

USA/Puerto Rico

Amnesty International's concerns regarding the FBI shooting of Filiberto Ojeda Ríos in September 2005

Background

Filiberto Ojeda Ríos was the leader of the "Macheteros", a Puerto Rican independence organization which advocated armed struggle against the United States and was active during the 1970s and 1980s. He became a fugitive in 1990 while released on bond pending trial on federal robbery charges. On 22 September 2005, FBI agents surrounded a house in a rural location of Puerto Rico where Ojeda Ríos and his wife were alleged to be living, and initiated a surveillance operation. In the afternoon of 23 September there was a brief exchange of gunfire after agents attempted to enter the house and arrest him; one agent was wounded, reportedly from shots fired from within the house. There followed a stand-off of around an hour and a half, during which Ojeda Ríos reportedly refused calls to surrender. During this period his wife left the house and was taken into custody. At just after 6pm, an agent fired three shots at Ojeda Ríos reportedly after seeing him at a window with a gun. Although agents at the scene heard him scream and apparently fall to the ground, senior officials at the FBI's headquarters in Washington, DC, decided that no-one should enter the house until the following morning. Ojeda Ríos's body was found in the house. An autopsy determined that he had bled to death after receiving a gunshot wound which was not immediately fatal. A pathologist gave an opinion that he might have survived had he received immediate first-aid and surgical intervention.

A subsequent investigation by the Office of the Inspector General (OIG: an independent investigatory agency of the US Department of Justice) cleared the FBI of wrongdoing in fatally shooting Ojeda Ríos, finding that the shooting did not violate FBI policy. However, the report was critical of many aspects of the planning and execution of the operation, including the decision not to allow an FBI crisis negotiating team to send a negotiator, and directions by senior commanders not to allow officers into the house until the following day. The report made a number of recommendations intended to improve the planning and conduct of future FBI arrest operations. These included recommending an inquiry into several rounds fired into the house by an unknown agent, prior to the fatal shooting of Ojeda Ríos; the use of flash bang devices; consideration

of all available options in any future operations; better communications and management along the chain of command; and ensuring negotiators are appropriately utilized in such scenarios.

In February 2007, Amnesty International wrote to the US Attorney General commenting on the OIG's report and findings. The organization expressed concern about the circumstances of the shooting, with reference to international standards on the use of deadly force. AI urged a review of FBI standards on the use of deadly force, in order to ensure that they are in line with both the letter and spirit of international standards. In April 2007, the FBI responded to AI's letter stating that FBI polices are periodically reviewed to ensure they complied with US standards, and that they were unable to comment on the specifics of the case "due to ongoing legal process". AI has received no response from the Attorney General to its substantive concerns.

The text of AI's letter to the Attorney General is given below.

Amnesty International's letter to the US Attorney General regarding the shooting of Filiberto Ojeda Ríos and the OIG investigation.

Alberto R. Gonzales
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington D.C. 20530-0001
USA

6 February 2007

Dear Attorney General

Amnesty International has reviewed the report of the Office of Inspector General (OIG) issued in August 2006 of its investigation into the shooting incident involving Federal Bureau of Investigation (FBI) officers and Filiberto Ojeda Ríos (Ojeda), taking advice from a number of police experts. As you may recall, Amnesty had previously raised concern about the alleged circumstances in which Ojeda was shot dead in September 2005, and called for a full, independent inquiry.

The OIG investigation appears to have been conducted thoroughly and rigorously on the basis of the evidence made available. However, there are a number of issues raised by the report that in our view call into question some of the conclusions drawn. We also have concerns as to whether the FBI's deadly force policy conforms to international standards. We are taking this opportunity to raise these concerns with you, as outlined below.

The OIG report states that it tried to gain testimony from a range of sources, including people living close to the scene and Ojeda's wife who was in the house when the initial assault took place and was a vital witness in the case. In the event, however, the testimony provided to the inquiry appears to have consisted mainly of FBI officers and experts. While the lack of access to other witnesses, including Ojeda's wife, appeared to be largely outside the OIG's control, we would question the OIG's conclusion that this did not materially affect their findings. There are critical questions which remained unresolved, including the level of perceived threat from within the house, given as the basis for delaying entry after Ojeda Ríos was shot. We urge all responsible parties to consider what more could be done to ensure that key witness testimony, including transcripts from any hearings, is made available in any future inquiries of this nature.

Based on a review of the evidence, the OIG concluded that during the initial assault Ojeda had fired on the agents first, after which there was a two-minute exchange of gunfire. At no point until after the assault did FBI officers identify themselves. We agree with the OIG finding that once under fire officers were not obliged to identify themselves, under their rules of engagement and international standards. However, as the OIG notes, the use of a "flash-bang" by an FBI officer as a distraction at the beginning of the assault may have been interpreted by Ojeda's wife as gunfire initiated by the agents. It is thus at least conceivable that this initial exchange of gunfire occurred under conditions in which Ojeda did not know who was attacking him and that he was lawfully defending himself, his wife and property. However, this question does not seem to have been considered in the OIG report.

