

Brice Hortefeux
Minister of immigration, integration, national identity
and co-development
EU Presidency

Brussels, 1 July 2008

Ref: B-791

Dear Mr. Hortefeux,

Re: The Pact on Immigration and Asylum and cooperation with third countries in the field of migration

The informal Justice and Home Affairs Council meeting in Cannes on 7 and 8 April will mark the beginning of intense discussions on the future of the EU's immigration and asylum policy during the French Presidency. Several initiatives and high level conferences are planned in the next six months but it is clear that the adoption of a European Pact on immigration and asylum is the main goal of your programme in this field.

Although the informal Council meeting in Cannes will be the first occasion for discussion on the draft version of the Pact at ministerial level, the five principles underlying the Pact are already clear. Creating channels for legal migration and developing a true partnership with countries of origin in migration management reflect the basic assumption that the objective of zero-immigration is not realistic nor desirable. On the other hand a very tough approach on irregular migration is put forward, including through the organisation of joint repatriations of irregular migrants and the conclusion of readmission agreements with third countries. In addition, the effectiveness of external border controls is to be enhanced including through increased use of technology and the reinforcement of FRONTEX and its operations at the borders. As far as asylum policy is concerned, the objective to construct an "Europe de l'asile" is to be welcomed and should be used to revive the Tampere Spirit.

If the Member States are to adopt a Pact on Immigration and Asylum at this stage, Amnesty International believes that it should include a clear commitment to develop a coherent policy that fully respects the fundamental rights of migrants, asylum seekers and refugees as laid down in international human rights law and standards. As the EU and its Member States increasingly focus on involvement of third countries of origin and transit in controlling migratory flows, Amnesty International would like to raise particular concerns with regard to human rights violations that may result from such cooperation.

Today, Amnesty International published the report Mauritania: "Nobody wants to have anything to do with us". Arrests and collective expulsions of migrants denied entry into Europe (AI Index: AFR 38/001/2008). The report shows how since 2006 thousands of migrants, accused of trying to enter the Canary Islands irregularly from Mauritania, have been arbitrarily detained and then forcibly returned without any right of appeal to challenge the decision before a judicial authority. Many of them have been held for several days in a detention centre in Nouadhibou, which was funded by the Spanish authorities. Some of them have been ill-treated by members of the Mauritanian security forces. Nationals of West African countries, including regularly staying migrants and refugees, say they have been arbitrarily arrested in the street or at home and accused, apparently without any evidence, of intending to travel further to Spain. Some migrants have been the victims of racketeers and many have been forcibly returned by the Mauritanian authorities to Mali or Senegal.

Since a number of years, the EU and its Member States are exerting pressure on African countries in order to involve them more actively in the EU's strategy to combat and prevent irregular immigration. In the case of Mauritania, which has traditionally been welcoming large numbers of nationals of neighbouring countries, a readmission agreement was concluded with Spain in 2003. In addition, Mauritania has also agreed to the presence on its soil of an aeroplane and a helicopter, deployed in the context of an operation

conducted by the EU in order to control its external borders. Moreover, members of the Spanish Guardia Civil undertake joint patrols with the Mauritanian authorities along the country's coastline.

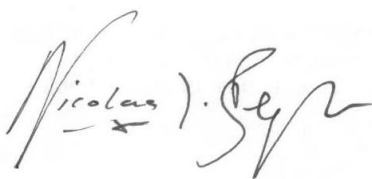
In the context of the extremely dangerous sea crossings, this policy that aims to prevent migrants from leaving the West African coast is increasingly justified as necessary to save lives. This report, however, reveals that such co-operation has also given rise to violations of certain fundamental rights of migrants in transit countries such as Mauritania, including of migrants who did not even have the intention of migrating to Europe. Moreover, the rights of some refugees and asylum-seekers, the majority of whom come from the countries of West Africa and Liberia and Sierra Leone in particular, are also under threat and at times denied in Mauritania. For instance, several refugees were arbitrarily detained for short periods of time and at least two of them were forcibly returned to Mali. An asylum procedure was set up in 2005, but it has not yet been implemented.

Co-operation with third countries through conclusion of readmission agreements as well as through operational activities carried out in the framework of FRONTEX has become a crucial element of the EU's comprehensive migration policy. The European Pact on Immigration and Asylum will again confirm their importance by calling for more efficient co-operation with third countries of transit and origin. As the EU and its Member States insist on further developing this approach, effective mechanisms are urgently needed to monitor and assess all implications of such co-operation, in particular where it directly or indirectly gives rise to human rights violations. As much as co-operating with third countries in the field of migration may be necessary to 'manage' migration, it can not absolve the EU and its Member States from its responsibility to ensure that fundamental rights of migrants, asylum seekers and refugees are effectively respected in practice.

Amnesty International therefore calls upon the Member States to ensure that the future European Pact on Immigration and Asylum reflects a rights-based approach to all aspects of migration management. It should acknowledge the need to effectively ensure that co-operation with transit countries and countries of origin does not result in violations of the fundamental rights of migrants, asylum seekers and refugees in practice. Finally, it should also explicitly ensure that such co-operation can never absolve the Member States from their obligation under international refugee and human rights law to guarantee access to protection and to ensure that people in need of international protection are safe from refoulement.

We hope these concerns will be taken into consideration during your discussions.

Yours sincerely,



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Director
Amnesty International EU Office



Stephan Oberreit
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