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IMMIGRATION COOPERATION WITH LIBYA: THE HUMAN RIGHTS PERSPECTIVE

Amnesty International briefing ahead of the Justice and Home Affairs Council, 14 April 2005

Introduction

Amnesty International understands that the Council will discuss the future orientations of the EU's engagement and co-operation with Libya as regards illegal immigration at the forthcoming JHA Council. These discussions will be held on the basis of a report by the Commission services on the technical mission to Libya on illegal immigration, carried out between 28 November and 6 December 2004.

Amnesty International has briefed the Commission's services extensively on its findings and concerns regarding Libya, both on the general human rights picture and the situation of refugees and has been informed about the main findings of the mission. However, given the serious nature of Amnesty International's concerns and the potentially far-reaching implications for human rights and refugee protection of decisions that may be taken regarding future co-operation with Libya, it is to be deplored that the mission report has not been made publicly available ahead of the JHA Council in order to allow for a dialogue involving all relevant EU actors and in particular the European Parliament. Given that the mission had limited opportunity to gather relevant information, such transparency would allow for a more fully informed debate on the findings of the experts.

Amnesty International therefore takes the opportunity of the forthcoming discussions in the Council to reiterate its concerns regarding the situation of human rights in Libya. We understand that the situation of human rights was raised during the EU mission, in particular as regards refugee protection. However, we are concerned that a purely utilitarian approach to border management and repatriation issues risks overshadowing humanitarian concerns.

The situation of migrants and refugees in Libya is extremely problematic, considering that:

- there is no official acknowledgement of the presence of refugees and asylum seekers in Libya, according to the UNHCR;
- Libya does not allow the UNHCR to operate its proper protection mandate;
- In the absence of an asylum policy and a legal protection framework, there is effectively no guarantee of refugee rights in Libya;
- detention conditions of 'illegal immigrants' are reported to be deplorable;
- expulsions of large numbers of 'illegal immigrants' are carried out on a regular basis with no attention paid to protection needs.

In this context, deportations of 'irregular migrants' to Libya as carried out repeatedly by EU Member States, in particular by Italy and Malta, must be regarded as a matter of serious concern¹.

There are compelling reasons for the EU to apply clear human rights conditionality to any discussion or initiative regarding co-operation on illegal immigration with the Libyan authorities. We understand that discussions within the EU are at a very preliminary stage and that a proper partnership will not be possible until Libya has joined the Barcelona process. However, it appears that Member States are already developing bilateral dialogue and co-operation with Libya on illegal immigration in the absence of any formal framework. Amnesty International believes that any EU or bilateral partnership should be developed on the basis of the principles of the Barcelona process. As long as Libya has not been formally included into that framework, extra care must be taken that both EU and bilateral co-operation agreements are in full compliance with Member States' international obligations regarding human rights.

¹ See Press communiqué, Amnesty International calls on the European Commission to speak out against Italian deportations, 21 March 2005.

The development of ad hoc co-operation mechanisms on illegal immigration without adequate safeguards would in fact risk undermining the credibility of the Barcelona process and the prospects of Libya committing to its principles. Given the lack of adequate safeguards regarding the expulsions, degrading detention conditions and the absence of an effective asylum policy in Libya, such ad-hoc co-operation may also be in flagrant contradiction with the EU's human rights policies as they are proclaimed through the Common Foreign and Security Policy. All of this points to the need for co-operation with Libya to be developed in the clear perspective of the Barcelona framework including proper safeguards and parliamentary scrutiny, instead of endorsing non-transparent practices developed by individual EU Member States.

Furthermore, while acknowledging the need to tackle root causes of asylum and migration, Amnesty International holds that regional co-operation with countries generating flows of migrants must not be used as a humanitarian alibi to allow Libyan authorities to carry on arbitrary arrests and put migrants in prolonged incommunicado detention, where they are at risk of ill-treatment and torture.

