

# REFUGEES: HUMAN RIGHTS HAVE NO BORDERS

## Conclusions and Recommendations

### 1997 Refugee Theme Campaign

Over the past decade widespread disregard for human rights has caused one refugee crisis after another. At the same time, the system devised to protect refugees has fallen into disarray, with states showing increasing reluctance to host refugees. Every day governments are violating the principle of *non-refoulement*, the fundamental basis of refugee protection. UNHCR, the agency set up to guarantee international protection for refugees, appears unable to ensure that states fulfil even their minimum obligations towards those forced to flee their country.

The 1997 Amnesty International report, *Refugees: Human rights have no borders*, outlines why people flee, why they need protection and the system that should, but does not always, provide that protection. It demonstrates that refugee crises cannot be resolved unless the underlying human rights issues are addressed. Amnesty International therefore calls on all governments to take concrete measures to prevent human rights violations and to live up to their obligations under international law to protect the fundamental human rights of their citizens. It also urges all armed opposition groups to abide by the principles of international humanitarian law. If respect for human rights was universal, no one would be forced to flee their home in search of protection abroad.

One essential element in restoring respect for human rights in countries where abuses have been widespread is ending impunity. Amnesty International calls on all governments to end impunity by investigating reports of human rights violations and bringing those responsible to justice. This would be a major step towards breaking the cycle of violence and giving refugees the confidence to return home.

Amnesty International also believes that many armed conflicts that cause refugees to flee are fuelled by outside powers that supply arms, personnel and expertise to protagonists known to disregard human rights. It therefore calls on all governments to end transfers of equipment and training for military, security or police forces that are used to commit or facilitate human rights abuses.

The international system to protect refugees is in crisis. Many people who deserve protection are falling through the net: denied access to asylum procedures; wrongly told they do not qualify as refugees; sent back to countries where they will not be safe. However, instead of enhancing refugee protection, governments are trying to restrict even further the definition of who qualifies for protection and the degree of protection they should receive. The stark reality is that governments, both individually and collectively, are unwilling to commit themselves to a greater degree of protection. This has led Amnesty International to conclude that this is not a time to call for bold new measures by the international community, such as the development of new international standards. Rather, it is a time to remind the world's governments of their existing obligations towards refugees and to urge them to ensure that these minimum standards are respected. Amnesty International calls on the international community to ensure that the full framework provided by international human rights law is applied to the protection of refugees.

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Amnesty International believes that basic human rights principles provide an inviolable standard of protection for all people, regardless of asylum decisions made by individual states. The organization opposes the return of anyone to a situation where they may be at risk of execution, “disappearance”, torture or imprisonment as a prisoner of conscience. This position is the basis of Amnesty International’s intervention on behalf of refugees.

The main thrust of Amnesty International’s work is to combat the human rights abuses that force so many people to flee their homes in terror. In its 1997 campaign on the human rights of refugees, Amnesty International is focusing on the way governments treat refugees. The following recommendations outline the minimum steps necessary to protect the human rights of refugees so that they are safe from further harm and are treated with the dignity that their tragic circumstances demand.

## TO GOVERNMENTS IN COUNTRIES OF ASYLUM

People usually become refugees because their human rights are at grave risk. They sever the link with their own state, and seek the protection of another state, because their own government is persecuting them or cannot be relied on to protect them. When refugees seek the protection of another state, they rarely receive a warm welcome. Many are turned back at the border without a hearing; detained as “illegal immigrants”; subjected to further violence or squalid conditions in refugee camps; put through summary and unfair asylum procedures; or sent back to the country they fled. Amnesty International urges governments in countries of asylum to:

### 1. **Build awareness and public support for the rights of refugees**

Governments in countries of asylum often obscure the relationship between human rights violations and the protection needs of refugees. As the number of those seeking protection increases, governments seem less willing to live up to their international obligations. Many governments which have offered people asylum in the past are now restricting access to their countries, often justifying such actions on the grounds that they are responding to economic difficulties or anti-immigrant attitudes and growing xenophobia within their societies.

