



# THE EU AND HUMAN RIGHTS

## MAKING THE IMPACT ON PEOPLE COUNT

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Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion – funded mainly by our membership and public donations.



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## PREFACE

2009 is a year of change in the composition of the European Union (EU) institutions, with elections to the European Parliament in June, a new Commission due to start its mandate in October, and the prospect of a new External Action Service on the horizon. This document highlights the cause of individuals that are directly affected by the human rights consequences of the EU's policies. It focuses on six key areas of human rights, with particular emphasis on the individual rights holder, to underline the need for the EU to take action to defend, protect and promote the human rights of individuals, both within its own borders and internationally.

To complement Amnesty International's programme for the rotating EU presidencies, the following document is intended to address our broader human rights concerns to the full range of EU policy makers and actors. It is additionally directed at relevant EU decision makers that do not necessarily have a background in human rights, but whose work nonetheless can potentially create a real impact.



## EXECUTIVE SUMMARY

### Human rights defenders

Human rights defenders are people who, individually or with others, act to promote or protect human rights. Supporting and giving legitimacy to the work of human rights defenders is an important way for the EU to protect and promote the human rights of all. Human rights defenders are crucial actors in the struggle for political, social and economic rights. Their position at the forefront of defending and promoting human rights often puts them at particular risk of attack and intimidation. The EU acknowledged this with the adoption of the EU Guidelines on Human Rights Defenders in June 2004. However, words and written commitments are not enough and the situation for human rights defenders worldwide is not improving. As the EU further develops its strategic relationships with partners it needs to ensure that the voices of human rights defenders, and their experiences, continue to be recognized.

The EU has definite responsibilities with regards to the protection of human rights defenders both within and outside its own borders. While the situation for human rights defenders working within the EU is less repressive than elsewhere, freedom for human rights defenders to operate can also be restricted. This is the case, for instance, with regard to lesbian, gay, bisexual and transgender (LGBT) issues. This challenges the EU's commitment to protect and promote human rights and more importantly, fails to protect vulnerable persons from violence and hatred. The EU has a responsibility to ensure that standards of protection for human rights defenders and their freedom of expression and assembly are safeguarded throughout its own territory, as well as internationally.

## Asylum-seekers, refugees and migrants

Asylum-seekers, refugees and migrants remain vulnerable in European societies. Individual refugees and migrants continue to face ill-treatment and human rights abuse. The core of the EU's asylum and migration programme should be the implementation of EU asylum and migration legislation and the continuous evaluation of its impact on human rights protection for asylum-seekers, refugees and migrants in the EU.

For irregular migrants there have been worrying developments at EU level in the area of immigration and border control. Detention of up to 18 months, allowing removal to countries other than the country of origin and entry bans, that may in certain cases last indefinitely, are some of the EU sanctioned policies that individuals now face. Recent European Parliament delegation visits to detention centres in 12 member states portray a grim reality for migrants and asylum-seekers being detained in substandard conditions without proper legal assistance. The growing criminalization of irregular migrants is an area of concern where leadership from the EU is urgently required. In order to protect migrants' rights it is imperative that EU member states take a clear position against legislative measures that criminalize irregular migration and maintain an approach that is grounded in administrative law and based on full respect of the human rights of migrants, irrespective of legal status.

The EU is increasingly engaging with third countries in order to manage migration. As the EU and its member states insist on further developing this approach, effective mechanisms are urgently needed to monitor and assess all implications of such co-operation, in particular where it directly or indirectly results in human rights violations. As much as co-operating with third countries in the field of migration may be necessary to "manage" migration, it cannot absolve the EU and its member states from their responsibility to ensure that the human rights of migrants, asylum-seekers and refugees are effectively respected in practice.

## **Detainees and suspects**

Hundreds of thousands of people around the world continue to be detained arbitrarily - either in prisons, detention centres, or under house arrest. The EU has a clear responsibility to challenge detentions which defy international law. In recent years, a number of key international actors, including the European Parliament, have called Europe to challenge the increasing acceptance of unlawful practices in the name of the "war on terror", and in particular support the closure of Guantánamo Bay. Specific and practical support, such as offering international protection for detainees who cannot be repatriated safely due to the risk of torture or persecution in their home countries, or whom are stateless, would be a significant gesture from the EU. Action is needed to become credible: when the EU says that the "war on terror" cannot justify human rights violations it has to show that these are not just empty words.

The EU must honour its human rights obligations by acting to end all other forms of unlawful detention still being conducted in the name of counter-terrorism anywhere around the world, and to ensure that there is no impunity for crimes such as torture and enforced disappearances. In this process, the EU has to at last come to terms with its own responsibilities in the CIA rendition and secret detention programme.

Alongside detention and imprisonment, torture and other forms of ill-treatment are used by states worldwide to gain information or a confession, as well as to punish, intimidate and threaten prisoners and detainees. The EU is committed under the Guidelines on Torture and other cruel, inhuman or degrading treatment, to react to such cases. It must reaffirm its absolute commitment to the prevention of torture in 2009 by stepping up the implementation of its own guidelines, and addressing shortcomings in its internal counter-terrorism policies that undermine its commitment never to transfer detainees when they are at risk of torture.

## **Victims of conflict and violence**

As well as its commitments to the prevention of torture, the EU must ensure that it does all it can to ensure that human rights are respected in conflict situations. Recent conflicts have continued to cause loss of civilian life, and have led to people suffering torture, forced displacement and starvation. The EU has an obligation to be at the forefront of all efforts to ensure that international law is upheld in conflict situations, that the welfare of civilians is protected at all times, that arms do not end up in the hands of those who would use them to violate human rights, and that those who commit war crimes are held accountable for their actions and brought to justice.

As well as ensuring that international law is respected in conflict situations, and that those who do not respect these laws are held accountable, the EU has clear obligations with regard to the arms trade and its devastating effect on individuals. Every day over 1000 people are killed directly with firearms and many thousands more die indirectly as a consequence of armed violence or are driven from their homes, forced off their land, raped, tortured or maimed. The EU has led international calls for greater control of the arms trade but efforts so far have had limited impact. The EU has to take real action in 2009 to push for the development of strong binding arms legislation with human rights and development at its heart.

Individual suffering caused by conflict and violence that is fuelled by the arms trade is felt disproportionately by women and girls. The EU's focus on tackling violence against women in its external relations policy should be broadened so that the ongoing violations of women's rights within the EU are addressed with the same urgency.

## People living in poverty

Poverty is one of the worst human rights crises in the world today and denies people their most basic rights. It exists in all countries of the world, developed or developing and affects more than one billion persons. The current economic crisis means the situation of people living in poverty is likely to worsen. Understanding that people living in poverty are driven into, and trapped within, this condition by the abuse of a range of universal and interdependent human rights is fundamental in finding a solution. Based on this understanding all states have the duty to respect, protect and fulfil human rights at home and abroad. These human rights obligations relate to the form in which development aid is given so it prioritises the most vulnerable, ensures non-discrimination, respects participation and information rights of those affected and provides accountability mechanisms.

For the EU this requires that steps are taken, that due diligence is exercised, so that, at a minimum, the impact of its actions does not harm human rights. This involves three key areas. The first is ensuring corporate accountability. The EU can do this as a global actor and an economic bloc by providing a level playing field and guiding business to respect human rights. The second is by combating poverty at a global level by leading efforts to mitigate the negative impact of the world economic crisis through abiding by commitments and avoiding cutting development aid. The third step involves the EU targeting poverty and discrimination within its own borders. EU efforts to eradicate poverty within a human rights framework should encompass a renewed perspective on its own policies of social inclusion. People living in poverty in the member states of the EU are a reality and EU policies and instruments to address this are ill equipped without the integration of human rights.

## People in the margins

The Roma are a clear example of a community that suffers from both poverty and marginalization. They encompass the link between these two human rights issues. Roma face exclusion from public life and are unable to enjoy full access to their rights in relation to housing, education, employment and health services. Evidence of segregation patterns such as special schools or classes for Roma children have echoes of apartheid. And yet, responses at national and European level remain dispersed and unsuccessful in achieving lasting improvement. The Roma community is certainly not an isolated case of marginalization; they are among millions of other individuals within the EU who face various forms of discrimination. The Slovenian “erased” have also suffered a violation of their right to work and social security. Racism is still rife throughout the EU, there are alarming reports of rising Islamophobia and anti-Semitism, and in many parts of Europe homosexuality is still taboo, while the open expression of LGBT identities is regularly met with rejection and abuse. A swift adoption by member states of the new anti-discrimination directive proposed by the Commission would fill an important legal protection gap at EU level and send a clear message that achieving equality for all is indeed a priority for the EU. The debate around the directive should also be an opportunity for the EU to revisit its policies on racism and discrimination taking into account all its manifestations in society and how it can undermine the human rights of each and every person.



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## Conclusion

Analyzing EU human rights policy from the perspective of an “impact on people” is not the most common approach, yet it is the one that should ultimately count. The EU has continuously developed and grown since its inception, and as a result has had to gradually increase the number of its instruments, structures, and policies relating to human rights. However, it is inevitable that separate policies eventually need to be reviewed to create an overarching human rights framework and enhance coherence. The EU has a wealth of significant human rights instruments at its disposal, including decisive efforts in mainstreaming human rights; it signals the right language and is signatory to international human rights law. Yet at crucial moments the EU fails to act coherently and loses the overview of all its instruments. This can put its credibility at risk, and unnecessarily limits its human rights impact.

The EU does not have an unproductive human rights record. But it cannot afford to continue an inconsistent human rights system when it could instead utilize its instruments, competence and influence to increase protection for human rights at home and abroad. What is also needed is a framework that turns the many disconnected actions of the EU into a set of instruments that broadens rather than constricts the EU’s impact. This framework must also create standards by which the EU can hold itself accountable. Four initial steps can be taken immediately. These are to develop a comprehensive human rights policy that enables the EU to utilize non human rights instruments where applicable, to accede to the European Convention on Human Rights (ECHR) and make the Charter of Fundamental Rights legally binding, to develop an internal human rights mechanism, and to integrate the activities of EU agencies into a human rights impact perspective.

## HUMAN RIGHTS DEFENDERS: PROTECT THOSE WHO DEFEND OUR RIGHTS

Human rights defenders are crucial actors in the struggle for political, social, and economic rights. Their position at the forefront of defending and promoting human rights often puts them at particular risk of attack and intimidation. Supporting and giving legitimacy to the work of human rights defenders is one of the most important ways to protect and promote the human rights of all, as they are catalysts for change on human rights issues, and are often emblematic of the wider repression of others in the country in which they work.

The EU acknowledged this with the adoption of the EU Guidelines on Human Rights Defenders in June 2004. This written commitment to promote the principles in the UN Declaration on Human Rights Defenders in its relations with countries outside its borders remains unique.

