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EU Member States threatening the integrity of the international refugee protection system

**Amnesty International's open letter to the UK Presidency
on the occasion of the Justice and Home Affairs (JHA) Council, 12 October 2005**

7 October 2005
Our ref. B496

Dear Secretary of State,

Amnesty International believes that the recent tragic events in Morocco and Spain are yet another indication that there is a profound crisis in the system of refugee protection across the European Union. The forthcoming JHA Council will be a very important opportunity for EU Member States to address the need to develop tools aimed at enhancing the capacity of third countries to provide refugee protection. This marks a critical moment in the debate on how the EU should conduct its asylum and immigration policies and the outcome of discussions in the Council on the European Commission's communication on regional protection programs will be eagerly awaited by all those involved in refugee protection.

As you are aware, during the night of 28 to 29 September 2005, at least five men of sub-Saharan origin died and several others injured when hundreds of people (including children) tried to gain entry to Spanish territory by climbing over two razor-wire fences separating the Spanish enclave of Ceuta from Morocco, and were confronted by law enforcement officials from both countries. Media reports say another six people were killed near the Spanish enclave of Melilla as recently as 6 October 2005. These tragic events highlight increasing attempts on the part of EU Member States to effectively withdraw from their international human rights and protection commitments and to shift responsibility for refugee protection onto neighbouring third countries where responsibility, enforceability and accountability for effective protection are likely to be minimal at best.

In the light of these events, Amnesty International urges the Presidency and the Council to examine carefully the potential impact of future developments in the EU asylum and immigration policies, in particular regional protection programs, on the international protection regime. Central to the debate is the need for a renewed political commitment from EU Member States to enhance the EU's contribution to the international refugee system and to tackle root causes of forced displacement.

In assessing the impact of the policies of the EU and its Member States on the international protection system generally, and more specifically on the willingness of third countries to bear the brunt of de facto responsibility, there can be little doubt that the manner in which the "fight against illegal immigration" is conducted risks exacerbating rather than alleviating the problems associated with irregular migration. The lack of real solidarity combined with abusive practices that too often amount to breaches of international human rights obligations - ranging from unlawful detention to *refoulement* - puts a great strain on the EU's stated goal of seeking durable solutions and tackling root causes. It also strains the EU's credibility and legitimacy in asking others to carry burdens that it is not prepared to accept for itself.

From the perspective of European governments keen to limit the numbers of migrants and asylum seekers, keeping refugees close to their regions of origin or in transit countries is seen as a panacea. However, in the absence of a commonly agreed definition under international law, the notion of "regional protection" raises questions regarding the definition of what constitutes "effective protection" and who will be in charge of assessing refugee needs. Emergency assistance and shelter provided in the immediate aftermath of a crisis is indispensable for saving lives and providing initial protection for

displaced persons. However, Amnesty International is concerned that, far too often, refugees are forced to live for years in a protracted situation of mere survival, and while waiting for a durable solution, they are unable to exercise their fundamental human rights. Refugees should be granted timely and durable access to protection, including a secure legal status that will enable them to assert their fundamental human rights, and seek effective redress if these are denied to them.

Amnesty International believes that the EU's contribution to enhancing the international refugee system should not be limited to legal, financial and technical assistance to third countries. It should also be translated into practice by concrete solidarity measures with countries hosting large numbers of refugees. In this context, expanded resettlement opportunities within EU countries would constitute a welcome development for the EU and a significant contribution to international protection. Resettlement is intended as a response to immediate and compelling protection needs arising from an acute protection crisis or, in a protracted refugee situation, to provide access to a durable solution where other solutions (local integration or voluntary repatriation) are not available. Today less than 1% of the world's refugee population is granted resettlement as a durable solution, with even less accessing protection through protected entry procedures.

Enhancing access to international protection would therefore require significant commitments from EU Member States both in terms of numerical targets (i.e. persons actually resettled within the EU) and in terms of financial support to the UNHCR and other relevant actors involved. While they may, with time, diminish to some extent the need for onward movement on the part of some refugees, resettlement schemes as protection tools can never be expected to remove the impetus for onward movement of persons in search of protection.

Looking more specifically at the Commission's communication, Amnesty International calls on the Presidency and on the Council to carefully weigh the added value of the Commission's proposal in view of the numerous tools already implemented at international, European and inter-governmental level. In this respect, Amnesty International is concerned that the Commission's proposal reflects a lack of political ambition and has serious substantive shortcomings.

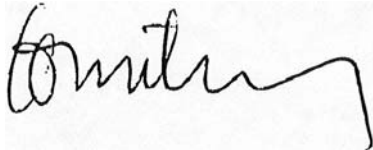
Although the European Commission claims it takes a holistic and integrated approach to migration management, this strategy is not properly reflected in the communication where the expertise developed by the Commission in the area of development or humanitarian assistance is not adequately considered. Given that the communication does not include operational details, one wonders what would be the added value of such regional protection programs. Whether they can actually improve the coherence of the protection activity already undertaken by the EU under assistance, development and humanitarian programs, will only be seen in practice. Before discussing further new concepts, the Presidency and the Council should ask the Commission to take stock of existing programs and assess the need for developing additional programs. It should also undertake an in-depth assessment of the protection situation in potential host countries. Such an assessment should be based on the expertise of the United Nations High Commissioner for Refugees.

Against this background the launch of a pilot regional protection programme (RPP) by the end of 2005 must be considered wholly premature. Amnesty International is concerned at the prospect of a launch of a pilot-RPP in Western Independent States (NIS) given the persistent difficulties in Ukraine and the very problematic human rights situations prevailing in Moldova or Belarus, a country which has no diplomatic relations with the EU. Having regard to regions of origin, the presence of a large community of refugees may have a detrimental impact on the political stability of host societies. In this respect, assistance programs for local communities can only work with a sustained and open dialogue with host countries at an early stage. Amnesty International notes with concern that the Commission's proposal pays little attention to recent developments in regions of origin. Despite restrictive changes to its asylum policy, Tanzania may be considered as an option for launching an RPP in Africa. However, the Tanzanian authorities have denied protection to refugees from the Great Lakes since 2004. The Kenyan authorities have developed similar practices. Amnesty International urges the Presidency and the Council to pay due attention to recent changes in countries that are traditionally hosting large communities of refugees.

It is clear that a purely "defensive" approach to all these issues, is not only inappropriate, but will ultimately be ineffective as well. As the recent events in Ceuta and Melilla so tragically illustrate, it is time for the European Union to radically rethink its policy direction in order to truly enhance solidarity and cooperation with third countries hosting ever increasing numbers of displaced people.

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

Yours sincerely,



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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 of the High Representative for CSFP; and UNHCR Branch Office Brussels.