

## **Amnesty International EU Office**

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### **Reaffirming the primacy of human rights – Amnesty International’s ten-point programme for the Austrian Presidency of the European Union**

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Amnesty International  
EU Office  
Rue d’Arlon 39-41  
B-1000 Brussels  
Tel.: +32 2 502 14 99  
Fax: +32 2 502 56 86  
Email: [amnesty@aieu.be](mailto:amnesty@aieu.be)

## **Reaffirming the primacy of human rights – Amnesty International’s ten-point programme for the Austrian Presidency of the European Union**

At the start of every European Union Presidency, Amnesty International presents its observations of the EU’s human rights policies and recommends how they could be made more effective. Austria takes over the Presidency relieved that the EU budget for the next seven years has been settled, reassured that despite the constitutional fiasco the EU is still in business, and eager to conclude negotiations on the EU Fundamental Rights Agency to be established in Vienna.

But all is not well. Disclosures about CIA secret detentions, renditions and the suspicion of European complicity in gross human rights abuse by US agents, including illegal detention, “disappearance” and torture, has put the EU and Member States on red alert. With inquiries launched both by the Council of Europe and the European Parliament, and warnings by the Commission and the Parliament that the sanctioning mechanism of Article 7 TEU may need to be used for the first time, the significance of this

latest twist in the “war on terror” can hardly be exaggerated. It has effectively shattered EU complacency about its own human rights record, and the outcome is bound to redefine EU human rights policies.

### **COUNTER-TERRORISM: HUMAN RIGHTS ALSO UNDER THREAT IN THE EU**

The allegations of involvement in unlawful activities by the US add to Amnesty International’s concern that the EU conducts its own counter-terrorism effort in a manner that shows significant human rights shortcomings. EU counter-terrorism strategies have always made obligatory references to respect for human rights, but it has become increasingly clear that the need to address human rights implications in its own sphere of competence has been grossly underestimated.

What is more, until now there has been no response from the EU to measures taken by some Member States that breach international standards.

Such discrepancy between what is on paper and what is practised risks undermining not just the EU's credibility, but ultimately also the effectiveness of the counter-terrorism effort itself. If the EU wants to retain credibility inside and outside its borders, it must end any semblance of ambivalence and double standards. It must make clear that the rules set out by international humanitarian and human rights law have not changed and will be applied rigorously in all counter-terrorism efforts.

The greatest human rights challenge for the Austrian Presidency will be to set the record straight, by reaffirming the primacy of human rights. At the end of the six months, there must be no doubt left that arbitrary arrests, secret detentions, extraordinary renditions, denial of due process, torture or other illtreatment, and "disappearances" will not be tolerated. There must be acceptance by all Member States that deportations with "diplomatic assurances" to countries that practice torture are out of bounds. There must also be recognition that the common fight against terrorism is an area of competence and action where the EU is expected to ensure adequate protection for human rights throughout its territory.

#### **HUMAN RIGHTS PROMINENTLY IN THE BALANCE**

A common perception of the threats of terrorism and "illegal immigration" has become a dominant feature in the fields of foreign and security policy and of justice and home affairs.

This reinforced the scope and legitimacy for collective EU policies and actions in these fields. In that context, the human rights dimension has become more pronounced in a number of ways.

The debate on UN reform, in which the EU has played a leading and constructive role not least in connection with the new Human Rights Council, has underlined the inextricable link between security, development and human rights. This conceptual insight is gradually finding its way into the whole field of the EU's external

relations, raising complex challenges of shaping more comprehensive and crosscutting strategies - for example development policies in which human rights (including women's and children's rights) are more effectively mainstreamed; conflict prevention strategies that try to tackle root causes of poverty and exclusion; ambitions to control irregular migration while protecting refugees' and migrants' rights; or trade policies that take account of human rights impacts.

At the same time the EU is becoming more operational in its foreign policy, which manifests itself in particular in concrete engagement in peacekeeping and civilian crisis management. Human rights are now recognised as a key factor that has to be built into crisis prevention, peace and crisis management operations from the very start. Another area in which the EU seeks to develop more concrete action to enhance stability through advancing democracy, human rights and the rule of law as well as through economic prosperity, is the European Neighbourhood Policy. Ironically, the achievements in this respect of the EU's enlargement policy and its crucial role in Europe's remaining fragile area, the West Balkans, have overshadowed the way the whole enlargement complex has contributed to the constitutional crisis and now risks troubling each Presidency. This poses a major challenge also in human rights terms, given the very significant potential to effect positive change through EU enlargement.

