



## NGO ExCom Side Event - 8 October 2021 **Refugee protection: Share – not shift – responsibility!** Summary

### Introduction

During the 72<sup>nd</sup> session of the UNHCR Executive Committee, important messages against pushbacks, denial of access to territories to claim asylum were voiced by stakeholders, including UNHCR<sup>1</sup>. The NGO statement on International Protection<sup>2</sup> was particularly focused on those harmful externalization<sup>3</sup> trends, highlighting recommendations for Member States to promote international protection through improving responsibility-sharing, solidarity, and cooperation.

On 8 October, in the margins of this Executive Committee meeting, the International Council of Voluntary Agencies (ICVA) organized an NGO side event on “**Refugee protection: Share – not shift – responsibility!**”<sup>4</sup>. The approach for this side event was rooted in the recognition that in recent years, the international response to forced displacement has been shaped by two fundamentally diverging trends: First commitments to global solidarity and cooperation as the foundation of the refugee protection system, particularly enshrined in the Global Compact on Refugees and its implementation; Second, efforts to shift, minimize or avoid protection responsibilities, through externalization practices, which have the alarming effects of undermining refugee protection. Gathering over ninety participants from Member States, non-governmental organizations (NGOs), refugee-led organizations (RLOs), Academia, and UN Agencies, this side event provided an opportunity to reflect on the above-mentioned externalization practices and explore ways to counter such dangerous trends. Speakers, including from New Women Connectors/Global Refugee-Led Network, Geutanyoe Foundation and the 2019 Martin Ennals Award Laureate for Human Rights Defenders and participants notably emphasized the need to step-up complementary pathways and to meaningfully involve refugees in decision-making processes affecting them.

### Overview of presentations

**Ms. Liliane Fan**, Co-Founder of the [Geutanyoe Foundation](#) and Chair of [The Asia Pacific Rights Network](#)'s Rohingya Working Group described the effects of the 2015 Andaman Sea crisis on refugees and the positions taken by Member States.

UNHCR and many NGOs have been providing humanitarian assistance to the Rohingyas for several years as they continued to lack protection and respect for their human rights in Myanmar, pushing them to leave their country in dangerous ways. In 2015, Member States such as Thailand, Malaysia, and Indonesia, placed this crisis on top of their political agenda, attempting to find solutions at regional level. Several refugees then remained stranded at sea at the Thailand-Malaysia borders, revealing that Rohingyas and other communities were brought and abandoned by smugglers, without any other options available and legal pathways to seek asylum. At that time, Human Right

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Summary prepared by Jérôme Elie (who chaired the event) and Loïse Daï Rocheteau of ICVA, finalized in November 2021.

<sup>1</sup> High Commissioner's opening statement to the seventy-second session of the Executive Committee of the High Commissioner's Programme, 4 October 2021: <https://www.unhcr.org/615af9e44>; Statement by Ms. Gillian Triggs, seventy-second session of the Executive Committee of the High Commissioner's Programme, 6 October 2021: <https://www.unhcr.org/615f05904>

<sup>2</sup> NGO statement on International Protection, October 2021: <https://www.icvanetwork.org/resources/72nd-excom-october-2021-ngo-statement-protection>

<sup>3</sup> For a definition of the externalization of international protection, refer to paragraph 5, page 1 of *UNHCR Note on the "Externalization" of international protection*, May 2021: <https://www.refworld.org/docid/60b115604.html>

<sup>4</sup> Flyer of the NGO ExCom side event: <https://www.icvanetwork.org/resources/refugee-protection-share-%E2%80%93-not-shift-%E2%80%93-responsibility>



Watch<sup>5</sup> and several NGOs called this denial of access to States' territories a "maritime ping pong" phenomenon.

In 2015, most of the rescues at sea were undertaken by fishermen boats, which are consistently frontline actors in saving refugees' lives. However, while fishermen's contributions are consistent with international maritime law, it does not exonerate States from their own obligations.

Six years ago, *ad hoc* multilateral regional cooperation was organized to respond to the needs of the Rohingyas. For instance, Indonesia issued a regulation that laid out a legal coordination framework. The Association of Southeast Asian Nations (ASEAN) put in place in 2016 a Trust Fund to Support Emergency Humanitarian and Relief Efforts for victims of irregular migration in Southeast Asia. The Bali process on People Smuggling, Trafficking in Persons and Related Transnational Crime – which is a framework agreement established in 2002 – also includes mechanisms that share-responsibility, arrangements for safe disembarkations and could have been activated.

