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**The International Organization for Migration (IOM)  
and  
Human Rights Protection in the Field:  
Current Concerns**

**Submitted by  
Human Rights Watch**

**IOM Governing Council Meeting  
86<sup>th</sup> Session  
November 18-21, 2003  
Geneva**

**Introduction**

Human Rights Watch welcomes the opportunity to continue its engagement with the International Organization for Migration (IOM) at the November 2003 Governing Council meeting (86<sup>th</sup> Session).<sup>1</sup> Throughout 2003, Human Rights Watch representatives have met with IOM officials in Geneva, New York, and Brussels, and in IOM field offices. These meetings reflect Human Rights Watch's on-going commitment to ensure that all migration-related laws, policies, and practices promote and protect the human rights of migrants,<sup>2</sup> and safeguard the international refugee protection regime.<sup>3</sup>

Our engagement with IOM arises from our concern that IOM has no formal mandate to monitor human rights abuses or to protect the rights of migrants and other persons, even though literally millions of people worldwide participate in IOM-sponsored programs and projects.<sup>4</sup> Human Rights Watch began to monitor and document IOM operations in the field in the early 1990s. In 1993, we documented IOM's role in the asylum determination system imposed on Haitian asylum seekers by the United States and concluded that the determination procedure violated the

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<sup>1</sup> The International Organization for Migration (IOM) granted Human Rights Watch observer status in 2002 for Council meetings. Representatives from Human Rights Watch attended the December 2002 Governing Council meeting (84<sup>th</sup> Session), and with Amnesty International, issued a joint statement included as Appendix I in this document.

<sup>2</sup> According to IOM's web site, the categories of persons that can access IOM assistance are: rejected asylum seekers, trafficked migrants, stranded students, labor migrants, qualified nationals, and refugees referred by the United Nations High Commissioner for Refugees (UNHCR). See [http://www.iom.int/en/what/assisted\\_voluntary\\_returns.shtml](http://www.iom.int/en/what/assisted_voluntary_returns.shtml) (accessed November 12, 2003). For the full range of IOM services, see <http://www.iom.int> (accessed November 15, 2003).

<sup>3</sup> For more on Human Rights Watch's work on migrants and refugees, see <http://www.hrw.org/campaigns/migrants/> and <http://www.hrw.org/refugees/> (accessed November 10, 2003).

<sup>4</sup> IOM's policy on "Effective Respect for Migrants' Rights" states: "In international law, protection is based on a mandate, conferred by treaty or custom, which authorizes an organization to ensure respect of rights by States. These rights may include human rights, workers' rights or the rights of refugees, and can be found in various international instruments such as United Nations conventions and declarations. IOM has no such mandate, and thus is not concerned with legal protection per se." See [http://www.iom.int/en/who/main\\_policies\\_effrespect.shtml](http://www.iom.int/en/who/main_policies_effrespect.shtml) (accessed November 10, 2003).

right to seek asylum.<sup>5</sup> Ten years later, we continue to find IOM complicit in situations that threaten people's human rights in many countries, as detailed in this paper.

IOM policy statements have evolved and been fine-tuned over the years to reflect the language of "effective respect" for migrants' rights. While the adoption of rights language and development of policy reflecting such language is encouraging, we feel that IOM has not appeared to have learned from past mistakes. Human Rights Watch calls on member states of the Governing Council to send a clear message to IOM that it must observe international human rights and refugee protection norms in all its operations.

Moreover, we urge member states to request that IOM develop effective accountability mechanisms to answer criticism and allegations with respect to IOM practice in the field and its impact on human rights. IOM does not have a standard for accountability when rights violations occur in the course of its operations. This has been a longstanding issue of concern for Human Rights Watch. We believe that the historic absence of accountability for IOM for its practices in the field is at the root of continuing problems such as those detailed below. Only a strong commitment to such accountability will set IOM on the path toward correcting longstanding failures to protect migrants' rights.

## **IOM and Human Rights**

The June 2003 "Note on IOM Strategy: Current and Future Migration Realities and IOM's Role," states that: "Underlying all that IOM does is the fundamental concern to protect the human rights and dignity of migrants."<sup>6</sup> Official IOM policy states that, despite the lack of a formal mandate legally obligating the organization to ensure respect for migrants' rights,<sup>7</sup> IOM nonetheless "recognizes its responsibility to ensure that when providing assistance to migrants, its activities must obtain full respect for the rights of the individual, its activities must be non-discriminatory and must not diminish the human rights of others."<sup>8</sup> Moreover, IOM assumed the chairmanship of the Steering Committee for the Global Campaign for Ratification of the Convention on the Rights of Migrants in October 2003.<sup>9</sup> With these statements and professional activities, IOM has put itself forward as a stakeholder in the protection of migrants' human rights.

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<sup>5</sup>Americas Watch, *No Port in the Storm: The Misguided Use of In-Country Refugee Processing in Haiti*, September 1993. In 1997, the Inter-American Commission on Human Rights ruled that United States' Haitian Migrant Interdiction Program violated, among other things, the Haitian asylum seekers' right to seek asylum, and their rights to life, liberty and security of person under the American Declaration of the Rights and Duties of Man. The decision notes IOM's involvement in the process at paragraph 65. See *Haitian Centre for Human Rights and Others v. United States*, Case No. 10,675, Report No. 51/96, adopted as a final Report at the 95th Session, March 13, 1997.

<sup>6</sup> MC/INF/262, para. 16. Council Meeting documents, 86<sup>th</sup> Session, November 18-21, 2003, Geneva. See [http://www.iom.int/DOCUMENTS/GOVERNING/EN/MCINF\\_262.PDF](http://www.iom.int/DOCUMENTS/GOVERNING/EN/MCINF_262.PDF) (accessed November 10, 2003).

<sup>7</sup>See footnote 4 above.

<sup>8</sup>IOM, "Migrants' Rights: IOM Policy and Activities," MC/INF/259, para. 4. Council Meeting documents, 84<sup>th</sup> Session, December 2-4, 2002, Geneva. See <http://www.iom.int/DOCUMENTS/GOVERNING/EN/Mcinf259.pdf> (accessed November 10, 2003).

<sup>9</sup>See Global Campaign for Ratification of the Convention on the Rights of Migrants at <http://www.migrantsrights.org/index.htm> (accessed November 10, 2003). Human Rights Watch also serves as a member of the Steering Committee.

