

SETTLE THE PAST, SAFEGUARD THE FUTURE A CHALLENGE TO THE EUROPEAN UNION AND TO GOVERNMENTS IN LATIN AMERICA AND THE CARIBBEAN TO PROMOTE AND PROTECT HUMAN RIGHTS IN AN EVOLVING PARTNERSHIP

Amnesty International Memorandum to the European Union-Latin America and Caribbean Summit in May 2002

Amnesty International is presenting this Memorandum to the European Union-Latin America and Caribbean Summit, being held in Madrid on 17-18 May 2002, with the aim of ensuring that in its final statement, the Summit will reiterate a commitment to the promotion and protection of human rights through concrete measures and programs of support in the region.

Nearly three years ago, in June 1999, the first Summit of Heads of State and Government of the countries of Latin America, the Caribbean and the EU was held in Rio de Janeiro, Brazil. Countries represented at the Rio Summit made a commitment to take new positive measures to strengthen respect for human rights, the rule of law and democratic political systems. The Summit also stated that one of its top priorities for immediate action was to promote and protect human rights, especially those of the most vulnerable groups of society, and prevent and combat xenophobia, manifestations of racism and other forms of intolerance, and to place human development and civil society at the heart of the relationship between the two regions.

Amnesty International has welcomed these commitments; however, it is not enough for the EU and its partners in the Americas to make these statements. What is necessary is for the partners, and especially the EU, to turn the statements into action in a systematic and structured manner, at the different levels of dialogue, cooperation and assistance. Follow-up to the commitments made in Rio de Janeiro has on the whole been disappointing, and not in any way commensurate with the commitments made.

Therefore, in line with commitments made at the Rio Summit, Amnesty International urges the EU to use the opportunity of the Madrid Summit to inject a strong human rights focus into the debate, to address the continuing impunity for human rights violations in the region, to take effective measures to urge Latin American and Caribbean countries to avoid any retrograde

steps with respect for human rights and ensure that they adhere to international human rights standards.

Human rights safeguards developed over many years have been under threat since the 11 September attacks in the USA, as security and “anti-terrorism” legislation dominate the international agenda. Many states are failing to abide by the international rule of law - specifically international obligations to protect human rights - in their efforts to address security threats. Rights are at risk as some countries both in Europe and the Americas introduce security and “anti-terrorism” measures which infringe or undermine human rights.

Some improvements but entrenched problems persist

Amnesty International acknowledges that there have been some positive developments with respect to human rights in recent years and has welcomed the openness of some governments in Latin America and the Caribbean on issues of international collaboration on human rights. The UN Declaration on Human Rights Defenders¹, adopted by the UN General Assembly on 9 December 1998, and the appointment of a Special Rapporteur on Human Rights Defenders, as well as the Organization of American States (OAS) resolution on human rights defenders passed in 2001², were important milestones for those involved in promoting and defending the rights of their fellow citizens. Some important breakthroughs have been made towards ending the culture of impunity for human rights violations in Latin America. One such was the arrest of former Chilean President Augusto Pinochet in the United Kingdom in October 1998 which offered renewed hope to relatives of the thousands of victims of human rights violations in Chile that justice might at last be possible.

However, while we should welcome the public discourse on human rights, in too many instances public statements and commitments made by governments have not corresponded to concrete improvements in the human rights situation within countries in the region. Amnesty International continues to document serious human rights violations, often committed with impunity, and draws attention to the frequent disregard for international human rights

¹ United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

² Human rights defenders in the Americas: support for the individuals, groups, and organizations of civil society working to promote and protect human rights in the Americas (AG/RES. 1818 (XXXI-O/01))

obligations on the part of governments in Latin America and the Caribbean³. These violations include political killings, disappearances, extrajudicial executions, prison conditions which amount to cruel, inhuman and degrading treatment, abuses by security forces, internal displacement, ill-treatment of asylum-seekers, threats and harassment of human rights defenders. Entrenched and long-standing human rights problems persist; there continue to be setbacks, and it should be impossible for the international community to ignore the escalating human rights crisis in Colombia.

