

Protection Gaps: Amnesty International's concerns to UNHCR'S Standing Committee

8 – 11 March 2005

Introduction

The opportunity to highlight the situation of refugees and asylum seekers in various regions of the world is an important component of the annual March meeting of the Standing Committee of the United Nations High Commissioner for Refugees (UNHCR). Amnesty International (AI) has chosen within this document to focus on a selected number of situations in which the organization is concerned for the protection of the human rights of refugees and asylum seekers. However, the point must be made that there are in addition several other situations of concern in relation to refugees and asylum seekers in other regions of the world that are also deserving of the attention of the international community. Many of these will be highlighted in the consolidated oral statements that are made on behalf of the non governmental organisations (NGOs).

Within this document, AI raises concerns in regard to the current mass deportation of “illegal immigrants” from Malaysia, which is expected to affect the protection of large numbers of refugees from Indonesia, Myanmar and other countries. In addition, concerns are raised about the sustainability of return to Burundi and to Rwanda, including concerns about conditions of return. The organization is further concerned about widespread detention practices, often in inadequate conditions, of refugees and asylum seekers in Europe.

At a time when the UNHCR is in a process of change, AI urges the members of and observers to the Standing Committee, and the international community in general, to continue and indeed enhance the protection of the human rights of refugees and asylum seekers in all regions of the world. There must be continuity in the operations of and protection provided by UNHCR to refugees, including in the various initiatives and programmes that the agency has pioneered over the last four years. Members of and observers to the Standing Committee must ensure in particular that UNHCR is adequately resourced to provide protection to and to search for durable solutions for the majority of the world's refugees who live in protracted refugee situations.

1. ASIA

1.1 Refugees and asylum-seekers in MALAYSIA: At risk of arrest, detention, imprisonment and *refoulement*

“The Executive Committee...considers it timely to draw attention to the following particular aspects:

(ii) access, consistent with the 1951 Convention and 1967 Protocol, of asylum seekers to fair and effective procedures for determining status and protection needs;

(iv) the need for rapid, unimpeded and safe UNHCR access to persons of concern to the High Commissioner;"

(EXCOM Conclusion on Safeguarding Asylum, No. 82 (XLVIII), 1997)

In July 2004, the Malaysian Minister of Home Affairs, Azmi Khalid, announced plans to arrest and expel more than one million "illegal immigrants" from the country by the end of 2005.¹ In October the government announced an amnesty period during which "illegal immigrants" could return to their home countries without facing arrest or penalties. More than 380,000 migrants are reported to have left during the amnesty which was initially extended by the authorities until the end of 2004, and again following the devastating effects of the Indian Ocean tsunami. The authorities announced a further extension following a meeting with the Indonesian President in February 2005. The mass deportation operation began on 1 March 2005.

As Malaysia is not party to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol, it makes no distinction between persons seeking international refugee protection and those migrating for economic reasons. Over the years the Malaysian government has refused to offer protection, including legal status, to refugees on its territory, instead designating all undocumented foreign nationals as "illegal immigrants". It is therefore expected that the large-scale operation will also affect refugees and asylum-seekers who would be at risk of serious human rights violations if returned to their country of origin.

Risk of human rights violations during mass deportation

The organization fears that those caught up in the operation are at risk of serious human rights violations. A similar mass expulsion conducted in 2002 resulted in abuses, including the deaths of children due to dehydration and unhygienic conditions in Malaysian detention centres, and the reported rape of a 13-year-old girl by police officers. Over many years, AI has received reports of abuses by police against alleged undocumented migrants, ordinary criminal suspects and political detainees. The Malaysian authorities have been recruiting and training new members of the People's Volunteer Corps (*Ikatan Relawan Rakyat Malaysia*, RELA) to assist the police to arrest and detain undocumented migrants. The risk of abuses due to poor training and lack of accountability has increased in light of recent reports that the authorities intend to equip RELA members with firearms.

The Malaysian authorities have stated that all undocumented migrants arrested from 1 March 2005 will be prosecuted in court before being deported. Conviction under the Immigration Act can incur fines of up to 10,000 Malaysian Ringgit (US\$2,630) per offence, jail sentences of up to five years, or both, as well as whipping of up to six strokes with a rattan cane. Over the last two years, tens of thousands of "illegal immigrants" have been sentenced to caning, which constitutes cruel, inhuman or degrading punishment and contravenes international human rights standards.

