



## Critical review instead of complacency

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

**June 2008**

**AMNESTY  
INTERNATIONAL  
EU Office**







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# CRITICAL REVIEW INSTEAD OF COMPLACENCY

## AMNESTY INTERNATIONAL'S TEN-POINT PROGRAMME

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## Critical review instead of complacency

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### Amnesty International's ten-point programme for the French Presidency of the EU

Through the construction of the European Union, **human rights were embedded as fundamental values** of this shared effort. This "Union of values" gave a collective dimension to the international commitments on human rights that each Member State already had. However, there has not been a linear progression on assuming this joint responsibility on human rights: the level of political commitment varied -very frequently consensus was found at the lowest common denominator.

But looking at the overall progress of the last 60 years, the EU has developed policies and instruments to underpin its human rights commitments. As a guiding principle, human rights are to be mainstreamed in all policy areas of the EU. At operational level, there is a good toolkit of human rights instruments for external relations, including guidelines and human rights dialogues.

What then, is the problem? That these **words need to be put into action**. There is a gap between the institutional commitments and what is done in practice. The EU discusses freedom of expression and association in its human rights dialogue with China, but does not follow through by ensuring that discussion leads to practical change on the ground. After years of silence, finally the EU formally addressed the US on Guantanamo. But, where is EU's support to help the US in closing it?

This gap is growing because there is a **sense of complacency** when the EU talks about human rights. Instead of complacency, of satisfaction, there should be a sense of challenge. **Challenge to be consistent** in fully implementing its human rights commitments through political engagement and adequate resources. Human rights guidelines are important but their effectiveness is hampered if members states and delegations do not use them, due to lack of resources or political will. No less important is the need to develop benchmarks to assess what is the impact achieved by the human rights dialogues.

**Challenge to be coherent** and give continuity to the effort of mainstreaming human rights in all EU policies. Practice shows that human rights remain in a box, treated separately and perceived as an option. Mainstreaming means that the full range of human rights –civil and political as well as economic, social and cultural- are at the core of all relations with third countries, from development to counter-terrorism cooperation; from trade, to migration.

And the **challenge to be credible** so that when there are wrongs, the checks and balances of the system react and reinforce the lines that should never be crossed. These human rights lines are universal: for example the absolute ban on torture or equality of all before the law. In meeting the challenge of credibility, the EU and its members states need to put their own house in order: as a priority they must acknowledge and address any responsibility for facilitating the US-led rendition and secret detention programme.

These challenges require **vision and courage**. Inspiration can be drawn from the vision that France had when in 1789 it proclaimed the revolutionary principle of "liberty, equality, fraternity" for all. France can pride itself in this heritage and its role in promoting principles that, sixty years ago were endorsed in the "Universal Declaration of Human Rights".

In March 2008 before the UN Council for Human Rights, Rama Yade, Secretary of State for External Affairs and Human Rights, recalled France's historic role and the particular responsibility that it entails by stating that: " On the eve of the French presidency of the EU, France will once again be in the forefront [of the fight for human rights]".

Amnesty International calls on the French Presidency to honour this commitment and lead the EU to respect, protect and fulfil the human rights of all people in Europe and in the wider world.

## Ten points for the French Presidency and key challenges for a credible EU human rights policy

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- 1 **Promote ways to substantially address EU internal human rights issues and policies including support for an ambitious Fundamental Rights Agency and complementarity with the Council of Europe;**  
*and come forward with innovative suggestions for a Council permanent structure on human rights in the EU.*
- 2 **Collaborate with all investigations to disclose the full truth about European involvement in illegal practices of renditions and secret detention;**  
*and show political leadership that acknowledges the collective responsibility of the EU to address the human rights violations committed in the context of the illegal renditions.*
- 3 **Honour Council commitment to bring equality for all in all areas of life and revive the impetus for a comprehensive EU human rights instrument to cover all grounds and forms of discrimination;**  
*and launch the elaboration of a EU framework strategy on Roma inclusion.*
- 4 **Launch the debate on the need to bring EU asylum acquis in line with international refugee and human rights law and standards;**  
*and promote political agreement to eliminate the concept of “safe countries of origin” but adopt a legal remedy with suspensive effect against all first instance asylum decisions;*  
*and promote concrete engagements with respect to urgent refugee crisis.*
- 5 **Ensure the rights of refugees, asylum seekers and migrants are fully respected in practice when enhancing cooperation with third countries on migration and asylum;**  
*and give a clear political commitment in the Pact on Immigration and Asylum that ensure high standards of protection.*
- 6 **Take steps to ensure that the EIB adopts a robust due diligence system in respect to its lending and investment and all major public EU funds procurement includes social, environmental and human rights criteria;**  
*and ensure that EIB’s statement on environmental and social principles currently under review include the “do no harm” principle.*
- 7 **Ensure the coherence of the EU approach to Neighbourhood policy in terms of human rights commitments;**  
*and encourage human rights reforms in the enlargement process to bring war criminals to justice.*
- 8 **Build EU leadership in fostering cross-regional partnerships at the UN Human Rights Council to work effectively on UPR;**  
*and ensure adoption of Council’s common position to make the Code of Conduct on Arms Exports legally binding.*
- 9 **Bring a renewed focus to the implementation of all current EU mechanisms for the protection of human rights in third countries;**  
*and lead in making appropriate resource provision in implementing existing*
- 10 **Engage in a constructive debate on the human rights accountability mechanisms of the EU;**  
*and launch an overall review on the human rights policy of the EU both in its internal and external dimensions.*



## 1. The EU's internal human rights policy

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As acknowledged by the EU, discrimination, terrorism, migration and asylum are global issues that need a common EU response. However, what is often ignored is that the **human rights challenges and actual violations** associated with these policies are also present within the EU and deserve systematic and serious attention.

The EU's current limited approach to human rights protection within Member States risks leaving core human rights problems unaddressed. It is time for the EU to acknowledge its internal human rights deficit and take an integrated approach to human rights. The French presidency must send a clear message that **the EU is accountable for human rights within its territory** and that protection and promotion of human rights is at the forefront of their internal agenda.

The creation of a **new EU Agency for Fundamental Rights** (the Agency) presented the EU with an opportunity to develop a coherent collective policy on human rights in the EU. But instead of this, the multi-annual framework adopted earlier this year confirmed the reluctance of EU Member States to start such a discussion. Its provision to limit the agency's remit to issues only from the perspective of existing EC law is short-sighted. Support is required for an ambitious Agency that can guide the EU in shaping a strong EU human rights policy.

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

To this end, **the Council should create space** to at least ensure that the recommendations of the Agency are acted on, but furthermore to allow the EU to address cross-cutting and basic human rights issues. To be fully coherent, discussions at Council level should also include issues that do not fall directly under EU competence but clearly engage EU responsibility as a Union founded on human rights law.

