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**NGO Statement on International Protection**

Dear Chair,

This statement was prepared in consultation with a wide range of NGOs.

Today, one of the greatest threats to the international protection system is the externalization of States' asylum obligations. Whether an explicit policy or *de facto* practice, it involves the shifting, rather than sharing, of the responsibility to save lives and guarantee the rights of forcibly displaced people. Enshrined in the 1951 Refugee Convention, this responsibility was affirmed by all UN Member States in the 2016 New York Declaration. With new humanitarian crises breaking out from Afghanistan to Haiti, it is as critical as ever that States fully uphold both the letter and spirit of international law.

The May 2021 UNHCR Note defines externalization as unilateral measures or arrangements between States designed to or serving "in practice to shift, minimize or avoid responsibilities." Critically, it warns that such practices "could render international protection increasingly inaccessible, placing many asylum-seekers and refugees at risk of limbo, mistreatment or *refoulement*." UNHCR also provides examples of positive, cooperative practices that promote protection. However, externalization measures undermine both global solidarity and protection.

This trend is most pronounced among high-income countries that take advantage of their resources, power, and sometimes, geographic location, to compel other countries to host refugees, block onward movements, or even return asylum seekers. These measures are often presented as seemingly legitimate policies to support countries of origin and transit. In fact, they distort supposed "partnerships" to serve the interests of destination countries. In addition, a State's provision of humanitarian and development aid should not be contingent on migration control efforts and does not offset its own obligation to allow access to territory and asylum and protection processes.

Meanwhile, low-income countries already host the vast majority of displaced people despite having far fewer resources. Major transit and hosting countries may adopt their own closed-door and return policies, putting protection further out of reach. This grim scenario recently took shape as Europe reacted to the mere possibility of increased displacement from Afghanistan. Unsurprisingly, Afghanistan's neighbors declared their borders closed, too. A similar effect is seen in the Americas. The United States has invoked a public health authority to expel thousands of asylum seekers to Haiti, Central America, and Mexico in a way UNHCR warned may constitute *refoulement*. It is already leading to returns by other countries in the region.

UNHCR's guidance rightfully emphasizes that deterrence of irregular migration cannot preclude access to protection or condone the treatment of asylum seekers in ways that violate international law. A State that outsources its asylum obligations is not absolved of human rights infringements that might take place in a third country. In some cases, States have indirectly engaged in *refoulement* by funding migration enforcement and border security forces in other countries that do not protect forced migrants' rights. For example, the Libyan coastguard continues to benefit from EU support despite documented allegations of abuses.

Externalization can take different forms. It is exploitative, expensive, ineffective, dangerous, and, in most cases, unlawful. NGOs have played an important role in documenting externalization practices worldwide and their harmful impacts. Several examples follow:

In Greece and along the so-called "Balkan route," we see a troubling increase in reported use of unlawful pushbacks—and even "chain pushbacks"—to keep asylum seekers off territories, sometimes forcefully sending refugees and migrants across multiple borders. In the United Kingdom, new legislation introduced in July would not only criminalize individuals arriving irregularly but also authorize pushbacks at sea. Such harsh policies ignore the reality that because asylum seekers do not move by choice, but out of necessity, harsh deterrence measures do not work. Indeed, asylum seekers who are pushed back often try again to find refuge.

Similar reasons raise concern over the expanded abuse of the "safe third country" concept to remove asylum seekers to places that are not truly safe. UNHCR has underscored that this concept is unworkable, not found in the Refugee Convention, nor required under international law. There are multiple examples of bilateral agreements creating precarious situations that put rights and lives at risk. For instance, the 2016 EU-Turkey agreement has proven to be "unethical, illegal and unnecessary." Other agreements with North and West African countries bent on reducing irregular movements along the Mediterranean route only pushed people towards the longer, more dangerous Atlantic crossing to Spain's Canary Islands.

We are also concerned by States replicating Australia's offshoring practice, which transfers asylum seekers to extra-territorial processing facilities, leading to long-term detention in deplorable conditions. Despite the evidence that this model is costly, ineffective, inhumane, and unlawful, Denmark and the UK have signaled their intention to allow such practices. Civil society, the European Commission, and UNHCR have voiced strong objections against an approach likely to "erode" the international refugee protection system.

If the goals of asylum and migration policy are, as policymakers claim, to protect lives and uphold "orderly" movement, externalization fails dramatically. It undermines global solidarity and States' international obligations. Until externalization is abandoned, the entire system will be at risk. We, therefore, call on:

- States to recommit to sharing responsibility in a robust protection regime. Those that adopted policies and practices that externalize asylum responsibilities should reverse course while others should refrain from taking similar measures.

- States should base determinations of "safe third countries" and decisions to return or transfer refugees on individual evaluations of asylum claims, assessments of the security and human rights landscape in the country of return, and the possibility of accessing asylum processes there. States should take full account of UNHCR's legal considerations on this matter.

- UNHCR should convene a global conversation on the risks of externalization, perhaps at the next High Commissioner's Dialogue on Protection Challenges, to inform further legal guidance on States' obligations and emphasize more equitable approaches. NGOs encourage UNHCR to continue calling out such dangerous externalization practices.

Further details are available at icvanetwork.org

Thank you.