



**The search for a coherent and credible EU human rights policy –  
Amnesty International's ten-point programme for the Finnish  
Presidency of the European Union**

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*"The protection of human rights will thrive in a rigorous, frank and cooperative environment. Progress cannot be made in an atmosphere of distrust and disrespect and through the pursuit of narrow self-interest."*  
Louise Arbour, UN Commissioner for Human Rights, at the closing meeting of the now defunct UN Commission on Human Rights, 27 March 2006.

At the start of every European Union's Presidency, Amnesty International presents its observations of the EU's human rights policies and recommends how they could be made more effective.

From one Presidency to the next, the analysis and the broad thrust of the recommendations show a great deal of continuity, but looking at developments over a longer time span we see striking change. Seven years ago, at a time when "EU human rights policy" meant looking at third countries only, the previous Finnish Presidency made history at the October 1999 Tampere summit with a strong human rights impulse for the EU's asylum and immigration policy. The five-year Tampere Programme to develop the EU as an "Area of Freedom, Security and Justice" significantly stated that a future common European asylum system should ensure the "full and inclusive application of the Geneva Convention", and affirmed refugee protection as a principal human rights obligation.

Seven years later, the "Tampere spirit" has evaporated. The minimum standards adopted during the first phase of the development of the European asylum system reflect the lowest common denominator of harmonisation and in some respects breach international human rights and refugee law. The level of protection still varies so much from one Member State to another that we can rightfully speak of a protection lottery. The political momentum has shifted to the external dimension of justice and home affairs issues in which the fight against "irregular" immigration is conducted at almost any cost. Here, the lack of real solidarity with countries of origin and transit combined with abusive treatment of migrants puts the EU's stated goal of tackling root causes and seeking durable solutions into question.

Major change also occurred with regard to the second key aspect of the Tampere Programme, the development of judicial cooperation. As a result of the 11 September 2001 attacks, EU legislative activity in this field has been transformed to fit the cause of counter-terrorism, relegating rights protection to little more than an afterthought. Current prospects of the Council fulfilling its 2001 promise of adopting proper procedural safeguards for suspects and defendants in criminal proceedings look increasingly dim. Laws and practices by Member States that breach their international human rights obligations persistently fail to elicit the slightest response at EU level.

Human rights within the EU have only recently become an item on the EU's political agenda, with some seemingly significant developments: the proclamation of the Charter of Fundamental Rights, the proposed Fundamental Rights Agency (FRA), the Group of Commissioners on Fundamental Rights, and the intentions to enable EU accession to the European Convention on Human Rights (ECHR) and to incorporate the Charter into the constitution. But the reality is that the FRA will be barred from dealing with the hard issues of human rights within the EU. The Group of Commissioners is equally invisible in this respect, while accession to ECHR and a binding Charter are shelved as a result of the constitutional crisis.

Throughout all this, we see that human rights compliance within the EU is not only a problem as such, but in fact constitutes a major taboo. For many years, human rights problems within EU borders have included police abuse, often of a discriminatory nature, and increasingly restrictive asylum policies, but no acknowledgement that

these are matters of proper concern to the EU has ever been forthcoming. The EU's enlargement programme has sharpened the contrast between the scrutiny of candidate countries and the complacency of Member States. As the debate around the FRA is increasingly demonstrating, there is a gap between the EU's preached "union of values" and the denial with which the abuses of these values within that Union are shielded.

The disclosures of secret CIA activities in Europe and the European complicity in gross human rights abuse by US agents have rattled the system. However, the ranks stay closed even after initial findings by the Council of Europe and by the EP temporary committee of inquiry have confirmed such complicity. Set against the thoroughly researched cases of rendition involving EU Member States, the denial by individual governments and the silence of the Council in the face of what for the victims amounts to a total breakdown of the rule of law, appears shocking. But it fits the pattern: human rights compliance within the EU is a matter of see no evil, hear no evil, speak no evil.

Two dominant factors are now driving the EU's domestic agenda: terrorism and irregular migration. Both raise serious human rights issues. Amnesty International has extensively demonstrated the human rights deficit in the EU's counter-terrorism policy, and the manner in which human rights and refugee protection obligations are snowed under in the fight against "illegal immigration". Given their external ramifications they risk undermining the credibility of the EU human rights policy as a whole.

This human rights policy has traditionally focused on external relations. Over the last decade an impressive toolbox of policy instruments has been assembled, including the human rights clause in agreements with third countries and in a series of human rights guidelines. The rights dimension in external assistance is gradually being strengthened, the EU's role in crisis management and fostering the rule of law in situations of weak or transitional government is steadily expanding, and the EU has come out in support of an international arms trade treaty. Implementation of the guidelines is stepped up, the High

Representative for CFSP's Personal Representative for Human Rights is proving an asset in helping to break down institutional barriers, and the new EP Subcommittee on Human Rights is settling into its accountability role.

But notwithstanding such progress, the EU's external human rights effort remains too fragmented in the face of the major human rights challenges of violent conflict, extreme poverty and gross violations of human rights in many countries. The interests involved in "strategic partnerships" with major powers dilute the human rights message where it is often most critical. The need for more coherence and consistency across a range of external policies and instruments is greater than ever if the EU is to realise its potential to affect change world-wide. That presents not only a challenge but also an opportunity since it is an objective that enjoys wide support among European citizens.

