

representatives of religious institutions, and friends and family of detainees;

- Sign and observe the Optional Protocol to the Convention Against Torture, which provides for regular visits to and monitoring of detention centres;
- Provide conditions of detention that comply with basic human rights standards, including access to a lawyer, health care, education, and adequate food and water;
- In particular to industrialised countries - provide additional development assistance for refugee-hosting areas in developing countries, encouraging host governments to permit more freedom of movement for refugees;
- In particular to governments of developing countries - move from policies of encampment of refugees towards policies that allow refugees to become self-reliant.

To humanitarian agencies:

- Join the international coalition on detention of refugees, asylum seekers and refugees established by leading refugee and human rights organisations (www.idcoalition.org) and join in its advocacy work;
- Seek access to detention facilities in order to provide care and services to detainees;
- Alert the UN Working Group on Arbitrary Detention to specific abuses you encounter or of which you become aware.

To the general public:

- Learn about the policy of your government on detention;
- If detention is used in your country to deter asylum seekers and refugees, raise public awareness of its effects on detainees and urge your political representatives to ensure human rights standards are respected;
- Establish visitor groups in your area to visit detainees;
- Visit the above website of the international coalition and support its work.



“Flee for your life and risk imprisonment without crime”

Imprisoned for being a refugee¹

“After facing persecution and extreme poverty at home, refugees face further suffering when they are deprived of their freedom of movement and detained in centres, camps and prisons – simply for fleeing for their lives.

We have been visiting immigration detainees for more than 20 years. Across Europe, the US, South Asia, Asia Pacific, Southern Africa, Eastern Africa and in the Caribbean, our staff witness firsthand the physical and psychological harm caused to very vulnerable individuals, including children, by this loss of their freedom.”

Fr Lluís Magriñà SJ, JRS International Director

¹JRS applies the Catholic Church definition of 'de facto refugee' to all "persons persecuted because of race, religion, membership in social or political groups" and to "the victims of armed conflicts, erroneous economic policy or natural disasters.

What is detention?

Governments throughout the world tell their citizens that they “detain” migrants or refugees who entered their countries without permission. Put in jail without charge and with little or no judicial oversight, they are often afforded fewer rights than people convicted of crimes. UNHCR (the UN refugee agency) defines detention as: “Confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities, or airport transit zones, where freedom of movement is substantially curtailed, and the only opportunity to leave this limited area is to leave the territory.”

What does it mean in reality?

- People fleeing serious human rights abuses can find themselves locked up in the so-called country of refuge while their cases are being examined.
- Refugees are often kept in “closed camps”, from which they dare not stray lest they be arrested and imprisoned in a jail.
- Refugees, forced to flee for a second time, are often jailed, sometimes indefinitely, in the new country of “refuge.”
- Unsuccessful asylum applicants, and undocumented migrants, may be kept behind bars indefinitely waiting for their home country to accept them back - which in many cases will never occur.

In none of these situations has anybody been charged with a criminal offence. Imposing a penalty on people simply for seeking refuge is prohibited by the 1951 UN refugee convention. Nevertheless, governments around the world detain increasingly larger numbers, hundreds of thousands, of refugees, asylum seekers and irregular migrants in closed centres – using the denial of freedom of movement to arbitrarily discourage migration, even flight from persecution. Unfortunately, lack of available records makes it impossible to say exactly how many persons are detained throughout the world each year.

Why is JRS concerned about this issue?

JRS is concerned about the conditions in which people are being held in detention and the lack of access to proper procedures. **Inadequate detention conditions and procedures** are frequently found in industrialised countries that have signed all of the major human rights agreements and instruments; **in some countries the conditions of detention are so harsh that they are life-threatening.**

Further, JRS is concerned that detention is being used – inappropriately and in violation of international human rights law – to deter the arrival of refugees and to persuade them

to leave. We are particularly concerned that in a time of decreasing asylum applications worldwide, the practice of detention is rising, and that governments seem to be copying each other’s worst practices.

What is the impact of detention?

Human costs – The psychological impact of detention can be very severe, particularly for vulnerable people such as trauma survivors, pregnant women and children. For example, a 2003 report by the US-based Physicians for Human Rights documented significant symptoms of depression, anxiety, and post-traumatic stress disorder among detained asylum seekers.

Financial costs – Detention centres are far more costly to run than community-based alternatives. For example, in Bologna in Italy it costs €2,670 a month to detain one person in a detention centre. The average monthly household income in Italy is €2,000.

