

AMNESTY INTERNATIONAL

Dr. Wolfgang Schäuble
Minister of Home Affairs
EU Presidency

11 January 2007
Our Ref: b_607
AI Index: IOR 61/003/2007

Dear Dr. Schäuble,

Subject: Respecting human rights when cooperating with third countries in the field of migration

In light of the forthcoming informal meeting of the Ministers of Justice and Home Affairs in Dresden on 15-16 January, Amnesty International would like to draw your attention to some key human rights concerns related to the EU's cooperation with third countries on migration.

Closer cooperation with countries of origin and transit in the field of migration management has been prioritized by the EU since the adoption of the 1999 Tampere conclusions. The principle has been repeated both in the Hague Programme and in the Global Approach to Migration. The most significant results so far have been the Ministerial Conferences on migration and development between EU Member States and African States organised in Rabat and Tripoli last year that have created a political framework for this cooperation. Amnesty International has on both occasions welcomed the ongoing dialogue between the different stakeholders in the migration debate but persistently called for a balanced approach that effectively tackles the root causes of (forced) migration and makes human rights conditionality a key element of its strategy when engaging in cooperation with third countries to control irregular immigration.

So far, the focus for the EU and its Member States has been on persuading and assisting African and North African countries to cooperate more effectively in combating irregular migration by stepping up ever more sophisticated border control measures and to work together with the EU and its Member States on return.

This approach can result in gross human rights violations as the events at the Spanish enclaves Ceuta and Melilla in 2005 clearly illustrate (see Amnesty International, 'Spain and Morocco : Failure to protect the rights of migrants-Ceuta and Melilla one year on', AI Index EUR 41/009/2006). Amnesty International documented serious human rights violations inflicted upon third country nationals by Moroccan authorities in the wake of these tragic events when expelling persons to desert areas at the border with Algeria. Moreover, this has not at all been an isolated incident. Similar unlawful expulsions by the Moroccan authorities continued to take place in 2006, while most recently, in the early morning of 23 December Moroccan police forces in Rabat arrested and consequently deported more than 200 migrants, asylum seekers and refugees, to the border with Algeria. At Christmas day another 40 persons were arrested at Nador, while on 29 December 140 were arrested in Lâayoune. UNHCR has confirmed that 70 among those arrested were in the possession of UNHCR documents with 10 persons having already been granted refugee status in Morocco. Initially, Moroccan authorities denied that such persons were among those arrested but there have been reports that UNHCR documents have been destroyed or confiscated during these raids.

The persons arrested were consequently deported to desert areas along the Algerian border near Oujda. Some sources reported excessive use of force and intimidation (including firing in the air) by

Moroccan and Algerian border authorities, both trying to expel the migrants from their territory. Some women claim to have been raped. A number of the persons concerned managed to reach Oujda where they were initially left without any shelter and without any material support.

It was only after long negotiations that UNHCR succeeded in obtaining agreement from the Moroccan authorities to let the asylum-seekers and refugees among the people deported to the Algerian border return to Rabat. Those persons without UNHCR documents that managed to return to Oujda are still staying at the outskirts of town or in a provisional camp near the University reportedly in difficult conditions. The fate of the migrants that did not manage to reach Oujda is unknown until now.

In reaction to UNHCR's demand for clarification the Moroccan government stated that the operation should be seen as part of its commitment to cooperate with the EU in the fight against illegal immigration as agreed both in Rabat and Tripoli.

The recent events in Morocco described above are a sad illustration of the fears and concerns consistently expressed by Amnesty International and other human rights organizations with regard to the human rights situation in Morocco and the rest of the region. No matter how important cooperation with Morocco in the fight against irregular immigration may be for the EU and its Member States due to geographic and strategic reasons, such massive breaches of international human rights obligations cannot pass without response.

A strong signal is needed in order to ensure that the comprehensive European Migration Policy agreed upon during the last European Council is truly based on the 'respect for human rights and fundamental freedoms of migrants' also as regards cooperation with third countries. As stated in the German Presidency work programme it is indeed 'important to do a better job of protecting migrants in transit countries'.

The incidents described above, put into question the conclusion of the readmission agreement between the EU and Morocco as well as recently extended financial engagements of the EU towards Morocco on migration management in the framework of the European Neighbourhood Policy (ENP). EU Member States and the Community are always under an obligation to comply with their obligations and responsibilities arising from international law, in particular from the European Convention for the Protection of Human Rights and the Geneva Refugee Convention, including when removing third country nationals from their territories.

Given the recent illustration of the treatment these people risk in Morocco, it would be hard to see how the EU could continue to negotiate an agreement with Morocco on the readmission of third country nationals who no longer have a right of residence in the EU, as if nothing had happened. Therefore, Amnesty International calls upon the EU to review the negotiation of the agreement with Morocco with a view to including sufficient guarantees for treatment of third country nationals on its territory in compliance with international human rights standards. The implementation of existing bilateral readmission agreements between certain Member States and Morocco should be reviewed with the same purpose.

Finally it is time for the EU and its Member States to reconsider its strategy towards cooperation with third countries in combating irregular immigration and apply human rights conditionality as a principal method to ensure effective compliance by all concerned with commitments to protect migrants in transit countries. The cooperation of third countries in the management of migration is, of course, indispensable but it would be wrong and shortsighted if the price for such cooperation is silence in the face of blatant abuse. To the contrary, observance of basic human rights when dealing with irregular migrants, asylum seekers and refugees by such countries is crucial if the EU wants to engage in long term and stable relations with these countries. This requires a permanent screening of the situation of migrants and refugees in the countries concerned and the impact of measures taken by the EU to support its partners in the fight against illegal immigration on their situation. The sub-

committees on human rights within the framework of the Association Agreements with the third countries concerned could be used as an important tool in this respect.

Amnesty International urges the informal JHA Council to launch a discussion on full integration of human rights conditionality in its cooperation on migration with transit countries such as Morocco.

We hope that these concerns may be taken into consideration in your discussions in Dresden.

Yours sincerely,

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