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**AMNESTY  
INTERNATIONAL**



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Dear Ms Connors,

Amnesty International would like the following information on the situation of human rights defenders (HRDs) in the Americas region to be brought to the attention of the Special Rapporteur on the situation of human rights defenders (the Special Rapporteur). The organization welcomes the invitation of the Special Rapporteur to respond to the questionnaire on the use of legislation to regulate the work of human rights defenders (HRDs). While it is not possible to provide detailed responses to the questionnaire for the purposes of publication as an annex to the report to the General Assembly, it is hoped that the information given below is of use in informing the Special Rapporteur of the ways in which HRDs in the region are intimidated and silenced.

Human rights violations, including killings, attempted killings and death threats, against HRDs are widespread and the use of legislation to intimidate them is also common place in the region.

Legislation exists only in some countries to protect them and their work, which is of varying levels of effectiveness.

#### **1. Specific regulations to protect human rights defenders:**

In the Americas, specific regulations to protect HRDs at risk have only been adopted in Brazil, Colombia, Guatemala and Mexico. Precautionary Measures of the Inter-American Commission on Human Rights continue to be fundamental for a large number of HRDs in the Americas region, even in countries where mechanisms of protection have been established. These regional measures are often one of the best ways to push national mechanisms of protection to take action when a HRD is at risk. Usually, protection measures only address the immediate situation, are often too limited to provide the protection needed by defenders in the longer term, and do not adequately address ongoing impunity and the lack of concrete and effective political efforts needed to support the legitimate work of HRDs.

In **Brazil** the Programme of Protection for HRDs was created in 2004 and in 2007 the government approved the National Policy on the Protection of HRDs (Decree No. 6.044). The Programme began with pilot projects in three states – Pernambuco, Pará and Espírito Santo – and has extended to Rio de Janeiro, Bahia and Minas Gerais. While Amnesty International has

been supportive of the initiative, the programme has several weaknesses, including irregular funding and lack of political will to provide meaningful protection in some cases. The lack of resources, infrastructure and co-ordination between state and federal authorities are major problems that impede the programme from fully achieving its objective of protecting HRDs.

In **Colombia**, killings, threats and attacks against HRDs intensified in the context of the 2011 Victims and Land Restitution Law, which may lead to the restitution of some of the lands violently stolen by all parties to the armed conflict. Those campaigning in favour of Afro-descendant communities, Indigenous Peoples and peasant farmers displaced by the conflict have been particularly targeted. In response to the spate of killings of HRDs and the continued lack of effective implementation of the state's various physical protection programmes, in March 2011 the Office of the High Commissioner for Human Rights called on the government to fundamentally revise protection mechanisms in place. On 31 October 2011, the government issued Decree 4065 which unified all the Ministry of the Interior's protection programmes under a newly-created National Protection Unit. Through Decree 4066, issued the same date, staff members of the now disbanded civilian intelligence service, the Administrative Security Department (DAS), which had been responsible for providing security measures, such as bodyguards, to HRDs, were to be transferred to the National Protection Unit. The continued use of former DAS personnel in the implementation of protection measures raises concerns. In April 2009, the media revealed that the DAS had been carrying out a long-standing, massive, illegal "dirty tricks" campaign – including surveillance and wire-tapping – targeting, among others, HRDs, the UN and international human rights groups. The operation was carried out in co-operation with paramilitaries, who threatened and killed some of those targeted by the DAS. A number of senior and middle-ranking DAS officials have been convicted or are under investigation for crimes associated with the "DAS scandal".

Intelligence from civilian and military security agencies (including the DAS) has been widely used to mount unfounded criminal proceedings against HRDs. Additionally, responsibility for the provision of security measures is being increasingly transferred to private security firms, where little effective control appears to be in place to prevent the use of former members of illegal armed groups, whether guerrillas or paramilitaries. Some HRDs have rejected physical protection schemes, insisting instead that the state take decisive action to guarantee their security by bringing to justice those responsible for human rights abuses. Impunity in such cases, however, remains high. Thus, while protection measures have been introduced in Colombia, concerns remain about the misuse of this mechanism to commit further abuses against HRDs.

In **Guatemala**, the Unit for the Analysis of Attacks against Human Rights Defenders was created in 2007 and has been key in analysing and identifying patterns of attacks against HRDs and the contexts of those attacks. The creation of the Unit was based on a ministerial decision (*Acuerdo Ministerial 09-2010*), and continues to be dependent on the political will of the incumbent Minister of the Interior. The stability of the Unit, and protection of several HRDs, has been undermined by this continuing dependency on political will: in 2009 it was suspended for months without justification; in January 2010 it ceased to exist for a number of days until 10 January when a new ministerial decision was issued.

Since 2008 a cabinet level decision (*Acuerdo Gubernamental*) creating the Programme of Protection for Human Rights Defenders was drafted in consultation with civil society. However, this *Acuerdo Gubernamental* is awaiting the President's signature to enter into force. Amnesty International continues to urge the Guatemalan government to sign this Governmental Act and also to provide stability to the Unit.

