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RUSSIAN FEDERATION

Failure to Protect Asylum Seekers

*"We don't want refugees here -
go back to your own country"*

A Moscow police officer, 1996

CHAPTER 1: INTRODUCTION

" They say that they are able to help refugees and then ask us why we have come here and tell us to go home - you can't hold two watermelons in one hand... I ask Russia just to say yes or no... how long will this go on ? "

An Afghan asylum seeker interviewed in St Petersburg, July 1996.

The collapse of the Soviet Union in 1991 left over 65 million people living outside what they regarded as their country of origin, including 25 million ethnic Russians living outside the Russian Federation. Mass population movements across the region of the former Soviet Union have been a feature of the 1990s as people have been compelled to flee their homes because of civil war, ethnic tension, persecution and insecurity. Moreover, relaxation of the previously strict Soviet border controls has allowed an influx of refugees from beyond the former Soviet Union.

The population displacement problems consequently faced by the Russian Federation are indeed immense. Although some countries in similar situations have repeatedly refused to commit themselves to the principles of international refugee law, the Russian Federation acceded on 2 February 1993 to the 1951 Convention Relating to the Status of Refugees (the Refugee Convention) and its 1967 Protocol, expressly undertaking certain obligations towards those seeking protection from serious human rights violations in their country.¹ Amnesty International welcomes this commitment by the Russian government to abide by international standards of refugee protection. However, it must be said that, in reality Russia has failed to live up to this commitment.

Amnesty International bases its refugee work on the principle of non-refoulement. This principle forbids the return of persons to a country or territory where they would be at risk of serious human rights violations, and is widely recognised as a principle of customary international law, binding on all states. The Russian Federation therefore has a duty to ensure that all people who are at risk of human rights violations if returned to their country are afforded effective and durable protection from refoulement.

In addition to being bound by this principle under customary international law, the Refugee Convention enshrines the principle of non-refoulement by stipulating in Article 33 that

¹ In 1992, Russia had also accepted the establishment of an office of the United Nations High Commissioner for Refugees (UNHCR). The Federal Migration Service (FMS) of the Russian Federation was established in 1992 and 90 regional Migration Service branches were set up from 1992 to 1995. Russia adopted a Law on Refugees and a Law on Forced Migrants on 19 February 1993, and these entered into force on 20 March 1993.

no state party "shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened". In addition to the principle of non-refoulement, the provisions of the Refugee Convention provide for numerous obligations, including the obligation not to impose penalties on refugees on account of their illegal entry or presence in the country, the obligation to protect refugees without discrimination as to race, religion or country of origin, and the obligation to co-operate with the office of the United Nations High Commissioner for Refugees (UNHCR)². The Russian Federation is also a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention Against Torture)³, which obliges states parties to refrain from returning a person to a state where there are "substantial grounds for believing" he would be in danger of torture.

Despite these international obligations, the Russian Federation is failing in its duty to protect those fleeing human rights violations. This report shows that persons wishing to seek protection in the Russian Federation are routinely denied access to the asylum procedures. Left in a legal limbo, often for years, these people are unable to obtain from the Russian authorities any documents identifying them as asylum seekers, and are consistently harassed and ill treated by law enforcement officials. Asylum seekers in this situation are at constant risk of being detained and are sometimes threatened with return to their country of origin. Indeed, a section in this report focuses on specific cases of refoulement of which Amnesty International is aware, in particular cases from the transit zone of Sheremetevo-II international airport in Moscow.

In many instances, it is difficult to determine whether the treatment of asylum seekers in Russia is a result of bureaucratic incompetence, corruption and the general weakening of state and legal authority which has prevailed in the country in recent years, or a deliberate policy on the part of the government to prevent refugees from seeking protection in Russia. However, Amnesty International reminds the government of the Russian Federation of its clear obligation to ensure that those at risk of serious human rights violations in their countries are afforded protection against refoulement. Having accepted these obligations, the Russian government must take the necessary measures to ensure that they are fulfilled.

Amnesty International is particularly concerned at the following aspects of the Russian Federation's treatment of asylum seekers:

- *laws on asylum procedures are confusing, contradictory and often applied arbitrarily;*

² A list of abbreviations used in this report is given in Appendix 2.

³ Russia is a party to the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Torture Convention) and the International Covenant on Civil and Political Rights (ICCPR) as successor state to the USSR, which acceded to the above conventions in 1987 and 1973 respectively. Russia acceded in its own right to the first Optional Protocol of the ICCPR in January 1992.

• *other decrees or laws have the effect of specifically blocking access to asylum procedures;*

This denial of access to asylum procedures results in:

• *asylum seekers being frequently left vulnerable to harassment, extortion and ill-treatment, and often denied access to basic social, medical and educational provisions;*

• *instances of forcible return to a country where the asylum seeker is at risk of grave human rights violations.*

This report concludes with detailed recommendations to the Russian Government, Fundamental Standards for the Protection of Refugees⁴, which Amnesty International urges the government to implement immediately. These are based on internationally recognised standards including human rights treaties and Conclusions of the Executive Committee of the UNHCR. As an international worldwide and impartial human rights movement, Amnesty International bases all its activities and recommendations on internationally recognized standards of human rights.

Amnesty International puts forward this report, and makes recommendations, not only to the government of the Russian Federation but also to the international community at large. In recent years, sending asylum seekers back to a “safe third country” (a country through which they had transited on the way to the country where they sought protection) without any examination of the substance of their claim has become standard practice in many countries. The determination of which country is “safe” more often than not takes insufficient account of the actual situation of refugee protection in that country, and does not take into consideration whether the individual asylum seeker would be afforded effective and durable protection from further refoulement. In many cases, asylum seekers are subject to “chain refoulement”, passed on from one country to another until they end up in their country of origin - precisely the place from which they were fleeing. Amnesty International is concerned that asylum seekers are sent back to Russia under the assumption that Russia is “safe”.

Amnesty International is opposed to the sending of an asylum seeker to another country without adequate consideration of the substance of his or her claim.⁵ If in a particular instance circumstances dictate that an asylum seeker should be sent to another country, the sending country must obtain specific guarantees from the receiving country that the asylum seeker will be afforded access to full and adequate asylum procedures, and would be protected from refoulement. Amnesty International in particular urges European governments to recognise

⁴ Appendix 1

⁵Amnesty International reminds governments of UNHCR Executive Committee Conclusion 15(XXX), which states: “Regard should be had to the concept that asylum should not be refused solely on the ground that it could be sought from another State. Where, however, it appears that a person, before requesting asylum, already has a connexion or close links with another State, he may if it appears fair and reasonable be called upon first to request asylum from that State.”

the inadequacy of refugee protection in the Russian Federation, and that Russia is for many asylum seekers anything but "safe".

Also, Amnesty International points to the fact that the use of "carrier sanctions" in Europe prevent asylum seekers transiting through Russia, and in particular Sheremetevo-II airport in Moscow, from proceeding onwards to seek asylum. These asylum seekers are often trapped in the transit zone of the airport and forcibly deported to their country of origin with no consideration of their asylum claim. This is just one of the ways in which the obstruction of access to asylum procedures in Western Europe has had the effect of displacing the responsibility for refugee protection to surrounding countries.

Migration patterns and Flight

At the beginning of 1997, the overall picture of migration in Russia is a complicated one. Groups of people moving to the Russian Federation include refugees and forced migrants from former Soviet republics⁶, as well as "internally displaced persons" (IDPs) fleeing conflicts within the Russian Federation⁷. There are large numbers of people with a connection to the Russian Federation based on ethnicity who are returning to the Russian Federation from former Soviet republics for reasons varying from persecution to a growing feeling of insecurity as members of a minority group in a new state. The FMS reported that in 1996 alone over 640,000 asylum seekers had arrived in the Russian Federation from other Commonwealth of Independent States (CIS) countries and from the Baltic countries. Of these, 180,000 received forced migrant or refugee status⁸.

⁶At a press conference on 5 February 1997, as reported by the Russian ITAR-TASS news agency, Tatyana Regent, head of the FMS, stated that the FMS since 1992 had recognized over 1.2 million people as refugees and forced migrants.

⁷Regarding Chechnya alone, at her 5 February 1997 press conference Tatyana Regent stated that since 1992 over 450,000 people had fled their homes in Chechnya and had applied to the FMS for assistance (human rights violations arising from the conflict are the subject of the Amnesty International reports; Armed Conflict in the Chechen Republic: seeds of human rights violations sown in peacetime AI index: EUR 46/10/95 and Brief summary of concerns about human rights violations in the Chechen Republic AI index: EUR 46/20/96).

⁸ Tatyana Regent, 5 February 1997.

Another significant movement is that of refugees and asylum seekers from outside the CIS and the Baltic states into Russia. Although the Soviet Union did have a practice of granting asylum to a small number of prominent Communist activists and revolutionaries⁹ from abroad, this was very different to the large influxes of asylum seekers arriving in Russia within the past decade, largely due to Russia's geographical position, the relative openness of its borders, and the increased obstruction of access for asylum seekers into Europe. Asylum seekers now arrive in the Russian Federation from, for example, Afghanistan, Iraq, Angola, Zaire, Ethiopia, Somalia, Sri Lanka, Nigeria, Rwanda and Cameroon. Estimates as to their numbers vary, and are sometimes exaggerated. The reality is that it will be impossible to ascertain how many asylum seekers there are in Russia until a fair and satisfactory asylum determination procedure is established.

