



Refugee Council
of Australia



AUSTRALIA'S REFUGEE AND HUMANITARIAN PROGRAM 2011-12

Community views on current challenges and future directions

Executive summary

March 2011

*This is an extract from the RCOA submission to the Australian Government
on the 2011-12 Refugee and Humanitarian Program.*

The full submission can be downloaded from www.refugeecouncil.org.au

Cover photo: In Malaysia, as in many other Asian countries, even official UNHCR refugee status does not always afford adequate protection. These two Afghan refugee brothers in their 20s are not allowed to work legally, even though they are desperate to support their families. © UNHCR/Zalmai.

1. EXECUTIVE SUMMARY AND RECOMMENDATIONS

1.1 AUSTRALIA'S REFUGEE AND HUMANITARIAN PROGRAM AND GLOBAL NEEDS

During 2009-10, Australia passed the 750,000 mark in its intake of refugees and humanitarian entrants since nationhood.¹ The 13,770 refugee and humanitarian visas issued in 2009-10 were divided between 9,236 offshore refugee and humanitarian visas (the lowest number in eight years) and 4,534 onshore visas (the second highest on record). These included 2,156 onshore visas granted to asylum seekers who entered Australia by boat. The main source regions for offshore refugee and humanitarian visas were Asia (38.6%), Middle East and South-West Asia (31.8%) and Africa (29.2%). The Refugee and Humanitarian Program remained a small part of overall immigration to Australia, making up just 7.0% of permanent additions by migration in 2009-10. The offshore program is well below its historic high of 89,199 arrivals in 1949-50 and its 35-year peak of 21,917 arrivals in 1981-82.²

Australia's share of international refugee support remains modest – hosting just 0.22% of the world's refugees and receiving just 0.53% of asylum applications in 2009.³ Australia received 9.85% of the refugees resettled in 2009 but resettlement remains a durable solution offered to a tiny minority, with only 1.1% of the refugees under the mandate of the United Nations High Commissioner for Refugees (UNHCR) benefiting from resettlement during the year. When the numbers of refugees being hosted is considered with 10 years of refugee recognition and resettlement, Australia's global share is 1.16% (19th overall, 23rd on a per capita basis and 68th relative to total national Gross Domestic Product).

Five countries have produced 60% of the refugees under UNHCR's mandate – Afghanistan (2,887,123), Iraq (1,785,212), Somalia (678,309), Democratic Republic of Congo (455,852) and Burma (406,669). The six countries to receive the largest influxes of refugees are Pakistan (1,740,711), Iran (1,070,488), Syria (1,054,466), Jordan (450,756), Kenya (358,928) and Chad (338,495). More than half of the world's refugees (5.47 million) are in what UNHCR classifies as protracted refugee situations.⁴ Only 24% of the world's refugees are living in camps, with the rest dispersed in often very difficult conditions in urban and rural areas.

UNHCR's 2009 statistics record another 7.95 million people of concern who are not in countries of citizenship – asylum seekers, stateless people and others in need of protection. Around two-thirds of these people (5.17 million) are in Asia, the largest groups being stateless people in Thailand, Nepal and Burma. Within Asia, there are unknown numbers of people (perhaps millions) who have been displaced primarily by persecution but do not appear in UNHCR statistics, having no official status as asylum seekers or refugees. Regarded as “illegal foreign workers” or “illegal immigrants”, these people are primarily from Burma and can be found in largest numbers in Thailand, Bangladesh and India.

While global resettlement in 2009 (at 112,442 places) was the highest since 1995, resettlement will have to be expanded considerably if current needs are to be met. UNHCR estimates resettlement needs for 2011 at 172,307 and over coming years at 805,535. Those in need of resettlement are from the three key regions of Middle East and South-West Asia (43.8%), Africa (33.2%) and Asia (17.3%).

Recommendations

Based on feedback from its national consultation process from discussions with non-government organisations (NGOs) in Asia, Refugee Council of Australia (RCOA) recommends that the Australian Government:

¹ As at 30 June 2010, the total refugee and humanitarian intake and refugee recognition since 1901 was estimated at 757,500.

² Australia's Refugee and Humanitarian Program was redeveloped in 1977, in response to the emerging refugee crisis in Asia.