However, words and written commitments are not enough. The situation for human rights defenders worldwide is not improving. For example in Russia and many Central Asian countries there is a shrinking space for independent voices and civil society seeking to publicize abuses, articulate alternative views, or hold governments and others to account. In Latin America, although abusive practices have remained largely unchanged, the rationale for them has shifted. The techniques previously used to repress political dissent, have now been turned on those challenging social injustice and discrimination, and those they seek to support. Even at home, within some EU member states, liberty for human rights defenders to operate can be restricted.

Recent efforts to ensure that the EU Guidelines on Human Rights Defenders are updated to explicitly call for support for all types of human rights defenders, including women and economic, social and cultural rights activists, are welcome. Ill-treatment while in police custody, torture and death threats are frequently suffered by human rights defenders who peacefully protest against communities being forcibly evicted from their land or protest against discriminatory access to food programmes. Amnesty International regularly receives reports of gunmen hired by farmers or private extractive companies - occasionally supported by local politicians and police - to intimidate human rights defenders and their families who are fighting for their right to land.

Words and written commitments are not enough. The situation for human rights defenders worldwide is not improving.

Now there is a need for renewed energy, from the European Commission and from member states, to ensure that the guidelines are implemented. They are far from universally understood and used by the EU diplomats responsible in third countries, let alone by government practitioners working in related areas of policy. So much more could be achieved if there was a high level political signal of the importance placed on the actions in the guidelines, and with more resources and leadership devoted to training and information sharing on how the guidelines operate. The EU needs to show consistency and genuine support for human rights defenders, from the desk officer in the embassy, right the way up to ministers visiting the country in question. The EU must make itself, and its commitments to human rights defenders, more visible and tangible.

Practical support for human rights defenders themselves is a key part of the EU's support for their work, but in the longer term, the EU can and should also contribute to directly addressing the rights violations which defenders are raising. Freedom of expression is a regular issue on the agenda of the human rights dialogues which the EU holds with third countries, but this has to be a frank and genuine exchange of views. The EU should not condone situations, such as that currently faced with China, in which a list of human rights defenders cases are submitted each month, freedom of expression is discussed at political level, and then human rights defenders are denied access to the legal experts' seminar. All this is done with EU consent. The participation of independent Chinese civil society voices - and those working in all the countries with which the EU holds human rights dialogues - must become a standard for meaningful successive legal experts' seminars, and as a minimum, must be a pre-condition for those to be held in Europe.

An evaluation, involving all the parties in the EU-China dialogue, needs to be carried out to assess what is being achieved by the dialogue in terms of improvements in the human rights situation on the ground, and whether other mechanisms would be more effective. New human rights dialogues, of different models, and being led by different EU institutions are being set up all the time. This was the case in 2008 with Central Asian countries and the African Union, and in 2009 with a number of Latin American countries, including potentially Cuba. Proper evaluation of the long established EU-China dialogue could help with decisions about the conduct of newer dialogues to ensure that the EU focuses its energy in a way that is making a difference on human rights.

As the EU further develops its strategic relationships with partners, it needs to ensure that the voices of individual human rights defenders, and their experiences, continue to be recognized. The EU has embarked on a series of "upgrades" in its relations with neighbouring countries, including Israel, Morocco, Ukraine and Tunisia. This process is likely to progress to all of the EU's neighbours; however in many of these countries the situation for

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human rights defenders continues to be difficult, in particular with regards to freedom of expression and association. The EU must ensure that these upgrades increase the EU's capacity to support their important work, and that all future Action Plans agreed with neighbouring countries are based on firm commitments from both sides to work to improve the human rights situation, including notably that of human rights defenders.

The challenge for the EU is not only in its support for human rights defenders elsewhere but also for those working within its own borders. Far more could be done by member states to publicize their commitments to human rights defenders as a union. While the situation for human rights defenders working within the EU is usually less repressive than elsewhere, the EU does not pay enough attention to the calls of human rights defenders to end human rights violations within its borders.

For example, difficulty within the EU exists for human rights defenders advocating for the observance of international human rights standards for LGBT people. The use of inflammatory language by some politicians and faith leaders is a matter of great concern. Occasionally politicians, but more often media outlets in some EU member states, are openly calling for or condoning violence against LGBT people and their organizations. In eight EU member states (Poland, Lithuania, Latvia, Hungary, Romania, Estonia, Czech Republic, and Bulgaria) violence against LGBT persons has been recorded. Legislative attempts have been made in some member states to restrict the rights of children and young people to obtain information on sexual orientation and gender identity, as well as the freedom of opinion and expression of LGBT organizations to distribute such information to minors. These violations affect the whole LGBT community, yet they result in making it particularly difficult for human rights defenders who advocate in the sexual orientation and gender identity field. As known and visible leaders of rights movements their safety is volatile in the homophobic and transphobic climate perpetuated in a number of EU member states. The EU has a responsibility to ensure that standards of protection for human rights defenders and their freedom of expression and assembly are safeguarded throughout its own territory, alongside its broader responsibility to ascertain standards of non-discrimination. The significant failure to do so in relationship to sexual orientation and gender identity damages its credibility, and more importantly, fails to protect individuals from violence and hatred.

The EU has a responsibility to ensure that standards of protection for human rights defenders and their freedom of expression and assembly are safeguarded.

## ASYLUM-SEEKERS, REFUGEES AND MIGRANTS: MORE PROTECTION, LESS REPRESSION

Asylum-seekers, refugees and migrants remain in many ways vulnerable in European society. As much as European leaders increasingly acknowledge the need for immigrants to meet the demand of European labour markets, the concept of *l'immigration choisie* so prominently promoted during the French Presidency continues to determine the EU's thinking on how it should deal with migratory pressures. The five commitments in the European Pact on Immigration and Asylum are supposed to steer the debate in the EU, but close analysis of its provisions show that there is nothing new.

While claiming to develop a balanced approach on migration, EU leaders have in reality re-emphasized a tough approach on irregular migration and the importance of strengthened control measures at the external borders. Although lip service is paid to the fact that control-oriented measures should never prevent asylum-seekers from seeking protection in the EU, little is being done in order to ensure that those principles are implemented in practice. Refugees and migrants alike continue to face ill-treatment and other human rights abuses, not only at the EU's external borders, but also within the territory. While there has been a lot of media attention on the situation in southern EU member states such as Greece and Italy, migrants and asylum-seekers are facing violations of their human rights in other EU member states as well.

While claiming to develop a balanced approach on migration, EU leaders have in reality re-emphasized a tough approach.

## The challenges for the EU

The challenges the EU is facing in the field of immigration and asylum are significant and 2009 may well become a crucial year for human rights protection of asylum-seekers and migrants within the EU. While the discussions on the Commission proposals in the field of asylum (Dublin Regulation, EUDR, Reception Conditions, and European Asylum Support Office) have started already, the Commission is expected to put forward additional proposals to amend the Qualifications Directive and Asylum Procedures Directive, and an EU resettlement programme later this year. On top of that a new multi-annual programme in the area of freedom, security and justice must be adopted under the Swedish Presidency that will set out the boundaries of future EU legislative activity and policy initiatives in this field. As the EU continues to present itself as a beacon for human rights protection, it must take an ambitious approach and develop high standards for the protection of those who flee human rights abuse. Ten years after their historical meeting in Tampere where EU Heads of State and governments adopted an ambitious programme in the field of migration and asylum it is time to set another historical mark.

The EU must take an ambitious approach and develop high standards for the protection of those who flee human rights abuse.

The issue of the implementation of EU asylum and migration legislation and the permanent evaluation of its impact on human rights protection of asylum-seekers, refugees and migrants in the EU should be the core of the new programme. As this is still a relatively new area of EU competence which has considerable impact on the human rights of migrants and asylum-seekers, continuous monitoring of the situation on the ground will be crucial. This is particularly necessary in the field of asylum, while at the same time possibilities for further amending the asylum *acquis* after the second stage of harmonization in light of remaining protection gaps, must clearly be left open. In its contribution to the Commission's Green Paper on the future of a Common European Asylum System (CEAS), Amnesty International has already presented an analysis of the main gaps in the existing EU asylum legislative instruments. While the EU asylum *acquis* is generally marked by a rather low level of protection for asylum-seekers, in addition to considerable room for derogation from those standards, certain provisions are even at odds with international refugee and human rights law and standards. Obviously, these flaws need to be remedied as soon as possible and the first initiatives taken by the European Commission seem promising. Proposals to strengthen protection standards with regard to asylum-seekers with special needs, such as unaccompanied minors and victims of torture, are to be welcomed as necessary steps in standard-setting at EU level. However, both the Asylum Procedures Directive and the Qualification Directive pose problems of compatibility with international refugee and human rights law. Important legal gaps remain with regard to, among other

things, the right to an effective legal remedy, the inappropriate use of accelerated asylum procedures and safe country-concepts, exclusion and cessation clauses, the internal protection alternative, as well as unclear grounds of subsidiary protection for victims of indiscriminate violence and differences with regard to social rights attached to refugee status and subsidiary protection status respectively under the Qualification Directive. It is yet not entirely clear whether the Commission will effectively tackle these issues thoroughly in its proposals that are expected later this year. If not, a third round of legislative amendments will clearly be needed to bring EU legislation fully in line with refugee and human rights law and standards. The new multi-annual programme should reaffirm the need for the Common European Asylum System to be at least in compliance with international refugee and human rights law.

## The Dublin system

As far as the Dublin system is concerned, the multi-annual programme should include a thorough debate on the fundamental principles upon which the mechanism for allocating responsibility for examining asylum applications between EU member states and four non-EU countries is built. Although the Commission proposal recasting the Dublin Regulation includes a number of positive amendments that, if adopted, may also in practice improve the protection of human rights of asylum-seekers within such a system, a more fundamental debate is urgently needed within the EU. The Dublin system is based on the presumption that protection standards and reception conditions in EU member states and the four associated non-EU countries are the same or at least equivalent. However, reality today shows that this is clearly not the case and that the current system is not only built on a myth but also unfair to asylum-seekers and may result in violations of their human rights, including of the principle of *non-refoulement*.

The current system is unfair to asylum-seekers and may result in violations of their human rights.

