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POSITION PAPER ON AUSTRALIA'S REINTEGRATION PACKAGE FOR AFGHAN REFUGEES[1]

On 16th December 2002, the Federal Government announced that a Reintegration Package would be offered to Afghan refugees with a Temporary Protection Visa (TPV) to facilitate their repatriation. The package includes a grant of \$A2,000 per person, or up to \$A10,000 for families, plus the cost of travel to Kabul and a limited range of support services provided through International Organisation of Migration (IOM).

The TPV is the visa granted to people who have been found to have a well-founded fear of persecution in their country of origin but did not enter Australia with a valid visa. The three-year visa was introduced to deter other refugees attempting to arrive in Australia without authorisation or proper documentation. Refugees with a TPV are not eligible for the full range of services as is other refugees, nor do they have the right to family reunion or reentry into Australia.[2] After three years, the person must again apply for protection.

While repatriation packages have been used in the past to encourage the return of failed asylum seekers or those on temporary humanitarian visas, Australia has never before actively promoted repatriation amongst a refugee group.

Actively promoting that refugees return to the country from which they have recently escaped persecution is clearly a decision that needs to be undertaken with the utmost sensitivity, using international principles as guidance. This is especially so as the target group consists of people to whom Australia has accepted that it has protection obligations under the Refugee Convention.

For those who genuinely wish to return to their country of origin, the package will give them a welcome 'helping-hand'. Others will be less confident that they will be safe if returned. The vast majority of Afghan TPV holders are from the Hazara ethnic group. Even before being targeted by the Taliban, the Hazara had experienced decades of systematic discrimination on the basis of their ethnicity and religion. It is understandable that they would be cautious about predictions that this discrimination has suddenly disappeared with the overthrow of the Taliban.

It is internationally accepted practice that voluntary repatriation should only be promoted when it is determined to be truly voluntary, and take place in conditions of safety, dignity and security[3]. As will be outlined below, the Refugee Council argues that Australia's Repatriation Package for Afghan refugees holding a TPV is considered not to meet these standards and as such requires significant change. The Council has also made recommendations as to how these issues can be addressed to ensure that Australia's promotion of repatriation is humane,

consistent with international principles and not in breach of its Convention obligations with respect to this cohort of people.

1. International Principles Governing Voluntary Repatriation

1.1 The Principle Of Voluntariness

While voluntary repatriation is not addressed in the 1951 Convention Relating to the Status of Refugees (hereafter the Refugee Convention), it follows directly from the principle of non-refoulement. Non-refoulement is the cornerstone of international protection. It describes the right of refugees to be protected against forced return to the territory from which they had fled. As the forced return of refugees is prohibited under international law, it follows that return of refugees must be voluntary. Voluntary repatriation means that, after reviewing all available information about conditions in their country of origin, refugees decide freely to return home.[4]

Determining the voluntary nature of return is therefore crucial in any examination of repatriation. The United Nations High Commissioner for Refugees (UNHCR) offers some guidance in this respect. The UNHCR Handbook on Voluntary Repatriation suggests that although the decision to repatriate may be clouded by multiple factors, one of the most important elements in the verification of voluntariness is the legal status of the refugees in the country of asylum. If refugees are legally recognised as such, their rights are protected and they are allowed to settle [emphasis added], their choice to repatriate is likely to be truly free and voluntary.[5]

It follows that if Governments are to promote the repatriation of refugees, it is essential to ensure that returnees are:

- returning voluntarily and are not compelled or coerced by uncertainty about their status; and
- are in possession of the relevant material in order to make an informed choice.

1.2 Ensuring Return In Safety And With Dignity

Once the voluntariness of repatriation is established, return must be conducted in a way that ensures the return of refugees in safety and with dignity.

