



Folketingets Udvalg for Udlændinge- og Integrationspolitik

Udvalget for Udlændinge- og Integrationspolitik
(2. samling)
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Hermed fremsendes høringssvar fra Amnesty International og Dansk Flygtningehjælp vedrørende dagsordenspunkterne 25 og 27 i det tidligere oversendte samlenotat til brug for råds-mødet (retlige og indre anliggender) den 5.-6. juni 2008 om forslag til direktiv om fælles standarder og procedurer for tilbagesendelse af tredjelandsstatsborgere med ulovligt ophold og spørgsmål om genbosætning af irakere.

Birthe Rønn Hornbech

/Pernille Breinholdt Mikkelsen

Dorthe Kania

Fra: Lisa Blinkenberg [Lblinkenberg@amnesty.dk]
Sendt: 20. maj 2008 11:20
Til: Dorthe Kania
Cc: Helga Therp; Hanne Pilegaard
Emne: Re: SPAIS: SKRIFTLIG HØRING. Frist den torsdag den 22. maj kl. 9.00

Vedhæftede filer: Letter to JHA Ministers_9 May 2008.pdf; MDE 14.012.2008 - Palæstinensiske flygtninge.pdf; Konklusioner vedrørende genbosætning af irakere.doc; Rådskonklusioner om GAM.doc; udsendelsesdirektivet.doc



Letter to JHA Ministers_9 May ... MDE 14.012.2008 - Palæstinensi... Konklusioner vedrørende genbos.. om GAM.doc (2... Rådskonklusioner udsendelsesdirektiv et.doc (304...

Kære Dorthe,

Tak for det tilsendte materiale:

Amnesty International har følgende bemærkninger:

(See attached file: Letter to JHA Ministers_9 May 2008.pdf)

1) Udsendelsesdirektivet. Hermed vedhæftes et Amnesty dokument, der præciserer vores bemærkninger vedr. direktivet og som berører følgende områder:

- Vi er bekymret over, at en række grupper af personer ikke vil blive omfattet af direktivets bestemmelser.

- Vi foretrækker frivillig udrejse i stedet for tvangsmæssig udrejse, og mener at den nærværende ordlyd af direktivet først og fremmest forholder sig til en tvangsmæssig udsendelse.

- Som vi har nævnt tidligere er vi bekymret over indrejse forbuddet, da man ikke kan forudse, hvornår personer har behov for international beskyttelse.

- Amnesty har en række kritikpunkter i forhold til frihedsberøvelse, hvilket er fremsat tidligere og ligeledes er indeholdt i dokumentet.

2) I forhold til genbosættelse af flygtninge fra Irak hilser vi det velkomment, at Tyskland formentlig vil udarbejde udkast til rådskonklusioner om genbosætning af flygtninge fra Irak. Vi bifalder, at Danmark støtter tiltag, der sætter fokus på behovet for, at så mange medlemsstater som muligt indfører genbosætningsordninger og vi håber, at Danmark vil have mulighed for at modtage flere irakiske kvoteflygtninge. I den forbindelse vedhæfter jeg et lille dokument, der tilkendegiver, at mange palæstinensere befinder sig i et ingenmandsland mellem Syrien og Irak, og har et ekstremt behov for genhusning.

(See attached file: MDE 14.012.2008 - Palæstinensiske flygtninge.pdf)

Mvh

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19-05-2008
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Subject
SPAIS: SKRIFTLIG HØRING. Frist den
torsdag den 22. maj kl. 9.00

Hermed fremsendes yderligere kommenterede 3 dagsordenener forud for rådsmødet (retlige og indre anliggender) den 5.-6. juni i skriftlig høring i Specialudvalget for Asyl- og Indvandringssamarbejdet, som nævnt på mødet den 15. maj.

Frist for eventuelle bemærkninger er torsdag den 22. maj kl. 9.00.

