

# **Amnesty International Memorandum to the European Union and EU Member States**

## **Addressing dangers and difficulties faced by human rights defenders in Latin America and Caribbean States**

The EU has recognised that as part of civil society, human rights defenders<sup>1</sup> make a crucial contribution to promoting and protecting human rights and to helping forge programs of cooperation designed to overcome some of the political, economical, social and cultural challenges and inequalities in Latin American and the Caribbean States.

Amnesty International is presenting this Memorandum to the Ministerial meetings between the European Union and the Rio Group, Mercosur, Andean Community, Mexico and Chile, held in Athens, Greece, on 27-28 March 2003, in order to highlight the serious difficulties and dangers faced by these important representatives of civil society in Latin America and the Caribbean.

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. In particular, the organization welcomes the priority given to protection and promotion of human rights in the Political Declaration of The Madrid Commitment of 17 May 2002 and “to encouraging the interest and participation of the representatives of civil society in the political, economical and social processes of our countries, in the respective regional groupings and in our bi-regional relationships”.<sup>2</sup>

However, the organization believes that delivery on these commitments regarding human rights and participation of civil society in these processes requires the EU to pay urgent attention to a situation which Amnesty International considers has become a case of systematic repression of human rights defenders in the region. Lending support to human rights defenders at risk is of itself support to advance the human rights components of the Madrid Commitments.

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<sup>1</sup> Human rights defenders are all those men and women who act on their own or collectively to contribute to the effective elimination of all violations of the fundamental rights and freedoms of peoples and individuals. This work includes, but is not exclusive to, the search for truth and justice and strengthening the rule of law, the strengthening of democratic governance and accountability, the struggle for gender, racial and sexual equality, the protection of economic, social and cultural rights and the rights of indigenous peoples, the struggle against environmental degradation, hunger, disease and poverty, the struggle for a fair standard of living, education and medical attention, the struggle to end war and arms proliferation and to provide urgent assistance to victims of conflict or natural disasters. Defenders work in various spheres of society and their work is inspired and guided by internationally recognised human rights standards.

<sup>2</sup> Para 9, EU-LAC Common Values and Positions, Political Declaration, the Madrid Commitment, 17 May 2002.

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## **Dangers and difficulties facing human rights defenders in Latin America and Caribbean States**

In Latin America and the Caribbean the job of questioning and challenging states, including powerful political, military and economic elites, in regard of their human rights obligations is a dangerous and life-threatening one: Amnesty International has documented more killings of both men and women human rights defenders in this region than in any other region of the world.

Many defenders have become so acclimatized to widespread threats and intimidation, state inaction on their behalf and hostility from different sectors of society that they have ceased to report many such incidents, scores of others have been forced to flee their homes, sometimes their country.

The gravity of the risks faced by human rights defenders in Latin America and Caribbean States has been extensively and widely documented by Amnesty International<sup>3</sup> and other inter-governmental and non-governmental human rights organizations.

Evidence collected by Amnesty International over the last ten years, and more, documents how hundreds of activists struggling to promote and defend human rights have been the victims of execution, “disappearance”, torture and ill-treatment, threats and intimidation committed by state agents or those acting on their behalf.

Defenders have also been subject to a wide range of harassment such as investigation on spurious charges, detention, with or without an authorized arrest warrant, raids and surveillance. Slander campaigns, in which defenders are the subject of unsubstantiated and unfounded accusations, have become commonplace as a means of detracting attention from human rights concerns, as well as a means of discrediting human rights work.

Repression of human rights workers in Latin America and the Caribbean is systematic. It can be described as systematic because systematically governments have failed to take effective action to prevent attacks and hostilities against defenders and have systematically failed to comply with their national, as well as international, duty, which they themselves agreed to honour, to provide adequate remedies.

Attacks on human rights defenders cannot be committed or be met with impunity without the tacit acceptance of the authorities.

