

# **Amnesty International's concerns at the 55th Session of the Executive Committee of the United Nations High Commissioner for Refugees**

**October 2004**

## **Introduction**

The 55th session of the Executive Committee (EXCOM) of the United Nations High Commissioner for Refugees (UNHCR) is taking place at a time when many millions of displaced persons in various areas around the world are denied effective protection. The concept of "effective protection" is one that is currently generating considerable debate within the international community, and yet one that lacks a definitive elaboration from an authoritative source. However, in practice the lack of effective protection means that millions of refugees and other persons of concern around the world are living lives that are neither secure nor dignified. Some live for years on end without their fundamental human rights being respected and without access to a durable solution, or have "solutions" imposed on them. At its 55th session, Amnesty International calls on all members of and observers to UNHCR's Executive Committee to commit in both policy and practice to providing effective protection to refugees, asylum-seekers and other persons of concern to UNHCR.

Amnesty International takes this opportunity to present a set of recommendations to the members and observers of the Executive Committee and to UNHCR on some of the major contemporary challenges in international refugee protection. As this forum seeks to elaborate conclusions on international protection, the organization urges member states to ensure that these conclusions enhance rather than diminish the international protection of refugees and asylum seekers. The organization also draws the attention of the Executive Committee to some of its recent reports which address serious failures in the international protection regime for refugees, asylum-seekers, internally displaced persons (IDPs) and returnees, and which illustrate the particular concerns Amnesty International is raising on the occasion of the 55th Session of the Executive Committee.

## 1. The debate on effective protection

*In order to guide the on-going debate on what constitutes “effective protection”, Amnesty International recommends that UNHCR’s Department of International Protection provide an authoritative, rights-respecting and comprehensive definition of the scope and content of “effective protection”, which effectively integrates international human rights standards.*

*One essential component of “effective protection” is the ability to have access to and to enjoy fundamental economic, social and cultural rights. All actors, including states, UNHCR and international organizations, should ensure that respect for, and promotion and protection of, these rights are integrated into their policy and practical responses to refugees and other persons of concern.*

The Executive Committee is, in essential part, a forum intended to provide tools for UNHCR, states and partners including non-governmental organizations (NGOs) to implement protection. However, as member states and observers to this body come together in Geneva to discuss the protection and assistance activities of UNHCR, around the world the reality for many displaced persons is insecurity, poverty and discrimination. Refugees continue to be crowded into unsafe and unsanitary camps and unable to enjoy fundamental economic, social and cultural rights and asylum-seekers continue to be denied access to territory and refugee status determination procedures. Millions of people continue to be internally displaced in their own countries and often suffer successive cycles of displacement, and many of those returning continue to lack access to a truly sustainable return to their homes.

It is in this context that any discussion of “effective protection” must be located. Amnesty International emphasizes that effective protection requires the delivery of legal, physical and social protection, firmly grounded in international human rights standards, and where the dignity of the individual human being is an essential component. It should be linked to the search for and delivery of durable solutions.<sup>1</sup> The organization has continued to document numerous situations where the lack of respect for these essential elements of protection has led to violations of the human rights of refugees, asylum seekers, internally displaced persons and returnees.<sup>2</sup> Worrying gaps remain in the protection of displaced persons in every region of

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<sup>1</sup> Amnesty International has previously commented on the evolving norm of “effective protection” in the report *UK/EU/UNHCR: Unlawful and Unworkable – Extra-territorial processing of asylum claims* (AI Index IOR 61/004/2003).

<sup>2</sup> Go to [www.amnesty.org/refugees](http://www.amnesty.org/refugees) for access to Amnesty International’s public documents related to refugees and other displaced persons. In particular, the following document the importance of access to economic, social and cultural rights in order to assure protection for refugees and other persons of concern; Amnesty International, *Sudan/Darfur: Rape as a weapon of war – sexual violence and its consequences* (AI Index AFR 54/076/2004), Amnesty International, *Starved of Rights: Human Rights and the Food Crisis in the Democratic People’s Republic of Korea* (AI Index ASA 24/003/2004),

the world. The fall in numbers of people of concern to UNHCR over the past years should not distract attention from the fact that many refugees continue to suffer gross violations of their rights.