Venligst
Dorthe Kania

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Mr. Dragutin Mate
Minister of Interior
EU Presidency

Brussels, 9 May 2008
Our ref: b-767

Dear Mr. Mate,

Subject: Proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals

Amnesty International has been following closely the discussions on the proposal for a directive on common standards and procedures in Member States for returning illegally staying third-country nationals and has raised its concerns on various occasions, including ahead of the April Justice and Home Affairs Council Meeting. During the legislative process, we have seen a constant downgrading of human rights safeguards and standards resulting in a compromise provisionally agreed between the Slovenian Presidency and the Rapporteur which is very worrying in many respects. The EU as a global actor for the promotion of human rights can not afford to adopt common standards on return that risk undermining international human rights standards. Amnesty International urges the Member States, the European Parliament and the Commission to put the protection of the fundamental rights of those subject to return again at the centre of their discussions and re-assess the compromise in this perspective.

During the COREPER-meeting of 7 May the compromise text did not receive sufficient support from the Member States for a variety of reasons. As the Presidency explores the possibilities to resolve this situation Amnesty International reiterates its main concerns with regard to the compromise which is currently discussed, from a human rights perspective. These concerns relate to the scope of the directive, the safeguarding of the principle of voluntary departure, entry bans, detention and emergency situations. In Amnesty International's view the compromise text should not be adopted as long as those concerns are not effectively addressed.

Possibilities for Member States to **exclude categories of illegally staying third country nationals from the scope of the directive** have been constantly expanded. The compromise allows Member States not to apply all the standards of the directive to persons refused entry at the border or those who entered irregularly and have been apprehended or intercepted in connection with the irregular crossing of the border and have not subsequently obtained an authorisation or a right to stay in a Member State. Using vague and undefined criteria such as 'in connection with' leaves room for extremely large interpretation and could encompass potentially every third country national who entered the territory of the Member States irregularly, regardless of where he or she was apprehended in the territory or the duration of his or her irregular stay. As a result crucial safeguards in the directive with regard to legal remedies against return decisions as well as safeguards with regard to detention and judicial review of detention would not apply in those cases. Such broad derogations raise questions with regard to discriminatory treatment of certain groups of irregularly staying third country nationals.

Amnesty International has expressed full support for the general principle underpinning the original Commission proposal that irregularly staying third country nationals should have the **opportunity first to leave the territory on their own accord as an alternative to forced removal**. Unfortunately, this important principle has been seriously watered down. The period of voluntary

departure to be granted by Member States ranges between only seven and thirty days. Member States may also provide in their national legislation that such period shall only be granted following an application of the third country national concerned. In addition, Member States may refrain from granting such a period of voluntary departure to start with if there is a 'risk of absconding' or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent. The reference to applications dismissed as manifestly unfounded or fraudulent will allow Member States to exclude *inter alia* asylum seekers whose application for asylum has been rejected as manifestly unfounded from being granted a period of voluntary departure. In light of the widespread practice in the Member States to reject asylum claims on the basis that they are manifestly unfounded, this may potentially exclude a large group of persons from such a period of voluntary departure.

Effective safeguards with regard to the duration of the minimum period for voluntary departure as well as the reception conditions to be guaranteed to the individuals concerned during the period of voluntary departure or postponement of the return decision must be reinserted. This is necessary so as to allow the third country nationals concerned to make the necessary practical arrangement for their return as well as prevent them from becoming destitute.

Amnesty International considers **entry bans** to be a blunt instrument that is entirely inappropriate in light of the fact that changes in a country of origin, and thus the individual's need for international protection, cannot be predicted. While a general safeguard clause ensuring the right to international protection as defined in the Qualification Directive is included, it remains difficult to foresee in practice how this could be realized. At the same time, entry bans could also present an important practical obstacle to family reunification with family members residing in EU Member States, including under the family reunification directive. Amnesty International strongly believes that Member States should never be under an obligation to impose an entry ban and questions the necessity and appropriateness of including such an instrument in the directive as it risks undermining Member States' human rights obligations under international human rights law in practice.

