



**The ambitions and ambivalence of EU human rights policy  
Amnesty International's ten-point programme for the Portuguese  
Presidency of the European Union**

---

June 2007

## **The ambitions and ambivalence of EU human rights policy**

### **Amnesty International's ten-point programme for the Portuguese presidency of the EU**

---

*"In the European Union, we are turning our common ideals into reality: for us, the individual is paramount. His dignity is inviolable. His rights are inalienable."*  
Berlin Declaration celebrating the 50<sup>th</sup> anniversary of the Treaty of Rome, March 2007.

As Portugal assumes the EU Presidency, the contrast between the Union's values and global human rights ambitions, and the EU's deeply flawed record in upholding human rights while fighting terrorism, could hardly be greater.

In October 2006 Europe expressed outrage at the murder of the Russian journalist Anna Politkovskaya. The President of the European Commission said that Moscow's credibility was 'on the line over its ability to prosecute those responsible'. The European Parliament backed the call for an investigation and recommended that the EU Council 'give serious thought to the future of relations with the Russian Federation'.

The Russian government denied any involvement and there was no hard evidence linking it to the murder. But the EU reacted in force and rightly so because it knew the difference between actual involvement and political responsibility.

It was a very different story when the first CIA rendition cases came to light in November 2005. Europe's leaders were dismissive. Very few countries opened investigations and most capitals responded with a heavy silence, despite growing evidence that European airfields had served as stopovers to Guantánamo and that people with the 'wrong' name and skin colour had been kidnapped in Europe and sent to countries where they were tortured.

The EU Council had yet to respond to the European Parliament's indictment of this sorry affair in February 2007 when in June a new report from the Council of Europe confirmed that the CIA operated secret detention centres in several EU member states. Yet again, with the indignant demand for absolute proof, there remains a denial of political responsibility for the fact that there has been a total breakdown of the rule of law in the heart of Europe. The first EU leader has yet to stand up to acknowledge that it is the EU's business to stop and prevent kidnapping, torture and disappearance within its own borders and airspace.

The Berlin Declaration celebrating the 50th anniversary of the Treaty of Rome stated that 'In the European Union, we are turning our common ideals into reality: for us, the individual is paramount. His dignity is inviolable. His rights are inalienable'. It is scant consolation for those who ended up in torture cells in unnamed countries and in the legal black hole of Guantánamo.

Serious as this critique is, to say that the EU only pays lip service to human rights would not do justice to the many positive efforts in various domains externally. The steadily increasing direct engagement of the EU in conflict prevention and crisis management activities in different parts of the world is significant. The EU supports the International Criminal Court and the UN Human Rights Council as new institutions that are indispensable for more effective global governance, and put its weight behind efforts that culminated in the 2006 UN General Assembly resolution to start work on an Arms Trade Treaty. And slowly but surely the arduous task is taken up of putting the EU's toolbox of human rights instruments – the human rights clause in EU agreements with third countries, the various human rights guidelines – into practice.

These are positive developments to build on. It requires collective confidence and determination to address the major external problems, be it in 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.

Each of these world powers has serious human rights problems and forces the EU to 'balance' these concerns with the obvious interests of trade, energy and security. At the same time they require member states to seek collective strength instead of pursuing national interests.

Human rights constitute a common point of reference that can and should be used not only to counter divisive tendencies but also to apply greater continuity amidst constantly shifting priorities. While the German Presidency's focus on the EU's eastern neighbours and Central Asia has yet to be anchored more firmly in a human rights framework, the Portuguese Presidency is looking to the South to re-engage the EU with Africa and meet the challenges of human security in that continent.

Portugal's promise to address human rights at each EU encounter with third countries during its presidency is encouraging, especially given the unique prospect of an EU-Africa summit in addition to a number of major bilateral summits. However, the EU is making it all too easy nowadays for 'strategic partners' to confront the EU with its own deficiencies.

Ambitious but ambivalent. We have seen the EU and its member states come under increasing scrutiny not only over dubious methods used to combat terrorism, but also over abusive practices in the fight against irregular immigration. This is particularly apparent in the mounting immigration crisis between Africa and Europe. Discrimination in its multiple manifestations cuts across these and other forms of human rights abuse. The current climate of anxiety dominates political agendas and encourages the stigmatisation of foreigners and suspicion of Muslims. At the same time, it does not help improve the ongoing discrimination towards Roma or stem the current of homophobia that in some countries is present at the highest official level.

Amnesty International has come to regard the domestic human rights deficit as a key challenge for the EU, for two simple reasons. First, there are serious human rights problems within the EU, and these should not be neglected let alone deliberately ignored. Second, if domestic problems are not addressed adequately, it will affect the EU's credibility, and thus effectiveness, when confronting third countries over their human rights conduct.

