

EXECUTIVE COMMITTEE OF
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STANDING COMMITTEE
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NGO Statement on International Protection

Dear Chair, Ladies and Gentlemen,

This statement is delivered on behalf of a wide range of NGOs. It has been prepared in close consultation with the NGO community, and aims to reflect the diverse views highlighted during this process.

Today, we find ourselves in a challenging situation – one in which we continue to face large scale humanitarian crises and related displacement due to armed conflicts, disasters, climate change and political and economic upheavals, but also a situation in which the protection concerns manifesting from these crises are compounded by an ongoing global pandemic. Prior to the global spread of COVID-19, humanitarians were continuing to see shrinking protection space, notable gaps in asylum and reception systems, externalisation of responsibilities to third countries, human rights abuses against people on the move, and States' general resistance to policies and practices that would allow displaced people to find durable solutions. Adding to this, the response to the pandemic has given rise to critical protection concerns, ranging from cases of *refoulement* and the denial of the right to seek asylum, to arbitrary and discriminatory restrictions on freedom of movement, including detention, to the perpetuation of statelessness.

Given the scope of protection concerns today, we would like to draw the Standing Committee Members' attention to six key aspects we believe require increased vigilance from UNHCR and its governing bodies.

First and foremost, we wish to reaffirm the central importance of international protection and the principle of non-*refoulement*.

We acknowledge the right of the authorities to take preventive measures provided they are non-discriminatory, and deemed necessary, proportionate and reasonable for protecting public health. However, we are concerned with UNHCR's report that more than 160 countries have partially or completely closed their borders, with more than 100 States having made no explicit exception for persons seeking asylum. It is critical that this trend is reversed. This has also severely hampered humanitarian access and assistance to people in need and on the move. In Yemen for example, the movement restrictions have created a critical situation at the northern border with Saudi Arabia, where a large number of migrants and refugees continue to be stranded without access to safe drinking water and sanitation, hygiene supplies, food, or access to any reliable form of health support.

NGOs are deeply concerned about the suspension of asylum processes across the globe, as they are likely to give rise to cases of *refoulement*. We have seen a worrisome increase in the number of States denying entry to asylum seekers without due process, increased deportations, and the forcible return of non-citizens. For example, Algeria continued to forcibly expel vulnerable migrants, and other people on the move, to Niger despite the border closures. Moreover, a number of measures currently in place around the world may reduce the quality of asylum processes or cause excessive delays in the

evaluation of applications, thereby increasing the risk of failed applications or reduced due process, also potentially leading to *refoulement*.

NGOs are concerned with administrative obstacles and political ‘work-arounds’ being used by several member states, including measures aimed at limiting the applicability of the 1951 Refugee Convention to certain groups, which undermine the ability of individuals to seek international protection. We see concerning signs of temporary protected status granted to Syrians in several European States coming under threat of non-renewal despite the conflict that continues to rage inside Syria. We continue to see the externalisation of border controls and the outsourcing of border management to transit countries, often resulting in poor reception conditions and inadequate assessments of asylum claims. These trends have come together to create further risks of harm for the most vulnerable, including potentially exposing them to trafficking, rape and other forms of sexual and gender-based violence.

NGOs are deeply concerned about increased reports of evictions and forced returns of displaced persons, including stateless persons, and particularly the use of COVID-19 response to justify such measures. We have heard increasing rhetoric around the acceleration of camp closures and are troubled by reports of pressure being placed on displaced people – whether currently living in camps or not – to return to their place of origin despite ongoing threats to their lives and livelihoods in their home communities. In Syria, the rising cost of displacement has prompted more than 200,000 people to return to their homes in areas along active frontlines in recent months.

We are concerned about the likely increase in both forced and lawful evictions during this time. Shelter and cash assistance remain the top priority needs for this group. Loss of income due to COVID-19 may also expose displaced people living in rented or informal accommodations to a heightened risk of eviction. This is gravely exacerbated in contexts of high fragility and ongoing conflicts such as Libya, Nigeria, and Iraq. In refugee contexts such as Lebanon, the fast deteriorating economic situation and the steep increase in cost of living has made it a struggle for refugees to cover basic costs and the threat of evictions has been acute. Any eviction of displaced tenants, lawful or otherwise, during a lockdown period would pose serious protection risks and vulnerabilities, as well as only complicate and worsen the public health situation in the area.

Secondly, we urge all States to refrain from arbitrary and otherwise unnecessary uses of detention – both in relation to immigration and to COVID-19 containment measures.

