

The human cost of “Fortress Europe”: Detention and expulsion of asylum-seekers and migrants in the EU

Amnesty International Open Letter to the incoming UK Presidency on the occasion of World Refugee Day

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Rt Hon Tony Blair MP, Prime Minister
United Kingdom

Dear Prime Minister,

Amnesty International is today publishing three reports on detention conditions and deportation practice in the United Kingdom, Spain and Italy¹. We are writing to you in your capacity as incoming President of the European Union in order to highlight the concerns raised in these reports as we understand that the issues of detention and expulsion will be high on the agenda of your EU Presidency in view of the discussions on EU standards on return. Despite the fact that the proposed EU constitution is currently under a cloud, along with the incorporation of the Charter of Fundamental Rights, Amnesty International calls on the European Union and its Member States to abide by the principles set out in the Charter. We hope that our recent findings will be taken into due consideration during any future discussions on a European return policy.

I. Amnesty International’s findings

Amnesty International’s reports highlight a consistent pattern of human rights violations linked to detention and removal operations. The Italian and the Spanish reports encompass the broader complex of interception, detention and expulsion of foreign nationals, including persons seeking international protection. The UK report focuses on the increased use of detention both at the beginning and end of the asylum process. While the scope and methodology of each report vary, these documents confirm concerns expressed on numerous occasions by Amnesty International, national and international human rights monitoring bodies (such as the UN High Commissioner for Refugees, the UN Special Rapporteur on the Human Rights of the Migrants, the Council of Europe’s Commissioner for Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) and other NGOs regarding the lack of adequate procedural safeguards and often appalling living conditions in detention centres.

Amnesty International acknowledges that States have a sovereign right to control the entry, residence and removal of foreign nationals on their territory. That right must, however, be exercised in accordance with international refugee and human rights law and standards. Importantly, these include the principles of non-discrimination and proportionality. The exercise of State sovereignty cannot be at the expense of the fundamental human rights of asylum seekers or migrants, whatever their legal status.

While the statistics show a continuous decrease of asylum applications in most EU Member States, including the UK, Italy and Spain, Amnesty International deplores the fact that detention appears increasingly to be used as a deterrent to discourage potential asylum-seekers. Against this background, Amnesty International is particularly concerned that the UK Government announced in February 2005 that, by the end of 2005, up to 30 percent of new asylum applicants will be put through a “fast track detained process”². As highlighted in the reports, governments argue that detention is necessary in order to prevent people from absconding at the end of the asylum process. But Amnesty International is

¹ Amnesty International, United Kingdom, *Seeking asylum is not a crime: detention of persons who have sought asylum*, AI INDEX EUR 45/015/2005, Amnesty International, Italy, *Temporary stay- permanent rights: the treatment of foreign nationals held in temporary stay and assistance centres*, AI Index EUR 30/004/2005, Amnesty International, Spain, *The Southern Border: the State turns its back on the human rights of refugees and migrants*, AI INDEX/41/008/2005.

² UK Home Office, *Controlling our borders: Making migration work for Britain – Five-year strategy for asylum and immigration*, published on 7 February 2005.

concerned that the authorities are using the risk of absconding as justification for detention without a detailed and meaningful assessment of the risk posed by each individual. Individuals concerned may be placed in detention on the basis that a bed is available in a detention centre, rather than considering the necessity, legality and appropriateness of detaining them. The precarious situation of migrants is enhanced by the absence of a regular and automatic judicial review.

Although detention is also often justified as the only way to ensure an effective removal policy, Amnesty International's reports show that on numerous occasions individuals may be detained even if the prospect of effecting their forcible removal within a reasonable time may be slim due in particular to lack of co-operation of the countries of origin. The report on Italy also highlights the fact that little attention is paid to international standards prohibiting collective expulsion as shown by the recent removal operations carried out from Lampedusa Island. Amnesty International has also documented evidence of clandestine expulsions of foreign nationals and asylum seekers from Ceuta and Melilla, the Spanish enclaves on Moroccan territory.

Beyond the specifics of each national system, the three reports identify common trends of particular concern to Amnesty International such as:

- Unsatisfactory medical care, unhygienic and harsh living conditions in detention centres, exposing individuals (in particular children and vulnerable persons) to traumatic experiences;
- Difficulties in gaining access to a fair and efficient asylum determination process, resulting in the return of people to countries where they risk serious human rights violations. In this respect, Amnesty International provides evidence that the combination of the lack of adequate training provided to border guards and the low level of procedural safeguards available under the refugee status determination procedure lead to a quasi-systematic denial of protection. The reports highlight the far-reaching consequences on the principle of *non-refoulement* of the use of the so-called white list of safe countries of origin and re-admission agreements with transit countries with poor human rights records;
- Difficulties in gaining access to legal advice necessary to challenge the legality of their detention and expulsion orders; removal operations implemented in particular by the Spanish and Italian authorities may result in breaches of the provisions of the European Convention on Human Rights;
- Ill-treatment of individuals detained in reception centres and excessive use of force by police during deportation operations point to the need for effective judicial remedy but also for the establishment of independent monitoring mechanisms both at national and EU level.

