AMNESTY INTERNATIONAL

European Institutions Office

AMNESTY INTERNATIONAL'S COMMENTS ON THE MID-TERM REVIEW OF THE STOCKHOLM PROGRAMME

5 December 2012

INTRODUCTION

The five-year programme defining the European Union's priorities of for freedom, security and justice, which is referred to as the Stockholm Programme, was adopted by the European Council in December 2009. It specifically called on the Commission to submit a mid-term review of the programme's implementation by June 2012. This has not materialised but the Cyprus presidency has submitted an "assessment of progress" ahead of a debate in the JHA Council in December this year.

Amnesty International is inviting all the EU institutions and agencies involved in implementing the Stockholm Programme to do more than carry out a formal review of what activities were carried out and to revisit their action (or inaction) critically, in line with the "tools" (for good implementation) promoted by the Stockholm Programme three years ago. These tools include "*objective and impartial evaluation of the implementation of the policies*", "*evaluation of the effectiveness of the legal instruments*", including to "*determine any obstacles to the proper functioning" of the different areas covered, as well as "open, transparent and regular dialogue with representative associations and civil society*".[1]

We are also submitting comments and recommendations on developments in policy areas we have been monitoring, bearing in mind the political priority set by the Council three years ago: "*The area of freedom, security and justice, must, above all, be a single area in which fundamental rights are protected.*" (emphasis added)[2]

ASYLUM AND MIGRATION

With the adoption of the recast Qualification Directive, political agreement on the recast Dublin Regulation and Reception Conditions Directive, and continuing trilogues on the recast Asylum Procedures Directive, the Union is on course to achieve the objective set by the Stockholm Programme to establish a Common European Asylum System (CEAS) by the end of 2012. We doubt, however, whether the new legislation provides for high protection standards in the EU and enough legal clarity to allow for a higher degree of harmonisation when put into effect by the member states. We particularly regret that the EU has not seized the opportunity to adopt standards that fully endorse the presumption against detention of asylum-seekers and help reverse the current widespread and systemic detention practices in the EU. We urge the Commission to monitor closely the implementation of the newly-adopted rules governing detention of asylum-seekers and address any further deterioration of practices by starting prompt infringement proceedings, as well as proposing amending legislation to enhance protection against excessive use of, and/or prolonged, detention.

We also regret that the Council has been unwilling to heed the judgments of European Court of Human Rights in *M.S.S. v Belgium and Greece* and the Court of Justice of the European Union in *N.S.* and *M.E.* to address human rights violations resulting from the transfer of asylum-seekers from one member state to another under the Dublin arrangements. While the Early Warning, Preparedness and Crisis Management Mechanism, introduced by the amended Dublin Regulation, might help identify protection gaps in national asylum systems, whether or not these are due to particular pressure, this mechanism in itself is unlikely to ensure that measures taken in applying the Dublin system fully respect fundamental rights. We urge the Council to consider fundamentally revising the Dublin system to ensure that asylum-seekers' rights are safeguarded in any arrangements seeking to attribute responsibility for determining their claims, and enhance solidarity and fair responsibility-sharing among member states.

A key role in making the common area of protection and solidarity as defined in the Stockholm Programme a reality will be played by the European Asylum Support Office (EASO). We note that the high expectation placed on this agency in providing support to EU member states and institutions is not reflected in the financial resources allocated to it, in sharp contrast to the large and constantly increasing attributions to the EU Borders Agency (Frontex). While EASO has been operational since June 2011, there has been a worrying

[1] The Stockholm Programme, paragraph 1.2 The tools (2010/C115/01)
[2] The Stockholm Programme, paragraph 1.1 Political priorities (2010/C115/01)

lack of transparency and organised input from NGO experts into its activities. We are particularly concerned by the lack of involvement and consultation of expert NGOs in the production of country of origin reports, and a general approach to consultation after publication of relevant reports. Notwithstanding the two meetings of the Consultative Forum held so far, we have yet to see this office engage meaningfully with civil society organisations. All of which undermines confidence that EASO is developing as an independent centre of expertise on asylum, rather than just executing decisions taken by the management board, the main governing body of the agency comprised of member states' asylum authorities.