This potential to exert positive influence on third countries makes the EU's domestic human rights deficit even more of a liability. Significantly, this year's Austrian and Finnish Presidencies in their joint operational programme implicitly acknowledge this by stating their intention to "*work to improve the coherence and consistency of the EU's human rights policy in its internal matters as well as in external affairs*".

That intention must now be turned into a concrete process, and eyes will be on the Finnish Presidency to make it happen. Amnesty International believes that five years after 9/11 a comprehensive review of the EU's human rights policy is indispensable. It must be sharpened to address the major challenges in a way that matches not only the EU's ambitions but also its potential and, most importantly, the pressing needs. It should set human rights as the framework for global security and development. It must help safeguard the EU from complacency and double standards at home and so protect its credibility and legitimacy in the world. It should rise above the pursuit of narrow self-interest and reflect a true union of values.

In other words, it is time to recapture some of the Tampere spirit.

### **TEN POINTS FOR THE FINNISH PRESIDENCY TO SHAPE A COHERENT AND CREDIBLE EU HUMAN RIGHTS POLICY**

- 1. Allow the EU Fundamental Rights Agency a meaningful role to address structural human rights deficiencies within the EU.**
- 2. Ensure an adequate response to the inquiries on unlawful US activity in Europe and take decisive steps to restore the primacy of human rights principles in the EU's counter-terrorism effort.**
- 3. Improve refugee protection in the EU and initiate a strategic debate on the future orientations of the common European asylum system.**
- 4. Strengthen protection of the rights of migrants and trafficked persons, and ensure that common standards on return fully comply with international law.**
- 5. Maintain a strong human rights dimension in the EU's enlargement and neighbourhood policies.**
- 6. Press China, Russia and the USA on the occasion of summits and other high-level meetings for reforms to remedy their human rights deficiencies.**
- 7. Strengthen implementation of the EU human rights guidelines.**
- 8. Further enhance the central role of human rights in crisis management operations, and develop an action plan for the implementation of UN resolution 1325 on women, peace and security.**
- 9. Lead the EU in support of the process to develop an Arms Trade Treaty through a resolution at the UN General Assembly in the autumn of 2006.**
- 10. Initiate a comprehensive review of the EU's human rights policy, and pave the way for EU accession to the European Convention on Human Rights.**

## **1. Human rights compliance within EU borders**

For many years, human rights problems within EU borders have included police abuse, often of a discriminatory nature, as well as increasingly restrictive asylum policies, but the Council has never acknowledged that these are matters of proper concern to the EU. Today, alarming reports of rising racism and homophobia cast a shadow over the EU's declared commitment to fight discrimination in the EU.

Amnesty International's appeals in recent years regarding human rights deficiencies within EU borders have been met with either an invocation of lack of competence (Commission) or simply no reply at all (Council). The use of Article 7 TEU has for all practical purposes been declared out of bounds. There is still no proper structure in the Council dedicated to dealing with domestic human rights questions.

Countering terrorism and fighting "irregular" immigration have become the dominant priorities for the EU in the field of justice and home affairs. Both have fostered serious human rights violations and serve as justification for restricting certain fundamental rights and freedoms. In today's political reality, the problematic manner in which terrorism and immigration issues are handled from a human rights point of view has taken the debate beyond technical questions of competence. And yet, the EU persists in denying that reality. For the Council, addressing its own members over human rights problems constitutes almost the greatest taboo of all. The potential for regular periodic review of member countries' human rights records to become an important instrument in the context of the new UN Human Rights Council, makes the EU's refusal to even consider applying any form of peer review at home incongruous.

### **EU FUNDAMENTAL RIGHTS AGENCY**

The establishment of the EU Fundamental Rights Agency ought to mark a highly significant step in the process whereby the EU is shaping its policy with regard to observance and fulfilment of human rights within its own borders. It is precisely for that reason that Amnesty International is very critical of the proposals – not for what the agency will be expected to do, but

for what it will be precluded from dealing with: the hard issues of human rights within the EU.

The low profile and recent breakdown of discussions over the future agency in the Council have echoed the taboo on domestic human rights compliance. The debate has focused on the structure of the new entity while the issue of its purpose has been left aside or caught up in conflicts of interests between the Member States, the EU and the Council of Europe. However the question of the role of the agency resurfaced when the Council confronted the question whether or not to include third pillar justice and police matters in its remit, and failed to reach agreement. Equally telling of the sensitivities involved is the resistance to allowing the agency a role with regard to Article 7 TEU - while there would be every reason to consider the agency as an opportunity to explore the scope for using Article 7 as a corrective and preventive rather than a sanctioning mechanism.

At the June 2006 EU summit the Council, notwithstanding the serious disagreements, still called for "the necessary steps to be taken" to get the agency started in January 2007. Amnesty International believes that it is crucial that sufficient time is allowed to debate how to give the future agency a start on clear grounds that are not set by default but are part of a broader reflection on EU's human rights policy. The EU's credibility – towards third countries, towards candidate countries, and towards its own citizens – will depend on not giving in further to what is increasingly perceived as a double standards approach to human rights.

