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**Human Rights Watch's Statement to
the IOM Governing Council
30 Nov – 3 Dec 2004 (88th Session)**

Human Rights Watch welcomes the opportunity to continue its engagement with the International Organisation for Migration (IOM) and its Member States at the 2004 Governing Council meeting (88th Session).¹ As we have noted in the past, we remain committed to working with the Council and IOM to ensure that migrants' rights are protected and promoted in all IOM operations. We consider this ongoing dialogue to be of considerable importance for our joint efforts to raise awareness about the human rights and refugee protection dimensions of global migration. In particular, we take the opportunity of the 2004 Governing Council to highlight on-going general concerns regarding IOM's mandate and policies, and to express concern about two specific initiatives: IOM's Memorandum of Understanding (MoU) with the Sudanese government and the United Nations regarding the return of internally displaced persons in Darfur, Sudan, and IOM's proposed activities with respect to migration management in Libya.

IOM's Mandate and Policies

Human Rights Watch has been monitoring and documenting IOM operations in the field since the early 1990s. During this time, we have on a number of occasions raised with IOM via letters and meetings the concern that fundamental human rights standards have not been respected in a range of IOM operations and that IOM is undertaking activities for which it has no formal mandate.² While our ongoing dialogue with IOM has been constructive, IOM has not responded in a satisfactory manner to many of our concerns. Moreover, our research continues to reveal a range of current and planned IOM activities that would appear to threaten the rights of the very people IOM is tasked with assisting.

IOM itself has recognised that it lacks a formal protection or human rights mandate, but states that it is nonetheless committed to respect for fundamental human rights, social justice and the dignity and worth of all peoples. While the adoption of rights-based language and

¹ Human Rights Watch has held an observer status for IOM Governing Council meetings since 2002. Human Rights Watch attended both the 2002 and 2003 Governing Council meetings.

² See for example the paper submitted by Human Rights Watch at the November 2003 Governing Council meeting (86th Session) and the joint statement issued by Human Rights Watch together with Amnesty International during the December 2002 Governing Council meeting (84th Session). Both these documents are available from our website at www.hrw.org. On September 23, 2004 Human Rights Watch wrote to IOM about its concerns about the Memorandum of Understanding between the Government of Sudan, the International Organization for Migration and the United Nations, and met with IOM in September and October to discuss these concerns.

development of policy reflecting such language is encouraging, we remain concerned that these have not been translated into IOM projects and programmes at the operational level.

Human Rights Watch also remains concerned by the lack of adequate accountability mechanisms within IOM. IOM has no adequate mechanism in place to ensure that its own operations meet standards enshrined in international humanitarian, human rights, or refugee law. More specifically, with regard to voluntary assisted returns, IOM has no adequate mechanism to evaluate whether decisions to return are, in fact, authentically voluntary. That is, made freely and in a fully informed manner, not under duress or under circumstances that are directly or indirectly coercive. It also remains unclear to Human Rights Watch as to the formal mechanisms IOM employs to assess that conditions are safe enough to allow for returns. IOM also lacks mechanisms whereby the agency and its staff can be held accountable for returning individuals to places where their lives or freedom could be under threat on account of their race, religion, nationality, membership of a particular social group or political opinion or where they may face torture. Nor does it undertake any systematic post-return monitoring of migrants.

In response to Human Rights Watch's concerns about lack of accountability, IOM has referred to internal investigation processes within the organization. However, IOM has not been able to provide us with any information as to when these processes have been used, including in relation to the particular operations raised by Human Rights Watch. Moreover, there does not appear to be any formalized independent external accountability mechanism, as is the case with other international organizations such as United Nations organizations. The majority of evaluations carried out by IOM are internal and confidential and thus not available to NGOs. In some cases where an external evaluator has conducted a review of a specific IOM operation and where that evaluation has criticized IOM, the organization simply declines to publish the evaluation. There exists a profound lack of transparency in IOM's accountability processes, leading to the impression that there is in fact no accountability when there is evidence that IOM is directly implicated or complicit in a human rights violation.