In 2011, the migratory and protection challenges from the upheaval in North Africa and the Middle East have tested Europe's solidarity not only internally but also with other regions. Evaluations of Regional Protection Programmes have shown these instruments' as neither sufficient nor effective tools in supporting and alleviating the burden of non-EU refugee-hosting countries and regions. A much more promising tool is the EU resettlement programme, which, however, relies on voluntary participation by member states and has so far seen little uptake in member state participation and pledges to increase the number of resettled refugees. While we welcome the developing EU framework for resettlement, we call on member states to make a real commitment to resettling refugees under the programme.

On borders and migration, an important development has been the initiative to strengthen Frontex and clarify its legal framework. We welcome the fact that Regulation 1168/2011 has made explicit the human rights framework applying to Frontex activities. It has also established a fundamental rights monitoring mechanism in the form of a consultative forum and a fundamental rights officer appointed by the Border Agency. It has not, however, ensured *independent* monitoring of compliance by Frontex with its fundamental rights obligations, as we called for. Moreover, it remains to be seen to what extent this mechanism will be sufficient to ensure that monitoring is meaningful and effective and leads to proper investigation and follow-up of incidents and means of redress.

Migration at sea has increasingly become associated with the deaths of thousands of migrants and the rescue of countless others who have attempted the dangerous sea crossing to reach Europe. We urge the Council to place the prevention of deaths at sea at the heart of a coordinated Europe-wide approach to migration at sea and to recommit itself to rescuing people in distress at sea and to prompt and safe disembarkation in the context of the renegotiation of the Guidelines for Frontex Operations at Sea.

We have consistently argued for a rights-based approach to migration, which means that policies in this field, including border control measures, must be guided by the principle of safeguarding the human rights of migrants. In practices seen in member states this has often proved not to be the case. There is compelling evidence that in many cases migration control policies and practices have put migrants, asylum-seekers and refugees at risk both at the EU borders and in non–EU countries through the operation of cooperation agreements. In February this year, the European Court of Human Rights, in the case *Hirsi Jamaa and Others v. Italy*, has condemned the Italian Government's policy of intercepting migrants at sea and pushing them back to Libya. As recently as 22 November, the European Parliament adopted a resolution raising the alarm over the treatment of migrants in Libya and warning against any cooperation on migration control which might put people at risk there. We reiterate the need to ensure that any co-operation with third countries on migration control fully respects the rights of asylum-seekers, refugees and migrants and to ensure that adequate monitoring mechanisms are in place to guarantee that human rights are observed in practice.

We welcome the fact that the renewed Global Approach to Migration and Mobility (GAMM) has added the key aspect of people's mobility and introduced a more migrant-centred approach by acknowledging that migrants' human rights must be strengthened in source, transit and destination countries. We note, however, that the securitisation approach to migration remains prevalent and policy instruments conceived to engage third country cooperation, such as 'mobility partnerships', are geared to preventing migration rather than fostering mobility. We are particularly concerned at the lack of any human rights impact assessment in policies which promote migration management with third countries. Enhanced border management at the external borders, and particularly the prevention of irregular migration across the Greek-Turkish border, has been identified as a key goal in the *EU Action on Migratory Pressures: a Strategic Approach*, the roadmap listing various measures to reduce "illegal immigration" into the EU. These measures need to be reviewed

with reference to preserving access to protection in Europe and allow scrutiny by bodies exercising democratic oversight, including ensuring their compliance with the EU Charter of Fundamental Rights.

FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

Amnesty International has consistently urged the EU to produce a comprehensive internal human rights policy. This summer over 11,000 people from across Europe signed our petition calling on the EU to put human rights back on its internal agenda in the context of the consultation on the 2013 EU Citizenship Report.