*Under Russian law, asylum seekers from both outside and inside the CIS and the Baltic states may apply for recognition as a refugee¹⁰. In addition, it is possible for an asylum seeker from within the CIS and the Baltic states to receive protection through being recognized as a forced migrant, under the terms of a Federal Law on Forced Migrants of 2 February 1993, amended on 20 December 1995. This law defines a forced migrant in much the same terms as the definition of a refugee in the Law on Refugees¹¹. To qualify as a forced migrant, however, an asylum seeker needs to be a citizen of the former USSR, or to demonstrate that he or she "permanently resides on legal grounds on the territory of the Russian Federation...", a requirement which is not possible for many asylum seekers to meet (see below). The situation for many asylum seekers from within the CIS and the Baltic states is somewhat eased by the fact that they are able to buy a temporary "guest permit" (*gostevaya propiska*) which provides them with the temporary rights to stay in a region. This temporary remedy is not available to*

⁹Article 38 of the 1977 constitution referred to the asylum rights for "foreigners, persecuted for defending the interests of the working people and the causes of peace, for participating in revolutionary or national liberation movements, or for progressive social-political... activities".

¹⁰The 1993 Law on Refugees defines a refugee to be: "a person who [has] arrived or is seeking to arrive in the territory of the Russian Federation, who has been forced or has an intention to move from the place of his permanent residence in the territory of another State as a result of an act of violence, committed against him or of persecution on racial, national, confessional or language grounds or because he belongs to a certain social group or holds certain political views." For an analysis of the Law see also Lawyers' Committee for Human Rights report "*Commitments without compliance; Refugees in the Russian Federation.*" May, 1996.

¹¹ie someone "... who has left the place of his residence as a result of an act or a violation or of persecution in other forms, committed against him or against his family members, or as a result of the real threat to be subjected to persecution because of his racial or national affiliation, religion or language, and also because of his belonging to a definite social group or because of his political convictions, which have become a pretext for launching hostile campaigns with respect to a particular person or group of persons, or massive breaches of the public order".

asylum seekers from outside the CIS or the Baltic states, however, who therefore often find themselves more exposed.

CHAPTER 2: DENIAL OF ACCESS TO ASYLUM DETERMINATION PROCEDURES

Accurate statistics regarding the numbers of asylum seekers and recognised refugees presently within the Russian Federation are extremely hard to obtain, and not only in relation to refugees from outside the CIS or the Baltic states as noted above. This is due in part to the difficulties in obtaining access to the asylum procedures, as well as the confusion, even amongst officials, regarding the distinction between a refugee and a "forced migrant". The UNHCR has registered approximately 30,000 asylum seekers from outside the CIS or the Baltic States since 1992, but this figure does not accurately reflect the presence of asylum seekers who are unable to travel to Moscow to register their asylum applications, nor does it account for the fact that many of those registered by the UNHCR have subsequently left the Russian Federation¹².

Another factor complicating the compiling of statistics, and the entire issue of refugee protection in the Russian Federation, is the extensively decentralised form of government in the country. The federal body responsible for immigration matters, as well as for determining asylum claims, is the Federal Migration Service (FMS), through its 90 regional migration offices. Although regional migration agencies are in theory bound to follow federal policy, in practice they often work according to the particular migration policy of the region.

According to the information available to Amnesty International, while approximately over 1.2 million asylum seekers from the territory of the former Soviet Union have been registered as refugees or forced migrants, there have been as of January 1997 only 77 cases of asylum seekers from outside the CIS or the Baltic states recognized as refugees. At her press conference on 5 February 1997 when she disclosed the figure of 1.2 million registered refugees and forced migrants¹³, the head of the FMS also stated that almost one million illegal immigrants from outside the CIS or the Baltic states had arrived in Russia in 1996, but that only 10,000 of them had applied for asylum and "significantly fewer are likely to receive it".

¹²According to UNHCR statistics from 1992 to 1993, 15,483 cases were registered by the UNHCR office in Moscow, representing 21,323 persons. Most of these asylum seekers were from outside the CIS or the Baltic states, with a small number of asylum seekers from Tajikistan (a CIS member). From the beginning of 1994 to September 1996 3,794 cases, representing 8,188 persons, were registered by the UNHCR. Of the more than 29,000 people registered since 1992, 12,000 to 15,000 of them were estimated to be living in Moscow.

¹³ An earlier report by the FMS, in December 1996, gave the significantly lower figure of just over 900,000 broken down as follows: 203,844 refugees from Kazakstan, 193,964 refugees from Tajikistan, 156,768 from Uzbekistan; 76,227 from Kyrgystan, and 11,876 from Turkmenistan. About 238,000 refugees came from the Caucasus; 122,557 from Georgia; 108,187 from Azerbaijan and 7,338 from Armenia. Over 30,000 refugees came to Russia from the Baltic republics. It is highly unlikely that some 300,000 refugees were registered in the two months between the two announcements, so the reason for the discrepancy is not clear to Amnesty International.

Stemming from the principle of non-refoulement is the obligation for states to establish adequate procedures to identify those in need of protection, and to ensure access to these procedures. All people who come forward and express a fear of returning to their country must be given access to a full review of the substance of their claim. Only after a full review of the merits of the claim, taking into account all individual circumstances, can a decision be made regarding whether or not an individual is in need of protection. In this regard Amnesty International points to Conclusion 71 (XLIV) of the Executive Committee of the UNHCR, which states: "The Executive Committee reiterates the importance of establishing and ensuring access consistent with the 1951 Convention and the 1967 Protocol for all asylum seekers to fair and efficient procedures for the determination of refugee status in order to ensure that refugees... are identified and granted protection".

However, access to a substantive consideration of the merits of each asylum seeker's claim is not ensured in the Russian 1993 Law on Refugees. This law states that the agency to which the asylum claim is submitted should first make a decision regarding the registration of the claim, within five days. The asylum seeker who has had his or her claim registered is given the right to temporary accommodation and various measures of social assistance, including meals and lump sum grants (Article 3). Those whom the agency decides not to register as asylum seekers should receive written reasons for this decision, against which they may appeal to either the FMS or a court of law within one month. However, there is no indication of whether there should be a substantive review of the asylum seeker's claim; indeed, there is no indication whatsoever of what considerations the relevant agency would take into account in making this decision. Amnesty International believes that any review of a refugee status determination claim must take into account the human rights situation in their country of origin as well as the asylum seeker's individual circumstances, and is concerned that this is not clearly stated in the 1993 Law.

Amnesty International is concerned that this vague provision in the 1993 Law on Refugees leaves room for arbitrary decisions on whether to "register" particular asylum claims¹⁴.

In practice, Amnesty International is aware of numerous cases of asylum seekers presenting themselves repeatedly at migration service offices to lodge a claim for refugee status, only to be turned away without any guidance or information. They do not receive written

¹⁴There exists an alternative procedure for making an asylum claim, under a constitutional provision whereby the President of the Russian Federation may grant citizenship to persons who seek political asylum. This procedure was established on 26 July 1995 in Presidential Decree 763 .

According to this decree, asylum seekers should submit applications to the FMS, who then consult with various ministries and recommend a decision on the case to the Commission on Citizenship, which then submits the application to the President.

According to a representative of the FMS , the decree only succeeds in further confusing the procedure for seeking asylum. The representative said that over 1,000 Afghan asylum seekers have submitted applications through the Moscow Migration Service to the President. They have not received an answer as yet. To date Amnesty International is not aware of any cases where an asylum seeker has made a successful application under this procedure.

reasons which would enable them to appeal the decision, as stipulated in the law; most receive no kind of acknowledgement at all that they had attempted to claim refugee status. Many asylum seekers, including many individuals which Amnesty International believes would be at risk of grave human rights violations if returned to their country, are left in legal limbo for years, unable to even register their asylum claim and obtain documents identifying them as asylum seekers who should be protected against refoulement.

It is a fundamental principle of refugee law that pending final determination of their claim to refugee status, individuals seeking asylum must be protected from refoulement. The absence of registration and any kind of document identifying asylum seekers as such often results in asylum seekers facing harassment, detention, and ill-treatment by local authorities and police on the basis that they lack proper documentation.

Although asylum seekers are able to register at the UNHCR office in Moscow and obtain a document certifying them as such, these documents are not recognised by Russian law enforcement officials and therefore provide no effective protection. Lt-Gen. Ivan Rakmanin of the border guards of Kaliningrad district in Moscow confirmed this:

" [UNHCR] identity cards, given out to these people [illegal immigrants] are not considered as documents by our law enforcement officials and any illegal migrant can be deported from Russia".¹⁵

Augusto¹⁶, an Angolan¹⁷ asylum seeker told Amnesty International in June 1996:

"I have had at least nine UNHCR cards torn up by police since I arrived in January 1995. I was stopped recently at metro Komsomolskaya and asked for my documents, I gave my UNHCR cards and the policeman said "this is not a document - it is toilet paper". He tore it up. There were four policemen in the car and they asked me for a 5,000 rouble fine. I did not have any money with me and so one of them hit me with a truncheon. They told me "We don't want refugees here - go back to your own country".