³ Statistics in this section calculated from UNHCR's 2009 Global Trends or UNHCR statistics from earlier years.

⁴ Refugee populations of more than 25,000 displaced for more than five years. These protracted refugee situations involve refugees from 18 source countries in 23 countries of asylum.

1. *Demonstrate its unequivocal commitment to the Refugee Convention by ending the numerical link between the onshore Protection program and the offshore Refugee and Humanitarian program, to demonstrate the importance of Australia providing asylum to refugees who have not been able to find effective protection elsewhere.*
2. *Advance the development of an Asia-Pacific regional refugee protection framework by expanding its offshore resettlement program to offer additional places for vulnerable refugees within the region.*
3. *Develop a five-year plan to expand its offshore Refugee and Humanitarian Program to 20,000 places per year, returning it to a similar level to that achieved in the years following Australia's response to the Asian refugee crisis in the late 1970s.⁵*
4. *Maintain a global focus to Australia's resettlement program by setting a minimum regional target of 25% for each of the key regions of Africa, Asia and the Middle East and South West Asia.*
5. *Encourage other governments to increase their commitment to resettlement (or to develop resettlement programs for the first time) and to include the needs of the Asia-Pacific region as part of a global approach to resettlement.⁶*
6. *Review Australia's policies on the resettlement of refugees with disabilities, giving careful consideration to:*
 - (a) *the introduction of exemptions from the health requirement for all applications under the offshore component of the Refugee and Humanitarian Program and all applications for family reunion made by refugee and humanitarian entrants; and*
 - (b) *the implementation of key recommendations of the Joint Standing Committee on Migration report "Migration treatment of disability: Enabling Australia".*
7. *In the light of advice from NGOs working with refugees in Asia, the Middle East and Africa, give greater consideration to resettling refugees from smaller groups of highly vulnerable refugees including:*
 - (a) *Refugees who are well outside their region of origin (such as African and Middle Eastern refugees in Asia) and have little prospect of local integration;*
 - (b) *Refugees in detention or at high risk of being detained.*
8. *While not altering UNHCR's pivotal role in referring refugees for resettlement, give consideration to receiving resettlement referrals from experienced NGOs which have detailed knowledge of highly vulnerable people within larger refugee populations.*
9. *Explore even greater cooperation with the key resettlement states of the United States and Canada, examining options for the three states to take on different but complementary responsibilities for resettlement within the Africa, Asia and the Middle East regions.*
10. *Consider options for the development of a small additional program (or sub-program) to facilitate resettlement of refugees with the involvement of community-based organisations.*

1.2 DEVELOPING AN ASIA-PACIFIC REGIONAL REFUGEE PROTECTION FRAMEWORK

Participants in RCOA's consultation process were unanimous in their opposition to the idea of a Regional Processing Centre in Timor-Leste, viewing it as an unacceptable shifting of Australia's responsibility to another country and an imposition on a very small state by a rich and powerful neighbour. Asian NGO representatives consulted shared these concerns, seeing it as an entirely Australia-centred proposal which offered little towards resolving refugee protection issues in Asian states.

The Prime Minister's proposal for an Asia-Pacific Regional Protection Framework is viewed quite differently, with many consultation participants agreeing that regional and international cooperation is vital to any significant change to the circumstances of people seeking protection from persecution. However, given the often self-serving and highly distorted nature of the Australian

⁵ Australia's offshore refugee and humanitarian intake averaged 21,239 per year in the three years from 1 July 1979.

⁶ In 2001, the then UN High Commissioner for Refugees, Ruud Lubbers, recommended that developed nations set annual resettlement targets at a level equal to 0.1% of their national population. Under this formula, Australia's offshore program would have 22,000 places each year.

political debate about asylum seekers, many are sceptical about whether Australia is genuinely interested in seeing an improvement in refugee protection, fearing that any efforts to change current circumstances will be aimed only at achieving domestic political goals.

The development of a regional protection framework will clearly require significant additional commitments from Australia, including financial resources and resettlement places. Australia must demonstrate that its goal is not to shift its responsibilities to its Asian neighbours but that it is prepared to lead by example, both in its modelling of protection-centred asylum policies and in its willingness to put resources into strategies to improve regional refugee protection outcomes. Australia must be prepared to review its current asylum policies and amend policies which, if copied elsewhere, would undermine refugee protection.