The UNHCR defines the principle of safe return as:

“ return which takes place under conditions of legal safety (such as amnesties or public assurances of personal safety, integrity, non-discrimination and freedom from fear of persecution or punishment on return), physical safety (including protection from armed attacks, and mine-free routes and if not mine-free than at least demarcated settlement sites), and material assistance (access to land or means of livelihood).[6]

The principle of return with dignity is also defined by UNHCR:

“The dictionary definition of ‘dignity’ contains elements of ‘serious, composed, worthy of honour and respect’. In practice, elements must include that refugees are not manhandled; that they can return unconditionally and that if they are returning spontaneously they can do so at their own pace; that they are not arbitrarily separated from family members; and that they are treated with respect and full acceptance by their national authorities, including the full restoration of their rights.”[7]

Among the elements of 'safety and dignity' to be considered, UNHCR highlights the importance of:

- the refugees' physical safety at all stages during and after their return including on route, at reception points and at the destination;
- the refugees' access to a means of livelihood;
- the importance of keeping families intact; and
- attention to the needs of vulnerable individuals.[8]

1.3 A Checklist for Voluntary Repatriation

UNHCR presents the following as preconditions for voluntary return:

- providing updated factual information on conditions in the country of origin to the refugees;
- talking with the refugees to determine the voluntariness of the repatriation. All potential returnees, including women and the elderly, should be canvassed to ascertain that they have decided freely to return home;
- launching information campaigns about the conditions in the areas of return to ensure that the decision to return is well-informed; and launching confidence-building campaigns amongst the refugees;
- reporting any protection concerns to UNHCR and/or other human rights organisations.[9]

2. Determining Best Practice: the Use of Repatriation Packages Inter-nationally

Before considering what is happening in Australia, it is useful to look at examples of what is happening in some other countries.

2.1 Models in the United Kingdom:

i. The Kosovar Voluntary Return Program

The Kosovar Program offered a reintegration package to all Kosovars in the UK, the vast majority of whom had arrived through the Humanitarian Evacuation Program (of which Australia's Safe Haven Program was part). It was wholly funded by the UK government and run by IOM and local refugee agencies.

The program included the following:

- * 'Explore and Prepare' visits to Kosovo which provided an opportunity for heads of households and community leaders to visit Kosovo to assess the situation for themselves;
- * funded flight and assistance with onward travel in Kosovo;
- * a return grant of Stg250 (approx. \$A750) per person, increased to Stg400 (approx. \$A1,200) in later stages;
- * a generous baggage allowance;
- * free shipment of furniture and household goods (4 cubic metres/adult and 1 cubic metre/child);
- * bi-lingual support staff at the returns rendezvous centre and airports;
- * specialist support services for unaccompanied minors.

In order to ensure that people were able to make informed choices about their options and to help them prepare for return, the refugee sector set up a comprehensive advice and support program that included:

- * returnees information pack and video;
 - * a drop-in advice centre, outreach and information road-show;
 - * weekly bulletins and a bi-monthly magazine;
 - * mines awareness training;
 - * fact sheets on status and extension of visas;
 - * regional seminars for legal advisors assisting clients with asylum applications;
 - * some small-scale training in English and computer use.
- ii. Afghan Voluntary Returns Program

On 20th August 2002 the UK Government announced a 6-month trial of a voluntary assistance scheme for Afghan asylum seekers and those with Exceptional Leave to Remain wishing to return to Afghanistan. Afghan refugees, all of whom have been granted permanent residence in the UK, were not eligible.

In developing and operating the scheme, the Home Office worked in partnership with the UNHCR, IOM, the Afghan Embassy, non-government organisations and Afghan communities in the UK.

The package includes:

- * funded flight and assistance with onward travel in Kabul;
- * a grant of Stg600 (approx. \$A1,800) per person and up to Stg2,500 (approx. \$A7,500) for a family;
- * an 'Explore and Prepare Program' to enable asylum seekers to visit home to assess the situation without affecting their applications for refugee status;
- * an information post, based at the British Refugee Council, to provide information and create awareness about the scheme.

It was hoped that the package would attract 1,000 applicants but by mid April 2003, only 39 Afghans had signed up to return.

2.2 The Danish Model

The Danish Government funded the Danish Refugee Council to administer a repatriation scheme for Bosnian refugees wishing to return to their country of origin.

The Danish scheme was very similar to the UK models profiled above, with the important exception that it allowed returnees to change their minds within a set period. Those who had been resident in Denmark for less than six years were entitled to exercise their 'right to regret' the repatriation and return to Denmark within a 6-month period. Those who had been in Denmark more than six years were able to exercise their right to regret within a period of 12 months. Those choosing to return to Denmark were able to resume the same legal and social rights as held prior to repatriation.

