

TABLE OF CONTENTS

Introduction	1
1. Repression of human rights defenders	7
Risking their lives	8
Fleeing repression	21
The right to an effective remedy	23
2. Human rights defenders under suspicion	27
3. Restricted campaigning and reporting	39
Amnesty International's recommendations for the protection of human rights defenders	51
Amnesty International's recommendations to the Organization of American States	53
Appendix Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms	55

More protection, less persecution

Human rights defenders in Latin America

Introduction

Human rights defenders are the men and women committed to realizing the ideals proclaimed in the Universal Declaration of Human Rights, that all people should be free from “fear and want”. Wherever there is persecution and oppression, when human rights are denied or human dignity is threatened, when harassed minorities or oppressed peoples are at risk, defenders strive to protect the weak and hold those who abuse their power to account.

From whatever walk of life, human rights defenders in Latin America are united by one thing: their unconditional commitment to protecting and upholding the dignity and rights of their fellow citizens. They are a vital link in the chain of human rights defence at all levels, playing a dynamic role in human rights promotion and the struggle to eliminate violations and social injustice. Crucially, they contribute to strengthening the rule of law and justice in Latin American countries.

The human rights community is a mixture of individuals and groups, some of whom work in official or non-governmental bodies or organizations. Between them they make a difference. They have been the front runners in pushing for change, exposing violations committed by state agents, speaking out on behalf of marginalized social groups, seeking to end impunity by challenging the perpetrators of human rights violations and promoting just and equitable societies.

Defenders constantly remind all states to live up to their promises and their obligations to protect the rights of their citizens. This role continues to be important because the distance between government rhetoric and reality is often enormous.

Defenders have a decisive role in countries suffering the consequences of violent conflict or dictatorship, where state officials feel free to act with impunity. They are often the only force standing between the mass of ordinary people and the unbridled power of the state. They are a crucial source of information about what is really happening in a particular country; they alert international non-governmental organizations and the media and report abuses to the relevant United Nations (UN) bodies, helping to breach the wall of silence that offending governments try to maintain.

The role of human rights defenders is also key in countries undergoing major reform or transition. They are among the first to take advantage of small democratic openings, and they help create the space in which the right to peaceful dissent and freedom of expression can be exercised and protected. Defenders try to ensure that those responsible for past human rights violations are held to account, but also constitute a guarantee that justice is not turned into vengeance against the old oppressors and that truth about the past is not used as a partisan tool. Above all they try to ensure that new-found freedoms flourish, by continuing to investigate and campaign on issues of human rights and social justice.

In all societies, no matter how democratic they may appear, independent scrutiny by civil society makes an important contribution to ensuring that states protect human rights and conduct their activities within the parameters of the laws, treaties and contracts agreed upon with that society. Indeed, the best safeguard for the human rights of all individuals is the opening up of the state to reasonable public scrutiny and the encouragement of the community to become involved in these processes.

Human rights violations directly attributable to the state are those perpetrated by its public servants and state agents. Additionally, the state is responsible for the actions of civilians to whom it delegates, *de jure* or *de facto*, authority to act on its behalf, or with its consent, acquiescence or knowledge.

There exists a long tradition of repression of the brave individuals who defend human rights in Latin America. Despite this, the human rights movement has developed, gaining strength and confidence. But the risks are still high.

Even today, those struggling to improve the dignity and rights of others are often the first to be killed, abducted, tortured, threatened with death, detained and harassed by state agents. In some cases the level of risk is so high that they are forced to leave their community, even their country.

The fate and whereabouts of many of Latin America's "disappeared" human rights defenders still remain unknown, although no case of "disappearance" has been reported during the period under review from 1996 to 1999. A large number of human rights defenders in the region dedicate their efforts to uncovering the fate of those who remain "disappeared", by campaigning for truth, justice and reparation, and providing a unique and important historical record of past violations.

Acts of violence and intimidation against members of human rights organizations are planned, ordered and carried out by members of the security forces, paramilitary groups, "death squads" or armed groups, against those sometimes perceived as enemies of the state because of their efforts to raise awareness in their own country and abroad of the

plight of their fellow citizens. Cases of deliberate and arbitrary killings by armed opposition groups have also been documented.

Disdain for human rights defenders and their work can manifest itself in defamatory accusations that defenders are involved in criminal or subversive activities, or that they are unpatriotic and undermining the image of the nation. In turn, defamation plays a key role in generating and condoning attacks on human rights defenders as the perpetrators feel immune from prosecution and free to take justice into their own hands.

Harassment of human rights defenders can take many shapes and forms. In some countries there exists an array of legal and bureaucratic obstacles devised to restrain them from carrying out their activities to campaign and report on issues of human rights and social justice. Some obstacles may be deliberate attempts to block human rights initiatives, such as investigations on fabricated or politically motivated charges, detention, raids or surveillance. Other difficulties are the result of omission by government officials to act appropriately on issues regarding the work of human rights defenders.

Paradoxically, the principle line of defence for human rights defenders as with all individuals -- the law -- can also be a form of persecution, used by state officials at any level. The adverse effects of the legal system used against human rights defenders are exacerbated by some government's inability or failure to take corrective action by ensuring redress and an effective remedy for those who have had their rights violated, or to ensure that those accused, justly or unjustly, of an offence are protected from abuse of the criminal process.

Human rights defenders in Latin America defend and promote a wide range of human rights where the state is negligent or acquiesces in human rights violations or is directly responsible for their commission. Human rights defenders therefore need to be protected when their work brings them into conflict with violators.

However, investigations into offences committed against human rights defenders are frequently veiled in secrecy and irregularities, as perpetrators attempt to cover up their crimes and pervert the course of justice. Impunity prevails. State agents suspected of participating in violations against human rights defenders are seldom detained or suspended from duty pending the outcome of criminal investigations. Although some degree of official protection for human rights defenders may be offered, such measures -- often armed body guards taken from the same security force units implicated in human rights violations -- seldom match the requests of those at risk.

The adoption by the UN General Assembly of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (henceforth referred

to as the Declaration on Human Rights Defenders) on 9 December 1998, reflects clear recognition of the legitimacy of the action of human rights defenders. The final Declaration on Human Rights Defenders should also mark greater government collaboration with human rights defenders in the interest of meeting international obligations under treaties ratified by states as well as implementing international standards adopted by the UN.

For several years now, the UN has recognized the legitimacy of and the need for the work of human rights defenders. This has been clearly demonstrated by the establishment of consultative status at the UN Economic and Social Council for non-governmental human rights organizations. The fact is that human rights defenders have greatly contributed to the establishment, strengthening, use and growth of the universal system of human rights protection which exists today. They have also played an important role in drawing up new international human rights standards and international protection mechanisms.

Different UN bodies have frequently requested states to guarantee the work, security and personal safety of human rights defenders. For example, the Human Rights Committee recommended to the Iraqi authorities that “steps be taken without delay to facilitate the establishment and free operation of independent non-governmental organizations, with particular reference to those working in the field of human rights.”¹ In 1995 the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities expressed its concern about attacks on human rights defenders in different parts of the world and at the fact that state authorities were not ensuring their protection by “taking all necessary steps against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or other arbitrary action as a consequence of the legitimate exercise of those rights”.²

¹ Final Observations of the Human Rights Committee -- Iraq, UN doc. CCPR/C/79/Add.84, 19 November 1997, para. 21.

² Resolution 1995/25, adopted on 24 August 1995.

The UN has also expressed its concern about the serious human rights violations suffered by human rights defenders. For example, in 1996 the Commission on Human Rights requested the Special Rapporteur on extrajudicial, summary or arbitrary executions to give special attention to killings of human rights defenders.³ Similarly, in 1998 the Commission on Human Rights requested the Working Group on Enforced or Involuntary Disappearances to give special attention to cases of human rights defenders who have “disappeared”.⁴

The American Declaration of the Rights and Duties of Man and the American Convention on Human Rights recognize the right of individuals to meet together and work to defend human rights. Human rights defenders have played, and continue to play, an important role in the promotion, defence and strengthening of the inter-American human rights system. Successive reports by the Inter-American Commission on Human Rights demonstrate the valuable contribution made by human rights defenders.

In 1985 the General Assembly of the Organization of American States (OAS) recalled the commitment on the part of states “not to take reprisals against people or institutions who submit testimony or complaints to the Inter-American Commission on Human Rights”.⁵ Between 1986 and 1990 the General Assembly urged OAS member states to provide the necessary guarantees and facilities for non-governmental human rights organizations to be able to carry on contributing to the promotion and defence of human rights and to respect the freedom and personal safety of members of such organizations.⁶

Nevertheless, the OAS General Assembly inexplicably gave up the practice of urging member states to guarantee the work of non-governmental human rights organizations. In contrast to the appeals made by the Assembly in previous years, in recent years the Inter-American Commission and the Inter-American Court of Human Rights have had to call for a substantial number of preventive and temporary measures on behalf of defenders who have approached them, both as complainants or as witnesses.

In addition, despite the fact that the Inter-American Commission on Human Rights has recognized the contribution made by human rights defenders, the OAS does not possess any clear, formal mechanisms or procedures to enable non-governmental human rights

³ Resolution 1996/74, adopted on 23 April 1996.

⁴ Resolution 1998/40, adopted on 17 April 1998.

⁵ Resolution AG/Res. 778 (XV-0/85).

⁶ Resolutions AG/Res. 835 (XVI-0/86), AG/Res. 890 (XVII-0/87), AG/Res. 950 (XVIII-0/88), AG/Res. 1022 (XIX-0/89) and AG/Res. 1044 (XX-0/90).

organizations to participate in the inter-American system. Compared with other international systems, such as the UN and the European and African systems, the OAS is today the only international system which does not allow non-governmental human rights organizations consultative status. This situation severely limits the ability of human rights defenders to work with and contribute to the inter-American system.

This report examines a range of human rights violations faced by human rights defenders in Latin America. It analyses a number of ways in which governments and state agents attempt to silence human rights defenders in order to conceal the truth about human rights violations or protect state agents responsible for such abuses. The purpose of this report is to provide the reader with a glimpse of the issues concerning human rights defenders. For more specific information see Amnesty International's reports on countries, which can be obtained from Amnesty International sections around the world or from Amnesty International's International Secretariat.

Although this report details cases taken from the beginning of 1996, Amnesty International has followed the work of these human rights and social groups for many years.

This report concludes with a set of recommendations to Latin American governments and another set to the OAS.

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote And Protect Universally Recognized Human Rights and Fundamental Freedoms can be found in the appendix of this report.

1. Repression of human rights defenders

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 1, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

In Latin America, being a human rights defender can be a dangerous, even fatal, commitment. Those struggling to improve the dignity and rights of others are often the first to suffer serious violations that jeopardize their physical integrity. The majority of these violations, including extrajudicial execution, abduction, torture and ill-treatment, are perpetrated by state agents, often members of the security forces, or those acting with their acquiescence or consent. An alarming number of human rights defenders are also vulnerable to constant death threats and intimidation. The level of threat to their safety, including their family, forces some individuals to flee their community.

