

EXECUTIVE COMMITTEE OF THE
HIGH COMMISSIONER'S PROGRAMME

62nd Meeting
3 – 7 October 2011

NGO Statement on General Debate

Agenda Item 4

Mr. Chair,

This statement 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.

NGOs would like to take the opportunity, in this year of Commemorations of the 1951 *Refugee Convention* and of the 1961 *Statelessness Convention*, to call on ExCom Members to strongly reaffirm their commitment to the principles that are the foundation of these two exemplary documents, most prominently during the 7-8 December 2011 Ministerial meeting sponsored by UNHCR in Geneva.

Statelessness

As such, NGOs would like to particularly encourage States to firmly tackle the issue of statelessness that has been all but ignored for far too long. UNHCR estimates that the total number of stateless people worldwide could exceed 12 million; a staggering figure that could easily and significantly be reduced with commitment from individual States and with active support from the international community. NGOs urge ExCom members confronted with stateless populations to show leadership and deal with this eminently avoidable legal anomaly. In this regard, NGOs strongly encourage States to take advantage of the Ministerial meeting to make meaningful pledges committing to amending national legislation and/or ratifying the *Statelessness Convention*.

Stateless IDPs

NGOs would like to bring to the attention of ExCom Members the specific risks faced by stateless Internally Displaced Persons (IDPs). Not only are they uprooted by conflict or disasters, but they face the particular risks of not being able to access essential services because of their lack of documentation or of a recognised nationality. NGOs call upon UNCHR to continue its work with host governments to highlight the seriousness of the issue and find adequate solutions, for instance in countries like Zimbabwe where displaced farm workers of foreign descent and their families lack proper documentation to claim nationality; or in Ivory Coast where there is inadequate information on how many displaced people of foreign descent have had their claim for nationality declared ineligible. NGOs are also concerned that both Sudan and South Sudan have moved separately to introduce laws and procedures to determine who will become and remain citizens of each country with the risk that new stateless populations will be created. NGOs call upon the two States to collaborate in ensuring that no citizen will be left without nationality and thus avoid errors made in the 1990s in former Soviet republics, errors which we are currently still grappling with.

Universal Birth Registration

Universal birth registration is an important tool for preventing statelessness. Registering a birth is the first legal acknowledgement of a child's existence; without proof of birth, a child lacks not only proof of nationality, but also legal identity and can be invisible to the authorities. Birth registration reaffirms the rights of the child and helps build a protective environment against abuse, exploitation, trafficking, recruitment into armed groups, and violence. Registration and identification documents are particularly important during and after conflicts, especially when State, community, and social structures break down.

While standards contained in previous ExCom Conclusions provide evidence that ExCom Member States believe that birth registration is pivotal for protection, a clear articulation of what measures must be taken to fulfil these standards is still missing. NGOs, therefore, call upon UNHCR Member States to find concrete measures to uphold these standards and to address gaps through an ExCom Conclusion specifically on birth registration in 2012. We also call upon UNHCR to harness all the technical support necessary to address Member States' issues and concerns surrounding birth registration in order to pave the way for such a Conclusion.

NGOs recommend to include the following stipulations in this Conclusion: birth registration is the responsibility of the State, and the development of temporary and/or parallel systems should be avoided; birth registration should be issued free of charge and should be easily accessible to all without discrimination of any kind; "retrospective" registration for adults without birth certificates should be stipulated to ensure full civil registration of the population of concern; and registration should include at least the minimal information as recognised under international standards and practices.

Horn of Africa Response

The current drought and consequent famine in the Horn of Africa compounds internal displacement within the affected countries, as well as large refugee influxes into neighbouring countries such as in Ethiopia and Kenya. As a result, it seems that the humanitarian system is at the same time confused in the architecture of its response and, in effect, quite ineffective and opaque in its coordination.

It is worth highlighting once again, that the best means of protecting the affected Somali populations is to do so where they are, in Somalia. If support was better provided in-country (within Somalia) to host communities who are supporting IDPs, then there would be a reduction in the number of people crossing international borders to seek assistance. The fact that people are seeking refuge across borders indicates a failure to provide protection and support to an individual or family prior to a displacement, which then becomes forced. A UNHCR-led co-ordination response is not comprehensive enough, alienates key actors, and does not reflect the reality on the ground, where IDPs and host communities form the majority of affected populations.