The nature of the package offered to the Bosnians was determined on an individual basis by authorities and based on assessed need. Components of the package were:

- the 'right to regret' option;
- funded transport to the home country;

- free transportation of a maximum of one cubic metre of baggage per adult and a half cubic metre per child;
- a maximum of DKK5,000 (\$A1,222) for the transport of equipment needed to set up in business;
- a maximum of DKK15,000 (\$A3,800) per adult and DKK 5,000 (\$A1,250) per child or, if a temporary resident, DKK2,000 (\$A490) per adult and DKK1,000 (\$A245) per child;
- expenses for health insurance for one year;
- other travel-related expenses;
- ability for elderly refugees to take part of their state retirement benefits, depending on their duration of stay in Denmark.

In addition, counselling and information was provided on the:

- current situation in their country of origin;
- legal aspects of the scheme;
- mental preparedness;
- land mine awareness training; and
- other logistical issues.

3. The Australian Model: the Reintegration Package for Afghan Refugees

While Australia has offered a repatriation package to both Kosovar and East Timorese displaced people evacuated as part of the Safe Haven Program, in both instances the people had been brought to Australia by the government on a temporary basis and as part of an evacuation program, the conditions of which were known to the participants in advance. The package being offered to Afghan TPV holders is distinctly different as it is being offered to people who have been determined to be refugees.

The Australian Reintegration package for Afghan TPV holders includes:

- \$A2,000 per person, or up to \$A10,000 for families;
- funded transport to Afghanistan and ongoing travel to their home region;
- only the standard baggage allowance of 20kg, plus 7kg hand luggage;
- limited information on the package provided by IOM;[10]
- reception on arrival through IOM at the Jangalok Reception centre in Kabul;
- a landmine brochure and video on arrival in Kabul;
- access to vocational training through the reception centre in Kabul.[11]

4. The Reintegration Package Offered to Afghan Refugees with a TPV

The Reintegration Package offered to Afghan refugees with a TPV does have a number of positive aspects that are worth noting.

In principle, the Refugee Council supports efforts by the Australian Government to provide support to those refugees who genuinely wish to return. Assisted repatriation, if voluntary, allows repatriation to occur without creating an additional burden on the limited resources of the receiving country that is recovering from conflict. It provides the returnee the opportunity to be reunited with their community, culture and country.

The payment, \$2,000 per person or \$10,000 per family is generous and comparable to similar offers in Britain. For some this will enable them to establish themselves in Afghanistan, and for others this money will be used to repay debts incurred from extended family and friends when money was raised to help them escape Afghanistan.

Promoting the creation of conditions that are conducive to voluntary return in safety and dignity is also important. The funding of a vocational training centre in Kabul is useful way of supporting Afghanistan's reconstruction. It is consistent with UNHCR's recommendation that States develop programs that simultaneously offer incentives to prospective returnees and contribute to the broader goal of Afghanistan's reconstruction.[12] This being said, it must be noted that it is seen as unfortunate that refugees with a TPV were not given unrestricted access to vocational training programs or English programs while they were in Australia that could have also significantly assisted their contribution to Afghanistan's future.

On a practical level, sending translated versions of the Reintegration Package to every adult TPV holder was also a positive step. Typically, important information has been sent to TPV holders in English.[13] As refugees with a TPV are not eligible for Government-funded English classes or most support services that could explain the forms, communication between TPV holders and the DIMIA has been characterised by confusion and misunderstandings. It is hoped that the practice of translating documents for TPV holders continues in the future.