- Host countries should conduct public information campaigns drawing attention to the human rights concerns underlying the plight of refugees and the obligations of states to protect them.

### 2. **Ratify and implement international treaties**

Ratification of international treaties relating to the protection of human rights and the rights of refugees demonstrates states’ commitment to the values endorsed by the international community and allows them to be held accountable for their actions.

- All states should accede to and implement the 1951 Convention relating to the Status of Refugees (the UN Refugee Convention) and its 1967 Protocol, as well as relevant additional regional refugee treaties. They should also accede to and implement international and regional human rights treaties, including in particular the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture).
- All states that have declared reservations to the UN Refugee Convention, or maintain a geographical limitation incompatible with the intention of the 1967 Protocol, should withdraw them and extend the scope of protection to all refugees.
- All states should apply the full range of refugee and human rights treaties in determining who is entitled to protection as a refugee. Their assessment of claims should be based on international and regional refugee instruments and relevant human rights instruments.

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### 3. Stop forcibly returning refugees to countries where they are at risk of serious human rights violations

The fundamental basis of international refugee law is the established principle of *non-refoulement*. This prohibits states from sending anyone against their will to a country where they would be at risk of serious human rights violations. It is a norm of customary international law, binding on all states irrespective of whether they are party to the UN Refugee Convention, and states cannot derogate from it. Other international human rights instruments also prohibit *refoulement* in all cases where a person would be at risk of serious human rights violations.

- States must scrupulously observe the principle of *non-refoulement*, and not forcibly return refugees, in any manner whatsoever (including rejection at the frontier and interdiction at sea), to frontiers of territories where they may face serious human rights violations.
- States should adhere to the full range of other international human rights standards so that no one is sent back to a situation where they may face grave human rights violations, such as torture, “disappearance” or execution.
- States should ensure that all asylum-seekers are referred to an independent and specialized body responsible for deciding asylum claims. Border officials should never decide claims; they should be instructed to refer each asylum-seeker to the responsible body.
- States should ensure that the principle of *non-refoulement* applies irrespective of whether an asylum-seeker has been formally granted refugee status.
- States should not penalize asylum-seekers for illegal entry.
- States should not interpret the term “coming directly” in Article 31 of the UN Refugee Convention in a manner that excludes refugees who merely travel through another country before applying for asylum.

### 4. End practices that prevent or deter asylum-seekers pursuing claims

Article 14.1 of the Universal Declaration of Human Rights states that “everyone has the right to seek and to enjoy asylum from persecution”. While governments are entitled to control immigration and entry to their territory, they should ensure that asylum-seekers have access to a fair and satisfactory asylum procedure. They should ensure that there are no restrictions on entry or border control measures that in practice obstruct access. They should not detain asylum-seekers in violation of international law. They should not deny asylum-seekers the means of adequate subsistence while their asylum claims are being considered, which can in practice force refugees to withdraw their claims because they cannot survive.

- States should ensure that any restrictive measures, such as visa controls, carrier sanctions and interdictive border controls, do not in effect prevent asylum-seekers obtaining access to their jurisdiction or asylum procedures.

- All asylum-seekers, in whatever manner they arrive at the border or within the jurisdiction of a state, must be referred to the body responsible for deciding asylum claims.
- Detention of asylum-seekers should normally be avoided. No asylum-seeker should be detained unless it has been established that detention is necessary, is lawful and complies with one of the grounds recognized as legitimate by international standards. In all cases, detention should not last longer than is strictly necessary. All asylum-seekers should be given adequate opportunity to have their detention reviewed by a judicial or similar authority.
- Governments should never detain asylum-seekers in order to deter people from seeking asylum in their country, to impede their asylum claim or to induce them to abandon their claim.
- Governments should not deny asylum-seekers access to adequate means of subsistence while their asylum application and any appeal is being considered.