Amnesty International considers the compromise text with regard to the **maximum duration of detention** excessive and unacceptable as common EU standard. Detention is often justified as the only way to ensure an effective removal policy, but 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. Lack of cooperation of the countries of origin in the removal process remains in the compromise text one of the reasons to extend the period of detention up to 18 months. This is open to wide interpretation and might open the door to abusive practices at national level leading to unjustifiably long periods of detention for reasons for which the individual concerned can not be held responsible. The general presumption against detention in international law and the exceptional grounds for deprivation of liberty are incompatible with the creation of such additional grounds for prolonged detention.

In line with international standards, the EU should maintain a qualitative approach and ensure that detention should always be for the shortest possible time and must not be prolonged or indefinite. Detention is an extreme sanction for people who have not committed a criminal offence. It violates one of the fundamental rights protected by international law – the right to liberty.

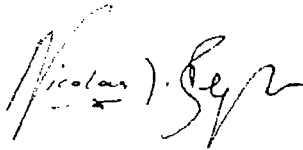
Furthermore, persons deprived of their liberty within the framework of this directive should be given an adequate opportunity to have their detention reviewed both on its legality and its necessity. This should include a prompt, fair, individual hearing before a court, accompanied by the provision of legal assistance. The compromise ensures a speedy judicial review of detention ordered by administrative authorities either *ex officio* or at the request of the person detained but does not guarantee that subsequent review of detention at reasonable intervals of time must be carried out by a judicial authority.

Amnesty International also believes that the detention of children should be avoided. In line with Article 37 of the UN Convention on the Rights of the Child, children should only be detained as a last resort and in facilities appropriate to their status. As unaccompanied children are particularly vulnerable, the directive should in addition prohibit their detention and effectively ensure that they are represented by a guardian. Additional safeguards are needed to avoid the detention of other vulnerable groups, including victims of trafficking, seriously ill people, elderly persons and pregnant women.

Finally, Amnesty International is strongly opposed to the possibility for Member States to weaken the safeguards on judicial review of detention as well as detention conditions in so-called **emergency situations** which are hardly defined in the compromise text. This is particularly worrying as it could serve as a pretext for Member States to derogate from the obligation to carry out detention as a rule in specialised detention facilities which could lead to more generalised use of ordinary prison accomodation for detention of third country nationals in the context of removal. In addition it would allow Member States to provide for a judicial review of detention which is less "speedily" as required under "normal" circumstances. EU Member States should not undermine their obligations under international human rights law and standards with regard to deprivation of liberty through EU legislation. Including a possibility for Member States to derogate in ill-defined emergency situations from the minimal safeguards in the directive on judicial review and reception conditions again opens the door for abusive interpretation and must be rejected.

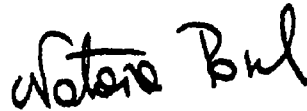
Amnesty International urges you to ensure that these concerns are taken into account and effectively addressed in your further discussions with all actors involved.