That said, a number of negative aspects of the package are cause for concern:

4.1 The 'Voluntary' Nature Of The Package

As previously discussed, repatriation of refugees must be voluntary, or the host state risks violation of its non-refoulement obligations. To be voluntary, the decision must not be made under duress. It is not possible, however, to feel confident that the Package offered to Afghans is 'voluntary' when the refugees being offered it are under considerable pressure as a result of:

- a threat of indefinite detention for those whose second application for protection is refused, yet who are unwilling, on the basis of their subjective fear, to return to Afghanistan;
- repeated and unqualified announcements by the Minister for Immigration that Afghanistan is safe, with the implication that refugees from Afghanistan will be obliged to return when their visa expires;
- the lack of family reunion for refugees with a TPV. It is estimated that 75% of Afghan TPV holders have dependents (spouse and/or children) overseas however TPV holders are not eligible for family reunion and some may never be eligible to apply for family reunion. Further, they do not have a right to re-enter Australia should they wish to visit their family in third countries;

- the absence of a complementary form of protection available for those who are not found to be refugees yet still have a compelling humanitarian reason not to be returned other than an appeal to the Minister for him to exercise his non-compellable and discretionary powers under section 417;[14]

- a clear ultimatum. The letter sent to each TPV holder clearly states:

“The offer is valid until the 30 June 2003. If you do not accept the offer by that date you will not be eligible to receive this Reintegration Package including the cash assistance at any time in the future”.

4.2 The Lack Of Informed Choice

For repatriation to be voluntary the decision must be based on a free and informed decision. In order for TPV holders to make a choice about whether they should accept the Reintegration Package they clearly need to have access to the relevant information. International experience with repatriation demonstrates that people are more likely to return willingly and stay in their country of origin if they are given information, assistance and reassurance about their safety.[15]

In the Australian case:

- there are no services funded to give advice to people wanting information about the current conditions in Afghanistan;
- there are no services funded to give people advice about the package other than the Department of Immigration about whom many of the TPV holders have negative views due to their detention experience and the conditions of the TPV, or IOM that may be seen to have a conflict of interest in its promotion of repatriation as it is sub-contracted by the Australian government to implement the program;
- there is no funding provided through the Immigration Advice and Application Assistance Scheme (IAAAS) to provide legal advice specifically to TPV holders about the implications of the package. Further, only unaccompanied minors have automatic access to IAAAS advice during the re-application process;
- TPV holders are not able to make an assessment about their chances of being granted further protection because no decisions have been made on TPV holder's applications. As a consequence, they must guess whether it is better to accept repatriation now rather than staying in Australia and pursuing further protection which, if unsuccessful, is likely to result in detention and deportation;[16]
- many TPV holders lack the computer skills and English language proficiency to research the situation in Afghanistan to determine if it is safe to return;
- it is difficult to obtain reliable information about the situation on the ground in Afghanistan. The security in an area can literally change within days making the need for accurate updated information crucial to a returnee's assessment of safety.

4.3 The Safety Of Returnees

Voluntary repatriation should only be promoted where refugees can return with an assurance of safety. Clearly the decision to actively promote returns must be taken with the utmost care and where the safety of returnees must be the principle concern. The Australian offer,

however, appears to give little consideration to the principle of safe return. In this regard, RCOA notes:

- the ongoing instability in Afghanistan making any assessment of safety in regions outside Kabul very difficult;
- the fact that many Afghan refugees have had no contact with family members or others living in their home region since their arrival in Australia and are thus unable to make an assessment on their own of the potential risks of returning;
- the absence of any requirement to monitor returnees' safety;
- the absence of any attempt to identify and counsel those who may still be at risk if returned but who are influenced to accept the Package by other external factors such as welfare problems;[17]
- the absence of any banking facilities in Afghanistan. Returnees are forced to travel through Afghanistan with between \$2,000 and \$10,000 in cash. After up to four years in Australia returnees will look different to locals, easily identifiable as 'cashed-up' returnees, and could be targeted by unscrupulous elements;
- the lack of consideration of the needs of vulnerable returnees (see 4.5).

4.4 Sustainability

If Governments are to promote repatriation, return must be sustainable.

The Council is concerned about reports that of the 15 people who have returned as at 2nd April 2003, the majority left Afghanistan for a neighboring country immediately after arriving in Kabul. It is not known whether these people are moving in order to be reunited with family living in camps or whether this is due to their on-going fear in Afghanistan. What these examples do indicate is the risk that the promotion of refugee repatriation can result in merely shifting the responsibility for refugees from one state to another.

