

GENERAL DEBATE

NGO Submission

This statement has been drafted in consultation with a number of UNHCR's NGO partners.

Thank you, Mr. Chairman,

We welcome this Executive Committee's focus on a number of issues that are critical to the protection of those who have been forcibly displaced or are stateless. We would like to focus on three main areas: 1) the erosion of refugee protection and adequate access to asylum; 2) UNHCR's role with respect to internally displaced persons (IDPs); and 3) UNHCR's role in the asylum-migration nexus.

Working in Partnership

Before turning to these issues, non-governmental organisations (NGOs) welcome the High Commissioner's commitment to partnership with NGOs as a dialogue of equals and we commit ourselves to working in partnership with UNHCR for the full realisation of refugee rights, as well as the rights of other persons of concern.

We are committed to working in partnership with UNHCR to operationalise what we hope will be adopted as this year's ExCom Conclusions on Women and Girls at Risk and Statelessness and in developing creative new ways to resolve protracted situations.

While we appreciate the High Commissioner's highlighting of the importance of partnership with NGOs since he came into office, the question we now must ask is, "Is partnership translating into a better response for refugees and others of concern to UNHCR at the field level?"

1) THE EROSION OF PROTECTION AND ADEQUATE ACCESS TO ASYLUM

We are gravely concerned that State policies, including interception at sea, restrictive visa regimes, arbitrary detention, and accelerated return procedures, are preventing asylum-seekers from gaining access to asylum procedures and, in fact, are eroding the institution of asylum. We share UNHCR's dismay at the outcome of the recent Swiss referendum. It is ironic that this referendum took place in a country that is still home to world's humanitarian capital, Geneva. The referendum upheld highly restrictive legislation that could result in *refoulement* by blocking the access of undocumented asylum-seekers to examination of the merits of their refugee claims. Unfortunately, this legislation is but one example of the many measures that have led to denying asylum-seekers and refugees adequate access to territory and to fair asylum procedures and protection worldwide.

We note a particularly disturbing trend among a wide range of States globally to block UNHCR and NGOs access to sites where refugees and asylum-seekers might be located for

no other reason than to prevent them from identifying people of concern and coming to their aid. We regard such moves as a deep and fundamental threat to the very foundations of refugee protection.

Governments that prevented access to UNHCR since the 56th session of the ExCom include Libya (access to detention centres), China (access to North Korean refugees in Jilin Province), Cambodia (access to Montagnard refugees from Vietnam in Ratanakiri and Mondolkiri provinces), Thailand (access to new Hmong arrivals from Laos in two jails and in the White River settlement in Pitchabun province). While we still regard as unacceptable that the Government of Italy, for months, denied UNHCR access to Lampedusa while it was engaged in mass expulsions of undocumented foreigners, we welcome the agreement of the Italian government to a UNHCR presence on Lampedusa. Unfortunately, we have seen numerous cases of *refoulement*, in particular from North Africa and Southern and Eastern European transit countries.

We note with particular distress that the Government of Uzbekistan closed the UNHCR office in Tashkent. We fully support UNHCR's efforts to prevent the *refoulement* of Uzbek refugees and asylum-seekers from Kyrgyzstan, Ukraine, and Kazakhstan and applaud the High Commissioner for insisting that bilateral extradition agreements cannot supersede international legal obligations. States have responsibilities under the 1951 Convention. ExCom Members must hold States who do not respect these responsibilities, such as Uzbekistan, to account.

NGOs are concerned by the indefinite use of "Temporary Protection" for Iraqi refugees and urge UNHCR to revisit its policy on Iraqis fleeing Iraq. In the Middle East region, where governments refuse to acknowledge the Temporary Protection policy, Iraqi refugees are denied basic security and the chance to live in dignity. UNHCR should clearly recognise Iraqi refugees on a *prima facie* basis or process individual Iraqi refugee claims. Iraqi refugees, as well as Palestinian refugees, should not be left in limbo while the situation in Iraq remains unstable. We understand that even among those Iraqi refugees deemed most vulnerable in Syria, only 12 or 13 were accepted for resettlement this past year.

Denying Asylum on "Security" Grounds

Five years after the events of 11 September 2001, States throughout the world are increasingly closing their doors to *bona fide* refugees and asylum-seekers in the name of security. The equation that refugees are terrorists is a myth that States and UNHCR must emphatically denounce. We encourage States, UNHCR, and NGOs to respond strongly to combat the increased xenophobia against asylum-seekers and refugees.