Amnesty International calls on all states and international organizations to uphold fundamental standards of international refugee and human rights law in their policy and practice. UNHCR is uniquely mandated to supervise the application of the international legal regime for the protection of refugees<sup>3</sup>, an important facet of which, in Amnesty International's opinion, would be to provide authoritative guidance on the scope and content of effective protection.

If "effective protection" is to be a term of any substantive meaning to the lives of the millions of refugees, IDPs, asylum seekers and returnees, it must enable them to live lives of dignity with full respect for their human rights. It should not be allowed to be "negotiated down" or held hostage to the self-interest of states.<sup>4</sup>

## Denial of the right to education in Egypt

Amnesty International has conducted research in Egypt in May 2004 focusing on access to primary education of children from refugee and asylum-seeking families in Egypt. The equal opportunity to access education for refugee children in both urban environments and camp settings, is an important tool of protection and can be fundamental in reducing the traumatic effects of displacement for children. Access to education would also assist refugee children to equip themselves, their families and their communities, with the necessary skills to ensure that in the future they are able to avail themselves of durable solutions. Egypt is obliged under international law to provide access to primary education to refugee and asylum-seeking children on its territory.<sup>5</sup> Yet the preliminary findings from the organization's research

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Amnesty International, *Lebanon: Economic and social rights of Palestinian refugees submission to Committee on the Elimination of Racial Discrimination* (AI Index MDE 18/017/2003).

<sup>3</sup> Article 35 of the 1951 Convention relating to the Status of Refugees obliges state parties in Article 35(1) to "undertake to co-operate with the [UNHCR] in the exercise of its functions, and ... in particular facilitate its duty of supervising the application of the provisions of [the] Convention." Further, paragraph 8 of the UNHCR Statute states that the High Commissioner shall provide for the protection of refugees *inter alia* through "promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto".

<sup>4</sup> The Lisbon Conclusions represent a valuable starting point in defining the concept, but do not in themselves constitute a definitive response. For instance, one area of omission identified by Amnesty International in relation to these Conclusions is that they do not incorporate the requirement that the individual should enjoy a legal status. *Summary Conclusions on the Concept of 'Effective Protection' in the Context of Secondary Movements of Refugees and Asylum Seekers: Lisbon Expert Roundtable, Agenda for Protection, 9-10 December 2002.*

<sup>5</sup> This obligation arises as a result of Egypt's obligations under, *inter alia*, the Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social, and Cultural Rights (CESCR). See also CESCR General Comment 13 on the Right to Education (E/C.12/1999/10), 1999.

indicate that a variety of factors have combined to impede access to primary education for children from the refugee and asylum-seeker communities in Egypt. These include:

- Bureaucratic obstacles affecting refugees and asylum-seekers specifically. These include the failure of local educational authorities to recognize UNHCR refugee and asylum-seekers cards where other identification such as a valid passport is unavailable; the administrative requirement to produce residency permits for admission into schools (asylum-seekers are generally unable to obtain such permits and while recognized refugees can obtain them, they need to renew them every six months); and the administrative requirement to produce evidence of previous educational achievement;
- Inability to benefit from education received at “community schools” which do not offer recognized qualifications. Refugee and asylum-seeking children who study in such schools are unable to receive recognized qualifications from these schools or to sit for examinations in public schools and thereby receive official certification of the educational standard they have achieved;
- Financial constraints on the part of the parents of refugee and asylum-seeking children;
- Lack of availability of space in Egyptian public schools.

In light of these findings, and noting that the lack of access to primary education leaves children particularly vulnerable, Amnesty International urges the government of Egypt to ensure that refugee and asylum-seeking children are able to enjoy the right to free primary education without discrimination.<sup>6</sup>

## **2. Vulnerability in the absence of effective protection**

### **2.1 Detention**

*Recognizing that the detention of refugees and asylum seekers is inherently undesirable, Amnesty International urges states to be circumspect about the use of detention in relation to refugees and asylum seekers, and in particular to eliminate the use of detention in relation to refugee and asylum-seeking children.*

The *Note on International Protection* presented to the 55th Session of the Executive Committee delineates UNHCR's concern at state policies of arbitrary and/or widespread

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<sup>6</sup> Amnesty International will shortly be releasing a public report on its concerns and recommendations to the Government of Egypt on the right to education for refugee and asylum-seeking children in Egypt.

