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## OPEN LETTER TO THE HEADS OF STATE OF AMERICAN STATES ON THE OCCASION OF THE 50TH REGULAR SESSION OF THE GENERAL ASSEMBLY OF THE ORGANIZATION OF AMERICAN STATES

The Fiftieth Regular Session of the General Assembly of the Organization of American States (OAS) will focus on how Member States address the challenges posed by the COVID-19 pandemic in the region. Amnesty International calls on OAS Member States to include firm commitments in the final resolutions that ensure the protection of the human rights of every person, without distinction, in the final resolutions of the General Assembly.

Putting human rights at the centre of state actions would make it possible to arrive at comprehensive solutions to the structural problems afflicting the region. A collaborative approach to address vulnerability and build resilience in order to address the challenges of COVID-19 requires multilateralism to focus efforts to ensure the restoration of human rights in the development of public policies. Amnesty International takes this opportunity to reiterate to OAS Member States and the Secretary General its considerations regarding urgent human rights situations in the region.

### 1. Situations of particular concern that pre-date the COVID-19 pandemic

Within the framework of this OAS General Assembly, Amnesty International calls on States in the region to redouble their efforts to ensure that observance of and respect for human rights become a reality for those living in this region. In particular, Amnesty International would draw particular attention to the situation of people living in two countries in the region whose complex human rights situations are emblematic of the need to address these issues in a comprehensive manner during the General Assembly.

#### a) *Chile*

Mid-October 2019 saw the start of numerous demonstrations in Chile following the announcement of a fare increase on public transport. The demonstrations subsequently expanded massively to encompass demands for a more just society in which the state guarantees rights such as the rights to health, water, quality education and social security.

Amnesty International believes that human rights violations, such as the use of lethal force, and crimes under international law, such as the torture of protesters, committed by members of the security forces in the context of these protests were not isolated or sporadic incidents. On the contrary, they appear to be part of a consistent pattern as regards the type of violations and the *modus operandi* employed throughout the country, primarily by members of the Chilean police (*Carabineros*). The degree of coordination required to sustain the violent repression of the protests gives the organization reason to believe that there was probably command responsibility at the highest level for either ordering or tolerating the repression. Such a serious possibility must, naturally, be clarified by the judicial authorities in an independent and impartial manner.

It should be noted that during and after the state of emergency, commanders in the Chilean police as well as their superiors, far from exercising effective control in order to prevent or investigate acts of violence committed by their subordinates, allowed officers to continue operating in the same way, leading to a constant flow of complaints from protesters of ill-treatment, torture and permanent eye injuries. Failure to prevent this type of behaviour, by those who have a responsibility to do so, may constitute grounds for individual criminal responsibility under international law.

In addition, in May 2020, it was reported that the Chilean police attempted to conceal the presence of the officer identified as “G-3” during the operation in which student Gustavo Gatica was blinded. “G-3” is a “Deputy Prefect of Services 2”, a high-ranking commander in the Special Forces. Amnesty International published evidence that the Lieutenant Colonel identified as “G-3” of the Chilean police Special Forces, had used his shotgun in an abusive manner against protesters on multiple occasion and on a number of days during protests at the end of 2019.

Amnesty International, therefore, calls on OAS Member States, by virtue of their shared obligation to promote and guarantee human rights, to urge the Chilean authorities to conduct a meaningful and thorough investigation into all human rights violations and crimes under international law that may have been committed in the context of the protests, which encompasses the entire chain of command up to the highest level.

#### b) *Nicaragua*



Despite the efforts of the international community, regional and international human rights mechanisms and civil society organizations, including victims' associations, the Nicaraguan authorities have yet to take significant measures to resolve the human rights crisis in the country or to guarantee justice, truth and reparation for crimes under international law committed in the context of the repression of social protests that began in April 2018.

