



Refugee Council of Australia

SUBMISSION TO THE EXPERT PANEL ON ASYLUM SEEKERS – July 2012

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees and the organisations and individuals who support them. It has more than 150 organisational and 550 individual members. RCOA promotes the adoption of flexible, humane and practical policies towards refugees and asylum seekers both within Australia and internationally through conducting research, advocacy, policy analysis and community education. RCOA consults regularly with its members and refugee community leaders, and this submission is informed by their views.

1. Opening observations

RCOA welcomes the opportunity to contribute to the inquiry of the Expert Panel on Asylum Seekers and believes that any solution to deter asylum seekers arriving by boat in Australia should focus on improving the inadequate levels of protection faced by refugees and asylum seekers that compel them to make dangerous journeys further afield to secure protection and safety. The panel's deliberations provide a rare and unique opportunity to reframe the discussion of refugee and asylum issues in a way that reflects the complexity of the issues with which the Expert Panel is concerned. At the outset, RCOA would emphasise the following points:

- There are no instant solutions to refugee problems, although there may be some immediate measures available to provide alternatives to dangerous sea voyages for those in need of protection.
- The majority of those who approach Australia by boat have historically been found to be refugees within the meaning of the term under international law.
- Effective international cooperation to share responsibility for refugee outflows will not be secured through unilateral efforts by stable countries that are parties to the 1951 *Convention Relating to the Status of Refugees* to shift the bulk of the responsibility on to poorer countries that are not parties to the Convention.
- The linking of the grant of protection visas in Australia to the number of Special Humanitarian Program visas available for the resettlement of the immediate families of refugees already in Australia risks creating new demand for the services offered by people smugglers.
- Serious efforts to address refugees' problems will require a willingness on the part of states to commit more resources to assisting them than wealthy states thus far seem willing to provide.
- There is every reason to believe that, as 'push factors' grow for particularly vulnerable minorities in Afghanistan and Pakistan, the numbers of those who seek protection in Australia will increase, to the point where 'deterrent' measures to prevent asylum seekers from approaching Australia by boat would cease to have any real effect.

2. An opportunity for Australia to exercise constructive leadership

Australia's wealth and its political influence within the Asia-Pacific region, its role in establishing and leading the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process) and the regional impact of Australia's national debate about asylum have all meant that Australia has had and will continue to have a leadership role within the region on matters of "border protection" and asylum. In determining its national policies, Australia must carefully consider what impact those policies will have on other countries' policies and what kind of leadership – positive or negative – it wishes to exercise. It is ultimately in Australia's national interest to provide leadership which encourages greater protection for people facing persecution. Much of the flow of asylum seekers

to Australia has been influenced by asylum seekers' views – often well-founded – about the limited opportunities for effective protection in Asia. If protection opportunities for refugees within Asia increase as part of a working regional cooperation framework, the pressure on movement to Australia must inevitably decrease.

Australia could choose to undermine its international reputation and push ahead with “border protection” options which push responsibility for asylum seekers to other nations within the region. It is possible that some of these measures could result in short-term declines in movements of asylum seekers. However, without any concerted regional effort to improve protection options for those who most need it, the pressure will build again in the near future, and it is almost inevitable that Australia will face the current challenges on a similar or greater scale but in a different form. This challenge will not disappear by some unilateral national action. What is needed is a clear acknowledgement of the depth of the refugee protection crisis in the Asia-Pacific region and the Middle East and a concerted regional effort to address these protection needs.

Progress can only be achieved through cooperation and cooperation can only come if Australia is seen to be working in the interests of the region and those who need to be protected. Policy-makers in Australia must understand that once an asylum seeker enters Australian territory or Australian territorial waters, they are regarded by other states as being Australia's responsibility. Any effort to shift responsibility for those asylum seekers after they have entered Australia will be regarded negatively by the states that Australia is seeking to cooperate with on these issues.