Recent reports about the treatment of asylum-seekers and refugees in EU member states such as Greece, Malta and Italy and statistics about the continuing widely diverging recognition rates for Iraqi refugees in EU member states, clearly indicate that minimum protection standards are not met today at the same level in practice within the EU. In light of this reality, a fundamental debate on the Dublin system and its financial costs is inevitable, as was already indicated by the Commission in its Asylum Policy Plan. As this will be a long term objective, it is essential to provide for correction mechanisms as well as increased solidarity and responsibility-sharing between the member states in the short term. Today, member states risk violating their obligations under international refugee and human

rights law by becoming involved in chain *refoulement* where access to a fair and satisfactory asylum procedure after a Dublin transfer is not guaranteed in practice and asylum applicants may be returned without proper assessment of their protection needs. They also risk violating their obligations under EU legislation where they deliberately and knowingly cooperate in transferring asylum-seekers to situations where they have no access in practice to safeguards laid down in, for instance, the reception conditions directive or the asylum procedures directive. The traditional mechanisms and instruments established under the EU Treaty to ensure compatibility with EU standards in the field of asylum may not always be adapted to deal with protection gaps that exist today. Obviously, EU member states are under an obligation to comply with EU legislation at the national level in law and in practice and national judges together with the European Court of Justice will have a crucial role in identifying practices which are incompatible with EU standards. However, in light of the objective of developing a Common European Asylum System based on high protection standards within the EU legal framework, it is of crucial importance to acknowledge the unique nature of the developing EU asylum *acquis* within the framework of EU law.

Ten years of in-depth discussions on EU asylum legislation have clearly shown that setting standards in the area of asylum is very different from setting standards in traditional areas of EU competence such as competition law, state aid or even rules on the free movement of EU citizens. Protection needs is an evolving concept that is subject to different interpretations. As long as the ultimate decision on whether or not a person is in need of international protection remains the responsibility of national authorities, differences in interpretation will continue to exist. Consequently, member states should acknowledge that they have a specific and shared responsibility to ensure that EU asylum law is complied with in practice and that it can not suffice to refer to the primary responsibility of each member state under the EU Treaty to ensure compatibility with EU legislation. This approach should inform the discussions at EU level on the Commission recast proposal on the Dublin Regulation and in particular on the proposed temporary suspension mechanism *inter alia* when a member state is not complying with its obligations under EU legislation.

Member states should acknowledge that they have a specific and shared responsibility to ensure that EU asylum law is complied with.

## Cooperation and solidarity

As the harmonization of EU asylum policy progresses, practical co-operation in the field of asylum is increasingly being discussed at EU level. It can take many forms but whatever framework is chosen, it is clear that within the context of the developing Common European Asylum System it is important to re-emphasise the main objective at EU level is to improve the quality of decision-making on asylum applications in member states. It is crucial for all actors involved to acknowledge that practical co-operation will only have added value if it is based on an EU legislative framework that is based on high protection standards and is in line with international law. The proposed European Asylum Support Office (EASO) is designed to be instrumental in further developing forms of practical co-operation between asylum authorities at EU level. Building on a strong EU legislative framework that is based on high protection standards, the EASO could play a useful role in standard-setting with regard to the collection of country of origin information at EU level, the training of decision-makers and case handlers in national asylum bodies and co-ordinating EU efforts in the field of refugee resettlement. In any case, the functioning of the EASO should be clearly based on principles of transparency and accountability while the role of NGOs and the UN High Commissioner for Refugees within the EASO should be fully guaranteed.

The EU and its member states need to show more concrete solidarity both with those countries that are receiving the bulk of the world's refugees and internally within the EU. One way to do so is to engage effectively and significantly in resettlement of refugees. In their November 2008 Council conclusions, EU Justice and Home Affairs Ministers endorsed the necessity of increased engagement of EU member states in resettlement to address the Iraqi refugee crisis. The focus on particularly vulnerable groups and the stated objective of resettling up to 10,000 refugees are to be welcomed. However, these engagements should be made concrete and as a result the immediate and effective implementation of the November 2008 Council conclusions should be a priority for the Czech and Swedish Presidencies. Joint efforts at EU level in this field should not be limited to the Iraqi refugee crisis but rather include other groups of refugees who are in need of resettlement. If the EU is serious about developing a Common European Asylum System based on high standards, the issue of internal EU solidarity will need to be addressed more effectively and systematically. As much as temporary crisis situations at southern EU borders can never justify measures that *de facto* violate the human rights of asylum-seekers, refugees and migrants, the refusal of other less affected EU member states to address such situations in a spirit of concrete solidarity is equally unacceptable.

The EU and its member states need to show more concrete solidarity with those countries that are receiving the bulk of the world's refugees.

## Immigration and border control measures

The recently adopted European Pact on Immigration and Asylum as well as the much debated and heavily criticized Returns Directive carry a message that it is increasingly acceptable to constrict the human rights of irregular migrants. Those who are not residing legally on EU territory have to go and the EU is prepared to use almost every means at its disposal to remove them. Detention of up to 18 months, allowing removal to other countries than the country of origin of the third-country national concerned and entry bans that may in certain cases last indefinitely are some of those means that are now sanctioned by EU law. In particular the EU's approach to detention is worrying and has inspired a number of member states to amend their legislation and practice and allow for longer detention periods for the sole purpose of expulsion. At the beginning of 2009 Amnesty International received evidence of unacceptable detention conditions in the centre of Mayotte, one of the French overseas territories, as well as in Lampedusa, Italy. Recent European Parliament delegation visits to detention centres in no less than 12 member states show a grim picture of migrants and asylum-seekers being detained in substandard conditions without proper legal assistance. As much as the Return Directive sets some standards with regard to grounds for detention and conditions for detention, it also allows considerable room for derogation to the member states.

The deprivation of liberty of persons who have committed no crime is a serious breach of one of the most fundamental rights of every human being: the right to liberty and freedom of movement. When implementing the directive, member states must take a qualitative approach and ensure that detention remains a matter of last resort and is not a first response, as it is unfortunately currently the case in some EU member states. Both the Commission and the European Parliament must ensure a thorough evaluation of the impact of the directive on human rights protection of migrants who are residing irregularly on the territory. Migrants' rights are human rights, regardless of the legal status of the individuals concerned. EU institutions must do everything that is within their power to assist member states to fully respect those rights.

The deprivation of liberty of persons who have committed no crime is a serious breach of their fundamental rights.

## Migrant criminalization

In addition to the disproportionate use of detention as a tool of “migration-management” the growing criminalization of irregular migrants is another area of concern where leadership from the EU is urgently required. The clearest example is the recently adopted security package in Italy according to which irregular presence on the territory is considered to be an aggravating factor whenever a crime has been committed by a migrant. As a result, the punishment for a crime can be higher in case the person concerned is a migrant staying irregularly. Similarly in the Netherlands, migrants are increasingly declared “undesirable aliens” by way of an exclusion order which means that they no longer have the right to shelter and access to basic facilities and makes continued presence in, or return to, the country a crime which carries a maximum prison sentence of six months. In addition, if regularly staying migrants are convicted to a sentence of three years or more they risk withdrawal of their residence permits and the imposition of an exclusion order. Amnesty International has expressed concern about the compatibility of such measures with international human rights standards, including equality before the law and equal protection of the law and the principle of non-discrimination.

Amnesty International calls on EU member states to take a clear position against legislative measures that criminalize irregular migration and maintain an approach that is grounded in administrative law and based on full respect of human rights of migrants, irrespective of their legal status. The Stockholm Programme should clearly denounce any form of criminalization of irregular migrants and unambiguously confirm a rights-based approach in policies aimed at addressing irregular migration.

Amnesty International calls on EU member states to take a clear position against legislative measures that criminalize irregular migration.



## Engagement with third countries

The EU is increasingly engaging with third countries in order to manage migration. Whether it is in the context of the global approach to migration, the European Neighbourhood Policy or newly developed instruments such as mobility partnerships, measures to address irregular migration flows are streamlined into EU policies. Increasingly the transit countries are under pressure to fully co-operate to either prevent onward migration towards the EU or to facilitate readmission of their own nationals or of third country nationals who transited through their territories. Recent Amnesty International research has shown that since 2006 thousands of migrants, accused of trying to enter the Canary Islands irregularly from Mauritania, have been arbitrarily detained and then forcibly returned without any right of appeal to challenge the decision before a judicial authority. Many of them have been held for several days in a detention centre in Nouadhibou, which was funded by the Spanish authorities. Some of them have been ill-treated by members of the Mauritanian security forces. Nationals of West African countries, including regularly staying migrants and refugees, say they have been arbitrarily arrested in the street or at home and accused, apparently without any evidence, of intending to travel further to Spain. Some migrants have been the victims of racketeers and many have been forcibly returned by the Mauritanian authorities to Mali or Senegal.

As the EU and its member states insist on further developing this approach, effective mechanisms are urgently needed to monitor and assess all implications of such co-operation, in particular where it directly or indirectly gives rise to human rights violations. As much as co-operating with third countries in the field of migration may be necessary to "manage" migration, it can not absolve the EU and its member states from their responsibility to ensure that fundamental rights of migrants, asylum-seekers and refugees are effectively respected in practice.

Mechanisms are urgently needed to monitor and assess all implications of third country co-operation, in particular where it gives rise to human rights violations

## **DETAINEES AND SUSPECTS: DO MORE TO END TORTURE AND ARBITRARY ARRESTS**

In December 2008, the world celebrated the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights (UDHR). According to the UDHR, no-one may be subjected to arbitrary arrest, detention or imprisonment. Detention is “arbitrary” when there is no legal basis or when there are grave violations of the right to a fair trial. Yet as this anniversary was celebrated by governments everywhere, including in the EU at both member state and collective level, hundreds of thousands of people continued to be detained arbitrarily - either in prisons, detention centres, or under house arrest. Some of these individual figures, such as Aung San Suu Kyi, the co-founder of Myanmar’s main opposition party, who has endured unofficial detention, house arrest and restrictions on her movement since 1989, have become internationally recognised names in their plight. But for every one who receives international attention, there are thousands more, in similar situations that do not have even the minimum of support that worldwide renown can bring. In Myanmar alone, Amnesty International is aware of more than 2,000 other political prisoners and prisoners of conscience. Worldwide there are many more.

Hundreds of thousands of people continue to be detained arbitrarily - either in prisons, detention centres, or under house arrest.

Under international human rights law, all defendants have the right to a fair trial. But all around the world, detainees are held without due process and prisoners are convicted in trials where these safeguards have been ignored.

In some instances people are held for long periods without trial. This includes many of those who are being held in the “war on terror”. As the 2008 Amnesty International Report set out, the USA continues to hold hundreds of people in indefinite military detention without charge or trial in Afghanistan and Guantánamo Bay, in addition to the thousands held in Iraq.

## Arbitrary detention

The EU, as a union of values, has a responsibility to challenge detentions which defy international law. In recent years, a number of key international actors, including the European Parliament, have called the EU to challenge the increasing acceptance of unlawful practices in the name of the “war on terror”, and in particular supporting the closure of Guantánamo Bay. Specific and practical support, such as offering international protection for detainees who cannot be repatriated safely due to the risk of torture or serious human rights violations in their home countries, or whom are stateless, would be a significant gesture from the EU. Action is needed to become credible: when the EU says that the “war on terror” cannot justify human rights violations it has to show that these are not just empty words.

