

Ms. Beatrice Ask
Minister of Justice
Presidency of the Council of the European Union

Mr. Tobias Billström
Minister for Migration and Asylum Policy
Presidency of the Council of the European Union

Brussels, 13 July 2009
Ref: B890

Dear Ministers,

Re: Amnesty International's observations on the Stockholm Programme on the area of freedom, security and justice

On 15-17 July, the EU Justice and Home Affairs Ministers (JHA) will meet in Stockholm to discuss the next multi-annual programme in the area of freedom, security and justice (AFSJ) on the basis of the Commission's Communication of 10 June 2009: *An area of freedom, security and justice serving the citizen*.

Amnesty International takes this opportunity to submit a number of observations and comments on the Commission's Communication in an effort to make a constructive contribution to your discussions that should result in the adoption of the Stockholm Programme in December.

Amnesty International believes that the building of an Area of Freedom, Security, and Justice over the next five years is a unique opportunity to re-emphasise the EU's strongest contribution to people in Europe: a Union of rights. The Stockholm Programme could indeed be the programme that makes human rights become more of a reality, strengthening the rights of the individual, and reversing the trend of sacrificing rights for a misunderstood concept of security. While Amnesty International welcomes certain ideas and suggestions made by the Commission, notably the emphasis on the individual, the organization regrets the lack of a clear vision for the EU. The Commission Communication falls short of an actual emphasis on rights. Of particular concern is its low level of ambition and the emphasis on operational effectiveness and control measures to the detriment of safeguarding and strengthening individual freedoms.

Amnesty International calls on all stakeholders involved to use the opportunity of the Stockholm Programme to finally shape an internal human rights mechanism for the EU and clearly reaffirm the objective of developing a common immigration and asylum policy that fully respects the fundamental rights of migrants, asylum-seekers and refugees. Wherever questions of fundamental rights are concerned, the sole emphasis on EU citizens in the draft Programme has to be clarified as explicitly referring to all individuals affected by the EU policies in the areas covered by the Stockholm Programme, including third country nationals, regardless of their status.

Below you will find a short summary of *Amnesty International's Briefing on the Stockholm Programme* (see annex). Following the structure of the Commission's Communication, Amnesty International calls on JHA Ministers to ensure that the following principles and objectives are incorporated in the Stockholm Programme:

- **An ambitious internal human rights policy for the EU based on strong accountability systems.**
Amnesty International has consistently argued that if domestic problems are not addressed adequately and mechanisms are not established to discuss internal measures between Member States, this lack

of basic consistency will increasingly affect the EU's credibility as a human rights actor and diminish its effectiveness when confronting third countries over their human rights violations. The Stockholm Programme is not credible without acknowledging the link between the internal and external human rights dimension and without a commitment to finally devise internal human rights accountability mechanisms, regardless of treaty reform developments. The Stockholm Programme should not only set a time line in which the extension of the mandate of the Fundamental Rights Agency to cover current "third pillar" issues will be achieved, but also, more importantly, actually outline a mechanism through which the recommendations of the agency are first of all examined by the Council.

