

Amnesty International's concerns at the 56th session of the Executive Committee of the United Nations High Commissioner for Refugees

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Introduction

Around the world Amnesty International continues to document serious violations of the human rights of refugees, asylum seekers and internally displaced persons (IDPs). The reluctance of states to provide access to procedures and effective protection to individuals who are forced to leave their homes and places of origin remains of concern to the organization. As an observer at the 56th session of the Executive Committee (EXCOM) of the United Nations High Commissioner for Refugees (UNHCR) Amnesty International takes the opportunity to present its concerns on some of the major contemporary challenges in international refugee protection.

Amnesty International reminds the members and observers of the EXCOM and the UNHCR that the purpose of international protection is fundamentally to enable a refugee to have access to and to enjoy full respect for her human rights, including through the principle of *non-refoulement*. However, an unbalanced focus by the international community on refugee numbers and statistics frequently downplays and obscures the human rights of the human beings behind these figures; including when, in the words of the *Note on International Protection*¹, “some politicians and elements of the media play on xenophobic fears and [seek] to reduce asylum-seekers and refugees to statistics which must be kept down.”

While much is made of the large numbers of refugees returning, or being expected to return, to their country of origin; such as for example in the case of Afghanistan or Sudan, the mere fact of the return of large numbers does not in itself guarantee that the return is sustainable and is taking place in safety and dignity. Nor does such return guarantee that the individual returnee will be protected; including being able to work, to educate her children, to be free from gender-based violence. Equally, while searching for a durable solution, the plight of the individual refugee and her protection needs must remain at the centre of any response.

¹ UNHCR, Note on International Protection, A/AC.96/1008, note 9, 4 July 2005

Rushing to achieve solutions which are unlikely to prove durable in the long term or to place refugees at risk must be avoided, by host states and by the international community, and it is also necessary to ensure that solutions are not imposed on individuals.

In this document, Amnesty International sets out four thematic areas that are of pressing concern to the organization, illustrated by specific situations in countries that the organisation has either visited or engaged in research and advocacy in the period since the last meeting of EXCOM. These thematic areas are; protection from *refoulement*, access to procedures, access to solutions, and protection of IDPs.

1. Protection from *refoulement*

“Reaffirms the fundamental importance of the observance of the principle of non-refoulement...of persons who may be subjected to persecution if returned to their country of origin irrespective of whether they have been formally identified as refugees.”²

The fundamental principle of *non-refoulement* prohibits the return in any manner whatsoever of any person to a situation where she would be at risk of torture or other serious human rights violations. Threats to or breaches of this principle have been an especially worrying feature of the practice of states in the last year. Amnesty International is concerned that refugees and asylum seekers on a number of occasions have been threatened with or have been forced to return to a situation where they are at risk of torture or other serious human rights violations. The organisation reminds member and observer states that the principle of *non-refoulement* is a norm of customary international law from which any departure is prohibited. In addition, Article 3 of the Convention Against Torture (CAT), to which a significant number of EXCOM member and observer states are parties, prohibits the expulsion, *refoulement* or extradition of any person to a situation of torture. The absolute prohibition on torture and ill-treatment includes an absolute prohibition on transferring any person to any state where there is a risk that they will be tortured or subjected to cruel, inhuman or degrading treatment. This is especially relevant in cases where diplomatic assurances³ are sought in order to bring about the return or transfer of persons, including asylum seekers. Amnesty International is of the view that states which violate international law and systematically torture or ill-treat detainees also systematically deny it and take steps to hide it. Therefore, any assurances made by those states that a person will not be tortured or ill-treated cannot be treated as reliable. On May 20, 2005, the UN Committee Against Torture ruled in the case of *Agiza vs. Sweden* that “[t]he procurement of diplomatic assurances, which, moreover, provided no mechanism for their enforcement, did not suffice to protect

² EXCOM Conclusion No. 6 (XXVIII), 1977.

³ Diplomatic assurances are guarantees made by the country of origin to the host country that it will not subject to ill-treatment the person whose return it is seeking.

against this manifest risk [of torture upon return].⁴ Amnesty International has documented cases of the return to torture and ill-treatment of persons, including asylum seekers, following the acceptance of diplomatic assurances by the sending state.⁵

1.2 Refugees in need of a safe haven – the case of Uzbekistani refugees in Kyrgyzstan

Following the disturbing events in the eastern city of Andizhan in Uzbekistan in May this year, where government troops reportedly fired on thousands of mainly unarmed and peaceful demonstrators, killing hundreds of people, scores of men, women and children fled to neighbouring Kyrgyzstan in search of international protection. In its reports *Refugees in Need of a Safe Haven*⁶ and *Uzbekistan in Pursuit of Refugees in Kyrgyzstan*⁷, Amnesty International described the Uzbekistani government's unlawful efforts to promote the forcible return of refugees to Uzbekistan through informal and formal pressure. Informal pressure took the form of threats and financial inducements to relatives at home in Andizhan to go and plead for their return as well as clandestine visits by the Uzbekistani Ministry of National Security officers to individual refugees in camps. Formal pressure included the use of inter-government channels, by for example, issuing warrants for refugees to appear as witnesses to crimes. There have also been reports of co-operation by the authorities of Kyrgyzstan to effect these returns. Amnesty International strongly condemns any state action that seeks to undermine the basic principles of refugee protection.

On 29 July, UNHCR secured the evacuation of 439 Uzbek refugees who were airlifted out of Kyrgyzstan to a temporary centre in Romania. Over the next few months they will be resettled in third countries that have offered them protection. On 16 September another 11 refugees who had remained in detention were airlifted to London and are also awaiting resettlement. However, Amnesty International remains deeply concerned about four remaining Uzbeks in Kyrgyzstan as, well as of the fate of four Uzbek men who were forcibly returned to Uzbekistan on 9 June.