In addition, Amnesty International is particularly concerned that the Nicaraguan authorities have not only failed to implement the recommendations of international organizations in relation to the pandemic, but have promoted mass gatherings that could put thousands of people at risk. The situation of people detained in the context of the protests that began in April 2018 held in police stations or in the Nicaraguan prison system is also especially worrying in the context of COVID-19. Hundreds of people have been imprisoned since April 2018 for the free exercise of their rights. As of the beginning of October 2020, local organizations reported that more of 100 them remained in prison, despite the prior commitment of the government to release them.

The organization is also concerned at allegations that people detained for political reasons who have physical symptoms that could be related to COVID-19, and remain in precarious and overcrowded detention conditions and are not receiving appropriate medical care.

The situation of the people who work in the Nicaraguan health system is also of concern. As of August 2020, the organization knew of at least 31 health workers who had been dismissed by the Ministry of Health. Several of those who were dismissed from their posts have filed lawsuits demanding reinstatement. Amnesty International has received information that police were deployed outside the courts during the employment hearings. According to representatives of several of the doctors, police officers took photos of health workers as they arrived at court.

Amnesty International calls on OAS Member States to issue a resolution at the end of this General Assembly that promotes truth, justice and reparation for the serious human rights violations and crimes under international law committed in the context of the protests that began in April 2018; that calls for the adoption of measures designed to prevent the spread of COVID-19 in the country; that demands the immediate release of those detained solely for exercising their rights; and that ensures that action is taken to protect people who work in the Nicaraguan health system from intimidation for disagreeing with government policies.

## 2. Measures to combat the COVID-19 pandemic

In the context of the COVID-19 pandemic, states have the power to adopt extraordinary measures to combat the disease, while always respecting human rights. However, Amnesty International is concerned that repressive measures have been adopted and implemented in the region on the pretext of combatting COVID-19. Some of these measures, by their very nature or their impact, are unnecessarily repressive. Furthermore, in many cases, they are not in line with the principles of legitimacy, necessity and proportionality.

### *a) Quarantine in state custody*

While it is true that, under international human rights law, state authorities can impose quarantines to contain public health emergencies, mandatory quarantines in state custody represent, in practice, a deprivation of liberty and are only permissible in limited situations. Where such quarantines are imposed, states have an obligation to guarantee that they are carried out in humane conditions and avoid fostering ill-treatment, discrimination or turn into unlawful detention.

The World Health Organization (WHO) has established that quarantines can delay the introduction of the disease into a country, but if applied inappropriately, they can create additional sources of infection and spread the disease. International human rights law also states that any restrictions on freedom must have a basis in law and be of limited duration. According to current WHO quarantine guidelines, quarantines should last 14 days, after which time they must be lifted – provided people do not develop symptoms of COVID-19. While the initial February WHO guidelines recommended testing people after 14 days, revised guidelines issued in August state that contacts or likely contacts who do not develop symptoms no longer need to be tested as a requirement for them to leave quarantine.

In countries such as *El Salvador, Paraguay and Venezuela*, strict measures taken to combat COVID-19 included confining tens of thousands of people in state-run quarantine centres in the custody of the police or military. These mandatory state quarantines exceeded 14 days and the people detained in these centres did not have access to information about how long they would be held or the scientific criteria that would be used to determine their release from the centres.



In the particular cases of *El Salvador and Venezuela*, Amnesty International is concerned that mandatory quarantines have turned a public health intervention into a punitive response which has had a disproportionate impact on low-income communities and on refugees and migrants returning to their countries of origin. This would appear to be a strategy designed to punish those who allegedly fail to comply with mandatory confinement.

In *El Salvador*, at the end of August, according to official figures, 16,780 people had been detained in quarantine centres (containment centres). Most were people living in poverty who in many cases were detained for more than a month. The so-called containment centres lack the resources to guarantee adequate hygiene and sanitation facilities. Following multiple legal disputes, the Constitutional Chamber of the Supreme Court of Justice determined that there was a lack of legal basis for the authorities keeping people in these centres as a form of punishment.