The **Slovenian "erased"** illustrates the limits of an approach to human rights based solely on lines of competencies between EU and Member States. The "erased" are thousands of individuals who were illegally removed from the registry of permanent residents of Slovenia in 1992 and, as a consequence, were left with no legal status, or even stateless. They lost access to education, health care and many other human rights. By continuing to consider this persistent human rights problem as a purely national issue, for which the EU has no competence, the EU fails to accept any responsibility. This de facto allows for ongoing violations of its common shared human rights obligations within its territory.

In this respect, Amnesty International welcomes that discussions already started under the Slovenian presidency on the idea of creating a permanent **structure to deal with domestic human rights** issues. However, the risk of putting human rights in a separate 'box' is real. It is therefore essential that such a structure clearly endorses the need for the EU to improve and strengthen its human rights policy in a way that is inclusive and respected within the Council. It should work at the crossroads of the various EU policies, as a 'whistle blower' but also in a creative and prospective way to mobilise existing resources and instruments. One specific role could be to look at EU accession to international and Council of Europe human rights instruments as well as developing the EU's human rights policy in light of the Lisbon Treaty.

In the discussions over the proposed revised framework decision on combating terrorism, the argument was put forward that European human rights standards are implicit in all EU instruments and that any specific reference or elaboration on their interpretation by the EU would be superfluous. The reality clearly contradicts this argument: respect by Member States of their human rights obligations can not be taken for granted in Europe. The EU must therefore urgently revisit its legislative framework in the area of justice and home affairs to put it in line with international human rights law and to promote more human rights' protection in Europe. An EU area of freedom, security and justice can only be genuine and effective if based on a common ground of high level protection of human rights. The French Presidency must take the lead to ensure that this is reflected in the final report of the High Level advisory group on the future of European Home Affairs Policy ( **Future group**).

While the **Lisbon Treaty** does not modify the competencies of the EU, it provides for new opportunities to strengthen the human rights foundations of the EU, notably with the European Charter for Fundamental Rights becoming legally binding and the prospect of EU accession to the European Convention for Human Rights (ECHR). The French Presidency should start preparations for this to ensure that the changes can be effective as soon as the Treaty is ratified. This would be a clear indication that the EU is committed to work hand in hand with the Council of Europe to promote European human rights standards.

### Amnesty International calls on the French Presidency to:

- ◆ promote ways to substantially address EU internal human rights issues and policies at Council level;
- ◆ support an ambitious new Agency that can guide the EU in shaping a strong EU human rights policy;
- ◆ promote enhanced complementarity with the Council of Europe and the human rights provisions in the Lisbon Treaty, in particular the EU accession to ECHR.

### Key challenge for the French Presidency

**Come forward with innovative suggestions for a Council permanent structure on human rights in the EU to complement the Council working group on human rights (COHOM) dealing with the EU's external affairs**

## 2. Counter-terrorism and human rights

The way the EU deals with the fight against terrorism is illustrative of the shortcomings of its human rights policy. The EU and its Member States must ensure that measures taken to combat terrorism comply with their obligations under international human rights law, but still Amnesty International continues to note serious shortcomings. These are explicit in the way the EU deals with torture, detention, the definition of terrorism and related offences, the black listing of 'terrorists' and other key issues at the centre of the struggle to protect human rights in the context of counter-terrorism measures.

### CIA RENDITIONS AND SECRET PRISONS

The continuing failure of the EU and EU Member States to admit any responsibility for facilitating the **US-led illegal rendition and secret detention programme**, undermines the EU's credibility as a responsible actor in the global fight against terrorism.

The announcement in February 2008 by the UK Foreign Secretary that two flights carrying terrorist suspects had landed at the UK overseas territory of Diego Garcia in 2002 contradicts assurances given by the US to other European countries on the operation of their rendition programme in European airspace. These revelations clearly demonstrate the need to thoroughly investigate and follow-up all allegations of European involvement in the US detention and rendition programme. They come as a serious blow to the European governments' attempts to blankly deny any involvement and underplay the evidence brought forward.

Since late 2005, Amnesty International has reported on evidence indicating that the CIA ran secret detention centres – known as "black sites" – in Europe. Investigations by the Council of Europe have since confirmed that the CIA operated black sites in at least two European countries, which would have held several dozen high-value detainees – all victims of enforced disappearance, a crime under international law – in conditions amounting to torture or other cruel, inhuman or degrading treatment. Some of those held in Europe have now been transferred to Guantanamo, where they are facing capital charges in a system which does not guarantee them fair trial rights.

The failure of European States to recognise and rectify the conditions that allowed such violations of human rights in Europe means that there is no guarantee that such programs could not be resurrected in the future. Amnesty International recognizes that European states must have effective intelligence and security services. However, increased international cooperation in the fight against terrorism, combined with the broader powers and functions being assumed by the security and intelligence services, require improved scrutiny over the manner in which these powers are used. Safeguards should be introduced to enhance the ability of these services to combat terrorist threats while protecting human rights and the rule of law.



The French Presidency must show political leadership by unequivocally condemning the illegal practices of renditions and secret detention and by raising the issue with their US counterparts on every relevant occasion. It must encourage and collaborate with all investigations at national and European level in order to disclose the full truth about Europe's involvement in renditions and secret detention, and to bring perpetrators to justice. While Amnesty International has welcomed the European Parliament (EP) move to set a working group to follow-up on the work of EP temporary committee, this must not remain an *ad hoc* initiative but be part of a wider and official political commitment from all EU institutions.

The French Presidency must further monitor and **call for full reparation to victims** and accountability of anyone -including foreign agents- responsible for human rights violations, including crimes under international law such as torture and enforced disappearances. The French Presidency must also promote safeguards against the use of airspace or airport of the EU member States for unlawful detention and rendition purposes.

Amnesty International also believes that the Council should seek clarification on and follow-up of the European Commission initiatives, in particular the Commission queries to Poland and Romania about the possible use of their territories by the CIA for the **detention and transfer of terrorist suspects** and the follow-up envisaged to the questionnaire sent to EU Member States on the fight against terrorism and protection of fundamental rights.

### DIPLOMATIC ASSURANCES

A basic principle underpinning the international protection of human rights is the obligation for all states not to send anyone to any country where there is a real risk that they will be subjected to grave human rights violations, including torture or other ill-treatment. This was recently re-affirmed by the European Court of Human Rights in the case of *Saadi v Italy*.

But despite the clear message delivered by the Strasbourg Court, EU Member States not only remain silent on their role in the US led illegal rendition and detention practices, they have also not given up seeking diplomatic assurances to return third country nationals to places where they will be at risk of torture and other ill-treatment.

Amnesty International calls on the French presidency to prevent any EU move to legitimise this illegal practice and further promote Council conclusions that ban the use of diplomatic assurances to transfer people to places where they face torture or other ill-treatment.

Existing tension and, very frequently, contradictions between **the internal and external dimensions of EU policy on human rights** are reflected in the case of diplomatic assurances along with the EU guidelines on torture. The EU can not implement its commitments to eradicate the use of torture in third countries while at the same time returning individuals to countries where there is risk of torture. The EU needs to be coherent putting its own house in order internally in order to be credible, and to have impact in its dealings with third countries.

