

## Open letter to the candidates for the post of Secretary General of the Organization of American States

To the candidates for the post of  
Secretary General of the Organization of American States (OAS)

15 March 2005

Dear Sirs,

Amnesty International is a movement, made up of over one and a half million members in approximately one hundred and fifty countries throughout the world, working for observance of the fundamental rights enshrined in the Universal Declaration of Human Rights and other related instruments. It is independent of all governments or groups of governments, political ideologies, economic aims and religious beliefs. Its sole interest is to ensure that human rights are protected and effectively observed.

In this context, Amnesty International is paying particular attention to the process which will shortly result in the election of a new Secretary General of the OAS following the resignation of the person appointed in June 2004. For whoever is appointed to the post, the issue of human rights is clearly of particular significance since, both historically and legally, it is an inherent part of the OAS. Indeed, as you are certainly aware, as well as the many inter-American instruments that relate to the subject, the OAS Charter, in its guiding principles, reaffirmed and proclaimed *the fundamental rights of the individual*<sup>1</sup>, set up the Inter-American Commission on Human Rights *whose principal function shall be to promote the observance and protection of human rights*<sup>2</sup> and was unambiguous in calling for the consolidation in the Americas of a system *based on respect for the essential rights of man*.<sup>3</sup> The Inter-American Democratic Charter, which was adopted by acclamation of the Active Member States of the organization, even more explicitly stresses that *the promotion and protection of human rights is a basic prerequisite for the existence of a democratic society*.<sup>4</sup> It also expressly states that *essential elements of representative democracy include... respect for human rights and fundamental freedom and access to and the exercise of power in accordance with the rule of law*<sup>5</sup> and goes on to reaffirm that it is the intention of the Member States *to strengthen the inter-American system for the protection of human rights*.<sup>6</sup>

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<sup>1</sup> Article 3(l) of the OAS Charter.

<sup>2</sup> Article 106 of the OAS Charter.

<sup>3</sup> Fourth paragraph of the Preamble to the OAS Charter.

<sup>4</sup> Ninth paragraph of the Preamble to the Inter-American Democratic Charter.

<sup>5</sup> Article 3 of the Inter-American Democratic Charter.

<sup>6</sup> Article 8 of the Inter-American Democratic Charter.

Bearing all this in mind, Amnesty International believes that there are a number of important and very urgent human rights tasks waiting to be addressed at the inter-American level which are of serious concern. Of them, we believe that it is important for the following to be brought to your attention, as candidates:

- The widespread persistence of impunity which has been fostered by the failure to implement specific norms and action at a national level to comply with the provisions of human rights instruments that are binding on the Active Member States as well as, in many cases, the failure to ratify or make reservations to international treaties on the subject and the blatant disregard or failure to fully comply with the recommendations and decisions of the Inter-American Commission on Human Rights and Inter-American Court of Human Rights.
- Despite the speeches and statements made in support of the Inter-American Commission and the Inter-American Court, there has been a clear absence of financial backing for them, making it difficult for them to attend to the increasingly large workload they are faced with, especially following the entry into force of their new rules of procedure<sup>7</sup>.
- The threats from within the OAS itself to the independence and autonomy of the Inter-American Commission and, consequently, to the system of human rights protection as a whole. This was expressed in Executive Order No. 04-01 issued by the now former Secretary General, Miguel Angel Rodríguez, in which the Office of the Executive Secretary of the Commission was made subordinate to bodies of the organization that, strictly speaking, are political, thereby affecting not only internal and staffing budgetary matters but also placing at risk key aspects of the functioning of the system such as the confidentiality and objectivity required in the treatment of cases. A step forward has been made with Executive Order No. 05-03, issued by the Acting Secretary General currently responsible for the General Secretariat of the Organization of American States, in that it is directed to overcome these kinds of limitations. However, there is no certainty that the new Secretary General, when elected, will retain the positive elements of this latest rule or that, if he does, he will strive to ensure that it is strictly enforced and adopt additional measures to reinforce the essential independence of the inter-American human rights protection bodies and the room they have for autonomy.
- Approaches that give first and sometimes sole priority to the signing and implementation of international trade agreements, while failing to make sufficient assessments of the impact they will have on the effective enjoyment of human rights by the people involved in the enforcement of such instruments and forgetting that compliance with standards and principles on fundamental rights has to take unambiguous *precedence* over all other international agreements, whatever their nature. Such approaches tend to leave to one side, on the one hand, the fundamental criterion that the economy should be at the service of people and not the other way around and, on the other hand, that the United Nations Charter itself, as a legally binding instrument, as well as having human rights promotion as one of its aims, stresses that the charter – and certainly including that aim – shall take precedence over any other international treaty that contradicts it.<sup>8</sup>

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<sup>7</sup> One worrying example was when, on 27 November 2003, all the judges and officials of the Inter-American Court had to draw the attention of the then Secretary General to the fact that their budget had been cut and sought a substantial increase for fear of imminent collapse. The complete text of the communication in question can be found at [http://www.derechos.org/nizkor/costa\\_rica/doc/oea1.html](http://www.derechos.org/nizkor/costa_rica/doc/oea1.html).