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<sup>3</sup> For more information on the situation of human rights defenders in Latin America and the Caribbean see Amnesty International reports: Brazil: Human rights defenders – protecting human rights for everyone (AI Index: AMR 19/08/98); More Protection, Less Persecution: Human rights defenders in Latin America (AI Index: AMR 01/02/99); Colombia: The protection of human rights defenders- one step forwards, three steps back (AMR23/22/00); Mexico: Daring to raise their voices (AI Index: AMR 41/040/2001); Guatemala: Guatemala’s Lethal Legacy: Past impunity and renewed human rights violations (AI Index: AMR43/001/2002); Bolivia: The need to protect human rights defenders (AI Index: AMR 18/04/2002).

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In Guatemala, government failure to address serious human rights violations committed against human rights defenders during the period of the internal armed conflict on account of their efforts to expose the atrocities, committed by the Guatemalan military and paramilitary groups, has resulted in renewed attacks against defenders. Many of these latest attacks, including several killings and scores of threats during the months of 2003, are allegedly committed by members of illegal clandestine groups, made up, in part, by ex-paramilitaries or ex-members of the security forces.

In Colombia, the human rights community lives under siege. In the past 20 years scores of defenders have been killed by the military or their paramilitary allies, and hundreds more live in exile. Yet government efforts to protect defenders have been restricted to a program of practical measures providing such items as bullet proof vests or funds to flee. While such measures have been useful, it is obvious that the government has failed to pursue a plan of comprehensive action, including thorough judicial investigations, at all levels of the state apparatus that might have helped prevent attacks and deal with the root causes of aggressions against defenders.

More recently, the situation of insecurity for defenders in some countries has been exacerbated by the adoption of new security policy and measures to combat terrorism. Evidence collected by Amnesty International suggests that some human rights defenders are the victims of attacks or harassment during operations organized by the security forces ostensibly to combat terrorism.

In one example, in December 2002 in Colombia, the offices of the development organization, Terre des Hommes-Italia, a project financed by the European Union and established to address the needs of young people affected by the conflict, was raided by state agents allegedly looking for arms, but who also copied information from computers. No arms or other incriminating material were found. Amnesty International has received other similar reports.

Also in Colombia, recent official and unofficial restrictions on movement mean that human rights defenders are not always able to gain access to areas where human rights violations were reported to have taken place. Some activists, journalists and humanitarian workers have been interrogated or arbitrarily detained during attempts to reach people in conflict zones cut off from the rest of the country.

In St. Lucia, one human rights lawyer was recently threatened with rape and execution on account of her work to expose police brutality during public security operations. She was also vilified by sectors of the mass media. Similarly, human rights defenders in Brazil have consistently been labelled by prominent public figures and elements of the media as defenders of criminals because of their efforts to ensure public security policies complied with international human rights standards.

Under the pretext of security, some governments in the region have introduced over the last few years measures to restrict or “control” demonstrations by civil society. Worse still, those

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exercising their legitimate right under the UN Declaration on Human Rights Defenders<sup>4</sup> to peacefully protest against policies perceived to perpetuate economic, social and cultural degradation and inequalities have themselves been violently repressed.

On 10 March this year, a march organized by women's organisations in Port-au-Prince, Haiti, was forcibly broken up by officers of the Police. Participants were harassed and threatened by pro-government counter-demonstrators in the presence of officers. The counter-demonstrators also threatened journalists who were attempting to cover the events. In Argentina, two people were killed by police fire in June 2002 following protests at the continuing economic crisis.

Amnesty International has also noted a growing tendency by authorities at different levels of the state apparatus to resort to legal means as a form of gagging human rights defenders, for example by detaining them or threatening them with detention, sometimes on charges of defamation or other more serious crimes. In Cuba and some states of Mexico this is an ongoing problem.

When a government fails to condemn, prevent or remedy violations against human rights defenders it sends a message that such violations are tolerated. Defenders become vulnerable to attack not only by state agents who have gone unpunished, but by others who act on their behalf or copy their example.

Incidents such as these show that today defenders in Latin America and the Caribbean enjoy no more or no better protection than they might have during past decades.

In her third report to the UN Secretary General of January 2003, the UN Special Representative on Human Rights Defenders, Ms Hina Jilani, affirmed the need for greater international efforts to protect human rights defenders in Latin America and the Caribbean on account of the systematic<sup>5</sup> nature of the violations defenders face in this region. She stated that some countries that require particular attention are Guatemala, Colombia, Mexico, Brazil, Honduras, Ecuador, Argentina, Bolivia, Haiti and Dominican Republic<sup>6</sup>.