In June 2005, Amnesty International registered its concern at the lack of access to asylum procedures for people who may have crossed the Uzbekistan border into Kyrgyzstan in search

⁴ UN Committee Against Torture, Decision, Communication No. 233/2003, CAT/C/34/D/233/2003, May 20, 2005.

⁵ Amnesty International has criticised the use of diplomatic assurances in a number of cases documenting that they are not reliable or adequate, including the case of two Egyptian men who were forcibly returned from Sweden (AI Index: MDE 12/035/2001); the case of a Saudi Arabian man who was forcibly returned from the USA (AI Index: MDE 23/004/2000); and a Sri Lankan man who was forcibly returned from Canada: (AI Index: AMR 20/002/1998).

⁶ See Amnesty International: *Kyrgyzstan: Refugees in Need of a Safe Haven* (AI Index: EUR 58/008/2005), 30 June 2005

⁷ See Amnesty International: *Kyrgyzstan: Uzbekistan in Pursuit of Refugees in Kyrgyzstan: A Follow-up Report* (AI Index: EUR 58/016/2005), 2 September 2005

of international protection in other places and at other times since the events in May. Because of the concealed nature of the problem, it is difficult to gauge the number of people it involves. Reports suggest that the problem is growing and now concern both the southern border area and the north of Kyrgyzstan. Most refugees are hiding in Kyrgyzstan without any proper registration and access to asylum procedures and this has made them particularly vulnerable to random police checks. Without registration they are also unable to access adequate housing and healthcare.

Four men remain in detention in Kyrgyzstan

Four Uzbek men, whose status remains disputed, are still held in detention in Kyrgyzstan. UNHCR, which considers all four men of concern to the agency, has formally recognized one of the four as a refugee under its mandate and continues to make efforts to determine the status of the other three men. The Kyrgyz Migration Service (KMS) has not recognized any of the four as refugees and initially denied refugee status to all four men. However, on 18 August a Kyrgyz court overruled the KMS and directed the latter to reconsider their claims. The KMS was given four weeks to appeal against the court's decision but at the time of writing no decision has been made known to Amnesty International. The organisation strongly condemns any moves to forcibly return any of the four men in detention, as it believes they are at serious risk of torture on return and may even be sentenced to death. Amnesty International urges the Kyrgyz authorities to transfer the four men into the care of the UNHCR as a matter of urgency.

Forcible return to Uzbekistan

Four asylum seekers were forcibly returned to Uzbekistan on 9 June and were initially reported to have been held incommunicado in Andizhan prison. In late July a well-informed source inside Andizhan told Amnesty International that, following alleged torture, one of the four had been transferred from prison to intensive care in an Andizhan hospital. There were also unconfirmed reports that one of the four men may have died as a result of his treatment in prison, a claim the Uzbekistani general prosecutor's office dismissed as "fabrication" in a press statement on 23 August. Despite concerted efforts by the UNHCR and other international agencies it has not been possible to establish their whereabouts since their forcible return to Uzbekistan.

Recommendations

Amnesty International

- urges the Kyrgyz authorities to ensure that none of the four Uzbek asylum seekers in detention is forcibly returned to Uzbekistan in contravention of the principle of *non-refoulement*;
- urges the Kyrgyz authorities to ensure that all asylum seekers in its territory are granted access to fair and satisfactory asylum determination procedures. Asylum

seekers and refugees in Kyrgyzstan should have access to effective protection, including protection from *refoulement* and access to an adequate standard of living, including healthcare and adequate housing.

- urges the Uzbekistani authorities to give UNHCR immediate, unfettered access to the four men forcibly returned to Uzbekistan, in line with their mandate responsibility, in order to monitor their well-being in accordance with international standards;
- calls on the international community to ensure that all Uzbek refugees who were transferred to temporary centres outside the region are granted timely access to an appropriate durable solution.

2. Access to procedures

*“Some countries continue to penalize asylum-seekers for unauthorized entry and to detain them, often for lengthy periods, and sometimes on a mandatory basis. Such practices prejudice fair process, as they can diminish access to legal assistance and interpretation services, and may exacerbate prior trauma... In many States, asylum seekers and refugees who have gained entry do not have valid identity documents and are vulnerable to harassment, arrest, detention and deportation ”*⁸

This year's *Note on International Protection* echoes many of Amnesty International's concerns regarding the multiple barriers asylum seekers face in trying to access fair and satisfactory asylum determination procedures. The resulting dramatic limitations on the asylum space in several countries have seriously jeopardised the fundamental human rights of persons who have arrived in these countries in search of international protection from persecution and grave human rights violations. In addition to denying asylum seekers and refugees fundamental rights such as protection from arbitrary detention and unlawful expulsion, or the right to an adequate standard of physical and mental health, the limitations on access to procedures, as well as the inadequacy of such procedures, have placed individuals at risk of *refoulement*.

2.1 Flawed procedures jeopardise refugee protection - the case of Greece

Gaps in the current legislative framework in Greece often results in violations of human rights of refugees, including the right to freedom from arbitrary detention or expulsion, protection from *refoulement* and the right to seek and to enjoy asylum.

⁸ UNHCR, Note on International Protection, A/AC.96/1008, note 15 & 12, 4 July 2005

Lack of access to fair and satisfactory asylum procedure

There has been a sharp decrease in the recognition rate of refugees in Greece in recent years. In 2004, 11 people were recognised as refugees under the 1951 Refugee Convention and 22 were granted protection under humanitarian grounds. Another 3731 applications were rejected and in 623 cases the examination was stopped before a decision was reached. In total the recognition rate for the first nine months of the year was 0.3 per cent while the granting of protection status (refugee or otherwise) was 0.9 per cent.

