

**EXECUTIVE COMMITTEE OF THE  
HIGH COMMISSIONER'S PROGRAMME**

63<sup>rd</sup> Meeting  
1-5 October 2012

**NGO Statement on International Protection**

**Agenda Item 5. (a)**

*Mr. Chair, Ladies and Gentlemen,*

*This statement (available at: <http://www.icva.ch/doc00005497.pdf>) has been drafted in consultation with, and is delivered on behalf of, a wide range of NGOs and aims to reflect the diversity of views within the NGO community.*

Over the past months, many situations around the world have arisen involving serious protection issues for refugees, asylum-seekers, internally displaced persons (IDPs), stateless persons, and others of concern to UNHCR. NGOs take the opportunity of this 63<sup>rd</sup> Executive Committee meeting to highlight some of the most serious situations in which Member States' should take urgent action to protect the rights of all these persons. We raise these points in the spirit of cooperation that brings us all together to serve the populations of concern to UNHCR.

**1. Africa**

**(i) Kenya**

While recognizing that Kenya has been generously hosting large numbers of refugees for decades, NGOs are concerned about a wide-range of issues concerning Kenya's asylum policies and practice.

*Threats of forced return to Somalia*

Senior Kenyan officials have recently publicly stated that Somali refugees should soon return to "liberated" parts of south central Somalia. Yet conflict, or the risk of renewed conflict, persists in the majority of refugees' home areas. Somalis can voluntarily return to Somalia any time, but ongoing insecurity in Somalia means those fearing generalised violence there should continue to receive assistance and protection in Kenya, and should not be forced – either through a reduction in assistance or through direct physical pressure – to return home. NGOs call on Kenya to ensure its officials desist from making statements implying Somalis will be forcibly returned. NGOs call on donors not to reduce their support to humanitarian programmes in the Dadaab camps – which would likely lead to significant pressure on refugees to return to Somalia against their will – and call on UNHCR to work with Kenya to prevent the forced return of Somali refugees.

*Ongoing Liboi border closure, related abuses, and suspended registration in the Dadaab camps*

Despite repeated statements to the contrary, the Liboi border crossing near the Dadaab camps - which now shelter almost half a million mostly Somali refugees - remains officially closed, which compels Somalis to enter Kenya via irregular routes. This continues to expose them to serious security risks, including sexual violence, banditry, police harassment, and attacks by wild animals. The closure also continues to prevent NGOs from identifying the most vulnerable as soon as they enter Kenya and prevents UNHCR from registering Somalis at the border, a process that is all the more important since Kenya suspended registration of new refugees in the Dadaab camps one year ago. NGOs again call on Kenya to re-open the Liboi crossing and to resume camp-based registration.

*Arbitrary arrest and detention*

Following its recent invasion of Somalia, Kenya arbitrarily arrested and detained large numbers of Somalis in the Dadaab camps and in urban centres, ostensibly to identify suspected terrorists. While

Kenya has a right to arrest anyone against whom there is sufficient evidence of involvement in violence in Kenya, NGOs call on Kenya to end its arbitrary arrest and detention of Somali nationals.

#### *Registration in urban areas*

A July directive issued by Kenya's Department of Refugee Affairs requires all agencies working with refugees to use only government-issued refugee identification documents, including for resettlement purposes. Until March 2012, the vast majority of asylum-seekers went through UNHCR refugee status determination (RSD) procedures and were not issued with Kenyan documents. Moreover the government's registration process has been cumbersome and poorly managed. As a result, refugees face significant delays in receiving their identity documents, while refugees recognised before March 2012 struggle to access social services and work, and face increased delays in UNHCR's resettlement procedures. NGOs call on Kenya to improve its registration system, including by swiftly issuing refugees registered before March 2012 with government-issued documentation.

#### *Access to work*

Although Kenya's laws say refugees have a right to work in line with the rights of "other foreigners in similar circumstances," refugees face serious challenges in accessing work permits in camps and urban areas. NGOs call on Kenya to facilitate such permits and to allow them to access work.

#### *IDPs*

Kenyans continue to be displaced in large numbers as a result of severe and frequent natural disasters, resource-based conflicts and forced evictions. Most do not receive adequate government assistance. Kenya has focused on resettlement of IDPs displaced by the 2007/08 post-election violence, and has ignored the alternatives of return or local integration. NGOs encourage Kenya to closely consider stakeholder recommendations relating to Kenya's draft IDP legislation, to adopt the legislation without delay, and to develop a detailed IDP Policy under the legislation. We also call on UNHCR to continue to encourage Kenya to ratify the Kampala IDP Convention and to adopt a broader and more flexible approach towards durable solutions for IDPs.

#### **(ii) Malian IDPs and Refugees**

Around 110,000 IDPs in northern Mali live in makeshift shelters or with host families, while most of the 67,000 IDPs in the south live with host families. In both areas, IDPs and their hosts lack food, work, and access to health care and education. In the north, IDPs face sexual violence, child recruitment and the risk of unexploded ordinance, while in the South, IDP girls face sexual violence and exploitation. As of mid-September, the Consolidated Appeal Process (CAP) for Mali was only 48% funded, including less than 40% of the required amount for protection work. NGOs call on donors to generously respond to the CAP, including its protection component, and on UNHCR to increase its child protection work including through programmes that identify, protect, and reunify separated children and provide psychosocial support.