Attacks against human rights defenders are attacks on the principles of democracy, accountability and transparency which underscore and guide human rights work and have earned defenders international acclaim as important actors in public life in Latin America and Caribbean States.

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<sup>4</sup> 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, otherwise known as the Declaration on Human Rights Defenders, was adopted by the UN General Assembly on 9 December 1998.

<sup>5</sup> The Special Representative describes "systematic" violations as those which may be "local in its character, [but] in many cases it is obvious that the violation would not have occurred or been met with impunity without the tacit acceptance of the national-level authorities, implicating the State as a whole." Para 27, UN doc. E/CN.4/2003/104.

<sup>6</sup> Ibid.

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Attacks on human rights defenders reflect hostility towards civil society's role in democratic institutions and its role as independent observer, critic and adviser on government policy and practice on human rights.

Attacks against human rights defenders threaten the entire human rights fabric. They cause insufferable damage to the individual and their family, as well as weakening or stalling the ability of human rights defenders to act and speak freely and to defend the rights of others.

Attacks on human rights defenders reflect the pervasiveness of human rights violations as a whole, since one of the main reasons to attack a human rights defenders is to stop, prevent or deter him/her from reporting on or attending to human rights violations committed against others and, to halt or obstruct action by defenders to remedy such situations.

**In conclusion**, the situation of insecurity for human rights defenders in Latin America and the Caribbean has not improved over the last decade, but has gone unchecked to the extent that, today, defenders in some countries face emergency situations. While structural problems and the lack of resources may be a constraint in pursuing improvements, in reality it is the absence of political will on the part of Governments that allows the violations against them to continue, and the impunity with which these violations are allowed to prevail.

Constant appeals by human rights defenders in the region for their own safety have been marked by a large number of resolutions by the UN Commission on Human Rights, the Organization of American States and the European Parliament, two recent visits to the region by the UN Special Representative of the Secretary General on Human Rights Defenders and by the establishment in the Inter-American Human Rights System of a Unit for Human Rights Defenders.

These are excellent initiatives. However, the difficulties and dangers faced by defenders in Latin America and the Caribbean are so serious, concerted efforts are now required at regional and international level. Attention to this issue by the EU is urgent and is recompense owed to human rights defenders in the region in respect of their struggle and the important gains achieved despite attempts to stifle, thwart and oppress them and their activities.

In Amnesty International's Memorandum to the European Union-Latin America and Caribbean Summit in May 2002, the organization called on the EU, in its relations with Latin America and the Caribbean, to monitor the application of the 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.

The EU has reiterated its pledge to respect human rights. This Memorandum outlines recommendations to support the EU in meeting that pledge. The Memorandum sets out concrete objectives by which the EU can begin to measure compliance of the human rights commitments and clauses, which state that human rights, democracy and respect for fundamental freedoms are the basis of cooperation, of all the agreements concluded by the EU with third countries since 1995.

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**Recommendations: Amnesty International calls on the European Union and Member States, in its relations with Latin America and Caribbean States, to:**

1. Assist governments in Latin America and the Caribbean to develop concrete plans on policy and practice to implement the principles of the UN Declaration on Human Rights Defenders.
2. Insist that plans to implement the principles of the UN Declaration on Human Rights Defenders do not consist solely of measures for practical protection, but consist of comprehensive measures aimed at preventing violations and addressing the root cause of such violations.

Such plans should include measures suggested by Amnesty International in its recommendations for the protection of human rights defenders (see Appendix I), for example: effective investigations to bring those responsible to justice; steps to implement legislation that promotes the principles of the UN Declaration on Human Rights Defenders, in particular the right to freedom of expression and freedom of association; reform or repeal of legislation that may impinge on these rights, for example, security legislation or criminal defamation laws that are used to harass human rights defenders through legal means; strategies to identify and deal with state and non-state groups hostile to human rights work and those who carry out such activities.

