

Amnesty International statement to the 86th Session of the Council of the International Organization for Migration (IOM)

20 November 2003

Amnesty International (AI) welcomes this opportunity to contribute to the debate of the 86th Session of the IOM Council. We welcome too the documentation provided to this Council session by IOM, in particular the *Note on IOM's Strategy: Current and Future Migration Realities and IOM's Role*, in which the Organization states that 'underlying all that IOM does is the fundamental concern to protect the human rights and dignity of migrants.'¹

IOM and Human Rights

Amnesty International is concerned, however, that IOM continues to carry out projects, on behalf of governments, which negatively impact on the human rights of refugees, asylum-seekers and other migrants. We have raised these concerns in the past. They arise in the context of how persons are treated when they are or may be of concern to the United Nations High Commissioner for Refugees (UNHCR), and they concern the implications of IOM's Assisted Voluntary return (AVR) programme, as well as the manner in which information is disseminated by IOM.²

Persons who are or may be of concern to UNHCR

It is our strong view that IOM should refrain from returning or moving persons who may be of concern to UNHCR in the absence of the primary involvement or explicit endorsement of that agency. With this in mind, and as illustrative of our concerns, we would wish to raise the recent case of 14 Turkish Kurds currently in Indonesia. These

¹ IOM, 'Note on IOM Strategy: Current and Future Migration Realities and IOM's Role', MC/INF/262, 13 October 2003, p.4.

² In this regard, we would like to draw the attention of IOM, and the members and observers of the Council, to the document submitted by Human Rights Watch to this Council session. See Human Rights Watch, *The International Organization for Migration (IOM) and Human Rights Protection in the Field: Current Concerns*, November 2003.

asylum seekers³ were expelled from Australian waters. They were towed to Indonesian waters by the Australian authorities, and were subsequently transported by IOM to Jakarta from the Indonesian island of Yamadena. Amnesty International is concerned that this internal transfer may not have been a voluntary one on the part of the 14 individuals who were taken to a closed detention centre upon their arrival in Jakarta. Amnesty International condemns the actions of Australia which it considers to be in violation of its obligations under the Refugee Convention.

While we recognize the desire for IOM to be a pragmatic and flexible organisation, it is Amnesty International's view that this does not permit the Organization to acquiesce in activities or initiatives which would breach international human rights standards. We seek assurances from IOM that it will not participate in activities which would expose individuals to human rights abuses, including returns to situations where individuals would be at risk of human rights abuses. In this regard, we would also welcome IOM's response to a number of human rights recommendations that we have made to the Organization in the course of several reports published by Amnesty International⁴.

Assisted Voluntary Return

Amnesty International is concerned at IOM's role in actively encouraging people living under conditions of duress to return to their countries or regions of origin. As has been noted in UNHCR's Handbook on Voluntary Repatriation, "...[in situations where refugees'] rights are not recognized, if they are subjected to pressures and restrictions and confined to closed camps, they may choose to return, but this is not an act of free will." In the face of individuals being subjected to arbitrary detention or severely restrictive detention regimes, for example, Amnesty International has serious concerns about whether returns can be truly voluntary. We would question what choice an individual has when the only alternative to return with IOM's assistance is to remain in detention for a lengthy or indefinite period of time while "awaiting deportation".

³ According to press reports quoting IOM representatives, 12 of the 14 wished to apply for asylum. Amnesty International would wish to see all 14 having access to UNHCR and as necessary, other independent advice, before concluding that any of the individuals should not be considered to be asylum-seekers.

⁴ See in particular AI, *Australia-Pacific: Offending human dignity – the "Pacific Solution"* (AI Index ASA 12/009/2002), *Afghanistan: Continuing need for protection and standards for return of Afghan refugees* (AI Index ASA 11/014/2002), *UK/EU/UNHCR: Unlawful and unworkable – extra-territorial processing of asylum claims* (AI Index IOR 61/004/2003), *Afghanistan: Out of sight, out of mind – the fate of the Afghan returnees* (ASA 11/014/2003).