A major problem faced by persons seeking international protection in Greece is the inability to communicate with the authorities. During an Amnesty International visit to the Asylum Unit in Athens, one interpreter who was a Mandarin-speaker was conducting interviews with all of the applicants, regardless of nationality, often with the help of other applicants acting as interpreters in a second or third language. The Unit's representatives used Greek to communicate with the applicants, interspersed with English, in which the representatives displayed minimal competence. The organization is also concerned that authorities, especially in border areas, may actively be impeding refugees' access to asylum through the inadequate provision of competent interpretation services, or the lack of provision to asylum applicants, in a language they could understand, of information about the asylum procedure and their rights.

Further allegations received by Amnesty International suggest that officials stationed at border areas, and particularly in the area of the Greek-Turkish border, have been expelling persons from the territory of Greece without providing those in need of international protection with the opportunity to seek asylum or to challenge their removal on other grounds, including human rights grounds. Individuals who had entered Greece without documentation were allegedly put in military trucks, taken to the banks of the river Evros, on the land border with Turkey, and left to swim to the other side.⁹ Such practices are in flagrant violation of the principle of *non-refoulement* as well as the prohibition on arbitrary and collective expulsion.

Amnesty International is also concerned by the provision in asylum legislation in Greece allowing the authorities to "interrupt" the examination of asylum claims in cases of "arbitrary departure" of applicants from their stated place of residence. The provision stipulates that a period of three months is allowed for an appeal to be lodged against the decision of "interruption" and for the decision to be annulled if it is proven that the relocation was due to reasons beyond the applicant's control. The organisation is concerned that the way this provision is applied renders it impossible for applicants to know whether the examination of their application has been "interrupted" and thus effectively limits their right to appeal against a decision of "interruption". It also limits the right of asylum applicants transferred to Greece

⁹ These practices are, however, very difficult to document and the problem is compounded in border areas by the fact that these expulsions allegedly take place in areas which are under military control and thus access to them is restricted.

from other European states on the basis of the Dublin II Regulation, to have their claims examined in full. Rather, based on a decision to “interrupt”, the Greek authorities refuse to examine the claims of those returned to Greece on Dublin grounds and instead issue immediate deportation orders exposing people to a risk of *refoulement*.

Detention

Amnesty International’s findings suggest that asylum seekers in detention, many of whom have been detained on grounds of “illegal entry” in contravention of international refugee law, may in fact be prevented, directly or indirectly, from seeking refugee protection while in detention. It appears that a considerable number of persons detained are not being 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. The information collected by Amnesty International during visits to detention centres suggests that some of the detainees may be persons in need of international protection, and therefore, their detention should only be carried out in certain limited circumstances in accordance with international standards, including UNHCR Guidelines¹⁰.

A particular area of concern is the reported detention of children, and the authorities’ treatment of unaccompanied minors. There have been instances of unaccompanied minors being detained with adults for three months and subsequently released without the Prosecutor for Minors being notified, and thus without their safety having been secured. Amnesty International is concerned that many minors might have been trafficked after their release as a result of this failure to ensure their protection.

Recommendations

Amnesty International urges the Greek authorities to ensure that:

- The asylum determination procedure meets international standards of fairness, timeliness and impartiality including access to free, independent and competent legal advice at all stages of the asylum process;
- Adequate interpretation facilities, including written information on asylum determination in a language which applicants understand, are made available to applicants throughout the asylum process as well as to detainees in border police stations and detention centres;
- The current asylum legislation and its application do not contravene the spirit of the Dublin II Regulation and provide for the examination in full of the applications of asylum claimants being transferred to Greece on Dublin grounds;

¹⁰ UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers, February 1999.

- Mechanisms are put into place to ensure the right of all detainees to challenge the lawfulness of their detention or any decision to expel, including an effective right to appeal;
- Detention of unaccompanied children is prohibited and there is a presumption against the detention of individuals such as women with children;

3. Access to solutions

“The ultimate goal of international protection is to achieve a durable solution for refugees.”¹¹

While emergency assistance and protection that is provided in the immediate aftermath of a crisis is indispensable to protect the lives and dignity of displaced persons, Amnesty International is concerned that far too often refugees are forced to live for years in a protracted situation and, while waiting for a durable solution, they are unable to exercise their fundamental human rights. The organization believes that refugees should be granted timely and durable access to protection, including a secure legal status that will enable them to assert their fundamental human rights, and seek effective redress if these are denied to them.¹² The three durable solutions, of voluntary repatriation, local integration and resettlement, are all essential tools in the provision of protection to refugees, and it is essential that all three are utilised as appropriate to each specific refugee situation. This includes taking into account as far as possible the intentions of the individual refugee, including determination of the best interest of the child. As with the provision of refugee protection, Amnesty International considers that the identification of durable solutions should involve participation from the refugee herself, in recognition of the fact that the human rights and inherent dignity of the refugee require her participation in identifying a solution to her plight.

The organization hopes that the Conclusion on Local Integration that should be adopted by this EXCOM will highlight the importance of this durable solution in resolving the plight of significant numbers of refugees who are currently living in a situation of limbo for protracted periods of time in countries of asylum. While self reliance is an important tool on the road to achieving a durable solution, Amnesty International does not believe that it can or should in itself constitute a solution or indeed provide a substitute for the international protection to which all refugees are entitled. The organization also reminds member and observer states to EXCOM that international human rights law obliges state parties to uphold the fundamental human rights to which all refugees are entitled by virtue of their humanity, including the right

¹¹ EXCOM Conclusion No. 90 (LII), 2001

¹² It is noteworthy in this regard that the Swiss Forum for Migration (SFM) has concluded in its survey conducted within the framework of the Convention Plus initiative that the most important motivation for the onward movement of refugees surveyed was the lack of a secure legal status formally conferring protection. SFM, *Movements of Somali refugees and States' responses thereto: Abridged Version of Main Results*, 2005.

to work and the right to an adequate standard of living, regardless of whether these are being provided in the context of self reliance or a durable solution.

