

# **AMERICAS** **@The Continent in which we** **want to Live**

## **A Message from Amnesty International to the People of the Americas**

The future of democracy in the Americas will be high on the agenda when the region's presidents gather in Washington for talks in December. Significantly, human rights do not feature on that agenda.

During the years of military rule in the region the human rights movement played a crucial role in opposing the military regimes and exposing their crimes. When formal democracy was restored in most Latin American countries in the 1980s, there were high hopes that newly elected governments would honour their pledges to uphold human rights. A decade later, at the threshold of the twenty-first century, there is still a gulf between governments' promises and reality. As the presidents of the Americas meet, the human rights movement is calling on them to fulfil their promises and ensure that human rights are respected.

There have been advances in the struggle for human rights. Most countries of the region have active and mature human rights organizations. Stronger civil societies mean that human rights victims are not at the mercy of the state as easily as in the past. There has been some progress in the Inter-American system for the protection of human rights. Many of the region's countries are parties to the main regional and international treaties for the protection of human rights. The General Assembly of the Organization of American States (OAS) has just adopted the Inter-American Convention on the Forced Disappearance of Persons; twelve countries have signed this instrument to date. In many countries the new freedom of the press has seen the growth of an independent media prepared to challenge the authorities.

Nevertheless serious human rights violations persist in most countries of the Americas. The main reason for this is that those responsible for human rights violations operate with impunity. Extrajudicial executions and "disappearances" continue to be reported in Peru and Colombia among others. In El Salvador, dozens of unresolved killings, some clearly political, have followed the 1992 peace accords, which ended 12 years of civil war. "Disappearances" and extrajudicial executions have also continued to be reported from Guatemala, even though its current President, Ramiro de León Carpio, previously served as the country's human rights procurator, while those responsible for the country's past human rights violations continue to enjoy impunity. In Haiti, hundreds of people "disappeared" or were

extrajudicially executed by the army or their armed civilian auxiliaries which until recently ruled the country.

In both Colombia and Peru, special courts and draconian anti-terrorist legislation have expedited trials of thousands of alleged "subversives", many of whom may be prisoners of conscience. In both countries, thousands of political prisoners, hundreds of whom are prisoners of conscience or possible prisoners of conscience, have been tried or are awaiting trial under judicial procedures which fall far short of international standards.<sup>1</sup>

In Cuba, where the Cuban Communist Party continues to be the only legal political party, some six hundred prisoners of conscience are serving prison sentences of up to fifteen years for offenses related to their attempts to peacefully exercise their rights to freedom of expression, association and assembly. Many are members of unofficial political, human rights or trade union groups whose activities are severely hampered by the authorities. Trials in all political cases fall far short of international standards.

In the capital cities of the region, particularly those of Brazil and Colombia, adolescents, street children and young adults are killed or "disappeared" every year by the police or "death squads", which often include off-duty police officers. In Colombia other marginalized sectors of society - homosexuals, prostitutes, drug addicts - are also targeted for murder. In rural areas landowners continue to be above the law. They use their power and influence to intimidate indigenous leaders, peasants, rural union leaders, community activists and anybody who dares to challenge their control over land, economic resources and political privileges.

Although the death penalty has been abolished in law in most Latin American countries, it continues to be widely used in the United States (USA). There is now ample evidence demonstrating that the use of the death penalty in the USA is arbitrary, unfair and racially discriminatory, despite the existence of elaborate judicial safeguards. More than 2,870 men, women and juvenile offenders are under sentence of death in the USA. More than 253 have been executed since 1977; 27 were executed between January and the end of October 1994. Nine juvenile offenders have been executed since 1985, in clear contravention of international human rights standards. In September 1993, President Clinton signed new legislation which authorizes the death penalty for some 60 offenses under federal civilian law.