#### **DELIVERING ON HUMAN RIGHTS WORLDWIDE**

Amnesty International has for years been critical of the EU for failing to put its human rights tools in the field of external relations into practice. The recent period shows more positive developments, including focused efforts to implement the various human rights guidelines, debate on the human rights clause, and EU support for an international arms trade treaty. At the institutional level the European Parliament's revived Subcommittee on Human Rights, and the new position of Javier Solana's Personal Representative on Human Rights, have had a positive impact.

Nevertheless, engrained problems remain. Human rights worldwide continue to feel the impact of 9/11 and the manner in which the US conducts its 'war on terror'. When dealing with key countries, 'strategic partnerships' and the double standards of Realpolitik still tend to eclipse human rights interests. Mainstreaming human rights remains an elusive goal. There is great resistance from the EU to go beyond the purely voluntary approach when addressing corporate responsibility in relation to human rights. Insufficient funding of human rights actions is hampered by too much bureaucracy.

#### **NEGLECTING HUMAN RIGHTS AT HOME**

Human rights within the EU have only recently become an item on the political agenda. There are some significant developments: the proposed fundamental rights agency (FRA), the Group of Commissioners on Fundamental Rights, and the - now frustrated - intentions to enable EU accession to the European Convention on Human Rights (ECHR) and to incorporate the Charter of Fundamental Rights into the Constitution. However, these cannot disguise the fact that human rights compliance within

the EU remains an area of glaring neglect. For many years, human rights problems within EU borders ranged from police abuse, various forms of racism and discrimination to increasingly restrictive asylum policies. The EU's enlargement programme has sharpened the contrast between the scrutiny of candidate countries and the complacency of Member States. Unfortunately, the FRA is not likely to provide the answer as compliance by Member States will be largely excluded from its remit.

Now, two dominant factors are driving the EU's domestic agenda: terrorism and irregular migration. Both feature serious human rights issues. Amnesty International has demonstrated extensively the human rights deficit in the EU's counter-terrorism policy, and the manner in which human rights and refugee protection obligations are snowed under in the fight against "illegal immigration".

Given their external ramifications there is a real risk of undermining the credibility of the EU human rights policy as a whole.

### **TEN POINTS FOR THE AUSTRIAN PRESIDENCY TO REAFFIRM THE PRIMACY OF HUMAN RIGHTS**

- 1. Enable the EU Fundamental Rights Agency to address human rights compliance by Member States.**
- 2. Reaffirm the primacy of human rights principles by ensuring full human rights observance in the EU's counter-terrorism effort and see to it that by the end of 2006 all EU Member States have ratified the Optional Protocol to the Convention against Torture.**
- 3. Develop a comprehensive policy that will address the situation of the Roma in the EU.**
- 4. Strengthen protection of the rights of asylum seekers and migrants through a common information system, gender guidelines, and standards on return that comply with international law.**
- 5. Ensure that the development of Regional Protection Programmes is never a substitute for refugee protection obligations.**
- 6. Assert a strong human rights dimension in the EU's enlargement and neighbourhood policies.**
- 7. Press for more active implementation of the EU human rights guidelines.**

**8. Make control of small arms a key theme for 2006, and complete the work to strengthen the EU Code of Conduct on arms exports.**

**9. Lead the EU to help ensure that the UN Human Rights Council is established as an effective body during the first half of 2006.**

**10. Initiate a comprehensive review of the overall EU human rights policy and ensure effective Council working groups to deal with human rights within and outside the EU.**

## **1. Human rights compliance within EU borders**

Human rights problems within EU borders have for many years included police abuse and various forms of racism and discrimination, and the impact of increasingly restrictive asylum policies. More recently, fighting terrorism and irregular migration have become the dominant priorities for the EU. Both have fostered serious human rights violations and undermined the general acceptance of basic standards by serving as a justification for restricting certain fundamental rights and freedoms.

This has no doubt contributed to a climate of fear and suspicion which in turn can nourish racism and radicalisation. At the same time, people fleeing persecution, victims of police violence, discrimination and trafficking, and other particularly vulnerable groups of society are too often left behind with their needs inadequately addressed. While the EU would generally acknowledge that these situations raise human rights issues, its responses appear to be either too fragmented or too general. The answer to Amnesty International's appeals in recent years regarding human rights deficiencies within the EU has been either inadequate (Commission) or non-existent (Council).

The reality is that the EU is not prepared to upgrade its domestic human rights role. For the Council, addressing its own members over human rights problems constitutes a greater taboo than applying sanctions for excessive budget deficits. This is reflected at the institutional level by the absence of a proper structure in the Council dedicated to dealing with domestic human rights questions. It is also echoed by the low

profile discussions over the future EU Fundamental Rights Agency.

