



Amnesty International's recommendations ahead of the Informal JHA Ministerial Meeting in Tampere 20-22 September 2006

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I. INTRODUCTION

In 1999, the landmark Tampere European Council provided the political direction for developing an Area of Freedom, Security and Justice (AFSJ) in the EU. Amnesty International takes the opportunity of the EU Council revisiting Tampere to present its observations on developments and challenges in the EU justice and home affairs sphere from a human rights perspective.

These observations should not be considered as an assessment of the Hague Programme as such but rather as an attempt to provide an appraisal of the gradual establishment of a "Union of Freedom, Security and Justice" set against the principles of democracy, human rights and the rule of law.

Two years ago, Amnesty International presented an assessment of the Tampere Programme (1999-2004 in a document entitled: "More justice and freedom to balance security".) Shortly thereafter, in November 2004, the Hague Programme was agreed by the European Council setting out a new five-year policy agenda for the development of the AFSJ.

Half-way through this new period, Amnesty International is concerned that a security-driven approach has tended to prevail at the expense of the human rights dimension. We are not alone in considering that the protection of fundamental rights, fair treatment of third country nationals, the role of the newly proposed Fundamental Rights Agency and the powers of the European Court of Justice are dealt with too cursorily within the programme's section devoted precisely to "strengthening freedom".

The emphasis on the security of the state can all too easily result in effective subordination of the rights and freedoms of the individual. This not only risks compromising the EU's common values in the abstract, it also leads to actual human rights abuse, which in turn is bound to remain unaddressed until the EU develops a proper capacity to address its own human rights shortcomings and challenges, including serious transgressions of Member States.

Amnesty International is convinced that the efficiency of EU JHA policies can only be achieved if respect for human rights and the establishment of common measures to safeguard individual freedoms are addressed directly as a core part of the AFSJ development. While this is beginning to be acknowledged in the area of asylum and immigration, largely governed by Community law, the balance between "freedom, security and justice" aimed for by the Hague Programme remains very fragile. But it is in particular in the field of judicial and police cooperation, mostly intergovernmental, that there is still a long way to go before justice and freedom, as well as security, are firmly entrenched in all the policies and actions of the EU.

Fighting terrorism and irregular immigration drive the agenda in the JHA field. Public concern and demand for effective action reinforce the repressive reflexes inherent in the political approach to these complex and indeed very serious issues. All the more reason to be concerned about the danger of human rights being reduced to politically correct references in speeches and policy documents.

The Finnish Presidency stated the ambition of the Informal JHA ministerial meeting in Tampere to be "to recapture the spirit of Tampere in the cooperation in justice and home affairs". That spirit is not only about more efficient cooperation. It is first and foremost about shared values being made real in a genuine area of freedom and security and justice for *all* people.

II. DEVELOPMENT OF AN EU AREA OF FREEDOM, SECURITY AND JUSTICE AND ITS INSTITUTIONAL LIMITATIONS

The ambitions of the Hague Programme are to consolidate the instruments that are under construction. This pragmatic approach is also the main problem: without a vision of a future coherent legal and political framework, it was bound to be difficult to work on the creation of a genuine European Area of Freedom, Security and Justice. At the time the Hague Programme was drawn up, the perspective of the constitutional treaty did provide a wider horizon and carried promises of greater coherence and new democratic legitimacy. Following the constitutional crisis, there is today a pressing need for alternative treaty adjustments and for fresh political impetus.

In its July 2006 Communications on the Hague Programme, the Commission has pointed out the need to transfer the responsibilities of the third pillar into the first pillar (Title IV TEC) so that more rapid and substantial progress can be achieved in the area of judicial and police cooperation. At the same time it considers it essential to extend the Community method to legal migration, as is already the case for all other immigration and asylum issues. This would end the unanimity rule in the Council for these matters and give a role to the European Parliament.

