

Sixty – third Session of the Executive Committee

3 October 2012

Statement by Erika Feller

Assistant High Commissioner (Protection)

Striking a Fair Balance:

Protecting Individuals, Embracing Communities, Upholding Responsibility Sharing

Mr. Chairman,

The Note on International Protection is the High Commissioner’s annual report on the state of international protection for persons of concern to UNHCR. It explains where the needs are and how the Organisation delivers on its protection mandate. At one level, refugee work is a pragmatic and practical exercise of, as one author has put it, managing flows, mitigating misery and promoting rights [of the forcibly displaced].¹ To present it so matter-of-factly does not, however, capture the reality of the challenge it represents to fundamental principles of state sovereignty, international cooperation, peace and security, as well as, at a more local level, notions of community, cohesion and belonging. It is perhaps these features of the global displacement problem which have made protection, for States and for UNHCR, an ever more difficult responsibility. The Note charts the successes and the failures.

It has not helped that 2011/12 saw a succession of emergencies and more people becoming refugees than at any time since 2000. That borders remained, for the most part, open, that millions were able to find immediate safety and that solutions were found for many, many thousands, both inside and outside countries of origin, attests both to the relevance of the international protection regime and to the fact that

¹ Tom Clarke, “*The Global Refugee Regime: charity, management and human rights*” July 2008.

solidarity for the displaced remains a fundamental value commanding widespread support.

Protection is, though, not getting any easier. The Note reports on significant obstacles to accessing quality protection: the intractability of many displacement situations; the problems of assisting and protecting persons in insecure settings; the particular survival challenges for the very vulnerable and the impact of funding shortfalls on efforts to move beyond just basic protection. UNHCR still has to make efforts to improve its own response. By the same token, political will is not consistently enough behind protection. This is disturbingly evidenced in a prevailing attitude in a number of countries to the effect: “Yes we sympathize with your plight, but resolve it please elsewhere.” A “refugee-free” country is an elusive goal.

Current emergencies demonstrate the challenges to effective protection. The Mali situation is but one example. The generosity of the host countries – Burkina Faso, Niger, Mauritania – deserves absolute commendation. This does not change the fact that the closeness to the border of refugee sites brings with it insecurity for the refugees and enhances the risk of infiltration of the sites by armed elements, compromising their civilian nature. The hosting sites are many and dispersed, which complicates access for the purposes of regular protection monitoring. Tensions among the different displaced groups exacerbate the security problems, while socio-cultural practices are hampering the effectiveness of protection interventions, particularly on behalf of women. Funding shortages mean that available resources must be applied for life-saving activities, making them inadequate when it comes to protection delivered say through education or vocational training - which, over the longer term are an important investment in the prevention of military recruitment of children, child labour, early marriage, or sexual exploitation of girls and boys. Funding constraints are also limiting efforts to register, document and profile the affected population. Lack of birth certificates for children born in displacement will have long-term protection consequences.

The protection profile of the Mali operation mirrors, in many ways, that of other conflict-driven displacement situations. Again, was it not for the receptiveness of Kenya or Ethiopia to Somalis fleeing conflict and food insecurity, many more thousands of people would have lost their lives. The life won, however, in Daadab camp for example,

may well become a struggle against the threat of kidnappings, improvised explosives or criminal violence. Over-crowding of camps inhibits effective arrangements to deal with combatants or ex-combatants among the population. The response to SGBV is still inadequate, with an urgent need for up-scaled programs of prevention and to combat impunity and prosecute cases.

Refugees are most often associated with survival in refugee camps. The fact is, however, that increasing numbers of displaced persons are also part of the phenomenon of urbanisation, living in shanty settlements in or around big towns. The Note illustrates the protection gaps like sexual violence, trafficking or survival sex, flowing from the precariousness of illegal or unregularised stay for urban refugees.

Urban refugees often arrive illegally, having crossed several borders. Many tragically do not make it. Irregular border crossing is a dangerous business, whether by land, air or sea. People are driven to take considerable risks: hiding in and under trucks, stuffed into car trunks, crammed into containers where lack of air, food and water claim lives regularly. Discovery can mean mistreatment at the hands of smugglers, transporters and border guards, as well as detention, summary returns, or even being abandoned in the desert along remote stretches of North African borders and left to die. In the Sinai, buying and selling of human cargo is a growing plague.