Conflict in Mali has forced at least 265,000 Malians to flee to neighbouring countries, mostly to Burkina Faso, Niger, and Mauritania. Refugees live in areas hit hardest by a regional food crisis affecting 18 million people. Many of the refugees are nomadic pastoralists, who fled with their livestock to settle in border areas. They were subsequently moved to camps where they are unable to retain their livestock, and therefore support themselves. In mid-September, UNHCR reported that their budget was only 39% funded, which has limited the extent to which UNHCR and its partners can provide protection and life-saving assistance. For example, in Niger's refugee camps, sanitary conditions and water rations are well below minimum emergency standards. The onset of the rainy season will increase the risk of cholera in many camps. NGOs have also documented numerous child protection problems, but limited funding for protection work and education for an estimated 97,000 school-age refugee children means it is hard to address them.

NGOs urge States to increase support to host countries and humanitarian agencies to help assist and protect Malian refugees and their hosts. We urge UNHCR offices in the region to work closely with

agencies responding to the broader food crisis to help maintain harmonious relations between refugees and their hosts and to effectively address the nutritional needs of all affected communities. Finally, while we recognise the significant security and logistical challenges faced by host governments, UNHCR, and their partners in providing assistance to refugees in remote border areas, NGOs urge UNHCR to work with host governments to avoid strict adherence to confined refugee camp arrangements, and to ensure pastoralist herders are allowed to move freely in order to accommodate their livestock and thereby limit aid dependency.

**(iii) Rwandan refugees and the cessation clause**

In its “Comprehensive Strategy for the Rwandan Refugee Situation,” UNHCR recommended cessation of refugee status by 30 June 2013 for Rwandan refugees who fled Rwanda between 1959 and the end of 1998. A number of African States have begun to implement this recommendation.

On-going, well-documented patterns of human rights violations in Rwanda, particularly in relation to violations of freedom of expression and suppression of dissent, continue to force Rwandans to flee their country. Many Rwandan refugees continue to express a fear of return and some have faced security threats in their country of asylum. NGOs therefore urge UNHCR to closely monitor the well-being of Rwandan returnees in the run up to, and after, the invocation of cessation. States hosting Rwandan refugees and UNHCR should ensure that legal safeguards and related procedures - including legal aid and access to residence rights and naturalisation - are in place to protect Rwandan refugees who do not wish to return. Refugees who wish to be exempted from the application of the cessation clause should be informed of their related rights and receive help in applying for exemption. In relation to all Rwandan refugees – regardless of whether they sought asylum before or after 1998 – who are facing security threats in their country of asylum, we call on UNHCR and those States to take steps to protect them, including through emergency resettlement.

**(iv) Somaliland**

On 31 August, Somaliland forcibly returned up to 100 Ethiopians, mostly women and children and including refugees and asylum-seekers, from Somaliland’s border town of Wajale to Ethiopia, in flagrant violation of its *non-refoulement* obligations. The deportations follow police raids on 30 and 31 August on an informal settlement known as the Social Welfare Centre in Somaliland’s main city, Hargeisa, where several hundred asylum-seekers and migrants from Ethiopia have lived for almost a year. Police fired live ammunition during the raid, wounding at least six Ethiopians, and then arrested and detained 56 Ethiopians, including the majority of those injured who were denied medical access for over a week. On 31 August, UNHCR also identified 72 registered refugees from the Social Welfare Center who were detained in Wajale and secured their release. However, the authorities prevented UNHCR from assisting an unknown number of other individuals in Wajale, including registered asylum-seekers. The unlawful deportations also echo Somaliland’s attempted *refoulement* of 20 Ethiopian refugees and asylum-seekers in late December 2011.

NGOs call on Somaliland to end its *refoulement* of refugees and asylum-seekers and to allow UNHCR in Somaliland to resume asylum-seeker registration, which has been suspended since October 2008.

**(v) South Africa**

NGOs are concerned about a number of issues relating to South Africa’s asylum and refugee policies.

*Closure of refugee reception offices*

Over the past year, and in defiance of court orders, South Africa has closed down three of its six Refugee Reception Offices (in Johannesburg, Port Elizabeth, and Cape Town), causing a crisis in asylum-seekers’ and refugees’ access to asylum and refugee procedures. Newly arriving asylum-seekers can only register at the three remaining offices (in Pretoria, Durban, and near the Zimbabwe border in Musina). The closures are part of South Africa’s plan to move all asylum-processing to the country’s borders. NGOs call on South Africa to respect the decisions of its own courts and to re-open the three offices. We also call on South Africa not to move its entire asylum processing to far-flung

border regions where asylum-seekers and refugees, who frequently have to attend such offices, will have limited or no access to work, adequate shelter and assistance.

#### *Refusal to register certain asylum-seekers*

Since late 2011 - and without making changes to South Africa's Refugee Act or related Regulations - South Africa's refugee reception offices have automatically refused to register asylum-seekers who have passed through countries South Africa deems are safe before reaching South Africa. Although States may ask asylum-seekers why they did not claim asylum in such transit countries and may take the answer into account when deciding on a person's asylum status, States are not entitled to automatically refuse asylum applications solely on that basis. If a person automatically excluded from the asylum system solely on that basis is forced by the authorities, or through other circumstances such as fear of arrest, to return to a place threatening their life or freedom - or to another country from which they may be returned to such a place - this constitutes *refoulement*. NGOs, therefore call, on South Africa to end this unlawful practice.

