

Dr. Wolfgang Schäuble  
Minister of Home Affairs  
EU Presidency

8 June 2007  
Our Ref : b\_678

Dear Dr. Schäuble,

**Subject : the protection crisis in the EU as regards Iraqi refugees and at its southern borders**

In a letter of 11 April 2007 ahead of the Justice and Home Affairs Council, Amnesty International raised serious concerns about the way the EU is dealing with the protection needs of Iraqi refugees both within the EU and in the countries neighbouring Iraq. The widely diverging practices of the Member States as regards the assessment of their protection needs as well as worrying return practices have been indicative of how the Common European Asylum System is still nowhere to be seen.

Recent incidents with asylum seekers and migrants trying to reach the southern shores of the EU in small boats have added another dimension to the failing protection system of the European Union. We have witnessed an embarrassing spectacle with Member States quarreling over responsibilities to assist people in distress at sea, putting lives at risk.

As both issues are on the agenda of the forthcoming Justice and Home Affairs Council meeting, Amnesty International urges the Presidency to take the lead in this discussion and to tackle the legal and political obstacles to the shaping of a European policy on migration and asylum that is capable of offering protection to those in need. In order to do so, the EU urgently needs to give a clear signal to the outside world that it takes its responsibility as a global actor in the international protection regime seriously and that it will ensure that Member States comply with their obligations under international law. The crises as regards Iraqi refugees and in the Mediterranean need an urgent and meaningful response from the EU.

**End the deadlock in meeting the protection needs of Iraqi asylum seekers and refugees**

As the world has been watching the situation in Iraq and its neighbouring countries worsen in recent months, the EU has not made any progress in shaping a meaningful response to the plight of Iraqi refugees. A number of technical meetings have been organised to analyse in detail the diverging practices between the Member States in dealing with Iraqi asylum claims as well as return. However, they have not up to now resulted in significant commitments by Member States to change their national practices or to develop a common European approach that grants protection to those in need and raises protection standards in Europe.

There is no point in further analysing what is already clear: despite the adoption of minimum standards during the first phase of harmonisation of European asylum policy, no common European protection space exists for those Iraqi refugees that are able to reach the EU's territory.

Immediate action is needed to remedy this situation and to ensure that protection standards in those Member States that are currently performing poorly, are raised to the level of those Member States

that are effectively granting protection to Iraqi asylum seekers. This includes a generous interpretation of subsidiary protection grounds to those that do not qualify as refugees. In Amnesty International's view, considering the sectarian conflict that has developed over the last year, no viable internal flight alternative exists for persons fearing persecution or serious harm in Iraq. The Member States, together with the European Commission have a responsibility to make concrete progress towards ending the current protection lottery in Europe for Iraqis.

It remains Amnesty International's position that there should be no forced returns to any part of Iraq, including Northern Iraq. The Kurdish region can not be considered to have the safety or stability conducive to safe and sustainable return and any return would be premature. As they can not be returned to Iraq, measures should be taken to prevent rejected Iraqi asylum seekers from becoming destitute and to guarantee at least continued access to basic rights such as housing and financial support, health care and education and permission to work as long as return to Iraq is not possible.

Finally, the EU and its Member States urgently need to become significantly engaged in the resettlement of Iraqi refugees from the countries neighbouring Iraq and show concrete solidarity with those countries that are hosting the bulk of the Iraqi refugees. As societies in these countries have come under great pressure, effective resettlement - especially of the most vulnerable groups - could also encourage those countries to continue to give Iraqi refugees access to their territory, to respect the principle of non-refoulement and guarantee access to basic rights such as primary education and health for those refugees who will not be resettled.

### **Uphold obligations under international human rights law in the Mediterranean**

Over the past weeks the EU has been confronted again with a series of worrying incidents involving asylum seekers and migrants trying to cross the Mediterranean sea in order to find a place of safety and a better future in the EU. While an unknown number of people lost their lives during these extremely dangerous crossings, recent incidents before the coast of Malta have raised important questions about Member States' compliance with responsibilities under international maritime and human rights law and about the lack of a common EU response to the humanitarian challenges ahead.

Worryingly, recent incidents between the coastlines of Libya and Malta seem to indicate that the international search and rescue regime has come under pressure due to conflicting interests of parties involved. Although the legal questions concerning the responsibilities of all parties involved – States, shipmasters and shipowners- may be complex, all parties concerned are under a moral and a legal obligation to give assistance to people in distress at sea. Political, legal and/or commercial considerations can never put into question the humanitarian imperative to save lives at sea. Amnesty International urges all Member States to fully comply with their obligations under international law in order not to endanger the lives of those in distress at sea.

Recent amendments to the International Convention on Maritime Search and Rescue and the International Convention for the Safety of Life at Sea aim at maintaining the integrity of the search and rescue services that entered into force in 2006. Contracting States and parties are required to cooperate to ensure that masters of ships providing assistance by embarking 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. The amendments equally stipulate that the obligation to provide assistance applies regardless of the nationality or status of the persons or the circumstances in which they are found. Member States should do everything within their power to enhance such cooperation so as to ensure that these amendments are applied in practice and that people in distress at sea receive assistance as soon as possible. Those Member States that have not accepted these amendments should do so immediately.

While it is necessary to investigate recent incidents to determine the responsibilities of the different actors, the EU urgently needs to look ahead and take measures to create a protection oriented approach towards the recurrent crossings of the Mediterranean. The attempt to develop guidelines between Member States on the operational aspects of rescue at sea and disembarkation is indeed timely. However, saving the lives of those in distress at sea being the first priority, measures also need to be taken to ensure that those in need of protection have an opportunity to access a fair asylum procedure.

Finally, dealing with the arrival of boats carrying asylum seekers and irregular migrants on the southern shores can not be left to the Member States directly concerned alone. The arrival of people in need of protection or in search of a better future in such dramatic circumstances is a challenge common to all Member States. Amnesty International firmly opposes any abuse of the vulnerable position of the migrants and asylum seekers involved in this highly sensitive political debate. Using political arguments to refuse the disembarkation of people rescued at sea is simply unacceptable. The lack of political will of the majority of the Member States to engage seriously in a debate about the necessity of burden and responsibility sharing with those Member States most targeted is equally unacceptable.

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

Yours sincerely,



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