Similarly, in 2004 the Inter-American Commission suffered a 10 percent cut in its regular budget compared to the amount previously allocated to it (see Resolutions AG/RES 2059 (XXXIV-O/04) and AG/RES 1974 (XXXIII-O/03)).

<sup>8</sup> Article 55 of the United Nations Charters states that the organization shall promote “*universal respect for, and observance of, human rights and fundamental freedoms for all*” while article 103 states that “[*i>n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail*”. It should also not be forgotten that paragraph 6 of the Preamble to the OAS Charter solemnly reaffirms the principles and purposes of the United Nations.

Lastly, it is worth recalling that at the World Conference on Human Rights held in Vienna in 1993, representatives of over 170 countries agreed that protecting and promoting human rights is the *first responsibility of Governments*.

- Various challenges to the rules and principles of the Rule of Law as manifested in the undermining of the monitoring role which the judiciary should have with regard to the other public authorities, as well as the support given to situations that are in breach of the lawfully established institutional framework. These things have occurred despite the fact that the OAS Charter and the Inter-American Democratic Charter clearly prohibit such conduct<sup>9</sup> and that the Universal Declaration of Human Rights itself establishes that it is *essential* for human rights to be protected specifically by *rule of law*.<sup>10</sup>
- With a few exceptions, organizations from civil society in the continent still have very limited involvement in OAS activities, due to the bureaucratic inertia and interests which prevail within the organization as well as the political will of some governments which try to prevent such involvement. This happens despite the commitment made by the OAS as an institution in, for example, the recommendations of its Permanent Council on "*Strategies to Increase and Strengthen Civil Society Participation in OAS Activities*".<sup>11</sup>
- Human rights defenders are also facing serious situations in several countries of the region where they find themselves the targets of different types of attacks for carrying out their work, sometimes resulting in physical injury and occasionally even death. Those behind such attacks are sometimes state actors and sometimes private actors with in neither case governments showing the due diligence they should in protecting these important social actors.

In this context, Amnesty International is requesting each of you, as candidates for the post of OAS Secretary General, to clarify publicly and officially whether you feel that your respective personal records demonstrate that you would be capable of addressing the above-mentioned problems and to state explicitly whether, in the event of being appointed to the post, you are prepared to firmly commit yourselves to complying with the following:

- A) Using all necessary means to promote effective action against impunity and in particular ratification of, and/or the withdrawal of reservations to, inter-American and international human rights treaties, the implementation of such treaties in the countries of the Americas by means of appropriate laws and policies and full compliance with the recommendations of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.
- B) Pushing as soon as possible for a substantial increase in the regular budgets of the Commission and the Court so that they have the necessary stability to be able to carry out the work they have to do as a result of the increasing number of cases and mandates assigned to them.
- C) Maintaining and developing the positive elements of Executive Order No. 05-03 that seek to ensure the effective independence and autonomy of the Commission and the Court, including asking the Active State Members of the Organization to make additional financial contributions for that purpose.
- D) Formulating initiatives, in line with the Organization's Charter, the United Nations Charter, the Inter-American Democratic Charter and all the different instruments applicable in the Americas, to consolidate the principle that human rights take primacy over commercial treaties as well as treaties of any other kind.

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<sup>9</sup>Article 9 of the OAS Charter states that *a Member of the Organization whose democratically constituted government has been overthrown by force may be suspended from the exercise of the right to participate* in the activities of the organization and this is also developed in article 19 of the Inter-American Democratic Charter which states that *an unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, constitutes, while it persists, an insurmountable obstacle to its government's participation in (...) the (...) bodies of the Organization*. In connection with this, article 4 of the same Charter states that *the constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy*.

<sup>10</sup> See the third paragraph of the Preamble to the Universal Declaration of Human Rights.

<sup>11</sup> Resolution CP/RES No. 840 (1361/03).

- E) Demonstrating a permanently and active commitment to accepting the basic requirements of respect for the rule of law in the countries of the region as being the appropriate framework for compliance with fundamental rights.
- F) Putting forward proposals to all appropriate bodies to bring about the meaningful and fair participation of civil society organizations in the work of the OAS.
- G) Supporting effective protective measures of the person and the work carried out by human rights defenders in the region as well as measures to assess the situation they are facing in the region on an ongoing basis.

We believe that what you have to say on these key issues on the hemisphere's agenda will be extremely important not only for our world movement but also, incidentally and especially, for the people and countries of the Americas.

Yours sincerely,

Susan Lee

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