The EU, as a union of values, has a responsibility to challenge detentions which defy international law

Amnesty International welcomes the initiatives of EU member states, at national and EU level, in that direction. We are hopeful that the EU framework can provide political impetus, as well as legal and practical support to offer humanitarian protection to Guantánamo detainees who can not safely return to their home country. As part of a coalition of international NGOs involved in advocacy and litigation for the closure of Guantánamo, Amnesty International has called on EU Ministers for Justice and Home Affairs to join efforts with Ministers for Foreign Affairs to offer solutions for these detainees as soon as possible. The European Commission and the European Parliament should do all that is their respective powers to assist the Council in this endeavour. Furthermore, the EU must continue to pressure the United States to release Guantánamo detainees or charge them in accordance with international law with full protection against further violations of their human rights.

The EU must honour its human rights obligations by acting to end all other forms of unlawful detention conducted in the name of the “war on terror” anywhere around the world and to ensure that there is no impunity for crimes such as torture, other degrading treatment of detainees and enforced disappearances.

The EU must at last come to terms with its own responsibilities in the CIA rendition and secret detention programme. It is time for EU institutions and member states to implement the recommendations issued by the European Parliament two years ago following the inquiry of the Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners (TDIP). In its resolution adopted on 19 February 2009, the European Parliament clearly denounces the lack of action of the member states and the Council to shed light on Europe’s involvement. There have been a series of new developments in EU member

states following the adoption of the TDIP report. In 2008 the UK government admitted that extraordinary rendition flights carrying prisoners landed on its territory in 2002. Poland has opened a judicial inquiry on possible CIA secret prisons. There is also new evidence of rendition flights and transfers to Guantánamo passing through Spain and Portugal. The new US administration has already directly challenged the CIA rendition and secret detention programme. Yet the EU still continues to deny any responsibility on the issue. As a result, there has been no substantial discussion, let alone concrete initiative, on what corrective and preventive measures could be done to end such practices. The new European Parliament will bear a particular responsibility to continue to hold to account EU institutions and member states for effective follow up including independent inquiries, reparation for victims and the setting up of proper safeguards.

Detention and imprisonment, which are lawful under national standards, may be considered arbitrary under international standards, and such examples should be challenged by the EU in its dialogues with third countries, according to its commitments under the Guidelines on Human Rights Dialogues. One of the largest of such detention systems is the “Re-education through Labour” system in China, in which estimates of between 300,000 and 500,000 individuals are held. Under this system, and other forms of administrative detention in China, such as Enforced Drug Rehabilitation, individuals are deprived of their liberty without charge, trial or judicial review. This is a violation of both Article 9 and Article 14 of the International Covenant on Civil and Political Rights, which China has signed and declared an intention to ratify in the near future. Unlawful detention is clearly a human rights violation in itself, and is often compounded by detainees being held in conditions that are so poor that they amount to cruel, inhuman or degrading treatment.

Detention and imprisonment, which are lawful under national standards, may be considered arbitrary under international standards, such examples should be challenged by the EU.

## The death penalty

The death penalty, still maintained in 59 countries worldwide, is the ultimate denial of human rights and a clear example of cruel, inhuman or degrading treatment. It is the premeditated and cold-blooded killing of a person by the state, and violates the right to life as proclaimed in the Universal Declaration of Human Rights. Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner. There is increasing consolidation of the international consensus that the death penalty cannot be reconciled with respect for human rights. All EU member states have abolished the death penalty, and the EU is an important global force against its practice, most notably through the EU guidelines against the death penalty, bilaterally with third countries, and multilaterally within the framework of the United Nations. Following important resolutions achieved through action by the EU and other multiregional partners at the UN General Assembly in December 2007 and 2008, the EU needs to keep up pressure to realize the agreed international moratorium on executions and ensure that the global trend towards abolition continues. In particular, the EU needs to refocus attention on those countries that are now moving towards adopting a moratorium or abolishing the death penalty, and those countries that have *de facto* moratoria but are considering recommencing executions. Belarus is now the only country in Europe and Central Asia that retains the death penalty – therefore, abolition should be a high priority as the EU moves towards closer political contact with the Belarusian authorities.

The EU, as an abolitionist organization, needs to also make sure that it has the ability to act decisively in all cases of imminent execution, not just those where there is evidence that the minimum standards have not been met. More generally, the EU should build on the positive example of the working methods used during the preparation of the 2007 resolution, and employ these practices throughout its work within the United Nations, including work on country situations - through wide consultation and co-operation with cross-regional partners, civil society involvement and a large degree of internal and external burden sharing.

The EU, as an abolitionist organization, needs to make sure that it has the ability to act decisively in all cases of imminent execution.

## Torture and other forms of cruel, inhuman or degrading treatment

Torture and other forms of ill-treatment are often used alongside detention and imprisonment to gain information or a confession, as well as to punish, intimidate and threaten prisoners and detainees. For example in November 2008, Jorge Martínez Guzmán, a detainee in the Pacho Viejo prison in Veracruz State, Mexico was tortured by a group of unidentified men. He was blindfolded, tied up and handcuffed by what he estimates to be a group of 10 men. He was beaten repeatedly by several people, dragged along the floor using the handcuffs around his wrists and subjected to simulated asphyxiation by means of a plastic bag and a wet towel placed over his head. Despite acknowledging that he was in a critical enough state to be transferred to intensive care, the Veracruz State Attorney General's Office has not opened an investigation into Jorge Martínez Guzmán's case.

The EU has a political commitment under the Guidelines on Torture and other cruel, inhuman or degrading treatment, to react to such cases. Amnesty International's assessment is that this political commitment is not being met, and cases of torture brought to the attention of the European Commission, and member states within the Council are not being followed up. We urge the Council and Commission to reaffirm their absolute commitment to the prevention of torture in 2009 through a change in the implementation of the Guidelines on Torture. The Swedish Presidency, who adopted these same Guidelines on Torture when they last presided over the EU, is well placed to show leadership on this issue.

The EU must also address shortcomings in its internal counter-terrorism policies that undermine its commitment never to transfer detainees when they are at risk of torture. Not all member states have signed, ratified, and implemented the Optional Protocol of the Convention against Torture. This is a crucial step to demonstrate that the EU's commitment to the abolition of torture is genuine. The inaction of the EU in addressing issues such as member states' complicity in USA led renditions programmes, has served to highlight the lack of accountability for human rights violations that lie at the heart of Article 6 of the Treaty of the EU. The EU has to reflect on how to address serious actual and potential breaches of human rights within its borders. Action is urgently needed, not only to directly attend to violations that have clearly taken place, but also to re-establish credibility when raising concerns about torture taking place elsewhere.

The EU's new multi-annual programme for justice, freedom and security should explicitly guarantee the absolute nature of *non-refoulement* and reject any initiatives to legitimise the use of diplomatic assurances to expel

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terrorist suspects to countries where they would be at risk of torture and other ill-treatment. The UK in particular has been for some years seeking to deport individuals whom it alleges pose a threat to national security. This is often to countries where they would face a real risk of serious human rights violations, including torture, other ill-treatment and unfair trials, and is done by relying on so-called "diplomatic assurances" from the countries to which these individuals are to be returned. Such bilateral arrangements with countries well known for not meeting their human rights obligations are completely unenforceable and can never be relied upon to give real protection against torture.

## **Addressing human rights concerns for suspects and detainees within the EU**

It is insufficient for human rights violations against suspects or detainees to be addressed only from an external policy perspective. Reports continue to demonstrate that the right to liberty, the right to a fair trial, to humane conditions of detention, and the right not to be subjected to torture and other ill-treatment, cannot be taken for granted in Europe. EU member states must make it clear that they abide by the same rules that they promote outside the EU. To ensure coherence and effectively protect all persons from human rights violations on its territory, the EU must design policies to redress its own human rights shortcomings with regards to treatment of "suspects" and detainees.

Amnesty International's research has revealed serious concerns regarding torture or other ill-treatment committed by law enforcement officials and the effective impunity many enjoy in relation to these acts in the EU. In recent years Amnesty International has investigated cases in Spain where people reported that they had been hit, kicked, punched and verbally abused by police officers, including while handcuffed and in police custody. Cases in France and Greece have highlighted similar abuse.

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 in incommunicado detention may be deprived of effective access to a lawyer, access to a doctor of their own choice, and are unable to inform their family and friends of their detention. Legislation authorising these conditions has been maintained by successive Spanish governments, despite the calls for over a decade by various UN bodies, the Council of Europe Committee for the Prevention of Torture (CPT) and human rights organisations to

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remove this legislation. In the UK, authorities continue to seek to deal with a number of individuals suspected of terrorism-related activity outside the ordinary criminal justice system, including by imposing so called “control-orders”, in some cases amounting to deprivation of liberty, following unfair procedures.

Amnesty International believes that without the political will to create strong judicial mechanisms and legislation to protect the rights of individuals suspected of, or prosecuted for, criminal offences, the EU's efforts to facilitate access to justice within its borders, implement mutual recognition of judicial decisions and increase police and judicial cooperation will produce little result. While the European Commission has always taken the view that mutual recognition of judicial decisions could only operate smoothly if there is trust between member states in each others' criminal justice systems, there has been a tendency at EU level to decide on measures in the sole name of facilitating cross-border law enforcement, without analysing the state of the national criminal justice systems and taking the time to identify areas where EU measures could improve the level of human rights protection throughout Europe. This approach risks exacerbating protection gaps, instead of strengthening justice, freedom and security within the EU.

The upcoming Stockholm programme has the opportunity to redefine an ambitious policy for the EU's area of justice, freedom and security. With protection of human rights at its core, it needs to commit the EU to analysing the impact of its co-operation instruments in the field of policing and criminal justice on the human rights of the individuals, 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-operation, 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 criminal justice system across the EU. One important step would be the adoption of an adequate legislative instrument on the rights of suspects in criminal procedures, including cases of serious crime and terrorism.

Further efforts are also needed to ensure that the EU's legal framework to combat terrorism respects EU member states' human rights obligations. The definition of “terrorism” remains too vague and risks in particular infringing on the right to freedom of expression and association. The amendments to the framework decision on terrorism which created new offences linked to terrorism have not alleviated these concerns and risk creating further abuse. This in turn affects the definition of EU terrorist blacklists, implying severe restrictions on individuals' fundamental freedoms, despite having no guarantee of effective remedy to challenge inclusion on the blacklists. A recent ruling by the Grand Chamber of the Court of Justice (Kadi and Al Barakaat) condemned the existing system of blacklists for failing to respect

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the rights of defence. As the advocate general noted in his opinion, “*the claim that a measure is necessary for the maintenance of international peace and security cannot operate so as to silence the general principles of Community law and deprive individuals of their fundamental rights*”.

