

### NGO Statement on International Protection

Dear Chair,

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

Today, a major threat to the international protection system—if not the greatest threat—is the externalization of States' asylum obligations. Whether an explicit policy or *de facto* practice, it involves the shifting, rather than sharing, of a global responsibility to save lives and guarantee the rights of forcibly displaced people. That is a responsibility enshrined in the 1951 Refugee Convention and to which all 193 UN Member States affirmed their commitment just five years ago 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 the spirit of international law to ensure protection for those who need it.

In its [Note of May 2021](#), the UN Refugee Agency (UNHCR) defines externalization as unilateral measures or arrangements between States that are designed to or “serve 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 does provide examples of positive, cooperative practices that promote protection, including emergency evacuations, regional search-and-rescue disembarkation schemes, resettlement, and complementary pathways. These are essential to meeting the humanitarian needs of and providing protection for displaced persons. However, externalization measures—through which States neglect their obligations, impose them on others, or deter individuals seeking refuge—undermine both global solidarity and protection.

This trend is most pronounced among high-income countries that take advantage of their resources, power, and, in some cases, geographic distance from sites of displacement, to compel other countries to host refugees, block onward movement of would-be asylum seekers, or even return asylum seekers to their regions or countries of origin. Low-income countries already host the vast majority of displaced people despite having far fewer resources. In destination, transit, and refugee-hosting countries, some politicians take advantage of real but unrelated local frustrations—like the economic costs of the COVID-19 pandemic or concern that asylum seekers, particularly, carry disease—to fuel anti-refugee public sentiment by making refugees scapegoats, then adopt their own closed-door policies. But if more and more countries seal their borders, individuals urgently fleeing danger will confront more barriers to safety and face greater suffering and risk to their lives.

This grim scenario is already taking shape as countries react to the mere possibility of increased displacement from Afghanistan—just as Greek authorities publicized a [newly completed wall at the land border with Turkey](#), Turkey announced it would [build a wall](#) and [fortify existing barriers](#) along its border with Iran. It is unsurprising, then, that Iran and Afghanistan's other neighbors have declared their borders closed, too. A similar effect can be seen in the Americas. Throughout the pandemic, U.S. land border ports of entry have remained closed to asylum seekers. And the United States has invoked a public health authority (deemed unjustified by [health experts](#) and [unlawful](#) by a U.S. court) 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.

Externalization measures are often put forth under the guise of seemingly legitimate policies to support countries of origin and transit to address “border management” or “root causes” of displacement. In fact, they distort supposed “partnerships” between those countries and destination countries to , the detriment of forcibly displaced people. A State’s provision of humanitarian and development aid to help others that are hosting refugee populations or to tackle drivers of displacement does not offset its own obligation to allow access to territory and asylum and protection processes. And where externalization does occur, it does not exonerate a State from human rights infringements that might take place in a third country’s territory.

Indeed, 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 humanitarian and human rights law. But in some cases, as with EU support to the Libyan coastguard, States have indirectly engaged in *refoulement* by funding migration enforcement and border security forces in other countries that do not protect forced migrants’ rights. Similarly, anti-trafficking efforts ostensibly intended to protect refugees and migrants from the “perils of the journey,” have in fact led to inhumane arrests, detentions, and deportations of migrants and asylum seekers to countries where they are at risk of abuse, exploitation, and other rights violations.

Externalization can take [different forms](#). It is exploitative, expensive, irresponsible, ineffective, dangerous, and, in most cases, unlawful. NGOs have played an important role in documenting the alarming number of examples of externalization from around the world, and their harmful impacts:

To begin, there has been a troubling increase in States reported using unlawful pushbacks to keep asylum seekers off their territory. The UN Special Rapporteur on the human rights of migrants reported in June 2021 on [the "deadly practice" of pushbacks](#), examining how the use of force, militarization of border patrols, delayed search-and-rescue operations and disembarkation, denial of access to territory, and the externalization of border governance measures create risks of *refoulement* and “chain *refoulement*.”