Loss of life at sea, in the Mediterranean, the Gulf of Aden, the Caribbean or the waters of South-east Asia remains a serious threat. The boats are not adequate for the journey, the individuals themselves are ill-equipped for it and the smugglers are unscrupulous. Absent a functioning search, rescue and disembarkation protocol, passing ships may see little incentive to stop and help. The obligation to assist persons in distress at sea applies to all ships, whether they are commercial or military, passenger or freight. However, disputes over safe ports of disembarkation and the reluctance of flag and coastal states to accept responsibilities can mean voyage delays, significant financial costs and even legal threats, including of criminal prosecution over charges of abetting irregular migration.

While not all irregular movers are refugees under the international refugee definition, quite a number, particularly those leaving refugee producing countries, are likely to be. The push factors are more often than not a complicated, even inextricable, mix of

refugee and migrant concerns, including war, human rights violations and unsustainable lives at home, which blend with pull factors including reunification with families and the lure of better economic and education possibilities abroad.

Some very positive efforts are underway by states to collaborate on new regional strategies around these issues. In Asia, the development of the Regional Cooperation Framework (RCF) and the establishment of a Regional Support Office in Bangkok offer promise to broaden protection space in a region where the formal sign-on to the 1951 Refugee Convention remains close to non-existent. The upcoming meeting in the Asia/Pacific region on irregular maritime movements hopefully will benefit from this new spirit of regional cooperation. In Central Asia, with the Almaty process, and in Eastern Europe, through the Panel on Migration and Asylum, newly established under the auspices of the EU Eastern Partnership, there are also opportunities to be seized to strengthen refugee protection on mixed migratory flows through regional cooperation.

This said, regional cooperation is not an end in itself. Its aims must include stronger national asylum systems - not their replacement - and for states to share more equitably the burdens and responsibilities of protecting refugees.

And regional cooperation must build in appropriate and accessible solutions. There is still work to do here. Many displacement situations remain protracted, with overall rights protection increasingly sub-standard with time. Solutions are seriously underfunded. This is particularly stark at present, given the number of new large-scale crises which compete for a finite amount of money which has to be applied to life-saving assistance.

Resources for solutions in 2013 are far less than opportunities would demand. This is notable in Africa where large numbers of former Angolan and Liberian refugees, as well as Congolese refugees in the Republic of Congo, are ready to repatriate, but have not yet done so, partly because our funding constraints are impeding investment in meaningful activities to underpin their return and reintegration. Of course the onus is also on the refugees themselves to seize and work with the opportunities for return when these are real and viable. This is the case with the Burundian former refugees in Mtabila camp, Tanzania, which is to definitely close on 31 December 2012. A strong message in support of return was delivered to the camp population during my recent

visit to them. UNHCR and other partners are committed to facilitating a process of orderly, safe and dignified return, as well as to assist with their reception in Burundi.

Safe, viable and durable return requires investment. Refugees often return in less than ideal conditions, to situations of only partially resolved conflict and to places ill-suited, or not yet ready for their reintegration because of insecurity, contested land claims, fledgling rule of law structures and limited subsistence possibilities. The transition from relief funding to longer-term investment in solutions remains complex and still has to overcome variations in planning and implementation methodologies, an aversion to using development funds for third country nationals and planning processes based on core and non-core activities. The Transitional Solution Initiative (TSI) is promising, but is currently attracting little by way of funding from other than UNHCR.

Host countries understandably call upon the international community to do more to help resolve refugee situations, as well as alleviate some of the costs. Local integration depends on political will and on robust funding arrangements. Seeing the refugee presence as a burden obscures the potential refugees have in relation to the development of their host countries and communities, which in turn feeds a reluctance to foster more self-reliance. When self-reliance is made possible, host countries wish to see their own efforts - efforts such as those in train in Eastern Sudan, Ethiopia or the Central African Republic, in Iran and Pakistan, or in Latin America through the cities of solidarity initiatives - to be matched by international solidarity. Resettlement countries remain generous partners on solutions and recent announcements, for example by Australia, of substantive increases in programs have been most welcome. Globally, though, available places do not match demand. We are also worried about an increasing rigidity in the resettlement process in some countries which is leading to quotas being too early and heavily earmarked to specific populations at the expense of flexibility when new or emergency needs arise. For example a recent flash appeal for resettlement of non-Iraqi refugees out of Syria has so far met with limited success partly because of lack of space within pre-agreed quotas.