The scope of human rights violations against human rights defenders ranges from the occasional targeting of selected individuals to systematic strategies to eliminate certain human rights groups. In some places, the security forces are responsible for coordinated plans intended to silence human rights defenders and stifle the impact of their initiatives. In others, although apparently free to conduct their work without hindrance, human rights defenders continue to suffer attacks which expose the hidden dangers faced by those speaking out for the victims of violations and social injustice.

Full investigations into violations against human rights defenders and the bringing to justice of the perpetrators could substantially help reduce the number of attacks and threats against them. Yet prosecutions of this kind are rare. In the main, judicial investigations are flawed and inconclusive. Pressure generated by human rights defenders themselves helps ensure that some cases remain open until investigations are fully completed, but many cases are shelved before those responsible have been identified or tried. Few members of the security forces, or their allies, are detained on suspicion of having committed an offence against a human rights defender. Equally, few are suspended from duty pending the outcome of investigations, in accordance with the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

This lack of political will to protect human rights defenders from the perpetrators of the crimes against them, and to purge the violators from state institutions, raises serious

doubts about the commitment of some governments in the region to implementing their international human rights obligations and purported human rights agendas.

Risking their lives

The most extreme expression of intolerance for those who defend human rights is the extrajudicial execution by state agents, or those operating with their support or acquiescence, of those who have dedicated their lives to defending the fundamental freedoms and universally recognized rights of their fellow citizens. As the examples given in this report demonstrate, serious human rights violations, such as political killings and abductions, are rarely the work of a single person acting alone. Several members of the armed forces are frequently involved. The structure of the institution -- centralized command, ability to act rapidly and on a national scale, capacity to use lethal force and overcome resistance -- lends itself to such tasks. In some situations, such violations have been delegated or contracted out to forces ranging from paramilitary groups and "death squads" often composed of regular police or military personnel, to irregular bands which are in the pay of local landowners or other private citizens but operate with official acquiescence.

In Brazil activists involved in uncovering death squads linked to state agents, or campaigning on indigenous or land issues have been among those targeted for political killings. In Colombia, the murder of members of human rights organizations has become a permanent feature of the escalating conflict in this country: during 1997 and 1998, more than 20 human rights defenders were killed by members of the Colombian security forces, their paramilitary allies or armed opposition groups.⁷ In Guatemala and Honduras, the legacy of past human rights atrocities surfaced again in 1998 with the killing of two prominent figures who had dedicated their lives to upholding human rights and human dignity. In Mexico, so-called paramilitary groups attempted to kill one human rights defender working in a remote part of the country.

During the period under review, scarce progress has been made on investigations into cases of political killings, abductions or "disappearances" of members of human rights groups. On the contrary, impunity has been protected and reinforced by attacks, death threats and intimidation against individuals trying to investigate the facts or take remedial action -- including victims' relatives, lawyers, journalists and judges.

⁷ See Amnesty International, *Colombia: Human rights defenders under increasing attack*, March 1998 (AI Index: AMR 23/17/98) and *Colombia: No security for human rights defenders*, May 1997 (AI Index: AMR 23/32/97).

The Brazilian case

Francisco Gilson Nogueira de Carvalho, a lawyer at the *Centro de Direitos Humanos e Memória Popular* (CDHMP), Centre for Human Rights and Collective Memory, in Natal, the State capital of Rio Grande do Norte, was shot dead on his doorstep by six men on 20 October 1996. He was killed by 13 bullets, most of them to the head. He had been working with a special commission set up by the state attorney general in May 1995 to investigate the activities of the *Meninos de Ouro* (Golden Boys), a death squad believed to be responsible for numerous killings. Since 1995, formal allegations had been repeatedly made that the death squad operated under the auspices of the Deputy Secretary for Public Security. An official investigation was closed “due to lack of evidence” in 1997, but was recently reopened, largely due to calls made by human rights organizations, and a

civil policeman was charged. On 3 March 1999, one witness was killed and two others were threatened.

On 20 May 1998 indigenous leader Francisco de Assis Araújo, known as “Chicão”, was killed in Pesqueira, Pernambuco state, Brazil. The day he was killed, he was visiting a sister with members of his family, in the Xucuru neighbourhood of Pesqueira. His family had already gone into the house, and Francisco de Assis Araújo was parking the car when he was shot at by an unidentified gunman. He was hit in the head and back by five bullets and died immediately.

Francisco de Assis Araújo was a leader and advocate for the land rights of the Xucuru people. Because of his campaigning activities he had received death threats since 1989, and his name had appeared on a death list in 1992, along with 20 other indigenous leaders. Federal police are currently investigating the killing.⁸

The systematic killing of Colombian defenders

In the early hours of 19 May 1997 a group of masked gunmen, identifying themselves as members of the *Fiscalía* (Attorney General’s Office) overpowered the doorman of the

⁸ See Amnesty International, *Brazil: Human rights defenders, protecting human rights for everyone*, May 1998 (AI Index: AMR 19/08/98).

Bogotá apartment building where Carlos Mario Calderón and Elsa Alvarado lived, forcibly entered the seventh floor apartment and killed them with sub-machine gunfire. Both activists worked for the *Centro de Investigación y Educación Popular* (CINEP), Centre for Research and Popular Education. Senior military commanders had recently accused members of CINEP of attempting to discredit the armed forces.

Mario Calderón and Elsa Constanza Alvarado were university professors and had also worked with CINEP for many years. Members of this organization have frequently been targeted for death threats and other human rights violations.

Almost one year later Dr José Eduardo Umaña Mendoza, a renowned Colombian human rights lawyer, was killed in Bogotá in April 1998 in apparent retaliation for defending trade union leaders accused under anti-terrorism legislation. According to reports Dr Umaña was killed by two men and one woman who identified themselves as journalists and entered the lawyer's office, located in his apartment in Bogotá. They killed him with several gunshots to the head.

Less than two months previously another renowned human rights lawyer, Dr Jesús María Valle Jaramillo, was shot dead by unidentified gunmen in his office in Medellín after denouncing links between members of the Colombian military and paramilitary organizations. He was president of the *Comité Permanente por la Defensa de los Derechos Humanos de Antioquia -- "Héctor Abad Gómez"*, (CPDH), Antioquia Permanent Committee for the Defence of Human Rights -- "Héctor Abad Gómez", and the fourth president of the organization to be killed. He was also a university professor and a Conservative Party local councillor.

In Colombia, the killing of members of human rights organizations forms part of a campaign by sectors of the Colombian security forces and their paramilitary allies to weaken the work of human rights defenders. Killings, threats and intimidation have combined over a number of years with defamatory claims that human rights organizations are acting on behalf of the armed opposition. Past experience shows that these attempts to present human rights defenders as legitimate targets in the counterinsurgency war serve as an open invitation to paramilitary groups to target those identified for serious human rights violations.

Paramilitary forces -- although declared illegal in 1989 -- continue to commit widespread human rights violations with the support or acquiescence of Colombian armed forces. Despite the weight of evidence of links between paramilitary groups and the security forces, documented by Amnesty International and many other organizations, including the UN, the Colombian government has persistently failed to take effective action to remove those responsible from active service. However, in an important step towards

braking these long established links, in April 1999 the government dismissed two leading army generals for their links with paramilitary organizations.

Carlos Castaño, head of the Colombian national paramilitary organization *Autodefensas Unidas de Colombia* (AUC), United Self-Defence Forces of Colombia, was implicated by the Attorney General's Office in the 1997 CINEP killings and the killing of Jesús María Valle Jaramillo, but remains at large despite outstanding warrants for his arrest. At the beginning of 1999, he publicly declared human rights defenders "*objetivo militar*" (military targets).

Guatemala's past haunts the present

Since his brutal murder in April 1998, the Guatemalan authorities insisted that Bishop Juan José Gerardi was the victim of a common crime or a crime of passion. However, in a report made known in November 1998, Acisclo Valladares, a former Attorney General commissioned by the Guatemalan Catholic church to examine the investigation by the authorities into the murder, concluded that Bishop Gerardi was probably extrajudicially executed and that the priest arrested for his murder had been wrongly accused. Those involved in investigations have been attacked and threatened. One witness escaped an attempt on his life the night before he was to testify. In March 1999 the Guatemalan Public Prosecutor at last announced that his office would pursue lines of inquiry on a possible political motive for the crime.

Bishop Gerardi was murdered as he returned home two days after he had presided over the presentation of the Catholic church's report (REMHI) into the atrocities carried out over more than three decades of internal armed conflict.⁹ Based on a three-year study of over 55,000 reported human rights violations, the REMHI project concluded that some 79 per cent of them had been carried out by the security forces. Bishop Gerardi had been a leading force behind the project.

The government promised a full inquiry into Bishop Gerardi's murder, but in common with Guatemalan human rights groups, Acisclo Valladares concluded that the official investigation of the killing had been gravely flawed. The authorities thus far had considered only the hypotheses that the murder was either a common crime or a crime of passion, failing to initiate enquiries into the most likely explanation, that the Bishop was killed by those who want to prevent the identification and prosecution of those responsible for violations perpetrated during Guatemala's dirty war. Acisclo Valladares publicly called on the authorities to investigate indications that the brutal killing was

⁹ After 35 years of armed conflict the *Acuerdo de Paz Firme y Duradera*, Agreement for a Firm and Lasting Peace, was signed in December 1996 by the Guatemalan Government and the *Unidad Revolucionaria Nacional Guatemalteca* (URNG), Guatemalan National Revolutionary Unity.

politically motivated and may have involved military or former military personnel. For their part, the Guatemalan military have denied any part in Bishop Gerardi's death.

A spate of killings in Honduras

On 10 February 1998 Ernesto Sandoval Bustillo, coordinator for the non-governmental *Comité para la Defensa de los Derechos Humanos en Honduras* (CODEH), Committee for the Defence of Human Rights in Honduras, and former Justice of the Peace, was shot dead by unidentified men as he walked to the CODEH offices in Santa Rosa de Copán, Honduras.

According to reports, Ernesto Sandoval Bustillo had received several death threats from "*Los justicieros de la noche*" ("Avengers of the night"), a so-called "death squad" active in Santa Rosa de Copán. In a statement to the press on 26 December 1997, this "death squad" had blamed human rights defenders for defending criminals and had listed the names of 75 people it intended to capture and execute.

At the time of his murder, Ernesto Sandoval had been active on investigations into the killing of Cándido Amador Recinos on 12 April 1997, as well as investigations into past human rights crimes perpetrated by members of the Honduran security forces. Cándido Amador Recinos, a member of the Chorti indigenous group, was a leading member of the General Council of Assessment for the Development of Indigenous Groups in Honduras. Others involved in pressing for a full investigation into his death also received death threats and some were killed. Despite appeals by non governmental Organizations to the authorities to determine who was responsible, no proper investigation was completed, and no one has yet been brought to justice for either the killing of Ernesto Sandoval Bustillo or Cándido Amador Recinos.