Yours sincerely,



Nicolas Berger

*Director
Amnesty International EU Office*



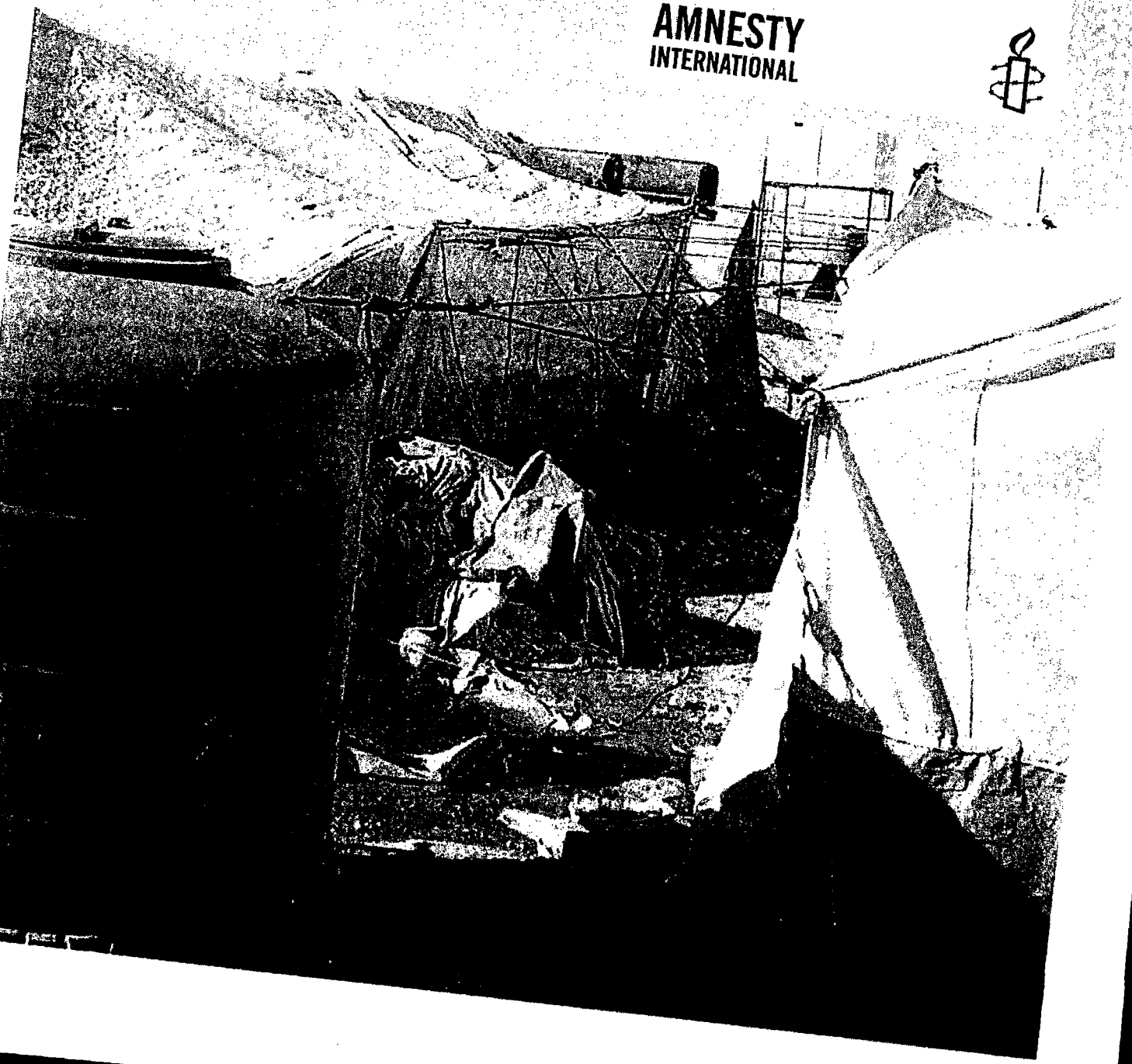
Nataša Posel

*Director
Amnesty International Slovenia*

AL-TANF CAMP

TRAUMA CONTINUES FOR
PALESTINIANS FLEEING IRAQ

**AMNESTY
INTERNATIONAL**



'ONE DAY HERE IS LIKE 10 YEARS ANYWHERE ELSE'

A resident of al-Tanf camp talking to Amnesty International

At least 729 Palestinian refugees who have fled Iraq are stranded in appalling conditions in al-Tanf camp in the no-man's land on the Iraq-Syria border, as of 2 April 2008. The narrow strip of land, wedged between a concrete wall and the main transit road from Baghdad to Damascus, is dry and dusty. Temperatures soar to 50°C in summer and plunge to below freezing in winter. Overcrowded tents are the only protection from the heat, the snow and the blinding sandstorms.



The camp's school, which backs onto a busy highway without protection.