In addition, the Commission also points at the need to enhance the role of the European Court of Justice (ECJ) in freedom, security and justice policies. The rule that only the highest national courts can refer questions on interpretation of Title IV TEC or questions on the interpretation or validity of Title IV-based measures for preliminary ruling to the ECJ risks differing interpretations at the national level. As such questions may concern fundamental issues such as the refugee definition or human rights restrictions in the fight against terrorism, the matter is obviously not without importance. In order to reinforce the preliminary ruling system and to guarantee uniform interpretation of the already existing and future *acquis* under Title IV TEC, Amnesty International calls upon the Ministers to remove that restriction on the powers of the ECJ.

Given the deficiencies and limitations of the current system there is a growing body of opinion that real improvement could be achieved only if a transfer of competence encompasses all third pillar matters and instruments and if the changes affect not only the voting procedure within the Council but the whole decision making process, including co-decision by the European Parliament. The case for such institutional change is compelling indeed but Amnesty International believes that it needs to be firmly grounded in a legally binding human rights framework if it is to develop successfully and lead to substantial progress for human rights.

As of today, the EU still needs to develop such a framework. Giving the EU more competence and powers cannot in itself correct the human rights deficit inherent in the EU legal and policy framework in justice and home affairs. To achieve that, the EU Charter on Fundamental Rights must be given binding legal effect in the EU legal system as soon as possible, backed up by active steps to pave the way for EU accession to the European Convention on Human Rights.

III. OBSERVATIONS ON THE HAGUE PROGRAMME

A. Cooperation in criminal matters and counter-terrorism

As of today, the development of the EU's counter-terrorism policy and judicial co-operation in criminal matters are an illustration of how human rights still need to be properly built into the political and legislative agenda.

1. The fight against terrorism and its human rights deficit

The issue of terrorism has been at the top of the EU's political agenda ever since 9/11, resulting in action plans, communications and a raft of measures adopted by the Commission and the Council profoundly influencing the policies in the EU criminal justice field and beyond.

Following-up to its reactions to the attacks in Madrid and London, the Council recently renewed its commitment to reinforce EU coordination and capacity to pursue and investigate terrorist suspects across borders after the recently uncovered plans for attacks in London last August. The Presidency has stressed that this event calls for urgent action in the judicial and law enforcement fields and the Commission has already launched a Green Paper proposing new EU requirements for detection and surveillance, while security experts are to suggest further measures to tighten security at airports and on board aircraft.

Such declarations, proposals and action plans serve to manifest EU Member States' solidarity and determination in the face of one of today's major threats to democracy and human rights. However, they also have a knee-jerk character and many have questioned their efficiency. What is more, they have done very little to address, let alone integrate the issue of protection of fundamental rights in collective EU policies and legislation.

The EU counter-terrorism strategy adopted in December 2005 aimed at developing a more integrated approach to fighting terrorism. Cutting across the pillars of the EU, it included a prevention component along with protection and prosecution issues, in line with the key objectives set in the Hague Programme. Such commitments aimed notably to "redress the balance" towards a less repressive approach to the fight against terrorism and to develop a better understanding of the factors leading to terrorism, notably "home-grown" terrorism.

However, we note that the measures proposed continue to be mostly repressive in nature. On the prevention side for instance, control measures such as surveillance of NGOs, media or religious structures tend to take precedence over the discourse on social inclusion and multi-cultural and inter-religious dialogue. With regard to the issue of terrorist lists, where the courts have ruled that the EU has clear competence, the EU has conspicuously failed to establish adequate mechanisms to ensure the respect of the presumption of innocence and access to judicial remedies for people concerned.

At the same time, the EU continues to remain silent about ongoing questionable practices of EU Member States, both at home and across their borders. In a report published in February 2006, AI documented how UK anti-terror legislation violated the fundamental rights to liberty and fair trial, leading to actual abuse of individuals' human rights. AI believes that the EU cannot remain silent in the face of such documented accounts of sustained attacks on human rights by Member States. To do so risks undermining the credibility of the EU's human rights policy as a whole.