Despite measures put in place by governments to safeguard civil and political rights, including new laws, constitutions and constitutional amendments purportedly introduced to reinforce the highest possible legal protection for human rights, there is still a vast gulf between official statements and concrete improvements in human rights in Latin America and the Caribbean. More often than not, legal, constitutional, administrative and other measures have failed to translate into effective action to put an end to human rights violations.

Impunity - preventing justice, allowing further abuses

The establishment of the International Criminal Court (ICC) will become a reality on 1 July 2002. While the ICC will have no ability to prosecute cases of human rights violations committed before this date, it is the opinion of Amnesty International that the ICC will be a major step towards ending impunity for the worst crimes known to humanity. As demonstrated in reports issued by Amnesty International in recent years, it is a fact that a culture of impunity exists throughout Latin America and the Caribbean as victims of human rights violations are routinely denied justice, and most perpetrators never face arrest, prosecution or punishment.

Violent and repressive policing, torture and ill-treatment continue unabated in many countries, and will persist as long as the individuals and authorities responsible are not held to account for the abuses being committed and institutions set up to bring the guilty to justice allow contempt for the rule of law to flourish.

The issue of impunity with regard to past abuses, committed under military rule in countries including Argentina, Chile, El Salvador, Paraguay and Uruguay, or in the context of Guatemala's long-term civil conflict, remains unresolved, even decades later. As well as legal restraints, there continue to be political and institutional obstacles, including amnesty laws, that

³ Amnesty International has also documented human rights violations and concerns in Europe.

need to be addressed if those responsible for human rights violations are to be brought to justice.

The stark reality of torture and ill-treatment persists in Latin America and the Caribbean in the form of police brutality, excessive use of force and ill-treatment of prisoners including juveniles and women. Officials involved in torture and ill-treatment are flouting international human rights standards as well as national and internal codes of conduct.

In **Brazil** torture, violence and threats are being used on a systematic basis as a method of interrogation by the police and by many of those working in the prison system. Torture has become both a method of police interrogation as well as a means of holding together a penal system in a state of collapse. The authorities have failed to provide structured and effective strategies for reforming public security which has resulted in the sacrifice of the human rights of a substantial percentage of the Brazilian population to violent, repressive, and corrupt policing methods. The use of torture in **Mexico** is widespread and continues to be used to obtain confessions from detainees which are later used by prosecutors as evidence to secure criminal convictions. Attempts continue to be made to discredit the work of human rights defenders and deflect attention away from the human rights violations they report. They often face harassment and intimidation in the form of spurious charges, smear campaigns and surveillance operations as they campaign to ensure that the victims of human rights violations are not forgotten and that those responsible are brought to justice.

In **Jamaica** Amnesty International has documented many cases of serious and systematic human rights violations at the hands of the police and other members of the security forces as part of a pattern of excessive force. In **Peru**, although torture was made a punishable offence in February 1998 when Congress passed Law No. 26926, in only two cases have perpetrators been convicted of the crime of torture and Amnesty International remains concerned at the lack of effective investigations into complaints of torture under this legislation. Meanwhile, the organization continues to receive reports that people detained by the security forces are being tortured and ill-treated. These reports suggest that detainees are tortured either to extract information and confessions or to punish them.

A cycle of impunity has been created by the failure of institutions such as the police, the military authorities and the judiciary to punish those responsible for human rights violations, both past and current. All countries represented at the Summit have a responsibility to take urgent and practical measures to tackle impunity at all levels of society.

Human rights defenders

Human rights defenders in a number of countries across the region have come under attack on account of their efforts to support victims of human rights violations. Some have paid with their lives. Protection for human rights defenders is not just an issue of safety; it is also essential to safeguard their freedom to carry out their legitimate work of promoting and defending human rights. Genuine efforts to protect those at risk require the implementation of full respect for all principles outlined in the UN Declaration on Human Rights Defenders.

Defending human rights in some countries in Latin America and the Caribbean can be a dangerous, even fatal, commitment. Those struggling to improve the dignity and rights of others are often the first to suffer serious human rights violations that jeopardize their physical integrity. Human rights defenders are victims of violations including extrajudicial execution, abduction, torture and ill-treatment, many of which are perpetrated by state agents, usually members of the security forces, or those acting with their acquiescence or consent. An alarming number of human rights defenders are subjected to constant death threats and intimidation. The level of threat to their own safety and that of their families has forced some individuals to flee their communities.

