

Statement of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Dr. Walter Kälin, to the Human Rights Council, Second Session, 19 September 2006

Mr. President of the Human Rights Council, distinguished Representatives, colleagues, ladies and gentlemen,

I have the honour of addressing you on my activities pursuant to the mandate entrusted to me by Resolution 2004/55, covering the period from the meeting of the Human Rights Commission in March 2005 until the concluding session of the Commission in March of this year. I will report on my activities since March in my report to the General Assembly to be discussed by the Third Committee next month.

Before you are my general report (E/CN.4/2006/71) and its seven appendices, covering the National Framework for Implementation (E/CN.4/2006/71/Add.1) and the reports on my missions to Nepal (E/CN.4/2006/71/Add.2), Croatia (E/CN.4/2006/71/Add.3), Bosnia-Herzegovina (E/CN.4/2006/71/Add.4), Serbia-Montenegro, including Kosovo (E/CN.4/2006/71/Add.5), the Sudan (E/CN.4/2006/71/Add.6) and Georgia (E/CN.4/2006/71/Add.7). You also will have received the *Report of the Secretary-General on the performance and effectiveness of the new mechanism on internal displacement* (E.CN.4/69), as required in paragraph 27 of the Resolution 2004/55.

Resolution 2004/55, reaffirmed by resolution 2005/46, requests the mandate holder to address the complex problem of internal displacement, “*in particular by mainstreaming human rights of the internally displaced into all relevant parts of the United Nations system*” and engaging “*in coordinated international advocacy and action for improving protection and respect of the human rights of the internally displaced, while continuing and enhancing dialogues with Governments, as well as non-governmental organizations and other relevant actors.*”

It is my conviction that in order to ensure the full protection of the human rights of internally displaced persons, three things are essential:

- 1) There must be a strong normative framework;
- 2) There must be political will; and
- 3) There must be the capacity to protect.

My work addresses these three pillars, which I believe must underpin all activities that aim to enhance the protection of the rights and well-being of internally displaced persons.

Normative Framework

With the adoption of the *Outcome Document of the World Summit* in 2005, the international community recognized the *Guiding Principles on Internal Displacement* “as an important international framework for the protection of internally displaced persons.” The international community furthermore committed itself to take effective measures to increase the protection of internally displaced persons. (A/60/L.1, paragraph 132). I welcome this recognition of the *Guiding Principles*.

Commendable efforts also have been undertaken at the regional level to enhance the normative framework for the protection of internally displaced persons. I welcome discussions on a draft Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons that would establish standards for the better protection of internally displaced persons. I also welcome the adoption of Recommendation 6/2006 by the Committee of Ministers of the Council of Europe, addressing internally displaced persons. And I commend the Inter-American Commission on Human Rights for their efforts to examine the situation of those persons internally displaced by natural disasters and encourage them to reinstate the function of a Rapporteur on IDPs, as they had previously. Such a mandate has enhanced the protection of the rights of IDPs in Africa and recently was renewed by the African Commission on Human and Peoples’ Rights.

Political Will

It is my understanding that the mandate to pursue dialogue with governments, as well as to mainstream the human rights of internally displaced persons into all relevant parts of the United Nations, is a call to support the strengthening of political will for the protection of the internally displaced and their rights.

Dialogue with Governments

In the spirit of constructive dialogue, my first full year as Representative has been particularly active, and I take the fact that the number of requests that I visit exceed my capacities to do so as an indication of governments’ willingness to further the protection of the internally displaced in their own countries. With the passage of time, it is appropriate that I briefly update you on developments and my follow-up since the missions took place.

Nepal

The situation in Nepal is not what it was when I traveled there in April 2005. A cease-fire has been declared, the authorities in place have constituted themselves into a multi-party interim government, and negotiations are being conducted with the CPN-M for a durable peace settlement. In this context, return seems more likely than it did at the time of my visit. I am about to send a letter to the Government and the parties negotiating, reminding them that there is much to be done to support a durable solution for the many who were displaced by the armed conflict, and requesting them to ensure

that the necessary steps are taken, in particular by adopting and implementing a policy and action plan on internal displacement. I emphasize the need to fully respect the right of IDPs to choose whether to return to their places of origin, remain where they have fled within the country, or resettle elsewhere; the importance of ensuring that IDPs are safe and secure no matter where they settle; and the importance of ensuring that the return or resettlement of IDPs is sustainable. I furthermore urge the parties to consult with the IDPs throughout the peace process and to take appropriate measures so that all IDPs can exercise their electoral rights when it comes to establishing new institutions in Nepal.