Many defendants charged under the Immigration Act reportedly do not have access to a lawyer, are not fully informed of their rights under Malaysian law and are not fully aware of the charges they face. Such reports indicate that the right to a fair trial is not fully respected.

According to AI's information, hundreds of asylum-seekers and refugees are currently held with thousands of other detainees in immigration detention centres in Malaysia. At times, especially when mass arrests lead to severe overcrowding, conditions are reportedly so poor as to amount to cruel, inhuman or degrading treatment. In addition to overcrowding, the following problems have

¹ See Amnesty International, *Malaysia – Human rights at risk in mass deportation of undocumented migrants* (AI Index ASA 28/008/2004, December 2004).

been reported: poor hygiene and sanitation; inadequate provision of nutrition and safe drinking water; denial of medical care; verbal or physical abuse. Detention conditions which have the indirect effect of forcing people to return to a situation where they risk facing serious human rights violations would constitute a “constructive” *refoulement*, which is similarly prohibited by customary international law.

Protection of refugees and asylum seekers

In 2003, the UNHCR registered 15,000 new asylum-seekers in Malaysia. Most were from Chin and northern Rakhine States in Myanmar and from the Indonesian province of Nanggroe Aceh Darussalam (NAD), commonly known as Aceh.²

In a significant step forward, the Malaysian government announced in October 2004 its willingness to provide official identity document to Rohingyas, members of a Muslim ethnic minority in Rakhine state, the vast majority of whom have effectively been denied Myanmar citizenship, to allow them to work in Malaysia and to protect them from becoming caught up in the deportation process. Mohamed Nazri Abdul Aziz, Minister in the Prime Minister's Department, stated that identity documents would be provided to Rohingyas until the Government of Myanmar confirms their citizenship and stops persecuting them. By February 2005, however, the plans had not yet been implemented, leaving members of the Rohingya community vulnerable to arrest and *refoulement*. UNHCR estimates that there are about 10,000 Rohingyas currently living in Malaysia.³ The Malaysian government continues to deny legal protection to other refugees, including the Acehnese from Indonesia⁴ and other ethnic groups from Myanmar, such as the Chins.

While UNHCR issues “Temporary Protection Letters” (TPL) to some refugees, the documentation offers variable levels of protection during police identity checks. In some cases the letter is accepted as a valid document establishing the status of the holder, but in many others it is ignored, confiscated or destroyed by police officers, leaving the holders in a precarious situation. Although the Malaysian government has said that refugees and persons of concern for UNHCR would not be affected by the planned mass deportation of undocumented migrants, many asylum-seekers, whether or not they are holders of TPL, still feel at constant risk of arrest, detention, imprisonment and *refoulement*.

Recommendations

AI urges the Government of Malaysia to

- put a halt to any deportations until it can be guaranteed that the fundamental human rights of all refugees, asylum-seekers and migrants, including the principle of *non-refoulement*, will be respected in the process.

² UNHCR Global Report 2003, “East Asia and the Pacific”, p. 370.

³ UNHCR “Rohingyas flock to UNHCR in Kuala Lumpur following Malaysia government pledge”, 9 November 2004.

⁴ Thousands of Acehnese have escaped counter-insurgency operations or have migrated to Malaysia for economic reasons over the years. Following the declaration of a military emergency on 19 May 2003 in NAD, the numbers of Acehnese fleeing in fear of violence and human rights violations are believed to have increased, although precise numbers are unknown. UNHCR considers that the high-level of generalized violence in NAD places all Acehnese in Malaysia at potential risk of human rights violations if forced to return. Furthermore, in view of the continuing humanitarian crisis in Aceh following the tsunami, the well-being of all Acehnese returned to the province remains of compelling concern.

- ensure that any person whose expulsion is being considered has her/his case individually examined in a fair and transparent procedure;
- establish formal mechanisms through which UNHCR will be granted access to refugees and asylum-seekers in detention;
- issue relevant identity documents as a matter of urgency to Rohingya refugees. To ensure that all documentation that identifies the holder as a refugee or person of concern to UNHCR is recognized and respected in practice by the police and other authorities.

