

**NGO Statement
Agenda Item 5a**

International Protection

Mr. Chairman, Ladies, and Gentleman,

This statement has been drafted by a number of NGOs. It attempts to reflect the diversity of views within the NGO community.

NGOs remain concerned about the ongoing erosion of the refugee protection regime and remind States of their international obligations under refugee, human rights, and humanitarian law. Particular international protection concerns we address in this statement include: *refoulement*, detention, refugees' economic rights, durable solutions, statelessness and, finally, UNHCR Executive Committee (ExCom) Conclusions.

Refoulement

As has been noted in several NGO statements to this forum in the recent past, the fundamental principle of *non-refoulement* has come under increasing threat. States have sought to circumvent their obligations in this regard through a variety of means, including rejection at the frontier, visa requirements, carrier sanctions, interdiction, and arrangements with third countries; the end result being that refugees and others are placed at risk of return to situations where they face persecution or torture and other serious human rights violations.

NGOs are concerned, in particular, at the reliance by some States on diplomatic assurances in order to effect the removal from their territory of refugees, asylum-seekers, and others at risk of torture and ill treatment. We note that States that violate international law and have a record of torture or ill-treatment of individuals under their jurisdiction also systematically deny the fact and take steps to hide it. In another disturbing development, some States are using national security arguments to justify legal challenges to the absolute prohibition of torture under international law.

We have been alarmed in recent months by bilateral discussions between the Governments of Laos and Thailand in relation to groups of Lao Hmong refugees and asylum-seekers currently in closed camps and detention centres in Thailand. Following the forced return of more than one hundred Lao Hmong refugees to Laos earlier in the year, and credible reports of abuse and detention of many of these individuals upon their return, NGOs note that Thailand will be in further breach of its obligations under international law if the bilateral discussions result in more forcible returns. We urge the Government of Thailand not to rely on diplomatic assurances being provided by the Government of Laos and to continue to provide asylum to these individuals until they can find a durable and rights-based solution to their plight.

NGOs also note that the principle of *non-refoulement* has been ordinarily understood to embrace not only forcible return from within a State's territory, but also non-admittance at its

border. ExCom *Conclusion No. 6 (XXVIII) on Non-Refoulement* from 1977 has reaffirmed that the principle of *non-refoulement* applies “both at the border and within the territory of a State of persons who may be subject to persecution if returned to their country of origin irrespective of whether or not they have been formally recognized as refugees.”

We have noted, with concern, the forcible removal during 2007 of individuals, including from Sudan and Eritrea, from the territory of Israel at the border with Egypt. According to reports, these individuals were not allowed to access fair and satisfactory asylum procedures in Israel prior to their removal. This summary expulsion of asylum-seekers appears to contravene Israel’s obligations under the 1951 Refugee Convention. Reports have also indicated that asylum-seekers and other migrants attempting to cross the border have been subjected to inhumane treatment by Egyptian security personnel, and that border guards have killed more than one individual. We are further concerned that the Government of Sudan has, in the past, punished and/or executed its own nationals solely for having entered Israel, and that Sudanese migrants within Israel may, therefore, have a *sur place* refugee claim. We call on the government of Sudan to desist from this persecutory practice and on the Government of Israel to provide appropriate international protection to such individuals, particularly protection against *refoulement*.

We remind Member and observer States of ExCom that the principle of *non-refoulement* is a norm of customary international law from which any departure is prohibited. This fact is of fundamental importance in the context of mixed population flows. States should make all efforts to promptly identify those in need of international protection and ensure their access to fair and satisfactory asylum procedures. In no circumstance should any individual be returned to a situation of human rights abuse, regardless of his or her legal status in the host country. We look forward to discussing these and other issues in more depth at the forthcoming *High Commissioner’s Dialogue on Protection Challenges*. In this context, we urge that the agenda for this Dialogue provide sufficient space for interactive and meaningful debate and that NGOs are able to participate fully, in recognition of the unique perspectives that we can bring to such a debate.