3. The weaknesses of current solutions on offer

RCOA urges the Expert Panel to take note of major problems associated with a number of approaches to asylum seekers that are currently being mooted in public and political debate.

The ‘Malaysian Solution’

In its *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry Into Australia's Agreement with Malaysia in Relation to Asylum Seekers*, RCOA raised serious concerns about pre-transfer screening processes, voiced its alarm that ‘UNHCR's operations in Malaysia do not meet the standards necessary to ensure procedural fairness’, and in the light of the deportation from Malaysia of a group of Uighur asylum seekers, concluded that ‘RCOA has little confidence in the assurances of the Malaysian Government that it will comply with non-refoulement principles’.

RCOA's most serious concerns, however, were associated with the implications of the ‘Malaysian solution’ for meaningful regional cooperation. In para.8.1.3 of the submission, it remarked as follows:

Policies which focus on shifting Australia's protection obligations elsewhere hardly set a constructive example for other countries in the region which have far less capacity to provide protection and assistance to refugees than Australia. Instead, they send a clear message to the region that the complex challenges of refugee protection in Asia are less important than domestic political considerations. It is particularly troubling when this message comes from one of the few countries in the region which is party to the Refugee Convention. The arrangement therefore not only undermines protection principles but will also hamper the development of regional cooperation and the implementation of urgently-needed reforms.

In the light of the recent parliamentary debates that triggered the appointment of the Expert Panel, it appears to RCOA that there are no realistic prospects that the legislation required to overcome the legal obstacles arising from the decision of the High Court of Australia in *Plaintiff M70/2011 v. Minister for Immigration and Citizenship* (2011) 85 ALJR 891 will be enacted in the life of the current parliament, nor in the foreseeable future. For this reason, RCOA would urge the Panel not to pursue this as an option.

The ‘Pacific Solution’

RCOA was critical from the outset of the suite of measures known as the ‘Pacific Solution’, and nothing that has occurred in recent times has led it to change its position. Proponents of such measures

typically point to a reduced flow of boats in Australia's direction in the aftermath of their adoption. It is important, however, to note that two other major developments at almost the same time – the sinking on 19 October 2001 of the vessel known as SIEV X, with the loss of 353 lives, and the overthrow of the Taliban regime in Afghanistan by mid-November 2001 – are also likely to have played very significant roles in reducing the demand for people smugglers' services. While recent tragedies at sea may have similar effects, the deteriorating situation in Afghanistan (see, for example, Dexter Filkins, 'After America: Will civil war hit Afghanistan when the U.S. leaves?', *The New Yorker*, July 9, 2012) means that the environment in which any new 'Pacific Solution' might be attempted would be very different from that in 2001-2002.

RCOA shares the view expressed by Ministers in the Commonwealth Government that a resumption of removing asylum seekers to Nauru would be virtually valueless as a deterrent. The figures are well known. Some 43% of those on Nauru were ultimately resettled to Australia, and some 27% to New Zealand. Those who returned in despair to their own countries doubtless would have been resettled too had they remained. At the same time, the Nauru experience exposed a range of severe problems with offshore processing of asylum claims. As RCOA noted in its Senate Committee Submission (paras.8.2.3-4):

Under the offshore processing arrangements in place under the Pacific Solution, access to legal advice was extremely limited and the credibility of refugee status determination procedures was highly questionable. Many asylum seekers whose claims for protection were rejected under offshore status determination processes experienced persecution or serious threats to their safety and security after returning to their countries of origin. As many as 20 of them are believed to have been killed ... Asylum seekers affected by the Pacific Solution were detained in remote facilities for often lengthy periods (up to six years in some cases), to the serious detriment of their health, particularly mental health, and general wellbeing. Throughout the life of the Pacific Solution, there were multiple incidents of self-harm, 45 detainees engaged in a serious and debilitating hunger strike and dozens suffered from depression or experienced psychotic episodes.