Asian NGO representatives emphasised the importance of developing a framework which will have tangible benefits for participant countries. It was suggested that, if countries in the region are able to see clear benefits of being involved in a regional protection framework, they may be more inclined to participate. States are more likely to take steps to enhance refugee protection if neighbouring states are taking similar steps at the same time, removing fears that unilateral actions may result in refugees moving from neighbouring states where protection is inadequate.

Educating and empowering local NGOs in the region to take on a greater role in advocating for improved standards of refugee protection could be critical to encouraging cooperation. A Thai NGO representative commented that responses to refugee issues in his country were largely in the hands of international organisations and foreign nationals, suggesting that Thai citizens and organisations needed to be much more actively involved if refugee questions were to be taken more seriously by Thailand. One consultation participant suggested developing a parallel NGO process to the Bali Process to facilitate greater NGO engagement on protection issues in the region.

A Malaysian NGO representative observed that many refugees who came to Malaysia from elsewhere expected to be treated fairly but were shocked by the treatment they received from Malaysian authorities and the limited support given by UNHCR. While most would prefer to remain in Malaysia, after a while they began to consider ways of leaving for countries with higher human rights standards, including Australia. In many parts of Asia, people have great difficulty in getting prompt and unrestricted access to a refugee status determination process and continue to have no legal status even after registering with UNHCR. In some countries, even UNHCR recognised refugees are subject to arrest and detention. Few refugees or asylum seekers have official permission to work and, in order to survive, are forced to break the law, risking arrest or detention. Many asylum seekers and refugees report being exploited by employers taking advantage of their lack of status and by corrupt officials pressuring them to pay bribes. Across the region, many refugees are asking for the most basic of human rights – access to an asylum process, official permission to remain in the country, protection from arbitrary detention and refoulement, the right to support themselves, health care and access to basic education for their children.

As acknowledged earlier, more than two-thirds of the world's stateless people are in the Asian region, with by far the largest group being in Thailand. Research conducted by the United Nations Economic, Social and Cultural Organisation (UNESCO) has shown that a lack of legal status is the single greatest risk factor for a highland person in Thailand to be trafficked or exploited. In seeking to improve protection within the region, collective international action is needed to resolve statelessness.

Consultation participants saw the need for Australia to be much more active in advocating for international pressure on countries responsible for policies which create refugee crises. For example, Bhutan, which has produced more refugees per capita than nearly any other country in the world, has faced little public pressure, even from the countries which have committed significant resources to the support and resettlement of Bhutanese refugees. In addition, there is a pressing need for greater international scrutiny of the treatment of asylum seekers and refugees in countries of asylum, through channels independent of governments and UNHCR.

Recommendation – Strategies for the promotion of a regional protection framework

11. Taking into consideration the nature of protection needs in the Asia-Pacific, feedback from consultation participants and NGOs working in the region and key lessons learned from previous examples of regional cooperation on refugee protection, RCOA recommends that the Australian Government not pursue plans for a single Regional Processing Centre in Timor-Leste but focus on promoting the development of an Asia-Pacific regional refugee protection framework through the following strategies:

A. Focus on protection principles

- i) Seek the agreement of governments in the Asia-Pacific region to work together collectively to provide to all asylum seekers:
 - a) Timely access to sound refugee status determination;
 - b) Effective protection (including freedom from detention and respect of human rights) throughout the time taken to determine status and to provide a durable solution;
 - c) Timely durable solutions and/or a safe return to the country of origin.
- ii) Work towards the development of a regional agreement to guarantee non-refoulement.

B. Promote greater understanding of refugee protection needs

- i) Create a new position of Australian Ambassador for Refugee Protection, to assist the Government in high-level advocacy on refugee protection issues within the Asia-Pacific region and internationally.
- ii) Support the development of a parallel NGO process to the Bali Process, to foster the engagement of NGOs across the region in refugee protection issues.
- iii) Lobby UNHCR to coordinate more detailed research on forced displacement in the Asia-Pacific region, to gain a fuller understanding of refugee protection needs. This should include research on the numbers and circumstances of unrecognised refugees in Asia (particularly people from Burma in Thailand, India and Bangladesh), with a view to exploring strategies for regularising their status.
- iv) Lobby for the creation of a UN Special Rapporteur on Refugee Protection, to promote robust international examination of refugee needs independent of all government and UNHCR processes.