Pakistan and Iran are both developing countries that have shouldered the burden of supporting millions of refugees from Afghanistan for decades. Clearly the aim of supported return is not intended to add additional pressure on the already stretched resources of neighbouring countries.

4.5 Concerns About Vulnerable Groups

Voluntary repatriation must take into account the additional needs of vulnerable groups such as unaccompanied children, unaccompanied elderly, handicapped and the chronically ill as well as specific needs of unaccompanied women and single heads of households. While the Department has made assurances that 'appropriate provision' will be made for people with medical issues and special needs, there are no details of what this means in practice. The Package provides no details on:

- whether IOM staff are required to accompany vulnerable returnees to their home destination to ensure their safety: travel within Afghanistan can be precarious and little protection is available outside Kabul. Clearly this presents considerable risks to the elderly, disabled, unaccompanied minors and women. While formal legal restrictions have been lifted

on the movement of women, they are still subject to harassment in many places[18] and would be at particular risk if traveling without the protection of a male relative;

- what arrangements are in place for those with health problems: it is reported that IOM can organise medical treatment for emergencies on arrival and provide a wheelchair but this is not sufficient for people with chronic illness or disability.

4.6 Unaccompanied Minors

While the Reintegration Package has not been offered to Afghan TPV unaccompanied minors to date, plans are underway to extend the offer to this group. This offer is to be made through the state welfare authorities that have been delegated guardianship responsibility by the Minister for Immigration. Provision for legal advice has been made. While the Council notes the Government's decision not to offer the Package to children who are not able to trace a parent or guardian overseas, the Council notes that there are a number of unresolved issues, not least:

- whether those who are not eligible for the Package because their family is missing will be offered a form of complementary protection in the event that their second application is unsuccessful, having regard to the fact that there is no parent or guardian to whom they can be returned;
- whether there is a conflict of interest for the Minister for Immigration who retains key guardianship responsibility yet is also the promoter of the Repatriation Package;
- the lack of specialist support available to assist minors make such a decision: State government protection agencies have no experience in refugee repatriation nor any knowledge of the current situation in Afghanistan and thus are not qualified to advise their wards on repatriation;
- how the best interest of the child could be determined where there is a risk of indefinite detention on one hand and on-going instability in Afghanistan on the other;
- the particular risks for unaccompanied minors in transit; and
- the need for bilingual assistance throughout process, including bilingual staff to accompany minors who elect to return until they are reunited with their families.

4.7 The Timing Of The Package

The timing of the package has also been the cause of concern:

- the package was offered without proper consultation with specialist refugee agencies in Australia or the communities that the offer aims to assist;
- the Reintegration Package was sent out over the Christmas break when most support services closed. As a result, TPV holders were not able to seek advice and support when they first received the letter, exacerbating any anxiety caused by the offer;
- the offer was made before any second-round decisions were made.[19] Almost all of the Afghan TPV holders have made a second application for protection, fearing continued persecution in Afghanistan if returned. It is expected that a decision to take up the offer will, for some, depend on their assessment of whether their applications for protection will be assessed favorably. If they are rejected they run the risk of being detained indefinitely,[20]

which is the source of considerable fear. If so, some may consider it better to return at least with some financial support as offered by the package. Until there is a sense of how Afghan applications will fare, accepting the Reintegration Package presents a most vexed choice for most;

- finally, but probably most importantly, the Package was introduced while there is on-going instability in Afghanistan. Numerous reports have suggested that the situation on the ground is deteriorating.[21] It is in this context that the Package encourages refugees with a TPV to return.

4.8 Preparation For Return

Preparation of returnees prior to departure enhances the likelihood that return will be successful and sustainable.

Afghanistan has experienced over 25 years of conflict. Healthcare is among the worst in the world and disease is endemic. Education and skill development of local Afghans has been severely disrupted by war, limiting efforts to rebuild the country. Afghanistan has undergone huge changes in the last year having, for example, a new government and a new currency.

Despite the level of change, little effort is being made to prepare the returnees prior to departure for the conditions they will experience in Afghanistan on their return.

Most notably, the package does not include information on:

- immunisation;
- the availability of health and dental services:[22]
- the new currency.

