

NGO Statement

Agenda Item 5(b) International Protection

Mr. Chairman,

This statement has been drafted and is delivered on behalf of a wide range of NGOs.

We fully agree with the High Commissioner that protection lies at the heart of UNHCR's work. Effective protection requires not only legal instruments, but the political will and commitment of States. Humanitarian organizations, such as UNHCR and NGOs, have a crucial role in protection activities, although the responsibility to protect lies with States. We hope that ExCom can consider how their responsibility to protect is helping UNHCR to fulfil its mandate. As NGOs, we urge not only UNHCR, but also Member States to take a stronger stance on the protection of refugees and those who have been internally displaced.

Voluntary repatriation

Many States have joined UNHCR in emphasizing that voluntary return is the preferred durable solution. However, in order for return to be truly voluntary and sustainable, conditions conducive to return must be in place – these include measures for safety, security, land rights, social infrastructure (particularly health and education services), the removal of landmines, restitution and compensation, and access to livelihood opportunities. UNHCR plays a crucial role in providing refugees with accurate information on the conditions, safety and resources available in areas of return; facilitating and coordinating return movements; and maintaining a proactive protection presence in areas of return. Acute funding and staffing constraints have hampered UNHCR's ability to maintain a significant protection presence for returning populations, for example, in South Sudan.

Protection is vital to upholding the rights of the most vulnerable, developing safe and sustainable return strategies and thereby preventing repeated situations of displacement, instability and violence. A complementary approach to emergency relief, protection initiatives and development activities provides the greatest chance for long term stability, and the sustainable return of refugees and IDPs, as well as enhancing good governance and the rule of law. It is UNHCR's responsibility to work with donors and other development actors to help governments put services in place.

Resolving Protracted Refugee Situations

We reaffirm our support for recent efforts to resettle refugees from two of the longest protracted refugee situations in Asia. Some of the Burmese refugees in Thailand and Bhutanese refugees in Nepal have finally been provided with a durable solution. We welcome the work of governments involved in these initiatives and would like to encourage them to continue their efforts to find a resolution to the political impasse that has resulted in these communities remaining displaced for so many years.

Asylum-migration nexus

We share the High Commissioner's concerns over the increasing use of asylum, migration, and security issues for political gain. The perpetuation of the view that refugees and asylum-seekers are illegal immigrants and/or agents of insecurity, terrorism, and crime erodes public support for refugees, encourages racism and xenophobia, and undermines the institution of asylum.

Given that only 1-2% of the world's refugees will be resettled in any given year and that the average length of time a refugee spends in a refugee camp has increased from 9 to 17 years in the space of just one decade, we have been particularly surprised to hear the term "queue-jumper" being used in this forum. Given the lack of fair and effective asylum procedures, durable solutions, and physical protection in countries of first asylum, which is known to force refugees to make onward movements in search of protection, the notion of "queue-jumping" is particularly inappropriate.

There is a clear need to ensure that States adopt a rights-based approach to migration management and open legal channels for migration, including by signing and upholding the Migrant Worker's Convention. In developing border control measures to manage mixed flows, States must ensure that these measures are designed and implemented in a protection-sensitive manner, including clear guarantees for the human rights of migrants, asylum-seekers, refugees and others in need of protection.

We caution against the use of bilateral or multilateral "safe third country" agreements. They disregard an asylum seeker's unique circumstances, even where there is a valid case for individual asylum. Such measures risk refugees being returned to a country that lacks proper status determination processes or where refugees' rights cannot be guaranteed, and may constitute *non-refoulement*. We are concerned that some States considered to be safe third countries do not provide effective protection.

Detention as a deterrent

During UNHCR's Annual Consultations with NGOs last week, deep concern was expressed about the increased use of mandatory, indefinite and non-reviewable forms of detention in inhuman or degrading conditions. Such detention is in violation of the international prohibition on arbitrary detention and is used to penalise and/or deter future asylum-seekers, in breach of Article 31 of the Refugee Convention. We urge UNHCR to redouble its efforts to work with States to implement UNHCR's Guidelines on Detention and to combat the spread of arbitrary forms of detention.

Extra-territorial detention and processing

We are concerned over the increasing trend toward extra-territorial detention and processing. ExCom States, such as Australia and the United States, are continuing to use offshore detention and processing "solutions," where the accountability and responsibility for protection is weak and unclear. These asylum determination systems lack capacity, access to legal counsel is inadequate and there is no access to independent or judicial review.

The Multilateral Framework of Understandings on Addressing Irregular Secondary Movements of Refugees and Asylum-Seekers, along with the study on secondary movement from Somalia provides crucial recognition of the fact that it is the lack of

effective protection that causes so-called “secondary” movements. It also provides concrete measures to redress these protection gaps, which we hope ExCom members will take up in future.

Resettlement

We are pleased to see the increasing use of resettlement as a protection tool, more States offering resettlement programmes, the expansion of existing resettlement programmes, the commitment of the US, Australia, Canada for their ongoing resettlement programmes, and the prospect of a European resettlement scheme. These improvements, however, do not excuse States from their primary obligation to protect asylum-seekers arriving in their countries. If resettlement is to be used as a strategic tool of protection, then the focus should be on those with the greatest protection needs, and not those with better integration prospects or those who meet national labour market demands. We also wish to remind states of the protracted nature of some urban refugee caseloads who are in need of resettlement.