Substantive reform of the blacklist systems of the EU, including both the EU “autonomous” lists and the ones implementing directly the UN lists, to ensure the systematic respect of the right to be heard, the right to an independent review mechanism and effective judicial remedy, is still needed to ensure the realization of a genuine EU area of justice, freedom and security.



## **VICTIMS OF CONFLICT AND VIOLENCE: THE NEED FOR ACCOUNTABILITY AND PROTECTION**

### **The EU's response to conflict**

Violence and conflict can lead to violations of human rights and the suffering of civilians who are targeted or get caught in the middle. While there have been no armed conflicts between EU member states since the EU's formation, there have been human rights violations committed during conflicts right at its borders in the Balkans and the Caucasus, and during conflicts that are occurring around the world today – from the Middle East to Africa. Recent conflicts have continued to cause loss of civilian life, and have led to people suffering torture, forced displacement and starvation.

The EU needs to be at the forefront of efforts to ensure that international law is respected in conflict situations and that civilians are protected at all times. They must also ensure that arms do not end up in the hands of those who would use them to cause human rights violations, and that those who commit war crimes are held accountable for their actions and brought to justice.

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### **Civilian and military missions**

In direct response to conflict and post-conflict situations, the EU is currently engaged in 13 civilian and military operations worldwide. Two new European Security and Defence Policy (ESDP) missions were launched in 2008. The largest ever civilian ESDP mission has been deployed in Kosovo and a mission was established to monitor the situation following the conflict in and around South Ossetia. Both include a human rights mandate or a human rights monitoring mandate. Yet, in both instances these human rights mandates are restricted, either through a focus only on the conduct of the mission rather than addressing the human rights situation on the ground, or through restrictions with regards to the territory, which might not incorporate those areas where human rights violations are most likely to occur. Some of these restrictions are intrinsic to the political situation of the mission, yet the failure to implement a human rights focus in practice, marginalizing the

importance of human rights among activities and mission staff is, despite improvements in operational procedures and training, still too prevalent. Making human rights monitoring in future ESDP missions effective will also depend on whether the findings can be made public. Non-publicly accessible human rights monitoring, as in the case of the Georgia mission, is not in keeping with standards of effective monitoring and misses the opportunity to contribute to efforts of justice and eventual reconciliation. ESDP missions, both civilian and military, are still too rarely focused on the protection of those whose human rights are under constant threat. Re-centring ESDP missions more on the possibilities for direct impact on people would greatly increase the effectiveness and the mark that the EU can leave.

## Accountability

In accordance with its own guidelines on international humanitarian law, the EU is obligated to always take a principled stance in all conflict and post-conflict situations in favour of full investigations and accountability for violations of international law, including war crimes. This is to be done through international mechanisms when appropriate.

The EU and its member states have led the way in supporting the establishment of a system of international justice, including the International Criminal Court (ICC). The EU has a long-established common position and action plan on the ICC. Amnesty International supports resolutions by the European Parliament to continue their vigorous efforts to promote universal ratification of the Rome Statute and the enactment of national implementing legislation. Amnesty International also endorses the aspects of the common position on the ICC in relation to third countries. The EU regularly raises ICC ratification and implementation in political dialogues with third countries, and often includes ICC negotiations in many third country agreements and action plans whenever appropriate. In most cases, the primary objective in ICC negotiations with third countries is to maximize the political will for the ratification and implementation of the Statute in order to achieve the desired universality. However, there has been little progress on the ICC and international justice in the EU during the Czech Presidency given that the Czech Republic remains the only EU member state that has not ratified the Rome Statute. This fact greatly hinders the EU's ability to advocate towards third countries.

The EU is currently engaged in a process of enlargement towards a number of countries in the Western Balkans which continue to have serious problems in dealing with the issue of accountability. Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) has been a

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major factor defining the pace and progress of accession negotiations with Croatia, as well as deepening relations with the other countries of the former Yugoslavia, most notably Serbia. This needs to continue and the EU should support measures to ensure that the ICTY can continue its work until all persons indicted are brought to justice before it.

Just as crucial are domestic war crimes proceedings. These do not grab as many international headlines, but national jurisdictions in each of the states of former Yugoslavia needs further support from the EU to ensure the investigation and prosecution of outstanding war crimes. Such measures might include the continued provision of assistance to law enforcement, judicial and prosecutorial authorities, including funding for training and witness protection. In particular more support is needed for the War Crimes Chamber which has been established with international support at the State Court of Bosnia and Herzegovina. There is concern that the planned withdrawal of international staff could undermine its effectiveness, unless sufficient resources and training programmes are established for local judges, prosecutors and staff. While other cases have been prosecuted by cantonal and district courts, serious doubts remain about their capacity to deal with such complex cases.

There remains a persistent failure in Croatia to investigate and prosecute crimes committed by the Croatian army and police forces, including the murder and disappearance of more than 100 Croatian Serbs in the Sisak area during the 1991-1995 war. The EU needs to support the government of Croatia in developing an action plan to combat impunity for war crimes, especially those where victims were Croatian Serbs or members of other minorities and the perpetrators were members of the Croatian army and police forces. In Kosovo there is backlog of cases and a failure of the United Nations Mission in Kosovo over the past 10 years to effectively address outstanding war crimes, including enforced disappearances and abductions. The European Union Rule of Law Mission in Kosovo therefore should receive increased support from EU member states to ensure that international police, prosecutors and judiciary of the highest calibre are appointed to the Kosovo courts, so that all outstanding cases of war crimes may be promptly, impartially and thoroughly investigated and prosecuted in trials that meet international standards. The EU must take measures to develop the capacity of local staff so that the full responsibility for prosecution for war crimes can be assumed by the Kosovo authorities in future.

Given the EU's track record in supporting investigations and accountability for all violations, through international and domestic mechanisms, it is worrying that the EU has not taken such a principled stance during the recent conflict in Gaza and southern Israel. The EU has not called for a full independent investigation of clear violations of international humanitarian

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and human rights law committed by both sides, due to the concerns of some member states that this would be seen as “taking sides”. The inability on the part of the EU to make this call, in line with its own guidelines, has had a serious impact on the ability of EU member states to move forward on this issue within the UN Security Council. Acting to ensure full accountability for human rights abuses and violations of international law, no matter who commits them, does not equate to taking sides in a conflict.

## Arms control

Millions of people suffer daily the consequences of irresponsible and poorly regulated arms transfers, proliferation and unlawful use of conventional arms. Every day at the current rate, over one thousand people are killed by firearms and many thousands more die indirectly as a consequence of armed violence or are driven from their homes, forced off their land, raped, tortured or maimed. The EU has lead international calls for greater control of the arms trade – both through the development of a legally binding Arms Trade Treaty (ATT) at the United Nations and through its own Code of Conduct on Arms Transfers.

With the transformation of the Code of Conduct into a Common Position in December 2008, EU member states have now committed to make sure that national legislation guarantees respect with the Code. All EU member states are now obligated to refuse arms transfers that could lead to serious violations of human rights or international humanitarian law or undermine economic development. This implementation needs to be rigorously pursued and monitored. The effectiveness of the Code is dependent not only on making it legally binding but also in closing the loopholes and attending to its weaknesses. Such weaknesses include the omission of police equipment which falls outside the scope of the EU military list and therefore the Code; the need for greater transparency on end-users and end-uses of arms transfers licensed; and its difficulty in dealing with the consequences of an increasingly globalised defense market, either through controlling offshore production from EU companies or via re-export of EU supplied military equipment, components and technology through third countries.

However, the Code, due to the nature of its limited geographical scope, cannot necessarily fully regulate a global trade; this is why the EU's role in promoting an ATT is so important. This work will continue throughout 2009 with the Open Ended Working Group, and the EU will need to act quickly to ensure a strong treaty with human rights at its heart. In order to be an effective global instrument the ATT will need to comprise of a comprehensive system to control the cross-border movement of all conventional arms, ammunition and associated equipment – including

weapons platforms and systems, their ammunition and components, arms and ammunition production equipment and technologies, internal security equipment, and dual-use items intended for military, security or police use. A provision to prevent arms transfers where there is a substantial risk that they are likely to be used for serious violations of international human rights and humanitarian law must form the basis of all arms transfer decisions by governments. This is necessary for an effective and responsible regulation of the international arms trade and most importantly to save lives, livelihoods and prevent human rights abuses.

## Violence against women

Women and girls suffer disproportionately from violence – in conflict zones and in peacetime - at the hands of the state, the community and the family. Women face heightened levels of sexual violence in times of conflict, insecurity and in the context of poverty. The scale on which this can occur was recently demonstrated in the re-escalation violence in North Kivu, in the Democratic Republic of the Congo in the second half of 2008. A recent Amnesty International report documented ongoing rape of women and girls by armed groups and government forces. Even infants and elderly women were among the victims – some of whom have been gang raped. Much more concerted and co-ordinated action is needed by the EU to combat violence against women – both within EU member states and in its relations with third countries.

The EU has committed to tackling violence against women in its external relations in a new set of Guidelines, which were adopted in December 2008. These guidelines lay down the criteria for intervention by EU missions in third countries, such as Commission delegations and member state embassies. The guidelines demonstrate the EU's intention to intensify action to combat violence against women in the world, by pursuing three inseparable aims: the prevention of violence, protection and support for victims, and combating the impunity of perpetrators of violence. However, as with other guidelines, their real value will only be demonstrated by the manner in which they are implemented and the resources dedicated to this.

The updated EU Guidelines on Human Rights Defenders, also adopted at the end of the French Presidency in 2008, provide for an increased focus on women human rights defenders. Women human rights defenders are at risk of attack because of the work they do, but also because of who they are. Organisations that represent women human rights defenders are persistently threatened in a way that often amounts to harassment. They are

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often reviled in the communities they work in as they are seen as stepping outside traditional bounds of womanhood, a factor that puts them at risk from their own families. This calls for attention to be drawn to their work with a particular urgency to ensure that governments respond actively.

The current focus within the EU's external relations on tackling violence against women is laudable. However, the ongoing violations of women's rights within the EU must be addressed with the same urgency. Violations of women's human rights are still common in Europe, including domestic violence, the trafficking of human beings (which disproportionately affects women), rape, forced marriage, "honour" killings and genital mutilation. The EU and its member states have failed to protect women against violence in the home and from intimate partners. This abuse has remained pervasive across the region for all ages and social groups, manifested through women enduring a range of verbal and psychological attacks, physical and sexual violence and economic control. There are gaps in protection, existing laws against such violence are often not fully implemented, and resources including for shelters and training of relevant law enforcement officials often remain woefully inadequate. A step for the EU is to support the adoption of a strong and comprehensive Council of Europe instrument to cover all forms of gender based violence against women and girls throughout their life cycle, including - but not limited to - domestic violence.