#### *New Limits on the right to work*

South Africa's ruling party, the African National Congress, has recently recommended changing South Africa's Refugees Act to limit refugees' and asylum-seekers' right to work. Under international law, refugees are entitled to work and since 2003, asylum-seekers in South Africa have had the same right. Under the proposed changes, refugees and asylum seekers would be allowed to have salaried jobs but would not be allowed to operate a business. In violation of the current Refugees Act, several municipalities have recently closed down around 1000 small businesses operated by refugees and asylum-seekers in Limpopo Province, causing destitution and displacement. NGOs call on South Africa to ensure refugees and asylum-seekers continue to be entitled to work, in accordance with South Africa's refugee legislation.

#### *Threats against third country nationals*

NGOs are concerned about the growing number of threats against third country nationals, including refugees and asylum-seekers. Examples include threats made in Johannesburg's Mayfair District by a group calling themselves the South African Blacks Association who distributed pamphlets to foreigners there threatening to "burn down [their] houses" and "rape and kill [their] women". NGOs call on South Africa to prosecute all individuals and organisations inciting such violence.

#### *Lack of transparency on status of Zimbabweans holding special dispensation permits*

Finally, NGOs call on South Africa to inform Zimbabweans holding permits issued under the "Special Dispensation for Zimbabweans Process" since 2010, which will start to expire soon, whether the permits will be renewed and, if so, how to renew them.

### **(vi) Returns to South Sudan**

With passage of amendments to its Nationality Act in 2011, Sudan effectively stripped southerners of their Sudanese nationality. 300,000 people have returned to South Sudan since late 2010, while over 100,000 remain in Sudan. Many want to return to the South but had limited options in 2011-12 because of limited flights and because overland routes pass through a number of insecure areas along the disputed border between the two countries. In April armed gunmen attacked a convoy of buses heading for South Sudan. In Kosti, a port town in Sudan's White Nile state, thousands were stranded for several months following the closure of river routes in March 2012. Despite on-going IOM and UNHCR efforts to facilitate boat and overland returns, the process is slow. Large numbers remain stuck on the outskirts of Khartoum and Omdurman awaiting transportation assistance. NGOs call on States to work closely with UNHCR and the Governments of Sudan and South Sudan to implement the existing comprehensive strategy for support to returnees, including emergency assistance during the return journey and support in return areas, including land allocation and security of tenure. We also call on both South Sudan and Sudan to sign and implement the long-negotiated "four freedoms agreement" protecting the rights of each other's citizens.

**(vii) Sudan**

In July, Sudan forcibly returned nine asylum-seekers and one recognised refugee to Eritrea in violation of Sudan's non-refoulement obligations. All ten - six Eritreans and four Ethiopian nationals - were convicted earlier in July, together with 41 others, of unlawfully entering Sudan and were sentenced to a two-month prison term pending their deportation. None of the 51 were allowed to appeal their convictions or sentences and were denied access to UNHCR. International refugee law prohibits States from punishing asylum-seekers for how they enter the country of refuge. Eritreans forcibly returned to Eritrea face a real risk of abuse, including incommunicado detention, torture, and other forms of serious ill-treatment. NGOs call on Sudan not to prosecute asylum-seekers for unlawful entry and to grant UNHCR access to all detainees claiming asylum.

NGOs remain extremely concerned about the situation of hundreds of thousands of IDPs and other conflict affected civilians in Southern Kordofan and Blue Nile states where the humanitarian situation remains extremely precarious. Sudan continues to block aid, despite its signature of a Tripartite Humanitarian agreement between the African Union, League of Arab States, and the United Nations. The agreement's mandated needs assessment in non-government held areas has not yet been carried out as required in the agreement and bombing of civilian areas continue. NGOs call on Sudan to allow the assessment to proceed, to grant aid agencies unhindered access to populations in need and to end its bombing of civilian areas.

In Darfur, hundreds of thousands of IDPs and conflict-affected civilians depend on food assistance, but government restrictions on aid worker movement has reduced capacity to assess needs and deliver assistance. NGOs call on Sudan to end its unjustified movement restrictions on aid agencies.

**(viii) Tanzania**

NGOs are also concerned about the situation of over 220,000 Burundians in Tanzania. Tanzania has recently screened just over 40,000 Burundian refugees and revoked the status of 37,582, who Tanzania says must return to Burundi by the end of the year. Tanzania has recognised that around 2715 continue to require international protection. NGOs are concerned that shortcomings in the screening process means some refugees should not have had their status revoked. NGOs call on the Government of Tanzania to ensure that the return process of refugees whose status has been revoked is done in a safe, dignified and rights-respecting manner. We also call on donors to support Burundi in its efforts to successfully reintegrate returning refugees.

NGOs are also concerned by government officials' statements suggesting that over 162,000 other Burundian nationals in Tanzania who were to be granted citizenship under a massive "naturalise or return" durable solutions program since 2007 will now not be recognised as citizens. We call on Tanzania to clarify its position in relation to this group, which has been in Tanzania since the 1970s.

In contravention of Tanzania's Refugees Act, since late 2011 Tanzania's Refugee Services Department has refused to register many asylum-seekers who therefore have not received permits confirming the legality of their presence. Pending a decision on their claim, registered asylum seekers in Tanzania are entitled to aid in refugee camps and may not be deported. Unregistered would-be asylum seekers therefore largely depend on private charity and fear arrest and deportation. Some registered asylum-seekers have waited for years for their cases to be heard. NGOs call on Tanzania to register all asylum-seekers in line with Tanzanian and international refugee law and to reconvene its National Eligibility Committee - which was suspended in 2010 - to conduct refugee status determination, as provided in the Refugees Act.