detention of asylum-seekers.<sup>7</sup> The practice of detaining refugees and asylum seekers, including as a deterrence measure, is another worrying indication that effective protection remains out of the reach of many persons entitled to international protection.<sup>8</sup> While UNHCR Guidelines state explicitly that in the view of UNHCR, the detention of asylum-seekers is “inherently undesirable” and that “[a]s a general principle asylum seekers should not be detained”, state practice is considerably different in many places in the world. The rights to liberty and freedom from arbitrary detention have been a core element of formal human rights standards since they were enshrined in Articles 3 and 9 of the 1948 Universal Declaration of Human Rights. Subsequent international standards, notably the International Covenant on Civil and Political Rights, recognize that the right to liberty is linked to freedom from arbitrary detention.

## **2.2 Urban refugees**

***Amnesty International calls on states to commit to respecting and protecting the rights of all urban refugees on their territories, with specific attention being paid to particularly vulnerable refugees, including women, children and the elderly. UNHCR should make public, and actively implement in the field, its policy document of “guiding principles and good practices” in relation to urban refugees.***

Refugees and asylum seekers in urban settings are often denied effective protection.<sup>9</sup> Many are disproportionately vulnerable to abuse of their human rights, including arbitrary detention as a result of arrest and imprisonment for working illegally, or even because they are forced to sleep on the streets and therefore are more likely to be detected by the authorities. Many urban refugees do not enjoy access to a legal status or to basic economic, social and cultural rights such as the right to work or to adequate housing. Many urban refugees around the world fall into a “protection gap” and are thereby rendered invisible to the international community. A large number of refugees arrive in urban areas as onward movers in search of effective protection where, due to these gaps in protection, many fall into a downward spiral of abuse and exploitation. In many cases, inadequacies in refugee status determination procedures further increase the vulnerability of urban refugees.

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<sup>7</sup> UNHCR, *Note on International Protection*, A/AC.96/989, 7 July 2004.

<sup>8</sup> See Amnesty International, *Australia-Pacific: Offending human dignity – the “Pacific Solution”* (AI Index ASA 12/009/2002, August 2002) and also Amnesty International, *Bahamas: Forgotten detainees – human rights in detention* (AI Index AMR 14/005/2003).

<sup>9</sup> Recent Amnesty International reports that have addressed issues relating to human rights violations suffered by urban refugees and returnees include Amnesty International, *Cote d’Ivoire: No escape – Liberian refugees in Cote d’Ivoire* (AI Index AFR 31/012/2003) and Amnesty International, *Afghanistan: Out of sight, out of mind – the fate of the Afghan returnees* (AI Index ASA 11/014/2003).

## **Refugees at risk of arbitrary detention and forcible return in Malaysia**

Conditions in the Indonesian province of Nanggroe Aceh Darussalam (NAD) have forced hundreds of Acehnese to flee to Malaysia as well as other countries.<sup>10</sup> While the Malaysian government has shown some limited tolerance of the Acehnese and other refugee populations within its borders, the majority of which live in Malaysia's cities and urban settlements, officially it affords them no legal recognition or protection. Without such recognition refugees in Malaysia, including children, are at constant risk of arrest as "illegal immigrants" and can face charges under Malaysia's punitive Immigration Act, detention in the squalid conditions of an immigration detention camp, or both.

In contravention of the norm of customary international law of *non-refoulement* which prohibits the return of persons to a situation where they would face serious human rights violations, Malaysia has forcibly returned Acehnese refugees back to Indonesia on several occasions. The threat of prolonged detention in immigration detention camps in poor living conditions has also prompted some Acehnese refugees to "volunteer" to be returned to Indonesia. In addition to the risk of arbitrary detention and *refoulement* by Malaysia, the lack of formal recognition as refugees prohibits Acehnese refugees from working or accessing basic services such as healthcare and education. Acehnese refugee children, whether born in Malaysia or in NAD, are not permitted to attend state schools and do not have the right to health-care.

### **2.3 The right to seek and enjoy asylum**

*Amnesty International urges all states to uphold the right to seek and enjoy asylum, including through recognizing that the grant of asylum is a peaceful and humanitarian act, and should not be considered an unfriendly act by any other state.*

*Amnesty International calls on State Parties to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol to recognize the decision of other States Parties to grant refugee status. The fact that an individual has been recognized as a refugee provides a very strong presumption for all states to refuse any extradition requests for alleged offences in the refugee's country of origin. The main responsibility for considering whether the refugee status of an individual should be reviewed or revoked rests with the state that has recognized that individual as a refugee.*

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<sup>10</sup> Amnesty International, *Indonesia: New military operations, old patterns of human rights abuses in NAD province* (AI Index ASA 21/033/2004).