A narrow escape in Mexico

Some human rights defenders have escaped attempts to kill them. In Mexico, human rights defenders working in remote parts of the country are vulnerable to attack by so-called paramilitary groups. On 15 February 1997 members of the *Centro de Derechos Humanos "Fray Bartolomé de Las Casas"* (CDHFBC), Fray Bartolomé de Las Casas Human Rights Centre, in Chiapas, were attacked by members of *Paz y Justicia*, a so-called paramilitary group, as the defenders tried to escape an apparent ambush in the municipality of Sabanilla. One member of the CDHFBC was shot in the arm and an international observer accompanying the delegation was wounded in the head with an axe. No full investigation by the authorities was known to have been conducted into the attack, nor was anyone brought to justice.

An uncertain fate

Uncertainty continues to cloud scores of cases of "disappeared" human rights defenders in Latin America despite continued efforts to clarify the circumstances in which they

“disappeared”, their fate and whereabouts. Cases remain unresolved and at risk of closure if not for the efforts of fellow human rights defenders.

During the period under review from 1996 to 1999, several Latin American human rights defenders were abducted for varying periods of time. In some instances abductions gave rise to fears of extrajudicial execution or “disappearance”, although no “disappearance” is known to have occurred. On at least one other occasion, human rights defenders were abducted with the apparent intention of using them as human shields in the context of internal conflict. In such instances, relatives suffer untold anguish as they do not know whether their loved ones are dead or alive. The captive, cut off from the world and placed beyond any form of protection, is left alone to face the possibility of being killed. Captors often interrogate their victims and issue threats intended to frighten them into ceasing their activities.

Among those affected have been individuals briefly visiting Argentina to press for truth and justice on human rights violations committed during Argentina’s military regime (1976-1983). On 17 November 1998 Esteban Cuya was attacked shortly after taking a taxi to his hotel in Buenos Aires. Two black cars blocked the road and men forced their way into the taxi. They beat Esteban Cuya before stealing important files. They also gagged him with a wet towel and threatened to kill him. After being driven around for some time he was then pushed out of the car in a street in Buenos Aires. Esteban Cuya is a Peruvian member of the German human rights organization *Coalición contra la Impunidad*, Coalition Against Impunity. The attack appears to have been a direct response to the *Coalición Contra La Impunidad*’s campaign for German courts to bring to justice those responsible for human rights violations against German nationals during the military regime in Argentina.

In Colombia, those working on human rights education have been targeted. On 28 January 1999 Jairo Bedoya, Olga Rodas, Jorge Salazar and Claudia Tamayo were abducted from the office of their organization in Medellín, capital of Antioquia department by paramilitary gunmen. The armed gang made all those present in the offices lie on the floor and, using a list of names, selected four members of the *Instituto Popular de Capacitación* (IPC), Popular Training Institute, a non-governmental human rights organization specializing in research, popular education and peace promotion.

Three days later, paramilitary leader Carlos Castaño announced that the AUC was holding them as “prisoners of war”. On 8 February 1999 Olga Rodas and Claudia Tamayo were released. Before their release Carlos Castaño told them personally that he intended to continue his campaign against those working on issues of human rights and social justice.

Following continued international and national outcry, Jorge Salazar and Jairo Bedoya were released on 18 February. While their release was welcome, the AUC simultaneously reiterated its threat to continue its declared offensive against members of human rights organizations.

The taking of civilian human rights defenders as hostages or “prisoners of war” is strictly prohibited under common Article 3 of the Geneva Conventions of 1949.

In El Salvador, an apparent attempt to abduct and make to “disappear” or kill one human rights defender appears to have been related to activities to promote the right to vote and to eliminate the death penalty. In September 1996 Salvadorean human rights defender Eliezar Ambelis, a member of the *Centro para la Promoción de los Derechos Humanos “Madeleine Lagadec”*, Centre for the Promotion of Human Rights “Madeleine Lagadec” in San Salvador, was threatened. On 8 October, two masked individuals tried to abduct him on the road from Santa Clara to the community of El Rosario, department of San Vicente. An hour after the abduction attempt, the Centre’s office in San Salvador received a call from an individual saying: “I want you to know that this office has to disappear, so watch out. We’ve got the guy from Santa Clara. Pray for him.” The person calling is believed to have been unaware that Eliezar Ambelis had managed to escape from his captors. That same night, a threatening note was left at the Centre’s office, saying: “... look out, your day will come soon.” No proper investigation is known to have been conducted into the threats or the attempted abduction.

Deliberate and arbitrary killings by armed opposition groups

The bound and blindfolded bodies of United States (US) indigenous rights activists Ingrid Washinawatok, Lahe’en’a Gay and Terence Freitas, who were seized by armed men in Colombia on 25 February 1999, were found on 4 March dumped over the border in Venezuela. They had been shot dead.

The three US citizens had travelled to Colombia in February as part of an international campaign to support the U’wa indigenous community in the northeast of the country. For several years the U’wa have been fighting plans by an oil company affiliated to the US Occidental Petroleum Corporation (OPC) to exploit oil deposits on their ancestral lands.¹⁰ On 25 February the car of the three rights activists was intercepted by two armed gunmen in civilian clothes as they travelled to the airport in Saravena, Arauca department.

¹⁰ The OPC had been carrying out seismic surveying and oil exploration in an area known as the Samore block in Boyacá department. Part of the area under exploration covers U’wa ancestral lands and the community threatened to commit mass suicide if the work continued. As a result of the controversy the OPC suspended operations in the area.

A few days after the subsequent discovery of the bodies of the US environmentalists, the armed opposition group, *Fuerzas Armadas Revolucionarias de Colombia* (FARC), Revolutionary Armed Forces of Colombia assumed responsibility for their killing. Amnesty International opposes and condemns the taking and holding of hostages and the deliberate and arbitrary killing of civilians in all cases.

In the past, the deliberate and arbitrary killing of those working on human rights and social justice by members of armed opposition groups has also been reported in Peru and El Salvador.

Torture and ill-treatment

Between 1996 and 1997, numerous reports of ill-treatment, or other forms of abuse amounting to torture, by security forces agents, or individuals acting with their acquiescence or consent, against members of human rights groups were received. Some defenders have been attacked in broad daylight, others have been abducted and beaten.

While Bolivian human rights defenders have, in the main, been free to conduct their work since the return to civilian government in 1982, an attack in 1997 on a prominent human rights defender exposed the dangers which those involved in speaking out on human rights can face.

Waldo Albarracín is a lawyer and President of the Bolivian non-governmental organization *Asamblea Permanente de Derechos Humanos* (APDH), Permanent Assembly of Human Rights. On 25 January 1997 Waldo Albarracín was travelling by public transport to the San Andrés University in La Paz when he was abducted by a group of eight men in civilian clothes. He was driven around blindfolded and tied, while being beaten about the head, ears and testicles, and subjected to threats against his life. After several hours, Waldo Albarracín was left badly injured at the headquarters of the *Policía Técnica Judicial* (PTJ), Technical Judicial Police, in La Paz.

Waldo Albarracín was hospitalized and suffered a cracked rib and contusions. Although he had complained to the authorities of continued threats against him and his family, these complaints were seemingly not investigated. Despite continued threats and harassment following the attack, no steps were taken by the Bolivian authorities to provide adequate protection to the family. Despite measures by the Bolivian authorities to investigate the attack and the fact that a Congressional Commission of inquiry established that two members of the police were involved, a satisfactory conclusion has still not been reached.¹¹

¹¹ For documentation on Waldo Albarracín's attack, see *Bolivia: Undermining human rights work*, May 1997 (AI Index AMR 18/10/97), as well as Urgent Actions AI Index: AMR18/02/97, 18/04/97,

Other APDH activists have also been beaten by members of the Bolivian security forces. In July 1998 Padre Hugo Ortiz, a Catholic priest and President of the APDH in Caranavi, La Paz department, was beaten by members of *Unidad Móvil de Patrullaje Rural* (UMOPAR), Mobile Rural Patrol Unit. In this case, no disciplinary measures were taken against those suspected of perpetrating the attack, and no investigation was initiated.

In Guatemala, members of human rights organizations and witnesses in human rights trials have been the target of attacks on account of their efforts to seek truth and justice. Although such attacks are no longer widespread as was the case during certain periods of Guatemala's dirty war, Amnesty International has continued to receive reports of incidents in which human rights defenders have been ill-treated and abused. Those working in remote areas are particularly vulnerable to attack.

On 17 June 1998 several men armed with grenades, machetes and firearms assaulted a group of some 30 Guatemalan women members of *Mamá Maquín*, a womens' organization working with returned refugees and displaced people, as they were returning from a meeting in a returned refugee community in El Quiché department. The assailants beat up several women with their machetes and stole their personal goods. Witnesses said that the men also tore up the papers from the meeting and cursed the women and their organization. On the previous day, threats had been received at the *Mamá Maquín* office in Guatemala City, by unknown individuals who telephoned to warn them to give up their work on behalf of returned refugee women.

Threats and intimidation

Few human rights defenders in Latin America escape some form of threats or intimidation. The intensity and severity vary from country to country and context to context, but can in the case of Colombia or Brazil for instance be a prelude to a physical attack. In other instances, the intention appears to be to frighten members of human rights organizations into silence.

Many threats include accusations linking human rights defenders to subversive or criminal activities. Degrading obscenities and insults are common. Individuals may receive successive telephone calls or letters, slanderous graffiti may be left in public places. Over a long or sustained period of time such threats can have a significant psychological impact. The consequences are exacerbated still further when family members, especially children, are targeted.

18/06/97, 18/07/97 and News Services AI Index AMR18/01/97 and 18/03/97.

Human rights lawyers attempting to investigate cases of human rights violations or press for legal remedies to end impunity are frequently the target of threats. In an attempt to shield themselves from prosecution those under suspicion pervert the course of justice by intimidating individuals involved in the judicial procedures. In some instances, lawyers or public prosecutors are forced to drop cases assigned to them because of the perceived risk to their lives.

In Argentina, lawyers working with the non-governmental organization *Coordinación en contra de la Represión Policial e Institucional* (CORREPI), Coordination against Police and Institutional Repression, have repeatedly been threatened on account of their work to support relatives of those killed by Argentine police. In July 1998 a message recorded on the office answerphone of Dr Sergio Smietniansky in Buenos Aires warned: "You are going to spit blood, you jew... We are going to be waiting for you when you come out the office and there we are going to see if you still want to carry on like a madman." A complaint regarding threats against Dr Smietniansky was lodged with the courts. The judge in charge of the case offered the lawyer police protection, an offer rejected by Dr Smietniansky. No thorough or conclusive investigation was conducted.

