

61st Meeting
4 – 8 October 2010

NGO Statement on International Protection

Agenda Item 5. a)

Mr. Chair, Ladies and Gentlemen,

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 of this 61st Executive Committee meeting to address a number of particularly urgent country-specific protection concerns, as well as highlight some more general protection challenges worldwide.

1. Country-specific situations of concern

Over the past year, there have been dozens of situations around the world involving serious protection concerns for refugees, asylum seekers, internally displaced persons (IDPs), stateless persons, and other persons of concern to UNHCR. We would like to take this opportunity to highlight what we believe are some of the most serious examples of Member States' failures to protect the rights of persons of concern and to highlight one or two other situations of concern to us.

a) Africa

(i) Burundi/Rwanda/Uganda

Over the past year, which has seen new tri-partite agreements between UNHCR and a number of refugee-hosting countries in the Great Lakes region, the Rwandan authorities have successfully placed significant pressure on both Burundi and Uganda to return Rwandan asylum seekers and refugees back to their country.

In Burundi, deportations of almost 80 Rwandans scheduled for mid November 2009 were halted after NGOs alerted UNHCR, which intervened with the authorities. On 27 November, however, Burundi deported 103 Rwandans after denying them access to asylum procedures. During Uganda's July 2010 deportation of 1,700 Rwandans, including hundreds of refugees, at least two people died as a result of the speed and manner of the operation. We call on all three governments to respect the right of their nationals to claim asylum and remain as refugees in each others' countries and to respect asylum seekers' and refugees' rights to appeal any decision to refuse them asylum or to revoke their refugee status. We also call on UNHCR to publicly press all three countries to respect these obligations. In May this year, Uganda, Rwanda, and UNHCR announced that the 1951 Refugee Convention's "cessation clause" will be applied to Rwandans in Uganda by 31 December 2011. The clause allows a refugee-hosting country, usually with UNHCR's agreement, to declare that a specific caseload of refugees is no longer in need of protection and should return home. Uganda has not explained whether the clause will apply to all Rwandans in Uganda or only to a specific category, for example those who fled Rwanda during the immediate aftermath of the country's genocide in 1994. We call on Uganda to clarify its position and to publicly affirm that any application of the clause will be accompanied by safeguards required under the Convention and Ugandan law, including the right of any Rwandan refugee or asylum seeker covered by the clause to resubmit an asylum claim, and for asylum seekers fleeing Rwanda after the clause has been invoked to lodge asylum claims in Uganda.

(ii) Democratic Republic of Congo (DRC)

Almost 2 million civilians remain displaced in eastern DRC. They face significant obstacles to returning home, including a general lack of security in villages away from main roads, abuses and threats by combatants on all sides, looting of harvests, extortion by ill-disciplined combatants, property destruction, and disputes over land title and land occupation.

Despite these concerns, over the past year the Congolese authorities have at times let political considerations trump the needs of the displaced. In September 2009, the authorities pressured 60,000 people in UNHCR-run camps in and around Goma to return home to show that the army's military operations had brought peace to eastern Congo and that it was safe for both IDPs and Congolese refugees in Rwanda to return home. This pressure coincided with a reduction in humanitarian assistance in the camps and assistance incentives in return areas.

After the camps closed, UN officials, diplomats, and others welcomed the "spontaneous return" of IDPs to their homes, yet there was no monitoring to track where IDPs went after they left the camps. While some returned to their villages of origin, others were afraid to do so. It remains unclear how many have settled in Goma and the nearby town of Sake, or moved on to other displacement sites after realising that their home areas remained insecure or that their land was occupied.

We call on Member States and UNHCR to ensure that the events in Goma are not repeated in the coming months and that IDPs in eastern DRC are in no way coerced or forced to leave their places of refuge with host families or in camps and to return home when it is not safe to do so.

In February 2010, DRC, Rwanda, and UNHCR signed a tri-partite agreement relating to the return of around 54,000 mainly Tutsi Congolese refugees from Rwanda to their homes in eastern Congo. Given ongoing insecurity in the region, likely disputes over land title in return areas and the resulting risk of violence, we call on both countries and UNHCR to ensure that any return takes place only on a purely voluntary basis and that sufficient resources are committed to ensuring that return takes place in a safe, dignified, and durable manner.