#### **Amnesty International calls on the Finnish Presidency to:**

- **clarify the role of the EU Fundamental Rights Agency in promoting an adequate corrective response at EU and national levels to structural human rights deficiencies within the EU;**
- **create a dedicated structure in the Council for human rights within the EU.**

## 2. Counter-terrorism and human rights in the EU

### RENDITIONS AND SECRET DETENTION

The disclosures about the manner in which the "war on terror" is being conducted by the United States and its impact in Europe sparked investigations by the Council of Europe and the European Parliament. Numerous reports from the media, NGOs including Amnesty International, as well as testimonies from officials and from victims of unlawful practices, have left the reality of illegal CIA activities in Europe no longer in dispute. At the same time there is now clear evidence suggesting complicity from the part of EU Member States or candidate countries in such activities that involve illegal kidnapping, transportation, detention, torture and "disappearance" of persons suspected of terrorist activity.

The Council has persistently distanced itself from any such suggestions, preferring to maintain a posture of denial while arguing that there is still no real proof. This makes it all the more essential that, in cooperation with the European Parliament's initiative, EU Member States and all other relevant EU actors work towards establishing the truth about complicity by European governments in illegal practices, and on the alleged presence of CIA secret detention sites on EU territory.

The EU Presidency must take a lead in stating loud and clear that these matters have no place in a genuine Area of Freedom, Security and Justice. It must recall the provisions of Articles 6 and 7 TEU and send a clear signal that Member States must comply fully with their obligations under international human rights law and can be held accountable by the EU for breaching them. Furthermore, EU institutions need to take proactive steps to ensure adequate prevention of such violations of human rights in Europe. In line with some of the initial recommendations from the European Parliament's draft interim report, the EU Presidency should immediately engage in a debate on how the EU can build on its legal and political competencies to frame an EU-wide counter-terrorism strategy which respects human rights standards. In this context the practice of deporting people with "diplomatic assurances" to countries where they risk torture should be declared unacceptable.

### JUDICIAL COOPERATION IN CRIMINAL MATTERS

Following from the 1999 Tampere European Council and the adoption of the Hague Programme in 2004, the progressive development of the EU as an Area of Freedom, Security and Justice has been consistently reaffirmed as a priority for the EU. As the Finnish Presidency has the challenging task of undertaking a mid-term review of the Hague Programme, it is the time to assess how human rights have been incorporated in the process, and in particular how protection of individual rights has so far been upheld in the pursuit of counter-terrorism. Terrorism-related cases and specific national legislation aimed at combating terrorism illustrate the pressing need to tackle existing limitations of fundamental rights in criminal proceedings, such as the right of access to a lawyer, the right to be brought promptly before a judge or the non-admissibility of evidence extracted through torture.

Years have passed since the EU first promised a framework decision on basic procedural guarantees such as the right to a lawyer and interpretation for those facing criminal proceedings throughout the EU. A Commission proposal was finally presented in 2004 and has been discussed in the Council since then, but there are still no concrete prospects for adopting it even though the initial proposal has been watered down considerably. The latest compromise seeks to limit the number and scope of the rights covered and to adopt only very general minimum standards, while it is still not agreed to have a binding instrument at all.

It is urgent that the Finnish Presidency give a strong political signal to revitalise these discussions with a view to ensuring that the EU can agree on a binding instrument with added value for the protection of basic fair trial rights in criminal proceedings across the EU. It is further essential to develop other instruments to ensure that access to justice and fundamental rights are fully incorporated in the EU's judicial cooperation programme.

#### **Amnesty International calls on the Finnish Presidency to:**

- **ensure full cooperation by Member States with ongoing inquiries into unlawful activities by US agents and possible European complicity, and to commit to taking appropriate action on their outcome;**

- **reaffirm unequivocally the absolute prohibition of torture or other ill-treatment, and to oppose forced return with “diplomatic assurances” to countries that practise torture;**
- **see to it that by the end of 2006 all EU Member States have ratified the Optional Protocol to the Convention against Torture, or presented a schedule for ratification;**
- **ensure that the proposed framework decision on procedural rights for suspects and defendants in criminal proceedings does not fall below Member States’ existing obligations under international human rights law;**
- **ensure that standards protecting individuals develop at the same pace and have the same weight and binding force as judicial measures that enhance the powers of law enforcement in the course of the creation of the Area of Freedom, Security and Justice.**

### 3. Refugee protection

Seven years after the 1999 Tampere European Council, the Finnish Presidency is confronted with the difficult challenge of paving the way to the second phase of the harmonisation process of the common European asylum system. Despite a restrictive political climate surrounding refugee protection, these discussions are of crucial importance to safeguard the future of the common European asylum system (CEAS) but also the international protection system, with the 1951 Geneva Convention at its core.

Despite strong initial commitments of the 1999 Tampere Summit, the overall assessment of the first phase of the harmonisation process between 1999-2004 is rather negative from a human rights perspective. It has not managed to end the existing protection lottery by failing to establish an equivalent level of protection throughout the EU. Instruments adopted show a creeping confusion between “asylum” and “immigration” procedures and a distortion of the protection aim of the CEAS for the sake of migration control. In many instances, Member States’ practice falls even lower than the EU minimum standards, despite a continuous decrease of asylum

applications in the EU for the last five years bringing them down to the level of 1988. The ongoing protection crisis at the Southern borders of the EU has shown a consistent pattern of human rights violations linked to interception, detention and expulsion of foreign nationals, including persons in need of international protection.