An information video and translated brochure on landmines is apparently provided by IOM at the reception centre in Kabul where people can stay on their first night. Providing information in the first two days of arrival, after some 24 hours of travel and with all the distractions of return, is less than ideal educational context.

Further, few provisions have been made to facilitate returnees participation in the reconstruction process in Afghanistan:

- no additional luggage allowance is provided to enable people to take back those possessions that they have accumulated while in Australia. Some TPV holders will have been in this country for over four years. Similarly, no provision is made for those seeking to transfer business related items that will both assist them integrate on arrival and develop the economy of Afghanistan;
- no assistance is available to those people who are owed superannuation refunds but who may not be familiar with English or who have any understanding about this process. TPV holders are not eligible for any of settlement services that would usually provide this advice such as Migrant Resource Centres. This money would be invaluable to those returning;
- the conditions of the TPV exclude them from government-funded English classes and vocational courses. As a result, few will be returning with skills that could assist the rebuilding of the country.

4.9 Guaranteeing Applicants Are Able To Change Their Minds

Assurances have been given that potential returnees will be able to change their mind if they no longer want to return to Afghanistan, although they will not be eligible for financial assistance if they change their mind again at a later date.

No guarantees have been given, however, that if applicants do change their mind, this will not be communicated to the delegate assessing their application for protection. As the applicant's willingness to avail him/herself of the protection if the country of origin is a crucial aspect of determining refugee status, this information may unfairly prejudice the applicant's claim. Applicants need to be assured that their applications for protection will not be prejudiced if they considered taking up the Package.

Further, the package encourages potential returnees to seek information directly from the Afghan Embassy in Canberra. There are concerns that this could damage their protection claim should they decide not to take up the offer as it could constitute 'availing themselves of the protection of their country of origin' which would disqualify them from receiving refugee status. It is essential that the Government make specific guarantees that this will not jeopardize their claims for further protection.

4.10 Social Cohesion

While it is acknowledged that the financial packages provided to returnees can be of considerable assistance to them on return, it must also be acknowledged that the presence of people in a community with a large amount of money (by local standards) has the potential to create social division. The people who have remained throughout have to make do with few resources and minimal support while those who fled return with money to spend. This creates a situation of "haves" and have-nots", with all the possibilities this creates for jealousies and community tension, undermining the social cohesion that is essential if Afghanistan is to have a sustainable future of peace.

5. Recommendations

The Refugee Council of Australia recommends that the Australian Government introduce the following measures:

i. Information And Advice To Potential Returnees:

Impartial information must be made available to TPV holders to ensure that they are able to make an informed choice about return. Specific information should be provided on inter alia:

- the security situation in Afghanistan by area. Given the instability in the country this information would need to be updated on a regular basis;
- the legal aspects of the package;
- current medical facilities, with specific information for those with medical conditions requiring ongoing care.

The Government should fund a neutral agency to deliver this service. The service would need to be delivered face-to-face in major cities, with outreach to regional centres. In capital cities this should be complemented by Internet access so that TPV holders with computer skills can undertake their own research. The service should be eligible for free services from the Translating and Interpreting Service (TIS) and employ bilingual staff where appropriate.

Such a service should also provide counselling to prospective returnees to ensure that the decision is being made freely and that the person is in possession of all relevant information on which to base this decision.

ii. 'Explore and Prepare' Option:

The Reintegration Package should include an 'Explore and Prepare' option, allowing heads of households and community leaders a single visit to Afghanistan to assess the safety of permanent return. Seeing the situation on the ground will allow individuals to assess the safety of return first-hand, guaranteeing informed choice in a context where little information is otherwise available. The Refugee Council notes this will require legislative change as the TPV does not allow people to re-enter Australia.

iii. Access to IAAAS:

To ensure an informed choice, TPV holders should be able to access government-funded legal assistance to receive specialist advice about the reintegration package and their applications for protection. Application assistance could be subject to means testing. This would avoid TPV holders feeling coerced to return because they do not have access to legal advice or the skills to make their application independently in confidence. This would also ensure that each returnee's case could be assessed: ensuring that Australia is not encouraging the return of people with an on-going fear of persecution.

iv. Information for the Refugee Sector:

Information seminars on the package and process of repatriation, run by specialist DIMIA staff, are urgently needed for each of the following groups who work with TPV holders:

- refugee agencies;
- legal advisers; and
- community leaders.

v. Pre-return Information:

For those who do accept the offer, specific pre-repatriation information is required prior to departure on, inter alia:

- the new currency, introduced since they left Afghanistan;
- immunisation;
- landmine awareness;
- the availability of medical facilities; and
- how to apply for refunds of superannuation.

