

Franco Frattini
Commissioner for Justice, Freedom and Security

Brussels, 28 November 2005
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Dear Mr Frattini,

Subject: Future EU-Morocco co-operation in the aftermath of the crisis in the Spanish enclaves and Morocco Amnesty International's recommendations to the European Commission on the occasion of the JHA Council on 1-2 December 2005 regarding human rights protection of asylum seekers and migrants

In the aftermath of the crisis in the Spanish enclaves and Morocco, the European Commission services carried out a technical mission in early October 2005 with a view to exploring ways in which the EU might assist in addressing the migration crisis. The outcome of the mission was made public in a technical report, which highlights practical measures of co-operation with Morocco and Sub-Saharan countries.

Amnesty International understands that the Commission will further develop these orientations and put forward a set of concrete measures for co-operation with Morocco on the occasion of the forthcoming JHA Council. These measures will be considered within the context of broader political discussions, and in particular the definition of a strategic approach to the external dimension of Justice and Home Affairs.

While Amnesty International understands that co-operation with Morocco is an incremental process which needs to be analysed in the broader context of a multifold agenda with neighbouring countries, we deplore the fact that the concrete measures envisaged in the short-term with Morocco are mainly centred on a purely defensive approach against irregular migration. Belying the rhetoric of the European Commission and the EU Member States, refugee protection and migrant rights have not received adequate attention. In the recent period, Amnesty International has produced detailed evidence that the string of incidents at the Southern European borders are tangible evidence that the integrity of the international refugee protection system is put at risk by EU Member States' practices.

In a previous exchange of correspondence, Amnesty International received assurances that the European Commission seeks to promote a comprehensive and balanced approach with a view to better manage migratory flows in the region. However, Amnesty International reiterates its fears that the measures proposed by the Commission to fight "illegal immigration" risk exacerbating rather than alleviating the problems associated with irregular migration. The lack of real solidarity, combined with abusive practices puts a strain on the EU's stated goal of seeking durable solutions and tackling its root causes. It undermines the EU's credibility and legitimacy in asking others to carry burdens that it is not prepared to accept itself. The current discussions with the Moroccan authorities show that no significant progress will be made, unless the EU and its Member States are prepared themselves to respect fully international law obligations.

We therefore wish to put forward some concrete recommendations in order to enhance human rights protection of refugees and migrants both in the EU and in Morocco. Our recommendations are based on the findings of a mission carried out by Amnesty International in October 2005 and which have already been made public. We hope that these recommendations will be taken into due consideration in the coming discussion.

1. No impunity for deaths at the borders

As already widely reported, the recent incidents have been characterised by unprecedented violence against the migrants trying to cross the fence between the Moroccan territory and the Spanish enclaves. According to Amnesty International's findings, scores of people have been injured and at least 11 killed since August 2005 while trying to cross into the enclaves of Ceuta and Melilla when the law enforcement officials of Morocco and Spain confronted them. Both the Spanish and Moroccan governments assured Amnesty International that their respective judicial authorities were investigating the deaths of people whose bodies were found on their own side of the border.

However, Amnesty International noted that the authorities of both countries sought to apportion blame for the deaths to the other party, or at least to deny that their security forces were criminally responsible.

Amnesty International acknowledges that the responsibility for investigating these incidents lies primarily with national authorities. As regards responsibility at EU level, however, under article 7 TEU, the European Commission has a key role in monitoring the breach of fundamental principles of human rights in the Member States. Amnesty International therefore urges the EU to press the authorities of both countries to ensure that the investigations conducted into the aforementioned events are thorough, prompt, independent and impartial, and that the results are made public. The burden of proof, in conformity with international standards, must rest with the authorities of both countries and not with the victims nor with the non-governmental organizations working on their behalf. To prevent further human rights violations, all the CCTV cameras placed on the fences should be put under judicial control and systematically monitored in order to detect possible human rights violations. Any person reasonably suspected of being responsible for such violations should be brought to justice, in conformity with international standards.