Danger is everywhere, especially for the children. The land is infested with scorpions and snakes. The school tents are unprotected from the busy highway, which has already claimed the life of a boy knocked down by a truck. Heating and cooking systems in the tents regularly cause fires that destroy tents – 42 tents in all, according to residents who spoke to Amnesty International delegates visiting the camp in March 2008.

A fire in April 2007, said to have been started by a spark from an electric cable, engulfed much of the camp. Three people were severely burned and 25 others, mostly children, suffered minor burns and smoke inhalation. Many people had their few possessions destroyed.

An official from UNHCR, the UN refugee agency, told Amnesty International that it was the second major fire in the camp: "It is an example of how inappropriate and dangerous this place is for humans to live in and underlines the need to move these refugees to an appropriate and safe place."

Despite the unsafe and harsh conditions at al-Tanf, the population of Palestinian refugees from Iraq in the camp is growing.

The camp was initially established in May 2006 when a group of 389 Palestinians fleeing persecution in Iraq went to the Syrian border but were refused entry by the Syrian authorities. The Syrian authorities have allowed in



Emergency food provisions arriving for the camp's 700 residents.

over 1 million refugees fleeing Iraq but are generally not willing to accept Palestinian refugees. The camp continues to expand as some of the approximately 4,000 Palestinians who used forged passports to enter Syria are being picked up by Syrian security forces and deported to the camp on an increasingly regular basis.

Access to services

UNHCR is the main agency helping refugees fleeing Iraq and provides food, water and fuel to those at al-Tanf. UNHCR staff in Syria visit the camp daily. UNRWA, the agency that has been helping Palestinian refugees since 1950, provides basic health, education and social services. Other UN agencies have also assisted at al-Tanf, including UNICEF, the UN Children's Fund, which has set up a child-friendly space for the camp's children, 18 of whom were born after their families arrived in the camp and have known no other life.

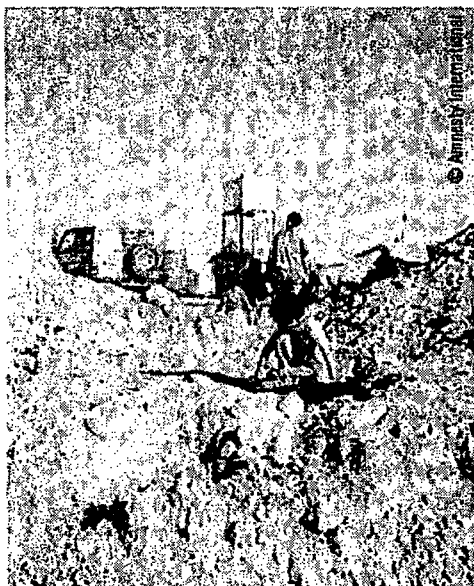
UNRWA and UNICEF have established a school in al-Tanf, and teachers from the camp now educate more than 150 children. However, older students forced to quit university in Iraq are unable to continue with their education.

Basic medical care is provided in al-Tanf, but people needing emergency treatment are taken to the Palestinian

Red Crescent Society hospital in the Syrian capital, Damascus. Al-Tanf residents say the size of the camp's population demands full medical services on site. In 2007, a man died of kidney failure – he had initially been treated in Damascus, but when his condition suddenly deteriorated the camp could not give him the necessary emergency care and he died.

PALESTINIANS ARE FLEEING IRAQ

Palestinian refugees in Iraq have been targeted for gross human rights abuses since the US-led invasion in March 2003. They have been threatened, abducted, tortured and killed mainly by Shi'a armed militia groups, in particular the Mahdi Army, followers of the Shi'a cleric Moqtada al-Sadr, but also by Iraqi government forces. The bodies of those abducted and killed are often found mutilated or with clear marks of torture. Palestinians have been targeted because of their ethnicity and because they are reputed to have received preferential treatment under the former Ba'ath government headed by Saddam Hussain. As a result of the persecution, thousands have fled their homes, mostly in Baghdad, after they or their relatives suffered abuses or received death threats. According to UNHCR, since 2003 the number of Palestinians in Iraq has fallen from 34,000 to around 15,000. UNHCR considers Palestinians, especially those at al-Tanf, to be among the most vulnerable among the 2 million refugees who have fled Iraq.