One of the latest – and extremely worrying – manifestations of the trend to deny asylum on security grounds is the overly broad application of the so-called "material support" ground of inadmissibility to the United States (US). Under this bar, which is the most dangerous threat ever posed to the US Refugee Program, *bona fide* refugees and asylum-seekers who have been coerced under extreme duress, including at gunpoint, to provide material support of as little as \$1.00 to groups of two or more people deemed to have engaged in so-called "terrorist activity" (broadly defined) are being denied admission to the United States. Women who have been attacked, raped, and held captive by rebels and forced to cook for them are now being denied admission to the US on grounds that they provided material support – cooking meals under duress – to a group considered by the US authorities to be terrorists.

The coerced provision of material support under the threat of death or torture should not be grounds for inadmissibility, denying asylum, or resettlement. Legislative reform is needed to address the context of armed conflict, the particular circumstances of an individual's actions, and the duress under which a person may have acted. Such legislation should also take into consideration the context in which the organisation or group is operating. Some of these groups may indeed be defending themselves from persecution, crimes against humanity, or even genocide.

The delay in garnering a legislative solution to this problem in the US has nearly shut down the US refugee admissions programme for Colombians, Vietnamese Montagnards, and Hmong, Cubans, and Liberians. It has further resulted in substantial processing delays and a 20% rejection rate for thousands of Burmese Karen in Thailand, *bona fide* refugees identified in October 2005 by the United States as being in need of resettlement.

Refugee Status Determination

NGOs remain concerned about the need to improve the fairness of UNHCR refugee status determination (RSD) procedures. UNHCR has taken initial positive measures to set a minimum of due process, including issuing its first comprehensive standards for field offices conducting RSD, but they are still to be implemented in many countries. UNHCR continues to prescribe the withholding of evidence, interview transcripts, and sources of origin information from asylum-seekers. Also, specific reasons for rejection are still not provided. We call upon UNHCR to resolve these gaps and to take steps to increase the independence of its appeal procedures.

UNHCR's RSD determines the fate of nearly 90,000 people in 80 countries every year. UNHCR conducts RSD to fill the gap left by States, which have the primary responsibility to conduct RSD and the obligation to protect the human rights of refugees and asylum-seekers. We call on States that have yet to adopt domestic asylum legislation and procedures to do so in the earliest possible time in full cooperation with UNHCR. NGOs believe that UNHCR has a crucial role to play in such a transition in order for this to happen as smoothly as possible and to ensure that domestic asylum procedures meet the highest standards of fairness. We further call on ExCom Members and UNHCR to actively promote the ratification and implementation of the 1951 Convention and its Protocol. We particularly call on all ExCom Members that are not Party to the Convention to urgently ratify the Convention and its Protocol.

Overuse of the Exclusion Clause

We are deeply troubled by overly broad approaches to exclusion, which run contrary to the Refugee Convention itself. We urge UNHCR to take steps to protect refugees from these sweeping provisions, such as the material bar support in the US. Measures UNHCR should take include intervening in individual cases when refugees face the risk of *refoulement* in violation of the Convention. We urge States to ensure that their provisions are corrected so that refugees who are entitled to protection are not denied asylum and returned to persecution in violation of the Convention and its Protocol.

2) UNHCR'S ROLE WITH RESPECT TO IDPS

In relation to the deplorable state of the world's asylum system, we would like to refer to UNHCR's expanding role in protecting the rights of internally displaced persons (IDPs). This role must not come at the expense of the agency's core mandate to work on behalf of

refugees, asylum-seekers, and stateless persons. Nor should the agency's work with IDPs serve as an excuse for governments to deny the right of refugees to seek asylum from persecution and other human rights abuses and their ability to access effective international protection. Last year, when UNHCR embarked on its cluster responsibilities, NGOs asked, "What are the safeguards that will be put in place to ensure that UNHCR's core protection mandate will not come at the cost of the new responsibilities?"

We still ask, "What are the criteria that UNHCR applies to determine if its core mandate is being threatened by its IDP involvement?" NGOs continue to express willingness to work with UNHCR to clarify these criteria. One possibility is for UNHCR's new Policy Development and Evaluation Service to work with NGOs and other partners to develop clear criteria that can be used by UNHCR when the question of involvement with IDPs arises. Further, if UNHCR does not get involved and no other UN agency comes forward, how will the protection gap be filled?

The Limits to Protecting IDPs for UNHCR

While having made progress in clarifying the responsibilities of UNHCR in responding to IDPs, it must not be forgotten that there are *limits* to UNHCR's ability to adequately protect IDPs, as has been seen in Darfur, Sudan, in Iraq, in Chechnya, in Lebanon (South of the Litani river), in Sri Lanka, in Somalia, to name a few.