**2. The Americas**

**(i) Canada**

Canada's new "Protecting Canada's Immigration System Act" allows the Minister of Public Safety to designate groups of persons - including asylum-seekers - as "irregular arrivals," including if the

Minister considers a group cannot be examined in a timely manner or suspects it might have been smuggled for profit. The application of these provisions would lead to a number of violations of international refugee and human rights law. These include penalisation for unlawful entry, arbitrary long-term detention of asylum-seekers, and no appeal rights, which could lead to *refoulement*. Contrary to the Refugee Convention's provision that States should "facilitate assimilation and naturalisation of refugees," it could also lead to a five year bar on a designated person's right, even if subsequently recognised as a refugee, to apply for permanent residence and to benefit from family reunification rights. The Act also provides that asylum-seekers coming from countries the Minister of Citizenship and Immigration designates as ones not producing refugees will go through a fast track procedure with no appeal rights. This inevitably increases the risk of incorrect decisions and *refoulement*. NGOs call on Canada to repeal those parts of the law breaching international law and Canada's own Constitution and to adopt a more rights-respecting approach to refugee protection.

#### **(ii) Ecuador**

Ecuador's Executive Decree 1182 of 30 May 2012 significantly curtails refugee protection in two ways. First, it limits its definition of a refugee to that contained in the 1951 *Refugee Convention*, omitting to also include the *Cartagena Declaration's* broader definition which defines a refugee as someone who has "fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order." Second, it introduces an "admissibility stage" into the asylum procedure that takes an average of seven months during which time asylum-seekers are denied asylum-seeker documentation and therefore unable to access education, housing, or employment and are at risk of deportation. We call on Ecuador to rescind the Decree, to ensure Ecuadorian law uses the *Cartagena Declaration's* definition of a refugee and that asylum-seekers are given asylum-seeker documents from the moment they lodge their claim.

Ecuador also systematically rejects gender-based violence asylum claims, which mostly involve Colombian women, and has no mechanisms in place for providing such women with shelter and other forms of assistance while their claims are pending. We call on Ecuador to ensure such claims are properly considered, in line with international refugee law, and that claimants are given medical, psychological, and material support while their claims are pending.

Finally, despite numerous government statements that Ecuador's priorities include combatting trafficker and smuggler abuses, which include sexual and labour exploitation, NGOs are concerned that Ecuador has so far failed to protect Colombian female asylum-seekers against such abuses, and that former victims depend entirely on NGOs and UNHCR for assistance. We call on Ecuador to match its statements with law enforcement action and to assist victims of such exploitation.

### **3. Asia and the Pacific**

#### **(i) General concerns relating to refugee protection**

NGOs are concerned about the lack of legal and procedural foundations for refugee protection in many Asian countries, particularly in South East Asia, which host large numbers of refugees and where few countries have signed the 1951 *Refugee Convention*. In those that have, recognition rates are unreasonably low, in part due to States' failure to comply with basic refugee law including through applying a too narrow definition of the term "refugee." States' laws and practices are restrictive, which include detaining asylum-seekers, using accelerated procedures to determine their claims - which in the absence of appeal rights risks rejecting genuine refugees and committing *refoulement* - and severely limiting local integration options for recognised refugees. Some States detain all asylum-seekers pending a determination of their claims. With the majority of asylum-seekers and refugees living in urban and other non-camp settings, NGOs are also concerned that donors disproportionately fund refugee camps. NGOs encourage States to end their restrictive practices and to ratify the 1951 *Refugee Convention* or to pass or strengthen existing legislation

protecting the rights of refugees and asylum-seekers. We also call on States to use detention only as a last resort.

NGOs working in Asia are also concerned about shortcomings in some of UNHCR's RSD procedures in Indonesia, Malaysia, and Thailand, which include a lack of legal representation and lengthy delays in decision-making. Such delays forces asylum-seekers in Indonesia to abandon their claims and to undertake risky boat journeys to reach Australia. We call on UNHCR to carry out a detailed review of its RSD procedures to ensure procedures are applied in a uniform and predictable manner and in accordance with UNHCR's own guidelines.

**(ii) Afghan Refugees and IDPs**

Absent durable solutions, Afghan refugees are likely to continue to require international protection for some time to come because of poor security conditions, limited livelihood opportunities, and highly limited access to basic services such as education and health care. The number of Afghan IDPs has increased significantly in recent months, some of whom recently returned after decades as refugees but who are unable to return to, or reintegrate in, their home towns and villages due to a lack of work, services, and material assets including land and property. NGOs are therefore concerned that some States have reduced, or plan to reduce, protection space for Afghan refugees. Examples include rapidly expanding areas of Iran being declared "no-go" areas for foreigners who are primarily Afghans, Pakistan's announced plans to end the legal status of registered Afghans in Pakistan, and efforts by Norway, a number of EU Member States – including the UK and Sweden – and the EU-sponsored European Return Platform for Unaccompanied Minors (ERPUM) to return unaccompanied Afghan minors to Afghanistan, despite their inability to trace minors' families and a lack of appropriate care facilities for them in Afghanistan.

