Statewatch comments to the International Development Committee inquiry into "Migration and Development"

Introduction

1. *Statewatch* welcomes the opportunity to submit comments to the inquiry of the International Development Committee into "Migration and Development". This submission focuses on the third question that the inquiry is considering:

> How coherent is UK and EU migration policy with policy on other development-related matters and how might a more holistic and longer-term approach to migration be beneficial to the UK and its development partners?

2. It is our view that that the migration (and security) policies of intergovernmental organisations, particularly the EU, are already "contaminating" the international development agenda by making aid and trade increasingly dependent upon migration control. It is logical that in the longer term this will result in developing countries diverting resources to meet these obligations. We believe that this approach contradicts and will undermine development policy and reproduce rather than alleviate global inequalities. In this context we are very concerned that any "holistic" approach would be at the expense of UK and EU "development partners".

Background

3. The current links between the EU development agenda and migration control should be seen in a historical context.

4. The EU has pursued ever-more restrictive immigration and asylum policies. The visa regime makes it impossible for genuine refugees to reach the EU without recourse to illegal means while the demand for migrant labour in EU countries (among other things) encourages people to enter illegally and use any possible legal means to stay here. The criminalisation of entry has thus created the market in illegal travel and "trafficking", fuelling crime and corruption in countries of origin and transit.

5. At the EU summit in Tampere (Finland) in October 1999, six action plans of the EU's High Level Working Group on Immigration and Asylum (HLWG) were adopted. The policies were an attempt to pass responsibility for prevention of immigration to the countries of origin of refugees and migrants and the countries through which they pass by tying trade and aid to the prevention and return of "refugee flows". The plans targeted Afghanistan, Albania (later extended to Kosovo), Iraq, Morocco and Sri Lanka. The UK was responsible for the development of the Sri Lanka plan.

6. The plans included detailed statistics showing the size and age structure, life expectancy and infant mortality of the population, imports and exports to and from the EU and the rest of the world, GDP, development aid and existing trade cooperation and readmission agreements – all of which are to be used to cajole these countries into accepting EU readmission policies. Of the six countries targeted for action, at least four can be described as refugee-producing countries. Yet none of the action plans

contained any proposal which would allow refugees from those countries to seek asylum in Europe. The plans were about making people stay where they are - either in an unsafe country of origin or in precarious conditions in the region of origin - and about sending back those who made it to Europe.

7. The HLWG proposed a combination of vague and aspirational recommendations to improve the social, political, economic and human rights situation in the targeted countries but managed specific, clear and implementable recommendations to stop migration from and through them (these include more airline liaison officers stationed at airports to prevent people boarding aircraft bound for Europe; new laws criminalizing trafficking and illegal exit; equipment and training to detect forged documents and arrangements for the identification and documentation of returning refugees).

8. The levers of trade and aid have been used explicitly in this process, particularly in the pursuit of readmission agreements. The EU demanded the insertion of a clause on readmission and repatriation during the final stage of the negotiation of the Lomé Convention on aid and trade (between the EU and 77 African, Caribbean and Pacific states). The ACP states argued that there was no basis in international law for such a demand (the Legal Service of the EU concurred), but with little choice the ACP countries capitulated and Lomé IV was signed in February 2000. Its successor, the Cotonou agreement, which will run from 2007-2020, strengthens the EU's position in regard to imposition of readmission obligations. The EU will no longer sign any association or cooperation agreement unless the other side agrees to these standard obligations.

9. To further these objectives, the Seville European Council agreed upon the establishment of a single body for General Affairs and External Relations in June 2002. This means that development policy no longer has an independent role in foreign policy and is instead be considered alongside security and defence and external trade and aid, creating, as the European Parliament has noted, "a risk of development considerations being seen as less important, even ignored" [Working Paper, DEVE 106 EN 01/2003].
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Return of migrants to developing countries

10. The EU has so far signed readmission agreements with Hong Kong and Macao, completed negotiations with Sri Lanka and Albania and is negotiating with Morocco, Russia, Ukraine, Pakistan, China, Algeria and Turkey. More are planned.