The right to seek asylum is enshrined in international human rights law. It has also been explicitly recognized that the grant of asylum is a peaceful and humanitarian act and should not be considered to be unfriendly by any other state.<sup>11</sup> Yet, states in many parts of the world pressure other countries to forcibly return their citizens who are asylum-seekers and refugees abroad. For a country of asylum to act in accordance with such pressure is to act in violation of its obligations under international refugee and human rights law standards. The forcible return of a refugee or any other person of concern to a situation where they risk torture or other serious human rights violations is a fundamental indicator of the lack of effective protection.

### **Extra-territorial pressure compromises refugee protection**

Pressure from China has resulted in the forcible return of several ethnic Uighur asylum-seekers and refugees to China over recent years.<sup>12</sup> Amnesty International has monitored growing numbers of forced returns of Uighur asylum seekers and refugees to China from neighbouring countries, including Nepal, Pakistan, Kazakstan and Kyrgyzstan.

According to reports, China has put pressure on its neighbouring countries to forcibly return Uighur asylum-seekers and refugees to China in violation of those states' obligations under international refugee and human rights law standards. Similarly, according to these reports China has been pressurizing other states to prevent Uighur diaspora organizations and individuals from engaging in peaceful and legitimate activities in accordance with their fundamental human rights.

Another example of how extra-territorial pressure from the country of origin can undermine effective protection is demonstrated by the case of refugees from Turkey who are the subject of international arrest warrants. Amnesty International has documented several cases where refugees of Turkish origin have been arrested and threatened with extradition on the basis of international arrest warrants.<sup>13</sup> It is apparent that these arrest warrants are often related to the very acts that formed the basis of the refugees' claim to a well-founded fear of persecution.

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<sup>11</sup> See *inter alia* Article 2 of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) and UNHCR Executive Committee Conclusion No. 94 (LIII), 2002 on the civilian and humanitarian character of asylum.

<sup>12</sup> See Amnesty International, *People's Republic of China: Uighurs fleeing persecution as China wages its "war on terror"* (AI Index ASA 17/021/2004).

<sup>13</sup> One such recent case involved Swedish citizen Hemo Amedsson who was arrested in Estonia in June 2004 and threatened with extradition to Turkey. He had fled Turkey in 1980 and had been recognized as a refugee in 1983.

### 3. Conclusion on mass influx

*In all cases of mass influx, Amnesty International urges that refugees should be able to retain access to the right to seek and enjoy asylum and enjoy effective protection in their country of asylum. The organization emphasizes that in situations of mass influx, wealthier states have a responsibility to commit financial and other support to those neighbouring states receiving refugees.*<sup>15</sup>

While group protection measures such as prima facie recognition of refugees can be important immediate protection responses to mass influx situations, most refugee-producing crises prove not to be of a “reasonably short duration”<sup>16</sup>. It is therefore imperative that refugees should be ensured access to a secure legal status in the country of asylum as early as possible. Refugees must be able to enjoy access to their fundamental economic, social and cultural rights as well as their civil and political rights. It is the responsibility of the international community to ensure, in addition, that all refugees have access to durable solutions in a timely manner. Allowing refugees to remain in camps or urban settlements for years without an end in sight – defined by a current campaign of the US Committee for Refugees as the “warehousing” of refugees – is not “effective protection”<sup>17</sup>.

The protection of refugees’ human rights is an obligation of the entire international community, and cannot in the majority of situations be left solely to neighbouring states, some of which already host vast numbers of refugees. Any arrangements or mechanisms put in place in relation to situations of mass influx and to relieve undue burdens on countries of first asylum must be driven by the imperative to protect refugees, asylum-seekers and the displaced. Such arrangements or mechanisms must be grounded in human rights, including but not limited to the right to seek and enjoy asylum from persecution, and to fundamental economic, social and cultural rights such as the right to an adequate standard of living. They must ensure the central role of UNHCR in protecting and assisting refugees, which includes the provision of adequate and timely financial support to enable UNHCR to deliver on its mandate responsibilities. In this context, guarantees must be made that money promised is

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<sup>15</sup> See Amnesty International, *UNHCR's Forum and Executive Committee – Basic human rights principles applicable to responsibility- and burden-sharing arrangements* (AI Index IOR 42/007/2004, March 2004).