2. AFRICA

2.1 Concerns in relation to the sustainability of return to BURUNDI

“The Executive Committee,

Recognizes that, in principle, all returning refugees should have the right to have restored to them or be compensated for any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile; notes, therefore, the potential need for fair and effective restitution mechanisms, which also take into account the situation of secondary occupants of refugees' property; and also notes that where property cannot be restored, returning refugees should be justly and adequately compensated by the country of origin;”

(Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, No. 101 (LV) 2004)

More than 200,000 refugees have returned to Burundi during the past three years. The great majority of these refugees have returned from Tanzania and the Democratic Republic of the Congo, with other significant populations also returning from other countries in the sub-region, including Rwanda. As a result of a recent mission to Burundi, AI is concerned that many refugees are returning home in part because of the human rights abuses and hardship they face in their country of refuge rather than as the result of a free and informed choice to return voluntarily in conditions of safety and dignity. In addition, the organization is very concerned at reports that Burundian refugees are being forced to return, directly and indirectly, from Tanzania in conditions which amount to *refoulement*.⁵

Returnees often face additional violations of their rights in Burundi, particularly of their social and economic rights, including their right to adequate shelter, food, education, healthcare and livelihood. These violations not only threaten the sustainability of the repatriation programme, but possibly also the long term future of the peace process in Burundi. Refugees have fled Burundi for more than three decades, with major exoduses in 1972, 1993-1994 and 1996-1997. AI delegates noted that returning refugees from each of these three time periods faced difficulties in reintegrating and reclaiming their land, though those who fled more recently generally faced fewer challenges.

⁵ In February 2005, UNHCR wrote to the Government of Tanzania to express concern at the forced return of nine asylum seekers to Burundi. For further information on forced returns of refugees from Tanzania, see Amnesty International, *Rwanda – Protecting their rights: Rwandese refugees in the Great Lakes region* (AI Index AFR 47/016/2004).

Right to livelihood—challenges in reclaiming or accessing land

Burundians' livelihood still depends overwhelmingly on subsistence agriculture. However, over the last years, population increase and environmental degradation have resulted in a gradual reduction in the average size of individuals' farmland, reduced soil productivity and increasing tensions over land ownership and farming rights. The problem of land availability is particularly acute in certain areas of the country, for instance in Nyanza-Lac, although much of the country faces similar constraints.

At a time when increasing numbers of Burundians are left landless and destitute, refugees are attempting to reclaim land that they left behind when they fled the country.⁶ In some cases, returnees find their lands vacant and unused, permitting them to begin cultivation without difficulties. However, other refugees return to find their land unavailable, as it might have been redistributed to other landless Burundians through government programs, including to Burundians internally displaced due to the war or human rights abuse, or it might have been used by the government to accommodate plantations or to construct schools or clinics. Returnees may also find that their land has ostensibly been sold, usually by family members pretending to be the owners of the land, without the consent or knowledge of the refugee or it might simply have been occupied by other landless Burundians, whether family members or strangers, when vacant.

When returnees are confronted with the occupation of their land, the process for presenting their grievances and reclaiming their land is not always straightforward. Some returnees were not aware of how to initiate their claims. Faced with threats of violence and in the absence of police protection, some returnees abandoned the process of reclaiming their land altogether. Others found that their efforts to make use of official channels or obtain new land were thwarted by corruption, disinterest or unaffordable court fees. The court processes were usually very slow, although most often the judgments were in favour of the returnee. Some returnees found, however, that these favourable judgments were never implemented, and others were asked for money by magistrates in order to conduct site visits and evict illegal occupants.

In cases where the land is not available, the government is supposed to assist returnees in finding other lands. These lands, identified after a survey, are supposed to be allocated expediently to returning refugees and other displaced individuals, with a priority on extremely vulnerable individuals including the elderly, single women with children, and the disabled. In practice, these groups of people do not necessarily benefit from priority treatment, and in some cases were unaware that they were supposed to be accorded special treatment. AI met refugees who had returned to Burundi in 2000 who were still awaiting land allocations that the Government of Burundi had committed to provide them.

