

23 May 2005
B 466

**AMNESTY INTERNATIONAL OPEN LETTER TO THE EU PRESIDENCY
ON THE OCCASION OF THE JHA COUNCIL ON 2-3 JUNE 2005**

Dear M. Schmit,

Amnesty International notes that, following the conclusions of the April 2005 JHA Council, the JHA Council will further discuss co-operation between the European Union and Libya with a view to adopting operational conclusions on the fight against illegal immigration. These discussions will be held on the basis of the conclusions of the report by the commission on the technical mission to Libya on illegal immigration, carried out between 28 November and 6 December 2004. In the absence of a formal framework of dialogue with Libya, we understand that the Ministers will discuss the feasibility of establishing a specific dialogue mechanism aiming at developing an Action Plan on migration issues defining short- and mid-term priorities. EU Member States will also consider possibilities to develop a regional approach to migration management on the African continent.

In view of the coming discussions, we wish to reiterate our concerns regarding the impact of bilateral or EU migration partnership with Libya on refugee protection and migrants' fundamental rights¹. We are concerned that discussions regarding Libya have developed under great political pressure in the absence of clear political guidelines defining the parameters of the external dimension of the common European asylum and immigration policy laid out by the Hague programme. Amnesty International wishes to share its recommendations regarding essential pre-conditions for developing operational measures in line with the EU Member States' international obligations and the conclusions of the Hague programme. Our recommendations focus on the following points:

- Absolute respect of Member States' obligations under international law;
- Full and inclusive respect of the Barcelona acquis regarding the values of democracy, human rights and the rule of law;
- Respect of refugees and migrants' fundamental rights;
- Clear human rights conditionality in the regional dialogue.

1. Absolute respect of Member States' obligations under international law

Amnesty International acknowledges the political commitment undertaken by the November 2004 European Council regarding the need to put an end to humanitarian disasters and prevent further loss of life in the Mediterranean Sea. Amnesty International has time and again call for the implementation of solidarity measures for those Member States that are in the front line of dealing with sea arrivals. However, Amnesty International is concerned that some EU Member States such as Italy and Malta have already developed bilateral partnership on illegal immigration with Libya and have been rushing to deport people from their territory without proper scrutiny of individual cases².

Over the last year, we have repeatedly expressed fears that the Italian government's attempts to deal with arrivals by sea are seriously compromising the fundamental right to seek asylum and the principle of *non-refoulement*, which prohibits the forcible return of anyone to a territory where they would be at risk of serious human rights violations. On 10 May 2005, The European Court of Human Rights asked the Italian government not to further proceed with expulsion measures regarding a group of eleven "irregular" migrants who were arrested in Lampedusa in March 2005. However, at the time of writing, Italy is again operating large-scale expulsions of "irregular" migrants to Libya³.

¹ Amnesty International, Immigration co-operation with Libya: the human rights perspective, briefing issued ahead of the JHA Council, 14 April 2005.

² Amnesty International, Letter to Commissioner Frattini, 21 March 2005, document B456.

³ ANSA News, 16 May 2005.

It is to be deplored that Italy has so far not improved its asylum practice, nor has it requested solidarity measures available under EU instruments. Despite repeated cautioning from NGOs, UNHCR and the European Parliament⁴, neither the Commission nor the Council have so far expressed any reservations about recent large-scale expulsions carried out by Italy.

Amnesty International calls on the Council to recognise that while partnerships with third countries can be important tools to address migration management, they do not release Member States from their obligations to ensure access to asylum determination procedures and to respect international law standards, such as the absolute nature of the principle of *non-refoulement*.

2. Full and inclusive respect of the principles defined under the Barcelona process

AI notes with concern that the Council and the Commission appear to be rushing into the development of operational co-operation with Libya while the specific parameters of the external dimension of the common European asylum policy have yet to be defined. The development of precise orientations should be considered first before entering into discussions with specific countries on an *ad hoc* basis. The external dimension of the common European asylum policy should be articulated with the global CFSP agenda, including its human rights, humanitarian and development policies.

Regarding the policy of engagement with Libya, any compromise on human rights principles as they are proclaimed through the Common Foreign and Security Policy would set up a negative precedent with potential far-reaching consequences on the credibility and viability of the Barcelona process. The development of “Barcelona à la carte” policy would clearly dissuade members of the Barcelona process to respect their commitments, but it would also further complicate negotiations with third countries which might wish to join the Barcelona process. In absence of any formal framework, any EU or bilateral partnership with Libya should be firmly based on the principles of the Barcelona process.