Abdul, an asylum seeker from Afghanistan, reports that he approached the Moscow Migration Service in May 1996 to try to register his asylum application. He said he was told that he did not qualify for refugee status because he had stated the purpose of his visit to Russia as "business" on his visa application, whereas in fact he was seeking asylum. He was told by the official that his name had been communicated to an OVIR (Otdel Viz i Registratsii - passport office) department dealing with the deportation of illegal aliens, and that if he was

¹⁵ "Kaliningrad district is terrorised by illegal immigrants", article in *Nezavisimaya Gazeta*, Moscow, 30 October 1996.

¹⁶ Unless otherwise stated, the names of asylum seekers have been changed to protect their identities.

¹⁷ For information on all countries of origin of asylum seekers mentioned in this report, please see Amnesty International reports on those countries.

found to be in Russia after the end of May 1996 he would be forcibly returned to Afghanistan. The words "Refusal to register because of illegal entry to territory of the Russian Federation. Entry visa does not correspond to purpose of visit" were scribbled in pen across his UNHCR identity document. The text of the document stating that Abdul had been registered by the UNHCR and was to apply to the FMS was crossed out.

Yonan, an Iraqi asylum seeker, arrived in Moscow and was registered by the UNHCR in July 1993. He approached the Moscow Migration Service in November 1995 to lodge a claim for asylum but was met with the response "we don't have that kind of law". In January 1997 an Amnesty International representative approached the authorities to explain the difficulties Yonan was having in registering his application for asylum, but again was told that no asylum seekers were allowed to register in Moscow. Indeed, a government official confirmed that the Moscow Migration Service stopped registering any asylum applications at all since mid-1996, stating "we'll open again in our own time".

Andre arrived in the Russian Federation on 22 October 1993, on a direct flight from Luanda, Angola. He claims to have fled Angola after the killing of three cousins and his uncle in a massacre at Bakongo in Luanda, the Angolan capital, on 22 - 23 January 1993. Andre explains that he fled to Russia "because it was the only choice I had". Since arrival in the Russian Federation, Andre has been registered by the UNHCR office in Moscow, but has, at the time of writing, been unsuccessful in registering his application for asylum with the Russian authorities. He explains that he has approached the Moscow Migration Service office several times, but each time "they tell us it is not our turn and we have to wait - I have been waiting now for over three years".

The extent to which asylum seekers are left without legal protection when denied access to determination procedures can be illustrated by the response of the Federal Migration Service to a letter from Amnesty International raising concerns about the refoulement of 20 Afghans in August 1994 from the Krasnodar territory in southern Russia. The letter from the FMS head, Tatyana Regent, of 16 December 1994 argues that, as the Afghans were not registered as asylum seekers, they were not seeking asylum and therefore not protected by the principle of non-refoulement.

Propiska (residence permit) and residence registration systems

Particularly troubling in this regard is the way the Russian *propiska* system is used to obstruct access to asylum procedures. The *propiska* system dates from the days of the Soviet Union, when citizens needed to obtain permission from the Ministry of Internal Affairs (MVD) to live in a certain place.

In fact, the *propiska* system should not play any part at all in status determination of refugees. There is no requirement in the Law on Refugees or the Presidential Decree for asylum seekers to have a *propiska* before registering an asylum claim. However, many local

authorities require asylum seekers to have one. According to representatives of the FMS¹⁸, local migration authorities sometimes determine asylum procedures according to the immigration legislation in the region. The legislation being passed at a local level does not conform to the Law on Refugees, the presidential Decree or the Russian Constitution.

For example, Mr Kakuliya (first name not known), an ethnic Georgian from Abkhazia, had been refused refugee status because he did not have a propiska for Stavropol territory. The Civil Chamber of the Supreme Court ruled in this case¹⁹ that, since the Law on Refugees does not contain any mention of a propiska being a condition for refugee status, it was unlawful to require asylum seekers to have one.

Unfortunately, a decision like this is often ignored by the executive and legislative powers. In practice, many asylum seekers do therefore need propiskas in order to register their claim for asylum. It is therefore useful to discuss the problems of asylum seekers with regard to propiskas as they try to register their claims for asylum.

With the entry into force of the Declaration on Rights and Freedoms of Man and Citizen in September 1992 and the 1993 Constitution²⁰, the right to freedom of movement was established and the propiska system was deemed by the Committee for Constitutional Supervision to be an unconstitutional restriction of this right. The right can only be restricted by federal law and even then only in exceptional cases (for instance, to protect the constitutional order or legal rights and freedoms of other persons). In accordance with constitutional provisions, the 1993 Law on the Rights of Citizens to Freedom of Movement and Choice of Temporary and Permanent Residence fundamentally changes the nature of the propiska system. The obligation to get permission to live somewhere was abolished and replaced by an obligation to register one's place of residence. Lower normative acts which established procedures for requesting and granting propiskas of a permissive nature lost their force. Similarly, lower acts which have been issued since the adoption of the 1993 Constitution are unconstitutional and have no legal force. This was confirmed by the Constitutional Court which considered such a law by the Moscow government to be unconstitutional (see below).

In practice however, local authorities continue to apply such lower acts which restrict the right to freedom of movement and residence²¹, and issue new such acts. In such cases,

¹⁸ Round table discussion at Moscow City Duma on 4 July 1996, in which Amnesty International representatives took part.

¹⁹ Kakuliya vs. Krasnodar Migration Service, Civil Chamber of the Supreme Court (7 August 1995).

²⁰ Article 24 (1) of the 1993 Constitution states: "Everyone who is legally located on the territory of the Russian Federation has the right to freedom of movement and the choice of place of whereabouts and residence within the Russian Federation".

²¹ In a decision of April 1996 the Russian Constitutional Court ruled that local legislative rulings by the Moscow city, Stavropol territory and Leningrad regional governments requiring the purchase of residence permits were unconstitutional. However, despite this decision these governments have not, at the time of writing, changed their legislation or policy to bring them into line with the Constitutional Court ruling.

asylum seekers find themselves trapped in a vicious circle - in order to gain access to determination procedures, they need a propiska and in order to obtain a propiska they need legal status ²².

Even in cases where local authorities apply the registration procedure established in the Law on Freedom of Movement, obtaining registration of a place of residence is an almost impossible task for asylum seekers. The conditions for registration are, in accordance with the Law: proof of ownership of a residence; a rental contract; or the consent of relatives who agree to house the new resident. This consent form has to be registered with the local police. Asylum seekers from outside the CIS or the Baltic states report that only in exceptional cases are they able to obtain written agreements from their landlords, as apartment owners prefer unofficial agreements for property rental to avoid paying taxes. Without registering his or her place of residence, the asylum seeker is automatically disqualified from being able to apply for refugee status in that locality ²³.

Amnesty International has no opinion on the propiska system per se, or any similar requirement of registration of residence a government may provide for its citizens or foreign nationals. However, the organisation believes such regulations must be applied in a way which is consistent with international human rights standards and, with regard to foreign nationals, such regulations must not obstruct individuals who fear serious human rights violations in their country from coming forward and seeking protection. However, that is precisely how the Russian propiska and the registration of place of residence systems are being applied.

Asylum seekers in this position are in constant danger: random identity checks on the streets of cities in Russia are common and asylum seekers without the proper residence registration papers often report being threatened with detention or even refoulement to their country of origin. In Moscow, monthly verifications of the residence permit regime are carried out by law enforcement officials in some hotels, hostels and apartment buildings. Provision for this was made in a ruling of 28 July 1994 (No 519) as a result of the Presidential Decree of 14 June 1994²⁴. This ruling also instructs the Moscow Migration Service to establish a proposal for limiting the number of refugees arriving in Moscow, and ordered their expulsion from the city.

²²For example, in March 1996 the Moscow government issued a resolution which, allows forced migrants to receive status in Moscow only if they have relatives in the city who are prepared to let them stay with them. This does not apply however, to refugees or asylum seekers. For further information on this see Svetlana Gannushkina's article "Russian Migration Politics".

²³ The Presidential Human Rights Committee commented in its 1993 report that "The Laws on Refugees and Law on Forced Migrants do NOT provide for a refusal to register the application for refugee status or forced migrant status if his or her place of residence is undecided. However, many such applications are not accepted and not registered".

²⁴ "Urgent Measures to defend the population from banditry and other manifestations or organized crime". Presidential Decree No. 1226 which allows law enforcement authorities to detain persons suspected of ties to organised crime for up to 30 days without charge and without access to a lawyer.

In an interview with Amnesty International in 1996, a representative of a local non-governmental organization claimed that the standard response from the Moscow Migration Service to enquiries from asylum seekers from Central Asia about refugee status is "Go and live in the provinces, or go home".

