

NGO Statement on International Protection: The High Commissioner's Dialogue on Protection Challenges

Agenda Item 4

This statement has been drafted in consultation with a wide range of NGOs and attempts to reflect the diversity of views within the NGO community.

Mr. Chairman,

Last June, NGOs presented a statement asking for greater attention to be paid to the plight of boat people and other migrants and refugees injured or traumatised while crossing borders. We appreciate that this issue was a specific focus at the High Commissioner's Dialogue on Protection Challenges in December, and that participants brought the misery of these victims to the centre of the deliberation.

Almost every day, reports in media, worldwide, include statistics of those who have died or disappeared in such crossings – statistics that are usually significantly underestimated. In certain boat crossings, the reported number of deaths and disappearances has gone from one out of 30 to one out of 20 in the past 12 months. There are three things that are rarely reported.

May we comment first on an underreported aspect of *enforcement*, which we consider fairly positive. Most certainly, the High Commissioner's Dialogue was strengthened by the engagement of an unusual variety of civil society organisations, States, and international actors. We were particularly struck by the participation of FRONTEX in the debates. A key player in any discussion on European border control, FRONTEX reported that "though search and rescue is not part of FRONTEX's remit," they "have saved more than 10,000 lives" – without regard to migration status. In one instance, for example, fully "85% of passengers rescued... were in distress." NGOs genuinely appreciate the importance of such efforts in reducing the loss of life at sea.

We are distressed, however, that much of the rescue work by FRONTEX is in fact incidental to a deterrence campaign so broad and, at times, so indiscriminating, that directly and through third countries – intentionally or not – asylum-seekers are being blocked from claiming protection under the *1951 Refugee Convention*. The prohibition in international law against *refoulement* is clear: persons who may be subject to persecution in their country of origin may *not* be turned back, whether they have been formally recognised as refugees or not. Accordingly, we call for far greater efforts by States and enforcement authorities, like FRONTEX, to strengthen measures not only to identify those in need of protection, but also to provide real *access* to that protection. Under no circumstances should any individual be returned to a situation of human rights abuse, regardless of his or her status in the host country. Even as we strongly support an enforcement focus on the smugglers and traffickers that ferry migrants into peril, NGOs call for at least as much attention to the protection and

care that is offered to their victims, to asylum-seekers, and, indeed, to all migrants who are victims of violence or trauma crossing borders.

Turning to the second underreported issue: what happens to *survivors* after they are rescued or arrive? We continue to be concerned that many detention and removal practices widely implemented in arrival situations contravene international obligations under the *1951 Refugee Convention*, the *Convention on the Rights of the Child*, and other treaties. We also believe that better, concrete alternatives are within reach. As actors who are engaged alongside States, UNHCR, and national Red Cross and Red Crescent societies in the Canaries, on Lampedusa, on Malta, in Yemen and elsewhere, NGOs commend the insistence in UNHCR's *Refugee Protection and Mixed Migration: A 10-Point Plan of Action* on developing mechanisms to ensure that all who need special protection and assistance actually *receive* it: first – but not only – refugees and asylum-seekers, but with an increased response to *victims* as well: victims of torture, trafficking, trauma, and violence, including those who have witnessed atrocities in transit. We welcome the fact that the EU and Council of Europe have both expressed their commitment to work in this direction.

The third underreported issue is what the travel was like for these migrants and refugees even *before* the final leg of their journey. On one level, perhaps, it has seemed enough to confront their suffering only during that last part of the trip: the beatings; rapes; stabbings; shootings; people starving; thirsting to death; and suffocating, on the sea and, for that matter, on many land crossings as well. But what is neither reported nor considered adequately is the violence and trauma that so many of these same migrants and refugees have already experienced in transit. NGOs working in Turkey and Gulf countries, for example, report that “almost all” of the Somali women they encounter have been beaten or raped somewhere along the way *even before* enduring additional violence or trauma on boats crossing the Gulf of Aden. Similar reports describe men and women on the move being tortured, sometimes in detention, and even children being assaulted or extorted time after time, by the same or different smugglers and traffickers, long before stepping onto a boat or other means of getting from Africa to the Gulf States or Europe. The victim encountered upon rescue or arrival is often in fact the victim of a *multiplicity* of horrors and rights violations en route. So much the more reason for us all to take great care in arrival settings to treat victims, first, as victims.

NGOs congratulate UNHCR for the success of the High Commissioner's Dialogue in providing a forum for frank discussion and building a consensus for UNHCR to provide leadership on these issues. We urge States and UNHCR to support efforts to survey the range of protection responses in post-rescue/post-arrival settings, particularly along African-European migratory routes, with a mapping of existing services and actors and a gaps analysis. This work can then inform the processes examining these challenges within UNHCR, IOM, the Red Cross/Red Crescent Movement, the Council of Europe, and the NGO community, promote the exchange of concrete good practices and provide a resource for the development of a solid ExCom Conclusion on protection in these contexts.

We encourage further elaboration of the *10 Point Plan*, especially mechanisms that provide emergency care and protection for *all* arrivals, regardless of status; conduct individualised needs assessment for each; and then carefully differentiate in order to direct those with particular needs and rights, including refugees, victims of torture or trafficking, and unaccompanied children, to the agencies and procedures with mandates for their protection and care. In order to overcome recurring debates, it will be important to remind ourselves that this work is neither pure rescue at sea, nor pure refugee response, but rather the essence of *protection* in the context of both, which requires collaborative action where institutional mandates overlap. Perhaps clarification in this regard in a General Conclusion this year can

help to relieve some of the distraction that the inaccurate name “Rescue at Sea” seems to impose on these deliberations.

We emphasise the great need for research into the phenomena of multiple physical abuse and trauma experienced on so many migration routes today. What kind of protection is really available upon arrival – or should be available – to victims of *repeated* violence and trauma, whatever their migration status? It is time to address the appalling effects of this consecutive brutality, and when, in such contexts, “rescue” is complete.

Finally, we believe that a growing sense of convergence and possibility is the reason that there was so much participation in the High Commissioner’s Dialogue last December; that this convergence is why even unusual participants responded so positively to UNHCR’s convening role on the issue, including so many Red Cross/Red Crescent societies and NGOs that work with migrants, as well as refugees; and the reason such a large number of State officials came and spoke from their capitals—in particular from countries whose countrymen, women and children suffer so horribly and die in transit.

Thank you, Mr. Chairman.