Detention

The issue of detention is also one of increasing concern to NGOs. In many regions of the world, asylum-seekers and refugees are subject to prolonged, often indefinite, and arbitrary detention. Many States use detention as a regular facet of their asylum and migration policies. Aside from its lawful purpose, States appear to use detention to penalise asylum-seekers for entering their territory in an irregular manner, and/or to act as a deterrent to the arrival of more asylum-seekers.

Such use of detention contravenes the spirit and, often, also the letter of the international system of refugee protection. It also contravenes UNHCR’s *Guidelines on Detention*, which state, explicitly, that the detention of asylum-seekers is “inherently undesirable”.

In some States, including in States where detention is routinely used as an element of asylum policy, NGOs remain concerned about inadequate procedural safeguards in relation to detention and also about the conditions in which refugees and asylum-seekers are detained. Too often, the detention of refugees and asylum-seekers is not subject to periodic review by a court and in some circumstances asylum-seekers are detained alongside convicted criminals. Detention is also used by States to provide a less than satisfactory “solution” to the situation

of rejected asylum-seekers who are in a legal limbo, as they cannot be returned to their place of habitual residence or country of origin.

We are particularly concerned in cases where asylum-seeking and refugee children are detained. We urge all States to recognise in their policies and practice that the detention of children is undesirable and detrimental to their physical and mental well-being. We, therefore, call upon States to refrain from detaining children and, in all cases, to consider the necessity and appropriateness of the detention of children, including, primarily, whether it is in the best interests of the child and proportionate to the objective to be achieved. There should be a statutory prohibition on the detention of unaccompanied and separated children and appropriate accommodation created where none exists.

In this context, we bring to the notice of the ExCom, the situation of 149 recognised Lao Hmong refugees, of which 82 are children, who continue to be detained in appalling conditions at Nong Khai detention centre in Thailand. Reports have indicated that these refugees are confined to two hot, windowless, and overcrowded cells, which they are not allowed to leave. They have no access to clean drinking water, have not been allowed to wash their clothes adequately, and have had their mosquito netting and blankets removed. UNHCR has described the conditions as “deplorable” and “inhumane”.

We welcome the inclusion of a reference to children in detention within this year’s *Conclusion on Children at Risk*. We are also particularly concerned to ensure that all refugee and asylum-seeking children are able to enjoy access to the right to education, and note in this respect the importance of ensuring that these children have access to a safe school environment and to good quality education.

Economic Rights

The Agenda for Protection (Goal 5, Objective 7), emphasises the need to integrate strategies for self-reliance and empowerment from the outset of refugee operations, with UNHCR as a catalyst to mobilise financial and technical support for such measures. NGOs remind all relevant actors, however, that while the achievement of self-reliance can be a key element of protection, it should not be seen or used as a substitute for a durable solution. In addition, NGOs note that all refugees are entitled to respect for, and protection of, their human rights, by virtue of their humanity, which includes the rights to work, freedom of movement, and to an adequate standard of living, regardless of whether these are being provided in the context of a self-reliance strategy or a durable solution.

Nearly 8 million refugees do not enjoy their rights under the Refugee Convention to work, to practice professions, to engage in enterprises, to own property, or to move freely. In many countries around the world, asylum-seekers are denied employment and forced to live in severely inadequate housing while they wait for a final assessment of their claim.

In some countries, NGOs report a deliberate policy of destitution to force rejected asylum-seekers to leave the territory of the host State. Such individuals are left homeless, unable to work, to access healthcare and/or other essential services. Rejected asylum-seekers in many countries in Europe live in conditions of extreme poverty. Many are unable to return to their countries of origin for reasons beyond their control. In 2004, a parliamentary committee in the United Kingdom noted that “where the removal of a failed asylum-seeker is delayed through no fault of their own, it is morally unacceptable for him to be rendered destitute.” In addition, Iraqi families are reported to be leaving Egypt and returning to Iraq, despite great

dangers, in a form of constructive *refoulement* because of destitution in Egypt, particularly by being denied the right to work.