Against this bleak backdrop, Amnesty International believes that a wider political discussion is needed regarding the future orientations of the CEAS. While previous Presidencies were considering the asylum dossier from a predominantly technical angle, the Finnish Presidency should create space for a political dialogue on the overall humanitarian objectives of the CEAS. Such discussions should aim at bridging the gap between the CEAS as a human rights instrument and the EU’s global humanitarian agenda and reiterating Member States primary obligations towards those in need of international protection.

#### STRUCTURAL DEFICIENCIES OF THE COMMON EUROPEAN ASYLUM SYSTEM

Without such political reflection, ongoing discussions on strengthening practical co-operation between Member States may only lead to cosmetic improvements of the CEAS. Instead, its structural deficiencies must be tackled:

Responsibility-sharing is to be considered not only in terms of emergency assistance mechanisms in case of massive influx but also by addressing deficiencies of the Dublin II Regulation highlighted by recent studies by the UN High Commissioner for Refugees (UNHCR) and the European Council on Refugees and Exiles (ECRE).

Further procedural harmonisation should focus on the improvement of the quality of the decision-making process. In this context, the establishment of an EU list of safe countries of origin should be suspended pending a decision by the European Court of Justice on the European Parliament’s challenge to the legality of the EC directive on asylum procedures.

A common independent information base of country of origin information must be geared towards ensuring an equivalent level of protection throughout the EU.

Developing best practice for the protection of vulnerable groups, with particular attention to be

given to gender-related persecution, but also to unaccompanied minors, human rights defenders, and persons fleeing armed conflicts.

In order to maximise the practical impact of the qualification directive provision that the refugee definition should be interpreted with an awareness of gender, EU gender guidelines to better protect refugee women should be developed.

#### THE EXTERNAL DIMENSION

The external dimension of a common European policy on asylum and immigration will remain a high priority for the Presidency. The launch of a pilot Regional Protection Programme (RPP) will be a major test of the political will of Finland and other Member States to deal significantly with root causes of forced displacements and to fully comply with their international obligations. In this respect, the possible launch of a pilot RPP in Western Newly Independent States raises strong concerns given the persistent difficulties in Ukraine and very problematic human rights situations prevailing in Moldova and Belarus, a country with which the EU has no formal relations. This requires the Finnish Presidency to insist on a careful examination of the effective protection available in those third countries that may be willing to host such a programme, in close co-operation with the UNHCR.

#### **Amnesty International calls on the Finnish Presidency to:**

- **initiate a strategic debate on the future orientations of the common European asylum system;**
- **improve refugee protection in the EU through a substantial revision of responsibility-sharing mechanisms, a common independent information base, and the development of best practices for the protection of vulnerable groups including EU gender guidelines;**
- **ensure that Regional Protection Programmes are never a substitute for the protection obligations flowing from the 1951 Geneva Convention and other relevant international instruments including the ECHR.**

## 4. Migration management

The forthcoming discussion on the need for legal migration is very opportune. While the positive impact of migration is increasingly a subject of debate within the international sphere, all too often it is framed solely within a discourse of control, containment or even criminality. The EU Presidency will have a primary responsibility in ensuring that migrants' rights are at the core of the debate.

Migrants are especially vulnerable to unscrupulous and abusive practices by recruitment agents in countries of origin. They are more likely to seek out the services of people smugglers or traffickers, to suffer serious physical and mental harm in the course of their journey, and to be vulnerable to labour and sexual exploitation. In this regard, it is essential that the renewed dialogue on legal migration includes a strand on the fight against trafficking in human beings. The Finnish Presidency should promote the standards defined by the UN and the Council of Europe, through ratification of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.

Migrants are often subject to harsh employment conditions breaching basic social and economic rights, and deprived of any effective access to justice and redress. The coming Presidencies should ensure that the dialogue set up on legal migration serves to promote, fulfil and protect the rights of all migrant workers and their families without discrimination, with the 1990 UN Convention on the Rights of All Migrant Workers and Members of their Families at its core.

#### MIGRATION MANAGEMENT VS. REFUGEE PROTECTION

In the aftermath of the tragic events in the Spanish enclaves and Morocco, EU Member States have agreed on operational priorities to fight against "irregular" immigration and to develop a strategy on the external dimension of Justice and Home Affairs issues. In line with the December 2005 European Council conclusions, the conference on migration and development in July 2006 in Rabat is to define concrete action plans and a strategic framework for a migration policy focusing on Africa and the Mediterranean countries. It will be important in that context to open prospects for the creation of legal means of

entering the EU other than through seeking asylum.

These documents include assurances that the EU seeks to promote a balanced approach aiming for better management of migratory flows in transit countries as well as enhanced refugee protection in regions of origin. However, in the light of the recent tragedies at the Southern borders, Amnesty International has signalled a distinct lack of political will by EU Member States to fulfil such assurances in practice. The lack of real solidarity combined with abusive practices puts a strain on the stated goal of tackling root causes of migration and seeking durable solutions. It undermines the EU's credibility and legitimacy in asking others to carry burdens that it is not prepared to accept for itself.