NGOs call on UNHCR to make protection of Afghans a key priority in the coming year and to resist efforts by States to limit or undermine refugee protection for them. In particular, NGOs encourage UNHCR to enhance cross-border collaboration with all its partners to improve its profiling of Afghan refugees in Pakistan and Iran and to better understand the likely reintegration challenges returning Afghans will face in the coming year. We also call on donors to generously support Iran and Pakistan to ensure they are able to adequately assist and protect the large numbers of Afghan refugees they have been hosting for over 30 years.

*Specific Concerns on Afghan Refugees in Iran*

NGOs are concerned about increasing restrictions on registered Afghan refugees in Iran, including the imposition of "no-go areas" where Afghan refugees and other third country nationals are not allowed to reside. NGOs have documented cases in which Afghans refugees have been *refouled* to Afghanistan for breaching these regulations. Other restrictions include the requirement to apply for work permits and restrictions on the type of work they are allowed to do. We are also concerned about increased reports that Iran is recognising only a very small percentage of Afghan asylum seekers as refugees and that it is not allowing Afghans scheduled for deportation to claim asylum if they wish to do so.

We call on Iran to allow Afghan refugees full freedom of movement in Iran, not to forcibly return them to Afghanistan, to fairly adjudicate all asylum seekers' claims, and to automatically allow them to work and not to restrict the type of work they may do.

*Specific Concerns on Afghan Refugees in Pakistan*

NGOs are concerned about the possible repatriation of registered Afghan refugees from Pakistan before the end of 2012, after the communiqué at the end of a UNHCR-organised conference in May 2012 on a regional "Solutions Strategy for Afghan Refugees" remained silent on whether refugees' "proof of registration" (POR) cards would be extended beyond 2012.

In Pakistan's Khyber Pakhtunkhwa province, which hosts the majority of Afghan refugees in Pakistan, government officials announced earlier this year that Afghan refugees would be arrested and deported if they did not leave the country by 25 May 2012, although few refugees have in fact been arrested and deported. In recent months Pakistan's security forces have forced some refugees to leave urban areas in Malakand Division and moved them to remote refugee camps, in violation of their free movement rights. NGOs also note that UNHCR in Pakistan has not communicated very clearly with NGOs on UNHCR's understanding on Pakistan's plans for Afghan refugees.

NGOs call on Pakistan to immediately extend Afghan refugees' POR cards, to sign and ratify the 1951 Refugee Convention, and call on UNHCR to encourage Pakistan to do so. NGOs also request UNHCR to engage more transparently with NGOs in Pakistan on Pakistan's Afghan refugee policy.

### **(iii) Australia**

Australia's new legislation authorises its authorities to transfer asylum-seekers arriving in Australia by boat to any place in the world Parliament designates as an offshore asylum processing location, which at present is limited to the remote Pacific islands of Nauru and Manus in Papua New Guinea. Asylum-seekers may be detained there for as long as it takes to process their claims. Asylum-seekers who arrive by air, including those with improper documents, will be allowed to remain in Australia - mostly on "bridging visas" which allow them to live and work in the community - while their claims are processed. The "offshore processing" law therefore appears arbitrary and discriminatory as it specifically targets desperate boat people for arriving in Australia by sea by potentially detaining them without time limits in remote locations.

NGOs call on Australia to introduce new legislation that would repeal the new law and would replace it with positive measures to enhance and not reduce refugee protection, including through improving the capacity of Australia, transit countries, and refugee-producing countries to provide asylum-seekers with safe alternatives to irregular boat departures.

### **(iv) China**

Between 19 August and late September, China forcibly returned between 4,000 and 7,000 Kachin refugees to an active conflict zone in northern Myanmar where they face armed hostilities, army abuses, and a lack of aid, including in under-serviced IDP camps to which Myanmar has consistently denied access by UN and international aid agencies. These most recent cases of mass *refoulement* follow others involving at least 300 Kachin refugees over the past year, including pushbacks and denials of entry at the border. NGOs condemn China's mass forced return of refugees and call on China to protect and assist refugees from Myanmar and to allow UNHCR to do so.

NGOs are also concerned that until its mass *refoulement* of Kachin refugees took place in August, China had failed to provide them with any secure legal status or aid, had denied them adequate shelter, food, potable water, sanitation, basic health care and education, and denied humanitarian agencies access to them. In search of income, adults sought day labour and were vulnerable to exploitation by local employers. Others were stopped for roadside drug testing, arbitrary fines, and prolonged and abusive detention by the Chinese authorities, all without due process or judicial oversight. NGOs call on China to ensure that any refugees in China are given secure legal status, assistance, and are not subjected to arbitrary arrest and detention.

NGOs are also concerned about China's consistent *refoulement* of North Korean refugees on the grounds that they are "economic migrants," despite the well-known fact that North Koreans face severe persecution upon their return, including torture and prolonged imprisonment in political prisoner camps. NGOs call on China to end its appalling practice and to protect North Koreans in line with its international obligations, including by giving UNHCR access to all North Koreans in China.



**(v) Myanmar**

During this year's June – August inter-ethnic violence in Myanmar's Rakhine State between Muslim Rohingya and Rakhine Buddhists, the authorities evacuated tens of thousands of Rohingya and several thousand Buddhists, who lost their homes, to IDP camps. All Muslim populations in the area, including IDPs, are prohibited from entering the state capital city, Sittwe. As a result, many have lost their livelihoods, which has made them entirely dependent on the limited aid they receive in IDP camps where water, shelter, health and sanitation conditions fall well below international standards due to poor coordination involving the UN, Red Cross and Crescent Societies, NGOs and limited donors funds.