The lack of adequate accountability mechanisms is of particular concern in light of IOM's recent initiatives in relation to the voluntary returns of internally displaced persons in Darfur and with respect to IOM's planned activities in Libya as detailed below.

Voluntary Returns of IDPs in Darfur, Sudan

Human Rights Watch has on several occasions expressed concerns as to whether IOM return operations to insecure post-conflict zones are appropriate. In particular, we remain seriously concerned about the content of the MoU entered into by IOM with the Government of Sudan and the United Nations on August 21, 2004, regarding IOM's responsibility for voluntary returns of internally displaced persons in Darfur.

Under the terms of the MoU, IOM is not only tasked with overseeing the voluntary return process, but also with determining the "voluntariness" and "appropriateness" of return. Such determinations are core protection functions, requiring expertise in and formal commitment to international protection standards. IOM has told Human Rights Watch, however, that it does not have a formal protection mandate and that it is not a refugee protection agency. IOM's policy on internally displaced persons, makes no reference to protection, and refers

only to a mandate for assistance activities.³ The organization has nonetheless put itself forward as the primary stakeholder in the protection and return of the internally displaced in Darfur.

Human Rights Watch is concerned that the standards articulated in the MoU and the criteria adopted by the Management Coordination Mechanism in Sudan for Darfur are considerably lower than those found in other agreements of this nature. While we welcome the general acknowledgement in the MoU of the need to end impunity, to secure human rights, and to adhere to international humanitarian and human rights law, there is no express reference to the United Nations Guiding Principles on Internal Displacement. Moreover, fundamental provisions necessary to ensure respect for the safety, dignity and human rights of the internally displaced are also missing from this agreement.⁴

In conversations with Human Rights Watch, IOM indicated that it was necessary to enter into the MoU so as to prevent forced returns of the internally displaced. However, the MoU does not include adequate mechanisms or safeguards to ensure that the terms of the MoU itself, as well as broader human rights standards, are respected. For example, not only has the MoU failed to prevent the recent forcible returns and relocations of internally displaced persons in Darfur - such as the widely-publicized forced removal and relocation of displaced persons from El Geer camp in South Darfur in November 2004 - there are no provisions in the MoU to hold the Government of Sudan accountable for these serious and ongoing violations of the terms and spirit of the MoU and fundamental human rights principles. We are also concerned that IOM did not publicly condemn the Government of Sudan for such actions, which is particularly troubling given the appalling human rights record of this Government in Darfur and its active involvement in war crimes, crimes against humanity and other violations of human rights. There are 1.6 million internally displaced persons in Darfur; the Sudanese government claims to have the right to relocate them at will. This is totally inconsistent with the principles of the MoU, yet IOM has not taken a position against the Government's assertion of its unilateral "right."

Human Rights Watch has, on a number of occasions raised concerns about the failure of IOM to consult with humanitarian and human rights actors whose own operations are impacted and affected by IOM's operations. Darfur is a case in point, where IOM agreed to take the lead role in relation to voluntary return without prior consultation with other agencies and in disregard of the clear procedures which it had agreed to in the context of the Inter-Agency Standing Committee (of which IOM is a member).⁵ Moreover, humanitarian actors on the ground have noted the complete failure of IOM to establish an adequate and effective field presence in Darfur. This is even more troubling in light of the fact, as affirmed by the African Union Cease Fire Commission working in Darfur, that the cease fire is broken daily. During the past months, the United Nations has also reported that the level of violence in Darfur has increased despite the cease fire.

In past years, Member States have expressed serious concerns regarding IOM expanding its operations beyond its formal mandate. In the case of the Darfur IDP returns operation, IOM

³ Internally Displaced Persons: IOM Policies and Activities; MC/INF/258, 18 November 2002; See in particular paragraph 29.

⁴ These are outlined in detail in Human Rights Watch's letter to IOM of 23 September 2004, copies of which are available from Human Rights Watch.