#### RETURN OF "IRREGULAR" MIGRANTS

The return of third country nationals staying irregularly in EU countries is another key priority for the EU. Within the context of current discussions on the draft directive on common standards and procedures in Member States for returning third country nationals illegally staying on their territory, the Finnish Presidency has a key responsibility to ensure that the EU standards will not leave people in limbo and fully comply with relevant international law standards.

Importantly, these include the principles of non-discrimination and proportionality, and the prohibition of collective expulsions. Specifically, this calls for the prompt ratification by all EU Member States of Protocol IV of the ECHR prohibiting the collective expulsion of foreign nationals. Furthermore, the European Commission should be urged to introduce a proposal for a binding EU code of conduct on the use of force for law enforcement officials, in full compliance with relevant guidelines defined by the UN and the Council of Europe. Finally, Member States that ignore minimum EU standards must be held accountable especially where absolute principles such as *non-refoulement* are involved.

#### **Amnesty International calls on the Finnish Presidency to:**

- **strengthen protection of the rights of migrants through the ratification of the 1990 UN Convention on the rights of migrant workers and their family members;**

- **promote the ratification of the 2005 European Convention on Action against Trafficking in Human Beings;**
- **ensure that common standards on return are adopted that fully comply with international law.**

## 5. Enlargement and neighbourhood policy

The final steps and decisions to be taken under the Finnish Presidency to prepare for the accession of Romania and Bulgaria will require continued close monitoring throughout the second half of 2006 with regard to the full implementation of human rights standards.

Romania has made progress towards creating an independent, professional and effective judiciary system, but further implementation needs to be ensured. Trafficking in human beings still remains a problem for Romania, notwithstanding some results in dismantling networks. In the area of child protection the situation has improved although serious problems remain in particular with regard to children with mental disabilities. Sustained effort will be needed for the integration of the Roma minorities. Reports of ill-treatment by law enforcement officials continue.

Bulgaria has shown only limited progress in the reform of the judiciary system and in the fight against corruption. Similar patterns of human rights abuse persist as in Romania including ill-treatment of police detainees, while trafficking in human beings remains a problem. Bulgaria also faces difficulties with regard to the integration of minorities in general and Roma in particular.

Now that negotiations with Turkey are underway, the EU must make maximum use of all channels of interaction with the Turkish government to press for further legal reforms pertinent to human rights, as well as their actual implementation. Particular emphasis should go to guarantees for the full enjoyment of freedom of expression and association. Article 301 of the new penal code fails to safeguard freedom of expression and should be revoked; failing this, the EU should monitor that Turkey's judiciary interpret Article 301 strictly in line with the ECHR. Special attention is also needed for the prevention of torture and of impunity for its perpetrators, and for tackling violence against women.

The EU agreed to start accession negotiations with Croatia in October 2005 after it confirmed that Croatia had met the outstanding condition of full cooperation with the International Criminal Tribunal for the former Yugoslavia. It remains vital that the EU urge the Croatian authorities to apprehend and turn over major war criminals to the International Tribunal. At the same time Croatia should be encouraged to reform its judicial system, while being supported in its resourcing, in order to ensure that all perpetrators of war crimes and crimes against humanity are brought to justice, regardless of their or their victims' ethnicity.

It remains essential that the EU fully exploit the commitments and opportunities of the Euromed partnership to drive reforms towards better protection of human rights throughout the Mediterranean region. The human rights chapters in the European Neighbourhood Action Plans offer new entry points for sustained engagement of Euromed partners with regard to better human rights protection. Recent efforts to establish human rights sub-committees or working groups as part of the bilateral institutional frameworks set up to implement the Action Plans are welcome, and the Finnish Presidency should encourage that this element is strengthened further in the Action Plans currently being developed. It should further ensure that Association Agreement Councils make full use of these chapters and integrate human rights issues as part of the bilateral political discussions.

**Amnesty International calls on the Finnish Presidency to:**

- **ensure continued regular and close monitoring of candidate countries' human rights performance;**
- **apply a systematic human rights component in action plans and political dialogue in the context of the European Neighbourhood Policy.**

## **6. Summits with other world powers: human rights vs Realpolitik**

The EU has regular summit meetings with the three non-European countries that are Permanent Members of the UN Security Council: China,

Russia and the USA. With each of these countries the EU has an important relationship that is marked by substantial common interests, divergent views on key strategic issues, and by a pressing human rights agenda. All three countries feature major human rights problems, and with all three the interest the EU has in maintaining its close alliance (USA) or developing a "strategic partnership" (China and Russia) tends to compromise the political will to take a strong and consistent stand on human rights.

There is no question that the cause of human rights requires the EU to speak out against abuse not only by small countries but also by the world powers. Experience shows that pressure that is well-informed and applied consistently is effective, both for individual cases and with regard to longer-term structural reform. Also, the EU's own credibility as a human rights advocate is influenced by the manner in which it confronts its major global partners.

### **China**

Human rights abuses continue on a massive scale in China affecting countless people. The EU-China human rights dialogue that has been conducted for the past ten years with the aim to improve the human rights situation in China has led to interesting exchange and modest concessions in the legislative sphere, but had no significant impact on actual human rights practice.

