



Time for accountability

Amnesty International's
ten-point human rights programme for the
Slovenian Presidency of the European Union

January 2008



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AMNESTY INTERNATIONAL'S TEN-POINT PROGRAMME

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"The biggest human rights problem in Europe today is complacency."

Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe

When the European Community was transformed into the European Union in 1991, it opened up far-reaching political dimensions with democracy, human rights and the rule of law expressly named as pillars of the European project. A specific EU human rights policy was developed in little more than a decade, with a binding human rights clause in all agreements with third countries; a series of guidelines on death penalty, torture, human rights defenders and children; a code of conduct for arms exports; specific human rights dialogues with countries such as China and Russia; a Charter of Fundamental Rights; extensive annual reports on human rights; a yearly discussion forum and a special agency for fundamental rights.

In retrospect a remarkable achievement. No less significant was the process whereby the EU committed itself to raising the issue of human rights systematically in the multitude of contacts with third countries - and there is hardly any country in the world with which the EU does not have relations. Often this happens discreetly, at local level and is focused on individual cases of persecution or abuse. Those efforts can be highly effective, especially in smaller countries that are more sensitive to external pressure.

There was no lack of ambition, but a coherent human rights policy proved elusive. How do you achieve consistency? How are human rights mainstreamed in trade relations and development co-operation? How do you formulate concrete benchmarks to measure effectiveness? With so many crosscutting policy issues and interests it is hard enough at national level to ensure consistency in the shaping and implementation of human rights policy. At the complex EU level it is that much more difficult given the necessity of getting the member states to reach agreement and stick to it. The Commission and Parliament have some room to manoeuvre but for the Commission that is limited to community law, while the Parliament has no formal say in the broader foreign policy sphere.

The real decision-making power in EU policy is the prerogative of the Council, i.e. the Member States. This is the crux when it comes to the question how to shape a consistent, credible and effective human rights policy. Member States more often seem to embody the limitations rather than the aspirations of the EU's human rights policy. The prevailing divisions between Member States in foreign policy matters, in combination with their collective denial of domestic shortcomings, ensure that in practice human rights are all too easily sidelined.

On many issues it is obvious that only a collective effort will have effect: the safeguarding of international peace and security, energy provision, poverty eradication, economic growth and environmental and climate management. And yet national reflexes remain predominant. It is mostly the larger Member States that, when it comes down to it, are not prepared to subordinate their own foreign policy to the collective interest. The effect of deep divisions in EU foreign policy came dramatically to the fore with the invasion of Iraq in 2003, and the scars are still visible.

Four years later, with a Union that has grown from 15 to 27 members, the pursuit of national interests continues at the cost of the common interest and collective leadership in a starkly divided world. That manifests itself not least in relation to the major strategic partners China, Russia and the United States, each one a country with serious human rights problems. It took four years before the EU formally declared to the US that it would be better if Guantánamo were closed. Russia is becoming increasingly repressive but as a major energy supplier can afford to ignore EU critique. China knows that the trade and investment will keep on coming and continues with grave violations on a massive scale. The lack of conviction and collective strength affected the EU's response to humanitarian crises in the Middle East and Africa, and did not help efforts to give the United Nations a stronger role in the protection of human rights.

If foreign policy is handicapped because it may be difficult to find consensus, it is rather the opposite at domestic level where member states are united in trying to shield their own shortcomings. But where in foreign policy the balancing of different interests is unavoidably part of Realpolitik, internally it constitutes a problem: the denial of responsibility for own shortcomings affects credibility and with it the ability of the EU to implement an effective overall human rights policy.

In every respect, 9/11 marked a turning point. Up to then the EU's human rights policy could count on broad support - suddenly that support began to break down. Polarisation in international relations

hampered efforts to reform the United Nations and became a bone of contention in the new Human Rights Council. The US lost credibility by the way it went about its “war on terror” and caused serious damage to the international human rights framework built up painstakingly over decades. The EU stood powerless and was vulnerable to criticism because of its half-hearted attitude towards the US. It did not help that the EU itself made concessions in the fight against terrorism, not only through unbalanced legislation, but also by remaining silent when Member States overstepped the line.

The situation got worse when it became apparent that a number of Member States were themselves implicated in the illegal CIA activities of kidnapping and secret transportation to Guantánamo or to other countries for the purpose of torture – the so-called renditions. Despite convincing evidence of European complicity in this malpractice that was detailed in reports from the Parliamentary Assembly of the Council of Europe and from the European Parliament, Member States persisted in denying their own responsibility, and the Council remained silent. No preventive measures to stop these dubious practices of secret services from happening again, no consequences for those responsible, and no redress for victims. Illegal imprisonment, torture and disappearances could take place in and through Europe with impunity.

The climate in Europe has hardened further with increasing problems around the complex of asylum and immigration. Irregular immigration from Africa is forcefully dealt with in close co-operation with transit countries that are not overly concerned with human rights. Politicians cater to populism and xenophobia and the basic rights of suspects, asylum-seekers, and undocumented migrants seem less than fundamental. Fear feeds discrimination and causes a vicious circle where whole communities feel excluded, in turn fostering polarisation and radicalisation.

It all adds up to a depressing picture in which the EU as a “community of values” seems to be slowly slipping. Is it a fair picture? Yes and no. As an advocate for human rights worldwide, the EU has unmistakably lost credibility through the appeasement of partners and the denial of its own shortcomings and mistakes. That is serious but there is still a need for perspective: it does not mean that Europe should be cast together with the world’s worst human rights offenders.

There is also much to count on the positive side when considering how human rights have been directly and indirectly protected and enhanced by the EU: intervention in individual cases; an active and increasing involvement with conflict prevention and crisis management not only in Europe (Balkans) but also in Africa and Asia; unwavering support for the International Criminal Court and for an international arms trade treaty; the ongoing effort to abolish the death penalty, the way it has drawn attention to the practice of torture, and seeks to offer effective protection for human rights defenders. But in spite of all the good intentions, EU human rights policy nowadays lacks coherence and conviction.

Of course there are limitations to the possibility of protecting human rights always and everywhere, but what counts is how choices are made, how you ensure consistency and how you speak with one voice and use your collective strength when confronting the world’s great crises. Of course there will always be problems concerning one’s own human rights record, but to be credible, what matters most is the ability for self-reflection and self-correction.