The prevailing attitude of complacency and denial risks undermining the EU's global human rights effort, and its laudable ambition to provide more effective leadership. Its credibility rests on the quality of its own corrective capabilities. The most important test of that is how public authorities respond when confronted with their own failures in the field of human rights.

A strong EU role externally to advance human security in spheres of conflict prevention, crisis management and poverty eradication requires a human rights policy that is consistent in its external and internal dimensions. Genuine security must be based on full observance of human rights, and the EU has yet to show that that is not just rhetoric when it is faced with serious challenges to security, with the very real pressures of immigration, and with racism, discrimination and xenophobia on the rise.

The EU needs an effective human rights policy more than ever. It can set a powerful example to the rest of the world if it can overcome its ambivalence. The leadership that is required for that should not only be expected from the large member states. We look to the Portuguese and Slovenian presidencies in particular to display their own kind of leadership to generate a fresh impetus. Human rights should be a litmus test.

## **Ten points for the Portuguese Presidency to shape a coherent and credible EU human rights policy**

---

- 1. Shape parameters for 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.**
- 2. Provide concrete follow-up to the inquiries into European involvement in illegal US activity in Europe and keep the EU's fight against terrorism strictly within the bounds of international human rights law.**
- 3. Take steps to upgrade the EU legislative framework to address all forms of discrimination.**
- 4. Remedy existing protection gaps in current asylum instruments and improve the quality of decision-making.**
- 5. Uphold human rights in managing irregular immigration and ensure essential safeguards for the return in safety and dignity of persons who have no right to remain in the EU.**
- 6. Ensure a strong and consistent human rights dimension in the EU's enlargement and broader neighbourhood policies.**
- 7. Continue to press the key strategic partners to remedy their human rights deficiencies and to fulfil their responsibilities as international actors.**
- 8. Place human rights at the core of evolving EU-Africa relations and co-operation.**
- 9. Strengthen implementation of the EU guidelines on human rights defenders and on torture, and initiate a review of the guidelines on human rights dialogues.**
- 10. Further enhance the central role of human rights in conflict prevention and in the EU's crisis management operations.**

## 1. Human rights in the EU

---

Reports of human rights problems continue across the EU, fostered notably by the EU and its member states' policies to fight terrorism and irregular immigration, and with discrimination in its different manifestations cutting across a whole gamut of political and social activity. The absence of reflection from the EU institutions and member states on how to address the structural human rights shortcomings in Europe, let alone any internal accountability or peer pressure mechanisms to take corrective action, can only encourage a climate of impunity and tarnish the EU's credibility externally.

A collective, coherent and principled response from the EU is urgently needed to correct present trends of human rights violations in Europe. The start of the new EU Fundamental Rights Agency could serve as a benchmark for EU action. However, that can only happen if its activities come within the scope of a strong commitment from the EU Council to develop a meaningful EU internal human rights policy.

### FUNDAMENTAL RIGHTS AGENCY

The EU Fundamental Rights Agency was formally inaugurated on 1 March 2007 after a negotiation phase that was marked by a lack of vision and absence of public debate on the state of human rights protection in the EU. It is essential that the Presidency now creates the conditions that will enable the new agency to bring added value to the human rights protection system in Europe.

This implies that the agency contributes to reviewing the existing institutional, legal and remedial human rights architecture in Europe, building on complementarity between the EU and the Council of Europe. It also implies that the work of the agency is based on a comprehensive assessment of the human rights situation within EU borders, rather than cataloguing issues falling under EU 'first pillar' competence. The agency's programme should not limit itself to the existing EU agenda and framework but rather seek to influence that agenda to address the key human rights issues in the EU and develop its institutional, legal and policy capacities to deal with these at all levels.

The agency should naturally build on clear community law - notably in the areas of racism and discrimination and of asylum and immigration. However, it is equally important that the agency is involved from the earliest stage in other major challenges, such as the fight against terrorism, the fight against trafficking in human beings or police accountability, in order to assist the EU institutions in developing policies that are in line with member states' international human rights obligations.

### JUDICIAL AND POLICE COOPERATION IN CRIMINAL MATTERS

The development of judicial and police co-operation in criminal matters provides the EU with a unique opportunity to set up rules and mechanisms that can ensure compliance with human rights standards. However, most initiatives to develop common rights standards in the EU remain blocked.

Despite the efforts of successive presidencies, the EU has failed to agree on a binding instrument to protect fair trial rights in criminal proceedings. At the same time, the fact that anti-terror legislation in some member states continues to undermine fundamental rights principles is a strong warning that the respect for international and European human rights standards can never be taken for granted.

The Portuguese Presidency should continue to push for the adoption of the proposed framework decision on procedural rights, and promote further instruments to guarantee access to justice and rights of the accused across the EU. Work should also be carried further to cover all fair trial rights and include serious crime where safeguards are absolutely essential considering the gravity of the issues at stake and the consequences of injustice for both sides.