Given this context, Amnesty International has consistently urged the EU to bring human rights considerations into its decision about whether or not to lift its arms embargo against China. In a welcome development EU leaders have in 2005 begun to stress publicly the importance of human rights reform in relation to the debate around the lifting of the EU arms embargo, and put forward criteria which may be used to measure progress.

### **Russia**

The EU's largest neighbour continues to struggle with severe human rights challenges. Progress made during the 1990s is slowly eroding, particularly in the area of freedom of speech and freedom of assembly, affecting human rights defenders in particular. Racially motivated crimes are widespread in the Russian Federation, as is violence against women. The conflict in Chechnya continues to generate massive human rights abuse by both Russian forces and Chechen armed

opposition, and the violence has spread into other regions of the North Caucasus.

The human rights "consultations" between the EU and Russia that started in 2005 should become a prime channel to address these and other issues, but they cannot be seen as substitute for confronting the Russian authorities in no uncertain terms at the highest level as well. In 2006 there is an additional reason to do so as Russia is hosting the G8, and holds the chair of the Committee of Ministers of the Council of Europe. Since it joined the Council of Europe ten years ago, Russia has failed to honour its commitments and obligations as a member, by not ratifying key conventions such as the European Social Charter and protocol 6 under ECHR, and by not fully co-operating with the European Committee for the Prevention of Torture.

## USA

The transatlantic partnership is the cornerstone of European foreign policy. Traditionally the death penalty has been the major human rights concern the EU has had with regard to the US, and it has been a regular feature of the interaction between the two sides.

Since 11 September 2001 the partnership has become dominated by the common desire to combat terrorism, and by divergent views as to how that is done most effectively. Faced with the growing evidence that the US are systematically breaching human rights and the rule of law in its counter-terrorist efforts, Amnesty International notes positively that the EU has now called for the closure of Guantánamo Bay. It is imperative that the Finnish Presidency maintains the momentum by confronting the issue of torture and unlawful CIA activities with the US directly as well as by addressing the question of European complicity.

### **Amnesty International calls on the Finnish Presidency to:**

- **continue to press for appropriate reform and action in the field of human rights at the EU-China summit in September 2006;**
- **continue to press Russia at the EU-Russia Summit in November 2006 on its systematic abuse of human rights, and to ask for steps that demonstrate a real engagement and co-operation with the**

### **Council of Europe human rights mechanisms;**

- **continue to press the US to close Guantánamo Bay, stop prevaricating on torture, and help establish the truth about unlawful CIA activities in Europe.**

## **7. Implementation of the EU human rights guidelines**

The EU guidelines on human rights constitute an important set of concrete foreign policy tools to be used at EU level and by Member States, and in particular through missions in third countries. Putting them into practice effectively has not been easy, but experience shows that focused effort and coordination will bring results. In this context it is increasingly problematic that the main responsibility for implementing the guidelines is still effectively carried by an already overburdened Presidency. A more structured and coordinated approach makes it urgent to seriously examine the scope for burden sharing among Member States, at different levels.

Through closer examination of the guidelines on human rights defenders Amnesty International has identified some key obstacles that need to be overcome in the actual practice of implementation. Most important is to raise the level of awareness of the guidelines, at all relevant levels of EU and Member State staff and especially in missions, as well as among human rights defenders and relevant local NGOs. Another point of general concern is the relative lack of transparency in the way the different guidelines are operated. Feedback on individual cases and information on action taken would enable NGOs to make a more effective contribution to the implementation of the guidelines.

### **DEATH PENALTY**

The UK Presidency shaped a new approach to promoting abolition of the death penalty by focusing on 14 countries where there were prospects of influencing developments, be they positive or negative, a methodology further pursued by the Austrian Presidency. The Finnish Presidency is encouraged to continue this approach, complementing intervention in urgent individual cases. The list of countries selected may need to be reviewed, with particular emphasis placed on countries which have a

moratorium that may expire during 2006/2007. In order to enable the NGO community to assist in identifying suitable individual cases, the Presidency should consider disclosing which countries are targeted.

Amnesty International proposes that the Finnish Presidency use the opportunity of the ASEM summit in September 2006 in Helsinki to have a substantive debate on the issue of the death penalty in the region with Asian partners. Particular emphasis should be given to countries where no positive signs of progress are seen in terms of either abolition or establishing a moratorium.

### HUMAN RIGHTS DEFENDERS

Of all the EU guidelines on human rights, those on human rights defenders have seen the most vigorous efforts to achieve their effective implementation. Since their adoption in 2004, presidencies have taken a number of steps, and the evaluation under the Austrian presidency provided an opportunity to get an overview of the current application. The review showed that despite obvious engagement, there is significant room for improvement. Areas which need strengthening include monitoring and reporting through missions and delegations, and effective intervention on behalf of human rights defenders imprisoned or under threat. The review showed a need for more systematic awareness-raising of the guidelines' existence and their potential among EU and Member State officials as well as local NGOs and defenders themselves.