Noblesse oblige. An EU that keeps those who want to join the club under pressure for years to respect human rights, cannot afford the kind of complacency that says that they no longer matter once you are in. An EU that continues to deny complicity in illegal CIA activities can hardly take the US to task. An EU that buys off its responsibilities and is not prepared to take in more than a mere fraction of the world’s refugees cannot really pride itself on solidarity with developing countries.

The EU has the potential to play a strong, credible role in the world and to fill the current leadership vacuum. Now that the institutional reform crisis is overcome, a more conscious orientation on the principles of democracy, human rights and the rule of law could well offer an important guide, and help to create that elusive resonance with Europe’s citizens. Unfortunately, too often at crucial moments we see rather the opposite. Relegating the Charter of Fundamental Rights to an annex of the new reform treaty and allowing opt-outs to individual Member States may be politically opportune, but it sends a poor signal not only to citizens but also to the outside world.

As the first of the new generation of Member States to hold the EU Presidency, Slovenia is well placed to strengthen the Union’s rights imprint by paving the way for a review of the EU’s overall human rights policy. In the post-9/11 world the US may have lost the moral high ground, but the EU is slipping too. That is troubling, but reversible. All the more reason for the EU to take a step that would leave critics as well as supporters no more room to question its genuine commitment to human rights. It is time for accountability.

Ten points for the Slovenian Presidency to shape a coherent and credible EU human rights policy

- 1 **Shape the EU's internal human rights policy to include an effective role for the Fundamental Rights Agency, complementarity with the Council of Europe, and coherence with the EU's external human rights effort; and support the establishment of a permanent Council structure on human rights in the EU.**
- 2 **Provide concrete follow-up to the inquiries regarding European involvement in renditions and keep all counter-terrorism activity firmly within the bounds of international human rights law; and oppose the use of diplomatic assurances that allow the transfer of persons to countries where they may be tortured.**
- 3 **Take steps to upgrade EU legislation to provide equal and effective protection against every act of discrimination on all grounds; and push for a truly integrated EU policy on Roma.**
- 4 **Ensure the shaping of the Common European Asylum System is based on full evaluation of the implementation of first-phase asylum legislation; and promote a more appropriate approach by Member States to the Iraq refugee crisis.**
- 5 **Ensure the rights of refugees, asylum seekers and migrants are fully respected in practice when enhancing cooperation with third countries on immigration and asylum; and apply a rights-based approach to EU policy on legal migration.**
- 6 **Develop a common approach for all neighbouring countries to improve the consistency and coherence of the mutual engagement on human rights; and maintain pressure on countries in the Western Balkans to bring war criminals to justice.**
- 7 **Place human rights at the core of the EU's engagement in regional partnerships with Africa, Asia and Latin America and the Caribbean.**
- 8 **Ensure that the EU leads the way in ensuring the UN Human Rights Council can deal with substantive concerns; and maintain the push for an international Arms Trade Treaty.**
- 9 **Use the guidelines on torture and human rights defenders in a complementary way; and initiate a comprehensive evaluation of the guidelines on human rights dialogues.**
- 10 **Initiate a comprehensive assessment of the EU's overall human rights policy in its internal and external dimensions and in the interconnections between security, development and human rights.**

1. The EU's internal human rights policy

The discussions around the EU **Fundamental Rights Agency** are a good illustration of both the potential and the limits of the EU's internal human rights policy. The Commission's proposal for the agency's multi-annual framework highlights important and pressing human rights issues in the EU as priorities for the agency's work in the five years to come, notably in the areas of discrimination, asylum and immigration. At the same time, it provides only a limited list of themes without reference to the European human rights framework or context. It has no room for flexibility or self-reflection to address other major human rights challenges such as those raised by the fight against terrorism that fall outside the strict remit of Community law, or wider EU policy and institutional questions. Thus, the proposed programme also highlights the EU's fragmented approach to human rights.

The involvement of EU Member States in the CIA **rendition** and secret detention programme, the human tragedies associated with **immigration**, the continued **discrimination** of Roma, are serious human rights issues that all relate to existing EU policies and instruments in the area of justice, security, social affairs and equal opportunities. The failure to respond adequately at EU level to such major human rights challenges or to even acknowledge the human rights violations at stake, illustrates the lack of an integrated approach to human rights, and the protection gaps that exist within the EU framework.

This is no longer something that can be dismissed by reference to limitations of formal competence. Politically it is no longer tenable to fence off internal human rights problems from EU-level accountability. This has also become clear in the context of human rights dialogues with third countries where the EU's credibility is increasingly being brought into question. The dichotomy that has become apparent in the EU's human rights policy requires it to reassess the objectives and impact of its activities and instruments, and to reshape its policies in order to ensure proper **coherence** and **accountability** for human rights in practice.

*The motto of the first EU day against **trafficking** on 18 October 2007 rightly proclaimed that it is "time for action" to end the human rights violations that are both the cause and result of trafficking in human beings. The recommendations put forward by the Commission, directly inspired by the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, are positive steps in this direction. They notably insist on the crucial issue of identification of victims of trafficking, and call on states to provide unconditional assistance to all persons (whether or not EU nationals) who may be victims of trafficking. While encouraging Member States to take action on the recommendations, the EU must also take direct steps to make these measures enforceable at EU level by reviewing and developing its legal framework and policies to consistently address the human rights issues arising at each stage of the trafficking cycle.*

The discussions on the agency have served to clarify and reaffirm the leading role of the **Council of Europe** for the protection of human rights in Europe and the need for complementarity between the two institutions. However, emphasis on the need to avoid overlap and ensure mutual respect is not sufficient. The ambition should be to build on the Council of Europe's work using the EU's unique political and legislative competence to implement at the EU level the standards and recommendations it has agreed to in the wider European forum.

Moreover, the EU should engage in a substantial dialogue with the Council of Europe about the challenges ahead, the priorities and how to shape a strong and coherent EU human rights policy as a key ingredient of the overall European human rights system. This means clearly and formally recognising and integrating the Council of Europe's expertise, but also organising systematic exchanges between the Council of Europe and the EU institutions, at all relevant political and operational stages of the EU policy process. In this context, it is becoming urgent to remedy the lack of a **dedicated Council structure** to deal with domestic human rights issues.