Above: A boy playing on the edge of the camp.
 Front cover: The red tanks scattered around al-Tanf supply residents with water.

At least 2,300 Palestinian refugees from Iraq are also suffering extremely harsh conditions in al-Waleed camp, another makeshift camp near the Syria-Iraq border. Al-Hol camp in al-Hassakah governorate in north-east Syria is home to a further 300 Palestinians from Iraq.

In October 2007 Amnesty International published a report – *Iraq: human rights abuses against Palestinian refugees* (AI Index: MDE 14/030/2007) – which detailed the abuses and urged the international community to act urgently to help resettle Palestinian refugees from Iraq.

April 2008
 AI Index: MDE 14/012/2008

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Trauma and despair

Many camp residents described to Amnesty International the horrific events that prompted them to flee Iraq and have left them traumatized. Some had been kidnapped and tortured. Others had relatives who had been abducted, mutilated and killed. Others spoke of armed militia cutting off ears, gouging out eyes, pouring acid over the head of captives.

Mas'ud Nur al-Din al-Mahdi and 'Adnan 'Abdallah Melham, both now living in al-Tanf, were among four Palestinians arrested in May 2005 and detained by the Iraqi security forces. They were tortured and paraded on television "confessing" to a bomb attack. The four were released in May 2006 after a court ruled that there was no evidence that they had been involved in bomb attacks. Mas'ud Nur al-Din al-Mahdi told Amnesty International that the torture he suffered included being suspended upside-down for a long time and having a large stone put on his genitals.

Members of one family now at al-Tanf described to Amnesty International the murder of two of their brothers in

Baghdad – Mohammad Hussain Sadeq in March 2006, and 'Omar Hussain Sadeq a year later.

The people in al-Tanf are also traumatized by the conditions in the camp and their fear that they may be stuck there for many more years. One resident pleaded with Amnesty International delegates to "save us from this hell". He added: "A human being doesn't live just to eat." Another said: "We regret that our plight depends on political decisions rather than humanitarian considerations."

UNHCR believes that resettlement in third countries is the only possible durable solution for these Palestinians at the present time. It told Amnesty International that the Chilean government offered to resettle an initial group of 116 Palestinians from al-Tanf; their departure is expected in April 2008. A number of other governments outside the Middle East have reportedly said they will resettle some of al-Tanf's residents, but their plight is desperate and safe resettlement cannot come quickly enough.

ACT NOW

PLEASE WRITE TO YOUR GOVERNMENT:

- ✉ draw its attention to the plight of Palestinian refugees in al-Tanf camp, highlighting the need for immediate action;
- ✉ call for urgent assistance in resettling them and other particularly vulnerable refugees from Iraq;
- ✉ call for expedited processing for resettlement in recognition of the extremely harsh conditions in the camp.

Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion – funded mainly by our membership and public donations.

Dorthe Kania

Fra: Anne la Cour [anne.lacour@drc.dk]
Sendt: 21. maj 2008 14:44
Til: Dorthe Kania
Cc: Bettina Chu; Dorte Smed; Louise Juelskjær
Emne: Svar: SPAIS: SKRIFTLIG HØRING. Frist den torsdag den 22. maj kl. 9.00
Vedhæftede filer: Joint AI-ECRE letter Return Directive_13 May 2008.pdf

Kære Dorthe Kania

Vedr. Udkast til rådskonklusioner om genbosætning af flygtninge fra Irak og udsendelsesdirektivet

Hermed Dansk Flygtningehjælps kommentarer til høringen. Vi har ingen kommentarer til spørgsmålet om EU's samlede migrationsstrategi:

Dansk Flygtningehjælp skal bemærke, at organisationen gerne så, at Danmark supplerede den nuværende kvote med en særlig kvote for irakiske flygtninge fra nærområdet (Syrien og Jordan). Det bemærkes tillige, at Danmark i det seneste år kun har taget et meget lille antal kvoteflygtninge fra Irak, og at der ikke er planer om at foretage en udvælgelsesrejse til nærområdet til Irak.

