AMNESTY INTERNATIONAL EU Office

Amnesty International briefing on the future Stockholm Programme

In the coming months the EU will discuss the priorities for the Area of Freedom, Security, and Justice (AFSJ) for the next five years on the basis of the recently published Communication from the Commission to the European Parliament and the Council, entitled: "An Area of Freedom, Security and Justice serving the citizen".

The following is a response by Amnesty International, based on the Communication of the Commission, analyzing the Stockholm Programme from a human rights perspective. The briefing is split into two sections, the first focuses on general concerns in the area of rights and justice, the second on migration and asylum.

Amnesty International believes that the building of an AFSJ 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 the sake of a misconceived security. While Amnesty International welcomes certain ideas and suggestions made by the Commission, notably the emphasis on the individual, the organization at the same time regrets the lack of a clear vision on a human rights policy for the EU. In fact, the Commission Communication on the Stockholm Programme falls short of an actual emphasis on rights and as it stands does not provide any real step forward. Of 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.

Instead, Amnesty International calls on all stakeholders involved to use the opportunity of the Stockholm Programme to finally shape an ambitious internal human rights policy 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 including all individuals affected by the EU policies in the areas covered by the Stockholm Programme, including third country nationals, regardless of their status. This explicit mentioning is paramount as the Stockholm Programme will set out the main priorities of the EU in policy areas such as immigration and asylum and anti-discrimination, all of which affect third country nationals' human rights.

PART I: Rights and Justice

1. A Europe of rights

Given the unique opportunity of the Stockholm Programme, this political priority deserves to be given much more attention than what is proposed by the Commission. Although certain issues relating to rights are developed in other chapters of the Communication, defining a Europe of rights should be the overarching priority that provides the human rights framework for all EU

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action in Justice and Home Affairs (JHA). The current proposal of Commission fails to reach this objective.

As priority for the EU's human rights policy, the Communication merely states that *"the system for protecting human rights in the EU legal order is particularly well-developed".* To illustrate this point, it refers to the European Union Fundamental Rights Agency (FRA) and to the "political symbol" that EU accession to the European Convention on Human Rights (ECHR) would represent. There is no further signal of commitment to any concrete action or new ways for the EU to effectively address the failures of EU Member States to respect, protect and fulfil the human rights of all persons in the EU. This falls considerably short of addressing the still serious human rights problems and challenges that persist across the EU. In addition, restricting a Europe of rights to citizens' rights does not design an AFSJ that protects the human rights of all persons living in the EU irrespective of nationality or legal status. **The reference to citizens only in the title should be deleted**.

Amnesty International has consistently argued that if domestic problems are not addressed adequately and mechanisms are found 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 proper internal human rights policy, regardless of treaty reform developments.

The protection of human rights within an AFSJ can only be effective if strong accountability systems exist within the EU framework, including at the executive level. While Article 7 TEU provides for the possibility of suspending membership rights in cases of a breach or a serious breach of the principles on which the EU is founded (Article 6 TEU), the Council openly admits that this is a purely theoretical option. **The EU must therefore establish other effective peer review and internal accountability mechanisms that can fill this gap and provide a means to address Member States' failures to respect their obligations as provided for in Article 6 TEU.**

Attempts to accommodate these concerns by declarations reaffirming values and by setting up the Fundamental Rights Agency have served to underline a serious problem rather than address it by highlighting the attitude of complacency on the part of the Council and the Member States. Indeed, as today, the FRA remains barred from addressing core human rights issues arising in the implementation of EU justice and security policies. The current trend to refer all those wanting to discuss fundamental rights to the FRA is more than ironic as the reports of the FRA do not even have an address in the Council: no Council formation is obliged to acknowledge and read, let alone act upon reports of the Fundamental Rights Agency. **The Stockholm Programme should set a time line in which the extension of the mandate of the FRA to cover current "third pillar" issues will be achieved, but more importantly outline a mechanism through which the recommendations of the agency are examined at all by the Council.**

This programme will only achieve its objective of protecting and fulfilling individuals' human rights, if it is firmly grounded in a legally binding human rights framework. An important step to strengthen the EU's human rights framework would be for the EU to commit to giving the EU Charter on Fundamental Rights binding effect in the EU system, backed up by EU accession to the European Convention on Human Rights.

Amnesty International calls on the Council to take the opportunity of the new Stockholm programme to be more ambitious on the internal human rights policy for the EU.

An AFSJ for all without discrimination

While Amnesty International welcomes the emphasis on the need to take "vigorous" action to tackle discrimination, including specifically xenophobia, racism, anti-Semitism and homophobia, we believe that an explicit reference should be made here to the EU anti-discrimination directives. This reference has to include the Commission proposal for an additional directive on equal treatment filling the gap of the existing ones and finally achieving equality before the law for all irrespective of their identity. The upgrading of EU legal anti-discrimination framework to guarantee equal treatment to all persons irrespective of religion or belief, age, disability, or sexual orientation, beyond the employment sphere, will indeed serve to strengthen the EU's AFSJ and show renewed commitment to one of the most appreciated strengths of the EU: protection from discrimination.