Amnesty International calls on the Slovenian Presidency to:

- ◆ shape the EU's internal human rights policy to include an effective role for the Fundamental Rights Agency, complementarity with the Council of Europe, and coherence with the EU's external human rights effort;
- ◆ encourage more effective EU action against trafficking and lift all obstacles to the EU becoming a party to the Council of Europe Convention against Trafficking;
- ◆ support the establishment of a permanent Council structure to deal with human rights in the EU.

2. Counter-terrorism and human rights

It is an evident priority for the EU to protect all persons against terrorism. The EU prides itself on reminding the US that the fight against terrorism can only be conducted within the bounds of international humanitarian and human rights law. And yet, instead of leading by example and developing policies that are in line with this position, the fight against terrorism and respect for human rights principles tend to be treated in practice as two separate issues.

The complicity of EU Member States in the US-led **rendition** programme involving kidnapping, denial of due process, torture and disappearance has irrevocably tainted all the EU's counter-terrorism effort. While the fight against terrorism has been and shall continue to be a priority for the EU and the Presidency in particular, the EU Council has yet to come to terms with the human rights implications of counter-terrorism measures and practices by the EU itself and especially by the Member States.

The Council's argument that the EU is not competent to address the issue of Member States' complicity in renditions is not tenable. Even if the EU is not a party to international human rights treaties, this does not exempt it from the requirement to respect fundamental rights as provided by Article 6 TEU. Moreover, the **prohibition of torture** is a peremptory norm of international law from which no derogation is possible. It is incumbent on all states to protect against, investigate and sanction torture, and there can be no doubt that this binds the institutional and individual actors at EU level.

*Ongoing denial and inaction by the Council and individual Member States therefore amount to a structural breach of their international and European human rights obligations that would qualify for examination under **Article 7 TEU**. This is aggravated by initiatives within the EU's sphere of competence that risk further undermining of the absolute ban on torture and other human rights obligations.*

Discussions at EU level on the use of **diplomatic assurances** to expel terrorist suspects to countries where they would be at risk of torture or other ill-treatment risk legitimising a practice that violates the *non-refoulement* principle. The growing body of evidence demonstrates that diplomatic assurances cannot protect people at risk of torture in the receiving state and thus represent nothing more than a way for states to circumvent their international obligations. Should the EU endorse reliance on diplomatic assurances to remove alleged terrorist suspects from its territory, it risks finding itself complicit in torture and other ill-treatment.

*A recent critical report by the Council of Europe's Parliamentary Assembly on the system of EU **terrorist blacklists** charged that it violates human rights and does not meet minimum standards of procedural protection and legal certainty. Adjustments already introduced are considered insufficient. In light of this report and recent European Court of Justice jurisprudence, the EU needs to ensure that the inadequacies of the system are addressed and that effective legal remedies are in place at all stages of the listing and de-listing process.*

It is clear that respect for international human rights obligations cannot be taken for granted in Europe. The above examples directly contradict the argument that these standards are implicit in all EU instruments and that any specific reference or elaboration on their interpretation by the EU would be superfluous. Notwithstanding the treaty reform process, it is necessary to revive the Hague programme ambition to strengthen the EU as an area of freedom, security and justice and in particular to re-launch discussion on binding EU instruments on the **rights of suspects** and the presumption of innocence.

Amnesty International calls on the Slovenian Presidency to:

- ◆ provide concrete follow-up to the inquiries regarding European involvement in renditions and keep all counter-terrorism activity firmly within the bounds of international human rights law;
- ◆ ensure respect for the absolute prohibition of torture and resist any attempt to establish an EU position legitimising the use of diplomatic assurances to facilitate the transfer of persons to a country where they may be at risk of torture;
- ◆ amend the EU terrorist blacklist system to include effective safeguards against arbitrariness at all levels of the process;
- ◆ in line with the Hague Programme, revive initiatives to protect human rights in the sphere of EU criminal law.

3. Racism and discrimination

When the preparations for the close of the “2007 European Year of Equal Opportunities for All” were nearly completed and speeches ready to applaud its success, real events of Roma communities being forcibly evicted and expelled from Italy showed the ugly reality of racism and discrimination in Europe. No less striking than the hate reactions was the governmental haste in issuing a decree directed against the victimised minority for the purpose of appeasing social anxiety. Such a response flies in the face of any genuine fight against discrimination and for social inclusion.

This grave incident was only the tip of the iceberg - the Roma community continued to suffer abuse all over Europe. Only recently the European Court of Human Rights has ruled segregation in education as discriminatory. The systematic violation of the right of Roma children to adequate education blights their future employment prospects and perpetuates the cycle of marginalisation and poverty for Roma people. When EU funds are being channelled to improve housing conditions of the Roma community, no notice appears to be taken that these new infrastructures are also segregated, Roma-only settlements.

Roma discrimination is finally beginning to be recognized as more than a social or an inequality problem, but as a human rights problem affecting millions of people in the EU. Evidence of outright segregation is troubling in its reminiscence of apartheid. And yet, expressions of concern and attempts at remedial policies notwithstanding, the EU's response falls dramatically short of what is needed to tackle the most massive human rights problem within its borders today. Only through ensuring the economic, social and cultural rights of the Roma community by a coordinated and consistent EU Roma policy, can the EU address this unacceptable situation.

In addition to adopting an effective EU Roma policy, further steps are needed more generally to ensure that the fight against racism and discrimination is effective in policy and practice. EU anti-discrimination legislation should be upgraded to cover all grounds and all acts of discrimination, with due consideration of all relevant international and European human rights standards. Non-discrimination legislation and policies should be adequately incorporated in all Member States without exception.

Reports of discrimination against the LGBT community in EU Member States continued through the past year despite European standards and case-law, and despite EU sponsored projects to fight discrimination against lesbian, gay, bisexual and transgender (LGBT) people. Again problems were encountered with the ban of EU sponsored gay pride marches and examples of “institutional homophobia”. The EU must hold Member States to account for the way they implement EU anti-discrimination legislation. It must also review and monitor its anti-discrimination policies so that EU projects are carried out in accordance with their objectives and effectively contribute to fight intolerance and prejudice.