Rather than disempower asylum-seekers and refugees by rendering them destitute or detaining them, States should allow them to work and study in order to facilitate their local integration or return once their status has been determined.

Resettlement and Durable Solutions

NGOs consider that the identification of durable solutions should respect, as far as possible, the intentions and voluntary choice of the individual refugee, including determination of the best interests of the child. Ensuring the right to participation, which is an essential element of the human rights framework, is crucial to enabling refugees to identify rights-respecting solutions to their plight.

We welcome recent offers to resettle a large portion of the 108,000 Bhutanese refugees who have now spent nearly 20 years in camps in Nepal, but are concerned that the combined effect of a strong push for resettlement and the absence of strong and sustained pressure on Bhutan to accept repatriation of the refugees undermines the refugees' right to a free, voluntary, and informed choice. We caution that all durable solutions offered to this group, including resettlement, must be based on a free, voluntary, and informed choice and should never be premised on coercion, directly or indirectly. We urge UNHCR and resettlement countries to ensure that the choice of resettlement is voluntary and does not in any way extinguish the right to return to Bhutan. In addition, continued discrimination against remaining Lhotsampas and other minorities inside Bhutan risks exacerbating existing tensions and provoking renewed displacement.

While we welcome the resettlement opportunities currently available to refugees from Burma on the Thai-Burma border, we note with concern the impact of the resettlement process on those who remain in camps. Camps are being stripped of refugees who have run community-based organisations, worked as teachers, and paramedics. This is despite undertakings from countries of resettlement that the most vulnerable refugees will be given priority. Resettlement should not just be offered to those individuals who demonstrate "integration potential". Some refugees from Burma do not wish to be resettled, but given declining conditions in camps feel they have no alternative. Not all refugees will be resettled. It is of critical importance that UNHCR and States ensure that the continuing protection of refugees left in camps is not eroded by the resettlement process.

We welcome efforts to expand the use of resettlement as a durable solution. However, we note that this is a solution that will, of necessity, be available to a minority of the world's refugees and also note, with concern, that far too many refugees in protracted situations are unable to access any durable solutions at all. The ability of many refugees to access the resettlement solution is also hampered by delays in processing, UNHCR's actual capacity to make referrals, and onerous criteria related to security concerns. In light of the important role played by resettlement in providing durable solutions for refugees, we welcome indications from some States, particularly in Europe, that they wish to start resettlement programmes and urge these to be initiated without delay. We express concern however, on the adoption, by some States, of integration criteria, instead of focusing on those in greatest need of protection. We also express concern about HIV status being used as a barrier to resettlement.

Palestinian refugees and internally displaced persons (IDPs) constitute the largest and longest-standing unresolved caseload of refugees and displaced persons in the world today. NGOs urge the international community to increase efforts to find voluntary durable solutions to their plight. The estimated 15,000 Palestinian refugees still in Iraq and the hundreds stranded in camps at its borders are particularly vulnerable and in urgent need of evacuation, and at least temporary protection, and access to durable solutions, including local integration, resettlement, and voluntary repatriation.

Given the current numbers accepted by States, we are concerned that only a small percentage of the Iraqi refugee population will be referred for resettlement. We, therefore, urge States with resettlement programs to increase the numbers of places available for refugees from Iraq and to expedite their resettlement processing in view of the urgency that exists. Moreover, we encourage States that have already resettled Iraqi populations to utilise existing family reunification provisions or otherwise make efforts to ensure that family members are speedily reunited and resettled. Efforts must also be urgently made to provide protection to thousands of highly vulnerable Palestinian refugees in Iraq, stranded at Iraq's borders with neighbouring countries, as well as those in Egypt who have been refused residency. We urge States to make concrete offers of resettlement on their behalf, at least as a temporary humanitarian and protection measure pending a durable solution to their plight.