Med hensyn til udsendelsesdirektivet henvises til vedhæftede kommentar udarbejdet af ECRE (European Council on Refugee and Exiles). Flygtningehjælpen kan tilslutte sig ECREs bemærkninger.

Med venlig hilsen

Anne

Anne la Cour Vågen

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Asyl og repatriering/Protection and repatriation
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>>> "Dorthe Kania" <dka@inm.dk> 19. maj 2008 >>>

Hermed fremsendes yderligere kommenterede 3 dagsordenener forud for rådsmødet (retlige og indre anliggender) den 5.-6. juni i skriftlig høring i Specialudvalget for Asyl- og Indvandringssamarbejdet, som nævnt på mødet den 15. maj.

Frist for eventuelle bemærkninger er torsdag den 22. maj kl. 9.00.

Venligst
Dorthe Kania

Ministeriet for Flygtninge, Indvandrere og Integration
Internationalt kontor
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1057 København K
Telefon: 3392 3117

26-05-2008

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26-05-2008



ECRE

EUROPEAN COUNCIL ON
REFUGEES AND EXILES

Brussels, 13 May 2008

Dear Member of the European Parliament,

Re: Forthcoming plenary vote on the proposal for a directive on return of illegally staying third country nationals (Returns Directive)

After a long and difficult negotiation process, the *proposal for a directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third country nationals* is due to be presented to the plenary session of the European Parliament (EP) for adoption at first reading agreement. This Directive presented a unique opportunity to guarantee and improve the necessary human rights safeguards in the return procedures of the majority of EU Member States. This instrument is also the first opportunity for the European Parliament to ensure that EU asylum and immigration legislation fully respects fundamental rights by effectively using its mandate in the co-decision procedure.

Amnesty International and ECRE therefore urge all MEPs not to accept this provisionally agreed compromise text and to ensure that its serious flaws are properly addressed. The EP should ensure that the common standards and procedures laid down in this EU legislative instrument guarantee that the return of irregularly staying third country nationals takes place in safety and dignity and in full respect of their fundamental rights.

Amnesty International and ECRE have closely followed developments since the Commission presented its proposal in 2005. We have reiterated on several occasions our serious concerns from a human rights perspective on a number of its provisions, such as the obligatory use of re-entry bans (renamed entry-bans) as well as the excessive maximum detention periods and the lack of sufficient guarantees with regard to vulnerable categories of third country nationals, such as unaccompanied minors. Unfortunately, the compromise provisionally reached by the Council and the European Parliament in April 2008 does not remedy these flaws, and in fact introduces a number of extremely problematic provisions.

While there are many provisions presenting concerns with regards to safeguarding human rights, Amnesty International and ECRE would like to draw your attention to three areas of major concern in the compromise text:

1. Excessive and disproportionate maximum duration of detention of adults, families and unaccompanied children (Articles 14, 15 and 15a)

The compromise text allows detention for the purpose of removal for up to 18 months. Amnesty International and ECRE consider such a long period of detention to be excessive, disproportionate and therefore unacceptable as a common EU standard. Such a standard risks encouraging Member States to lengthen or maintain long detention periods for removal purposes rather than to reduce them. Amnesty International and ECRE also oppose the

detention of unaccompanied minors, which is also allowed under the compromise text within the same excessive time limits of up to 18 months. In addition, detention in ordinary prison accommodation, including for unaccompanied minors and families with children, is allowed. This would particularly apply in "*emergency situations*" which are extremely vaguely defined. We acknowledge that the compromise text reaffirms to some extent the presumption against detention through the use of a 'may' provision in Article 14, 1 and the fact that detention can only be maintained as long as removal arrangements are in progress and executed with due diligence. However, this is undermined by the use of extremely vague criteria, such as the delay in obtaining documents from the country of return, to allow prolonged detention up to 18 months in Article 14, 5.

