



Migration and Development: the Human Rights Perspective

Amnesty International submission to the first ACP Ministerial meeting on asylum and immigration.

11-13 April 2006

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1. The need to put human rights at the core of the EU-ACP dialogue on migration

Amnesty International has long advocated for the protection of the human rights of refugees, asylum seekers and displaced persons. In the recent past, the organisation has moved towards a more holistic approach to human rights and the movement of people and is now seeking to address more systematically the rights of migrants, including migrant workers and members of their families. Throughout its work, Amnesty International looks to strengthen international legal protection for all migrants, ensure accountability of governments and other actors, expose exploitation and confront discrimination and racism against migrants.

Amnesty International believes that forthcoming discussion on the migration-development nexus that will take place within the framework of the EU-ACP partnership is extremely opportune. Indeed, while the positive impact of migration is increasingly a subject of debate within the international sphere, all too often it is framed solely within a discourse of control, containment or even criminality. Yet migrant workers play an essential role in the development process, including through filling employment and skills gaps in destination countries, and sending much needed remittances back to countries of origin.

In discussing the issue of international migration in the context of development, there is a danger that the rights, needs and vulnerabilities of the individuals who are migrating will be obscured. Amnesty International acknowledges the safeguards included in the article 13 of the Cotonou agreement, which defines the parameters of the EU-ACP dialogue on migration. However, too often the debate has taken a cost-benefit approach to the issue of migration, placing at the forefront the economic imperatives of countries of origin and destination, at the expense of the human rights imperatives of the individual migrant worker. For too many people, migration is not a voluntary and informed option, and the conditions in which they live and work do not respect fundamental standards of human rights and dignity.

Amnesty International believes that sustainable development can only be based on the respect, protection and fulfilment of the human rights of all people. Human rights should be both the means and the end of development. Recognition that this extends to the rights of migrant workers is essential to ensure that increasing economic development is not based on exploitation, discrimination, abuse and the deepening of inequality. If the human rights of individual migrants are not placed at the forefront of any analysis of, or proposed engagement with, the phenomenon of migration, it is likely that resulting migration policies will lead to human rights abuses; including as a result of the individual being viewed as a commodity, or a unit of labour.

A consequence of this could be that the individual's rights would be placed secondary to the requirements of the host country or country of origin, or the industry that requires his or her labour. While the benefits to both migrants themselves as well as to the countries of origin and destination are an important positive consequence of international migration, Amnesty International is firmly of the view that migrant workers should not be looked upon solely as "agents of development", and accordingly encouraged or even coerced to migrate in conditions which may violate the inherent dignity of the human person, and at the expense of other fundamental human rights.

Against this background, Amnesty International calls on the EU and the ACP countries to ensure that the dialogue set up under article 13 of the Cotonou agreement serves to promote, fulfil and protect the rights of all migrant workers and their families without discrimination, with the 1990 UN Convention on the Rights of All Migrant Workers and Members of their Families at its core.

2. Human rights clauses: purely cosmetic?

Human rights violations in countries of origin are often the motivating factor for the movement of migrant workers and members of their families. While movement in response to violations of economic and social rights or environmental degradation is not generally considered to constitute refugee flight, it has become increasingly difficult, in practice, to separate out refugees from other involuntary migrants or from economic migrants. Such "survival migrants" are migrating less out of choice than out of necessity. Lack of access to human security and development, discrimination, and extreme poverty are all primary motivating factors for the movement of such migrants from their countries of origin.

As recently illustrated during the crisis in the Spanish enclaves of Ceuta and Melilla, human rights abuses can also be the result of restrictive migration control measures aiming at barring access to the EU territory or aiming at removing irregular migrants from the territory of the host State. Amnesty International appreciates that the return policy and countering illegal immigration are necessary components of a proper immigration policy and understands the desire of governments to promote new and more effective ways of dealing with mixed movements of refugees and migrants. However, Amnesty International is very concerned that protection issues are not given adequate attention while persons in need of international protection are amongst irregular arrivals. Amnesty International also reiterates that the fundamental rights of migrants shall be respected regardless of their legal status.

While the EU has developed financial incentives and technical assistance for the countries willing to implement their readmission obligations, there appear to be no commensurate efforts to tackle the root causes of immigration – including serious human rights abuses – more effectively. Amnesty International is therefore concerned that readmission clause included in the article 13 of the Cotonou agreement may amount to trading human beings in exchange for financial aid.