Whilst the following briefing note focuses on Amnesty International's concerns regarding refugees and migrants, it also provides a brief assessment of the human rights situation highlighting the main findings of Amnesty International February 2004 report².

Situation of migrants and asylum-seekers in Libya

In a welcome step, Libya ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in June 2004. However, at the time of writing, Libya has not ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, nor has it established national asylum procedures. Libya has signed and ratified the Organisation of African Unity (OAU) Convention on specific aspects of refugee problems in Africa, which provides a broad definition and a legal basis for refugee protection, as well as an obligation to co-operate with the United Nations High Commissioner for Refugees (UNHCR).

However, according to the UNHCR, two key obstacles prevent the fulfilment of these obligations in practice: firstly, the lack of official acknowledgement of the presence of refugees and asylum seekers in Libya; and secondly, the absence of any official contact or status accorded to the UNHCR in the country. In the absence of a legal protection framework, there is no effective guarantee of refugee rights. Although there are no official statistics about the refugee population, the refugee presence in Libya at the end of 2003 was estimated by the UNHCR to comprise approximately 12,000 refugees, including 9,000 Palestinians and a large number of Somalis, residing mainly in Tripoli. To our knowledge, there are no accurate data about the number of foreign nationals residing in Libya, nor on the people who transit via Libya in efforts to reach Europe.

The number of official asylum requests lodged with the UNHCR in 2003 was 391, representing an increase over previous years. However, this figure is not indicative of the total number of asylum seekers in the country, as it includes only those who were able to locate and reach the UNHCR office in Tripoli, known to be a small fraction of the total. During the first part of 2003, 42 claims for refugee status were recognised by the UNHCR, with six rejected.

Widespread arrests were reported of individuals from sub-Saharan Africa, including possible asylum-seekers. Some faced the threat of deportation to their countries of origin where they could be at risk of serious human rights violations. Ill-treatment of those detained was widely reported.

- According to media reports³ the Libyan government will proceed with the "repatriation" to Egypt of 882 Egyptians who had tried to "illegally" migrate to Italy and who were sent back to Libya from Lampedusa. The announcement has been made by the Egyptian Embassy in Tripoli. The Libyan authorities have just arrested other Egyptians who were trying to cross the Mediterranean Sea. According to Agence Europe⁴, Mr Frattini called on the Italian government to develop humanitarian activities to help immigrants and expressed hope that adequate pressure would be exerted on Egypt so that it controlled its borders more efficiently.
- On 23 December 2004, Libya deported dozens of refugees recognised by the UNHCR, who were originating from Ethiopia, Somalia and Liberia. This followed the news that Italy had deported to Libya

² Amnesty International, "Libya: time to make human rights a reality", AI INDEX MDE: 19/002/2004, February 2004.

³ ANSA News 21 March 2005.

⁴ Agence Europe 23 March 2005.

hundreds of foreign nationals recently arrived in Cortone, in the south of Italy on 20 December 2004. Amnesty International expressed concerns that the deportees may face persecution upon return to their home country⁵.

- On 27 August 2004, the Libyan authorities attempted to forcibly return to Eritrea 76 Eritrean nationals, including six children. Some of the Eritreans hijacked the plane that was carrying them and forced it to land in the Sudanese capital, Khartoum, where they all applied for asylum. Testimonies of some of the deported Eritreans who are currently in Sudan confirmed regular testimonies of ill-treatment in Libya; detention without charge; no access to a lawyer; no opportunity to seek asylum; confiscation of belongings⁶.
- On 21 July 2004, the authorities forcibly returned over 110 individuals detained in Libya to Eritrea, where they were at risk of torture. On arrival in Eritrea, they were detained and held incommunicado in a secret prison⁷.
- Seven Eritrean nationals, who were unlawfully detained after the expiry of their three-month prison sentences for illegal entry into Libya in 2002, were released at the end of 2004. They had fled from Eritrea to Libya via Sudan and were arrested in 2002 as they attempted to travel by boat to Italy where they planned to seek asylum.