A Tajik woman commented on the situation for Tajik refugees in the Russian Federation:

"When we apply to the Moscow Migration Service they tell us that their offices are closed for registration. They tell us to go to Irkutsk or Yaroslavl. I lived in Irkutsk before, but since the outbreak of the Chechen war no people from Central Asia were given residence permits any more. It is only possible to get a residence permit if you already have relatives living in a region, and even then there has to be enough space. Few Tajiks apply for refugee status here, because it is useless to do so".²⁵

Sebastian, an Angolan asylum seeker, told a representative of Amnesty International in April 1996 how he was evicted from his apartment because he has no document which protects him as an asylum seeker or registration of his place of residence in Moscow.

"I lived with three friends in an apartment in eastern Moscow. On 21 March 1996, the day after we moved in, two policemen came to our apartment and told us that because we were not registered we had no right to live there. We explained that we were asylum seekers, but they returned two weeks later and confiscated our documents and took us to the police station with five armed policemen...At the police station we met two officials from OVIR, they came with us back to our apartment, and took our neighbours' documents as well, as they are Angolan asylum seekers too. Two days later two policemen came to the door at 9pm. We were scared and did not open the door immediately, so they started kicking the door, and the door handle nearly flew off... We opened the door, and in the process my friend got hit in the face. Once they saw the blood, the policemen left."

"We were told to pay a fine of 30,000²⁶ roubles each, which we eventually paid, and asked for our documents back, but the officials at OVIR still phoned the UNHCR registration centre and asked them why we had left Angola. Eventually we got our documents back, but on 6 June 1996 some policemen took us all to the police station, including my friend's son, who is 11. They told us that we had three days to leave the apartment."

²⁵ Interview with Amnesty International, July 1996.

²⁶ Approximately US \$6. A few asylum seekers assisted by the UNHCR receive a living allowance of approximately US\$50 per month. Others have to survive on significantly less than this.

In November 1996 Sebastian contacted Amnesty International, explaining that he had tried to register his application for asylum by registered mail, since he had not managed to get anyone at the Moscow Migration Service offices to accept it in person. The day after he moved into a new apartment police officers came to the door and demanded a 100,000 rouble fine for his illegal presence in Moscow. He went to the police station the next day and asked the head of the police station to ring the FMS to confirm that he had applied for asylum. According to the explanation the police officer gave Sebastian, the FMS apparently denied that he had applied for asylum, and stated he was "illegally" in Moscow.

Patrick is an asylum seeker from Burundi, who was studying in the Russian Federation when conflict started in his home country in 1993. He is of mixed Hutu-Tutsi parentage, but in Burundi is identified as Hutu, his father's ethnic group - and is therefore afraid to return home.

He registered with the UNHCR in July 1994, and went two days later to the Moscow Migration Service office. He reports that he was told that the asylum applications of Afghans and CIS and Baltic states refugees were being considered first, and given an application form to complete. However, he has been unable to complete this application form for two years, as it asks for an address, and the written consent of the landlord to stay in this property. Patrick explains that he lives unofficially in a student hostel: " No one will take a refugee in ... especially as this just means problems for them with the local police". On returning to seek further advice from the Moscow Migration Service, he was told that he had to find someone to give signed confirmation of his permission to live there. Unable to do this, and without any document he says:

"I am arrested all the time - the police rip up our UNHCR cards and we have to get new ones issued...we are fined, before it was 20,000 roubles, now more like 50,000 roubles. Otherwise, they just make you empty out your pockets and they take everything they find. They take you in a car to the police station. If you have no money you are allowed to telephone your friends so that they get their money... if you have no friend you will be kept in there for the night. Money is all they are interested in."

The meanest regimes are undoubtedly in Moscow city and Moscow region²⁷, although approximately 30 of Russia's 89 regions implement restrictive local migration and or registration laws contravening Federal laws.

²⁷ The Mayor of Moscow, Yury Lushkov, issued an ordinance on 14 March 1996 "On the procedure for recognition of the status of refugees and forced migrants in Moscow city". This ruling stipulates that in order to obtain a residence permit for Moscow, forced migrants are required to have close relatives in Moscow who are registered and who provide a letter of agreement for the registration of forced migrants for no less that a year. The Act states that "Refugee status can be given to someone who has a residence permit for Moscow". It goes on to say that the Governmental Commission. For Accommodation needs to be consulted by the migration service before a person is given status either of forced migrant or of refugee.

Recent developments

There were nevertheless a number of minor positive developments in the treatment of refugees and asylum seekers in 1996. These include the acceptance for review of more than 400 asylum seekers' applications in St Petersburg and the recognition of 27 Afghan asylum seekers and their families as refugees in Perm. Three families from the latter group were provided with apartments in the Perm region. Also, 17 asylum applications from Afghan families living in one of the UNHCR accommodation centres²⁸ were accepted for consideration by the Moscow Region Migration Service in July 1996. While these are positive signs of movement, when seen in the context of the number of asylum seekers and the length of time that has passed since Russia adopted the law "On Refugees", they remain largely isolated cases and go little way to addressing the issue adequately.

The situation remains that asylum seekers report finding life in the Russian Federation difficult: generally they are not eligible for any kind of social services, medical care, the right to work, or education.

In an interview with an Amnesty International representative in August 1996 Abdirazak, a Somali asylum seeker who arrived in Moscow five years earlier, explained the difficulties he and his family have to cope with:

"I have five children, three of them were born in Moscow. They are all sickly, we can afford to eat only twice a day and cannot afford to buy meat or vegetables. There is not enough money to buy clothes for the children. My children are not allowed to attend school. We experience hostility from the neighbours - I was once threatened with a knife in the lift. We had to leave our last apartment because of harassment from police and from the neighbours. I have no right to work, and have to pay fines to police officers constantly as I do not have a document saying that I am a refugee".

CHAPTER 3: POLICE HARASSMENT AND ILL-TREATMENT

Aside from the frequent destruction by police of official identity documents including UNHCR identity cards, asylum seekers frequently suffer other forms of police harassment in the form of extortion, beatings and general intimidation. There are many cases of asylum seekers being harassed into leaving their homes by police officers; asylum seekers report frequent police visits to their homes late at night. Non-CIS or Baltic states asylum seekers and others of non-Slavic origin are often targeted by police due to their physical features, especially through the legal right of police to make random identity checks. Once apprehended, asylum seekers are usually made to pay fines for not having a residence permit, and are often detained in police custody.

It has already been noted that Russian police officers do not recognise the asylum seekers' identity cards issued by the UNHCR office in Moscow as legal documents. During identity checks of asylum seekers, police officers reportedly demand payment of a fine for not having papers in order

²⁸ at Verbilki, Taldom, Moscow region

(even asylum seekers who have managed to register with a migration service office still report being fined, for not having a residence permit or registration; fines range from 30,000 to 50,000 roubles (roughly US\$6 to US\$10). Asylum seekers frequently report being detained for periods of up to 24 hours if they cannot pay the fine. One asylum seeker reported being taken to remote, deserted outskirts of Moscow in a police car with three or four police officers, and being intimidated, threatened and asked for money.

On 4 July 1996 at about 9pm, Salim, an Afghan asylum seeker who had arrived in Moscow in April 1996, was stopped by three police officers outside Botanicheskoy Sad metro station. He was asked to show his documents and when he showed his passport, the police officers reportedly started shouting "Narkotiki!" ("Drugs!") and searched him. He had only about 20,000 roubles with him. The police officers apparently told him to go and get some more money and to return in 30 minutes.

" They told me to get out of Russia, and said, there's no place for blacks here. I tried to explain that I was an asylum seeker, and that I had no money - but they would not listen. One of the policemen held my hand and used the knife [bayonet] attached to his rifle to cut my hand - they tore my passport up, and then they left in the car".

Speaking to an Amnesty International representative in July 1996, Salim showed the top of his thumb which had been cut off half way across the nail.

In a particularly disturbing incident on 8 October 1996, three officers of the special branch police (OMON) of the Leninsky district in Moscow arrested four Afghan asylum seekers as they were waiting to be interviewed and registered in the office of the UNHCR-sponsored Refugee Reception Centre in Moscow. They were taken away in a police car, and the whereabouts of these four men since then is not known. There is no way to trace them, as they had not registered their names with the UNHCR before being arrested. Amnesty International is highly concerned for their safety.

Homaun, an Afghan asylum seeker living in St Petersburg, told an Amnesty International representative in July 1996: " I was a teacher in Kabul university of literature and language. One year ago I was working in the market when the OMON came and asked for my documents.. When I did not have these they told me to get my things. I was told to stand with my hands on my head up against the police car. The road was busy and lorries were passing very close by - one passed so close that I wobbled and let my hands fall from my head to balance. I was then beaten in the groin until I was nearly unconscious, by three people in turn. One of them took a pistol and said 'open your mouth' and put his pistol in my mouth. I had lost all reason and said ' kill me , I've had enough' ."