Amnesty International welcomed the Commission's proposal for the Agency as one step in the incremental process of building an effective human rights policy for the EU itself, but found that its mandate was conceived too narrowly, and that the overall process reflected a limited and ad hoc approach to fundamental rights policy in the EU. It argued for an Agency that is empowered to identify weaknesses in the way human rights are observed in practice in the EU - not only at EU level but also in the Member States. With all the monitoring of human rights that exists already, what is really lacking is a body to analyse and shape all the information into effective remedial action.

However, the discussions which began under the UK Presidency seem to confirm a minimalist conception of the future Agency's role. Amnesty International is particularly concerned that the possibility for the Agency to engage in activities in the area of police and judicial cooperation in criminal matters and to provide technical expertise in connection with Article 7 TEU seem to be closing up.

The obvious lack of political will to shape a coherent and substantial human rights policy risks increasing the distrust of EU citizens in the capacity of the EU to address their individual and everyday life problems. It also reflects badly on EU's credibility vis-à-vis third countries and candidate countries, giving way to what is increasingly perceived as a double standards approach to human rights.

It is therefore important to note from the

Draft Operational Programme of the Council for 2006 submitted by the incoming Austrian and Finnish Presidencies that the two presidencies "will in particular work to improve the coherence and consistency of the EU's human rights policy in its internal matters as well as in external affairs".

**Amnesty International calls on the Austrian Presidency to place the individual at the heart of a new and genuine internal human rights policy, including:**

- the creation of a dedicated structure in the Council for human rights within the EU;
- a Fundamental Rights Agency with a clear mandate to improve the capacity of both the national and collective systems to respond to human rights deficiencies within the EU.

## **2. Counter-terrorism and human rights in the EU**

In May 2005, Amnesty International published a report highlighting the deficiencies in the EU's criminal law response to terrorism. The analysis also expressed concerns over measures by Member States including methods of removing terrorist suspects from EU jurisdictions to third countries where they may face serious human rights abuse. These concerns have gained a particular resonance with the disclosures about the manner in which the "war on terror" is being conducted by the United States, and how it impacts in Europe. The Council of Europe, the European Parliament and national authorities have initiated investigations to establish the truth on possible EU and Member State complicity in practices that involve illegal kidnapping, transportation, detention and torture of persons suspected of terrorism, and on the alleged presence of CIA secret detention sites on the territory of EU and candidate countries.

The EU has never responded to antiterrorist measures taken by some Member States that breach international standards. However, the recent developments highlight the EU's

collective responsibility with regard to the way its Member States conduct the fight against terrorism. The manner in which the European Council in December 2005 kept silent on all of this and merely reiterated the importance of "a comprehensive and proportionate response to the threat from terrorism" fails to reflect the urgent need to directly and effectively address issues relating to human rights when framing counter-terrorism policies.

In fulfilling the commitment to strengthening the EU "Area of Freedom, Security and Justice" based on shared values and mutual recognition, it is of critical importance that the fight against terrorism is made part of this effort not just on paper, but also in practice. The EU counter-terrorism strategy to "prevent, protect, pursue and respond" must develop hand in hand with adequate legal safeguards for the protection of the rule of law and fundamental rights and freedoms. In this respect, clear common human rights grounds for judicial and police cooperation are to be applied in all circumstances, and terrorism-related offences cannot be allowed to fall outside the scope of the new framework decision on procedural rights of suspects and defendants in criminal proceedings.

The EU strategy is rightly focusing also on the issues of radicalisation and recruitment in terrorism. However, the "war on terror" syndrome has already created a dangerous convergence of integration and security issues. Discriminatory law enforcement practice cannot but alienate minorities who are perceived as a higher "risk factor" for generating terrorist activity. In a climate of suspicion and fear, it will be critically important to make a clear separation between integration and terrorism issues, and to reassert shared and universal values in the dialogue with religious and minority groups.

The overarching concern is the creeping erosion of fundamental human rights principles as a consequence of the response to the threat of terrorism. This is not just because of the way the US is waging its "war

on terror” and makes the end justify the means, or because of steps taken by some EU Member States that tend in the same direction. Perhaps most disturbing is the absence so far of an explicit response from the EU to the implicit attack on the international system of human rights standards built up over decades. Its silence leaves citizens in doubt over the real strength of the “Union of values”, and risks undermining the credibility of the EU human rights policy as a whole.

In December 2005 the Austrian Federal Parliament, responding to a personal appeal by Amnesty International Austria to all parliamentarians, unanimously adopted a resolution requesting the Federal Government to ensure compliance with the absolute ban on torture and other illtreatment, and to take a series of steps to put that into practice in all its consequences both at home and at EU and international level. Amnesty International believes that it is necessary and appropriate for the Austrian Government to now respond in its capacity as Presidency of the EU.