(iii) Kenya

Kenya continues to host large numbers of mostly Somali refugees, almost 300,000 of whom live in three appallingly overcrowded camps near the town of Dadaab in Kenya's poverty-stricken North Eastern Province bordering Somalia. Fewer than 5,000 refugees were allowed to move from the Dadaab camps during the past 12 months, thereby violating their right to freedom of movement under the 1951 Refugee Convention. In the continued absence of any form of refugee screening near the border and organised safe transport from there to the camps, we are concerned about numerous reports relating to Kenyan police abuses against Somali asylum seekers on and near the border and in the camps. These include interception and extortion, unlawfully returning those who cannot pay to Somalia or arbitrarily arresting, detaining, and illegally charging them with unlawful entry, beating men and women alike, and in some cases raping women. We call on Kenya to immediately end these abuses, to swiftly conclude and publish the findings of an independent investigation it has launched into the extent of these abuses, to formally approve at central and local level the granting of more land on which to build new camps, and to allow refugees registered in the camps to freely move throughout Kenya.

(iv) South Africa

In light of perceived improvements in the situation in Zimbabwe, on 2 September South Africa ended its April 2009 "special dispensation" policy for Zimbabweans – which allowed hundreds of thousands of Zimbabweans to live and work in South Africa – and announced it would resume deportations on 1 January 2011. The 2 September decision allows Zimbabweans (asylum seekers, the undocumented, and those with fraudulent South African identity papers) currently working, studying, or operating a business in South Africa to regularise their status by 31 December. To qualify, applicants must hold a Zimbabwean passport, which they can obtain from the Zimbabwean authorities in South Africa, and prove they have been in the country since at least 31 May this year. NGOs are concerned that four

months is insufficient time to ensure that all Zimbabweans wishing to apply can do so and that those missing the deadline will be caught up in South Africa's likely resumption of mass deportations of Zimbabweans in the New Year. NGOs call on South Africa to extend the deadline until at least 1 June 2011 to ensure this does not happen. NGOs also call on the Zimbabwean authorities to commit the necessary resources to ensure passport applications are rapidly processed.

Despite UNHCR's 2010 Eligibility Guidelines on Somalis – which advises against forced returns to south central Somalia – South Africa continues to arrest, detain, and threaten Somali asylum seekers with deportation to Somalia, including those deported from Namibia via South Africa. We call on South Africa to respect its obligations not to deport Somalis to south central Somalia.

(v) Sudan

In the run-up to the January 2011 referendum in southern Sudan, we urge Member States and UNHCR to ensure NGOs are involved in the development of contingency plans relating to possible renewed displacement from northern to southern Sudan, and from southern Sudan to neighbouring states. We urge States and UNHCR to ensure that such plans involve a rapid and robust humanitarian response should displacement increase and humanitarian conditions deteriorate before or after the referendum. We also urge UNHCR to increase its protection monitoring in IDP areas around Khartoum to identify any concerns as soon as they arise.

In the Kassala region of eastern Sudan, over 60,000 Eritrean refugees have established settlements and made Sudan their home. Many have been there for more than three decades or were born in the camps since then. By and large the long-term camp residents are *de facto* integrated into Sudanese society and many say they want to remain in Sudan. We urge the Government of Sudan to grant those refugees who want to remain in Sudan permanent residency and eventual naturalisation, which amongst other benefits would contribute significantly to the economic development of the Kassala region.

b) Asia

(i) Bangladesh

Over the past year, Bangladesh has targeted stateless Rohingya people from Myanmar who have not been permitted to register with the authorities or to lodge asylum claims. In January and February 2010, police intensified raids on the unregistered Rohingyas living in the Cox's Bazar and Bandarban districts of Bangladesh, causing thousands to flee to Kutupalong where they joined others already living in a makeshift camp which now shelters about 30,000 Rohingyas living in precarious conditions, including a lack of food making in particular women and children vulnerable.