RCOA is also of the view that it would be a gravely retrograde step to revive the idea of granting refugees only Temporary Protection Visas (TPVs). This visa category, introduced in 1999, had no demonstrable effect on the number of boat arrivals in Australia, but a number of adverse consequences, both for refugees and for public policy. The former Commonwealth Minister for Health, Dr Michael Wooldridge, had earlier described as 'deeply flawed and dangerous' the 'spurious claim' that 'Australia should only be a temporary haven for refugees before they are sent back again when things get better', arguing that 'creating insecurity and uncertainty as these views undoubtedly do is one of the most dangerous ways to add to the harm that torturers do'. RCOA shares this assessment. Furthermore, the visa condition that prevented TPV holders from sponsoring immediate family to join them played into the hands of people smuggling syndicates.

4. Relevant global trends

Asylum flows to Australia must be considered in a global context. Current trends can be summarised as follows:

Most refugees are in protracted situations – As at 31 December 2011, there were 10.4 million refugees under the mandate of the United Nations High Commissioner for Refugees (UNHCR), with 7.1 million of this population in what UNHCR regards as protracted or long-term situations with no immediate durable solution available.

Asylum applications are increasing – UNHCR has recorded a significant increase in the number of asylum applications: from 1.05 million in 2010 to 1.7 million in 2011¹, of which Australia received 15,441 applications or 0.92% of the global total. While countries located closest to refugee source countries receive the highest number of applications, many asylum seekers head to other OECD countries. In Europe and North America, asylum applications in 2011 were highest in France (89,320),

¹ Includes individual asylum applications and group recognition of asylum seekers as refugees. Figures drawn from UNHCR's 2011 Global Trends report.

United States (60,587), Germany (53,347), Sweden (43,759), Belgium (41,152), United Kingdom (36,429), Italy (34,117), Canada (24,985), Switzerland (19,439) and Norway (18,222).

Few refugees benefit from resettlement – Resettlement is a durable solution for only a limited number of refugees and opportunities for resettlement have been declining since 2009. Of the 10.4 million refugees under the UNHCR mandate, only 0.7% were resettled in 2011. Total resettlement under UNHCR and non-UNHCR programs in 2011 was 79,784 (29% lower than in 2009). Despite the very low number of resettlement places currently available, thousands of places are not filled each year. In 2011, only 61,649 of the 80,000 places available through UNHCR processes were filled.² This failure to fill places is due to delays in security assessments for refugees awaiting resettlement, particularly for resettlement to the United States (which operates the largest resettlement program), and also due to limited capacity of UNHCR to refer refugees for resettlement from some locations. The lack of access to resettlement can be seen most starkly in the experiences of Afghan refugees in Pakistan and Iran. Of the 2.55 million officially recognised Afghan refugees in those two countries (there are believed to be 2 million more unregistered refugees), only 3513 were resettled through UNHCR-coordinated resettlement processes in the five years to December 2011 – just 703 per year. It is impossible to sustain the argument that refugees should wait patiently for resettlement when just 0.1% of the officially recognised refugees in the world's largest and longest running protracted situation are resettled in any year in spite of worsening security situations in the countries of asylum.

Other durable solutions are in decline – The other durable solutions of voluntary and safe repatriation to countries of origin and integration of refugees in countries of asylum are also limited. There has been a long-term decline in voluntary repatriation (from a high of more than 2.4 million people voluntarily returning in 2002 to less than 200,000 in 2010). The possibility of integration into countries of asylum is restricted, particularly in Asia. Indonesia, for example, does not permit local integration of people found to be refugees and, as such, UNHCR has identified resettlement as the only durable solution available to refugees in Indonesia. In Pakistan this week, the Government has announced its intention to force the return of Afghan refugees, despite the broad evidence of the declining security situation in Afghanistan.

