

Amnesty International Statement on the occasion of the EUROMED Ministerial Conference on Migration – Algarve 18-19 November 2007

The Ministerial Conference meeting on migration comes at a time when migration is high on the political agenda of the international community. Initiatives to discuss the broader migration theme and the links between migration and development at the highest level have multiplied in recent years. Ministerial meetings in Rabat and Tripoli in 2006 have reconfirmed the need to explore the benefits of migration for both sending countries and destination countries as well as the migrants themselves.

The focus of the EUROMED Ministerial meeting will be on legal migration, migration and development as well as measures to address irregular migration. While the potential positive links between legal migration and development are being stressed, Amnesty International is concerned that disproportionate emphasis is being placed on concluding readmission agreements and improving the efficiency of FRONTEX operations through increased involvement of EUROMED partners. Amnesty International acknowledges the importance of such themes in the context of the wider migration debate but regrets that respect for human rights principles and standards when dealing with policy challenges in the migration field risk to be marginalised. States should also recognise that stricter border control measures and readmission agreements alone will not provide a sufficient answer but need to be complemented by a policy that genuinely addresses the root causes of migration.

Adding to its traditional focus on asylum, Amnesty International has worked on upholding the human rights of migrants for some years, including within the debate on international migration and development from the basic premise that migrants are entitled to protection of their human rights. Human rights of migrants exist independent of where a person finds himself or herself and must be protected during the entire cycle of migration; in countries of origin, transit and destination. Tools of migration management, whether they are programmes for organising legal migration, addressing irregular migration or projects developed to enhance the benefits of migration for development, should be based on full respect for international human rights law and standards. In particular, states of transit and destination must protect all migrants, regardless of their status, from discrimination, racism and xenophobia, including violence perpetrated by state and non-state actors. As migrants, asylum seekers and refugees are increasingly forced to use the same – often irregular – channels of movement, measures aiming at addressing irregular migration flows need to be able to effectively identify those in need of international protection. Access to the territory and to fair and efficient asylum procedures must therefore be considered to be an integral part of any border management strategy. Yet the issue of a balanced and rights-based approach to mixed migration flows appears absent from the framework of this Conference.

Amnesty International calls on the EUROMED partners to tackle the issue of human rights protection in the context of the wider migration debate seriously through an open and constructive dialogue on how to implement effective measures to improve respect for human rights obligations in the context of increasing cooperation in the field of migration. Creating and implementing a common EUROMED migration agenda should indeed be to the benefit of countries of destination, sending countries and most importantly the migrants themselves. This should include concrete mechanisms to evaluate progress as well as setbacks with regard to human rights protection in the framework of increased cooperation between EUROMED countries in the migration field.

Amnesty International takes the opportunity of the Ministerial Conference on migration to reiterate some of its major concerns with regard to upholding and respecting rights of migrants in relation to the different migration management instruments.

Engage in permanent and effective monitoring of respect for the human rights of all migrants, regardless of their status in the implementation of migration management instruments.

Amnesty International notes with concern the paradox that while the EU develops frameworks and allocates significant resources to promote human rights, it tolerates de facto practices that have undermined human rights protection of refugees and migrants in partner countries, including EUROMED countries. Similarly, EU Member States export their restrictive agendas on countering 'illegal immigration' effectively undermining human rights protection in the partner countries, as well as their own ambition to provide durable solutions to the challenges posed by refugee flows. Both the Barcelona Process and the European Neighbourhood Policy have so far failed to address this paradox.

As the externalisation of EU migration policy is developing, the burden both with regard to refugee protection and with regard to preventing irregular migration towards the EU, is increasingly being put on third countries, in particular EUROMED partner countries. At the same time, reports about serious human rights abuses, including refoulement, long term detention in appalling conditions and collective expulsions in countries such as Morocco and Algeria do raise fundamental questions about the nature of this cooperation.

In Morocco, for instance, Amnesty International has documented in the recent past large scale expulsions of third country nationals by Moroccan authorities to desert areas along the Moroccan-Algerian border in December 2006 and in October 2005 immediately following the tragic events at Ceuta and Melilla¹. Similar operations were allegedly carried out in October 2007 resulting again in hundreds of migrants being deported to the border with Algeria.