However, as breaches of international law persist, the current situation can be described as follows:

1. Fishermen are still undertaking rescue at sea although in a context of increased criminalization of rescue at sea activities.
2. Pushbacks tend to continue. During the COVID-19 pandemic, there was no will to mobilize existing regional mechanisms. In 2020-2021, there were apparent pushbacks by Malaysia.
3. Current trends also indicate a rise in xenophobia, particularly in the context of the COVID-19 pandemic, for example against Rohingyas since 2020.
4. A continuous lack of UNHCR access to detention centers.
5. A disconnect between foreign policy positions and domestic policies.
6. A lack of regional and international cooperation.

Ms. Fan recommended several ways forward to improve international dialogue on responsibility-sharing and the Rohingyas crisis. Currently, there is no regional solution, and it must be initiated at international level. Additionally, resettlement and temporary solutions must be developed through a whole-of-society and whole-of-government approach<sup>6</sup>.

**Ms. Anila Noor**, Founder of [New Women Connectors](#) and Member of the Steering Committee of the [Global Refugee-Led Network](#), started by reflecting on this event's title and how it resonates with the so-called "refugee crisis". As herself an asylum seeker who reached The Netherlands in 2015-2016, she stressed that this is in fact a human rights crisis, calling on stakeholders to remember that refugees are human beings, not to think about borders security but rather about human security. Linked to enhancing the promotion of responsibility-sharing and resettlement at European level, she mentioned that the 7 October 2021 EU High-Level Forum on providing protection to Afghans at risk<sup>7</sup> was arranged to support and raise global coordination for resettlement of Afghans. During the Forum, Ylva Johansson, European Commissioner for Home Affairs started her speech by sharing a story of a young Afghan girl who, due to her passion for football and dream to practice sports, had to be rescued and provided protection. It is important to listen to the struggle of refugee women and girls. Above all, Ms. Noor highlighted how they bring skills and knowledge from their home countries to host countries, which become their new home and can encourage and celebrate their skills. Quoting Ms. Johansson "*Cities are offering up to host refugees, Universities want to host advanced scientists, Societies are mobilizing; as leaders, we cannot stay behind*", Ms. Noor stressed that this

<sup>5</sup> See: Human Rights Watch, *Southeast Asia: End Rohingya Boat Pushbacks; Thailand, Malaysia, Indonesia Should Act Urgently to Save Lives*, May 2015: <https://www.hrw.org/news/2015/05/14/southeast-asia-end-rohingya-boat-pushbacks>

<sup>6</sup> In addition to Ms. Fan's recommendations, see: UNHCR, *Left adrift at sea, Dangerous journey of refugees across the Bay of Bengal and Andaman Sea, Jan 2020-June 2021*, August 2021: <https://reliefweb.int/report/myanmar/left-adrift-sea-dangerous-journeys-refugees-across-bay-bengal-and-andaman-sea-january>

<sup>7</sup> See, Press briefing by Ylva Johansson, European Commissioner, following the High-Level Forum on providing protection to Afghans at risk, 7 October 2021: <https://audiovisual.ec.europa.eu/en/video/I-211839>



kind of statement is a call for a welcoming environment for refugees. The key questions raised after this Forum, however, were: How a more inclusive approach to humanitarian assistance can happen, with a huge hesitation from some Member States to show solidarity? How can we come up with more cohesion? Especially with the Afghanistan crisis, many Afghans have not been evacuated and have not been able to move to neighboring countries such as Pakistan and Iran. There should be complementary and legal pathways put in place and make sure people do not become smuggled and trafficked.

The role of Member States to intensify legal pathways such as the United States, Canada, the United Kingdom, The Netherlands, and Denmark is fundamental as well as the involvement of refugee leaders who relate to their communities as they can bring their experiences, priorities, and flag gaps. Lastly, Ms. Noor referred to the NGO statement on International Protection delivered at the Executive Committee. She underscored that the statement is about power and position among high-income countries, which hold the privilege and advantage of controlling their resources, access to asylum and their territory. NGOs, refugees and UNHCR, she contended, have an important role in ensuring Member States effectively apply international protection and access to durable solutions.

**Mr. Abdul Aziz Muhamat, [the 2019 Martin Ennals Award Laureate for Human Rights Defenders](#)**

went back to his personal story where he was incarcerated for six years and a half in the Manus Island detention center.

