

AIDE-MEMOIRE in view of the 21-22 February 2006 JHA Council

Amnesty International's concerns regarding an EU list of safe countries of origin

In view of the forthcoming discussions about the possible adoption of a common EU list of safe countries of origin, Amnesty International recapitulates its concerns as to the potentially far-reaching consequences of such a list on the principle of non-refoulement. Concerns raised in this document were already shared with the EU institutions and the EU Member States on previous occasions during the negotiations of the Council directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

- **Human rights implications**

Amnesty International questions the appropriateness of such a discussion. Given that Member States were until recently divided on the proposed list on account of serious human rights concerns in the relevant countries, it is highly questionable that a list of this nature should be adopted at all. It is deplorable that the Council is examining this issue in an isolated fashion, without expressly taking into account the broader issue of the inadequacy of the system of country of origin information that is a key concern in many EU Member States.

- **Inadequate democratic control**

Amnesty International also believes that revisiting this issue is inopportune given on-going discussions in the European Parliament about the possibility to challenge article 29 of the EC directive 2005/85/EC. Indeed according to article 29, the adoption of the common list is due to take place by qualified majority voting (QMV) with mere consultation of the Parliament. While we are aware of the 15 December 2004 Council decision limiting the use of Article 251 TEC to certain areas of Title IV TEC, Amnesty International believes that the fact that the Parliament is not associated through co-decision goes against article 67 (5) of the EC Treaty, which provides that once the Council has adopted "common rules and basic principles" in relation to asylum procedures by unanimity, further measures in the field must be adopted under the co-decision procedure.

Amnesty International therefore submits that the Council should suspend the negotiations until there is more clarity about a possible challenge before the European Court of Justice.

- **Potential breach of article 3 of the 1951 Geneva Convention**

Amnesty International believes that in practice the use of a list of safe countries of origin may lead to discrimination among refugees on the basis of their nationality. Such discrimination is strictly forbidden by Article 3 of the 1951 Geneva Convention.

Amnesty International appreciates that under the relevant provisions of the EC directive no country can be labelled as "safe" in general terms. However, we are concerned that the proposal allows for the use of a common European list to restrict access to the regular asylum procedure. While the individual may rebut the presumption of safety under the relevant provisions of the directive on asylum procedures, there is no mention of the benefit of the doubt and the burden of proof lies exclusively with the asylum seeker.

Amnesty International therefore remains concerned that people coming from countries considered "safe" may be forced to overcome an unreasonable presumption against the validity of their claim. As

mentioned in our comprehensive comments on the EU directive, Amnesty International is concerned that asylum seekers will have to rebut the presumption of safety and have their case processed through an “accelerated procedure” that may not offer sufficient safeguards, in particular regarding the right of appeal.

UNHCR, Amnesty International and other non-governmental organisations have also consistently denounced the inadequacy of the criteria used in order to designate such safe countries. Although we appreciate the attention given to non-governmental sources such as Amnesty International’s annual report, past discussions have shown that the designation of the countries to be included on the EU common list is a highly politicised debate guided by political interests rather than full consideration of human rights standards. Indeed, as a result of a lack of clear criteria for the inclusion of countries in the EU list, countries with a poor human rights record might be included.

- **Lack of adequate monitoring system**

Beyond the issue of designating the countries to be included on the EU list, Amnesty International is concerned that there are no adequate provisions regarding reliable and independent monitoring of the human rights situation in these countries. Given the current climate in EU Member States and their questionable commitment regarding refugee protection, Amnesty fears that EU governments will agree on a light mechanism that would amount to a humanitarian alibi and allow them to evade their international obligations.

Amnesty International believes that setting up an adequate monitoring system is a core issue in order to develop a fair and efficient protection system across the European Union. The situation in the particular countries should be assessed regularly and impartially on the basis of a wide variety of sources, including reports from non-governmental organisations. UNHCR and other human rights monitors, such as the committees set up by the Council of Europe, should be closely associated to an EU mechanism.

The monitoring mechanism should include an emergency procedure for dealing with humanitarian crisis or situations of massive human rights crisis.

Amnesty International believes that many of the points raised in this paper should also be taken into consideration in later discussions regarding a common system for country of origin information.