We took good note of the Commission's strategy on the effective implementation of the Charter of Fundamental Rights (the Strategy) and the launch of an annual report on the Charter's application in 2011. We were also impressed that the Council followed this initiative by committing to monitoring human rights compliance of its proposals throughout the legislation process.[3] However we remain concerned about the actual implementation of the strategies and guidelines adopted by the Council and Commission.

We regret that compliance with human rights standards throughout the legislative process continues to be treated as an issue that is up for negotiation rather than being a legal requirement. Continuing negotiations on the new proposed anti-discrimination directive or the right to access to a lawyer, for example, are stumbling over political considerations and different legal interpretations ignoring the advice of human rights bodies and experts. There is a need for greater transparency and accountability in the EU law-making system to ensure that implementation of the Charter is effectively guaranteed throughout the legislative process.

Furthermore, we call for stronger action on human rights compliance in implementing and enforcing of EU law after its adoption. We note that the Commission's Strategy is very laconic on monitoring member states' effective implementation of the Charter when implementing (or not) EU law while the Council is not addressing it at all. We particularly urge the Commission to be more coherent and proactive in using all instruments at its disposal (including infringement procedures) to ensure compliance with the Charter by member states when applying EU law.

We also call on the EU to refrain from using EU law as an excuse not to apply the Charter and refusing to act claiming it has no competence to do so. In this context, we insist that concentrating on Article 51 of the Charter [stating that the Charter only applies within the remit of EU competence and to member states only when they are applying EU law] risks steadily destroying this instrument instead of instilling it with life. And this despite the clear fact that the EU already has the competence to protect human rights, both nationally and at EU level.

As the European Parliament has consistently highlighted, particularly in its reports on the situation of fundamental rights in the EU, as demonstrated by the examples of controversies over new laws in Hungary and Romania, and as acknowledged by President Barroso in his speech on the State of the Union delivered in September 2012, there is an urgent need for "*a better developed set of instruments – not just the alternative between the 'soft power' of political persuasion and the 'nuclear option' of article 7 of the Treaty"* to deal with *"threats to the legal and democratic fabric*" in EU member states.[4]

We call on the EU institutions to set up internal mechanisms to prevent and remedy at EU level systemic human rights shortcomings across member states.

---

[3] Council conclusions on the role of the Council of the European Union in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union, 25.2.2011: Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies, 19.5.2011

[4] José Manuel Durão Barroso President of the European Commission State of the Union 2012 Address Plenary session of the European Parliament/Strasbourg 12 September 2012 (SPEECH/12/596)

THE UNION'S ACCESSION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

Despite the Council's specific call in the Stockholm Programme for the EU's rapid accession to the ECHR, negotiations are still continuing with worrying difficulties. The lack of transparency in the procedure, especially on the EU side represented by the Commission, threatens the real enhancement and accomplishment of human rights protection in Europe. We call on the EU to be more open about the current discussions and challenges to allow genuine democratic and public debate on the objectives and implications of EU's accession to the ECHR. The position taken by the EU in Strasbourg regarding negotiation of the accession agreement on issues such as the scope of the accession, allocation of responsibility for respondent and co-respondent parties, and the EU's role in the Committee of Ministers, risk undermining the aim of reinforcing the creation of a strong and uniform European fundamental rights system.

VULNERABLE GROUPS

Amnesty International recalls the commitment in the Stockholm Programme to make full use of existing instruments to tackle discrimination, racism, anti-Semitism, xenophobia and homophobia.

The forthcoming review of the implementation of the Race and Employment Equality Directives provides an opportunity to further demonstrate this commitment. Rather than assessing the formal transposition process, as done previously, we call on the Commission to assess thoroughly the implementation of EU anti-discrimination laws based on human rights standards. We also urge the Commission to take appropriate legal action when violations are identified.