### GUANTANAMO

Consistency and concrete action from the EU is necessary where other third countries fail to abide by international law. The continued existence of the detention centre at **Guantánamo** Bay is a constant reminder of the failure to respect human rights in the war on terror. Real security from terrorist attacks can only be achieved by strengthening the human rights framework, not by undermining it by resorting to unlawful practices. The French Presidency should show urgently needed leadership at EU level by offering the necessary support to the US in the closure of the facility. It should ensure that a fair and transparent assessment of protection needs of all detainees is carried out in collaboration with an international body such as UNHCR. EU countries should engage in resettlement of released detainees in need of protection.

Whilst strengthening its capacity to fight terrorism, the EU must send a very clear message that all Member States must bring their laws and practices into line with international and European standards, rather than weakening this protection.

### Amnesty International calls on the French Presidency to:

- ◆ encourage and collaborate with all investigations at national and European level to disclose the full truth about European involvement in illegal practices of renditions and secret detention;
- ◆ call for full reparation to victims and accountability of anyone responsible for human rights violations in the context of renditions. France in particular should lead by example in line with its strong support to the new UN Convention on Enforced Disappearances;
- ◆ provide leadership to the EU in supporting the US in the closure of Guantanamo and in ensuring that a fair and transparent assessment of protection needs of all detainees is carried out in collaboration with an international body such as UNHCR.

### Key challenge for the French Presidency

**Show political leadership in the Council by drafting a Council statement that acknowledges the collective responsibility of the EU to address the human rights violations committed in the context of the US-led illegal renditions**

## 3. Racism and discrimination

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Despite major improvements in the international and legal frameworks, discrimination remains one of the most serious and pervasive human rights abuses in Europe today. Millions of people are still subject to exclusion, poverty, ill treatment and violence because of who they are, what they are presumed to be or what they believe in.

At EU level, the **Equality and Race Directives** were remarkable achievements at their time. Today, the EU must build on this legacy and adopt a comprehensive human rights instrument to cover all grounds and forms of discrimination.

The announcement that the Commission will limit the scope of the **new anti-discrimination directive** to extend protection to one ground only is therefore very disappointing. This once again highlights a fragmented approach to human rights, inconsistent with Member States obligations under European and international law, as well as with EU proclaimed objectives of tackling multiple forms of discrimination and preventing discrimination in all areas of daily life, including in access to education, housing and health.

Social exclusion and **discrimination of Roma communities** is a well-reported fact in spite of legal and policy instruments available at European level to fight them. Patchy responses so far have been unsuccessful in achieving structural and sustainable improvements in the situation of Roma in crucial areas such as access to housing, education and employment. Public acknowledgement of this failure has started to show the obvious. First, there is no integrated and comprehensive EU policy specifically targeting discrimination against Roma. Second, the EU has a collective responsibility to address one of the most extensive and complex human rights problem within its territory.

However, words have not been matched by effective action and change in a comprehensive manner. In this regard, the aim must be the full realisation of the economic, social, cultural, civil and political rights of Roma people through the adoption of an **EU Framework Strategy on Roma Inclusion**, in accordance with international and European human rights instruments. This strategy should ensure that Roma communities are protected from discrimination, have equal access to education, healthcare and housing, and are empowered through participation in the civic and economic life of their countries. The French Presidency should ensure that such a strategy is developed to fully reflect the European dimension of Roma discrimination and that adequate priority is given by Member States and institutions to the resolution of this problem with a comprehensive and cohesive approach.

### Amnesty International calls on the French Presidency to:

- ◆ honour the Council commitment to bring equality for all in all areas of life and adopt a comprehensive human rights instrument to cover all grounds and forms of discrimination;
- ◆ lead on the collective responsibility of the EU in addressing social exclusion and discrimination of Roma communities.

### Key challenges for the French Presidency

- √ **Take the opportunity of the upcoming discussions on the new directive to revive the impetus for a comprehensive EU legal instrument to cover all grounds and all forms of discrimination.**
- √ **Launch the elaboration of an EU Framework Strategy on Roma inclusion with involvement of Member States and Roma communities.**

## 4. Asylum

After the European Commission's consultation process on the **Common European Asylum System (CEAS)**, the French Presidency is now faced with the important task of starting the discussions on the **second phase instruments**. The Commission should present its policy plan in the area of asylum legislation before the start of the French Presidency and proposals on amending the first phase instruments are expected still this year. The result of the first phase of harmonisation is not entirely positive. The minimum standard approach so far has not resulted in a harmonised system based on high standards of protection. In fact, some aspects of the EU asylum acquis even fail to meet standards set in international human rights and refugee law and consequently risk undermining the international protection regime rather than enhancing it at EU level.

The Commission proposals about the **Dublin Regulation, EURODAC** and the Reception Conditions Directive announced for September will be indicative of how seriously the EU wants to tackle the various human rights concerns with regard to the first phase instruments. In particular the Qualification Directive and the Asylum Procedures Directive contain concepts at odds with international human rights law or that risk undermining an asylum procedure that gives effective protection to those in need of it. This must be eliminated or adjusted. Recent research carried out in a limited number of Member States by UNHCR on the implementation of the Qualification Directive already confirms some of the concerns raised by Amnesty International and other NGOs.

Recent research on the treatment of **Iraqi asylum seekers** within the EU show that Member States' practices continue to vary considerably. Whereas the recognition rate for Iraqi asylum seekers in 2007 reached 85 % in Germany and 82 % in Sweden, protection was granted in only 30 % of the cases in Denmark and even 12 % in the UK. At the same time, some Member States have been negotiating readmission agreements with Iraq, while Amnesty International's assessment is that conditions for a sustainable return in safety and dignity to any part of Iraq are still not in place today.

Reports on the application of the Dublin Regulation in the Member States and on the implementation of the Reception Conditions Directive have already shown a long list of problematic areas. As the protection standards in the EU Member States differ significantly, the Dublin system continues to generate fundamentally unfair consequences for asylum seekers arriving in the EU. This requires, for instance, substantial changes to key provisions in the Dublin Regulation with regard to family reunification and unaccompanied minors. Also required would be the inclusion of additional parameters such as recognition rates and the level of reception conditions in other Member States *inter alia* for vulnerable asylum seekers.

The French Presidency should seek political engagement from all EU Member States to ensure that **Dublin transfers** are always carried out in a protection-oriented and non-discriminatory manner. The current protection lottery within the EU is simply no longer acceptable and must be addressed effectively. An important measure would be to provide for an effective legal remedy with suspensive effect to every asylum seeker subject to transfer to another EU Member State in application of the Dublin Regulation. Secondly, States should effectively make use of the sovereignty clause in the Dublin Regulation when this is necessary from a protection perspective and with the consent of the asylum seeker.

Besides legislative harmonisation, **practical cooperation** between the Member States is commonly understood as an instrument to diminish divergences between Member States in decision-making.

Amnesty International believes that such cooperation should primarily focus on the need to improve the quality of decision-making within the CEAS so as to ensure protection is granted to those who need it. This will require in the first place the production, collection and application of reliable, independent and high quality country of origin information that is common to all Member States in asylum procedures.