11. Readmission agreements are vital to the EU countries, obliging signatory states to take back their own nationals. The European Commission has proposed the extension of the Cotonou readmission obligations to cover "other third country nationals" (i.e. undocumented migrants from the region). We share Amnesty International's view that this amounts to "trading human beings in exchange for financial aid".

12. We are also concerned about the two EU "Return" Action Plans for repatriation from the EU, preferably voluntary (but if not then forcibly) of all illegal migrants and refugees whose countries are now "safe". The first is a specific programme for Afghanistan [EU Council doc. 15215/02, 4.12.02] and the second is a wider plan on

increased expulsion across the board [EU Council doc. 14673/02, 25.11.02]. The former makes few provisions for the security of the people returned, contains no obligation not to go ahead if the human rights situation in Afghanistan does not improve and chooses to completely ignore ongoing and at times fierce military action and calls from agencies working on the ground in Afghanistan not to return refugees.

13. Some of the funding for the repatriations will come from the recently established "European Refugee Fund". This is hugely disappointing given that this budget line was created to assist in the "support and integration" of refugees in the EU.

14. The EU and most member states have set ambitious expulsion targets. With the "political agreement" at this months Justice and Home Affairs Council of EU Decisions on financing expulsions [EU Council doc. 14204/03, 31.10.03] and joint expulsion flights [EU Council doc. 14205/03, 31.10.03)] we are concerned for both the safety of people being expelled and that increasing returns could have a detrimental effect on developing countries.

The UK government proposals for 'safe havens'

15. The UK government's "new vision for refugees" is a "global network of safe havens" – "particular camps whose prime purpose is to provide a place of safety and process claims". The underlying principle is "protection not migration" – there will be "no need to flee". Like the HLWG plans before them, the UK proposals contain no meaningful proposals as how to this utopian vision will be achieved.

16. To secure the cooperation of developing countries the UK governments proposes that:

> at every level of governance (domestic, EU, international) in development, trade, conflict resolution and promotion of human rights, the factor of reducing forced migration should be explicit and played into the wider agendas of these objectives [Home Office draft, "A new vision for refugees", 5.2.03].

17. Under the 'safe havens' plan proposes that those fleeing conflict, poverty, persecution or environmental disaster will be housed in UNHCR administered camps, if not in the actual country they are fleeing, then in the region. All would be entitled to six months temporary protection while their asylum applications are being processed. Those that actually manage to reach the EU to make an application would be sent immediately to a safe haven in Europe – but potentially outside the EU – for processing (possibly the Ukraine post-EU enlargement or even Albania in the short-term).

18. Internally displaced refugees – there are some 20 million worldwide – will not have access to these "safe havens". There will be "some form of internal policing to avoid internal violence and prevent entry of combatants", though refugees would be "free to leave" (but then ineligible for any form of international protection elsewhere).

19. We are alarmed that these proposals are now being discussed at the EU level and that the lack of transparency in EU Council proceedings has all but hidden these

discussions from scrutiny. The Swedish government stands alone in its criticism and firm opposition. It has also written to the UNHCR to express their disappointment at its position (the UNHCR is in favour of "protection in the region" (camps) but opposes the external processing of asylum-seekers). The Netherlands, Denmark and Austria have backed the UK strongly. The European Commission's work programme of 2004 says that it will produce a report on a "single [asylum] procedure, resettlement programmes and external asylum applications" by June 2004 [COM (2003) 645, 29.10.03]. This appears to contradict public declarations by EU and UNHCR representatives that the former could not accept the UK proposals.

20. We are also concerned that the draft Constitution contains a provision for "partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection" [Article III-167(2)(g)]. Without clarification, this provision is clearly open to misuse by Member States seeking to "sub-contract" their protection duties to third countries.

