Amnesty International's Intervention to the Symposium on Reform of the European Court of Human Rights Strasbourg, 17 November 2003

On behalf of Amnesty International, I would like to thank the Finnish Government for sponsoring this symposium and for extending an invitation to me to speak.

Amnesty International agrees with the characterization of the European Court of Human Rights as the "Jewel in the Crown" of the European regional system for the protection of human rights.

As the only international human rights court to which individuals enjoy the right of direct petition, it is a unique mechanism which has ensured redress for violations of human rights of individuals, and guarded against impunity. The judgments of the Court have led to better implementation of human rights obligations through changes of law and practice in member states.

Its judgments have guided not only member states of the Council of Europe but other countries too- on what steps they must take to respect and secure fundamental human rights.

This is why Amnesty International has been following closely the current process, aimed at guaranteeing the long-term effectiveness of the European Court of Human Rights, for the last three years.

We agree that the exponentially increasing numbers of applications received by the Court render change necessary.

The question is what changes are needed.

Amnesty International considers that the current process of reform must result in effective measures to meet three objectives. It must ensure:

1) better implementation of the Convention at national level, which will reduce the need of people to apply to the Court for redress; and
2) more efficient and effective screening of the applications received to weed out the overwhelming majority of those that are currently inadmissible or ill-founded;
3) the expeditious rendering of judgments, particularly on cases that raise repetitive issues, which form the majority of the Court's judgments on the merits. Doing this will strengthen the right of individual application.

We consider that the essence of the right of individual application is the right of individuals to receive a binding determination from the European Court of Human Rights of whether the facts presented constitute a violation of rights secured in the European Convention. This right of individual application- which lies at the heart of the system- should be strengthened by ensuring speedier resolution of applications submitted to the Court.

Measuring the proposals currently on the table from the CDDH, we (Amnesty International and the 73 other organizations which have signed a Joint Response to the

proposals) consider that some meet these objectives, others fail to meet these objectives and that there are proposals that are missing.

Turning first to the proposals that aim to improve implementation of the Convention at national level:

We join the Committee of Ministers and its Steering Committee on Human Rights (the CDDH) in the belief that better implementation of the European Convention by member states should be a principle aim in this process. Better implementation of Convention obligations would lead to less violations and better redress mechanisms in member states- thus reducing the need for people to bring applications to the European Court of Human Rights.

We therefore welcome the group of proposals set out in Part A of the CDDH Interim Report, which was published in April 2003, (CDDH (2003) 006). These set of proposals aim at improving implementation of the European Convention of Human Rights at the national level. Some of these proposals aim at preventing violations from occurring in the first place by ensuring adequate training about Convention rights and the case-law; ensuring systems of continuing review of existing law and administrative practice for compatibility with the Convention and ensuring the screening of draft legislation for compatibility with the Convention. Other proposals in this group aim at ensuring the existence and accessibility of effective remedies at the national level where there are allegations that a Convention right has been violated.

We are confident that if states take the measures set out in the Recommendations to be adopted by the Committee of Ministers in order to give effect to these proposals, that rights will be better safeguarded at home, and individuals will have less cause to seek redress before the European Court of Human Rights. We consider that this set of proposals directly addresses the first objective we have laid out: improving implementation at the national level.

Turning next to the objective of ensuring efficient and effective screening of all of the applications received by the Court:

All have agreed with the Evaluation Group and the Court's assessment that carrying out this function is one of the two main challenges facing the Court.

We consider, however, that none of CDDH's proposals, to date, address the need to effectively and quickly screen out the more than 90% of applications received which are inadmissible or struck out under the current criteria.

We note that the Court in its Position Paper on the CDDH proposals, issued on 12 September 2003 shares this view that proposals to deal with the filtering function are missing.

To address this challenge we, like the Court, have recommended that more resources be added to the Registry, which carries out the initial review of all applications received. The resources should be financial and human. Additional registry lawyers should be hired as well as paralegal, secretarial and clerical support for the registry lawyers.

There is no way of preventing people from sending applications to the court- of "turning off the tap". As long as the Court endeavours to inform each applicant of whether their case is admissible or not, then there will be a need for highly qualified registry staff to perform the initial screening of the applications received and registry staff to communicate with applicants.