This is contrary to international human rights standards and treaties which encourage governments to restrict their use of the death penalty with a view to its ultimate abolition. The death penalty is also occasionally carried out in Cuba, where it is applicable for a wide range

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<sup>1</sup> Amnesty International regards as prisoners of conscience any person who is in prison, detention or subject to other physical restrictions by reason of his or her political, religious or other conscientiously held beliefs or by reason of his or her ethnic origin, sex, colour or language, provided that he or she has not used or advocated violence. This includes those prisoners which Amnesty International believes have been falsely accused of offenses which are politically related and for which there is no evidence to link them to the political beliefs with which they have been imputed.

of offenses and is on the statute books of most English-speaking Caribbean countries and Chile. In Peru the scope of the death penalty was extended in contravention of the American Convention on Human Rights in December 1993, when the new Constitution came into force.

In response to the escalation of violent crime, the governments of the English-speaking Caribbean are turning to the death penalty and corporal punishment. In July 1994 the government of Trinidad and Tobago carried out its first execution since 1979. The execution was in violation of national and international law, as the case was still under judicial review. In August 1994 a judge ordered the first whipping in 25 years in Jamaica; further whipping sentences were imposed later in the year. The new government of Barbados, elected in September 1994, committed itself to the use of the death penalty and the reintroduction of corporal punishment which was declared unconstitutional by the Court of Appeal in 1992. Despite numerous studies that have shown that such punishments do not deter violent crime more effectively than other penalties, other governments in the region are poised to adopt them.

Torture and ill-treatment continue to be widespread throughout the region. Beatings in police stations, near asphyxiation, electric shocks and other forms of torture have been reported in Argentina, Colombia, Chile, Ecuador, Mexico, Paraguay, Peru, Venezuela, the USA and others and were the norm in Haiti under the military government which only recently relinquished control of the country. Appalling prison conditions amounting to inhuman and degrading treatment, and the torture of prisoners are common in many countries of the region, often leading to prison riots, which are violently suppressed. Prisoners have been massacred in Peru in 1986, Brazil in 1992, and in Venezuela in 1992 and 1994. Law enforcement officers have used excessive force, in violation of international standards, against criminal suspects and demonstrators in Bolivia, Brazil, Costa Rica, Paraguay, the USA, Uruguay and Venezuela.

A disproportionate number of victims of human rights violations come from the poorest and most vulnerable sectors of society. Many were caught in the crossfire of political violence. The victims include human rights activists and those who struggle for the rights of their communities to a better and more secure life.

Political violence still features on the regional landscape, particularly in Peru and Colombia. "Disappearances", extrajudicial executions, arbitrary detention and torture have characterized the security forces' counter-insurgency operations in these countries. Unarmed civilians in war zones, trade unionists, civic and popular activists and human rights workers are among the victims.

In Colombia, more than 20,000 people have been killed for political reasons since 1986 -most by the armed forces and their paramilitary protégés. Paramilitary squads have overrun

whole villages, taken control of the administration and exacted "taxes" from the population. They have killed, terrorized and driven out villagers and repopulated communities with their own supporters. Tens of thousands of people have fled from their villages to the shanty towns of Colombia's cities, where they face grinding poverty and further violence.

In neighbouring Peru, a long and dirty war is being fought between the government and armed opposition groups. At least 27,000 people have lost their lives in the insurgency, approximately half of them killed by government troops. A significant proportion of the killings did not take place in armed combat; they were deliberate killings of defenceless people by either government troops or the armed opposition. Between 1983 and 1993 Amnesty International recorded details of more than 4,300 people who were detained by the security forces and then "disappeared"; the true figure is believed to be higher.

Amnesty International is aware of widespread human rights abuses by armed opposition groups in Colombia and Peru. The organization has repeatedly and unequivocally condemned the grave human rights abuses committed by these groups. These include the deliberate killing of civilians; the killing of members of the security forces who are *hors de combat*, or who have been incapacitated, have surrendered or been taken prisoner; the use of torture and the taking of hostages. In Nicaragua abuses, including summary executions and hostage-taking, have continued to be committed in the context of political violence by armed opposition groups made up of former *contra* rebels and demobilized members of the army.

