

Statement by Ms. Wendy Chamberlin
Acting United Nations High Commissioner for Refugees
to the 61st Session of the United Nations Commission on Human Rights

(Geneva, 17 March 2005)

Mr. Chairman,
Excellencies,
Distinguished Delegates,
Ladies and Gentlemen,

Thank you for giving me this opportunity to address this distinguished Commission devoted to the promotion and protection of human rights. Let me congratulate you, Mr. Chairman, and the other members of the Bureau on your election. I take this opportunity also to extend particular greetings to Ms. Louise Arbour.

Mr. Chairman,

For more than 50 years, the UN High Commissioner for Refugees has worked to protect the rights of refugees. This responsibility has taken us around the globe and to radically different environments in order to uphold this, the core of the UNHCR mandate. Although the international protection regime continues to evolve, one of the constants over that time has been the interwoven relationship between refugee and human rights law.

Evolving links between the two have traditionally set the agenda for UNHCR's contribution to the Commission. Today, I will focus on three issues where these links are evident and which recent events have pushed to the fore. These issues, in fact, represent groups of people UNHCR protects:

- The improvement of protection measures on behalf of IDPs;
- The complementarity of human rights monitoring and UNHCR's protection efforts, and;
- The plight of stateless persons and the prevention of statelessness

Improving protection measures on behalf of IDPs

The first of these issues, protection of IDPs, has been a consistent feature of Commission debates. UNHCR has noted with satisfaction the significant attention devoted to internally displaced persons. The Guiding Principles developed by the former Special Representative of the Secretary-General, Mr. Francis Deng, provide useful guidance firmly rooted in existing international human rights law.

Primary responsibility for internally displaced persons rests with the authorities of their countries. But the international community and the UN in particular has a responsibility to ensure that obligation – to respect and secure the rights of IDPs – is fulfilled, particularly when States are unable or unwilling to do so. These rights cover the entire cycle of displacement including, eventually, the return home. With this in

mind, a new IDP policy was developed by the United Nations Inter-Agency Standing Committee (IASC) in September 2004.

UNHCR has revisited internal procedures and guidelines for our own involvement in IDP situations. We have what could be called a 'predisposition' to help IDPs, fully respecting the collaborative approach adopted by the UN. When IDPs situations arise that are linked or similar to refugee/returnee situations, and where there is a need for intervention, we will intervene, provided that this is at the request of and in collaboration with our UN and other humanitarian partners.

Together, these measures will answer the needs of IDPs in a more effective and predictable way. UNHCR concurs with Special Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mr. Walter Kälin, that the protection of IDPs depends on access and adequate presence on the ground.

Allow me to illustrate some of the issues at hand from our experience in Darfur.

UNHCR believes that protection for IDPs begins with presence. We have deployed 50 staff members, including 20 international personnel, to three field stations in remote districts of West Darfur. We will open another seven field units in the region, six of them in West Darfur. Other UN agencies and NGOs work in IDP camps and concentration points; our unique role is to provide protection through presence to isolated IDP communities spread over great distances in West Darfur.

The strong presence of international staff in the field has, in itself, enhanced protection. It has also emboldened IDPs, who have openly and persistently raised protection problems themselves. Many individuals and community *sheikhs* have echoed what one IDP woman told a colleague when discussing the incidence of rape: "Since you are here such things do not happen anymore, but who knows what will be when you leave."

Beyond ensuring an international presence in the vast region, our protection work uses extensive monitoring to direct interventions and shape programmes. We intervene when we find that IDPs have been advised to return to unsafe areas of origin. We study relations between authorities and local populations and, where these are good, try to replicate those factors elsewhere. We raise violations of rights with local and regional police and advocate for the removal of abusers. Protection officers help police investigate and follow up on sexual and gender-based violence while programme staff work with partners, including the Office of the High Commissioner for Human Rights, to train police in the rule of law and human rights. We partner with local NGOs to provide psychosocial counseling for victims. And we are directing assistance, like shelter, seeds and tools, to needy returnees.

There can be no doubt, however, that the international response so far to the human rights crisis in Darfur falls short, and I would like to highlight several points which have emerged as immediate and inarguable needs:

- An individual's right to leave his or her country to seek asylum must be preserved at all times. Only a significant improvement in the protection situation in Darfur will prevent further outflows. Refugees continue to arrive

in Chad and UNHCR recently opened two new camps in order to accommodate the latest arrivals.

- Given the present security situation in Darfur, UNHCR cannot promote the return of refugees in Chad to their home country, or of IDPs to their areas of origin.
- Presence is itself a tool of protection, and more international staff should be deployed to the region.
- The UN must remain engaged in the region though every effort should be made to prevent a protracted situation.
- The right to protection does not depend on resources. Responsibilities and activities designed for the protection of IDPs should not be determined by funding levels.