Threats against those reporting on torture are common. In Brazil in April 1998, the Rio de Janeiro-based group *Grupo Tortura Nunca Mais* (Torture No More), received a number of anonymous death threats and suffered other forms of intimidation. The threats followed the group's public campaign against the promotion of an army doctor alleged to have participated in torture under the military regime (1964-1985).

In 1997 Peruvian human rights lawyer Heriberto Benítez Rivas was threatened on numerous occasions. As a precautionary measure he temporarily left his home. However, following his return, Heriberto Benítez received more threatening telephone calls. One anonymous caller told him that "he was done for". In another call, taken by Isabel Rivas, Heriberto Benítez' ageing mother, the caller said: "Tell your son that he's done for and to stop undermining the government." Isabel Rivas, who suffered from high blood pressure, subsequently required medical assistance. These threats occurred in the context of revelations implicating members of the Peruvian *Servicio de Inteligencia del Ejército* (SIE), Army Intelligence Service, in human rights violations. Heriberto Benítez was involved in representing ex-agents of the SIE, including one woman who was tortured by SIE members for allegedly leaking security plans.

Chilean human rights defenders have been threatened on account of their efforts to end impunity and keep judicial proceedings into past cases of “disappearances” open. In June 1997, three members of the Chilean *Agrupación de Familiares de Detenidos-Desaparecidos*, Association of Relatives of “Disappeared” Prisoners, received various telephone threats. One caller told Sola Sierra, president of the *Agrupación*, “now, we are going to kill you, you communist so-and-so.” The arrest of former General Augusto Pinochet in 1998 in the United Kingdom reportedly sparked further intimidation of human rights defenders in Chile campaigning for justice and adequate redress.

Not all threats are verbal. In Venezuela, members of the *Oficina de Derechos Humanos Vicariato Apostólico*, Human Rights Office of the Apostolic Vicariate, of Puerto Ayacucho in the State of Amazonas, have been targeted for their work with indigenous communities. In May 1997, two vehicles, one belonging to the Human Rights Office

and the other to a nun, were damaged by acid. Although no one was harmed in the attack, the acid stripped the paintwork of the vehicles. The Human Rights Office has been targeted before. In December 1996 the Prosecutor’s Office of the Public Ministry of the State of Amazonas charged the Human Rights Office and two of its legal staff with “usurpation of functions”, in what appeared to be an attempt to restrict the organization’s

legitimate activities. The charge was reportedly filed following two letters sent by the Human Rights Office to the General Commander of the State Police complaining about the killing, allegedly by police officers, of a civilian in November 1996.

Slander and defamation

Smear campaigns play an important part in undermining the credibility of human rights work. Unsubstantiated, defamatory accusations, including allegations of murder, corruption or terrorism, can be presented in the media as statements of fact, confirmed by “evidence” which remains unspecified and unchallenged. Such claims reveal a clear intent to undermine the legitimacy of the efforts of individuals and organizations working to protect human rights defenders. Despite the fact that many governments in the region have made statements pledging to reverse or counter these trends, officials rarely take appropriate action.

Accusations against human rights defenders are often made through unofficial reports and “accidental” press leaks, all easily disowned and denied by the authorities. Nevertheless, there can be no doubt that those who make the accusations are well aware of their consequences.

Mexican defenders, Alfredo Zepeda, a Jesuit priest, and Concepción Hernández Méndez have suffered numerous threats and harassment for their role as members of the *Agrupación de Derechos Humanos Xochitépetl*, Xochitépetl Human Rights Group, and the *Comité de Derechos Humanos de la Sierra Norte de Veracruz*, Human Rights Committee for the Mountains of Northern Veracruz, respectively. Both organizations campaign on behalf of impoverished peasants of the Otomí, Nahuatl and Tepehua Indian communities. In May 1996 local landowners, taking over indigenous lands, ran a campaign in the local media, accusing them of murdering a large landowner and calling for reprisals against them. Although the Roman Catholic bishop made public statements condemning the false accusations, Alfredo Zepeda and Concepción Hernández Méndez received several anonymous death threats.

On 24 July 1998 the Mexican daily newspaper *La Jornada* published an article in which General Álvaro Vallarta, president of the Commission for the Defence of the Senate of the Republic, was reported to have accused members of the national human rights network “*Todos los Derechos para Todos*” (“Full Rights for All”) and the *Centro de Derechos Humanos “Miguel Agustín Pro Juárez* (PRODH), Human Rights Centre “Miguel Agustín Pro Juárez, of receiving drugs money and wanting to destabilize the country.

In October 1998 Bertha Oliva de Nativí, coordinator of the Honduran *Comité de Familiares de Detenidos-Desaparecidos en Honduras* (COFADEH), Committee of Relatives of the “Disappeared” in Honduras, wife of a “disappeared” and one of the human rights defenders highlighted in Amnesty International’s 1998 campaign for the Universal Declaration of Human Rights, was accused of profiteering. An article published in the daily national newspaper *La Tribuna* suggested that Bertha Oliva de Nativí was obtaining financial benefits from Amnesty International’s campaign. The newspaper is reportedly owned by Carlos Flores Facussé, President of Honduras. The Internet version of the article made further allegations. *Noticiero La Ultima Hora*, a radio program broadcast by *Radio América*, carried a live discussion on the article. Amnesty International wrote an open letter to the editor of *La Tribuna* explaining Amnesty International’s campaign and requesting a public retraction. To Amnesty International’s knowledge neither the letter nor a retraction were published.

Fleeing repression

“To give in seems to me to be worse than death itself.”

Colombian human rights defender Josué
Giraldo Cardona, speaking from exile shortly before his killing in October 1996

The level of risk for some Latin American human rights defenders is so great that they are forced to uproot their families and their lives to seek safety elsewhere. Some may never return.

Many governments in the region have on more than one occasion pledged to introduce specific measures to secure the protection of human rights defenders and prevent them from having to flee on account of attacks on them. Yet the steady stream of relocation requests received by national and international humanitarian organizations adds weight to

the suggestion that these promises are mere rhetoric.

Effective protection for human rights defenders, including witnesses, means decreasing the level of risk. It means that governments need to fulfill responsibilities to protect, instead of allowing state agents, or their allies, to attack, murder, harass and persecute

them. Only then may those who gamble their lives in another place be able to return home safely. Combating impunity by bringing to justice the perpetrators of human rights violations against members of human rights organizations could have a considerable impact on reducing the level of attacks on them.

In the years covered by this report, Brazilian and Colombian human rights defenders have been the most likely to be forced to leave their homes on account of the risk to their lives. Cases have also been reported in Ecuador, Guatemala, Haiti, Mexico and Peru.

Local Colombian human rights defenders are especially vulnerable. Far from national and international networks that lend a degree of support and protection, they are frequently driven to uproot their lives to avoid imminent attacks by local security force agents or their paramilitary allies.

In December 1997, two armed men burst into the house of Mario Humberto Calixto, president of the *Comité de Derechos Humanos de Sabana de Torres*, Sabana de Torres Human Rights Committee, in the northeastern department of Santander. The intervention of two volunteers from Peace Brigades International -- an international organization providing accompaniment to human rights defenders -- allowed Mario H. Calixto to escape abduction or possible extrajudicial execution. The attack on Mario Humberto Calixto came shortly after the Committee had published a report regarding human rights violations in the area which provoked several death threats against the president. On account of the threats against his life, Mario Humberto Calixto and his family were compelled to leave Sabana de Torres. To date no one has been brought to justice for the attempted killing.

Recently, one Haitian human rights defender also narrowly escaped an attempt on his life. On 8 March 1999, as Pierre Espérance was travelling by car in the capital Port-au-Prince, a Toyota sedan pulled in front of him and stopped. A man stepped out and began firing at him with a machine-gun. When Pierre Espérance tried to escape, the Toyota gave chase and the occupants began shooting again, wounding Pierre Espérance.

Pierre Espérance, director of the National Coalition for Haitian Rights (NCHR) in Port-au-Prince, joined this organization in 1991, a few weeks after the military coup which overthrew democratically elected President Jean-Bertrand Aristide. The NCHR's director in New York is quoted as saying that "Indications are that this [shooting] was a cold-blooded, premeditated attempt to murder a well-known human rights advocate." Following further death threats against him after the attempted killing, Pierre Espérance left Haiti.

The right to an effective remedy

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in this Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of violation of these rights.

2. To this end, everyone whose rights or freedoms are allegedly violated, has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms; as well as enforcement of the eventual decision and award; all without undue delay.

Article 9(1) and (2), Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Issues of justice are crucial to virtually all efforts to improve respect for human rights. Latin American human rights defenders have pioneered campaigns for truth, justice and reparation on behalf of the victims of human rights violations and social injustice and have consistently insisted on the independence and impartiality of the judiciary as the cornerstone of human rights protection.

Logically, the law should provide adequate redress and effective remedy to everyone, including human rights defenders whose rights have been violated. However, the cases described in this report illustrate how in many countries, governments are failing to fulfill their international or domestic obligation to ensure full and proper investigations into violations and threats against human rights defenders, the bringing to justice of those responsible and the provision of reparation.

No matter how adequate a country's human rights legislation may be, it will have little impact on the protection of individuals if the government lacks the political will to enforce it. The case of human rights defenders illustrates this point. Governments across the region frequently reiterate rhetorical pledges to ensure the protection of human rights defenders, even repudiating attacks on them and assigning bodyguards for their protection, but rarely follow up their pledges with effective measures to tackle the problem at its core by conducting the proper investigations.

Amnesty International believes that if the authorities had acted effectively on information in their possession regarding threats against human rights defenders, some killings could have been averted. For instance, 10 years after the 1988 killing of Brazilian environmentalist Francisco “Chico” Mendes, information came to light suggesting that several weeks before his killing “Chico” Mendes had notified the authorities of the identity of one individual involved in plans to kill him and had requested that the suspect be detained. At the time, the authorities failed to act on the notification. The suspect he had indicated was subsequently imprisoned for the crime. Similarly, before his killing in October 1996, Dr Josué Giraldo Cardona, then president of the Colombian *Comité Cívico por los Derechos Humanos del Meta*, Meta Civic Human Rights Committee, had filed several complaints regarding threats to his physical integrity. However, despite a request by the Inter-American Court of Human Rights for the Colombian government to take special measures to guarantee his safety, the authorities neither took action to investigate the killing of three former Committee presidents, the threats against Dr Josué Giraldo Cardona, nor to provide effective protection.

In many countries domestic measures for the investigation of human rights violations are still weak and structurally flawed. Violations are not investigated by an independent body

and the results of investigations often remain unknown. In some countries violations committed by members of the military forces continue to come under special military jurisdiction. This is often the case in Brazil, Colombia and Mexico. Nor are those suspected of having committed violations suspended from active duty pending the outcome of investigations. Legislative measures granting immunity from prosecution to the perpetrators of human rights violations can also obstruct proper investigations, in particular into past cases of violations against members of human rights organizations. For example, amnesty decrees have prevented the prosecution of those suspected of perpetrating violations against human rights defenders in Argentina, Chile, El Salvador, Honduras, Peru and Uruguay.