The most recent example of the homophobic legislation proposal in Lithuania, or Italy's security package which severely discriminates against Roma and migrants in basic access to, for example, health care and education, remind us that discrimination is a daily occurrence and Member States cannot be left to their own devices in achieving comparable standards for all. **The Stockholm programme should highlight the importance of its contribution to non-discrimination legislation and in addition build upon the linkages between the EU's anti-discrimination policies and EU policies in the area of justice, security, asylum and immigration, notably to enable the EU to address discrimination by law enforcement authorities**.

Recent research from Amnesty International has documented the issue of institutional racism, through the example of the Austrian judicial system, and reports on police ill-treatment in France and Greece have highlighted the persistence of racist violence and discriminatory practices by police officers. Such human rights violations directly challenge the EU's commitment to build a common AFSJ founded on human rights. The aim to prevent and combat racism and xenophobia is explicitly included in Article 29 TEU regarding EU's common action in the field of police and judicial cooperation. Together with the Directive implementing equal treatment irrespective of racial and ethnic origin, this can provide a sound basis to develop further instruments, policies and safeguards to fight discrimination that exist in EU Member States' justice systems. One concrete step could be to ensure that the issue of racial discrimination in the police and justice system is included as part of the monitoring of the implementation of the Race Directive. Other steps could include the design of awareness raising and training programmes for police and judicial authorities across the EU. **These issues could also be tackled at EU level through the establishment of procedural safeguards in the area of police and judicial cooperation.** Reports of ill-treatment and discrimination in the course of immigration controls also call for discrimination to be an explicit concern for the EU's immigration policy.

An AFSJ where vulnerable persons are protected

We note that the link between protecting the rights of citizens and the EU's immigration policy are actually made in relation to the **rights of the child**. In this one instance rights are defined with a specific reference to the EU Charter and international law. We welcome the attention to the rights of unaccompanied minors and victims of trafficking as a specific and more fleshed out objective in the Commission Communication. The section on **human trafficking** is an interesting, yet isolated, example of an issue that is mainstreamed in the Commission Communication throughout JHA policies. In fact, trafficking is an area where there is already ongoing legislative

work and it is clearly prioritised by Swedish Presidency. Since the Stockholm programme is designed to establish the main political objectives for the next five years, similar attention should also be given to some other pressing human rights problems, such as women as victims of violence. The Communication's sole reference to one financial instrument (Daphne Programme) is insufficient; the issue has to be systematically examined.

As one example, a coordinated and systematic response to the issue of **female genital mutilation (FGM)** in the EU could be foreseen, including looking at developing a core of common standards in criminal matters, in access to justice, in police cooperation and in the single asylum procedures. Dealing effectively with FGM in the EU requires the adoption of a framework which criminalises the practice of FGM and recognises the principle of extra territoriality of criminal law. This is an important element since young girls resident in the EU are sent abroad to be mutilated. In relation to refugee status, there is no uniform implementation of the Qualification directive in the case of people fleeing their country for fear of being submitted to FGM. Therefore, policies and practices must be changed to reflect the recognition of "acts of a gender-specific or child-specific nature" as persecution in the Qualification Directive.

The objective to tackle discrimination against **Roma** appears more ambitious and we call for this commitment to remain in the Stockholm Programme. We want to also specifically recall that that discrimination against Roma directly affects the right to free movement of EU citizens, which is set as a high priority for the EU. **Measures to tackle discrimination against Roma should not only be about protection and promotion**. They should serve to redress the causes that make Roma people vulnerable in the first place. We need to ensure that Roma, just like all people, are able to fully enjoy their fundamental rights as citizens. **The specific reference to the role of civil society in shaping the EU's policy on Roma is welcome, yet we believe this could be acknowledged systematically for all the main political priorities of the Stockholm programme**.

Overall, Amnesty International regrets the piecemeal approach of the Commission towards rights. The human rights of all persons living in the EU, whether they are citizens, migrants, refugees, children, women or minorities, cannot be addressed by often *ad hoc* protection measures for the most vulnerable category. They must be addressed throughout the whole spectrum of EU policies on justice and home affairs. The efficiency of these policies can only be achieved if respect and protection for human rights, together with the establishment of common measures safeguarding individual freedoms are addressed directly as a core part of the development of an AFSJ.

2. A Europe of Justice – A Europe that protects

Given the development of EU asylum and migration policy, Amnesty international understands the rationale for having a separate chapter dedicated to these. Yet, we are concerned that EU asylum policy appears disconnected from the EU's objective to "protect". This objective needs to have a connection to the EU's international obligation to provide protection to persons who risk persecution or other human rights violations in their country.