3. Set benchmarks to assess the implementation of these plans. Benchmarks may include: the designation of political responsibilities for overseeing implementation of plans on policy and practice regarding human rights defenders; allocation of budgets for this purpose; evaluation structures and reports on the effectiveness of the measures adopted; legislative measures; satisfactory conclusion on judicial investigations on a selection of emblematic cases of violations against defenders; establishment of special mechanisms to ensure such investigations; prompt replies to urgent appeals sent by UN mechanisms and compliance with UN recommendations; serious dialogue with defenders regarding their needs; public campaigns to offset hostility towards those who promote and protect human rights.
4. Take up discussions regarding plans to implement the principles of the UN Declaration on Human Rights Defenders with authorities at all levels of the state apparatus, including state authorities in federal systems, and departmental and municipal authorities.
5. Ensure that plans to develop policy and practice for the implementation of the principles of UN Declaration on Human Rights Defenders address the recommendations made by the UN Special Representative on Human Rights Defenders, in particular recommendations made on the situation of human rights defenders in Guatemala and Colombia, as well as recommendations made to all States;

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recommendations by the UN High Commissioner for Human Rights; and recommendations by the Inter-American Human Rights System.

6. Ensure that practical protection programs include judges, prosecutors and other government officials, who suffer human rights violations due to their commitment to human rights protection, as well as witnesses, but that such programs take into account the differing needs of these different sectors.
7. Highlight the important experiences and recommendations of civil society and human rights groups in improving public security and combating terrorism and insist on the effective incorporation of these considerations into programs aimed at developing policy and practice to improve regional security and combat terrorism. Ensure that programs of cooperation to combat terrorism respect internationally recognised human rights and do not impinge on or threaten the security of human rights defenders. Ensure that programs of assistance in security provided by governments of the EU, including training in security operations and security and intelligence equipment, adopt the appropriate safeguards and controls to ensure such assistance is not used to interfere with or hamper the activities of human rights defenders.
8. Ensure that cooperation programs involving the media and promotion of freedom of expression include components that seek to ensure the media plays a positive role in promoting the UN Declaration on Human Rights Defenders and the legitimate work of human rights defenders.
9. Ensure that cooperation programs in education include components that promote the UN Declaration on Human Rights Defenders and the legitimate work of human rights defenders.
10. Ensure that programs on democracy and human rights include components which encourage and emphasize the importance and legitimacy of critical scrutiny by civil society of government policy and practice on human rights.
11. Ensure that the Regional Program of Support to Ombudsman in Latin America, incorporates advice and assistance on monitoring respect for the principles of the UN Declaration on Human Rights Defenders, as well as recognizing ombudsman as human rights defenders, who may also on occasion require protection.
12. Support and encourage the establishment of mechanisms which ensure the proper participation of the relevant sectors of civil society, including human rights defenders, in the formulation and implementation by governments of policies and practices to further political, civil, economic, social and cultural rights. Including efforts to establish measures to improve public security and combat terrorism. Promote compliance with human rights principles and standards in free trade agreements by ensuring human rights defenders are invited to submit opinions and recommendations and set up mechanisms to ensure proper attention to these considerations.

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**Amnesty International calls on the European Union and EU Member States, in their efforts to protect human rights defenders and their work in Latin America and the Caribbean, to:**

13. Support human rights defenders in their efforts to ensure states adopt policies and practice to guarantee respect for and implementation of the principles of the UN Declaration on Human Rights Defenders.
14. Support programs adopted by non-governmental organizations, as well as the offices of Human Rights Ombudspersons, which aim to overcome failure by governments to guarantee their safety and freedom to carry out their work.
15. Support international non-governmental organizations engaged in providing protective accompaniment to human rights defenders at risk.
16. Ensure emergency procedures are adopted so that human rights defenders fleeing their countries due to a well-founded fear of persecution can quickly apply for and be granted asylum.
17. Support visits by EU delegations to countries in Latin America and the Caribbean to verify the situation of human rights defenders.
18. Ensure EU diplomatic missions guarantee respect for the principles of the UN Declaration on Human Rights Defenders by instructing staff to:
  - Act quickly to condemn threats and attacks against human rights defenders.
  - Help overcome the isolation of many human rights defenders and help legitimise their important work by receiving defenders and visiting their offices and areas of work.
  - Closely monitor investigations into threats and attacks against human rights defenders and send regular reports regarding the situation of human rights defenders to their respective Foreign Ministries.
  - Ensure dialogue with human rights defenders reflects all sectors of society, in particular more marginalised sectors such as campaigners for women’s rights, gay, lesbian and transgender activists, environmentalists, leaders of displaced communities and community workers.
  - Attend and observe trials of human rights defenders.
  - Facilitate national and international meetings of human rights defenders.
  - Refrain from making unsubstantiated statements or allegations that may jeopardise the integrity or security of human rights defenders.
19. Support the mandate of the Human Rights Defenders Unit of the Inter-American Commission on Human Rights, and explore areas of collaboration.
20. Encourage all governments to support the mandate of the UN Special Representative to the Secretary General on Human Rights Defenders.