UNHCR is overstretched – UNHCR provides national Refugee Status Determination (RSD) only as a stop-gap measure where domestic asylum systems do not operate. However, it is conducting RSD activities in 76 countries worldwide. These countries include 17 countries in Asia (Afghanistan, Bangladesh, China, Hong Kong, India, Indonesia, Iran, Kazakhstan, Kyrgyzstan, Malaysia, Mongolia, Nepal, Pakistan, Sri Lanka, Tajikistan, Thailand and Uzbekistan) and every Middle Eastern country except Israel. This work in RSD stretches UNHCR's resources and diverts its attention from providing support to refugees and overseeing the quality of national RSD processes. The organisation is also suffering considerably from reductions in funding from European and North American donor countries.

Human rights abuses continue unchecked – Protection under the Refugee Convention is based on a well-founded fear of persecution but there is little international action to address the causes of persecution in many source countries. International criticism of countries where abuses are taking place is often muted, and coordinated and constructive international responses to address issues of persecution are rare. The situation is further complicated by growth in the number of non-state actors involved in persecution.

Asylum seekers are travelling further in search of protection – In the absence of durable solutions through UNHCR and other international means, refugees and asylum seekers are increasingly seeking their own solutions to secure basic levels of protection. The growth in the numbers of asylum seekers entering Australian waters by boat is part of a global phenomenon in which increasing numbers of asylum seekers are travelling far from countries of first asylum to countries which they believe will offer them the protection they are not currently receiving. Over the past five years, there have been considerable increases in asylum claims in South Africa, Europe and North America.

² Presentation by UNHCR's Senior Resettlement Officer to UNHCR NGO Consultations, 3 July 2012.

5. Factors for consideration in our region

The sub-regions most relevant to asylum flows to Australia are South East Asia, South Asia and the Middle East, an arc from the Philippines to Lebanon. These sub-regions include almost all of the source countries and the countries through which asylum seekers travel before entering Australia by boat. An examination of the situation in these three sub-regions reveals the following:

Most countries in the region have not signed the Refugee Convention – Of the 32 countries in South East Asia, South Asia and the Middle East, 25 have ratified neither the 1951 Refugee Convention nor its 1967 Protocol. The countries which have signed both the Convention and the Protocol are Yemen, Israel, Iran, Afghanistan, Cambodia, Philippines and Timor-Leste – and several of these have a very patchy record in respecting refugee rights.

The region is the source of more than half of the world's refugees – These three sub-regions are home to 36% of the world's population but are the source of more than half of the world's 10.4 million refugees under UNHCR's mandate as at December 2011 (5.36 million or 51.5%), more than three-quarters of the 3.48 million stateless people counted by UNHCR (2.7 million or 77.6%) and most of the non-IDPs and non-refugees of concern to UNHCR (1.04 million or 73.4%). And while 51.5% of the world's refugees come from these 32 countries, 45.8% have remained within the region to seek asylum despite the limited protection available.

The region is home to three-quarters of refugees in protracted situations – Of the 7.26 million refugees classified by UNHCR as being in protracted situations as at December 2010 (the latest statistics available), 5.26 million (or 72.8%) come from the Middle East, South Asia and South East Asia and 5.1 million (or 70.6%) remain within these sub-regions.

Only 20% of refugees are in camps – Despite popular belief in Australia, only 25% of the world's refugees live in camps. In the Middle East, South Asia and South East Asia, the proportion of refugees living in camps is only 19.5%. Within these three sub-regions, UNHCR's 2011 statistics show that 72% live in private accommodation in urban and rural areas and 8.5% live in unknown or undefined accommodation. This has clear implications for how refugees are protected and supported, with the need for protection strategies to focus particularly on the difficulties faced by refugees living in urban settings, often without formal legal status.