2. The EU's insufficient response to Guantánamo and US-led renditions programme

The EU institutions have been very slow in officially taking a position against Guantánamo and the Council has still failed to acknowledge and denounce the practice of renditions carried out by the US with European complicity, despite overwhelming evidence of serious human rights abuse carried out both in Guantánamo and in the rendition operations. EU rhetoric on the need to respect fundamental rights in the fight against terrorism thus rings increasingly hollow.

In reaction to US President Bush's recent statements admitting the existence of secret CIA prisons, the EU's anti-terrorism coordinator Gijs de Vries has expressed the hope that "this will be a step towards closure of Guantanamo". Mr de Vries said that "counter-terrorism must be firmly based on a framework of international human rights law" and added that "it is welcome to hear President Bush now saying that all prisoners will be treated according to the Geneva Conventions". At the same time, EU Justice Commissioner Franco Frattini called on all EU Member States to investigate the presence and operations of CIA secret detention sites in Europe.

While Amnesty International welcomes such statements, we note that they still fail to directly confront both the human rights excesses of US counter-terrorism policy and EU Member State's responsibilities in the US-led rendition programme. They fail to address President Bush's calls on the US Congress to pass legislation authorising the use of military commissions to try terrorist suspects, and seeking to shield US personnel from prosecution for violation of Article 3 of the Geneva Conventions – which guarantees humane treatment and fair trial in situations of armed conflict. The Council and Commission declarations also omit to address the US President's support for new special measures to legalise "alternative procedures" used by the CIA, including secret detention and interrogation methods which Amnesty International considers as amounting to torture or other cruel, inhuman or degrading treatment, despite US official denials.

Amnesty International believes that the recent declarations of the US President highlight the urgent need for a full independent commission of inquiry into all the US "war on terror" detention and interrogation practices, as well as criminal investigations into the conduct of any US personnel against whom there is evidence of involvement in crimes committed. It is crucial that the EU and its Member States support such initiatives, making clear that unfair trial procedures, indefinite executive detention or impunity for human rights violations are unlawful and can never be authorised.

Furthermore, it is more than ever time for the Council to back up the Commission's call to EU Member States and institutions to investigate their own responsibilities in CIA illegal operations and to fully cooperate with the ongoing European Parliament inquiry. This is particularly important as the EP Temporary Committee is embarking on the second phase of its work, focusing on determining the degree of involvement or complicity of Member States, public officials or persons acting in official capacity or EU institutions, in illegal detention, abduction, rendition, transfer and torture of individuals.

Amnesty International also urges the Council to consider the recommendations made by the Secretary General of the Council of Europe to fill the legal gaps that helped facilitate participation of European governments in the US-led rendition programme, in order to prevent similar abuse in the future. The Secretary General has proposed three areas of reform which could all be explored by the EU from a legal, policy and diplomatic perspective: 1) measures to improve oversight and accountability of national and foreign security services; 2) model human rights clauses to supplement agreements related to civilian and state aircraft; 3) standards for waiving impunity in cases of serious human rights violations.

Another concrete step would be for the Council to follow-up the European Parliament's recommendation to adopt a Common Position stating the absolute ban on the use of diplomatic assurances to allow the return of individuals to countries where they are at risk of torture or other cruel, inhuman or degrading treatment.

3. Human rights side-tracked in EU cooperation in criminal matters

Within the EU's own borders, EU policies and measures carried out in the context of the fight against terrorism tend to develop well beyond the strict issue of terrorism. This has direct repercussions on individual human rights. The ever more restrictive asylum and immigration policies feed the trend of criminalisation of foreigners and the feeling of alienation of whole communities in Europe. On the judicial cooperation front the developments are mostly prosecution-led, with rights protection ostensibly left behind.

While the implementation of the European Arrest Warrant encounters obstacles involving issues of national sovereignty, lack of mutual trust and human rights guarantees, there is still no parallel legal framework protecting the rights of suspects and defendants in criminal proceedings in the EU. At this stage, the delay in the adoption of the proposed framework decision, the poor quality of the latest compromise and the ongoing debate over the very existence of a legal basis for such an instrument have already seriously undermined any positive impact on mutual trust between judicial authorities and protection of rights across the EU.