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Although human trafficking involves both women and men, women and young girls are particularly vulnerable. Amnesty International welcomes the acknowledgment by the EU that more needs to be done to ensure that trafficking in human beings is dealt with as a human rights issue, and not only from a criminal law perspective. A priority in defining a genuine Area of Freedom Security and Justice in the EU should be to ensure that the protection of, and the respect for, the human rights of all trafficked persons lies at the core of EU anti-trafficking policies. Such action will further ensure that anti-trafficking measures, including measures designed primarily to combat irregular migration and organized crime, do not infringe or negatively impact on the human rights of these individuals. The EU and its member states must, without further delay, sign, ratify and implement the Council of Europe Convention on Action against Trafficking in Human Beings. The EU needs to amend its standards related to trafficking in human beings to ensure that, at a minimum, they are consistent with the provisions of the Council of Europe Convention.

Every year 3 million girls are subjected to genital mutilation internationally, a dangerous and potentially life-threatening procedure that causes immense pain and suffering. Female genital mutilation (FGM) violates women and girls' human rights. It affects equality between women and men and children's rights, which are guiding principles and priorities of the EU. Within

the EU it raises questions on the interpretation of existing legislation on refugee and other forms of international protection. It further challenges the right to access adequate health and social services of women and girls who have undergone FGM. In January 2009, the European Parliament called for the adoption of “a European legal framework to ensure the physical integrity of young girls from Female Genital Mutilation”. It is crucial for the respect of human rights of women and girls that this political commitment is met with the adoption of a framework to deal with FGM within the EU and in third countries.



## PEOPLE LIVING IN POVERTY: ENSURING THAT THE RIGHTS OF THE POOR ARE RESPECTED

Poverty is one of the worst human rights crises in the world today and denies people their most basic rights. It exists in all countries of the world, developed or developing, affecting more than one billion persons. The current economic crisis and climate change means the situation of people living in poverty is likely to worsen.

Poverty is not inevitable but the result of decisions. It is not only about the lack of resources and opportunities, but it is also a matter of denial of human rights. Denial of the right to food, shelter, healthcare and education, denial of the right to be protected against violence and the right to security of livelihood, denial of the right not to be discriminated against and the right to participation in civil and political freedoms.

Understanding that people living in poverty are driven into, and trapped within, this condition by the abuse of a range of universal and interdependent human rights is fundamental in finding a solution to the issue. There is increasing recognition that the realization of human rights (political and civil, as well as economic, social and cultural rights) are at the heart of poverty eradication. Human rights are an essential part of the fight against poverty: they are both the means and the goal.

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The historical adoption in December 2008 at the UN of the Optional Protocol of the International Covenant on Economic, Social and Cultural Rights that reinforces the universality, indivisibility, interdependence and interrelatedness of all has been a milestone in this direction. It stresses that economic, social and cultural rights, including the rights to adequate housing, food, health, education and work, are not a matter of charity but rather rights that can be claimed by all without discrimination of any kind. Overall, EU member states played a positive role in the debate and adoption of the Optional Protocol and they should now follow suit by signing and ratifying it.

Development and human rights instruments are mutually reinforcing when they are employed to address the discrimination, exclusion, powerlessness and accountability failures that lie at the root causes of poverty. This conceptualisation enables traditionally “human rights” and “development”

oriented actors to seek convergence between development outcomes and processes in a coherent approach.

Based on this understanding all states, both recipients and donors, have the duty to respect, protect and fulfil human rights at home and abroad. When states act collectively through entities they have created they must also respect international human rights treaties. International cooperation and assistance including development aid falls under the scope of this duty. These human rights obligations relate to the form in which development aid is given so that it prioritises the most vulnerable, ensures non-discrimination, respects participation and information rights of those affected and provides accountability mechanisms. It also applies to the result of international cooperation so that as a minimum it should not have a negative impact.

When, for example, the EU provides aid for supporting the education sector in a third country, both the recipient and the donor have obligations to insure that the most marginalised children receive it and that primary education is compulsory and free. They should also make sure that their action does not contribute to discriminatory practices such as segregated education systems.

Humanitarian aid is also bound by human rights obligations. Zimbabwe's current humanitarian crisis is a case where food insecurity has reached unprecedented levels. Amnesty International has documented the use of hunger as a political tool whereby the government had employed traditional leaders and political activists to deny suspected political opponents access to humanitarian operations, including food distribution. Zimbabwean authorities have the primary obligation to guarantee the free passage of aid; they should also investigate allegations of discriminatory food distribution. The EU and other donors have the obligation to ensure their aid is not used in a discriminatory way.

The EU and third countries should put into practice the "do no harm" principle and respect and protect human rights. This cannot be achieved by simply abstaining from direct actions that cause human rights violations, for example by promoting fees that would obstruct access to primary education for all. It requires that steps are taken, that due diligence is exercised, so that, at a minimum, the impact of their action does not result in harm to human rights. Steps are required to assess the likely human rights impact of an intervention, to monitor the actual impact and to modify it as a result. In those cases when results turn negative, states must ensure access to justice and effective remedies for those people whose rights are abused as a result of the intervention.

The EU and third countries should put into practice the "do no harm" principle and respect and protect human rights.

## Poverty in the world

The role of the EU in the global fight against poverty is defined in “The European Consensus on Development”, the common policy framework of principles and objectives of development aid. It states: “*The EU, both at its member states and Community levels, is committed to meeting its responsibilities. Working together, the EU is an important force for positive change. The EU provides over half of the world's aid and has committed to increase this assistance, together with its quality and effectiveness*”.

The human rights treaty obligations of EU member states are not reflected in this common vision that guides the action of the EU in development cooperation. The European Consensus on Development fails to coherently reflect the applicable international human rights framework and other core legal principles which constitute the human rights-based approach to development. There is systematic confusion between policy commitments and legal obligations as well as a failure to identify core development challenges, such as poverty, as a denial of human rights.

The EU, founded on the principle of respect for human rights, is committed to mainstream human rights in its external relations. The EU's ambition to use its joint force for positive change will be at risk if its vision does not recognize the emphasis on the indivisibility and interdependence of human rights as the means and the goal of development cooperation. It implies that the EU and member states acknowledge their human rights obligations when providing development aid. Human rights provide the framework, the overarching umbrella that serves as a reference for all policies.

This need cannot be overstated in the current context where the world's poorest people and countries will be particularly affected by the global economic crisis which builds on previous crises of rising food and fuel prices combined with the impacts of climate change. It is estimated that the economic recession could push millions of people back into poverty where social safety nets are weakest or non-existent. At the same time, most countries have already announced that they will not meet the targets of the Millennium Development Goals to reduce poverty by 2015.

The EU should lead the efforts to mitigate the negative impact of the crisis by abiding by its commitments and avoid cutting its development aid. Further efforts need to be focused on linking human rights to poverty through, for example, integrating human rights into the Millennium Development Goals to ensure that resources are being used to achieve the greatest impact and address not just the symptoms of poverty, but also the root causes. The upcoming 2010 UN Development Summit brings an opportunity to promote a more effective human rights focused initiative to eradicate poverty

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## Poverty in the EU

EU efforts to eradicate poverty within a human rights framework need to encompass a renewed perspective of its own policies of social inclusion. People living in poverty in the member states of the EU are a reality and EU policies and instruments to address it are ill equipped without the integration of human rights. The case of the Roma illustrates this situation. For instance, unlawful forced evictions of Roma communities in places such as Italy have driven them deeper into poverty. Targeting the most vulnerable groups with measures that shake their already fragile situation amounts to a human rights violation. Interventions in the name of security are self-defeating if human rights are not respected.

Using EU structural funds to improve the living conditions of Roma communities seems a logical step towards the fight against poverty. The absence of human rights standards is exposed when these funds have been used to perpetuate segregation and isolation by constructing a new settlement distant from the village and its services. Amnesty International has documented this reality in Letanovce, Slovakia, where currently two thirds of the Roma population live in shacks, with no connection to the electricity grid and one public pump as the only source of water. In addition to housing conditions, Roma children are mostly placed in a segregated education system which damages their future employment prospects and perpetuates the cycle of marginalization and poverty for Roma people.

This example gives an urgent indication of the need for the EU to develop a comprehensive framework strategy for Roma inclusion. The issue is not about whether the EU should get involved in Roma issues or not. The EU is already substantially involved: through legislative competence in the fight against race-based discrimination, through policies on social inclusion and employment and through specific programmes being funded by EU structural funds. The question is how efficient and successful all these measures and funds are to effect change for Roma people in Europe.

An EU framework strategy would address the European dimension of Roma exclusion and would reflect the priority that member states and the EU institutions need to give to the resolution of this situation. It would provide a comprehensive and cohesive approach through analysing the interdependence of the human rights violations suffered by Roma communities. As a roadmap for member states it would build on their efforts carried out so far, promote co-ordination of national policies and assist their implementation. There are three dimensions on which such a framework should be developed: accountability of national authorities for their responsibility to protect Roma people; equal access to education, health care, housing and employment for Roma communities; and empowerment

Targeting the most vulnerable groups with measures that shake their already fragile situation amounts to a human rights violation.

of Roma communities through involvement and participation in the civic and economic life of the country.

Poverty in the EU is not confined to historically marginalized ethnic groups such as the Roma. Among others, many asylum-seekers and migrants also suffer destitution because they are discriminated in their access to basic needs such as adequate housing, education and healthcare as well as employment. Amnesty International has documented the discriminatory practices that asylum-seekers face in Denmark when accessing social services or the restricted access to health care by migrants in Germany. Legal status - or lack of it - is emerging as one pattern that drives people into poverty in the EU.

## Corporate accountability

In a globalized world the fight against poverty also involves key actors such as businesses. Companies' activities have both positive and negative impacts on human rights. Although governments have the primary responsibility for the protection of human rights, companies have, at a minimum, the responsibility to respect them. Similarly to states, companies should exercise the "do no harm" principle and adopt measures, such as a due diligence system, to avoid causing or being complicit in human rights violations as the action or inaction of companies can have a negative effect on human rights.

States frequently fail to uphold their duty to protect against human rights violations or abuses involving companies due to multiple reasons, including the protection of foreign investment, lack of understanding or capacity, as well as lack of political will. This results in a substantial human rights protection gap which can result in serious human rights violations. This protection gap involves various actors with different accountability mechanisms. There are the "home states" (where multinational companies are headquartered), the "host states" (where the human rights impact of these companies' operations is felt) or the companies themselves. Proper accountability needs adequate mechanisms and the international human rights framework has not kept pace with the impacts of economic actors in a globalized context. The fact that there are no clear international human rights standards for all companies also contributes to this protection gap.