We are concerned that many stakeholders involved in the global migration discourse at regional and international levels focus narrowly on the need for “managed migration” systems, and ignore the human rights dimension of migration. Developing migration systems in many parts of the world are characterized by increasingly restrictive asylum regimes, highly securitized border control management, growing immigration detention regimes, and dubious “returns” policies. The legitimate need for systems to manage migration must not ignore the fact that migrants are individual human beings who are entitled to respect for their fundamental rights. All of IOM’s member states have legal obligations to guarantee such core rights and, as noted above, IOM itself has recognized its own responsibility for ensuring that its activities do not violate the human rights of migrants, asylum seekers, refugees, internally displaced persons (IDPs), or other persons participating in IOM programs.<sup>10</sup>

Human Rights Watch urges IOM to live up to its commitments by ensuring that policies and practices adhere to international human rights norms. In Human Rights Watch’s 2002 statement to IOM’s Governing Council,<sup>11</sup> we asked the Governing Council to urge IOM to refrain from or cease engaging in any activities that have the effect, either directly or indirectly, of obstructing enjoyment of basic human rights by migrants, refugees, and asylum seekers. Our research and the research of colleague organizations, however, has revealed a range of on-going IOM activities that appear to obstruct, in whole or in part, the rights of the very people IOM is tasked with assisting.

This paper details a selection of migration-related areas—returns programs, property claims management, detention center operations, and counter-trafficking projects—where concerns have arisen regarding IOM policy and practice and its adherence to human rights and refugee protection norms. We also raise the issue of IOM’s engagement with civil society, emphasizing that meaningful consultation with nongovernmental and humanitarian organizations requires a dedicated effort that genuinely enfranchises civil society actors. The examples below are intended to promote a dialogue with IOM and with its member states with a view to assisting IOM to develop policy and good practice that genuinely reflects its rhetorical commitment to the protection of human rights.

## **IOM and Returns**

The IOM plays an increasingly prominent role in the return of migrants, asylum seekers, refugees, and IDPs to their countries of origin, to other countries that have agreed to accept them, or to other regions within their own countries. The organization claims that it returns migrants in safety and dignity and only on a voluntary basis.<sup>12</sup> The IOM, however, has no mechanism—either internal or external—to evaluate whether decisions to return are, in fact, made under duress or under circumstances that are directly or indirectly coercive, or to assess that conditions in certain countries are safe enough to allow for returns. Moreover, if IOM does effect returns that are not truly voluntary, there is no mechanism in place to hold the agency accountable for

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<sup>10</sup>For the sake of simplicity, this paper uses “migrants” as a catch-all word that includes the categories listed in footnote 2 and all persons who participate in IOM programs or are assisted by IOM projects.

<sup>11</sup>Appendix I in this document.

<sup>12</sup>According to IOM officials, a voluntary return is one that occurs without force, either physical or psychological, and that involves an informed decision to return. Human Rights Watch meeting with IOM, Brussels, November 13, 2003. Meeting notes on file with Human Rights Watch.

returning individuals to places where their lives or freedom could be under threat due to persecution.

Concerns about recent returns arise in three specific areas: returns to post-conflict zones, treatment of so-called “third country nationals,” and other “voluntary assisted returns.”

### *Post-Conflict Returns*

The IOM has implemented programs that facilitate the return of migrants, refugees, and asylum seekers to countries struggling to recover from situations of armed conflict, including Afghanistan and Iraq. We are concerned that in some instances IOM may be returning people prematurely to countries where they may not be safe. The IOM does not evaluate whether an asylum seeker has had a full and fair asylum determination procedure, nor does it conduct systematic post-return monitoring of any migrants, which heightens the fear that people could be returned in the absence of any mechanism to determine if their continuing safety is assured. In the light of such fundamental failings, there is reason to question whether IOM returns to post-conflict zones are always appropriate or whether, in light of serious security concerns, they might lead to actual physical harm or further displacement.<sup>13</sup>

Returns from various countries to Afghanistan facilitated by IOM,<sup>14</sup> for example, have taken place despite well-documented reports by intergovernmental and nongovernmental organizations warning that conditions in the country may not be safe or secure enough at present to encourage Afghans and their families to return.<sup>15</sup> In Australia, IOM has conducted returns of Afghans holding temporary visas whose status assessment, conducted by the Australian government, was based, in part, on a four-page “country information report” about Afghanistan. The report

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<sup>13</sup>For an authoritative interpretation of what constitutes “voluntary return” and “in safety” see, UNHCR, Global Consultations on International Protection, “Voluntary Repatriation,” EC/GC/02/5, April 25, 2002, at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3ccfe52c4> (accessed November 12, 2003) and UNHCR, *Handbook on Voluntary Repatriation: International Protection*, Geneva, 1996.

<sup>14</sup>IOM projects focusing on voluntary assisted returns to Afghanistan include, among others, returns from Belgium (Return of Qualified Afghans Program) and Denmark to Afghanistan, and the Reception Assistance for Returning Afghans Program (RAR). See [http://www.iom.int/en/what/assisted\\_voluntary\\_returns.shtml](http://www.iom.int/en/what/assisted_voluntary_returns.shtml) (accessed November 10, 2003). In 2002, IOM assisted in the return of over 200 rejected Afghan asylum seekers from IOM-operated “migrant processing centres” on the island of Nauru (see below for more on IOM operations with respect to detention centers). See IOM Press Briefing Notes, January 14, 2003, at <http://www.iom.int/en/archive/PBN140103.shtml> (accessed November 10, 2003).

<sup>15</sup>For numerous expressions of continuing concern about security conditions in Afghanistan by the United Nations, see <http://www.un.org/apps/news/infocusRel.asp?infocusID=19&Body=Afghan&Body1=Annan%20> (accessed November 15, 2003). See also, Human Rights Watch, “Afghanistan: Security Must Precede Repatriations,” August 8, 2003, at <http://hrw.org/press/2003/08/afghan080803.htm> (accessed November 10, 2003); Human Rights Watch, *Afghanistan: Killing You is a Very Easy Thing for Us*, July 2003, at: <http://www.hrw.org/reports/2003/afghanistan0703/> (accessed November 10, 2003). See also, Amnesty International, *Afghanistan: Out of Sight, Out of Mind: The Fate of the Afghan Returnees*, AI INDEX: ASA 11/014/2003, June 23, 2003, at <http://web.amnesty.org/library/Index/ENGASA110142003?open&of=ENG-AFG> (accessed November 10, 2003).

contained minimal substantive information about conditions in Afghanistan and gave misleading information about human rights protections.<sup>16</sup>

With respect to returns to Iraq, IOM has suggested that such returns are exceptional; that is, conducted only in humanitarian cases at the behest of individuals who actively seek out IOM's assistance.<sup>17</sup> Recent disturbing reports, however, indicate that some rejected Iraqi asylum seekers sign "voluntary" return forms with IOM because they have no other option.<sup>18</sup> Human Rights Watch's research inside Iraq and neighboring countries, however, has identified a range of serious protection issues specific to returning refugees and has called on governments to refrain from returning, or assisting in the return, of refugees to Iraq until security conditions permit.<sup>19</sup> The United Nations High Commissioner for Refugees (UNHCR) issued a press release on November 14, 2003, calling on governments not to return Iraqis due to serious security concerns and the country's lack of capacity to provide even the most basic services to returnees.<sup>20</sup>

Human Rights Watch welcomes the development and implementation of returns programs that include mechanisms that serve as a check on involuntary returns. For example, the U.K.