## TRAFFICKING IN HUMAN BEINGS

The EU has repeatedly declared its engagement in combating trafficking, which is set as a priority in making Europe an area of freedom, security and justice. Beyond declarations and action plans however, the parameters must be set for a more coherent and human rights based policy covering all stages of the 'trafficking cycle'. This implies measures to better prevent trafficking of human beings and provide appropriate and effective protection and assistance for all trafficked persons. This must be without discrimination and should not be made conditional on their co-operation with the competent authorities and acting as witnesses in criminal proceedings against suspected traffickers. One practical step would be for the EU to revisit its legislation to ensure that all EU measures are at least consistent with the minimum standards set out in the Council of Europe Convention on Action against Trafficking in Human Beings.

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

- **shape the role of the Fundamental Rights Agency as part of a coherent internal EU human rights policy;**
- **conclude the negotiations of the framework decision on procedural rights;**
- **promote ratification of the 2005 European Convention on Action against Trafficking in Human Beings;**
- **designate a proper structure in the Council to deal with human rights in the EU;**
- **ensure that any future treaty reform includes the EU Charter of Fundamental Rights as a binding instrument and enables EU accession to the European Convention on Human Rights.**

## **2. Counter-terrorism and human rights**

---

As reports of EU member states being implicated in the US-led renditions programme continue to unfold, lack of evidence can no longer serve as a justification for denying the complicity of European states in human rights abuse generated by such illegal practices. While one presidency after another ignores the issue, pressure continues to build to break the shameful silence and inaction of the EU Council.

In February 2007, the European Parliament adopted with a clear majority the final resolution of the Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (TDIP). It is crucial that the work of the European Parliament is followed up and that its recommendations to the member states and EU institutions are enforced in order to establish accountability and prevent further abuse. In line with the Parliament's resolution, the EU should consider the adoption of rules for the management of EU airspace and initiatives to establish monitoring and supervision of joint and co-ordinated intelligence activities at EU level.

In June 2007, new information documenting the US-run system of secret detention in the 'war on terror' included another report from the Council of Europe's Committee on Legal Affairs and Human Rights, confirming that the CIA operated secret detention centres in Poland and Romania. Beyond the grave human violations, the report highlights the lack of proper safeguards and the absence or difficulties of independent investigations in EU member states.

It is difficult to see how the EU can ignore these findings, the exposure yet again of structural human rights deficiencies, and the implications for the EU's credibility on human rights. The steps that must be taken are obvious:

- stop any ongoing violations;
- ensure reparation to victims;
- bring to justice those responsible for human rights violations;
- prevent such serious breaches of human rights in the future.

This implies that the EU and its member states acknowledge individual and collective responsibilities by casting full light on past and present involvement in CIA illegal activities in Europe, and reaffirm their commitment to human rights standards by taking all measures to guarantee that those values are fully respected and enforced. One such measure would be for the EU to declare an absolute ban on the use of diplomatic assurances to allow the transfer of individuals to countries where they are at risk of torture or other cruel, inhuman or degrading treatment.

If on the other hand member states persist in denying their responsibility and if governments attempt to obstruct judicial and parliamentary investigations aimed at ensuring accountability of the executive for grave human rights violations, this would amount to the kind of structural and persistent breach of fundamental principles of human rights that calls for scrutiny within the framework of Article 7 TEU.

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

- **provide concrete follow-up to the inquiries into European involvement in illegal US activities and keep the EU's fight against terrorism clearly within the bounds of international human rights law;**
- **reaffirm the absolute ban on torture by declaring that the use of diplomatic assurances to transfer persons to countries where they risk torture is unacceptable.**

### **3. Racism and discrimination**

---

As the Portuguese Presidency takes over the EU 2007 campaign around the "European Year of Equal Opportunities for All", racism and discrimination remain widespread, affecting all EU member states without exception. This reality is confirmed by the findings of the Eurobarometer presented in January 2007, which points out that over three-quarters of Europeans feel that being disabled or being Roma, tends to be a disadvantage in their society.

Substantial efforts by the EU are still needed to ensure that the right not to be discriminated against is actually implemented in all member states as a fundamental human right. The ban of an EU-sponsored anti-discrimination event in Lithuania adding to bans of public events organised by LGBT (lesbian, gay, bisexual and transgender) groups in other EU countries such as Poland and Latvia illustrates the gap between EU commitments and intentions and the actual practice.

It shows that the EU still needs to position itself more strongly as a meaningful actor in the fight against discrimination. The EU should not only press for implementation of the existing EU anti-discrimination framework but also reinforce its monitoring of actual practice. At the same time EU legislation should be upgraded to cover all grounds and all acts of discrimination. All relevant international and European human rights standards and recommendations should be considered to this end.