This year, in **Mexico**, the Law for the protection of HRDs and journalists was unanimously approved by both the Chamber of Deputies and the Senate. Now the President should sign and publish the law, to bring it into force, and ensure that implementing legislation is developed, operational protocols are agreed and resources are in place to guarantee its effectiveness. This Law gives institutional stability and clarity to a legal mechanism which aims at ensuring

cooperation between federal and state authorities to implement effective measures to protect HRDs and journalists at risk. The full participation of representatives of civil society in the mechanism will be essential to ensure its effectiveness and legitimacy. Additionally, it is also vital that the authorities do not assume that their responsibilities are restricted to establishing a protection mechanism. Impunity for threats, fabricated criminal charges, attacks and killings of HRDs and journalists remain some of the greatest obstacles to improving the safety of these vital social actors.

See Amnesty International Public Statement on the Law at:

<http://www.amnesty.org/en/library/asset/AMR41/029/2012/en/a2072202-6e36-42c7-81e6-f62980963154/amr410292012en.pdf>

In 2011, the government of **Honduras** announced before the Inter-American Commission on Human Rights that measures, including a Protocol, were being taken to ensure the protection for HRDs at risk. To date, however, Honduran defenders and journalists are not aware of any of such policies or protocol. On the contrary, they still face frequent threats and attacks in carrying out their work with little or no protection available. Perpetrators of acts of intimidation and physical attacks against defenders and journalists enjoy almost total impunity, fostering an environment in which abuses can flourish. Amnesty International recently wrote to the Honduran Government expressing serious concern at the increasing number of attacks against HRDs and journalists and requesting information on any measures and policies on their protection. No response has yet been received.

The open letter to the government is available at:

<http://www.amnesty.org/en/library/asset/AMR37/009/2012/en/f4d8d718-662d-451f-90a9-c65e99c96f47/amr370092012en.pdf>

## **2. Restrictions to the rights to freedom of information, expression, association and assembly, and the criminalization of those defending economic, social and cultural rights:**

The rights to freedom of information, expression, association and assembly, which are fundamental for the defence of human rights, are protected in the Americas region. The Inter-American System of Human Rights has advanced these standards in several documents (see for instance, Chapter II of the Second Report on the Situation of HRDs in the Americas, OEA/Ser.LV/II, 31 December 2011). However, there are many cases across the region where these freedoms have been restricted by law, by manipulated interpretations of laws and/or by the misuse of the criminal justice system. Such cases affect a wide range of people, but a large proportion of these cases concern HRDs who are targeted by State and non-state actors with the intention of hampering their human rights work.

The most recent example refers to **Canada**, where unprecedented powers were granted to police by a new law in the Canadian province of Quebec. The law is incompatible with the rights to freedom of expression, assembly and movement. The emergency legislation – passed on 18 May 2012 and entitled Bill 78 “An Act to enable students to receive instruction from the postsecondary institutions they attend” – imposes a series of restrictions on public demonstrations, including a requirement for protest organizers to apply in advance before convening any group of more than 50 people. Amnesty International is concerned that this law could have a chilling effect on the work of all activists, including those who defend human rights.

More information available at: <http://www.amnesty.org/en/news/quebec-law-breaches-canada-s-international-human-rights-obligations-2012-05-26>

In **Cuba** the legal framework provides for certain rights and freedoms, but those who voice views beyond those permitted by the authorities are intimidated and harassed, arbitrarily detained or imprisoned after unfair trials.

The current legal framework and the way in which it is enforced by the authorities seriously limits freedom of expression. The Cuban authorities frequently quote threats to national

security, independence and sovereignty as their justification for taking action against those peacefully expressing criticisms of government policies or exposing human rights violations. In the 2007 *White Book* outlining Cuba's official position on foreign policy and human rights, the government asserts the limits to freedom of opinion and expression that it considers applicable. Three key elements deployed by the authorities to impose restrictions are the state's virtual monopoly of the media (including television, radio, the press and internet service providers); the requirement that all practising journalists join the national journalists' association, which is effectively under the control of the ruling Cuban Communist Party; and a number of provisions in the Constitution and the Penal Code that are so vague that they lend themselves to abuse by state officials, such as the police and the judiciary, to restrict freedom of expression.