Human mobility is one important way for people to regain control of their own circumstances and contribute more productively to the economic and social life of their countries of origin and destination. UNHCR together with the International Labour

Office are jointly reviewing options on how to integrate labour mobility schemes into broader solutions strategies for the displaced. A recent UNHCR/ILO workshop in Geneva supported as a first step, examination with partners how current obstacles for refugees to access existing labour mobility schemes might be removed. One emerging issue here is the lack of travel documents for to refugees, inspite of the provision in the 1951 Convention requiring their issuefor those without national passports. There is no labor mobility without mobility. Without travel authorisation, there is no mobility. On a related issue, we are also collaborating with IOM on a review of Assistant Voluntary Return (AVR) arrangements as they may link to asylum options.

When it comes to Internally Displaced Persons (IDPs) we welcome the progressive adherence to the Kampala Convention on IDPs with 14 countries having so far ratified this instrument, and the interest shown in the draft model law being developed, with UNHCR input, to support its implementation. With only one more instrument of ratification required to bring the Convention into force, we urge those States that have not yet done so to ratify this historic instrument as soon as possible. IDP operations will increasingly benefit from more targeted support of the Global Protection Cluster (GPC) which is taking important steps to become more field focused, not least through last week's launch of a GPC database.

AGE, GENDER AND DIVERSITY– GENERAL CONSIDERATIONS

How communities themselves understand protection, what their protection priorities are, and the protection mechanisms they themselves can draw upon is firmly built into our country operations planning process with governments. This helps to empower refugees as agents on their own behalf. Legally it roots protection in a philosophy of equity and rights, placing persons of concern, regardless of sex, age and background, at the centre of decision-making. The Age, Gender and Diversity Mainstreaming (AGDM) Accountability Framework has been the main tool here for UNHCR. It ensures that our protection interventions at the country level are “rights-based”, “community-based,” “participatory” and benefit from early warning.

In Nepal, for example it was through participatory assessments that UNHCR identified substance abuse as a problem contributing to domestic violence, neglect of children, school drop-out and a generally unsafe environment. Bringing the problem out activated the community to form its own redress structures. In Chad, participatory assessments centered on high bride price as a factor behind youth suicide. Community elders subsequently took on the problem, which led to a dramatic drop in the rate, as well as in the incidence of SGBV.

The office of the Assistant High Commissioner for Protection is the home currently for oversight of the AGDM Accountability Framework. In the spirit of this responsibility, I turn now to some specific protection challenges, using the AGD lens as the filter.

PROTECTION AND GENDER

Situations of forced displacement are not gender neutral; they affect women and girls disproportionately. Exposure to rape, human trafficking, survival sex, and in tandem lack of documentation and exclusion from support and services, is commonplace. Many of our programs focus on building the skills of women to assist them to play a more active role in determining their own futures and that of their families and communities. This is what women have requested, including during the Regional Dialogues with Refugee Women, organized in the context of the 1951 Convention's 60th anniversary. These were a special form of participatory assessment.

The Dialogues brought out particularly the sexual and gender-based violence (SGBV) threats. The women reported alarming trends like sex for house repairs or for grades in schools, rape of minors by so-called "protectors" and forced marriage, often under-age, to overcome the stigmatisation of rape. Follow up to the dialogues is in train. In Jordan, for example, where women asked for an emergency response system for rape cases, the national Family Protection Department has agreed to engage. There are new programmes for survivors, additional safe houses constructed and outreach medical and psycho-social support centres set up in places from Medellin [Colombia] to Kyangwali [Uganda] or Delhi [India]. Such welcome developments are cause for optimism.

