

# **BOLIVIA**

## **Crisis and Justice**

### **Days of violence in February and October 2003**

*“I can’t go on any more; for me, there is no justice”.*

*Vicenta de Colque, mother of Ana Colque, a nurse who died of gunshot wounds in La Paz on 13 February.*

#### **I. Introduction**

During 2003 Bolivia underwent a period of social upheaval which erupted on 12 and 13 February and again in October, leaving more than 100 dead, including members of the security forces, and hundreds injured or taken into custody. Although each incident had an apparently specific cause, the serious economic recession that has affected a high percentage of the Bolivian population in both urban and rural areas, the failure to implement agreements between different civilian governments and sectors of the population, and the social and economic marginalisation of significant sectors of the population all contributed to mass demonstrations and the subsequent events in the capital La Paz<sup>1</sup> and various other cities throughout the country.

In February 2003, news of a rise in income tax announced by the then President of the Republic, Gonzalo Sánchez de Lozada, whose administration had been inaugurated in August 2002, sparked off a series of protests which culminated in violent clashes between members of the national police force and the army in La Paz. Government buildings, including the presidential palace, were attacked and there were reports of snipers. The situation was defused by the active intervention of members of the non-governmental organisation *Asamblea Permanente de los Derechos Humanos* (Permanent Human Rights Assembly) (APDH). Thirty three people died, including members of the security forces, and dozens were injured. The subsequent announcement by President Sánchez de Lozada that the plans for tax reform were being abandoned did nothing to reduce tension throughout the country, which was further increased by new demonstrations and strikes that continued for several months.

The lack of clarity concerning judicial investigations into the events of February further fuelled rejection of the administration of President Sánchez de Lozada. By the end of February, national and international media were reporting multiple demonstrations, with thousands clamouring for him to stand down. The economic crisis continued and the government was severely criticised for its handling of the economic situation.

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<sup>1</sup> La Paz is the seat of government, Sucre is the seat of the judiciary.

The protests escalated during September and October. After the announcement in September of the government's plans to export national resources such as gas, further protests broke out, mobilising thousands of demonstrators including trade unionists, miners, peasants and members of the indigenous population, particularly in La Paz and El Alto.<sup>2</sup> The demonstrators were calling for the resignation of the President, whose position had been weakened with the resignation of four members of the cabinet, and the public withdrawal of support of the Vice-President.

It is reported that dozens of demonstrators died as a result of the use of excessive force by the security forces during these days of violence in September and October. Information provided by the *Defensoría del Pueblo* Ombudsman recorded that at least 59 people had died, while according to the *Fiscalía General* Attorney General's Office the figure was 56. The protests brought about the resignation of President Gonzalo Sánchez de Lozada, who was replaced by the Vice-President, Carlos Mesa Gisbert.

The international community expressed its concern at the continuing violence and loss of life in February and October. The Secretary General of the United Nations, Kofi Annan, made an appeal on 13 February to the people of Bolivia and its government to try to find a solution to the conflict "through dialogue and the full respect of democratic institutions", extending his message to the international community, whom he asked to demonstrate "flexibility and understanding" in collaborating to help Bolivia "find solutions to its difficult problems and confrontations". Similarly, through its Commissioner for External Relations, Chris Patten, the European Union expressed its concern at the wave of violence, urging the government and civil society to go back to the negotiating table and "work constructively" and consensually together on the economic, political and social challenges facing the country. The Secretary General of the Organization of American States (OAS), César Gaviria, demonstrated his concern at the deplorable events of 12 February and expressed his "solidarity with the families of those who died", appealing for "respect for the rule of law and constitutional order, in accordance with the principles enshrined in article 4 of the Inter-American Democratic Charter, which clearly and emphatically points to the constitutional subordination of all state institutions to the legally constituted civilian authority".

Again, in October the Secretary General of the United Nations called for the maintenance of constitutional order, stressing that "differences are resolved through dialogue and by political means" and reiterating that human rights and "above all, the right to life" should be respected in full. Also in October, the Inter-American Commission on Human Rights (IACHR) "vigorously" condemned the violence and "reminded" the Government of its duty to respect human rights while re-establishing public order.

On both occasions Amnesty International appealed to the authorities to ensure that the Bolivian authorities restored order within the rule of law and guaranteed that human rights

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<sup>2</sup> The city of El Alto is at an altitude of over 4000 metres, 12 kilometres from La Paz. It has around 700,000 inhabitants, the majority of whom are Aymara peasant immigrants. El Alto is a reception centre for rural migrants to the city, with a high rate of population growth. According to official statistics, it has a poverty index of 66.9 %.

were respected.<sup>3</sup> Representatives of Amnesty International visited Bolivia in March and November 2003 for interviews with the authorities, gathering first hand information about the events, interviewing the families of victims, non-governmental human rights organisations, lawyers, members of parliament, the Ombudsman and members of the church.<sup>4</sup>

This document contains a translation of the verbatim transcript of some of the testimonies that victims or their families presented to the Amnesty International delegation.

### **Constant concern of Amnesty International**

Over the past 10 years, Amnesty International has been monitoring, investigating, recording and reporting its concern to the respective authorities about the serious human rights violations committed by the security forces, including continuous allegations in connection with the eradication of coca leaf crops in the area of El Chapare. These concerns include the very probable excessive use of force by members of the army and the police, which has caused civilian deaths and innumerable injuries during operations of the combined forces to advance the programmes for the eradication of coca leaf crops in El Chapare agreed between the United States and Bolivia, as well as in the context of public demonstrations.

In the light of increasing social conflict in the country in recent years, reports of victims and allegations of excessive use of force by the security forces to control popular demonstrations, Amnesty International has repeatedly urged the authorities to promote the protection of human rights, offering to this end equitable solutions which would lead to genuine dialogue and which are in keeping with the international commitments of the Bolivian Government.

Amnesty International has also submitted its concern to the Bolivian authorities about the importance of meeting their international commitments in relation to the UN International Covenant on Economic, Social and Cultural Rights. This concern has been raised bearing in mind that human rights are indivisible and that the authorities have a duty to take steps involving effective dialogue, leading to sustainable solutions to critical situations such as Bolivia experienced during 2003, and which continue to this day.

The demonstrations, blockades and strikes that took place in 2003, the most deplorable example of which were the bloody days of February and October, appear to reflect desperate measures on the part of the least privileged sectors of society to remind the authorities of long-standing demands. According to information published in April 2004 by the Bolivian non-governmental organisation CEJIS, Bolivia has a population of 8.4 million and an annual

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<sup>3</sup> Press releases (AI Index AMR 18/002/2003) of 14 February 2003, (AI Index AMR 18/009/2003) of 13 October 2003 and (AI Index AMR 18/012/2003) of 17 October 2003. Urgent Action (AI Index AMR 18/10/2003) of 14 October 2003 in favour of the participants at mass demonstrations.

<sup>4</sup> Amnesty International missions of 12 to 27 March and 17 to 24 November 2003. The representatives were: in March, the Colombian lawyer Rafael Barrios and in November the Uruguayan lawyer, Amnesty International representative at the United Nations in New York, Renzo Pomi and the researcher on Bolivia at the International Secretariat in London, Virginia Shoppee, on both occasions.

growth rate of 2%; 62% of the population identify themselves as indigenous. The poverty index for the population of Bolivia is one of the highest in the region. According to the 2002 National Population and Housing Census, 63% of the population of Bolivia lives in poverty. Fourteen per cent manage to survive on less than one US dollar a day. According to the Pan American Health Organization the average per capital income is only 50 bolivianos a day (equivalent to around 6 dollars). The situation of the population in rural areas is even more desperate: 90% lives in poverty and 60% in extreme poverty.<sup>5</sup>

Time and again Amnesty International has received information indicating that the social conflict of recent years has arisen as a protest at the government's failure to fulfil agreements relating to social and economic demands. Amnesty International has been concerned at the manner in which the security forces have acted to control these public expressions of discontent.

According to Bolivian analysts, the role of the armed forces in matters of internal security during the civilian governments of the last two decades has been used principally to suppress social conflict. This use has increased dramatically in recent years, along with a serious deterioration in economic conditions, an increase in social protest and mobilisation, the reduced effectiveness of the mechanisms of political representation (political parties) and discrediting of the political leadership at alarming levels.<sup>6</sup>

Amnesty International has acknowledged the need and responsibility of governments to guarantee order in situations of conflict, but has reminded the authorities that any action on the part of the State must be governed by a complete respect for fundamental human rights such as the right to life and to physical integrity.

Similarly, Amnesty International has appealed to successive Bolivian civilian governments to undertake independent investigations into allegations of human rights violations and to make public both the methods and results of such investigations.

In this context, the organisation has stressed to Bolivian governments, including the present government of President Carlos Mesa Gisbert, its continuing concern at the lack of exhaustive,

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<sup>5</sup> See: *Octubre en Bolivia* (October in Bolivia), Chapter I, page 25, publication of the *Centro de Estudios Jurídicos e Investigación Social*, (CEJIS) (Centre for Legal Studies and Social Research), Year VIII, No. 16, April 2004, Santa Cruz de la Sierra.

<sup>6</sup> Document: *Escenarios de Conflicto* (Conflict Scenarios), by Gonzalo Rojas and Raúl Barrios, published by Fundación Tierra, December 2002, La Paz, Bolivia.[Available only in Spanish]

independent and conclusive investigations into such allegations, and at the jurisdiction of military courts in cases against military personnel accused of human rights violations.<sup>7</sup>

Amnesty International welcomed President Carlos Mesa Gisbert's affirmation, in his inaugural speech to the National Congress on 17 October 2003, with regard to the respect of human rights and the respect for life "as a citizen's most precious possession and gift". In light of the tragic results of the demonstrations in October, days before his inauguration, the organisation appreciated the importance of what the President had to say about the independent investigations being conducted by the ordinary courts into these events.

However, Amnesty International has noted with growing concern the slow pace at which these investigations are progressing, the transfer to military courts of cases of civilians who lost their lives during the clashes in February 2003, and the reported intention of the prosecutors charged with investigating the events of October 2003 to close the files on these cases. Amnesty International has noted with interest the information received from the Attorney General's Office on 1 October 2004 on the continuation of the investigation into the events of October 2003, under the impetus of the Public Ministry.

The information contained in the present document summarises the situations of crisis recorded during the months of February and October 2003, according to information broadly disseminated by the Bolivian and international media and information gathered in Bolivia by the two Amnesty International delegations. It provides the available information on how the investigations are progressing, as well as testimonies of relatives of the victims.

## **II. February 2003**

### **a). The events of February**

The announcement by the authorities of their intention to introduce a direct income tax was totally rejected by some sectors of the population. The national press reported the negative response to the announcement, stating that Bolivian business community took the view that such a measure would not contribute to the revitalisation of the economy and could cause an even deeper recession. Similarly, opposition parties such as *la Nueva Fuerza Republicana* (NFR) New Republican Force and *Movimiento Al Socialismo* (MAS) Movement Towards Socialism, expressed the view that "they would mobilise the country if the Executive persisted with its intention to continue to implement an economic policy that takes no account whatsoever of social measures." The *Central Obrera Boliviana* (COB) Bolivian Workers' Central wrote to the President of the Republic asking him not to give his approval, as a means of avoiding "major social upheaval".<sup>8</sup>

In a televised message to the Nation broadcast on 9 February, President Sánchez de Lozada announced the new income tax ranging from 4.2% to 12.5%, stating that the fiscal deficit for

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<sup>7</sup> Open letter to The President of the Republic of Bolivia, Carlos Mesa Gisbert (AI Index Ref. TG AMR 18/010/2003) of 24 October 2003.