The EU cannot afford to ignore serious discrimination related to issues of citizenship, minority rights and statelessness. In this respect, the "erasure" of more than 18 000 people from the Slovenian registry of permanent residents in 1992, thousands of whom are still in this position, is another example of a serious problem that is effectively left unaddressed at EU level. Slovenia's failure to comply with the decisions of its own constitutional court and to meet Council of Europe and UN criticism casts a shadow on its Presidency coming up in 2008.

The new framework decision on racism and xenophobia, successfully negotiated under the German Presidency, should now lead to concrete actions including training and awareness raising about hate speech and racist violence among law enforcement authorities and the wider community.

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

- **take steps to upgrade legislation to provide equal and effective protection for all grounds and acts of discrimination;**
- **ensure that implementation of EU law is monitored more closely and that abuses in EU member states are acted upon.**

## **4. Asylum**

---

Under the German Presidency the Common European Asylum System (CEAS) has not been a priority. No substantive progress has been made as the member states are still in the process of incorporating core EU legislation and the Commission is due to evaluate the implementation of the first phase instruments. Meanwhile, the need for concrete initiatives towards a protection oriented European policy in the field of asylum has never been more evident than in the first half of 2007.

#### **IRAQI REFUGEE CRISIS**

The humanitarian crisis in Iraq has painfully demonstrated the shortcomings of both the internal and the external dimension of the European asylum policy. As a major refugee crisis unfolds in the countries neighbouring Iraq, EU member states diverge widely in their approaches to the relatively low numbers of Iraqi asylum seekers who are able to reach the territory of the EU. At the same time they have responded poorly to the call for resettlement of Iraqi refugees from the region as a tangible expression of international responsibility sharing.

Recognition rates of Iraqi asylum seekers have been fairly low in most member states while others have even engaged in the forced return of rejected asylum seekers to Iraq. If anything, the incoherent treatment of Iraqi asylum seekers has made clear that the EU has far from achieved a common asylum system that is able to offer effective protection to those in need. The Portuguese Presidency should acknowledge this and work closely with the Commission to take the lead in identifying and remedying the existing protection gaps in the EU's asylum policy.

#### **QUALITY OF DECISION-MAKING**

The ongoing discussions on strengthening practical co-operation in the field of asylum have so far focused on the pooling of resources regarding country of origin information with the setting up of a common portal. To set common standards for the quality of country of origin information to be used by the asylum bodies in the member states is essential for the development of the CEAS. At the same time, member states should look into difficulties with interpreting and applying core concepts of the qualification directive.

Although assessment of protection needs is obviously case-related and differences between the member states will remain to a certain extent, it is obvious that the current set of minimum standards established during the first phase of the CEAS is not suited to guarantee effective protection for those in need throughout the EU. Evaluation of the implementation of the EU asylum acquis should therefore not be limited to an analysis of legislative compliance but also assess whether the administrative and judicial practice provides effective protection.

#### REVIEW OF THE DUBLIN REGULATION

The Portuguese Presidency will have the important task of opening the debate on the future of the Dublin system the purpose of which is to determine which country is responsible for handling an asylum application. The Dublin Regulation is criticised for perpetuating the protection lottery and causing unjustifiable hardship to asylum seekers. The latter in particular requires substantial adjustment of its provisions. At the same time measures should be taken to achieve effective burden sharing between the member states.

The Commission's report on Dublin as well as its green paper on the second phase of harmonisation of the CEAS should be used as an opportunity to rethink the approach taken so far. Possible alternatives to the current system should be seriously examined and no option can be ruled out from the start.

#### RESETTLEMENT

Resettlement has been consistently promoted by UNHCR as one of the three durable solutions to refugee situations. The CEAS should therefore also comprise a firm resettlement component. The current crisis in Iraq and the neighbouring countries shows that even in emergency situations member states are not able or willing to seriously engage in resettlement programmes for the most vulnerable refugees and so to show concrete solidarity with the countries most affected by refugee flows.

While it is acknowledged that the impact of resettlement on large-scale refugee crises will always be limited, it remains a useful tool to address specific protection needs while its function as a tangible expression of concrete solidarity should not be underestimated. A common approach is needed that would allow for larger numbers of refugees to be resettled in more EU member states. The Portuguese Presidency should continue this debate at Council level in order to shape such a common resettlement strategy.

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

- **address the flaws in the current first phase instruments while developing high standards for improving the quality of decision-making;**
- **enter into a debate about the fundamental principles underpinning the Dublin regulation;**
- **promote concrete cooperation between member states in developing joint resettlement efforts.**

## 5. Immigration

---

The fight against irregular immigration remains the principal focus in the area of EU immigration policy. As the summer set in, the Mediterranean again turned into a prime danger zone where people drowned while EU member states quarrelled over rescue responsibilities. A Regulation on Rapid Border Intervention Teams was adopted with unprecedented speed by the Council and the European Parliament. Meanwhile Frontex, the EU border agency charged with co-ordination of specific operations of the member states in the fight against irregular immigration, struggled to cope with the size of the problem and member states' failure to fulfil their pledges of support.