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<sup>16</sup>See Human Rights Watch, "Australia: Don't Send Afghans Home to Abuse: Recent Findings Refute Government's Depiction of Conditions," at <http://hrw.org/press/2003/05/refugees052303.htm> (accessed November 12, 2003). See also, Australian Department of Immigration and Multicultural and Indigenous Affairs, "Afghan Reintegration Package Offer to Expire," June 25, 2003, at [http://www.immi.gov.au/media\\_releases/media03/d03041.htm](http://www.immi.gov.au/media_releases/media03/d03041.htm) (accessed November 12, 2003), detailing returns to Afghanistan under the auspices of IOM and stating that "TPV [temporary protection visa] holders who do not accept the package and whose application for a further protection visa is unsuccessful will be required to depart Australia without the benefit of the package."

<sup>17</sup>IOM's web site states that "IOM is helping small numbers of Iraqis, particularly those with special humanitarian reasons, to return home from abroad via Jordan. Returnees have included a terminally ill cancer patient who wanted to return home to be with his family. To date, 288 Iraqi migrants around the world have asked IOM for such help to return home." See <http://www.iom.int/en/news/pbn241003.shtml#item1> (accessed November 10, 2003).

<sup>18</sup>See Meaghan Shaw, "Iraqi Family Gives Up its Fight for Asylum," *The Age*, October 30, 2003, at <http://www.theage.com.au/articles/2003/10/29/1067233247071.html> (accessed November 8, 2003), detailing the plight of the Kadem family, who, after four years in Australia, including time spent in detention, signed papers to voluntarily return home. Abdullah Kadem, age sixteen and family spokesman, told *The Age*, "They don't give us a choice to stay here. . . We want to stay here but they keeping us four years here. We can't stay anymore. They don't care. We tell them all this bombing (in Iraq). . . They say: 'No. This is your only choice to go back to Iraq.'" The article also features Denis Nihill, IOM Chief of Mission in Australia, describing that it takes three to six weeks for IOM to organize transit visas through Jordan for returning rejected asylum seekers. See also, Migration News Sheet, "Sweden: Financial Assistance Offered to Iraqis Who Accept Voluntary Repatriation," June 2003, detailing cash grants from the IOM in collaboration with the Swedish Migration Board available to Iraqi asylum seekers and persons with residence permits who agree to return voluntarily to Iraq, via Jordan.

<sup>19</sup>Human Rights Watch, "Iraq: Donors Should Insist on Rights Monitoring: Mechanisms Needed to Ensure Accountability for Abuses," October 22, 2003, at <http://www.hrw.org/press/2003/10/iraq102203.htm> (accessed November 9, 2003); Human Rights Watch, *Hearts and Minds: Post-War Civilian Deaths in Baghdad Caused by U.S. Forces*, Vol. 15, No. 9(E), October 2003, at <http://hrw.org/reports/2003/iraq1003/> (accessed November 10, 2003); and Human Rights Watch, "Human Rights and Iraq's Reconstruction: Memorandum to June 24 International Donors Meeting," June 2003, at <http://www.hrw.org/backgrounder/mena/iraq/iraq-memo062003.htm> (accessed November 10, 2003). For more on Human Rights Watch's work in Iraq, see "Crisis in Iraq" campaign pages at <http://www.hrw.org/campaigns/iraq/> (accessed November 10, 2003).

<sup>20</sup>UNHCR, "Iraq Still Volatile, so Iraqis Abroad Need Continued Protection," November 14, 2003, at <http://www.unhcr.ch/cgi-bin/texis/vtx/news/+GwwBmeohpRCwwwwwwwwwwhFqnN0bItFqnDni5zFqnN0bIAFqnN0bIDzmxwwwwww1FqnN0bI/opendoc.htm> (accessed November 15, 2003).

government, in collaboration with IOM, has implemented an “Explore and Prepare” program that permits Afghans to return to Afghanistan temporarily to assess the conditions themselves and prepare for return. Where conditions do not allow for return, Afghans who take advantage of the program may re-enter the U.K. within a specific timeframe if they decide not to return to Afghanistan permanently.<sup>21</sup>

Human Rights Watch urges the IOM to ensure that Afghan and Iraqi refugees and migrants receive detailed and impartial information about conditions within their countries to ensure that their decisions concerning return are made voluntarily. Moreover, we urge IOM to cease returns of failed asylum seekers and others not permitted to lawfully remain in third countries when it is not clear that such returns are truly voluntary. Finally, we call on IOM to refrain from any activity that violates the rights of refugees and to refer all refugee protection cases to organizations with a specific protection mandate.

### *Returns of “Third Country Nationals”*

Human Rights Watch is also concerned about IOM’s role in situations in which conflict resulted in the flight of individuals who were nationals of the country in crisis alongside individuals from other countries. In these cases, IOM has implemented some returns programs for “third country nationals” that assume that only nationals or individuals already recognized as refugees prior to flight may have claims for refugee status. An individual who fears persecution upon return to his or her home country is a refugee regardless of where he or she lived previous to flight or what factors prompted that flight.

In Jordan, for example, we documented IOM’s role in returning individuals who had been living in Iraq and were from countries known to produce large numbers of refugees, such as Somalia and Sudan, within seventy-two hours of their arrival in Jordan from Iraq.<sup>22</sup> We were deeply concerned that IOM had participated in the *refoulement* of individuals to places where they feared persecution.<sup>23</sup>

Moreover, we are alarmed that IOM operations in the field failed to prevent inappropriate and potentially dangerous contacts between third country nationals and officials from their governments.<sup>24</sup> In Jordan, IOM failed to impose controls on contacts between Sudanese government officials and individuals reluctant to return home to Sudan from Jordan.<sup>25</sup> Refugees should not have their identities disclosed to the government of their country of origin.<sup>26</sup>

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<sup>21</sup>See U.K. Home Office, “Explore and Prepare,” at <http://www.ind.homeoffice.gov.uk/default.asp?PageId=4555> (accessed November 13, 2003).