3.1 Solutions being imposed – the case of Montagnard refugees in Cambodia

A Memorandum of Understanding (MOU) signed by the governments of Cambodia and Viet Nam and the UNHCR in January 2005 aimed to settle issues relating to ethnic minority Montagnard people who fled the Central Highlands of Viet Nam to Cambodia. At the time of writing, Amnesty International understands that 286 refugees have been resettled to the United States, Canada and Finland; and that 423 refugees are currently in sites in Phnom Penh awaiting resettlement. The MOU provides, *inter alia*, that the parties to the tripartite agreement will return to Viet Nam those refugees who do not wish to resettle in a third country nor to return to Viet Nam “in an orderly and safe fashion and in conformity with national and international law”. Since the beginning of the year more than 60 recognized refugees have opted to return to Viet Nam rather than be resettled.

Amnesty International considers that the MOU contains significant gaps which may serve to diminish the protection of the fundamental human rights of Montagnard refugees, particularly for those Montagnards who have returned to Viet Nam. Whereas the MOU contains a commitment by the Vietnamese authorities that returnees will not be punished for illegally leaving the country, this does not preclude the punishment of returnees by the authorities for peaceful expression of religious or political beliefs.

Amnesty International remains seriously concerned about the human rights situation in the Central Highlands, where there is no guaranteed effective access for independent human rights monitors to the region, including international organizations. While UNHCR delegates have undertaken several visits to the region, Amnesty International is concerned that they may not have been given unfettered access to monitor and report on the human rights situation and well-being of returnees in conditions that guarantee security and confidentiality for their sources. The organization considers that provisions for monitoring the treatment and wellbeing of returnees are inadequate, and in present conditions cannot properly be carried out independently of the Vietnamese authorities.

Amnesty International has welcomed the fact that Cambodia is one of the few countries in the region to have signed the Refugee Convention and its 1967 Protocol, and appreciates that hundreds of Montagnard refugees have been resettled to third countries from Cambodia under the auspices of the UNHCR. However the organization has been informed of credible reports which it is now following up of Montagnard asylum-seekers continuing to be forcibly returned to Viet Nam from neighbouring Cambodian provinces. Amnesty International reminds the Government of Cambodia of its obligations under the principle of *non-refoulement*. The organization considers that the forcible return of Montagnard refugees and asylum seekers to Viet Nam from Cambodia constitutes a violation of the principle of *non-refoulement*, and is not in conformity with international law and Cambodia's obligations. As a state party to the Refugee Convention, Amnesty International urges Cambodia to respect

both the letter and the spirit of the Convention in providing effective and, where appropriate, durable protection to refugees on its territory.

Recommendations

Amnesty International

- Calls on the parties to the tripartite MOU to institute an urgent and independent evaluation of the MOU, including an evaluation of proposed next steps to ensure that the “effective solutions” to the problems of Montagnard refugees in Cambodia mentioned in the preamble to the MOU are durable and rights-respecting;
- Calls on the Cambodian authorities to refrain from the forcible return of Montagnard refugees and asylum-seekers to Viet Nam in accordance with customary international law on *non-refoulement* and its obligations as a state party to the Refugee Convention as well as to the CAT. The prohibition on the forcible return of Montagnard refugees to Viet Nam applies equally to all Montagnards who have been recognized as refugees but who do not wish to be resettled to a third country. It is hoped that an alternative durable solution to their situation may be pursued;
- Requests the international community to use all available avenues to encourage the Cambodian government to abide by its obligations as enshrined in the UN Refugee Convention.
- Requests UNHCR to use all available avenues to ensure access to all Cambodian asylum seekers, in particular those in Cambodian provinces neighbouring Viet Nam, including access to fair and satisfactory procedures and to effective protection,
- Calls upon the Vietnamese government to allow unrestricted access for independent and international human rights monitors to the Central Highlands in order to monitor and report on the situation of the returnees;
- Requests the international community to use all available avenues to encourage the Vietnamese government to grant access to outside observers to the Central Highlands;

3.2 Waiting for a solution – the case of Iranian Kurds in Turkey

Amnesty International is concerned about the situation of a group of some 1,200 Iranian Kurdish refugees who fled to Turkey between 2001 and 2003 having previously claimed asylum in Northern Iraq, and who have been waiting for a durable solution for some years in Turkey.

This group was part of a larger group of Iranian Kurdish refugees who had originally fled Iran and claimed asylum in Northern Iraq in the 1990s and were registered there by the

UNHCR. Due to a lack of effective protection in Northern Iraq at the time, resettlement was the primary tool of both protection and solutions for this group of refugees. However, in 1999, the UNHCR office discontinued resettlement referrals from northern Iraq, leaving the group of refugees with no effective access to a durable solution. In 2003, the UNHCR office in Northern Iraq was closed as a result of the deteriorating security situation in the region. As they were unable to access either effective protection in Northern Iraq, due in part to the deteriorating security situation in the region¹³, or a durable solution in the form of resettlement to a third country, the group fled to Turkey, either via Iran or directly from Northern Iraq. Many of the group allege that they were advised to do so by UNHCR staff in Northern Iraq.