In *Venezuela*, an estimated 100,000 of the approximately 5.2 million Venezuelan refugees who fled the human rights crisis and humanitarian emergency in the country, have returned from countries such as Colombia and Peru. Amnesty International is concerned that the policy of quarantining returnees in insanitary facilities is counterproductive. In addition, the organization deeply regrets the policy of stigmatization and discrimination towards these people; the officials in the government of President Nicolas Maduro have referred to Venezuelan refugees who return from Colombia as “biological weapons” or “traitors” allegedly sent to infect the Venezuelan population. This situation, together with the fact that they are placed in mandatory state quarantine, increases concern that the deprivation of liberty is discriminatory and potentially arbitrary.

In *Paraguay*, by the end of June, the authorities had also placed some 8,000 people in mandatory quarantine, most were Paraguayans returning to the country after losing their jobs in the informal sector in Brazilian economy due to confinement measures in that country.

Amnesty International believes that the imposition of compulsory quarantine restrictions under state control, for an undisclosed duration, in environments that lack minimum infection prevention and control measures, and without guarantees of independent procedures that comply with the provisions of international human rights law, may, in effect, constitute arbitrary detention. Furthermore, if the quarantine centres create discriminatory situations and the state authorities do not provide adequate water, food and medical care, these conditions could be considered to constitute cruel, inhuman or degrading treatment and a violation of the right to health.

As the COVID-19 pandemic continues, states in the Americas may potentially look to reapplying measures such as mandatory confinement to contain it. Amnesty International strongly urges OAS Member States to develop mechanisms and/or adopt policies on human rights to avoid coercive, punitive and discriminatory approaches when applying public health measures.

*b) The need for international cooperation agreements to combat the pandemic*

In its resolution “[OAS Response to the COVID-19 pandemic](#)”, the OAS resolved to “strengthen hemispheric cooperation and solidarity to contain, mitigate, and defeat the pandemic and its consequences, including exchanging information, scientific knowledge, lessons learned, and best practices, with due regard to the differential impacts on all vulnerable groups and at risk populations by enhancing health care and services.”

Cooperation among the states in the Americas must guarantee that medical treatments to combat COVID-19 and/or a potential vaccine are available and accessible without discrimination, establishing special measures to support specific groups that are at greater risk from the virus, or whose marginalized situation means they could be left behind in access to vaccines or treatments. Amnesty International calls on the OAS Member States to ensure that treatments and/or vaccines are treated as public goods, in line with the following principles:

- i. Ensure fair allocation of vaccines, within and between countries: Criteria to guide vaccine allocation should be consistent with human rights standards, pay attention to the needs of marginalized groups and reflect the WHO Allocation Framework. Representatives of civil society organizations and communities should be included in any decision-making process regarding allocation criteria for COVID-19 vaccines, including the WHO global vaccine allocation mechanisms and at national level.

Amnesty International calls on the states in the Americas to avoid exclusively national approaches and, when possible, to cooperate through international mechanisms, avoiding bilateral agreements that may undermine the availability of vaccines for other states.



- ii. Increase availability and affordability through transparency and sharing innovations: States must ensure that companies do not violate the right to health or obstruct access to COVID-19 treatments and vaccines. States should, therefore, urge those who develop vaccines and therapeutic products to share their knowledge, experience, data on biological material and intellectual property with the WHO COVID-19 Technology Access Pool (C-TAP), so that other developers can be licensed to enable wider public use.

Bearing in mind that, in most cases, research on treatments and vaccines to combat COVID-19 would be carried out using public funds, states should guarantee collaboration with C-TAP as an essential precondition for state financing, as well as full transparency regarding all aspects of development and sales, in order to ensure the widest possible access to the products developed.

