

ANDEAN REGION

@Human rights and refugee protection

***Statement by Amnesty International to the seminar on forced migration
in the Andean region
Quito, Ecuador, February 1992***

Amnesty International welcomes the convening of this seminar as an opportunity to further advance the task of refugee protection in the Andean region. There is a growing number of refugees in this region and it is essential that governments, with the active participation of the United Nations High Commissioner for Refugees (UNHCR) and interested non-governmental organizations, take the necessary steps to ensure that they receive protection. Furthermore, this seminar is an opportunity to secure explicit recognition of the fact that serious and widespread human rights violations in refugees' countries of origin are a primary cause of forced migration, and that until such violations cease there will continue to be a refugee "problem".

Amnesty International is a worldwide voluntary movement that works to prevent some of the gravest violations by governments of people's fundamental human rights. The main focus of its campaigning is to free prisoners of conscience¹, to ensure fair and prompt trials for political prisoners, to abolish the death penalty, torture and other ill-treatment of prisoners and to end extrajudicial executions and "disappearances".

Amnesty International's work for refugees follows from these concerns: it opposes the forcible return (*refoulement*) of any person to a country where he or she risks imprisonment as a prisoner of conscience, torture, "disappearance" or execution. In order to ensure that such people are identified and given protection, Amnesty International calls on all governments to ensure that asylum-seekers have access to fair and satisfactory asylum procedures.

Refugees have other humanitarian needs besides their primary need for protection against forcible return. Having been forced to leave their homes and local communities, they face a range of social and economic problems. However, while these humanitarian problems need to be addressed, Amnesty International concentrates on working to prevent refugees from being sent back to situations that could imperil their life, physical integrity or freedom.

Any successful approach to dealing with the plight of refugees in the Andean region must begin by recognizing the fact that so many of the people who are forced to flee their homes do so as a direct consequence of serious and widespread human rights violations. There are other reasons, too, for forced migration, but it is no accident that many of the so-called "refugee-producing" countries in the world are those where serious human rights violations are widespread. This is certainly true in some countries of the Andean region

¹ These are people detained anywhere for their beliefs or because of their ethnic origin, sex, colour or language, who have not used or advocated violence.

where such violations persist, and where many people have fled their homes seeking protection in other states or in other parts of their own country.

For example, in **Colombia** human rights violations and political violence connected with a long running civil conflict has in recent years produced an increasing number of refugees and internally displaced persons. The widespread political violence has been exacerbated even further by the increasingly violent activities of drugs trafficking organizations, frequently working with the support or acquiescence of local security forces, which have taken over vast areas of land through the intimidation, harassment and eventual displacement of the local civilian communities.

Despite some recent encouraging developments in Colombia, including the progress that has been made through peace talks between several of the guerrilla groups and the government, there has been a continuation of political violence and serious human rights violations in many regions of the country. In areas where guerrilla forces remain active, the local population is often perceived by the armed forces and paramilitary forces as potential guerrilla collaborators and has, as a result, been subjected to arbitrary arrest, torture, "disappearance" and extrajudicial execution by army personnel and paramilitary forces.

In many cases people fleeing these countries have been individually singled out for persecution by the government forces. In other cases, a climate of insecurity and violence arising from internal conflict makes people generally vulnerable to human rights violations at the hands of the armed forces or, in some cases, to abuses committed by opposition groups engaged in armed conflict with the government. However, whether a government or its armed forces are themselves persecuting such people, or are unable or unwilling to protect them against abuses at the hands of armed opposition groups, it is clear that many of those who flee would be at risk if they were to be forced to return.

The obligation to protect those who flee because of threats to their lives or freedom is clearly established in international law. The internationally recognized principle of *non-refoulement*, set out in the 1951 Convention relating to the Status of Refugees, prohibits the forcible return of any person to a country where they risk serious human rights violations. The states of the Andean region are all parties to the 1951 Convention, and some of these states played an active part in its drafting.

In order to ensure that refugees are effectively protected it is essential that governments act in accordance with their obligations under international law to protect those at risk. In Latin America there is a tradition of offering asylum to those who risk political persecution in their own countries. More recently, Latin American states have shown some willingness to extend protection to a broader group of refugees than covered explicitly by previously established international standards. In 1984, in the Cartagena Declaration, ten Latin American states resolved to extend protection to

"persons who have fled their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order."