We are also concerned that such returns, including returns to a situation of internal displacement, may compound problems of displacement in post-conflict regions and may be unsustainable, leading in many cases to renewed cycles of displacement and leaving individuals vulnerable to human rights abuses.

In situations where UNHCR is engaged in assessing the promotion or facilitation of the repatriation of refugees and other persons of concern such as asylum seekers, IOM should be guided by UNHCR in contemplating the voluntary return of unsuccessful asylum seekers and other migrants.

Information dissemination and assessment of country of origin conditions

In making a decision on whether an individual can voluntarily return to her country of origin, Amnesty International would stress that the decision whether to return or not should in all circumstances be based on an accurate assessment of the human rights situation in the place to which the individual wishes to return. At the same time, the assisting body, in this case IOM, needs to make a determination that the return will take place in conditions of safety and dignity with full respect for the human rights of the returnee.

IOM does not itself carry out the assessment of the human rights situation in the place of origin, and in Amnesty International's view would not be the appropriate body to do so. Amnesty International would therefore welcome clarification from IOM as to whose assessment of these factors it relies on prior to taking the decision to assist an individual to return. This is especially pertinent in situations of detention, where the individual herself might not be in a position to have access to objective and accurate information about the situation in her place of origin. Amnesty International would also make the point that voluntary return should be undertaken to the place of origin or preferred destination of the returnee. It follows, therefore, that the objective assessment of the situation, including the human rights situation, on the ground should emanate not merely from the capital city or a large urban centre, but to the specific place to which the individual wishes to return. This should also be the point to which all returnees are transported by IOM.

Consultations with NGOs

While we are pleased to read that "IOM has launched and is institutionalizing a consultative mechanism with NGOs" we are concerned that we have yet to see

concrete results of this institutionalization.⁵ Since the last Council meeting in December 2002, Amnesty International along with other NGOs has been invited to attend one consultation meeting, organized by the Migration Policy and Research Programme of IOM. While appreciating such initial attempts to build closer links between IOM and NGOs, Amnesty International is concerned that such meetings have not resulted in either institutionalized mechanisms or indeed concrete follow up action.

Although our organizations will not necessarily agree on all issues of common interest, Amnesty International stresses the importance for IOM and the NGO community to continue to engage in constructive dialogue. We would therefore welcome periodic and regular consultations with IOM and, in this respect, would particularly welcome the opportunity to explore together with IOM the possibility of setting up an NGO Focal Point or Liaison Unit within the structure of IOM's Geneva headquarters. This Focal Point or Liaison Unit would be charged with the responsibility of developing and maintaining close links with the NGO community, and with making the Organization accessible to NGOs both in Geneva and in the field.

Migrants' rights

Finally, Amnesty International welcomes IOM's public commitment to 'work towards the effective respect of migrants' rights'⁶. We remind IOM, and all member states represented in this Council, that 'effective respect' for the human rights and dignity of migrants requires a commitment to protecting and upholding these rights that goes beyond mere rhetoric. This demands respect – in policy, law and practice - for all human rights standards applicable to migrants and by which states are bound. We would in this context also urge the member states of this Council who have not already done so, to commit to ratifying the Convention on the Rights of All Migrant Workers and Members of their Families which brings together a range of human rights standards and specifically recognizes them to be applicable to migrant workers and their families.

⁵ Note on IOM Strategy, p. 4.

⁶ Note on IOM Strategy, p. 2.

Recommendations

Amnesty International

- requests IOM to give assurances that it will abide by international human rights and refugee law standards; in particular to standards relating to arbitrary and unlawful detention, conditions of detention, and the principle of *non-refoulement*;
- in this regard, requests IOM to respond to a number of recommendations that Amnesty International has made to the Organization in the course of several human rights reports;
- requests IOM to further institutionalize a consultative mechanism with NGOs, in the form of a Focal Point or Liaison Unit based within the structure of IOM's Geneva headquarters that would be charged with the responsibility of developing and maintaining close links with the NGO community.