

Amnesty International statement to the 88th Session of the Governing Council of the International Organization for Migration (IOM)

30 November - 3 December 2004

Introduction

The 88th Session of the Governing Council of the International Organization for Migration (IOM) is meeting at a time when there is immense interest in matters relating to migration. States and other actors are increasingly coming together to discuss the myriad issues related to the phenomenon of migration at the international, the regional and the national levels, as illustrated by the “Year in Review: Focus on selected policy developments and events in 2004” agenda item of this Council session.

At the outset, Amnesty International would stress that any discussion on migration should take as its starting point the human beings who are migrating and their human rights. The theme of this year’s international dialogue on migration is “valuing migration” which should mean, in the opinion of Amnesty International, valuing, protecting and promoting the rights of the migrant at every stage of her journey. It should not amount merely to an “evaluation” of the phenomenon of migration in a sterile cost-benefit analysis, in which the migrant herself is invisible or treated as a mere statistic.

While it might be tempting for some members of and observers to this Council to locate all global discussions on migration-related issues within this forum, we believe that it should serve as a complement to other discussions since it is more appropriate for the theory and practice of some of these issues to be located elsewhere. In particular, we would highlight discussions taking place in the United Nations human rights mechanisms such as the Commission on Human Rights, or those fora organized by the United Nations High Commissioner for Refugees (UNHCR).

Over the past year, Amnesty International has continued to document situations around the world in which migrants live and work in precarious and often unsafe conditions, with little respect for their fundamental human rights. For many migrant workers and their families, their daily reality is weak and limited legal protection and constant vulnerability to

discrimination and exploitation by unscrupulous recruitment agents, employers and other actors in the host societies such as immigration and police officials.

IOM's mandate

Amnesty International has noted with interest IOM's statement that "it needs to play a leading role in international migration law and best practices, including ensuring effective respect for migrants' rights"¹. Amnesty International is of the opinion, in this context, that it is not the international standards relating to migrants' rights that are either unclear or inadequate: it is rather the inadequate ratification and implementation of the standards contained within relevant legal instruments that is resulting in a lack of "effective respect for migrants' rights".

In connection with this, Amnesty International would recommend that IOM is careful when embarking on an exercise such as the "International Migration Law Project" in isolation from the many inter-governmental organizations (some of whom have a mandated responsibility in this area) and non-governmental organizations who have demonstrated expertise in migration issues. Amnesty International would in this context also urge the IOM to clarify whether it sees itself as mandated to advocate for increased ratification and increased and enhanced implementation of relevant migrants' rights instruments.

At the moment that IOM is conducting an internal review of the purposes and functions of the organization, Amnesty International also believes that it would be opportune for IOM's member states and the organization itself to reflect on its core competencies and its role within the international migration arena. This could take place within the context of an independent and external evaluation of IOM's overall mandate. The report of the Global Commission on International Migration, which is to be presented to the UN Secretary-General and other stakeholders in the course of 2005, will shed analytical light on the global governance of international migration. Amnesty International urges IOM to take into account the recommendations of the forthcoming report of the Global Commission on International Migration in charting IOM's future role.

Moreover, we have read with interest the fact that IOM "has launched and is institutionalizing a consultative mechanism with NGOs"², and welcome the first steps that have been taken towards the realisation of such a mechanism.

Human rights impact of IOM operations

In Amnesty International's statement to the 86th Session of this Governing Council in 2003 we sought assurance from IOM that it would "not participate in activities which would expose individuals to human rights abuses, including returns to situations where individuals would be

¹ IOM, *IOM Strategy: Current and Future Migration Realities and IOM's role*, MC/INF/274, 4 November 2004.

² *Ibid.*, p. 8.

at risk of human rights abuses.” We would again strongly encourage IOM to ensure that it includes a rights-based protection focus in all of its operations and activities.

Amnesty International is concerned that in the context of the crisis in Darfur in Sudan, IOM has assumed a role for which its expertise is in question, both in practice and in terms of the organization’s mandate.

In particular, we are concerned that the criteria on which IOM will determine the “voluntariness” and “appropriateness” of the return of internally displaced persons (IDPs) in Darfur have not been made accessible to the international community, including non-governmental organizations. We are also concerned to ensure that the criteria are based explicitly and clearly on all relevant international and regional human rights standards relating to return, including the UN Guiding Principles on Internal Displacement. In order *inter alia* to ensure that any return is not only safe but also sustainable, it is vital that an independent and impartial post-return monitoring of the human rights situation is carried out by a competent and experienced organization. This would be in order to monitor the proper treatment of all returnees in accordance with international human rights standards, and as applicable, the fulfilment of guarantees or assurances on the basis of which IDPs have made a decision to return to their homes or places of origin.

Irregular migration and human rights

In the course of its research, Amnesty International has documented a number of situations involving migrants who are in an irregular or undocumented situation³. Very often, such individuals are the most vulnerable to abuse of their human rights; they lack access to basic services, are at risk of physical and sexual abuse, arbitrary detention, and arbitrary expulsion from the territory of the host state. Many migrant workers become “undocumented” as a result of an arbitrary act to deprive them of their legal status while they are in the country of employment; such as an arbitrary termination of their work permit, or confiscation of their passport by their employers. In addition, irregular migrants are much less likely to expose human rights abuses committed against them, and to seek redress for such abuse. In addition to their specific vulnerability which stems from the lack of legal status in the host country, many irregular migrants also suffer multiple discrimination for reasons of their gender and age.

In light of this, Amnesty International is concerned that the language of “control and containment”, which often characterises this issue within the discourse used by IOM and many of its member and observer states, is detrimental to a responsible and rights-respecting debate on irregular migration. While recognizing the sovereign right of states to control their

³ See, for example, Amnesty International, *Spain: Crisis of identity- Race related torture and ill treatment by State Agents*, AI Index: EUR 41/001/2002, Amnesty International, *Malaysia: Human rights at risk in mass deportation of undocumented migrants*, AI Index ASA 28/008/2004 and Amnesty International, “Protecting Migrant Workers’ Rights”, *The Wire*, Volume 34, No. 11, December 2004.

borders, Amnesty International recalls that all migrants, including those in an irregular or undocumented situation, are entitled to respect for and protection of their fundamental human rights. We are concerned that many of the policies to “combat” irregular migration implemented by states, including through the assistance of IOM, could negatively impact the human rights of the individuals concerned. In this context, we continue to be concerned that the concept of “migration management” has yet to be authoritatively defined in a manner which explicitly acknowledges that such management can not be conceptually or practically detached from the human rights obligations that states have voluntarily assumed.

Recommendations to IOM

The International Organization for Migration should

- Make publicly accessible its “Criteria for Voluntariness and Appropriateness” for the return of IDPs in Darfur;
- Refer explicitly to existing international human rights standards applicable to migrants in all its publications, and provide a detailed analysis to the Council on IOM’s adherence to such standards within the design and implementation of its operations and projects;
- Make available detailed information on the International Migration Law project and clarify whether it sees itself as mandated to advocate for increased ratification and increased and enhanced implementation of relevant migrants’ rights instruments.
- Provide NGOs with a timeline for the institutionalization of a consultative mechanism with NGOs, including those NGOs based outside of Geneva;
- In the context of the discussions on the future role and direction of IOM, take into account the recommendations of the forthcoming report of the Global Commission on International Migration in charting IOM’s future role.

Recommendation to member and observer states to the Governing Council

All member and observer states to the Governing Council should

- Ratify all relevant instruments, including but not limited to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, for the protection of migrants and their human rights and ensure effective implementation of the provisions of these instruments.