II. Amnesty International's recommendations on EU standards on return

In view of the discussions on common minimum standards on return which are due to be adopted under the UK Presidency, Amnesty International believes that this is an opportune moment for Member States to thoroughly re-examine their current policy, legislation and procedures regarding detention conditions and removal practice. In order to achieve high-level guarantees of basic rights, the common minimum standards on return to be adopted at EU level should be fully in line with international human rights and refugee law. Particular attention should be paid to UNHCR guidelines as well as to the guidelines on the process relating to all stages of the "forced return" of foreign nationals, adopted on 9 May 2005 by the Council of Europe's Committee of Ministers³. Amnesty International believes that there is also a pressing need for the EU and its Member States to provide for independent monitoring bodies given the far-reaching consequences of the migration partnerships with third countries at EU and bilateral level with regard to the principle of *non-refoulement*.

³ UNHCR, Revised guidelines on applicable criteria and standards relating to the detention of asylum seekers (1999) and EXCOM conclusions n°44 (XXXVII), 1986; Committee of Ministers of the Council of Europe, Guidelines on all stages of the forced return process, 9 May 2005 CM (2005) 40.

In the context of the forthcoming negotiations, Amnesty International calls on the EU Presidency to uphold the following points:

➤ **Detention as a last resort**

No one should be detained unless it has been established after a detailed and individualised assessment that detention is *necessary, proportionate, lawful and complies with one of the grounds recognised as legitimate by international standards*. In all cases, detention should not last longer than is strictly necessary. Alternatives to detention and non-custodial measures should always be considered before resorting to detention.

In order to ensure that individuals are adequately informed about their rights and receive the necessary health care, *access to essential services*, including to effective legal assistance, competent interpretation and qualified medical care, should be systematically granted.

In line with UNHCR standards, there should be a *statutory prohibition on the detention of vulnerable people*, including torture survivors, pregnant women, unaccompanied minors, those with a serious medical condition, the mentally ill and the elderly.

➤ **Compliance with international standards**

In order to avoid irreparable breaches of the principle of *non-refoulement*, any EU instrument defining common minimum standards on return should include *specific safeguards* ensuring that removal orders should only be issued when a claim for international protection has been rejected, following a fair and equitable procedure and an independent judicial review.

The future EU directive should also include guidelines regarding adequate *training of law enforcement officers* performing migration controls, maritime interception and escort duties in order to ensure that migrants are treated with respect and dignity and that persons seeking international protection have access to asylum procedures. The EU directive should also reiterate the *prohibition of collective expulsions* according to international standards such as the Protocol 4 ECHR.

➤ **Judicial review and effective remedy**

Persons deprived of their liberty should be given adequate opportunity to have their detention *automatically and regularly* reviewed (as regards both its legality and necessity) by means of a prompt, fair, individual hearing before a judicial or other similar authority whose status and tenure afford the strongest possible guarantees of competence, impartiality and independence.

Persons subject to a removal order to their country of origin or a country deemed to be safe shall have *access to an effective remedy* in the meaning of article 13 ECHR and article 47 of the Charter of Fundamental Rights of the European Union. All appeals should be of a suspensive nature, without exception. In all cases the asylum-seeker must be allowed to stay in the country to await the outcome of the appeal.

➤ **Independent monitoring**

Member States should mandate an *independent inspection body at national level* to make regular, unannounced and unrestricted visits to airport detention cells and airport transit zones. They should also establish *independent monitoring systems for expulsion procedures*, for example by appointing observers, mediators or ombudsmen, and conduct impartial and in-depth enquiries at all levels into allegations of ill-treatment. UNHCR and NGOs should be granted access to reception facilities at all stages of the procedure.

Independent investigations should be carried out into cases where expulsion has resulted in an actual breach of the principle of *non-refoulement*. Given the extra-territorial effect of article 3 ECHR, Member States are held accountable for breaches of the *non-refoulement* principle occurring outside the EU territory.

The EU should develop an *EU-wide monitoring and accountability mechanism*, which would be complementary to the national procedures. Such a function could be part of the remit of the future EU Fundamental Rights Agency.

We hope that our recommendations will be taken into due consideration during the coming discussions and look forward to your response.

Yours sincerely,

Dick Oosting
Director

CC to:

Secretary of State for the Home Department, Charles Clarke
Commissioner for Justice, Freedom and Security, Franco Frattini
EU Permanent Representatives
Members of the European Parliament
UNHCR Branch Office Brussels.