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## Appendix I

### **Amnesty International's recommendations for the protection of human rights defenders submitted to the governments of Latin America and the Caribbean in 1999.**

Governments should:

1. Ensure that the principles contained in the *Declaration on the Right and Responsibility Of Individuals, Groups and Organs of Society to Promote And Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted by the UN General Assembly on 9 December 1998, are fully incorporated into national law and mechanisms, including National Human Rights Commissions, for the protection of human rights. Authorities at all levels of government should explicitly commit themselves to promoting respect for human rights, and to the protection of human rights defenders.
2. Ensure that in the interest of fulfilling obligations contained in international human rights law, state officials at every level of the state apparatus, including lower-ranking officials, fully collaborate with and facilitate the work of members of non-governmental human rights organizations.
3. Ensure exhaustive and impartial investigations are conducted into violations against human rights defenders that those responsible are brought to justice and the victims or their relatives provided with reparation. The results of such investigations should be made public. Members of the security forces under formal investigation for human rights violations should be immediately suspended from active service until investigations have concluded. Governments should also set up information systems to ensure that no agent of the security forces dismissed because of possible involvement in human rights violations against human rights defenders is employed in other official departments.
4. Effectively disband, disarm and prosecute paramilitary groups which operate with the complicity or acquiescence of the security forces.
5. Ensure that the perpetrators of human rights violations against human rights defenders do not benefit from any legal measures exempting them from criminal prosecution or conviction. Previous legislative measures that prevent full and conclusive investigations into the cases of violations against human rights defenders should be repealed.

6. Take effective action to ensure all public servants, including the security forces, act to recognize the legitimacy of the work of human rights defenders and to abstain from making unsubstantiated allegations against human rights defenders. Statements of this nature must be publicly countered and appropriate measures applied to sanction those responsible.

7. Take effective action to sanction state officials who abuse the criminal process to the detriment of members of human rights and social organizations with the intention of harassing them or curtailing their legitimate activities for the defence of human rights and fundamental freedoms. Ensuring that human rights defenders have equal access to the law and that judicial investigations and proceedings against them are conducted in accordance with international fair trial standards set by the American Declaration of the Rights and Duties of Man, the American Convention on the Human Rights and the International Covenant on Political and Civil Rights (ICCPR).

8. Adopt integrated programs for the protection of human rights defenders that include preventative measures, such as thorough criminal investigations into attacks and threats against human rights defenders, education for security force agents on the rights of human rights defenders to carry out legitimate activities, as well as security measures to assist with immediate safety issues. Such programs should ensure that all measures to protect human rights defenders are adopted in accordance with the requests of members of human rights organizations.

9. Ensure full implementation of comprehensive witness protection programs for the protection of individuals, including human rights defenders, involved in criminal investigations and judicial proceedings against those accused of human rights violations.

10. Ensure the full implementation of international recommendations and resolutions, including precautionary or provisional measures, regarding human rights defenders, by the inter-American human rights system, including the OAS General Assembly and the UN. Appropriate measures should be taken to monitor implementation.

11. Ensure full support for mechanisms and initiatives, including special rapporteurs, within the UN and inter-American human rights systems that give wide and universal recognition to human rights defenders and their work. Also, recognize the jurisdiction of the Inter-American Court of Human Rights, the UN Human Rights Committee and the UN Committee against Torture in order to permit submission of complaints regarding violations against human rights defenders.