In the United Kingdom, a new asylum bill introduced in July 2021 not only [criminalizes individuals who arrive in the country irregularly](#) but [authorizes pushbacks](#) of asylum seekers at sea. Border Force agents are [reportedly being trained](#) in tactics to turn boats back across the English Channel to France. In Greece, the frequency of reported pushbacks has led some to describe these abuses as the country’s “[de facto border policy](#).” Along the Balkan route, [chain pushbacks](#) can leave refugees and migrants forcefully sent across multiple borders, from Italy as far back as Bosnia and Herzegovina. In both areas, the EU Coastguard and Border Agency, Frontex, has been investigated for alleged [complicity](#) in such pushbacks.

U.S. practice offers another example of chain *refoulement*, as Central American asylum [seekers](#) have been flown to southern Mexico to then be [bussed by Mexican authorities to Guatemala](#). The decision to fly asylum seekers deep into Mexico was partly a reaction to asylum seekers’ attempts at re-entry—through its ongoing [misuse of the public health authority](#), the United States has expelled asylum seekers just across its border with Mexico since the onset of the COVID-19 pandemic. But many who were expelled crossed the U.S. border again. Indeed, 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—many try repeatedly to reach what they hope will be safe refuge.

This chain *refoulement* is not the only example of U.S. pressure on, and financial support for, migration enforcement efforts in Mexico and Central America that have led to the violation of the rights of migrants and [refoulement of asylum seekers](#). Central American and Mexican officials charged with violence against migrants and asylum seekers have been trained and funded by the United States. For many years, the United States has not only conflated foreign aid for security and crime prevention with migration enforcement, but also has made some of its foreign humanitarian and development aid to Central America

contingent upon efforts to stem irregular migration. U.S. funds to combat trafficking in the region cannot compete with profits traffickers reap from asylum seekers lacking unimpeded routes to the United States or legal access to the U.S. border. The United States also began the global trend of limiting the extraterritorial reach of the non-*refoulement* obligation forty years ago, so that it could interdict and detain offshore Haitian refugees. In July 2021, the Biden administration [responded](#) to political upheaval in Haiti and Cuba by threatening to interdict anyone who tried to come to the United States by sea and refuse to screen them for admission to the United States.

We are also concerned by States replicating Australia’s offshoring practice, which transfers asylum seekers to extra-territorial processing, leading to long-term detention in deplorable conditions and, in some cases, to [refoulement](#). After nine years and over AUD 9 billion (USD 6.6 billion) in spending, hundreds of transferred asylum seekers remain in limbo, with no access to a durable solution. They remain in Nauru, Papua New Guinea, or temporarily in Australia, often suffering significant mental and physical health issues as a result of their long-term detention and separation from family.

Despite the evidence that this model is costly, ineffective, inhumane, and [unlawful](#), in June 2021, [Denmark](#) and the [United Kingdom](#) each adopted new laws that allow the same practice. The governments have faced strong objections from [civil society](#), the [European Commission](#), and UNHCR, which has rightly characterized this as a [“neo-colonial” approach](#) and [warned](#) it would “erode” the international system for refugee protection.

Indeed, a further concern is the expanded use of the “safe country” concept. Some countries abuse the [“safe third country”](#) concept to remove asylum seekers without adequate screenings for protection concerns to places that are not truly safe; able to provide asylum seekers with meaningful access to rights, safety, and support; or able to assure against non-*refoulement*. As UNHCR [stated](#), the approach taken in the United States-Guatemala asylum cooperative agreement was “at variance with international law” and allowed for the “transfer of highly vulnerable individuals to countries where they may face life-threatening dangers.” Given the backlog and pent-up demand for protection that has developed because of COVID-19 related border closures and dislocations, countries will increasingly look to safe third country agreements to externalize the responsibility to protect. The United Kingdom’s new asylum bill, for example, is based on the notion that people should claim asylum in the “first safe country” they arrive in. In a [press release](#), UNHCR underscored that this concept is not found in the 1951 Refugee Convention nor required under international law, warning it would be “unworkable and undermine global humanitarian and cooperative principles.”

