

Amnesty International Statement

at the occasion of the Ministerial Euro-African Conference on Migration and Development Rabat, 10-11 July 2006

On 10-11 July 2006, at the initiative of Spain, Morocco and France, nearly 60 African and European countries, including all EU Member States and the European Commission, are meeting in Rabat to discuss migration and development in the context of the persistent crisis of irregular migration from Africa to Europe. The conference is set to take concrete short-term measures to stem the flow of migrants from sub-Saharan African countries trying to cross to Europe, in balance with a long-term approach to address the structural causes of migration, on the basis of partnership between the countries of origin, transit and destination.

Amnesty International is deeply concerned that, until now, the various parties have failed to give due weight and priority to human rights considerations and to ensuring that the rights of refugees and migrants are not sacrificed in the name of migration control and security. Despite an abundance of rhetoric about humanitarian intentions and about the importance of tackling root causes of migration, the overriding preoccupation of European countries and of the EU is to keep people out, and to do so at almost any cost. Under the guise of security and managing migration flows, ever tougher controls are introduced.

That approach has serious human rights consequences. These range from outright abuse of migrants' basic rights and violations of longstanding refugee protection obligations, to the tragic loss of life of desperate people who simply will not be deterred from trying to seek a better future. The inescapable reality is that these human rights implications are not an incidental byproduct, but a structural, inevitable consequence of Europe's one-sided security approach.

When considering the complex of asylum, immigration, security and development, and the interrelated questions and problems they raise, it has become increasingly difficult to see the real picture amid the avalanche of statements, communications and plans that emanate from the European Union on. However, two conclusions stand out:

- there is a deep divide between Europe's immigration control agenda, and Africa's interest in increasing development aid and in opening legal channels of migration;
- some obligatory references notwithstanding, human rights and refugee protection are effectively absent from the equation.

Where the challenge for the Rabat Conference is portrayed as finding the right balance between Europe's security interests and Africa's development needs, it is appropriate to recall the quintessential message of UN Secretary General Kofi Annan, underpinning his reform proposals last year, that there will be "no security without development, no development without security and neither without human rights". The repressive agenda as driven by Europe cannot be accommodated just by adding a development component that does not bring any short-term relief to an immigration crisis that is as much a protection crisis, where long established values and systems to protect the rights of refugees and migrants are seriously eroded.

The "Fortress Europe" approach lacks the strategic perspective not only of the human rights dimension, but also of an immigration policy proper that can ultimately break through the vicious circle of repressive measures triggering desperate responses by migrants and perpetuating the criminal

exploitation of their plight. That approach needs to be radically re-thought and to have a real human rights dimension placed at its core, to safeguard the basic rights of migrants and to preserve the integrity of the international protection system.

"Migration management" vs immigration control

In the aftermath of the tragic events in the Spanish enclaves and Morocco in 2005, EU Member States agreed on operational priorities to combat irregular immigration and to develop a strategy on the external dimension of Justice and Home Affairs. In line with the December 2005 European Council conclusions, the Finnish Presidency of the EU and the European Commission in its political assessment of the Hague Programme on Freedom, Security and Justice promise a comprehensive examination of immigration issues, covering both "illegal" and legal immigration.

The pertinent documents include assurances that the EU seeks to promote a balanced approach, one that aims to ensure better management of migratory flows in transit countries but also enhanced refugee protection in regions of origin. However, against the backdrop of the continuing tragedies at the Southern borders, Amnesty International is concerned by what it sees as a distinct lack of political will by EU Member States to fulfil such assurances in practice. The lack of real solidarity combined with abusive practices put a strain on the stated goal of tackling root causes of migration and seeking durable solutions. It undermines the credibility and legitimacy of the EU in asking others to carry burdens that it is not prepared to accept for itself.

It will be important in this context to open prospects for the creation of legal means of entering the EU other than through seeking asylum. A renewed discussion within the EU on the scope for legal migration is therefore opportune and indeed urgent. While the positive impact of migration is increasingly a subject of debate within the international sphere, in Europe it is all too often framed solely within a discourse of control, containment or even criminality. In that context the Rabat Conference will be an important touchstone for the EU to clarify how it will formulate its objectives with regard to the UN High Level Dialogue on Migration and Development in September 2006.

In the short term, the Rabat Conference is to define a strategic framework for a migration policy focusing on West Africa and the Mediterranean countries, as well as to take concrete steps for the immediate future. Amnesty International understands that a concrete action plan with short- and mid-term measures is to be adopted but that its operational focus will be on cooperation in the fight against irregular migration and in the area of return and readmission. Discussion on legal migration and access to the European labour market and mobility of skills are bound to remain non-committal, while development issues are not likely to move beyond the stage of reiterating good but essentially hollow intentions given the multiplicity of actors and the lack of coordination.

Immigration control vs refugee protection

From a human rights perspective, the possibility that pressing human rights issues including refugee protection may be absent from the Rabat action plan is of serious concern. Although it is premature to assess the merits of the various initiatives, questions arise not only about feasibility but also about potential impact on the international protection system if the Rabat action plan fails to address this pressing question. There are limited prospects of bringing order to the inherently disorderly business of the movement of people in need of international protection. The external dimension of the common European asylum system also risks impacting negatively on the rights of those for whom the international protection regime is designed.