Arduous negotiations around the adoption of the European Evidence Warrant and the Commission's cautiousness in engaging further on issues relating to fairness in gathering and admissibility of evidence are another illustration of the difficulties faced by judicial cooperation in criminal matters at EU level. Without the political will to create strong judicial mechanisms and legislation to protect the individual in criminal proceedings, Amnesty International believes that the efforts envisaged by the Hague Programme to facilitate access to justice, implement mutual recognition of judicial decisions and generally "strengthen freedom" will produce little result.

4. Trafficking in human beings and compliance with Council of Europe standards

Trafficking in human beings is another area that to a large extent falls under third pillar rules. Amnesty International is concerned that EU action and policy in this field have not developed in line with declared intentions, leaving mostly unexplored the "rights approach" to trafficking.

Amnesty International believes that the Council of Europe Convention against trafficking provides minimum standards to build an adequate protection framework to protect and assist trafficked persons. It urges the EU to become party to the Council of Europe Convention, in addition to its call on EU Member States to ratify the Convention. The EU should amend its existing legislation or adopt new legislation to ensure that EU standards at a minimum meet the standards of the Convention. This includes inter alia amending EU legislation with a view to granting a residence permit to victims of trafficking whether or not they cooperate with the competent authorities during criminal investigations, and including provisions to protect trafficked persons in the upcoming directive on return.

5. The role of the future Fundamental Rights Agency

The opposition of some EU Member States to the Commission's proposal to extend the monitoring role of the future EU Fundamental Rights Agency to judicial and police cooperation matters illustrates the reluctance to go beyond the limited existing EC framework and develop a genuine EU Area of Freedom, Security and Justice. In practice, such a restriction would preclude any possibility for the Agency to address the core human rights challenges in the EU today, including the implications of the fight against terrorism and the protection of individual freedoms in the sphere of policing and criminal justice.

6. Recommendations

Amnesty International calls on the EU and its Member States to:

- **Build on the EU's competences and powers to develop EU counter-terrorism strategies and measures with respect for human rights at their core;**
- **Adopt a strong instrument on procedural rights of suspects and defendants in criminal proceedings that will add value to the existing frameworks and improve rights protection and visibility across the EU;**
- **Become party to the Council of Europe Convention against trafficking and amend and develop EU law and policy in accordance with the standards and principles set out in the Convention;**
- **Enable the Fundamental Rights Agency to address third pillar issues;**
- **Pave the way for EU accession to the European Convention on Human Rights and push for the EU Charter on Fundamental Rights to be given binding legal effect in the EU legal system as soon as possible.**

B. Asylum and immigration

In their assessment of the implementation of the Hague Programme, Ministers of Justice and Home Affairs should not limit themselves to mere stock-taking but should take this opportunity to give a new impetus to the development of an effective Common European Asylum System (CEAS), and to place migrants' and refugee rights at the heart of the EU policies in the spirit of the 1999 Tampere Council.

The review of the Hague Programme necessarily implies a thorough evaluation of the instruments adopted in the first phase that are in the process of being implemented or have been implemented so far by Member States. Such an evaluation can only be useful if EU institutions and Member States are ready to draw the lessons from this exercise and accept that changes to existing legislation or even new measures may be necessary. Amnesty International calls upon the Member States to enter this debate with an open mind and urges the Council and the Commission to take appropriate action where needed in order to further underpin the respect of fundamental human rights and freedoms within the Area of Freedom, Security and Justice.

1. Quality of decision-making at the heart of the second phase of the Common European Asylum System

Amnesty International in its June 2006 memorandum to the Finnish Presidency already called on the EU institutions and the Member States to commit themselves to tackle structural deficiencies of the CEAS. In this respect, improving the quality of decision-making in asylum procedures should be a key priority of the second phase of the harmonisation process.

