

## Amnesty International

### Statement to Working Session 11: Humanitarian issues and other commitments II, including:

- Migrant workers, the integration of legal migrants;
- Refugees and displaced persons;
- Treatment of citizens of other participating states

Amnesty International remains concerned about the continuous and consistent pattern of human rights violations linked to interception, detention, and expulsion of foreign nationals, including those seeking international protection, by the participating states.

Amnesty International was deeply disappointed when the **European Union** adopted a Directive on the return of irregular migrants. Amnesty International considers the 18 months maximum limit on detention pending deportation to be excessive, disproportionate and therefore unacceptable as a common EU standard. We are concerned that this Directive could lead to an increase in the use of prolonged detention in EU member states where many countries currently have much lower detention limits.

In **Greece**, Amnesty International has serious long standing concerns regarding the treatment of irregular migrants, asylum-seekers and refugees including unaccompanied minors. Amnesty International believes that the Greek authorities are failing to fulfil their obligations, including the right to adequate housing and protection against forcible evictions, access to fair and satisfactory asylum procedures, the right not to be expelled without appropriate procedural safeguards and due process of law, the right not to be subjected to inhuman or degrading treatment, including during arrest and detention, and respect of the principle of *non-refoulement*.

The new Presidential Decree 81/2009 which was signed on 30 June 2009 changes drastically the asylum procedures in Greece. It abolishes the possibility of substantive appeal against the decisions of first instance and maintains a limited judicial review by the Council of the State on procedural aspects only. It also decentralises the decision making at first instance to 50 Police Directorates across the country. Amnesty International believes that the changes deprive asylum-seekers of their right to an effective remedy and seriously undermines the fairness and independence of a procedure where the first instance status determination decisions are made by police officers, who are also responsible for immigration control and enforcement measures.

In **Turkey**, Amnesty International is concerned that the rights of persons in need of international protection are violated due to Turkish asylum regulations that do not conform to international standards and which are unfairly and arbitrarily applied. Refugees, asylum seekers and others in need of protection are denied the opportunity to apply for asylum either at Turkey's borders or after being apprehended by law enforcement officials and arbitrarily detained. Lawyers, refugee assisting NGOs and the UNHCR are routinely denied access to persons who may be in need of protection, who in turn are not able to apply for asylum under Turkish domestic law or to challenge their detention. Persons in this situation are commonly held for extended periods of time in detention facilities that do not meet international standards before being released or deported.

National legislation also places severe restrictions on asylum seekers and refugees' access to health care, housing and work. In addition, the imposition of fees for asylum seekers and refugees to obtain the administrative permits required to access health services and resettlement to their countries (their access to rights to asylum, health care and education).

Amnesty International is concerned that increasingly, refugees, registered asylum-seekers are forcibly returned to countries where they are at risk of persecution in breach of the principle of *non-refoulement*. Individuals have been forcibly expelled by Turkish law enforcement officials from Turkish territory without any regard to procedural or legal safeguards, or to the risks of serious human rights violations they may face upon return.

The five-day war that began on the night of 7-8 August 2008 between **Georgia and the Russian Federation** resulted in hundreds of civilian deaths, thousands of injuries and the displacement of almost 192,000 people. One year on from the conflict, its impact is still being felt – particularly in and around the disputed region of South Ossetia. An estimated 30,000 people, mostly ethnic Georgians, remain displaced. Of these, the UN's refugee agency, UNHCR, estimates that some 18,500 displaced people from South Ossetia are unlikely to be able to return in the short term. This is adding against the background of the estimated 222,000 people who were displaced from their homes in Abkhazia and South Ossetia as a result of earlier conflicts. Many of the IDPs from 2009 as well as the previous conflicts continue to be housed in rudimentary living conditions in collective centers or new settlements built in the vicinity of the conflict zone, leaving serious concerns as to the long-term situation of those who remain unable to return.

Against this background of ongoing tensions and fragile security, the issues of justice for crimes under international law committed by all sides during the conflict and reparation for the victims of such crimes remain acute. Despite ongoing investigations by both the Russian and Georgian sides, to date no one has been brought to justice by the Georgian or Russian authorities for the serious violations of international law which took place during the conflict and in its immediate aftermath.