While open political violence has diminished in the region, poverty, unemployment, inequality and discrimination breed potentially explosive unrest. Large sections of the region's population remain excluded from the benefits of economic development and without access to basic goods and services. Poverty and deprivation cannot be dissociated from current human rights problems throughout the region. The urban riots that shocked Venezuela in 1989, recent riots in Argentina's northern provinces, land conflicts in Brazil and Mexico and widespread trade union and peasant protests in Bolivia, Ecuador and Paraguay are the most visible manifestations of the social conflicts which affect almost every country of the region.

In the suburbs of Brazil's towns and cities, hundreds of youths and adults, most from the poorest sectors of the population are killed or "disappeared" by the police or "death squads", which often include off-duty police officers. In Colombia's urban areas people regarded as "disposable" have also been killed by "death squads" in what amounts to a campaign of "social cleansing". Unlawful police violence against the poorest sectors of the population have been recorded in Venezuela and in the main cities of other countries in the region. Amnesty

International is concerned by the high number of reports of police shootings, resulting in serious injuries and death in several US cities, particularly Los Angeles and New York.

Among the urban poor children are the most vulnerable. Thousands of abandoned and orphaned children live a desperate existence on the streets of the Americas' main cities. They are attacked by "death squads", beaten and persecuted by the police and threatened with starvation. Street educators who deal with the consequences of attacks on street children by the security forces, are often singled out by the police. Even in countries which have advanced legislation for the protection of minors, the laws protecting them are often not applied and remain on paper. In the USA, death sentences are passed on juvenile offenders, although this is forbidden by international law and in particular by the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (IACHR) and the Convention on the Rights of the Child. At least 34 juvenile offenders are on US death rows. Children have also been among the victims of past and present political violence in Argentina, Chile, Colombia, El Salvador, Guatemala, Haiti, Nicaragua, Peru and Uruguay. Some of these children saw their parents killed or tortured, or taken away by the security forces never to be seen again. Other children "disappeared".

Women in the Americas suffer human rights abuse as well as discrimination. As human rights campaigners, political activists and trade union leaders or as mothers, grandmothers and wives, women have been subjected to human rights violations throughout the region. The mothers and grandmothers of the "disappeared" during the dirty war in Argentina, including over 50 children, are still trying to discover where their children and grandchildren are. So are the mothers and relatives of the "disappeared" in Chile and Guatemala as well as the mothers of the 11 adolescents and young adults from a shanty town in Rio de Janeiro who "disappeared" in July 1990.

In many cases women suffered particularly vile forms of sexual assault and other forms of torture and ill-treatment. In Mexico, at least three women were raped by soldiers in June 1994 in the state of Chiapas, where early in the year there had been fighting between the Mexican army and the armed indigenous peasant movement, Ejército Zapatista de Liberación, Zapatista Liberation Army. In Haiti, women living in poor urban neighbourhoods and rural villages, where support for President Aristide was strongest, were raped by members of the security forces of the recently deposed military-backed Haitian Government. In Peru, some women have been falsely accused of terrorism-related offenses, on the basis of declarations forced from them under torture, including rape.

Indigenous people have been victimized by the security forces and by powerful local landowners and their allies for decades. Bitter land disputes have fuelled tensions and the indigenous peoples have suffered the most. Discrimination against indigenous people means that they are more likely to have their rights trampled on in the first place and then be failed by the justice system. The circumstances in which indigenous peoples fall victim to human

rights violations vary widely across the Americas. In Ecuador and Mexico, Indians involved in bitter struggles for land have been arrested and tortured, and in Mexico some have been extrajudicially executed. Tens of thousands died in Guatemala during the military counterinsurgency campaign of the late 1970s and the early 1980s. Native Americans are among those in the USA awaiting judicial execution in the horror of death row. Allegations of ill-treatment of Mohawk Indians during a land dispute in Canada in 1990 remain unresolved. The indigenous communities of Peru, caught in a decade of conflict between government forces and armed opposition groups, have suffered widespread abduction, torture and killings.