Common country of origin information

It is self-evident that reliable, independent and high quality country of origin information is a prerequisite to a qualitative decision-making process in asylum matters. Efforts should therefore be continued to establish a common independent country of origin information database at EU level, a necessary precondition to phase out existing information gaps and discrepancies between Member States. Such a common database would of course at the same time be an important tool to end the existing protection lottery in the EU.

In order to make correct decisions on asylum applications, country of origin information should be up-to-date, reliable and impartial. Here, NGOs and UNHCR often gather invaluable information that may not always be at the disposal of governmental bodies. Asylum bodies in the Member States as well as EU institutions should recognise the specific expertise of NGOs and UNHCR in this field. Amnesty International's worldwide network and frequent fact-finding missions to countries of origin often produce crucial information relevant to the assessment of asylum claims including the fate of human rights defenders. Amnesty International calls upon the Commission and the Member States to make full use of this potential and to involve NGO-expertise on a permanent basis in the development of common country of origin information.

Review of Dublin II

At the same time, the evaluation of the Dublin II regulation should be taken seriously. The evaluation of the system by the Commission is still ongoing and the final report is eagerly awaited. Meanwhile, in-depth reports by UNHCR and ECRE have revealed major deficiencies and flaws in the system that should be addressed, while Courts recently have suspended transfers under the Dublin Regulation based on insufficient guarantees in the responsible Member State as to a fair examination of the asylum application. Current practice in the Member States show that the strict application of provisions in the Dublin II Regulation concerning non-accompanied minors, reuniting family members and the definition of family member often cause hardship and unjustifiable situations. Clarifications of Commission Regulation No 1560/2003 providing guidelines for the interpretation and application of the Dublin II Regulation will undoubtedly contribute to the better functioning of the Dublin system, but will not end such unjustifiable situations.

Amnesty International therefore **recommends** to amend the Dublin II regulation itself, notably:

Article 6 on unaccompanied minors in order to prevent children from being transferred to another Member State except on the basis of family reunification and in the best interest of the child;

- Article 7 on reuniting families to include also persons who have been granted subsidiary protection status;
- Article 8 to permit family unification during all stages of the asylum procedure;
- Article 16 to ensure that the responsible Member State completes a substantive examination of the asylum application when taking back an asylum seeker, if the asylum seeker had not yet received a final decision;
- Article 2(I) to include a broader concept of family unit so as to take account of cultural backgrounds of refugees which may imply a broader concept of the family unit.

Detention

At the same time Amnesty International notes a worrying trend in most Member States towards more systematic detention for the purposes of applying the Dublin II Regulation. As a general rule asylum seekers should not be detained, and the detention of asylum seekers must be opposed unless they have been charged with a recognisably criminal offence, or unless the authorities can demonstrate in each individual case that the detention is necessary, that it is on grounds prescribed by law, and that it is for one of the specified reasons which international standards recognise may be legitimate grounds for detaining asylum seekers. Each asylum-seeker who is detained must be brought promptly before a judicial or similar authority to determine whether his or her detention is lawful and in accordance with international standards. The Commission and the Member States must take these concerns into consideration and amend the Dublin Regulation accordingly.

Amnesty International welcomes the call of the Finnish Presidency for a commitment to further develop the minimum standards adopted in the first phase. Extending the scope of the first phase instruments to third country nationals having subsidiary protection status would indeed be an important step forward. However, other problematic aspects, such as the insufficient guarantees for a legal remedy or the inadequate criteria for the safe country of origin concept in the asylum procedures directive for instance, should equally be remedied.

2. Return in compliance with international human rights

The return of third country nationals staying irregularly in Member States is clearly one of the key priorities in the developing asylum and immigration policy of the EU. The currently discussed common standards for return should fully comply with relevant international law such as the principles of *non-refoulement*, non-discrimination and proportionality and the prohibition of collective expulsions. Therefore, crucial aspects of the Commission proposal such as the risk of absconding, the exclusion of transit zones from its scope and excessive detention periods should be amended in order to bring the text in line with the abovementioned standards and to ensure the priority of voluntary return over forced return.