C. Model best practice in asylum procedures

Review Australia's approach to immigration detention with a view to reforming Australia's asylum seeker reception and detention arrangements to model the protection-centred practices Australia would like to see replicated in the region. The current Australian policy of indefinite mandatory detention is a particular concern, given the role that arbitrary detention plays in the fears which foster onward movement from South-East Asia.

D. Respond to protection issues in refugee-producing countries

- i) Involve the Department of Foreign Affairs and Trade in taking up protection issues within refugee-producing countries through every multilateral and bilateral means possible, proposing international action to support states unable to protect their populations and putting international pressure on those unwilling to do so.
- ii) Develop a strategy for the role of Australian aid in improving situations in refugee-producing countries, including through development initiatives, peace building, anti-corruption programs, support of human rights frameworks, strategies to resolve statelessness and efforts to improve security for vulnerable people.

E. Encourage and support change in countries of asylum

- i) Encourage states to work towards policies which ensure refugees and asylum seekers have:
 - a) Fair and prompt access to asylum processes;
 - b) Legal status and freedom from detention;
 - c) The right to work;
 - d) Access to education;
 - e) Access to health care.

- ii) Lobby for each country in the region to develop domestic asylum legislation in line with the principles of the Refugee Convention.
- iii) Seek opportunities to promote training for government and NGO officials on refugee protection issues, particularly in countries where national expertise is more limited.
- iv) Develop a strategy for the role of Australian aid in improving situations in countries of asylum, focusing on education of refugees and asylum seekers, health and livelihood programs, support for highly impoverished non-refugee populations, capacity building of government officials on refugee protection issues, supporting the role of local NGOs and ensuring adequate funding for UNHCR's work.
- v) Fund the development of a deployment scheme to involve Australians in supporting the provision of legal aid to asylum seekers, refugee status determination and involvement in resettlement programs.

F. Focus on statelessness

- i) Lobby for the development of strategies to resolve statelessness in the Asia-Pacific region, through the Bali Process, in discussions with ASEAN bodies and in bilateral discussions with governments across Asia.
- ii) Work with governments of the Asia-Pacific region to put forward specific proposals to resolve statelessness in the lead-up to the ministerial meeting to be hosted by UNHCR in Geneva on 7-8 December 2011.
- iii) Explore forming an international working group to address the displacement of Rohingya, examining issues inside Burma, treatment of Rohingya asylum seekers and refugees in various parts of Asia and possible remedies.

G. Enhance resettlement

See recommendations 1 to 10.

H. Develop strategies for sustainable and monitored return

- i) Seek agreements with states receiving returnees that all returnees will be protected from detention, harassment, torture and discrimination on return, with future returns suspended if this agreement is breached.
- ii) Work with UNHCR and human rights organisations to provide comprehensive independent monitoring of returnees.
- iii) Provide a safeguard for returnees from Australia, guaranteeing immediate resettlement through the In Country Special Humanitarian Program if they are subject to detention, harassment, torture or discrimination.

1.3 FAMILY REUNION AND THE SPECIAL HUMANITARIAN PROGRAM

The impact of the policy of numerically linking the offshore Special Humanitarian Program (SHP) and the Onshore Protection Program – a policy not replicated in any other country – has been to reduce the availability of SHP places to its lowest level in nine years. The SHP is the main means by which humanitarian entrants reunite with family members, providing options for the reunion of immediate family (or “split family”) for SHP and onshore protection visa holders and for members of the wider family for people on any form of Refugee or Humanitarian visa.⁷ Within the SHP, the “split family” category (partners and children of adult humanitarian entrants and parents of unaccompanied humanitarian minors) is given priority over wider family reunion and SHP proposals from community-based organisations. In 2009-10, 1,267 SHP Split Family visas were granted, a level lower than two of the previous three years. However, within a smaller program, the Split Family category made up a higher proportion of the SHP (39.2%). The recent increase in asylum applications is, under current policy, highly likely to result in a further decrease in SHP visas available and an increase in requests for family reunion under the Split Family category.

⁷ 'Split family' members of Refugee visa holders are counted against the Refugee component, not the SHP.