In **Kazakhstan**, the authorities continued to co-operate with Uzbekistan, the Russian Federation and China, in the name of regional security and counter-terrorism, in ways that breach their obligations under international human rights and refugee law. Refugees are not effectively protected and continue to be at risk of refoulement or abductions.

The situation of refugees and asylum-seekers from the Commonwealth of Independent States (CIS) – in particular religious asylum-seekers from Uzbekistan – and that of Uighur asylum-seekers from the Xinjiang Autonomous Republic of China (XUAR) remain difficult. There is no national status determination process in place and no system for giving protection to refugees and asylum-seekers. There is no procedure in national law to challenge an order of deportation on the grounds of risk of serious human rights violations faced by a person upon return. The government has not acknowledged the right of asylum-seekers from the CIS and XUAR to seek international protection in Kazakhstan.

In **Kyrgyzstan**, refugees and asylum-seekers from Uzbekistan continued to be at risk of forcible return or abduction by the Uzbekistani security service sometimes operating in co-operation with their Kyrgyzstani counterparts. Those fleeing are faced with serious human rights violations in Uzbekistan. At least one asylum-seeker was abducted by members of the Uzbekistani security service.

The **Ukrainian** authorities repeatedly forcibly return asylum-seekers to countries where they would be at risk of serious human rights violations, and disregard asylum procedures. Most recently, on 2 September, a group of six DRC nationals were forcibly removed from Ukraine without regard to the risks they may have faced on return and despite the fact that one of them had reportedly expressed his wish to claim asylum. The six DRC nationals arrived at Boryspil airport in Kyiv on 31 August, but they were not allowed to leave the airport, and were deported on 2 September. One of the group was reportedly beaten when he tried to claim asylum and was then drugged to make him sleep. According to the State Border Guard Service, the DRC nationals did not fulfil the requirements of the Council of Ministers' Regulation No. 1071/2009 concerning the entry of foreigners and stateless persons to Ukraine. According to the regulation, foreign nationals and

stateless persons entering Ukraine must have no less than UAH12 620 (about €1,000) to sustain themselves during their stay in Ukraine.

### **Forcibly returned to Kosovo**

Several EU governments have negotiated, or are in the process of negotiating, bilateral readmission agreements with the Kosovo government, which allow for the forcible return of people originating from Kosovo, who have been refused refugee status, or whose temporary protection has been ended. Under such agreements, government may make requests for person to be readmitted regardless of their ethnic background.

Amnesty International is extremely concerned that Serbs, Roma, and members of other minority communities at risk (including Albanians returning to a minority situation) may thus be forcibly returned to Kosovo. The organization considers that Kosovo Serbs and Roma continue to be at risk of persecution (including from both inter-ethnic attacks and systematic discrimination). Further, Amnesty International (and other human rights organizations and institutions) consider that the Kosovo authorities do not currently have the capacity, the resources or the political will to implement the 2007 *Strategy for the Reintegration of Repatriated Persons* which aims to ensure the sustainable return and reintegration of members of minority communities.

Further many Roma originating from Kosovo may be at risk of statelessness. The 2008 Law on Citizenship grants the right to citizenship to those registered with the civil authorities or with proof of their habitual residence in Kosovo as of January 1998. Those without documentation (and in particular Roma) seeking to voluntarily return, or who are forcibly returned, may be unable to prove their right to residency, and may therefore be vulnerable to de facto statelessness.

Amnesty International urges that these persons should instead be granted asylum or continued subsidiary protection until such time as conditions for a safe and durable return are present in Kosovo.

### **Recommendations:**

Amnesty International call on all participating states:

- to ensure that all persons seeking international protection get access to a fair and transparent asylum procedures, with the right of appeal and ensuring that asylum-seekers and refugees have access to state health and education services, as well as adequate housing.
- AI calls on the EU governments not to send back to Kosovo Serbs, Roma or other members of minority communities which might be at risk of persecution.