We also note that the Court is exploring the possibility of setting up a 5th Chamber of judges to perform this screening function.

We look forward to considering additional proposals to address what has been identified as a principle challenge to the Court: the effective and quick screening out of the more than 90% of applications that currently fail to meet the current admissibility criteria or are struck out.

Turning to the objective of ensuring the expeditious rendering of judgments on the merits, particularly on cases that raise repetitive issues:

We welcome the proposal to amend the Convention and Court's procedure of handling cases which raise repetitive issues about which the Court's case law is clear. This proposal, known as "Proposal B.1", would allow Committees of three judges to decide "manifestly well-founded cases" in an expedited manner- making rulings of admissibility and merits in one judgement that would be binding.

As it is estimated that such manifestly well founded, clone cases make up 65% or more of the cases on which the Court currently issues judgments on the merits, it is clear that this will indeed reduce the workload of the Chambers. It will also enable the court to render judgments on these cases more efficiency and within a reasonable time. We believe, therefore that this proposal directly addresses the 2nd of the two challenges faced by the Court, namely the effective handling of "clone cases, while maintaining the right to individual petition.

I now turn to the proposal that we consider fails to meet any of the objectives for reform which I mentioned previously. It is a proposal to limit the number of applications which the court will consider on the merits.

This proposal adds new admissibility criteria to Article 35 of the European Convention. This is a proposal which the Court, in its Position Paper, states is the most contentious of the proposals- within the Court itself and in other fora.

The wording of the current proposal of the CDDH, known as proposal "B.4", would require the Court to declare a case inadmissible if it considers that the applicant has not suffered a "significant disadvantage" and if the case does not either raise a serious question affecting the interpretation or application of the Convention or its Protocols or a serious issue of general importance.

We share concern expressed by some judges of the Court, members of the Registry, representatives of the European National Human Rights Institutions and other experts about this and other proposals to change the current admissibility criteria in a manner which would restrict the right of an individual to have currently admissible cases determined on their merits.

It risks arbitrary application and interpretation and creating a hierarchy of Convention rights.

Unlike other proposals, curtailing the right of individual application would have little impact on the main source of the Court's overburdening, which is disposing of the high number of cases that are inadmissible under the current criteria.

We are unconvinced of the necessity or effectiveness of this proposal. The Registry and the Court have indicated their opinion that this proposal will do little to reduce the Court's caseload. Instead, we believe that adding additional admissibility criteria suggested, will make the admissibility process significantly more time-consuming and complex. We therefore consider that this proposal fails to meet the objectives against which the measures for reform should be judged.

The right of individual petition is a vital element of the protection of human rights in the Council of Europe system.

We consider that curtailing this right would be wrong in principle.

Such a measure would be seen as an erosion of the protection of human rights by Council of Europe member states, an erosion which will have an adverse impact on efforts to promote the protection of the rights of people in countries where systems are significantly weaker.

As some of the Judges have stated in the Court's Position paper," it would send a most unfortunate signal to governments about the need for individual remedies". Particularly at a time when human rights - including the right to fair trial and the absolute prohibition of

torture and inhuman or degrading treatment or punishment - are under great pressure around the world, we urge the Council of Europe to maintain the integrity of the system it has established.

In concluding, Amnesty International applauds the dedication to the task of seeking to ensure the long-term effectiveness of the European Court of Human Rights that has so far been undertaken by the Evaluation Group, the Steering Committee on Human Rights and its Secretariat, the Court and the Registry. We welcome the proposals aimed at ensuring better implementation of the Convention at the national level, and measures to address "manifestly well-founded" cases. We vigorously oppose the proposal to amend the admissibility criteria and urge that this be dropped, as it does not address the root of the problems faced by the Court and it risks sending a dangerous signal that is wrong in principle.

In closing, on behalf of Amnesty International, I would like to urge all Counsel of Member States to do three things:

1) consider additional proposals to ensure the effective and quick screening of applications which are inadmissible under current criteria;

2) oppose the adoption of additional admissibility criteria; and

3) inform civil society in each member state about the reform process. Consult them before making final decisions on the proposals to reform the European Court. This mechanism is a corner stone in the Council of Europe system for the protection of human rights. These proposals, when implemented, **will** have an impact on the protection of human rights of all persons within the Council of Europe.

Thank you.