Three years after the world community expressed shock over the forced mass displacement in Darfur, Sudan the needs of the displaced population remain at similarly alarming levels. The population in the camps is kept at a minimum level of survival. The IDPs are cut off from all traditional means of subsistence and they have become dependent on international aid. Due to the fighting and administrative obstacles (with regards to supplies and human resources), aid distribution, including food, has become extremely difficult. In addition, it is estimated that donors cut their humanitarian budgets allocated to Darfur, Sudan by 40% in 2006 compared to last year.

Reports from NGOs tell of the consequences of the reduced levels of assistance, including a further worsening of the public health situation for the population. Some recent cholera outbreaks could not be addressed (more than 1,000 cases were reported in West Darfur in the last three weeks) and medical references and evacuation of wounded have been hampered.

The pattern of security incidents has progressively led to the withdrawal of international staff. Since May 2006 alone, 12 humanitarian workers have been killed in Darfur, a number higher than the total until that month. The question should be asked whether the obstructions put in place for humanitarian personnel have become a deliberate tactic of war? Without the support of States in fulfilling the responsibility to protect, UNHCR will have limited success in its protection of IDPs.

In Lebanon, most recently, major constraints were placed on the delivery of humanitarian assistance to civilian populations. In Iraq, humanitarian organisations are unable to undertake independent assessments of the needs and to access the civilian population in many areas. As a consequence, the scale of the needs remains unknown and many humanitarian agencies are unable to intervene.

In Sri Lanka, we see a significant rise in the number of security incidents, particularly towards civilians. Humanitarian organisations are having extreme difficulty in independently assessing

humanitarian needs, particularly in the East and North of Sri Lanka and the increasing anti-NGO climate is particularly worrying for its impact on humanitarian action.

The cluster approach provides new opportunities to engage on behalf of IDP populations in desperate need of protection and assistance. For example, in a variety of ways, Palestinians have been, and continue to be, displaced. We call upon the international community to explore a protection role in the context of the UN humanitarian reform process to seek protection – particularly the implementation of the right of return, restitution, and compensation – and solutions on behalf of Palestinian IDPs inside Israel and the occupied Palestinian territory.

Finally, we would like to acknowledge that the current cluster approach assumes access to IDPs from within the country. In situations where this access is not possible, humanitarian access from neighbouring countries must be negotiated.

UNHCR's Internal Review of IDP Operations

NGOs would like to know what is UNHCR's vision as to its role concerning IDPs? How will UNHCR ensure that its involvement with IDPs is sustainable? There has been considerable use of external staffing arrangements (such as ProCap and Surge) to meet the demands put on UNHCR. What measures is UNHCR taking to ensure that its own staff – and particularly protection staff – are being equipped to deal with the different challenges of working in IDP situations? UNHCR must take care that its role with IDPs does not see huge staffing resources being deployed to cluster countries at the expense of other operations. It is also important that funding and resources for IDP protection should be *additional* to UNHCR's work on refugee protection. What steps have been taken, or controls put in place, to ensure this separation?

We hope that the forthcoming internal review planned by UNHCR of its IDP involvement will take into consideration the views of its NGO partners. NGOs and UNHCR have worked for a number of years in IDP situations and this collaboration has only increased with the roll-out of the cluster approach.

In this context, it is also important to look at the collaboration between UNHCR and NGOs in the roll-out of the cluster approach. Are all humanitarian actors being treated as equals – at both the field and headquarters levels? Recent experiences of local Lebanese NGOs – who should have been valued partners in the recent emergency – along with international NGOs, were thrust into the position of making spur-of-the-moment project proposals in a UNHCR cluster in a manner not in line with an equal partnership. The cluster approach should not be a way for cluster leads to tell partners how to work. There must be a realisation that NGOs may have limited resources to dedicate to cluster participation, as they prioritise operations. National and local NGOs should be given meaningful opportunities to contribute to new mechanisms for improved collaboration and coordination through consultation and involvement from the onset.

UNHCR's Reform Process

Related to the questions on UNHCR's plans for the sustainability of its IDP operations is UNHCR's reform process. The reform and restructuring is necessary to ensure that UNHCR can become a more efficient protection organisation. While NGOs have heard and read about the reform process with interest, there have been limited opportunities for a frank discussion of what NGOs see as necessary elements of change. We would welcome the opportunity to

engage with UNHCR in this change process as UNHCR's work often directly impacts upon our operations.