AI recognizes that returnees are not the only individuals with a critical need for arable land. For instance, Burundians internally displaced as a result of conflict and human rights abuse are often unwilling to return to their original lands due to their fear of facing further instability and feel they have a right to inhabit lands that they perceive to be safe. In addition, the growing population furthermore requires some means to sustain itself. It is essential to ensure that transparent and

⁶ Returnees who fled Burundi in 1972 face the gravest challenges in regaining or claiming land. In most cases, their land was seized and redistributed by the Burundian government several years after they left the country. Furthermore, some of the 1972 refugees lack precise details as to where their family's land is located, making it even more difficult for them to assert a claim. Their need for land in order to support themselves is however no less dire.

equitable solutions to the problems surrounding land and property restitution are found in a timely manner, in consultation with returnees and others most likely to be affected.

Access to an adequate standard of living

Those returnees who are able to return to their property almost inevitably find that their houses have been destroyed due to fighting, weather and/or neglect. Lacking the means to rebuild, they look to local authorities, UNHCR and humanitarian organizations to provide assistance, particularly for durable roofing materials without which adobe-brick homes inevitably collapse in the rainy season. The procedures to provide such roofing material are, however, unclear, inconsistent, poorly managed and inadequately resourced in many areas of the country. In many cases, corruption at the local commune level meant that returnees could only access assistance such as roofing materials if they paid bribes. In such a system, the most destitute returnees become those most likely to be excluded from assistance schemes, even though they were ostensibly supposed to receive priority assistance.

In other cases, returnees have found their houses still standing, but occupied by other people, in many instances by family members. In these cases, returnees may attempt to find officials to mediate in the conflict, as with land disputes. However, given that the conflict over housing is often intra-familial, returnees often attempt to find an alternate solution, often waiting, sometimes for years, for the government to assign them other plots of land and assist with building materials.

Without land or safe, dry housing, returnees are more vulnerable to diseases and at greater risk of malnutrition and fatal illness. The health consequences are of particular concern because access to healthcare is so limited and inconsistent in Burundi. In theory, returnees are entitled to free healthcare for a limited period of time; however, the communities to which they return are often too poor to subsidize their healthcare and, in practice, do not waive the fees. In some areas, returnees are temporarily able to obtain free healthcare at medical centers funded or supported by international humanitarian organizations. Returnees are eligible for free care for only a limited time, after which they are expected to pay fees that are often beyond their means (except in areas where the provision of healthcare for the general population is assisted by international organizations).

Food aid, as well as non-food items, is provided to returnees by the UNCHR by means of a return package that is meant to last for three months and provide for refugees' subsistence during the time it takes them to plant and harvest their first crops. AI notes with concern that returnees and some of UNHCR's Implementing Partners often mentioned that the return package has been insufficient to meet the nutrition and other requirements of returnees for the full period of three months. In addition, it invariably takes longer than three months to prepare the fields, plant and harvest, and can take significantly longer if the refugee has returned during the dry season. The difficulty in accessing food assistance is of particularly grave concern for returnees who have not obtained land and have not been able to grow their own crops.

Furthermore, AI is concerned by inconsistent approaches regarding the categorization of returnees that are eligible for return packages and other assistance. Sometimes UNHCR and local authorities limited their assistance to returnees who lived in an official UNHCR camp and refused assistance to those individuals who lived outside of these camps⁷. In other cases, UNHCR

⁷ Some Burundian refugees lived outside of refugee camps in order to pursue economic or social opportunities, among other reasons; others arrived in Tanzania at times when the camps were not accepting

provided assistance to individuals who had lived outside of the refugee camps, on the condition that they could provide documentary proof that UNHCR deemed acceptable of their previous residence in Tanzania⁸.

Another major concern of returning refugees that also affects other Burundians is the acute lack of educational possibilities for their children. Returnees are ostensibly entitled to free primary education; however as with healthcare, communities are typically too poor to subsidize returnee children's education. As a result, returnee children are either denied access to education altogether or subject to being sent home from school when the school administration decides that the child must pay. School materials such as notebooks, pens and uniforms are often beyond the reach of returnee families as well as the general population, particularly given the large numbers of children in many families. As in many other countries, girls are often the most likely to suffer from a lack of educational opportunities and required to work at home.