Moreover, we are concerned about the fact that the Commission Communication tends to present the area of justice as an issue of "administrative convenience". The section on "making people lives easier" is focussed too much on making the "Member States' lives easier" and encourages the misleading perception that security and justice are two separate issues. The disproportional emphasis on operational effectiveness and control measures to the detriment of

measures to protect human rights is a missed opportunity to address the concern expressed by the High-Level Advisory Group on the Future of European Justice Policy: "We should determine concrete steps to strengthen citizens' rights at European level for 2010 and the following years ... Otherwise, our citizens will often perceive the European Union as an institution that curtails rather than guarantees rights". (Report from the High-Level Advisory Group on the Future of European Justice Policy, Council of the EU, 7 July 2008, 11549/08, JAI 369)

The Stockholm Programme has to redefine an ambitious policy for the EU's AFSJ. With protection of human rights at its core, it needs to commit the EU to analyzing the impact of its cooperation instruments in the field of policing and criminal justice from a human rights perspective of the individual as well as the existing protection gaps at national level. Based on these assessments, it should aim to design both appropriate correction mechanisms within the EU system (such as peer review, suspension of co-ordination, and non-execution in cases of non-conformity with human rights standards) and EU binding legislation to guarantee an equal and high level of human rights protection in the justice system across the EU. **Amnesty International calls on the Council to clarify that strengthening justice in the EU *is* about protection and fulfilment of human rights, fair treatment, and security for all; and to propose action to make this statement a reality in the EU's Area of Freedom, Security, and Justice.**

Procedural Safeguards

The adoption of **binding standards on the procedural rights of suspects and defendants in criminal proceedings** is key to achieving the above mentioned goal. The Stockholm Programme ought to establish a much needed legal benchmark to address and monitor at EU level the failure to protect human rights that persists across EU Member States' criminal justice systems. We further consider it imperative that if the EU is to continue to promote mutual recognition in the area of criminal matters, a set of standard procedural safeguards for the investigation and prosecution of a suspect must be enacted. There is now a body of detailed, credible and current empirical evidence that have been gathered by the Commission to confirm the need for a binding instrument on procedural safeguards at EU level. The Council of Europe monitoring bodies and the European Court of Human Rights continues to find breaches of Convention Rights in the area of criminal justice across the Member States, including the failure to provide access to legal assistance and other defence rights from the first moments of detention. For instance, Amnesty International and international human rights bodies have repeatedly raised concerns regarding the use of incommunicado detention in Spain, on the grounds of "national security" and "public safety". People held incommunicado detention may be deprived of effective access to a lawyer, access to a doctor of their choice, and are unable to inform their families and friends of their detention.

Amnesty International therefore finds it disappointing that the Commission Communication devotes so little attention to procedural safeguards, especially at a time when the issue is put back on the agenda at Council level and by the Commission itself, who just issued a new proposal for a framework decision on the right to interpretation and translation.

This new legislative proposal has been presented as the first step of a right-by-right approach aiming towards the adoption of a coherent set of procedural safeguards. The Swedish Presidency *Roadmap with a view to fostering protection of suspected and accused persons in criminal proceedings* (the Roadmap), presented on 1 July 2009, provides some detail on this new way forward. The Roadmap proposes that the EU addresses, as a matter of priority, measures on: interpretation and translation; information about rights and charges; legal aid and legal advice;

communication with relatives, employers, and consular authorities; special safeguards for vulnerable groups; a green paper on the right to review the grounds for detention. In the introduction, the Presidency explains that action of the EU in this area intends to build upon the European Convention on Human Rights (ECHR) "to expand existing standards or to make their application more uniform". The Roadmap provides an indicative order in which measures are presented, yet there is no proposed timeframe, nor is it clear what type of instrument is envisaged for each measure or if these are to be considered consecutively or concurrently. We advocate for a clear plan through which focus on the adoption of a binding legislative instrument for each right is maintained. However, if action in this area is genuinely a priority for the JHA Council, the Roadmap presented by the Swedish Presidency has to form part of the Stockholm Programme. **The priority that procedural safeguards hold must be spelt out in detail in the Stockholm Programme and in the subsequent Action Plan. Amnesty International calls for the Roadmap to be incorporated into the Stockholm Programme, thus providing the highest political endorsement of its importance and a five year timeframe for the adoption of binding instruments to protect these acknowledged fundamental rights**.