The Slovenian Presidency has a very special opportunity to display EU leadership in human rights by addressing once and for all a long-standing violation within its own boundaries: the “**erasure**” of more than 18,000 people from the Slovenian registry of permanent residents in 1992, thousands of whom are still in this situation. By fully responding to Council of Europe and UN criticism and complying with the decisions of its own constitutional court, the Slovenian Government can show how EU founding values of respecting and protecting human rights ought to prevail over political and bureaucratic obstacles.

Amnesty International calls on the Slovenian Presidency to:

- ◆ take steps to upgrade EU legislation to provide equal and effective protection for every act of discrimination on all grounds;
- ◆ push for a truly integrated EU policy on Roma to make effective use of all available legal, financial and policy tools;
- ◆ restore the rights of the “erased” and adopt measures that grant full reparation for the

4. Asylum

Enthusiasm for taking further steps in harmonising EU Member States' legislation and practices appears to be lower than ever, and "asylum fatigue" has prevented any in-depth debate about the final destination of the EU's asylum policy since the adoption of the Hague Programme in 2004.

The consultation process launched by the Commission with its June 2007 Green Paper on the future of the **Common European Asylum System** (CEAS) was therefore very welcome in order to give a renewed impetus to addressing the flaws in the existing asylum acquis and creating a European system that offers adequate protection to those who need it. Following publication of a policy plan, the Commission's first proposals for the implementation of the CEAS by 2010 are expected by mid-2008. Awaiting such concrete proposals, the Slovenian Presidency could usefully build on the general debate as launched by the Commission's Green Paper and engage in a constructive and open dialogue with the various stakeholders, including NGOs, on the overall objectives of the CEAS.

During the Slovenian Presidency the results are due of important evaluations of the reception conditions and qualification directives. In the already published evaluation of the **Dublin Regulation** the Commission, in line with earlier reports by NGOs and UNHCR, expressed concern in particular about the increasing practice of detention pending Dublin proceedings, and encouraged application of the sovereignty and humanitarian clauses in the Dublin Regulation.

Ultimately, fundamental rethinking of the Dublin system is needed as long as widely diverging and restrictive practices in the Member States result in a *de facto* protection lottery in the EU. In the meantime the Slovenian Presidency should already launch the debate about a more flexible and protection-oriented application of the Dublin system. Vulnerable groups such as unaccompanied children, traumatized asylum seekers and the elderly should be assured of adequate reception conditions and procedural safeguards in the responsible state. Member States should commit to respect the principle that detention of asylum seekers is a last resort and should be excluded with regard to vulnerable groups.

Current plans to give law enforcement agencies in the Member States access to EURODAC's database for the purpose of prevention, detection and investigation of terrorist offences and other serious crimes are a matter of grave concern. EURODAC was conceived as an instrument to facilitate the determination of the state responsible for an asylum application lodged in one of the EU Member States. Turning it into an instrument of law enforcement and counter-terrorism risks stigmatisation of asylum seekers and irregular migrants as potential criminals.

The **refugee crisis in Iraq** and its neighbouring countries and the dismal response so far from EU institutions as well as individual Member States continue to demonstrate the shortcomings of the European asylum policy. Member States show great differences in the granting of protection, while contributions aimed at sharing the responsibility of the crisis either through financial and technical assistance, or through offering places for resettlement to the most vulnerable, remain seriously inadequate. Countries like Syria and Jordan have been particularly generous in hosting large refugee communities, but in the absence of significant efforts by other countries they started to take restrictive measures to stop Iraqis from entering.

It is necessary to revive the debate within the Council on the Iraqi refugee crisis so as to bring Member States to review their current restrictive policies towards the relatively small numbers of Iraqi refugees who reach the EU; to refrain from returning Iraqi refugees to any part of Iraq; and to ensure continued access to basic social services for those who had their applications rejected. In the spirit of responsibility-sharing, EU Member States should be encouraged to actively resettle Iraqi refugees from Syria and Jordan, as well as the most vulnerable Palestinian refugees who are still in Iraq or are stranded in refugee camps at the Syrian border.

Negotiations have yet to be concluded on the Commission proposal to extend the scope of the 2003 directive on the status of third-country nationals who are long-term residents, to beneficiaries of international protection. The Slovenian Presidency should taken these forward to ensure that refugees and beneficiaries of subsidiary protection enjoy the same rights under EC law as other legally residing third country nationals in the EU. This includes rights of free movement and residence in other Member States, recognition of professional qualifications and access to employment and self-employed activity.

Amnesty International calls on the Slovenian Presidency to:

- ◆ ensure that evaluation of the implementation of first-phase EU asylum legislation is duly taken into account in the process of shaping the CEAS;
- ◆ initiate agreement on a broader application of the sovereignty and humanitarian clauses in the Dublin Regulation pending fundamental changes to its underlying principles;
- ◆ promote a more generous approach by EU Member States to protection of refugees from Iraq arriving in the EU, and proper EU responsibility-sharing for the Iraq refugee crisis through resettlement and through increased financial and technical support to neighbouring countries.
- ◆ ensure that beneficiaries of international protection can enjoy the same rights as other legally residing third country nationals in the EU

5. Immigration

The way in which mixed migration flows are handled at the external borders of the EU remains an issue of major concern. Better policies and tools are needed at EU level to ensure **access to protection** at the borders of the EU as well as **return in safety** and dignity for those refused entry.

Operational measures must be compatible with Member States' obligations under international refugee and human rights law. Joint operations at external borders within or outside the FRONTEX-framework should always be conducted in close co-operation with UNHCR and should be evaluated regularly from a human rights perspective. Member States' responsibilities with regard to search and rescue as well as co-operation with third countries in accordance with international refugee and human rights law and standards should be clarified further.

At the same time, solidarity and **responsibility-sharing** is needed within the EU with those Member States confronted with particular pressures, such as Malta. Solidarity can materialise in different ways, including through financial and technical assistance. In addition, mechanisms of intra-EU resettlement for those found to be in need of protection could contribute to more equitable burden-sharing.