UNHCR offices have also been strengthening their own SGBV prevention and response strategies, including in emergencies. Community watch teams, innovation in domestic energy fuels, scaling up energy efficient stoves, better access for displaced women to legal, medical, and psychological services, as well as more accessible safe shelters, and referral mechanisms for victims of trafficking embedded in the broader protection framework, have variously resulted. We are improving data collection, monitoring and evaluation of GBV incidents through the Gender-Based Violence Information Management System (GBVIMS). It is being progressively rolled out in a number of countries, including Chad, Ethiopia, Uganda and Colombia where it is assessed as having markedly improved institutional coordination, and the interaction between civil society, communities and local institutions. UNHCR has been instrumental in developing this tool, which is now an inter-agency one, overseen by a global steering committee composed of UNHCR, UNFPA, UNICEF, WHO and IRC.

The Women’s Dialogues underscored the importance of addressing dangerous levels of impunity. The women felt strongly that the failure to investigate and prosecute sexual violence and the inability of victims to seek and achieve redress has eroded their confidence in law enforcement actors and the judiciary and prevented survivors from coming to terms with what has happened to them, and moving forward with their lives.

Initiatives which bring justice and reparations to survivors and help to deter recurrences are often talked about, but far less acted upon. Hence I have made it a particular responsibility of my Office, in follow up to the Dialogues through 2012, to promote activities by UNHCR to ensure that justice is more accessible to victims of SGBV. Justice is a broad-based concept, including not only remedies for violations of rights and reparations for harm suffered, but at an earlier stage containing impunity through education, training and prevention activities. For 2012/13 we are setting in train an “access to justice initiative”, centered on both response and prevention. It is of course primarily the responsibility of States to prevent, investigate and punish acts of SGBV and provide remedies to victims. UNHCR plays only a supportive role together with important partners, including UN Women. We will be variously encouraging the enactment of laws and the operation of law enforcement and justice mechanisms which are gender sensitive; the realization of safe and supportive protection environments for SGBV survivor’s; and women’s better access to legal support.

Justice is for everyone. It is not SGBV or displacement specific. UNHCR's mandate extends to the protection of stateless persons. Statelessness is an anomaly in the 21st Century and a significant human rights problem which, when left unaddressed, breeds inequality, marginalization and stigmatization. Women and their children are still at particular risk in many countries. A recent global survey of nationality laws found that 26 countries continue to discriminate against women by failing to give mothers the ability to confer nationality on their children on an equal basis with fathers. It is welcome that some countries, like Kenya and Tunisia, have taken significant measures recently to redress this through national legislation. It is also positive that six countries followed up on their Ministerial Meeting pledges to accede to the Statelessness Conventions and that others are reviewing this or withdrawing reservations and putting in place determination procedures for stateless persons.

PROTECTION AND AGE

Children have comprehensive rights under international law, yet in practice they are often deprived of the most basic ones. Forced displacement exacerbates children's exposure to neglect, exploitation and sexual abuse. The AGD Framework consistently brings out that a lot more needs to be done when it comes to child protection. Recent statistics indicate that, despite ongoing efforts by UNHCR and partners, progress against key child-related GSP [Global Strategic Priority] indicators continues to be very limited. [Only 19% of Unaccompanied and Separated Children have undergone a Best Interest Determination, only 51% of newborns in camp settings are reported as being issued with a birth certificate. Programs for adolescents are an exception.]

The growing number of unaccompanied children moving throughout Asia, Europe, Central America, the Middle East and Africa is an extremely worrying trend. UNHCR's data, which admittedly fluctuates, suggests that around 4-5% of all asylum applications in industrialized countries are from children seeking asylum on their own. Parents are increasingly entrusting even very young children to the growing smuggling and trafficking trade.

There are a variety of reasons for children moving on their own, which cannot always be disentangled. Sometimes it is a coping mechanism to deal with repressive national conscription policies. Economic pressures on family or family reunion with relatives

abroad, are other reasons. In many cases the cause directly links to conflict, as children increasingly become direct targets of violence. From Somalia to Syria, and way beyond, children are casualties, killed, tortured, forcibly recruited or arbitrarily arrested.

Unaccompanied and separated children are a protection challenge. Return, is impeded where family tracing possibilities in source countries are limited. Care arrangements in camps can be unreliable, with children often abandoned as carers move on. Facilities in camps are rarely adequate, but urban settings for unaccompanied children can be just as threatening. In a report just published: “Protecting Children on the Move”, commissioned by UNHCR and funded by the EU, alarming problems are brought out. These include policies on the part of some authorities not to provide properly for the children so as to create disincentives to further arrivals. The resulting situations prove the fallacy of a ‘do nothing and it will go away’ approach. Smugglers and traffickers move freely in unhealthy makeshift camps, as do drugs. Inhabitants, including very young children, exist in a legal limbo, close to being invisible to the national asylum system.