The Cuban government wages a permanent campaign of harassment and short-term detentions of those who are demanding respect for civil and political rights. The following reports give a detailed analysis of this situation and both include cases of HRDs:

"Routine Repression: Political short-term detentions and harassment in Cuba" Index: AMR 25/007/2012 available at <http://www.amnesty.org/en/library/asset/AMR25/007/2012/en/16f0c0fe-c76b-428e-9050-bc9eb2ea95f7/amr250072012en.pdf> and

"Restrictions on Freedom of Expression in Cuba" Index: AMR 25/005/2010, available at <http://www.amnesty.org/en/library/asset/AMR25/005/2010/en/62b9caf8-8407-4a08-90bb-b5e8339634fe/amr250052010en.pdf>

#### **Economic, social and cultural rights:**

The freedoms of HRDs working on economic, social and cultural rights have been restricted on several occasions across the region. They have been particularly targeted as a result of manipulated interpretations of law and/or through the misuse of the criminal justice system. The situation is particularly grave for HRDs working at state or municipal levels where national authorities have little to no presence. Many of these defenders are community, *campesino* and Indigenous leaders representing groups that are often already marginalized. The exclusion and marginalization experienced by HRDs working on these issues put them at particular risk of reprisal for their work, and they have great difficulties to access mechanisms of protection if they face such reprisals. They are in urgent need of recognition, protection and legislative support, especially as they are often de-legitimized by the government, which frequently takes steps to criminalize their work.

In **Ecuador**, Amnesty International has documented several cases of community leaders and HRDs who have been criminalized for criticizing government policies, laws on natural resources and the impact of extractive companies in their communities. Historically, Indigenous and *campesino* communities have been marginalized, with little or no access to formal mechanisms to participate and to express their concerns. Street protests have been a central focus for their campaigns and a way to make their voices heard in the corridors of power and to express solidarity with others facing similar challenges. Unfounded charges, protracted investigations, repeated appeals by prosecutors to extend the length of time that people have charges hanging over them, restrictive bail conditions, and the use of terrorism-related or road blocking charges are among the methods used in what appears to be a deliberate attempt to curb the rights to freedom of expression, association and assembly of these leaders.

Amnesty International has noted that the authorities in Ecuador have been able to arrest and criminalize Indigenous and *campesino* leaders because aspects of national law fall short of international standards. Among the articles of the current Penal Code most often used against Indigenous and *campesino* leaders are Article 158 (sabotage), Article 160 (terrorism), and Article 129 (blocking a road) - all of which have been used to criminalize leaders who protest against government proposed policies. These articles lack precision or provisions that allow for

the legitimate exercise of human rights.

For example, on 5 January 2009, Vicente Zhunio Samaniego, a community leader and President of the Farmworkers' Association of Limón Indanza in Morona Santiago province, was detained by police officers. They accused him of taking part in a protest against a Law that opened the way for the development of a large-scale mining industry. He was charged with the criminal offence of sabotage. As Vicente Zhunio was being pushed into the police car, he was shot in the head by an identified gunman. Despite the seriousness of his injury, the police refused Vicente Zhunio medical treatment for six hours. He was held incommunicado for 18 hours, during which time he was beaten and threatened with death, to try to get him to sign a blank sheet of paper. On 29 January 2009 a judge ordered Vicente Zhunio's release from preventive detention, noting procedural irregularities by the prosecution, namely that they had not ensured that there was sufficient evidence on which to base the accusation. In December 2009, a judge dismissed the case due to the lack of evidence. However, as far as Amnesty International is aware there was no investigation on the attack against Vicente Zhunio.

In **Mexico**, Amnesty International has documented for decades dozens of cases of criminalization of HRDs. The organization has received numerous reports regarding human rights defenders who have been wrongfully detained and have faced prosecution by both state and federal authorities on the basis of fabricated or flawed evidence. Some have the threat of arrest hanging over them for years because warrants are issued – often on spurious grounds – but not acted on. Others are detained on the basis of flawed evidence which is often later dismissed as baseless and unreliable by appeal courts, but only after protracted and damaging prosecutions have been initiated. Commonly, the criminal justice system is misused to harass and silence HRDs, especially those working on economic, social and cultural rights at the local level. Both federal and state authorities have been implicated in falsely incriminating HRDs for the purpose of discrediting their work and curbing their legitimate human rights activities.

One of the most recent examples refers to indigenous HRDs José Ramón Aniceto Gómez and Pascual Agustín Cruz, from the Nahuatl community of Atla, in the municipality of Pahuatlán, Puebla State. They have already spent more than two years in prison for a crime they did not commit as the result of their work to guarantee access to water in their community. In 2010, they were detained, tried and sentenced to almost seven years in prison by Puebla state courts for the crimes of aggravated vehicle robbery. On the basis of detailed research, Amnesty International has concluded that the case against José Ramón Aniceto and Pascual Cruz was brought solely in reprisal for their legitimate work to extend their community's access to water and that they were denied the right to a fair trial. The organization is calling for their immediate and unconditional release. More information on the case is available at: <http://www.amnesty.org/en/library/asset/AMR41/035/2012/en/7910209b-36cd-4504-8fbf-3cdd10e6c6e4/amr410352012en.pdf>). Other previous similar cases are documented in the report: "Standing up for justice and dignity: Human rights defenders in Mexico" Index Number: AMR 41/032/2009, available at <http://www.amnesty.org/en/library/asset/AMR41/032/2009/en/30eef2b9-7f45-47bb-8397-bd9beb0a5cf4/amr410322009eng.pdf>

I trust this information is useful to the Special Rapporteur. Please do not hesitate to contact me if you have any questions concerning this letter.

Yours sincerely,



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