## PROTECTING MIGRANTS RIGHTS

Serious concerns remain about the impact of such operations on the access to protection for asylum seekers as well the respect of fundamental rights of migrants within the mixed migratory flows. Questions arise regarding accountability for human rights violations occurring during such operations that need to be addressed at EU level. As the RABIT-regulation may be applied in practice for the first time under the Portuguese Presidency, this issue becomes very important and measures should be developed to ensure that fundamental rights of migrants and asylum seekers are being respected in practice when external border control operations are being carried out.

## GLOBAL APPROACH TO MIGRATION

In the area of migration management, the recent Commission communication extending the global approach to migration to the eastern and south-eastern borders of the EU has mapped out the various initiatives and structures in which migration related issues have been discussed at EU level. The mobility partnerships as sketched out by the Commission may make a useful contribution to the debate on the creation of legal channels for migration. But here, too, important questions remain as regards the definition of the concept as well as the balance between the commitments of the third countries concerned and those of the EU member states. Opening up legal channels of migration is clearly bargained against increased efforts from the third countries concerned in the field of border control and readmission.

The Portuguese Presidency should stimulate the debate on circular migration and ensure consultation of all stakeholders involved. The ministerial conference on migration to be held in November within the framework of Euromed will be an important opportunity to discuss these issues with the Mediterranean partners. At the same time the issue of capacity building in the field of asylum as well as the respect for fundamental rights of refugees and migrants in the countries concerned should be included in the conference agenda.

## RETURN

The return of third country nationals residing irregularly in the EU will remain an important issue on the EU agenda. Negotiations on the Commission proposal on common standards and procedures in member states for returning illegally residing third country nationals have been very difficult so far within the Council and a new 'minimalistic' approach has been considered under the German Presidency.

Binding EU standards on return should guarantee the priority of voluntary return over forced return and should fully comply with relevant international standards such as the principles of *non-refoulement*, proportionality, non-discrimination and the prohibition of collective expulsions. At the same time, guarantees should be included that people will not be left in limbo without access to basic social or economic facilities in the member states.

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

- **ensure that operational measures and instruments to deal with large scale arrivals of migrants and asylum-seekers at the external borders of the EU are compatible with member states' obligations under international refugee and human rights law;**
- **uphold human rights in relations with third countries to manage irregular immigration and ensure essential safeguards for the return in safety and dignity of third country nationals who no longer have a right to reside in the EU;**
- **ensure that the Euromed conference on migration reflects a comprehensive approach including legal channels of migration as well as refugee protection and respect for migrants' rights.**

## 6. Enlargement and neighbourhood policies

---

### ENLARGEMENT

The Copenhagen criteria stipulate clear indicators with regard to human rights standards. While not taking a position on the merits of candidate countries' suitability to join the EU, Amnesty International will continue to share with the Presidency and the European Commission its information and assessment as to the status of human rights in the countries concerned and the measures needed for improvement.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) is expected to close in 2011. It is therefore vitally urgent that all remaining war crimes indictees be surrendered to The Hague as soon as possible. Amnesty International welcomes the continued calls made by the EU that Western Balkan countries take decisive action to arrest and surrender key fugitives. The Portuguese Presidency should redouble these efforts and make their capture and transfer to The Hague a condition for all discussions with countries from the Western Balkans.

The prime area of concern for all candidate and accession countries is the frail justice system. We encourage the Portuguese presidency to instruct the Commission to analyse and address how the EU can contribute positively to the strengthening of these systems.

### EUROPEAN NEIGHBOURHOOD POLICY

When the European Neighbourhood Policy (ENP) was launched its key objective was to stabilize relations with neighbouring countries by establishing a common value system based on human rights and democracy, promoting prosperity through economic incentives and access to the European markets, and providing security for all.

Two years after its inception, the bilateral agreements and action plans negotiated with each neighbour vary greatly with regard the emphasis that is placed on human rights. The institutional framework does not always include a specific forum to discuss human rights. While this may be unintentional and due to a lack of co-ordination, the result is unsatisfactory. The Portuguese Presidency should ensure that the spirit and intent of the ENP is achieved, by calling on the Commission to introduce human rights subcommittees under all Association Councils and asking that a common diagnostics tool is developed to define with neighbours their individual needs.

#### **Amnesty International urges the Portuguese Presidency to:**

- **continue to promote human rights in candidate and accession countries with a special emphasis on strengthening justice systems;**
- **maintain pressure on countries in the Western Balkans to surrender war criminals to the International Criminal Tribunal for the Former Yugoslavia ;**
- **actively address human rights issues at all association and cooperation councils with EU neighbours;**
- **engage the European Commission to streamline the institutional framework of all association agreements and to establish a common diagnostics tool to assess human rights challenges and needs in neighbouring countries.**

## 7. Strategic partners

---

The EU's regular high-level meetings with major global strategic partners including the non-European permanent members of the UN Security Council, China, Russia and the USA are important occasions to highlight human rights concerns. All have serious human rights problems and in its dealings with them the Portuguese Presidency should take a consistent stand to raise these problems.