While Amnesty International regrets the lack of a specific reference to a compliance monitoring mechanism on procedural safeguards, we welcome that the Communication of the Commission has inserted a more general reference to the need to improve **evaluation** of the effectiveness of the legal and political instruments adopted at community level in the judicial sphere. We believe that this should be developed further **to provide the EU with a specific mechanism which would automatically and systematically monitor, evaluate, and report publicly on the respect in law and practice of all the rights to fair trial in each Member State**. The EU could offer technical assistance to examine any shortcomings of a legal or procedural nature and, where appropriate, offer such assistance to ensure respect for fair trail rights. Consideration may also be given to the appropriateness and feasibility that the application of mutual recognition instruments could be suspended until the Members State was able to demonstrate that the right in question is consistently ensured. This would in addition eliminate the *de facto* discrimination between Member States in that the existing safeguard clause on JHA in certain accession treaties is extended to a more encompassing monitoring mechanism applicable to all Member States.

Torture and the Fight against Terrorism

Amnesty International is particularly surprised by the lack of attention devoted to international human rights law with regards to the fight against terrorism in the Commission Communication programme. The reference to the need for EU counter-terrorism policies to comply with "international standard" is dealt with in a two-line paragraph, in the middle of the section dealing with the priority areas identified for reducing the terrorist threat. As consistently highlighted by the EU counter-terrorism coordinator, the key to fighting radicalization and preventing attacks lies in the importance of leaving no human right protection gaps when combating terrorism. Despite the fact that preventing radicalization and attacks are identified priorities for EU action, the connection to human rights law is never made properly. There is also no mention of human rights in relation to the question of financing terrorism, despite the reports by the Council of Europe and 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 backlist 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**.

This lack of reference to international human right law in the context of counter-terrorism is particularly striking at a time when the JHA ministers have succeeded in adopting a common framework for helping the US close Guantánamo, and are further seeking to adopt common principles with the US on how to fight terrorism in line with international human rights, refugee, and humanitarian law. 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 with EU external policies. While the EU has adopted guidelines on torture "to identify ways and means to effectively work towards the prevention of torture and ill-treatment within the Common Foreign and Security Policy", there is no equivalent EU internal mechanism or policy framework to support efforts and action at international, regional, or national level, 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.**

In the context of the fight against terrorism, the lack of EU scrutiny and accountability for torture and other human rights violations committed by EU Member States have undermined the EU's commitment to upholding the absolute ban on torture. In its resolution adopted on 19 February 2009, the European Parliament clearly denounced the lack of action of the Member States and the Council to shed light on Europe's involvement in the CIA rendition and secret detention programme, involving kidnapping, denial of due process, torture and enforced disappearances. In fact, there is until today no guarantee that such practices can never occur again. On 26 June 2009, the international day against torture, the secretary general of the Council of Europe focused his allocution on the need for Europe to develop appropriate safeguards to prevent such abuse in the future and ensure justice for the human rights violations that have been committed. "We must ensure that the airports and airspace of Europe are not used to transport illegally detained people to countries where they may be tortured. (...) Immunity should not be a licence to kidnap or torture people with impunity (...) Today, it is late, but it is not too late for the European governments to act." **We call on the EU to take the opportunity of the Stockholm Programme to act: acknowledge, bring to justice, repair, and prevent any human rights violations committed by EU Member States in the course of their participation in the CIA illegal rendition and secret prison programme.**

Discussions at EU level on the use of diplomatic assurances to expel terrorist suspects to countries where they would be at risk of torture or other ill-treatment further calls into question EU's commitment to the absolute ban on torture. This practice is also in flagrant contradiction of EU efforts to fight torture in these countries. **We call on the Council to ensure that the Stockholm programme takes a strong stance against the use of diplomatic assurances**.

PART II: ASYLUM AND MIGRATION

Under the heading *Promoting a more integrated society for the citizen – a Europe of solidarity*, the Commission Communication describes the main challenges for the EU's immigration and asylum policy under the next multi-annual programme. Amnesty International believes that the suggested heading of the chapter might lead to confusion as to what should be the focus of the EU's immigration and asylum policy as it exclusively emphasizes the aspect of solidarity. Instead Amnesty International suggests that the Stockholm Programme should unambiguously promote the development of a common immigration and asylum policy that is based on international human rights and refugee law and the fulfilment of EU Member States' obligations towards asylum-seekers, migrants and refugees as well as the respect of their human rights.

The title also suggests that promoting a more integrated society for "the citizen" is the number one priority for the EU in the new multi-annual programme in the area of freedom, justice and security. While Amnesty International acknowledges the importance of promoting integration of third country nationals in European society, consistently developing a rights based-approach to such complex issues as asylum and migration is equally important. Amnesty International **strongly suggests making a clear reference to the objective of creating a Europe that protects the human rights of migrants, asylum-seekers and refugees in the title of the chapter dealing with migration and asylum**.

Doing this would also more accurately reflect the content of the Commission's Communication that calls for a dynamic and comprehensive immigration policy "that emphasizes respect for fundamental rights and human dignity" and the creation of a common area of protection and solidarity based on "respect for human rights, high standards of protection and a general improvement in the quality of the national systems". Amnesty International believes it is important to re-affirm these fundamental principles that should provide guidance for all initiatives developed in this area of the Stockholm Programme.