<sup>8</sup> Cochabamba daily newspaper *Los Tiempos*, 8 February 2003.

2002 had been more than 8.5% and that it was hoped, under agreements with the International Monetary Fund for macroeconomic adjustment, to reduce it to a little over 5% for 2003. At the same time, it was announced that, during 2003, wage increases proposed by social and labour organisations would not be met.

Members of the *Policía Nacional* National Police Force (PN) expressed their discontent and unhappiness with the income tax, which had been nicknamed “*el impuestazo*” (mega-tax), mobilising and concentrating forces at the headquarters of the *Grupo Especial de Seguridad* (GES), Special Security Group of the National Police Force, which is located half a block away from the Plaza Murillo, where the Presidential Palace is. Members of the civilian population joined them and in major cities throughout the country street marches and demonstrations were set in motion at the same time as the COB was calling a 24-hour strike against the tax measures.

These developments aggravated the social conflict which had been gathering momentum since the beginning of the year when, in January, peasant coca leaf growers started to erect road blocks on the interdepartmental highway between Cochabamba and Santa Cruz in protest at government policy on the coca leaf crop eradication programme. Between 14 and 15 January, four people died from bullet wounds during clashes with members of the security forces in El Chapare. Dozens of people, including members of the joint forces, were injured and hundreds of demonstrators were taken into custody. Members of the Catholic church, the non-governmental human rights organisation *Asamblea Permanente de Derechos Humanos* Permanent Human Rights Assembly and the Ombudsman intervened to try to promote a dialogue between the peasants and members of the government.<sup>9</sup>

The police insurrection spread to the cities of Santa Cruz, Oruro and Sucre and by 12 February members of the PN from police districts 2 and 4 in La Paz were confined to barracks and the centre and Southern Zone areas of La Paz were left without police surveillance. The protest in the Plaza Murillo increased with the presence of students from the Colegio Ayacucho, who stoned the government building. A large group of soldiers tried to disperse the demonstrators, which included police officers and civilians, with gas and rubber pellets, and from midday onwards gun shots were reported, along with the presence of snipers. There was crossfire between police and members of the army, and reports of looting and setting fire to public and commercial premises in the centre of La Paz. In the confrontations that took place on 12 February, 15 people died and 76 were injured. In a televised message, President Sánchez de Lozada announced the abandonment of the “*impuestazo*” and ordered the withdrawal of the police and the army.

On 13 February, further clashes took place between military personnel and civilian demonstrators, including people taking part in a march organised by the COB. The looting

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<sup>9</sup> See: Press release AI Index: AMR 18/001/2003, Press Service Number: 010 of 16 January 2003 and letter to the Vice-President Carlos Mesa AI Index: Ref: TG18/01/2003, of 20 January 2003.

continued. Ten people died in La Paz and in El Alto, one of whom was Ana Colque Quispe, a 24-year-old student nurse, who died from a bullet in the chest as she was trying to help a young construction worker who had been shot as he tried to repair the roof of a building close to the plaza San Francisco in La Paz. The construction worker, Ronald Collanque Paye, died on the roof of the building. Doctor Karla Espinoza, who was also trying to help the victims, was wounded by a bullet in the face. Ana Colque Quispe died in the Hospital de Clínicas.<sup>10</sup>

Between 12 and 13 February 2003, hundreds of injuries and 33 deaths were reported among police officers, civilians and members of the military as a result of wounds caused by projectiles “fired by weapons of war, according to the preliminary conclusions of the early results of the inquiry carried out by the National Institute of Forensic Investigation, following the autopsies carried out on the bodies”.<sup>11</sup>

#### **b). The Organization of American States (OAS)**

The Bolivian government sought the co-operation of the OAS in a letter to the Secretary General dated 14 February 2003, citing the danger that the violence of February represented for the democratic process and the concern about the activities of unidentified snipers. The letter asked for an investigatory commission to be sent at the earliest possible opportunity to assist in shedding light on the events and to bring forward an impartial and objective investigation. The Permanent Council of the OAS resolved to support the request the very same day.<sup>12</sup>

At a meeting in La Paz on 6 March in the presence of the President of the Republic of Bolivia and the Secretary General of the OAS, the two specific tasks of the collaboration were defined: the technical co-operation of international experts with the Attorney General’s Office,

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<sup>10</sup> The case of Ana Colque: The current situation. Published in April 2004 by the Permanent Human Rights Assembly, the *Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo*, Bolivian Chapter of Human Rights, Democracy and Development and *la Coordinadora de la Mujer*, the Women’s Co-ordination Unit.

<sup>11</sup> *Ibid.*

<sup>12</sup> Permanent Council of the OAS [...] issued Resolution CP/RES. 838 (1355/03), which resolved as follows: “1. To express its full and decisive support for the constitutional Government of the President of the Republic of Bolivia, Gonzalo Sánchez de Lozada, and for the democratic institutions. 2. To condemn the use of violence and other undemocratic acts that disrupt democracy and good governance in Bolivia. 3. To reaffirm 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 essential elements of democracy. 4. To reaffirm the firm resolve of the member States to apply the mechanisms provided in the Inter-American Democratic Charter for preserving democracy. 5. To urge all sectors of Bolivian society to strengthen channels of dialogue and tolerance and to refrain from promoting political violence. 6. To reiterate that the promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and the consolidation of democracy in the States of the Hemisphere. 7. To support the efforts of the Government of the Republic of Bolivia to reach, with due urgency, agreements with the international financial institutions that will contribute to democratic, social and financial stability in that country”.

supporting prosecutors in the investigation process and with the National Government in producing and presenting a report to advance the discussion on institutional flaws, with recommendations to the Government and to the country to strengthen democracy.<sup>13</sup>

The OAS published its report in May 2003. As part of the “Preliminary Conclusions of the Investigation”, it stated: that shots were fired at the Presidential Palace; that the President’s life was at risk, although there was insufficient evidence to show that there was a plan to assassinate the President of the Republic; that the military defended democracy and the rule of law with regard to the police attack, and that they acted in a “*restrained and proportional manner*.”<sup>14</sup>; “; that what happened in February constituted insubordination on the part of the police with regard to the country’s laws and Constitution. It also stated that, with regard to the action of the army and the police, the conduct of some uniformed officers and the conduct of members of the National Police Force and their participation should be investigated and clarified so that appropriate sanctions could be applied if laws were broken.”<sup>15</sup>

According to information published in the Bolivian media, the OAS report was criticised by various sectors of the population for establishing that the fault lay with the police and taking the view that the behaviour of the army had been “restrained and proportional”, in light of the many victims of firearms. Human Rights organisations expressed their concern at the lack of balance and failure to examine the weakness of the Attorney General’s Office.

Amnesty International believes that, in light of the testimonies and reports gathered by the organisation’s delegation, press information, court documents and the high number of victims, the behaviour of the military forces in action on 12 and 13 February, would appear to have been neither “restrained” nor “proportional”.

### **c). The investigations - The prosecutors**

Investigations regarding the victims of the events of February and the circumstances surrounding the deaths were initiated to public clamour by the ordinary courts. Information received reveals that statements were taken from victims, family members and witnesses and that information was sought from institutions such as the National Police Force, the Armed Forces and the Permanent Human Rights Assembly, concerning their participation in the events of 12 and 13 February. Delegates of the Amnesty International mission in March 2003 held interviews with two of the prosecutors assigned to the investigation. The prosecutors expressed their concern at the lack of resources to enable them to carry out their work, the

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<sup>13</sup> Report of the Organization of American States (OAS) on the events of February 2003 in Bolivia, May 2003. See: 3. Scope of the OAS Mission.

<sup>14</sup> Amnesty International’s emphasis.

<sup>15</sup> Ibid. See 6. and 7. Preliminary Conclusions of the OAS Investigation; and Recommendations.



difficulties encountered with regard to some autopsies and in gathering evidence, since the bodies of those who died as the violence progressed had been picked up or moved by various people from the place where they had died. Similarly, they reported a lack of co-operation on the part of both the police and the army during the corresponding enquiries and a fear of being discredited professionally if slanderous statements about them were disseminated by groups or individuals with no interest in seeing the investigation progress. The prosecutors stated that, since there was a conflict of competence with the military courts, the Constitutional Court should be the one to reach a decision on this conflict. The investigators stated that, as the videos that had been shot during 12 and 13 February, which were already in the public domain, had no value as evidence and that evidence would be gathered during the investigation.<sup>16</sup>

In April, the Attorney General of the Republic, Oscar Crespo, informed the *Comisión Mixta de Defensa y Gobierno del Parlamento* Parliamentary Joint Commission on Defence and Government about the investigation that was being conducted into the events of February. According to information disseminated at the time by the Bolivian media, the report of the Attorney General mentioned the slow progress being made in the investigations, citing a lack of support for the enquiries on the part of the investigating Judicial Technical Police and the lack of will on the part of the executive.

Faced with regular changes of prosecutor, and the slowness of the investigation, a group of non-governmental human rights organisations set up a commission to follow up the case of the death of the nurse Ana Colque Quispe and a lawyer was appointed to file a criminal suit. At the end of May, Ana Colque Quispe's mother, Vicenta Colque, initiated criminal proceedings in connection with her daughter's killing. The plaintiff came up against an obvious lack of co-operation on the part of the Prosecutors' Office and the army. With regard to the Prosecutors' Office, the commission said "It is with some concern that we have noted structural and associated problems, such as restrictions on full access to information, a lack of independence in the judicial system which responds to political pressure, a lack of professional ability, a limited sense of ethical values and of justice in the behaviour of officials in the justice system ...".<sup>17</sup> With regard to obstruction on the part of the armed forces, the plaintiff recorded, for example, the refusal to provide copies of the information provided by the military personnel who participated in the action on 13 February, taking the view that such documentation was "top secret".<sup>18</sup>

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<sup>16</sup> During their March 2003 visit, the Amnesty International delegates received copies of documentary videos from the Permanent Human Rights Assembly and the Ministry of Defence. These videos had been compiled from film shot by television cameramen and amateurs.

<sup>17</sup> Documentation gathered by the Amnesty Internacional delegation in November 2003 and the publication "The case of Ana Colque: the current situation", April 2004 by the Permanent Human Rights Assembly, Bolivian Chapter of Human Rights, Democracy and Development and Women's Co-ordination Unit (See Chapter: The Legal Complaint, (*La Querella*) pages 31 to 35).

<sup>18</sup> *Ibid.*

Six months later, in August 2003, the Formal Charge was presented by the prosecutors.<sup>19</sup> This accused four members of the army of homicide, grievous bodily harm (*lesiones gravísimas*), actual bodily harm (*lesions graves*) and assault (*daño calificado*). These offences carry penalties of between 20 and 30 years in prison.

The military personnel against whom these charges were brought claimed lack of competence in a submission in which they alleged that the four were being prosecuted by the Permanent Tribunal of Military Justice for the offences of homicide, abuse (*exceso*) and hostile behaviour (*hostilidad*) towards individuals, stating that the civilian courts did not have competence to deal with them since they were subject to military justice. The plaintiff rejected this argument in accordance with Articles 34 and 13 of the Political Constitution of the State.<sup>20</sup>

The claim of lack of competence was rejected by the Eighth Examining Judge of the Criminal Court following a public hearing held on 30 August 2003, establishing that the case ought to proceed in the ordinary courts.<sup>21</sup> Further appeals were lodged by the interested parties and the case was finally sent to the Superior Court of the District of La Paz for a decision.