The scope of human rights violations against human rights defenders ranges from the occasional targeting of selected individuals to systematic strategies to eliminate certain human rights groups. In some countries in Latin America and the Caribbean, the security forces are responsible for coordinated plans intended to silence human rights defenders and stifle the impact of their initiatives. In others, although apparently free to conduct their work without hindrance, human rights defenders continue to suffer attacks which expose the hidden dangers faced by those speaking out for the victims of violations and social injustice.

In its statement to the UN Commission on Human Rights in April 2001⁴, the EU reiterated the importance of ensuring that the rights and freedoms articulated in the UN Declaration are put into practice in all parts of the world, and welcomed the appointment of the UN Special Representative for Human Rights Defenders. The EU also recognized the indispensable role human rights defenders play in the promotion and protection of human rights.

⁴Statement by Ambassador Johan Molander, on behalf of the EU, 57th Session of the Commission on Human Rights (Geneva, 19 March-27 April 2001)

While the UN Declaration, Organization of American States (OAS) resolutions and EU statements of support are to be welcomed, the fact is that the human rights community in many countries in the region, including Colombia, Guatemala and Mexico, is living under siege and is facing constant threats in its efforts to confront impunity and speak out about human rights violations.

The crisis in Colombia must not be ignored

The human rights crisis in Colombia demands urgent action by the international community and specifically by those states represented at the Madrid Summit. The deterioration of the human rights situation continues to intensify and spread throughout the country and has reached an even greater level of urgency since the breakdown of the peace process between the Colombian government and the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) in February 2002.

There is currently an intensification of militarization across the country, by the Colombian military as well as by paramilitary groups linked to them, and armed opposition groups. Despite government denials of links between the security forces and the paramilitaries, these groups continue to operate with the apparent acquiescence and frequently open support of the security forces.

The civilian population, caught in the crossfire between military and their paramilitary allies on one side and armed opposition groups on the other, is not receiving the human rights and humanitarian protection it urgently needs. Each month, tens of thousands of people are being displaced as they flee from areas of armed conflict and huge numbers are victims of human rights abuses committed by both sides. The Colombian government is failing to take decisive action to confront and dismantle paramilitary groups and prevent further human rights abuses against the civilian population.

Killings, threats and intimidation of members of human rights organizations, trade unionists and other vulnerable sectors of civil society form part of a campaign by sectors of the Colombian security forces and their paramilitary allies to weaken the work of human rights defenders.

Armed opposition groups continue to be responsible for numerous abuses including the arbitrary and deliberate killing of hundreds of civilians. Journalists, indigenous leaders and politicians have been targeted for opposing the policies or exposing abuses committed by both sides. Kidnappings and hostage-taking by both paramilitary forces and guerrilla groups are

widespread. The vast majority of perpetrators of abuses continue to evade accountability in Colombia.

Amnesty International has repeatedly called for aid provided by the EU and its member states not to be used to implement projects that are part of Plan Colombia⁵, which Amnesty International believes is exacerbating the human rights crisis.

The first round of the presidential elections in Colombia takes place on 26 May 2002, just 10 days after the Madrid Summit. The presidential candidates must make human rights concerns a centerpiece of their agenda and the international community must exert all necessary pressure to ensure that the candidates commit publicly to a human rights program. The human rights crisis in the country cannot be hidden behind the excuses of defending security and confronting “terrorism”, and human rights abuses carried out by military and paramilitary groups, as well as by armed opposition groups, must be tackled .

Amnesty International is urgently calling on the international community to ensure that international human rights monitoring is established in the former demilitarized zone and in other conflict areas of the country and that urgent measures are taken to guarantee the security of the civilian population.

The EU should insist on full compliance with and implementation of UN recommendations, including ending impunity in cases of human rights abuses and dismantling the mechanisms of impunity, including army-backed paramilitary forces. The safety of human rights defenders and other groups at particular risk, including indigenous and displaced communities, should be guaranteed. The international community, in particular the EU, must play a positive and active role to resolve the human rights and humanitarian crisis faced by Colombia.