Co-operation with transit countries is increasingly seen as an indispensable part of a comprehensive immigration policy for the EU. Support for capacity-building in third countries, both with a view to curbing and preventing irregular migration towards the EU as well as for the development of properly functioning asylum systems in such countries, are deemed essential elements of "migration management". There is nothing improper per se about co-operation with third countries on migration, and indeed it offers opportunities to enhance the global protection regime. However, it should be predicated on respect for refugees' and migrants' rights, including effective human rights monitoring.

Refugees, asylum seekers and irregular migrants are regularly victims of serious human rights violations both in transit and destination countries. As the EU increasingly engages in co-operation with transit countries either through implementation of the European Neighbourhood Policy or on an ad hoc basis as with Libya, it can not turn a blind eye to the human rights realities in those countries. Protection of human rights of refugees, asylum seekers and migrants must not be sacrificed to the desire to prevent "irregular" migration towards the EU at all costs. Action Plans adopted in the framework of the European Neighbourhood Policy all include to various extents measures to increase capacity building in the field of immigration and asylum. Care must be taken to ensure that a constant and open dialogue is possible on the observance in practice of the rights of refugees and migrants while implementing the EU's "migration management" agenda.

*Proposals with regard to **legal migration** of highly skilled workers as well as a common set of rights for third-country workers have opened the debate on legal migration at EU-level and should be welcomed in general. Nevertheless, the EU should avoid discriminatory approaches whereby certain categories of migrant workers would enjoy easier access to basic rights than others. Access to fundamental rights, including the right to freedom of association, family unity, education, adequate housing, healthcare and other social services as well as rights relating to working conditions must be ensured for all migrant workers. EU legislation in this field should clearly reflect existing international and European human rights standards, in particular the UN Convention on the Rights of All Migrants and Members of their Families.*

Progress has been made under the Portuguese Presidency with regard to the adoption of the Commission proposal on common standards and procedures in Member States for the return of illegally staying third country nationals. As negotiations between the Council and the European Parliament continue, concerns remain with regard to the absence of effective guarantees for the priority of “voluntary departure” over forced return, possibilities to limit the geographical scope of the directive and excessive periods of detention prior to removal. Guarantees that people will not be left in limbo without access to basic social or economic facilities in the Member States should be reinforced.

Amnesty International calls on the Slovenian Presidency to:

- ◆ ensure that measures developed in the context of the EU's migration management agenda are fully compatible with Member States' obligations under international refugee and human rights law;
- ◆ ensure that the rights of refugees, asylum seekers and migrants are fully respected in practice when enhancing cooperation with third countries on immigration and asylum; mechanisms of the European Neighbourhood Policy should be used to monitor human rights performance in this field;
- ◆ apply a rights-based approach to EU policy and regulation on legal migration that is firmly rooted in existing international human rights law and standards.

6. The EU's neighbours

ENLARGEMENT AND WESTERN BALKANS

Amnesty International does not take a position on whether or not any candidate country should be admitted as a member of the EU, but understands that during the accession process candidate countries will benefit from EU encouragement and support for reforms. In striving to realize this potential, it is essential to address serious concerns that persist in all countries, in particular regarding the need to strengthen systems of justice.

The human rights situation in **Croatia** has improved in the past few years, but concerns remain about the failure of the authorities to fully address the human rights legacy of the 1991-95 war. In particular, perpetrators of war crimes and crimes against humanity, regardless of the ethnicity of the victims and of the perpetrators, must be brought to justice before Croatian courts in proceedings that meet international standards of fairness. Assistance programmes should pay particular attention to reform of the judiciary, with a view to ensuring that they are equipped to deal with complex war crimes cases.

In **Turkey**, problems persist in the criminal justice system, alongside ongoing threats posed to freedom of expression by the penal code, allegations of torture and ill-treatment during unofficial detention, and the non-recognition of the right to conscientious objection. The EU should focus attention on implementation of the EU guidelines on human rights defenders in Turkey, to ensure that they can carry out their work without intimidation or harassment as a key priority in promoting further reform.

In the broader enlargement perspective, the EU's critical engagement with the Western Balkans is essential to address the legacies of the 90s wars. **Impunity for war crimes** before both the International Criminal Tribunal for the former Yugoslavia (ICTY) that is to close down by 2010, and in domestic courts, remains a critical concern across the region, in particular in Serbia, Montenegro and Bosnia-Herzegovina. In Kosovo, the EU's planned mission needs to be able to help rebuild the local system and see to it that justice is administered in a manner that guarantees fair trials in all cases and full reparations to victims of crimes, including crimes under international law.

EUROPEAN NEIGHBOURHOOD POLICY

The extent of the EU's engagement on human rights with neighbourhood countries and the quality of the human rights commitment in the **ENP Action Plans** varies greatly from region to region, from country to country. There is no consistency in approach, no common diagnostics tools, and a lack of a common institutional framework, which has in turn led to clear differential treatment. This continues to cause problems for the EU particularly in seeking to enhance co-operation with ENP countries on human rights.

There has been a welcome trend to establish subcommittees with **Southern Mediterranean** ENP partners to specifically examine human rights concerns. It will be important for these mechanisms to be transparent and involve full NGO participation. At the same time, such subcommittees are not a substitute for discussing human rights concerns in full political dialogues with Southern partners. Appropriate fora also need to be developed to discuss individual cases, an important factor in the EU guidelines on human rights dialogues that is not included in these subcommittees.

Following on from the Memorandum of Understanding between the European Commission and **Libya** in July 2007 and the Council conclusions of October 2007, human rights must be an integral component of increased co-operation between the EU and Libya. The Council has mandated the Commission to present a proposal for negotiations on future co-operation, with human rights listed as a specific area of "mutual concern". The Slovenian Presidency should ensure that negotiations do include in particular co-operation on judicial reform, freedom of expression, and a means to address individual cases.

*Following the elaboration of a new **Central Asia Strategy** under the 2007 German Presidency, this region will hold particular importance for the Slovenian Presidency with a review on the implementation of the new strategy due in June 2008. Plans to hold human rights dialogues with all five Central Asian countries are welcome but there is real concern regarding the level of seriousness given to this initiative by both the EU and the five Central Asian countries. It is essential to develop separate benchmarks for each country, relevant to the different human rights situations. Above all, the EU should call for the ratification and implementation of all core international human rights instruments by the Central Asian states.*

MIDDLE EAST PEACE PROCESS

As a key player in the Quartet for the Middle East Peace Process and a provider of direct humanitarian and financial assistance to the Palestinian Authority (PA), the EU is in a position to ensure a human rights-oriented approach in all diplomatic and economic initiatives undertaken in relation to the situation in Israel and the Occupied Palestinian Territories (OPT). This should include putting respect for human rights at the core of the agenda in all discussions and holding all parties accountable to the same standards.