20. We share the view of Ian MacDonald QC and Nadine Finch that the "automatic removal of asylum seekers to a location outside of the European Union before substantive consideration of their application would not conform with internationally recognised human rights and refugee protection standards and is likely to be in breach of the United Kingdom's obligations under the Refugee Convention" and would give rise to "a serious possibility of a breach of the European Convention on Human Rights" [Opinion obtained by *Justice*, see press release, 20.6.03].

21. For decades more than 6 million of the 10 million refugees in UNHCR care around the world have been trapped in exile, unable to return home or settle in their country of asylum. The UK proposals amount to the creation of camps by the some of the world's most prosperous countries in some of the world's poorest and most unstable regions. It should be inconceivable that the UK government can associate these plans with "development policy".

The current EU agenda

22. The Seville European Council adopted conclusions on a number of immigration and asylum issues. These state that each future EU association or cooperation agreement should include a clause on "joint management of migration flows and compulsory readmission in the event of illegal immigration". The Conclusions also declared the EU's willingness to offer financial assistance to third States to assist with readmission of their own and other countries' nationals and with broader "joint migration management". Undefined sanctions for non-cooperating countries are also envisaged. A recent treaty between the EU and Central American states is the first to contain the "new generation" migration management clause in an agreement.

23. This was followed-up in December 2002 by a European Commission Communication on "migration and development and on financial resources for return policy, border management, assistance to non-EU countries" [COM (2002) 703, 3.12.02] and then in June 2003 by a formal Commission proposal for an EU Regulation to create a budget providing "financial and technical assistance" in this area [COM (2003) 355, 11.6.03]. The programme has five objectives:

- The development of their [developing countries] legislation in the field of legal immigration, in particular on admission rules, on the rights and status of persons admitted;

- The development of legal migration in accordance with an analysis of the demographic, economic and social situation in the countries of origin and in the host countries;

- The development of their legislation and national practices as regards international protection, with a view to satisfying the provisions of the Geneva Convention of 1951 on the status of refugees;

- The establishment in the third countries concerned of an effective and preventive policy in the fight against illegal migration;

- The readmission, in the full respect of law, and durable reintegration, into the third country concerned [From latest draft of this proposal in EU doc. 14052/03 ADD 1, 28.10.03].

22. In May the EU Council adopted Conclusions on "migration and development" in which "migration management" is the primary "strategic policy priority" for the EU [Council doc. 8927/03, 5.5.03]. To this end and not unlike the UK government proposals on "protection in the region", the EU calls for the "coordination of development and migration related policies, and cooperation with regional processes and international organisations operating in the field". The Conclusions propose that "the opportunity of the mid-term review of Country Strategy Papers… allow for a case-by-case reassessment of migration issues in concerned countries".

23. Security concerns also have the potential to 'contaminate' the development agenda with recourse to the powers of persuasion assured by aid and trade. Financial Intelligence Units from the USA and EU member states in the pursuit of terrorist funds and assets have designated non-cooperating countries to face sanctions, potentially as part of wider anti-terrorism clauses to be imposed on the developing world in the same way as readmission clauses. The European Commission has suggested that a greater allocation of resources to developing countries to combat "crime and terrorism" will also feature in its 2003-04 review of Country and Regional Strategy Papers.

24. The EU is also targeting its future EU "neighbours" (post-enlargement): Russia, Ukraine, Moldova and Belarus plus the "Western Newly Independent States (WNIS)" of Croatia, Bosnia-Herzegovina, Serbia and Montenegro, Macedonia and Kosovo plus the "Southern Mediterranean" states of Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia (only Ukraine and Moldova are seeking accession to the EU). The plan is to create a "friendly neighbourhood" of "prosperity" and "peace" with the underlying motivation being to protect the EU from trans-border threats of terrorism, crime and migration. These countries will be expected to institute "reform" and to implement key parts of the EU's acquis communautaire - especially on "enhanced cooperation on justice and security issues" including illegal migration, judicial and police cooperation and "threats to stability".