⁵Plan Colombia is a controversial aid package presented by the Colombian government to the international community in 2000. The Plan, originally designed to seek aid to support the peace process, was transformed into a predominantly military plan ostensibly aimed at combatting illicit drugs cultivation, and received the backing of the US government. However, the human rights conditions which were added to the aid package by US Congress, were waived by then US President Bill Clinton on the grounds of US national security interests. AI opposed the military aid program which it believed would escalate the human rights crisis and the armed conflict, and deplored the decision to waive human rights conditions. Other members of the international community, including the EU, pledged support for the peace process, human rights and development programs, but made clear that such support was independent of Plan Colombia. - Amnesty International Report 2001.

Security and human rights

Since the 11 September attacks in the USA, many states have taken steps to protect their populations from similar violent criminal acts. Amnesty International recognizes the duty of states under international human rights law to protect their populations, but reiterates that such protective measures should be implemented within a human rights framework.

Many states are failing to abide by the international rule of law - specifically international obligations to protect human rights - in their efforts to address security threats. Some states have responded to terrorism or threats to their security by legislating that such crimes should be tried in special courts; such courts, however, may not have adequate guarantees to ensure a fair trial. Amnesty International will continue to draw attention to the introduction of any security measures, including new security legislation and new law enforcement measures, which infringe or undermine human rights.

Amnesty International has monitored the use of security legislation and security measures in all regions of the world for 40 years. In many cases where there has been a war against political opponents of whatever kind, human rights have been violated, including the right to life, the right not to be tortured, and the right not to be detained arbitrarily. Those affected frequently include members of the wider population who are not involved in the political struggle or in any illegal activity. Examples of this broad use of security laws leading to the violations of the rights of ordinary people include the dirty wars (*guerras sucias*) in Latin American countries including Argentina and Chile in the 1970s.

During the 1990s, in some countries, such as Peru and Colombia, security legislation has allowed for secret trials and faceless judges, in violation of the right to fair trial. All court proceedings must normally be held in public. The ability of the general public, journalists and human rights defenders to scrutinize proceedings is important to ensure the fairness of the procedure.

On 11 April 2002, the Colombian Constitutional Court ruled unconstitutional and "illegal" the Defence and National Security Law (*Ley 684 de Seguridad y Defensa Nacional*) approved by the Colombian Congress in July 2001. Amnesty International had expressed its concerns that this Law would make it easier for security force agents and their paramilitary allies to escape prosecution for human rights violations, particularly in areas known as theatres of operations (*teatro de operaciones*), and that the provisions in this Law threatened to reinforce impunity for human rights violations committed by the armed forces or their

paramilitary allies. The legislation granted the security forces judicial police powers in certain circumstances, and restricted the ability of civilian investigators in the Procurator General's Office (*Procuraduría General de la Nación*) to undertake disciplinary investigations against security force personnel for human rights violations committed during security force operations.

Such provisions could have facilitated the continued perpetration of abuses in either joint military-paramilitary operations or in paramilitary operations undertaken with the acquiescence of the armed forces and would have made it easier for security force agents and their paramilitary allies to escape prosecution for human rights violations. Amnesty International has urged the Colombian government to respect the Constitutional Court's ruling. However, it is just as important for the Colombian government to actively refrain from implementing such legislation in future.

Amnesty International has welcomed the clear and unambiguous statements by the EU Presidency and other EU leaders at this year's UN Commission on Human Rights, confirming that human rights must be a key requirement for security. However, the EU must ensure that these words are matched with concrete action both within Europe and in its relations with other countries. Amnesty International will continue to monitor the EU's initiatives in the field of security, both as regards measures introduced within the EU and in cooperation with third countries. Amnesty International will equally be monitoring closely the proposed draft OAS **A**Inter-American Convention for the Prevention and Elimination of Terrorism[@] in order to ensure that it includes clear and strong references to human rights and international human rights standards, including the rights of refugees and asylum-seekers.