Recent removals from Italy

Against this background, the removals from Italy are of particular concern to Amnesty International. Since 13 March 2005, over 1,000 people of various nationalities have landed by boat on the Sicilian island of Lampedusa. On 17 March, the Italian authorities forcibly returned 180 people to Libya, where they may be in grave danger. Non-Libyan nationals risk detention on charges including illegal entry into and exit from Libya. Despite strong protests by various organisations including the UNHCR⁸, Italy has reportedly carried out further deportations and is planning new expulsions. Similar to a previous episode in October 2004, the authorities appear to be rushing to deport people from Lampedusa, and are doing so without proper scrutiny of the individual cases. In addition, Libyan officials have been in Lampedusa recently, and according to the Italian Minister of the Interior they have been allowed holding centre to collaborate with the Italian authorities in identifying people-traffickers. The UNHCR and Amnesty International have voiced strong concerns about the presence of Libyan officials given that, if there were any Libyan asylum seekers in the group, such a practice would run counter to basic refugee protection principles, and could constitute grounds for a valid refugee claim *sur place*.

Despite pressing calls from human rights monitors, including members of the European Parliament, Commissioner Frattini abstained from any public criticism of the deportations and declared that the Commission could not take legal action against Italy before the adoption of the directive on asylum procedures.

Overview of human rights developments in Libya 2004-2005

The country was reopened to international human rights monitors in 2004, including Amnesty International. However, access for non-governmental organisations remains very limited.

Over the course of 2004, the authorities announced several reform initiatives, including the possible abolition of the death penalty and the People's Court. During its visit to Libya in February 2004, Amnesty International highlighted a pattern of unfair trials before the People's Court, in which the rights of the accused were routinely violated, even in instances where these rights are guaranteed in Libyan law.

In January 2005, the General People's Congress - Libya's Parliament - decided to abolish the People's Court. The abolition of this exceptional court, known to try political cases, is an important step forward for human rights in Libya, which should contribute to effective and durable human rights protection in the country. Amnesty International is yet to receive a copy of the text of the resolution or details about plans surrounding its abolition. The organisation hopes that these plans will provide for the abolition of related institutions, including the Popular Prosecution Office, and the transfer of all pending cases to the jurisdiction of the ordinary criminal court system.

⁵ Amnesty International, Libya: Refugees face imminent expulsion, 23 December 2004, AI Index MDE 19/022/2004

⁶ Amnesty International, Urgent Action, 232/04 MDE 19/014/2004 6 September 2004.

⁷ Amnesty International, Urgent Action, 232/04 MDE 19/012/2004 28 July 2004.

⁸ UNHCR deeply concerned about Lampedusa deportations of Libyans, Press communiqué, 18 March 2005.

Several other new resolutions relating to different aspects of Libyan society were passed during this General People's Congress, which met for its ordinary annual session between 8 and 12 January 2005. These reportedly include a resolution relating to the establishment of a new committee within the Secretariat of the General People's Congress, on legal affairs and human rights. Amnesty International welcomes the decision to create a body which will focus on legal affairs and human rights. It hopes that this new body will be able to operate independently and to work towards enhancing human rights protection in Libya.

Despite such positive steps, Amnesty International is deeply concerned at the limited progress made in establishing the truth about how some prisoners died in custody in past years. No significant steps are taken to shed light on other past human rights violations, including "disappearances". Prisoners of conscience and political prisoners detained in previous years remain in prison. Legislation criminalizing peaceful political activities was still in force. The security forces continue to arbitrarily arrest people for political reasons and to detain them incommunicado for long periods without charge. There were reports of torture and ill treatment.

Legislation continues to prohibit the formation of associations or political parties outside the existing political system. With the exception of the Human Rights Society of the Gaddafi International Foundation for Charitable Associations, which is headed by Saif al-Islam al-Gaddafi, the son of Colonel Mu'ammr al-Gaddafi, human rights organisations or individuals wishing to carry out human rights work continued to be prevented from operating.