The General Assembly of the Organization of American States (OAS) in 1985 endorsed this declaration and urged all member states to implement its provisions.

Although the Cartagena Declaration was drafted with a view to the refugee situation in Central America, its recognition that general circumstances can give rise to a legitimate claim for protection is applicable also in the Andean region. While governments in the region are bound, as parties to the 1951 Convention, not to forcibly return individuals at risk of serious human rights violations, this obligation is sometimes interpreted by some governments to exclude those who are not individually targeted for persecution by their government. The strength of the Cartagena Declaration is that it explicitly recognizes that "generalized violence" and "massive violations of human rights" are valid reasons for seeking protection, and in so doing ensures protection for a broader group of people. Amnesty International believes that the full implementation of the Cartagena Declaration by the states of the Andean region would be an important step towards ensuring that all those at risk of serious human rights violations are effectively protected against forcible return.

However, the protection of refugees against forcible return is not enough. The real solution to the refugee "problem" lies in addressing the reasons for flight, and it is thus of crucial importance that states live up to their obligations to respect the fundamental human rights of their citizens. Furthermore, states must speak out against human rights violations in other states and bring pressure to bear on governments which disregard fundamental human rights. The numerous international human rights instruments, the practice of the United Nations (UN) Commission on Human Rights and its related bodies, and, indeed, practice under the inter-American human rights system, clearly establish that the protection of human rights is not an internal matter; states have a legitimate interest in the manner in which other states treat their citizens. This is made abundantly clear when human rights violations in one state result in people fleeing to another state.

In searching for solutions due attention must also be given to the internally displaced – people who have fled their homes and communities but who have not crossed an international border and do not therefore fall within the formal refugee definition. When people flee serious and widespread human rights violations they may not always flee across a border, but may simply move to other parts of their own country. This is especially true where such violations are more prevalent in a particular region of the country, often as a result of an internal conflict in that region. If people flee from areas where armed opposition groups involved in conflicts with the government are active, they will often be viewed with suspicion by the authorities and so the mere fact of their displacement may increase their vulnerability to human rights violations.

For example, in **Peru**, where there are serious and widespread human rights violations, since 1983 an estimated 200,000 men, women and children have been forced to flee the remote rural areas in the emergency zones to urban centres, in an attempt to escape these violations and political violence. This mass internal migration has taken place in the context of the armed conflict between government security forces or civil defence patrols acting with their support and the opposition forces of the *Partido Comunista del Perú*

(*Sendero Luminoso*), Communist Party of Peru (Shining Path), and the *Movimiento Revolucionario Túpac Amaru*, Tupac Amaru Revolutionary Movement. The great majority of these displaced people have moved to Lima, the capital, where they settled in shanty-towns. Others have settled in Huancayo, Ayacucho, Pisco, Nazca and Arequipa. Some displaced people have been targeted by the security forces or so-called paramilitary groups acting with their support and many have "disappeared" or been extrajudicially executed. Also, displaced people have been among those in Peru who have been subjected to atrocities, including torture and killing after mock-trials, by members of the *Partido Comunista del Perú*. For example, some of those who have allegedly refused to support that Party, who have been accused of being informants, or have sought to help the displaced through soup kitchens have been subjected to such abuses.

Amnesty International believes that the primary duty to protect the internally displaced lies with the government. The fundamental human rights of the internally displaced – no less than other citizens – must be respected. However, in situations where a government has shown a disregard for the human rights of the displaced, and especially where the displaced are viewed with suspicion by the government in the context of an internal conflict, the international community must undertake effective action for the purposes of offering to the displaced the protection they have been denied by their own government and to which they would be entitled if they were to cross an international border.

The international community needs seriously to consider taking action to protect the internally displaced. In so doing they should ensure that whatever action is taken actually provides real and effective protection to the internally displaced as well as any humanitarian assistance. If the UN, for example, becomes involved in providing humanitarian assistance to the internally displaced, but does not also provide effective protection, there is a danger that the displaced people may continue to face risks but at the same time may be precluded from seeking protection abroad because of an unwarranted reliance by potential asylum states on the effectiveness of the UN action.

The Andean region will continue to face a refugee "problem" so long as serious human rights violations persist in some countries in the region. The solution lies in ensuring protection for those who have fled and are at risk if returned, and in bringing pressure to bear on countries which disregard the fundamental human rights of their citizens.