All victims of human rights violations committed by agents of the state, or by individuals acting with the state's consent, have the right to the truth and to adequate reparation, including financial compensation and rehabilitation. Reparation should include legal measures necessary to restore the victim's dignity and reputation. The victims, their relatives and society as a whole are also entitled to seek measures which guarantee an end to impunity and prevent the repetition of such violations in the future.

Faced with ineffective domestic mechanisms for the investigation of human rights violations, Latin American human rights defenders and others frequently seek redress by filing individual complaints with international mechanisms such as the Inter-American Commission on Human Rights, the UN Human Rights Committee or the UN Committee against Torture.

However, non-compliance with recommendations or resolutions issued by international mechanisms is a growing concern in some countries. For instance, on 27 October 1995 the UN Human Rights Committee ruled that the Colombian government was responsible for the "disappearance", torture and killing of Nydia Erica Bautista de Arellana and requested appropriate protection for the relatives. However, the sister of Nydia Bautista, Yanette Bautista and then president of the *Asociación de Detenidos Desaparecidos* (ASFADDES), Association of the Relatives of the Detained and Disappeared, and other relatives continued to receive death threats. On account of the lack of effective protection they eventually fled Colombia in fear for their lives.

Reluctance to submit to international scrutiny signifies that some countries have not recognized the competence of the Inter-American Court of Human Rights, the UN Human Rights Committee or the UN Committee against Torture to receive individual complaints. In these countries, human rights defenders are unable to submit individual complaints, regarding cases of violations against themselves or others, to these regional and international forums.

2. Human rights defenders under suspicion

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles, and to advocate their acceptance.

Article 7, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Many Latin American human rights defenders struggle against a range of difficulties and obstacles intended to deliberately block and prevent them from carrying out their legitimate activities to monitor and promote human rights and issues of social justice.

At the instigation of state officials, human rights defenders may be subject to a range of harassment such as investigation on spurious charges, detention, with or without an authorized arrest warrant, raids and surveillance. In some instances, investigating the activities of individual activists appears more important than the investigation of the violations and threats against them. Treating human rights defenders as criminals or subversives, before the outcome of investigations is known, and subjecting them to degrading and humiliating experiences contributes to the stigma that may be associated with human rights activism in some countries.

Unsubstantiated accusations through the media also contribute to discrediting the work of human rights and social activists. Such accusations place human rights defenders at risk of attack and, in the event of judicial proceedings against them, prejudice their right to be presumed innocent until proved guilty.

Harassment of this kind may involve the misuse or the abuse of the legal system to the detriment of members of human rights and social organizations. The adverse effects of the legal system are compounded by the state's inability or failure to ensure redress and an effective remedy to those who have had their rights violated or to ensure that those falsely accused are protected by the necessary safeguards.

In the past, fabricated or politically motivated charges were widely used to silence and imprison a variety of government critics in numerous Latin American countries. During the period under review between 1996 and 1999, a number of those working on issues of human rights and social justice have been subjected to this kind of treatment as a form of harassment.

In some instances, those human rights or social activists who are detained face imprisonment after trials that fail to meet international fair trial standards. In other

situations, human rights defenders have been detained, sometimes arbitrarily, for short periods of time and then released without charge.

Fabricated criminal charges

In Brazil, criminal charges and court orders have been used to curtail the activities of church workers, trade unionists, agrarian reform and land activists. What appear to be politically motivated charges and preventive detention orders have been seemingly prompted solely by their legitimate activities with the rural poor.

In October 1996 Amnesty International took up the case of Frei Anastácio Ribeiro, a Franciscan priest sentenced to nearly five years imprisonment on charges related to his peaceful activities in campaigning for land reform. He was detained on 27 November 1995 in the municipality of Conde in the northeastern state of Paraíba in connection with the occupation by 300 landless rural workers of the *Fazenda Jacumã e Tabatinga*. Frei Anastácio Ribeiro, state coordinator of the *Comissão Pastoral da Terra* (CPT), Church Land Pastoral, a Roman Catholic church organization, was charged with “*esbulho possessório*” (the violent seizure of land belonging to another) and “*formação de quadrilha*” (the forming of a criminal gang), and with ill-treating children by exposing them to insalubrious conditions in land encampments. The judge held him responsible on these charges on account of his CPT work, even though he had not been present at the occupation. The judge falsely described the CPT as a “clandestine organization”.¹² He continues to face similar criminal charges in eight judicial districts in the area.

In Brazil, criminal charges against human rights defenders have also affected individuals of foreign nationalities. Italian priest Luis Pescarmona who was working with the rural poor in the state of Paraíba was threatened with expulsion in 1998 for allegedly “forming a criminal gang and inciting workers to armed struggle”. He also suffered death threats, and has been the subject of a number of apparently politically motivated police investigations, criminal charges and court cases.

Honduran defenders have been persecuted on account of their efforts to curb impunity. At the beginning of April 1998, the head of the Armed Forces in Honduras, General Mario Hung Pacheco, requested a court to order the arrest of Ramón Custodio, president of the *Comité para la Defensa de los Derechos Humanos en Honduras* (CODEH), Committee for the Defence of Human Rights in Honduras. General Mario Hung Pacheco reportedly accused Ramón Custodio of forging documents after the latter showed correspondence to the press in January that year in which the former head of the Armed Forces, General Humberto Regalado, ordered General Hung Pacheco in 1988 to hand

¹² Amnesty International, *Brazil: The criminalization of rural activism -- the case of Frei Anastácio Ribeiro* (AI Index: AMR 19/27/96).

over a “disappeared” student to a counter-intelligence unit. In February 1998 a court had rejected a similar request by General Hung Pacheco. At the end of 1998 the court had not acted on the request.

Harassment at the hands of local courts has also been reported in Mexico where Indalecio Pérez Pascual has been intimidated by the Tabasco State authorities since mid-1996. In October 1998 he fled to another part of the country because of a campaign to discredit him followed by an indictment of murder; investigations into the case appear to be riddled with irregularities.¹³

Indalecio Pérez Pascual was an activist with the *Comité de Derechos Humanos de Tabasco A.C.* (CODEHUTAB), Tabasco Human Rights Committee, and member of the *Comité de Derechos Humanos Indígena de Macuspana*, Macuspana Indigenous Human Rights Committee, municipality of Tabasco. As part of his work he often filed complaints regarding serious cases of human rights violations in the State of Tabasco. Other members of CODEHUTAB have also been legally harassed. In late 1998 Francisco Goitia Prieto, priest and president of the organization, was the victim of a public campaign to discredit him and was accused of murder following a traffic accident in November 1997. Allegedly, relatives of the victim in the accident filed a complaint regarding coercion by members of the judicial police to press charges against the priest.

Critics of the Cuban government, including those who work for human rights, are frequently threatened with imprisonment. If detained, judicial guarantees for those accused of political or politically-motivated offences are severely limited (see below).

Juan Escandell Ramírez, a Cuban lawyer working for the *Corriente Agramontista* (Agramontist Current), an independent lawyers’ organization, has been threatened with imprisonment on numerous occasions because of his work defending Cuban political prisoners. Following a brief detention in February 1996, he was told by Cuban State Security that they were intending to concoct a case against him. In September 1997 he was accused of “sexual harassment”. In September his wife, Yanét Pico Camaraza, was briefly detained on suspicion of trafficking in marijuana but released without charge. The following month, they were both summoned to the military counter-intelligence headquarters in Rancho Boyeros, Havana, and informed of investigations against Juan Escandell Ramírez for having written an anonymous letter to an army major inciting him to take action against the government. Two weeks later, the couple were summoned to the headquarters of the *Departamento Técnico de Investigaciones* (DIT), Technical

¹³ See Amnesty International, *Mexico: Under the shadow of impunity*, March 1999 (AI Index: AMR41/02/99).

Investigations Department, in Havana, and asked to sign official warnings about statements they had given to foreign news media.

Juan Escandell Ramírez reportedly left Cuba in June 1998. Amnesty International believes that there is no credible evidence for the accusations against Juan Escandell Ramírez and that he and his wife were targeted solely on account of his work.

Arbitrary detentions

The detention, with or without an authorized arrest warrant, of members of human rights or social organizations can be considered arbitrary when such measures are intended to prevent human rights defenders from carrying out their legitimate work or are used as a form of punishment. Harassment of this nature by the state contradicts guidelines laid down by the UN Working Group on Arbitrary Detention.

One Mexican human rights defender, César Estrada Aguilar, member of the *Centro de Derechos Humanos Indígenas* (CEDIAC), Indigenous Rights Centre, based in Sitala, Chiapas State, Mexico, was detained, apparently without an arrest warrant, on 17 March 1998 by two police officers in the municipality of Sitala. His captors forced him at gunpoint to drive around the surrounding area and repeatedly threatened to kill him on account of his peaceful activism for indigenous rights. César Estrada Aguilar was subsequently held in the police station in Sitala for three hours, while the threats and harassment by the two police officers continued until he was able to escape.

In Cuba, detention can often lead to trial and imprisonment. However, human rights defenders and their relatives have been among those detained for short periods of time and then released without charge, in an apparent attempt to intimidate them. In July 1997 Cuban State Security officials went to the home of 80-year-old Jesús Yáñez Pelletier, vice-president of the unofficial *Comité Cubano Pro Derechos Humanos* (CCPDH), Cuban Committee for Human Rights, carried out a thorough search and arrested his wife, Marieta Menéndez. She was taken to a police station where she was held for several hours before being released, apparently without charge. She was reportedly threatened with charges of “disrespect” and “incitement to rebellion”.

Some human rights defenders have been repeatedly detained. Venezuelan human rights defender Juan Bautista Moreno was detained at his home on 19 October 1998 by soldiers who took him to military headquarters in Guasualito, in Apure state. Once in detention, the colonel in command of military operations in the region accused Juan Bautista Moreno of being a member of a Colombian guerilla group operating in Venezuela and threatened him with “disappearance”. Protesting his innocence, Juan Bautista Moreno stated that he was only working to improve the living conditions of the local people. A military officer replied: “That is precisely the problem.” Juan Bautista Moreno was released after eight hours’ detention.

Juan Bautista Moreno works in collaboration with the *Comité para la Defensa de los Derechos Humanos* (CODEHUM), Committee for the Defence of Human Rights, a non-governmental organization based in Guasdalito. He was also arbitrarily detained in October 1996. Subsequently, Juan Bautista was detained again between 27 and 29 January 1999. On this occasion he was held incommunicado at the military headquarters in Guasdalito together with eight other people, some of whom were tortured before being released. At the time of writing in April 1999, it was not known whether Juan Bautista Moreno was still being held.

Raids and surveillance

Theft, telephone monitoring, raids and surveillance are other forms of harassment that make the work of a human rights defender especially difficult and frightening.