A draft Penal Code, announced by the authorities in 2003, was examined by a committee of legal experts assembled by the then Secretariat of the General People's Committee for Justice and Public Security, and subsequently sent for discussion by Libya's local decision-making bodies, the Basic People's Congresses. The draft, obtained by AI in February, retains numerous provisions that contravene Libya's obligations under international law, including provisions that prescribe the death penalty for activities solely amounting to the peaceful exercise of freedom of expression and association. Despite the authorities' continued and categorical denial of the existence of prisoners of conscience, scores of prisoners of conscience and possible prisoners of conscience remain in prison.

Despite Colonel Mu'ammr al-Gaddafi's stated opposition to the death penalty, which he reiterated to Amnesty International in February 2004, death sentences continued to be handed down, including after unfair trials. In May 2004, six health professionals — five Bulgarian nurses and a Palestinian doctor — were sentenced to death by firing squad. They were accused of deliberately infecting 426 children with the HIV virus while working in al-Fateh Children's Hospital in Benghazi. A sixth Bulgarian defendant was sentenced to four years' imprisonment. Nine Libyan defendants were acquitted. The defendants had told Amnesty International delegates that their confessions, which they later retracted, had been extracted under torture, which included electric shocks, beatings and suspension by the arms. Their appeal case before the Supreme Court was expected to open in 2005. On the basis of the allegations of torture, eight members of the security forces and two others (a doctor and a translator) employed by them were charged. They had faced trial alongside the foreign and Libyan health professionals before the same criminal court in Benghazi. In May 2004, the court pronounced that it was not competent to examine their cases. The trial was to reopen on 22 March 2005 in Tripoli, but was postponed to 26 April 2005. The Supreme Court looked into the appeal case of the six health professionals on 29 March 2005 and is expected to announce its verdict on 31 May 2005.

Amnesty International's recommendations

1. In considering future co-operation with Libya, Amnesty International calls on the Council to act in full compliance with the EU's human rights policies as they are proclaimed through the Common Foreign and Security Policy, and specifically:
 - a. to refrain from developing flexible mechanisms of co-operation on illegal immigration which would include neither appropriate legal safeguards, nor proper parliamentary scrutiny;
 - b. instead, to ensure that any partnership with Libya by the EU or by individual Member States is based firmly on the principles of the Barcelona process, and until such time as Libya is formally included into that framework, to take extra care that bilateral co-operation is in full compliance with Member States' international human rights obligations;
 - c. to this end, to institute a transparent dialogue on this dossier involving all the actors concerned, and for this purpose to instruct the Commission to make the outcome of the technical mission to Libya on illegal immigration publicly available;
 - d. to ensure that promotion of regional co-operation with countries generating migrants and refugees is firmly grounded in human rights principles.

2. In view of the overall human rights situation in Libya in general and the effective lack of refugee protection in particular, Amnesty International takes the view that Member States should refrain from expelling asylum-seekers and “irregular” migrants” having transited or coming from Libya given that these removals may be in breach of their obligations under international law.
3. Amnesty International calls on the Council to press the Libyan authorities to:
 - a. put an end to arbitrary arrest and expulsion of third country nationals;
 - b. ensure that detention conditions are in compliance with international standards, that detention is used only as a last resort and that adequate legal and judicial safeguards against unlawful detention are put in place;
 - c. respect its international obligation of *non-refoulement*, as stated in the OAU Convention in particular;
 - d. ensure that international monitors, in particular the UNHCR, have access to detention facilities. Monitoring missions should be able to assess both the situation of people who have been expelled from EU countries and the expulsions carried out by Libyan authorities;
 - e. ratify the 1951 UN Convention on Refugees and the 1967 Protocol and recognise the mandate of UNHCR.