The creation of a **European Asylum Support Office** that offers guarantees with respect to transparency and democratic control could be useful to overcome current problems of coordination of the existing and highly non-transparent informal structures established between the Member States. Such an office could also play a key role in monitoring the implementation of the EU asylum acquis. It could have added value in coordinating resettlement activities of Member States as well as developing best practice in dealing with vulnerable groups in asylum procedures such as unaccompanied minors or victims of torture or traumatised asylum seekers. Additionally, it could shape training programmes for decision-makers in the Member States.

The French Presidency should take the discussion on the extension of the scope of the **long term residence directive to refugees** and beneficiaries of subsidiary protection forward. Failure to reach agreement on the need to extend the scope of the directive to both categories of beneficiaries of international protection and to include the duration of the asylum procedure in the calculation of the five years of legal residence needed to obtain long term residence status would be simply unacceptable within a CEAS. Beneficiaries of international protection under EU law are full members of European societies and should be recognised as such. There is no reason why they should remain excluded from the status of long term resident under EU law.

Current plans to give law enforcement agencies in the Member States access to the **EURODAC** 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 not only risks stigmatisation of asylum seekers and irregular migrants as potential criminals, it also may put asylum seekers and their family members who are still in the country of origin at risk as a result of the likely expansion of data stored and the increasing cooperation of law enforcement agencies in the EU with their counterparts in third countries.

Finally, as the EU continues to receive only a small fraction of the world's total number of **refugees**, Amnesty International urges the French Presidency to promote the use of resettlement as one of the durable solutions to refugee situations at EU level in a spirit of solidarity and responsibility-sharing. In particular with regard to the Iraqi refugee crisis, 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 stranded in dangerous conditions in refugee camps at the Syrian border.

#### Amnesty International calls on the French Presidency to:

- ◆ work to bring the EU asylum acquis in line with international refugee and human rights law and standards;
- ◆ promote a protection-oriented approach towards practical cooperation in the field of asylum. A European Asylum Support Office should be based on the principles of transparency and democratic accountability and UNHCR-involvement;
- ◆ promote a broadened application of the sovereignty and humanitarian clauses in the Dublin Regulation to mitigate the discriminatory effects of the Dublin Regulation;
- ◆ promote a significant engagement in resettlement of refugees as a concrete expression of solidarity and responsibility-sharing.

#### Key challenges for the French Presidency

- √ **Promote that all Member States agree that in the second phase instruments there is no concept such as safe countries of origin but that there is a clear obligation to provide a legal remedy with suspensive effect against all first instance asylum decisions.**
- √ **Promote concrete engagements at EU-level with regard to resettlement of Palestinian refugees stranded at the border between Iraq and Syria as well as other vulnerable refugees from Iraq.**

## 5. Migration

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Although the debate at EU level is focusing on the legal migration of high skilled workers, the EU continues to step up controls at its external borders. According to official Commission statistics some 34,000 irregular migrants were intercepted during operations coordinated by **FRONTEX** in 2006-2007 while over 9,000 irregular migrants were diverted back, without specifying their final destination. While FRONTEX is increasingly becoming the central factor in the EU's 'integrated border management', ill-treatment of migrants and asylum seekers at Europe's borders continue to be regularly reported.

The increasingly worrying reports of how **migrants and asylum seekers are treated at the EU's external borders** illustrate the need for better policies and tools at EU level to ensure both access to protection and return in safety and dignity. As a recent example, there were incidents at the Greek-Turkish borders where **Afghan asylum seekers**, including minors, were prevented from entering Greek territory and pushed back into the territorial waters of Turkey in makeshift boats. Amnesty International received similar reports of migrants being pushed back at the Italian maritime borders for instance.

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. Independent monitoring of such operations could not only function indirectly as an additional guarantee for the individuals concerned but should also support border control authorities in complying with their obligations under international refugee and human rights law, as well as European law while carrying out their duties. Member States' responsibilities with regard to search and rescue as well as cooperation 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 for those Member States confronted with particular migratory pressures. 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 migration 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 based 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 it can not turn a blind eye to the human rights realities in those countries.

The envisaged **agreement between the EU and Libya** will also cover cooperation in the field of migration control and asylum. Given the poor human rights record of Libya, it has not ratified the Geneva Refugee Convention and still has no asylum procedure in place, the extent to which solid guarantees for the respect of human rights of asylum seekers, refugees and migrants will be included in the final text, will be crucial to prove its added value from a human rights perspective.

Protection of refugees', asylum seekers' and migrants' human rights must not be sacrificed because of 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 migration 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.

The Rabat follow-up **Ministerial Conference on Migration and Development** that will be organized under the French Presidency should aim for a balanced set of concrete measures that are firmly rooted in the framework of international human rights principles and standards, as embodied by the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Amnesty International encourages the States involved to effectively promote the development of rights-respecting, transparent and non-discriminatory legal channels for migration, that offer opportunities for all categories of workers, including so-called low-skilled or semi-skilled workers. Cooperation aimed at addressing irregular migration flows should be protection proof and include concrete mechanisms to ensure access to international protection to those in need of it as well as concrete proposals to address the root causes of forced migration.

## The Pact on Immigration and Asylum

The conclusion of a Pact on Immigration and Asylum is one of the main priorities of the French Presidency. As the discussion on the content of the Pact is ongoing, its added value to and coherence with the existing global approach on migration and the European Comprehensive Policy as already defined at EU level remains somewhat ambiguous. Also its impact remains uncertain. If the Member States are to adopt such a pact, Amnesty International believes that it should be used as an opportunity for Member States to express their political commitment to develop a coherent policy that fully respects the rights of migrants, asylum seekers and refugees and is firmly rooted in international human rights and refugee law and standards. It must reaffirm the need to reconcile the legitimate aim of the Member States and the EU to control external borders with the right of refugees and asylum seekers to access a fair and satisfactory asylum procedure and of migrants to be treated in full respect of their fundamental rights. In addition, a modern and forward looking EU migration policy requires rights-respecting legal channels of migration as well as coherent policies that tackle root causes of migratory movements. If anything, the Pact should aim to revive the Tampere Spirit and secure the political commitment of the Member States to put human rights back at the heart of the EU's migration and asylum policy.

### Amnesty International calls on the French Presidency to:

- ◆ ensure that rights of refugees, asylum seekers and migrants are fully respected in practice when enhancing cooperation with third countries on migration and asylum;
- ◆ ensure that measures developed in the context of the EU's migration management agenda are fully compatible with Member States' obligations under international human rights law and standards;
- ◆ ensure that EU's border management guarantees access in practice to a fair and satisfactory asylum procedure, along with a monitoring system that is effective and independent.

