



To: Foreign Policy Aides

From: The Washington Office on Latin America (WOLA), and the SHARE Foundation

Date: January 16, 2008

Re: The Criminalization of Social Protest in El Salvador and Latin America

Introduction

On February 8, 2008, 13 Salvadorans will face criminal charges for their participation in a protest against the privatization of water in the town of Suchitoto as a result of El Salvador's Special Law against Acts of Terrorism. Unfortunately, the use of such terrorism laws to criminalize social movements is not limited to El Salvador. Region wide, the criminalization of social protest is undermining the democratic processes that the U.S. has staunchly supported for many years.

Human rights violations are often committed by law enforcement bodies in their efforts to quell social protests. As will be illustrated in the cases mentioned below, these violations include an excessive use of force, cruel and inhumane treatment of detainees, arbitrary and illegal detentions, illegal searches and violations of the right to due process. While governments have the responsibility to guarantee public security, they must also ensure that law enforcement bodies do not violate the human rights of the protesters and detainees in the process.

Governments throughout the hemisphere – Peru, Honduras, Mexico, Paraguay and Guatemala, to name a few – are embarking on legislative changes or reinterpreting existing legislation in a manner eerily reminiscent of the authoritarian governments that characterized the region in previous decades. These laws are less geared towards preventing or punishing terrorist acts and instead facilitate the criminalization of legitimate acts of social protest such as demonstrations, sit-ins, and road blockages. Those social protests that have been targeted for criminalization are not exclusive to a particular cause but address a wide range of issues including labor rights, mining activities, land rights, autonomy, the right to food and employment, privatization projects and the environment. Strapped for resources, peaceful social protests are often the only effective way for popular movements to pressure their governments. In criminalizing these protests, governments are denying the legitimate exercise of the populations' right to freedom of expression.

While the Salvadoran government has a responsibility to protect its citizens from all manner of threats, including terrorism, it must balance its concerns for national security with the protection of human rights. There is an important distinction between acts of protest, including unlawful ones, and terrorist acts. Respect for democracy and freedom of expression demand that this distinction be observed.

The following provides an overview of the alarming situation of the criminalization of social protest in El Salvador, followed by an analysis of this phenomenon as a regional trend in Latin America.

Salvadoran Legislation

In September 2006, the Salvadoran National Assembly passed the Special Law against Acts of Terrorism (*Ley Especial contra Actos de Terrorismo*). This special law has been widely criticized by Salvadoran and international human rights organizations for its vague definition of terrorism and the extreme nature of the sanctions imposed under the law in relation to the crimes themselves.

The closest definition of terrorism in the law is found in Article 1. It states that the law is designed to prevent, investigate, sanction and eradicate actions which “by their form of execution, or means and methods employed, evidence the intention to provoke a state of alarm, fear or terror in the population, by putting in imminent danger or affecting peoples’ life or physical or mental integrity, or their valuable material goods, or the democratic system or security of the State, or international peace.”

- Article 5 stipulates that acts such as an attempt on the life, personal integrity, freedom or security of an internationally protected person, the president, public officials and their family members, are punishable by 40 to 60 years in prison.
- Article 6 sanctions 25 to 30 year sentences for taking over or occupying, towns, buildings, public spaces, among others, through the use of arms, explosives or similar objects which affect the normal activities of the population, personnel or users of the space. This article does not define what is meant by “similar objects”, giving police and judges wide discretion to interpret the term on a case by case basis.
- Article 8 sanctions anyone who defends terrorism or incites others to commit any of the crimes detailed in the law with five to ten years in prison.