Unlike the 28,000 registered Rohingya refugees in two UNHCR-supported refugee camps, 200,000 or more unregistered Rohingyas in Bangladesh – including the 30,000 in the Kutupalong makeshift camp – are denied humanitarian assistance and protection, and remain vulnerable to arrest, detention, extortion, and deportation to Myanmar. Hundreds of unregistered Rohingyas are detained in Cox's Bazar jail with no access to UNHCR protection.

We call on Bangladesh to register the 200,000 or more Rohingya stateless people in the Cox's Bazar and Bandarban districts, to allow them to lodge asylum claims, to permit those who register the right to reside, work, and access basic services in Bangladesh, and to grant UNHCR access to them.

(ii) Kyrgyzstan/Uzbekistan

Following the outbreak of violence in southern Kyrgyzstan in June this year, which saw the widespread destruction of homes in the cities of Osh and Jalalabad, almost 100,000 ethnic Uzbeks fled a few kilometres into Uzbekistan. After less than two weeks Uzbek and Kyrgyz officials actively encouraged them to return home. Almost all returned, but because of violent Kyrgyz law enforcement sweeps in ethnic Uzbek areas leading to widespread arbitrary arrest, detention, and torture, many said they wanted to flee across the nearby border once again to seek protection. Yet both Kyrgyzstan and

Uzbekistan closed their borders. Whilst recognising that UNHCR and international donors need to continue to provide shelter and other assistance, we call on both countries to allow Kyrgyz citizens to flee their country and to scrupulously respect the principle of *non-refoulement*, whether at the border or inside Uzbekistan.

The most recent revision of the Kyrgyzstan Flash Appeal calls for \$96.4 million, of which only 43 percent was funded as of early September. As the largest appealing agency, UNHCR has requested \$25.5 million to cover a number of programmes, including protection work, but it is only funded at 37 percent. We call on Member States to commit additional resources to UNHCR and its partners to help them address crucial issues such as helping the displaced and homeless to obtain crucial documentation such as passports and to carry out effective protection monitoring, including relating to the needs of separated children and survivors of gender based violence.

(iii) Sri Lanka

In response to international pressure, as of July this year Sri Lanka had released just over 90% of the 285,000 IDPs held since early 2009 in internment camps in the north of the country. Of these, an estimated 88,000 have been unable to return home because their villages are deemed unsafe because of landmines or because they are inside government-designated “High Security Zones.” An estimated 12,000 suspected Tamil Tiger rebels (LTTE) cadres were taken from conflict areas and held in “rehabilitation centres” and it is possible that they included civilians displaced during the conflict to whom humanitarian agencies had no access. In addition, an estimated 160,000 IDPs displaced before 2006 remain displaced in “welfare centres” throughout North Eastern Sri Lanka.

Sri Lanka has limited humanitarian agencies’ access to return areas by strictly scrutinising proposed activities, including locations and staff, before granting access and work permits. The authorities have made clear that they do not want agencies to be involved in protection-related activities, including assessments and monitoring. IDPs remaining in the internment camps and those returning to their home areas enjoy only limited free movement, despite some recent improvements. The authorities also say agencies may not support IDPs displaced in or before 2006 with programmes aimed at helping them to rebuild their lives in other parts of the country. Finally, the Sri Lankan authorities continue to deny relatives of detained LTTE suspects, who may include displaced civilians, information about likely release dates.

We call on Sri Lanka and UNHCR to guarantee protection and promote durable solutions for all displaced Sri Lankans, including those recently returning home. In particular, we call on Sri Lanka to give humanitarian agencies full and unrestricted access to return areas, IDP camps, and to all locations sheltering IDPs attempting to return home (including temporary settlements and transit and emergency sites), to guarantee the displaced and returnees unrestricted free movement, and to put in place land, housing, and property restitution programmes for those who lost land and property during the conflict.