Despite the theoretical safeguards on the need for a more effective and integrated management of migration flows, Amnesty International believes that the policy of engagement of EU Member States with countries of origin and transit has so far produced little more than an extension of their restrictive asylum and immigration policies, rather than pursuing political, development or economic co-operation from a human rights perspective to prevent the causes of people fleeing their countries. In particular, Amnesty International is concerned that readmission agreements do not include sufficient safeguards and that a mere general reference to Member States' international obligations is not enough to effectively prevent *refoulement*.

In the light of the above, the EU-ACP dialogue should promote the development of effective monitoring mechanisms. There should be a human rights impact assessment, based on relevant human rights standards, of every decision taken to combat illegal immigration and of their cumulative effect, in order to help prevent negative effects on the EU's key human rights obligations.

3. Denial of fundamental rights through trafficking and exploitative labour practices

Amnesty International's research also highlights that survival migrants are especially vulnerable to unscrupulous and abusive practices by recruitment agents in countries of origin. Migrants are more likely to seek out the services of people traffickers, to be vulnerable to labour exploitation and to suffer serious physical and mental harm in the course of their migratory journey. In this regard, it is essential that the EU-ACP dialogue includes a strand on the prevention and the fight against human trafficking. It should promote the respect of the standards defined by the United Nations and the Council of Europe.

Finally, migrants are often subject to harsh employment conditions breaching basic social and economic rights. Due to their particular vulnerability, migrant workers often find themselves working in dirty, dangerous and demeaning places. The "3 Ds" as this is commonly known characterise much of the work undertaken by migrant workers, especially that undertaken by particularly disadvantaged groups such as irregular migrants, women and children. Often through lack of choice, migrant workers have to work in extremely dangerous sectors of the economy. In many countries, governments tolerate the existence of this informal economy, and society reaps the benefits from its existence, while at the same time these irregular migrant workers are criminalised, and the individuals themselves are too afraid of the repercussions to seek redress for abuses perpetrated by their employers. Women are particularly vulnerable to sexual abuse and gender-based violence and discrimination during the process of migration, especially when compelled to migrate in an irregular status. The nature of work undertaken by many women migrant workers also leaves them vulnerable to exploitation and abuse; most migrant women workers are confined to unregulated and gender-segregated sectors of work. Domestic work is one such area that in many countries is overwhelmingly serviced by migrant women, who are often targets of abuse and exploitation, by employers and even by authorities of the State.

Amnesty International calls on the EU and the ACP countries to actively prevent and combat trafficking of human beings. The EU-ACP dialogue should also explore ways to reduce labour exploitation including by opening legal channels of immigration and enhancing the legal protection of migrants.

4. Recommendations

In the view of Amnesty International, the issue of international migration and development must be discussed within the framework of international human rights law and standards, including the rights and principles contained within the 1990 UN Convention on the Rights of All Migrant Workers and Members of their Families.

Amnesty International recommends integrating the following points in the 2006 ACP Action Plan and Declaration on Migration and Development:

1. The human rights of all migrant workers and members of their families must be placed at the forefront of any debate on migration and development. The EU-ACP framework partnership should promote, protect and respect the fundamental human rights of all migrant workers and members of their families, irrespective of their status.
2. The EU-ACP dialogue must adopt a human rights-based approach to economic migration, recognising that the human rights of all migrants, regardless of their status, must be upheld at all stages of the migration process. It should seek to play a role in preventing and eliminating the trafficking and exploitation of all migrant workers and their families by promoting the observance of the standards defined by the United Nations and the Council of Europe.
3. The EU-ACP dialogue should develop a human rights impact assessment based on relevant human rights standards, of every decision taken to combat illegal immigration and of their cumulative effect, in order to help prevent negative effects on the EU's key human rights obligations.
4. The EU-ACP dialogue should be grounded in the principles of non-discrimination and legal certainty and protect the rights of all migrant workers and their families. It should therefore refer explicitly to existing relevant international and European human rights standards, with the UN Convention on the Rights of All Migrant Workers and Members of their Families at its core.
5. The EU-ACP dialogue on economic migration should develop through a genuine and constructive dialogue between EU and ACP countries, based on information and experience sharing, mutual respect and mutual benefit. The development of an EU migration policy should imply commensurate efforts to tackle the root causes of migration, which in certain circumstances, including a lack of human security and gross inequalities, compel migrants to leave their countries of origin in the absence of fundamental human rights protections.