### **Key challenges for the French Presidency**

- √ **Give a clear political commitment in the Pact on Immigration and Asylum to ensure that EU policies on asylum and migration maintain high standards of protection.**
- √ **Ensure that any future EU-framework agreement with Libya is based on full respect of international human rights and refugee law and must include mechanisms for permanent evaluation of migration control instruments.**
- √ **Ensure that human rights are at the core of the October Euro-Africa Ministerial Conference on migration and development while discussing legal channels for migration in a transparent and non-discriminatory way.**



## 6. Economic actors and human rights

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Under international human rights law **states have duties to protect people** within their jurisdiction against human rights violations or abuses, including those involving companies or any other economic actor. **Companies** have –at a minimum- the responsibility to respect human rights and should exercise **due diligence or the “do no harm”** principle to avoid causing or being complicit in human rights violations.

However, states frequently fail to uphold their duty to protect due to multiple reasons, including lack of understanding or capacity, as well as lack of political will. The failure of states to comply with their duty to protect from the negative impacts of economic actors results in a serious human rights protection gap which can result in serious human rights violations.

This **protection gap** involves various actors with different **accountability** mechanisms. There are the “home states” (where multinational companies are headquartered), the “host states” (where the human rights impact of these companies’ operations is felt) or the companies themselves. Proper accountability needs adequate mechanisms and the international human rights framework has not kept pace with the impacts of economic actors in a globalized context.

Companies’ activity has both positive and negative impacts on human rights. Amnesty International has documented a wide range of human rights violations associated with corporate activity, including violations of the rights of indigenous peoples, violations of the right to an adequate standard of and violations of the right to health. Company operations are also associated with violations related to security operations, including extra-judicial executions, torture and ill treatment. However, the action or inaction of companies can have a negative effect on any and all human rights.

The relationship between the state and the company often has important **intermediary actors** – both public and private- from the financial or insurance sectors. They play crucial decision-making roles but their impact on human rights has frequently not been accounted for. Increasingly financial institutions are being held accountable for the human rights impact of projects they support financially. This is particularly the case when they should have known about the negative impact and when it is demonstrated that they failed to take due diligence measures.

In this context, the EU should take steps to ensure it does not contribute to human rights violations through the actions of its economic and financial institutions. Thus, investment and public procurement of EU funds should be consistent with EU human rights responsibilities.

There are a number of areas where the EU could act but Amnesty International would like to highlight two in particular: the role of the **European Investment Bank (EIB)** as an investor and lender, and **EU public procurement**. In both cases robust policies and mechanisms need to be put in place to ensure that EU funds do not support, contribute to or benefit from human rights violations.

### THE EUROPEAN INVESTMENT BANK (EIB)

The EIB is the long-term lending bank of the EU, having as shareholders the 27 EU Member States with their finance ministers sitting in the Board of Governors. It enjoys its own legal personality and financial autonomy. Acting outside of the EU, the EIB is a major lender to development projects around the world (140 non-EU countries with €8 billion in 2007). Billions of Euro are provided as soft loans to non-EU countries. In spite of its commitments to EU policies that uphold and respect human rights, the EIB currently does not have effective due diligence processes in place to ensure that it is not supporting projects or activities that will cause human rights harms. The EIB’s different practices on due diligence depending on whether the loan recipient is an EU Member State or a third country highlights one again the lack of coherence between internal and external policies of the EU.

Specifically, the **EIB** lacks:

- Legally binding standards to properly assess their social and environmental impact.
- Effective systems to ensure that people affected by projects it supports have access to adequate information, are able to participate in consultations and express any concerns in all matters and not only on environmental ones.
- Independent mechanisms to allow people or communities whose rights are negatively affected to bring forward their grievance and access redress.

The EIB should incorporate these critical elements into a due diligence framework to ensure its investments and loans do not contribute to human rights violations. Moreover, ensuring that EIB funding has effective human rights protection mechanisms can play a vital role in entrenching respect for human rights amongst the economic actors the EIB supports.

As one of the four main EIB shareholders, the French Presidency has a role to play in improving the accountability of the EIB.

## PUBLIC PROCUREMENT POLICIES

Under EU law regulating large public purchases, contracting authorities can consider criteria such as environmental impact or community benefits whilst ensuring the best value for money for their contracts. Therefore, what is now required is the political will to put in practice what the legal framework already foresees: to include environmental and social criteria -including human rights- in all public procurement (services, goods and works) involving EU funds.

### Amnesty International calls on the French Presidency to:

- ◆ Ensure that the EIB adopts and implements a robust due diligence system in respect of its lending and investment in order to ensure that it does not contribute to or benefit from human rights violations or abuses and promotes a culture of respect for human rights through all its lending and investment.
- ◆ Ensure all major public procurement involving EU funds includes a social, environmental and human rights criteria

### Key challenge for the French Presidency

Ensure that EIB's statement on environmental and social principles currently under review include the "do no harm" principle to avoid causing or being complicit in human rights violations.

## 7. The EU's neighbours

### ENLARGEMENT AND WESTERN BALKANS

The EU has a special responsibility to raise human rights concerns with those countries that plan one day to become members and to offer concrete assistance on necessary reforms. This includes both official candidate countries and potential candidate countries. Whilst Amnesty International does not take a specific position on whether individual countries should join the EU, the encouragement and support for reform given to countries by the EU during the accession and pre-accession process is a clear benefit.

The French Presidency should oversee this process, and ensure that these issues are raised not only as part of the official accession negotiations, but also during bilateral and cross-regional dialogues.

A prime example of how the EU can use its leverage within the accession process is to push **for an end to impunity for war crimes throughout the Western Balkans, in particular in Croatia, Serbia, Montenegro and Bosnia-Herzegovina**. Political concerns should not supersede issues of justice for past war crimes, which present the EU with a completely new challenge when dealing with these particular accession countries.

In the context of the accession negotiations, Amnesty International has particular concerns that should be raised with negotiating countries. The slow pace of prosecutions for war crimes in **Croatia** and the apparent ethnic bias of investigations, most involving only Croatian Serb perpetrators, need urgent attention. There are fears regarding harassment and intimidation of victims and witnesses, as well as journalists reporting on war crimes. Croatian authorities have not made accountability for war crimes a clear political priority. The EU has an obligation to ensure that Croatia tackles its justice system and ensures justice to all victims of war crimes. 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.

In **Turkey**, over the past year, violations of human rights have increased whilst measures to combat them have remained insufficient. In addition to implementing current legal reforms, urgent legislative reform must be adopted. In particular, there are long held concerns over violations to the right to fair trial, especially for those prosecuted under anti-terrorism laws, and that unacceptable hurdles are placed in the way of human rights defenders. Amnesty International has repeatedly called for Article 301 of the Turkish Penal Code to be abolished, however restrictions to freedom of expression go far beyond Article 301 and there are many more articles that require revision. The EU can continue to have a significant impact on these reforms and on human rights improvements in the country.

In general, there also needs to be greater coherence between human rights monitoring and review in countries prior to and following accession. The great attention to human rights that takes place prior to accession is currently lost at the moment of accession.

## CENTRAL ASIA

The start of the French Presidency marks one year since the adoption of the **Central Asian Strategy**. During this year, there has been little progress in implementing the human rights commitments within the strategy or demonstrating that human rights are an integral part of the deepening relationship.