Amnesty International calls on OAS Member States to evaluate as a matter of urgency their legal frameworks on intellectual property so that they do not constitute an obstacle to the availability and affordability of medicines, treatments, equipment and medical innovations for everyone, whether within their countries or abroad. States should take full advantage of the flexibility available under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to protect public health.

- iii. Guarantee that cost is never a barrier to access: The right to health obliges states to use the maximum available resources to guarantee that cost is never a barrier to accessing health technologies, such as COVID-19 treatments and vaccines. Any costs that reduce the rates of vaccine use will also significantly reduce its effectiveness.

Amnesty International believes it is clear that international cooperation agreements must prioritize ensuring that lower-income countries can acquire the vaccines they need. States should, therefore, focus their efforts so that companies are transparent regarding the cost of development in order to guarantee affordable prices.

c) *The Inter-American human rights system, a heritage to be safeguarded in the Americas*

The Inter-American system of human rights protection, comprising the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights, both autonomous and independent entities of the OAS, is crucial to the realization of human rights in the Americas.

The Inter-American system has made it possible to combat impunity under both military regimes and constitutional governments, and even during internal armed conflicts in the region. Similarly, it has guaranteed that when states have been unable to investigate human rights violations committed in their territories, victims have recourse to an independent protection mechanism capable of guaranteeing truth, justice and reparation. Since the Inter-American system was created more than 60 years ago, thousands of victims and their relatives from all over the continent have seen its mechanisms as their only chance of obtaining justice.

Taking all the above into consideration, Amnesty International calls on OAS Member States to protect and safeguard the independence and autonomy of these bodies and the mechanisms they designate to carry out their work.

In particular, the organization calls on the Bolivian authorities to make a commitment to ensure that the Interdisciplinary Group of Independent Experts (*Grupo Interdisciplinario de Expertos Independientes*, GIEI) has the necessary independence to carry out its mandate, as a guarantee of access to truth, justice and reparation for victims and their relatives. This commitment should translate into meaningful practical measures, such as, for example, the non-disqualification of its members, respect for its autonomy and independence, and full and unrestricted access to the necessary information related to the facts.

Likewise, Amnesty International calls on OAS Member States to comply with the Cancun Agreements as regards the effective financing of the Inter-American system, in order not to undermine its capacity to protect and defend human rights in the Americas.

Given the OAS Secretary General's decision not to renew the mandate of the Executive Secretary of the IACHR, the organization, in accordance with the Inter-American regulations set out in Article 21 of the IACHR Statute and Article 11 of the IACHR Rules of Procedure, notes the important role of the Inter-American Commission in the process of appointing the postholder to the position of Executive Secretary. In particular, Article 21 establishes that "for the Secretary General to be able to remove the Executive Secretary, he shall consult with the Commission and inform its members of the reasons for



his decision.” However, the information publicly available to date provides no evidence that the OAS Secretary General undertook a process of prior consultation with the IACHR regarding the removal of the Executive Secretary, in accordance with the provisions of the IACHR Statute.

Regarding the report by the Ombudsperson’s Office, which, according to the OAS Secretary General, details alleged employment irregularities and a “a systemic issue within the Commission that requires prompt corrective measures”, Amnesty International calls for appropriate reporting and complaints channels to be put in place. These should be characterized by independence and transparency and be respectful of due process for complainants and reported. In addition, these channels should provide for corrective measures or sanctions, where appropriate, and, if harassment or other irregularities are found to have occurred, efforts should be made to avoid repetition.

The organization calls on the OAS Secretary General to respect the autonomy and independence of the IACHR, establish independent investigation channels that enable complaints that have been made to be dealt with appropriately, ensure guarantees for all parties are respected and transparency in public management and, where appropriate, allow responsibilities and reparation measures to be determined.

Finally, taking into consideration the impacts that crimes under international law such as enforced disappearance and torture have in the region, Amnesty International calls on OAS Member States to ratify and implement the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention to Prevent and Punish Torture.