The EU as a global actor and an economic bloc is uniquely placed to advance corporate accountability by providing a level playing field and guiding business to respect human rights. At the UN, the EU recently played a crucial role during the renewal of the mandate of the UN Special

The EU as a global actor and an economic bloc is uniquely placed to advance corporate accountability by providing a level playing field and guiding business to respect human rights.

Representative of the Secretary-General on Business and Human Rights.

The common EU position emerged with support to the “protect, respect and remedy” framework which comprises of three principles:

- The state duty to protect against human rights abuses, including those by businesses;
- The corporate responsibility to respect human rights; and
- The need for remedy when corporate-related abuses have occurred.

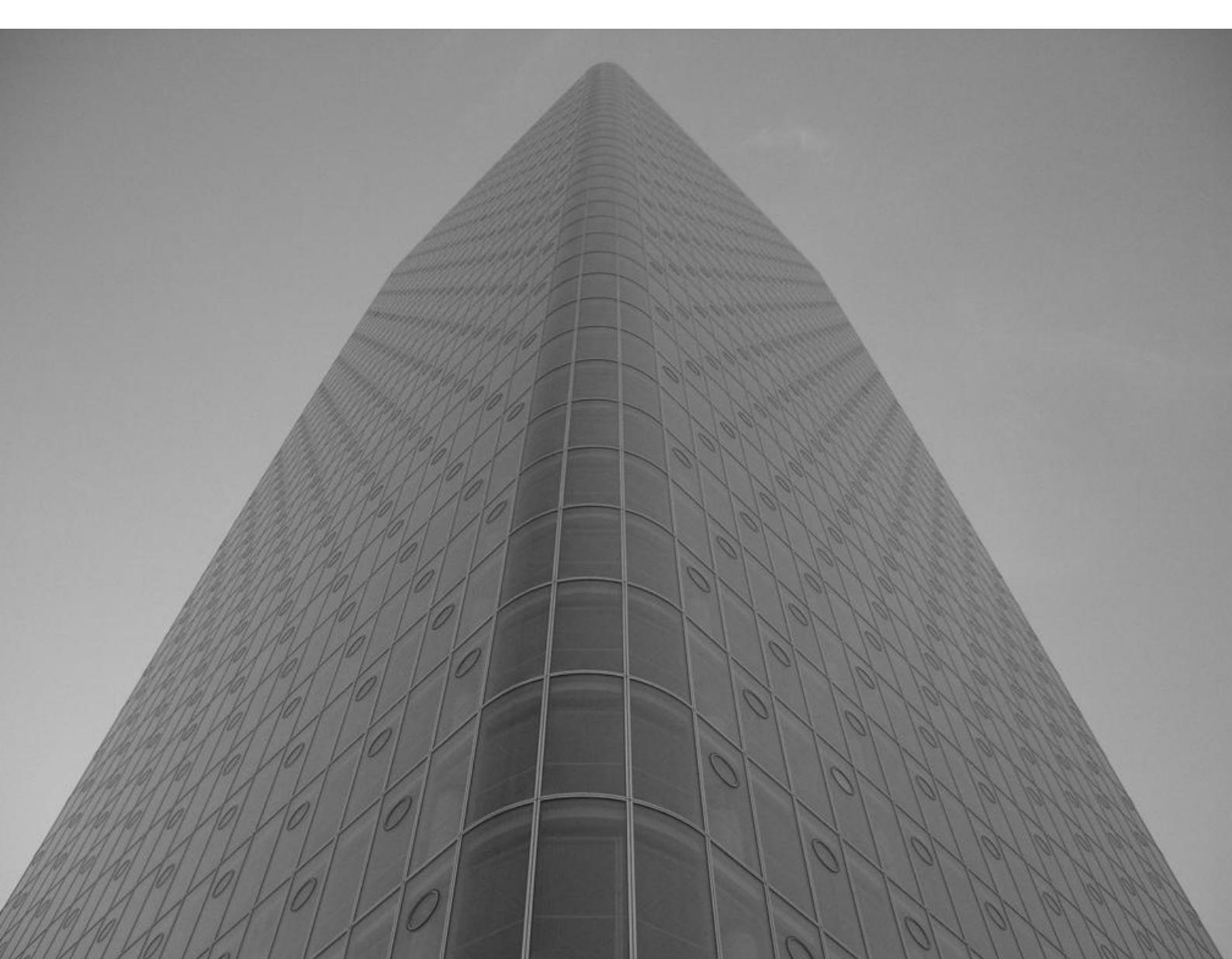
The UN Special Representative on Business and Human Rights has called on states to take a more creative approach to their duty to protect towards the private sector and has indicated that “governments should not assume they are helping business by failing to provide adequate guidance for, or regulation of, the human rights impact of corporate activities. On the contrary, the less government’s do, the more they increase reputational and other risks to business”.

So far, the EU has framed its concerns about business and human rights as corporate social responsibility (CSR) issues, that is, as voluntary additional measures that companies are encouraged to adopt on top of their legal obligations. However, corporate accountability refers to those measures that states are required to adopt in relation to corporations in order to uphold their obligations to protect human rights and to make sure that corporations are accountable to society at large and not only to their shareholders. A CSR approach tends to be a top-down process in which companies decide what issues to address, for example by contributing to a community’s education or promoting eco-friendly measures at their premises. Fostering this approach, the EU would not address the international and European human rights framework, regulating impacts of corporate activity on the specific human rights recognised under international and European law, and, at the same time, on prevention, responsibility and accountability.

A business and human rights perspective denotes instead a bottom-up process, which sees the individual at the centre of the debate. Their protection, including against the activities of corporations, is a state duty. While CSR can be a broad and at times vague concept, business and human rights is a much more specific framework.

The development of effective corporate accountability mechanisms is crucial if European aspirations in relation to poverty alleviation and sustainable development are to be met. Action to integrate better corporate accountability measures in all relevant policies is essential for the success of the EU’s own commitment to tackling climate change, delivering sustainable development and promoting and defending human rights.

In the EU context, the European Investment Bank (EIB) is a major lender to development projects around the world (140 non-EU countries with €8 billion in 2007). Bound by EU policies that uphold and respect human rights, the EIB must have an explicit recognition of and respect for human rights and an effective mechanism to ensure that it is not supporting projects or activities that will harm people's human rights.



## PEOPLE IN THE MARGINS: END DISCRIMINATION IN EUROPE

Despite the EU's involvement in fighting discrimination and the important progress achieved, millions of people in Europe continue to face exclusion, intolerance and violence because of what they are or what they are perceived to be. Whether it is being turned away from a restaurant because of the colour of one's skin, being assaulted in the street for speaking the wrong language, praying at the wrong place; being passed over for promotion because of one's gender or age, being insulted for one's sexual orientation; being denied access to education on account of a disability, or adequate housing on account of one's ethnicity - discrimination, in both overt and subtle ways, blights the lives of millions of people across Europe.

Millions of people in Europe continue to face exclusion, intolerance and violence because of what they are or what they are perceived to be.

### Roma

Roma discrimination is finally beginning to be widely recognized as a European problem beyond social exclusion or inequality. It is a human rights urgency affecting millions of people in the EU. Roma communities largely face exclusion from public life and are unable to enjoy full access to their rights in relation to housing, education, employment and health services. Evidence of segregation patterns such as special schools or classes for Roma children with limited education standards has echoes of apartheid. And yet, responses at national and European level remain disperse and unsuccessful in achieving lasting improvements. Only through ensuring the economic, social and cultural rights of the Roma community by a coordinated and consistent EU Roma policy, can the EU address this unacceptable situation.

In addition to the long-term discriminatory practices, Roma people face a systematic stigmatisation fuelled by a spiral of verbal and physical abuse against them. Anti-Roma language used by officials and politicians is still widespread with little accountability for those making the statements. This still existing systematic abuse stands in stark contrast with the silence of those who can act to stop it and who have a duty to protect human rights. A concerted voice of denunciation against discriminatory acts is required to

stand by one of the pillars of the EU as a community of values: the respect of human rights.

A new angle of discrimination against Roma communities is emerging when the right to freedom of movement for Roma EU citizens is being abused. Triggered by the grave incidents against Roma camps in Naples last May, the Fundamental Rights Agency has taken up as a first priority to research Roma migration and freedom of movement issues to respond to these concerns.

A concerted voice of denunciation against discriminatory acts is required to stand by one of the pillars of the EU as a community of values: the respect of human rights.

## National, ethnic and linguistic minorities

Other national, ethnic and linguistic minorities also face considerable difficulties on accessing their rights, particularly in the newly independent states of the 1990s. Amnesty International has for instance documented discrimination faced by the Russian speaking minority in Estonia in the field of employment, in the education system and in acquiring citizenship. Their situation is similar in Latvia.

Throughout the Balkans, many minority returnees to parts of the former Yugoslavia continued to face discrimination in accessing a number of services, finding employment – including in public institutions - and regaining their property or tenancy rights.

While monitoring the respect of minority rights is part of the EU accession process, such monitoring no longer exists after the country has joined the EU. This implies that some problems are left unsolved. There is reduced vigilance at EU, but also often member state, level towards the respect of minority rights. The EU must build on the existing conventions of the Council of Europe - and also on Article 21 of the European Charter for Fundamental Rights - to develop common policies aimed at ensuring equal protection of minorities' rights across the EU, including official recognition of their minority status and full enjoyment of their cultural rights.

It is acknowledged that there are people driven into the margins as a consequence of discriminatory acts. But when this discriminatory act is adopted in an arbitrary manner by a state, it constitutes a human right violation. And when the highest national court and international human rights bodies explicitly condemn this act as illegal and a human rights violation, the EU as a union of values, needs to assume its responsibility.

The Slovenian erased continue to face the consequences of a violation of the principle of non-discrimination; the right to work and social security; the right to the highest attainable standard of physical and mental health and the right to education. Thousands of erased persons are still left without a legally regulated status both inside and outside Slovenia. Even those who subsequently had their status regulated (because they obtained Slovenian citizenship or a permanent residence permit) continue to suffer from negative consequences of their erasure and have not been granted full reparation yet. Recently, the Slovenian authorities have announced a number of planned measures to restore the legal status of the erased. Amnesty International notes that these steps would be a positive progress but reminds that full reparation and redress are essential elements to properly address human rights violations. The persistence of this human rights violation breaches the essence of the EU as an “Area of Freedom, Security and Justice”

## **EU anti-discrimination legal framework and beyond**

The rationale behind the new proposal presented by the Commission in July 2008 to extend EU's anti-discrimination framework was precisely that discrimination continues to prevail in the EU, notably in areas that are not yet covered by EU law, i.e. discrimination in access to goods and services - including social services, healthcare and housing - on the grounds of age, sexual orientation, disability, religion or belief.