In February 1999 heavy police surveillance was reported outside the offices of *Ciudadanos en Apoyo a los Derechos Humanos A.C.* (CADHAC), Citizens for Human Rights, a Mexican non-governmental organization which monitors human rights in the State of Nuevo León. CADHAC members were also followed when they left the office. This latest surveillance operation coincided with attempts by CADHAC to visit the CERESO de Apodaca prison after more than 40 inmates initiated a hunger strike to protest against alleged torture and ill-treatment. On 23 February CADHAC had issued a public statement about the conditions at the prison as well the authorities' refusal to allow them

access.

Giulia Tamayo León, a prominent Peruvian women's rights activist, had her home burgled in October 1998. Many of her working papers and files relating to her campaign for women's rights were stolen or tampered with. She also received several intimidatory telephone calls. Giulia Tamayo was campaigning against forced sterilization of women in Peru. The fact that many valuable items were not taken in the burglary suggests that it was politically motivated and intended to obtain more details about Giulia Tamayo

León's activities. Amnesty International believes that the theft was an attempt to intimidate Giulia Tamayo and force her to stop her legitimate work on violence against women in the health and public sectors, and other issues of women's human rights.

In October 1996 the office of the Guatemalan non-governmental organization *Centro de Acción Legal en Derechos Humanos* (CALDH), Centre for Legal Action for Human Rights, was broken into. Files were searched and a note was left on the meeting table saying, "the time has not yet come." At the time of the incident, CALDH staff were in Washington for a session of the Inter-American Commission on Human Rights concerning cases of human rights violations in Guatemala. This was not the first time CALDH had suffered harassment. In 1995 the UN Verification Mission in Guatemala (MINUGUA) confirmed that the vehicles used during surveillance operations against

the staff and office of CALDH were registered as belonging to the Presidential Chief of Staff.¹⁴

In Colombia, members of the *Comisión Intercongregacional de Justicia y Paz* (CIJP), Intercongregational Commission of Justice and Peace, have for a number of years been the target of constant harassment. As a result of this campaign against the organization, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, passed a resolution in August 1998 requesting special protection measures for the organization's director, Javier Giraldo. Just prior to this the Colombian security forces raided the office of the organization in Bogotá, following the release of a military intelligence report which alleged that CIJP had information regarding an urban guerrilla network. No one was brought to justice in relation to this incident and on account of repeated threats and inadequate measures to protect his life, Javier Giraldo eventually left the country.

In March 1999, the house of Ecuadorian human rights defender Alexis Ponce, spokesperson of the *Asamblea Permanente de Derechos Humanos* (APDH), Permanent Assembly for Human Rights, was broken into in the capital, Quito. Documents and files containing human rights information were opened and a small strong-box containing a tape-recording with information about the killing of a prominent Ecuadorian trade unionist was stolen.¹⁵ Alexis Ponce believes that whoever broke in was looking for information about the assassination of opposition parliamentarian Jaime Hurtado Gonzalez.¹⁶

In February 1999 reports had circulated of a "death list" containing the names of 11 public figures in Ecuador who were apparently among a group of foreigners invited to a ceremony marking the opening of a "peace dialogue" ("*diálogo de paz*") in Colombia last January. One of those named, parliamentarian Jaime Hurtado Gonzalez from the *Movimiento Popular Democrático*, was shot dead on 17 February 1999. Another of those named was Alexis Ponce. The day after the assassination of Jaime Hurtado, the APDH received threatening telephone calls as a result of which they moved office.

Defenders without defence -- Unfair trials against defenders

¹⁴ Paragraph 132, Third Report of the Director of the United Nations Mission for the verification of human rights and compliance with the Global Human Rights Accord in Guatemala, November 1995.

¹⁵ See Amnesty International, *Ecuador: The death of Saúl Cañar Pauta*, December 1998 (AI Index: AMR 28/03/98).

¹⁶ See Amnesty International, Urgent Action 28/99, 19 February 1999 (AI Index: AMR 28/04/99).

The right to a fair trial is a fundamental safeguard to ensure that individuals are not unjustly accused and punished. It is indispensable for the protection of other fundamental human rights, such as the right to freedom from torture and the right to life, and especially, in politically motivated cases, the right to freedom of expression.

The imprisonment of members of those dedicated to issues of human rights and social justice on political or politically motivated charges after trials which fail to meet international standards for a fair trial is a problem in Brazil, Colombia and Cuba. Among the rights of the accused that are frequently violated are the right to adequate defence and the right to be presumed innocent until proved guilty.

In Brazil, members of the *Movimento dos Trabalhadores Sem Terra* (MST), Landless Rural Workers' Movement, have been among those tried and imprisoned. On 10 June 1997 José Rainha Júnior, one of the leaders of the MST, was found guilty on a charge of double homicide and sentenced to 26 years in prison in a trial which did not meet international fair trial standards. There is compelling evidence that he was falsely convicted of having orchestrated the murder of a local landowner and a policeman in Pedro Canário, Espírito Santo state. Amnesty International believes that he was convicted on the basis of his activism in the MST in organizing land invasions rather than on the basis of the evidence presented. Following appeals by Brazilian human rights groups and by Amnesty International, the location of his retrial has been changed to Vitória, the state capital, where the impartiality of the jury may be better guaranteed.¹⁷

¹⁷ Under Brazilian law, anyone receiving a sentence of over 20 years' imprisonment automatically receives a second trial, the result of which stands, subject to appeal. See Amnesty International, *Brazil: Human rights defenders -- protecting human rights for everyone*, May 1998 (AI Index: AMR 19/08/98).

In Colombia, the system of *Justicia Regional*, originally designed to facilitate the prosecution of crimes relating to political violence and drug trafficking, has increasingly been applied to criminalize activities by human rights and social organizations.

The central features of *Justicia Regional* are that judges, prosecutors and witnesses may remain anonymous and access to evidence by defence lawyers and the defendant's right to challenge evidence are severely restricted.¹⁸ Human rights activists have repeatedly denounced the use of anonymous witnesses whose testimony cannot be contested. According to reports of one case, an anonymous witness for the prosecution acted as three different individuals, thus falsely corroborating his own evidence.

Cases are initiated by *Fiscales Regionales* (Regional Attorneys) who, although officially independent, are often based in regional military barracks and work closely with Military Intelligence in collecting evidence in investigations. In many cases, the *Fiscal Regional* is often provided with a Military Intelligence report which serves as the basis for opening an investigation as well as being the sole evidence against those accused.

In October 1997, in Bucaramanga, the capital of the department of Santander, the offices of a non-governmental organization working with those displaced by the armed conflict, *Corporación para la Reconstrucción Social y Económica de la Población Desplazada del Nororiente (Corporación REDES)*, Corporation for the Social and Economic Reconstruction of the Displaced Population of the Northeast, were raided by military forces and judicial authorities from Bogotá. During the operation, documentation belonging to REDES was confiscated, including financial reports and personal files of displaced people registered with the organization. Four REDES board members -- Javier Orlando Marin Rodríguez, Yolanda Amaya Herrera, Socorro Rincón Chinchilla and Armando Valbuena Pallarés -- were detained on the orders of the *Fiscal Regional* and are being held in preventive custody facing charges of "rebellion". The raid and arrests were made on the basis of investigations carried out by the XX Brigade, Military Intelligence.

After the arrests, Military Intelligence sources frankly acknowledged that evidence taken from the offices of REDES was in their possession, rather than in the hands of the investigators of the *Fiscalía Regional*, Regional Attorney's Office, leading to serious concerns about the manner in which evidence is gathered and controlled by the office of the *Fiscal Regional*, with clear implications as to the impartiality of investigations conducted in close collaboration with Military Intelligence.

¹⁸ See Amnesty International, *Colombia: A summary of Amnesty International's concerns related to the Colombian government's implementation of the ICCPR*, March 1997 (AI Index: AMR 23/17/97), page 16.

Furthermore, the presumption of innocence in these cases was irrevocably undermined and alleged evidence, which should have remained *subjudice*, was either published or, worse still, alluded to without having been substantiated in a court of law. In these cases, when the defence has managed to gain access to such “evidence”, it has often been found to only consist of unsubstantiated assertions of guilt by Military Intelligence.

The media coverage surrounding the raid was characterized by high-ranking military officials making unsubstantiated accusations against human rights defenders, with the clear aim of portraying the human rights movement as allies of the armed opposition. A military official who took part in raids was quoted as saying:

*“They were part of an integrated structure of people with no criminal record for subversive activities, with defined economic capacity, generally professionals. They formed a structure of support to the ELN [National Liberation Army] which was almost invisible and difficult to uncover.”*¹⁹

Such claims by the military, which are in clear violation of the laws of due process, were not publicly countered or contested by the Colombian government. In fact, the government’s silence lends credibility to the claims of the military: turning unsubstantiated accusations into apparent statements of fact.

In Cuba, repression of criticism or dissent is built into Cuban legislation. Offences such as “enemy propaganda”, “disrespect” or “contempt”, “illegal associations, meetings and demonstrations” and “dangerousness”, are widely applied to silence critics. Judicial guarantees for those accused of political or politically motivated offences are severely limited. Very few defence lawyers, all of whom are employed by the state, are willing to argue strongly in defence of their client for fear of reprisals against themselves. Prosecution witnesses are also sometimes subjected to undue pressures to testify against the accused.

Those accused of crimes against state security (which include “enemy propaganda”) are tried in provincial courts and are normally not permitted access to lawyers while in pre-trial detention. Such detention can last several weeks or months. During that period they may be subjected to psychological pressures, including threats against relatives, to sign incriminating statements. The defence lawyer is often not permitted access to the defendant or the trial dossier until very shortly before the trial hearing is due, thus preventing adequate preparation of the defence case. In some cases vital prosecution evidence has been withheld from defence counsel on the grounds of state security. Cases involving more minor offences, such as “disrespect” or “dangerousness”, are tried in

¹⁹ *El Tiempo*, 8 November 1997.

municipal courts. According to the Cuban Penal Code, the participation of a defence lawyer is “not indispensable” in municipal court cases although, if the defendant wishes, he or she may appoint one. However, in practice the defendant frequently has no opportunity to consult a lawyer, especially when, as often happens, the relatives are not informed of the arrest or the trial takes place within a day or so of arrest.

Of the wide range of Cubans, including many political opponents, subjected to such treatment, human rights defenders have also been tried and imprisoned on politically motivated charges.

Lorenzo Páez Núñez, then president of the Cuban *Centro No Gubernamental para los Derechos Humanos “José de la Luz y Caballero”*, José de la Luz y Caballero Non-Governmental Centre for Human Rights, and Dagoberto Vega Jaime, an activist of the same organization, were detained in July 1997 in Artemisa, Havana, and tried the following day in a municipal court. They were charged with “disrespect” and “defamation”, because of their attempts to disseminate to US contacts information regarding human rights violations. Lorenzo Páez, who was also a correspondent for *Libertad* (Freedom), an independent press agency, was sentenced to 18 months’ imprisonment and Dagoberto Vega to one year’s imprisonment. According to reports, the trial proceedings did not adhere to international standards for a fair trial. In particular, the two defendants did not have time to appoint defence lawyers. There was also confusion regarding the precise basis of the charges which were reportedly not adequately explained during the proceedings. Both activists were eventually released after completing their terms of imprisonment.