⁵ These procedures require that roles and responsibilities for the internally displaced should be assigned and agreed upon through a consultative inter-agency process, based upon the experience and the expertise of the agencies.

clearly lacks the formal mandate and the experience, expertise and capacity to conduct such an operation in a manner that will ensure compliance with international protection standards. This is a grave concern in a huge country with a poor human rights record, a long history of waging conflict against certain ethnic groups, and which has blocked relief to its own citizens until pushed to the brink by international action. Moreover, IOM's failure to consult with humanitarian and human rights actors who do possess such expertise and capacity has seriously damaged inter-agency relations and led to a lack of trust and confidence that IOM has the well-being of the IDPs as its foremost concern. We strongly recommend that IOM cede responsibility for determinations of "voluntariness" and "appropriateness" of return to an appropriate agency with a protection mandate in Darfur. Arrangements similar to those in place in West Darfur, where UNHCR is designated as the lead agency for the protection and voluntary return of internally displaced persons, should be established throughout Darfur.

Prospective IOM Operations in Libya

Human Rights Watch is also alarmed by reports of planned and proposed IOM operations in Libya. Libya has not yet ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, has no functioning asylum system and fails to protect the human rights of migrants, refugees and asylum-seekers. Migrants in Libya routinely suffer police abuse, arbitrary detention, collective expulsion, and even death in custody. There is no evidence to conclude that asylum seekers or refugees can receive effective protection in Libya or that the human rights of migrants are fully respected.

For example, in July 2004, Libya forcibly repatriated more than one hundred Eritrean nationals who were clearly at risk of persecution—including torture and ill-treatment—upon return. Libya has ratified the 1969 Organization of African Unity (now the African Union) Convention on the Specific Aspects of Refugee Problems in Africa which obliges them not to return anyone to a country where they would be a risk of persecution or serious human rights violations. Libya is also a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides for an absolute ban on returning people to a place where they are at risk of torture.

In September 2004, the IOM sent a special technical team to Libya to consult with the government about the management of illegal migration. The timing of the visit, coming on the heels of proposals from some European Union (EU) member states to establish off-shore detention centers for the processing of migrants and asylum seekers from North African countries, gives rise to the concern that IOM will be involved in advising Libya and the EU about the establishment and management of such centers in the future. We respectfully remind the Governing Council of the severe criticism of IOM for its operation of off-shore detention centers for asylum seekers, including women and children, on the Pacific Islands of Manus and Nauru. Human Rights Watch, among many other nongovernmental and intergovernmental organizations, determined that the procedures in those camps violated the right to seek asylum and amounted in many cases to arbitrary detention. Moreover, conditions in the camps—managed on a daily basis by IOM staff—were woefully substandard and violated international law.

Human Rights Watch urges IOM to develop clear criteria to assess the legitimacy of conducting IOM operations in countries where the asylum system and/or immigration policy and practice routinely deny the right to seek asylum and violate refugees' and migrants' rights. The notion that IOM will help such countries by developing capacity cannot be

divorced from the fact that in the meantime many countries, such as Libya, routinely violate migrants and refugee rights with impunity. IOM cannot claim, for example, to make detention conditions better, but ignore the fact that many asylum seekers and migrants in detention are not being lawfully detained in the first place.

Conclusion

Human Rights Watch calls upon IOM to refrain from engaging in any activities that have the effect, either directly or indirectly, of obstructing enjoyment of basic human rights by migrants, refugees and asylum seekers. In particular, we urge IOM to refrain from assuming responsibility for protection activities for which it does not have the mandate or the expertise. We would also request that IOM ensures that those operations which do fall within its mandate respect fundamental human rights principles. This must be complemented by the creation and implementation of independent and transparent accountability mechanisms. Evaluations should be easily accessible to all interested stakeholders, including NGOs.

In coming to this Council meeting Member States cannot leave their other obligations at the door. Member States bring with them their international obligations to protect the human rights of migrants, refugees and the internally displaced. We urge the Member States to request that IOM develop effective, independent and transparent accountability mechanisms to answer criticisms and allegations with respect to IOM practice in the field and its impact on human rights

We hope that IOM and the governments that make up its Governing Council will take these concerns into consideration when developing, implementing and evaluating IOM's policies, strategies, programmes and operations.

Thank you.