**Amnesty International calls on the Austrian Presidency:**

- to cooperate fully with ongoing inquiries into unlawful activities by US agents and possible European complicity, and to take all necessary steps to establish the truth;
- to commit to taking appropriate action if inquiries were to determine complicity by any Member State, whether by act or omission, in practices that violate international human rights and humanitarian law;
- to commit to preventing forced return with “diplomatic assurances” from EU territory to countries that practise torture;
- to reaffirm clearly and unequivocally the primacy of human rights principles including in particular the absolute prohibition of torture or other illtreatment and the ban on using evidence obtained through torture;
- to ensure in conjunction with the subsequent Finnish Presidency that by the end of 2006 all EU Member States have ratified the Optional Protocol to the

**Convention against Torture.**

### **3. Discrimination against Roma**

In the latest annual report of the EU Monitoring Centre on Racism and Xenophobia, the Roma emerge as the group most vulnerable to racism and discrimination in the EU. This assessment confirms comprehensive reporting from the Commission and a host of other reports and statements that discrimination against the Roma is a major human rights issue in the EU. It is also an issue which highlights the discrepancies in the way the EU addresses human rights issues in the context of accession negotiations and when looking at its own Member States.

In its recommendations to the 2005 Luxembourg Presidency, Amnesty International has raised serious concerns about the sterilisation of Roma women in Slovakia. Since then, in other reports it has highlighted discrimination against Roma with regards to housing rights in Greece and access to citizenship in Slovenia in particular. These findings add to a whole range of other studies and reports on discrimination against the Roma, which all highlight negative stereotyping and widespread structural abuse of economic and social rights of Roma virtually throughout the EU.

It is striking to see how all the wellintentioned efforts to analyse and tackle the engrained discrimination and exclusion facing Roma have failed to correct the abysmal social and economic situation of Roma communities all around Europe. One of the latest efforts to break the vicious circle was the launch of the Decade of Roma Inclusion in February 2005, with the support of European leaders. However, there is an obvious and urgent need to shift gears and create much greater policy and institutional drive and focus if the necessary change is to happen. The Austrian Presidency appears well-placed to provide such an impetus.

**Amnesty International calls on the Austrian Presidency to build on existing**

**expertise to:**

- **develop a comprehensive policy that will address the concrete situation of the Roma in the EU;**
- **address the gaps remaining in the EU anti-discrimination legislative framework and ensure a thorough monitoring of its implementation by EU Member States.**

## **4. Protection of asylum seekers and migrants**

### **COOPERATION BETWEEN MEMBER STATES**

The Austrian Presidency will pay particular attention to strengthening practical cooperation among EU Member States in view of establishing a common European asylum system by 2010. Despite the adoption of the series of minimum standards comprising the six building blocks of that system, Amnesty International is concerned that the level of protection still greatly varies from one Member State to another.

A common independent information base is a key element in achieving an equivalent level of protection throughout the EU. A common European asylum system should be based on common country reports, or at least be facilitated by the establishment of a European documentation centre dealing with information on refugee-producing countries and countries of transit. Such a centre would work on the basis of a wide variety of sources including reports from intergovernmental organisations such as the UN High Commissioner for Refugees, and nongovernmental organisations.

### **GENDER-RELATED PERSECUTION**

Developing best practice for the protection of vulnerable groups is another key element for harmonising the level of protection.

Particular attention is to be given to gender-related persecution, including sexual violence, forced abortion or sterilisation, female genital mutilation, punishment for transgression of social mores, "honour"-related crimes or trafficking. While the qualification directive held that the refugee definition should be interpreted with an awareness of gender, the newly adopted

directive on asylum procedures does not include any specific safeguards for female asylum-seekers.

### **RETURN OF "IRREGULAR" MIGRANTS**

The return of third country nationals staying irregularly in EU countries is another key priority for the Austrian Presidency. Amnesty International acknowledges that States have a sovereign right to control the entry, residence and removal of foreign nationals on their territory. That right must, however, be exercised in accordance with international refugee and human rights law and standards. Importantly, these include the principles of non-discrimination and proportionality. The exercise of State sovereignty cannot be at the expense of the fundamental human rights of asylum seekers or migrants, whatever their legal status. Within the context of current discussions on the draft directive on common standards and procedures in Member States for returning third country nationals illegally staying on their territory, the coming Presidency has a key responsibility to ensure that the EU standards will fully comply with relevant international law standards. Specifically, this calls for the prompt ratification by all EU Member States of Protocol IV of the ECHR prohibiting the collective expulsion of foreign nationals. Furthermore, the European Commission should be urged to introduce a proposal for a binding EU code of conduct on the use of force for law enforcement officials, in full compliance with relevant guidelines defined by the UN and the Council of Europe. Finally, Member States that ignore minimum EU standards must be held accountable especially where absolute principles such as non-refoulement are involved.