While serious human rights violations in the region continue with virtual impunity, both parties seem more interested in privileging economic relations rather than promoting and protecting human rights. Beatings by law enforcement officers are still routine. Torture and other ill-treatment in detention continue to be widespread across the region. Evidence obtained through torture or ill-treatment is often admitted in court. Terrorism and national security are frequently used as an excuse to clamp down on dissent. Corruption in law enforcement and the judiciary contributes to a climate of impunity. Potential witnesses are not willing to testify against police officers for fear of reprisal against themselves or their families.

Statements made during the Slovenian Presidency that human rights are at centre of relations are welcome - but it will be for the French Presidency to demonstrate this commitment through concrete actions. The Central Asia Strategy foresees regular and result-oriented Human Rights Dialogues with all five Central Asian countries. These dialogues are the only human rights-specific tool contained in the strategy. For the credibility of the strategy, it is essential as a first step that a round of dialogues with all five countries are held under the French Presidency. These should be accompanied by concrete and country-specific benchmarks for progress on human rights – on the basis of existing Guidelines and on implementation of international obligations and commitments.

In addition, the French Presidency should ensure that the highest international pressure continues to be placed on **Uzbekistan** concerning the Andizhan massacre. Three years after the killing of hundreds of people, when security forces fired on mainly peaceful demonstrators, the authorities continue to refuse to hold an independent, international investigation into these events. The EU has paid particular attention to this issue in the past, and it is essential that while this has not been resolved, EU policy remains both consistent and coherent. The EU must not change its policy merely for political convenience.

## RUSSIA

Relations with Russia present the EU with a particular challenge of competing priorities and strategies. Amnesty International continues to receive cases of curtailment of press freedom, violations of the right to freedom of assembly, restrictions on the right to freedom of association, occurrences of violent racist attacks, serious harassment of human rights defenders and allegations of torture in police detention. The situation in the North Caucasus continues to be a matter of particular concern.

Unfortunately the EU has failed to demonstrate a true commitment to raise these issues with the Russian authorities at all levels and in all discussions. It is clear that human rights are rarely discussed in a serious, considered manner outside the formal human rights consultations. These consultations have also failed to deliver on any real follow-up of urgent individual cases, and it has still not been possible to organise a seminar with civil society in conjunction with the consultations.

The French Presidency should therefore use the opportunity of the **EU-Russia summit** to place human rights clearly on the agenda at the highest level.

## EUROPEAN NEIGHBOURHOOD POLICY (ENP)

The extent of the EU's engagement on human rights with neighbourhood countries through ENP and the quality of the human rights commitment in the **ENP Action Plans** vary widely from region to region and from country to country. There continues to be little 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 while seeking to enhance co-operation with ENP countries in terms of human rights.

The EU has lately shown a lack of coherence particularly in its approach towards Southern ENP partners. It is essential that negotiations with Libya make it clear from the outset that commitments on human rights and engagement to discuss concerns at different levels is integral to any future framework agreement. It is also essential that any upgrade in relations with Israel be accompanied by an increase in the opportunity to engage on human rights issues. There has been a welcome trend to establish subcommittees with Southern Mediterranean ENP partners to specifically examine human rights concerns. However, only three countries have human rights subcommittees with the EU. At the same time, such subcommittees are not a substitute for discussing human rights concerns in all political dialogues with Southern partners, and appropriate fora need to be developed to discuss individual cases.

### Amnesty International calls on the French Presidency to:

- ◆ use the opportunity of the enlargement process to encourage human rights reforms in candidate and potential candidate countries, in particular with regards to impunity for war crimes in the Western Balkans and freedom of expression in Turkey;
- ◆ ensure that strengthening relations with Central Asian countries are indeed founded on respect for human rights, and that the human rights commitments in the Central Asia strategy are fully implemented;
- ◆ demonstrate that human rights have a core role in EU-Russia relations, and have further implications than discussions at the human rights consultations;
- ◆ ensure the coherence of the EU approach to Neighbourhood Policy in terms of human rights commitments, and set up human rights subcommittees for all ENP countries.

### Key challenges for the French Presidency

- √ **Complete the first round of full dialogues with all Central Asian countries during the Presidency, and ensure continued pressure on Uzbekistan concerning investigation of the Andizhan events;**
- √ **Make human rights a specific agenda point of the EU-Russia summit.**

## 8. The EU as a global actor

### EU ACTION IN THE UNITED NATIONS

The EU has given a necessary priority to making sure that the Human Rights Council (HRC) develops into an effective body for the promotion and protection of human rights globally, able to deal with urgent country situations and with an effective and coherent system of special procedures. The EU has been particularly instrumental in defending the mandates and independence of special procedures, and in promoting the inclusion of non-governmental organisations within interactive dialogues.

However, the HRC is still a relatively new institution, and is still building its procedures. Due to this new situation, EU working methods have not always been the most efficient or effective. There is still a need for the EU to build on successful cross regional partnerships over the past year, and provide essential and timely outreach to other regional groupings and individual countries. This is particularly the case in the work of the HRC on the situation in Israel and the Occupied Palestinian Territories, where sustained and strategic attention to achieving consensus is needed.

The first two rounds of **Universal Periodic Review (UPR)** within the HRC are now complete, and as France takes over the Presidency of the EU, it has just undergone the review procedure itself. The Presidency should build on this experience, both in terms of conduct during the review and during consultation procedures. Whilst it is inevitable that the process cannot be perfect from the start, it is essential that lessons are learned quickly so that best practice and precedents can be established. The French Presidency is also in a unique position to demonstrate best practice on follow-up on UPR, including extensive post-review consultation with civil society and publicising the review outcome. It is expected that they will take the concrete recommendations that emerged from the UPR process seriously. There is a role to be played by further EU co-ordination in future reviews to enable concrete input from EU Member States into all sessions and on all relevant issues, including during reviews on other EU Member States.

The adoption of a resolution on a moratorium on the **death penalty** at the 62nd session of the UN General Assembly was a significant milestone towards world-wide abolition of this ultimate cruel, inhuman and degrading punishment, and violation of the right to life. The resolution also demonstrated that a moratorium is a concern shared by countries in all regions. Following the EU's crucial role in the cross regional partnership that promoted this resolution, it will be the task of the French Presidency to follow this up on behalf of the EU at the 63rd session. The French Presidency will also be tasked with organising the first European Day against the Death Penalty on 5 October. This follow up should be based on the closest co-operation with all co-authors and co-sponsors right from the outset. Working with these partners, the EU should concentrate on calling on those states that retain the death penalty to implement the resolution through the introduction of a moratorium as a step towards abolition, and ratification of the 2nd optional protocol to the ICCPR. Follow up should also ensure that implementation of the resolution continues to be monitored and discussed at subsequent General Assembly sessions. The clear international momentum towards abolition should not be lost.