Mr. Chairman,

This Commission has a crucial role to play in enhancing the protection of the rights of IDPs. Three fundamental points which it can stress to States:

- The obligation to actively seek assistance from the international community if they are unable to properly secure the rights of IDPs on their territory.
- The obligation to grant and facilitate access by humanitarian agencies, assistance and staff to crisis areas and, in turn, allow vulnerable populations to access them.
- An IDP cannot be forced to return to his or her place of origin or any other location where his or her life, freedom or other fundamental human right would be threatened.

Complementarity of human rights monitoring and UNHCR's protection efforts

My second point is linked to the first. The imperative to protect IDPs illustrates the larger challenge of maximizing the effectiveness of international protection efforts as a whole.

UNHCR welcomes the increased participation of counterparts from the OHCHR in the field. It offers great potential for close cooperation and to build effectively on each other's work. It may also, on occasion, require a clearer delineation of roles and responsibilities. I would like to table some observations on this issue from the UNHCR perspective, so that States can better understand our approach when considering the practical aspects of the relationship between refugee protection and human rights.

First, UNHCR is not and does not understand itself to be a human rights monitoring agency. Our monitoring functions are confined to promoting observance of the rights of persons who come under UNHCR's mandate.

That delimitation still allows, and indeed benefits from, cooperation with the OHCHR during the repatriation of refugees or the return of IDPs to their homes. In each case, UNHCR strives to ensure that such returns take place in safety and dignity. This means careful monitoring of the actual treatment of those who have returned and the ability to share information gathered with those who are still displaced. It also means an effective response to protection problems returnees may experience.

In most settings, those requirements make for large-scale and enormously complex operations. Meeting them demands a collaborative, contextual and innovative approach, as well as the resources of both international actors and any available national human rights mechanisms.

I would like to cite just one example of such an approach. This February, the Afghan Independent Human Rights Commission and UNHCR signed a letter of understanding for a human rights monitoring partnership. It envisages “that joint human rights monitoring of both returnees and non-returnees will enable close monitoring of the overall situation, with particular attention to vulnerable groups and individuals.”¹ The objectives of the partnership are “to reinforce State responsibility to respect, protect and fulfill the rights of its population.”

The plight of stateless persons and the prevention of statelessness

My last point today relates to statelessness, a problem the UN first identified in 1949.

Several human rights instruments recognize the right to a nationality. Yet many people today are deprived of these rights, rendering them in effect stateless, people who literally have no place to stay or go. These problems often start as early as the registration of their birth, when their very legal identity is challenged by a lack of documentation.

Since 1949, the international community has made significant efforts to resolve both the status of these individuals and the root causes of the problem of statelessness. The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are key milestones and establish an international legal framework. UNHCR’s mandate for statelessness has been made explicit by the UN General Assembly.

Yet relatively few states have signed and ratified these instruments. Reasons for this range from real and perceived socio-economic constraints to a fear of disturbing an ethnic balance, or concepts of ethnically homogenous societies. Unfortunately, the low accession rate is not because statelessness has been solved or become obsolete. We grapple with many forms of this discrimination today as millions of individuals still lack or have unclear nationality status.

The result is the denial of basic rights and enormous psychological distress. Large groups of people are deprived of their nationality from one day to the next. Others are ordered to leave the country immediately, dumped with a few hours’ notice at the

¹ LOU, Section B, “Partnership Objectives”, para. 6.

border of a country they have never been to and where they have no links or status. Some have lived for generations in a country without ever gaining citizenship or any form of legal identity. And the experience of stateless individuals can be nothing short of Orwellian. UNHCR recently resolved the case of a man who spent 20 years in detention after losing his identity papers. Stateless individuals are regularly denied access to education, health and other social services. They face obstacles when they want to marry, start a family, hold a government position or travel.

Despite efforts to carry out a systematic analysis of existing national legislative frameworks, our picture of the quantitative dimensions of statelessness remains incomplete. I hope though that the examples I have given explain why UNHCR considers it a serious problem – not least from a human rights perspective. Statelessness is a dilemma which needs and deserves to be addressed. We hope that the moral power of this Commission will encourage States to consider accession to existing instruments related to statelessness, and to address, at the national level, situations of statelessness, particularly those of a protracted nature.

I strongly recommend that the Commission look more closely into the issue along with measures that could be taken to return, to human and legal society, those who lack what no human being should ever be denied: someplace to call home and the full enjoyment of a legal identity. UNHCR is ready to support such measures in the exercise of its mandate for stateless persons.

Mr. Chairman,

We look forward to enhancing our partnerships with the Office of the High Commissioner for Human Rights, other UN agencies, as well as national human rights institutions, in order to further strengthen the protection of refugees, IDPs, stateless and other persons of concern to UNHCR.

When UNHCR addressed this forum in past years, we referred in one way or another to human rights violations as a root cause for displacement and obstacle to return. I would like to call upon you to be mindful always of the displacement aspect and consequences of human rights violations and to underscore these aspects in your resolutions and reports.

I hope my thoughts on the need to further enhance the protection of IDPs, the possibilities for enhanced cooperation on the link between human rights monitoring and protection, and on the plight of stateless persons will generate further debate on these issues.

Finally, please allow me to wish the sixty-first meeting of the Commission every success in your noble and fundamental task.

Thank you.