That being said, NGOs are extremely concerned by the calls of the Kenyan and Ethiopian governments to create IDP camps in Somalia to prevent people from crossing the borders to seek protection. The establishment of IDP camps in southern Somalia is an untenable proposition on three levels: it would contradict the very notion of international protection which is based on one's right to seek safety from persecution or armed conflict outside one's

country of origin by crossing borders into another country, and it would impinge upon the right to seek asylum in neighbouring countries, thus undermining fundamental tenets of international refugee law and international human rights law, to which both Kenya and Ethiopia are signatories.

Consultations with Refugee Women

NGOs commend UNHCR for its ongoing commitment to the protection of refugee, displaced, and stateless women and girls and for undertaking the series of Dialogues held in seven countries as part of the 60th anniversary commemorations. During the Dialogues, over 1,000 refugee, asylum-seeker, and internally displaced women and girls and 200 men and boys were consulted on their protection needs. UNHCR and partners' staff also participated in the Dialogues. We urge States to pledge their support to assist UNHCR to address the many urgent protection needs that the Dialogues have highlighted.

Sexual and Gender-based Violence (SGBV)

These protection needs include the persistent and horrifyingly high risks of rape and sexual exploitation faced by women and girls in all aspects of their lives which are compounded by lack of registration and access to safe livelihoods, schools, and shelter. NGOs welcome UNHCR's release of its updated strategy on addressing SGBV as an important opportunity to make tangible and significant progress in addressing this critical protection concern. We look forward to working with UNHCR on implementing this strategy and improving prevention and response efforts in targeted countries. While the updated strategy outlines six new action areas for further agency attention, NGOs urge UNHCR to also prioritise strengthening their core SGBV interventions. Meeting minimum standards in regards to SGBV is still a challenge in far too many contexts. NGOs call on UNHCR to commit the financial and human resources necessary, both at headquarters and the regional/country levels, to address gaps that prevent minimum standards from being met and to build a strong foundation for further protection efforts.

In addition, NGOs note with concern the risks to the safety and well-being of women and girls fleeing drought and famine in the Horn of Africa. NGOs strongly encourage UNHCR to prioritise SGBV programmes in this crisis and to ensure a consistent response across refugee and IDP contexts.

Donor governments are urged to increase funding to UNHCR to enable the employment of sufficient gender specialists and community development and protection staff in all sites; to support the establishment of effective mechanisms for reporting and follow-up on all allegations of sexual abuse, corruption, and mismanagement; and to ensure access in all sites to comprehensive holistic services for the victims/survivors of rape and sexual abuse.

Maritime Protection

This past year, events in North Africa, as well as in Somalia, have reminded us of the perilous voyages undertaken by migrants, refugees, and asylum-seekers to escape violence and poverty by reaching Yemen or European shores.

With respect to the crossings themselves, NGOs are deeply concerned that the issues around maritime protection and rescue at sea largely remain outside the humanitarian and protection debate, despite the sharp rise in the rate of deaths and disappearances – both reported and

unreported. In the case of North Africa, NGOs call upon the European Union to develop a plan to reduce the number of boat people perishing each year at its doorstep, including the designation of a European body charged with and publicly accountable for that objective. NGOs support UNHCR's initiative to facilitate two Expert Meetings on Maritime Protection in Djibouti and in Tunis in the coming months.

Regarding access to protection upon interception or arrival, NGOs emphasise that States' obligation to refrain from non-*refoulement* applies to all refugees and asylum-seekers, it also applies to others in these increasingly mixed flows of migration, in particular, children and victims of human trafficking and torture. NGOs further emphasise that, under both international and regional conventions, States have pro-active obligations to identify, differentiate, and refer anyone in these different groups to the appropriate procedures for assistance and protection. In this direction, NGOs applaud the foresight, practicality, and flexibility of UNHCR's 10 Point Plan of Action for Refugee Protection and Mixed Migration, including its call for cooperation and responsibility-sharing in these matters among States, international organisations, and civil society actors. NGOs applaud the choice of the Yemeni NGO Society for Humanitarian Solidarity (SHS) for the Nansen Refugee Award this year, as this decision recognises the importance of their work in the Red Sea and the Gulf of Aden to assist migrants and refugees who attempt to reach Yemen from Somalia or Eritrea.

NGOs are distressed that disagreements regarding the country responsible for disembarkation of migrants rescued at sea continue unabated, particularly between Italy and Malta. We urge thorough investigations of all deaths of boat migrants in the Mediterranean Sea in 2011. In particular, we urge Member States to examine whether distress calls were ignored or delayed and, if so, whether this came about because of gaps in responsibility sharing. Ignored or delayed response to vessels in distress and delays in disembarkation put vulnerable people in danger and reinforce the need for the EU to agree on clear and binding guidelines that establish responsibility for disembarking migrants at sea.