### MIDDLE EAST PEACE PROCESS

The achievement of lasting peace in the Middle East is a central aim of the EU, through both its financial assistance programmes and foreign policy. The EU has also stated the need to address political, economic/humanitarian and security issues simultaneously, and is in a position to ensure a human rights

oriented approach in all diplomatic and economic initiatives. The French Presidency will have a particular role to play in this, through participation in the Quartet, through bilateral relations with Israel and the Palestinian Authority, and crucially also by facilitating regional dialogue through the Euro-Mediterranean Partnership.

The French Presidency should continue to push for measures that combat impunity and promote the rule of law, and should ensure that all parties are held accountable to the same standards, so that all human rights violations are condemned in the highest terms. It should also promote the inclusion of a human rights agenda into a revived peace process.

It is clear that there is a need for a new strategy on **Gaza**. The French Presidency should clearly confirm agreement with the Commission that the continuing blockade constitutes collective punishment, and should remind Israel of its obligations under international human rights and humanitarian law. There should be an unequivocal call for the lifting of unnecessary, disproportionate and arbitrary restrictions on the movement of Palestinian people and goods into and out of Gaza. The EU should specifically discuss the matter of Gaza, along with wider issues of the peace process, with the rest of the Quartet, the AHLC and as a priority with Euro-Mediterranean partners.

### ARMS CONTROL

It is ten years since the EU adopted the **Code of Conduct on Arms Exports**, in which Member States pledged not to approve arms exports in certain instances, including where the sale would violate the exporting State's commitments under the UN Charter or specific arms control agreements. The Code, however, is not a legally binding instrument and not all Member States have introduced the Code or referenced it in their national laws. After agreement on a draft Common Position, its adoption has been delayed due to problems in the Council. France is in a unique position during its Presidency to finally allow for the adoption of the Code as a Common Position, and to ensure that this is not linked to any discussions concerning the arms embargo on China, which should be clearly focussed on the human rights situation in the country. The efficiency of the Code is dependent not only on making it legal but also in closing the loopholes and attending to its weaknesses

Adoption of the Code would also greatly assist the EU's advocacy for an international **Arms Trade Treaty** (ATT), which will reach another critical phase at the UN during the French Presidency. A global and effective ATT is essential to ensure that no arms transfers are 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 (the "golden rule").

### EUROPEAN SECURITY AND DEFENCE POLICY

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. The new **EULEX mission in Kosovo** was launched under the Slovenian Presidency, and is due to become fully operational at the start of the French Presidency.

Amnesty International urges the French Presidency to ensure that the **EU-led mission in Kosovo** is subject to much **greater scrutiny and accountability** than its predecessor, the United Nations Mission in Kosovo (UNMIK). UNMIK's lack of accountability in the areas of justice and police is well known, and this has had an impact on the credibility of international institutions in Kosovo. Unless the EU ensures strict accountability mechanisms for any violations committed by its staff it will fail to build respect for human rights and rule of law in Kosovo. This is particularly important as the EU-led mission will have broad responsibility over public administration, reform of the criminal justice system and prosecution of war crimes. The seriousness with which the EU takes this issue will also impact on other ESDP operations in the future.

In general, ESDP missions should pay particular attention to making sure that the problems manifested in many UN operations, both military and civilian, are not repeated. ESDP operations should also all have qualified human rights personnel and have active knowledge of EU human rights guidelines and standards of behaviour for personnel.

The French Presidency will also oversee both the advanced planning for the future External Action Service, and a revision of the current European Security Strategy, expected in December. Amnesty International asks the Presidency to use this opportunity to create greater coherence in the EU's external actions, in particular between ESDP missions and longer term Community action in third countries, to ensure greater strategic planning and coordination of the human rights aspects of all external actions. The EU should also guarantee that human rights considerations are not neglected in favour of any increased emphasis on the security agenda during the Presidency.



### Amnesty International calls on the French Presidency to:

- ◆ further develop efficient and effective working methods at the Human Rights Council, in particular in order to foster cross-regional partnerships and to establish the best possible practice for the UPR;
- ◆ build on the strong cross-regional partnership behind the UN resolution on a moratorium on the death penalty, to enable effective follow-up at the 63rd session and beyond;
- ◆ play a central role as a member of the Quartet and in bilateral relations in order to ensure a human rights oriented approach to the Middle East Peace Process, and in particular to help forge a new Strategy for Gaza, to put an end to the extensive violations of human rights and human suffering;
- ◆ continue strong advocacy at the UN for the negotiation and adoption of an International Arms Trade Treaty that includes the 'golden rule' as a minimum;
- ◆ ensure that the new Kosovo ESDP mission and all other ESDP missions address the issue of accountability for international staff, and do not make the same mistakes as past UN missions;

### Key challenge for the French Presidency

**Ensure the swift adoption at the beginning of the Presidency of the Common Position to make the Code of Conduct on Arms Exports legally binding, and address the loopholes in the current Code of Conduct.**

## 9. Human rights in EU foreign policy: instruments and regional policies

Recent years have seen many positive developments in the EU's efforts to promote and protect human rights in its external relations. Its growing role as a global actor, with engagement in conflict prevention and crisis management activities, at the UN Human Rights Council, and in support of International Criminal Court and the UN Human Rights Council has been significant. Amnesty International has also welcomed the steady development of the 'toolbox' of human rights instruments in the EU's Common Foreign and Security Policy (CFSP).

However, the constant challenge remains the less high profile, but critical, task of putting these **commitments into practice**. This requires political engagement, appropriate levels of resource, but also integration with other areas of policy.

Enabling the EU to be coherent in its implementation of commitments on human rights requires collective confidence and determination between all Member States to address the major external problems together. Whether confronting humanitarian crises such as in Sudan or the Middle East, directly or through the UN, or in dealings with key strategic partners like China, Russia and the US, the EU is strongest when it speaks with **one voice in protection of human rights**.

A **human rights clause** in an agreement is an important step, but of itself cannot bring about change on the ground if there are not clear benchmarks on when, and how, to use it. There also needs to be a willingness to use it when the conditions are met. The decision to do so must take account of, but not be subordinated to, other considerations such as trade, energy and security. Supporting and safeguarding the full range of human rights – civil and political, as well as economic, social and cultural – calls for common principles to be enshrined in all areas of the EU's relationships with third countries, from development, to counter terrorism co-operation; to inter-cultural dialogue.

Similarly, a comprehensive set of **human rights guidelines** is important, and demonstrates the EU's intention to use its relations with third countries to good effect on human rights. However without the appropriate resource to back it up, and demonstration of political will to do so from Member States' ministries of foreign affairs, these commitments cannot, and are not, being fully put into practice. This compromises the EU's perceived commitment to the objectives it has set itself, and therefore the effectiveness of the toolkit as a whole. Consequently, Amnesty International urges the French Presidency to lead the EU responsibly, by addressing implementation of existing human rights commitments, both in member state capitals and in missions and delegations abroad.



## HUMAN RIGHTS DIALOGUES

Human rights dialogues encompass many of the key challenges on coherence. Even where a human rights dialogue effectively provides a forum for frank exchange on human rights issues, there will be little imperative for the interlocutor to follow up on it if the EU's policy in other areas does not reinforce the conclusions of the human rights discussion. This points towards a critical need for a renewed effort on mainstreaming, ensuring that all parts of the Council - including preparatory working groups- and Commission, take up their responsibilities on human rights as a core part of their work, and not an optional extra. Only in this way will the EU truly be able to fulfil its commitments in the EU guidelines on human rights dialogues to ensure that human rights are addressed at every opportunity.