In observations addressed to the Legislative Assembly during the law’s deliberation, the Salvadoran Office of the Human Rights Ombudsman highlighted several concerns with the law: its failure to establish criteria for a precise definition of terrorism; sentences disproportionate to the severity of crimes outlined in the law; and to the need to ensure that the law would not lead to the criminalization of social protest.ⁱ

International human rights organizations have also voiced similar concerns. Joanne Mariner, the Terrorism and Counterterrorism Program Director at Human Rights Watch, has stated that “[t]he Salvadoran counterterrorism laws are written in broad language that invites police and prosecutorial misuse.”ⁱⁱ

Other recent legislative changes further affect the ability of Salvadoran citizens to carry out undisturbed peaceful public protests. On July 22, 2007, the Public Security Ministry presented reforms to the Penal Code that would increase the severity of punishments for acts of public disorder. Approved by the Salvadoran Congress approximately one month later, the reform to Article 348 states “when two or more people alter the public order by blocking roadways or public access to them, impeding the free circulation of transit, or invading buildings or installations, they will be sentenced to prison for two to four years.”ⁱⁱⁱ The new reforms also establish prison sentences of four to eight years for “aggravated public disorder”, which includes acts that impede the execution of legal hearings, public acts by government officials, the daily activities carried out within public or private institutions, and the celebration of sports, cultural or artistic events, among others.

The cases detailed below are worrisome examples of the potential misuse of the Special Law against Acts of Terrorism and of the reforms made to the Penal Code.

Suchitoto

On July 2, 2007 the Salvadoran National Civilian Police (*Policía Nacional Civil – PNC*) detained 14 individuals during a protest against the privatization of water. Notably, four of the fourteen detainees were apprehended when the PNC intercepted a vehicle carrying members of civil society group CRIPDES on the road to the protest.^{iv}

Five days after their arrest, thirteen detainees learned that they would be charged with acts of terrorism under Article 5 of the 2006 Special Law against Acts of Terrorism; aggravated damages under Articles 221 and 222 of the Penal Code, and injuries against a police agent under Article 142 of the Penal Code. One individual was released without charges.^v Immediately after the detentions, the defense team presented a request for review of the legality of the arrests before the Supreme Court of El Salvador and is currently awaiting a response.

On July 19, the defense presented its appeal, including the testimony of eyewitnesses and a video of the July 2 protest. After hearing the appeal, the judge reiterated the charge of acts of terrorism but granted provisional freedom to all charged over the course of the following several weeks. Salvadoran analysts conjecture that the detainees were released as a result of rapid international pressure articulated in the form of letters from members of the U.S. Congress, a declaration from Amnesty International, and communications from assorted human rights and solidarity groups.

The next hearing in the case is expected in February 2008. While the final hearing date has not been scheduled, the judge has given the prosecution until Feb 8th to present evidence. She will then have three days to transfer the evidence to the defense and 14 subsequent days to schedule the hearing. This hearing will be pivotal as the judge will decide if there is sufficient evidence to send the thirteen to trial under terrorism charges. If she finds the evidence to be insufficient, the case will either be sent to the regional court system and the charges reduced, or all charges will be dropped.

Nurses' union

On September 4, 2007 eight members of the Executive Board of the Trade Union of Nursing Workers of El Salvador (SIGEESAL) who are part of the Salvadoran Trade Union Front, were arrested as a result of their participation in a nation-wide solidarity protests that took place on July 6th against the privatization of health services and the acute shortages of medicines in public health clinics. The SIGEESAL members were charged with public disorder and aggravated damages under article 348 of the Penal Code. With the modifications of this code mentioned previously, the protesters could face increased prison sentences for their participation in the protest. While the unionists were released on September 9, they will face trial in the coming months.

Cutumay Camones

Since August 2007, residents of the Cutumay Camones communities, located on the outskirts of El Salvador's second largest city, Santa Ana, have protested the construction of a landfill on the grounds it will contaminate an aquifer which supplies drinking water to 8,000 local residents. In spite of findings by the Office of Human Rights Ombudsman Oscar Luna which confirm that the site is indeed located on an important aquifer, local authorities, including Santa Ana Mayor Orlando Mena, have continued to push for the landfill, which will be built by U.S. private company Presys S.A de C.V.

In October and November anti-riot police entered the communities on three occasions using rubber bullets and tear gas to quell protests. During one such incident on November 22, thirty-seven people, ten of whom were minors, were detained by police and charged with public disorder charges under Article 348. Community leaders allege that the majority of these detainees did not engage in disorderly acts and were in fact violently removed from their homes by police. In one case, a minor, William Alfredo Ventura, died the same day due to respiratory complications following his detention. On November 26, the ten minors were freed, and two days later all the detainees were released, although they continue to face charges.