On 2 October 2003, the First Criminal Chamber of the Superior Court of the District of La Paz rejected the competence of the ordinary courts to deal with the four members of the military accused in relation to the events of 12 and 13 February. Among the factors taken into consideration in giving its decision, the Superior Court of the District of La Paz states that, with regard to the events that occurred on those dates, as far as the members of the Armed Forces were concerned, the alleged offences “occurred while they were on service” and that, consequently, they fall under “the jurisdiction and competence of military justice”, stating “that all the background [...] be forwarded to the Permanent Tribunal of Military Justice [...]”.<sup>22</sup>

This finding aroused renewed mistrust of the justice system in Vicenta de Colque, the victim’s mother. In desperation she told her lawyer of her dismay, sobbing “I can’t go on any more; for me, there is no justice”. The conflict of competence between the ordinary courts and the military courts that arose as a result of this decision has had the effect of delaying the investigations and, as a result, the administration of justice, even further.

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<sup>19</sup> Resolution No.67/03. Investigations 674 and 676, 13 August 2003, presented before the Eighth Examining Judge of the Criminal Court.

<sup>20</sup> Article 34 of the Political Constitution of the State of Bolivia stipulates that “any person who violates constitutional rights and guarantees shall be dealt with by the ordinary courts.” Article 14 of the Political Constitution of the State stipulates that: “the immediate authors of any action against the security of the individual are held responsible for this action, and may not excuse themselves by claiming that they were acting on orders from a superior.”

<sup>21</sup> Interlocutory Decision 553/2003.

<sup>22</sup> Resolution 649/03 of the First Criminal Chamber of the Superior Court of the District of La Paz.

**d). Conflict of competence: The Military Courts**

Amnesty International noted with growing concern the transfer to the military courts of the investigation against the four members of the armed forces who were being investigated by the ordinary courts in connection with the events of 12 and 13 February 2003. According to information received by Amnesty International from members of the Public Ministry, when a conflict of competence arises between the ordinary courts and the military courts, it falls to the Constitutional Court to give a decision on the conflict.

Amnesty International has repeatedly registered its concern with the Bolivian authorities about the broad jurisdiction of the military courts, which permits them to investigate and try cases of human rights violations committed by members of the armed forces. The *Comité de Derechos Humanos* Committee on Human Rights and the Inter-American Commission on Human Rights have, on numerous occasions, stated that for military courts to try members of the armed forces accused of human rights violations is incompatible with the obligations of States under international law.

Amnesty International has pointed out to successive Bolivian governments the importance of ensuring that both the legal system and legal proceedings are consistent with the standards adopted by the international community for the protection of human rights, such as the International Covenant on Civil and Political Rights, ratified by Bolivia on 12 August 1982. This Covenant is one of the instruments establishing the fundamental rules on which laws and judicial proceedings should be based in all countries, stipulating, inter alia, the requirements of independence and impartiality. In this sense, the military courts need to be special, and exclusively functional, courts, whose role is to maintain discipline in the armed forces and, as a result, they should be excluded from hearing cases of human rights violations.

**e). The Constitutional Court**

The plaintiff appealed against the decision of the Superior Court of the District of La Paz, revoking the jurisdiction and competence of the ordinary courts in the case of the four members of the military and ordering its transfer to the military courts. The case remained with the Military Court which, in February 2004, acquitted the four soldiers.

However, in May 2004, the Constitutional Court, in response to an appeal *recurso de amparo constitucional* lodged by Ana Colque Quispe's mother, which was upheld, decided that the four military personnel ought to be tried by the ordinary courts.<sup>23</sup> No appeal against this decision is possible.

In its judgment, the Constitutional court referred to the Report of the Inter-American Commission on Human Rights on the human rights situation in Peru which states: "The Commission has repeatedly and consistently stated that the military jurisdiction does not offer

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<sup>23</sup> Constitutional Court Judgment 0664/2004-R, Sucre, 6 May 2004, Case: 2004-08469-17-RAC, District: La Paz.

the guarantees of independence and impartiality needed for the trial of cases that involve punishing members of the Armed Forces, thereby guaranteeing impunity”. The Commission’s report states that “The military criminal justice system has certain peculiar characteristics that impede access to an effective and impartial remedy in this jurisdiction. One of these is that the military jurisdiction cannot be considered a real Judicial system branch, but it is organised instead under the Executive. Another aspect is that the judges in the military judicial system are generally active-duty members of the Army, which means that they are in the position of sitting in judgment of their comrades-in-arms, rendering illusory the requirement of impartiality...”.<sup>24</sup>

While non-governmental human rights organizations applauded the decision and saw it as an historic precedent, the armed forces rejected the decision and ordered the troops to be confined to barracks. The high command of the armed forces made public statements about the seriousness of the consequences of the Constitutional Court’s decision, warning that in future they could disregard orders from the Executive when they were called upon to guarantee the stability of the democracy. Deputies and members of the Catholic church condemned these declarations as veiled threats on the part of the high command of the armed forces. After meetings between the military high command and the President of the Republic, the order confining troops to barracks was lifted. Some days later, spokesmen for the army announced the intention to exhaust all legal and political remedies to reverse the decision of the Constitutional Court.

### **III. Testimonies of members of the families of victims of February 2003**

The lack of information and the confusion that surrounded the events of February left the population and, in particular, the victims’ relatives, in a state of great uncertainty which is clearly reflected in the testimonies gathered by the Amnesty International delegates during their visit to Bolivia in March 2003.<sup>25</sup>

These testimonies are translations of a verbatim transcription of the interviews delegates had with members of the victims’ families.

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<sup>24</sup> Doc.OEA/Ser.L/V/II.106, Doc.59 Rev., Second Report on the Situation of Human Rights in Peru, 2 June 2000, Paras: 209 and 211.

<sup>25</sup> The Amnesty International delegates received testimonies from members of the victims’ families, María Eugenia Calcina Rivero, mother of Julián Huascar Sánchez Calcina, 16 years of age; Flora Miranda, mother of Jorge Mauro Franco Miranda, 22 years of age; Alberto Surci, father of Wily Surci Ramos, 18 years of age; Angélica Alcon Loza, wife of Marco Antonio Quispe Nina, 26 years of age; Jenny Tatton Moscoso, mother of Police Lieutenant Omar Nemer Tatton; Angélica Saravia, sister of Private Elvis Telésforo Saravia.

**1) Testimonies of the groups of mothers of victims of 12 and 13 February known as the “*Madres de Plaza Murillo*”:**

“Before all else, to say that we all want justice to be done. We don’t want the death of these people, these young people, to go unpunished. We want to know what happened. In what respect do we want justice? First, we want light to be shed on everything that happened during those two days. We want to know who gave the order to shoot, who? it must have been somebody. We doubt very much that it was just a conscript or a police officer of lowly rank who started to shoot on his own initiative, without thinking of the consequences, without even looking where to and who was going to be affected”[ ... ]

“we have no experience, we’re not experts, we don’t have ... we’re not professionals in ballistics, or in criminology [...], but what we can see, and if you look at the photographs of the civilians that were taken at the time, yes – they are all men who died, all men, except for the nurse and the doctor, who is, who was shot and injured then. But they are all men, and all aged between, well, 35-30 is the age range, you can check, all the photographs of the civilians, they have short hair, like someone in uniform, [...] The other thing that makes us think that orders had been given, they had sought out from where the snipers had been looking out, and said, that one’s a policeman, they were selective – or that one is, has been or is a *policia civil* and they killed him, because otherwise others would have been killed – old people, women, children – but that didn’t happen, it was just the men, young men, and all with the physical characteristics of someone in uniform”[the victims].

“... there was a special programme on channel 11 [...] There were representatives of the Red Cross. When the man from the Red Cross came, and he was quite clear about it. He said, on the 11th [of February] we were already ready with the ambulances. We had three ambulances ready. At 12 on the dot, we were already there with 3 ambulances. Just hearing that, I already felt uncomfortable and I said crikey! so that means that they already knew that something was going to happen. That’s why they had already got the ambulances ready, otherwise they wouldn’t have done it [...] So why didn’t they warn the people, and say tomorrow it’s possible there might be things happening, stay off the streets, but they didn’t, they didn’t, they knew but they didn’t do that, they knew that something was going to happen. They gave no warnings, they didn’t alert anyone. It was bullets, they weren’t killed with sticks or stones, they were shot...”

**2) Flora Miranda, mother of Jorge Mauro Franco Miranda, 22 years of age,** tried to find him when she was completing passport formalities at the Immigration Office near the Plaza Murillo on 11 February, she saw “people taking shelter . . . and then shots began ringing out” and the Immigration office officials started evacuating members of the public:

“...I live in El Alto, in the Horizontes district. We went up there, and I got home at around a quarter to three, but there was nobody at home.[...] I was watching the TV, watching what was happening in the Plaza Murillo, I was waiting for something to happen, waiting for news from the President, for the President to say that there would be no *impuestazo* (mega-tax), then something clicked, I was watching and then I said to myself, I said Oh God, I could see that they were burning things, they were wrecking things and tearing off doors, everything, you know? And, well it was about a quarter to seven and, you know, deep down inside I said to myself something has happened, in my mind, and being a mother .... I'm going to call his mobile phone, I thought. So I called him on my mobile and a woman's voice answered, hello, and I said: hello, what are you doing with my son's mobile, I said. Is your son called Jorge Mauro Franco? she said, yes, he's my son, I said, he's my son. How long have you had it? Do you know what she said? Your son is injured, he's in the Hospital de Clínicas. [...] I started to leave la Ceja, I left for la Ceja, I arrived at la Ceja. It was complete havoc at La Ceja. People here, people there, there was gunshot, there were bullets. They had set fire to the toll booth, they were [firing] gas, crying, there, with my little girl, because I was there with my youngest daughter, well, I had to get to the hospital to help my son. ... I arrived at the hospital and looked through the injured for my son's name, Mauro Franco, Mauro Franco, it wasn't there, it hadn't been there, and I saw a boy there and I said that's my son, I said that's him. Can I go and see him? But they wouldn't let me through and the woman said to me, no, it's not him, she said .... We're making another list, she said, and another list comes out, but my son's name is not on it. There were just NNs [No Name] people who had died. NNs 20-year-olds, nameless police officers who had died. So I said, if my son's not here ... I went to the morgue ... I went in, I went to the front door and went in. I saw him. That's him, I said, that's my son, I said and there were some men there, that's my son, I said ... my cousin called me and I said, Mauro is dead ... just look at my son, they had already done an autopsy, they had done an autopsy on my son at 5 in the afternoon. And I arrived at the hospital at 8 in the evening, probably a bit later, I can't really remember now. I said, from 5 until 8, why haven't they sewn him up, why haven't they?... they have left him like this, exposed, laid out like this, there was nobody to, I asked him, please, look, please sew him up, he's all naked. His pants were there, put them on him, please, I said. ... I took my son out at 12 at night. I arrived at El Alto at 2 in the morning. I said, you know, me suffering such anguish, coming home with my dead son, ... we arrived home. ... my husband came, two of my sisters accompanied me, I didn't know what to do, the only thing left in my heart was, why ?...”