In any case, these asylum systems are most often created with adult beneficiaries in mind, and are ill-equipped to address the specific claims of child asylum-seekers. In many countries guardianship, often a precondition to access the asylum procedures, is difficult to secure in practice. Inadequate age assessments frustrate or delay access to the procedures. The situation is further exacerbated by states failing to put in place appropriate best interest determination procedures.

One of the problems which should not occur, but does with frequency, is that of children in immigration detention. States detain children for a number of reasons: for health and security screening, to check identities, to deter more arrivals and to facilitate early removal. Sometimes, children are detained because it is more convenient to do so than to release them into the community. The conditions of detention can be grim, marked by squalor and an absence of any recreation or education possibilities. Sometimes regular jail cells are used.

Children have great difficulty understanding the reasons for their circumstances. So should we. A number of States, including Hungary, the Czech Republic, Ireland, Italy,

Portugal and Venezuela have legislated recently to prohibit the detention of refugee, asylum-seeker and migrant children. UNHCR advocates for children being taken out of detention and subscribes to the conclusions of an important publication released recently by the Alternatives to Detention Coalition (IDC) titled “Captured Childhood” which puts forward alternatives to detention models, built on three basic starting blocks: 1) That a child is first and foremost a child; 2) That it is never in the best interest of the child to be detained; 3) That liberty is a fundamental human right. Alternatives to detention are an important focus of new Guidelines issued by UNHCR on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers. They supersede those issued in 1999 and provide examples of alternatives to detention that states could explore. Models are already in place in countries like the US, Canada, Australia, Belgium, Philippines, Argentina, Sweden or Japan.

For its part, UNHCR is expanding the pool of child protection experts for deployment by the Office. This year at least 10 UNHCR operations have received such deployments thanks to the support of our stand-by partners. We launched in June our new Child Protection Framework, which is being rolled-out in eleven target countries: [Chad, Egypt, Ethiopia, India, Kenya, Mexico, Rwanda, Sudan, Thailand, Uganda and Yemen]. Child protection training material is being developed to anchor this work and to support Best Interest Determination (BID) in the field. A new tool, “Listen and Learn: Participatory Assessment with Children and Adolescents” should assist offices to make their participatory assessments more child-specific and friendly. All these initiatives by UNHCR will, of course, not solve the problems, which go beyond the mandate and capacity of the Organization. All actors need to reinforce their respective contribution if this situation is to change and in particular more funding for child protection activities needs to be prioritised.

So too should birth registration, which is unacceptably low in many displacement situations and is laying the seeds for the new statelessness situations of the future. A number of States made enhanced birth registration one of their pledges at the Ministerial Meeting event last year. This is actually happening in Central Asian states, Pakistan, Thailand, the Philippines, Uganda and Kenya, among others. This Committee could contribute to this momentum through adopting a protection conclusion on birth registration.

Education is a fundamental human right. Every child is entitled to it. It is critical to the development of individuals and societies. Access to quality education can improve protection for children with hours spent within a classroom equaling hours not spent exposed to the risks outside schools, which can be very prevalent in displacement settings – risks such as SGBV, child labour or forced recruitment. Education is also fundamental in making children key actors in their own protection. It can transmit life-saving information to children and families, on topics from sanitation to land-mines.

Yet more than 24 per cent of all refugee children between 6 and 11 years of age do not receive primary education. The figures for secondary education are even more critical..

In 2011, UNHCR commissioned a global review of refugee education, which made a number of recommendations now translated into a new Education Strategy for the Office. Motivating and incentivizing communities to send children to schools, constructing classrooms, providing supplies and improving teacher quality are all goals being supported not least through new partnership arrangements. Education opportunities are for example being expanded through strategic partnerships with UNICEF in the East and Horn of Africa. UNHCR’s cooperation with the German Government through the DAFI scholarship scheme is an inspiring but too rare example of arrangements to improve access to higher education. Since 1992, the DAFI programme has enabled over 6,000 refugee students to pursue university education. Ethiopia’s scholarship programme for Eritrean refugee students, with 75% funded by the Government of Ethiopia and 25% funded by UNHCR is a further bright light in an otherwise dim landscape.