Refugee and humanitarian entrants are increasingly looking at other visa options in the general Migration Program, in an attempt to bring family members to Australia. However, in most cases, these options are not viable, given the high costs of application and agent fees and of supporting family members for extended periods without social security, health care and other support. Eligibility restrictions also limit family reunion for humanitarian entrants. For example, the requirement, for an Orphan Relative visa, that documentation be provided to demonstrate that a family member is the sole survivor in the context can be problematic in a refugee situation where family members are missing.

There is a growing body of research suggesting that the prolonged separation of families – particularly those displaced by war and conflict – has a far-reaching impact on those who have been resettled. The negative psychosocial, economic and social consequences of family separation have been clearly identified in community consultations in the past. This year's consultations also highlighted the potential benefits to individuals, families and the broader Australian community of ensuring there is timely humanitarian family reunion.

In RCOA's community consultations, the main concerns raised about family reunion for humanitarian entrants were:

- the insufficient number of places for family reunion with the Humanitarian Program;
- the impact of the numerical link between the onshore protection program and the SHP;
- the restrictive definition of "family" applied by the Department of Immigration and Citizenship (DIAC) failing to take full account of actual family structures and dependency;
- the very limited access to affordable migration advice – and the negative impact this has on the overall application process;
- difficulties in the application process (including the complexity of forms, the time taken to determine applications, the inadequacy of feedback to unsuccessful applicants and unreasonable expectations about availability of supporting documentation);
- the impacts of the "time of decision" requirement and the long processing times on split family applications from unaccompanied humanitarian minors;
- the difficulties faced in reuniting family through the Migration Program; and
- the separation of families through resettlement to different countries.

Family reunion is, of course, not the only focus of the SHP. It also provides a means for resettlement for:

- People who cannot easily get access to UNHCR refugee status or its resettlement process, despite having compelling needs for resettlement.
- Those still within their country of origin, providing a vital alternative, through the In Country SHP visa, for people at immediate risk of persecution. (As noted earlier, this could be expanded to include returnees from Australia who are experiencing persecution or significant discrimination).
- Refugees supported by community-based organisations, including ethno-specific groups and broader volunteer organisations formed specifically to support the refugee resettlement process.

In a shrinking program with expected growth in Split Family applications, it is important that these other aspects of the SHP are preserved and supported. Community-based organisations have played an important role in resettlement in Australia. Their continuing role can be enhanced through improved training, requiring effective cooperation between these groups and providers of Humanitarian Settlement Services, supporting groups with access to resettlement referrals (where relevant) and ensuring that competent groups continue to have the opportunity to assist in resettling an appropriate number of new arrivals.

Recommendations

RCOA recommends that, in seeking to address the issues outlined above, the Australian Government:

12. *Increase the number of places available in the Special Humanitarian Program, through breaking the numerical link with the onshore protection program and by expanding the overall program.*
13. *Enhance humanitarian entrants' access to family reunion through the Migration Program by waiving application fees, lifting bars on access to social security for family reunion visa holders who have been proposed by humanitarian entrants and examine alternatives to complex legal and eligibility requirements which cannot be met by people living in refugee situations overseas.*
14. *Foster discussion among resettlement countries about how to work together in resettlement to reduce dispersal of homogenous groups of refugees.*
15. *Review the "time of decision" requirement for SHP Split Family grants, in view of the likely long-term impact on those who arrived as unaccompanied humanitarian minors of living alone in Australia without family support.*
16. *Review the DIAC definition of "family" to bring it into line with the UNHCR Resettlement Handbook's definition (which includes a broader understanding of dependency).*
17. *Create incentives for migration agents to provide free advice to humanitarian entrants through discounts in the costs of registration and training and modifications to registration requirements.*
18. *Develop a clearer strategy for the aspects of the SHP which do not involve family reunion, including the In Country SHP and the involvement of community-based organisations in resettlement.*
19. *Increase funding for the Immigration Advice and Application Assistance Scheme and review funding distribution to increase access for refugee and humanitarian entrants across Australia.*
20. *Improve feedback to people whose SHP proposals are unsuccessful, in line with recommendations of the Commonwealth Ombudsman's Report 15/2007.*
21. *Seek community feedback about how current information strategies about the SHP application process and other family reunion options can be further improved.*