A joint commitment and an effective monitoring system

All agreements concluded by the EU with third countries since 1995 have included a human rights clause, which states that human rights, democracy and respect for fundamental freedoms are the basis of cooperation. Further, the EU has continued to reiterate, in a variety of other contexts, the importance of respect for human rights, fundamental freedoms and the rule of law.

While Amnesty International welcomes these statements of position, it is essential that such undertakings do not remain at the level of mere political rhetoric. Amnesty International believes that the nature and urgency of the human rights problems across the region are such that human rights considerations must be an integral component of all ongoing dialogue between the EU, Latin America and the Caribbean. The EU must therefore set concrete

objectives as regards human rights protection in order to ensure compliance with agreements and commitments undertaken in principle by countries receiving EU cooperation funds.

The EU must engage constructively with recipient governments and their NGO communities to define the standards to be attained. Benchmarks must then be set against which progress is regularly measured. Effective monitoring mechanisms must be established to assess performance and ensure that human rights clauses are fully applied.

As well as genuine implementation of human rights clauses included in specific agreements, Amnesty International believes that EU guidelines on the prevention and eradication of torture in third countries must be applied throughout the region. These instruments have marked a significant advance for EU human rights policy and they provide the EU with practical tools to show its opposition to serious violations of human rights and to engage offending countries in concrete programs of action and prevention.

Amnesty International also urges that the EU actively engage with Latin American and Caribbean countries, including with their NGO communities, in programs of capacity- and institution-building aimed at strengthening the rule of law and administration of justice.

Such a framework of constructive engagement and evaluation must be applied to all EU involvement with Latin America and the Caribbean and to all countries participating in this Summit.

For example, the EU's involvement with Latin America and the Caribbean has included negotiations with Mercosur and Chile, the EU's Common Position on Cuba, the EU/Mexico Global Agreement⁶, amongst others. Amnesty International believes that all Agreements currently under negotiation and envisaged for the future should not only include human rights clauses but should also establish monitoring mechanisms. Thus far human rights provisions are part of all these agreements, but the EU has not adequately addressed the implications of including human rights clauses and is not ensuring that they are fully applied.

As regards Guatemala, Amnesty International has welcomed EU resolutions condemning attacks against all those involved in efforts to confront impunity, and its calls on the international community to redouble its efforts to press for implementation of the human rights

⁶The Economic Partnership, Political Co-ordination and Co-operation (Global) Agreement signed in December 1997 and entered into force on 1 October 2000, provides for the institutionalisation of the political dialogue "covering all bilateral and international matters of mutual interest".

elements of the 1994 Global Human Rights Accord. Formal processes for continued EU cooperation with Guatemala have been established, dependent in principle on progress in human rights areas; however, follow-up by the EU to set concrete benchmarks against which progress can be measured is essential. There must then be effective monitoring to ensure that progress has in fact been made.

The commitment to protecting human rights is reciprocal. A credible partnership between the EU and its Latin American and Caribbean counterparts, whether in the context of present (Mexico) and future (Chile, Mercosur) Trade and Association Agreements, or in the type of framework constituted through these summits, must build on a common understanding that the realization of human rights for all is a mutual concern and a challenge shared by both sides. With security at the top of virtually every political agenda, the question of seeking a legitimate balance between security and human rights must be given a similarly high priority. In this overall perspective it is also appropriate to stress the obligation resting on all governments to put in place safeguards against racial discrimination and racist behaviour.

Conclusion and Recommendations

Amnesty International welcomes the human rights dimension that the EU has developed in its external relations and its commitment to the promotion and protection of human rights. The organization expresses the hope that the Madrid Summit will result in practical action on the part of the EU to concretely address human rights violations in countries in Latin America and the Caribbean.

In the view of Amnesty International, it is more important than ever that human rights are placed at the heart of EU policies and relations with other regions of the world, and that states do not use the events of 11 September as an excuse to roll back the safeguards on human rights which have been developed and built on in recent years.

The gulf between commitments and practice can only be bridged if all unresolved human rights abuses are properly investigated and the guilty brought to justice. Breaking the cycle of impunity for human rights violations and strengthening respect for human rights and the rule of law must be part of the agenda at the Madrid Summit.