Conclusion

25. "Unsettled" as the links between migration and development may be, a number of concerns are obvious. The vast majority of the world's refugees already stay within their region in the developing world. Estimates as to the global number of refugees suggest a fall in recent times from 17.6-18.2 million in 1992 to 12-14.5 million in 2000 [Sørensen et al., 2003: 7]. The European Commission cites 1.9 million refugees in EU territory (fifteen per cent of this total) [COM (2002) 703, 3.12.02], yet EU governments are increasingly insistent that as many as possible should be returned and in future seek "protection in the region" – all by forcible means if necessary.

26. If, as EU governments have consistently argued, refugees are a "burden" for developed countries (though there is much evidence to the contrary), they are, by rationale, clearly a greater burden for developing countries. For example, Iran currently hosts and supports 1.4 million refugees from Afghanistan and Pakistan more than 2 million as against less than 100,000 in Europe – who are to be returned as quickly as possible to this supposedly "safe" country.

27. The EU has already exported its responsibility for countless refugees onto the developing world. By funding "protection in the region", border controls and "migration management" in developing countries it will export responsibility for countless more.

28. "Migration management" as "development" strategy is a thinly veiled global extension of the "buffer states" policy that was central in relations with the applicant states. However, this was part of a wider, more comprehensive approach to social and economic development to enable the enlargement of the EU. The EU's global approach makes no such provisions – it is increasingly unilateralist and focused on migration control. The use of use of "sticks and carrots" (aid and trade and the threat of sanctions) and increasingly harsher rhetoric smacks of neo-colonialism. Development policy should not be part of this process and must have an independent role in EU foreign policy. The EU is not asking developing countries whether domestic immigration and asylum policy is among their priorities, it is coercing them into accepting its demands.

29. It is claimed that this strategy will not divert funds or priorities away from development programmes. It is our view that in the longer term this will be unavoidable as developing countries are forced to divert resources away from social and economic policies to meet these obligations. We believe that this can only undermine development and reproduce rather than alleviate global inequalities.

30. It also seems likely that as successive "waves" of developing countries introduce border controls and restrictive immigration and asylum policies, vulnerable people from the World's poorest countries will be denied access to more and more of the World's resources. The market in illegal travel ("trafficking") and false documents is likely to grow together with all the associated crime and corruption.

31. We believe that the EU policies are unbalanced, inhumane, and internally contradictory. This is highlighted not least by the migrant labour needed by the EU (mainly unskilled but also skilled). At a Greek EU Presidency conference in Athens in

May this year the Foreign Minister, George A Papandreou, suggested that the EU needed 30 million immigrants by 2020. This is because of a predicted 30% fall in the working population (and a drop from 22% to 12% of the EU's share of world trade). By proposing the idea of "quotas in return for readmission", the EU threatens to develop into the biggest trafficker in human beings of all.

32. All this comes at a time when assistance from "Official Development Aid" is falling and developing countries are increasingly dependent on remittances [Gammeltoft, 2002]. In 1997, ODA dropped to the same level of funding as 1981 in real terms; there has been "no serious debt relief"; and since, 1992, donor countries have even been able to include in their ODA figures, money spent on refugees and asylum-seekers living in the donor country. In 1998, 20 per cent of total humanitarian assistance was spent on supporting refugees and asylum-seekers in donor countries. The sums amounted to just under a billion dollars, or more than a third of bilateral humanitarian assistance [Chimini 2003: 81].

33. We urge the Committee to consider EU policy carefully in the course of its deliberations. In this regard the Committee might benefit from oral evidence from UK delegates to EU working parties (such as the HLWG) or from officials in the European Commission.

Statewatch, 13 November 2003
Comments prepared by Ben Hayes

For more information about Statewatch's work, see http://www.statewatch.org/.

This submission develops and updates Hayes, B. and Bunyan, T. (2003) 'Migration control, security and the EU development agenda' in BOND (ed) *Europe and the World* (London: Bond)

Statistics from 'The Migration-Development Nexus…', *International Migration Quarterly*, vol 40 (5) Special Issue 2/2002.