**3) Julián Sánchez Calcina, aged 16, student at the Italo/Bolivian Cristoforo Colombo college. His mother, María Eugenia Calcina tells how she found his body:**

“.. until the evening, we were already worried that he wasn't with us, worried at his absence, so we rang home thinking that he had gone back home because he always went home to feed the dogs, he loved his animals, his cat, we were thinking he had gone up to feed them at home, but he hadn't. My husband came to the fair, and said Julián's not there. We called. I was thinking he was with him and he thought he was with me at the Fair [handcrafts]. But he wasn't, he wasn't. He came and said: Julián's not there, let's go and find him. We went to the Hospital de Clínicas, but he wasn't there. We went to the morgue and my son had been there; my husband was the first to go in and see. What I can't forget is when he cried out and said María! I couldn't believe it when I saw my dead son, laid out on a table and already cold. They had already opened him up, all of his poor body was open like a book. All you could see were his intestines, his stomach, something here on his abdomen. When I looked inside, there was nothing. I had asked what they had done to him, I was even afraid to touch him, thinking it would hurt him. [...] Nothing can take the place of my son, nothing. I still can't believe it. And to think I always thought that my children would be with me always. They've taken my son from me.”

#### **IV. October 2003**

##### **a). The events of October - Further violence in the so-called “Gas War”**

In the climate of social tension and continuing public demonstrations that prevailed during the months following the tragic events of February, from mid-September 2003 there were reports of mass protest marches and roadblocks in Warisata, Ventilla, Senkata, El Alto and La Paz (Department of La Paz), against the economic policy and the announcement of gas exports via Chile. The announcement about exporting natural gas via a Chilean port sparked off demonstrations and strikes at national level in a protest relating, in part, to the historical background to Bolivia's loss of access to the Pacific Ocean following the war with Chile (1879-1893) known as the “War of the Pacific”, and the subsequent breaking-off of diplomatic relations with that country in 1978 after a failure to reach agreement on an access route to the sea. With a clear and unambiguous message “no gas to be sold either via Chile or to Chile; the gas is for the people of Bolivia”, mass demonstrations called for the defence and

recovery of ownership of the gas by the Bolivian people and on 8 October an indefinite strike began in the city of El Alto, paralysing the La Paz-Oruro highway.<sup>26</sup>

Amnesty International directed its concern towards events recorded in September during the intervention of members of the army and police force in Warisata in order to remove roadblocks on the La Paz-Sorata road, opening the route to travellers, including tourists, who had been stranded by the roadblocks.<sup>27</sup> In circumstances which have to be ascertained, violent incidents took place between the peasants who were manning the roadblock and members of the combined forces, when five civilians and one member of the army lost their lives, allegedly as a result of gunfire. More than 20 people, including members of the security forces, were injured. Reports indicated that the combined security forces had apparently carried out a violent raid on the “Elizardo Pérez” college of education in Warisata, firing shots inside the school, and that shots had been fired at some private houses by the security forces. As a result of this incident, several arrests were made.

At the beginning of October, there were reports of new confrontations when peasants, miners, trade unionists and members of the indigenous population clashed with members of the army and police force in Ventilla, Senkata, and El Alto in the Altiplano Paceño when the roadblocks were first being set up. Despite the intervention of representatives of the Catholic church and the Permanent Human Rights Assembly, the conflict spread to the Departments of Cochabamba and Santa Cruz. Reports received indicated that the conflict was spreading, with clashes on 15 October that caused loss of life and injuries in the population of Patacamaya (Department of La Paz), when members of the armed forces held up heavy goods vehicles that were transporting around 3000 miners who were travelling to La Paz to support the demonstrations calling for the resignation of President Gonzalo Sánchez de Lozada. According to the media, the so-called “gas war” resulted in the deaths of 68 people, with more than a hundred injured.

Despite the government’s offer to hold a referendum on gas exports and revision of the Hydrocarbons Law, there were huge demonstrations in La Paz, with flags decorated with black bands in memory of those who had died calling for the resignation of the President, who had now lost the support of his Vice-President.

The degree of repression by the security forces against demonstrators and against the social sectors who had risen up in protest, together with the political crisis moving across Bolivia, led to the initiation of a hunger strike on 16 October on the part of the former Ombudsperson, Ana María de Campero, members of the Permanent Assembly, intellectuals and members of the Church. Figures produced by the Permanent Assembly put at 80 and 400 respectively the

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<sup>26</sup> See: *Octubre in Bolivia* October in Bolivia, Chapter II, page 79, Published by the *Centro de Estudios Jurídicos e Investigación Social*, (CEJIS), Centre for Legal Studies and Social Research, Year VIII, No. 16, April 2004, Santa Cruz de la Sierra.

<sup>27</sup> Amnesty International communication to Mr. Yerko Kukoc, Government Minister, (AI Index TG AMR 18/08/2003) of 23 September 2003.



number of dead and injured at as a result of the events of October 2003. The people expressed their revulsion at the high cost in human life at the historic march that took place on 16 October in the city of La Paz, with some 200,000 people gathering in the Plaza de San Francisco.<sup>28</sup> The hunger strikers installed themselves in the parish church of Nuestra Señora del Carmen in the city of La Paz, while other local churches opened their doors to other strikers. Calling for peaceful resistance by way of the hunger strike, the participants made a public appeal, calling on committed members of the public to join the initiative, urging the mobilised sectors of society to desist from any action leading to violence and asking for the resignation of President Gonzalo Sánchez de Lozada so that a successor could be appointed in accordance with the constitution.

Inter-governmental organisations expressed their concern on 16 October at information indicating the excessive use of force by the security forces, the high number of victims and the possibility of further clashes. The UN Special Rapporteurs on torture, Mr Theo van Boven; on extrajudicial, summary or arbitrary executions, Mrs. Asma Jahangir; on the promotion and the protection of freedom of opinion and expression, Mr. Ambeyi Libago; on the human rights and fundamental freedoms of indigenous peoples, Mr. Rodolfo Stavenhagen; and the Special Representative of the UN Secretary General on human rights defenders, Mrs. Hina Jilani, established their concern about the “excessive use of force by the army and the police in the course of their ongoing law enforcement operations”. Appealing to the Bolivian government to adopt “the necessary measures to ensure the full protection of the human rights of the demonstrators” including “the right to assemble and protest, in the light of the international norms endorsed by Bolivia” and stressing that the Army and the Police must act “in strict compliance with human rights standards, and in particular that, the strict limits on the use of lethal force” in compliance with the United Nations Basic Principles on the Use of Force and Firearms.<sup>29</sup>

The protests brought about the resignation of President Gonzalo Sánchez de Lozada, whose mandate was due to terminate in 2007. On 17 October, the President submitted his resignation in writing to the Parliament and left the country accompanied by some of his ministers. He was replaced by the Vice-President, Carlos Mesa Gisbert.<sup>30</sup>

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<sup>28</sup> See: *Octubre en Bolivia*, Chapter III, page 157, Published by the *Centro de Estudios Jurídicos e Investigación Social*, (CEJIS), Year VIII, No. 16, April 2004, Santa Cruz de la Sierra.

<sup>29</sup> UN Press document dated 16.10.03: Special Human Rights Rapporteurs expressed their grave concern about the situation in Bolivia; Agencia EFE Cable, 17 October 2003.

<sup>30</sup> Diverse sectors of civil society filed complaints at the Attorney General’s Office for the prosecution, under a responsibility trial, of former President Gonzalo Sánchez de Lozada and his ministers for the deplorable events of October 2003. In response to this, in November 2003, the Attorney General’s Office sent to the Supreme Court of Justice an application for political and criminal proceedings against the former president and his cabinet for the violation of constitutional guarantees and individual rights enshrined in Part One, Title One of the Political Constitution of the State, Articles 6, 7, 9, 12, 13 and 21 and Article 138 of the Criminal Code on the punishment of “ [...] the perpetrator(s), or others directly or indirectly guilty of bloody massacres in the country.” The application also requested that the Supreme Court of Justice apply to the National Congress for the necessary

## V. The administration of President Carlos Mesa Gisbert

On 17 October, by 97 votes to 30, the National Congress voted to accept Gonzalo Sánchez de Lozada's resignation and appointed Vice-President Carlos Mesa Gisbert as President of the Republic. The Political Constitution of the State establishes that his mandate will last until 6 August 2007.

In his inaugural address, Carlos Mesa Gisbert referred to his programme of work, which included forming a government with no political parties with the aim of gathering together independent officials so as to be able to restore the credibility of the political system; holding a binding referendum to decide the issue of gas exports and amendment of the Hydrocarbons Law and convening a Constituent Assembly. Emphasising the respect of human rights and a respect for life, President Mesa Gisbert acknowledged the delicate economic situation in which the country found itself and expressed his confidence in the support of the international community and cooperation bodies.<sup>31</sup>

During the first weeks of his government, President Mesa promised the investigation by the ordinary courts of the events of February and October and declared an amnesty for anyone detained in connection with the so-called "gas war".<sup>32</sup> The Sole Article of the Supreme Decree establishing the amnesty, states that the amnesty "... shall apply only to those citizens whose actions were carried out in the period between 5 August and 4 November 2003, in the context of social protest against the decisions and policies of the National Government".

The Bolivian media provided a summary of the victims of the clashes of September and October, revealing that, during the six weeks of social conflict in Bolivia, the first six victims died in Warisata; 69 people lost their lives as a result of the confrontations and the highest number of deaths was recorded in the cities of El Alto and La Paz, during the clashes of Sunday, 11 and Monday, 12 October.<sup>33</sup>

In the weeks following the inauguration of the new administration, the Vice-Minister of Justice, Carlos Alarcón, publicly confirmed that financial compensation would be paid to the injured and the immediate family members of those who lost their lives as a result of the action of the combined forces in October, and that the medical expenses of those injured in the clashes would be paid. This initial information concerning compensation and care of the victims and their families was complemented by the Vice-Minister of Justice when he spoke

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authorisation for these proceedings. In a resolution on 14 October 2004, the Congress gave its authorisation for the responsibility proceedings against the former president and his cabinet of ministers to go ahead.

<sup>31</sup> Article in the Bolivian daily newspaper *La Razón* on 18 October 2003.

<sup>32</sup> Supreme Decree No. 27237 issued in the *Palacio de Gobierno* in the city of La Paz, on the fourth of November 2003. Copy delivered to the Amnesty International delegation during the meeting with the Government Minister Alfonso Ferrufino and officials of the new administration on 20 November 2003.

<sup>33</sup> Article in the Bolivian daily newspaper *La Razón* on 18 October 2003.

to Amnesty International delegates at a meeting on 20 November 2003 and in the document handed to the representatives of the organisation. The document states that, through an agreement with the victims' families, the government will pay each of the 200 families recorded up to 7 November 2003 a sum of 400 Bolivianos to cover emergency expenses, adding that the negotiation of an offer from the government was under way relating to Humanitarian Assistance for the immediate families of those who lost their lives or were incapacitated through injury.<sup>34</sup>

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<sup>34</sup> According to a 15-page document: "Information for Amnesty International on the measures put forward by the new government administration for the investigation by the ordinary courts of the events of October 2003" dated 17 November 2003. The document includes information on the coordination put forward by the Ministry of the Presidency via the Vice-Minister of Justice for dealing with victims and relatives; coordination with the Public Ministry for the investigation work, Government's proposal on the creation of a National Human Rights Action Programme and on the jurisdiction of the military courts.

## VI. Testimonies of October 2003

The testimonies gathered by the Amnesty Internacional delegation demonstrate the severity of the situations experienced by entire communities, the anxiety of members of the victims' families and the impotence of members of civil society, including members of the Church. The general outcry was a rightful claim for effective justice.<sup>35</sup>

### **1) Testimony of Santiago Mayta Mamani, Chairman of the “El Ingenio, Unidad Vecinal Uno” Neighbourhood Committee of El Alto :**

[On 12 October] ...by 5 in the afternoon, we already had people dead and injured and, you know, the military were shooting us down like pigeons.[...] at San Juan de Río Seco, the Río Seco bridge, [...] on that stretch there had been several deaths and people wounded. And even the people living here, we didn't see that but they said that the people living in that avenue, there was even a conscript who [...] because he didn't shoot when ordered by his superior, [...] his superior, almost certainly a captain, started to lower his weapon and finished the conscript off with it. This is what the whole neighbourhood said they saw. So not only soldiers, but also several local residents arrived at the bridge in this way, and at the bridge, they also finished off the residents in the same way, several of the residents were killed and injured there like that.