Police frequently raid hostels and apartment blocks where asylum seekers are known to be staying. Joseph is an Angolan asylum seeker, aged 27. He approached the Moscow Migration Service in November 1995, but was told to come back in January 1996. He tells of the problems and intimidation he has experienced with police and "mafia" he suspects as being linked with the police in Moscow:

" In May 1996 we were told by the police of Bolshevo district to leave the apartment where we were living, or else we would be kicked out by bandits. Three days later there was a knock on

the door - we looked through the spyhole and saw a police document. When we opened the door three men in plain clothes were there - they came in and one took out a gun. I managed to escape and run downstairs to call for help. One of the men hit my friend on the head with a metal bar - he still has the scar. I called for help but no one came - I managed to catch one of the guys and we went to the police station. At the police station I was told that these were mafia guys and that we would get into more trouble if we lodged a complaint. When I got to the police station they began to film me with a video camera - I asked why; if it was for the press or the TV - but they told me it was for personal use. We left the apartment after this."

Bahand, who arrived from Afghanistan four years ago with his wife and family, told Amnesty International:

"On Monday 3 June 1996, policemen came to my apartment at 6am and started kicking on the door. They asked me to show my documents, which I did. As I explained that I have no residence permit for Moscow, I overheard the officers talking amongst themselves: 'take him,' one said, 'there's a special order for Afghans'. Later, I went to try to sort this out at the passport office, but was only asked how many Afghans were going to fight for the Chechens in the Chechen conflict, and then told 'you should all go to Siberia'."

Such incidents, believed to be ethnically motivated, are apparently on the increase²⁹, with reports of such occurrences increasing since two presidential decrees were issued to combat organized crime and vagrancy³⁰. Under their provisions a suspect may be detained for up to 30 days; additionally those held on suspicion of involvement in organized crime may be held for this time without charge, or access to a lawyer³¹.

²⁹ See for example Amnesty International's News Service Item 88/96 of 15 May 1996 (AI Index: EUR 46/26/96) "Ill-treatment of Ethnic Minorities Continues"; see also Russian Federation: Comments on the Second Periodic Report submitted to the United Nations Committee against Torture of October 1996 (AI Index: EUR 46/46/96).

³⁰ Presidential Decree No 1226 of 14 June 1994 "Urgent measures to defend the population from banditry and other manifestations of organised crime", see footnote .Presidential Decree No. 1226 issued on 10 July 1996 "On Urgent Measures on Strengthening Law and Order and Intensifying the Fight Against Crime in Moscow and Moscow Region" authorises law enforcement officials to detain for a personal identity check people identified as vagrants, beggars, or homeless (under the provisions of another Presidential Decree No 1815 of 2 November 1993, On Measures to Prevent Vagrancy and Begging").

³¹This conflicts with Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Russia is bound as a successor state to the USSR, which states that "anyone who is arrested or detained on a criminal charge shall be brought promptly before a judge", and that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful". Prompt access to a defence lawyer of one's own choice is

CHAPTER 4: DENIAL OF ACCESS AND REFOULEMENT AT MOSCOW SHEREMETEVO-II INTERNATIONAL AIRPORT

Amnesty International is alarmed at the apparently extensive violations of the rights of asylum seekers occurring in the transit zone of Sheremetevo-II airport, Moscow. People arriving in the airport transit zones and attempting to seek asylum are rarely allowed to present their applications for asylum, and they report that they are not given contact numbers for the migration service or the UNHCR. Amnesty International has been unable to obtain statistics of people who tried to claim asylum but who were not able to, indeed it is not clear whether such statistics even exist. Asylum seekers are routinely forcibly returned - without even the most cursory examination of their asylum claims - from the airport to their countries of origin where they may face persecution, torture or threats to their lives.

In meetings with FMS representatives and representatives of the Department of Immigration Control of Moscow city and Moscow region (DOIC) in June and July 1996, Amnesty International was told that all those who wished to seek asylum could do so easily, and would be given the opportunity to contact the UNHCR. However, Amnesty International has found that these claims do not reflect reality. In fact, Amnesty International has learned that many asylum seekers in the transit zone are trapped: unable to find anybody to accept and process their asylum claims, they often remain stranded and are routinely forcibly sent back to their country of origin with no consideration of their asylum claims.

Some of the asylum seekers who arrive at Sheremetevo-II airport from countries in Africa and Asia are not in fact intending to seek asylum in Russia. Some hold tickets for onward journeys to other European countries or North America. In most cases, these tickets are with the Russian state airline Aeroflot, whose flights generally stop over at Moscow before proceeding to these countries.

All passengers transiting through Moscow airport have their documents checked upon arrival by the border guards (*pogranichniki*), an independent federal body. According to the information available to Amnesty International, border guards have become increasingly stringent in recent years checking documents of passengers travelling on to other European countries. Amnesty International believes that this is due to the strict carrier sanction regimes in place in many of these countries³². Asylum seekers arriving with false documentation are told that they cannot proceed on to their destination country, and informed that they must wait in the transit zone of the airport until the next flight back to their embarkation point.

recognised as a key factor in international fair trial standards, and an important safeguard against torture and ill-treatment.

³² Many countries in Western Europe now provide in law for fines for transporters, particularly airlines, who bring undocumented passengers. In some countries the fines are applied regardless of whether or not the individual is subsequently recognised as a refugee.

Amnesty International has on many occasions expressed its grave concern regarding these provisions. While Amnesty International does not dispute the basic right of states to impose measures regulating the entry of foreign nationals, it believes that such measures must not be implemented in such a way that asylum seekers are obstructed from access to seeking protection.

In theory, any passenger indicating to the border guards his or her wish to seek asylum should then be referred to officers of the Points of Immigration Control (PIC), who receive the claim, assess it, and make a decision on its registration. Officials of PIC are responsible to the respective migration service which covers the region; in the case of Sheremetevo-II airport, the DOIC. However, according to the information available to Amnesty International, PIC did not have a presence at the transit zone of Sheremetevo-II airport until August 1996. Until then, all asylum claims were, in theory, referred to officials at the office of the FMS in Moscow, who would come to the transit zone, interview the asylum seeker, and make a decision on the registration of the claim. In August 1996, the DOIC opened a new office in Sheremetevo-II airport, and responsibility for assessing asylum claims in the transit zone was transferred from the FMS to that office.

It is the understanding of Amnesty International that the DOIC office has two doors; one faces the hallway outside the transit zone, beyond passport control and customs. The other door opens directly into the transit zone. However, the latter door, connecting directly to the transit zone reportedly remains locked, and nobody in the transit zone is allowed direct access to the office. Amnesty International is unaware of any systematic attempt on the part of border guards to ensure systematically that asylum seekers are in fact able to access PIC officers.

According to the information available to Amnesty International, although a small number of PIC officers occasionally patrol the transit zone, there is no permanent presence there. Amnesty International is unaware of any systematic attempt on the part of PIC officers to identify those who have come forward to claim asylum and conduct interviews. Indeed, even on patrol, PIC officers reportedly rarely wear uniforms or any kind of insignia identifying themselves, making it extremely difficult for an asylum seeker to spot them and lodge a claim. In this context it should be noted that the transit zone in Sheremetevo-II airport is a vast area, shared with the departures lounge and the duty free area. There are at any one time hundreds of people passing through, and as a practical matter it is nearly impossible for asylum seekers to identify plain-clothed PIC officers.

In addition, even if the asylum seeker does manage to contact the UNHCR and ask for assistance, the UNHCR does not have free access to the transit zone. Rather, it must apply in advance to the border guards for a permit to access the area and interview a particular asylum seeker. Indeed, officials of the FMS have indicated to Amnesty International that, at least until August 1996, even they had difficulties obtaining permission from the border guards to enter the transit zone.

As far as Amnesty International is aware, in the rare cases when asylum seekers have been interviewed by representatives of the Federal Migration Service, none has been granted refugee status in Russia, or even a more substantive review of their claims:

Beatrice, an asylum seeker from Cameroon, stated that she was detained in Cameroon for her involvement with an opposition political party, the Social Democratic Front. She reports that in 1992 she was detained for four days without food and that she was beaten by two policemen on the back and the soles of the feet during interrogation about her political activities. Prior to the municipal elections in January 1996, she reportedly heard that the security forces were looking for her and she went into hiding. According to Beatrice, in March 1996 friends arranged for her to leave for Romania via Russia. On arrival in Romania she tried to contact the UNHCR *"But when I got there they would not listen to me... they put me back on the plane to Moscow"*. Beatrice was

returned to Moscow airport on 20 March 1996, where she tried to apply for asylum, but reports that she was ignored by officials: *"I asked for the number of the UNHCR but they would not give it to me"*. She also told Amnesty International that on arrival at Sheremetevo-II her passport was taken away from her by what she calls an "immigration officer", who gave her meal tickets for two weeks. According to Beatrice, the officer who spoke to her did not introduce himself or say whom he worked for. *"They all have the attitude of not giving anyone any information whatsoever... they don't even want to talk to you. Luckily, thanks to some other passenger I managed to get the number of the UNHCR."*

However, despite appeals by the UNHCR and Amnesty International calling for Beatrice to have an interview to determine her status, she was not given access to representatives of the UNHCR or the FMS and was subsequently deported.