1.4 PUBLIC DISCOURSE ON AUSTRALIA'S REFUGEE POLICIES

Consultation participants expressed concern again this year about what they saw as a general failure of political leadership on asylum seeker and refugee issues. Many expressed their desire for politicians on all sides of politics to present facts, use correct terminology and cease leveraging asylum issues for political gain. The confusion of issues – often wilful – in the current discourse was noted. Over-population, water security, and caring for vulnerable and marginalised Australians all enter as common arguments against taking a more humane approach to asylum seekers and refugees. There is wider public concern about government expenditure in relation to asylum seekers and refugees, with perpetuated myths fuelling the concern.

Refugee and humanitarian entrants voiced a number of concerns regarding both the media's and politicians' portrayal of issues and had varying views of the direct impact the public discourse had on their daily lives. While people consulted in Sydney reported no adverse treatment, a number of those settled in Perth and Brisbane said they had experienced hostile treatment as a direct result of the public debate about asylum seekers and refugees. Concerns were expressed about politicians purporting to be supportive of refugees still in camps offshore without realising that their negative comments about asylum seekers were actually hurting people who came through the offshore humanitarian program. The negative stereotypes perpetuated in the media (as "queue jumpers" and as people reliant on welfare) impacted the lives of refugee and humanitarian entrants, particularly when seeking employment. They felt stigmatised as a burden on Australia, rather than as people who contribute economically and socially. African community members in Brisbane spoke about the appearance of graffiti on African-owned and operated shops, urging Africans to "go back to your country".

Another person noted that the negative public discourse led to a missed opportunity: that the Australian community “does not get to see what refugees and asylum seekers *do*, or how we contribute”. Other negatives from the public discourse are also overlooked, such as the psychological impact on some former refugees who relive traumatic experiences as a result of negative media coverage and others who respond by withdrawing from wider community contact because of a feeling that they are being rejected by Australian society.

In considering the strategies to address ways to shift the negative public discourse on Australia’s refugee policies, a number of options exist for campaigns, for education and information provision and for policy formation and development. A worthwhile new initiative is *Let’s Change the Conversation*, a campaign launched by Amnesty International Australia in December 2010. It involves media and multi-media advertising, public information and training sessions aimed at arming people with facts, anecdotes and personal stories to better equip them in challenging common misconceptions. This type of training can and should be offered to individuals, organisations, the media, the corporate sector and, in some form, to DIAC staff and contracted service providers. The Federation of Ethnic Communities’ Councils of Australia (FECCA) launched its campaign to reclaim multiculturalism in November 2010. FECCA’s *Different But Equal* report outlines a whole of government approach to reframe multicultural policy in Australia.

Many participants shared the view that the positive stories of resettled humanitarian entrants were not being told, not promoted and not even recorded. It is vital at this point in the debate to show the points of commonality humanitarian entrants share with all other Australians. Shared values include a concern for family, a desire to be self-sufficient, to learn and to be a contributing member of the community.

Recommendations

RCOA recommends that:

22. *DIAC, the Australian Government and politicians take on a more proactive role in engaging with the media on asylum and refugees issues, with the development of a Government communications strategy to support the Refugee and Humanitarian Program.*
23. *The Australian Government examine Amnesty International Australia’s Let’s Change the Conversation campaign and consider implementing similar training and education opportunities.*
24. *The Australian Government and all parties represented in the Australian Parliament take up the framework and reforms set out in FECCA’s National Multicultural Agenda “Different But Equal”.*
25. *The Government reinstitute funding for the Australian Human Rights Commission for the provision of information and educational materials related to asylum seekers, refugees and human rights.*
26. *The contributions of people of refugee background be acknowledged during Refugee Week through:*
 - *formal awards ceremonies conducted by Federal and State Government agencies; and*
 - *local recognition by Federal and State MPs of people of refugee background within their electorates.*
27. *Specific refugee-related components be included for consideration in the development of the national curriculum.*
28. *DIAC consider funding (through the Diversity and Social Cohesion Program or similar programs) the development of a NGO-coordinated national training and media strategy to improve the quality of reportage on refugee and asylum seeker issues and enable refugees and the organisations working with them to engage with the media and the Australian public.*