Millions of refugees are unregistered – Because of the lack of access to established refugee status determination systems, the Middle East, South Asia and South East Asia host a very large proportion of refugees whose need for protection is not acknowledged in official figures. On the Thai-Burma border, there are estimated to be around 60,000 unregistered refugees in the nine official refugee camps because asylum seekers there have not been able to access refugee registration since 2006. Outside of the refugee camps, Thailand hosts many "illegal migrant workers" from Burma, with estimates varying between 1 million and 2 million. Many of these Burmese citizens would have strong claims for refugee protection if Thai policies permitted them access to a refugee registration system. There are also believed to be at least 1 million Afghans within Iran and another 1 million in Pakistan who have come from Afghanistan to seek refuge, including a significant number of people who have previously voluntarily returned to Afghanistan and found the situation intolerable.

The region's refugees live in very difficult circumstances – The situation of many refugees and asylum seekers within the region are very precarious. In particular there are hundreds of thousands of refugees or people in refugee-like conditions in Bangladesh, Thailand and Malaysia who have no legal status to remain within those countries, no legal permission to work to support themselves for survival and no access to basic services such as primary education for children or health care. This lack of legal status and lack of access to basic services is a significant driver for people to move out of those countries and on to places with greater safety.

People on the move in the region are more likely to need refugee protection – Mixed migration flows are much less of a factor in boat journeys to Australia than similar flows to Europe, or within Europe, where significant numbers of people seeking asylum cite economic conditions, unemployment or even natural disasters as reasons for seeking protection. Of those who reach Australia by boat, the majority have

strong grounds for refugee protection and many of those deemed to have weaker claims are from source countries where involuntary returns are highly problematic for security reasons. This means that with the flows to Australia, it is much harder to return people to safety on the basis of them having manifestly unfounded claims.

The classification of ‘transit’ and ‘destination’ countries is false – The region cannot and should not be divided into countries of source, transit and destination as this is not borne out by the reality of the situation. For example, Thailand and Malaysia are often referred to as transit countries but much larger numbers of refugees and asylum seekers (currently around 100,000 in each country) remain within the borders of those countries for extended periods of time then move on to countries such as Australia. The continued treatment of these countries as “countries of transit” feeds national sentiment that refugees are someone else’s problem and undermines efforts to ask all countries within the region to take some level of responsibility for refugees within their borders.

Refugees experience long waits for asylum and resettlement interviews – Right across the region, refugees report that the processing of asylum and resettlement applications is very slow and that people are left for long periods of time without clear information about progress on their applications. In Indonesia, for instance, RCOA understands that there are around 1200 recognised refugees and nearly 5000 asylum seekers waiting for refugee status determination. It is not unusual for applicants to wait 10 or 12 months for an interview. This long wait undermines efforts to encourage asylum seekers to remain in Indonesia for a determination of their case. Nearly all of the 1200 recognised refugees in Indonesia are waiting for resettlement but RCOA understands that just 73 refugees were resettled between January and June 2012.

6. Building regional cooperation

A need to increase the pace of progress through the Bali Process – RCOA is disappointed at the very slow pace of viable action through the Bali Process. It was established in 2002 but serious dialogue about refugee protection started only in 2009. It has taken a year to establish a Regional Support Office to advance the Bali Process’ Regional Cooperation Framework, with the office in Bangkok finally opening in the past week. The effort of supporting progress on refugee protection is in its infancy. Unfortunately, at the current rates of progress, it will be quite some years before the Bali Process results in specific protection outcomes for refugees and asylum seekers within our region.

Building on the small gains by civil society – Even given the slow pace of reform through the Bali Process, there have been some small but encouraging signs of progress within the region. In 2011, civil society advocacy, led by the Thai Committee for Refugees, resulted in the release from detention of a large group of Pakistani asylum seekers in Thailand. Both the discussion of the possibility of registration of refugees in Malaysia and the possible granting of work rights to asylum seekers and refugees in India are also positive developments that may encourage other countries in the region to offer protections to refugees and asylum seekers.