3. Restricted campaigning and reporting

Individuals, non-governmental organizations and relevant institutions have an important role in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to further strengthen, inter alia, understanding, tolerance, peace and friendly relations among nations and amongst all racial and religious groups, bearing in mind the various backgrounds of societies and communities, in which they carry out their activities.

Article 16, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Regular public scrutiny and inspection by both governmental and non-governmental bodies of specific activities by state officials, including members of the security forces, constitute a vital safeguard for the protection of human rights. The human rights and dignity of many sectors of society can be substantially improved when governments are open to scrutiny by appropriate bodies, including human rights groups.

Most countries in Latin America -- many emerging from dictatorships, periods of conflict, or undergoing transitions or major institutional reform, are, almost without exception, more willing to accept scrutiny by national and international human rights organizations than in the past. Nonetheless, Amnesty International has been unable to visit Cuba to investigate allegations of human rights violations in this country since 1988 on account of the failure of the Cuban authorities to grant the appropriate authorization. In spite of the apparent overall openness, Amnesty International is concerned that a number of recent incidents could signify a reversal of the willingness of most governments to allow human rights groups to conduct their activities.

In some Latin American countries a series of legal and bureaucratic measures have been introduced by state officials with the explicit intention of curtailing the defence and promotion of human rights. Some obstacles consist of deliberate attempts to block human rights initiatives; others are manifest in the omission to support and collaborate with members of human rights organizations.

Obstacles of this kind impinge on the right to freedom of expression, since one of the main goals of human rights work is to exchange information and generate greater awareness and concern on issues of fundamental freedoms and universally recognized rights. Infringements on the right to association and the right to movement also occur within this context.

Not surprisingly, restrictions of this nature have been contrived by government officials when grave human rights violations are suspected or known to have been committed.

A double injury unfolds. On the one hand, human rights defenders are prevented from conducting their legitimate activities on behalf of others, and on the other, the victims of human rights violations cannot exercise their right to have their complaint heard by an independent body other than the state. Without the support of human rights organizations victims are often unwilling or unable to pursue complaints about human rights violations against them or their relatives.

When national or international human rights organizations are prevented from exercising their right to monitor issues regarding internationally recognized human rights, local groups are likely to face much greater difficulties.

Restrictions on access by members of human rights organizations to specific geographical regions at times when grave human rights violations are known or suspected to have been committed have been reported in a number of countries. In April 1998 the Bolivian army closed off some areas of El Chapare,²⁰ restricting the access of civilians, including members of the media and human rights organizations, in order to break up demonstrations and roadblocks staged by coca-leaf growers on strike. Over the course of several days a number of people were allegedly killed and ill-treated by the Bolivian security forces, but no independent or conclusive investigation is known to have been conducted.

In Brazil, members of human rights organizations have not always been able to enter prisons or police stations where human rights violations are suspected to have been committed. Difficulties experienced by both national and international organizations have also been reported in penitentiary institutions in Mexico and Venezuela. Although Amnesty International recognizes the state's need to deal with situations regarding public, or institutional insecurity, the organization considers that such measures should not be applied at the expense of independent scrutiny by human rights groups.

²⁰ El Chapare is the main coca-leaf growing area in Bolivia located mainly in the department of Cochabamba. Over a number of years Amnesty International has documented cases of serious human rights violations, including extrajudicial execution and torture, committed by members of the Bolivian security forces in the context of operations agreed with the USA to eradicate coca-leaf crops in this area.

In Mexico, restrictions on the movement and activities of international human rights defenders have been legally endorsed, following a number of controversial expulsions shortly after the Acteal massacre in the State of Chiapas in December 1997.²¹ In May 1998 the Ministry of the Interior introduced new visa requirements for foreign human rights observers to visit the country.²² These measures made it more difficult for individuals representing human rights organizations to promote and monitor human rights owing to delays in obtaining visas, restricting visits to 10 days, except in exceptional circumstances, and requesting detailed information about the places and organizations to be visited, thereby jeopardizing the confidentiality of victims, relatives and witnesses giving testimonies.

Although the Mexican authorities assured these requirements would not restrict the activities of “reputable” organizations, previous evidence suggests to the contrary. In April 1997 National Immigration Institute (INM) agents in Acapulco, State of Guerrero, confiscated the visas of two members of an international delegation, Vilma Núñez de Escorcía, director of the Nicaraguan Human Rights Centre, and Benjamín Cuéllar, director of the Human Rights Institute of the Central American University in El Salvador, who was visiting prisons and collecting testimonies of victims of torture. Despite having informed the Mexican consulate in their own countries about their visit, the authorities expelled them from Mexico four days later. In October 1998, after obtaining special visas, Amnesty International delegates were denied access to prisons on more than three occasions, despite the fact that the organization had informed the authorities of its intentions.

Cuban human rights defenders face different obstacles to the free exercise of their right to freedom of association, assembly and expression. Despite in many cases having requested official recognition, human rights groups, among others, have not been permitted to operate officially, although they are not officially banned. As a result of their unofficial status, the activities of such groups are restricted and difficulties are frequently encountered in organizing events, or exchanging information and reports from the victims of human rights violations. Some have had their telephone lines cut off or been ordered by police not to go out on certain days. Still others who have attempted to travel to the capital Havana or elsewhere have been ordered to return to their home towns.

²¹ See Amnesty International, *Mexico: Under the shadow of impunity*, March 1999 (AI Index: AMR 41/02/99).

²² See Amnesty International, “Mexico: New visa requirements jeopardize work of human rights defenders”, 29 May 1998 (AI Index: AMR 41/27/98).

4. Protection programs for human rights defenders

The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this Declaration.

Article 12(2), Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Genuine government human rights initiatives should prioritize the protection and legitimacy of, as well as collaboration with, members of human rights and social organizations.

Responsibility for protecting human rights defenders cannot be transferred to a third party or to the members of human rights organizations themselves. Only the state has the power and the means to exercise control over state agents involved in human rights violations and to supervise and implement appropriate measures for the protection of those individuals targeted by state agents, or those operating with the state's consent. The state's responsibility to protect those who contribute to the promotion of universal freedoms has been reiterated in numerous recommendations by the UN and the Inter-American Commission on Human Rights. Article 12(2) of the Declaration on Human Rights Defenders also affirms this obligation.

While national governments retain primary responsibility for guaranteeing the human rights of its citizens, state and municipal authorities also play an important role in the local administration of justice, maintenance of law and order, and policing. It is therefore essential that the authorities at all levels of government explicitly commit themselves to promoting human rights, and protecting the rights of human rights defenders.

Protection for human rights defenders is not just an issue of safety. Genuine efforts to protect those at risk require full respect for all principles outlined in the Declaration on Human Rights Defenders, most fundamentally, unconditional recognition of the right to contribute to defending and promoting universally accepted human rights and fundamental freedoms.

Governments' efforts for the protection of human rights defenders should integrate immediate protection measures with preventative measures. Priority must be given to thorough investigations of the violations and threats against human rights defenders and

the bringing to justice of those responsible. Other preventative measures include education of security force agents on issues regarding human rights and social organizations, as well as public awareness campaigns.

Consultation with human rights defenders is vital in determining those measures which could effectively enhance their security. The prompt implementation of international recommendations and principles for the protection of human rights defenders is also important.

Pledges to protect human rights defenders are common, even routine, in some countries in the region. Nonetheless, cases outlined in this report show that in reality such promises often remain empty and unfulfilled. No matter how sophisticated the rhetoric or the mechanisms initiated ostensibly for the protection of human rights, human rights defenders will continue to be at serious risk if governments fail to exert sufficient political will to implement effective protection programs.

The degree of political will within governments to realize their obligation to protect human rights defenders can be measured against the implementation of recommendations made by Amnesty International in this report.

In Brazil, official measures to protect human rights defenders, including witnesses to serious human rights violations, have seldom been adequate. Since the 1996 death of Brazilian activist Francisco Gilson Nogueira de Carvalho (see above: **Risking their lives**), colleagues in the *Centro de Direitos Humanos e Memória Popular* (CDHMP), Centre for Human Rights and Collective Memory, in Natal, the state capital of Rio Grande do Norte, have been intimidated as they have tried to investigate his murder and the activities of a local death squad. A “death list” was discovered in which CDHMP staff and several state officials were named. One witness was killed. The state Attorney General and six state prosecutors, allegedly named on the list, had to suspend their investigations. Although Luis Gonzaga Dantas, a member of the CDHMP, received federal police protection for several months, he was eventually, partly because of the inadequateness of this protection, forced to leave his home to guarantee his safety.

Witnesses can play a crucial role in bringing to justice those responsible for human rights violations. However, in Brazil witnesses who are prepared to testify against police and hired gunmen, often protected by powerful political interests in the area, are routinely harassed and intimidated. The provisions for protection of witnesses are wholly inadequate, and the vast majority of witnesses receive no official protection, although the government submitted a bill to congress in September 1997 to create a national witness protection program. The first witness protection program was set up in 1996 by a human rights organization, *Gabinete de Assessoria Jurídica às Organizações Populares*

(GAJOP), Legal Support Office for Grassroots Organizations, in Pernambuco. The program, which has since expanded to several more states, functions in collaboration with the state government, but nonetheless depends heavily on volunteers to accompany and protect endangered witnesses, that is, on human rights defenders in effect protecting other defenders, in the absence of a fully functioning government-run program.

In the case of Guatemala, protection for human rights defenders was one of the first issues to be negotiated as part of the peace process between the Guatemalan government and the *Unidad Revolucionaria Nacional Guatemalteca* (URNG), Guatemalan National Revolutionary Unity. In Clause 7 of the *Acuerdo Global sobre Derechos Humanos*, Global Human Rights Accord,²³ the Guatemalan government reiterated its promise to protect human rights defenders and to guarantee their freedom to continue their work.

Nonetheless, in July 1996, in its fifth report to the UN General Assembly, MINUGUA stated that the government had not adopted any special measure to provide guarantees or protection to individuals and organizations working in defence of human rights. The report added that the threats and acts of intimidation against these individuals and organizations had not been investigated and that the practice of characterizing human rights promotional work as “subversive” was continuing in some regions, especially by some members of the army, the CVDC²⁴ and former military commissioners. “While this message persists, individuals and organizations working on human rights will continue to be a particularly vulnerable sector.”²⁵ In March 1999 MINUGUA reported “a substantial increase in reports of threats and intimidation against individuals working for the protection of human rights”, during the period from April to December 1998.²⁶

²³ Although five of the six agreements signed as part of the Guatemalan peace process did not come into effect until 29 December 1996 with the signing of the Agreement for a Firm and Lasting Peace, the Global Human Rights Accord, signed on 29 March 1994, came into effect that same day. This Accord promised, among other things, “to act firmly against impunity” and committed the government to ensuring full observance of human rights and to strengthening the institutions necessary to improve their protection.