1. Constructing a Europe of Asylum

The Hague Programme has defined the establishment of a common asylum procedure and a uniform status for those who are granted protection or subsidiary protection as the aims of the Common European Asylum System (CEAS) in its second phase. This has been confirmed by Heads of State and Government in the Pact on Immigration and Asylum as the main objective of harmonization. Merely restating this objective in the Stockholm Programme will not be enough. In order to take a significant step forward in the establishment of the CEAS, the Stockholm Programme will have to specify the meaning of a "common asylum procedure" and a "uniform status" in the context of EU legislation. There is a need for clarity about the boundaries of the CEAS and the level of European harmonization that is desirable and feasible in the field of asylum policy. There are several options available between the current minimum standards-approach and maximum harmonization whereby decision-making and appeal systems are organized at EU level. However, today a half-hearted approach is taken whereby most Member States only agree with EU standards that allow them to pursue their own national policies, shying away from a true European policy. Although the Lisbon Treaty, should it enter into force, will provide for a more solid basis to develop a common policy, the Stockholm Programme will nevertheless be important to set out the broad political orientations with regard to the degree of further harmonization of asylum policy.

The Stockholm Programme has to also clearly **reaffirm the commitment laid down in The Hague and Tampere Programmes to construct the CEAS based on the full and inclusive application of the Geneva Refugee Convention and other relevant Treaties**. This is important as a constant reminder for all stakeholders that the CEAS should strengthen and not undermine the existing global international protection regime.

Amnesty International believes that the Stockholm Programme should include clear commitments with regard to the legislative programme on asylum, the objectives of practical cooperation in the field of asylum and the external dimension of the CEAS.

A solid legal framework in line with international refugee and human rights law

As the second phase of legislative harmonization only started in 2009, negotiations on Commission proposals on EURODAC, the Dublin Regulation and the Reception Conditions Directive will necessarily continue under the Stockholm Programme. At the same time, the Commission is expected to present proposals recasting the Asylum Procedures Directive and the Qualification Directive later this year. While there is clearly some "harmonization fatigue" within the Council, Amnesty International believes that there is an urgent need to adopt amendments to the existing *acquis* in order to raise the standards of protection in EU legislation. The EU asylum *acquis* as it exists today is in certain respects at odds with international human rights standards while it also leaves considerable room for discretion or derogation to the Member States, resulting in widely diverging standards and practice in the EU. Recognition rates for certain nationalities applying for asylum in the EU differ widely between Member States, while there remain huge differences as to the level of reception conditions granted and the level of procedural guarantees for asylum-seekers. This is unacceptable from a harmonization as well as a human rights perspective as it shows that a common approach is still lacking.

Based on the myth that protection standards are the same in all Member States and that chances of getting protection are equal in all Member States, the Dublin Regulation results in a number of asylum-seekers being sent back to dysfunctional asylum systems where their rights may be violated and they are unable to access effective protection. Member States can no longer turn a blind eye to these differences and cases of substandard treatment of asylum-seekers in other EU Member States under the pretext that those states are responsible for complying with human rights standards and EU asylum legislation. Transferring asylum-seekers to situations where they may face human rights violations triggers the responsibility of the sending state. Recently the European Court of Human Rights has started to impose interim measures on EU Member States with regard to intended transfers of asylum-seekers to countries such as Italy, Malta, and Greece on the basis that they may risk human rights violations in those countries. In a case concerning a Turkish asylum-seeker in Greece, the European Court of Human Rights recently found that the individual's detention conditions were in breach of Article 3 ECHR and amounted to inhuman and degrading treatment or punishment. Other EU Member States have also been found to be violating rights guaranteed under the ECHR in their national asylum procedures. This illustrates that transfers of asylum-seekers between Member States can pose serious human rights problems which have to be addressed effectively and this should be fully acknowledged in the Stockholm Programme.

Amnesty International believes that the Stockholm Programme must contain a clear commitment to **organize a fundamental debate on replacing the current Dublin system with alternative models** that take into account actual protection standards in Member States and preferences of asylum-seekers or links with certain EU Member States and is complemented with effective responsibility-sharing between EU Member States. Such a debate should be based on the

various evaluations that have been made so far but should also take into account the financial and human costs of the current system. The Commission Communication seems to already suggest that such a debate can no longer be avoided in noting that "although the EU has chosen to preserve the broad guidelines of the Dublin system *at present*, it must also open new avenues" (see COM (2009) 262, p. 28).

