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OPEN LETTER TO THE STATES OF THE AMERICAS IN THE CONTEXT OF THE XLIX OAS GENERAL ASSEMBLY

Amnesty International welcomes the holding of the XLVIII General Assembly of the Organization of American States (OAS), a regional summit that promotes dialogue between states in the Americas. This year this foremost regional forum will reflect on innovation in multilateralism. Amnesty International believes that reflection and discussion about innovations in multilateralism cannot ignore the centrality of guaranteeing, respecting and promoting human rights.

For Amnesty International, developing human rights and placing them at the centre of the agenda helps ensure effective regional responses for people in the region subjected to the most serious human rights violations. The organization believes it is imperative that multilateralism develop human rights guarantees through state public policies in order to ensure comprehensive responses to situations of greatest concern in the Americas. Underlying social and economic disparities and gaps in participation remain significant challenges in terms of access to justice, the fight against impunity and the enjoyment of human rights.

It is in this context that Amnesty International calls on States to ensure that the final declaration of the General Assembly includes firm commitments to guarantee the protection of the human rights of all people, without distinction. These commitments should, naturally, translate into actions and policies for immediate implementation in the region. Amnesty International would also like to take the opportunity of this regional meeting to remind Member States and the Secretary General of the OAS of its concerns about a number of urgent human rights situations in the Americas, namely:

1. Situations of particular concern in the Americas

In the context of this OAS General Assembly, Amnesty International calls on States in the region to redouble their efforts to make the guarantee and defence of human rights a reality for those living in the Americas and in particular those living in:

a) Nicaragua

Despite the efforts of the international community, regional and international mechanisms for the protection of human rights and human rights organizations, the Nicaraguan authorities have not taken significant steps to resolve the human rights crisis in the country or to guarantee justice, truth and reparation for crimes under international law committed in the context of the repression of social protests that began in April 2018. The Nicaraguan authorities have also shown themselves to be unwilling to collaborate with regional or international human rights mechanisms to resolve the crisis. On the contrary, human rights violations have continued.

Amnesty International has documented cases of crimes under international law and serious human rights violations in Nicaragua. It has also detailed instances where the authorities have used torture as a form of punishment and to extract information during investigations about how the protests were organized. In addition, widespread arbitrary arrests have been used as a tactic to disperse the protests. The Inter-American Commission on Human Rights (IACHR) reported that by January 2019, at least 550 people had been detained and prosecuted in the context of the repression of the protests. Since the beginning of the protests, it has been reported that at least 325 people have lost their lives, many of them at the hands of state agents or members of pro-government armed groups.

Amnesty International has good reason to believe that the crimes under international law and the serious human rights violations committed in Nicaragua since the beginning of the protests were carried out not merely with the knowledge or consent of state authorities but on their orders, including at the highest levels of government. In fact, in a recent report, the Interdisciplinary Group of Independent Experts (*Grupo Interdisciplinario de Expertos Independientes*, GIEI) for Nicaragua, created by the IACHR with the agreement of Nicaragua, concluded that numerous crimes committed in the context of the repression of demonstrations constitute crimes against humanity. Amnesty International believes that these crimes should not go unpunished and the international community has a fundamental role to play in this.

The organization recognizes the efforts made by the IACHR, as well as by other organs of the OAS. Nevertheless, Amnesty International strongly urges States in the region, in light of their shared obligation to respect and guarantee human rights, to combine their efforts and, in the context the General Assembly, the foremost regional forum, to take specific actions to help bring an end to the spiral of violence, serious human rights violations and impunity.



In particular, Amnesty International calls on States in the region to issue a General Assembly resolution on Nicaragua that addresses the following: a) ending violence and repression; b) complying with the recommendations of the IACHR and its special mechanisms; c) allowing international scrutiny in Nicaragua, particularly by the protection mechanisms of the Inter-American system, including ensuring appropriate conditions to enable the Special Follow-up Mechanism to Nicaragua (*Mecanismo Especial de Seguimiento para Nicaragua*, MESENI) to carry out its monitoring work in the country; d) calling on OAS Member States to exercise their jurisdiction and undertake active, genuine, thorough and impartial investigations into crimes against humanity committed in Nicaragua and, where there is sufficient admissible evidence, to prosecute those believed to be responsible in fair trials whenever a person allegedly responsible for such conduct is in any territory subject to their jurisdiction; and e) urging the Nicaraguan authorities to guarantee justice, truth and reparation as part of a lasting and sustainable solution to the crisis.

b) VENEZUELA

As is widely known, Venezuela has been experiencing a profound human rights crisis for several years. Massive violations of civil, political, economic and social rights have been reflected in shortages of and lack of access to food and medicines, a deterioration in health services, as well as violence and political repression by the state. As a result, at least 3.7 million people have been forced to flee the country since 2015. The UN estimates that at least 7 million people in Venezuela are in need of humanitarian assistance.