The EU has reached a point in the development of the dialogues on human rights at which the overall impact of this mechanism needs to be properly evaluated. The dialogue with **China** is now relatively well established, but there is no clear picture on what, if any, change for the human rights situation in that country the process has brought. The lead-up to the Olympics has not been used by the EU and other international actors as the effective hook it might have been, to call for urgent improvements in key areas such as reform of the criminal justice system, and freedom of expression and association and to ensure a positive human rights legacy of the Games.

Though the dialogue with **Iran** has stalled, human rights consultations with Russia are taking place biannually, albeit without effective civil society input, and more recently, dialogues with Uzbekistan and Turkmenistan have started. As the French Presidency presses forward with the development of further dialogues with central Asian countries, there are clear questions around the EU's capacity to manage all these dialogues. In order to prioritise areas where it can have most impact, the EU needs to develop, and use, indicators for success. Civil society is ready to work with the institutions in this process. It should define criteria for initiation, cessation and resumption of all the dialogues. While flexibility and pragmatism are essential in order to adapt to difficult circumstances and interlocutors, consistency in the conduct of the dialogues is important. It makes clear that the EU takes this tool seriously and values it as a mechanism for improving human rights in third countries, rather than as an end in itself.

## OTHER HUMAN RIGHTS GUIDELINES

It is an ongoing challenge for each successive Presidency to implement the set of EU guidelines on human rights in external relations. As set out above, turning these written commitments into concrete actions requires consistent pressure, and understanding of how these mechanisms should operate, at all levels. The number of guidelines has steadily increased in recent years, and the comprehensive set now includes guidelines on children and armed conflict; children's rights; the death penalty; human rights defenders; human rights dialogues; and torture and other forms of inhuman and degrading treatment. In addition, the EU has adopted guidelines on International Humanitarian Law with relevance for the protection and promotion of human rights.

However, this steady increase has not been accompanied by the necessary increase in resources to implement the actions within the guidelines, by training for those responsible for implementing the guidelines, or by sufficient awareness raising of their existence and utility for all those working in EU missions and delegations abroad.

In particular, Amnesty International calls on the French Presidency to make improved **implementation of the guidelines on torture a priority**. The report of the European Parliament in 2007 outlined a number of actions which could improve the use of these guidelines, including:

- Enhancing coherence between the EU's internal and external approaches to torture and ill treatment, for instance by making progress on EU Member States' signature and ratification of the Optional Protocol to the Convention against Torture (OPCAT); and
- Improving knowledge, instructions and resourcing in EU Missions and European Commission Delegations for the implementation of the EU torture guidelines, through the development of a manual for diplomats' practical use.

In recent months there have been indications that the French Presidency will focus on tackling violence against women as a human rights theme. This theme is welcome, and indeed the proposed development of benchmarks for the implementation of UN Security Council resolution 1325 would be a helpful addition to EU activity in the field of women's rights. However it will also be important that the thematic focus does not divert time and attention away from the responsibility to implement commitments under the existing set of guidelines. Additionally, any new commitment should have the appropriate resources attached to it.

## EU-AFRICA STRATEGY

The implementation of the **EU-Africa strategy** is a clear opportunity for the EU to provide coherence in the human rights impact of all its areas of policy towards Africa. In addition, the EU-Africa strategy included a number of specific commitments to strengthen the regional architecture for the protection of human rights in Africa, and to improve co-operation between the EU and Africa in promoting human rights in international fora. The French presidency will oversee the agreement, with African partners, of the second annual action plan for the implementation of the strategy, and will therefore need to play a critical role in ensuring that the human rights aspects of the strategy are prioritised.

#### REFORM TREATY AND CFSP-EXTERNAL ACTION SERVICE

Once the new Lisbon Treaty is ratified, a key challenge for future presidencies will be to ensure that human rights are mainstreamed into all aspects of CFSP, including the new **External Action Service**. The structural changes in the EU's diplomatic service provide a good opportunity to bring the promotion of human rights to the fore of the work of EU missions and delegations. In each mission and delegation, an individual responsible for human rights should be identified and this responsibility should be included in their objectives.

#### Amnesty International calls on the French Presidency to:

- ◆ Bring a renewed focus to the implementation of all current EU mechanisms for the promotion and protection of human rights in third countries.
- ◆ Make human rights a central priority in all areas of the EU's policies towards third countries.

#### Key challenges for the French Presidency

- √ **Lead other Member States in making appropriate resource provision in implementing existing human rights commitments.**
- √ **Hold a workshop at the December Human Rights Forum to draft with NGOs a practical guide for diplomats on implementing the EU guidelines on torture.**

## 10. Accountability

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Amnesty International has been calling for the EU to have a consistent and **coherent human rights policy** both within and outside its borders. Such consistency requires not only the means (i.e. principles and instruments) but a systematic implementation of the mechanisms to monitor and address problems arising. However, a dynamic has been created whereby the lack of impetus to address grave human rights violations within the EU has caused there is a deficit in the internal dimension which in turn affects the credibility and potential of the EU's role in the world.

The EU's slipping credibility can be rectified by addressing **the gap in accountability** in EU human rights policy. This gap is felt in three dimensions:

- ◆ to take into account, **responsiveness**
- ◆ to give account for, **transparency**
- ◆ and to be held to account, **compliance**

Amnesty International therefore calls on the French Presidency to lead the EU in taking into account their international legal responsibilities, to make real transparency mechanisms to give an account of their activities and remedies and access to justice to the victims by holding to account those responsible for any violation.

And finally, **whom are we calling into account?** The real decision-making power in EU policy is the prerogative of the Council, i.e. the Member States. This is the crucial point when it comes to the question of how to shape a consistent, credible and effective human rights policy. Member States often seem to play rather ambiguously when it comes to bringing forward a comprehensive EU human rights policy. Some occasions have witnessed a solid, consolidated and coordinated position of Member States in human rights issues that show how the strong the EU lever can be (e.g. death penalty). In other situations, there is a collective denial of domestic shortcomings in human rights (e.g. illegal renditions programme). Such contradictory messages make the EU Council a global leader with an unsteady foundation; human rights must underpin the EU as one of its fundamental values.

The European Charter of Fundamental Rights was adopted for the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights. Ten years later, celebration should leave room to critical and constructive review of where we are and how the EU is accountable for human rights in the EU.

### Amnesty International calls on the French Presidency to:

- ◆ Engage in a constructive debate on the human rights accountability mechanisms of the EU.

### Key challenges for the French Presidency

- √ **Promote a Council declaration launching an overall review on the human rights policy of the EU in both its internal and external dimensions.**
- √ **A concrete step towards EU collective accountability will be for the Council to at last respond to the 2003 Communication of the Commission on the Article 7 of the TEU.**

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