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Practices of Detention and Expulsion: Human Rights at Risk

On World Refugee Day 2005, Amnesty International turns its attention to the practice of arbitrary detention and unlawful expulsion of refugees and asylum-seekers

June 20th is World Refugee Day, a day the world should turn its attention to the plight of refugees. To mark this anniversary, Amnesty International is launching three reports on detention and practices of expulsion. While the reports focus on the situation in the United Kingdom, Italy and Spain, practices of arbitrary detention and unlawful expulsion are not confined to these countries. They represent a sad reality in most parts of the world. In the absence of official statistics, the scale of the problem remains unknown. What is known, however, is that many of those detained are in search of asylum. Some are detained automatically as soon as they arrive in a country of asylum if they do not have proper documentation or authorisation. Others are put in detention while their asylum claim is under consideration. For many, detention is used once their asylum claims have been dismissed following asylum determination procedures that fail to meet basic standards of fairness. In some cases, detention for a short period of time is the prelude to expulsion before someone has had the chance to apply for asylum or have his/her claim properly assessed.

Conditions of detention fail to meet fundamental human rights standards. Detainees are often held in unhygienic, overcrowded conditions for prolonged periods of time, unable to effectively challenge the legality or necessity of their detention or complaint about ill-treatment. In its report on Italy for example, Amnesty International recorded allegations that people in temporary holding centres were subjected to physical assaults by law enforcement officers and supervisory staff, and to excessive and abusive administration of sedative and tranquillizing drugs. In most cases, access to legal advice is limited or non-existent. Confined behind security fences with no certainty about their present or hope for the future, some detainees suffer from physical and mental health problems in conditions which at times have been identified as amounting to cruel, inhuman or degrading treatment. Children and victims of torture are particularly vulnerable. The absence of an independent review mechanism to monitor detention conditions creates a climate of impunity that allows for detention conditions and the behaviour of authorities to go unchecked. Governments have sought to justify detention practices on the grounds that asylum seekers and irregular migrants allegedly constitute a "security threat". However, far from being terrorists, many of those detained are the victims of human rights violations themselves.

Expulsion practices also fail to meet basic standards of humane treatment and procedural fairness. In its recent research on conditions of detention in the UK, Amnesty International heard several allegations of the authorities using excessive force during attempted forcible returns. In its report on Spain, the organisation recorded the plight of persons risking their lives to cross into Ceuta, the Canary Islands or the Andalusian coast, only to find themselves being expelled back to Morocco without an effective opportunity to claim asylum or challenge the decision to deport them. Among those are included children and pregnant women.

Arbitrary detention and practices of unlawful expulsion breach fundamental human rights. The rights to liberty and to freedom from arbitrary detention are well enshrined in international human rights law. Protection from unlawful expulsion is an essential prerequisite to guaranteeing the fundamental principle of *non-refoulement*, which prohibits return to a place where there is a risk of human rights violations.

On World Refugee Day, Amnesty International calls on governments across the globe to stop detaining asylum seekers and refugees unless it is in full accordance with their obligations under international human rights law. It also reminds governments of their obligation to fully respect the principle of non-refoulement and ensure that no one is sent to a country where they are at risk of human rights violations. To meet their commitments, states must take measures that provide for an automatic and regular review of all decisions to detain. They also need to ensure access to fundamental procedural safeguards for any person subject to expulsion. This includes access to legal advice and an opportunity to appeal against a decision to expel.

For more information on the reports see below.

For more information on Amnesty Internationals' work on refugees and other displaced persons please visit www.amnesty.org/refugees

UK: Seeking asylum is not a crime, detention of people who have sought asylum (AI Index: EUR 45/015/2005)
For a copy of the full report go to: <http://web.amnesty.org/library/index/engeur450152005>

Italy: Temporary stay: permanent rights – the treatment of non-nationals held in ‘temporary stay and assistance centres’ AI Index: EUR 30/004/2005 (Public)
For a copy of the full report please go to: <http://web.amnesty.org/library/index/engeur300042005>

Spain: Refugees are now invisible and the right to seek asylum is in danger of extinction (AI Index:EUR 41/008/2005).For a copy of the full report go to: <http://web.amnesty.org/library/index/engeur410082005>