By then it was six in the evening, and that was when they arrived to take the dead and wounded to our headquarters and the injured to the Prosalud. So one by one they arrived there, and we left four dead from our area and various injured people, and they also took the more seriously wounded to other health centres or the hospitals. Well, we found this surprising, the leaders, and we found it strange, the government behaving in this way. And so for safety that night we moved our headquarters to our parish church of Cristo Redentor. We asked so that we could have that security, because any situation, they could even have taken our brothers from us, our loved ones who had died. And so we held our wake for the dead in that parish church. That night, then, we held a wake for seven dead, seven dead they kept bringing [dead people] in to that parish church. That's how we spent that night, and the next day, we were anxious to have the, what do you call him? the forensic doctor to operate on the bodies, so imagine, in that time we spoke to

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<sup>35</sup> The Amnesty International delegation gathered the testimonies of 11 people during their visit to the city of El Alto on 20 November 2003, in interviews held at the Archbishopric of El Alto. Testimonies received from: Santiago Mayta Mamani, Chairman of the “El Ingenio” Neighbourhood Committee, *Unidad Vecinal Uno*; Huascar Paredos Candia, Official (*Fiscal General*) of the Neighbourhood Committee of Villa Ingenio; Jorge Aguilar, resident of Bella Vista; Lucas Ramos Limache, resident of Villa Ingenio; Nemecio Quispe Flores, Teodoro Marca Colli, Yola Ramírez Willca; Reina Mamani of the adjoining area, Santa Rosa; Domingo Tancara Mamani, Father Wilson Soria, Father Modesto Chino Mamani. Extracts from five of these testimonies are reproduced in the text of this document.

Father Wilson who did us a big favour, and together with the bishopric, Father Obermaier that day we spent like that, coordinating with the parish, with Obermaier and all the rest and they agreed to bring the forensic doctor there, and the next day the forensic doctor came and did his work, but there were quite a lot for the forensic: 26, 26 people, or bodies, on which he performed an autopsy [...]

## 2) Testimony of Huascar Paredos Candia

My name is **Huascar Paredos-Candia**, I am an Official (*Fiscal General*) of the Villa Ingenio Neighbourhood Committee and I am simply going to simplify some things that my colleague the chairman has already related.

What we cannot understand is why ex-President Sánchez de Lozada would send military personnel to this town of El Alto de La Paz, which is so poor that it has no defence force, we have no weapons, there is no urban warfare here, we have no ... these are poor people who came here, people who have emigrated from the provinces, different provinces, or people who have been sacked from the mines, those people live in La Paz, struggling: building their schools, building their roads, making openings, that's the work that's being done in El Alto de La Paz. ¿How is it that Mr. Sánchez de Lozada y Sánchez Berzaín are so kind as to send their soldiers to carry out a massacre on the twelfth of October? It is unbelievable, how is it possible that there are humble people, people who have nothing ... Yes, they have blocked, have blocked with stones that they have put on the road, but they have no weapons, nothing to defend themselves with. And yet the military come and kill them left and right, shooting at houses, and ... so you see it was a tremendous crime what took place on the 12<sup>th</sup> of October in this town of El Alto. Especially in my neighbourhood, Villa Ingenio [...] they declared us to be a red area! A red area, how could we possibly be declared a red area? There are no extremists here, there's absolutely nothing here, those of us who live here are, as I said, humble people. Tradesmen who support themselves, bricklayers, builders who make a living from their work. So those are the people who have been most affected, do you see? Their sons have died, their husbands have died and this is the sad reality that you are going to see. As far as I'm concerned, this is a fiasco on the part of the politicians, because the only thing politicians in Bolivia have been bothered about is corruption, right? Filling their pockets, working for their own advantage. No benefits, they never came near the villages, have never brought ... they only came near for the elections to tell us "We are going to work for you, you are going to have benefits, you are going to have this, to have that, to have the other" and that's how the politicians tricked us.

And as a result, the events of the 12<sup>th</sup> of October happened, because the people got tired of having to listen to more lies. Having to listen to politicians continuing to lie to their people, that's what happened.

**3) Testimony of an inhabitant of El Alto (name withheld)**

My name is [...], I live in the Villa San Juan area, [...] This is what happened on 12 October. It was a Sunday, a Sunday, then what happened ... the wounded, many were wounded... there really were... they came... the soldiers, they came from Villa Ingenio. There were stray bullets, there were bullets, a lot [...] We were all together on the River Seco bridge, there's a little bridge a bit further up, and that's where we were. People started running towards us shouting "the army's coming, the army's coming, they are going to make trouble". We didn't think that they would cause any trouble for us! Those of us who had babies, those who had ... the women had already gone back to their homes. When the soldiers got near us, we thought that they wouldn't do anything to us because we weren't causing any trouble, we thought they would just go peacefully by. The road was not blocked or anything. That was when the soldiers started shooting innocent people. And it wasn't with pistols either, they had machine guns. They had weapons, and there were seven dead, seven wounded and a soldier dead by that time. He was killed in our road. There was a soldier who mutinied, he did not want to kill us or shoot at us, and a captain got down from a white truck and said "that's how you kill, you shit", and he killed the soldier whose cap was turned round, so that it faced backwards. "That's how you kill, you shit", and he shot the soldier, and they dragged the soldier up into the truck like a dog, the soldier was bleeding and they put him in the truck, like a dog.

Those who were killed, the poor dead ones, it was a shame how the blood had to flow instead of water, it was blood. It was very sad what happened there, there was no help, no ambulances to take the wounded away, even at the Villa Ingenio health centre, it was so empty that there was not even any alcohol to put on the wounds. [...]

**4) Testimony of Father Wilson Soria Paz,**

My name is Wilson Soria Paz. I am a priest in the diocese of El Alto. I have been working for three years in Cristo Redentor parish. Along with my people, I lived through those days of what was really criminal madness. I will leave these six, nearly seven, pages with you, which is entitled “For National Dignity”, and I am giving you them so that you can have more detailed information. I would like to mention one aspect, or emphasize two aspects. The people who were killed in Villa Ingenio were people who were not directly involved in the conflict, because the conflict happened a kilometre away from the parish centre. The military suddenly arrived a block away from the parish and began to fire indiscriminately at passers-by. There was a civic strike, there was no transport, but no warning was given to people so that they could take shelter, they even provoked people to come out. That is why there were so many dead in the area. I celebrated Mass for 18 bodies! I!

**N.B. The full text of “For National Dignity” – Statement by the Clergy of El Alto Diocese, provided by Father Wilson Soria Paz, can be found in Appendix I.**

**5) Testimony of Father Modesto Chino Mamani**

My name is Modesto Chino Mamani, and I am a priest in El Alto diocese. I work mainly in the parish of Senkata, known as San Francisco de Asís. What I can tell you is about justice, and especially about respect for human rights and is also important for the lives of humble people, innocent poor people who have been killed. All I can tell you is that all this certainly happened because of the strike that was decreed, in the form of a civic strike [...]. Well, I arrived at the place where, at first, there were clashes, with both sides involved. Shots, tear gas and sticks of dynamite from the other side. And I described this on the radio, because just then, Radio ERBOL and ATV [communications media] interviewed me for the first time. They asked me if I could describe what was happening and so I described what was going on. In my role, and especially as a human being, I find it hard to understand what happened then, much more as a person and a Bolivian and these were my own people as well. What happened was that as soon as they had cleared the road, they began to detain people, which is normal, and is bound to happen, because it is normal for people to get detained. But what I want to

complain about is that they were not just detaining people, they were practically assaulting, insulting, ill-treating and abusing them. More than three police officers, five, were hitting people there, it was incredible and inhuman. I was being interviewed by the radio and television but I automatically forgot about the media and began to shout and complain about what was going on. I shouted at them, “that’s outrageous, you should respect human rights”. A few minutes earlier, as I found myself there, I said to myself “those police officers, they could think I am involved”, so as I was returning from a church service, I put on a stole, a kind of thick shawl, to identify myself, it stands out, anybody would be able to see that I was a priest. I had no stones in my hands, only my book of liturgy and holy oils [Santos Oleos]. The interview stopped as they continued to detain people... they were treating people so badly, it was incredible, I couldn’t stand it. Then they detained other people, and again started to assault and kick them, incredible, very badly and I said “I am not on the air” but no, that is not what gives me strength... Deep down, I was angry at what was happening and I again shouted “respect human rights, respect life”. One of the police officers who was assaulting people turned round and said, “Who are you?” and they immediately shot at me. I did not feel it for a moment, because the shot is pellets... That had never happened to me before in my life... “Who are you?” and they shot at me before I could reply. I said, “I am a priest, and I am against these abuses that you are committing.” They immediately pushed me towards the group, and I was afraid they were going to hit me much harder. Pushing me was already ill-treatment. Incredible, I am a priest and the commander said, “You want to speak to me?” “Who are you?”, he said. “I am a priest”. “Where is your church?, he asked [...]

## **VII. The investigation into the “gas war” – September and October 2003**

At the end of October, it was announced that the Public Ministry would begin an investigation into the events of September and October, and five prosecutors were appointed. The investigation was to include the shooting of the conscript, Nemecio Sanca García, on 12 October. Witnesses claimed that the conscript was killed by an army officer after having refused to fire on demonstrators.

According to reports published at that time, the Attorney General ordered 27 prosecutors and pathologists from the *Instituto de Investigaciones Forenses*, Institute of Forensic Investigation, to work on this case in the days immediately after the tragic events of October. On 22 October 2003, the Attorney General issued instructions to the country’s nine district prosecutors, reiterating and supplementing earlier instructions to “clarify the events known as black



October” that were the object of the investigation.<sup>36</sup> The Attorney General also gave instructions to investigate the circumstances in which many people were killed in clashes between citizens and the Army and Police forces in Warisata, La Paz – the seat of government, El Alto, Patacamaya and other places. He ordered prosecutors in other districts to carry out the same task.

These investigations have proceeded very slowly. More than a year after the tragic events of September and October 2003, the number of deaths has still not been confirmed, although it is estimated at over 80. The Attorney General’s Office has confirmed 56 deaths and a large number of wounded.

It has been with growing concern that Amnesty International has received reports that the investigation may be closed before it has been completed. According to reports received by Amnesty International, at the end of July 2004, the two prosecutors in charge of the investigation said the investigation should be closed because it was “technically” impossible to identify those responsible for the deaths. They also referred to the application of Supreme Decree 27234 of 21 October 2003, which established a provisional amnesty for crimes covered by Law 2494, related to social protests between 5 August 2003, the date of publication of this law, and 4 November 2003, the date of publication of Supreme Decree 27234. Amnesty International raised its concerns with the authorities, emphasizing that it was vitally important for the investigation into the events of February and October 2003, with their tragic consequences, to be independent, conclusive and conducted by the civil justice system.<sup>37</sup>

Amnesty International emphasized that article 124 of the country’s Constitution states that: “The role of the Public Ministry is to promote justice, defend legality, and the interests of the State and society.” Chapter 1, on Criminal Proceedings, Article 16 on taking official proceedings against crime of the Bolivian Criminal Procedure Code, states that “Official proceedings against crime cannot be suspended, interrupted or halted, except in the cases expressly provided for in law”. Similarly, Chapter I, article 70, on the role of the Public Ministry, states that “it is the responsibility of the Public Ministry to direct the investigation of crimes and take official action against crime through the judiciary. To this end, it will take all the steps necessary to prepare the prosecution and participate in the trial, in accordance with the provisions of the Criminal Procedure Code.”