PROTECTION AND DIVERSITY

There is growing awareness that people fleeing persecution on account of their sexual orientation and gender identity should qualify as refugees under the 1951 Convention. In addition, the specific protection problems many lesbian, gay, bisexual, transgender and intersex (LGBTI) persons face in flight and in exile are becoming more visible and understood. The discrimination they encounter can be virulent, their isolation from family and community profound, and the harm inflicted on them severe. It is therefore a welcome development that some 40 countries around the world grant asylum on such grounds. We encourage others to follow their lead.

Xenophobia is a phenomenon present in many societies. Racially motivated attacks and hate crimes against migrants and refugees have increased dramatically and have become an almost daily phenomenon in a number of countries. As the South African Human Rights Commission states, in light of the many diverse causes which drive anti-foreigner violence “the concept of a society united in diversity continues to present challenges.” The noteworthy responses to xenophobic violence put in place in South Africa, in part through a cooperative effort between UNHCR and the National Police Service, deserve careful review for the interesting techniques for prevention, response and remedy that have been developed. These include a 24 hour hotline which receives at its peaks around 4000 calls a month. There is also a national index of potential violence hotspots, anti-xenophobia-focused teams within the police force, and outreach teams which verify reported threats, facilitate and monitor local police responses, and engage with conflict resolution and reintegration activities.

In Greece, a rise in xenophobic attacks has prompted the creation of the Racist Violence Recording Network. The objective is to promote zero tolerance of hate crimes, as well as the protection of victims and witnesses, to enable them to denounce such acts without the fear of arrest or retaliation. The Network might well be seen as a good practice worth emulating elsewhere. It was set up at the initiative of the National Commission for Human Rights (NCHR) and UNHCR in Greece, with the participation of 19 non-governmental organizations and other bodies, as well as the Greek Ombudsman as observer.

Turning to another aspect of protection and diversity, the WHO estimates that 15% of the global population lives with a disability, a figure which broadly represents 6.5 million displaced persons. They can face heightened exposure to violence and sexual abuse, exploitation, and exclusion from humanitarian assistance, education, livelihoods and health care. The Women’s Refugee Commission and UNHCR have embarked on a joint program of analysis and response. UNHCR is also including prominent national disability actors in protection activities in a number of countries. This has enabled us to raise the level of awareness about the threat that SGBV poses for the disabled, as well as boost capacity within the broader humanitarian community to include persons with disabilities in prevention and response to SGBV. Government pledges at the Ministerial Meeting to protect people with disabilities included measures to better tailor reception

facilities, and to increase resettlement quotas. We look forward to working together with you on their implementation. It is encouraging to see that some governments, including Uganda, Burundi and Nepal, are already taking a lead in this regard.

CONCLUSION

Through AGD work we have learned a lot over the years about how to engage with and respond to persons of concern to the Office, not as a faceless mass, but as individuals and as members of families and broader communities. In a welcome move, some governments are also showing interest in using AGD analysis and screening checklists in their own asylum programs. This Committee might wish to consider undertaking a more extensive review of the extent to which AGD is mainstreamed in the policies and practices of all protection providers. This would help to broaden what is currently a rather exclusive focus on UNHCR.

This said, we also appreciate that individual plight and assisting and protecting those in need must be approached in a way which places a primacy on human compassion, but which also keeps the broader connections² clearly in focus. Refugee work is aid and development. It is a legal world of Conventions, human rights, national laws and asylum claims. It is a form of migration management work, with resettlement at its centre. These multifaceted dimensions are at once local, international and political, embedded firmly in an environment of causes, effects and unequal burden - sharing. Capturing and balancing this reality while doing justice to the individual narratives is one of the most challenging aspects of refugee protection. If its foundation concepts are refuge and asylum, they cannot be disconnected from these other components of the global refugee response, in which old ways and new ways of doing things need to find their balance. UNHCR's protection responses are and will continue to be guided by this understanding.

² My thanks again to Tom Clarke for his interesting analysis of these connections