

NGO statement on International Protection including Solutions

Dear Chair,

This statement was prepared in close consultation with a wide range of NGOs and reflects their diverse views.

In the year of the 70th Anniversary of the Refugee Convention and in the current, complex global environment—one in which conflict, human rights violations, natural disasters, the climate crisis, and a pandemic affect people throughout the world—the protection of forcibly displaced people must not be put aside.

Therefore, NGOs urge States to:

- Uphold their obligations under international refugee law, international human rights law and international humanitarian law. Given recent trends of pushbacks, the use of violence at international borders, and the externalization of asylum, we draw particular attention to two fundamental tenets of refugee law that States must safeguard: access to territory and asylum and the principle of *non-refoulement*.
- Expand safe and regular routes to protection and migration, including refugee resettlement and complementary schemes, as well as labor and educational opportunities. Promoting the establishment and use of such legal channels as part of a comprehensive approach to asylum and migration, centered on human rights, will help mitigate existing legal and practical barriers to protection. It will also save lives by lessening the need for refugees to resort to smugglers to reach safe territory¹.

The central importance of international protection and the principle of non-refoulement:

Recent years have seen a shrinking of humanitarian protection by State duty bearers. We have also seen higher-income destination countries increasingly outsource protection obligations to lower-income origin and transit countries. What is being described as an 'externalization' of humanitarian protection obligations is in fact resulting in *refoulement*: more and more asylum seekers are being forced—often violently—into dangerous situations as they are turned away from borders and made to wait for the opportunity to seek safety. In some countries, efforts to accelerate asylum processing have come at the expense of human rights and in particular the right to *non-refoulement*. Introducing superficial fixes, such as shortening procedural time limits, without providing the necessary resources to implement them, can lower the quality of review of asylum applications. Similarly, accelerated "border procedures" such as those used by some EU Member States provide fewer due process guarantees, often involve *de facto* detention, can lead to cursory reviews of asylum claims, and allow insufficient time for appeal. This can result in unfounded rejections and thus in *refoulement*.

¹ *Protection in Europe: Safe and Legal Access Channels – ECRE's Vision of Europe's Role in the Global Refugee Protection Regime*, ECRE, February 2017: <https://www.ecre.org/wp-content/uploads/2017/04/Policy-Papers-01.pdf>

Concerning examples in Europe include *ad hoc* border closures in Greece in March 2020 and throughout the region during the pandemic; the pattern of violent pushbacks and mass expulsions reported to take place in Hungary, Croatia, Greece, and Bosnia and Herzegovina, among other countries; informal agreements outsourcing border control to Libya, Turkey, and Morocco; and the EU's policing of Mediterranean waters to prohibit safe access to asylum processes inside Europe. The United States' misuse of the Title 42 public health authority and expedited removal policies at its southern border with Mexico have blocked and expelled people in search of safety. A new plan to expand humanitarian exemptions and allow some vulnerable individuals to circumvent these restrictions would, however, shift responsibility for identifying vulnerable individuals to NGOs. Indeed, even as some States criminalize civil society humanitarian efforts—such as NGO search and rescue operations in the Mediterranean—they leave it to these NGOs and international organizations to fill the gaps in services that they leave.

The externalization of protection obligations to lower-income countries is largely based on discriminatory legislation and practices by which higher-income destination countries effectively renege on solidarity, responsibility-sharing, and commitments made in the 1951 Refugee Convention. Externalization has proven irresponsible and ineffective—it has failed to protect lives, curtail migration, or uphold 'orderly' movement and undermines relations with third countries. We call on States such as Denmark, the United Kingdom and Australia² to rethink their recent initiatives and on others to refrain from taking similar measures. NGOs welcome and support UNHCR's stated position against all those examples and applaud the recent publication of a Note on the "Externalization" of International Protection.³

These are just some examples of a broader global trend that sees duty bearers failing to deliver on their international obligations, shifting rather than sharing responsibility with other States and nongovernmental organizations, and exacerbating risk and harm, including through detention of asylum seekers, migrants and others seeking international protection.

The **centrality of protection** remains fundamental despite trends in the humanitarian sector that undermine it in practice, such as continued siloed approaches and resistance to treating general protection services as an overarching principle within humanitarian responses. Multi-stakeholder, comprehensive humanitarian responses must be founded in activities that improve decision makers' and implementers' contextual knowledge and ability to connect with and understand the needs of persons of concern; efficiently and effectively establish communication and provide information to persons of concern; and monitor and ensure the safety and quality of programs and services. The design, implementation, monitoring and evaluation, and adaptation of humanitarian responses should be informed by protection monitoring and analysis, mainstreamed protection services, and make use of responsive information services, in order to uphold the humanitarian imperative to do no harm. On top of this foundation, specialized, sector-specific activities such as legal aid provision and case management should be built.