Mr. Muhamat first asked decision-makers to give a platform for refugees to express themselves because they include many leaders, very strong, talented, and educated people. *“We deserve to be at roundtables, and we deserve to be part of the decision-making”*, he reminded because refugees are the ones experiencing displacement.

The main point he underscored was related to the living conditions in detention centers and in particular, the mental health effects on detained people who often suffer from post-traumatic stress disorder. He also analyzed how Member States use refugee detention for their political agenda.

Another point drawn from Mr. Muhamat’s experience was about health and hygiene conditions in detention centers, pointing out how detained people are treated and which health conditions and health services they have access to, beyond mental health aspects. His fourth critical point focused on financial and tremendous human costs, affirming that funding could be used in many (more constructive) ways to support complementary pathways and legal avenues. Sixteen people lost their lives on Manus Island. The reason for the loss of life is medical negligence and shortage of food.

Mr. Muhamat indicated that information about the external part of detention centers is usually reported but the internal part (what is happening inside) is rarely known. Refugees detained do carry trauma as a result of their journey, for example, leaving Afghanistan to go through Indonesia means a very difficult journey at the hands of smugglers and then the authorities. When reaching the final destination, the hope is to be part of and contribute to a community but at the end of the day, people are arrested and detained. In detention centers, nobody thinks about the trauma, and nobody asks asylum seekers what happened. People have to justify why they left their country of origin and struggle to be recognized as human beings with a name, not an administrative category and a number.

Today, countries such as Australia think they have the best model to regulate maritime migration, and the European Union is thinking of replicating this model. How much has Australia paid over the past nine years for the detention center in Nauru and Manus Island? Staggeringly, billions of Australian dollars<sup>8</sup>, amounting to the annual budgets of small countries. Which country in the European Union is ready to and can spend this amount of money? In addition, the reputation of the country is also severely affected by such policies. Additionally, UNHCR and NGOs regularly criticize

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<sup>8</sup> Asylum Seeker Resource Centre, Save the Children and GetUp, *At what cost? The human and economic cost of Australia’s offshore detention policies 2019*, December 2019: <https://asrc.org.au/wp-content/uploads/2013/04/1912-At-What-Cost-report.pdf>



the Australian policy, making public comments, and pointing to its failures. Interestingly, on 6 October 2021, Australia announced the closure of the detention center in Papua New Guinea<sup>9</sup>, leaving 124 men waiting for a legal pathway. Finally, Mr. Muhamat concluded with the idea that externalization is not a solution and there are better options available such as private sponsorships, used in Canada for instance.

### Open exchange

Following the three panelists' perspectives, participants discussed externalization's harmful practices and its numerous costs. They reflected on available legal avenues that Member States should use instead of externalization practices and on the importance of engaging refugee- and community-led organizations.

### Costs of externalization practices

The discussion highlighted the sense that several States are not fully honest about the fact that externalization policies are based on pushing responsibility onto other countries and that each time a person is found to be a refugee as part of one of the so-called offshore arrangements, there must be other countries willing to provide durable solutions or complementary pathways guaranteeing safety and a future. It is a State problem that will continue to exist in the longer-term.

Participants considered that the Australian offshore detention regime has caused an enormous amount of damages for more than eight years<sup>10</sup>. One aspect of the policy which needs to be understood in Europe is not only how shameful it is for the country responsible and how humiliating it is for other countries that get dragged into the offshore detention regime (e.g., Papua New Guinea, Nauru, and Manus Islands) but also how it leaves a legacy of many people with nowhere to go. There are still around 120<sup>11</sup> recognized refugees with nowhere to go on Manus Island, currently looking for legal avenues.

Some further reflections were also offered on how externalization is dehumanizing.

The audience also mentioned that the criminalization of human rights defenders, migrants, and refugee advocates is frequent when externalization is practiced, and this should end.

### Rejections of externalization and stepping-up complementary pathways and legal avenues

Several participants argued in favor of more creative thinking, especially working closely with refugees, parliamentarians, city mayors, local governments, faith-based groups, local communities, and sport organizations. For instance, sports organizations have a strong human dimension and the ability to connect and build social cohesion and inclusion. Another example shared for innovative approaches to tackle the disconnect between foreign and domestic perspectives is through engaging with parliaments, like in Malaysia where refugees have provided policy briefings to parliamentarians. One efficient legal avenue is through the Canadian Private Sponsorship of Refugees programs. For example, to start a process of assisting refugees from Manus and Nauru Islands through private sponsorship would require at least five Canadian citizens to come together and raise about 18'000 to 20'000 Canadian dollars. The process would then take between six months to one year. Once a person has been admitted, UNHCR would help to proceed with facilitating movement. More countries should be involved, thus also helping to reduce human trafficking.