3. Respect of international standards on refugee protection and human rights as a precondition for operational co-operation

According to the conclusions of the November 2004 European Council, any co-operation is conditional upon full respect for human rights, respect for democratic principles, the rule of law and the demonstration by those countries of a genuine commitment to fulfil international obligations towards refugees. Reports from human rights monitors show that Libya’s current situation falls short of this requirement. The Amnesty International report on Libya published in February 2004 has highlighted grave human rights violations in Libya, (such as severe restriction to the right to freedom of expression and association, torture, pattern of incommunicado detention by security forces, unfair trial and implementation of the death penalty) despite few positive changes⁵.

Amnesty International is also concerned that the current situation of the protection of refugees and “irregular” migrants does not comply with the orientations of the Hague programme. Despite the fact that Libya has ratified the 1969 OAU Convention on specific aspects of refugee problems in Africa and that the Libyan constitution and national legislation include provisions on asylum, Libya does not have a functioning asylum system in place. It is not a party to the Geneva Convention. In the absence of an official agreement, UNHCR cannot operate its protection mandate in the country. In the light of the Hague programme, Amnesty International considers that ratification and proper implementation of international standards on refugee protection (in particular the Geneva Convention) are a necessary precondition to develop partnership with Libya on migration issues. Further, the situation of “irregular” migrants is reportedly in breach of international human rights standards with deplorable detention conditions and large-scale returns of migrants with no attention paid to their protection needs.

⁴ Amnesty International, Urgent Actions: 19/012/2004, 19/014/2004, 69/05; UNHCR, Press communiqué, 18 March 2005; Résolution du Parlement européen sur Lampedusa, 14 avril 2005, P6_TA-PROV(2005)0138.

⁵ Amnesty International: Libya: time to make human rights a reality, AI INDEX MDE 19/002/2004.

Amnesty International calls on the Council to seek clear commitments from the Libyan government regarding respect for migrants' fundamental rights and the establishment of a system for providing international protection to persons with a well-founded fear of persecution. This commitment needs to go beyond stated intention or "exploratory" dialogue. It shall be reminded that given the extra-territorial effect of article 3 ECHR, the international responsibility of the Member states would be engaged if the EU and its Member States were to conclude a partnership with a country where refugees and migrants are at risk.

Amnesty International recalls that UNHCR is the only international organisation that has a mandate to act in favour of refugee protection. Amnesty International believes that there can be no alternative proposal looking at creating ad hoc EU monitoring mechanisms as a substitute to the work of this UN agency. Nor can the funding of specific projects run by inter-governmental organisations such as IOM or ICMPD be seen as an adequate response to this issue.

The Council should get clear assurances from the Libyan authorities that UNHCR will be allowed to perform its protection mandate. It should also press the Libyan government to ensure that international monitors, in particular 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 expulsion carried out by the Libyan authorities.

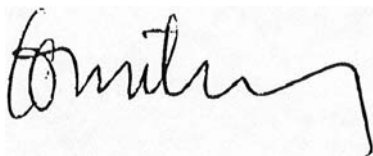
4. The human rights conditionality should apply to regional dialogue with African countries

Amnesty International understands that the Council will discuss the opportunity to explore avenues for co-operation on migration issues with Niger. While fully acknowledging the need to tackle root causes of asylum and migration, Amnesty International holds that regional co-operation with African countries must not be used as a humanitarian alibi to allow Libyan authorities to carry out arbitrary arrests and put migrants in prolonged incommunicado detention, where they are at risk of ill-treatment and torture. Amnesty International believes that any regional dialogue on refugee and migration issues should be articulated within the broader humanitarian and development agenda of the European Union.

Any pilot project with Niger should take into consideration the issue of regional protection for persons in need of international protection. Border management shall by no means prevent asylum seekers and refugees from getting access to protection.

We hope that our recommendations will be taken into due consideration during the coming discussions and look forward to your response.

Yours sincerely,



Dick Oosting
Director

PS. CC to: EU Commissioner in charge of Justice, Security and Liberty; EU Commissioner in charge of external affairs, Permanent Representatives, Members of the European Parliament, Personal Representative on Human Rights for CSFP of the High Representatives and UNHCR Branch Office Brussels.