



**Amnesty International contribution to the Commission Green
Paper on an EU approach to managing economic migration**

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Amnesty International contribution to the Commission Green Paper on an EU approach to managing economic migration

As part of the consultation regarding the development of a European policy plan on legal migration¹, Amnesty International takes the opportunity of the Commission Green Paper to address some of the key issues surrounding the debate on EU migration policy².

Amnesty International's contribution to the Green Paper will focus on the human rights aspects of the approach put forward by the Commission and consider in particular the issues of migrant workers rights and co-operation with third countries.

Summary

Amnesty International makes the following recommendations to ensure that the EU will protect human rights when developing an "EU approach to managing economic migration":

1. The EU 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 exploitation of all migrant workers and their families;
2. It 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;
3. The EU policy framework should ensure that all migrant workers have access to fundamental rights, including the right to freedom of association, family unity, education, adequate housing, healthcare and other social services. Migrant workers should further enjoy all rights relating to working conditions. The length of stay should not condition access to any of these rights;
4. The EU policy framework should ensure access to justice and the right to an effective remedy for migrants whose rights have been violated. It should also foresee regular monitoring of EU policy implementation;
5. The EU approach to economic migration should develop through a genuine and constructive dialogue with third countries, based on information and experience sharing, mutual respect and 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

1. Background

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 addressing more systematically the rights of migrants, including migrant workers and members of their families. Amnesty International's research highlights that many individuals are exposed to human rights abuses as a consequence of migratory movements. Such abuses can be the result of restrictive migration control measures, the denial of fundamental rights in the host country including through exploitative labour practices, or human rights abuses committed in the course of removing a migrant from the territory of the host State.

¹ See The Hague Programme approved by the European Council on 5 November 2004, 16054/04, JAI 559, 13 December 2004

² Amnesty International further endorses the common statement issued by the European Platform for Migrant Workers Rights in response to the Green Paper.

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.

It is against this background that Amnesty International welcomes the initiative of the EU to launch a debate on EU economic migration policy. Amnesty International calls on the EU to ensure that such an initiative serves to promote, fulfil and protect the rights of all migrant workers and their families without discrimination.

2. General remarks

While the Hague Programme and previous work from the Commission in particular clearly advocate for a comprehensive approach to international migration issues³, Amnesty International notes that the Commission Green Paper has adopted a very narrow basis for this discussion on economic 'migration management'. While this is explicable in the light of EU Member States reluctance to adopt a common EU migration policy, we believe that such emphasis on European economic considerations is incompatible with the issues at stake. If any EU regime of 'migration management' is to be effective, not only must it be credible to states, but it must also be credible to migrants. In order to do so, it is essential that such a regime effectively respects and protects the fundamental human rights of all non-nationals moving to work in EU countries and members of their families.

By referring mainly to economic criteria for the building of admission procedures, there is a danger that the individuals targeted by the EU will be treated as commodities, seen as temporary service providers and denied access to such basic rights as the right to family unity or to secure working conditions and legal status. The everyday reality for many migrants in Europe remains a bleak one. Vilified by politicians and the popular media, often subject to discrimination and human rights violations, many live their lives on the margins of societies unwilling to accept or integrate them fully, while there remains a high demand for cheap and flexible labour. It is essential for the "EU approach to managing economic migration" to endorse this when reflecting on an economic migration policy for Europe. The EU must ensure that its "migration management" policies and practices do not in any way increase the vulnerability of migrants whether documented or not.

While the Green paper recognises in its introduction that Europe is an ageing, demographically declining population that will require more migrant labour in the future in order to sustain economic growth, it should also clearly acknowledge that:

- there are ongoing conflicts and human rights violations around the world that will always cause people to seek refuge in Europe and the EU should ensure that these people receive unconditional and adequate access to the EU territory and to a fair asylum procedure;
- there is a rational demand-supply dynamic operating which draws economic migrants to Europe to work, and this is often in the complete absence of human rights protection;
- the EU cannot turn a blind eye to the appalling social and economic situation of individuals in many third countries where it has developed diplomatic and commercial interests;
- until the EU develops and implements credible, right-respecting and accessible frameworks for legal migration, many migrants will effectively have no choice but to access irregular channels to enter and work in the EU.

3. Migrant workers' rights

Amnesty International believes that the starting point for a discussion on economic migration "management" must be the rights of migrant workers and that these should be firmly grounded in principles of equality before the law and of non-discrimination. Furthermore, the EU policy on economic migration should seek to play a role in preventing and eliminating the exploitation of all migrant workers and members of their families, and provide mechanisms to ensure that those responsible for abuse are held into account.