Promoting dialogue about human rights obligations – It is worth noting that, while many countries in the region have not signed the Refugee Convention, most countries in the Asia-Pacific region have signed other human rights instruments which are relevant to the protection of refugees and asylum seekers (see Table 2 at Appendix 1). Most countries in the region have signed the international covenants or conventions relating to civil and political rights, torture, the rights of the child, racial discrimination, discrimination against women, the rights of people with disabilities and forced labour. As most countries in the region wish to be seen to be taking their international obligations seriously, these conventions and covenants provide a basis for serious discussion about the rights of asylum seekers and refugees.

Highlighting positive examples within Asia – In promoting dialogue about refugee protection, it would also be useful to highlight the positive examples of a number of Asian countries. The Philippines has signed the Refugee Convention and the 1967 Protocol, has developed relevant domestic legislation and has a working refugee status determination system. It provides a positive example of a member of the Association of South East Asian Nations (ASEAN) which has been able to develop these systems and which can share its experience with its ASEAN neighbours. In December 2011, the Republic of Korea passed new refugee legislation which brings the standards within that country towards levels seen in

many long-term signatories to the Convention. There are also positive examples from other regions, particularly Africa and Latin America, where countries have signed the Refugee Convention and have domestic Refugee Status Determination processes in place. In the case of the Economic Community of West African States (ECOWAS) there is common recognition of citizenship across borders, providing an additional protection mechanism for refugees. Civil society organisations in ASEAN countries are promoting the replication of such a model for South East Asia. This would provide a significant form of protection for refugees who are in vulnerable situations in other ASEAN states. Such an initiative would provide much greater options for citizens of ASEAN states to remain within their region, enabling refugee protection strategies to focus on the needs of people from outside the ASEAN region.

7. Possible steps towards protection-focused regional cooperation

In the discussion in Australia of building regional cooperation on refugee protection, a common question is: “What form could this regional cooperation take?” Any progress towards regional cooperation will be gradual, incremental and, no doubt, unpredictable. However, in an effort to advance the debate, RCOA suggests that this regional cooperation could include the following steps:

1. **Removing current barriers to existing refugee determination processes** – While few countries in the region have domestic asylum systems, UNHCR attempts to provide access to refugee status determination in places where domestic systems do not exist. Unfortunately, hundreds of thousands of asylum seekers in the region are denied access to either UNHCR or domestic asylum systems, including many in Bangladesh and on the Thai-Burma border. A first step in advancing cooperation on refugee protection should be to remove existing barriers to asylum seekers accessing current systems of refugee status determination.
2. **Supporting NGOs which provide vital services to refugees** – The support given to refugees and asylum seekers by small and under-resourced NGO programs is often vital to stabilising their situation in countries of asylum. The development of regional cooperation should be backed up by a strategy to provide additional support to NGOs involved in such important services as emergency assistance, health care, education and legal representation. RCOA believes that the Australian Agency of International Development (AusAID) can do much more than it is currently doing to support Asian NGOs working with refugees, particularly those working in urban settings. In Malaysia, AusAID can provide support to NGOs through UNHCR while in other countries AusAID can work through Australian NGO networks to build the capacity of critical refugee support services.
3. **Legal permission to remain while refugee status is determined** – A third step should be the promotion of legal recognition of asylum seekers and refugees in countries across the region, allowing people progressing through an asylum process to be given legal permission to remain in the country until their status is determined and a durable solution found. The legal right to reside must be coupled with other basic rights and access to services (these minimal requirements form the basis of *effective protection*³), including:
 - a. the right to work so that refugees and asylum seekers are able to support themselves and their families;
 - b. access to school education for children and basic health care, preferably through government domestic programs but, failing that, through properly-established and supported assistance developed by NGOs working with UNHCR.
4. **Developing national asylum legislation** – A next step would be to encourage the development of national legislation for asylum and refugee status determination, including avenues for independent review. These national systems could be based on similar models that have been developed in countries such as the Philippines and the Republic of Korea.

