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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

**Letter dated 19 March 2007 from the Permanent Mission of Serbia to the
United Nations Office at Geneva
addressed to the President of the Human Rights Council**

Upon the instruction of my Government, I have the honour to write to you regarding the report submitted by the Representative of the Secretary-General on human rights of internally displaced persons, Walter Kälin (A/HRC/4/38), to the fourth session of the Human Rights Council. I would like to draw your attention to the section of the report relating to the follow-up action to his visit, in which an incorrect reference was made to "Montenegro and Kosovo" (paras. 27-31).

First, I would like to call attention to the fact that the follow-up was actually to the visit to Serbia and Montenegro made in June 2005, as correctly referred to in the first sentence of the follow-up (para. 27). Consequently, the relevant chapter should bear the heading "Serbia and Montenegro". I would also like to point out the improper use of the term "Kosovo" throughout the remainder of the text on the follow-up action, which is inconsistent with the Security Council resolution 1244 (1999).

Furthermore, paragraphs 30 and 31 of the report indicate that, with regard to the ongoing Kosovo status talks and in the context of the situation of internally displaced persons, Mr. Kālin wrote in October 2006 to the President and Prime Minister of the Republic of Serbia, as well as to "the President of the Provisional Self-Government of Kosovo as well as the Special Envoy of the Secretary-General for the future status process of Kosovo, Marti Ahtisaari". In this respect, I must express my surprise that Mr. Kālin said in his report only that he "welcomes the assurances expressed by the Serbian authorities that the Government is doing its utmost to address the needs of the displaced persons" (para. 31), leaving out the substantial references made in my reply of 13 December 2006 that I addressed to the Representative of the Secretary-General on human rights of internally displaced persons, on behalf of my President and Prime Minister. The impression to be gained from this is the wrong one, that no reply to the said letter has been received from Serbia, although the report specifically referred to the reply from Mr. Ahtisaari, the Special Envoy of the Secretary-General.

I would appreciate it if you would request the Secretariat to make the necessary corrections in the chapter concerned and replace the words "Montenegro and Kosovo" with the words "Serbia and Montenegro" in its heading and insert "Kosovo (Serbia)" wherever reference is made to this Province, circulating it as a corrigendum to the report of Mr. Kālin (A/HCR/4/38).

I also request, in accordance with the instructions received from my Government, that my reply of 13 December 2006 (a copy thereof is attached*) to Mr. Kālin's letter addressed to the President and Prime Minister of Serbia be circulated as an official document of the Human Rights Council as an addendum to the same report.

Signed: Slobodan Vukčević
Ambassador
Permanent Representative

* Reproduced in the annex as received, in the language of submission only.

Annex

Geneva, December 2006

Dear Mr. Kälin,

Thank you for your letters of 2 October 2006 addressed to Mr. Boris Tadić and Mr. Vojislav Koštunica, President and the Prime Minister of the Republic of Serbia, and the recommendations regarding internally displaced persons (IDPs), attached thereto, which we studied with great interest.

We concur with you that the outcome of the current negotiations on the future status of Kosovo and Metohija should contribute to the Province's and Serbia's stability, as well as to the stability of the entire region. The issue of IDPs is, no doubt, of particular importance in that context since achieving stability will depend, in great measure, on finding solutions to this problem.

As you are well aware, the solving of the problem of IDPs remains one of the priorities of my Government. In addressing it, it has been guided by the Guiding Principles on Internal Displacement, which, as you pointed out in recommendation 2, set out, *inter alia*, that IDPs should be able to freely decide where they want to live. My Government therefore recognizes that IDPs should be in a position to choose between available options, i.e. between return, local integration and resettlement. But they can do so only if each of these options is real.

Unfortunately, for IDPs from Kosovo and Metohija the return is not a real option at all. As you pointed out in recommendation 3, much needs to be done to create the necessary conditions for sustainable return.

Ensuring security is an essential pre-condition for the return of IDPs. In that regard, addressing impunity, which regrettably still prevails in the Province, is of paramount importance. Yet, it is quite misleading to view the issue of bringing to justice all those responsible for war crimes, crimes against humanity and ethnically motivated crimes in the context of negotiations on the future status of the Province. UNMIK and the provisional institutions of self-government (PISGs) have a clear obligation to tackle impunity regardless of the negotiations on the future status. Sadly, though, delivering justice to war crimes, crimes against humanity and ethnic violence remains a distant goal in Kosovo and Metohija. It is of particular concern that UNMIK has continually failed to cooperate with the ICTY as has been pointed out also by ICTY Prosecutor Carla Del Ponte in her assessment provided to the Security Council pursuant to paragraph 6 of Security Council resolution 1534 (2004) (S/2006/353 of 31 May 2006, Annex II).

Mr. Walter Kälin
Representative of the Secretary-General
on the Human Rights of Internally Displaced Persons
Geneva

There is no room, either, for complacency about property rights, another fundamental element for ensuring the substantial return of IDPs. In fact, the protection of property rights remains one of the gravest problems in the Province as difficulties with the repossession of property by rightful owners persist and UNMIK and PISGs continually fail to address illegal occupation of property adequately. Again, the protection of property rights should not be dealt with within the negotiation process, as you seem to have suggested, since UNMIK and PISGs are under the obligation to guarantee property rights.

We share your view about the need to create an environment for sustainable return and the steps that PISGs should take to that end. However, as in the case of transitional justice and property, it is not acceptable that an effective prohibition of discrimination in all spheres of life, safety, access to the judiciary and the protection of religious and cultural sites be treated as subjects of negotiations for those are basic human rights which PISGs and UNMIK are obliged to ensure.

In the absence of necessary conditions for sustainable IDP return despite a seven-year international presence in the Province, it is clear that reinvigorated efforts by all actors, including relevant United Nations human rights mechanisms, are needed in order to ensure the exercise of the IDPs' right to return.

The Government of Serbia has done its utmost to address the needs of the IDPs and to enable them to lead a normal life while in displacement, protecting thus fully their human rights. I trust and believe that you were given convincing evidence of these efforts during your mission to Serbia in June 2005 and in the follow-up to the mission. They include also the quest for an appropriate solution to the problem of access to personal documents, affecting mainly the Roma, Ashkali and the Egyptians, to which you referred, *inter alia*, in recommendation 1. We stand ready to provide detailed information on these measures as well.

As to the other concerns expressed in recommendation 1, namely on the issue of statelessness, we cannot but notice that it prejudices the future status of Kosovo and Metohija. Although you propose that some steps be taken in order to avoid statelessness "whatever the final outcome of the current negotiations on the future status of the province of Kosovo will be", the content clearly indicates to a particular result of these negotiations.

Similarly, your recommendation 5 on mutual recognition of rights, entitlements and documents presupposes a certain outcome of the negotiations, even though you suggest that a number of guarantees be included in the outcome of the negotiations "whatever their result".

It is our view that the prejudging of the outcome of the negotiations on the future status of Kosovo and Metohija is unacceptable and may be counter-productive as it undermines attempts to reach a mutually agreeable solution.

We fully concur with you that renewed displacement must be avoided. A new wave of displacement triggered by the outcome of the negotiations would only destabilize the region. To avoid this, it is necessary to find a negotiated solution that would be acceptable to both parties.

Looking forward to continuing our cooperation on the issues of human rights of IDPs, I remain

Yours sincerely,

Slobodan Vukčević
Ambassador

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