2. EU re-admission agreement and States' practices should fully comply with international law

Given the gravity of the aforementioned incidents, the EU should be very vigilant about the legal guarantees to be inserted in the EU-Morocco re-admission agreement that will be a key framework document for regulating readmission practices between the EU Member States and Morocco. According to the information gathered from the Commission's services, Amnesty International is concerned that in its current form, the draft re-admission agreement with Morocco does not include any reference to international law standards. This omission is all the more worrying as EU re-admission agreements recently signed with third countries do include provisions stipulating that the enforcement of re-admission obligations shall be without prejudice to the obligations of the EU and the States parties under international human rights law, and in particular the 1951 Geneva Convention and the ECHR. Amnesty International urges the European Commission to ensure that adequate human rights provisions are inserted in the draft EU-Morocco re-admission agreement.

Beyond the negotiation of adequate guarantees within the body of the agreement, Amnesty International believes that the European Commission should closely monitor the practices of EU Member States in implementing re-admission protocols. Recent events show that the Spanish authorities have not ensured that the absolute ban on *refoulement* has been respected, which jeopardises compliance with its international obligations, including the Geneva Convention, the European Human Rights Convention, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Spain is a party.

Amnesty International therefore urges the European Commission to call on Spanish authorities to:

- put an immediate end to the clandestine expulsion of asylum-seekers and other foreign nationals at the border of Ceuta and Melilla with Morocco. These expulsions do not follow legally established procedures and are not the result of decisions taken in accordance with the law, and are therefore in flagrant violation of the principle of non-*refoulement* and international legislation to protect refugees.
- ratify, as soon as possible, Protocol 4 of the European Convention on Human Rights, which prohibits the collective expulsion of foreign nationals.

3. Use of force by law enforcement officials

The evidence collected by Amnesty International shows that law enforcement officials from both sides used force that was both unlawful and disproportionate, including lethal weapons. They injured and killed people trying to cross the fence. Many of those seriously injured inside Spanish territory were pushed back through doors in the fence without any legal formality or medical assistance. The law enforcement officials from both sides obviously lacked training on how to deal with particular circumstances when people try *en masse* to cross the fences around Ceuta and Melilla.

Given the gravity of the lesions suffered by the people who have tried to cross the fences, and the numbers of people affected, the EU should encourage the authorities of both countries to establish and implement a specific protocol on the use of force for the law enforcement officials operating in this area. The provisions of this protocol must be made public.



More generally, within the context of current discussions on the draft directive on common standards and procedures in Member States for returning third country nationals illegally staying on their territory, the European Commission should introduce a proposal for a binding EU code of conduct on the use of force for law enforcement officials, which would fully comply with the guidelines defined by the UN and the Council of Europe.

4. Refugee protection

The provisions of the Hague Programme clearly stipulate that support for cooperation on migration issues will be provided to those countries who demonstrate a genuine commitment to fulfil their obligations under the Geneva Convention. However, Amnesty International is concerned that European Commission may not pay sufficient attention to this human rights conditionality.

During its October fact-finding mission, Amnesty International gathered first-hand information about the hundreds of migrants, reportedly including dozens of asylum-seekers from West and Central African countries, who were rounded up by the Moroccan security forces in September and October 2005 and detained first in police or *gendarmerie* stations and then in military facilities. The organisation received numerous reports indicating that those held had been given no information regarding the possible length of their detention, nor had they been afforded the right to a lawyer and to appeal against their custody.


Amnesty International's delegates collected evidence confirming reports that hundreds of migrants, including possible asylum-seekers, were transported in buses, trucks and other vehicles to remote desert regions near the border with Algeria, and then ordered to walk across the frontier towards towns inside Algeria. People from West- and Central African countries told Amnesty International that they had been left with little or no supplies of food and water. These shortcomings are acknowledged by the recent European Commission technical mission to Morocco that found that "there are doubts as to whether Morocco is able to offer in practice effective protection to all those seeking protection inside its territory."

Against this background, Amnesty International urges the European Commission to insert adequate measures for refugee protection in the package of proposals to be submitted to the Moroccan authorities.

The credibility of the Commission on this issue will also depend on the steps it is prepared to take vis-à-vis the Spanish authorities within the context of the monitoring of adequate transposition of EU instruments.

We look forward to your urgent response.

Yours sincerely,



Dick Oosting
Director Amnesty International EU Office

CC to: President of the Commission, EU Commissioner in charge of external affairs, EU Presidency, Permanent Representatives, Members of the European Parliament, Personal Representative on Human Rights for the CFSP and UNHCR Brussels.