Despite important political changes in a number of countries during the 1980s, trade unionists in Latin America are still subject to illegal detention, torture and ill-treatment, "disappearance" and extrajudicial execution. Many trade unionists were among the thousands of people who "disappeared" in Argentina, Chile, Brazil, Uruguay and Guatemala during the years of military rule. Amnesty laws passed in the first four countries mean that there is little prospect of those responsible for the "disappearance" being brought to justice, and there are indications that the same will happen in Guatemala. The whereabouts of the "disappeared" are still unknown.

Thousands of peasants, rural union leaders and their advisers have been killed in Brazil since the country returned to democracy. Most were killed by hired gunmen, some of whom were off-duty or former police. Long delays in carrying out investigations and trials, disappearance of evidence and court records, failure to protect witnesses or those threatened with death, and police attacks on peasant settlers, point to a pattern of official complicity with those who order the killing - the *mandantes*.

Violent repression of trade unionists in Colombia has escalated since 1985. The country's largest trade union confederation reports that 500 trade union leaders have been killed since its creation five years ago. Union leaders and members have been subjected to extrajudicial executions, death threats and harassment in Guatemala and El Salvador. In Costa Rica human rights groups reported that in May 1994, police attacked a demonstration by striking banana workers and opened fire on strikers.

There is ample evidence that death sentences in the USA are imposed disproportionately on the poor, on minorities, on the mentally ill or retarded and - crucially - on those without adequate legal counsel. More than 20 years after the US Supreme Court held that the death penalty was unconstitutional in practice - largely because of racial discrimination - examination of the cases of prisoners now under sentence of death and of those executed since 1977 reveals pervasive evidence of continued racial discrimination. More than 49 per cent of prisoners now on death rows across the USA are black, even though black people comprise only 12 per cent of the US population. The most marked disparities in death-sentencing, however, are seen on examining the race of the murder victim. Eighty-four

percent of the prisoners executed since 1977 were convicted of murdering white victims, despite the fact that blacks and whites are the victims of homicide in roughly equal numbers.

### **The governments' reaction**

In the 1990s, for the first time in history, most of the Americas' governments speak the language of democracy and human rights. But democracy can only be based on the rule of law and on equal respect for everybody's legally sanctioned rights. This equality of rights has not been respected in practice.

The new civilian governments have set up mechanisms for safeguarding civil and political rights. Official human rights agencies have been established in many countries of the region, although the attributions, resources and effectiveness of these agencies vary from country to country. New laws, constitutions and constitutional amendments have been introduced, purportedly to reinforce the highest possible legal protection for human rights. International human rights organizations have regular access to governments.

Despite this, there is still a vast gulf between official statements and improvements in human rights in the Americas. Important as they are, constitutional provisions, institutional reforms and free elections have not brought an end to gross human rights violations in the region. Many governments still operate under the pretence that passing a law amounts to enforcing the rule of law. However, the survival of special courts for the military and security forces, the inefficiency and lack of real independence of the judiciary and the frequent violation of the principle of equality before the law, are some of the means by which impunity is perpetuated. While institutionalization of agencies for the defence of human rights should be welcomed, these can never be a substitute for the governments' lack of political will to uphold human rights under the rule of law enforced by an independent and efficient judiciary. If this political will is lacking, these government agencies become little more than lightning conductors to protect governments from taking direct responsibility for their human rights violations.

The impunity enjoyed by the perpetrators of gross human rights abuses during the years of military rule has eroded the legitimacy of the new democratic governments. Granting impunity to human rights abusers blatantly violates the principle of equality before the law which every democratic government is bound to uphold. The practice of impunity, however, is not limited to military regimes and civilian transition governments. It is rooted in the region's history of gross inequalities and authoritarianism; in the historically selective use of human rights standards as an instrument of cold war politics and national security; in the legacy of military rule and in the shortcomings of political and judicial reform since the return to democracy. In the Americas, the fact that human rights violators escape justice results from the persistence of structural factors such as military jurisdiction and the lack of

political will by the emerging civilian governments to carry out profound reforms of the administration of justice and the security forces.