<sup>22</sup>Human Rights Watch, *Flight from Iraq: Attacks on Refugees and other Foreigners and Their Treatment in Jordan*, Vol. 15, No. 4 (E), May 2003 at <http://hrw.org/reports/2003/iraqjordan/> (accessed November 10, 2003).

<sup>23</sup>*Ibid.*, pages 13-16.

<sup>24</sup>See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, UN Doc. HCR/1P/4/Eng/REV.2, 1979, (edited 1992), “It will be necessary for the examiner to gain the confidence of the applicant in order to assist the latter in putting forward his case and in fully explaining his opinions and feelings. In creating such a climate of confidence it is, of course, of the utmost importance that the applicant’s statements will be treated as confidential and that he be so informed,” para. 200.

<sup>25</sup>Human Rights Watch, *Flight from Iraq*, page 13.

<sup>26</sup>UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, at footnote 24.

## *Voluntary Assisted Returns*

As noted above, officials and staff from the IOM insist that all IOM-assisted returns are made on a strictly voluntary basis. According to Gianluca Rocco, Head of Implementation and Management Services for the IOM's Regional Liaison and Coordination Office to the European Union, "It is not in our mandate to work with authorities to effect deportations. How voluntary is a voluntary return when you are in a closed [detention] center?"<sup>27</sup> Our research indicates, however, that some returns under the auspices of IOM are effected from immigration detention centers and some occur under circumstances that do not appear voluntary.

Extensive research on the human rights of migrants in Belgium in July 2003 revealed that some returns are effected by IOM from closed immigration detention centers. A social assistant in one closed center told Human Rights Watch: "We say to detainees, 'Look, you can voluntarily return or return with two police officers accompanying you.' . . . We tell them, 'it is indecent to arrive in your country with two police officers at your side.'"<sup>28</sup> Staff at all the closed centers told us that the centers actively "partner" with IOM.<sup>29</sup> This example calls into question the voluntary nature of returns from the detention centers.

In the United Kingdom, nongovernmental organizations have also expressed concern about the voluntariness of IOM-assisted returns. Amnesty International has criticized the use of incentives schemes designed by governments and implemented by IOM that offer financial rewards and free transportation as potentially coercive.<sup>30</sup> Moreover, it has been reported that rejected asylum seekers and migrants with no status in the U.K. in need of government-funded social assistance can secure accommodation and a small amount of monetary assistance only if they sign a document stating that they will return to their own countries under IOM's voluntary returns program.<sup>31</sup>

In addition, asylum seekers in Indonesia who had been held in a jail for eight days before IOM visited them told Human Rights Watch that the IOM official told them their choice was between returning, "with his assistance, to Iran or Iraq, or go to court and get a criminal charge for illegal entry."<sup>32</sup> IOM Jakarta strongly denies this story, stating that no IOM representative was even posted or present in Lombok at that time.<sup>33</sup> There is confirmation, however, of the presence of an

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<sup>27</sup>Human Rights Watch interview, Gianluca Rocco, Head of Implementation and Management Services, IOM Brussels, July 3, 2003. Rocco coordinates the voluntary assisted returns program for Belgium.

<sup>28</sup>Human Rights Watch interview, Closed Detention Center, Belgium, July 14, 2003. The specific location of this center is not noted here to protect the identity of the staff person in question. Interview notes on file with Human Rights Watch.

<sup>29</sup>One social assistant told Human Rights Watch, "With IOM, it doesn't matter the status, they will return them. . . . Look, IOM will return anyone, no problem." Ibid.

<sup>30</sup>Amnesty International, *Afghanistan: Out of Sight, Out of Mind: The Fate of the Afghan Returnees*, AI INDEX: ASA 11/014/2003, June 23, 2003, at <http://web.amnesty.org/library/Index/ENGASA110142003?open&of=ENG-AFG> (accessed November 10, 2003).

<sup>31</sup>Confidential communication, November 3, 2003, on file with Human Rights Watch.

<sup>32</sup>Human Rights Watch, *By Invitation Only: Australia's Asylum Policy*, December 2002, page 36, at <http://hrw.org/reports/2002/australia/> (accessed November 15, 2003).

<sup>33</sup>Ibid. The refugees were able to identify the IOM staff member in Jakarta whom they met in the prison, but asked for the name to be withheld because IOM was still involved with arranging their resettlement to other countries. Ibid.

IOM representative at another interception incident in Sengiggi, alongside a representative from UNHCR, in mid-March 2000, just a few weeks earlier.<sup>34</sup>

The IOM's constitution mandates that all IOM-assisted returns are voluntary, implying, correctly, that deportations of any sort are strictly the responsibility of governments. The IOM must ensure that returns under the auspices of IOM are not conducted under circumstances that are directly or indirectly coercive.

## **IOM and Property Claims**

The IOM has vastly diversified its operations since its inception in 1951. In recent years, IOM's operations have extended to HIV/AIDS awareness and prevention,<sup>35</sup> technical cooperation in combating illegal immigration,<sup>36</sup> and managing compensation claims for victims of Nazi persecution.<sup>37</sup> Human Rights Watch is concerned that any new project areas in which IOM assumes responsibility must ensure the protection of human rights of the persons IOM is tasked with assisting.

IOM has also assumed greater responsibility for humanitarian and post-conflict reconstruction projects. For example, in June 2003, the Coalition Provisional Authority (CPA) in Iraq, through the Office for Transition Initiatives (OTI), contracted with IOM to implement critical aspects of the Iraqi Property Reconciliation Fund (IPRF).<sup>38</sup> The IPRF was established as a dispute mechanism to resolve property claims resulting from "Arabization" in Northern Iraq.<sup>39</sup> IOM was tasked with conducting a fact-finding and information campaign; developing a standardized claim form; establishing a series of claim registration offices; and offering facilities where

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<sup>34</sup>Ibid.

<sup>35</sup>See IOM "HIV/AIDS and Population Mobility," at <http://www.iom.int/en/who/main%5Fservice%5Fareas%5Fmigration.shtml#chap4> (accessed on November 13, 2003).

