UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Submission of the UN High Commissioner for Refugees (UNHCR)

UN Special Rapporteur on the human rights of migrants

Report on Externalization of Migration and the Impact on the Human Rights of Migrants

Pursuant to the call for inputs, UNHCR welcomes the opportunity to provide a submission to the Special Rapporteur on the human rights of migrants in relation to the forthcoming report on externalisation of migration and the impact on the human rights of migrants, which will be presented at the upcoming 80th session of the General Assembly.

UNHCR's mandate

UNHCR is the global UN entity with a mandate to provide international protection and to work for solutions for refugees and asylum-seekers, among others. It has been granted the authority by States to supervise the application of international instruments for the protection of refugees and asylum-seekers, in particular the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*). State parties to these instruments are also required to cooperate with UNHCR in the exercise of its functions (Art.35 of the *1951 Convention*). UNHCR's role is also reflected in many regional refugee law instruments. Over the years, the UN General Assembly has extended UNHCR's mandate to various groups of people who are not covered by the *1951 Convention*. Some of these people are qualified as "mandate" refugees; others are returnees, stateless persons and, in some situations, internally displaced persons (IDPs). With regard to IDPs, UNHCR was first called upon by the UN General Assembly in 1971 to extend its expertise and assistance to IDPs and since then has been mandated through various resolutions to provide protection and assistance to IDPs in many situations, in acknowledgement of the Office's expertise in forced displacement and capacity to adapt and respond to evolving emergencies, and the need to address the situation of people displaced within their own countries as critical to resolving refugee situations.

With regard to stateless persons, the UN General Assembly has also entrusted UNHCR with a global mandate to provide protection to stateless persons worldwide and to engage in the prevention and reduction of statelessness. UNHCR's Executive Committee has further requested UNHCR to undertake "targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons".

UNHCR has a direct interest in ensuring that the practices of States are in compliance with international refugee law. UNHCR thus wishes to share its guidance on issues relevant to the Special Rapporteur's forthcoming report. UNHCR remains available to provide clarifications on any of the information provided below.

UNHCR's relevant guidance documents

➢ UNHCR Note and Annex on Externalization

- UNHCR Note on the "Externalization" of International Protection (May 2021) - This note summarizes applicable legal standards and UNHCR's positions regarding policies and practices which effectively serve to "externalize" international protection obligations. It explains that externalization of international protection is distinct from lawful practices involving transfer of the responsibility for international protection, undertaken in accordance with international standards.

- Annex to UNHCR Note on the "Externalization" of International Protection: Policies and practices related to the externalization of international protection (May 2021) - This Annex explains that measures designed or effectively serving to avoid responsibility or to shift, rather than share, burdens are contrary to the *1951 Refugee Convention* and widely accepted principles of international cooperation and solidarity. It further explains that such externalization measures are distinct from policies and practices which are in accordance with international law, aimed at sharing international protection responsibilities in the spirit of international cooperation and solidarity.

➢ **Other UNHCR Guidance, Explainers, Notes and Papers**

- International Agreements for the Transfer of Refugees and Migrants (August 2025) – This guidance provides globally relevant advice and considerations to inform cooperative arrangements among States on asylum and ensure their consistency with international refugee and human rights law. In particular, it aims to inform the development and implementation of arrangements for State cooperation in relation to the transfer of refugees and asylum-seekers to a third country, when States are considering such arrangements. It underscores the importance of responsibility-sharing and international cooperation as essential elements for the legality and practical viability of these arrangements.

- The Need for Effective Returns Systems and the Potential Role of Return Hubs (March 2025) – This note summarizes key challenges hindering the return of persons not in need of international protection and UNHCR's involvement in addressing them. It further discusses the potential role of return hubs as a policy response that could be lawful when carried out in accordance with human rights norms and principles

- A Route-Based Approach: Strengthening Protection and Solutions in the Context of Mixed Movements of Refugees and Migrants (June 2024) - This explainer sets out a route-based approach which proposes a set of comprehensive, targeted and coordinated interventions to be taken by States, UNHCR, IOM, other UN agencies, civil society partners, migrant and refugee organizations and other stakeholders, along main routes in countries of origin, asylum, transit and destination in order to respond more humanely, effectively and predictably to the challenges of mixed movements.

- Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers (September 2019) – This guidance aims to assist States in responding to the challenges posed by onward movements of refugees and asylum-seekers in a manner consistent with international law and good practices, and through enhanced cooperation and responsibility-sharing among States to ensure access to international protection. It describes international legal provisions and guiding principles relevant to onward movements, provides recommendations on approaches to determining which State shall take responsibility for considering a claim and providing international protection to individual refugees, including the applicable standards to be met.

- Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries (April 2018) - This paper summarizes UNHCR's position, reflecting international law and practice, on access to protection and rights in the context of transfer to "first countries of asylum" and "safe third countries". It examines in particular the relevance of a connection between the refugee and the third country in the application of such concepts and the issue of access to and level of protection that needs to be guaranteed by the third country.

- General legal considerations: search-and-rescue operations involving refugees and migrants at sea (November 2017) - This note sets out a number of legal considerations relevant to search-and-rescue (SAR) operations involving refugees and migrants at sea, including issues arising in the context of cooperation between the range of actors involved in SAR responses. In this note, it is also mentioned that extraterritorial processing can also take place outside State territory, including aboard vessels in international waters. It also notes that UNHCR considers that processing on board maritime vessels is not appropriate, unless reception arrangements and eligibility screening processes meeting international standards can be guaranteed.

- Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers (May 2013) – This note emphasizes that though the primary responsibility to provide protection rests with the State where asylum is sought, lawful transfer arrangements between States can be carried out as long as they are aimed at enhancing responsibility-sharing and international/regional cooperation, instead of burden shifting, and ensure relevant standards are met. Such arrangements would need to clearly stipulate the rights and obligations of each State and the rights and duties of asylum-seekers.

➢ **UNHCR Executive Committee Conclusions**

- UNHCR Executive Committee Conclusion No. 96 (LIV) on Return of persons found not to be in need of international protection (2003) – In this document, the UNHCR Executive Committee states that the efficient and expeditious return of persons found not to be in need of international protection is key to the international protection system as a whole.

- UNHCR Executive Committee Conclusion No. 58 (XL) on the problem of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection (1989) – In this document, the UNHCR Executive Committee recognizes the destabilizing effect that irregular movements of refugees and asylum-seekers can have on structured international efforts to provide appropriate solutions, and the reasons behind such movements. It concludes that such irregular movements can be effectively addressed through concerted action by governments, in consultation with UNHCR, and that governments should strive to find durable solutions to prevent this phenomenon. It further emphasizes that lawful transfer arrangements can be carried out only if they meet international standards.

➢ **UNHCR High Commissioner's Statement**

- UNHCR's Grandi on need for 'panoramic' approach to mixed movements (April 2023) – In this statement, the UN High Commissioner for Refugees underscores the necessity of a comprehensive, route-based approach to addressing mixed movements of refugees and migrants, advocating for coordinated international cooperation, responsibility-sharing, and protection mechanisms across all stages of displacement. He cautions against externalisation practices that shift asylum responsibilities away from States, emphasizing that such measures risk contravening international legal obligations under the *1951 Refugee Convention*.

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