The need for an effective system for monitoring returns

There is a need for an effective system for monitoring returns. In the case of returns to Afghanistan, some countries were quick to offer incentives or engage in coercive tactics to encourage the return of refugees before being able to ensure a safe and dignified return. A system to monitor both the methods of deportation and the conditions and safety upon return will help to ensure against *refoulement*. Such monitoring must include those who are denied protection by States that use definitions of a refugee that are narrower than that of UNHCR, as they remain as persons of concern to UNHCR. A system to monitor ongoing protection needs of returned asylum-seekers would ensure that UNHCR’s standards for granting protection are being met in countries of asylum. The tripartite agreements between UNHCR, the transitional government of the Republic of Afghanistan, and several European states provide a model for an effective system of return.

Local Integration

We are heartened by an increased recognition of the value of self-reliance in developing refugees’ economic and social capacity in order to meet their essential needs on a sustainable and dignified basis. Promoting self-reliance is vital in affirming the rights contained in the 1951 Convention, including the right to engage in wage-earning employment, acquire property, and enjoy freedom of movement. Self-reliance is desirable even where a durable solution is not immediately available, particularly in protracted refugee situations and should be understood as a precursor to a durable solution, not as a solution in itself. Marginalised groups for whom self-reliance may not be an option, such as some female-headed households, people with disabilities and the elderly, may require special assistance.

Food Insecurity

According to UN agencies and NGOs, between 165,000 and 200,000 Saharawi refugees continue to remain forcibly displaced in refugee camps in Western Algeria, facing harsh and deteriorating living conditions due to Morocco’s occupation of the Western Sahara. Their protection has been further undermined by annual cuts to UNHCR’s budget for camps where they have limited opportunities to earn livelihoods. The cuts have also led to acute increases in malnutrition and anaemia. We, therefore, ask Member States, UNHCR and WFP to ensure that the provision of

food aid is increased to a level that is commensurate with international standards and reflects actual numbers.

It is well-documented that food insecurity leads to sexual exploitation and violence, for example, women being raped when they leave a refugee camp to find food or are being forced to exchange sex for food. ExCom members must adhere to existing commitments to ensuring refugee food security.

Urban refugees

Many urban refugees do not enjoy access to a legal status or to basic economic, social, and cultural rights, such as the right to work, education or to adequate housing, and so fall into a “protection gap.” Unaccompanied minors living in such situations are particularly vulnerable to abuse. Urban refugee women face problems of sexual and gender-based violence, are often forced into prostitution or fall prey to traffickers. In many cases, they lack access to UNHCR offices. NGOs call on States to commit themselves to respecting and protecting the rights of all urban refugees on their territories, with specific attention to particularly vulnerable refugees, including women, children, and the elderly. We appreciate UNHCR’s consultations with NGOs during the revision of its policy document of urban refugee policy. Swift publication and implementation of this policy will constitute a significant step forward.

Child protection

Child protection must be an integral part of every humanitarian response, incorporating child protection programming into the delivery of all services in accordance with the rights enshrined in the Convention on the Rights of the Child. The provision of good quality education is critical to meeting the protection needs of children affected by armed conflict and natural disasters. The ExCom and UNHCR must ensure that safe, good quality education is an integral part of every humanitarian response. In particular, children formerly associated with armed groups must have access to comprehensive service provision including psycho-social assistance, healthcare and education.

Women at risk

We support the draft Conclusion on the Protection of Women and Girls at Risk, in particular the clear acknowledgment of the extent of rape and sexual and gender-based violence, and the need for a broad-based protection response to this problem. We are delighted that the Conclusion is strongly operational and provides a blueprint for effective responses to individual women and to communities. It acknowledges the capacity of refugee women and the need for their participation – in identifying risks, planning responses and decision-making on protection issues. Prevention of rape, sexual violence and exploitation is as critical as a response after the event, which cannot happen without resources. Women and children are being raped on a daily basis, babies are born as a result of rape, and young girls die in childbirth. Little is known about the impact of bearing a child or children of rape on the integration experience of refugee women following resettlement or repatriation. The international community must commit to responding to the needs of refugee women and their children born of rape, as a matter of urgency that must be addressed through short and medium term solutions, as well as a long term strategic plan. We call upon governments to match their commitment to the Conclusion and to ensure that refugee women and children have access to a range of appropriate protection measures, with a

commitment to providing resources, including medical and psycho-social services, to ensure the implementation of the Conclusion.

Ensuring protection for populations

Millions of Palestinians fall into a protection gap with no access to any form of international protection, including Palestinian refugees in Iraq, who are particularly vulnerable. In this regard, we call on all actors to redouble their efforts at addressing this gap for Palestinian refugees beginning with their right of return in keeping with UN General Assembly Resolution 194, including the right to restitution and compensation.

While the implementation of UNHCR operations in Iraq is ongoing with a number of NGO partners, under-funding and consequent operational cuts have had an undesirable consequence through the second half of 2006. In view of the 330,000 returnees currently in Iraq, along with 1.2 million IDPs including 300,000 newly displaced persons, support for UNHCR needs to be significantly increased in order to meet the protection needs of these persons.

UNHCR RSD standards and practice

We would like to acknowledge the important step taken by UNHCR in publishing comprehensive guidelines on its procedural standards for refugee status determination. While awaiting the implementation of these standards by all UNHCR offices, we stress the need to redress some of the gaps between UNHCR policies and human rights standards. UNHCR continues to withhold much of the evidence used in refugee status determination from the applicants concerned. There is still no clear plan to develop an independent appeal system and some of the standards are so broad that they can be watered down at the discretion of local officers.

ExCom Conclusions

Finally, we look forward to a continuing involvement in the ExCom conclusions process and hope that improvements to enhance our participation can be made in the coming year.

Thank you.