For instance, Yemen is a country suffering from armed conflict, public disorder, natural and man-made disasters, poverty, a lack of Government capacity, neglect from international donors, and continuously increasing internal displacement over the past six years. In addition, environmental degradation, risks and impacts of climate change have increased the exposure to epidemics and pandemics for displaced and vulnerable people. Therefore, providing suitable and safe shelters, livelihoods and basic materials to the displaced and vulnerable people in order to minimize their suffering and protect their dignity, as well as

² See: [UNHCR News comments by Filippo Grandi on Denmark's new law on the transfer of asylum-seekers to third countries](#), 3 June 2021; [UNHCR Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom](#), 4 May 2021; UNHCR, [Observations on the Proposal for amendments to the Danish Alien Act](#), 8 March 2021

³ UNHCR, [UNHCR Note on the "Externalization" of International Protection](#), 28 May 2021

an easy access to essential and lifesaving services are the main concerns. Access to shelters is also important to retain the dignity lost when displaced and for protection purposes. Due to all the risks IDPs and refugees are exposed to, addressing protection needs, such as shelter, food, clothing and basic healthcare services, and psychological support need to be sustained and strengthened. NGO activities help in reducing the separation of children during displacement; increase awareness session for adolescents on the adverse effects of early marriage, of female genital mutilation; bring support for keeping girls in school during adolescence; empower girls, adolescents as well as women; develop vocational training after conducting market assessment. For all its difficult specificities, the protection challenges witnessed in Yemen are also witnessed in other regions. On this basis, NGOs offer the following recommendations to address protection issues in Yemen and other similar contexts:

- Strengthening societal resilience of displaced population and the host community through the use of resources and livelihoods in the area, and their development.
- Expanding and supporting protection and camp management projects that achieve continuity and efficiency (multi-year funding).
- Reducing violence faced by local organizations as well as the burden, by realizing the powerful role that local organizations play in the field, analyzing their field reports, working on the recommendations contained in their reports, and building bridges of respect and trust.

On the imperative of addressing all protection needs

The impacts of the climate crisis, protracted conflict, gender-based violence, human rights violations, inequity, and inequality within and between nations are among the factors that forcibly displaced a record-high of nearly 82.4 million people in 2020.⁴ In many cases, individuals need international protection even though they do not match the narrow criteria of the refugee definition established in the 1951 Refugee Convention and its 1967 Protocol.

In our ever-evolving world, the challenges of the present day create a pivotal moment. The COVID-19 pandemic continues to ravage the economy and social fabric in countries worldwide; climate change is increasing pressure and exacerbating insecurity by threatening lives, infrastructure, food supplies and livelihoods; and conflict continues as new technologies create new risks. An adequate response to these challenges requires a long-term view—even immediate shocks like the pandemic and natural disasters will have medium- and long-term implications for the volume and nature of displacement and resulting protection needs. For example, irregular migration to Europe is expected to rise as a result of the pandemic’s impact on livelihoods. Climate-related risks may also hinder safe, dignified and durable solutions to displacement, including return. Without ambitious climate action and disaster risk reduction, climate-related disasters could double the number of people requiring humanitarian assistance to over 200 million each year by 2050.⁵

This is a moment to reflect on what it means for States to provide protection and how they can effectively fulfil their moral and legal responsibility in our current context. That means developing approaches that are more inclusive and more sensitive to global pressures that force people to leave home.

In this perspective, NGOs welcome the new UNHCR Strategic Framework on Climate Action. It sets out a common approach for UNHCR to step up its ambition on three core pillars of action—law and policy, operations, and the “greening” of UNHCR. This is new territory for the agency and is much needed so that it can more effectively promote the rights and address the needs of displaced people and those at risk

⁴ *UNHCR: World leaders must act to reverse the trend of soaring displacement*, 18 June 2021

⁵ International Federation of Red Cross and Red Crescent Societies (IFRC), *The Cost of Doing Nothing: The Humanitarian Price of Climate Change and How It Can Be Avoided*, Geneva, 2019, <https://media.ifrc.org/ifrc/the-cost-of-doing-nothing/>

of displacement. As part of its efforts around law and policy, UNHCR released a legal considerations paper⁶ on protection for people displaced by climate change and disaster last October. While the paper does not seek changes in international law, it does make explicit use of the 1951 Refugee Convention, regional refugee definitions (under the [1984 Cartagena Declaration on Refugees](#) and [1969 OAU Refugee Convention](#)), and international human rights law to make the case for expansive protection for those displaced by climate change and disaster. The paper marks a significant and progressive step forward⁷. NGOs are ready to support and contribute to developing the regional plans for implementation and offer the following recommendations to UNHCR for the implementation of the Strategic Framework:

- Partner with government officials, legal practitioners, and civil society to advance case law relevant to the UNHCR’s recent “Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters.”
- Advocate for national policies to implement perspectives and guidance in the legal considerations paper and partner in such efforts with governments prepared to implement such guidance.
- Increase engagement with NGOs and other civil society organizations to reduce displacement risks and harms and address the need for context-specific solutions.
- Partner with people at risk of displacement and NGOs who have been working on the ground on the intersections of forced displacement and climate change.
- Collaborate with communities and grassroots organizations in order to strengthen community-based preparedness and response to disasters and establish culturally appropriate and context specific adaptation strategies.
- Promote action research with local communities to ensure their experiences and needs are effectively documented and used in advocacy and policy development at all levels.
- Follow through with the intent for UNHCR to “become a proactive protection agency that mitigates the need for protection in the future.” This would mean averting, minimizing and addressing risks of climate related displacement, including but not limited to those already displaced and those in communities hosting IDPs and refugees, in all operational work.

New approaches must also mean making concerted efforts to better protect women and marginalized people of all ages fleeing personal discrimination and violence. Access to asylum for survivors of domestic and sexual violence and violence targeting LGBTIQ+ people, for example, should be assured and not left to the discretion of courts or administrative decisions.

On inclusion and information:

To facilitate and improve access to protection, host countries should include forcibly displaced and stateless people in their country national systems and planning, particularly as a way of avoiding duplications and unsustainable programming. As the pandemic highlighted, we agree with the High-Commissioner that inclusion has the potential of becoming the “new protection”, of being “one of the most practical and concrete forms of protection”. There is, however, no preordained protection outcome in inclusion, which needs to build on vigilant advocacy, programming and monitoring. This also means that national systems need to be supported to mainstream inclusion principles and tools. Of immediate concern is the need to ensure all people, regardless of their migration status, have access to COVID-19 testing, treatment, and vaccination. We welcome UNHCR’s call for States to remove barriers to access to COVID-19 vaccines, recognizing that those obstacles can be both legal and practical

Inclusion would also help States better design, monitor, and implement aid programs and service delivery, and to coordinate with donors, UN agencies and NGOs in doing so. There is a new global push for data

⁶ UNHCR, [Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters](#), 1 October 2020

⁷ See: Devex, [Kayly Ober, Opinion: What does UNHCR's new guidance on the protection of 'climate refugees' mean](#), 15 December 2020

disaggregated across humanitarian programs using Washington Group short set, but this is far from universal and far from adequate.

Humanitarian actors must consistently and regularly assess their own programs—from the assumptions and data that shaped their design to the evidence that indicates whether they are efficient and effective—to ensure that individuals most at risk of harm and exclusion are being properly identified and included in the response. Guided by the goal of ensuring access to protection for all who need it, programs should invest time and resources into developing communication tools and strategies to reach those who face obstacles in the form of audio/visual access; language or reading ability age, gender, or other marginalized identities; etc. This remains under-prioritized in humanitarian response. NGOs need more resources, staff, and time to develop inclusive/universal design tools and resources.

Furthermore, all humanitarian stakeholders—including government agencies and international organizations—must commit to strengthening partnerships with NGOs that are led by, represent, and work with persons of concern. In particular, they should expand partnerships with representatives of historically marginalized groups, including persons with disabilities, older persons, LGBTQI+, and racialized minorities. Local and national groups are often well placed to inform humanitarian responses and to identify and access those most at risk of harm. Too often, the humanitarian sector focuses on whoever is easiest to reach and favors established partners that are easiest to work with, which only further entrenches inequality and power differentials.

In the current frame, the majority of humanitarian response treats information services as unidirectional, unilateral and as an afterthought to program design and delivery – in this frame anything that disseminates information about services as part of standard outreach strategies is seen as enough. In fact, and in service to the Global Compact on Refugees, quality, trustworthy, action-oriented information is a critical, lifesaving and life-sustaining humanitarian intervention in its own right. While we now see increased efforts and so much creative thinking to engage in risk communication and community engagement (RCCE), to coordinate communication efforts on Communicating with Communities working groups (CWC) and to engage in digital responses using social media, two problems persist: first is a lack of funding, as donors have not yet elevated ‘information’ to its rightful place as part of critical aid infrastructure. Second is the ongoing lack of coordination among aid agencies, which results in mixed messages, static and distrust among affected populations. We need to get to a point where ‘responsive information services’ is part of every Humanitarian Needs Overview/Humanitarian Response Plan.

Finally, we wish to commend ExCom members for electing to work this year on a Conclusion on international protection and durable solutions in the context of a public health emergency. We support efforts to learn from the COVID-19 pandemic to strengthen more effective responses to public health challenges. We are looking forward to the update from the ExCom Rapporteur and highlight our hope for a final text that will include the right language to ensure protection and durable solutions for UNHCR’s persons of concern. NGOs will remain attentive to developments in this regard.

Thank you, Chair.