Similarly, the organization understands that Supreme Decree 27234 of 31 October 2003, granted an amnesty for crimes covered by Law 2494, committed by civilians participating in social protests against the decisions and policies of the national government, and was not designed to be applied to state agents participating in the repression of such protests, in which dozens of Bolivians died. The Single Article of the Supreme Decree states that the amnesty “... applies only to citizens whose actions took place in the period of time between 5 August and

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<sup>36</sup> Instruction 011/2003, according to reports in the Bolivian daily, *Los Tiempos*, 23 October 2003.

<sup>37</sup> Amnesty International communication to Carlos Alarcón, Deputy Minister of Justice (Ref: TG AMR 18/06/2004) 13 August 2004.

4 November 2003, as part of the social protest against the decisions and policies of the National Government.”

It is in this context that Amnesty International has received the Attorney General’s communication of 1 October 2004, with interest and hope that the investigations into the events of October 2003 will be completed without further obstacles being put in their way. On 1 October 2004, the Attorney General stated that “[...] the action taken by the two prosecutors in charge of one stage of the investigation into the sad events of October 2003, has been correctly revoked by the La Paz District Prosecutor and the investigation will continue as established and under the impetus provided from my capacity as representative of the Public Ministry.”<sup>38</sup>

## **VIII. Conclusions and recommendations**

### **a) Conclusions**

Amnesty International considers it to be of vital importance to carry out exhaustive and independent investigations into the events of February and October 2003, make the outcome of the investigations public and bring those responsible to justice. The State has the obligation to prevent violations, to investigate them when they occur, to process and punish the perpetrators and to provide reparation for damages caused. The organization has emphasized this point to the Bolivian authorities on several occasions, including during interviews with ministers and members of the cabinet of the then President, Gonzalo Sánchez de Lozada, in March 2003<sup>39</sup> and members of the current administration of President Carlos Mesa Gisbert, in November 2003.<sup>40</sup>

The investigations conducted and the information gathered by Amnesty International during its visits to the country in March and November 2003, largely corroborate the reports received during the days and weeks immediately after the tragic events of February and October. The information gathered, both in the form of written reports and during interviews with members of civil society, confirmed previous declarations about the weakness of and lack of public confidence in Bolivian institutions, including the judiciary.

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<sup>38</sup> Communication of the Attorney General, Dr César Suárez Saavedra, Ref.Cite.FGR/Stría. 1008/04, 1 October 2004.

<sup>39</sup> Between 15 and 17 March 2003, Amnesty International delegates interviewed the Minister of the Presidency and Acting Minister of Justice and Human Rights, Sr. Guillermo Justiniano; Deputy Minister of Justice, Sr. Alberto Vargas Covarrubias; Minister of Foreign Affairs, Sr. Carlos Saavedra Bruno; Deputy Minister of the Interior, Sr. José Luis Harb; and Minister of Defence, Sr. Freddy Teodovich.

<sup>40</sup> Between 18 and 20 November, Amnesty International delegates interviewed the following ministers: Sr. Horacio Bazoberry, Director General of Multilateral Affairs at the Ministry of Foreign Affairs, General Gonzalo Arredondo Millán, Minister of National Defence; Sra. Lupe Cajias, Secretary for Special Policies and the Struggle against Corruption; Sr. Alfonso Ferrufino, Minister of the Interior; Sr. Carlos Alarcón, Deputy Minister of Justice; Sra. Ximena Prudencio, Director General of Public Safety and Crime Prevention.

Amnesty International has repeatedly written to the Bolivian authorities, presenting its concern at incidents, the characteristics of which would seem to indicate an excessive use of force by the security forces. In its letters, the organization has requested immediate, impartial and conclusive investigations, and emphasized that it is important for investigations to be conducted through the civil justice system, for their terms of reference and conclusions to be made public and for those responsible to be brought to justice.

Amnesty International renews its appeal to the Bolivian authorities to ensure that the investigations into the tragic events of February and October 2003 are dealt with in the most careful and clear way by the civil justice system, both in relation to the deaths and also the circumstances surrounding the events. These investigations should determine whether the security forces made excessive and disproportionate use of force and whether their actions were consistent with the provisions of the relevant United Nations instruments, such as the *Code of Conduct for Law Enforcement Officials*<sup>41</sup> and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.<sup>42</sup>

In the light of the possible closure of investigations by the civil justice system before they have been completed, Amnesty International considers that the judiciary is ignoring both the Bolivian Criminal Code and the Criminal Procedure Code. The organization emphasizes that neither the Criminal Code nor the Criminal Procedure Code allow the Public Ministry to close a case without concluding the respective investigation, given the duty of prosecutors to promote judicial proceedings. In its legal arguments, the *United Nations Guidelines on the Role of Prosecutors*<sup>43</sup> states that “prosecutors play a crucial role in the administration of justice” and considers that “rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles [...]” such as those enshrined in the Universal Declaration of Human Rights.<sup>44</sup>

It is important to emphasize that International Human Rights Law imposes two major classes of obligation on the State: one, the duty to abstain from infringing upon human rights, and the other a duty to guarantee respect of these rights. The former is composed of a set of specific obligations related directly to the duty of the State to abstain from violating human rights – whether through action or omission – which in itself implies ensuring the active enjoyment of such rights. The second refers to all obligations incumbent on the State to prevent violations, to investigate them when they occur, to process and punish the perpetrators and to provide reparation for damages caused. Within this framework, the State is placed in the legal position of serving as a guarantor of human rights, from which emerge essential obligations related to the protection and ensuring of such rights. It is on this basis that jurisprudence and legal doctrine has elaborated the concept of the Duty to Guarantee, as a fundamental notion of the

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<sup>41</sup> Adopted by the General Assembly of the United Nations on 17 December 1979 [resolution 34/169].

<sup>42</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>43</sup> Approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>44</sup> *Ibid* fifth paragraph, consideration.

legal position of the State in the matter of human rights. In this juridical relation between the individual and the State, characteristic of International Human Rights Law, the legal position of the State is basically that of a guarantor. The Duty to Guarantee can be summarized as a set of “obligations to guarantee and protect human rights... [and] consists of the duty to prevent conduct contravening legal norms and, if these occur, to investigate them, judge and punish the perpetrators and indemnify the victims.”<sup>45</sup>

On analysing article 1 (1) of the American Convention on Human Rights, the Inter-American Court of Human Rights reminded state parties that they have contracted the general obligation to protect, respect and guarantee each one of the rights in the Convention, meaning, “States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation. [...and that] the State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”<sup>46</sup>

Similarly, the State’s obligation to guarantee victims of human rights violations the right to appeal exists independently of its duty to investigate, bring to trial and punish those responsible for such violations. The Inter-American Court of Human Rights reminded States of their duty to investigate, when it stated that: “[The duty to investigate] must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.”<sup>47</sup>

With regard to standards dealing with amnesties and similar measures that prevent perpetrators of human rights violations being brought to trial and punished, Amnesty International would like to remind the authorities that these are incompatible with the duties imposed on states by International Human Rights Law. Referring to the incompatibility of amnesties with the Inter-American Convention on Human Rights, the Inter-American Court of Human Rights considered that: “all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and

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<sup>45</sup> United Nations Observer Mission in El Salvador, Report of 19 February 1992, United Nations document A/46/876 S/23580, paragraph 28.

<sup>46</sup> Inter-American Court of Human Rights, *Judgment of 29 July 1988, Velásquez Rodríguez case*, in Series C: Resolutions and Judgments, No. 4, paragraphs 166 and 174.

<sup>47</sup> Inter-American Court of Human Rights, *Velásquez Rodríguez Case, Judgment of 29 July 1988*, in Series C: Decisions and Judgments, No. 4, paragraph 177; *Godínez Cruz Case, Judgment of 20 January 1989*, in Series C: Decisions and Judgments, No. 5, paragraph 188; and *Caballero Delgado y Santana Case, Judgment of 8 December 1995*, in Series C: Decisions and Judgments, No. 22, paragraph 58.

forced disappearances, all of them prohibited because they violate non-derogable rights recognized by international human rights law."<sup>48</sup>

More recently, in July 2004 the Inter-American Court of Human Rights corroborated this ruling by establishing that: the State must not resort to measures such as amnesty, extinguishment and the establishment of measures designed to eliminate responsibility which intend to prevent criminal prosecution or suppress the effects of convictions.<sup>49</sup>

### **i) Economic, Social and Cultural Rights and the Indivisibility of Human Rights**

Amnesty International has repeatedly received reports indicating that the social conflicts of recent years have been generated by protests at the government's failure to comply with agreements on social and economic issues. Amnesty International would like to emphasize that human rights are indivisible.

Amnesty International considers it vital that the Bolivian authorities, in compliance with their international duties, ensure that they take these rights into account when formulating economic policies and take the necessary measures, as required by the *International Covenant on Economic, Social and Cultural Rights*, recognizing in this way the indivisibility of human rights. Equally, it is the duty of the Bolivian authorities to take measures that promote an effective dialogue and permit the achievement of lasting solutions in critical situations such as those that developed in Bolivia in 2003.

The state also has a responsibility to ensure that its actions are fully in keeping with respect for human rights, respecting fundamental human rights, such as the right to life and the right to physical integrity, and the economic, social and cultural rights of the people of Bolivia. The state also has the responsibility to take into account, in its economic agreements with other governments, the binding duties imposed by international standards on economic, social and cultural rights. All human rights are indivisible and interdependent.

Bolivia is State party to the *International Covenant on Economic, Social and Cultural Rights*.<sup>50</sup> Article 2(1) of this Covenant states that each state party to the Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant. These rights include the right to work, to an adequate quality of life, and to health and education.

Amnesty International has repeatedly called on the Bolivian authorities to take these rights into special consideration during the current critical period, while social tension still prevails

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<sup>48</sup> Inter-American Court of Human Rights, Judgment of 14 March 2001, *Barrios Altos (Chumbipuma Aguirre and other vs. Peru) Case, Judgment of 14 March 2001*, paragraph 41.

<sup>49</sup> Corte Interamericana de Derechos Humanos, *Caso 19 Comerciantes vs. Colombia*, Sentencia de 5 de julio de 2004, párrafo 263. [Available only in Spanish]

<sup>50</sup> Ratified on 12 August 1982.

and there remains the possibility of an escalation of social mobilizations, and to take the necessary measures to recognize these rights, as required by the *International Covenant on Economic, Social and Cultural Rights*, recognizing in this way the indivisibility of human rights.

### **b) Recommendations**

The tragic days of 2003, which resulted in a still unconfirmed number of deaths, but which reports say could be more than 100, must be investigated independently by the civil justice system. These investigations must be conducted in accordance with the relevant international standards. The Bolivian authorities must ensure that the resolution of these crises is guided by the principle of the indivisibility of human rights, that is to say, that it recognizes that the crisis has its roots in the violation of the economic, social and cultural rights of marginalized sectors of the population.

Amnesty International agrees with the declaration made by President Carlos Mesa Gisbert at his inaugural speech on 17 October 2003 that respect for human rights and respect for life is “the most precious asset and gift of any citizen.”

