" of the Restrepo Arismendi brothers

In January 1988, during the administration of former President León Febres Cordero, two brothers, Pedro Andrés and Carlos Santiago Restrepo Arismendi, aged 14 and 17 respectively, were thought to have been "disappeared" by members of the security forces, possibly the police. Following denunciations to the authorities at the time and the government's refusal to initiate a thorough and independent investigation into the incident, the present government established in July 1990, by an executive decree, a special international commission of inquiry presided over by Dr Toine van Dongen, who is also member of the United Nations Working Group on Enforced or Involuntary Disappearances, to investigate the fate of the two brothers. The commission, which does not have any judicial status, made public its report on 2 September 1991. The commission concluded that the Restrepo brothers were "disappeared" by members of the National Police, that the police were both negligent in their inquiries and sought to actively cover up their involvement in the "disappearance" and, although their remains have not been located, that the brothers are dead. The commission recommended that the persons found responsible for committing a crime in this case be judicially prosecuted and punished with the full rigour of the law; that the necessary steps be taken to avoid the repetition of similar cases; that the

Restrepo family be compensated in conformity with the law; that the necessary measures be taken to equally investigate other cases of "disappearance" and torture; and that the authorities continue to fully cooperate with the United Nations on all matters regarding human rights.

In its report the commission indicated that it had accumulated evidence indicating that the brothers had been detained by the SIC, that the elder brother, Carlos Santiago, had been severely tortured by SIC agents on the night of 8 January 1988, that their bodies had been disposed of on the night of 11-12 January, and "... that the investigative methods of the SIC included and include a practice of systematic torture, arbitrary detention and the use of cruel, inhuman and degrading treatment."

Following the commission's report, President Borja Cevallos is reported to have stated on 2 September that his government would immediately refer the report to the judiciary and would take all the necessary steps to ensure that the officers involved in the Restrepo case be punished. He further decreed the immediate dissolution of the SIC and the handing over of its functions to the recently created, but as yet not operational, judicial police. President Borja Cevallos also reportedly decreed the extension of the functions of the special international commission of inquiry to include investigation of other unresolved cases of "disappearance".

Amnesty International welcomes the initiative of the executive to have decreed the establishment of the special international commission of inquiry into the Restrepo brothers' case and the independent and thorough steps that the commission took to arrive at its conclusions. The organization also welcomes the commission's recommendations, and the reported statements by President Borja Cevallos to refer the commission's report to the judiciary. However, Amnesty International is concerned to know what are the exact terms of reference of the extended commission, including specifically the range of alleged human rights violations it is to investigate and the period over which they were committed. Above all, the organization is concerned that the judiciary complies and is seen to comply with all the necessary standards of pre-trial and trial procedures such that those persons responsible for past human rights violations are brought to justice.

Amnesty International is gravely concerned that throughout the years of the administration of former President León Febres Cordero, independent and thorough investigations were never initiated into numerous cases of "disappearance", torture and possible extrajudicial execution. The organization is also concerned that during the government of President Borja Cevallos the authorities have failed, except in the Restrepo case referred to above, to investigate thoroughly and independently allegations of human rights violations perpetrated during the former and present administration. In particular, Amnesty International is gravely concerned at the numerous reported cases of torture, including death under torture, perpetrated with impunity by police and military personnel since 1984.