(iv) Thailand

The situation of refugees and asylum seekers in Thailand has grown increasingly precarious since the deportation of more than 4,600 Lao Hmong refugees and asylum seekers on 28 December 2009, despite UNHCR and NGO protests. With the approach of elections in Myanmar, Burmese refugees along the Thai-Myanmar border are at heightened risk of coerced or forced return. We call on UNHCR and Member States to ensure that Thailand does not use the outcome of the forthcoming elections in Myanmar as an excuse to return Burmese nationals at risk of persecution back home. We also call on Thailand to allow UNHCR access to Rohingya detainees who have been held in Bangkok’s Immigration Detention Centre since January 2009.

c) Europe

(i) Greece

Greece, with a 0.04 percent asylum approval rate for applicants at first instance, abolished its appeals mechanism in July 2009, leaving rejected asylum seekers with no way to challenge a negative decision, and leading UNHCR to suspend its formal role in the asylum procedure.

A presidential decree that would have introduced interim reforms in the asylum procedure has been postponed at least twice, and full-scale reform of the system is now unlikely before the end of 2011, at the earliest. The Greek government has utterly failed to meet its most basic responsibilities to protect refugees. We therefore call on UNHCR to exercise its mandate and take over processing asylum claims.

The situation in Greece demonstrates the European Union's (EU) failure to develop a harmonised European asylum system that equitably establishes Member State responsibility for examining asylum claims. Under the Dublin II regulation, most European states continue to transfer asylum seekers to Greece, despite the lack of access to procedures and poor reception conditions there. Until the Dublin II regulation is amended, we join UNHCR in calling on EU Member States to make use of the sovereignty clause in article 3(2) of the Dublin Regulation and not transfer asylum seekers to Greece. NGOs also call upon European States to develop and implement a common European asylum system that respects the rights of asylum seekers, treats Member States equitably and is based on the principle of solidarity.

(ii) Italy

Italy has not renounced, and, in fact appears to continue to be engaged in, joint naval operations with Libya to interdict boat migrants on the high seas and in Libyan territorial waters and to return them summarily to Libya – a country where refugees and asylum seekers do not have access to effective protection – without screening to identify refugees, the sick or injured, pregnant women, unaccompanied children, victims of trafficking, or other vulnerable people. Recalling ExCom Conclusion No. 97 (LIV) on protection safeguards in interception measures, we call on UNHCR's Executive Committee to hold Italy accountable for its actions that result in asylum seekers and refugees being denied access to international protection.

d) Middle East and North Africa

(i) Egypt

With Egypt's election to the position of Chair of the Executive Committee of UNHCR in October 2010, we call on Egypt to take this opportunity to show true world leadership in the realm of international refugee protection.

In stark contrast to the honour UNHCR's Executive Committee has bestowed upon Egypt, over the past 12 months, Egyptian border guards have shot and killed at least 28 civilians trying to cross into Israel, at least some of whom appear to have been seeking asylum, bringing the total number of recorded deaths since July 2007 to 85. To our knowledge, the Egyptian authorities have investigated none of these incidents. There are regular reports of Egypt arbitrarily arresting and detaining asylum seekers and other individuals unable to lodge asylum claims in Egypt, and UNHCR continues to struggle to access them in detention. In 2010, Egypt has also deported a recognised refugee and attempted to deport three others. We call on Egypt to act in a manner consistent with being the chair of UNHCR's Executive Committee by ending these abuses, providing protection to refugees and asylum seekers, and fully cooperating with UNHCR.

(ii) Lebanon

Lebanon continues to arrest and sentence asylum seekers and refugees for illegal entry or presence and to detain them after they serve their sentences as a means of coercing them to "choose" to repatriate rather than remain in indefinite detention in inhumane conditions. We call on the Lebanese authorities to release all UNHCR-recognised refugees who are currently in detention, to grant access to UNHCR to any detainees seeking asylum, and to stop arresting and detaining people of concern to

UNHCR solely on the basis of their illegal entry or presence. We call on ExCom Member States to assist Lebanon in providing protection and durable solutions for refugees in Lebanon.