Counselling should also be provided to enable the returnees to prepare emotionally for the return to a country that holds many painful memories and from which they have been away for an extended period.

In addition the Council encourages the Government to consider setting up appropriate training to match the needs and skills deficit in Afghanistan with data on potential returnees.

vi. Additional Baggage:

To encourage small business transfer and to enable household goods to be taken back, an additional baggage allowance should be made available.

vii. Specialist Support for Unaccompanied Minors:

State government protection agencies with no experience in refugee repatriation or knowledge of the current situation are not qualified to advise their wards on repatriation. Specialist support is therefore required for unaccompanied minors to assist them make a decision on repatriation.

While unaccompanied minors are currently eligible for funded legal aid through the IAAAS, a comprehensive service is required to provide:

- specialist legal advice;
- referral to family tracing and counselling services;
- links to NGOs in Afghanistan that are able to provide and necessary support post arrival.

Special provision must be made for unaccompanied minors who elect to return, in particular ensuring that bilingual staff accompany them at all stages of their journey and until they are reunited with their families to ensure their safety in transit. This is essential given the absence police protection outside Kabul.

Those who are not eligible for the package because their family could not be traced should have their status regularised in Australia.

viii. Specialist Support for Other Vulnerable Groups:

Special attention must be paid to vulnerable groups who choose to return. This should include:

- pre-departure counseling;
- bilingual staff to accompany vulnerable individuals throughout the entire journey to ensure their safety, particularly when travelling beyond Kabul;
- referral to accessible health services to ensure continuity of care;
- referral to NGOs on the ground that operate specialist programs to assist people with their particular needs;
- monitoring of reintegration capacity.

ix. Assurance Of Confidentially:

Returnees should have the option of being able to arrive in a manner that does not identify their status as returnees, including choosing not to be met at the airport by IOM to avoid any risks resulting from being identified as a person with large amounts of cash.

x. Guarantees that Withdrawal will not Affect Claims for Protection

Written guarantees are required to the effect that:

- if a refugee with a TPV changes his/her mind, the initial consideration of the offer will not be available to decision makers when assessing the claim for protection;
- that seeking information directly from the Afghan Embassy in Canberra, as suggested to the TPV holders by DIMIA, will not constitute 'availing themselves of the protection of their country of origin'.

xi. Monitoring:

To ensure that Australia is not placing individuals at risk of persecution by actively encouraging return, the following should be monitored:

- returnees' safety after arrival;
- the security situation in Afghanistan.

If a particular region is found not to be safe, potential returnees should be advised of the danger, given the option to change their mind and counselled to delay travel if the person is determined to return.

If the situation in Afghanistan as a whole is assessed by UNHCR to be unsafe for return, the program should be suspended.

Monitoring of the program should be implemented by a neutral party to avoid undue political influence or conflict of interest. UNHCR should be encouraged to be an active partner throughout the process.

xii. Evaluation:

An independent evaluation of the Reintegration Package should be undertaken. This should consider key indicators such as relative cost/benefit, user satisfaction and sustainability.

xiii. A "Right to Regret" Option:

If the refugee returns to Afghanistan and discovers that his/her life is untenable there, there should be an option to apply to return to Australia for resettlement under the humanitarian program. Such an arrangement was put in place for Cambodians in the early 1990s and more recently for Kosovars in 1999-2000.

xiv. Family Reunion:

In order to ensure that the choice to return is not perceived as being coerced, TPV holders should be granted access to family reunion.

xv. Complementary Protection:

As returns of refugees can only be voluntary, some planning must be made for people for whom return is not an option. The threat of detention for those who are not able to prove an ongoing fear of persecution creates a strong incentive to repatriate and undermines the principle of voluntary repatriation.