In a very similar incident, a group of 28 men apparently of Congolese origin who had been granted refugee status by UNHCR in Algeria were taken for deportation by the Algerian authorities on 19 August 2007. The men had been held for months in a detention centre in Reggan, southern Algeria, waiting to be resettled in a third country. They were deported after being tried by a court for entering Algeria illegally. The 28 men were taken on trucks to the southern border with Mali. One of them was reported missing on arrival at the Malian border and his whereabouts are unknown. The 27 others were dumped at Tinzaouatene on the Malian border on 24 August, without food, water or medical aid. They were finally taken by truck to Bamako, the capital of Mali, where they were able to meet officials of the UN High Commissioner for Refugees².

At the same time, fundamental rights of migrants and refugees remain under threat in the EU as well and should equally be properly addressed by Member States. Reports about long term detention in conditions that are below international standards in Malta, Italy and the Canary Islands as well as about ill-treatment of migrants, including asylum seekers at the Greek-Turkish border, including refoulement and abusive interception practices are clear indicators of structural problems.

The pattern of violations of human rights of refugees and migrants raises questions about the effectiveness of the existing frameworks and dialogues between the EUROMED partners to discuss openly and thoroughly human rights issues arising from the implementation of migration management instruments. Mechanisms should be put in place to ensure that an open and transparent dialogue can take place on effective respect for the human rights of migrants, asylum seekers and refugees. In order for such a dialogue to be effective, all parties should commit to enter into a permanent monitoring of respect for migrants' rights by all EUROMED partners in close cooperation with international and human rights organisations. The Ministerial EUROMED Conference on Migration could be an important forum to engage in such a commitment and reinforce existing but for these purposes so far ineffective structures set up in the framework of EU-Association agreements.

Moreover, as migrants and refugees continue to be subjected to human rights violations in countries of transit and destination, negotiations on EU-readmission agreements or implementation of existing

¹ *Spain and Morocco: failure to protect the rights of migrants – Ceuta and Melilla one year on* (AI Index: EUR 41/009/2006)

² *Algeria. Briefing to the Human Rights Committee, September 2007* (AI Index: MDE 28/017/2007).

bilateral readmission agreements between individual EU Member States and in particular Maghreb countries must be reviewed. Effective safeguards need to be put in place to ensure that the fundamental human rights of those readmitted under such agreements will be respected in practice. States are always under an obligation to comply with international human rights standards, including when removing irregularly staying third country nationals from their territories.

Develop a common approach to migration and refugee protection in a spirit of solidarity and responsibility-sharing instead of responsibility-shifting

A more balanced approach that is genuinely aiming for a policy of responsibility sharing rather than responsibility shifting is urgently needed. Support for capacity building in the field of migration and asylum in EUROMED third countries is the overall policy objective of the external dimension of the EU's migration policy. Such an objective is indeed commendable but should always be complementary to the EU's own responsibilities with regard to protection of the rights of migrants and refugees. Offering concrete support to EUROMED partner countries to develop their asylum systems and help them fulfil their obligations under international refugee law is indeed a welcome step. However, operations developed within the framework of FRONTEX or at the bilateral level between individual EU Member States and EUROMED partner countries are still predominantly aimed at preventing migrants from reaching Europe rather than creating a protection-friendly space where asylum-seekers, refugees and migrants are able to enjoy their human rights and access effective international protection as appropriate.

Increasingly justified by the general objective to save lives, it is becoming difficult to see where genuine capacity building in the field of migration and asylum ends and a deliberate policy of containment of refugees and migrants begins. Capacity building can only be credible if mechanisms of effective solidarity and responsibility-sharing are developed. One way of expressing concrete solidarity among EUROMED partner countries is through engaging concretely in resettlement of refugees. Resettlement serves a number of crucial roles in any refugee crisis. It protects by removing vulnerable people from environments where they are at risk; it offers a durable solution for the individuals concerned; and it represents an important expression of international responsibility sharing. Currently, some of the EUROMED partner countries such as Syria, Jordan and Turkey are particularly affected by refugee flows from Iraq.

Neighbouring Jordan and Syria, which kept their borders open to Iraqis for most of the period since the US-led invasion of 2003, have experienced the largest influxes and consequently face the greatest demands. It is now estimated that over 1.4 million Iraqis are in Syria and the Jordanian authorities estimate that some 500,000-750,000 Iraqis are in Jordan. While the willingness of Syria and Jordan to host Iraqi refugees is commendable, measures are being taken that aim to curb cross-border movements of people, including the introduction of strict visa requirements. Despite this critical situation, the response of the international community has been inadequate. Relief, in the form of financial and other assistance and facilitating resettlement of the most vulnerable categories of refugees, has not readily emerged. Resettlement in general and specifically in relation to Iraqi refugees has received only a lukewarm acceptance from the international community including by EU Member States³.