The state has a duty to maintain social order. However, when impunity prevails, the rule of law breaks down in society at large. Popular anxiety about rising crime has provided the pretext for police to take the law into their own hands and for the state to execute convicted criminals. In these circumstances torture, judicial and extrajudicial executions, and "disappearances" become justified as a regrettable but unavoidable consequence of the growing threat to public order. In many cities shadowy forces have emerged to take the law into their own hands and impose their own forms of social regulation. These organizations blur the distinction between public and private power and between common crime and state repression. The "death squads" and their victims, from "common criminals" to street children, are the most visible actors of this parallel social order which regulates the lives of people who live on the fringe of society.

Social order cannot be preserved by unlawful killings by the police, by the expansion of the death penalty to more and more crimes, by torture or by "social cleansing" by "death squads". The politics of fear do not bring security. On the contrary, they degrade the societies which tolerate such crimes. Public security requires that states refrain from torturing or otherwise injuring their citizens, that they protect them from injury at the hands of others and that they provide a system of justice to which all are equally accountable and have equal access. Only the rule of law can, in the long term, ensure social order. Justice requires that the guilty be held accountable for their actions. If those who have committed human rights violations do so with impunity, the ground is laid for further abuses in the future.



## **A 10-Point Program for the Next Decade**

The governments of the Americas are accountable both to the international community and to their own people in their obligation to ensure full respect for human rights. To this end, in a landmark judgment, the Inter-American Court of Human Rights ruled in July 1988 that States have the duty "to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights."

As the presidents of the American nations discuss the future of the region over the next decade, Amnesty International presents to the governments and peoples of the Americas a 10-point program for the free and full exercise of human rights in the region.

### **1. Abolish the death penalty**

- Governments should abolish the death penalty and stop judicial executions.
- All death sentences should be commuted.
- In countries which retain the death penalty, minors, persons over 70 years of age, pregnant women and new mothers should not be sentenced to death, in conformity with international standards. Anyone in these categories already under sentence of death should have their sentence immediately commuted.

### **2. Prevent torture, "disappearances" and extrajudicial executions by government agents and compensate the victims**

- Ensure that torture, the commission of a "disappearance" or extrajudicial execution, or causing the death of a prisoner in custody is a criminal offence, punishable by sanctions commensurate with the gravity of the offence.
- Inform families immediately of any arrest and keep them informed of the whereabouts of the detainee or prisoner at all times.
- Make available judicial remedies (such as *habeas corpus* and *amparo*) to enable lawyers and relatives to locate prisoners and obtain the release of anyone who has been arbitrarily detained.
- Prevent detention or imprisonment other than in official, known detention centres, a list of which should be widely publicized.
- Order independent forensic investigations into reports of torture, killings and deaths in custody, to be carried out promptly and thoroughly by qualified personnel.

**3. Release all prisoners of conscience immediately and unconditionally**

- Release all detainees and prisoners held because of their peaceful political beliefs or activities, ethnic origin, sexual orientation, language or religion.

**4. Ensure prompt and fair trials for all political prisoners**

- Governments should abolish all special courts and legislation for the trial of political prisoners, including military courts.
- Ensure that all political prisoners charged with a criminal offence receive a prompt and fair trial by a competent, independent and impartial tribunal.
- Ensure that all political prisoners are treated in accordance with internationally recognized safeguards for fair legal proceedings.

**5. End impunity**

- Security forces personnel, against whom there is evidence of involvement in extrajudicial executions, torture, "disappearances", or other human rights violations, should be prosecuted. This principle should apply no matter how much time has elapsed since the commission of the crime. The perpetrators should not benefit from any legal measures exempting them from criminal prosecution or conviction.
- The activities of "death squads" and all paramilitary organizations should be thoroughly investigated and members of such organizations responsible for human rights violations brought to justice.
- Conduct prompt, thorough and impartial investigations into all reports of "disappearances" and bring to justice those responsible.
- Steps should be taken to strengthen national judiciaries and ensure that they are truly independent bodies able to carry out full and effective investigations into human rights violations. Military jurisdiction over human rights crimes committed by members of the security forces should be abolished.
- It should be a high priority of the governments to ensure that the civilian courts have the resources and legal means they need to administer justice. Procedures should be reviewed to reduce unacceptable long delays in investigations and in the gap between indictments and trials.