Israeli forces continue to commit grave human rights violations in the OPT, including through the increasingly stringent and damaging blockade, whilst hundreds of people have been arbitrarily detained by PA security forces in the West Bank and by the Executive Force in the Gaza strip, with reports of torture and ill-treatment. The EU should at all times push for measures that combat impunity and promote the rule of law and to ensure that the Palestinian population is not punished for the positions and actions of the Hamas de facto administration in the Gaza strip.

Amnesty International calls on the Slovenian Presidency to:

- ◆ develop a common approach for all ENP countries to improve the consistency and coherence of the mutual engagement on human rights;
- ◆ establish appropriate mechanisms with all Southern partners to address human rights concerns including individual cases;
- ◆ effectively implement the human rights dimension of the Central Asia Strategy;
- ◆ ensure that human rights are at the heart of negotiations on the Middle East peace process, and that all parties are held accountable to the same standards.

7. Human rights in regional policies

It has been an important aim of the EU's foreign policy to consolidate the central role that the values of human rights and democratisation have in relations with third countries. These values flow from the international legal obligations of the Member States as well as from EU treaty provisions that recognise human rights as common principles underpinning EU partnership and co-operation with third countries.

Similarly, the EU has made international commitments concerning the fight against **poverty**, making it pivotal in the EU's regional policies. Poverty is a multi-dimensional concept extending beyond limited monetary or capability definitions, holding an intrinsic relationship with human rights. Understanding poverty as a condition that is driven and perpetuated by the violation of human rights serves to reaffirm that human rights must be at the core of the EU's foreign policy agenda.

It is time for a fresh approach to bring this **link between poverty and human rights** into EU's regional policies, and thus to mark a new inroad into the discourse on accountability of the EU.

AFRICA

A challenge inherited by the Slovenian Presidency is that of implementing the new **EU-Africa strategy**, adopted at the December 2007 Lisbon EU-Africa summit. The strategy presents a number of important steps in the field of human rights, including strengthening African regional architecture such as the African Court for Human and People's Rights and the African Commission for Human and People's Rights; more effective co-operation on human rights in the UN Human Rights Council and other international fora; and working together to strengthen the International Criminal Court.

However, the strategy itself does not identify ways in which to improve inter-institutional coherence in foreign policy making from the EU towards Africa. To avoid the EU-Africa strategy remaining simply a checklist of important issues such as peace and security, development and trade, the process of implementation should be used to tackle the complexity in co-operation between the two regions.

The search for a red thread through these policies leads back to human rights, which provide an international legal framework, overarching in scope, and defining the rights and obligations in a partnership between states. Moving into the implementation phase of one more EU policy vis-à-vis Africa, it will be essential to build on the fact that this is, for the first time, a joint policy with the African Union, and to work with African governments to tackle the incoherence between different policy areas. Clear benchmarks at national and multilateral levels and a joint monitoring system and enforcing mechanism should be developed to track progress.

LATIN AMERICA AND THE CARIBBEAN

One of the key high level events of the Slovenian Presidency is set to be the **EU-LAC summit** in Lima in May 2008. It represents a clear opportunity to raise the need for progress in Latin American and Caribbean countries, on a number of key human rights issues including economic, social and cultural rights. Addressing violence and intimidation directed against human rights defenders, providing public security in vulnerable communities and access to healthcare, are particular priorities in the region.

As the summit will include an EU-LAC business meeting, the forum provides a setting for discussions not just on state obligations but also on business responsibilities for human rights. It will be an opportunity to remind states of their "duty to protect" also by properly regulating the human rights impact of companies, and ensuring access to justice for victims. EU Member States should monitor and regulate the human rights impact of European companies in third countries, and underline the responsibilities of companies, both in the EU and in LAC countries.

ASIA

The six months of the Slovenian Presidency will coincide with the final countdown to the **Beijing Olympics**, as well as a number of situations of severe current human rights concern in Asia, including in Myanmar, Pakistan and Sri Lanka. In ensuring that the EU provides a consistently strong response to these situations, the Presidency should not only work bilaterally with the countries in question, but also with influential partners in the region, such as India, China, and the ASEM and ASEAN groups, to ensure that regional relationships are used as effectively as possible to achieve progress on human rights in Asia.

Amnesty International calls on the Slovenian Presidency to:

- ◆ improve coherence between different policy areas in the implementation of the EU-Africa strategy in order to progress on the full spectrum of human rights in Africa;
- ◆ give the EU-LAC summit's focus on tackling poverty and social deprivation a clear rights-based approach;
- ◆ work with strategic partners in Asia to tackle the human rights crises in the **region**.

8. The EU as a global actor

UNITED NATIONS

On 18 June 2007 the **UN Human Rights Council** (HRC) concluded its first year of work by adopting a package of institution-building measures that provides a necessary basis for the HRC to start its work on substance. The EU has been influential in negotiating this package and in establishing precedents in how the HRC has conducted its work since its inception as the world's universal human rights body. This included a welcome encouragement of direct NGO participation in interactive dialogues.

Now the goal is to put the HRC to concrete work, with a coherent and comprehensive system of Special Procedures. This should balance the need for a predictable agenda (and therefore the ability for states and stakeholders to adequately prepare) with the flexibility to deal with the most urgent human rights situations. The **Universal Periodic Review** (UPR) is the main innovation of the HRC, and it holds the promise to be an important tool in addressing human rights situations across the board in all 192 UN Member States. However, the UPR is still a work in progress and it is important that good precedents and practices be developed right from the start. The EU, both through the Presidency and individual Member States, has a very important role to play in this.