#### **5. Provide refugees with a fair and satisfactory asylum procedure**

A fair and satisfactory asylum procedure is the only effective way to ensure that people who would be at risk of serious human rights violations if returned to a particular country are identified and offered protection.

- In each state, the body responsible for deciding asylum claims must be independent and specialized, with sole and exclusive responsibility for dealing with such claims. The decision-makers must have expertise in international human rights and refugee law. Their status and tenure should encourage the strongest possible guarantees of their competence, impartiality and independence. Decision-makers should be provided with objective and independent information about the human rights situation in asylum-seekers' countries of origin or any countries to which they might be sent.
- Asylum applicants should have the opportunity to be heard in person by the decision-maker when their claim is examined in the first instance. There should be an individual and thorough examination of all the circumstances of each case. Applicants should have adequate time to prepare their case.
- At all stages of asylum and related procedures, including expulsion or detention hearings, an asylum-seeker should have the right to legal counsel, be notified of that right, have access to qualified interpreters, and have the right to contact UNHCR and relevant non-governmental organizations.
- Asylum-seekers should be given, in a language they fully understand, the necessary guidance about the procedures to be followed and full information about their procedural rights.

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- If their claim is initially rejected, they should be given the reasons for the decision in writing, in a language they fully understand, so that they can pursue satisfactorily any appeals.
  - Every asylum-seeker must have the right to appeal. Appeals should normally be of a judicial nature and heard by a different body than that which heard the case in the first instance. An appeal should include a full examination of the case given the gravity of the interests at stake.
  - All asylum-seekers must be allowed to stay in the host country during the asylum determination procedure, including any appeals.
  - All officials and procedures dealing with asylum-seekers should take into consideration the special situation of refugees. It is not always possible for an asylum-seeker to “prove” every part of her or his case. If an asylum-seeker’s account is credible, she or he should be given the benefit of the doubt, unless there are good reasons to the contrary.

#### **6. Accept responsibility for examining asylum claims**

Increasing numbers of governments are avoiding their responsibility for examining asylum claims or transferring it to other countries. They use “safe third country” practices, measures such as “white lists” which exclude asylum-seekers based on the presumption that the country they fled is safe, readmission agreements between states which lead to the automatic return of people from one country to another, temporary protection schemes or other measures where the substance of the claim is not adequately assessed.

- The state in which an asylum-seeker lodges an asylum claim should normally assume responsibility for substantively examining that claim.
- All “safe third country” practices and similar bilateral and multilateral arrangements that allow asylum-seekers to be sent to a country where they would be at risk of direct or indirect *refoulement* or serious human rights violations should be ended immediately.
- Governments should not transfer their responsibility for examining an asylum claim to a third state unless they have received explicit consent that the refugee will be admitted and explicit guarantees that the applicant's claim will be examined in a fair and satisfactory asylum procedure and that the asylum-seeker will not be subject to *refoulement*.
- Procedures for dealing with claims presumed to be “manifestly unfounded” or submitted by asylum-seekers from countries presumed to be safe should offer the opportunity for a thorough and substantive examination of the claim using fair and satisfactory methods.
- While temporary protection schemes, or the granting of *de facto* or some form of humanitarian status, may sometimes provide interim protection, they should not be used to deny asylum-seekers access to a determination of the substance of their claim under the UN Refugee Convention. All those who are granted some form of interim protection must be

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given an opportunity to have their individual asylum claim assessed in a fair and satisfactory procedure, to determine if they are still in need of protection, before a decision is made to remove them from the country of asylum.

## **7. Recognize and meet the special needs of particular groups of asylum-seekers**

Certain categories of asylum-seekers have special protection concerns due to their particular vulnerability or circumstances. For example, the protection needs of women, children and those persecuted because of their sexual orientation are often misunderstood or wrongly interpreted.