- Governments should send a clear message to all law enforcement personnel that human rights violations such as torture, extrajudicial executions and "disappearances" will not be tolerated under any circumstances and that those committing them will be punished in accordance with the law.
- All incidents involving the use of lethal force by military and security forces should be thoroughly and independently investigated by an agency other than that to which those involved in the incident belong.
- Investigations should establish chain of command responsibility for human rights violations and should investigate patterns of human rights violations as well as individual cases. Anyone found to have ordered, committed or concealed human rights violations should be brought to justice.

#### **6. Protect the victims and witnesses of human rights violations**

- The rights of the victims and witnesses of human rights violations must be protected. Steps should be taken to ensure the protection of lawyers, prosecutors, officials and witnesses, victims or relatives of victims, involved in cases of human rights violations.
- All allegations of death threats should be promptly investigated and steps taken to ensure the safety of the recipient.
- The appropriate authorities should review arrangements for the treatment and custody of all prisoners, to ensure that they are treated humanely and in conformity with the UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners, and Article 10 of the ICCPR, which states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".
- No one should be forcibly returned to a country where she or he can reasonably be expected to be imprisoned as a prisoner of conscience, tortured, "disappeared" or executed.
- Every refugee or asylum-seeker must be given the opportunity of an individual hearing and be fully informed of his/her rights as a refugee or asylum-seeker under international law.
- The state should provide appropriate reparation and compensation to the victims of human rights violations and their families.

**7. Support the work of relevant intergovernmental, official and non-governmental human rights organizations**

- Governments should publicly state their commitment to collaborate with the work of international and regional bodies which monitor violations of human rights, including the United Nations High Commissioner for Human Rights, the UN Commission on Human Rights and the Inter-American Commission on Human Rights and to accept their findings and recommendations.
- Necessary resources, both human and material, must be provided to enable official human rights bodies to play their designated role in preventing and investigating human rights violations.
- Governments should guarantee that human rights activists and members of non-governmental organizations working for the promotion and protection of human rights are properly consulted in the formulation and implementation of human rights policies.
- The authorities should ensure that human rights defenders receive the full protection of the law so that they can carry out their vital work.

**8. Promote human rights through official programs of education and training**

- Governments should give high priority to education designed to promote human rights awareness, particularly among the most vulnerable sectors of the population, and to make society at large conscious of its duty to respect human rights and fundamental freedoms.
- Governments should ensure all law enforcement personnel and other government agents receive adequate training on the national and international standards which protect human rights and how to enforce them properly. Education in the human rights of women and children should be integrated into all education and training policies at both national and international level.

**9. Ratify and implement all regional instruments for the protection of human rights without reservations**

- Governments should ratify all regional legal instruments which provide for the protection of the human rights of all the peoples of the Americas. These instruments include:
  - The American Convention on Human Rights "Pact of San José, Costa Rica"

- Inter-American Convention to Prevent and Punish Torture
- Protocol to the American Convention on Human Rights to Abolish the Death Penalty
- Inter-American Convention on the Forced Disappearance of Persons
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women - Convention of Belém do Pará

Governments who have already ratified these instruments should reconsider any limiting reservations. In particular, governments should recognize the jurisdiction of the Inter-American Court of Human Rights.

**10. Ratify and implement all international instruments for the protection of human rights**

- Governments should also ratify without reservations and observe the provisions of all relevant international human rights treaties, including:
  - The International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocols
  - The International Covenant on Economic, Social and Cultural Rights
  - The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
  - The Convention on the Elimination of All Forms of Discrimination against Women
  - The Convention on the Rights of the Child
  - The Convention and Protocol relating to the Status of Refugees
- Governments should take due account of non-treaty instruments including the Vienna Declaration and Programme of Action, the Declaration on the Elimination of Violence Against Women, the Basic Principles on the Independence of the Judiciary, the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty.
- Governments should ensure that reports to treaty monitoring bodies are submitted in a timely manner and include detailed information on all rights protected by the reports.