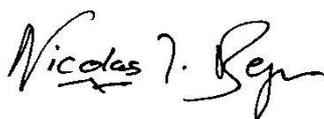
- **An area of freedom, security and justice for all without discrimination.** The Stockholm Programme needs to include a clear commitment to upgrade the EU legal anti-discrimination framework to guarantee equal treatment beyond the area of employment to all persons irrespective of religion or belief, age, disability or sexual orientation. The issue of discrimination should be addressed as a core element across all its JHA policies, including in the area of justice, security, asylum and immigration. The fight against racism and xenophobia should be stepped up at EU level and include racial discrimination in the police and justice system as part of the monitoring of the Directive implementing the principle of equal treatment irrespective of racial or ethnic origin.
- **An area of justice that upholds the human rights of all.** Ministers must commit to analyze the impact of the EU's cooperation instruments in the field of policing and criminal justice on the human rights of individuals and the protection gaps that exist at national level. The adoption of binding standards on procedural rights of suspects and defendants must be included as a key objective in the Stockholm Programme. The Swedish Presidency Roadmap should be incorporated in the Stockholm Programme so as to provide the framework and timeframe for the adoption of binding EU instruments to effectively protect the fundamental rights of those subject to such proceedings. A mechanism to systematically monitor and publicly report on the respect in law and practice of the right to a fair trial in the EU Member States must be developed.
- **An area in which human rights are upheld in the fight against terrorism.** Amnesty International is troubled by the lack of attention devoted to international human rights law with regards to the fight against terrorism in the Commission Communication. There is also no mention of human rights in relation to the question of financing terrorism, despite the case law of the European Court of Justice condemning the existing EU system of blacklists for failing to respect the rights of defence. The Stockholm Programme should commit to action on reforming the blacklists systems of the EU to ensure the systematic respect of the right to be heard, the right to an independent review mechanism and to an effective judicial remedy. Of real concern is the lack of attention devoted to the fight against torture and ill-treatment. The only reference to EU action against torture and other ill-treatment is made in relation to EU external policies. While the EU has adopted guidelines on torture in external relations there is no equivalent EU internal mechanism or policy framework to prevent and combat torture and other ill-treatment within the EU. We call on the Council to explicitly address the issue of torture and ill-treatment in the course of developing an AFSJ.
- **A Europe of Asylum that effectively protects those at risk of persecution or other human rights violations.** The Stockholm Programme should reaffirm the need to construct a Common European Asylum System (CEAS) based on the full and inclusive application of the Geneva Refugee Convention and other relevant human rights treaties. The second phase of harmonization of asylum legislation must lead to the adoption of high standards of protection for asylum-seekers and refugees in line with international refugee and human rights law. A fundamental debate should be launched on the functioning of the Dublin system and its impact on asylum-seekers' rights and alternative models of allocating and sharing responsibility between EU Member States must be considered. Monitoring of the

implementation of EU asylum legislation at national level, and evaluation of the impact of EU asylum legislation on the human rights of asylum-seekers and beneficiaries of international protection, must be emphasized as crucial tools to uphold standards of protection throughout the EU. Practical cooperation between national asylum authorities must serve the purpose of improving the quality of the CEAS, particularly of individual decision-making in Member States. Solidarity both with third countries and between EU Member States in the field of asylum must be further promoted through the development of intra-relocation systems based on consent of the persons concerned as well as through the creation of an EU resettlement programme for the most vulnerable refugees in close cooperation with UNHCR. Procedures for protected entry to the CEAS must be facilitated.

- **An immigration and border control policy that respects and protects the human rights of migrants.** The Stockholm Programme should place the respect for the fundamental rights of migrants at the centre of the EU's immigration policy again and counterbalance the current emphasis on security concerns in the area of migration. With regard to the crisis in the Mediterranean, there must be clear commitment to ensure that external border controls are carried out in full respect of international human rights law and the principle of *non-refoulement* in particular. The development of clear guidelines on the responsibility of EU Member States with regard to the disembarkation of persons intercepted or rescued at sea and access to fair and satisfactory asylum procedures must be clearly set as an objective. Permanent and independent human rights monitoring of the EU's external border control policy must be developed. The Stockholm Programme should clearly promote a rights-based approach to irregular migration, and reaffirm the priority of voluntary return over forced return. The feasibility of addressing at EU level the situation of irregular migrants who are unable to return to their countries of origin and the growing problem of their destitution must be analyzed.
- **An immigration and asylum policy that denounces the criminalization of migrants and actively promotes alternatives to detention.** The Stockholm Programme is a unique opportunity for the EU to take the lead in stopping the worrying trend to increasingly consider irregular migration from a criminal law perspective. Instead EU Member States should commit not to use criminal law sanctions in order to discourage irregular entry or residence of third country nationals and adopt an approach to migration that is grounded in administrative law and based on the full respect of human rights of migrants, irrespective of their status. Finally, the Stockholm Programme should unambiguously promote the use of alternatives to detention in the context of migration and asylum policies in EU Member States. It must invite the Commission to develop an action plan for the implementation of concrete alternative measures for detention at national level so as to ensure in practice that detention of migrants and asylum-seekers remains a measure of last resort and not a first response.

We hope these concerns and observations will be taken into account during your discussions on the future Stockholm Programme this week and in the coming months.

Yours sincerely,



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