<sup>36</sup>On April 15, 2003, Spanish immigration authorities signed an agreement with IOM to establish a "network of alert and social denunciation" in order to identify the presence of illegal immigrants in Spanish communities. According to the agreement, individuals and nongovernmental organizations will be encouraged to obtain and transmit information on undocumented migrants to law enforcement and immigration officers in an effort to combat illegal immigration. See Migration News Sheet, "Spain: Madrid Signs Agreement with International Organization for Migration to Set-Up Network Aimed at Detecting 'New Presence of Illegal Immigrants'," May 2003. See also, Elizabeth Nash, "Spain's Plans to Fight Illegal Immigration with Spy Networks Carry Echo of Franco," *The Independent*, April 19, 2003, at <http://news.independent.co.uk/europe/story.jsp?story=398475> (accessed November 10, 2003). ("Neighborhood watch committees would 'detect new cases of irregular migrants' and hand over details of those without identity papers to the authorities.") IOM's Press Briefing Notes of April 15, 2003, state only that Spanish authorities and IOM signed a "technical cooperation" agreement. See <http://www.iom.int/en/archive/pbn150403.shtml#item2> (accessed November 10, 2003).

<sup>37</sup>For information on IOM's German Forced Labor Compensation Program (GFLCP) see <http://www.compensation-for-forced-labour.org/> (accessed November 13, 2003).

<sup>38</sup>Coalition Provisional Authority Regulation 4, "Establishment of the Iraqi Property Reconciliation Facility," signed June 26, 2003.

<sup>39</sup>After the 1991 Gulf War, the Iraqi government systematically expelled an estimated 120,000 Kurds, Turkomans, and Assyrians from Kirkuk and other towns and villages in the oil-rich Kirkuk region. Most settled in the Kurdish-controlled northern provinces. The government of Saddam Hussein then resettled Arab families in their place in an attempt to reduce the political power and presence of ethnic minorities, a process known as "Arabization." See Human Rights Watch, *Iraq: Forcible Expulsions of Ethnic Minorities*, Vol. 15, No. 3(E), March 2003, at <http://www.hrw.org/reports/2003/iraq0303> (accessed November 15, 2003).

property disputes could be settled through voluntary mediation. IOM also agreed to develop a more broad-ranging, long-term strategy to address the massive number of property disputes in Iraq.

Serious security concerns, including attacks on IOM offices and staff, prevented IOM from implementing these aspects of the IPRF.<sup>40</sup> The attacks caused IOM to withdraw its staff from several Iraqi cities, and travel restrictions were imposed on staff. However, to many observers in Iraq, IOM also failed to implement the IPRF as a result of lack of expertise and insufficient staffing. In discussions with Human Rights Watch researchers in June 2003, protection-oriented humanitarian workers questioned IOM's commitment to a rights-driven property dispute process.<sup>41</sup> Concerns arose about IOM's unwillingness to engage with experienced humanitarian and human rights actors to ensure that the process reflected sensitivity to the human rights dimension of the property claims issue.<sup>42</sup>

## **IOM and Detention**

Human Rights Watch remains deeply concerned about IOM's continuing role in the Australian government's "Pacific Solution" to combat illegal immigration. In a December 2002 report, *By Invitation Only: Australia's Asylum Policy*, Human Rights Watch concluded that Australia violated its international obligations to protect refugees by denying them access to Australian territory and transferring them to other countries where they were detained pending processing of their asylum claims.<sup>43</sup> Despite IOM not having a refugee protection mandate, Australia requested in September 2001 that the organization assume responsibility for managing "migrant processing centres" on the Pacific Island of Nauru and on Papua New Guinea's Manus Island.

Human Rights Watch concluded that these centers were, effectively, detention facilities, in which the asylum seekers were being arbitrarily detained without access to legal assistance or an independent appeals body to review their asylum claims. In addition to making a range of recommendations to the Australian government, we called on the IOM to cease managing the detention centers and to refrain from assuming supervisory or managerial roles in situations

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<sup>40</sup>See "RPG Fired at IOM Office in Northern Iraqi City, Guard Slightly Injured," *Agence France Press*, July 6, 2003; Cynthia Johnston, "Driver Killed in Attack on UN Vehicles in Iraq," *Reuters*, July 20, 2003.

<sup>41</sup>Notes from June and September 2003 interviews on file with Human Rights Watch.

<sup>42</sup>According to our researchers, IOM did not regularly attend meetings with humanitarian and human rights organizations regarding these dimensions of the IPRF and rarely sought consultation with these groups. Concerns about the lack of consultation with such groups, IOM's position as a contractee of the occupation administration and not an independent humanitarian organization, and IOM's lack of expertise and capacity caused intergovernmental and nongovernmental organizations to distance themselves from the IPRF process. The process remains in limbo. *Ibid.*

<sup>43</sup>The complete report can be found at <http://hrw.org/reports/2002/australia/> (accessed November 10, 2003). In July 2000, the United Nations Human Rights Committee concluded that Australia's asylum policies, especially with respect to mandatory detention, not informing detainees of their right to seek legal counsel, and not allowing access of nongovernmental organizations to the detainees were in breach of the country's obligations under the International Covenant on Civil and Political Rights (ICCPR). See U.N. Human Rights Committee, "Concluding Observations of the Human Rights Committee: Australia," A/55/40, July 24, 2002, at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.55.40.paras.498-528.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.55.40.paras.498-528.En?Opendocument) (accessed November 16, 2003). As a result, Australia decided to restrict cooperation with U.N. bodies critical of Australian human rights practices. See, Human Rights Watch, "Australia Undermining Global Human Rights," August 31, 2002, at <http://www.hrw.org/press/2000/08/australia.htm> (accessed November 16, 2003).

where substantial numbers of asylum seekers have not obtained effective protection. We urged IOM to continue to engage in dialogue with UNHCR to elaborate joint principles to determine each organization's areas of work in an effort to avoid future situations where IOM engaged in activities that infringed UNHCR's protection mandate. A complete list of our recommendations to the IOM regarding its involvement in the Pacific Solution is attached here as Appendix II.

To date, IOM continues to manage the centers on Manus and Nauru through the Off-Shore Processing of Australia-bound Irregular Migrants (OPAB) project.<sup>44</sup> During IOM's tenure as manager of the centers, representatives from Amnesty International were permitted to visit the centers in Nauru in November 2001. Otherwise, the facilities have remained officially closed to media, lawyers, and independent monitors.<sup>45</sup> As Amnesty International has noted, "In the absence of independent local human rights monitoring, the lack of transparency about the detainees' circumstances raises international concern about their conditions and treatment."<sup>46</sup>

Afghan asylum seekers rioted at one of Nauru's two detention centers on Christmas Eve in December 2002 after their asylum claims were rejected. According to IOM, over 230 failed asylum seekers in Nauru "voluntarily returned to Afghanistan with IOM in 2002."<sup>47</sup> As noted above, returns from detention centers raise serious concerns that they are not genuinely voluntary.