Protection Space

NGOs are alarmed by the Australian government's persistent pursuit – now through passing of legislation – of an agreement with Malaysia, ruled unlawful by the Australian High Court, whereby 800 asylum-seekers who enter Australia by boat would be sent to Malaysia in return for Australia resettling 4,000 additional refugees from Malaysia over the next four years.

In March, States which are members of the Bali Process agreed in principle to act collectively on refugee protection needs in the Asia-Pacific region. This agreement, in a region where most States are not party to the Refugee Convention, represented a significant breakthrough in the development of constructive dialogue and positive engagement on refugee protection issues. In recent months, however, we have unfortunately seen negative leadership from Australia through its development of the arrangement with Malaysia. This plan not only undermines protection principles and places vulnerable groups at risk, but also sends a clear message to the region that Australia does not respect the binding nature of its international legal obligations towards asylum-seekers and refugees. In a year which marks the 60th anniversary of the *Refugee Convention*, it is particularly disappointing to see Australia, one of the first signatories of the *Convention*, setting this kind of example. NGOs are disappointed that UNHCR did not join with UNICEF in taking a principled stand against the Australia-Malaysia "arrangement" as providing inadequate protection for asylum-seekers.

The complex protection challenges in the Asia-Pacific region can only be resolved if governments commit to reforms aimed at broadening protection measures and building lasting security for refugees and asylum-seekers residing in Asia. NGOs, therefore, call on all governments in the region to take progressive steps towards improving refugee protection standards and enhancing engagement with other States on protection issues. NGOs also call on the Australian government not to proceed with the transfer of asylum-seekers to Malaysia, nor to pursue any change of legislation allowing for such transfers, or any offshore processing model. Instead, it should explore the role it can play in supporting reform and promoting constructive cooperation to protect refugees.

NGOs emphasise that such refugee “swaps” should not be pursued anywhere in the world since they cannot be seen as a constructive contribution to solving refugee protection problems.

NGOs welcome the 2011 Note on International Protection’s reaffirmation to make “combating racism and related xenophobia a key protection priority.” The recently signed Memorandum of Understanding between UNHCR and OSCE/ODIHR is a further positive step in the direction of improving policies for protecting populations of concern from violence motivated by racism, xenophobia, and related intolerance. State responses to violent acts and xenophobic populist rhetoric remain uneven throughout the world. The 60th Anniversary of the Refugee Convention presents an opportunity for governments to pledge taking concrete steps to address the unique challenge of bias-motivated violence against refugees, asylum-seekers, migrants, and other persons of concern. UNHCR, intergovernmental organisations, and UN agencies mandated with human rights protection will have an opportunity to make significant contributions in this effort, and should begin by redoubling efforts to coordinate monitoring, information-sharing, and victim assistance, while enacting policies specifically designed to address xenophobic and bias-motivated violence.

Protection in Natural Disasters

As the recent spate of natural disasters across the globe highlights, millions of people are being displaced and re-displaced by extreme natural hazards which are putting especially the most vulnerable populations at increased and acute risk. Climate change appears to be making matters worse by increasing the frequency and intensity of floods, hurricanes, droughts, and other climate-related hazards. Strengthened leadership, collaboration, and the provision of country-level expertise, guidance, and capacity is needed to address the real and growing challenge for governments and humanitarian actors to provide effective protection.

NGOs are concerned about the lack of predictability and effectiveness of current protection leadership arrangements and coordination at the country-level in natural disaster situations. We encourage and support UNHCR’s shared responsibility in leading protection clusters at the country level in natural disasters. We further encourage UNHCR’s continued role in sharing its protection expertise to ensure integration of protection concerns in the broader response.

Recognising that most natural disaster-induced displacement is internal, we urge States to rigorously apply the rights-based framework contained in the Guiding Principles on Internal Displacement in natural disaster situations and to refer to the Inter-Agency Standing

Committee (IASC) Operational Guidelines on the Protection of Persons in Situations of Natural Disasters. While emphasising that the main challenges lie in operational aspects of protection of persons displaced in natural disaster situations, we also encourage States to support UNHCR's efforts to strengthen the normative frameworks required for effective protection of persons externally displaced by natural disasters.

A collaborative approach by UNHCR to pool and coordinate expertise while increasing shared capacity in partnership with other organisations is essential. This includes working in close partnership with other agencies involved in preparedness and contingency planning, in order to enable an effective response in disaster-prone countries.