Statelessness

NGOs welcome the visible commitment and concrete actions undertaken by UN actors and others to prevent, identify, and reduce statelessness and to protect stateless persons. The need remains, however, to increase capacity to respond to the needs of *de jure* and *de facto* stateless individuals, and to strengthen and expand protection and assistance activities, particularly in field operations, to better respond to the wide range of protection and assistance needs of stateless individuals. A substantial and timely addition to the number of dedicated protection officers at the field level, as well as additional professional staff in the statelessness unit at UNHCR headquarters, is essential. Populations of particular concern reside in Bangladesh, Côte d'Ivoire, the Dominican Republic, Estonia, Latvia, Kuwait, the United Arab Emirates, Malaysia, and Syria, to name a few.

NGOs encourage increased efforts to ensure that domestic nationality laws provide for the equal right of women to pass on nationality to their children. Statelessness can increase the vulnerability of children and we, therefore, urge UNHCR to increase its activities to prevent and reduce statelessness in infants, children, and youth.

To facilitate the exchange of practical information between UNHCR field-level protection staff and partner agencies and to identify concrete actions that UNHCR and NGOs can undertake in a coordinated manner to implement the agency's statelessness mandate, we propose *the protection of stateless persons* as one topic for the forthcoming UNHCR/NGO Protection Retreat, currently scheduled for March 2008.

NGOs urge UNHCR to carry out a comprehensive and annual study of the scope of *de jure* and *de facto* statelessness worldwide, including identifying the causes of statelessness and disseminating best practices to achieve remedies to the plight of stateless individuals. In addition, we encourage UNHCR and Member States to implement the provisions of *Conclusion No. 106 on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons* from 2006.

We note also that in addition to statelessness, there are several other issues of concern that require UNHCR guidance, and we urge UNHCR to finalise guidelines on these issues without delay. These include the nexus between trafficking and refugee situations, refugee status determination on the grounds of sexual orientation and gender identity, and the protection of refugees and asylum-seekers living with HIV/AIDS.

ExCom Conclusions

The ExCom is, in essential part, a forum intended to provide tools for UNHCR, States, and partners including NGOs to implement protection. ExCom Conclusions are a valuable tool in this regard, and have in the past provided authoritative guidance on specific aspects of protection, ranging from durable solutions to the protection of specific groups. In particular, in recent years since the Global Consultations, Conclusions have helped elucidate various items of the Agenda for Protection. Yet we note that Conclusions cannot alter the fundamental and core obligations found in the 1951 Refugee Convention and human rights and humanitarian law; obligations that remain binding on States. Nevertheless, NGOs have used, and continue to use, Conclusions to further their advocacy and operations on behalf of refugees, asylum-seekers, IDPs, and stateless populations. We urge ExCom to consider issuing a Conclusion in 2008 that addresses implementation of the rights associated with self-reliance and related principles of equitable international burden and responsibility sharing.

NGOs have welcomed the opportunity over the last years to formally lend their expertise and experience to the Conclusions drafting process, and look forward to enhanced participation. We would be pleased to contribute to any evaluation undertaken by UNHCR on the effectiveness of Conclusions. In our opinion, the Conclusions with the least protection value are those that merely re-state language from previous Conclusions or, worse, attempt to dilute or circumvent obligations under international law and standards. The most effective Conclusions are those that bring clarity and greater definition to protection issues articulated within the Refugee Convention, and provide guidance on concrete action that furthers protection objectives. *The Conclusion on Women and Girls at Risk No.105* from 2006 is a good example of such guidance. NGOs commend UNCHR for the positive steps already taken to implement this Conclusion and call on States to provide the necessary resources for this process to continue. Conclusions have important practical application for States, UNHCR, and NGOs and we encourage all Member States to ensure that all Conclusions are negotiated with a view to enhancing protection, rather than merely furthering the interests of States.

Thank you, Mr. Chairman.