"Four men came up and said 'you're going, get ready'. They took my bag and walked with me to the plane. I tried to explain to them that it was dangerous for me to return, but they would not listen. On the plane home I felt like someone going into space, I did not know what was going to happen to me".

On arrival back in the airport in Cameroon, Beatrice reports that she was immediately detained by the security forces, but managed to leave the country a few weeks later, again for Moscow, but this time with a student visa which allowed her to enter Russia. Another case raised by Amnesty International in 1996 was that of the imminent *refoulement* of three African asylum seekers held at Sheremetevo-II. Two of the men had attempted to apply for asylum in the Federal Republic of Yugoslavia but were returned to Moscow on 9 August 1996. Amnesty International wrote to the Russian authorities on 15 August 1996 urging that their applications for asylum be given thorough consideration, especially in the light of the political situation of their country of origin. According to information available to Amnesty International, representatives of the DOIC talked to the three men on 14 August 1996 at Sheremetevo-II, but their statements were not officially registered as asylum claims. All three men were forcibly returned to their own country on 22 August 1996. Amnesty International has no information on their subsequent fate.

Further complicating the situation of asylum seekers in Sheremetevo-II is the role of Aeroflot. During the time that the asylum seeker is waiting in the transit zone, the Russian authorities hold the airline (which in most cases is Aeroflot) responsible for providing food. Since asylum seekers often face huge obstacles in lodging a claim for asylum, and are often unable to leave the transit zone even if they manage to lodge a claim, a prolonged stay in the transit zone translates into a large financial burden for the airline. The head of Aeroflot management for the transit zone confirmed to Amnesty International in June 1996 that asylum seekers are allowed to stay in the transit zone *"for one week, but not longer; it is expensive to feed them."* Amnesty International is concerned that there have been instances where it seems that asylum seekers were deported from Sheremetevo-II on the initiative of the airline, which had not obtained official authorisation.

One example of this lack of coordination leading to *refoulement* is the case of an African asylum seeker, who arrived in Sheremetevo-II airport on 8 May 1996 from Belgrade in the Federal Republic of Yugoslavia. He had been forcibly deported from Belgrade before seeing a representative of the UNHCR. The asylum seeker told Amnesty International by phone on 14 May that on arrival he tried to submit an application for political asylum in the Russian Federation,

but was told that he would have to wait to see the head of the Federal Migration Service. He told Amnesty International what he believed the consequences of his deportation would be *"prison or worse, death by firing squad. When I am taken back no one will know about me, no one will ever hear anything about me again, I will be removed"*. The next information he received was the date of his flight home on 16 May 1996, although UNHCR Moscow had informed the FMS of his wish to seek asylum on 13 May 1996.

On 16 May the head of the Department for Political Refugees and Determination of Status at the FMS informed Amnesty International that a decision was being taken on the case following an interview of 15 May and that the asylum seeker was in no danger of *refoulement* until a formal decision had been reached by the FMS. On 27 May 1996 the asylum seeker telephoned Amnesty International from the transit zone and informed the organization that he had still received no reply to his asylum request, that he had not received food for two weeks, and reported that the interpreter present during his interview could not understand what he was saying. On 30 May a phone call from another asylum seeker in the transit zone at Sheremetevo-II informed Amnesty International that the asylum seeker had been forcibly returned that morning. The head of Aeroflot management confirmed that everyone from the transit zone was deported by 31 May. However, when asked to confirm this, officials from the FMS said that the asylum seeker could not have been returned until a written instruction was issued by the FMS. According to Amnesty International's information, the FMS did not issue a decision rejecting the asylum claim until 3 June, although the asylum seeker had already been forcibly deported. Amnesty International fears that the asylum seeker may have been deported on the initiative of the airline, before the FMS reached a decision regarding his application.

Amnesty International is unaware of any measures taken by the Russian government to clarify this incident.

According to the information available to Amnesty International, Aeroflot has leased a number of rooms in the airport hotel of Sheremetevo-II specifically to house undocumented passengers during their stay before deportation. The rooms are currently being fitted with steel doors, locks, and window bars. It seems that the decision to establish this facility was made after a Liberian man stuck in the transit zone jumped out of a window and committed suicide in November 1996.³³ It is not clear whether the UNHCR will be able to access this detention facility, or whether people in that facility will be given the opportunity to present a claim for asylum. Indeed, it seems that this detention facility is to operate under an informal agreement between Aeroflot and the border guards, and even PIC officers have indicated that it is not clear whether they will be able to access it. Amnesty International is gravely concerned that the operation of this detention facility might result in asylum seekers being detained with no possibility of claiming asylum, and subsequently deported. It urges the Russian government to clarify the status of this facility and to ensure that its operation will comply with international standards, including standards regarding the detention of refugees.³⁴

³³ It is not clear from the information available to Amnesty International whether this Liberian man was seeking asylum although Amnesty International is concerned that, given the grave human rights situation in Liberia, this could indeed have been the case.

³⁴ These would include UNHCR Executive Committee Conclusion 44 (XXXVII), the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the ICCPR.

Amnesty International reminds the government of the Russian Federation that it has a clear obligation to ensure that all individuals coming forward to seek asylum, be they at ports of entry to the country or already within the territory, are given access to fair and satisfactory refugee status determination procedures and protected from *refoulement*. Amnesty International urges the Russian government to take immediate measures to ensure that all asylum seekers are given immediate access to asylum procedures and protected from return to their countries.

In addition, there have been reports of asylum seekers suffering ill-treatment and physical abuse at the hands of Russian security forces in the transit zone. On 21 May 1996 a Nigerian asylum seeker was reportedly assaulted in the toilet by three uniformed men claiming to be "policemen". Other events have been independently witnessed. In early May 1996 an Angolan man was reportedly kicked unconscious by two "security men" in the transit zone: a witness travelling through the transit zone described the scene:

"The two security men were dragging him along the floor by his arms and then stopped not far from us. One of the security men held both of his arms, while the other one kicked the Angolan man's head right back with his boot as if he was kicking a football, and I'm sure they must have broken his neck. They then dragged him into the toilet and viciously kicked him in the head and chest for about five - 10 minutes".

Communication with the country of origin

Amnesty International is also gravely concerned about reports that Russian officials have sometimes contacted the authorities in the asylum seekers' countries of origin and have provided information to these authorities regarding specific asylum cases. It is obvious that this will put asylum seekers at greater risk if subsequently they are returned to their country of origin. For example, an Iranian asylum seeker, aged 29, was arrested on 6 March 1996 while trying to cross the Russian border into Finland with forged documents, and was detained at the Directorate of Internal Affairs (GUV) in St Petersburg. In a conversation with Amnesty International in April 1996, a representative of OVIR confirmed that the Russian authorities had contacted the Iranian embassy on 29 March 1996 to arrange for his deportation. According to Amnesty International's information, the man had applied for asylum but later withdrew his claim after the Iranian ambassador to Russia telephoned him in prison and assured him he had no reason to fear for his safety in Iran. He travelled back to Iran on 30 May 1996, and on arrival in Teheran was arrested, reportedly detained for two days, and released pending further investigation. No further information is known about him.

Amnesty International opposed the *refoulement* of Elguzhda Meskhia, a political opponent of the current government in Georgia who had been seeking asylum in Russia. He was detained on 25 December 1995 in Moscow, on the basis of a warrant for his arrest issued by the procurator of the town of Tsalendzhikha in Georgia, and was forcibly returned to Georgia on 19 March 1996. While Amnesty International does not oppose the right of states to extradite known or suspected criminals, it was concerned that Elguzhda Meskhia might fall victim to torture or ill-treatment in

Georgia³⁵. Elguzhda Meskhia submitted an application for political asylum to the Russian authorities on the day before he was forcibly returned. A representative of the FMS commented that they had not received the application before the forcible return was carried out, and also that the Procurator General had not sanctioned the forcible return. This further indicates the alarming lack of co-operation between the various ministries and administrative departments responsible for asylum and forcible return issues. Conversely, there are apparently links and agreements between the law enforcement agencies, and co-operation on a direct level from police officer to police officer, in different CIS states, which have resulted in human rights violations of people forcibly returned to their country of origin³⁶.

At the time of writing this report, Albert Musin, a journalist and monitor of human rights developments in Central Asia living in political exile in Russia, is reported to be at risk of imminent and forcible repatriation to Uzbekistan where he is wanted on an apparently politically motivated charge. Albert Musin was arrested on 21 February 1997 for not having proper registration for Moscow, by Moscow police at a market in a Moscow suburb. He was taken to a police station in the Tyoply Stan neighbourhood. There, it was established that Albert Musin was wanted by the authorities in Uzbekistan, where a criminal case had been instituted against him in March 1996 for "illegal collection, divulging and use of information" (Article 191 of the Uzbekistan Criminal Code). Media reports of his arrest quoted statements by the Moscow police that a decision on Albert Musin's extradition would be taken by the Office of the Procurator General of the Russian Federation.