### USA

The three-presidency emphasis on intensifying transatlantic co-operation in the field of conflict prevention, crisis management and peace building is welcome, but this cannot be a substitute for ongoing dialogue on domestic human rights violations. The promised focus on the rule of law within this dialogue lacks credibility when the German Presidency let the fifth anniversary of Guantánamo in January and the EU-US summit in May pass without raising this symbol of abuse and injustice. The ongoing failure to hold senior government officials to account for torture and other ill treatment of 'war on terror' detainees, in the face of evidence that abuse has been systematic, cannot continue unchecked.

The silence of governments on both sides of the Atlantic, in relation to domestic human rights abuses committed in the name of the 'war on terror' compromises European and US leaders' ability to challenge violations elsewhere, and to lead the international community by example. Amnesty International looks to the Portuguese Presidency to use the EU-US summit to send a strong message on the importance of dealing with internal issues in order to maximise influence on human rights with third countries, and also to confront other domestic concerns. The use of the death penalty in the US in particular continues to be characterised by arbitrariness and discrimination, and it is still applied to convicts suffering from serious mental illness.

### CHINA

Before China's election to the new UN Human Rights Council it made a number of human rights-related pledges, including ratification of the International Covenant on Civil and Political Rights and active co-operation with the UN on human rights. All these pledges remain unimplemented. In its foreign policy, China is continuing to ignore the responsibilities that should go hand in hand with its growing influence. The need for oil to fuel China's rapidly growing economy acts as a dangerous driver for the ongoing sale of military equipment to Sudan, exacerbating the violence in the region.

Within China, human rights violations are widely reported to continue on a massive scale, fuelling discontent and instability. Voluntary promises to improve human rights internally, made when Beijing was elected to host the 2008 Olympics, are proving empty so far. The Portuguese and Slovenian Presidencies still provide the opportunity for the EU to use the Olympic commitments as a clear hook to push for genuine progress. It is critical to seize this opportunity. In doing so the EU must insist that any progress is lasting, unlike the time-limited changes which are currently being put forward by the Chinese government in new regulations for foreign journalists, increasing their freedom only in the run-up to, and during, the Olympics.

### RUSSIA

EU-Russian relations have come under great strain due to increasing tensions on a number of issues, serious human rights concerns not being the least of them. Russians experience a dramatic deterioration of freedom of expression and assembly, as well as increased pressure on civil society organisations in general and human rights organisations in particular. The EU has shown welcome determination under the German Presidency to engage with Europe's largest neighbour not only on energy and security issues but also to redress the human rights deficit in Russia.

The Portuguese Presidency should maintain this course of action. A serious partnership on equal footing requires seeking common ground on the basic value system enshrined in the international human rights

conventions to which both Russia and member states are party. While at this delicate stage of the relationship it is important that Portugal actively contributes to ameliorating the current strain on relations so as to remain a credible interlocutor, real problems between partners must be addressed. The EU needs to remain firm on core elements of its value system and show both unity and continuity. It is important that Portugal is in a position to assure that the EU speaks with one voice and prevents member states' domestic agendas from undermining the re-establishment of a strong partnership.

## INDIA

The three-presidency plan identifies deepening economic relations with India as a particular priority. But member states cannot afford to ignore ongoing human rights abuses in the face of India's growing economic power, such as impunity for past violations, arbitrary detention and torture in the name of security, and deprivation of economic, social and cultural rights on a massive scale in marginalised communities. Information around the use of the death penalty in India remains secret, but Amnesty International estimates that at least 40 people were sentenced to death in 2006.

The EU-India summit planned in November provides the Portuguese Presidency with an opportunity to address these issues in a frank manner and push for progress. The EU should also ensure that partnership in fostering economic growth involves responsible investment from both sides: the EU bringing corporate responsibility standards and India respecting the rights of affected communities through proper consultation and compensation.

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

- **use all available high level discussions to pressurise China, Russia, India and the USA to confront their internal human rights deficiencies and to fulfil their responsibilities as international actors.**

## 8. The EU and Africa

---

Africa is set to be a key focus of the Portuguese Presidency, with the agreement of a new EU-Africa joint strategy as its centrepiece. While some positive steps have been taken in the past year by the African Union to apply principles of human rights and good governance, grave violations - often as a consequence of armed conflict, and including rape, torture, and unlawful killings - are still commonplace in many parts of Africa.

To contribute meaningfully to tackling the challenges which Africa faces, and avoid simply adding to the list of EU initiatives on this region, the new strategy should emphasise and co-ordinate the interlinking aspects of security, development and human rights. In particular the EU-Africa joint strategy should strengthen regional human rights mechanisms, and support human rights mainstreaming in all organs of the EU. It should identify concrete subjects and projects to develop EU-African partnership working in international fora, and ensure that reciprocity regarding the rights of migrant workers and their families are central to the debate on migration.