By excluding key sectors in which individuals experience discrimination, anti-discrimination law can only have limited effect in combating structural patterns of discrimination and risks leaving people vulnerable to social exclusion. Limiting the scope of the discrimination further hampers efforts to address the phenomenon of multiple discrimination which typically affects the most vulnerable groups in society - such as for example immigrant women or the poorest elderly persons, who are trapped in a severe cycle of exclusion and deprivation.

The rapid adoption of new EU legislation is therefore essential to fill the current protection gap which exists at EU level, in line with Article 13 of the Treaty establishing the European Community and the existing directives. Unanimous support by all EU member states to the new directive proposal is needed without further delay to make this happen. No national political or “technical” issues can serve as a pretext to block this process. The strong support already delivered by the European Parliament should press member states to support the Swedish presidency in tackling the text during its term.

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New legislation in itself is not sufficient. Existing EU directives are still not correctly or fully implemented across the EU, while some forms of discrimination would still remain unaddressed by the new legislation. The new legislation on the table should be an opportunity for the EU to assess its responsibilities in the fight against discrimination, identify new priorities for action and generally recommit to a principled and non-negotiable approach of equality – not only for people living on its territory but also in the wider Europe and accession context.

Discrimination on the grounds of ethnic origin remains widespread in the field of housing, employment and the access to services, particularly in the private sector. Racism with law enforcement policies manifests itself both on the inadequate service and protection extended to victims of crime from members of ethnic minorities and in racially motivated abuse and ill treatment. Racist attacks by non-state actors continue to be a problem. The discrimination faced by migrants and asylum seekers, ethnic profiling and discrimination in the criminal justice systems are a growing area of concern. Ensuring that EU migration and counter-terrorism policies do not specifically target and/or disproportionately affect whole groups of society must be part of the EU's agenda to fight racism and discrimination.

Building on its competence, policies and instruments – including the work of the new Fundamental Rights Agency and “third pillar” instruments - EU action needs to be geared towards building a wider human rights perspective for its work on racism and discrimination that considers all its manifestations in society and how this undermines all the fundamental rights of persons on which EU is based. The research and data collection work planned by the Fundamental Rights Agency can be particularly useful to challenge some perceptions and open up the debate on how to improve policies, laws and other instruments to fight racism and discrimination. Such data can provide ways to apprehend cross-cutting issues such as, for instance, how access to employment or how migration status can impact on access to healthcare in Europe. This will contribute to shaping policies that will guarantee a better protection of all human rights – including social and economic rights.

EU action needs to be geared towards building a wider human rights perspective for its work on racism and discrimination.

## **CONCLUSION: THE EU AS A FRAMEWORK FOR HUMAN RIGHTS ACTION**

Analyzing EU human rights policy from the perspective of an “impact on people” is not the most common approach, yet it is the one that should ultimately count. This perspective highlights how much potential impact the EU’s policies could have on an individual’s human rights. This is currently not the case with the approach that the EU takes. The impact on rights holders depends not only on the specific human rights policies but also on whether an institutional response enables change, or at least does not circumvent it.

The EU has continuously developed and grown since its inception, and as a result has had to gradually increase the number of its instruments, structures, and policies, including those related to human rights. This has led to loopholes in the overall structure and gaps have at times been used innovatively to push certain agendas forward. However, it is inevitable that separate policies eventually need to be reviewed to create an overarching EU human rights framework and enhance coherency.

The EU has a wealth of significant human rights instruments at its disposal, including decisive efforts in mainstreaming human rights; it signals the right language and is signatory to international human rights law. Yet at crucial moments the EU fails to act coherently and loses the overview of all its instruments. This can put its credibility at risk, and unnecessarily limits its human rights impact.

In 2008 the Returns Directive presented, despite warnings from human rights organisations, a “milestone” in this respect. The civil society and international reaction to this directive was negative, and it arguably contributed to a loss of human rights credibility for the EU in 2008, particularly in relation to the fact that it allows for detention for up to 18 months of persons who have not committed any crime. Unfortunately the Returns Directive is not the only instance where the EU has been counterproductive to its own values, policies, and instruments.

The last 12 months, as predicted, also revealed more of the depth to which EU member states were implicated in the secret abduction and consequent torture by the CIA through its rendition program. Action by EU member states has fallen short of meeting international standards, such was the case with commitments on the absolute ban on torture, and the EU has

been unable to respond in a credible manner. As a consequence there has been significant damage done to the EU's ability to address torture and terrorism globally. This loss of credibility is not only related to complicity with a US administration that had abdicated on its human rights responsibility, but also relates to an evident lack of political will and the lack of a human rights framework in which to address these matters. The absence of an overall human rights framework through which to respond - despite some occasional efforts of the Commission – has led to the EU not acknowledging the misconduct of its own member states. This undermines both the credibility of member states individually as well as the EU institutions as a whole. Even the European Parliament, which arguably has more political space to pronounce itself, has succumbed to pressures and lacks constructive follow-up to its own resolutions.

The EU does not have an unproductive human rights record. The EU's military and civilian missions in the Western Balkans showed, for example, how it can combine different instruments with active diplomacy. However, successes seem to be uncoordinated. The EU remains dependent on the chance that the situation does not involve contradictions and disagreement in all, or at least most, of its policies directed towards a particular country. Human rights need more diligence, as we are far from the minimum standard guaranteed to all human beings. The EU cannot continue to afford an inconsistent system when it could instead utilise all those instruments which create an impact on human rights standards together. The EU is often faced with only small margins for effective change on the world stage. The fact that it has up to now not reflected on its own procedures and does not use its instruments coherently risks further limiting its influence.

The necessary changes obviously depend on a number of improvements. Significant political will and member states' openness to actually engage in a peer system that will make it hard for the human rights spoilers on the international scene to continue using EU member state deficiencies to justify their own actions is one of these measures. Equally, ways need to be found to counter the visible trend of member states hiding behind EU policy-making to disguise their own wish to restrict fundamental rights or agreeing with, for example, the trend of criminalising migrants, while blaming the human rights deterioration on the need to find a common EU agreement.

Beyond political will and increasing the small and far between instances of constructive political leadership on human rights, there are some measurable actions that can be taken to address the problems outlined. The EU can move towards more responsibility as an international actor in its own right through finally agreeing a proper human rights policy and reforming its institutional response. Without this, the major advancement on instruments and the serious efforts undertaken - from mainstreaming, to guidelines, to the European Instrument for Democracy and Human Rights, to human rights

clauses in third country agreements - will continue to be piecemeal. What is needed is a framework that turns the many disconnected actions of the EU into a set of instruments that can be governed, that can together broaden rather than constrict the EU's impact, and that create standards by which it can hold itself accountable. Both member states as well as the EU as an institution have to be involved in this process. This framework should draw up a comprehensive EU human rights policy encompassing the external and internal dimensions of EU policies. It needs to aim at reinforcing the EU's human rights legal framework and it should build in peer review mechanisms in the EU institutional system as well as integrating the activities of EU agencies in a human rights' impact perspective. Such a framework would set benchmarks and monitoring systems to ensure that the EU is accountable for how its actions impact human rights.

The following four elements should form the minimum basis of the EU's review of its human rights policy:

- 1.** The EU has to develop a comprehensive human rights policy, which brings together the means (principles and instruments), the systemic implementation method, and the mechanisms that it will use. Other policy areas must have a human rights approach and at a minimum must not negatively impact human rights. This comprehensive human rights policy must also include an approach on how to deal with actors stemming from EU territory, such as large companies and their responsibility to be accountable for the human rights impact of their activities.
- 2.** Regardless of Lisbon treaty developments, certain aspects of the treaty are paramount to creating institutional coherence on human rights. One of them is accession to the European Convention on Human Rights. Making the Charter of Fundamental Rights legally binding is another key step. The Charter creates a new independent source of rights in the EU to govern all the actions of EU institutions. It breaks new ground for human rights protection in Europe by including a single list of "fundamental rights" which go beyond the traditional civil and political rights which have for so long been mistakenly portrayed as the core of human rights standards. The EU would send another signal of being serious about standard setting by following new UN standards on economic, social and cultural rights.
- 3.** The debacle of CIA renditions and the EU silence with regards to it shows that the EU is not holding its member states to one the most fundamental international principles, the absolute ban on torture. The EU has to develop an internal human rights mechanism. Otherwise it will risk an inability to upkeep its legal responsibilities with regards to its own sets of values, the ECHR and the Universal Declaration of Human

Rights, and as a result it will find fewer ways to continue its, in principle, good work on coordination and cross regional alliance building at the United Nations. In comparison, any of the EU's external actions can potentially be reviewed from a human rights perspective by the Council through the Working Party on Human Rights (COHOM) and by the European Parliament through the Human Rights Subcommittee. Yet, there is no Council address that officially receives the reports of the Fundamental Rights Agency and responds to them; and nobody is assigned to assess the external human rights impact of an internal instrument.

4. A revised EU human rights policy needs to take into consideration the role and potential of EU agencies, as a number of them can have a significant impact on human rights. The EU must ensure that the activities of an agency such as FRONTEX, which is responsible for managing operational cooperation between member states at the EU's external borders - but without any specific human rights mandate - respects and does not negatively impact on the human rights of migrants and asylum-seekers. The EU should also be vigilant that the activities of the European Investment Bank, an independent body with no explicit human rights recognition in its mandate, do not undermine efforts of human rights mainstreaming in the EU's external relations. Finally, they must fully utilize the Fundamental Rights Agency, which is the only independent agency with a clear human rights mandate, as a tool for standard setting and for formulating a strong EU internal human rights policy. These steps are necessary to restore and preserve the EU's credibility in the field of human rights.



# THE EU AND HUMAN RIGHTS

## MAKING THE IMPACT ON PEOPLE COUNT

"The EU and Human Rights: Making the Impact on People Count" highlights the cause of individuals that are directly affected by the human rights consequences of the European Union's (EU) policies. It focuses on six key areas of human rights, with particular emphasis on the individual rights holder, to underline the need for the EU to take action to defend, protect and promote the human rights of individuals, both within its own borders and internationally.

This document is intended to address Amnesty International's broader human rights concerns to a full range of EU policy makers and actors. It is additionally directed at relevant EU decision makers that do not necessarily have a background in human rights, but whose work nonetheless can potentially create a real impact.

The EU has continuously developed and grown since its inception, and as a result has had to gradually increase the number of its instruments, structures, and policies, including in human rights. However, it is inevitable that separate policies eventually need to be reviewed to create an overarching human rights framework and enhance coherence. The EU has a wealth of significant human rights instruments at its disposal, including decisive efforts in mainstreaming human rights; it signals the right language and is signatory to international human rights law. Yet at crucial moments the EU fails to act coherently and loses the overview of all its instruments. This can put its credibility at risk, and unnecessarily limits its human

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