Since June, authorities have also denied humanitarian agencies access to Rohingya in northern Rakhine state who were dependent on those agencies before the recent violence. Rohingya in the north also continue to face killings, beatings, arbitrary arrest, detention and confiscation of property by the authorities.

NGOs call on Myanmar to end its discriminatory and abusive treatment of Rohingya in Rakhine State. Myanmar should guarantee all communities' right to free movement, guarantee their security and should allow aid agencies unhindered access to Rohingya IDPs who chose to remain in the camps, to Muslim host communities and villages around Sittwe whose livelihoods are affected by the ban on entering Sittwe town, and to Rohingya in northern Rakhine state. NGOs also call on Myanmar to produce a comprehensive plan that would allow Rohingya to return in safety to their communities as soon as possible

Finally, NGOs call on Myanmar to amend the 1982 Citizenship Act to bring it in line with international standards, to fairly address Rohingyas' lack of legal status and by promoting respect for human rights and reconciliation between the Rohingya and other ethnic groups in Rakhine State.

**(vi) Sri Lanka**

India hosts some 100,000 Sri Lankan refugees, many of whom wish to return home. Yet Sri Lanka has yet to take steps that would enable them do so, including by providing housing and livelihood assistance and recognition of educational qualifications refugees obtained in India since the early 1980s. Some refugees in India are afraid to return home in light of reports about arbitrary arrest and detention of civilians, including returnees, by Sri Lankan security forces in return areas. On 28 August, Sri Lanka's Minister of Resettlement said Sri Lanka would not engage with India on the return of Sri Lankan refugees from India until 2013 because its priority was to deal with IDPs. NGOs urge Sri Lanka without further delay to put together a returnee assistance package and policy to ensure a safe and dignified return in full respect of their rights.

**(vii) Thailand**

NGOs are concerned that urban refugees and asylum-seekers in Bangkok generally face long waiting periods for UNHCR RSD and resettlement procedures. In mid-2012, the average waiting time for the first-instance RSD interview with UNHCR was 112 days, and another 203 days to receive the decision for that interview. Average appeals took another 113 days for the interview (for those who were interviewed) and 236 days for a decision. The average waiting times were even longer in calendar year 2011: 212 days from registration to the first interview; 210 days from the first interview to a decision; and another 223 from appeal request to appeal decision. Resettlement waits for urban refugees from UNHCR referral to departure took an average of 401 days in 2010 and an average of 918 days in 2011. Because urban asylum-seekers and refugees remain vulnerable to arrest, detention, and police abuse while their claims and cases are pending, UNHCR should speed up its very slow processing of refugee claims in Thailand, if necessary by increasing the number of UNHCR protection officers, interpreters, and support staff.

UNHCR Bangkok's RSD procedures do not conform with its own guidelines. For example, legal representatives are not permitted to attend RSD interviews with claimants, even though UNHCR's

*Procedural Standards for Refugee Status Determination under UNHCR's Mandate* state, "The legal representative will have the opportunity to make brief submissions at the end of the RSD interview... and should promote complete and reliable disclosure of the Applicant's claim." NGOs call on UNHCR to promote fair practice standards in its Bangkok RSD process by permitting asylum-seekers full legal representation and by improving transparency, including by providing applicants clearly articulated reasons for rejection and access to evidence.

## **5. Europe and Central Asia**

### **(i) European Union (EU)**

NGOs are concerned about a number of issues relating to recent developments in the EU.

#### *Reception Conditions Directive*

Changes to the EU's *Reception Conditions Directive*, to be approved later this year, introduce regressive measures with respect to the detention of asylum-seekers and thereby fail to respect the principle of detaining only as a last resort. The measures include a wide range of reasons triggering the power to detain, the lack of automatic judicial review of decisions to detain and a failure to prohibit the detention of unaccompanied migrant children. NGOs call on the European Council to improve on the proposal before final adoption, and on EU Member States to adopt more favourable provisions when transposing the *Directive* into national legislation.

#### *Dublin Regulation*

NGOs are concerned that measures taken under the Dublin II Regulation continue to lead to transfers to countries such as Greece, Hungary, and Italy with inadequate asylum and reception capacities, including lengthy delays in processing asylum claims, long periods of detention, separation of families, and inadequate treatment of unaccompanied migrant children. We call on EU Member States to end such practices, including by adopting proposed changes to the Regulation that would ensure States cannot send asylum-seekers to States with dysfunctional asylum systems where their fundamental rights are at risk.

#### *Syrian Refugees*

EU Member States' treatment of recently arriving Syrian nationals varies considerably, with some States examining their asylum claims and others opting not to review their claims, which leaves them in a continuous state of legal uncertainty. NGOs recommend Member States either treat newly arriving Syrian nationals as asylum-seekers or grant them some form of temporary protection with clear rights attached. We also call on the EU to facilitate Syrians' access to Europe by relaxing visa restrictions, using emergency resettlement procedures for the most vulnerable currently living in countries bordering Syria and by increasing humanitarian aid to Syria's neighbouring countries.