<sup>16</sup> UNHCR, *Ensuring International Protection and Enhancing International Cooperation in Mass Influx Situations – Advance Summary Findings of the Study Commissioned by UNHCR, EC/54/SC/CRP.11*, 7 June 2004.

<sup>17</sup> See [www.refugees.org/warehousing/docs/statement.pdf](http://www.refugees.org/warehousing/docs/statement.pdf) for a joint NGO Statement Calling for Solutions to End the Warehousing of Refugees.

provided promptly and that it is administered by organisations and entities that will provide assistance in an effective, transparent and accountable manner.

Any agreement or mechanism should ensure the voluntary character of solutions, and should not permit, for example, collective or mass expulsion or arbitrary detention. They should ensure that asylum seekers who are in or who arrive at the borders of non-neighbouring states are accorded effective protection in the territory of those states, including access to durable solutions, and in particular in cases where the mass influx is managed through the device of temporary protection within a specific territory. Agreements or mechanisms should not compromise the right of a refugee to an effective remedy for violations of their rights under international refugee and human rights law by states party to relevant instruments.

### **No access to durable solutions in sight for Bhutanese refugees in Nepal**

More than 100,000 refugees of ethnic Nepalese origin from southern Bhutan have been living in camps in southeast Nepal for more than a dozen years after they were arbitrarily stripped of their nationality and forced to flee Bhutan in the early 1990s. The Bhutanese refugee situation has become one of the most protracted and neglected refugee crises in the world. Amnesty International has expressed its concern at the situation of these refugees, and the fact that a durable, rights-respecting solution to their plight seems a long way off.<sup>18</sup> As the situation continues, the potential for abuse of the fundamental human rights of the Bhutanese refugees is magnified.

There are already signs that human rights abuses related to the ongoing conflict between the Communist Party of Nepal (CPN) (Maoist) and the government are affecting people in the Bhutanese refugee camps. In June 2004 five Bhutanese refugees were reportedly arrested by security force personnel and held in incommunicado detention for several days on suspicion of involvement with the CPN (Maoist). Three were released after a few days but two male refugees were reportedly severely beaten under interrogation, before being transferred to prison. Local leaders at the refugee camp deny that the detainees had any involvement with the CPN (Maoist). Amnesty International has also been concerned at reports of sexual harassment and discrimination against women in the Bhutanese refugee camps. Refugee women in the camps face a range of protection problems, many of which stem from their depressed social and economic status and their consequent dependence on male partners, such as heightened vulnerability to domestic violence and a lack of access to judicial and administrative redress.

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<sup>18</sup> Amnesty International, *Bhutan: Ten years later and still waiting to go home – the case of the refugees* (AI Index ASA 14/001/2002). See also Amnesty International Press Release, *Nepal: Bhutanese Refugees Rendered Stateless -- Leading Global NGOs Criticize Screening Process* (AI Index ASA 31/023/2003).

## 4. Conclusion on voluntary repatriation

*A truly voluntary decision of a refugee to return is one that is free and informed. Amnesty International calls on UNHCR and the international community to ensure that refugees and other persons of concern to UNHCR are not coerced, including through denial of their fundamental economic, social and cultural rights, to return to their place of origin. For a return to be truly safe and dignified, it must be sustainable, and Amnesty International urges UNHCR and states to ensure that voluntary return is sustainable in order both to ensure the protection of the human rights of the returnees, as well as to prevent further cycles of displacement.*<sup>20</sup>

In the Standing Committee document *Legal Safety Issues in the Context of Voluntary Repatriation*<sup>21</sup>, it was noted that the decision of a refugee<sup>22</sup> to return to her/his country of origin should be based on a “free and informed choice.” This two-pronged approach requires that a prospective returnee’s decision must be both voluntary (“free”) and knowing (“informed”). A free or voluntary choice is a choice that is free of reprisal or *quid pro quo*. For example, when a prospective returnee’s safety is threatened in the country of asylum should s/he not repatriate or when s/he is offered an overwhelming incentive to “voluntarily” repatriate (effectively buying the decision), then the voluntary character of the decision is undermined. Further, the decision to return must arise out of a situation in the country of asylum which is sufficiently secure as to permit free choice. This would include legal status,

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<sup>20</sup> See Amnesty International, *Afghanistan: Continuing need for protection and standards for return on Afghan refugees* (AI Index ASA 11/014/2002, July 2002) and Amnesty International, *Afghanistan: out of sight, out of mind – the fate of the Afghan refugees* (AI Index, ASA 11/014/2003, June 2003)

<sup>21</sup> UNHCR, *Legal safety issues in the context of voluntary repatriation*, EC/54/SC/CRP.12, 12 June 2004.