**Amnesty International calls on the Austrian Presidency to strengthen protection of the rights of asylum seekers and migrants through establishment of a common independent information system, the adoption of gender guidelines that would provide specific safeguards for women, and common standards on return that fully comply with international law. Member States that breach EU standards must be called to**

account.

## 5. The external dimension of asylum and immigration

The external dimension of a common European policy on asylum and immigration will remain a high priority for the Presidency. In the aftermath of the tragic crisis in the Spanish enclaves and Morocco, EU Member States have agreed on operational priorities to fight against "irregular" immigration and to develop a strategy on the external dimension of Justice and Home Affairs issues. Furthermore, the December 2005 European Council adopted conclusions defining a strategic framework for a migration policy focusing on Africa and the Mediterranean countries.

### **"MIGRATION MANAGEMENT" VS REFUGEE PROTECTION**

These documents include assurances that the EU seeks to promote a balanced approach to better manage migratory flows in transit countries and enhance refugee protection in regions of origin. However, in the light of the recent tragedies at the Southern borders of Europe, Amnesty International has signalled a distinct lack of political will by EU Member States to respect these safeguards in practice. The lack of real solidarity combined with abusive practices puts a strain on the EU's stated goal of tackling root causes of migration and seeking durable solutions. It undermines the EU's credibility and legitimacy in asking others to carry burdens that it is not prepared to accept for itself.

### **REGIONAL PROTECTION PROGRAMMES**

The launch of a pilot Regional Protection Programme (RPP) will be a major test of the political will of Austria and other Member States to deal significantly with root causes of forced displacements and to fully comply with their international obligations. In this respect, the possible launch of a pilot RPP in Western Newly Independent States (NIS) raises strong concerns given the persistent difficulties existing in Ukraine and very problematic human rights situations

prevailing in Moldova and Belarus, a country which has no formal relations with the EU.

Against this background, the Austrian Presidency should insist on a careful examination of the effective protection available in those third countries that may be willing to host such a programme, in close co-operation with the UN High Commissioner for Refugees.

**Amnesty International calls on the Austrian Presidency to ensure that the development of Regional Protection Programmes is never a substitute for the protection obligations flowing from the 1951 Geneva Convention and other relevant international instruments including the ECHR.**

## 6. Enlargement and neighbourhood policy

### **TURKEY**

Following the start of negotiations with Turkey in October 2005, it is incumbent upon the EU to make maximum use of all channels of political dialogue with the Turkish government to press for further legal reforms pertinent to human rights as well as the implementation of those changes. Particular emphasis should be placed on guarantees for the full enjoyment of freedom of expression and association, as Article 301 of the new penal code does not safeguard freedom of expression in its current form. The Austrian Presidency should join the Commission in monitoring closely that Turkey's prosecutors and judges interpret Article 301 fully in line with the European Convention on Human Rights. Special focus should also be placed on the prevention of torture and of impunity for its perpetrators, and on putting an end to violence against women.

### **CROATIA**

The EU formally agreed to start accession negotiations in October 2005 after it confirmed that Croatia had met the outstanding condition by fully cooperating with the International Criminal Tribunal for



the former Yugoslavia. It remains vital that the EU should urge the Croatian authorities to reform its domestic judicial system and to support its resourcing, in order to ensure that all perpetrators of war crimes and crimes against humanity are brought to justice, regardless of their or their victims' ethnicity.

#### **EUROMED PARTNERSHIP**

In spite of the sobering critique voiced in Barcelona on the 10<sup>th</sup> anniversary of the Euromed partnership and the reserved attitude displayed by Euromed ministers during the Barcelona +10 Summit, it remains vital that the EU drives reforms towards better protection of human rights throughout the Mediterranean region.

At the time of the summit, Amnesty International pointed out that while the violation of human rights continued unabated among partner countries, the EU was itself increasingly failing to live up to its own international obligations, namely in its response to terrorism and irregular migration. As a consequence, Amnesty International feels strongly that if the EU is to press partner countries credibly, it must also ensure that its own Member States respect their international human rights obligations such as non-refoulement and the absolute prohibition of torture.