Recommendations

AI calls on UNHCR, the Government of Burundi, host governments and the international community to ensure that

- returns to Burundi are both fully voluntary, safe and sustainable over the long-term; in particular host governments should refrain from forcibly returning refugees and asylum seekers, whether directly or indirectly, to Burundi. Sustainable return includes as a minimum the following; security, freedom of movement, the restitution of property and access to cultivated lands, effective and accessible property restitution mechanisms, and non-discriminatory access to services including education, healthcare, social assistance, and other public services;
- adequate resources and technical expertise are made available in order to rehabilitate returning refugees' homes, to rebuild schools and hire educators, to support those unable to provide for themselves due to real constraints on land and capital, and to rehabilitate and stabilize the healthcare system;
- in addition to immediate food aid, attention is given to longer-term measures to ensure the sustainable and rights-respecting reintegration of returnees to Burundi. This could include measure such as the development of economic opportunities through micro-credit and vocational training, as well as the distribution of livestock.

AI calls on the Government of Burundi to

- ensure that all returnees are able to return in safety and dignity to their homes without harassment or physical threats during or after return;
- ensure that all decisions of the courts in regard to land rights and property restitution are implemented promptly, fairly and without discrimination;
- promptly and fully investigate suspected incidents of return-related attacks against life and property, and to ensure that all those reasonably suspected of organizing or participating in such crimes are brought to justice in the course of fair proceedings.

new refugees and were essentially obliged to settle in Tanzanian towns and villages. The Tanzanian government maintains that those Burundians living outside of the camps are in fact illegal migrants.

⁸ UNHCR officials stated their concern that Burundian villagers who are not returnees otherwise attempt to benefit from the food packages if stringent identification measures are not employed, thus diminishing the resources available to returning refugees.

2.2 Protection of the rights of refugees from RWANDA

“The Executive Committee

Recognizes that refugees, in exercising their right to return to their own country, should, in principle, have the possibility to return to their place of origin, or to a place of residence of their choice, subject only to restrictions as permitted by international human rights law; and, in this context, notes the importance of efforts that seek to mitigate the likelihood that returning refugees could become internally displaced;”

(EXCOM Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, No. 101 (LV) 2004)

In a recent report AI raised a number of concerns about the protection of Rwandese refugees and returnees, in regard inter alia to the voluntariness of return and the adequacy of returnee monitoring as it was currently being carried out.⁹ These concerns continue, and the organization would like to highlight again issues within Rwanda itself that raise concerns about the sustainability of return. The organization is also concerned about the lack of access to, and the quality of, protection for these and other groups of refugees in Uganda.

Barriers to a sustainable return to Rwanda

An estimated 2,931 Rwandese refugees have been repatriated from Uganda since the signing of the tripartite agreement on 24 July 2003. Another 18,854 refugees remain. Of those who were repatriated, an estimated 400 to 500 have since returned to Uganda, although there are concerns that this number might be higher. Rwandese refugees have given AI a number of reasons for returning to Uganda:

1. Failure to regain their land and/or property. Reports from Rwanda indicate that the increase in land disputes and of land scarcity is due in large part to the return of Rwandese refugees from all neighbouring countries including Uganda (along with the inflow of Congolese refugees). Many refugees who returned from Rwanda back to Uganda indicated that they were unable to regain their land, or feared that attempts to do so would have led to their arrest and detention.
2. Increasingly large numbers of returnees are internally displaced. Many returnees are being placed in 'temporary' camp-like settings upon return, rather than being given access to their homes and villages of origin. In addition to new returnees who are internally displaced, there currently exists a large population of internally displaced persons (IDPs) in Rwanda which consists primarily of individuals who were forcibly relocated by the current government during the Northwest Insurgency.
3. Forced mobilization of young males. In December 2004, AI noted the mobilization and training of young male returnees in Nasho, Kibungu province (see AI Index AFR 47/016/2004). Given the circumstances, this mobilization is most likely not into the Rwandese Defence Forces but into armed political groups fighting in the DRC.

In addition, the organization has heard repeated, unconfirmed reports that male returnees are forced to join "night patrols" (the government, citing the need for self-defense during the Northwest insurgency, organized civilians to monitor alleged anti-government activity in their neighborhoods and to participate in night patrols, sometimes in the company of soldiers).

⁹ Amnesty International, *Rwanda – Protecting their rights: Rwandese refugees in the Great Lakes region* (AI Index AFR 47/016/2004)

Refugees who have returned from Rwanda to Uganda also report that up to two-thirds of the men who participate in "night patrols" apparently go missing and never return.