(iii) Libya

NGOs are concerned about Libya's recent treatment of foreigners on its territory who may be asylum seekers but who do not have access to refugee determination procedures. In particular, we are concerned that over the past year Libya has detained over a thousand Eritreans, many of whom would potentially seek to lodge asylum claims if they could. UNHCR has limited or no access to these and other detainees. Many of the Eritreans have come face to face with Eritrean officials in the detention centres. Libyan officials have forced many to complete bio-data forms provided to Libya by Eritrean officials in Libya. Asylum seekers and migrants in Libya face unlimited detention in inhumane conditions, prison guard violence, and threats of deportation. Finally, we are concerned that Libya has yet to sign an agreement regularising UNHCR's presence in the country and that it has periodically closed or threatened to close UNHCR's office in Tripoli. We call on Libya to sign a memorandum of agreement with UNHCR that ensures UNHCR access to all migrant detention centres and that provides all detainees access to UNHCR and guarantees their right to lodge asylum claims with UNHCR.

(iv) Yemen

Although Yemen continues to recognise Somalis as prima facie refugees, its treatment of actual and potential asylum seekers from other parts of Africa remains alarming. This concern applies particularly to the tens of thousands of Ethiopians whom the government views as illegal migrants to be automatically deported and to whom UNHCR – unlike Ethiopian officials who regularly meet the detainees – has almost no access. We call on Yemen to ensure that all non-Somali nationals wishing to claim asylum in Yemen have full access to UNHCR's staff and offices.

2. Thematic Issues

(a) ExCom Conclusion on Disabilities

We welcome this year's draft "ExCom Conclusion on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR" which we hope is a positive step towards providing more effective protection and assistance to persons with disabilities covered by UNHCR's programmes.

Refugees and other persons with disabilities are highly vulnerable to protection risks, including physical and sexual violence, exploitation, and harassment. Disabled women, children, and older displaced persons often repeatedly face discrimination based on their age, gender, and social status, as well as their disability. Agencies working with the persons with disabilities in humanitarian emergencies sometimes neglect or ignore them, for example by failing to include them in registration and data collection exercises, by not setting up specialised services to address their needs or by failing to ensure they can access general assistance programmes. Agencies also seldom recognise the potential persons with disabilities have to contribute to the design and execution of assistance and protection programming.

For the Conclusion to have a real impact on the lives of persons with disabilities, UNHCR, together with other stakeholders should develop practical guidelines, policies, and operating standards for UNHCR staff and its partners to help implement the Conclusion. We also encourage UNHCR to engage with the non-governmental sector working with persons with disabilities to ensure that civil society is actively engaged in training and advocacy on disability issues. UNHCR should also incorporate disability awareness into its Age, Gender and Diversity Mainstreaming (AGDM) strategy and other relevant policies, such as its Community Based Approach. Finally, UNHCR should provide Member States, NGO partners, and other stakeholders with regular updates on the implementation and follow-up to the Conclusion.

EXCOM Conclusions provide UNHCR, Member States, and partners with further direction on their responsibilities in protecting refugees and other persons of concern to UNHCR. We would like to emphasise the persuasive authority of the Conclusions as expressions of States' protection obligations and as articulations of consensus on State practice as an expression of evolving customary norms. We note with concern, however, the approach of some States in the Conclusions negotiations process, including during the recent negotiations on the Disabilities Conclusion, to introduce standards that dilute States' commitments to providing effective protection. We call on Member States to be guided by humanitarian considerations, instead of political ones, when negotiating new Conclusions, and to ensure that new Conclusions provide for a qualitative improvement in addressing specific protection needs and gaps. We believe that NGOs have much to offer in helping Member States and UNHCR in developing the Conclusions.

(b) Detention of refugees and asylum seekers

Refugees and asylum seekers worldwide are increasingly detained for months or even years in conditions below basic international standards and often have no or limited access to asylum procedures or judicial review of their detention. We therefore welcome UNHCR's work over the past year on immigration detention, which has focused on alternatives to the detention of refugees and asylum seekers. Amongst a number of initiatives, we particularly welcome last year's ExCom side meeting on alternatives to detention, attended by 30 governments, UNHCR's April 2010 first regional roundtable on detention alternatives in East Asia, UNHCR's commitment to further revising its 1999 Guidelines on the Detention of Asylum Seekers, and that in early 2011, UNHCR plans to launch a study on alternatives to the detention of asylum seekers.