Albert Musin left Uzbekistan in 1993 to avoid harassment for his activities in the political opposition. Although raised in Uzbekistan, he currently has Kazakstani citizenship. He applied for refugee status in Russia in 1993, and received a reply from the Federal Migration Service on 21 July 1993, saying that he would need to provide concrete proof of his persecution in order to receive refugee status, and that in any case he could not be registered in Moscow due to regional legislative restrictions. Amnesty International is concerned that should Albert Musin be extradited to Uzbekistan and imprisoned on this charge he might be a prisoner of conscience. At the time of writing Amnesty International was appealing to the Russian authorities to prevent the extradition of Albert Musin and to accord him full legal protection as a refugee persecuted for his political beliefs by his country of origin.

It should go without saying that any kind of information regarding specific refugee cases should not be communicated in any manner whatsoever to the authorities of the country of origin. The Russian government has a duty to ensure that all relevant officials, not just officials of the

³⁵ Russia is a party to the international Model Treaty on Extradition, adopted without a vote on 14 December 1990 by the UN General Assembly's resolution 45/116, which provides that "if the person whose extradition is requested has been or would be subjected in the requesting state to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 14 of the International Covenant on Civil and Political Rights, then the person may not be extradited".

³⁶ See for example the case of Khoshali Garayev and Mukhametkuli Aymuradov, forcibly returned from Uzbekistan to Turkmenistan, as reported by Amnesty International in *Turkmenistan "Measures of Persuasion"* (AI Index: EUR 61/03/96), March 1996.

Migration Services, are properly trained in the identification of people declaring a fear of returning to their country, and receive unequivocal instructions on the handling of these cases, including immediate referral of the case to the agency responsible for determining refugee status.

CHAPTER 5: LEGISLATION AND APPEALS TO THE COURTS

The violations of the rights of asylum seekers detailed above look set to continue, unless certain measures can be developed and implemented to limit the scale of abuse.

In a small number of cases non-CIS or Baltic states asylum seekers have challenged the authorities' refusal to recognise them as refugees through the courts. The effectiveness of this course of action does, however, presuppose that the asylum seeker has been successful in submitting an application for asylum and that they have received a written refusal from the authorities. As explained above, only a small minority of non-CIS or Baltic states asylum seekers have succeeded in doing this in Russia.

In October 1995 the St Petersburg City Court heard the first of 14 appeals against the decision of the St Petersburg Migration Service to deny applications for refugee status. The appeal under consideration was lodged by an Afghan asylum seeker whose application had been initially turned down under Article 1 of the Russian Law on Refugees. After four days of testimony, during which the asylum seeker explained that he was a member of the People's Democratic Party of Afghanistan (PDPA)³⁷, and that he had held a high post in the Afghan Ministry of Security and had worked with the Soviet Committee for State Security (KGB), a settlement was proposed whereby the asylum seeker withdrew his complaint against the Migration Service, and his case was referred for review. The other 14 cases were also referred for review. As of January 1997 there had still been no decision taken on these cases.

During the hearing, the asylum seeker was questioned as to why he had not applied for political asylum under the Presidential Decree on Asylum, although no procedural guidelines existed for an asylum application under this decree at the time of the court hearing. Another question asked in the hearing was why the asylum seeker had not requested asylum with the Russian migration authorities immediately upon arrival, and yet had registered with the UNHCR. This again highlights the vicious circle that asylum seekers find themselves in, unable to gain access to determination procedure upon arrival, and later left open to accusations of not genuinely seeking asylum.

In another case, Alam, an asylum seeker from Afghanistan, appealed against the decision of the Migration Service of Krasnodar territory of 4 February 1995 to refuse to recognise him as a refugee. On 18 April 1996 the Pervomaysky District People's Court ruled that the Migration Service's ruling was unjust and overruled it. This decision was in its turn appealed by the Migration Service of Krasnodar territory, on the grounds that as Alam had not held a high post in the

³⁷ The PDPA was the ruling communist party up until the resignation of Babrak Karmal as president in 1986. It then was renamed under President Najibullah as the *Watan* (homeland) Party.

government during the regime of Najibullah, and that according to the service's information neither former military officers nor PDPA members were subject to persecution in Afghanistan, he could not have suffered persecution. Alam countered that as a PDPA member since 1974 and a high ranking military officer he was at direct risk of persecution. On 27 June 1996, the Collegiate on Civil Cases at the Krasnodar City Court repealed the decision of the Pervomaisky District Court and returned the case to that court on the grounds that the asylum seeker had travelled through Uzbekistan, and that this fact had not been duly examined. In July 1996 Alam appealed to the Chairman of the Krasnodar City Court seeking a revision of the City Court's Collegiate decision. At the time of writing, no decision has been taken in this case.

In the case of ethnic Georgian, Mr Kakuliya, whose case is mentioned above (see page 10), the decision resulting from his successful appeal to the Civil Chamber of the Supreme Court, has not, to Amnesty International's knowledge, been implemented by Krasnodar Migration Service.

It can therefore be concluded that although appealing decisions of the FMS in court can be effective in reversing the dismissal of a refugee claim by an asylum seeker, the situation is still problematic in that court decisions are not always observed by local authorities.

CHAPTER 6: DRAFT REFUGEE LAW - FURTHER DETERIORATION

The Russian government is currently debating the introduction of a new Law on Refugees, to replace the 1993 Law. Amnesty International welcomes the willingness of the government to recognise the issue of refugee protection and examine new standards.

However, Amnesty International has obtained a draft of the law³⁸ currently being discussed and has a number of serious concerns regarding its provisions. Amnesty International fears that its introduction as it presently stands would result in a deterioration of standards of refugee protection, rather than an improvement. The organisation believes that in order for the Russian Federation to comply with its international obligations, a comprehensive revision of the draft law is necessary, taking into account international standards and in particular the Fundamental Standards laid out in Appendix 1 of this report. In the Draft Law, asylum seekers residing legally in the Russian Federation are to present their applications to the migration service of the region where they are located. Asylum seekers at the border, however, are to present their claims to "organs of immigration control" or, in their absence, border guards. If an asylum seeker has already entered the country illegally, he or she is to present him or herself to a border guard or "the organ of internal affairs" within 24 hours of crossing the border (Article 4.1).

Similar to the provision in the current law, the Draft Law stipulates in Article 4.3 that a "preliminary interview" will take place before an asylum seeker's claim is to be registered. The reasons for refusal at the stage of the preliminary interview are laid out in Article 5, though it is not clear whether all asylum seekers who fall under that Article's provisions are to be refused, or whether the relevant official can exercise discretion. Those asylum seekers already on Russian territory whose claims are rejected at the stage of the preliminary interview are to be expelled within

³⁸In an unofficial English translation, provided by a source who wished to remain unidentified.

one month; however, asylum seekers at the border are to be expelled immediately (Article 5.3.1)³⁹. The Law provides in Article 10.2 that all decisions or actions of both the federal and local governments “may be appealed to the higher organ or to the court”.

Amnesty International welcomes clarification of the grounds on which the decision regarding registration of a claim is to be based. However, the organisation fears that far from providing for an adequate review of the substance of the claim, Article 5 of the Draft Law merely makes it clear that there is not to be an assessment of the merits of the claim.

The Article lists as a reason for refusal to register an application that “the person has arrived from another state where he had an opportunity to get refugee status”. Amnesty International is gravely concerned that this provision will lead to asylum seekers who transited through other countries on their way to Russia being summarily expelled to those countries without any specific assurance that they will be afforded protection from *refoulement*. It has been well documented over recent years by Amnesty International as well as by other NGOs and the UNHCR, that such “safe third country” policies often lead to people at risk of serious human rights violations being subject to “chain *refoulement*” including ultimately *refoulement* to their country of origin. Amnesty International urges Russia not to incorporate this practice, and points in this regard to Conclusion 15 (XXX) of the UNHCR Executive Committee, which states “Regard should be had to the concept that asylum should not be refused solely on the ground that it could be sought from another state.”

In addition, asylum seekers who “abuse their right to apply for refugee status” may have their applications refused at the preliminary stage. This provision is ill defined and vague. Amnesty International recognises that it may be appropriate to deal in an expeditious fashion with asylum claims which are clearly fraudulent and unrelated to the criteria laid out in the Refugee Convention. However, the organisation believes that such exceptional treatment should only allow that appeal against a negative decision be simplified. Amnesty International points to UNHCR Executive Committee Conclusion 30 (XXXIV), which states that even in such cases “an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory”.

In any case international standards require that any decision regarding the appropriateness of sending a particular asylum seeker back to a country through which he or she had travelled, or regarding the “abusive” character of a particular claim, must be undertaken by fully qualified officials of the body charged with determination of refugee status, not by border guards as is provided for in the Draft Law. It should be noted that although the law does provide for the right to appeal a decision, in the case of an asylum seeker at the border any appeal would be purely academic as he or she would be expelled “immediately”. Amnesty International is gravely concerned that if the Draft Law were enacted as it stands, people at risk of serious human rights violations would have their claims summarily rejected at the frontier by border guards and be subjected to *refoulement*.