AI is concerned that during the initial assault, the FBI discharged more than 100 rounds of high velocity rifle ammunition into a building where there may have been unarmed individuals who were not suspects (e.g. Ojeda's wife). None of the shots connected

with the intended target. The OIG concluded that this did not reflect inadequate fire discipline but rather Ojeda's superior position of cover and elevation. However, the discharge of such a high number of shots appears inconsistent with the United Nations (UN) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles). These state that, when lawful use of force or firearms is unavoidable, officers should act with restraint in such use, minimize damage and injury and respect and preserve human life. We do not underestimate the threat faced by officers as they approached the house and came under fire. However, the problems of the terrain could have been anticipated given that the house was under surveillance for some days and other options were open to them, including withdrawing to regroup. While the OIG report only shows pictures of the house close-up and from below, no snipers seem to have been deployed to mitigate the risk of a frontal assault by covering the windows on the "white" side from a distance.

The OIG found that the officer who later fired the fatal shots at Ojeda, after seeing him pointing a gun in his general direction through the kitchen window as he opened a refrigerator door, did not violate FBI guidelines on the use of deadly force. However, we are concerned that the FBI policy and the guidance provided to officers fails to meet international standards on the use of deadly force. The UN Basic Principles provide that officers shall resort to deadly force only when faced with an imminent threat of death or serious injury and only when "strictly unavoidable in order to protect life" when less extreme means are insufficient to achieve this objective. While the FBI policy also provides that officers may fire only when in "imminent danger of death or serious injury", the FBI's operational guidelines state that "imminent" does not mean "immediate" or "instantaneous" and includes a range of scenarios in which a suspect may signify an intent to use a weapon even if not in immediate reach. Amnesty International is concerned that this interpretation is overly broad and strays too far from the requirement under the international standard that deadly force be used only as a last resort when strictly unavoidable to protect life.

We note in this regard that in Europe and elsewhere, including the UK, the interpretation of "imminent" has come very close to the meaning of immediate or instantaneous. In Ojeda's case, Amnesty International notes that the agent who fired the fatal shots had himself been struck (but not wounded) by a bullet reportedly fired from the direction of the kitchen during the initial

exchange of gunfire. Nevertheless, from the evidence presented (including the view of the terrain from photographic figures), it appears that at the time the agent fired on Ojeda after seeing him at the window some 100 minutes later, evasive action could have been taken, including the adoption of safe positions affording cover from view and from fire. The fact that this took place at dusk may also have diminished Ojeda's view from the window, while Ojeda was reportedly visible outside from the light of the open refrigerator door.

Article 5 (c) of the Basic Principles provides that law enforcement officials shall "ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment". There was criticism in the OIG report of the decision taken from Washington to delay entry into the house for 18 hours after Ojeda was shot. While this was reportedly done on the basis of officer safety (and speculation that there might be explosives in the house) many of the agents at the scene disagreed with this decision. Several agents told the OIG they heard Ojeda scream out and fall after he was hit at 6.08pm on 23 September. No witnesses reported hearing any other sounds from him. According to the OIG report, the available forensic evidence suggested that Ojeda likely expired from blood loss before 8.09pm, the time at which officers at the scene were prepared to enter the premises. However, it is not entirely clear why agents could not have proceeded into the house after they made a "limited breach" of the house 6.49pm, when they detonated several explosive devices and received no reaction from anyone in the house. A police expert AI has consulted has suggested that the FBI, who were equipped with night vision, would have had the tactical advantage of darkness and surprise and could have used stun or gas devices. It is possible that Ojeda's life may have been saved had the agents entered earlier.

While finding no wrongdoing in the use of deadly force (with the exception of three shots to the front door), the OIG was critical of many aspects of planning and execution of the operation, including the decision to mount a daylight assault, failure to deploy a crisis negotiating team and the delay in allowing officers into the house until the following day. AI hopes that these serious criticisms have been the subject of a thorough internal review. While the OIG does not attribute tactical mistakes made directly to Ojeda's death, in our view there appear to be a number of points during the operation in which loss of life could have been avoided.

In view of these concerns, and the importance of the right to life, AI would be grateful to know what steps have been taken to address the OIG's criticisms. We would also welcome your comments on the issues of concern raised in this letter. In particular, we urge a review of FBI standards on the use of deadly force in order to ensure that they are in line with both the letter and spirit of international standards.

Amnesty International also raised concern last year about reports that members of the FBI used excessive and unjustified force against a group of Puerto Rican reporters and their camera crews on 10 February 2006. The journalists were waiting outside the apartment of Lilian Laboy, a political activist whose premises were being searched by the police, and were allegedly punched, kicked and sprayed in the face with pepper spray by FBI agents whom they attempted to question as the agents left the premises. Some reporters were reportedly injured and required medical treatment. None was apparently breaching any law when the incident happened. It was further alleged that agents deliberately targeted members of the media to prevent them filming and reporting on the alleged abuse. We should be grateful to know if the OIG or any other authority has investigated this incident and, if so, of the outcome. If this has not yet taken place, we urge that such an investigation be carried out immediately and that all incidents of alleged police misconduct are thoroughly and impartially investigated, with any officers guilty of abuses held fully accountable.

Thank you for your attention to these concerns.

Susan Lee
Program Director
Americas Regional Program

cc Robert S. Mueller III, Director, Federal Bureau of Investigation
Office of the Inspector General