More broadly the dialogue between the EU and Africa should be embedded in a rights-based approach to development, and move beyond the false dichotomy of human rights as being somehow distinct from or even an obstacle to development. Mechanisms should be developed and implemented to ensure accountability of those in power; policies and practices must be established to ensure access to rights for the most marginalised, and space must be created to allow the poor themselves to shape their own future.

Clearly the development of an effective EU-Africa joint strategy must constitute the overarching challenge for the Portuguese presidency, as distinct from the high level event which signs the new strategy off. But if the planned EU-Africa summit takes place in December 2007, human rights must be firmly on the agenda, and the logistics and diplomacy must not be allowed to supercede dire human rights abuses, for example in Zimbabwe and the Darfur region.

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

- **place human rights at the core of the presidency focus on Africa, and use the dialogue around development of an EU-Africa strategy to agree action on priority concerns in Africa, such as Zimbabwe and the Darfur region.**

## **9. Human rights in foreign policy**

---

### **HUMAN RIGHTS GUIDELINES**

The EU guidelines on human rights are an important tool to promote the EU's stated fundamental principles in its relations with third countries. If properly implemented, the potential of the guidelines to bring about change is significant. However, there is still a major gap between ambition and implementation of the guidelines, particularly those on torture and human rights defenders. The next presidencies must sustain the focus on implementation that was generated by previous presidencies and make it the centrepiece of their work in this area.

The Portuguese Presidency should, as a matter of priority, press for the completion of the 2006 Austrian Presidency recommendations on how the guidelines on human rights defenders are put into practice, with particular emphasis on awareness raising in missions and delegations. Since their adoption in 2001, implementation of the guidelines on torture remains elusive, and consistent pressure is needed to ensure that they are now taken forward, on the basis of a clear action plan.

The guidelines on human rights dialogues have been in existence since 2001, at which time the EU-China dialogue had already been taking place for five years. Official dialogues have been initiated since then with Iran, Russia and Uzbekistan, with more to follow (e.g. the new Central Asia strategy foresees dialogues with all five countries). At the same time dialogue-type practices at local level and in the context of association agreements are burgeoning.

Positive though this may seem, the relative proliferation of dialogues combined with problems encountered (e.g. China, Iran) give cause for serious reflection. The guidelines have never been subject to an external review, and it must be noted that the requirement for benchmarks, expected outputs, indicators of success as well as criteria for dialogue initiation, abortion and resumption is unclear or lacking. The Portuguese Presidency should take initiative for an open review process with a view to strengthening the guidelines to that effect.

A new set of guidelines on the protection of children's rights was proposed by the German Presidency, and their development will be carried forward into the Portuguese remit. Slovenia has expressed an intention to work on a set of guidelines on women. The purpose and scope of both will need to be clear, and their development evidently should not be at the expense of implementation of existing guidelines.

The EU's continued and persistent efforts to promote the abolition of the death penalty is welcome. Redoubled efforts under the German Presidency to raise this issue at the United Nations will require intensive cross-regional follow-up by the Portuguese Presidency to secure a successful outcome of this endeavour. It should carefully gauge the chances of success before making the final decision on tabling a resolution at the 62nd UN General Assembly.

In addition to efforts pursued at the UN, Amnesty International encourages the Portuguese Presidency to continue the successful strategy initiated by the 2005 UK Presidency and engage pro-actively with a selected number of countries that consider a positive change in their policy vis-à-vis the death penalty. In support of this new impetus Amnesty International will be stepping up its campaigning effort. At the same time it will continue to work closely together with the Portuguese Presidency in its efforts to implement the death penalty guidelines.

### **PROMOTING HUMAN RIGHTS AT THE UN**

Since its inception the United Nations has been the designated body to define and uphold international human rights standards. The new UN Human Rights Council (HRC) established in 2006 was due to complete its institution-building phase by mid-2007. It will now be important to put the new monitoring body and its instruments into effect.

The difficult negotiations over what authority and powers the HRC should hold have often not been in the EU's favour. This has somewhat discouraged member states and it will be in the hands of the Portuguese Presidency to interpret what implications the institutional outcome has for the EU.

The EU must overcome such discouragement and seek to contribute to strengthening the mechanisms by promoting best practices and setting positive precedents as the body starts to address human rights issues. This will require very careful consideration by the Presidency and partners on how to counter the fact that many UN member states saw the reform of the UN human rights body as an opportunity to further weaken its remit and authority. It is important that the EU remains a strong and vocal opponent to any such attempts. It will require strong and courageous leadership by the Portuguese Presidency to formulate clear positions on the part of the EU and to pursue them vigorously.