³ In this sense, *effective protection* meaning access to a fair and credible system of refugee status determination, including access to independent monitoring and judicial review; humane conditions of reception and protection, including protection against arrest and detention, access to livelihoods, provision of services and support to ensure an adequate standard of living and protection against refoulement; and provision of appropriate durable solutions within a reasonable timeframe.

5. **Promoting ratification of the Refugee Convention** – With domestic legislation in place, countries could be encouraged to sign the Refugee Convention and Protocol. For many countries, this would be seen as a much smaller step if taken after legislation is in place than if taken now when no protections are in place.
6. **Exploring the regional recognition of citizenship** – Building on the experience of the ECOWAS states in West Africa, discussions on regional cooperation could encourage an exploration of the recognition of citizenship across the ASEAN region, providing an additional form of protection for refugees from ASEAN states. This idea could also be promoted to nations in other sub-regions such as South Asia and the Middle East.
7. **Building regional consistency in asylum processes** – As each nation develops its own domestic asylum and protection systems, work could begin on building greater consistency in processes across the region. The goal would be to work towards a situation where an asylum seeker would not be advantaged or disadvantaged by seeking asylum within a particular country in the region.
8. **Working together to find protection solutions** – With a regional framework in place, countries in the region could work together to provide protection solutions for refugees based on responsibility sharing and on needs within the region rather than where refugees sought protection. This approach to protection would be based on a clear understanding that different countries have differing national capacities to provide long-term protection to refugees. For example, there would be recognition of the limited economic opportunities available in Indonesia, compared to greater opportunities in countries like Malaysia and Thailand and even greater opportunities in Australia.

Important role of civil society in promoting dialogue – For dialogue on refugee protection to succeed, civil society organisations must have an important role. The change that will be required in the medium to longer term to boost refugee protection in the region will require significant support from citizens of the individual countries. It is important to bring civil society organisations into the regional dialogue and to look at options for developing a civil society dialogue that runs parallel to the Bali Process discussions. In Thailand, for example, the national discussion of refugee protection has begun to change as national NGOs have started to take a more active role. In the past, much of the support of refugees in Thailand has been left to UNHCR and international NGOs. However, emerging Thai NGOs, with national support bases and local connections, have illustrated a greater capacity to engage Thai institutions, politicians and the local media in discussion about matters of refugee protection.

8. Role of resettlement to Australia in brokering solutions

Learning from the effectiveness of past resettlement programs – In the years following World War II and in the late 1970s and early 1980s, Australia's approach to refugee resettlement was far more generous than it is today. Thirty years ago, Australia's annual resettlement program was more than three times larger on a per capita basis than the current program. The 1980-81 program would be equivalent in per capita terms to a resettlement program of 33,750 today, while the peak post-war year for resettlement (1949-50 when 89,199 refugees were resettled) would be equivalent to a resettlement program of 242,000 relative to Australia's 2011 population. These historical highs in Australian refugee resettlement were part of a national strategy to respond effectively to the refugee crises which existed at the time. Given the national focus now on refugee issues, it is highly appropriate for Australia to look to the generosity and effectiveness of past programs in determining an appropriate response to current refugee needs. For some years, RCOA has been recommending that Australia's offshore refugee resettlement program be expanded to 20,000 places per year.

The impact of the numerical link with the onshore protection program – Australia's current approach to resettlement is significantly undermined by the policy, introduced in 1996, of creating a numerical link between the offshore resettlement and onshore protection programs. Australia is the only country to implement such a policy and is the only nation in the world to impose an absolute cap on the number of refugee places. Planning for resettlement is hampered by the need to try to predict the unpredictable – the numbers of asylum seekers likely to require protection in any given year. As the numbers of asylum seekers recognised as refugees has grown in recent years, places have been taken away from the Special Humanitarian Program (SHP), to the point where the SHP has dwindled to just a few hundred

places per year. This has caused much angst in refugee communities as the SHP has provided the best option for the reunion of refugee families. RCOA has strongly advocated for an end to this numerical link every year since its introduction 16 years ago.