The EU has a responsibility to carry forward its commitments from the 1999 Rio Summit and take positive action to address human rights concerns in its dealings with countries in Latin America and the Caribbean.

Amnesty International is calling on the EU, in its relations with Latin American and Caribbean states, to:

1. Cooperation and assistance

Give concrete support to countries in Latin America and the Caribbean, in the form of practical programs and training, including to strengthen those institutions which will ensure a just and fair administration of justice for all. Countries in receipt of such support must be held accountable to ensure that they abide by the international rule of law and uphold their obligations to protect human rights.

2. Impunity

Assume responsibility to tackle impunity, not only in terms of individual cases, but also in terms of eradicating the mechanisms which permit continued impunity; and to positively support programs and structures attempting to combat impunity, such as witness and judicial protection programs.

3. Torture

Implement its guidelines on the prevention and eradication of torture in third countries and engage offending countries in concrete programs of action and prevention.

4. Colombia

Urge the Colombian government to fully implement recommendations made by the UN Office of the High Commissioner for Human Rights and the UN Commission on Human Rights to address the deepening human rights and humanitarian crisis in the country. The EU should play a positive role to ensure that human rights and international humanitarian law are prioritized by the new government in Colombia and that the civilian population is shielded from the conflict.

5. Human rights defenders

Monitor the application of international human rights standards as these relate to human rights defenders in Latin America and the Caribbean, in particular 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, and the OAS resolutions on human rights defenders; and offer concrete support to the work of human rights defenders in promoting respect for human rights.

6. Security and human rights

Ensure that security and cooperation measures do not infringe upon human rights. As a corollary to this, the EU should seek ways to reinforce the joint commitment to human rights standards through putting in place safeguards against racial discrimination and racist behaviour.

Amnesty International materials for further reading:

Argentina : *Amicus Curiae Brief on the Incompatibility with International Law of the Full Stop and Due Obedience Laws - Presented by Amnesty International, the International Commission of Jurists and Human Rights Watch* (AI Index: AMR 13/12/2001, June 2001)

Brazil : “*They treat us like animals*” : *Torture and Ill-treatment in Brazil* (AI Index: AMR 19/022/2001, October 2001)

Chile : *Testament to suffering and courage: the long quest for justice and truth* (AI Index: AMR 22/014/2001, December 2001)

Colombia:

- *Human rights and USA military aid to Colombia- published jointly by Amnesty International, Human Rights Watch and the Washington Office on Latin America* (AI Index: AMR 23/065/2000, August 2000; Update II, AMR 23/004/2001, January 2001; Update III, AMR 23/030/2002, February 2002)

- *Memorial en derecho Amicus Curiae sobre la Ley No.684 de Seguridad Nacional presentado por Amnistía Internacional, la Comisión Internacional de Juristas y Human Rights Watch ante la Corte Constitucional de Colombia* (AI Index: AMR 23/130/2001, October 2001)

Guatemala: *Guatemala’s Lethal Legacy: past impunity and renewed human rights violations* (AI Index: AMR 34/001/2002, February 2002)

Haiti : “*I have no weapon but my journalist’s trade*” *human rights and the Jean Dominique investigation* (AI Index : AMR 36/001/2002, April 2002)

Jamaica: *Killings and Violence by Police : How many more victims?* (AI Index: AMR 38/003/2001, April 2001)

Mexico : *Justice Betrayed: Torture in the judicial system* (AI Index: AMR 41/021/2001)

Mexico : *Daring to raise their voices* (AI Index: AMR 41/040/2001)

Peru : *Peru: Legislation is not enough. Torture must to be abolished in practice.* (AI Index : AMR 46/17/99, September 1999)

Peru : *Torture continues unabated* (AI Index: AMR 46/40/00, December 2000)

More Protection, Less Persecution : *Human Rights Defenders in Latin America* (AI Index : AMR 01/01/1999)

Rights at Risk: *Amnesty International’s concerns regarding Security Legislation and Law Enforcement Measures* (AI Index: ACT 30/001/2002, January 2002)

2002 UN Commission on Human Rights: *Rights at Risk* (AI Index: IOR 41/025/2002, December 2001)