UNHCR's Responsibility for Stateless Persons

UNHCR must ensure that its increasing IDP responsibilities do not obscure the mandate for stateless persons. At the policy level, we urge UNHCR to fully operationalise this mandate and to formalise cooperative agreements with sister UN agencies (particularly OHCHR, UNFPA, OCHA, and UNDP). At the operational level, NGOs would like to see UNHCR develop and improve mechanisms to identify stateless persons and to undertake systematic reporting to provide relief for immediate needs and increase staff resources, including additional dedicated protection officers, to implement the mandate. We also urge the High Commissioner to undertake a field visit to highlight, and work toward the resolution of, a statelessness problem.

3) UNHCR'S ROLE IN THE ASYLUM-MIGRATION NEXUS

So-called irregular migration is a growing global phenomenon. NGOs believe that in developing responses, States and inter-governmental agencies too often adopt an approach that fails to identify those in need of international protection among mixed migration flows. Many of these approaches generally fail to recognise the human rights of all people on the move. We are particularly concerned by the push of the European Union and of individual EU Member States to prevent arrivals of asylum-seekers and migrants who travel via North Africa. We are deeply concerned about negotiations involving the new EU border control agency, Frontex, certain Mediterranean EU States, and North African States, including Libya. Joint naval patrols that could involve the interception of migrants and refugees seeking asylum are taking place without a careful examination of the appropriateness of such partnerships. We are extremely concerned about collaboration with countries that are known to treat migrants abusively, that do not have asylum laws or procedures for identifying persons with protection needs, and that routinely return mixed populations to their countries of origin.

We urge UNHCR to prevent maritime interception that does not provide meaningful opportunities for people in need of protection to seek asylum. UNHCR must not only engage in capacity-building for refugee protection in North Africa, Eastern Europe, and other regions of transit, but must also monitor closely the use of detention and other measures that serve as obstacles and deterrents to asylum. NGOs continue to receive information of cases of torture and inhumane treatment at immigration centres in different parts of the world. Asylum-seekers are detained in an arbitrary manner for prolonged periods without any external counsel or presence to monitor the conditions of the centres, such as the example of nine detention centres in Libya.

NGOs have noted a dramatic rise in the detention of asylum-seekers and the detention practices of many States, which run contrary to the UNHCR detention guidelines and to the prohibitions of international human rights law against arbitrary detention. We call upon States to cease using detention as a deterrent and to ensure that any use of detention is in compliance with international human rights law and the UNHCR guidelines.

We call upon UNHCR to oppose efforts by States to use UNHCR's engagement in capacity-building as a pretext to declare countries of transit as safe, to conclude readmission agreements, or to enter into other partnerships, such as joint border patrols, when the

countries in question are unable or unwilling to provide effective protection for refugees and asylum-seekers.

We welcome UNHCR's 10 point Plan of Action as a first step to safeguarding the rights of both refugees and migrants. We stress the importance of ensuring that the rights of all migrants are safeguarded at all times and we look forward to working with UNHCR to refine and elaborate the 10 points, particularly regarding profiling exercises (point 5) and return arrangements for non-refugees (point 9).

Better Protecting Refugee Rights

During the Annual Consultations between UNHCR and NGOs last week, the possibility of pushing for a Special Rapporteur on the Rights of Refugees through the Human Rights Council was raised. Such a position would undoubtedly help to address the concerns around the erosion of refugee rights. UNHCR should also seek more cooperation with regional and national bodies whose mandate is to uphold human rights, which includes refugee rights.

While it would take some time before a Special Rapporteur on Refugee Rights would be appointed, we urge States to look for other means by which the rights of refugees and asylum-seekers can be better upheld. In particular, the application of Article 35 of the 1951 Convention would allow the High Commissioner to better supervise "the application of the provisions of this Convention" (Article 35, *1951 Convention Relating to the Status of Refugees*). In addition, reforms to the Executive Committee of UNHCR could see peer reviews being instituted, similar to what is now being explored in the Human Rights Council. Such efforts to improve accountability of the responsibilities of States would seem a progressive way forward that would ensure better refugee protection.

Conclusion

NGOs are stakeholders in UNHCR's protection mandate. Our partnership to better protect and assist refugees and other persons of concern will depend on adequate resources to help us fulfil our responsibilities. As NGOs, we, therefore, call on this EXCOM to not only approve UNHCR's budget, but also to provide the funding necessary to ensure its implementation.

Thank you.