At the beginning of 2019, thousands of people took to the streets to demand a change of government. During January, numerous demonstrations were reported, many of them in low-income areas where the demand for political change had not been so pronounced up to that point. Between 21 and 25 January 2019, more than 980 people from almost every state in the country were arbitrarily detained, including 137 children and teenagers. It is estimated that approximately 770 of these detentions took place in just one day, 23 January, the date on which demonstrations were held throughout the country. Some of those detained were ill-treated by the authorities to punish them for taking part in the protest.

In this context Amnesty International documented extrajudicial executions in different parts of the country that reveal a recurring pattern. The victims were young men who were critical of the government, or perceived as such by the authorities, from low-income areas and whose participation in the protests had been visible or whose criticisms had gone viral on social media. That is, they were targeted executions based on the profile of the victims. In all the cases documented by the organization, the victims died as a result of gunshot wounds to the chest and were executed while in the custody of state authorities. In all the documented cases, after the killings the authorities publicly described the victims as criminals who had died in confrontations and initiated criminal investigations for “resisting authority” (*“resistencia a la autoridad”*).

The multiple acts of violence documented point to a policy of systematic and possibly widespread attacks, targeted in some cases and indiscriminate in others, implemented by the government of Nicolás Maduro to deter, neutralize or, in some cases, eliminate opponents, or those it perceives as such.

Amnesty International believes that this pattern is consistent with the repressive tactics used against the civilian population since 2014 and that were particularly in evidence in 2017. The organization therefore considers that there are well-founded reasons to argue that, as part of a systematic and widespread attack against people considered dissidents, the incidents described above may constitute crimes against humanity by state agents or third parties operating at the very least with state acquiescence or consent.

Regarding investigation and punishment for these crimes by the Venezuelan State, it is regrettable that in all the cases of violations of the right to life and physical integrity documented by Amnesty International, the official investigations have been neither impartial nor thorough and families have received only minimal information about their progress. In addition, Amnesty International is aware of many cases where relatives were harassed by public officials because of the victims’ involvement in the protests.

The organization therefore urges States in the region to make every effort to ensure that truth, justice and reparation are central pillars underpinning the search for solutions to the serious human rights crisis facing Venezuela. In particular, the organization calls on States in the region to use their good offices to support the creation of a special, impartial and independent investigation mechanism to put an end to the impunity that prevails in Venezuela. This should be part of the universal system of human rights protection supported by States that participate in the Inter-American system and have the capacity to investigate not only crimes under international law and serious human rights violations but also different levels of individual criminal responsibility, including chain of command. Amnesty International urges the national Public



Prosecutors of States in the region to prioritize invoking universal jurisdiction when a person allegedly responsible for such crimes is in any territory subject to their jurisdiction.

Finally, in view of the situation of massive violations of human rights that have resulted in an unprecedented number of Venezuelans leaving the country to seek international protection in neighbouring countries, as well as the international and national obligations of States in the Americas, Amnesty International strongly urges States in the region to guarantee effective international protection for migrants and refugees, ensuring they can regularize their stay and access mechanisms to apply for refugee status. The organization urges States in the American to deploy all their good offices to provide humanitarian assistance to those who need it, in coordination with local civil society organizations and humanitarian agencies, ensuring that such assistance is offered without conditions and does not result in violations of any kind.

2. The situation of human rights defenders in the Americas

Each year, the OAS General Assembly highlights the work of those who defend and protect human rights in the region through a resolution contained in its Omnibus Resolution. This has been a driving force, helping to reaffirm the importance of this work within the OAS and also laying the foundations within the regional forum for the recognition of defenders' contribution to ensuring human rights in the Americas. Moreover, these resolutions have promoted the creation of Inter-American human rights standards by instructing the Rapporteurship on Human Rights Defenders in the IACHR to prepare studies on the issue in the region.

Amnesty International believes that States in the Americas, when considering the issues to be promoted in the resolution on human rights defenders this year, should take the following points into consideration:

It is clear to all that the situation of defenders in the Americas is one of the most critical in the world. Attacks, killings, smear campaigns, misuse of the criminal justice system are just some of the manifestations of the high level of risk faced by those who defend human rights in the region. According to the organization Frontline Defenders, of the 321 human rights defenders killed worldwide in 2018, 241 were killed in the Americas. While some countries in the Americas have set up national protection mechanisms to guarantee the safety of human rights defenders, as well as other groups, such as trade unionists, journalists and judicial officials, these have proved insufficient to safeguard the work of defending human rights in these countries.

It is vital that States in the region adopt comprehensive policies that address the structural causes creating a dangerous environment for human rights defenders. These policies must adopt a differentiated approach that takes into account the protection needs of human rights defenders (gender, ethnicity, age, etc). There must also be a public commitment by States and other sectors with relevant responsibilities to guarantee that work to defend human rights can be carried out without fear of reprisals. They authorities, at the highest levels, both locally and nationally, must publicly recognize the work carried out by human rights defenders and groups.

