

**UNHCR Statement on a draft Revised General Comment No. 1
on the implementation of article 3 of the Convention against Torture
in the context of article 22**

Mr. Chair,
Members of the Committee,
Distinguished Delegates,
Ladies and Gentlemen,

UNHCR is grateful for this invitation from the Committee to participate in this General Discussion, and welcomes the opportunity to provide observations on the Draft Revised General Comment, both in writing and during this intervention.

The principle of *non-refoulement* is the cornerstone of international refugee protection, and lies at the heart of UNHCR's work. The Agency is mandated to ensure the consistent and coherent interpretation and application of international refugee law. This revision of General Comment No.1 is an essential opportunity to ensure that international human rights and refugee law are complementary and mutually reinforcing in upholding protection from *refoulement*. In both bodies of law, this principle stems from a single, shared value: states must not exercise their sovereign power to regulate the entry, stay and removal of foreigners by forcing them, directly or indirectly, to go to a country where they face threats to their lives or freedoms.

From among the other points we have brought to the attention of the Committee through our written observations on the Draft Revised General Comment, UNHCR would like to highlight three aspects of particular importance during this intervention: the extraterritorial application of the principle of *non-refoulement*, the use of diplomatic assurances and the importance of the *non-refoulement* when transferring asylum-seekers from one country to another for the purpose of processing their claims.

Firstly, **addressing the issue of extraterritoriality**: protection from *refoulement* must be ensured wherever the state in question exercises jurisdiction, whether *de jure* or *de facto*. This extraterritorial application of the non-refoulement principle is crucial in a number of contexts, particularly when states act outside their territory, be it on the high seas in the context of maritime search-and-rescue operations or through other forms of interception, or when acting in the territory, including territorial waters, of other states. It is equally important at the state's border, where rejection at the frontier and non-admission to the territory can breach the principle of *non-refoulement*. In this regard, UNHCR would like to note that large-scale arrivals at borders are no justification for the closure of borders. Sudden or large-scale arrivals do not justify any departure from the principle of *non-refoulement*, and states must have systems in place for ensuring its scrupulous observation.

Secondly, turning to **the use of diplomatic assurances**: UNHCR supports the Committee's view that diplomatic assurances must not be used as a loophole to undermine the principle of *non-refoulement*. Only when assurances can effectively guarantee protection from the risk of torture or other forms of ill treatment can reliance be placed upon them. As such, assurances must be a credible and suitable means of effectively eliminating the danger to the individual concerned. This will depend on whether the assurances provided are binding on those organs or agents of the state which are responsible for implementing measures that can eliminate the risk, and whether the state authorities providing the assurances are in a position to ensure compliance with the assurances given. In UNHCR's view, it is essential that assurances contain an unequivocal guarantee that the person concerned is free from any danger and that clear procedures are established allowing for effective monitoring and access to an effective remedy in case of non-compliance.

Thirdly, there are an increasing number of initiatives concerning the **transfer of asylum-seekers** from one country to another for the purpose of processing their asylum claims. Such initiatives, often done under special bilateral or multilateral state arrangements, involve the transfer to either a country where the asylum-seeker first sought or could have sought asylum, or to other countries with which the asylum-seeker has no previous links. The legality and appropriateness of such arrangement and transfer needs to be assessed on a case-by-case basis. Hereby, among other safeguards, it needs to be guaranteed that the asylum-seeker will be treated in accordance with accepted international standards and will be protected against *refoulement*.

In conclusion, UNHCR wishes to once again thank the Committee for this opportunity and reiterates its willingness and readiness to continue ongoing fruitful cooperation, including in the context of this Draft Revised General Comment.

I thank you for your attention.