Turkey maintains a geographical reservation to the Refugee Convention and its 1967 Protocol, which means in effect that non-European refugees are unable to receive protection from the Turkish government. In the case of non-European refugees in Turkey, the authorities will register their details but leave it to the UNHCR office in Turkey to determine their status. Persons recognised as refugees under the mandate of UNHCR are referred for resettlement to a third country. Pending resettlement, non-European refugees in Turkey are provided only with temporary protection.

However, while the group of 1,200 Iranian Kurdish refugees have been recognized as refugees by UNHCR in Turkey, as well as by UNHCR in Northern Iraq, the Turkish authorities have refused to grant protection to these refugees on its territory and have refused permission to the vast majority of this group to resettle in a third country, which has placed them at serious risk of *refoulement* to Iran. In addition, it appears that third countries of resettlement are also unwilling to accept this group of refugees due to concerns that the refugees, legitimately through the principle of family reunification, would eventually be joined by family members, which would result in a significant increase in the numbers of persons being resettled.

Members of this group have been compelled to sign statements by the Turkish police, declaring that they will not be treated officially, in accordance with the regulation that lays down the rights of asylum seekers and refugees in Turkey,¹⁴ but rather in accordance with the law that deals with foreigners seeking to visit or reside in Turkey¹⁵. The statement further asserts that they will be given temporary residence permits under which they risk *refoulement* to Iran if they cannot renew these permits or if they act in a way “contrary to public order, public health, general morality or national security”. Finally, the statement indicates that

¹³ The security situation had been bad even before the US invasion of Iraq due inter alia to the risk of attacks by Iranian agents alleged to be operating in Northern Iraq as well as the threat posed by the existence of Ansar al-Islam (Protectors of Islam), an Islamist group reportedly linked to al-Qa’ida, in the area near Halabja.

¹⁴ The 1994 Regulation on Foreigners who “claim asylum in Turkey or who come to Turkey in order to claim asylum in another country”.

¹⁵ Law no 5683 on the Residence and Visits of Foreigners in Turkey.

permission will not be given to allow them to be resettled in third countries, and that they shall not benefit from any of the medical support afforded to other refugees. Local lawyers have been informed by the Turkish Ministry of the Interior that the measures are necessary “in order to discourage the coming of other foreigners of Iranian origin to our country”¹⁶.

The organization is concerned that this group of refugees have not been provided with access to effective protection, including a timely and appropriate durable solution, despite being recognized as refugees under UNHCR’s mandate. In addition, this group of Iranian Kurdish refugees have been provided with a lower level of financial aid by UNHCR Turkey compared to others in the country. This has particularly affected those refugees who have serious health problems as well as other vulnerable groups among them including women, elderly people and children, since they cannot afford treatment in Turkish hospitals.

Recommendations

Amnesty International urges the Turkish government:

- To lift the geographical reservation to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and undertake to provide effective protection to all refugees under its jurisdiction;
- To treat the members of this group in accordance with the 1994 Regulation that lays down the rights of refugees and asylum seekers in Turkey;
- To undertake to uphold the principle of non-refoulement;
- To give permission to all refugees who have obtained visas from a third country to leave Turkey to be resettled in a third country;
- To enable all refugees on its territory to enjoy their fundamental human rights, including the right to work, to an adequate standard of living and to adequate housing. Particular attention should be given to the situation of vulnerable individuals;

Amnesty International calls on UNHCR:

- To refrain from any actions that might amount to discrimination towards this group of refugees and to provide them with the same level of support as enjoyed by other persons recognized as refugees under UNHCR’s mandate in Turkey;
- To advocate for and facilitate the resettlement of this group to third countries;

Amnesty International calls on third countries:

¹⁶ Letter from the Head of the Department of Foreigners and Asylum in the Police Headquarters to the Van Bar Association which Amnesty International has on file.

- To urgently consider offering places for resettlement to all members of this group of refugees.

3.3 Protection gaps while in search of a solution– the case of non-ID Palestinian refugees in Lebanon

Lebanon is host to over 400,000¹⁷ Palestinian refugees, most of whom arrived, or are descendants of refugees who arrived in 1948. A large majority is registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and with the Lebanese government. However, a small proportion is not registered with either UNRWA or the Lebanese government; they have an estimated population of 3,000 to 5,000¹⁸ (this group is often referred to as non-ID Palestinian refugees). They receive no assistance from UNRWA and face a host of restrictions on their access to fundamental rights due to discriminatory Lebanese laws and a lack of official registration. Many non-ID refugees have lived in Lebanon for decades and are married to registered Palestinian refugees. However, their children are not recognized as registered Palestinian refugees, and therefore are discriminated against in the exercise of some of their fundamental rights. These refugees have fallen into a particularly iniquitous protection gap, and Amnesty International believes it is of vital importance that a debate is started as a matter of urgency within the international community, including the relevant UN agencies, host states and other relevant states including member and observer states to EXCOM, as well as NGOs, in order to find solutions to bridge this protection gap. Such solutions should ensure that no group of Palestinian refugees is left in a situation where they receive neither international protection nor assistance.

Amnesty International believes that durable solutions respectful of the human rights of Palestinian refugees must be made available to them in any final peace agreement between the Palestinian Authority and Israel. Amnesty International recognizes that voluntary repatriation or return in safety and dignity is in general the preferred durable solution for refugees. The right of return¹⁹ is enshrined in international law and the organisation believes that Palestinian refugees should be able to exercise their right of return to their homes and lands.