4. Fear of discrimination in the community-based "gacaca trials"¹⁰ due to begin in March 2005 in 751 gacaca jurisdictions, including the likelihood that false allegations could be made by individuals against returnees in a bid to retain land and/or property.

5. Indirect pressure on unregistered refugees in Kibati (Uganda) to return. These refugees have been denied economic and social assistance and are therefore in a very precarious humanitarian situation. They are therefore vulnerable to the pressure to return that is placed on them through the provision of return-related assistance packages.

Access to fair and efficient asylum determination procedures in host countries

AI is concerned that a significant number of asylum seekers from Rwanda who are currently in Uganda and other host countries, including new arrivals, have not been given the opportunity to have their claim for asylum assessed in a fair and efficient asylum determination procedure administered by competent, independent and impartial authorities. The organization is concerned that these individuals have been left in a protection and assistance gap on the basis of assumptions rather than facts, which has placed them in a very vulnerable position.

The assumption that has been made is that many of these refugees are irregular movers who had previously found protection in Tanzania, and as such would not be provided with assistance nor international protection in Uganda. EXCOM Conclusion 58 (XL) recognizes, however, that "irregular movers" can only be returned to their first country of asylum if they would be protected against *refoulement* in that country and would be permitted to remain there and be treated in accordance with "recognized basic human rights standards". In addition, the fact that the quality of protection available to refugees in Tanzania is lower than that provided for in international standards would lead to the conclusion that many of those who fled to Uganda were not "irregular movers", but indeed onward movers who continue to be in need of international protection.¹¹

AI is also aware that even when asylum seekers from Rwanda are able to gain access to an asylum determination procedure, this is often inefficient, discriminatory and does not incorporate such basic safeguards as the right to an appeal, to legal counsel and to impartial interpretation.

Recommendations

AI calls on host governments, UNHCR and the international community to ensure that

- all asylum seekers without discrimination have access to a full, fair and independent asylum determination procedure, which includes access to a credible appeals mechanism;
- refugees and asylum seekers are not subject to *refoulement*, whether directly through deportation or indirectly either through deliberate denial of their economic and social rights or by being sent to a third country from which s/he would be *refouled* ("chain *refoulement*").

¹⁰ The gacaca jurisdictions are community-based tribunals in which community members serve as witnesses, judge and party. There are as a result, serious issues revolving around the judges' independence, impartiality and competence. There are in addition serious security concerns regarding the safety of all those involved in the gacaca sessions and hearings due to the poor human rights record of the Rwandese government, the intense politicisation of personal issues and existent polarization within Rwandese communities.

¹¹ See Amnesty International, *Rwanda – Protecting their rights: Rwandese refugees in the Great Lakes region* (AI Index AFR 47/016/2004).

AI calls on the Government of Rwanda to ensure that

- all returnees are able to return in safety and dignity and with full respect for their human rights, and that they are protected from further displacement and/or human rights abuse upon return, including discrimination in the provision of justice;
- all returnees are able to gain access, without discrimination, to their homes, their places of origin or former habitual residence or to a place of residence of their choice, or if this is not possible that they are provided with just and adequate compensation. The government should further ensure that independent, credible and effective property dispute mechanisms are instituted, and that all returnees are granted access to these mechanisms without threat of reprisal.

3. Detention practices in EUROPE

“The Executive Committee,

Expressed the opinion that in view of the hardship which it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order;”

(EXCOM Conclusion on Detention of Refugees and Asylum Seekers, No. 44 (XXXVII), 1986)

AI is concerned that asylum seekers and refugees in many countries in Europe are being detained in circumstances and conditions that are contrary to international human rights law, and refugee standards including UNHCR's revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers.

3.1 Italy

Immigration legislation (including most recently the so-called Bossi-Fini law 189/2002 and relevant implementing legislation of December 2004) allows many asylum seekers to be detained or restricted in their liberty in circumstances beyond those allowed by international standards.