As specified in the Directives, evaluation of legal instruments should also serve to identify existing gaps in the legislation, and the review process should "*include, if necessary, proposals to revise and update*" the existing legislation (Art.17 Race Equality Directive, Art. 19 Employment Equality Directive). In this respect, we call on the Commission to use this reviewing exercise as an opportunity to identify existing gaps in EU anti-discrimination legislation and ways to address them. We remain concerned at the lack of political will at Council level to adopt the Commission's proposal for a new transversal anti-discrimination directive covering the grounds of age, disability, religion/belief and sexual orientation in access to goods and services, education, and social benefits, which was meant to fill some of those gaps. After more than four years, there has been no progress, and discussions in the Council seem to put in question fundamental aspects of the proposal, undermining the Council's commitment to reinforcing the *acquis* of EU anti-discrimination law. Furthermore, the negotiations have been conducted outside the scrutiny, and in stark contrast with the views, of the European Parliament and expert bodies. We call on the Council to clarify its position and how this can be reconciled with its obligations under the Treaties and Charter.

Roma

The Stockholm Programme called for a concerted effort to fully integrate vulnerable groups. In this regard, we welcomed adoption by the Commission, in April 2011, of the EU Framework for National Roma Integration Strategies (the framework), as well as the entry into force of the National Roma Integration Strategies (NRIS), adopted by member states earlier this year. These instruments show a commitment at both EU and member state level to inclusion of Roma in housing, employment, health care and education. However, we regret that the Commission has favoured a needs-based over a rights-based approach to Roma inclusion, focusing on social and economic integration and neglecting to address the human rights violations the Roma are suffering. The framework and the national strategies particularly fail to address sufficiently widespread discrimination against Roma and the systematic evictions observed in many member states. We consider that forced evictions, which clearly violate international human rights standards, and which we believe ethnically target Roma, should be part of the Commission's monitoring of member states' compliance with their obligations under EU law, including anti-discrimination law.

The EU must fully commit itself to combating and preventing direct and indirect discrimination against Roma, who are one of Europe's largest and most disadvantaged minorities. The Council should take a clear stand on this, and encourage member states to include in their national strategies specific measures to fight discrimination against Roma, which is the root cause of social exclusion, and eliminating segregation where it

exists. It should also urge member states to establish clear indicators and more effective mechanisms to measure progress and ensure more effective implementation. The lack of a human-rights based approach is also reflected in a vague commitment to participating in designing and implementing the strategies. We call on the Commission, the Council and member states, to more systematically engage with civil society and Roma and ensure participation at all levels.

The Council should further commit itself to taking stronger measures to end anti-Roma rhetoric and stereotyping and encourage member states to fight racism and confront peers to address racist or otherwise stigmatising language or expression that can constitute incitement to hatred, discrimination and violence against Roma. We call on the EU to reiterate the commitment in the Stockholm Programme to making full use of financing programmes to combat racism and xenophobia.

Violence against women

Amnesty International has welcomed the commitment made in the Stockholm Programme and its action plan to develop a communication on a strategy to combat violence against women (VAW), domestic violence and female genital mutilation. In this respect, we have welcomed the actual adoption of the European Protection Order (EPO) and the Directive on the rights of victims of crimes and the particular attention paid to victims of gender-based violence. We also appreciate the studies on domestic violence and female genital mutilation. However, we are concerned by the lack of developments regarding the creation of a strategy on VAW. The EPO and Directive on the rights of victims of crime are no substitute for an EU instrument to counter VAW and cannot exhaust all possibilities of EU action in that area. The EU should develop a long-term vision and comprehensively address VAW, including its transnational dimension. Such a policy framework should reflect international standards as set out in the *Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)*. It should especially respect the due diligence obligations for preventing, protecting against, prosecuting, providing remedies for acts of VAW whether committed by state or non-state actors. It should also promote specific protection mechanisms and actions for women and girls at risk of or subjected to violence and ensure they are offered adequate support.