A credible common EU return policy should have the return in safety and dignity of third country nationals who no longer have or need a legal status in EU Member States as its most important objective. This implies an effective and qualitative EU-wide monitoring system of return practices including independent NGO-screening. A qualitative approach is urgently needed to counterbalance the current focus on increasing the numbers of persons sent back from EU territory.

3. The case for an EU-wide resettlement scheme

The launch of a pilot regional protection programme (RPP) has been announced to take place during the Finnish Presidency. Although not opposed as such to the idea of offering protection to refugees as close as possible to their country of origin, Amnesty International has already raised concerns as regards the Commission's intention to launch such a programme in Ukraine, Moldova or Belarus. It can be seriously questioned whether countries with such problematic human rights records and still themselves producing refugees, can be considered as offering the necessary guarantees to provide effective protection to persons fleeing persecution. The capacity of the countries willing to host such a programme to offer effective protection should be carefully evaluated and sufficient guarantees should be given to ensure that all obligations under international refugee law are being respected. In order to be meaningful, such evaluation and the eventual implementation of such a programme should be done in close cooperation with UNHCR.

Implementing RPPs necessitates an in-depth and continued debate on the need for expanding resettlement capacities in the EU. At present only a few Member States engage in resettlement activities in cooperation with UNHCR. The numbers of refugees resettled in EU Member States have been relatively small so far and should be increased. The EU and its Member States continue to have a global responsibility towards the world's refugees and should be willing to share the burden with the countries it asks to host such RPPs. Amnesty International therefore calls upon the Commission and the Member States to seriously engage in a debate on a future EU-wide resettlement scheme. Such a scheme should include significant numbers of refugees to be resettled and should give priority to the most vulnerable cases. Establishing a close link between RPP's and a genuine resettlement scheme at EU-level can only add to the credibility of the CEAS' external dimension.

To be clear, RPPs and resettlement schemes should never be seen as a substitute for the protection obligations flowing from the 1951 Geneva Convention and other relevant international instruments, including the ECHR. RPP's can never absolve Member States from their obligations under the Geneva Refugee Convention to offer protection to those refugees arriving spontaneously at their territory. It should be clear that countries willing to host an RPP cannot be considered as safe countries of origin nor as safe third countries and that both concepts must be distinguished.

4. Immigration crises at EU external borders need a rights-based response

During the past summer, Europe witnessed record numbers of immigrants arriving at the Canary Islands or trying to make their way to Italy or Malta. The recent initiatives of FRONTEX in the Mediterranean and Atlantic to curb the flow of irregular migrants from Africa are almost exclusively aimed at preventing third country nationals from entering EU territory. While joint sea surveillance, an operation known as Hera II, started in the beginning of August at the Canary Islands, a similar operation, Jason I, was announced by Commissioner Frattini to begin later that month to guard the shores of Italy and Malta.

Although Commissioner Frattini stated that the mentioned operations are not about building a "Fortress Europe" but about saving lives at sea, until today it remains unclear how many persons were intercepted through such actions and what happened to them. Parallel to the FRONTEX operations, the Spanish government convened an urgent meeting of the responsible Ministers in the Mediterranean Member States, while a technical group of 120 border experts discussed operational challenges of the ongoing crisis. The multitude of initiatives launched in a short time-limit indicates at the same time the serious nature of the Mediterranean crisis and the fact that the EU is still lacking an appropriate and global response to such developments.