<sup>22</sup> It is useful in this context to note Executive Committee Conclusion No. 75 (XLV) which recognizes *inter alia* that the problems of refugees and internally displaced persons often call for similar measures with respect to prevention, promotion, humanitarian assistance and solutions. Accordingly a Conclusion which aims to address legal safety issues in the context of voluntary repatriation should be, in the estimation of Amnesty International, equally relevant to the situation of returning IDPs.

<sup>24</sup> See UNHCR handbook, *Voluntary Repatriation: International Protection*, Chapter 2, Section 2.3, “One of the most important elements in the verification of voluntariness is the legal status of the refugees in the country of asylum. If refugees are legally recognized as such, their rights are protected and if they are allowed to settle, their choice to repatriate is likely to be truly free and voluntary. If, however, their rights are not recognized, if they are subject to pressures and restrictions and confined to closed camps, they may choose to return, but this is not an act of free will.”

protection of rights, absence of pressures to return and restrictions on rights.<sup>24</sup> The deliberate denial of economic, social and cultural rights by the host country or region could result in a constructive *refoulement*, not a voluntary repatriation. In effect, a decision to repatriate that is predicated on a denial of the right to food, to work or to education, for example, can never be considered a voluntary or free choice.

The decision to return must also be “informed”, that is the decision must be grounded in complete, accurate and objective information regarding the status of, and prospects for reintegration in, the country of origin, as well as the reality of the situation in the host country. Even when the decision to voluntarily repatriate is not tainted by threats or a denial of rights, it cannot be “free and informed,” where the prospective returnee has not been provided sufficient information. In being able to reach a truly informed decision on return, prospective returnees should be entitled to make “go and see” or “go and work” visits of a reasonable duration. Refugees must be able to return to the country of asylum, for instance if they find that they cannot sustain their return to the country of origin, and must not be penalized for having left the country of asylum to make such a visit. In cases where repatriation is facilitated or promoted by UNHCR or large-scale spontaneous repatriation occurs, it is of fundamental importance to ensure that the return is monitored by UNHCR and, as appropriate, other human rights organizations or agencies. Such monitoring reports should be made available to the refugees.

Amnesty International is of the opinion that return in safety and dignity must be sustainable. Recognizing the importance of choice on the part of the potential returnee and ensuring her/his return to her/his place of origin or preferred destination will be an important step towards safeguarding the sustainability of return. Safety includes legal, physical and material security. Returns, especially in large numbers, to a situation in which this return cannot be sustained will be detrimental to the safety and the human rights of the returnees, and may lead to successive cycles of displacement.

## **Repatriation of Rwandese refugees**

Amnesty International's latest report<sup>25</sup> on Rwanda focuses on the organization's human rights concerns regarding the UNHCR's October 2002 decision to promote the voluntary repatriation of Rwandese refugees and consider application of the “ceased circumstances” cessation clauses. It illustrates the organization's human rights concerns through a critical examination of past and ongoing repatriation operations.

Questions remain as to whether the asylum states or the Rwandese government had sufficient information regarding the situation of Rwandese returnees at their disposal before applying pressure on the UNHCR to promote the voluntary repatriation of Rwandese refugees. The same is true for the UNHCR regarding its decision in 2002 to promote their voluntary repatriation. The lack of effective monitoring regarding the human rights fate of returnees by either the Rwandese government, the UNHCR or relevant, credible NGO's suggests that

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<sup>25</sup> Amnesty International, *Forced to return: Rwandese refugees in the Great Lakes region* (forthcoming).

significant, necessary information was not available. There is also the question of whether or not the tripartite commissions responsible for the voluntary repatriation are in a position to provide refugees with the accurate, objective, verifiable information that is required of them. A related issue concerns the relevance of the information provided refugees. If the members of the various tripartite commissions have little or patchy information to begin with and at the same time are unaware of or unable to provide refugees with kinds of information wanted and needed by the refugees themselves, it is difficult to imagine how the information campaigns could succeed.