Regional Tendencies

As in El Salvador, other Latin American governments are passing anti-terrorist laws, some under the guise of combating organized crime, or changing existing penal codes. Also like El Salvador, the definitions of terrorism are so broad as to easily encompass legitimate expressions of social protests and the penalties are equally harsh. In these countries, there is an apparent increased tendency by the police and/or military to repress social movements, arbitrarily detain protesters and often commit other human rights abuses, such as torture. The following are country-specific examples of legislation being used to criminalize social protest.

Mexico

Since 2005, the Mexican government has reformed several articles of the Federal Penal Code to address national and international terrorism.

- In December 2005, the Mexican Congress approved a new article for the Federal Penal Code, Article 139, which specifies the crime of terrorism and a sentence of 6 to 40 years in prison for the use of any violent act that is against individuals, belongings or public services, that “produces alarm, fear or terror in the population or in a group or sector of it, which goes against national security or pressures an authority to make a decision.”
- On June 28, 2007, additional reforms to Article 139 went into force and a third chapter to Article 148 was added to include international terrorism. These reforms aim to sanction terrorism, those who fund terrorism and those who protect terrorists.

Apart from these legal reforms, people fighting for social and economic rights are often arbitrarily detained and charged with crimes they did not commit. In other cases, charges brought against protesters are disproportionate to the nature of the act allegedly committed. These charges have included sabotage, kidnapping, and sedition. Some prominent examples in Mexico include the arbitrary detention and arrest of protesters during the social conflict in the State of Oaxaca that began in 2006 (APPO)^{vi} and the case brought against members of the Peasant Democratic Front of Chihuahua (FDC) for peacefully occupying the Secretary of Agriculture building in Chihuahua in March 2007.^{vii}

Paraguay

In May 2007, the Paraguayan Chamber of Deputies passed the Law of Punishable Acts, otherwise known as the Anti-terrorist law. The law, still to be approved by the Paraguayan Senate, modifies the penal code to increase penalties for “acts of terrorism.” Like elsewhere, there is a lack of clarity of as to what constitutes a terrorist act. Activities that could be deemed terrorist include “noise pollution”, demonstrations, road blocks or any other act perceived to intimidate Paraguayan citizens. If passed, the law will allow judges to subjectively define different types of social protests as acts of terrorism and if convicted, the protesters could face up to 40 years in prison. In addition,

financial backers or supporters of the “terrorist acts” could face anywhere from five to fifteen years in prison.

Peru

In July 2007 the Peruvian Executive branch passed 11 legislative decrees apparently designed to confront organized crime. However, according to the Peruvian Pro-Human Rights Association (*APRODEH*), the decrees have less to do with organized crime and more with stifling dissent and criminalizing social protest. Not only are fundamental human rights restricted but Peruvians’ constitutional rights to due process are threatened through illegal and isolated detentions. Charges are distorted and sentences increased. For example:

- Legislative Decree 982 broadens the definition of extortion to include not just wrongful economic gain but any perceived gain from a public act against the state. Consequently, road blocks or sit-ins to protest environmental destruction due to mining activities would be considered extortion under the new legislation. If convicted under this new charge, a protestor could face prison time ranging from 5-10 years. The key word there is “a” protestor; if there are two or more people involved, the sentence could be increased anywhere from 15 to 25 years.^{viii}
- Legislative Decree 988 allows government forces to hold a detainee incommunicado for up to ten days.
- Legislative Decree 989 gives the police greater investigatory powers and allows for the use of anonymous witnesses in trials.

Conclusion

WOLA and SHARE recognize Latin American governments’ responsibility to protect their citizens from violence and provide for their security. However, it is imperative that governments balance the security needs of their citizens with respect for human rights.