Many questions remain regarding IOM's involvement in Australia's arbitrary detention of asylum seekers and refugees. A key outstanding question is to what extent IOM can be considered complicit in human rights violations as a direct result of its policy to operate detention centers where detainees' rights are being violated. In addition, Human Rights Watch calls on IOM to develop clear criteria to assess the legitimacy of conducting IOM operations in

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<sup>44</sup>See <http://www.iom.int/iomwebsite/Project/ServletSearchProject?event=detail&id=AUIZ001> (accessed November 10, 2003).

<sup>45</sup>Few independent accounts are available of conditions inside the camps since 2001. Two accounts come from news sources. Journalist Sarah Macdonald and Melbourne-based artist Kate Durham secretly filmed inside Topside camp on Nauru for the BBC's *Correspondent* program in September 2002. The camps were very closely guarded and asylum seekers with whom the women spoke accused IOM and the security company with whom it contracts of abusive treatment. According to the program's transcript, during an exchange between Kate Durham and IOM, one IOM staff person "grabs and violently pushes her before slamming the door in her face." See British Broadcasting Corporation, "Australia's Pacific Solution," *Correspondent*, September 26, 2002, at <http://news.bbc.co.uk/1/hi/programmes/correspondent/2279330.stm> (accessed November 15, 2003). The full transcript of the program is available at [http://news.bbc.co.uk/1/hi/english/static/audio\\_video/programmes/correspondent/transcripts/2279330.txt](http://news.bbc.co.uk/1/hi/english/static/audio_video/programmes/correspondent/transcripts/2279330.txt) (accessed November 15, 2003). Another segment produced by Australian SBS Television's *Dateline* program was titled, "Inside Nauru: Pacific Despair." The segment showed correspondent Bronwyn Adcock secretly filming in a center on Nauru in January 2003. Rejected Iraqi asylum seekers in the camp claimed that IOM staff had left the camp after a riot on Christmas Eve, December 2002, and had not returned. Although no IOM staffpersons were seen in the camp on the day Adcock was filming, IOM denied that it had ceased providing food and clean water to the asylum seekers in the center. See <http://www.sbs.com.au/dateline/index.php3?daysum=2003-01-29#> (accessed November 10, 2003) for a full transcript of the program.

<sup>46</sup>Amnesty International, "AUSTRALIA-PACIFIC: Offending human dignity - the 'Pacific Solution'," AI INDEX: ASA 12/009/2002, August 25, 2002, at <http://web.amnesty.org/library/Index/ENGASA120092002?open&of=ENG-NRU> (accessed November 10, 2003).

<sup>47</sup>IOM Press Briefing Notes, "South Pacific: Iraqi and Afghan Refugees Resettle in New Zealand," January 14, 2003, at <http://www.iom.int/en/archive/pbn140103.shtml#item1> (accessed November 10, 2003).

countries where the asylum system and/or immigration policy and practice routinely deny the right to seek asylum and violate migrants' rights.

Human Rights Watch will continue to follow up with IOM regarding the remaining detainees in the island camps and to determine to what extent IOM has taken into consideration any of the detailed recommendations from *By Invitation Only* in developing policy and practice.<sup>48</sup>

## **IOM and Counter-Trafficking**

Human Rights Watch has conducted research on trafficking in human beings for forced labor for over a decade.<sup>49</sup> The fundamental principle guiding our work is that persons who are trafficked are victims of an egregious human rights violation. As such, trafficked persons are entitled to protection and rehabilitation commensurate with their status as victims. All too often we have seen trafficking victims treated as undocumented migrants, detained and deported. Even when trafficked persons are recognized as victims, services for their protection and rehabilitation are often woefully inadequate. Despite broad support for the U.N. Trafficking Protocol,<sup>50</sup> which includes measures for victim and witness protection, many governments view their counter-trafficking initiatives strictly as law enforcement projects, often ignoring the human dimension of the trafficking phenomenon.

In the course of our research, we have seen the growing involvement of IOM in regional and national counter-trafficking initiatives. The organization currently lists over fifty counter-trafficking projects, and states that these activities are geared toward the prevention of trafficking in persons, particularly women and children, and the protection of migrants' rights.<sup>51</sup> The IOM's counter-trafficking activities include carrying out information campaigns, providing counseling services, conducting research on migrant trafficking, providing return and reintegration assistance to victims of trafficking, and helping governments to improve their legal systems and technical capacities to counter trafficking. In some cases, IOM also manages shelters for trafficking victims. Our research has found that IOM counter-trafficking operations have made a positive contribution in many parts of the world.<sup>52</sup>

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<sup>48</sup>In July 2003, the Australian government announced that it would resettle in Australia the remaining refugees held in the centers on Manus Island and Nauru, and it would close the Manus center. See Australian Catholic Migrant and Refugee Office, "Bishops Welcome Acceptance of Refugees from Nauru and Manus," July 30, 2003, at [http://www.acmro.catholic.org.au/media/2003\\_07\\_30.htm](http://www.acmro.catholic.org.au/media/2003_07_30.htm) (accessed November 10, 2003). As well, in late 2001, UNHCR and IOM formed the Action Group on Asylum and Migration (AGAMI), a bilateral dialogue whose ostensible purpose is to clarify what areas of work derive from their respective mandates. As of July 2003, AGAMI has convened five times. See UNHCR, Executive Committee of the High Commissioner's Programme, "Note on International Protection," A/AC.96/975, July 2, 2003, focusing on the mechanics of protection.

<sup>49</sup>See campaign pages on trafficking at <http://www.hrw.org/women/trafficking.html> (accessed November 10, 2003).

<sup>50</sup>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, Annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001). The Trafficking Protocol calls on states, "in appropriate cases," to consider providing victims with housing; counseling and information; medical, psychological, and material assistance; as well as employment, educational, and training opportunities.

<sup>51</sup>See IOM's counter-trafficking web pages at [http://www.iom.int/en/what/counter\\_human\\_trafficking.shtml](http://www.iom.int/en/what/counter_human_trafficking.shtml) (accessed November 10, 2003).

<sup>52</sup>See, for example, Human Rights Watch, *Owed Justice: Thai Women Trafficked into Debt Bondage in Japan*, September 2000, at <http://www.hrw.org/reports/2000/japan/> (accessed November 12, 2003).