Croatia

Despite the excellent cooperation I received from the Government of Croatia during my mission, I regret that little progress has been made toward durable solutions for the internally displaced of Serb origin who wish to return, but who face obstacles in having their property returned or obtaining alternative housing. It should be possible to find equitable and durable solutions for this small number of cases, and I would encourage the Croatian authorities to do their utmost to achieve this goal without further delay.

Bosnia-Herzegovina

In Bosnia-Herzegovina, too, progress in finding durable solutions remains slow. The signing of Guidelines for the bodies responsible for revising and recognizing the status of a displaced person in Bosnia and Herzegovina by the relevant ministries and the UN High Commissioner for Refugees is an encouraging step, although the Guidelines are not being applied uniformly at the local level.

Serbia and Montenegro, including Kosovo

The political landscape has changed drastically since my mission. Montenegro voted for a separation from Serbia, and negotiations concerning the future status of Kosovo are being conducted under the auspice of Mr. Ahtisaari, the UN Special Envoy for the future status process for Kosovo.

I sent a letter encouraging the new authorities of Montenegro in the work ahead and entreating them to take all necessary measures such that former IDPs, who could become either refugees or stateless, do not suffer adversely from this change of status. I reminded them of my mission conclusions and suggested that they take measures to ensure that IDPs are not the object of discrimination. I would like to thank the Government for its swift reply and assurance of its commitment to fulfill its international obligations.

I will also be sending a letter to the Special Envoy and the negotiating parties, highlighting the following issues with a bearing on the future of peace and stability in the region: (i) accession to citizenship for unregistered internally displaced persons; (ii) free and informed choice for the internally displaced whether to stay where they have fled, return, or move elsewhere; (iii) the creation of conditions allowing for return under safe and economically viable conditions; (iv) a solution for the humanitarian hardship cases

that remain behind; and (v) the continuity of social and economic entitlements, such as mutual recognition of civil status and pension rights. I commend UNMIK for commencing the relocation of the Roma IDPs in Northern Mitrovica in June 2006, thus ensuring that they can live in an environment that is not hazardous to either their own health or that of their children, but I do regret that UNMIK's action was so long delayed.

Sudan

My main report to the Commission sets forth my grave concerns about the situation in Darfur – concerns which have become all the more acute in recent weeks and months. Nonetheless, we must not ignore Southern Sudan and the fate of the hundred of thousands or even millions of internally displaced, who were facing the prospect of returning to their places of origin in light of the peace agreements between the Government of Sudan and the SPLA. My report identifies the many obstacles to a safe and sustainable return to the South and urges all actors to take the necessary measures to create the necessary enabling conditions. I remain concerned that not enough has been done to address these obstacles and renew my call to all relevant actors in this regard.

Georgia

In December 2005, I conducted an official mission in Georgia, where I urged all parties to the conflict to comply with their obligations under previously signed agreements and called on them to cooperate in the facilitation of return movements and the creation of conditions conducive to the “voluntary, safe and dignified return of the displaced persons to their permanent places of residence.” I urged the *de facto* authorities in Abkhazia to refrain from adopting measures incompatible with international human rights standards and specifically with the right to return, such as discriminatory legislation on the acquisition of “citizenship” and infringements of the use of the Georgian language in schools. Stressing that efforts allowing the displaced to live a normal life at the locations where they found refuge and the right to return voluntarily to their former homes in safety and dignity are not mutually exclusive, I encouraged the Government of Georgia to establish and implement a comprehensive, rights-based national IDP policy that would support social integration of the displaced; their acquisition of adequate living conditions; humanitarian assistance for particularly vulnerable groups, such as older persons and people with disabilities; and durable solutions for those who cannot live on their own.

I commend the Government of Georgia for establishing, in February of this year, a commission under the Chairmanship of the Minister of Refugees and Accommodation which is tasked with developing such a national strategy. I will continue my dialogue with the authorities concerned and hope to return to Georgia for a follow-up working visit in the near future.

Turkey

This year I returned to Turkey in the spirit of continuing dialogue with the authorities concerning the establishment and implementation of a national policy and strategy for internally displaced persons. Together with the Brookings-Bern Project on Internal Displacement, and the Norwegian Refugee Centre's Internal Displacement Monitoring Centre, I participated in two workshops on the strategy. I will return to Turkey shortly in the context of the launch of an action plan for durable solutions in Van province.

Creating operational will through the mainstreaming of human rights into all relevant parts of the United Nations

I have been actively engaged in mainstreaming the human rights of internally displaced persons throughout the United Nations. I utilize a variety of channels, such as active participation in the discussions on humanitarian reform, drafting guidelines on human rights and natural disasters for humanitarian workers, and maintaining personnel within the Office for the Coordination of Humanitarian Affairs and the UN High Commissioner for Refugees, as well as the Office of the High Commissioner for Human Rights. I am pleased to have a Memorandum of Understanding with the High Commissioner for Refugees, cementing the excellent working relationship established between my mandate and the agency that now is entrusted with a global responsibility for the protection of internally displaced persons.