However, in the short term, there is an urgent need to strengthen the position of asylum-seekers in the context of the Dublin Regulation, in particular with regards to vulnerable groups of asylum-seekers, maintaining family unity and protecting asylum-seekers from human rights violations resulting from Dublin transfers. The Commission proposal recasting the Dublin Regulation provides a number of positive amendments that would indeed contribute to a better protection of asylum-seekers' rights in the context of Dublin transfers, including with regard to effective remedies against Dublin transfers and the introduction of a temporary suspension mechanism. The Stockholm Programme should include a clear commitment that - pending the fundamental revision of the Dublin system - EU institutions should seek a **swift adoption of proposed amendments to the Dublin Regulation aiming at strengthening the safeguards for asylum-seekers, in particular with regard to effective remedies against Dublin transfers**.

Given the rather low level of standards laid down in the existing EU asylum *acquis*, the Stockholm Programme must unequivocally reaffirm the general importance of completing the second phase of harmonization through adoption of necessary amendments to existing EU legislation in order to **establish high standards of protection on the basis of international refugee and human rights law and standards**. This is also needed with regard to the Asylum Procedures Directive and the Qualification Directive. Both core legislative instruments include a number of concepts that are at odds with international human rights standards and need to be adjusted to ensure that the EU asylum *acquis* does not undermine the global international protection regime. For instance, provisions in the Qualification Directive on exclusion derogate from the Geneva Refugee Convention and allow extensive interpretation of who can be excluded from refugee status. The Asylum Procedures Directive contains a very long list of circumstances in which accelerated asylum procedures with lesser procedural guarantees can apply, makes it possible to deny a personal interview to asylum-seekers in certain cases and promotes broad application of safe country of origin and safe third country-concepts. The Stockholm Programme should include a clear commitment to establish a legislative framework that enables the development of fair and satisfactory asylum procedures. In addition, the need for **permanent monitoring of the implementation of EU-legislation and its impact on the rights of asylum-seekers and beneficiaries of international protection in practice must be re-emphasized as an integral part of constant quality-control of this legislative framework**.

Amnesty International welcomes the Commission's suggestion to **enshrine in legislation by the end of 2014 the principle of mutual recognition of all individual decisions granting protection status taken in the EU**. Currently, only negative decisions on asylum applications are mutually recognized between Member States. The mutual recognition of positive decisions will help to solve a number of practical obstacles relating to the transfer of protection status between EU Member States and is necessary if EU Member States are serious about creating a common asylum system. It will also facilitate the integration of refugees and beneficiaries of subsidiary protection into European societies and their freedom of movement within the EU. In addition, a new initiative is needed in order to extend the scope of the Long Term Residence Directive to beneficiaries of international protection. Refugees and beneficiaries of international protection do not currently have the same rights to freedom of movement within the EU as other non-EU nationals after legally residing for over five years. Granting them the same rights attached to long term-residence status under EU law is not only a question of fairness to this particular category of third-country nationals, it may also function as a *de facto* form of

responsibility-sharing between EU Member States. **The Stockholm Programme should include a clear commitment to at least extend the scope of the Long Term Residence Directive to beneficiaries of international protection as soon as possible**.

Enhancing practical cooperation with a view to improving the quality of the CEAS

A solid legal framework is paramount as a basis in order to construct a CEAS that is able to protect those in need of international protection. Amnesty International acknowledges that cooperation between asylum authorities at a practical level will equally be essential to ensure a harmonized approach. Legislative harmonization alone will not suffice to address the varying interpretation of protection needs in the Member States or to lift protection standards throughout the EU. Cooperation between asylum authorities in the field of country of origin information, interpretation services or training of asylum decision-makers and judges are considered useful tools to increase not only harmonization but also to develop best practice at a national level. Furthermore, practical cooperation can also include various forms of technical assistance for Member States with overstretched asylum systems. The European Asylum Support Office (EASO), if established, is meant to streamline existing and new initiatives on practical cooperation and has the potential to contribute to a better functioning CEAS.

However, Amnesty International believes that in order to do so, the activities of the EASO in the field of **practical cooperation should clearly serve the purpose of improving the quality of the CEAS and particularly of individual decision-making in the Member States**. This is important as the debate on the Commission proposal for a Regulation establishing the EASO seems to almost exclusively focus on how the EASO can be used to address emergency situations in certain Member States and create more concrete "solidarity" between Member States. Recent initiatives launched by UNHCR in a number of Member States to assist them to improve first instance decision-making are setting a good example. These initiatives at the same time illustrate the need for the EASO to identify the issue of quality of decision-making as a main focus in the activities it will develop. The Stockholm Programme should include a clear endorsement that this is indeed a priority for the EASO and the Member States.