We encourage member States to provide UNHCR and its partners with funding and support to fill the protection gap through a strengthened operational and coordination role to ensure protection for people affected by natural disasters. Sufficient funding must be allocated and capacity developed to ensure that protection is addressed as an essential part of any disaster response.

Immigration Detention

NGOs are concerned about States' increased recourse, over the past year, to harmful and unnecessary detention of refugees and asylum-seekers. During the June 2010 UNHCR-NGO Consultations, NGOs from all regions of the world reported that refugees, asylum-seekers, and stateless persons were being detained for lengthy periods in conditions below international standards, and often with little or no access to asylum procedures or rights to challenge their detention. NGOs reported that detention increases the risk of ill-treatment and abuse, including *refoulement*, and has a negative impact on detainees' physical and mental health.

Over the past year, NGOs have voiced their concern over the wellbeing of detained refugees and asylum-seekers in places of political unrest and natural disasters, situations which are known to increase the risk of serious human rights abuses and denial of basic necessities. In relation to Egypt, Libya, and Japan, NGOs have raised concerns on the lack of access by human rights monitoring agencies to immigration detention centres and the need for greater monitoring, regulation, and independent judicial oversight of those centres.

NGOs remind States that international and regional human rights law requires States to actively pursue alternatives to detaining asylum-seekers, including screening, case management, and legal advice, and to use detention as a last resort for the shortest possible time. The law also prohibits arbitrary detention of asylum-seekers and requires States to guarantee judicial review of any decision to detain.

NGOs welcome UNHCR's continued work on immigration detention, including its research into alternatives to immigration detention, which shows that refugees and asylum-seekers are very unlikely to abscond if they remain free and that detention does not deter asylum-seekers or irregular migrants from entering States.

NGOs also welcome UNHCR's model pledges for States, which include ending States' detention of refugee and asylum-seeking children and ending automatic detention regimes for refugees and asylum-seekers. NGOs encourage States to consider these pledges in the run-up

to the High Level Ministerial Meeting to be held in Geneva in December 2011, as part of the commemoration of the 60th Anniversary of the Refugee Convention.

We ask UNHCR to work with existing NGO's that provide legal aid to refugees; to support efforts to increase the availability of training in refugee law and provision legal aid for refugees throughout the global South; and to monitor the compliance of Member States of the EU with the ECtHR's ruling that all asylum-seekers have access to free legal aid.

Refugee Resettlement and Secrecy

UNHCR estimates that there are more than 800,000 refugees who need resettlement, yet less than 80,000 resettlement places are available worldwide. While NGOs are pleased that the number of countries welcoming resettled refugees has more than doubled over the last decade, it is regrettable that the number of resettlement places has been stagnant, as most new resettlement countries are participating at a level which is little more than symbolic. While the population of the European Union is 65% greater than that of the United States (US), last year the US resettled nearly ten times more refugees than did all of Europe. Norway, Sweden, and Finland have shown Europe how resettlement can be done; the rest of the continent should follow their lead, and that of the US, Canada, Australia, and New Zealand.

This year, however, the US will resettle far fewer refugees than in 2010, screening out thousands of refugees as "security risks" without informing them why to allow them to dispute the finding, then leaving them behind in the country of first asylum under a new cloud of suspicion. This practice puts those refugees at risk. NGOs remind the US and all resettlement governments that depriving refugees of due process deprives them of protection, and urge UNHCR to develop guidelines on refugee protection and the application of security criteria in the context of refugee status determinations and resettlement.

Partnerships

Since the time the international community established UNHCR 60 years ago, UNHCR and NGOs have been close partners in refugee protection. Today, UNHCR partners with nearly 700 NGOs across the globe, leveraging 30% of its budget for the expertise, manpower, financial resources, and values which NGOs bring to support mutual missions of refugee protection. It has, however, been nearly 20 years since the PARinAC process, when UNHCR-NGO partnership was last critically discussed and evaluated. The UNHCR field practice of handpicking, negotiating, and extending partnerships without any formal requests for proposals or any transparent and accountable evaluation procedures may sometimes be advantageous to ensure NGO partners are in place to respond quickly to emergency situations. This way of doing business with implementing partners and hastily extending partnerships year by year, however, is less effective as refugee situations become more stable or protracted. NGOs believe that UNHCR and NGO partnerships can be even stronger than they are now. We urge UNHCR to initiate further dialogue with NGOs to determine how to better serve refugees through more transparent and creative partnerships, shaped by the pursuit of long range durable solution and protection goals rather than by year-to-year budget cycles.

Thank you, Mr. Chair