The Austrian Presidency took the welcome initiative to maintain a systematic database on EU initiatives in individual cases, as an important step to gain and maintain an overview over the actions taken by the EU. This will give the EU the opportunity to measure the effectiveness of its actions and to further refine its 'toolbox' of measures to protect persecuted individuals. The Finnish Presidency is expected to provide a sustained drive towards effective implementation of the recommendations made in the review, and to continue to explore how the guidelines can be used not only to protect individuals at risk but also as an important vehicle for capacity building in countries where civil society needs to be strengthened in order to advance human rights, democracy and the rule of law.

### TORTURE

Since the adoption of the guidelines in 2001, the use of political instruments such as political dialogues, declarations and *démarches* in relation to the actual practice of torture has been minimal. After thorough evaluations of the guidelines on children and armed conflict and on human rights defenders, the Finnish Presidency should initiate a similar process of assessment and planning for the torture guidelines.

The aim should be to broaden the scope of implementation, in particular through developing a procedure to identify and *démarche* on individual cases in selected countries. Consistent pressure should be maintained on countries that have failed to sign or ratify the Convention against Torture and/or its Optional Protocol, by issuing a formal *démarche* at the beginning of the Presidency. For such an approach to be effective, it will be important at the same time to step up pressure on all EU Member States to ratify the Optional Protocol without further delay – in May 2006, 16 out of 25 Member States had signed, only 6 of these had ratified.

### HUMAN RIGHTS DIALOGUES

The 2001 guidelines on human rights dialogues were drawn up as a prescription for specifically designated human rights dialogues at central EU level with individual third countries. Following the EU-China dialogue that had already run for several years, new ventures were initiated with Iran (suspended) and Russia. Amnesty International has tended to be critical of such formalised dialogues as they easily slide into a ritual for its own sake. It is therefore encouraging to note increasing willingness to engage with third countries on human rights, through regular contacts and dialogues at different levels ("mainstreaming") including local exchanges through EU missions. Special attention is needed for the provisions in the guidelines that call for meaningful involvement of civil society.

### CHILDREN AND ARMED CONFLICT

The guidelines on children and armed conflict constitute an important commitment of the EU to address the impact of armed conflict on children. The implementation strategy for these guidelines adopted in April 2006 under Austrian Presidency signifies clear progress, and identifies specific recommendations for action. In particular, the

implementation strategy clearly indicates that human rights issues should be considered systematically in the early stages of planning of ESDP missions and that political tools available to the EU (such as *démarches* and political dialogues) have not been applied to their full potential since the guidelines' adoption in 2003.

**Amnesty International calls on the Finnish Presidency to continue to press for active implementation of the EU human rights guidelines, and to broaden the scope of application in particular through EU missions, by raising awareness about the guidelines and by ensuring meaningful involvement of civil society.**

**The Finnish Presidency is urged to raise the issue of the death penalty in Asia at the EU-ASEM summit in September 2006 in Helsinki.**

## **8. Conflict prevention and crisis management**

The European Union as a global security actor has a responsibility to contribute to solving conflicts and assisting war-torn countries. In recent years, the EU's activities in the field of conflict prevention and crisis management have increased dramatically. It is therefore essential that human rights protection and human rights training feature prominently in EU missions deployed in third countries.

All evidence from the field points to the need to handle conflict in terms of prevention, containment and management. The 2003 European Security Strategy makes a step in this direction by providing a conceptual framework which can serve as a common point of reference for crisis management.

The need to develop rapid reaction capabilities for short-term crisis management was one of the principal motives behind the establishment of the European Security and Defence Policy (ESDP) in 1999. The EU has identified police, the rule of law, civilian administration and civilian protection as priority areas in civilian capabilities. Specific capacities in these four areas may be used either in the context of independent missions managed by the EU or in operations run by other lead organisations in crisis management like the UN.

Human rights violations are usually the first signal that a crisis is about to erupt. If it is dealt with at an early stage, military means will not be necessary. However if a crisis has erupted then both during conflict and afterwards, human rights considerations have to be central to all action. In practice this means providing basic security, stopping the spread of small arms and the collection of surplus arms, bringing perpetrators of violations to justice, protecting displaced people and ensuring safe return.

The centrality of human rights for conflict prevention and crisis management is clearly understood and acknowledged in the context of the ESDP. However, knowledge about the actual ways and means of ensuring implementation, and about best practices, needs to be shared and disseminated. Member States must make the necessary expertise and resources available and develop appropriate recruitment procedures and programs for human rights training. The deployment of EU missions in the DRC and Kosovo provide further opportunities to ensure that the terms of reference of such missions contain a strong human rights mandate and that the implementation builds on previous experience.

In 2005 EU operational measures were drawn up (but not made publicly available) with regard to UN resolution 1325 of October 2000 concerning women, peace and security. As a next step, the EU could usefully develop an action plan for the implementation of resolution 1325, to include the need for training on gender issues, and for recruiting more women to participate in ESDP missions with a view to assisting women victims.

It is also important that the 2003 draft guidelines for protection of civilians in EU-led crisis management operations and the 2005 generic standards of behaviour for ESDP missions are properly taken into account in the next EU missions. Furthermore, the Finnish Presidency should build on NGO efforts to clarify the role of civil society, and develop a framework for the involvement of local civil society and international NGOs in crisis management.