The Bossi-Fini legislation makes provision for asylum-seekers to be confined in identification centres (formerly “reception” centres, established under previous legislation) for up to 20 days for administrative purposes such as verifying the identity of the asylum-seeker. There have, however, been reports of asylum-seekers being detained in some of the existing centres for far longer than the maximum stipulated period. Detained asylum-seekers are subject to an accelerated asylum determination procedure, and there are concerns that the legal assistance available to many asylum seekers in these centres is inadequate. The current legislation provides for seven identification centres and for the creation of further centres.¹²

Asylum-seekers, along with other foreign nationals, are subject to detention when they have entered, or have tried to enter, Italian territory illegally; when they were not legally residing in the

¹² The relevant implementing provisions of the Bossi-Fini law will come into force on 21 April 2005.

territory; or when they have received a deportation order before submitting their asylum application. Thousands of foreign nationals who have received deportation orders are detained in some dozen temporary holding centres (established under immigration legislation of 1998) where they can remain for up to a maximum of 60 days before expulsion from the country or release. However, delays and inefficiencies in the processing system have led to some people being detained repeatedly for the maximum period. The centres have held foreigners detained after arriving by boat, or detained on the streets or in the community, as well as after transfer from prison detention in connection with criminal offences. Many individuals have experienced difficulties in gaining access to the expert advice necessary to challenge the legality of their detention and of expulsion orders. Some individuals who are attempting to seek asylum have been unable to gain access to the asylum determination process. In some cases, asylum seekers have been prevented from contacting close relatives living in Italy.

Tension in the centres has been high, with frequent protests, including escape attempts, and high levels of self-harm. There are reports of frequent overcrowding, unsuitable infrastructures, unhygienic living conditions, unsatisfactory diets and inadequate medical care. Several criminal investigations are under way into alleged physical assaults on individuals by law enforcement officers providing security services and administrative staff. The Council of Europe's Committee for the Prevention of Torture (CPT) carried out a visit to Italy in December, during which it examined, among other things, the conditions of detention and the safeguards offered to foreign nationals held in temporary holding centres in Sicily. The authorities announced the closure of the Temporary Holding Centre at Agrigento "following an immediate observation" made by the CPT delegation.

The detention regimes in identification centres and temporary holding centres are reportedly very similar and an increasing number of centres appear to be used for both purposes. Although there is in theory an explicit provision for UNHCR to have access to the centres and for relevant lawyers and other bodies experienced in refugee work to apply for authorization to enter, there is concern that lawyers and UNHCR have at times experienced difficulties in gaining access and that non-governmental organizations are rarely allowed to visit the centres.¹³ In December 2004 the Minister of the Interior informed a parliamentary committee that he believed there was a need to convert the temporary holding centres into new 'multifunctional' immigration centres and to establish such centres in all regions of Italy.

3.2 Greece

Since 2002, AI has received allegations regarding the arbitrary arrest and detention particularly of foreign nationals that may amount to cruel, inhuman or degrading treatment. Furthermore, poor conditions of detention that may amount to cruel, inhuman or degrading treatment were noted by an AI delegation which visited detention centres for aliens in January 2005. Similar concerns, specifically about overcrowding and poor conditions of detention, were expressed by the UN's Committee Against Torture in November 2004. During a recent mission, AI noted that:

1. A considerable number of persons detained do not appear to have been adequately informed of the reasons for their detention and about their rights while in detention i.e. regarding their entitlement to take proceedings before a court on the lawfulness of their detention and to appeal against deportation on human rights or asylum grounds.

¹³ See Amnesty International, *Italy – Government must ensure access to asylum for those who need protection* (AI Index EUR 30/001/2004).

2. This is linked to inadequate interpretation services. Most of the interpreting needs in the centres are covered in an ad hoc manner by other detainees who may share a common language with the police officers (e.g. English) and another with the detainee.

3. The lack of information and communication facilities in detention centres, where irregular entrants are held pending deportation also limits detainees' access to lawyers, and the asylum determination procedures. In addition, there is an absence of any information about refugee protection and ways it could be accessed (e.g. UNHCR leaflets, phone numbers of relevant NGOs, multilingual material providing information about the rights of refugees and migrants in Greece). During interviews with regional police administrators it has emerged that only about 0.2 per cent of the detainees accommodated at the centres in the border regions file applications for asylum. Yet there are reports suggesting that a number of former detainees from border-region centres, often released on deportation orders, subsequently apply for asylum in Athens.

4. Overcrowding remains a serious problem. As a result, authorities fail to provide living conditions in accordance with international standards. In some centres, detainees report a lack of beds and mattresses. In nearly all of the centres, detainees, as well as their guards, report health problems - especially scabies - which are exacerbated by lack of hygienic conditions. The limited hot water available for bathing, which is reported by a number of detainees, is another result of overcrowding in the centres, which limits the ability to observe hygienic practices.