International and regional human rights standards require States to actively pursue alternatives to detaining asylum seekers. They prohibit their arbitrary detention, require detention to be used as a last resort for the shortest possible time, and guarantee judicial review of any decision to detain.

In light of these standards, we note with concern the recent increase in industrialised countries pressuring, funding, and otherwise providing incentives to neighbouring countries to detain asylum seekers, including countries that have not signed the 1951 Refugee Convention or where access to asylum procedures is limited or non-existent, thereby placing asylum seekers at risk of refoulement. We call on these countries to end such policies.

We are also concerned that many countries continue to detain or otherwise penalise asylum seekers for entering their territory without proper documentation, in violation of international refugee law which guarantees asylum seekers the right to seek asylum and to access asylum procedures, regardless of how they entered a country. We call on States to respect these obligations.

We welcome the fact that, over the past year, some countries have increasingly discussed alternatives to the detention of refugees and asylum seekers and that a few have established models that demonstrate alternatives can work well and cost less than detention.

We encourage UNHCR to expand its global work on this issue over the coming year at both regional and national levels, in particular by working closely with States and NGOs in implementing the revised UNHCR's Detention Guidelines and in developing and promoting alternatives to detention.

(c) Statelessness

In light of the upcoming 50th anniversary of the 1961 Convention on the Reduction of Statelessness, we call on Member States and UNHCR to scale up their efforts, including through additional resources, to reduce the number of stateless people worldwide. Fifty years later, it is a disgrace that this Convention has only 37 States parties. The 50th anniversary should be an occasion to at least double that number. UNHCR's annual budget is inadequate for it to effectively fulfil its mandate to prevent and reduce statelessness and to protect the rights of more than 12 million stateless persons worldwide and we urge States to increase related funding to UNHCR.

According to UNHCR statistics, only 46% of babies born in refugee camps and 59% of refugees born in urban areas receive birth certificates, leading in many cases to statelessness. We urge UNHCR to dedicate additional resources, including staff, to address this particular challenge.

To help underline UNHCR's commitment to its statelessness mandate, raise awareness of the issue and attract more donor funding, we encourage the High Commissioner to undertake a regional visit focused on statelessness and related UNHCR and NGO programming and to show that reducing statelessness should not be the job of one State alone but is rather an area where international solidarity can promote and facilitate reduction of statelessness. We would suggest the High Commissioner visit Bangladesh and other countries in the region to focus on the plight of stateless members of the Rohingya minority. We also support ongoing UNHCR staff training on statelessness issues which we believe is essential for expanding UNHCR's work in this critical area.

(d) Urban Refugees

During last year's ExCom, NGOs welcomed UNHCR's new policy on refugee protection and solutions in urban areas and we look forward to UNHCR developing operational guidance to help effectively implement the policy. Agencies have worked for many years with refugee populations in urban settings, leading to a wealth of good practice examples. In our view, the most successful programmes do not try to replicate protection and assistance programmes used in camp settings. Instead, they help refugees to access national and local institutions and services, and complement this with specialised programmes that address refugees' specific needs. Examples include legal aid programmes that help refugees address issues such as arbitrary arrest and detention, sexual and gender based violence, access to identity documentation, discrimination, and microfinance programmes for female refugees.

We particularly encourage UNHCR to work more diligently with host States and donors to ensure urban refugees are registered and receive identity documentation, which is the foundation of effective urban refugee protection. We urge UNHCR to reinforce its advocacy role in calling on States to guarantee urban refugees' rights, including access to education and employment. Finally, we encourage UNHCR to increase its work with local community-based organisations which often have the greatest understanding of the complex urban environments in which refugees live.

3. Conclusion

In closing, NGOs express their hope that Member States, together with other stakeholders, will use the occasion of next year's Commemorations of the 1951 Refugee Convention and the 1961 Statelessness Convention to tackle significant remaining gaps in the protection of displaced and stateless persons.

Thank you Mr. Chair.