**Amnesty International calls on the Finnish Presidency to:**

- **advance further the central role of human rights in conflict prevention and crisis management, including training**

**on human rights issues for personnel deployed in ESDP missions;**

- **develop an action plan for the implementation of UN resolution 1325 on women, peace and security, with special emphasis on gender-specific training and enhanced recruitment of women;**
- **implement the EU guidelines for protection of civilians in EU-led crisis management operations;**
- **draw up guidelines for the involvement of local civil society and international NGOs in crisis management.**

## **9. Arms control**

The second half of 2006 is of key importance for developing the UN Small Arms process as well as further elaborating the EU Code of Conduct on arms exports. The UN Review Conference in June/July 2006, the second major international summit on small arms, is to review the UN Programme of Action on Small Arms (PoA), and as such is a major opportunity to advance the broad international small arms agenda in light of the lessons learnt over the last five years.

It can be expected that certain States will seek to limit the function of the conference to merely review the implementation of the PoA, rather than seeking to improve the PoA itself. It is essential that the EU and other progressive States champion the need to elaborate on previous commitments and develop new ones to curb the spread of small arms. Areas where the EU is particularly well placed to take a leading role include arms transfer controls and arms brokering, particularly since the EU recently pledged its active support for an Arms Trade Treaty.

An important building block to achieve the Arms Trade Treaty is to ensure that global principles for international arms transfers, based on States' existing obligations under international law, are included in the outcome document of the Review Conference. The Finnish Presidency should secure a consensus among EU Member States on this, and marshal EU support for the development of an Arms Trade Treaty through a resolution at the UN General Assembly this autumn.

The EU Code of Conduct on arms exports, introduced in 1998, is one of the better regional agreements for arms control. However, the recent review offered few significant changes, and is yet to be concluded. The Finnish Presidency should focus on four key areas regarding the EU Code of Conduct:

1. Agreeing the draft Common Position, which will effectively make the Code legally binding; this has been agreed in principle and at technical level for some time, but requires political will to finalise discussions.
2. Finalisation of guidelines for implementation of the eight criteria.
3. Further development of the Code to ensure a more comprehensive response to the phenomena of licensed production overseas, offshore operations and the increasing trade in components and surplus weapons, and to clarify the circumstances under which Member States must require transit and trans-shipment licences.
4. Agreement on the need for systematic end-use monitoring. This could include investigating the possibilities of joint EU activities in this regard.

It is understood that under Finnish Presidency the review of the EU arms embargo on China will continue in accordance with the decision taken by the EU Council in December 2004. The EU has made the lifting of its arms embargo contingent on human rights reform but concerns remain in all areas of human rights violation under scrutiny. The Chinese Government has yet to present a coherent plan of reform and steps to improve its human rights practices must be implemented in a clear and consistent manner.

**Amnesty International calls on the Finnish Presidency to:**

- **conclude the review of a strengthened Code of Conduct on arms exports.**
- **take strong leadership regarding EU support for the process to develop an Arms Trade Treaty through a resolution at the UN General Assembly in the autumn of 2006.**

## 10. Special challenges for the Finnish Presidency

### TRANSPARENCY

Promoting and enhancing transparency was a hallmark of the previous Finnish Presidency. In the human rights sphere this led to the Council's annual report on human rights, the human rights forum and interaction with NGOs in the context of the Council working group on human rights in CFSP. The 2006 Presidency again marks transparency for special attention. Amnesty International would welcome new initiatives to allow for insight and involvement in EU activity in particular with regard to developments in conflict prevention and crisis management and in the justice and home affairs domain.

### FINLAND AS MEMBER OF THE UN HUMAN RIGHTS COUNCIL

The EU has been a strong advocate for the transformation of the discredited UN Commission on Human Rights into the new Human Rights Council. It must now apply the same vigour to making the new Council work and fulfil its promise of promoting and protecting all human rights for all more effectively. The new Council will rely heavily on its members to shape an institution that will encourage them to put respect for human rights before political self-interest. Finland, as one of the countries first elected to the Council while taking on the EU Presidency, will hold the key to marshalling the EU's collective power to that end.

### REVIEW OF EU HUMAN RIGHTS POLICY

There is a growing sense that the EU's human rights policy is in need of a thorough overhaul to take account of the changed international context after 9/11 and to address the growing gap between the EU's global effort to advance human rights and its domestic human rights deficit. With all human rights, conflict prevention and development NGOs Amnesty International appealed in February 2006 to Commission President Barroso to initiate such a review. The Finnish Presidency is looked at to support this call, and so live up to the promise in the Draft Operational Programme of the Council for 2006 that the Austrian and Finnish Presidencies "*will in particular work to improve the coherence and consistency of the EU's human rights policy in its internal matters as well as in external affairs*".

### EU ACCESSION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The constitutional treaty provided for the EU to accede to the European Convention on Human Rights, to ensure maximum consistency of human rights protection in Europe. Now that the constitution is shelved, prospects for accession look uncertain. The April 2006 Juncker report *Council of Europe – European Union: a sole ambition for the European continent* called for an EU decision to pave the way for EU accession to the ECHR, stating that "*since all Member States are agreed on it, there is no reason why it should not go ahead as soon as possible*".

#### **Amnesty International calls on the Finnish Presidency to:**

- **initiate a comprehensive review of the EU's human rights policy;**
- **take steps to pave the way for EU accession to the ECHR.**