Forty-eight countries will be reviewed each year, with the first round of UPR in April 2008 and the second round in May 2008. Seven EU member states will be subject to review during the Slovenian Presidency (Czech Republic, Finland, Netherlands, Poland, United Kingdom, France and Romania). It will be essential for the Presidency to work in particular with these states, alongside EU members of the HRC, to lead the way in developing good practice.

*The basis of the **Universal Periodic Review** will include preparation by the state concerned, an interactive dialogue and a report. Those states under review should be encouraged to organise broad consultations and public debate, and presentation of substantive national review documents, all with extensive opportunity for civil society participation. The Presidency, and other EU members of the HRC, should be sure to include human rights experts in their delegations to the UPR Working Group and to put forward human rights experts as rapporteurs. The EU should raise pertinent human rights issues and questions during interactive dialogues, and make sure that the reports adopted address directly and transparently key human rights issues in the reviewed countries, making serious recommendations to address shortcomings, with specific follow-up. The outcome documents should be used in all bilateral relations between the EU and third countries.*

In general, the EU still needs to enhance the **cross-regional approach** to its action in the UN, in order to overcome the problems of bloc mentality and the impact this has on the working environment at the HRC. The Slovenian Presidency should build on the positive experiences of the partnerships forged by the Portuguese Presidency around the special session of the HRC on Myanmar, and around the resolution on the death penalty at the General Assembly. As these experiences have shown, further development of burden-sharing between EU Member States not only allows the EU to expand the amount of work it can cover, but also greatly assists in building partnerships with individual countries around the world. Enough time should always be devoted to building these bridges, and co-operation at the UN must feature in all bilateral meetings with third countries.

Amnesty International calls on the Slovenian Presidency to:

- ◆ ensure that the EU leads the way in ensuring the UN Human Rights Council can deal with substantive concerns;
- ◆ secure meaningful practice for an effective Universal Periodic Review;
- ◆ build on the experiences of the Portuguese Presidency in burden-sharing and cross-regional partnerships.

CONFLICT PREVENTION AND CRISIS MANAGEMENT

The European Security and Defence Policy (ESDP) is becoming an increasingly important area of EU activity, with operations in the Western Balkans, Africa and Afghanistan. This will develop further in 2008, with a possible substantial operation in Kosovo to be put in place under the Slovenian Presidency. The integration of human rights, gender aspects and accountability into ESDP operations needs further deep consideration by the EU, in particular given the increase in scale and fields of activity. For example, **standards of behaviour** for personnel in ESDP missions were published in 2005, but there is still little evidence of how these standards are being implemented in practice in the field. All missions should have active knowledge of these standards and of the EU's own human rights guidelines, and should have qualified human rights personnel.

ESDP missions should not need to repeat many of the problems that have been manifested in UN operations, both military and civilian. This is particularly pertinent in planning for the EU mission in Kosovo, whose mandate should address the problems that have been experienced in the current UN mission, including issues of justice and impunity in cases of human rights abuses involving UN personnel.

The EU has been at the forefront of the push for an international **Arms Trade Treaty** (ATT), an issue that is now undergoing intense discussion at the UN. The EU and EU members of the Group of Governmental Experts (GGE) need to move quickly towards the negotiation of a global and effective ATT that will prevent irresponsible arms transfers and hold governments to their existing obligations. The ATT must include the "golden rule" that no arms transfers should be allowed that will be used or are likely to be used to facilitate or contribute to gross and serious violations of international human rights and humanitarian law.

It will be important to raise the issue in bilateral relations with third countries, especially those that still show reservations towards the ATT. In order to do so credibly, the EU should finally agree on a Common Position, which currently remains blocked in the Council, in order to make the Code of Conduct on Arms Exports legally binding.

Amnesty International calls on the Slovenian Presidency to:

- ◆ effectively implement relevant standards and guidelines within all ESDP operations, making sure that all missions have qualified human rights personnel;
- ◆ maintain the push for an international Arms Trade Treaty that includes as a minimum requirement the "golden rule" prohibiting arms transfers that may be used to violate human rights;
- ◆ push for agreement on Common Position to make the Code of Conduct on Arms Exports legally binding.

9. Human rights instruments in EU foreign policy

HUMAN RIGHTS CLAUSE

The EU has included the “human rights and democracy clause” in all co-operation and partnership agreements with third countries since 1995. However, how this “essential element” of the agreements is actually implemented in the EU’s relations with third countries remains very varied and, frequently, rather empty. The time has come to substantiate this commitment on human rights, referring to the international obligations of each party and including a clear procedure of consultation and a monitoring mechanism.

HUMAN RIGHTS DIALOGUES

The EU guidelines on human rights dialogues have been in existence since 2001 and provide an important framework for discussions on human rights with a number of key countries. This experience points at the need for comprehensive **evaluation**.

The human rights dialogue with **China** now has a mechanism for raising individual cases of political prisoners. The exchange between Chinese and European academics in the context of the legal experts seminars however has been in limbo after repeated Chinese refusal in 2007 to allow certain NGOs to participate. In the run-up to the Beijing Olympics, and with China still holding out on its stated commitment to ratify the International Covenant on Civil and Political Rights, this begs the question what progress has been made on freedom of expression, or indeed on the overall human rights situation in China where violations continue on a massive scale in a whole range of fundamental areas.

The human rights dialogue with **Iran** started in 2002 proved short-lived due to obstruction from Iranian side, and shows no signs of imminent revival. The human rights consultations with **Russia** have taken place biannually for several years now. The Russian authorities also have problems allowing for civil society input, refusing any involvement in meeting NGOs prior to the consultations, and cold-shouldering in particular the Russian human rights NGOs. Interestingly, the essentially reciprocal nature of the consultations is fully exploited by Russia that uses every opportunity to point out the EU’s shortcomings with regard to discrimination and treatment of minorities, and lately also regarding counter-terrorism.

Dialogues have recently opened with Uzbekistan and Turkmenistan, and further dialogues with the other Central Asian countries are also planned, in addition to there being many dialogue-type practices at a local level and in the context of association agreements. So capacity must dictate that the EU should focus on how it can have the most impact on human rights in third countries. The EU needs to develop, and use, clear indicators for success, and define criteria for initiation, cessation and resumption of all the dialogues, in order to ensure that a meaningful assessment can be made of their impact.

