

@Refugee protection and the need for fair and satisfactory asylum procedures

Statement by Amnesty International to the Hearing on refugees and asylum-seekers in Central and Eastern Europe held by the Committee on Migration, Refugees and Demography of the Council of Europe Parliamentary Assembly, Budapest, 1 July 1992

Amnesty International is a worldwide voluntary movement which works to prevent some of the gravest violations by governments of people's fundamental human rights. Its work is based on fundamental principles set out in the Universal Declaration of Human Rights and other internationally recognized standards. The main focus of its campaigning is to:

- free all prisoners of conscience. These are people detained anywhere for their beliefs or because of their ethnic origin, sex, colour or language, who have not used or advocated violence;
- ensure fair and prompt trials for political prisoners;
- abolish the death penalty, torture and other cruel treatment of prisoners;
- end extrajudicial executions and "disappearances".

Amnesty International's concern for refugees follows from these concerns: it opposes the forcible return of any person to a country where he or she risks imprisonment as a prisoner of conscience, torture, "disappearance", or execution. It calls on states to provide such people with effective and durable protection from being sent against their will to a country where they risk such human rights violations, or to any third country which would not provide them with effective and durable protection against such return.

The internationally recognized principle of *non-refoulement* obliges all states not to forcibly return individuals to countries where they risk serious human rights violations. This principle is set out in Article 33 of the 1951 Convention relating to the Status of Refugees:

"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".

In order to observe their obligations for the protection of human rights, governments must scrupulously observe this *non-refoulement* principle in all cases where asylum-seekers are in need of protection.

In order to help assure protection of human rights, Amnesty International urges states to accede to all the major international human rights instruments. With regard to refugees and asylum-seekers, Amnesty International calls on all states to accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and to cooperate with the Office of the United Nations High Commissioner for Refugees (UNHCR) in the application of its provisions.

Amnesty International welcomes the steps that have been taken by the governments of the Czech and Slovak Federal Republic, Hungary, Poland and Romania to accede to the 1951 Convention, although it regrets that Hungary is still seeking to maintain the geographic limitation to this treaty. Amnesty International calls on all those states in the region which have not already done so to accede to the 1951 Convention and its 1967 Protocol, and to do so without geographic limitation because states should recognize their obligations towards all asylum-seekers, and not just those from particular regions.

Amnesty International seeks to ensure that states' asylum procedures, which include the procedures and practices followed at their airports and borders, are adequate to identify asylum-seekers who would risk human rights violations if sent against their will to the country they have fled or to a third country which would not provide them with effective and durable protection against such return.

Amnesty International has identified certain essential principles and safeguards which it believes should be respected and applied by governments in dealing with all asylum claims. These principles and safeguards are based on international standards such as those set out in relevant Conclusions adopted by the intergovernmental Executive Committee of the Programme of the United Nations High Commissioner for Refugees and in Recommendation R(81)16 of the Committee of Ministers of the Council of Europe which deals with the harmonization of national procedures relating to asylum.

These essential principles include that all asylum claims must be thoroughly examined by an independent and specialized authority; the decision-makers must have expertise in international human rights law and international refugee law, and should take full account of human rights information which is drawn from the widest possible range of independent sources. An asylum-seeker should be able to appear in person before a decision-maker when his or her case is first examined, and at all stages in the procedure must benefit from the right to legal counsel. All refused asylum-seekers must have the right to have their case reviewed through a judicial process before being expelled from the country, although in exceptional circumstances this review may be expedited.

Amnesty International calls on all governments to ensure that these essential principles are fully reflected in their asylum procedures. In particular, in the case of governments which are in the course of devising new procedures, it calls on them to ensure that these principles are a basis for, and are fully reflected in, the procedures which are established. Amnesty International believes that states, in close cooperation and consultation with the United Nations High Commissioner for Refugees, should reach a common agreement on this essential aspect of refugee protection, explicitly setting out minimum international standards for fair and satisfactory asylum procedures.

Already there are some moves towards this in the European Community (EC), but Amnesty International is concerned that insufficient attention has been paid to ensuring that a harmonization of asylum procedures in the EC will ensure these essential principles are fully respected throughout the member states. Further, Amnesty International is concerned at the steps being taken by EC member states to impose common controls at their external borders and other restrictions on entry, such as visa requirements and sanctions on airlines transporting passengers without the necessary papers; it fears that the systematic imposition of such measures can obstruct asylum-seekers from obtaining access to asylum procedures in the European Community.

One effect of the restrictions on entry into the EC member states is therefore likely to be an increase in the number of asylum claims lodged in countries outside the European Community. This points to the need for all states, not simply the twelve EC member states, to be fully involved in establishing an agreement minimum international standards for fair asylum procedures, as part of a truly international response to the protection needs of refugees.