The human rights chapters in the European Neighbourhood Action Plans offer new entry points for a sustained engagement of Euromed partners with regard to better human rights protection. The Austrian Presidency should therefore encourage that this element should be further strengthened in the Action Plans currently being developed. It should further ensure that Association Agreement Councils make full use of these chapters and integrate human rights issues as part of the bilateral political discussions.

**Amnesty International calls on the Austrian Presidency to:**  
• **insist on achieving full human rights compliance in law and practice in the context of accession negotiations with**

**Turkey and Croatia;**  
• **develop a stronger human rights commitment on the political agenda of the Euromed partnership while recognising that the shortcomings in fulfilling human rights are a shared responsibility of all partner countries.**

## **7. Implementation of EU human rights guidelines**

The EU guidelines on human rights have been developed as concrete foreign policy tools to be used at EU level and by Member States, and in particular through missions in third countries. Experience so far with the guidelines has shown that putting them into practice effectively is not a simple matter, a concern that is very much shared by the EU and individual Member States. In this context it is increasingly problematic that the main burden of implementing the guidelines is still effectively carried by an already overburdened Presidency. A more structured and coordinated approach makes it urgent to seriously examine the scope for burden sharing among Member States.

Another point of general concern for Amnesty International is the relative lack of transparency in the way the different guidelines are operated. While NGOs – including local civil society – are acknowledged to have an important role, there is general reluctance to share information even on a discretionary basis with them. Feedback on individual cases and information on action taken would enable NGOs to make a more effective contribution to the implementation of the guidelines.

#### **DEATH PENALTY**

The UK Presidency shaped a new approach to promoting abolition of the death penalty by focusing on 14 countries where there were prospects of influencing developments, be they positive or negative. The Austrian Presidency is encouraged to continue this approach, complementing intervention in urgent individual cases. The list of countries selected may need to be reviewed, with particular emphasis placed on countries which have a moratorium that may expire

during 2006/2007. In order to enable the NGO community to assist in identifying suitable individual cases, the Presidency should consider disclosing which countries are targeted.

It is understood that one priority of the Austrian Presidency is to achieve progress towards the abolition of the death penalty in China. Amnesty International proposes that this objective be widened to the whole of Asia, and that the ASEM summit in September 2006 in Helsinki should provide a forum for the EU to have a substantive debate on the issue of the death penalty in the region with Asian partners.

### **TORTURE**

Since the adoption of the guidelines in 2001, EU actions have largely focused on support for the ratification of the Convention against Torture and its Optional Protocol, as well as on the funding of projects for prevention and programmes for rehabilitation. The use of political instruments such as political dialogues, declarations and démarches has been very limited. It would be timely for the Austrian Presidency to broaden the scope, in particular through developing a procedure to identify and démarche on individual cases in selected countries. This could be done by encouraging EU heads of mission to regularly organise briefings with local NGOs in order to inform them of the EU policy in the field of torture and to collect information and suggestions for further activities including use of political instruments.

Consistent pressure should be maintained on countries that have failed to sign or ratify the Convention against Torture and/or its Optional Protocol, by issuing a formal démarche at the beginning and the end of the Presidency. It is suggested that the Finnish Presidency follows this up in early September prior to the traditional Signature and Ratification Event at the UN General Assembly. For such an approach to be effective, it will be important at the same time to step up pressure on all EU Member States to have ratified the Optional Protocol to the Convention against Torture by the end of 2006 – at the start of 2006, 15 of 25

Member States had signed, only five had ratified.

### **HUMAN RIGHTS DIALOGUES**

The 2001 guidelines on human rights dialogues were drawn up as a prescription for specifically designated human rights dialogues at central EU level with individual third countries. Following the EU-China dialogue that had already run for several years, new ventures were initiated with Iran and Russia. Amnesty International has tended to be critical of these. The risk of such formalised dialogues as separate mechanisms is not only to isolate human rights criticism from main political dialogue, but also to reduce the exchange on human rights to a ritual in which maintaining the dialogue may become more important than achieving concrete improvements.

It is therefore positive to note that the willingness to engage with third countries on human rights, through regular contacts and dialogues at different levels (“mainstreaming”), appears to be gaining ground – from local exchanges through EU missions, to integrating human rights in political dialogue. However, given the tendency to apply confidentiality in these matters, particular attention will need to be paid to the provisions in the guidelines that call for meaningful involvement of civil society.

### **CHILDREN AND ARMED CONFLICT**

The guidelines on children and armed conflict constitute an important commitment of the EU to address the impact of armed conflict on children. The review of the guidelines conducted in December 2005 by the UK Presidency identifies specific recommendations for action. In particular, the review indicates that human rights issues should be considered systematically in the early stages of planning of ESDP (European Security and Defence Policy) and that political tools available to the EU (such as démarches and political dialogues) have not been applied to their full potential since the adoption of the guidelines in 2003.