Multiple examples show that bilateral agreements—often informal and backed by significant levels of aid—create precarious situations that put rights and lives at risk. Five years after parties reached the 2016 [EU-Turkey agreement](#), it has proven [“unethical, illegal and unnecessary.”](#) Although Turkey hosts the largest population of displaced people in the world, it maintains the geographical limitation of the 1951 Refugee Convention, meaning that only those fleeing from Europe can be given refugee status. This leaves full international protection inaccessible to most displaced people in Turkey. Greece’s recent decision to [declare Turkey safe](#) for asylum seekers of certain nationalities, including Afghans, will have devastating consequences for the majority of those seeking safety in Greece.

Other agreements with North and West African countries like [Morocco](#), [Tunisia](#), and [Libya](#) that sought to reduce irregular movements along the Mediterranean route only pushed people to attempt the longer, [more dangerous](#) Atlantic crossing to Spain’s Canary Islands, creating a [humanitarian emergency](#) in the fall of 2020. Meanwhile, the Libyan coastguard continues to benefit from significant [EU support](#) despite long-standing and well-documented allegations of authorities [abusing and detaining](#) asylum seekers and migrants. Although Libya has long been considered [unsafe](#), EU States’ failure to conduct search-and-

rescue operations—and measures to criminalize NGOs that do—have left the Libyan coastguard to intercept [record numbers](#) of individuals and return them to dire conditions in that country.

In North America, the United States’ [“Remain in Mexico” policy](#) created immense suffering due to the lack of adequate shelter, food, health care, employment, and education for Central and South American asylum seekers forced to wait in northern Mexico for asylum hearings in the United States. There were [more than 1,500 publicly reported cases](#) of murder, rape, torture, kidnapping, and other violent assaults. Though the policy was canceled in 2021, the Biden administration is [planning to reimplement](#) it in response to a U.S. court order.

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 the norms and obligations of States under international law. States have much to do to implement and expand sustainable solutions for the protection of forcibly displaced people; but until externalization is abandoned, the entire system will be at risk.

All Member States must recommit to share responsibility and cooperate with each other and UNHCR to realize a robust international protection regime. In particular:

- Member States that have adopted policies and practices that, by design or in effect, 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 in light of genuine, objective, up-to-date assessments of the comprehensive security and human rights landscape in the country of return, as well as individuals’ ability to access asylum processes there. States should take full account of the [legal considerations](#) laid out by UNHCR on this matter and other relevant research and guidance the Agency issues.
- Foreign development assistance should not be made conditional on recipient countries’ implementation of border and migration control measures that encourage restrictive practices and can lead to abuses against asylum seekers.
- Proxy border control, whereby States seek to halt the arrival of asylum seekers through agreements with private carrier companies or funding and training for security and enforcement efforts in other (typically transit) countries, must end. Such practices breed human smuggling and trafficking, compel asylum seekers to embark on deadly journeys, and lead to *refoulement*.
- All Member States must end the use of pushbacks and other illegal practices that prevent access to territory and protection for displaced people.
- All Member States should end the use of deterrence measures that intentionally or effectively undermine access to protection for displaced people.
- UNHCR should convene a global conversation, perhaps at the next High Commissioner’s Dialogue on Protection Challenges, on the risks of the externalization of asylum to inform further legal guidance on States’ obligations and emphasize alternative approaches to responsibility-sharing that are more equitable. NGOs welcome and support UNHCR’s stated positions against all forms of externalization, including in its recent “Note on the ‘Externalization’ of International Protection,” and encourage UNHCR to continue calling out such dangerous practices.

Thank you, Chair.