Recommendations:

1. The US Congress should urge the Salvadoran government to drop all charges under the Special Law against Acts of Terrorism brought against the thirteen individuals detained on July 2, 2007 and currently awaiting trial.
2. The congressionally-funded Millennium Challenge Corporation provides funding only to countries that meet certain specific criteria. One of these criterion has to do with "ruling justly," which is to be measured by, among other things, the recipient government respect for civil liberties and the rule of law. The US Congress should urge the MCC to evaluate whether recipient governments, such as El Salvador's government, that are implementing legislation that criminalizes legitimate forms of dissent, are meeting the "ruling justly" criterion and continue to be eligible for MCC assistance.
3. Police training supported by the US government through bilateral and multilateral assistance to El Salvador and through the International Law Enforcement Academy (ILEA) should include courses on the adequate use of force and the establishment of internal and external accountability mechanisms to adequately investigate and sanction those members who perpetrate human rights violations.
4. The US Congress should encourage the governments of Latin America to clearly define terrorism in their legal instruments in order to ensure that there is a clear distinction between acts of terrorism from legitimate acts of social protest.

ⁱ Procurador para la Defensa de los Derechos Humanos, “Informe Preliminar del Licenciado Oscar Humberto Luna, Procurador para la Defensa de los Derechos Humanos, sobre los incidentes ocurridos en el municipio de Suchitoto, Departamento de Cuscatlán, el día 2 julio de 2007.” July 19, 2007.

ⁱⁱ Joanne Mariner, “Terrorizing Social Protest” August 15, 2007 from findlaw.com

ⁱⁱⁱ Press Release “CEJIL señala que posibles reformas al Código Penal salvadoreño atentan contra derechos humanos,” Center for Justice and Internacional Law, Costa Rica, August 16, 2007.

^{iv} The protest was carried out with the authorization of and in coordination with the local municipal authorities. Protestors included students, peasant farmers, members of civil society organizations, and city employees. While there was some isolated violence in the form of rock throwing and tire burning, the majority of the protesters, including the detained individuals, participated in a peaceful fashion. When the National Civilian Police (*Policía Nacional Civil-PNC*) and anti-riot (*La Unidad del Mantenimiento del Orden-UMO*) police forces broke up a protest, more than twenty-five people were injured by rubber bullets and eighteen were severely affected by tear gas. For more than four hours, the Police Reaction Group (*Grupo de Reacción Policial-GRP*) and other police forces followed protestors and raided nearby homes, their efforts supported by tanks and air coverage.

^v The Office of the Human Rights Ombudsman and the Human Rights Office of the Archdiocese of San Salvador documented serious human rights abuses against the detainees while in prison and in transit there. One of the men arrested, Patricio Valladares Aquino, was hospitalized after the beating he received during his arrest.

^{vi} On June 14, 2006, Governor Ulises Ruiz ordered local and state police to dislodge striking teachers from the center of Oaxaca City, resulting in at least 90 injured civilians. The violence of this operative resulted in a massive social protest and the subsequent creation of APPO, which is composed of over 350 civil society organizations. According to the National Human Rights Commission, between June 2006 and January 2007, municipal, state and federal security forces were responsible for numerous human rights violations against the protesters and the people of Oaxaca including the arbitrary detention and arrest of over 150 people and dozens of cases of physical abuse and mistreatment, including torture and sexual abuse. The charges brought against the protesters have included criminal association, criminal damage and sedition. After the massive detention of 149 individuals in November 2006, governor Ruiz acknowledged that there were innocent people in prison who had no relation to the events.^{vi}

^{vii} On March 9, 2007, Jesus Emiliano Garcia, an advisor to the *Frente Democrático Campesino* (Peasant Democratic Front, FDC) in Chihuahua, was arrested under the charges of sabotage. Arrest warrants were also issued against four other members of the FDC. This accusation rose from a peaceful occupation of Secretary of Agriculture’s building in Chihuahua in February by the peasants of the FDC in order to request an urgent program of subsidies to grow corn, the basic food for Mexican families. Sabotage is considered a federal crime and detainees are not eligible for release on bail.

^{viii} Ardito Vega, Wilfredo et al. “Serios Peligros para los Derechos Humanos: Los 11 Decretos del Gobierno de Alan García.” Lima, August 2007. Pgs 13-14.