An examination of the newsletters, videos and information sessions provided to Rwandese refugees indicates more of a focus on promoting or selling voluntary repatriation to refugees than on providing them with the objective information needed to make an informed decision. There seems to be an over reliance on government authorities for the provision of information. Government authorities do have a role to play in the provision of information but so do credible local human rights organizations and NGO's or civil society organizations working in areas of concern to refugees.

## **5. Working methods of the Executive Committee**

*Amnesty International recommends that the contribution made by NGOs to discussion within the Executive Committee as well as related forums should be reflected in the working methods of the Executive Committee. NGOs should be allowed to make up to three statements per agenda item, and should be able to be substantively involved in the negotiation process for Executive Committee conclusions, including by being physically present at the informal consultations in which conclusions and decisions are negotiated.*

In negotiating Executive Committee Conclusions on International Protection, the organization urges member states to ensure that these conclusions do not in any way deviate from international standards of refugee, human rights and humanitarian law. The value of Executive Committee Conclusions lies in their use as tools and guidelines for states, UNHCR and other partners, including NGOs, to give effect to protection obligations.<sup>26</sup>

Over the years, NGOs have brought a unique and substantive voice to the proceedings of the UNHCR, including during the Global Consultations on International Protection and in the development of the Agenda for Protection, and have been active and significant contributors to discussions on standard-setting in the Executive Committee and other international fora. NGOs have been and should be seen as both operational as well as intellectual partners of

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<sup>26</sup> The NGO Statement on international protection delivered to the 53<sup>rd</sup> Session of the Executive Committee noted in this context that Executive Committee conclusions were not able to alter the fundamental and core obligations found in the 1951 Refugee Convention and its 1967 Protocol and human rights law, which remain binding on states. See [www.icva.ch/cgi-bin/browse.pl?doc=doc00000797](http://www.icva.ch/cgi-bin/browse.pl?doc=doc00000797)

UNHCR and states.<sup>27</sup> In this context, Executive Committee members should pave the way for a more structured and comprehensive involvement of NGOs in the negotiation process for Executive Committee Conclusions.

The effective involvement of NGOs in the Executive Committee should also extend to ensuring that NGOs are able to make their voices heard in a meaningful way within this forum. Through their oral interventions to the Executive Committee, NGOs are able to bring to the room their experience of field work and analytical research into the various protection problems with which refugees are confronted around the world.<sup>28</sup> The value of such contributions to enhancing the debate on refugee protection has been recognized and commended by both UNHCR as well as states. NGOs should be allowed sufficient space within the agenda to raise the plurality of issues of concern that arise in the field of refugee protection, and Amnesty International would therefore suggest that the number of NGO statements per Executive Committee agenda item be increased to enable such issues to be addressed in a comprehensive manner.

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<sup>27</sup> In this context, the Chair of the Panel of Eminent Persons on UN – Civil Society Relationships asserted in a recent report “[C]onstructively engaging with civil society is a necessity for the United Nations, not an option. This engagement is essential to enable the organization to better identify global priorities and mobilize the resources and talent needed to deal with the task at hand. We also see this opening up of the UN to a plurality of constituencies and actors not as a threat to governments but as a powerful way to reinvigorate the intergovernmental process itself.” This Panel was convened by the Secretary General as a result of his September 2002 report *Strengthening of the United Nations – an agenda for further change (A/57/387)*. See *We the Peoples: Civil Society, the UN and Global Governance – Report of the Panel of Eminent Persons on UN – Civil Society Relationships*, United Nations Non-Governmental Liaison Service Roundup 113, June 2004.

<sup>28</sup> UNHCR has on several occasions explicitly recognized the important role NGOs play in refugee protection. It has noted for instance that “NGOs remain UNHCR’s traditional partners and over the years have gained in importance in the field of protection, not least because they offer a range of competencies which complement UNHCR’s work...NGOs are also active advocates for compliance with international standards for protection.” UNHCR, *Strengthening Partnership to Assure Protection, also in Relation to Security*, 14 September 1999 (A/AC.96/923).