During the debates on improving protection and assistance in the humanitarian response to internally displaced persons, my mandate has put me in the ideal position to give advice and guidance not only to the governments concerned, but also to the UN agencies and other IASC members on the ground. During each mission, I make a concerted effort to consult with the IASC country team and subsequently to share my findings with them. In most places, they have taken up my recommendations and sought to further them in constructive dialogue with the Government.

I also seized the opportunity presented by the humanitarian reform to participate in policy debates on framing assistance and protection with a rights-based approach. I have advocated an understanding of protection which must cover the following categories, consistent with the concrete protection needs of a given situation:

- (a) rights related to physical and psychological security and integrity;
- (b) rights related to food, shelter, water, sanitation and health;
- (c) other social, economic and cultural rights, such as property and education; and
- (d) other political and civil rights, such as the right to documentation and political participation.

The overarching principles are non-discrimination against and among IDPs; participation of IDPs in the decisions that affect all aspects of their lives; and continuous monitoring of

how these rights are respected, given the heightened state of vulnerability of internally displaced persons.

Within this protection framework, States have an obligation to (a) prevent violations from occurring or reoccurring; (b) stopping them when they do occur, whether committed by organs or agents of the State or by third parties; and (c) ensuring reparation should violations happen.

The international community has an obligation to assist States in their duties through the different means at its disposal. Its activities can be responsive to a particular need and aim at preventing violations; they can be remedial, once a violation has occurred, to help mitigate the consequences of the violation through assistance, rehabilitation or reconstruction; or they can aim to create an environment that is conducive to the full respect for the human rights of internally displaced. These activities should cover all four groups of rights, and not just the first two.

In order to exemplify what this concrete rights-based approach to assistance and protection entails, I have drafted two documents. One is the *Guidelines on Human Rights and Natural Disasters*, for humanitarian agencies, and the other is the *Framework for National Responsibility*. The former was adopted by the IASC in June 2006 and can be found on its website. The latter is an appendix to my main report. Building on best practices worldwide, the *Framework for National Responsibility* suggests 12 key steps to help States fulfill their responsibility for the protection of and assistance to the internally displaced within their country.

Capacity Building

My efforts at capacity building have focused on giving States guidance on how to implement the *Guiding Principles on Internal Displacement*. On the one hand, this is done first through the detailed recommendations of my mission reports and other forms of interaction with governments. On the other hand, I continue work on a Handbook designed to help law and policy makers adopt appropriate laws and mechanisms to ensure the best possible protection and attention to internally displaced. I have just returned from a consultation in Vienna with the authors of the preliminary studies, which form the basis for the Handbook, as well as a wide range of experts from governments and international organizations. Once these studies are finalized, the development of model practices and parameters for policy will be undertaken in consultation with relevant stakeholders in the course of next year. It is my intention to adapt the San Remo International IDP Law Course to the contents of this Handbook, to ensure their complementarity.

At my instigation, the Brookings-Bern Project is collecting IDP-relevant policies and legislation from throughout the world. Together with the above-mentioned studies, they can be easily accessed on the Project's website for anyone to see and consult.

Personal Assessment and Outlook for the Coming Year

This past year has been successful for the mandate, despite the continued displacement for several millions people, be it through armed conflict or natural disasters. As I have said, I have received more invitations than I can accept in my current capacity. The task of responding to the protection and assistance needs of IDPs is overwhelming for any single agency and also, depending on the numbers, too much for one country, alone, to manage. An enhanced collaborative mechanism will always be necessary if the international community wishes to protect the rights of internally displaced persons.

I welcome the Secretary-General's critical report on the effectiveness of the mechanism I represent. It was based on a wide consultation, and the feedback has been gratifying, as well as providing food for thought and further implementation. I would agree that there are limitations inherent to a Special Procedure. However, this past year has shown that true complementarity can exist between what a Special Procedure can achieve and what UN operational agencies can do on the ground. And ultimately, this is in the interest of the Member States and IDPs.

Final Note

I thank the Member States for their support and willingness so often to engage in a constructive dialogue with me. I also thank the UN agencies and humanitarian actors, as well as civil society, all of whom contribute to making my missions as effective as they can be. Last but not least, my respect goes to the countless IDPs I have met during my missions, who have been willing to spend much of their time, efforts and limited resources to meet me and share their stories. We all cannot but feel humbled by their experiences.