Concerns have arisen, however, regarding possible conflicts between IOM's obligations to member states that comprise and fund it—and for whom, in many cases, counter-trafficking is largely a matter of immigration control—and IOM's response to the needs of trafficking victims, who are entitled to a victim-focused assistance plan. Human Rights Watch's research on trafficking in Bosnia-Herzegovina, for example, concluded that although the U.N. Mission in Bosnia-Herzegovina and IOM filled a vacuum where no services for trafficking victims existed, "those mechanisms in place fail to protect victims adequately."<sup>53</sup>

A recent detailed evaluation report by the Swedish Development Agency (SIDA) confirms that although IOM has stepped in to provide services and assisted return for trafficking victims in the western Balkans, including Bosnia-Herzegovina, there are severe shortcomings in IOM-run programs in the region.<sup>54</sup> The report identified serious concerns and recommended that IOM improve policy and practice in a number of areas, among them: relations with nongovernmental organizations; provision of services at IOM-run shelters, including vocational training that breaks from gender-stereotyped training; enhanced safety and security in the return process; development and implementation of specific policies for minors; and clarification of who constitutes a trafficking victim and should be afforded IOM-sponsored services, including a need to address the issue of how to proceed with trafficking victims who do not want to return to their countries of origin.<sup>55</sup> The report also recommends that IOM develop anti-trafficking information campaigns that do not stereotype or create prejudice against women migrants and conduct an analysis of the link between gender and trafficking.<sup>56</sup>

The report recognizes that IOM has an important role to play in anti-trafficking work, but concludes that the IOM return program "needs to assess its activities, procedures and approach out of a gender and empowerment perspective in order to secure the rights of victims and to comply with international human rights standards."<sup>57</sup>

The IOM has disputed the findings in the report and questioned the objectivity of the evaluation team.<sup>58</sup>

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<sup>53</sup> See Human Rights Watch, *Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution*, Vol. 14, No. 9(D), November 2002, at <http://www.hrw.org/reports/2002/bosnia/> (accessed November 10, 2003).

<sup>54</sup> SIDA, "Evaluation of IOM Regional Counter-Trafficking Programme in the Western Balkans," June 2003. The report is an evaluation of the SIDA-Sponsored *IOM Programme of Assistance for the Protection, Return, and Integration of Trafficked Women and Children in Albania, Bosnia Herzegovina, FYR of Macedonia, Kosovo, Serbia and Montenegro*. Some Swedish critics of IOM operations have been vocal and activist in the country. In October 2003, the Swedish Left Party tabled a motion in parliament asking for Sweden to withdraw from the IOM. The motion cites IOM's failure to protect human rights and observe refugee protection norms as part of the reason for the request for withdrawal. See Left Party, "Regarding the Termination of Sweden's Membership in the International Organization for Migration (IOM)," Motion to Parliament, 2203/2204:v474, October 2, 2003. On file with Human Rights Watch.

<sup>55</sup> *Ibid.*, "Recommendations," Section 8, pages 115-116. The Trafficking Protocol does not require a trafficked person to agree to return to her country of origin in order to access protection and rehabilitation services commensurate with her status as a victim of a human rights violation.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*, page 114.

<sup>58</sup> Human Rights Watch attempted to obtain the report directly from IOM, but IOM declined our request for a copy. In response, IOM stated that the "report is still for restricted distribution inside IOM and to IOM Member States and

Human Rights Watch also recognizes the role that IOM has assumed with respect to counter-trafficking. We call on IOM to evaluate all its counter-trafficking programs to ensure that the rights of trafficking victims are protected in conformity with international human rights norms.

### **Continuing dialogue with civil society**

The IOM has stated that “the NGO voice is one that can make an important contribution to migration policy debate and to the humane implementation of migration policies,” and that nongovernmental organizations are important “to ensure that migration policies are implemented humanely and effectively, consistent with international standards.”<sup>59</sup>

Human Rights Watch welcomes this language and finds it encouraging, especially since most fora addressing migration-related issues appear to be almost exclusively in the hands of state actors.

Human Rights Watch representatives have met with IOM officials in a number of locales throughout 2003 to discuss many of the issues detailed in this paper. We have appreciated the opportunity to do so. Our continuing engagement with respect to IOM and human rights protection reflects our concern that IOM’s stated policy of consultation with nongovernmental organizations and other civil society actors has not resulted in much change at the operational level or in the evaluation and development of policies.<sup>60</sup>

Our attempt to engage in the Berne Initiative is a telling example.<sup>61</sup> In September 2003, Human Rights Watch contacted the Swiss Federal Office for Refugees (FOR) to inquire about participating in the Initiative. We received a response from FOR’s Division of Legal and International Affairs stating that the Berne Initiative was a “states-owned process” whose aim was “not to set-up new binding obligations on states,” but to develop a framework of “common understandings” and effective practices, and informing us that the International Council of Voluntary Agencies (ICVA), had been selected to represent nongovernmental organizations.<sup>62</sup>

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donors due to major disagreements between IOM and SIDA on its content and objectivity, taking also into account the sensitivity of the subject.” Email communication from IOM Evaluation unit, November 7, 2003. Human Rights Watch obtained the report from another source.

<sup>59</sup>Ibid., para. 21.

<sup>60</sup>See IOM, “IOM Partnership with Nongovernmental Organizations (NGOs) in Managing Migration,” MC/INF/253, 84<sup>th</sup> Session, November 1, 2002, at <http://www.iom.int/DOCUMENTS/GOVERNING/EN/Mcinf253.pdf> (accessed November 9, 2003).

<sup>61</sup>The Berne Initiative is a consultation process launched by the Swiss Federal Office for Refugees in 2001. Its goal is to achieve better management of migration at the practical level through cooperation between states. The IOM is the official secretariat for the Berne Initiative. See <http://www.iom.int/berneinitiative/index.shtml> (accessed November 10, 2003).

<sup>62</sup>Human Rights Watch holds ICVA in high regard and is seeking observer status with the organization. ICVA is a global network of human rights, humanitarian, and development nongovernmental organizations, which focuses its information exchange and advocacy efforts on humanitarian affairs and refugee issues. See <http://www.icva.ch> (accessed November 10, 2003). Human Rights Watch, Amnesty International, European Council on Refugees and Exiles (ECRE) and many other relevant nongovernmental actors in the migration and human rights fields, however, are not actual members of ICVA. Amnesty International recently has issued a critique of a recent draft of the “common understandings” that resulted from the Berne process. See “Berne Initiative: Common Understandings for

The FOR also informed us that “International organisations and migration experts have been invited to participate as observers—their advice is indeed valuable, however, the concrete drafting of the common understandings and best practices is done by the governments—it is, as mentioned above, a states-owned process.”<sup>63</sup>

The IOM serves as secretariat for the Berne Initiative and can thus play an important role in helping to ensure that civil society actors are more directly engaged in the Berne process.<sup>64</sup> The IOM’s recognition of the importance of nongovernmental expertise in promoting a just migration system in conformity with international human rights and refugee protection norms uniquely positions IOM, as a major stakeholder in the Berne Initiative, to bring this message to others—governments, in particular—involved in the process.