#### *Deaths at Sea*

NGOs are concerned about the high number of migrants and asylum-seekers who drown while trying to reach the EU's shores, including Syrian nationals among the 61 people who died on 6 September off the coast of Turkey. The European Court of Human Rights recently stressed that all EU Member States must respect the principle of *non-refoulement* even outside their territories, including on the High Seas. NGOs are therefore particularly concerned that Member States have yet to ensure that the EU External Border Agency Frontex has clear guidelines and procedures for identifying persons in need of protection when intercepting third country nationals on or outside the EU's borders. NGOs call on Member States to take steps to ensure access to RSD procedures for individuals intercepted during sea border patrols, and to ensure that search and rescue procedures include steps to determine which Member State is responsible for providing emergency assistance to intercepted third country nationals, as required by the 1982 *Convention on the Law of the Seas*. Finally, we call on EU Member States to ensure that the proposed European External Border Surveillance System (EUROSUR) includes specific guidelines and procedures on rescue at sea.

## (ii) Greece

### *Arbitrary Arrest and Detention*

Between 4 August and 12 September, Greek police took more than 20,000 foreigners - presumed to be undocumented migrants - to police stations for questioning, arresting more than 2,400 of them for illegal entry and residence with a view to deporting them. NGOs recognise that Greece has the right to enforce its immigration laws and to deport people with no legal basis to stay in the country after a fair process. However, NGOs are concerned that the recent sweeps have targeted people on the basis of race or ethnicity, which is illegal under international law, and that people wanting to lodge asylum claims - but who have been unable to do so because of the dysfunctional nature of Greece's asylum system - will be caught up in such sweeps and be deported in violation of Greece's *non-refoulement* obligations. NGOs call on Greece to end mass round ups of people on the basis of their ethnic or racial appearance and to put in place procedures to ensure that asylum-seekers mistakenly arrested on suspicion of immigration offences are identified and released.

### *Asylum System*

Despite legislative reforms that aim to improve Greece's asylum system by establishing an initial reception service for migrants, an appeals authority, and an asylum service to take over the processing of asylum applications from the police, NGOs are concerned that little progress has been in implementing these reforms. The Greek asylum system remains largely dysfunctional, with the lowest refugee recognition rate at first instance in Europe (less than 1% in 2011) although NGOs recognise that some progress has been made in second instance with a recognition rate of 12%. Asylum-seekers continue to face significant obstacles in submitting asylum applications. The Central Alien's Police Directorate in Athens only accepts 20 applications per week. In late March the government announced a plan to build 30 new detention centres to house undocumented migrants pending deportation. Despite some efforts to improve what have been regularly described as inhuman and degrading conditions in existing centres, NGOs visiting detention centres on the islands of Samos, Leros, and Simi, and the makeshift camps of Xanthi and Komotini in August, found conditions to be substandard.

NGOs call on Greece to ensure that all people who wish to seek asylum in Greece can lodge their claims and have them properly examined, and to urgently improve detention conditions by using alternative facilities to reduce overcrowding and alternatives to detention.

## 6. Middle East and North Africa

### (i) **Refugees from Syria in the region**

NGOs recognise the burden large numbers of refugees from Syria are placing on Syria's neighbours and - despite recent developments on the **Turkish and Iraqi borders** - commend them for in the main keeping their borders open. However, NGOs are concerned that States bordering Syria may increasingly introduce restrictive policies towards refugees, including closing their borders and confining them to closed camps. We are also very concerned about discrimination against Palestinians fleeing Syria.

Since late August, thousands of Syrians have been stuck for days or weeks on the Syrian side of the **Turkish border** because, Turkey says, screening procedures at two key border crossings are overwhelmed and more recently because of a lack of space in Turkey's refugee camps. Preventing asylum-seekers from claiming asylum at the border and from entering Turkey to have their claims considered constitutes *refoulement*. Senior Turkish officials have said the UN should establish camps in so-called "safe areas" inside Syria and that Turkey could accept no more than 100,000 refugees. NGOs wish to stress that under international law, even if such safe areas were to be established, they should not be used to prevent people from fleeing Syria to seek asylum in other countries and call on

Turkey to allow all refugees from Syria to immediately enter Turkey where they can be screened for security purposes before onward movement.

NGOs are also concerned about hundreds of Syrians who, from mid-August and throughout much of September, were stuck on the Syrian side of the **Iraqi border** after Iraq closed the al-Qaim border crossing, where refugees are at risk of air and artillery attacks. Although international pressure led Iraq to recently re-open al-Qaim, Iraq has said it will not allow single men of military age to cross into Iraq, a policy that amounts to *refoulement*. NGOs call on Iraq to allow all people fleeing Syria to seek asylum in Iraq where it can then screen new arrivals for security purposes.

Until June, Syrian refugees in **Jordan** were allowed to live in host communities. As of early August, Jordan has taken all newly-arriving refugees to al-Za'atri camp, which, as of late September, sheltered around 65,000 people, only half of whom were officially registered. Conditions in the mostly tented camp are harsh, with high temperatures and regular sandstorms making life very difficult. Refugees are not allowed to leave the camp and there have been a number of violent incidents - the most recent on 24 September - between Jordanian security services and camp residents protesting for better conditions. Since April 2012, Jordan has arbitrarily detained Palestinians in a refugee holding centre called Cyber City, near Ramtha. Some Palestinians have said Jordan tried to deport them back to Syria in May and June, and has prevented their relatives from crossing into Jordan.

While the **Kurdish Regional Government** in northern Iraq has allowed refugees in camps to come and go freely, the authorities in **Baghdad** have used armed guards to prevent Syrian refugees from leaving the schools and camps where they are being accommodated.