The continued arbitrary detention of thousands of migrants and refugees is a critical concern. Even before the COVID-19 outbreak, those detained in dire conditions faced disproportionate risks and human rights violations. The pandemic, however, has further exaggerated these risks as social distancing, handwashing, self-isolation and other preventive measures are impossible to maintain in facilities with inadequate water, sanitation and hygiene conditions. Immigration detention has also been clearly shown to harm the mental and physical health and general well-being of those detained, especially children, families and other particularly vulnerable groups. Yet, this continues to be a widespread practice in countries along migratory routes.

While we recognize that States have the right and duty to impose public health measures – including quarantines – with the aim of stopping the spread of the virus, any such measures must be based on law, time-bound, non-discriminatory as well as necessary, proportionate and reasonable to the aim of protecting public health. We are deeply concerned about the potential for arbitrary deprivation of liberty when quarantine is extended beyond what is reasonably required by health exigencies. To ensure an effective response to COVID-19 while also ensuring respect for human rights, all populations including the displaced must be equally included in prevention, preparedness, testing, information sharing and treatment.

We are concerned about actions taken by some refugee-hosting States and by IDP-hosting sub-national authorities seeking to contain perceived risks of transmission or outbreak in refugee camps (or similar sites), and simply ‘closing them off’, restricting freedom of movement of the residents, but also hampering access to humanitarian assistance and other critical services. We see a strong example of this in Libya. An unknown number of migrants and refugees remain stuck in Libya’s commonly labelled, ‘Detention Centers’. Conditions across these centres are known to be extremely dire, with the detained population being victim of routine human rights violations, including forced labour, extortion, and torture. It is extremely difficult to undertake surveillance and preventive measures in detention settings. This ultimately increases the risk for spreading the virus, particularly in unofficial Detention Centres where most of the migrants and refugees intercepted at sea this year have been brought.

Third, we wish to emphasize everyone’s right to nationality and urgently urge UNHCR and Member States to address ongoing statelessness as a matter of priority.

In doing so, we reiterate and underscore the urgent call issued by 84 civil society actors, entitled ‘In Solidarity with the Stateless’.¹

As we witness first-hand the cost of institutional and public blindness and structural violence towards the stateless (and those at risk of statelessness) as States respond to COVID-19, NGOs remain deeply concerned about the lasting impact on an estimated 15 million stateless persons worldwide, and tens of millions whose nationality is under threat. Denied nationality and deprived of basic rights and welfare, the stateless were already marginalized before this crisis. They now face even greater, life-threatening marginalization, with potentially disastrous consequences.

On all continents, minorities and those deprived of documentation and citizenship, including Dominicans of Haitian origin, Indians declared foreigners in Assam, the Bidoon of Kuwait, the Maragoli, Nubians, Shona and Pemba communities of East Africa, and Europe’s Roma now face additional threats to their livelihoods and health, with many enduring heightened hate-speech, police violence and discrimination.

Women are also denied the equal right to confer citizenship on their children or spouses in 25 States worldwide, and they face impossible choices as non-citizen family members are separated from them and/or denied COVID-19 relief. In Libya, for example, pregnant women are denied access to public hospitals if they are not accompanied by a male family member and they often end up being referred to private clinics by humanitarian agencies, if they have access to information to locate the services actors provide on the ground.

Stateless people in densely populated camps, detention centers and informal settlements, as well as those in situations of homelessness and poverty, are at high risk of infection due to the inability to be protected through social distancing and preventative hygiene measures.

The Rohingya have endured new waves of hate speech in Malaysia, ongoing persecution in Myanmar and the first cases of COVID-19 have been reported in camps in Bangladesh. Meanwhile, a number of boats carrying Rohingya refugees have been denied safe and expedited disembarkation. In Myanmar, there is growing concern that the military is capitalizing on COVID-19 to carry out further crimes against the Rohingya. Furthermore, the current implementation and enforcement of public health policy is discriminatory. As the crisis takes hold, it is evident that States are not taking full responsibility

¹ Urgent call from 84 Civil society actors, In Solidarity with the Stateless, May 2020: <https://www.ici.org/in-solidarity-with-the-stateless/#:~:text=Today%20the%20ICJ%20joined%2083,in%20their%20Covid%2D19%20responses.>

or providing adequate protection for this group of people, who have faced and continue to face extraordinary persecution.

Finally, we urge consideration of situations in which climate change may lead to new statelessness, such as in small island States like Kiribati, the Marshall Islands, Tuvalu, and others.

