

## Amnesty International

**Statement for Working Session 3: Humanitarian issues and other commitments,** including:

- Refugees and displaced persons
- Treatment of citizens of other participating states

### **Externalization of border and immigration control and other concerns in the European Union**

Against the backdrop of political turmoil in North Africa and the Middle East, thousands of refugees and migrants attempt the dangerous sea crossing to Europe in search of safety and a secure future, often in overcrowded and un-seaworthy vessels. According to conservative estimates, at least 1,500 people, including pregnant women and children drowned while attempting this journey. Rather than taking measures to prevent such deaths at sea, including by increasing search and rescue operations, the **European Union's** response was to boost the ability of its external border agency, Frontex, to deter arrivals in Europe via the Mediterranean.

Over the last decade, European countries have increasingly sought to prevent people from reaching Europe, and have "externalized" elements of their border and immigration control. Externalization refers to a range of border control measures including measures implemented outside of the territory of the state – either in the territory of another state or on the high seas. It also includes measures that shift responsibility for preventing irregular migration into Europe from European countries to countries of departure or transit. Externalization measures are usually based on bilateral agreements between individual countries in Europe and countries of departure or transit.

The policy of externalization of border control activities has been controversial. The implementation of migration control agreements between European and non-European countries have led to serious human rights violations. The lack of transparency surrounding many European countries' border management practices and agreements with third countries means that these violations continue unchecked. The lack of scrutiny creates a permissive environment in which migrants, refugees and asylum-seekers are left vulnerable and are denied protection of their rights.

A well known example of how agreements between European and non-European countries can lead to serious human rights violations is the cooperation on migration control between Italy and Libya. In February 2012, the policy of push-backs previously implemented by **Italy** was condemned by the European Court of Human Rights in the case of *Hirsi Jamaa and Others v. Italy*. The Italian government publicly committed to implement the judgement. However, only a few weeks later, Italy and Libya agreed to start again their collaboration on migration control in the absence of any safeguards for the treatment of migrants, asylum seekers and refugees intercepted in the desert or at sea, taken at check points or from the

streets or caught while trying to board boats. Agreements between other countries in Europe and non-European countries, and agreements and operations involving the EU and FRONTEX, also need to be examined in terms of their human rights impacts.

The existence of bilateral or multilateral agreements between States does not relieve States of their human rights obligations. States should assess all agreements to ensure that they are not based on, or likely to cause or contribute to, human rights violations. Migration control agreements should include specific measures that ensure that the rights of migrants, refugees and asylum-seekers are safeguarded. States should not enter into migration control agreements unless there are effective mechanisms to ensure that the human rights safeguards will be implemented. Equally, the provision of technical and financial assistance should be made consistent with human rights. A State cannot deploy its official resources, agents or equipment to implement actions that would constitute or lead to human rights violations, including within the territorial jurisdiction of another State.

In addition, Amnesty International reiterates its profound concern at the construction of a fence along the 10.3 km section of **Greece's** land border with Turkey. The organization believes that the construction of the fence is likely to lead to violations of Article 18 (the right to asylum) of the EU Charter of Fundamental Rights and of the Refugee Convention since it would prevent individuals seeking international protection from reaching Greece.

Furthermore, detention conditions in the various immigrations facilities and police stations where migrants and asylum-seekers are held for immigration purposes continue to be a cause of concern, including the detention conditions of asylum-seekers and irregular migrants who currently arrive and are detained in overcrowding conditions at police cells on various Greek islands. Concerns also persist over the routine detention of irregular migrants and asylum-seekers including unaccompanied minors without alternatives to detention being sought, in particular since the beginning of a mass police crack down on migrants in August 2012. The scale of this operation also raised serious concerns about discrimination on the basis of perceived ethnicity. Finally, the organization maintains its profound concerns over the significant rise of xenophobic and racist attacks against foreign nationals.

### ***Recommendations:***

Amnesty International calls on Participating States, in particular those in European countries and the European Union, to:

- Ensure that their migration control policies and practices do not cause, contribute to, or benefit from human rights violations;
- Ensure their migration control agreements fully respect international and European human rights and refugee law, as well as the law of the sea; include adequate safeguards to protect human rights with appropriate implementation mechanisms; and be made public;

- Ensure their interception operations look to the safety of people in distress in interception and rescue operations and include measures that provide access to individualized assessment procedures, including the opportunity to claim asylum;
- Take all the necessary measures to prevent racist and xenophobic attacks against migrants and fully investigate those that occur;
- Halt police crackdown on "irregular migrants", in countries such as Greece, and allow for effective access to asylum to those in need of international protection.