Amnesty International believes, however, that until such time as this right is fulfilled, Palestinian refugees should benefit from civil and political, as well as economic, social and

¹⁷ This includes: 400,582 Palestinian refugees registered with UNRWA; estimates of between 10,000 and 40,000 Palestinian refugees not registered with UNRWA but registered with the Lebanese authorities; 3,000-5,000 Palestinians refugees neither registered with UNRWA nor with the Lebanese authorities. Sources: UNRWA; Fédération Internationale des Ligues des Droits de l'Homme (FIDH); The European Union's Humanitarian Aid Office (ECHO); the Palestinian Human Rights Organization; The Danish Refugee Council.

¹⁸ Sources: The Danish Refugee Council; the Palestinian Human Rights Organization

¹⁹ See "The Right to Return: The Case of the Palestinians, Amnesty International, AI INDEX: MDE 15/013/2001, 30 March 2001.

cultural rights in their host countries, including, but not limited to, the right to work, the right to education, the right to healthcare, the right to adequate housing and the right to an adequate standard of living.

In addition to restrictions that affect the exercise of human rights by all Palestinian refugees in Lebanon, such as restriction on their right to work, rights at work and housing rights,²⁰ non-ID Palestinian refugees are subject to additional restrictions due to lack of registration. The following are some of the human rights that are specifically denied to non-ID Palestinian refugees.

Amnesty International has documented cases of non-ID Palestinian refugees who are unable to get married or to get their marriages registered as they do not possess the necessary documentation. Lebanon has an obligation to ensure that all men and women of marriageable age within its jurisdiction can get married in accordance with its human rights obligations.²¹ The Human Rights Committee has clarified that state parties to the International Covenant on Civil and Political Rights (ICCPR) are under the obligation to adopt legislative, administrative or other measures for ensuring the protection provided for under article 23.²² The Committee stresses that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.²³

In Lebanon children born to non-ID Palestinian refugees are not eligible to be formally registered, either by the state or by UNRWA. With no official papers, many non-ID Palestinian refugee children are not able formally to access education, including primary education; they are unable to access state or UNRWA education. While they have the option to pay to go to private school, they are unable to take the *brève* state exams, thereby receiving recognition of their education or finish their school education.²⁴ Lebanon has an obligation, under international human rights law, to ensure the right of every child to be registered immediately after birth²⁵ and to education for all children under its jurisdiction, including in particular free and compulsory primary education without discrimination as to their status as refugees or asylum-seekers, any other legal status, or the legal status of their parents or guardians. Additionally, children should not be punished for the failure of the state of Lebanon to register them in the first place. In its Concluding Observations in 2002, the Committee on the Rights of the Child expressed concern about “the high rate of Palestinian

²⁰ See *Lebanon: Economic And Social Rights Of Palestinian Refugees: Submission To The Committee On The Elimination Of Racial Discrimination*, AI Index MDE 18/017/2003, 22 December 2003.

²¹ Article 23(2) of the International Covenant on Civil and Political Rights (ICCPR) states that “the right of men and women of marriageable age to marry and to found a family shall be recognized.”

²² See Human Rights Committee, General Comment 19: *Protection of the family, the right to marriage and equality of the spouses*, para. 3.

²³ *Ibid*, para. 1.

²⁴ In Lebanon, the last school certificate is the *baccalaureat*, after which students can go to University. Before going to study for the *baccalaureat*, students have to obtain a *brève*, which is an intermediate schooling certificate.

²⁵ Article 24(2) of the ICCPR and article 7(1) of the Convention on the Rights of the Child (CRC).

children living below the poverty line, as well as the lack of adequate access by Palestinian children to many basic rights, including health, education and an adequate standard of living, and about the quality of services provided.”²⁶

Recommendations

Amnesty International believes that everyone, irrespective of status is entitled to respect for, and protection of all human rights. Any bureaucratic requirements which have the effect of acting as an obstacle to the exercise of human rights should be abolished. All Palestinian refugees, including non-ID Palestinian refugees, should therefore be able effectively to enjoy all human rights guaranteed to non-citizens under international human rights law.

Amnesty International urges that a debate is started as a matter of urgency within the international community, including the relevant UN agencies, host states and other relevant states, as well as NGOs, in order to find solutions to bridge the protection gaps that exist in relation to non ID Palestinian refugees in Lebanon

Specifically, Amnesty International urges the Lebanese Government to:

- Regularize the status of unregistered refugees within its territory;
- Put a system in place that will ensure that all children within its territory, including the children of non-ID Palestinian refugees are registered and have equal access to human rights as Lebanese in accordance with its obligations under international human rights law²⁷, including ensuring that children of non-ID Palestinian refugees, have access to education on an equal basis with Lebanese nationals;
- Ensure that all Palestinian refugees are able to register their marriages in Lebanon
- Abolish all bureaucratic requirements impeding the effective enjoyment by Palestinian refugees of their rights to a name, education and marriage, among others.
- Ensure that all Palestinian refugees are accorded effective protection of their rights to enjoy just and favourable conditions of work, to adequate housing, and to an adequate standard of living.

²⁶ Concluding observations of the Committee on the Rights of the Child: Lebanon (CRC/C/15/Add.169), 21 March 2002, para. 54.