RCOA's views on Complementary Protection are articulated in a position paper on this issue[23] and the Council once again calls on the Government to adopt a humane and compassionate approach to people who have substantive reasons for not returning to their country of origin. The fact that the TPV holders have been determined to be Convention refugees gives added justification for this approach.

xvi. In-Country Support:

In addition to funding the Jangalok Reception centre in Kabul, consideration should be given to AusAID funding for NGO income generation projects inside Afghanistan for which returnees are one of the eligible groups. AusAID funding should also be directed to projects that involve strengthening the rule of law and order in the country and to human rights training.

xvii. Extension of the Offer:

Noting the continued instability in Afghanistan, not wishing to jeopardize the safety of returnees, and in order to avoid any appearance that the offer is an ultimatum, the offer should be extended and open to people who have received a decision on their application to remain in Australia.

xviii. Politicisation of Voluntary Repatriation:

Finally, the Council is also concerned that the offer should not be used for political gain in the future through the attribution of negative characteristics to people who decline the offer. All the people offered the package have been found to have had a well-founded fear of persecution and thus their reluctance to return, particularly when the safety of the country is far from guaranteed, should be treated with sensitivity and respect.

[1] This is an edited version of RCOA's position paper, a copy of which can be obtained by contacting the Council at info@refugeecouncil.org.au

[2] For details see RCOA's Information Paper on Temporary Protection Visas, May 2001.

[3] UNHCR, Handbook on Voluntary Repatriation: International Protection, Geneva, 1996, p16.

[4] UNHCR, Protecting Refugees: A field guide for NGOs, Geneva, 1999, p. 60.

[5] UNHCR, Handbook on Voluntary Repatriation: International Protection, Geneva, 1996, p10.

[6] Ibid, p12.

[7] Ibid, p12.

[8] Ibid, p12.

[9] UNHCR, Protecting Refugees: A Field Guide for NGOs, Geneva, 1999, p. 65.

[10] While this is described as 'counseling' it is limited to the provision of information about flights, payments, reception arrangements. There may also be information on the types of assistance available in Afghanistan. After arrival, IOM in Kabul can provide information on the safety in various regions if this information is available.

[11] It has been explained to the Council that this is to be provided as part of a Central Registry of Housing and Employment Options that was not operational at the time of writing.

[12] UNHCR Note on Basic Considerations Regarding Returns to Afghanistan from Non-neighboring states, Geneva, 10 July 2002.

[13] Some examples include the information sheet they received on release from detention, the letter explaining that their TPV has been changed to a XC visa after 36 months, the '30-month' letter requesting that they provide additional information to support their claim if making a second application for protection, the cancellation notice and the letter asking applicants to respond to any adverse information.

[14] For more details see RCOA's Position Paper on Complementary Protection, May 2002.

[15] British Refugee Council, Returns Policy Background Paper D: Manner of Removal, p3.

[16] Australia does not have an agreement with the interim Government of Afghanistan for forced deportations although it is expected that will continue to be actively pursued by the Australian Government.

[17] In contrast, the UK Government funds the Choices Program that provides confidential advice to refugees and asylum seekers who are considering return to their country of origin. Part of that process is identifying any external factors that may influence asylum seekers decision to return. If these problems can be addressed, the desire to return may diminish. They also try to establish the reasons why a person fled and whether the same conditions still exist.

[18] Amnesty International (18/12/02) Afghanistan : Human Rights Concerns, ASA 11/016/2002, www.amnesty.org/ai.nsf/Index/ASA110162002/OpenDocument&+COUNTRIES.

[19] RCOA reiterates that although some TPV holders have been eligible to have their cases considered since May 2002, at the time of writing the processing of applications for protection by TPV holders had not commenced.

[20] The interim Government of Afghanistan is currently not accepting forced returns.

[21] For details of see UNHCR (www.unhcr.ch), Human Rights Watch (www.hrw.org) and Amnesty International (www.amnesty.org).

[22] While health referrals may be provided by IOM on arrival in Kabul, this does not allow individuals to prepare in advance for the conditions they will encounter after their arrival. Many medications and health services are not yet available in Afghanistan.

[23] RCOA, Position paper on Complementary Protection, May 2002.