Victims of crime

We welcome the adoption of the *Directive establishing minimum standards on the rights, support and protection of victims of crimes*, since it creates a comprehensive legal framework which applies to all victims of crime in a non-discriminatory manner, irrespective of their race, ethnic or social origin, sexual orientation or residence status, nationality or citizenship. We also welcome the introduction of an individual assessment to identify and adequately address the specific needs of particularly vulnerable victims. However, we stress the need to ensure that the emphasis on victims' rights in no way departs from the EU's obligation to fully guarantee the rights of suspects and accused during criminal proceedings, particularly the right to presumption of innocence. We also insist that the directive still fails to address fully the key issues of reparation and prevention.

CRIMINAL LAW

Amnesty International has welcomed the inclusion of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings in the Stockholm Programme. In this respect, we welcome the actual adoption of both directives 2010/64 and 2012/13 on the right to interpretation and translation and on the right to information in criminal proceedings.

We also welcome the Commission's proposed Directive on the right to access to a lawyer and the right to communicate upon arrest, which is currently being negotiated by the European Parliament and the Council. Considering the fundamental divergences between the two institutions' approach to the proposal, it was anticipated that the discussions would not be easy. In fact, the text seems to be a long way from adoption owing to the diverging positions expressed at the trilogues. As the discussion proceeds, we call on all parties to remain vigilant that international human rights standards are upheld. We are particularly concerned by attempts to restrict the directive's scope while extending the scope of derogations to the core rights enshrined in the text (and neglecting the right to effective remedy in cases of breaches of the protected rights). Given

the human rights issues at stake, we press all the parties to give the process sufficient time and transparency to allow genuine democratic and public debate.

We welcomed the Commission's Green Paper on the right to review of the grounds for detention in June 2011 leading to a public consultation. Nevertheless we regret that no concrete action has been taken following the consultation process. Although the consultation's outcome showed that there is a pressing need for reform in pre-trial detention across the EU and notwithstanding a clear call on the Commission from both the European Parliament and civil society to come up with a legislative proposal setting common minimum standards, the Commission has failed to deliver on its own commitment. Despite the Commission's willingness to present an initiative on detention in the last quarter of 2013, this has in fact not been included in its Work Programme for 2013, nor have the consultations' findings been made public. We call on the Commission to take action and come up with a proposal setting common minimum standards for pre-trial detention.

COOPERATION ON INTERNAL SECURITY/COUNTER-TERRORISM

The adoption by an overwhelming majority of the follow-up report of the European Parliament on alleged transportation and illegal detention of prisoners in EU countries by the CIA (Flautre report) in September 2012 sent a strong message to the Commission, the Council and individual member states that accountability for complicity in human rights violations committed by the USA in the context of the CIA rendition and secret detention programmes is long overdue. We call on the Commission and Council to implement the clear recommendations from the European Parliament to promote and support further inquiries into member states' responsibility in kidnappings, illegal transfers and secret detentions on European soil, as a matter of collective responsibility under the Treaties.

A REINFORCED EXTERNAL DIMENSION

We welcomed the Stockholm Programme's call for increased coherence between external and internal elements of the work on freedom, security and justice, and the explicit recognition of this need for coherence in the EU human rights package for external relations adopted in June. Such coherence is critical to ensure efficiency and credibility of EU's actions *vis-à vis* its citizens and the world outside the EU, as shown by the examples above regarding cooperation in the field of asylum, migration or counter-terrorism policies.

We are still awaiting meaningful initiatives which back up the commitment to increased coherence of EU JHA policies, both process and content-wise. The Council should promote greater exchange and coordination between the internal working party, FREMP, and the human rights external working group COHOM, which could be tasked with setting up together the terms for enhanced cooperation on human rights issues on specific dossiers that are highly relevant for the EU internally and in its relations with third countries.