

AMNESTY INTERNATIONAL

Fundamental standards for the protection of refugees

Amnesty International's work for refugees is an essential component of its work for the protection of human rights. It aims to contribute to the worldwide observance of human rights as set out in the Universal Declaration of Human Rights and other internationally recognized standards. It opposes grave violations of the right of every person freely to hold and express their convictions and to be free from discrimination by reason of their ethnic origin, sex, colour or language, and of the right of every person to physical and mental integrity. The organization has members worldwide and is independent of any government, political grouping, ideology, economic interest or religious creed. In carrying out its work it applies the same standards to all governments. It also opposes abuses by opposition groups: hostage-taking, torture and killing of prisoners or other arbitrary killings. The main focus of its campaigning is to:

- free all prisoners of conscience – men and women detained anywhere for their political, religious or other conscientiously-held beliefs, or because of their ethnic origin, sex, colour or language, and who have not used or advocated violence.
- ensure that all political prisoners receive a fair trial, conforming to internationally recognized norms, within a reasonable time.
- abolish the death penalty, torture or other cruel, inhuman or degrading treatment or punishment.
- end extrajudicial executions and "disappearances".

Arising from these concerns, Amnesty International opposes the forcible return of any person to a country where he or she risks any of these serious human rights violations. It therefore seeks to ensure that states provide people with effective and durable protection from being sent against their will to a country where they risk such violations, or to any third country where they would not be afforded effective and durable protection against such return.

In this connection Amnesty International bases its work on the principle of *non-refoulement*, which is recognized by the international community as a norm of international law, binding on all states. It is set out in Article 33 of the 1951 Convention relating to the Status of Refugees, which states:

"No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Moreover, Article 3.1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that

"No State Party shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".

In order to comply with their obligations to ensure the protection of human rights, governments must scrupulously observe the principle of *non-refoulement* in all cases where such people seek their protection.

This paper sets out basic principles and safeguards which Amnesty International regards as essential for the protection of people who would be at risk of serious human rights violations if returned against their will to the country they have fled or to some other country. Amnesty International calls on all governments to follow these principles in order to ensure that they give to such people the protection they need.

Access to asylum procedures for all who seek protection

In order to ensure that people who would risk serious human rights violations if returned to a particular country are identified as such and afforded protection, Amnesty International seeks to ensure that all asylum-seekers have access to a fair and satisfactory asylum procedure. While recognizing that governments are entitled to control immigration and entry to their territory, Amnesty International calls on them, in doing so, to ensure and demonstrate adequately that asylum-seekers have effective access to their asylum procedures and that any restrictions on entry, such as visa requirements, sanctions on airlines or other transporters, or other similar restrictive measures, do not obstruct this access in practice. Amnesty International opposes the use of such restrictions on entry which do not meet these criteria.

Sending asylum-seekers to third countries

Amnesty International opposes the sending of asylum-seekers who are or who may be in need of protection from serious human rights violations to a third country unless the government sending them there has ensured that in that country they will be granted effective and durable protection, which should normally include legal protection, against forcible return.

Procedural safeguards

Amnesty International seeks to ensure that states' asylum procedures, including the procedures and practices followed at their airports and borders, are adequate to identify asylum-seekers who would risk serious human rights violations if sent against their will to another country.

Amnesty International calls on all governments to observe certain basic principles in their asylum procedures. These principles are essential in helping to prevent the forcible return of asylum-seekers at risk of serious human rights violations. These principles are based on international standards, such as are set out in the International Covenant on Civil and Political Rights, relevant Conclusions adopted by the intergovernmental Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR), and Recommendation R(81)16 of the Committee of Ministers of the Council of Europe dealing with the harmonization of national procedures relating to asylum. They include specific practical measures which are necessary for the effective implementation of the international standards. They include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

All officials involved in questioning or interviewing asylum-seekers and in making decisions on their applications should be instructed and trained to follow the procedural guidance given in §195-§219 of UNHCR's *Handbook on*

Procedures and Criteria for Determining Refugee Status. All such officials, including border officials, should take into consideration the special situation of asylum-seekers, who might experience language or other difficulties in expressing or presenting a request for asylum, who may have had to flee without personal documents, and whose past experience may have caused them to be apprehensive of authority, to be afraid to speak freely, and to have difficulty giving a full and accurate account of their case.

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

Detention of asylum-seekers

Amnesty International opposes the detention of asylum-seekers unless they have been charged with a recognizably criminal offence, or unless the authorities can demonstrate in each individual case that the detention is necessary, that it is on grounds prescribed by law, and that it is for one of the specified reasons which international standards recognize may be legitimate grounds for detaining asylum-seekers. Amnesty International calls for each asylum-seeker who is detained to be brought promptly before a judicial or similar authority to determine whether his or her detention is lawful and in accordance with international standards.

Amnesty International's refugee work:

In keeping with the principle that the protection of human rights is an international responsibility, Amnesty International's national sections may not work on cases in their own countries where people are imprisoned as prisoners of conscience, or subjected to torture, "disappearance", or extrajudicial execution - this is done by the organization's sections in other countries and its International Secretariat. But Amnesty International's sections may work in their own countries on behalf of refugees and asylum-seekers.