The conflicts in the Middle East and Sudan have dominated the HRC agenda in the first year, and the scope must now be widened. The worsening situation in Sri Lanka provides a clear example of where the EU could and should work more effectively within the UN in order to bring about change. Independent human rights monitoring is urgently needed in Sri Lanka to break the cycle of impunity for ongoing violations. Ahead of September's discussions in the HRC on the issue, the EU should develop a clear common position from which to build support for a strong UN resolution on the importance of monitoring.

In line with its previous advice to the Finnish and German Presidencies, Amnesty International reiterates to the Portuguese Presidency its five-step recommendations with a view to strengthening a constructive EU role in the UN HRC:

- Political approach – the Presidency must devise a clear political agenda for its objectives for the HRC and instruct its civil and diplomatic services accordingly.
- Integrated approach – key messages pertaining to the HRC should be integrated as standard items in all agendas of EU CFSP meetings, as well as in bilateral meetings held by member states.
- Inter-regional approach – the EU and its members in the HRC must undertake to actively forge broader inter-regional alliances.

- Burden sharing – towards this aim, systematic and intelligent burden sharing should be applied, building on the comparative advantages of the various EU Member States.
- Resourcing – the EU must urgently upgrade its capabilities at diplomatic and institutional levels to ensure it can operate consistently and effectively with regard to the HRC.

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

- **press for greater implementation of the EU human rights guidelines, particularly at mission and delegation level, by working towards full understanding of the guidelines among those who use them, and full impact on those affected by them;**
- **initiate a review of the EU guidelines on human rights dialogues;**
- **effectively implement the EU guidelines on the death penalty pursuing two avenues:**
- **focused engagement with countries that are contemplating abolition or the introduction of a moratorium;**
- **the introduction of a death penalty resolution at the UN General Assembly, as early as a positive outcome can be secured.**

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

---

The dramatic increase in demands on the EU as a global security actor, and its responsiveness to that demand, is one of the most striking aspects of the EU's evolving role in the international arena. It requires a careful response not only militarily but also politically to mainstream human rights into the policy and doctrine developments that are currently taking place. Initial steps have been taken within the Council to that end, and these exchanges need to be further intensified to not only address country specific situations but also to build human rights as a structural component into the European Security and Defence Policy (ESDP).

The rationale of that approach, the centrality of human rights for conflict prevention and crisis management, is beginning to be more widely accepted. Human rights can be a powerful tool for bringing parties closer and finding a solution to their conflict, and to steer the right course in post-conflict situations. Mediators and crisis managers invariably operate in politically contentious and sensitive conditions, and in such settings, internationally accepted norms of human rights can provide parties representing opposing interests with a common language with which to approach the root causes of the conflict and address the critical questions of transitional justice.

To ensure that human rights protection and human rights capacity-building feature adequately in all EU missions deployed in third countries, a specific and tailor-made effort is required in each particular situation. The EU has identified police, the rule of law, civilian administration and civilian protection as priority areas in civilian capabilities. Specific capacities in these four areas may be used either in the context of independent missions managed by the EU or in operations run by other lead organisations in crisis management such as the UN.

Knowledge about the actual ways and means of ensuring implementation, and about best practices, needs to be shared and disseminated. Member states must make the necessary expertise and resources available and develop appropriate recruitment procedures and programmes for human rights training. Each EU mission that is deployed provides further opportunities to ensure that the terms of reference of such

missions contain a strong human rights mandate and that their implementation builds on previous experience.

Each mission should include a qualified human rights focal point, and be equipped fully to address gender-specific issues. In 2005 EU operational measures were drawn up with regard to UN resolution 1325 concerning women, peace and security and armed conflict. The Council in November 2006 adopted strong conclusions on gender equality and gender mainstreaming in crisis management, stressing that "gender equality and human rights should be fully integrated in the planning and conduct of all ESDP missions and operations, including fact-finding missions".

As a next step, the EU could usefully develop an action plan for the implementation of UN resolution 1325, to include the need for training on gender issues. It is also important that the draft guidelines for protection of civilians in EU-led crisis management operations adopted in 2003, complemented by the generic standards of behaviour for ESDP missions in 2005, are properly taken into account in the next EU missions.

The Portuguese Presidency should build on Finnish and German Presidency support for joint NGO efforts to clarify the role played by civil society, and develop a framework for the involvement of local civil society and international NGOs in crisis management operations. In particular, the NGO community can contribute specialist knowledge on issues such as human rights and gender, which may not be as readily available among military and civilian staff.

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

- **continue to enhance the central role of human rights in conflict prevention and in the EU's crisis management operations;**
- **develop planning and monitoring mechanisms to ensure full implementation of UN resolution 1325 on women and armed conflict, of the EU standards of behaviour and of the guidelines for protection of civilians in EU-led crisis management operations;**
- **Draw up guidelines for the involvement of local civil society and international NGOs in crisis management operations.**