Promoting solidarity within the EU and with third countries to the benefit of refugees

The debate at EU level is increasingly concentrating on the need for more solidarity by Member States with those that are facing "particular pressures" due to the arrival of high numbers of asylum-seekers and migrants on their territory. There are many ways in which Member States or the EU institutions can concretely support states, including through purely technical or financial assistance to enhance their capacities, sending asylum support teams of asylum experts from other Member States, temporary suspension of Dublin transfers and the relocation of persons granted protection in one Member States to other Member States. In this regard, the Commission is expected to soon present a pilot project with regard to the relocation of beneficiaries of international protection from Malta to other Member States, while France has most recently welcomed on its territory about 90 persons who were granted protection in Malta. Amnesty International considers the relocation of beneficiaries of international protection to be a positive measure on the condition that the individuals concerned consent with their relocation and are fully informed of the consequences of their decision. Amnesty International acknowledges that these and other systems promoting solidarity and responsibility-sharing may contribute to enhancing protection within the EU and are essential components of a common asylum system. However, Amnesty International also believes that **such solidarity mechanisms must always be accompanied with measures to improve and enhance the capacity and quality of the**

asylum system in the Member States benefitting from responsibility-sharing. As much as solidarity of other Member States may be necessary in certain circumstances, the lack of it can never absolve EU Member States from their international obligations towards persons in need of protection.

Secondly, systems such as the internal relocation of refugees within the EU should be clearly distinguished from resettlement to EU Member States as a durable solution for refugees in third countries. While recently there have been positive developments in this field, in particular with regard to Iraqi refugees, there is still considerable room for improvement at EU level. The development of an EU resettlement programme can contribute to ensure that EU Member States engage more effectively and more generously in resettlement of refugees. Such a programme should **focus on resettlement of the most vulnerable cases and should be implemented in close cooperation with UNHCR**. Any engagement in the resettlement of refugees from third countries must always be complementary to EU Member States' obligations towards persons applying for protection in the EU.

Amnesty International also welcomes the Commission's call to consider new ways to ensure that access to protection is effectively ensured such as protected entry procedures and the issuing of humanitarian visas through EU embassies. However, the further development of regional protection programmes may be premature at this stage as no thorough evaluation of the currently implemented programmes has been completed so far. Many questions remain as to the real impact of these programmes on the protection capacities and the local population in the region concerned as well as on the refugees themselves. **The Stockholm Programme should include a commitment to launch a transparent debate on the effectiveness and impact of regional protection programmes, based on a full evaluation of the existing programmes**.

2. An immigration and border control policy that respects human rights

As indicated above, Amnesty International welcomes the Commission's explicit call to develop a long term-vision on migration that emphasizes respect for fundamental rights and human dignity. The Stockholm Programme presents a unique opportunity for the EU to place the fundamental rights of migrants at the centre of the debate again and to counterbalance the current over-emphasis on security concerns with regard to migration. The Stockholm Programme should clearly reaffirm the principle that an EU immigration policy must respect, protect, and promote the human rights of migrants, in compliance with international law and standards and the EU Charter on Fundamental Rights.

<u>Developing a policy on mixed migration flows that respects fundamental rights of migrants, asylum-seekers and refugees</u>

As illustrated by recent events in the Mediterranean and elsewhere at the external borders of the EU, policies developed at EU and national level to control borders and address mixed migration flows increasingly raise essential questions of compliance with obligations under international human rights law. The ongoing push-backs from Italy to Libya of migrants intercepted at the high seas without any assessment of their protection needs clearly are to be considered a breach of Italy's obligation to respect the principle of *non-refoulement* as established in international refugee and human rights law. Although the issue has been discussed at EU level, no EU Member State so far has had the courage to openly denounce such practices. Amnesty International is worried that this is interpreted as a tacit agreement of other Member States with practices that clearly undermine international law obligations and violate fundamental rights of the

migrants concerned. At the same time it sets a worrying precedent for other states and recently the press has reported a similar operation implicating several EU Member States in the context of a FRONTEX-operation off the coast of Malta. With regard to maritime operations in particular, there is an urgent need for clear guidelines at EU level defining the respective responsibilities of Member States with regard to search and rescue, disembarkation at a place of safety and access to asylum procedures for those who wish to apply for international protection. The Stockholm Programme should include a clear commitment from the Council and the Commission to adopt such guidelines in order to **ensure that search and rescue operations are carried out effectively and access to protection is guaranteed for the individuals concerned.**

In order to manage migration flows, the EU increasingly explores ways to cooperate with third countries more effectively and concretely. Amnesty International agrees that a more comprehensive vision is needed to address the challenges posed by migration to countries of origin, transit and destination. Yet, we urge the EU and its Member States to place the respect for human rights of the migrants concerned at the centre of their policies. Issues such as the trafficking of migrants, exploitation of migrant workers, root causes of migration and human rights abuses occurring during the migratory route require a concerted approach in which all stakeholders are involved on an equal basis. However, Amnesty international fears that within debates such as the one on migration and development the emphasis remains too strongly on preventing onward migration towards the EU territory, rather than **developing a genuinely balanced approach that responds effectively to the root causes of migration and works towards the effective protection of migrant's rights throughout the entire migration cycle**. While the Stockholm Programme should provide more details on how the EU's global approach to migration could become a reality, it must at the same time ensure that this is accompanied by a clear strategy to permanently evaluate the impact of these policies on the human rights of migrants. This is particularly needed with regard to the EU's external border control policy and operations carried out through FRONTEX. While the monitoring role of UNHCR with regard to access to protection within the EU must be further developed in the context of the EU's external border management, the role of EU agencies such as the FRA and the future EASO in this area must also be defined.