²⁷ This includes, *inter-alia*, obligations under the Convention on the Rights of the Child, which requires states parties to “respect and ensure the rights set forth in the...Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

4. Protection of IDPs

*“We want to be predictably engaged in situations of internal displacement”*²⁸

While much has been made of the fact that the number of refugees of concern to UNHCR has declined in the last year, it is of concern that similar focus has not been placed on the spiralling numbers of IDPs. The *Note on International Protection* indicates that, during the last year, there was an increase of nearly 2 million persons of concern to UNHCR, most of whom were IDPs. To this figure can be added the substantial number of persons who do not currently fall under UNHCR's mandate. There are now roughly 25 million IDPs in the world.²⁹

Amnesty International welcomes UNHCR's recent “predisposition” to involve itself in IDP situations where such involvement is appropriate, recognising the agency's unique expertise in dealing with situations of displacement. The recent developments, including the system of “clusters” recently discussed in the context of the Inter-Agency Standing Committee, which aim to revitalise the international response to situations of internal displacement are similarly welcome. UNHCR must be vigilant to ensure, however, that adequate staffing and training arrangements are put in place to ensure an adequate response to IDP situations in which it is involved, including its involvement as “cluster lead” on global issues of IDP protection, emergency shelter and camp coordination. It must also be assured that UNHCR's involvement in IDP situations does not materially affect its ability to deliver on its core refugee protection mandate. In addition, Amnesty International is of the view that the response of the international community to internal displacement, regardless of which cluster such response is organized within, must be firmly premised on international human rights law and standards, including the UN Guiding Principles on Internal Displacement.

The organisation calls on the international community, including states represented at EXCOM, to ensure that no IDP who has been forced to flee her home or village of origin is left in a protection vacuum, held hostage to bureaucratic inertia or gaps in inter-agency coordination, and unable to access a solution to her plight. Ultimately, however, it must be recognized that the primary duty and responsibility for ensuring protection of and humanitarian assistance to IDPs lies with the state in which its nationals are displaced.

4.1 Human rights violations on a massive scale: Operation Mrambatsvina -the case of IDPs in Zimbabwe

In May 2005 the government of Zimbabwe embarked on Operation Murambatsvina, a programme of mass forced evictions and demolition of homes and informal livelihoods. The

²⁸ UN High Commissioner Guterres in his closing address to UNHCR's Annual Consultations with Non-Governmental Organizations, 29 September 2005.

²⁹ UNHCR, Note on international protection, A/AC.96/1008, note 37, 4 July 2005

Operation, which was carried out in winter and against a backdrop of severe food shortages, targeted urban areas countrywide. In a report released on 22 July 2005 the Special Envoy of the Secretary-General of the UN, Mrs Anna Tibaijuka, estimated that some 700,000 people lost their homes, their livelihoods, or both during the operation.³⁰

Operation Murambatsvina has resulted in human rights violations on a massive scale in Zimbabwe. Moreover, the operation took place in a context of a longer-term failure of the government of Zimbabwe to respect human rights and uphold the rule of law. The mass evictions in Zimbabwe were carried out without notice, court orders, due process, legal protection, redress or appropriate relocation measures, in violation of Zimbabwe's obligations under international human rights law.³¹ While the evictions themselves constitute a grave violation of human rights, Amnesty International also has serious concerns about further violations of human rights in the wake of the evictions.

Massive internal displacement and forcible relocation of people to rural areas without shelter, food, water or access to health care or sanitation

Amnesty International is concerned that Operation Murambatsvina has resulted in enormous internal displacement of people and, as the UN has stated, a "humanitarian crisis of immense proportions". Initially the majority of those evicted remained outside without shelter, crowded into remaining houses with family or friends, or received shelter in churches. In numerous cases people were forcibly put on police or government trucks and taken to rural areas. In the weeks after the evictions began, homeless and destitute urban people began returning spontaneously to the rural areas in search of help from relatives.

Since the start of Operation Murambatsvina the police and government authorities have stated publicly that people should "return to their rural areas". This has been despite an acknowledged poor harvest and severe food shortages in the rural areas. Amnesty International believes the entire relocation operation constitutes forcible relocation, as forcing people into a situation of displacement through the destruction of their homes and livelihoods is a form of coercion akin to forcing people onto government trucks in order to relocate them.

Information of the situation of those who have returned to the rural areas is scarce. In some cases relatives have taken in displaced persons, but as in the urban areas where the number of inhabitants in a household has swollen, there are serious concerns about the sustainability of

³⁰ Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlement Issues in Zimbabwe, page 32

³¹ Zimbabwe is a State Party to ICESCR. General Comments no. 4 (1991) and no. 7 (1997) of the UN Committee on Economic, Social and Cultural Rights state that "forced evictions are *prima facie* incompatible with the provisions of the Covenant and can only be carried out under specific circumstances".

the situation. Food shortages are reported to be increasingly severe and IDPs seeking protection in urban areas are not always welcome.³²

No comprehensive assessment of the present location of those who have lost their homes during Operation Murambatsvina has been undertaken and it seems very unlikely that the government of Zimbabwe would facilitate such an assessment. One NGO estimated that approximately 30 per cent of people had returned to rural areas, but this reflected those that returned to a village. NGOs and churches have also reported finding people living in the bush in makeshift shelters. Some are attempting to “hide” from the authorities for fear of being moved again and losing more possessions – they report that they have been living outside since their homes were destroyed, but have been moved on several times.³³ Food and safe water for those IDPs living in small bush camps are scarce and sanitation usually non-existent.

Many IDPs remaining in the urban areas also continue to live outside or under extremely inadequate shelter. These include people sleeping outside in gardens, on verandas, etc. It appears that the majority of Operation Murambatsvina victims may remain in the urban areas³⁴, while a significant minority has been scattered across rural areas countrywide.

Prior to the release of the report of the UN Special Envoy several thousand people were also housed in transit camps or in churches. The transit camps and church-assisted groups, although numbering less than 10,000, were an identifiable concentration of IDPs. Since the release of the UN report they have also been scattered.