Detention is an extreme sanction for people who have committed no crime. Although European governments often state that detention is the only way to ensure an effective removal policy, reports show that longer detention periods do not directly lead to more effective removals. They are therefore unnecessary and they are also inhumane. The prolonged detention of persons in often appalling conditions in Europe, such as those witnessed by members of the EP LIBE Committee on their visits to detention centres in various EU Member States, should never be sanctioned by Community law.

2. Insufficient guarantee of the principle of voluntary departure over forced return (Article 6a)

While the priority of voluntary departure over forced return is the intended underlying principle for this directive, this is seriously undermined throughout the compromise text. The period of voluntary departure to be granted by Member States ranges between only seven and thirty days, in contrast to a *minimum* of four weeks proposed by the LIBE Committee in its adopted report of September 2007. Member States may even only grant such a period if a third country national actually applies for voluntary departure. We acknowledge that the provision whereby such a period must be extended when this is necessary, taking into account the specific circumstances of the individual case, is to be welcomed. However, Member States may refrain from granting such a period of voluntary departure to start with if there is a 'risk of absconding' or if an application for a legal stay has been dismissed as 'manifestly unfounded or fraudulent'. This will allow Member States to exclude for instance asylum seekers whose application for asylum has been rejected as 'manifestly unfounded' from being granted a period of voluntary departure. In light of the widespread practice in Member States to reject asylum claims on this basis, this may lead to a large group of persons having EU entry bans of up to five years imposed on them.

3. Obligatory use of entry bans valid throughout the EU (Article 9)

The proposed directive sets out an obligation for Member States to issue an entry ban together with a return decision if no period of voluntary departure has been granted or if the obligation to return has not been complied with. Such an entry ban, which would have to be included in the Schengen Information System, would prevent the third country national concerned from entering the territory of EU Member States for a period which should not exceed five years but could be unlimited when the third-country national represents a serious threat to public policy, public security or to national security. No effective guarantees are provided with regard to safeguarding access to protection in the EU, which may lead to violations of the *non-refoulement* principle. Amnesty International and ECRE oppose the use of entry bans as blunt instruments that may in practice create an insurmountable obstacle for the individual who may have a need to re-enter the territory of a Member State in search of protection. Furthermore, entry bans may also interfere with the right to family life, and risk encouraging the use of irregular migration channels in order to reach EU territory.

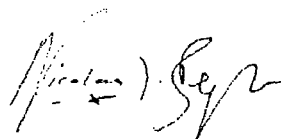
In addition to these major concerns, the compromise text allows the Member States to exclude potentially large groups of irregularly staying third country nationals from **the scope of the directive (Article 2)**. Persons "*refused entry at the border*" as well as those

"apprehended or intercepted in connection with the irregular crossing of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay" may be excluded from the scope of the directive and from safeguards with regard to legal remedies against return decisions (Article 12) or the provision with regard to detention, including the safeguards on judicial review (Article 14). Such broad derogations raise questions with regard to discriminatory treatment of certain groups of irregularly staying third country nationals.

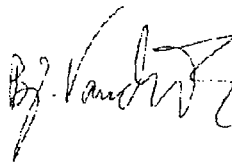
For persons who have not been able to gain admissibility to an asylum procedure at the border, excluding them from the abovementioned crucial safeguards under this Directive could be particularly problematic in terms of upholding the *non-refoulement* principle. It is known that in some Member States asylum seekers are in certain cases not able to effectively lodge a claim at the border, e.g. in Slovakia where some persons seeking asylum are re-accompanied across the border to Ukraine without any individual examination of their identity and status, and in Greece where people are regularly turned back at the border with their fear of persecution on return ignored.

We urge you to take these considerations into account in your deliberations.

Yours sincerely,



Nicolas Beger
Director
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Bjarte Vandvik
Secretary General
ECRE