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<sup>9</sup> News Comment on Australia's announced end to its offshore arrangement with PNG, UNHCR Multi-Country Representation in Canberra, 7 October 2021: <https://www.unhcr.org/en-au/news/press/2021/10/615e2deb4/unhcr-news-comment-on-australias-announced-end-to-its-offshore-arrangement.html>

<sup>10</sup> See: Kaldor Center for International Refugee Law, *Cruel, costly and ineffective: The failure of offshore processing in Australia*, Policy brief, August 2021: [https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy\\_Brief\\_11\\_Offshore\\_Processing.pdf](https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_Brief_11_Offshore_Processing.pdf)

<sup>11</sup> Refugee Council of Australia, *Offshore processing statistics*, 30 August 2021: <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/>



The situation for many Afghans remains serious, requiring additional efforts from the international community to support displaced and vulnerable populations in Afghanistan as well as those seeking protection in host countries. This includes women, children, persons with disabilities, LGBTQI+ individuals, members of ethnic and religious minorities, human rights defenders, and journalists.

The Permanent Mission of the United States in Geneva provided an overview of work done in the realm of durable solutions for refugees. The past two years have presented unprecedented global protection challenges from the COVID-19 pandemic to the crisis in Afghanistan, Ethiopia, Burma and elsewhere; these crises have stretched the global community's capacity to respond through rapid adaptation and innovative solutions. As we mark the 70<sup>th</sup> anniversary of the Refugee Convention, the US reiterated its commitments and thanked the NGO community as well as UNHCR for their collaboration in providing protection to the world's most vulnerable. For example, since 1980, the U.S. has admitted over 3.1 million refugees and remains committed to refugee resettlement. The U.S. refugee admissions program is being rebuilt and expanded by raising admission to 62'500 for this fiscal year and committing to resettling up to 125'000 refugees next year. In addition, the Permanent Mission is expanding cooperation and sharing expertise and resettlement efforts with partner countries like Canada and exploring a program to provide private sponsorship for refugees. The Permanent Mission of Canada in Geneva also shared its views on how the country work on private sponsorship and promotes the expansion of community sponsorship worldwide<sup>12</sup>.

### **Engagement of refugees and community-led organizations in solutions**

Refugees relate to their communities, and often come up with solutions; this call firmly shaped all the exchanges during the side event.

Over the past years, in line with the spirit of the Global Compact on Refugees, we have witnessed a rise in the role of refugee-led organizations in addressing the great operational needs of many refugee communities and situations. The call to provide resources to refugee-led organizations was also echoed by several participants. UNHCR has sought to strengthen the way it works with RLOs and supporting them in building up their structures, activities and in harnessing the enthusiasm and leadership that they are showing.

Participants pointed to another illustration of the work done to advance refugees engagement: the 2019 Global Refugee Forum, where the Global Refugee Led Network pledged for meaningful refugee participation and to bring knowledge and expertise as a tool in the ongoing efforts towards systemic change. The December 2021 High-Level Officials Meeting<sup>13</sup> should be another opportunity to gain momentum for meaningful refugee participation.

The Permanent Mission of Canada also invited others to replicate Canada's practice of including a refugee advisor within their delegations to international gatherings on refugee policies, stressing the benefits of having contributions from refugees alongside longstanding civil society colleagues.

### **Conclusion**

A major message coming out of this side event was about rehumanizing the narrative when speaking about responsibility-sharing and even more when addressing externalization trends.

Based on this side event and the NGO statement on International Protection, ICVA and its member NGOs will continue to explore options for future actions to tackle externalization practices. One question to consider is around advocacy and whether and how NGOs can partner with some Member States on this issue. Another connection that will need to be made and examined is the link between asylum, low recognition of refugee status, and externalization practices.

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<sup>12</sup> To learn more on the Private Refugee Sponsorship Program Canadian Initiative: <https://refugeesponsorship.org/>

<sup>13</sup> More information on the High-Level Officials Meeting: <https://www.unhcr.org/high-level-officials-meeting.html>