As the current apathy of the international community is potentially undermining the willingness and capacity by those receiving the bulk of Iraqi refugees to continue to offer them protection and is directly affecting EUROMED countries, EUROMED partners should give a strong and concrete signal of solidarity with those countries most affected by the current crisis.

Also with regard to interception and rescue at sea, cooperation between EU Member States and EUROMED partners is growing. EU Member States and the European Commission are increasingly seeking the cooperation of mainly North African coastal states in search and rescue and interception operations. Expert working groups at EU level are trying to develop common guidelines as regards the implementation of States' obligations under international maritime law, while FRONTEX is also looking into ways to engage more in cooperation with North African countries in order to step up interception in territorial waters of EUROMED partner countries. All efforts to strengthen the international search and rescue regime through a more effective participation by a greater number of

³ *Iraq. Millions in Flight: the Iraqi refugee crisis* (AI Index: MDE 14/041/2007)

States should be welcomed. At the same time, however, measures need to be taken to ensure that such enhanced cooperation is carried out in full compliance with international human rights law. This implies that those rescued or intercepted should at all times be brought to a place of safety where they would be protected from refoulement and, if necessary, can access a fair and satisfactory asylum procedure. In this respect it should also be taken into account that the nearest port is not necessarily a place of safety in all circumstances, for instance when the state of disembarkation has not ratified the 1951 Refugee Convention or is the state of origin of the asylum seekers concerned. Recent amendments to the International Convention on Maritime Search and Rescue and the International Convention for the Safety of Life at Sea that entered into force in 2006 aim at maintaining the integrity of the search and rescue services. Contracting states and parties are required to cooperate to ensure that masters of ships providing assistance by taking on board persons in distress at sea are released from their obligations with minimum further deviation from the ship's intended voyage and to arrange disembarkation as soon as reasonably possible. EUROMED partners should ensure that these amendments are applied in practice and that anti-trafficking measures do not undermine the international search and rescue regime and/or the human rights of all individuals affected by such measures.

The need for legal channels for migration that respect migrants' rights.

Amnesty International welcomes the acknowledgement by all EUROMED partners that legal migration is an important aspect of cooperation in the field of migration and that it can contribute to development in countries of origin of migrant workers. In the current debate about legal migration the focus is almost exclusively on temporary or circular labour migration. Examples in other regions show that temporary migration programmes often place migrants in vulnerable, often irregular situations as they do not allow freedom of movement to and from the country of employment, do not provide the migrant with a secure legal status for the entire duration of their employment contract and do not ensure sufficient protection of the rights of the migrant, including protection from discrimination and abuse.

In particular the right to family unity needs to be protected. Migrant workers employed under temporary or circular migration schemes are in many cases not allowed to bring their family with them to the country of employment. Yet, a family's right to live together is protected by international human rights law and is derived inter alia from Article 16 of the UDHR, Articles 17 and 23 of the ICCPR and Article 10 of the ICESCR. When developing schemes for legal migration, AI calls on states to develop rights-respecting, transparent and non-discriminatory legal channels for migration that respond to the real needs of their economies. The current emphasis in the EU is on attracting high-skilled workers. However, the reality in many EU countries today is one of ageing, wealthy societies with a high demand for low-skilled and semi-skilled migrant labour. Ignoring this economic reality will result in the continuing inflow of irregular migrant workers who are vulnerable to abuse and exploitation in shadow economies and unable or unwilling to access effective remedies to this abuse.

Amnesty International believes that the framework of international human rights principles and standards, as embodied in the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and other core international human rights instruments, should be the starting point for cooperation between EUROMED partners in the field of legal migration and the wider area of migration and development. These standards provide a benchmark, a normative framework and a set of guidelines for policy makers in developing migration policies that comply fully with international human rights obligations. EUROMED partners should commit to ratifying and effectively implementing the Migrant Workers Convention.

Amnesty International calls on partners of EUROMED to:

- **engage in transparent and permanent monitoring of treatment of migrants, asylum seekers and refugees when developing cooperation in the field of addressing irregular migration so as to ensure full compliance with international human rights law and standards. EUROMED partners should commit to creating effective monitoring mechanisms within the EUROMED framework.**
- **create mechanisms of concrete solidarity between EUROMED partners, such as resettlement of refugees to complement initiatives aimed at capacity-building in the field of asylum and migration in regions and countries of transit.**
- **engage in a dialogue on legal migration that includes all categories of skills provided by migrant workers, and that serves to promote, protect and fulfil the rights of all migrant workers and their family members. All EUROMED partners should ratify and implement the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.**

9 November 2007