Life is certainly the supreme right guaranteed by international law. This right must be implemented by States in law, policies and practice.<sup>51</sup> Article 6(1) of the *International Covenant on Civil and Political Rights* states that: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of life”.

Considering the high number of victims of the violent days of February and October 2003, and the importance of restoring confidence in Bolivian institutions, Amnesty International, in the spirit of contributing to this effort, considers it vitally important that all levels of the Bolivian government, Executive, Legislature and Judiciary, take the steps necessary to formulate policies and initiate reforms that permit the promotion and protection of human rights and avoid a repetition of the bloody events that took place in 2003.

Amnesty International therefore considers that the Bolivian Government should:

- Proceed with and effectively implement the National Human Rights Plan;
- Condemn, specifically and officially, all human rights violations, whoever is responsible;
- Guarantee that the security forces act in accordance with United Nations guidelines during protests and demonstrations, and thereby avoid endangering life or violating the human rights of demonstrators;

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<sup>51</sup> In its General Comment 1 on article 6, the United Nations Human Rights Committee, described the right to life as a “supreme right”. See: General Comment 6: The right to life (Art.6): 30/04/82. CCPR General Comments , Sixteenth session, 1982.

- Guarantee that, in future, police action during protests is legal, respects the freedom to protest peacefully and guarantee that security measures are in proportion to the threat;
- Guarantee that security forces training and action procedures comply with UN guidelines on the minimum use of force and firearms;
- Guarantee the establishment of chain-of-command control of the security forces so that officials accused of having ordered, tolerated or covered up abuses of human rights will be investigated by the civil justice system;
- Ensure that all police officers and all other law enforcement personnel should be aware of their right and duty to disobey orders the implementation of which might result in serious human rights violations. Since those violations are unlawful, police officers and others must not participate in them. The need to disobey an unlawful order should be seen as a *duty, taking precedence over the normal duty to obey orders*. The duty to disobey an unlawful order entails the *right* to disobey it.
- Ensure that both the army and the police comply with their role of guaranteeing the Rule of Law and human rights;
- Ensure and guarantee that independent bodies investigate all complaints of torture, ill-treatment and unlawful murder, promptly and impartially. The authorities must ensure that the necessary measures are taken to guarantee that officers on active service suspected of having committed human rights violations, should not avoid justice or compromise the impartiality and independence of the investigations. The conclusions of investigations should be made public. All officials declared to be responsible for human rights violations should be brought to trial and not allowed to serve in the police or security forces in the future. Victims should obtain adequate reparations.
- Guarantee the fundamental rights of all detainees, as enshrined in the Body of Principles for the Protection of all Persons Under any Form of Detention or Imprisonment, adopted by the UN in 1988;
- Impartially assert the right of all people prosecuted under criminal law to have their legal rights respected and receive a fair trial, in accordance with the provisions of the American Convention on Human Rights, the International Covenant on Civil and Political Rights and other international human rights instruments;
- Investigate promptly, thoroughly, impartially and independently all complaints of human rights violations. Any negligence on the part of the institution conducting such an investigation must result in the immediate, impartial and rigorous examination of the investigation procedure;

- Adopt urgent measures to strengthen the effectiveness, independence, impartiality and transparency of the work of the Public Ministry and the Attorney General's Office in accordance with international standards (Basic Principles of the UN on the Independence of the Judiciary, 1985; Guidelines on the Role of Prosecutors, September 1990);
- Maintain a policy of public support to the work carried out by human rights defenders so they can carry out their legitimate activities without fear of suffering reprisals and with the full cooperation of the authorities, in accordance with the provisions of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, known as the Declaration on Human Rights Defenders.<sup>52</sup>
- Adopt measures, using the maximum resources available, using all appropriate means to respect, protect and comply with economic, social and cultural rights, giving priority to vulnerable sectors of the population, and to the essential minimum obligations;
- Ensure the participation of all communities in decisions which are relevant to the realization of their rights.

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<sup>52</sup> Adopted through General Assembly Resolution 53/144, 9 December 1998.



## APPENDIX I

### **“For National Dignity” – Statement by the Clergy of the Diocese of El Alto<sup>53</sup>**

#### **FOR NATIONAL DIGNITY**

Saturday, 11 October 2003. It is the fourth day of a total civic strike in the city of El Alto. In District 5, in Villa Ingenio, District 1, Neighbourhood 1 of the city, an assembly is being held with the presence of the majority of residents (a significant number). It is decided to put the community on an emergency footing because of rumours that the government might announce a “state of siege”. Speakers criticize the former president, Gonzalo Sánchez de Lozada and his ministers. I read a message from the town clergy, which the media has not published:

#### **STATEMENT BY THE CLERGY OF THE DIOCESE OF EL ALTO**

“Cleanse your hands; purify your hearts. Recognize your misery...” (James 4.8)

The priests of El Alto Diocese, servants of the people of God, indignant at the events of the last few days, particularly those that have occurred in our city, communicate the following:

We condemn the atmosphere of generalized violence, deaths, attacks on human rights, wounded, clashes, the use of weapons of war against demonstrators, arrests, abuses of authority and the rupture of any chance of dialogue. Once more, the Bolivian family is in mourning and desperation, so we call on the authorities to investigate and punish whoever is responsible. AN END TO IMPUNITY!

Moreover, all we get from the government is misinformation, an inability to seek a solution to problems through dialogue and a passive attitude that allows the country’s problems to get worse every day.

We denounce the attack on P. Modesto Chino by the government’s repressive forces on Thursday 9 October, in Senkata.

Violence is not the way to deal with the social crisis, nor is it the solution to our problems. No arguments justify it. All such acts go against the fundamental principles of real democracy and the Constitution’s call to respect human life.

**WE THEREFORE CALL ON THE NATIONAL GOVERNMENT TO STOP BEING INTOLERANT, ESTABLISH A SINCERE AND HONEST DIALOGUE, AND LISTEN TO THE DEMANDS OF THE POOR WHO CLAMOUR FOR A SOLUTION TO THEIR**

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<sup>53</sup> Document given by Father Wilson Soria Paz, Parish priest of Villa Ingenio, El Alto to the Amnesty International delegation during its visit to the city of El Alto on 20 November 2003.

PROBLEMS. WE ALSO APPEAL TO THE LEADERS OF SOCIAL ORGANIZATIONS TO ABANDON ANY INTRANSIGENT ATTITUDES AND SEEK SOLUTIONS.

As priests of our communities, we once more reaffirm our Christian commitment to the people and at the same time we extend our solidarity to the victims' families, in their concern, suffering, pain and grief. We hope that God's spirit counters any selfishness and private interest so we can find a lasting peace based on social justice.

Yours sincerely

### **THE BOARD OF THE CLERGY OF EL ALTO DIOCESE**

The Community knows that its priests understand their needs and are by their side.

At night, residents hold an emergency meeting and listen to two announcements: someone or the government intelligence services describes them as revolutionaries and rebels; after two people are killed during the morning's demonstrations in Ballivián zone, the residents of Huayna Potosí decide to take control of Police Regiment No.5. "Military reinforcements have arrived and we cannot leave them on their own, we must help them, we must give them our solidarity", say the residents. Some young people leave to go there.

At 1.30 in the early morning, someone who has been wounded by a bullet arrives at the *Prosalud* health centre. His name is Luis Condori and he was wounded on the Tupac Katari bridge. The bullet has gone through his right leg, breaking bones and blood vessels and causing internal bleeding. People are worried. No ambulance, neither the 110 nor any kind of vehicle will be able to get through the intense blockade. The internal bleeding continues to increase and it is feared that blood clots will affect the circulation of blood to the brain. It is decided that the family take him on one of the health centre stretchers to a nearby hospital. They had to carry him to Chacaltaya Avenue. Fortunately, the wounded man recovered.

Sunday, 12 October, a fateful day. At 7.00, we celebrate Sunday communion in Cristo Redentor parish church, in Villa Ingenio. Many parishioners attend. The main theme of the service is "the Church's principal reason for defending human rights: humans have been created in the image and likeness of God, find redemption in Christ and are adopted as children of God. God is the Saviour and his love brings freedom, nobility and dignity to all people. All those who attack human dignity go against the will of God and his plan for freedom." We also announce that the government minister has militarized El Alto and warn them of the need to be careful, given they are defenceless against the army.

At 13.00, residents hold an assembly in Elizardo Pérez Square. At about 14.00, the first shots are heard in the direction of the River Seco former check point [*Extranca*]. Residents go to help the people of Puerto Mejillones and Zona Brasil. Clashes are concentrated on the River

Seco bridge and in the Extranca. Residents went armed with sticks, stones and a few sticks of dynamite. The confrontation continues. Residents sometimes take fright and flee, others crowd together. After about an hour and a half, a woman arrives at the parish church and says there are wounded people in Extranca and that some people have been killed on the River Seco bridge.

In the church and the surrounding area, and in adjacent streets, we remained “careful”, curious, with people coming and going from one neighbourhood to another. What a tragedy! Some soldiers in the *Extranca* have broken into the old glass factory and gone through to the Tahuantinsuyo zone. On their way through Villa Ingenio, Neighbourhood 4, they killed a resident called Roberto Adolfo Huanca Porce and wounded another. Their only crime had been to set tyres alight. What indignation!

Between 16.00 and 16.30, I went out on to the street corner outside the church, between Luis Espinal Street and Oblitas. The secretary had gone off to carry out a task. There were rumours about soldiers nearby. We were with the residents trying to think how to help the wounded in the Extranca, when I noticed a soldier on the next street corner. I didn't hesitate for a second. I turned round, signalled to the people in the street to warn them to get back into their homes, and I did the same, running as quickly as I could. I had only just got through the church gate when the shooting began. The people taking part in a training meeting in the church hall cried in desperation. There were people running along the street, there were cries, shots rang out incessantly. That's how things were for ten or 15 minutes. Then the heavens protected us with an intense hailstorm that lasted 15 minutes. We could still hear shots but they were coming from further away now. The soldiers began to move towards the River Seco bridge along one of the parallel streets.

The drama began. A young woman who sold *salchipapas* on the corner of Juan José Torres and Luis Espinal Avenues, one block away from the parish church, was hit by a bullet in his right arm, (I can't stop crying as I write these lines...). They took her to *Prosalud*, but it was closed because of the situation. In their desperation, the residents broke down the gate and went into the building. There was a nurse there, but no drugs because they had been used to treat the person wounded on the previous night. The young woman's wound was given an emergency dressing. At the same time as this patient was leaving, a larger number of residents arrived carrying wounded and dying people in blankets. One had half his neck shot away, another's skull was wide open, another's chest was split open. What to do in this situation? There was no access to ambulances, there were no drugs. Almost instinctively, seeing that the wounds were so serious and that nothing could be done, I began to give the sacrament of absolution to the dying, pardoning their sins. I began with the first, went on to the second,... when I returned to the first, he had already died. What grief! Such a feeling of powerlessness! We used the church loudspeakers to appeal for medical workers to come and help and for residents to provide drugs.

Fortunately, nurses and doctors living in the area began to arrive at the health centre, including *Prosalud* staff, and they dressed the wounds of the less seriously hurt (wounded

arms and legs). One doctor who made an outstanding contribution, due to his generous, risky and self-sacrificing actions, including putting his own motorbike at the service of the community during all these difficult days, was Dr. Alfredo Matha Pérez.

Feeling both pain and anger, I make the first complaint to the media: ERBOL and FIDES: “We have three dead and many wounded.”

Like a gift from Heaven, P. Ramón Ino Barreto appeared driving the Espíritu Santo parish church vehicle. He took the wounded, piled up as comfortably as possible. We didn’t get the chance to count how many there were.