³ See for instance The Hague Programme, page 7: "International migration will continue. A comprehensive approach involving all stages of migration, with respect to the root causes of migration, entry and admission policies and integration and return is needed (...); see also the Communication from the European Commission Study on the Links between legal and illegal Migration. (COM (2004) 412 final)

Amnesty International considers that the Green Paper does not give proper consideration to these issues and calls on the EU to develop a rights-based approach to "managing economic migration". In order to do so, Amnesty International wishes to make the following recommendations:

- ***The EU approach should make explicit reference to international instruments and standards applicable to migrant workers***

Amnesty International calls on the EU to develop a migration policy based on the principles outlined in the Migrant Workers Convention and other relevant International and European instruments, including ILO Conventions Nos.97 and 143, the Council of Europe Convention on the Legal Status of Migrant Workers, the European Convention on Human Rights, the European Charter of Social Rights and the European Charter of Fundamental Rights. The EU framework for migration policy should refer explicitly to these existing international and European human rights standards applicable to migrant workers.

Key international instruments, such as the UN Convention on the Rights of All Migrant Workers and Members of their Families (referred below as 'The Migrant Workers Convention') and the ILO Conventions No. 97 on Migration for Employment (Revised)(1949), and No. 143 on Migrant Workers (Supplementary Provisions) (1975), provide extensive and specific protection to migrant workers. The two ILO instruments delineate rights to migrant workers lawfully present within the territory of a State, including the principle of non-discrimination and equality of opportunity and treatment in such areas as remuneration, membership of trade unions and access to social services. The Migrant Workers Convention provides more extensive and specific protection to all migrant workers and members of their families regardless of their migratory status.

- ***The EU approach should uphold the rights of all migrant workers and members of their families***

Amnesty International believes that the EU approach to economic migration should clearly stipulate that all migrant workers are entitled to enjoy certain fundamental rights. The EU policy framework should ensure that all migrant workers have access to freedom of association, fundamental rights, including the right to family unity, education, adequate housing, healthcare and other social services. Migrant workers should not be subjected to arbitrary arrest and detention, to torture or cruel, inhuman and degrading treatment or arbitrary expulsion and they should be protected against sexual and gender-based violence. Migrant workers should further enjoy all rights relating to working conditions, and they should be protected from exploitative labour practices. The length of stay should not condition access to any of these sets of rights.

It is also essential that EU admission procedures and permit requirements do not lead to situations where the migrant workers' rights are de facto restricted or where she/he finds her/himself at risk of being unduly "owned" by the employer. Such a scheme would put the individual at risk of a variety of exploitative or discriminatory practices committed by her/his employer. In particular, the EU framework should not allow for situations where an employer holds the migrant worker's permit. It should further ensure the right for migrant workers to freely change employers and include provisions to enable migrant workers to develop their skills and experience through training or new activities further to their initial admission to work. Moreover, it is important that migrant workers should not lose their authorisation of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit. In case of a conflict with the employer, the migrant worker should have the right to remain in the EU as long as necessary for appropriate legal proceedings.

- ***The EU approach should guarantee effective protection and monitoring of migrant workers' rights***

The EU policy framework for economic migration should guarantee access to justice and the right to an effective remedy for migrants whose rights have been violated. Furthermore, it should provide for or refer to mechanisms to ensure that those responsible for abuse are held to account, including through criminal prosecutions, without threat of reprisal to the migrant.

The EU framework should also envisage regular monitoring of the implementation of EU migration policy, including reports on migrant workers' rights violations and recommendations to Member States and relevant EU bodies.

- ***The EU approach should promote the ratification by all Member States of the UN Convention on the rights of all migrant workers and members of their family***

In order for migrant workers to receive comprehensive protection, Amnesty International calls on the EU to encourage the Member States to ratify the Migrant Workers Convention, including the optional provision of article 77 regarding individual complaints.⁴

As a first step, the EU could undertake a detailed assessment of the implementation of the existing legal instruments in order to highlight the main legal and social gaps in the 25 Member States. Such a detailed analysis could be a useful tool to measure the need and means to enhance protection of migrant workers within the EU.

The EU should also consider the legal possibilities opened by the Constitution. If the Constitution is adopted, Amnesty International believes that the European Union, as both a political and legal entity, should ratify the Migrant Workers Convention. Such ratification would have a clear added value since it would allow the promotion of the rights enshrined in the Migrant Workers Convention in the external relations of the European Union, in particular through development and trade agreements. Indeed the EU cannot close its eyes to the appalling situation of abject poverty, socio-economic inequality, lack of human security and human rights abuses in many third countries where it has developed commercial interests.

4. Co-operation with third countries

Amnesty International agrees with the Green Paper's assertion that *"a successful EU policy on economic migration requires that migration flows are managed in co-operation with the countries of origin and transit, taking into account their reality and needs"* and believes that the EU framework on economic migration can only be shaped through a genuine, regular and constructive dialogue with the countries of origin of migrants.

However, Amnesty International deplores 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 leaving their countries. The development of an EU migration policy should imply commensurate efforts to enhance the dialogue on good governance and tackle the root causes of migration, including human rights abuse in countries of origin.



⁴ The European Parliament resolution on the EU's priorities and recommendations for the 61st session of the UN Commission on Human Rights in Geneva inter alia "calls on the Member States to ratify the UN Migrant Workers' Convention and to support the universal ratification thereof". European Parliament Resolution 24 February 2005. P6_TA-PROV(2005)0051