### **Return of asylum seekers and refugees places of torture in Central Asia**

Amnesty International fears that increasing numbers of people will be returned to torture in Central Asia, especially in **Uzbekistan, Tajikistan and Kyrgyzstan**, in contravention of international human rights obligations, if governments and international governmental organizations continue to prioritize cooperation on regional security over the provision of basic human rights guarantees.

Amnesty International's research shows that over the last 11 years of increased international cooperation in the so-called "war against terror" the human rights situation has only marginally improved across the Central Asian region and in some countries has in fact deteriorated significantly. The organization is particularly concerned that the authorities in Tajikistan and Uzbekistan - and to a lesser degree those in **Kazakhstan** and Kyrgyzstan – have continued to actively seek the extradition from neighbouring countries, in the name of national security and the fight against terrorism, of suspected members of Islamic movements or Islamist parties banned in Uzbekistan and Tajikistan, such as the Islamic Movement of Uzbekistan, the Islamic Jihad Union and Hizb-ut-Tahrir, or individuals suspected of involvement in the May 2005 Andizhan events in Uzbekistan or the June 2010 violence in the south of Kyrgyzstan.

Particularly alarming is the fact that over the last two years authorities in **Kazakhstan, the Russian Federation and Ukraine** appear to have stepped up efforts to comply with these requests and to forcibly return asylum-seekers and refugees to Tajikistan and Uzbekistan – and also China and the Chechen Republic (Russian Federation) despite international protests and interventions by the United Nations (UN) and the European Court of Human Rights (ECtHR). Amnesty International is concerned that many of these people forcibly returned, were people deserving international protection. Amnesty International's research has found that most of those forcibly returned to Uzbekistan and Tajikistan are held in incommunicado detention, thereby increasing their risk of being tortured or otherwise ill-treated.

Amnesty International is concerned that rather than adhering to their non-negotiable obligations to protect all people from return to torture under the Convention against Torture and the International Covenant of Civil and Political Rights, states are instead prioritizing adherence to regional cooperation and mutual assistance agreements such as the Shanghai Cooperation Agreement and the Minsk

Convention, which stress cooperation on ensuring national and regional security and combating terrorism and have no or very limited provisions safeguarding the human rights of individuals subject to extradition.

The European Court of Human Rights has issued at least [20] rulings prohibiting the return of criminal suspects to Uzbekistan and Tajikistan on the basis of a risk of torture, especially those charged with membership of Islamist parties or groups banned in the country.

Amnesty International is also concerned at the lack of protection of asylum-seekers against extradition. For example, Russian national law clearly establishes that a person who has been granted asylum in the Russian Federation cannot be extradited. However, some of the people whose extradition has been requested by Central Asian states have had their applications for refugee status routinely dismissed by the Russian Migration authorities, with insubstantial explanations as to the grounds for the refusal. Amnesty International believes that the Russian authorities often fail to give proper scrutiny to asylum claims once an extradition request has been made. Ukraine and Kazakhstan also continue to flout their international human rights obligations including the Refugee Convention by complying with extradition requests even in cases where the individuals concerned are recognized refugees or asylum-seekers. In many cases asylum-seekers are not given the opportunity to appeal against refusals to grant them refugee status.

Allegations of abductions and attempted abductions of Uzbekistani asylum-seekers and refugees or other nationals having fled their country by Uzbekistani security services operating with impunity on the territories of neighbouring Kazakhstan and Kyrgyzstan have continued unabated over the last few years. Security Services from China are also known to be operating under cover on the territory of Kazakhstan and Amnesty International has received numerous reports of Uighur asylum-seekers being abducted by Chinese security officers. Russian officials have also confirmed that Uzbekistani security forces have operated in the territory of the Russian Federation. NGOs working with asylum-seekers in Ukraine have reported mysterious cases where their clients have disappeared and then been reported back in their country of origin, without any information about how these returns were carried out. For example, in August 2012 the UN Refugee Agency (UNHCR) informed Amnesty International that it was monitoring the cases of four asylum-seekers detained on extradition requests from Kyrgyzstan, Uzbekistan and Russian Federation (two individuals). One of the individuals threatened with return to Russia was a recognized refugee, yet in August the UNHCR and his lawyer lost contact with him in detention, and were informed on 16 August that he had been returned to Russia on 15 August.

***Recommendations:***

Amnesty International would like to remind all OSCE Participating States that they must scrupulously abide by their non-derogable obligation under international human rights law not to deport, extradite or otherwise remove any person to a country or territory where there is a real risk that they would face torture and/or other ill-treatment.