Amnesty International believes that, in the particular case of groups/collectives, organizations and/or communities defending human rights, States in the region should take into account the organizational structure, identity and dynamics of the group at risk, the collective demands that gave rise to the group's defence of human rights and the context in which this is framed. Collective plans, whether preventive or reactive, must address the structural causes that increase the risks and attacks faced by these defenders, such as impunity, stigmatization and discrimination, among others. To be effective, collective plans must be the result of a risk analysis that is carried out on site in the place where the group lives and which takes into account the specific needs and nature of the group at risk. This should include a comprehensive, geographic, gender and ethnic perspective.

Finally, Amnesty International urges States in the Americas to sign, ratify and implement the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) as part of a comprehensive strategy to protect defenders of territory, the environment and human rights linked to access to land, as this is one of the groups most at risk on account of their work in the region.

3. The Inter-American system, a heritage to safeguard in the Americas



The Inter-American system of human rights protection – comprising the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (Inter-American Court), both autonomous and independent bodies of the OAS – is crucial to the realization of human rights in the Americas. Amnesty International would like to draw the attention of the States in the region to two developments:

a) *Statement on the Inter-American system by Argentina, Brazil, Chile, Colombia and Paraguay.*

In press releases issued by the Ministries of Foreign Affairs of Chile and of Paraguay on 23 and 24 April respectively, the governments of Argentina, Brazil, Colombia, Paraguay and Chile indicated that they had delivered a statement “on the Inter-American system for the protection of human rights” to the Executive Secretary of the IACHR.

This statement affirms that, when taking action, the organs of the Inter-American system should take into account: the critical importance of the principle of subsidiarity; the measure of autonomy enjoyed by the states “to decide the most appropriate ways of ensuring rights and guarantees, as a way to give effect to their democratic processes”; and the strict application of legal sources in resolving cases brought to their attention. It also states that “the organs of the Inter-American human rights system should take into consideration the political, economic and social realities of States”.

Amnesty International believes this is clearly intended to undermine the independence and autonomy of the organs of the Inter-American system. Attacks on the Inter-American system are not a new phenomenon. Indeed, between 2011 and 2014 a group of States carried out a so-called “strengthening process” (“*proceso de fortalecimiento*”) which led to regulatory reform that resulted in significant changes in the system of precautionary measures and the prosecution of cases, among other things, that had a direct impact on the effectiveness of IACHR’s human rights protection.

Against this background, it is important to highlight the central role played by the Inter-American system in the region, in guaranteeing the exercise of human rights and combating impunity, both under military and constitutional governments and, indeed, during internal armed conflicts. The regional system has ensured that when States have failed to investigate human rights violations committed in their territories, the victims could turn to an independent protection mechanism capable of guaranteeing truth, justice, reparation and measures to ensure non-repetition. Since the Inter-American system was created 60 years ago, thousands of victims and their relatives throughout the region have seen it as their only means of obtaining justice.

In addition, the Inter-American system has been the cornerstone of building a culture of respect for and of guaranteeing human rights in the Americas. The development of Inter-American standards and jurisprudence, which have subsequently been accepted and adopted by countries in the region, has not only fostered the creation of public policies on human rights, but also the elaboration of national jurisprudence that respects human rights. These advances in Inter-American standards and jurisprudence have also been influential and beneficial at the international level. It is not uncommon for the judgments of the Inter-American system to be referenced as the basis for the standards and jurisprudence of other regional human rights mechanisms (such as the African and European systems) and the universal human rights system, including recently the International Criminal Court. It is Amnesty International’s firm conviction that the Inter-American system is a heritage to be safeguarded in the Americas.

In conclusion, Amnesty International strongly urges these five countries to refrain from any action that could reduce the independence and autonomy of the organs of the Inter-American system. In addition, Amnesty International calls on all other States in the region to remain vigilant on this issue and to redouble their efforts to uphold, finance and comply in good faith with the resolutions of the Inter-American system, a system that belongs to all the people of the Americas.

b) *Election of Commissioners of the Inter-American Commissioners of Human Rights*

During the LXIX General Assembly, States in the region will once again have an opportunity to elect four of the seven IACHR Commissioners. In view of this, it is important to stress that the IACHR’s contributions are not limited to the advancement of Inter-American jurisprudence and standards through its system of cases and petitions, and subsequent representation before the Inter-American Court. The IACHR also monitors the human rights situation in the Americas in a variety of ways, including by visiting countries, preparing thematic or country reports and holding public hearings at the request of civil society, among others.

With this in mind, it is clear that those who make up this key autonomous body of the OAS should have not only the highest credentials in the field of human rights in the region, but also a strong ethical and moral commitment to the victims of human rights violations and their families for many of whom the IACHR represents a last hope.



In Amnesty International's view, the task facing States during this General Assembly is to elect those who will constitute the IACHR, taking into consideration the points set out above and guided by fundamental principles such as transparency, impartiality and suitability in order to ensure fair procedures that can meet the needs of the region on issues of human rights.