**In Lebanon**, refugees are not encamped and their movement is not restricted. Most are living with host families and some in public accommodations, such as schools. As of late September the High Relief Commission and UNHCR had registered close to 65,000 refugees from Syria with a further 18,000 waiting to be registered. However, registration does not grant them legal status, only a right to receive assistance. People who enter at an official border crossing are entitled to a six-month entry visa that is renewable twice. Those who enter other ways risk imprisonment, fines, and deportation as illegal immigrants. Large numbers of Syrians have entered Lebanon illegally because they feared arrest at Syrian border checkpoints. They are, therefore, at risk of detention and possibly deportation. Lebanon deported 14 Syrians in August, four of whom said they feared persecution upon return. Palestinians only receive a two-week residency permit, even when entering at official crossings, and once that expires they can only renew it once, for a month, for 50,000 LBP (US\$33).

**Israel's** Defense Minister Ehud Barak has said that Israel would prevent "waves of refugees" from fleeing Syria to the occupied Golan Heights. Such a step would constitute *refoulement*.

NGOs call on Syria's neighbours to keep their borders open to all refugees fleeing Syria, to grant refugees freedom of movement, to grant them secure legal status that protects them from deportation, and to end discrimination against Palestinians fleeing Syria. We also call on donor countries to generously support countries hosting refugees from Syria as well as UNHCR operations in the region, in particular its registration capacity. Finally, we call on UNHCR to introduce good camp management practices in Jordan and Turkey, including locating camps away from the border and protecting the civilian nature of camps, particularly in Turkey. We recommend UNHCR put in place emergency shelter preparedness in Lebanon to anticipate a possible large-scale influx of refugees as well as refugees' movement away from increasingly insecure border areas.

#### **(ii) IDPs in Syria**

As of late September, up to 2 million people were displaced throughout Syria. IDPs are repeatedly displaced between regions, towns, and even schools with the accompanying challenges relating to

their physical security and health. Massive shelling has destroyed many peoples' houses in numerous areas, including around Damascus. Government restrictions on NGO operations, including denying access to many areas, means massive numbers of IDPs are without any assistance. NGOs urge Syria to guarantee access for humanitarian actors to all areas of displacement. We also call on donor countries to generously support humanitarian relief operations.

**(iii) Egypt**

Trafficking of mostly sub-Saharan migrants and asylum-seekers in Sinai - and their torture, sexual assault, and rape during negotiations for their release in exchange for ransom - continues unabated without any attempt on the part of the Egyptian law enforcement to intervene despite Egypt's detailed trafficking law. NGOs call on Egypt to use its increased security presence in Sinai to free those detained, including many Eritrean nationals with potential asylum claims, and to give UNHCR access to all migrants detained in Sinai's police stations to identify asylum-seekers among them.

**(iv) Israel**

Since early June, Israel has enforced a law allowing it to detain all irregular border-crossers, including asylum-seekers and their children, for three years or more before their deportation. The law also allows officials to detain some people indefinitely, even if border control officials recognise they might face persecution if returned to their country. In addition, the law gives the authorities the discretion to prosecute irregular border-crossers for unlawful entry, which it defines as the crime of "infiltration." Punishing asylum-seekers for unlawful entry is a violation of international refugee law. The new law also states that the detention of irregular border-crossers falls under an administrative procedure that does not guarantee them access to a lawyer to challenge their detention. Subjecting irregular border-crossers to potential indefinite detention without charge or access to legal representation violates the prohibition against arbitrary detention under international human rights law. NGOs call on Israel to amend the law consistent with its international refugee law obligations, and, in the interim, not to enforce provisions that violate those obligations.

According to an affidavit from an Israeli reserve soldier, in June 2012 Israeli forces repeatedly detained groups of migrants attempting to enter the country from Egypt and forcibly transferred them to Egyptian border forces without allowing them to present asylum claims. The Israeli military spokesperson's office stated in August that Israeli soldiers have stopped groups of migrants several times and held them "until the arrival of Egyptian forces that took the infiltrators." In response to petitions by NGOs, Israel had pledged before the Israeli high court in 2011 to cease such actions. Israeli forces have also repeatedly refused to allow groups of Africans to cross a nearly completed border fence, without allowing them to present asylum claims. NGOs call on Israel to immediately end these practices - including rejection at the frontier - to ensure that all border-crossers can file asylum claims, to consider such claims, and to allow appeals if the claims are rejected.

**(v) Yemen**

As of late September, 20,000 IDPs from war-affected districts of Yemen's Abyan Province were seeking shelter in 76 schools in and around Aden. Unlike a further 80,000 IDPs renting apartments or living with relatives in Aden, they cannot afford to leave the schools. In early August, the Governor of Aden said that by mid-August IDPs should leave the schools and return to their homes in Abyan Province and that all assistance to IDPs in the schools should end. To-date, these threats have not been converted into action. NGOs are concerned that many of the IDPs come from areas in Abyan Province, such as Zinjibar and Khanfar districts, where there are still large quantities of unexploded ordinances (UXOs) including landmines, widespread destruction of property and livelihoods infrastructure such as irrigation channels, and localised insecurity. Due to insecurity, the UN and international NGOs have been able to conduct only 2 two-day assessment missions to Abyan. NGOs call on the Yemeni authorities not to force IDPs to return to Abyan Province and to guarantee IDPs' rights to return home in safety and dignity.

*Thank you, Mr. Chair.*