Towards 20.00, around the time of Sunday Communion, we attend the wake for the three dead in the communal room, and bless them. Residents attended in massive numbers. It was then that we noticed the shooting had stopped.

One hour later, the zonal authorities visited me to ask me if they could use the parish hall for the wake. They were nervous and afraid that soldiers might come into the offices where the bodies lay and attack the people present. Without thinking twice, I accepted their request. The Cristo Redentor parish church, Villa Ingenio, becomes a house that welcomes the community in its pain, suffering and hope.

Monday 13 October. The magnitude of the tragedy begins to become apparent. People come from Puerto Mejillones, Villa Ingenio District 2, Túpac Katari, Villa Ingenio, Neighbourhood 4, with their banners, the dead accompanied by the bereaved and residents. We see their pain and anger. While setting firecrackers off, they chant against the government: “RIFLES, MACHINE GUNS, THE PEOPLE WILL NOT BE SILENCED! GONI, YOU SWINE, THE FIRING SQUAD AWAITS YOU! THE PEOPLE UNITED WILL NEVER BE DEFEATED! RESIGN YOU MURDERING PRESIDENT!”

That day, there were wakes for 11 bodies. The parish church felt very small in the presence of the thousands of people who formed long queues to pray for the dead or to come looking for them.

Among the mourning and grief, I make a clear and determined denunciation to the media. The anger and indignation that overwhelmed me was so great that I couldn’t find words to express the horrible reality that we were living through at that moment. Cowards and murderers were the words that came out to describe the people responsible for that terrible massacre of civilians!

Solidarity was soon on hand. Ms Benita Pérez, vice-deputy [*diputada suplente*] donates six coffins. Residents make a collection of five *bolivianos* from each family, to care for the wounded and families of the dead. Policarpio Castañeta, deputy for district 16 donates 400

*bolivianos*, which covers the cost of another two coffins. The rest of the coffins were bought by the bereaved themselves. The previous and present governments did not give one penny towards the costs of the funerals.

Some media arrived: RTP, Radio Pachamama, ERBOL.... We did not feel alone. Society shared our pain and suffering.

A committee of residents and the various parish groups throw themselves into dealing with all the different jobs that need doing in such circumstances: cleaning, caring for new arrivals, providing of light refreshments, making telephone calls...

It never rains but it pours. Six people suffering from burns arrive at *Prosalud*. The River Seco petrol station has exploded. The people were very badly burned. They were cared for and sent on to hospitals or clinics. Then we realised that there had been more than six casualties. We counted again and found that the explosion at the petrol station had left four dead.

Towards midday, a dead baby was brought in. Kevin Colquehuanca was two months old. His mother had been holding him in her arms on the day of the shooting. When she fled from the danger, she tripped and fell on top of the baby, which later died. That same afternoon, he was buried in the Villa Ingenio cemetery.

A fruitless search for a forensic doctor: we repeatedly called various institutions to try to locate one but we were unsuccessful. The only suggestion we were given was to take the bodies to the general hospital so that an autopsy could be carried out there. They told us they had no guarantees and that the blockade did not allow ambulances through. What bureaucracy and lack of will! The bereaved, in their simplicity and naivety, agreed to take the bodies to the general hospital the next day, with the generous cooperation of the ambulances that P. Sebastián Obermaier had got hold of.

Tuesday, 14 October. The situation has changed significantly. The bereaved continue to arrive in massive numbers and the number of dead has risen to 15.

At 10.00, Fr. Sebastian arrives with sister Marcela Zamora, president of the *El Alto Conferencia Boliviana de Religiosos* (CBR), Bolivian Conference of Religious, sister Elizabeth Cussi, director of the El Alto Catholic, teacher training college. The attitude of the bereaved has changed: they refuse to take the bodies, they realise that the return journey will not be safe. Moreover, there are now 15 bodies and the most sensible thing to do is to get hold of a forensic doctor to come to Villa Ingenio. We call Mons. Jesús, who through the Minister of Health, manages to get forensic doctors allocated to deal with the bodies in the parish church. A committee of Fr. Sebastián, the religious representatives and the district authorities go to the hospital to bring the forensic doctors. What a big surprise! When we arrived, the hospital staff said they did not know anything about the work required in El Alto. We call the media, we call the Ministry again... and finally forensic doctors, nurses (empty-handed), a prosecutor and a PTJ official, agree to come to Villa Ingenio.

At that moment, we were visited by the deputy mayor and the president of the District 5 Vigilance Committee, who, as spokespeople for Dr. José Luis Paredes offered facilities for the burial and the immediate construction of a mausoleum.

Towards 13.00, the committee with the pathologists arrive without further problem. Residents were respectful and welcoming. A search began for the necessary equipment: cotton, alcohol, typewriter, paper.... The knife, shall we use the parish church kitchen knife? They worked for two and a half hours and handed over the corresponding death certificates.

After the legal autopsy, towards 15.30, the bereaved carried the corpses to their homes to wash them, prepare a wake and then the burial on the following day. One of the dead of Villa Ingenio stayed in the parish church hall, where many residents attended the wake.

That day one body was buried which had already had a legal autopsy, which was obtained by other means.

Wednesday 15 October 2003. Day of the general burial

The Eucharist, the mass for the body lying in state, scheduled to be held in the Church, had to be said in the Elizardo Pérez square. We did not expect so many people to attend. In the end we calculated that approximately 10,000 people attended the burial.

Priests from neighbouring parishes attended the celebration of the Eucharist: Fr. Enrique from Villa Tunari, Fr. Félix Bagnin from 16 de Julio, Fr. Fidel from Huayna Potosí, Fr. René Marca, from the northern highlands, Deacon Silverio from Huarina, myself and at the end of the mass the Episcopal Vicar of El Alto, Fr. José Fuentes.

During this massive celebration the two public letters from the Clergy of the diocese of El Alto and the CBR were read out, in which, in the outstanding parts highlighted the choice of the Church for the people of El Alto and for their fair social grievances and called for the RESIGNATION of the president Gonzalo Sánchez de Lozada.

The coffins were shouldered by the same mourners, and carried to the general cemetery of Villa Ingenio for more than 5 kilometres. On our arrival it seemed that All Saints had come early, such was the amount of people there.

The Virgin of Copacabana, patron saint of Bolivia and patron saint of the Armed Forces is in mourning because her children – soldiers, miners, peasants, the people of El Alto and La Paz were murdered.

Radio Pachamama arrived with a complement of provisions, money and coffins. Afterwards the following did the same: the Bishopric of El Alto, PMA, Instituto Domingo Savio de Calacoto, brothers and sisters from the 3<sup>rd</sup> and 2<sup>nd</sup> section of the 16 de Julio Zone, the Honorable Néstor Siñani, all of them with contributions in the form of provisions or money. These have been shared out and will continue to be, for as long as they arrive. On behalf of

the mourners, we would like to give thanks with all our heart for this generous contribution. May the Lord bless them.

This Wednesday 15, at night, from 20.00 hours a general alarm was called on a new military intervention in El Alto. What has really happened? The investigation will give us more objective information on the event. What is certain is that it caused great fright, fear, psychological traumas. Our people kept watch all that night.

Friday 17 October we began a hunger strike – 16 pastoral, priests, deacons, catechizers, young people from the youth pastoral, joining in the position of Sra. Ana María Romero de Campero in the call for the resignation of the president.

With the utmost sincerity that these days of suffering and bereavement have been TOO MUCH to face. Only with the help of God and other people have we accompanied these brothers and sisters in the most human and sympathetic form possible. We still continue to receive donations and pass them on to the corresponding recipients, according to a list. The procedures for requesting compensation for the dead and injured were carried out in an office in the Bishopric of El Alto, Ferropetrol Zone, next to Boris Bánzer square. To those affected by violence, we ask them to go to this address, as soon as possible.

The Lord is with us, because we are his children. Violence, like every type of evil, only comes from the sins of men. God loves us and shares our pain and suffering.

**LIST OF DEAD AND WOUNDED  
PARISH OF CRISTO REDENTOR**

**DEAD – 12 OCTOBER 2003**

1. + Damián Luna Palacios
2. + Richard Charca
3. + Francisco Ajllahuanca
4. + Mariano Linares
5. + Kevin Colquehuanca
6. + Roberto Adolfo Huanca Porce
7. + Jhonny Siñani
8. + Max Vallejos
9. + José Masías Quispe
10. + Luis Fernando Quelca
11. + Felix Calle
12. + Juan Ticona Parra
13. + Felix Bautista
14. + Damien Larico Mamani
15. + Benita Rodriguez Ticona

16. + Juan Ticona Mamani
17. + Marcelino Carvajal Lucero
18. + Wilson Chuquimia Duran
19. + Luis Reynaldo Cusi
20. + Manuel Yanarico Janco
21. + Florentino Poma Flores
22. + Enrique Héctor Marín Limachi (110)
23. + Dominga Rodríguez

### WOUNDED

NOMBRE Y APELLIDO
Constantino Pari Marca
Roberto Yauli Quispe
Luis Vilca Gavincha
Edgar Velasco Mamani
Esteban Choque Herrera
Luis Gualberto Mamani
Paulino Calamani Tamayo
Lucas Ramos Limachi
Patricia Montecinos Vega
Policarpio Mamani Mamani
Richard Ramírez Vilca
Luis Condori Quispe
Edgar Chura Quispe
David Poma
Rubén Poma Flores
José Alberto Cadenas Ch.
Rubén Cadena Calle
Alberto Osco Siñani
Martín Moya Nacho
Samuel Montecinos Tintaya
Javier Aruquipa Poma
Abraham Vicini Mendoza
Hernán Quispe



Roly Nelson Arratia
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Your servant,

FR. Wilson Gonzalo Soria Paz

PÁRROCO

PARROQUIA CRISTO REDENTOR

VILLA INGENIO – EL ALTO

## APPENDIX II

### Basic Principles on the Independence of the Judiciary

**Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985**

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

***Independence of the judiciary***

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

***Freedom of expression and association***

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in

such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

***Qualifications, selection and training***

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

***Conditions of service and tenure***

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration. Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

***Discipline, suspension and removal***

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

### APPENDIX III

#### Guidelines on the Role of Prosecutors

##### **Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990**

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts undertaken to translate them fully into reality,

Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime,

Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in combating criminality, particularly in its new forms and dimensions,

Whereas the General Assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Whereas in resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Committee on Crime Prevention and Control was called upon to include among its priorities the elaboration of guidelines relating to the independence

of judges and the selection, professional training and status of judges and prosecutors, Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas, in resolution 7 of the Seventh Congress the Committee was called upon to consider the need for guidelines relating, inter alia, to the selection, professional training and status of prosecutors, their expected tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their cooperation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses,

The Guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis.

### ***Qualifications, selection and training***

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.
2. States shall ensure that:
  - (a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;
  - (b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the

rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

***Status and conditions of service***

3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.
4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.
5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.
6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.
7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

***Freedom of expression and association***

8. Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.
9. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

***Role in criminal proceedings***

10. The office of prosecutors shall be strictly separated from judicial functions.
11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the



investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

13. In the performance of their duties, prosecutors shall:

- (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
- (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
- (c) Keep matters in the\* possession confidential, unless the performance of duty or the needs of justice require otherwise;
- (d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

### ***Discretionary functions***

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

***Alternatives to prosecution***

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special considerations shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

***Relations with other government agencies or institutions***

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

***Disciplinary proceedings***

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines. Observance of the Guidelines

23. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.

24. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.