Amnesty International fears that the policy of engagement with third countries as practiced by the EU and its Member States will produce little more than an extension of their restrictive asylum and immigration policies. While discussions are focussed on financial incentives and technical assistance for the countries willing to implement their readmission obligations, there are as yet no commensurate efforts to tackle the root causes of immigration – including serious human rights abuses – more effectively.

Against this background, Amnesty International is very concerned that protection issues are not being given adequate attention although there are, among the wider group of irregular migrants, persons with a well-founded fear of persecution who need international protection. Refugee protection should

be at the core of ongoing discussions at EU and inter-governmental level, and adequate safeguards must be established to ensure that those with a well-founded fear of persecution are identified and benefit from international protection. The Rabat Conference should pay proper attention to the situation of vulnerable groups and individuals at risk, in particular women and children. Discussions regarding refugee protection should not only focus on capacity building and refugee status determination procedures, but also tackle the issues of integration prospects and durable solutions in host countries.

Another significant step would be to develop emergency tools that would allow the EU to intervene promptly and efficiently when a neighbouring country is faced with a massive humanitarian or migration crisis. Such tools could range from adequate financial instruments to joint teams of experts who could assist in processing asylum claims and identifying vulnerable groups. Such tools should be geared towards the protection of people rather than focusing on border controls. None of the measures envisaged should aim at deterring spontaneous arrivals by shifting asylum seekers to processing zones where responsibility for refugee protection would be unclear.

Migrants' rights

Migrants are especially vulnerable to unscrupulous and abusive practices by recruitment agents in countries of origin. They are more likely to seek out the services of people smugglers or traffickers, to suffer serious physical and mental harm in the course of their journey, and to be vulnerable to exploitation. In this regard, it is essential that the renewed dialogue on legal migration includes a strand on the fight against trafficking in human beings and the needs of victims.

Migrants staying and working illegally in the EU commonly face racism and xenophobia and suffer economic exploitation. Employment conditions are often harsh and breach basic social and economic rights, without any effective access to justice and redress. The dialogue to be set up on legal migration should therefore serve to promote, fulfil and protect the rights of all migrant workers and their families without discrimination. Most European States have yet to ratify the 1990 UN Convention on the Rights of All Migrant Workers and Members of their Families. They should do so and adopt policies nationally to safeguard migrants' rights.

The EU's record in this regard contrasts sharply with the high priority the EU attaches to the return of third-country nationals staying irregularly in EU countries. The current discussions on the draft EU return directive should lead to common EU standards that will not leave people in limbo and that comply fully with relevant international law standards. These include the principles of non-discrimination and proportionality, and the prohibition of collective expulsions. Member States that ignore minimum EU standards must be held accountable especially where absolute principles such as *non-refoulement* are involved.

Human rights responsibility

Over the past period in which the Africa-Europe migration crisis has sharpened, Amnesty International has documented evidence of consistent patterns of human rights violations in this region linked to interception, detention and expulsion of foreign nationals, including persons seeking international protection. The string of incidents at the Southern European borders is tangible evidence that the integrity of the international refugee protection system is being jeopardized by EU Member States' current practices.

Despite a sharp decline in asylum applications in most EU Member States, these same countries appear increasingly inclined to withdraw from their international commitments regarding refugee protection and to shift responsibility to neighbouring third countries where the prospects for effective protection are likely to be minimal at best, and where States' practices towards refugees and migrants have also often been abusive of their human rights. The records of EU Member States themselves show a range of problems including denial of access to asylum procedures, sub-standard reception conditions, unlawful detention and expulsion practices, and even *refoulement*. Despite calls for corrective action from UNHCR, the European Parliament, and NGOs, there has been little response from the governments concerned, while the European Commission has refrained from living up to its responsibility for monitoring and enforcing compliance with EU standards.

Even where immigration control has resulted in excessive use of force and loss of life, such as occurred at the Spanish enclaves in Morocco in August – October 2005, there has been no public accounting as a result of any official investigations. The fact that three more deaths have occurred this week at the border with the Spanish enclave of Melilla reinforces the need both for proper investigation of such incidents, and for effective safeguards to be put in place to prevent excessive use of force by security forces engaged in stopping suspected irregular migrants.

European and African governments alike should cease to persist in the prevailing attitude of denial when it comes to taking responsibility for their own human rights shortcomings. The Rabat Conference should be an opportunity to jointly face up to that challenge by at least acknowledging that to achieve security and development, equal weight must be given to human rights. Irregular migrants, too, are entitled to basic human security.

Recommendations to the Rabat Conference

Amnesty International calls on the participants in the Ministerial Euro-African Conference on Migration and Development to incorporate explicit human rights commitments in the outcome documents:

- 1. Following States' existing obligations under international human rights and refugee law, protection of the rights of migrants and refugees must be inserted concretely and systematically in short-term measures of migration control;**
- 2. The strategic orientation to migration and development, in particular on the part of European States and the EU, must move away from the current repressive approach to one which encompasses both short- and the long term imperatives, balances European and African interests, reflects a serious commitment towards a policy on legal migration, and, most importantly, has rights protection at its core;**
- 3. Adequate mechanisms must be put in place by all states to identify persons in need of international protection, and all asylum seekers must have guaranteed access to fair and satisfactory asylum procedures, including provision of legal assistance and interpretation services, to ensure that they are safeguarded from immediate expulsion and *refoulement*;**
- 4. All States must ratify the 1990 UN Convention on the Rights of All Migrant Workers and Members of their Families.**

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