The Austrian Presidency should therefore

make better use of the variety of the political and operational tools at its disposal as outlined in the guidelines, including specific measures and incentives adopted to promote ending the use of children as soldiers. Better monitoring and reporting by EU heads of mission on the situation of children affected by armed conflict is also needed and can be achieved through the involvement of EU missions in local child protection networks.

#### **HUMAN RIGHTS DEFENDERS**

Of all the EU guidelines on human rights, those on human rights defenders have seen the most vigorous efforts to achieve their effective implementation. Since their adoption in 2004, presidencies have taken a number of steps, and the Human Rights Forum under the UK Presidency provided an opportunity for initial assessment. Research by Amnesty International that was presented to the Forum indicated that despite obvious engagement, there is a lot of scope for improvement in the sphere of monitoring and reporting through missions and delegations, and effective intervention on behalf of human rights defenders imprisoned or under threat. As a prerequisite, it showed a need for more systematic awareness-raising among EU and Member State officials as well as local NGOs, of the guidelines' existence and their potential.

In undertaking the first proper review of the guidelines, the Austrian Presidency will be able to draw on these and other findings. The review should build on the positive notion that the guidelines on human rights defenders are not only a concrete tool for effective action for persecuted individuals, but provide at the same time an important vehicle for capacity building in countries where civil society needs to be strengthened as the key to advancing human rights, democracy and the rule of law. In this sense, the potential of these guidelines extends well beyond individual protection and touches on the ability of the EU to conduct a foreign policy of which human rights are an intrinsic part, and to make its goals operational. Therefore they deserve a sustained drive by the 2006 Austrian and Finnish Presidencies towards their effective implementation.

**Amnesty International calls on the Austrian Presidency to continue to press for more active implementation of the EU human rights guidelines. In doing so, particular attention should be paid to broadening the scope of application through EU missions by raising awareness about the guidelines, and to ensuring meaningful involvement of civil society.**

**The Austrian and Finnish Presidencies are called upon to prepare for a substantive debate on the death penalty in Asia at the ASEM summit in September 2006 Helsinki.**

## **8. Arms control**

The first half of 2006 is of key importance for developing the UN Small Arms process as well as further elaborating the EU Code of Conduct on arms exports. The UN Review Conference (26 June - 7 July 2006), the second major international summit on small arms, is to review the UN Programme of Action on Small Arms (PoA), and offers a crucial opportunity to advance the broad international small arms agenda in light of the lessons learnt over the last five years. It can be expected that certain states will seek to limit the function of the Conference to merely review the implementation of the PoA, rather than seeking to improve the PoA itself. It is essential that the EU and other progressive states champion the need to develop new commitments on curbing the spread of small arms. Areas where the EU is particularly well placed to take a leading role include arms export controls and arms brokering, particularly since the EU recently pledged its active support for an Arms Trade Treaty.

An important building block to achieve the Arms Trade Treaty is to ensure that global principles for international arms transfers, based on States' existing obligations under international law, are included in the outcome document of the Review Conference. The Austrian Presidency should secure a consensus among EU Member States on this.

The EU Code of Conduct on arms exports, introduced in 1998, is one of the better regional agreements for arms control. However, the recent review offered few significant changes, and is yet to be concluded. The Austrian Presidency should focus on four key areas regarding the EU code of conduct:

1. agreeing the draft Common Position, which will effectively make the Code legally binding; this has been agreed in principle and at technical level for some time, but requires political will to finalise discussions;
2. elaboration of guidelines for implementation of the eight criteria;
3. develop the Code further to ensure a more comprehensive response to the phenomena of licensed production overseas, offshore operations and the increasing trade in components, and to clarify the circumstances under which Member States must require transit and transshipment licences.
4. agreement on the need for systematic end-use monitoring. This could include investigating the possibilities of joint EU activities in this regard.

It is understood that under Austrian Presidency the review of the EU arms embargo on China will continue in accordance with the decision taken by the EU Council in December 2004. The EU has made the lifting of its arms embargo contingent on human rights reform but concerns remain in all areas under scrutiny. The Chinese Government has yet to present a coherent plan of reform and steps to improve its human rights practices must be implemented in a clear and consistent manner.