Promoting a rights-based approach on return of irregular migrants

The highly controversial 2008 Return Directive provides a set of standards at EU level on the return of irregular migrants. Amnesty International, as many other NGO's, has consistently expressed concern on several aspects of this directive, including the use of re-entry bans, the maximum time limit for detention for the purpose of removal, the exceptions to the territorial scope of the directive and the explicit obligation for Member States to remove irregular migrants from their territory. A similar obligation to return every migrant irregularly on the territory is included in the European Pact on Immigration and Asylum while no link is established in both texts to the need to ensure that return is sustainable. Amnesty International is concerned that the political objective of zero-tolerance towards irregular migrants is both unrealistic and eventually counterproductive. A strict application of the stated principle also risks undermining the human rights of irregular migrants as it may prevent their individual circumstances being duly taken into account when taking a return decision, contrary to states' obligations under international human rights law.

Furthermore, the generalized use of entry bans in the EU may have devastating effects on access to protection in the EU or the right to family reunification for third country nationals. While the Return Directive contains a safeguard clause with regard to the right to seek asylum, it is in practice hard to foresee how this right would be realized when an entry ban has been issued. An

entry ban is a blunt instrument that is entirely inappropriate in light of the fact that future changes in a country of origin, and thus an individual's need for international protection, cannot be predicted. Also the weak safeguards with regard to vulnerable groups, including unaccompanied children and traumatized persons, give reason for concern. These and other aspects of the directive must be the subject of **thorough evaluation and monitoring under the Stockholm Programme with a view to upgrading the EU's common standards on return of irregular third country nationals.**

The Stockholm Programme should also, as suggested in the Commission Communication, clearly promote the priority of voluntary return over forced return and commit to promote the development of programmes that assist migrants who wish to return voluntarily to their country of origin or their former habitual residence in safety and dignity after having been given the opportunity to take an informed decision. In addition, the EU Return Directive should be reviewed in order to strengthen the obligation for Member States to prioritize voluntary over forced return and upgrade the numerous exceptions in the directive to match this important principle. **The situation of migrants who do not obtain a residence permit but also cannot be returned as well as solutions to the high occurrence of destitution merit a wider study on best practices in Member States.** At the same time the category of persons that cannot be returned should be clearly defined so as to ensure that those with protection needs are processed in fair and satisfactory asylum procedures.

Putting a stop to criminalizing migrants and promote alternatives to immigration-related detention

Amnesty International is observing a worrying trend in EU Member States to increasingly consider irregular migration from a criminal law perspective and use criminal law sanctions in an attempt to discourage irregular entry or residence of third country nationals. The UN Working Group on Arbitrary Detention (WGAD) has stated that criminalizing those who enter or remain in the country without authorization exceeds the legitimate interest of states to control and regulate irregular migration. Various UN bodies, including the Office of the High Commissioner for Human Rights (OCHR) as well as the Special Rapporteur on the human rights of migrants have opposed the treatment of irregular migration as a criminal offence, stating that irregular migration should be treated as an administrative offence. **The Stockholm Programme should fully endorse a rights-based approach to migration and take position against the criminalization of migrants in the EU**. Third country nationals should not be treated as criminals for the sole reason of their irregular entry or residence in any EU Member State. The new five-year programme should promote 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 clearly **promote the use of alternatives to detention**, both in the context of asylum procedures and in the context of removal procedures. International human rights standards, including jurisprudence of the UN Human Rights Committee, restrict the use of detention for immigration purposes by requiring that it is necessary and proportional, and that no less restrictive measure would suffice. In other words, to prove that detention is necessary and proportional, in line with international standards, state authorities must use and make available alternative measures both in law and in practice. The availability of alternative measures means that a policy of routinely detaining irregular migrants, without considering the use of less restrictive alternatives, is disproportionate and unjustifiable in international human rights law. The EU Return Directive also includes the principle that detention for the purpose of removal can only be used when other sufficient but less coercive measures cannot be applied effectively in a specific case. In line with the principle that detention for immigration or asylum-related purposes should only be used as a measure of last resort and never as a first response,

the Stockholm Programme should include a clear commitment to promote effective use of alternatives to detention in the EU Member States' law and practice. Building on the legal obligations enshrined in international human rights standards and EU legislation, the Commission should be invited to **develop an action plan for the implementation at national level of concrete alternative measures for detention** such as the use of reporting requirements, bail, bond and surety, accommodation in open and semi-open centres and directed residence.

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