Although Amnesty International recognises the pressing character of the ongoing crises and acknowledges that these events constitute a major challenge to the EU's immigration policy, we are particularly concerned that the right to seek asylum may not be upheld in these circumstances. Immigration measures should always respect obligations deriving from international human rights and refugee law. The developing EU policy on illegal immigration, at its southern borders as elsewhere, should be protection-proof and should be able to identify persons in need of international protection within the current mixed migratory movements. Member States involved in these operations should respect UNHCR Excom Conclusion No. 97 (2003) on Protection Safeguards in Interception Measures. According to these conclusions, interception measures should not result in asylum-seekers and refugees being denied access to international protection, and intercepted persons found to be in need of international protection should have access to durable solutions. At the same time officials implementing interception measures should receive specialised training, inter alia with regard to directing people expressing international protection needs to the competent authorities or to UNHCR. In order to avoid any major violations of refugee law Amnesty International calls upon the Member States and Frontex to guarantee that UNHCR is allowed to monitor these operations and that refugee law experts are systematically involved.

5. Managing migration comprehensively and from a human rights perspective

In the recently adopted EU Position with regard to the September 2006 UN High Level Dialogue on International Migration and Development, the Council stated that the ultimate goal of migration policy should be that people "migrate out of choice rather than out of necessity". Amnesty International fully supports this objective. Any EU immigration strategy should be comprehensive and include a clear perspective of tackling root causes of migration. However, so far little progress has been made to develop a concrete strategy.

The most recent initiative in this field, the Rabat Action plan adopted at the Ministerial Euro-African Conference on Migration and Development of July 2006, only partly addresses this issue. It enumerates a number of good intentions regarding possible cooperation on promotion of development and legal migration between the signatories to the action plan, but does not contain concrete measures. For instance, the plan does not lay any binding obligations upon the EU and its Member States with regard to access to the European labour market and mobility of skills. In the field of the promotion of development the plan is limited to very generally formulated objectives such as "improving economic cooperation", "promoting migration as a positive factor for development by encouraging concrete measures contributing to the reduction of poverty" or "promoting regional integration".

Neither the Rabat Action Plan or the EU Position on the UN High Level Dialogue on International Migration and Development imply a clear vision on how coherence between the various EU policies involved could be achieved. As long as EU strategies on migration management lack clear objectives and a global vision on tackling root causes of economic as well as forced migration, no real progress will be possible.

Amnesty International therefore calls upon the Member States and the EU institutions to pass beyond the mere rhetoric and engage fully and unconditionally in developing a concrete root causes strategy. The recent Commission initiative to set up a Commissioners Group on Migration Issues bringing together the Commissioners responsible for justice and home affairs, development and external relations, EU regions, education and social policy could potentially be a step forward. Amnesty International believes that such a strategy should also include a renewed discussion with a view to opening channels of legal migration into the EU, based inter alia on the 2005 Commission Policy Plan on Legal Migration.

Finally, migrants' rights should be placed at the core of EU policy. Third-country nationals staying or working illegally in the EU commonly face discrimination, xenophobia and economic exploitation. Their basic social and economic rights are often not respected and they remain without any legal or social protection. The dialogue on legal labour migration should be used to promote and protect the rights of all migrant workers and their family members irrespective of their legal status in the EU. Amnesty urges all Member States to ratify the 1990 UN Convention on the Rights of All Migrant Workers and Members of their Families without further delay, and to firmly incorporate migrants' rights in their national policies.

6. Recommendations

Amnesty International calls on the EU and its Member States to:

- **Put high quality decision-making at the heart of the second phase of harmonisation of EU asylum policy and involve NGO-expertise on a permanent basis in the development of common country of origin information within the CEAS;**
- **Amend those provisions of the Dublin Regulation that lead to unjustifiable hardship to asylum-seekers arriving in the EU;**
- **Seriously engage in a debate on a future EU-wide resettlement scheme;**
- **Develop EU policy on illegal immigration, at its southern borders as elsewhere, in a protection-proof fashion that is able to identify persons in need of international protection within the current mixed migratory movements;**
- **Engage fully in developing a concrete strategy on root causes of migration and take steps towards a policy on legal migration;**
- **Ratify the 1990 UN Convention on the Rights of All Migrant Workers and Members of their Families without further delay and to safeguard migrants' rights in their national policies.**