In addition, Amnesty International is concerned about Article 5.1.9, which lists as a reason for refusal that the asylum seeker “refuses to give information about him or herself and/or about

³⁹ One positive development in the Draft law is that non *refoulement* is guaranteed to registered asylum seekers in Article 9.1, which states that any “person applying for refugee status ... may not be returned against his wish to the territory of the country of his nationality”.

circumstances of his or her arrival to [Russia] or if s/he presents evidently false information". While a persistent refusal to provide relevant information might cast serious doubt over an asylum seeker's credibility, Amnesty International is concerned that overly strict application of this provision might result in people at risk of human rights abuses being disqualified from consideration and deported. It should be noted that refugees are in a particularly vulnerable situation and some have suffered traumatic experiences. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status notes: "A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-a-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case. ... Untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case."

Finally, Amnesty International is concerned about the 24-hour limit for asylum seekers who had illegally entered the country to present their claims.⁴⁰ Amnesty International believes that all time limits on applying for asylum are without justification and should be abolished. In this regard Amnesty International points to Executive Committee Conclusion 15 (XXX), which states: "While asylum seekers may be required to submit their asylum requests within a certain time limit, failure to do so, or the non-fulfilment of other formal requirements, should not lead an asylum request being excluded from consideration".

Many of the restrictions introduced seem to emulate the most restrictive of practice in various European states. Once again Amnesty International refers the Russian authorities to its minimum procedural guarantees in Appendix 1 of this paper and recommends the immediate transposition of all these recommendations into Russian law. However, any legislation must be judged in the light of state practice, and as this paper demonstrates, even those rights guaranteed in Russian law to asylum seekers are routinely violated.

RECOMMENDATIONS

Amnesty International is urging the Russian Government to immediately implement the recommendations detailed in Appendix 1, *Fundamental Standards for the Protection of Refugees*, as well as the recommendations outlined below:

Recommendations to the Russian Government

⁴⁰ There is an exception for the time limit in the case of "force majeure circumstances" in Article 10.1.3

1. The Russian Government must scrupulously abide by the internationally recognised principle of non-*refoulement*, including non-*refoulement* on the frontier, and must take steps to ensure that no person is returned to a country where he or she risks serious human rights violations.
2. The Russian Government should take immediate and concrete steps towards establishing a fair and satisfactory refugee determination procedure. In establishing such procedures, the government should follow the minimum procedural points outlined in Appendix 1.
3. The Russian government should take immediate measures to ensure that all asylum seekers at Sheremetev-II airport, as well as at all other ports of entry into the Russian Federation, are given access to asylum procedures. Asylum seekers should be provided with full information on their procedural rights, in a language they understand, and in particular should be informed of their right to contact the UNHCR. The government should also ensure that the UNHCR has free and unhindered access to the transit zone of the airport, as well as any facility where undocumented passengers may be detained.
4. The Russian government should issue clear and unequivocal instructions to all relevant personnel (including border guards, regional migration service officials, law enforcement officials and other officials who deal regularly with foreign nationals) on the rights of asylum seekers and their duty to refer all asylum seekers to the appropriate body charged with determining asylum claims. They should be specifically instructed not to pass any sort of information regarding such claims to officials of the asylum seeker's country.
5. The Russian government should ensure that all those who come forward to seek protection have their claim formally registered. They should receive proper official documents identifying them as asylum seekers and protecting them from *refoulement*.
6. The federal government has a responsibility to ensure that local and regional legislation and practice complies with international standards and with treaty obligations the government has undertaken. In this regard, the Russian government should ensure that all local legislation obstructing access to asylum procedures be annulled, and that concrete and practical measures are taken to ensure compliance at the local level with federal legislation regarding refugees, including training of local officials by the UNHCR.
7. The Russian government should take immediate steps to ensure that ill-treatment, beatings, harassment, arrest and arbitrary detention of asylum seekers by police is stopped. Specific and clear instructions regarding the treatment of asylum seekers and respect for UNHCR registration documents should be issued to all law enforcement personnel. Those who do not comply with these instructions should face appropriate disciplinary proceedings and/or prosecution.
8. The Russian Government should ensure that any new law affecting refugees which is introduced conforms to international standards of refugee protection. In particular, the Draft Law currently being debated should be comprehensively revised to incorporate the Fundamental Standards laid out in Appendix 1 of this report.

Recommendations to the international community

9. States should refrain from returning asylum seekers to the Russian Federation on the basis that it is a "safe third country" until such time that all asylum seekers are ensured the opportunity to have their refugee status determined in a fair and satisfactory procedure.
10. The international community should remind the Russian government of its responsibilities to refugees, and its obligations under international refugee and human rights law.

Appendix 1

AMNESTY INTERNATIONAL Fundamental standards for the protection of refugees⁴¹

Amnesty International calls on all governments to observe certain basic principles in their asylum procedures. These principles are essential in helping to prevent the forcible return of asylum-seekers at risk of serious human rights violations. These principles are based on international standards, such as are set out in the International Covenant on Civil and Political Rights, relevant Conclusions adopted by the intergovernmental Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR), and

⁴¹ For further information see Amnesty International policy document "Fundamental standards for the protection of refugees" (AI Index: POL 33/03/93)

Recommendation R(81)16 of the Committee of Ministers of the Council of Europe dealing with the harmonization of national procedures relating to asylum. They include specific practical measures which are necessary for the effective implementation of the international standards. They include the following:

The fundamental principle of non-refoulement demands that national asylum procedures are adequate to effectively identify all those in need of protection.

All asylum-seekers, in whatever manner they arrive within the jurisdiction of a state, must be referred to the body responsible for deciding on claims for asylum.

The body responsible for deciding on claims for asylum must be an independent and specialized authority whose sole and exclusive responsibility is examining and making decisions on asylum claims.

The decision-makers of that independent body must have expertise in international refugee law and international human rights law. Their status and tenure should afford the strongest possible guarantees of their competence, impartiality and independence.

The decision-makers of that independent body must be provided with services of a documentation office whose task should be to impartially collect and provide them with objective and independent information on the human rights situation in asylum-seekers' countries of origin or any countries to which they might be sent.

All asylum-seekers, at all stages of the procedure, must benefit from the right to legal counsel and interpreters, and the right to contact and to have access to UNHCR.

Asylum claims should be examined at first instance through a personal appearance by every asylum-seeker before the decision-makers of the independent body responsible for deciding on asylum claims, where there is a thorough examination of the circumstances of each case.

All asylum-seekers must receive written reasons if their asylum claim is rejected, and have the right to appeal against a negative decision. The appeal should normally be of a judicial nature and must in all cases have suspensive effect on expulsion.

Special circumstances may warrant the exceptional treatment of an asylum claim or a group of claims from persons in a similar situation. (These circumstances may include, for example, a determination that an asylum claim is "manifestly unfounded" in the sense that it is clearly fraudulent or not related in any way to the criteria for granting refugee status set out in Article 1A of the 1951 Convention or to criteria for defining other categories of persons who are protected from forcible return.) Such exceptional treatment would permit only that the appeal against the decision at first instance be expedited, but such an expedited appeal must still in all cases have suspensive effect on expulsion.

In addition to these essential principles certain practical measures are needed as safeguards to ensure the principles are fully observed in practice. Among the measures which Amnesty International believes to be essential are the following:

Border officials should be properly trained to identify and refer to the independent body anyone who may be at risk if turned away.

All asylum-seekers should be given, in a language that they fully understand, the necessary guidance about the procedure to be followed and full information about their procedural rights.

All asylum-seekers should be allowed access to appropriate non-governmental agencies providing advice and assistance to asylum-seekers.

All officials involved in questioning or interviewing asylum-seekers and in making decisions on their applications should be instructed and trained to follow the procedural guidance given in §195-§219 of UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status. All such officials, including border officials, should take into consideration the special situation of asylum-seekers, who might experience language or other difficulties in expressing or presenting a request for asylum, who may have had to flee without personal documents, and whose past experience may have caused them to be apprehensive of authority, to be afraid to speak freely, and to have difficulty giving a full and accurate account of their case.

Amnesty International urges that these principles and safeguards be used as a basis to develop an international agreement on the minimum procedural standards for dealing with asylum requests. If such an agreement is reached, a committee of experts should be established to monitor its implementation, and UNHCR should be represented on that committee; as well, states should be obliged to report regularly to the committee on their national asylum procedures.

APPENDIX 2

ABBREVIATIONS:

UNHCR:	United Nations High Commissioner for Refugees
ICCPR:	International Covenant of Civil and Political Rights
CIS:	Commonwealth of Independent States; includes Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgystan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.
IDPs:	Internally displaced persons; this term refers to people who are forced to flee their homes but who do not cross an international border in doing so.
FMS:	Federal Migration Service
MMS:	Moscow Migration Service
OVIR:	(Otdel Viz i Registratsii) Passport office.
DOIC:	Department of Immigration Control
MVD:	(Ministerstvo Vnutrennykh del) Ministry of Internal Affairs
GUVD:	(Gorodskoye Upravleniye Vnutrennykh del) City Department of the Ministry of Internal Affairs
OMON:	Special Police Units
PIK:	Point of Immigration Control