²⁴ *Comités Voluntarios de Defensa Civil* (CVDC), Voluntary Civil Defence Committees.

²⁵ MINUGUA’s Fifth Report, August 1996, paragraph 182.

²⁶ MINUGUA’s Ninth Report, March 1999, paragraph 76.

Likewise, the Guatemalan government has yet to provide the resources needed to implement the measures established almost three years ago under the Law on the Protection of Witnesses and Defendants and Persons Linked to the Administration of the Criminal Justice System²⁷ to protect those persons who are threatened or who run the risk of being threatened in the course of judicial proceedings. Attacks, threats and intimidation against those involved in criminal investigations and judicial proceedings against perpetrators of human rights crimes have been frequent in Guatemala.²⁸

This apparent lack of political will to take concrete steps to protect Guatemalan human rights defenders, including witnesses, is evidence of the Guatemalan government's refusal to recognize the legitimacy and value of their work. This refusal, in some instances tantamount to contempt, is reflected in a statement given by President Álvaro Arzú Irigoyen to members of the *Escuela Politécnica*, Military Polytechnic College, in Guatemala City on 2 September 1998. In what appears to be a veiled attack on human rights defenders, he referred to those who have "tried to reject or delegitimize whatever recognition the country has obtained on human rights issues" as traitors.

In Colombia, widening disparities between rhetoric and reality regarding issues relating to protection of human rights defenders have prompted recommendations by numerous international human rights bodies, including the UN and the Inter-American Commission on Human Rights.²⁹ Amnesty International has also noted that the government's efforts to provide protection for human rights defenders have failed to match the severity of the risk they face. Although some protection, for example, office and home security systems, is available the risk assessments required in order to benefit from such assistance are seemingly too cumbersome and inefficient. Progress in other areas of protection, such as investigation, is inexplicably slow.

Equally, despite Presidential Directive No. 11 of July 1997³⁰ which attempted to reaffirm the Colombian government's support for human rights organizations and deter

²⁷ Decree No. 70-96, 27 August 1996.

²⁸ See Amnesty International, *Guatemala: State of impunity*, April 1997 (AI Index: AMR 34/02/97).

²⁹ For example, the 1998 report of the UN High Commissioner for Human Rights stated that "the conditions in which activists are working ... demonstrate that the Government's efforts to protect them have proved insufficient". UN doc E/CN.4/1998/16, paragraph 146.

³⁰ The directive ordered all public servants, including members of the security forces, to "abstain from formulating false accusations or acting in a way which would undermine the right to defence, the due process of law and the honour of those being accused."

unsubstantiated allegations against them, no disciplinary measures have been taken against state agents who continue to jeopardize the safety of human rights defenders by claiming they are linked to armed opposition movements.

Neither has potentially damaging information contained in military intelligence archives been thoroughly revised and made available to those it may put at risk. In November 1997 a national human rights organization discovered a 94-page military intelligence report dating from 1994. The report named more than 50 members of human rights and social organizations as being involved in terrorism and acting as fronts for armed opposition groups. The 1994 report came to light when defence lawyers were checking prosecution evidence in a judicial investigation and discovered that the charges against the defendants, who were members of non-governmental organizations, were based solely on the contents of the old report. The case exemplifies the way in which military intelligence, however out-of-date or unsubstantiated, can serve as evidence in criminal prosecutions.

In light of revelations regarding the 1994 report, and the killing of Colombian human rights lawyer Dr Eduardo Umaña Mendoza in May 1998, Colombian human rights defenders requested that the Procurator General examine military intelligence files and inform human rights workers by January 1999 of any information the files contained which could be detrimental to their security. At the time of writing the Procurator General had still not informed human rights workers on his findings.

Human rights violations and threats against members of human rights and social organizations are also the direct consequence of the authorities' failure to honour international human rights standards ratified by the government, and to implement principles and recommendations by the Inter-American human rights system and the UN regarding the protection and safety of human rights defenders. Most notably, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, recently adopted by the UN General Assembly on 9 December 1998, outlines a series of guarantees for protecting human rights defenders and their work.

Notably, Resolution 1998/3 of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, issued in April 1998 condemned the murders of numerous human rights defenders and called on governments:

“...not to leave crimes committed against human rights defenders unpunished, to allow and facilitate all necessary inquiry, and to ensure judgement by a civil tribunal and punishment of the perpetrators as well as compensation...;

“...to take any measures necessary within its own jurisdiction to ensure the security of all persons covered by the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights who are being repressed, harassed or threatened throughout the world;”³¹

³¹ UN doc E/CN.4/Sub.2/1998/L.142

The UN and the Inter-American human rights system frequently issue urgent calls for immediate measures to protect individuals at imminent risk. In some cases, governments ignore such requests and fail to implement the measures requested, in others the governments' response falls far short of meeting the necessary urgency, or is ineffective because the requests of human rights defenders are not adequately considered. For instance, in April 1998 the UN High Commissioner for Human Rights recommended that the "Colombian authorities ensure proper recognition of the right of human rights advocates to conduct their activities without interference or unlawful hindrance, and without fear for their lives, physical integrity or freedom."³²

The killing of Colombian human rights defenders has nonetheless continued unabated.

³² UN doc E/CN.4/1998/16, paragraph 204. The Statement by the Chairman of the 54th Session of the UN Commission on Human Rights also expressed concern at the "apparent increased threat to many human rights defenders" and urged the Government of Colombia to strengthen and consolidate its support, through all institutions of the State, of all those who promote the defence of human rights. The UN Commission also called "on the Colombian Government to give special attention to the safety of human rights workers", 6 April 1998.

Amnesty International's recommendations for the protection of human rights defenders

Governments are urged to fulfil their obligation to protect human rights defenders by adopting and implementing the following ten points:

1. Ensure that the principles contained in the *Declaration on the Right and Responsibility Of Individuals, Groups and Organs of Society to Promote And Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted by the United Nations General Assembly on 9 December 1998, are fully incorporated into national law and mechanisms, including National Human Rights Commissions, for the protection of human rights. Authorities at all levels of government should explicitly commit themselves to promoting respect for human rights, and to the protection of human rights defenders.
2. Ensure that in the interest of fulfilling obligations contained in international human rights law, state officials at every level of the state apparatus, including lower-ranking officials, fully collaborate with and facilitate the work of members of non-governmental human rights organizations.
3. Ensure exhaustive and impartial investigations are conducted into violations against human rights defenders, that those responsible are brought to justice and the victims or their relatives provided with reparation. The results of such investigations should be made public. Members of the security forces under being formal investigation for human rights violations should be immediately suspended from active service until investigations have concluded. Governments should also set up information systems to ensure that no agent of the security forces dismissed because of possible involvement in human rights violations against human rights defenders is employed in other official departments.
4. Effectively disband, disarm and prosecute paramilitary groups which operate with the complicity or acquiesce of the security forces.
5. Ensure that the perpetrators of human rights violations against human rights defenders do not benefit from any legal measures exempting them from criminal prosecution or conviction. Previous legislative measures that prevent full and conclusive investigations into the cases of violations against human rights defenders should be repealed.
6. Take effective action to ensure all public servants, including the security forces, act to recognise the legitimacy of the work of human rights defenders and to abstain from

making unsubstantiated allegations against human rights defenders. Statements of this nature must be publicly countered and appropriate measures applied to sanction those responsible.

7. Take effective action to sanction state officials who abuse the criminal process to the detriment of members of human rights and social organizations with the intention of harassing them or curtailing their legitimate activities for the defence of human rights and fundamental freedoms. Ensuring that human rights defenders have equal access to the law and that judicial investigations and proceedings against them are conducted in accordance with international fair trial standards set by the American Declaration of the Rights and Duties of Man, the American Convention on the Human Rights and the International Covenant on Political and Civil Rights (ICCPR) .

8. Adopt integrated programs for the protection of human rights defenders that include preventative measures, such as thorough criminal investigations into attacks and threats against human rights defenders, education for security force agents on the rights of human rights defenders to carry out legitimate activities, as well as security measures to assist with immediate safety issues. Such programs should ensure that all measures to protect human rights defenders are adopted in accordance with the requests of members of human rights organizations.

9. Ensure full implementation of comprehensive witness protection programs for the protection of individuals, including human rights defenders, involved in criminal investigations and judicial proceedings against those accused of human rights violations.

10. Ensure the full implementation of international recommendations and resolutions, including precautionary or provisional measures, regarding human rights defenders, by the Inter-American human rights system, including the OAS General Assembly³³ and the United Nations. Appropriate measures should be taken to monitor implementation.

11. Ensure full support for mechanisms and initiatives, including special rapporteurs, within the United Nations and Inter-American human rights systems that give wide and universal recognition to human rights defenders and their work. Also, recognising the jurisdiction of the Inter-American Court of Human Rights, the UN Human Rights Committee and the UN Committee against Torture in order to permit submission of complaints regarding violations against human rights defenders.

³³See Introduction.

Amnesty International's recommendations to the Organization of American States

The Organization of American States (OAS) should recognize the serious situation faced by human rights defenders in the region as well as the important contribution that they make to the establishment and strengthening of national systems of human rights protection as well as to the inter-American system. In addition, the OAS should take steps to guarantee the protection of the rights and freedoms of human rights defenders to carry out their important work.

At its next General Assembly, the OAS should:

1. Adopt a resolution on human rights defenders publicly recognizing the contribution they make to the promotion and defence of human rights and urging states to grant non-governmental human rights organizations the necessary guarantees and facilities to enable them to carry on contributing to the promotion and defence of human rights, and to respect the freedom and personal safety of their members.
2. Establish the measures and procedures necessary to set up a system of consultative status at the OAS for non-governmental organizations so that they have improved access to the OAS and can make a greater contribution to its work.
3. Support the establishment within the Inter-American Commission on Human Rights of the post of Special Rapporteur on human rights defenders, thereby providing the inter-American system with a specific mechanism which, together with the procedures at the disposal of the Inter-American Commission and the Inter-American Court, can contribute towards the protection of human rights defenders.

The Inter-American Commission on Human Rights should continue its role in promoting and protecting human rights defenders in the region, in particular, by:

1. Continuing its practice of including the situation of human rights defenders as a subject for discussion during its visits to OAS member states.
2. Creating within it the post of Special Rapporteur on human rights defenders.

3. Including a chapter in its annual report on the situation of human rights defenders in the region.

In addition, the OAS should encourage member states to thoroughly implement the provisions of the UN Declaration on Human Rights Defenders and to eliminate any obstacles that might prevent or hamper their implementation.

Appendix

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares:

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present

Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting

against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, *inter alia*:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers,

law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.