- All states should, as a minimum, adopt and implement the recommendations of the UNHCR Guidelines on the Protection of Refugee Women and the numerous EXCOM Conclusions concerning refugee women. These recognize and address the particular concerns of women while in flight, in camps and during asylum determination procedures.
- Governments should recognize that women may be forced to flee as a result of persecution in the form of sexual violence or other gender-related abuses, as acknowledged by the world's governments in the Beijing Declaration and Platform for Action adopted in 1995. Governments should ensure that asylum decision-makers understand that sexual violence and other gender-related abuses can constitute persecution under the UN Refugee Convention definition of a refugee.
- Governments should offer protection to women who fear persecution because they will not conform to, or have transgressed, gender-discriminating religious or customary laws or practices of their society. Governments should recognize that asylum claims on these grounds fall within the ambit of the UN Refugee Convention and international human rights instruments.
- Governments should take measures, including following guidance issued by UNHCR, to address the special protection needs of unaccompanied minors and of children in their own right. States should also implement the provisions of the Convention on the Rights of the Child relating to children seeking refugee status.
- Governments should recognize that those persecuted because of their sexual orientation should be given protection under the UN Refugee Convention.

## **8. Protect the rights of refugees in situations of mass exodus**

Mass human rights violations cause mass exodus. In some circumstances, when hundreds of thousands of people flee their country, governments may not be in a position to examine every individual case, but will grant asylum to the whole group. In effect, there is a *prima facie* presumption

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of refugee status. Before any person who has been part of a mass exodus is returned to the country they fled, they should be given an opportunity to identify themselves as having individual grounds for continuing to fear persecution if returned.

- States should explicitly endorse the fundamental obligations established in EXCOM Conclusion 22:
  - (i) In situations of mass exodus asylum-seekers should be admitted to the state where they first seek refuge. If that state is unable to admit them on a long-term basis it should always admit them on at least a temporary basis pending arrangements for a durable solution. In all cases the fundamental principle of *non-refoulement*, including non-rejection at the frontier, must be observed scrupulously.
  - (ii) Asylum-seekers in mass exodus situations should not be penalized or treated unfavourably solely on the grounds that their presence in the country is considered unlawful. They should not be subjected to restrictions on their movements except those which are necessary in the interest of public health and public order.
  - (iii) States where large groups of refugees seek asylum should respect the refugees' fundamental civil rights and should ensure that they have the basic necessities of life. The refugees should not be subjected to cruel, inhuman or degrading treatment and should not suffer discrimination.
  - (iv) States should provide the means for asylum-seekers to stay in a place of safety. This should not be close to dangerous border areas.
  - (v) All governments should provide effective assistance, including financial support and resettlement opportunities, to states that host large numbers of refugees, for as long as it is required.
- Governments, in consultation with UNHCR and non-governmental organizations, should agree standards for the use of temporary protection schemes in situations of mass exodus. Such temporary protection schemes should not be used by states to undermine existing standards under the UN Refugee Convention.
- Governments should ensure that all those given temporary protection have the right to have their individual case for asylum examined before they are removed from the host country.

## TO THE INTERNATIONAL COMMUNITY

Refugees have been forced to sever the bond with their own state and therefore have an exceptional status – they are of international concern. A special UN agency, UNHCR, was established to protect them and to provide them with assistance. However, at the international level, there is no coordinated scrutiny or monitoring of refugee protection, and considerations other than human rights often drive

refugee policies. The crisis in refugee protection and related human rights issues are not being addressed in a comprehensive way. Amnesty International urges the international community to:

### 9. Base repatriation programs on human rights standards

The internationally agreed standard on repatriation states that: “the voluntary and individual character of repatriation and the need for it to be carried out under conditions of absolute safety...should always be respected.” Recent experience shows that many repatriations are not genuinely voluntary; rather there is premature, forced and coerced return to less than safe conditions. Equally fundamental to any decision that a refugee can repatriate is an assessment of their safety upon return, measured according to human rights standards. Any decision on repatriation should be based on an independent, impartial and objective assessment of the human rights situation in the country of return, with a view to the durability of that safety.