We appreciate those States' who have made an effort to address barriers to nationality and obstacles to obtaining or restoring legal civil documentation. In this vein, we note Iran's recent passage of a law which allows citizenship to be passed from an Iranian mother (and a non-Iranian father) to her child. Such change is welcome, and NGOs are keen to support Member States in implementing these measures. Most importantly, we remind all stakeholders of the imperative to listen to, work with and be guided by stateless activists and communities, and to be accountable to them for actions and inaction, during this time of crisis and beyond.

Fourth, NGOs would like to highlight inclusion as a central tenet of protection.

NGOs are concerned about the lack of sufficient measures to ensure protection and assistance are accessible by persons with specific needs, including women, children, youth, minorities, persons with disabilities, and people with different gender identities or sexual orientations. It is also essential that the voices of displaced people are heard and included in all processes that impact them, for increased accountability. To do this effectively, increased consideration must be given to the way in which actors on the ground adapt their participatory approaches, such that they can account for the diverse needs and capacities of different groups.

To this end, it is important to proactively combat discriminatory practices against people on the move and other vulnerable groups in whatever form they may take. Throughout the globe, especially in marginalized communities and for those who find themselves living in communication-vacuums, where rumours thrive, leading to acute discrimination, harassment, and stigmatization. Moreover, people on the move are prone to face discrimination and harassment based on their nationality and associated misinformation.

In the context of COVID-19, we are concerned that containment measures may further foster fear or hatred of others, as the virus may be seen to be brought from 'outsiders', including refugees, migrants, and internally displaced people. This has been witnessed in Cameroon, Central African Republic, Burkina Faso, Libya among other countries and regions. This hostility risks being manifested in violent forms, including excessive use of force from security forces to enforce public-health measures, inter-communal tensions between host and displaced communities, and even intra-communal tensions within displaced communities or camps and camp-like settings.

Fifth, NGOs are deeply concerned with the continuous shrinking of humanitarian space.

Insecurity, indiscriminatory intentional attacks on medical and humanitarian facilities and civilian infrastructure, and bureaucratic and legal impediments create a growing gap between communities requiring protection and assistance and the ability of humanitarian organisations to effectively reach and assist them. In Syria, the recent escalation of violence in the northwest region displaced nearly 1 million people in three months and impacted numerous schools and hospitals. This year, according to WHO's data, Libya has recorded the highest number of attacks on health facilities in the world; in April 2020, Al Khadra Hospital in Tripoli was hit three times in the space of five days putting out of action one of the few hospitals that had been designated to care for suspected COVID-19 cases.

Additionally, counter-terrorism measures and sanctions continue to negatively impact needs-based humanitarian action. These impacts are reflected in the operational challenges humanitarian actors regularly face, such as operating in areas controlled by non-state armed groups and/or countries where migrants are criminalised carrying out certain types of programming that may be (incorrectly) viewed as riskier, (e.g. cash-based assistance), as well as increasingly strict donor requirements that may limit to whom and where assistance may be provided.

NGOs call on States and multilateral bodies imposing sanctions to individually review each sanction regime to address any intended or unintended consequences impeding humanitarian assistance and to swiftly broaden the scope of existing humanitarian exemptions, waiving burdensome compliance requirements including for the private sector, and where they are not in place, and issue new exemptions to enable aid delivery including medical and other relief supplies to areas impacted by sanctions. Sanction regimes need to provide clear guidelines to those facilitating humanitarian trade and banks bringing cash for humanitarian purposes to the sanctioned country. We also urge Member States to simplify the bureaucratic procedures and support principled humanitarian action and protection through increasing humanitarian access to enable assistance to vulnerable communities and individuals, thus ensuring that one of their basic human rights are being met.

Finally, we strongly encourage the continued UNHCR efforts for a stronger partnership to ensure protection to those most in need.

We welcome that UNHCR has taken significant strides in this regard in the past months, and we hope to see this trend continue. We also appreciate UNHCR's openness in the weekly meetings it has convened with NGOs on topics broadly related to the COVID-19 response. This is complementary to UNHCR's recent developments to make funding more flexible, and to provide multi-year grants. As we move forward, the challenges COVID-19 has imposed on operations on the ground must also be reflected. NGOs see significant opportunities to further improve our partnership at the regional and country-level, as UNHCR continues to decentralize its operations, and we remain ready to collaborate to ensure our work remains complementary and impactful at all levels.

Thank you, Chair.