People in transit camps: Closure of camps; further relocation and “dumping” of people in areas with no shelter or access to food, sanitation or health services; conditions in unofficial camps

According to Amnesty International’s information, three so-called transit camps were established in connection with Operation Murambatsvina: Caledonia Farm in Harare (which accommodated some 5,000 people), the Sports Oval in Mutare (which accommodated several hundred people) and Helensvale Farm in Bulawayo (which accommodated some 1,500 –

³² Solidarity Peace Trust, “Hide and Seek”: Murambatsvina Part II An account of finding the forcibly displaced in rural Matabeleland, July – September 2005”, 20 September 2005

³³ Amnesty International interviews with victims of Operation Murambatsvina, August 2005; Research by Solidarity Peace Trust, September 2005.

³⁴ Amnesty International interviews with victims of Operation Murambatsvina and NGOs in Zimbabwe, August 2005; Combined Harare Residents Association (CHRA) & Action Aid International, “A study on the impact of "Operation Murambatsvina/Restore Order" in 26 wards of Harare high density housing areas”, July 22, 2005. Amnesty International also visited high-density urban suburbs during the day and at night and found evidence of people living and sleeping in gardens and on verandas.

2,000 people). Conditions at all camps were reported to be extremely poor, with inadequate shelter, food, water and sanitation.³⁵

The Harare and Bulawayo camps were swiftly closed in the days following the government of Zimbabwe's receipt of a highly critical UN report on the mass evictions. The Sports Oval had been closed during the UN Special Envoy's visit.³⁶ IDPs residing in these camps were dumped in small groups in various rural areas, and were forced to seek refuge at District Administrator's offices, business centres, bus stops and police stations, with little or no food, and in the majority of cases, no shelter.

Unofficial camps: Hopley Farm, Harare

Those removed from Caledonia Farm transit camp that had no urban or rural options were taken to Hopley Farm on the outskirts of Harare, where they were joined by other displaced victims of Operation Murambatsvina. The population of Hopley Farm is estimated at several thousand. They were placed there by the government with no shelter, no toilets, no food and inadequate water. The government not only failed to provide for basic needs, but also failed to alert the humanitarian community or the UN in order to ensure that the people received assistance. The Hopley population is "guarded" by police officers, who initially prevented humanitarian actors from access them. The future of those at Hopley Farm – many of whom are victims of repeated evictions – is unclear.

Amnesty International is aware of another unofficial IDP camp where the government has placed evictees - approximately 28 people are living in a small camp near Cowdray Park in Bulawayo. Unconfirmed reports suggest other such IDP camps may exist in different parts of the country.

Denial of access to humanitarian assistance

Amnesty International considers that where a State arbitrarily denies its consent to humanitarian assistance, when it is unable or unwilling to carry out its obligations to ensure adequate food, water, shelter and medical care, this constitutes a violation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Field Cod

Despite the recommendations made in the report of the UN Special Envoy that there should be immediate, full and unfettered access to humanitarian assistance for the victims of the evictions and demolitions, the Zimbabwean authorities continue to obstruct and curtail the humanitarian operations of the UN and NGOs. A UN Flash Appeal to raise funds for humanitarian assistance for the victims of Operation Murambatsvina has been severely

³⁵ Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlement Issues in Zimbabwe.

³⁶ When Amnesty International visited the Sport Oval in August a small group of people remained there, living in a large make-shift tent, guarded by police officers.

delayed reportedly because the government is unhappy with the language and with the role of NGOs in distributing aid. A UN Flash Appeal to raise funds for humanitarian assistance for the victims of Operation Murambatsvina was severely delayed, and subsequently abandoned, reportedly because the government was unhappy with the language and with the role of NGOs in distributing aid.³⁷ A Common Response Plan was sent to donors on 13 September by the UN Under-Secretary-General for Humanitarian Affairs, Jan Egeland. Amnesty International is concerned that the absence of a standard formal Appeal may undermine fundraising and therefore limit the assistance that a UN humanitarian program can provide in Zimbabwe.

Humanitarian actors have reported to Amnesty International that while negotiation with the authorities has eventually enabled them to supply food, water and some other relief items they have generally been prevented from providing temporary shelter to those living in the open. NGOs report that the authorities say they do not want people “to become comfortable, they want them to move back to the rural areas”. Several humanitarian actors also report that the government of Zimbabwe is unwilling to allow tents as they would be too visible a sign of the IDP problem the government is unwilling to acknowledge.

Recommendations

Operation Murambatsvina took place in a context of a longer-term failure of the government of Zimbabwe to respect human rights and uphold the rule of law. Amnesty International believes the government of Zimbabwe must acknowledge and address this wider failure to uphold human rights.

Amnesty International urges the government of Zimbabwe to:

- Fully implement the UN Guiding Principles on Internal Displacement in their policy and practice towards IDPs, including ensuring protection of the human rights of IDPs without reservation or discrimination;
- Consistent with UN Guiding Principle No. 25 (2) which provides that “consent [to accept offers of humanitarian assistance] shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance” and Zimbabwe’s obligations to ensure for persons on its territory freedom from hunger and deprivation, Zimbabwe should immediately make an urgent appeal for humanitarian aid for the victims of Operation Murambatsvina and all other person in Zimbabwe who are in need of food aid and other humanitarian assistance, and guarantee the free and unimpeded passage of international aid;

³⁷ Integrated Regional Information Networks (IRIN), “*ZIMBABWE: Govt won't agree on appeal for victims of cleanup*”, 29 August 2005

- Establish conditions, as well as provide the means, for IDPs to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country, and to facilitate their reintegration or integration;
- Respect the rights of victims of Operation Murambatsvina to an effective remedy, including access to justice, and appropriate reparations which can involve restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition, redress and compensation.

Amnesty International calls on the UN and African Union to:

- Recommend and facilitate an independent observer mission to monitor the humanitarian operation in Zimbabwe the aftermath of Operation Murambatsvina and ensure the protection of IDPs and other vulnerable groups.