- The principle of *non-refoulement* must never be violated by repatriation schemes. Repatriation programs should include human rights guarantees at all stages of the return. Repatriation should not be imposed until there is a fundamental and lasting change in the human rights situation in the country of return.
- The human rights situation in the country of return should be subject to independent and impartial assessment based on publicly available information before, during and after any repatriation. International human rights treaty bodies, thematic mechanisms and country rapporteurs should have an active role in this assessment.
- The international community, including governments, international organizations and non-governmental organizations, should immediately agree on how to provide an independent human rights assessment and monitoring system for repatriation programs. They should determine what type of organizations and agencies should be involved on an ongoing basis.
- Efforts should be made to ensure the involvement of a representative cross-section of the refugee community in assessing when return is possible.
- Governments in countries from which refugees have fled should cooperate with UNHCR, other international organizations, and non-governmental human rights and humanitarian organizations in the pursuit of durable solutions to refugee problems. They should allow access to their countries so that the human rights situation can be properly assessed throughout any repatriation program.
- Individuals should have the right not to repatriate without an adequate opportunity for an individual assessment of their asylum claim.
- When refugees are repatriating spontaneously rather than as part of an organized program, governments, UNHCR and other agencies should continue to exercise responsibility for

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ensuring that refugees are not put under undue pressure to return, and that measures are taken to ensure the safety of returning refugees.

### **10. Strengthen international solidarity and responsibility sharing**

All states should share equitably the responsibility for hosting refugees and funding their support. States should not bear a disproportionate share of the responsibility simply because of their geographic location. States hosting refugees should receive the full support of the international community. International organizations responsible for providing refugee protection and assistance should be able to operate without political interference by governments and with secure funding.

- UNHCR funding arrangements should urgently be reviewed to create an adequate mechanism for funding ongoing programs and, in particular, to improve the support for those states which bear the overwhelming responsibility for hosting refugees.
- UNHCR should be enabled to implement in full its protection mandate in a consistent manner and should be shielded from the political agendas of donor countries.
- "Responsibility sharing" should not be used to prevent refugees from seeking asylum in the country of their choice or to limit protection to the region of origin. All countries should share the responsibility for hosting refugees by making resettlement – one of the “durable solutions” – a viable option.

### **11. Make the international system more accountable**

At present little information is provided by governments about the protection they offer refugees and how they apply international refugee law. This makes it more difficult to hold governments to account if they fail to live up to their obligations towards refugees.

- States should comply with their reporting obligations under the UN Refugee Convention. UNHCR should submit these reports to the UN General Assembly annually.
- An independent, impartial mechanism should be established to monitor the compliance of States Parties to the UN Refugee Convention and its 1967 Protocol.

### **12. Ensure that internally displaced people are protected**

Millions of people have fled from the risk of human rights abuses but have not crossed an international border. Indeed, many people have been prevented from leaving their country as a result of efforts by other governments to restrict access to their countries. While the internally displaced often flee for the same reasons as asylum-seekers who have fled to other countries, only people outside their country of origin can receive international protection as refugees. The discrepancy between the protection accorded to refugees outside their country and the lack of protection for those

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who are internally displaced should receive greater international attention and concern. The issue of the protection and assistance needs of the internally displaced is especially urgent in view of the increased number of such people in many parts of the world and their particular vulnerability to gross human rights abuses.

- Measures taken by the international community for the protection of internally displaced people should not limit their right to seek and to enjoy asylum in other countries.
- All states should support the work of the Representative for Internally Displaced Persons of the UN Secretary-General by allowing access to their countries and by providing adequate resources. The role of the Representative should be strengthened to enable the Representative to identify perpetrators of human rights abuses against internally displaced people so as to ensure that they are held to account.
- The international community should take concrete measures to ensure that internally displaced people are protected. The Representative should develop guidelines for the protection of internally displaced people, based on the full range of existing human rights and humanitarian law, addressing any current gaps in the protection of internally displaced people.
- Governments and armed opposition groups in control of territory should allow access to displaced people to relevant UN, intergovernmental and non-governmental organizations working on behalf of the internally displaced.