### *Conclusion*

Human Rights Watch remains committed to consultation with IOM regarding the rights of migrants, asylum seekers, refugees, and IDPs. For migration policies and practices to be truly effective, they must also be rights-respecting. The issues of concern presented here are intended to raise awareness within IOM and with its member states about how some IOM policies and practices threaten migrants’ human rights. We hope that IOM and the governments that make up its Governing Council will take these concerns into consideration in the evaluation and development of policy, and in the evaluation and implementation of operations in the field. We also hope that the Governing Council will consider the creation and implementation of structures of accountability for IOM operations in the field that address policies and practices that have an adverse impact on the rights of migrants, asylum seekers, refugees, IDPs and all others who come within IOM’s purview.

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the Management of Migration – Preliminary Comments from Amnesty International,” October 10, 2003. On file with Human Rights Watch.

<sup>63</sup>Email communication from Rascha Osman, Division of Legal and International Affairs, Federal Office for Refugees, Switzerland, September 1, 2003. On file with Human Rights Watch.

## **APPENDIX I**

### **Statement by Amnesty International & Human Rights Watch**

**Governing Council, International Organization for Migration,  
84<sup>th</sup> Session  
Geneva, 2-4 December 2002**

Amnesty International and Human Rights Watch welcome the opportunity to attend the IOM Governing Council as Observers. We stand ready to work constructively with the Council and the offices of IOM, including in informal discussions, on matters of human rights compliance, transparency and accountability. We are mindful of the contribution made by IOM and its predecessor organizations to the well-being of many thousands of migrants and refugees since 1951, and particularly welcome this year's paper entitled "Migrants' Rights: IOM Policy and Activities." We trust that this document will provide a foundation for further development of IOM policy.

As organizations committed to the promotion and protection of human rights, however, we also come to this meeting with concerns about the human rights impact of certain IOM operations. In particular, we are concerned that IOM's work in certain contexts is adversely impacting upon basic human rights of migrants, refugees and asylum seekers, including for example the right to be free from arbitrary detention and the fundamental right to seek asylum.

In coming to this Council meeting, Member States cannot leave their other obligations at the door. Notably, Member States bring with them international responsibilities for the protection of the human rights of migrants, refugees, and asylum seekers. We note, for example, that a number of IOM Member States are parties to the Convention on the Rights of Migrant Workers and Their Families, and most are parties to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol. More than half are members of the Executive Committee of the U.N. High Commissioner for Refugees, and all but three are parties to the International Covenant on Civil and Political Rights. These obligations are critical to ensuring that the work of IOM is grounded in established international standards and norms, both today and in the context of discussions on the future relationship between IOM and the United Nations.

We urge IOM Member States to ensure that these international obligations are reflected in both IOM policy and its work in the field. This means that the Governing Council should urge

IOM to refrain from or immediately cease engaging in any activities that have the effect, either directly or indirectly, of obstructing enjoyment of basic human rights by migrants, refugees and asylum seekers.

We are conscious of the fact that IOM is playing an increasingly prominent role in the reception, assistance, and return not only of migrants, but also of asylum seekers, refugees and the forcibly displaced. Given that IOM does not have a protection mandate for its work with refugees and displaced persons, Amnesty International and Human Rights Watch recommend that IOM should refrain from taking a lead role in situations which fall squarely under the protection mandate of other international organizations, such as UNHCR. The same is also true in the context of “mixed flows” involving the onward movement of asylum seekers in search of effective protection and so raising substantial refugee protection issues. We recognize, therefore, that the ongoing work of IOM and UNHCR to define their respective roles more clearly is of critical importance.

Amnesty International and Human Rights Watch are also concerned that IOM should not provide an alternative agency for states where they prefer to avoid their human rights obligations or where UNHCR has declined engagement in a given situation on the basis that it sees grave problems or dangers. Even with the best of motives, IOM involvement in such situations can end up unwittingly facilitating abuses and harming migrants, refugees and asylum seekers. IOM’s presence should not have the effect of prolonging untenable state policies and practices which themselves fail to comply with international human rights standards. Such policies range from certain border control and deterrent measures, to arbitrary and unlawful detention to encouraging premature return to countries of origin. In such circumstances, states should be required to act in their own name and should be held directly accountable for their actions.

On behalf of our respective organizations, we look forward to continuing dialogue in furtherance of the protection of the rights of migrants, refugees, asylum seekers, and the displaced.

## **Appendix II**

**From**

***“By Invitation Only: Australian Asylum Policy”***

**Human Rights Watch Report  
at <http://hrw.org/reports/2002/australia/>**

**December 2002**

### **Recommendations**

#### **To the International Organization for Migration (IOM)**

- Cease managing detention centers, such as those on Nauru and on Manus Island, Papua New Guinea, where detention is arbitrary and contrary to international standards for the treatment of asylum seekers.
- Continue to elaborate joint principles, with UNHCR, for demarcating UNHCR's and IOM's respective areas of work so that IOM operations do not impinge upon UNHCR's protection mandate. IOM should refrain from having a management or supervisory role in situations where substantial numbers of asylum seekers have not obtained effective protection. IOM should defer to UNHCR guidance in identifying such situations and in deciding whether or not to undertake any proposed operation involving "mixed flows" of refugees and migrants.
- Establish transparent standards and guidelines for field offices, grounded in human rights law, on reception and assistance of asylum seekers and refugees. These guidelines should cover the level of material assistance; access to legal advice, access to family tracing services; meeting the needs and respecting the rights of women, children and other vulnerable groups, including torture survivors; and advocacy for the release of asylum seekers detained as illegal migrants in transit countries.

- Diversify funding for each program among a range of its member states, avoiding situations where a single state or group of states funds a program in which they have a vested interest in the program's deterrence of refugee movements. Interception and interdiction operations are frequently of this character, often interfering with the fundamental right to seek asylum.
- Take immediate steps to examine and improve communications with asylum seekers, refugees awaiting resettlement, and rejected asylum seekers in Indonesia and the Pacific sites. IOM communication policies should include greater emphasis on the participation and empowerment of such persons in all decisions affecting their lives.
- Ensure the right of education for all children, regardless of immigration status, in all of the centers IOM manages.
- Establish effective and confidential complaint mechanisms to ensure that people being assisted can communicate complaints or report unreasonable staff behavior, without fear of reprisal or discrimination.