5. The organization has also received allegations regarding the detention centre of Amygdaleza, where women and children are detained pending deportation, that suggest that some of the male guards in the centre may have engaged in practices that violate rules regarding the treatment of prisoners. In particular, the organization received allegations that within the past year, male guards at the centre have entered the women's wards at night, offered alcohol to detainees and demanded sexual favours.

3.3 Malta

The government has continued its policy of automatically detaining those arriving by sea without authorization, regardless of whether or not they have applied for refugee status and holding them until the conclusion of refugee determination proceedings or return to their country of origin. At the end of December 2004, over 800 people, including women and children, were held in detention centres: many were held on grounds, and for periods beyond those permissible under international norms. Following amendments to the Refugee and Immigration Acts in August 2004, individuals whose applications for asylum were still pending a definitive decision after 18 months were generally released. A new government policy paper on asylum and immigration issued in January 2005 confirmed the government's commitment to mandatory detention on arrival. AI's concern is compounded by continuing reports that individuals are frequently unable to exercise their rights effectively as they lack access to appropriate legal advice and to communicate with the outside world.

Conditions of detention

The detention centres for asylum-seekers and unauthorized migrants are run and guarded by members of the police and armed forces who lack relevant training. Conditions of detention in some of the centres continue to fall well below international standards. Following a large number of arrivals by sea between June and September 2004, some centres were severely overcrowded, with many people sleeping on mattresses on the floor and some housed in tents where women and children have been held together with men who are not relatives. There are also reports of

inadequate diets, sanitary arrangements and medical attention. Diseases such as tuberculosis and scabies are apparently prevalent. A number of detainees have developed mental health problems. Some detainees, including children, have little access to exercise in the open air, to outside visitors and no recreational facilities. Children also still experience delays in gaining access to education. In the absence of professional social welfare workers visiting the centres, many of the basic material needs of the individuals, such as clothing, continue to be met by local religious and non-governmental organizations, often working on a voluntary basis and dependent on charitable donations.

Ill treatment at the Safi army barracks

According to the reports received by AI, on the morning of 13 January 2005, over 90 individuals held in a detention facility for aliens at Safi army barracks conducted a peaceful protest, refusing to re-enter the centre at the end of an exercise period. The individuals, some of whom had apparently been detained for some 18 months, were protesting about the length of their detention; lack of information about the progress of their applications for refugee status or humanitarian protection and, in the case of those whose applications for asylum had already been rejected, lack of information concerning their future. Amendments to the Refugee and Immigration Acts in August 2004 made provision for individuals to request conditional release on grounds that continued detention would be “unreasonable as regards duration or because there is no reasonable prospect of deportation within a reasonable time.”

Eyewitnesses have reported that at around 10 am, after the protestors refused an order to re-enter the barracks, soldiers, dressed in riot gear and armed with batons and shields, charged the peaceful protestors and subjected them to deliberate and gratuitous violence. Photographs taken at the scene lend credence to these reports. It has been claimed that many people were injured, and some 26 were transferred to hospital for treatment.

If these allegations are substantiated, then such ill-treatment would be in clear violation of international treaties and standards ratified by Malta, as well as domestic law. The perpetrators of such human rights violations should be brought to justice and the victims should receive compensation. The Prime Minister requested that a Board of Inquiry, consisting of a retired magistrate, carry out an inquiry into the January incidents, which is still under way. No criminal investigation has been opened to date.

Recommendations

AI calls on the Governments of Italy, Greece and Malta to ensure that

- current detention practices of asylum seekers and refugees are in conformity with international human rights standards, including in particular UNHCR's revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers;
- all persons whose detention cannot be justified under international human rights law and refugee standards are immediately released. Ensure in addition that all persons whose continued detention is found to be justified under international human rights law, have access to independent judicial review procedures;
- a permanent, independent monitoring and inspection body is mandated to make regular, unannounced visits of inspection to detention facilities, in line with international standards;
- conditions in all immigration detention centres are consistent with the UN Standard Minimum Rules for the Treatment of Prisoners, including access to adequate food and water and medical attention, and that independent monitors, including UNHCR, are provided access to the detention centres.