The Slovenian Presidency therefore comes at a critical moment in the development of the dialogues on human rights at which the overall impact of this process needs to be evaluated. In a recent report, the European Parliament has also drawn attention to the need for proper **evaluation**. In order for this to be meaningful, it must be properly resourced, given sufficient time and access, and be transparent.

GUIDELINES ON TORTURE AND ON HUMAN RIGHTS DEFENDERS

Since their adoption in 2001, there have been difficulties in the implementation of the EU guidelines on **torture** with regard to individual cases, because of the necessarily high bar set for verification that torture is taking place before the EU will demarche. A recent European Parliament report has also identified a number of issues relating to capacity and understanding of the guidelines in Member State missions and EC delegations which prevent them being implemented to a satisfactory extent in the field. In addition the report identifies the striking extent to which human rights deficiencies within the EU impact on its credibility in dealing with third countries on this matter.

In a recent study of the state of implementation of the EU guidelines on **human rights defenders**, Amnesty International identified very similar issues. In order to maximize the impact of the two sets of guidelines, and to tackle the obstacles to their implementation, the Council Working Group on Human Rights COHOM should seek to use them in a complementary manner, and so ensure that action is taken by the EU wherever necessary in a manner that is both practical and effective.

GUIDELINES ON DEATH PENALTY

Action against the death penalty during 2007 has necessarily concentrated on achieving a UN General Assembly resolution on a world-wide **moratorium** on executions. Following on from the successful result and the momentum that has been created, the EU can now build on this historic vote and on the new partnerships forged in the negotiation of the resolution. The Slovenian Presidency should therefore recommit to the focused work by previous presidencies on so-called "countries on the cusp", i.e. those countries that are either contemplating abolition or introduction of a moratorium, or threaten to reintroduce the death penalty or resume executions.

CHILDREN'S AND WOMEN'S RIGHTS

In addition to improving use of the 2003 EU guidelines on children and armed conflict, the Slovenian Presidency will have to begin implementation of the new guidelines adopted at end of Portuguese Presidency on children's rights. It will be important to send a clear message to those in the field on how these fit with existing guidelines, particularly those on children and armed conflict, and to develop understanding and capacity among all parties involved in their implementation.

*The Slovenian Presidency has indicated an intention also to explore how EU development programmes might more adequately address the needs of children and women affected by armed conflict. This joined approach is most welcome given the disturbing levels of **violence against women**, particularly in post-conflict societies around the world.*

Amnesty International calls on the Slovenian Presidency to:

- ◆ initiate a comprehensive evaluation of the guidelines on human rights dialogues, and develop clear indicators for the impact of each dialogue and criteria for initiation, cessation and resumption;
- ◆ use the guidelines on torture and human rights defenders in a complementary way, to ensure that necessary action is taken by the EU wherever feasible and useful;
- ◆ build on the momentum and partnerships formed around the UN General Assembly death penalty resolution, and recommit to focused work on "countries on the cusp";
- ◆ in the implementation of the guidelines on children's rights to make clear, especially for missions and delegations in the field, how they fit with existing guidelines.

10. Taking stock: accountability

For the EU's human rights policy to be effective, it should not only have principles and instruments and put them into practice, but it should apply them in a consistent and credible manner. The red thread of the analysis in this memorandum is that consistency is increasingly compromised because serious problems of human rights within the EU are essentially ignored. Which in turn affects the credibility - and thus the effectiveness - of the EU when promoting human rights externally. Compared to what was presented to previous presidencies this is different only in that the sense of urgency is growing.

Amnesty International argued already in 2006 that the EU should engage in a thorough **review of its overall human rights policy**. The last such effort dates back to the May 2001 *Commission Communication on the EU's Role in Promoting Human Rights and Democratisation in Third Countries*. Against the background of the impact of 9/11 on human rights, two principal arguments were advanced to warrant such an exercise:

- ◆ the increasingly problematic interaction of the internal human rights deficit with the external dimensions of the EU's human rights policy; and
- ◆ the interrelation between security, development and human rights, linked to the emerging concept of human security.

This proposition had some resonance with the Commission where it was discussed with Commission President Barroso. The 2006 Austrian and Finnish presidencies' joint operational programme contained a positive commitment 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"*. However, the interest shown was not translated into steps towards an overall appraisal of a human rights policy that is clearly past its sell-by date.

If anything, the situation today puts all this in even sharper perspective. The dossiers of counter-terrorism and immigration have become highly charged, and with racism and discrimination also increasingly recognised as hard core European problems, the domestic human rights question has definitely hit the EU's political agenda. On fundamental issues, that agenda now clearly prioritises security over freedom. Attempts to accommodate these concerns by reaffirming values and setting up mechanisms like the Fundamental Rights Agency have not only served to underline that there is a serious problem but also, cynically, highlighted the attitude of complacency and denial on the part of the Council and the Member States.

The EU's human rights policy is in need of a thorough overhaul, to take account of the changed international context, to address problems of coherence and to close the gap between the EU's global human rights aspirations and its domestic deficit. But this is not only a matter of reviewing and reviving a human rights ambition that after 15 years has run out of steam. It is also and above all a matter of **accountability** for what in some respects has become a travesty of a human rights policy. We have come to the point where the main element of consistency in the EU's human rights policy seems to be the ease with which the Council and the Member States turn a blind eye to their own responsibilities.

The end of the Slovenian Presidency will mark the 15th anniversary of the UN's 1993 Vienna World Conference on Human Rights where states made a - mostly forgotten - commitment to "drawing up a national action plan identifying steps (to) improve the promotion and protection of human rights". That should offer an overdue framework for EU Member States to break through the vicious cycle of complacency, and for the EU to commit to reassessing and revitalising its overall human rights policy.

Injecting human rights accountability is timely, for the sake of the effectiveness and integrity of EU policies, and for the sake of victims. The forthcoming trio of French, Czech and Swedish presidencies will preside over major changes in 2009 with the reform treaty due to come into force, a newly elected European Parliament and a new Commission. Reconnecting practice to values will resonate with citizens and can only help to create a more solid basis for the EU to enter the next cycle with confidence.

Amnesty International calls on the Slovenian Presidency to:

initiate a comprehensive assessment of the EU's overall human rights policy in both its internal and external dimensions and in the interconnections between security, development and human rights.





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