Social costs – Detention criminalises refugees, asylum seekers and migrants – which results in greater mistrust and hostility by the local population and reduces chances of positive social integration. People held in detention-like conditions cannot become self-reliant, or contribute to the development of their host communities.

Impact on access to asylum – Detention policies deter many asylum claims and thus leave people who need protection in danger. Also, detention makes it more difficult for asylum seekers to prepare their cases and to get proper access to justice.

Recommendations

To governments:

- Never use threats of detention to deter people fleeing human rights abuses from seeking asylum;
- Avoid the use of detention and seek alternatives to detention, e.g. supervised release, open centres etc;
- Where absolutely necessary, and where all other alternatives have been exhausted, ensure that detention is used only for identification or legitimate removal purposes, is subject to ongoing judicial oversight, and does not exceed a reasonable time limit;
- Do not detain individuals solely because they have applied for asylum - particularly vulnerable individuals such as children, torture and trauma survivors, pregnant women, the physically infirm and the mentally ill;
- Permit access to detention facilities by civil society organisations, legal representatives,

Some Examples of detention where JRS works

Detention in Zambia

All refugees in Zambia are, by law, required to reside in one of six closed refugee camps/settlements, unless they have obtained a work, study or self-employment permit, or medical leave to stay in an urban area. If they leave the camps they may be detained in prisons. In fact, the vast majority of the refugees held in prisons have not committed criminal offences but simply violated the administrative requirement that they remain in designated areas. Zambian legislation also allows immigration authorities to detain for up to 14 days any person suspected of being a prohibited immigrant (PI), and to detain indefinitely suspected PIs pending their deportation from Zambia. The immigration department very frequently lacks the resources to deport nationals of non-neighbouring countries.

Refugees can be detained in any of Zambia's overcrowded prisons together with convicted criminals. Living conditions are extremely harsh and sometimes life threatening. Prisons are so crowded that most detainees are forced to sleep while sitting up. They are fed only once a day. Access to water is rare, and most of the toilets are blocked. There is a high level of abuse – physical and sexual – and high prevalence rates of infectious diseases amongst inmates. JRS Zambia knows refugees who have died while in detention. Separated children who arrive in Zambia to seek asylum are often detained on arrival as a first resort. They are held with adults and convicted criminals and often suffer abuse.

Detention in Malta

The number of arrivals of refugees and irregular migrants in Malta rapidly rose, from 24 in 2000 to 1,686 in 2002, as successive boatloads of people were intercepted in Maltese waters or landed on the shore. Malta implements a policy of mandatory, long-term detention of all migrants caught entering or staying on Maltese territory illegally, even if they apply for asylum, despite the fact that international law prevents States from punishing asylum seekers who must resort to illegal entry. Asylum seekers may remain behind bars for up to one year as the asylum procedure is fraught with delays. People whose asylum cases have been rejected are held in detention pending removal. There is no

time limit on immigration detention in Maltese law. However, current government policy states that irregular migrants may be detained for up to eighteen months. Nevertheless, some have been held for longer for allegedly refusing to cooperate with attempts to deport them. Vulnerable groups, such as torture victims, children and pregnant women, are also detained until their identity and vulnerability is established, which may take months.

Conditions in the immigration detention centres have been harshly criticised by the European Committee for the Prevention of Torture as falling below international minimum standards. In addition, the Human Rights Commissioner for the Council of Europe, Alvaro Gil-Robles, said after a fact-finding mission in October 2003, that conditions in Malta's detention centres were shocking in comparison with its prisons and that they needed "urgent action".

Detention in the United States

Asylum seekers in the US may be detained for an unlimited period of time, and all categories of migrants may, under certain circumstances, be subject to detention from the moment of arrival until the moment of deportation. They can be held for years pending a final decision on their cases. Detainees are held at hundreds of locations, in federal detention centres, criminal jails, and private government-funded facilities. During 2003, the Department of Homeland Security detained a total of 231,500 refugees, asylum seekers and migrants and the average daily detention rate was 21,133. Worryingly, this rate has been rising. In 2004, the US Congress passed legislation which included authorisation for the construction of up to 40,000 additional immigration detention bed spaces over the next five years; which could mean an increase of nearly 200 percent.

The conditions of detention can vary greatly by facility. Many detainees report mistreatment and suffer from depression and lack of sufficient medical care. JRS USA is working to promote better standards of detention, and the extension of those standards to jails and non-federal centres. The unnecessary detention of children is of particular concern. There is an urgent need to ensure that the government promptly transfers custody of minors from Department of Homeland Security operated facilities to the Department of Health and Human Services for foster care placement, as required by law.