**Amnesty International urges the Austrian Presidency to:**

- **make arms control, particularly the transfer of small arms, a key theme of its work to extend into the Finnish Presidency;**
- **vigorously promote the Global Principles for International Arms Transfers in the UN Small Arms process, in multilateral dialogues as well as in**

**bilateral contacts;**

- **complete the work to strengthen the EU Code of Conduct on arms exports;**
- **keep pressing China for concrete human rights measures in the debate around lifting the arms embargo.**

## 9. UN reform

The UN summit meeting in September 2005 confirmed the urgent need to reform the Human Rights Commission, but failed to provide the necessary framework for a strengthened and well functioning Human Rights Council. During the subsequent UN General Assembly the EU has rightly advocated that the new Human Rights Council be established as a standing body with operational autonomy that meets on a regular basis. However, the EU position has been severely challenged by a large number of countries and it was difficult to galvanise the necessary support among UN member states.

At the time of writing, the General Assembly had yet to vote on a resolution regarding the new Human Rights Council. There is every reason to be concerned that even under the best of circumstances, the resolution will only partially meet the envisaged reforms. Therefore, while key elements for an effective and well-functioning Council remain undefined and unresolved, it is of paramount importance that the EU continues its efforts on all necessary levels to ensure that the new Human Rights Council:

- is established as a principal organ of the UN;
- as a standing body that can meet at least monthly;
- with a mandate to address situations of violations of human rights;
- with an election procedure to ensure members abide by the highest human rights standards;
- with working procedures that allow for country resolutions to be voted by simple majority;
- assuming and strengthening the system of Special Procedures;
- empowered to make recommendations to the full UN system;

- preserving the fullest possible NGO contribution and participation.

**Amnesty International calls on the Austrian Presidency to lead the EU in maintaining the necessary momentum to ensure that the UN Human Rights Council is established as a fully functioning body during the first half of 2006.**

## **10. Wanted: a new EU human rights policy...**

The Austrian Presidency will mark the fifth anniversary of the last major EU human rights policy document, the May 2001 *Commission Communication on the EU's Role in Promoting Human Rights and Democratisation in Third Countries*. That was before September 11. Since then, the landscape has changed dramatically with major consequences for human rights:

- the impact of the 'war on terror' on international human rights protection;
- the dominant domestic agenda of fighting terrorism and "illegal immigration";
- the sharpened human rights dimension in enlargement and neighbourhood policies;
- the growing interdependence between human rights in external relations and within the EU;
- the increasing operational engagement in conflict prevention and crisis management;
- the search to effectively link security, development and human rights;
- the establishment of a UN Human Rights Council.

If anything has become clear from the controversy over unlawful CIA operations in Europe, or from the dramas of Lampedusa, Ceuta and Melilla, it is that when it comes to dealing with human rights, the EU is acting in an ad hoc fashion and has lost the compass of a relevant, overarching policy. Amnesty International believes that it is time for the EU to engage in a thorough and comprehensive review of its human rights policy, and to interconnect the external and internal dimensions. In other words, a new communication on human rights is needed to provide new focus and dynamism.

## **... and an upgrade of the Council's human rights structures**

A second institutional appeal concerns the operation of the Council's human rights structures. Recent experience with the establishment of the European Parliament's Subcommittee on Human Rights and Javier Solana's Personal Representative on Human Rights has shown that institutional innovations can have positive impact. The Fundamental Rights Agency proposal, despite uncertainties and misgivings, helps to focus debate on how the EU deals with domestic human rights issues. However, it is especially on the domestic front that the Council remains ill-equipped to address human rights issues adequately. No Council formation exists for that purpose - to negotiate the FRA proposal an ad hoc working group had to be established.

Amnesty International has repeatedly called for the creation of a dedicated Council working group to deal with human rights within the EU. With the increasing relevance of domestic human rights questions, and the prospect of the establishment of the Fundamental Rights Agency, the Austrian Presidency is duty-bound to act on this. On the external front, the Council working group on human rights COHOM has so far operated as a capital-based formation meeting monthly in Brussels. As human rights feature more prominently in a range of foreign and security policy domains, and as cross-cutting issues demand more consistent human rights input, a COHOM that is effectively limited to UN-related dossiers, overseeing implementation of the human rights guidelines and the official human rights dialogues, is increasingly unable to inject a consistent human rights perspective into overall Council operations. In fact, the prospect of a standing UN Human Rights Council will require a radical re-think of the Council's engagement. Amnesty International believes that this should tip the balance for the Austrian Presidency to take the necessary steps to establish COHOM as a

Brussels-based formation that is able to match the EU's human rights ambitions in external relations with sufficient institutional weight.

**Amnesty International calls on the Austrian Presidency to:**

- **initiate a comprehensive review of the overall EU human rights policy, interconnecting the internal and external**

**dimensions;**

- **create a dedicated Council working group to deal with human rights within the EU;**
- **take steps to establish COHOM as a Brussels-based Council working group.**