Maintaining a global focus to Australia's resettlement – An expansion of Australia's refugee resettlement program would provide greater opportunities for Australia to offer protection solutions to refugees in Asia as part of a developing regional cooperation framework. However, Australia should not allow its resettlement program to become focused only on Asia but should maintain significant refugee resettlement programs from Africa and the Middle East. Earlier this month, UNHCR released its "Projected Global Resettlement Needs" document for 2013. In this document, UNHCR has identified 859,305 refugees in need of resettlement, of whom 180,676 require resettlement in 2013. Unfortunately, the number of resettlement places offered by governments to UNHCR remains at only 80,000 per year. As Table 1 illustrates, 41.6% of refugees identified as being in need of resettlement are in Africa and 31.4% in the Middle East and South West Asia, with the proportion for the Asia region being 19.0%. The top six countries of origin for refugees identified by UNHCR as being in need of resettlement are Afghanistan, Somalia, Burma, Sudan, Democratic Republic of Congo and Iraq with the top six countries of asylum being Kenya, Pakistan, Malaysia, Iran, Chad and Turkey.

Table 1: UNHCR Global Resettlement Needs 2013, by country of asylum

Regions (DIAC definition)	Resettlement needs in 2013	Total resettlement needs
Africa	79,530 (44.0%)	357,893 (41.6%)
Americas	12,286 (6.8%)	32,020 (3.7%)
Asia	39,872 (22.1%)	163,685 (19.0%)
Europe	19,488 (10.8%)	36,103 (4.2%)
Middle East and South West Asia	29,500 (16.3%)	269,604 (31.4%)
Total	180,676	859,305

Engaging resettlement states in supporting regional cooperation – By maintaining a global focus to its resettlement, Australia would be in a stronger position to ask other resettlement countries to consider a greater focus on Asia as part of a developing Regional Cooperation Framework. For the past 12 months, Australia has chaired the international dialogue on refugee resettlement, through the Working Group on Resettlement (which met in Geneva in October 2011 and Melbourne in February 2012) and the Annual Tripartite Consultations on Resettlement (which was held in Geneva from July 9 to 11, 2012). The meetings were chaired by Jim O'Callaghan of the Department of Immigration and Citizenship (DIAC) and co-chaired by Paul Power of the Refugee Council of Australia (as NGO Focal Point). Australia's reputation among the resettlement states has been enhanced considerably by the positive leadership it has demonstrated among resettlement states, particularly for the way in which it has advanced dialogue on post-arrival support of resettled refugees. Given (as noted earlier) that there is some unfilled capacity for resettlement, Australia could build a case for resettlement states - in particular the United States, Canada, New Zealand, Sweden and Norway - to view resettlement as a strategic tool to increase protection opportunities for refugees in South East Asia and South Asia. However, if Australia tries to involve those same resettlement states in taking asylum seekers or recognised refugees who have previously entered Australian territory and have been shifted to offshore processing centres, there is little chance that those states will be interested, as they would rightly regard asylum seekers who have been on Australia's territory as Australia's responsibility. Engaging resettlement states in supporting the development of a Regional Cooperation Framework through strategic resettlement is an entirely different proposition – and one with a high prospect of success.

9. Humanitarian family reunion

Some refugee and humanitarian entrants separated from family members who are living in precarious situations overseas, and who feel there is no hope of reunification through regular pathways, may feel there are few alternatives but to support family members to make dangerous onward journeys to Australia or to other safer countries. In RCOA's 2011 community consultations, members from a wide range of communities – including those from the Africa, Asia and Middle East regions – talked about boat journeys being the only way they could foresee being able to reunite with their loved ones. While

recognising the enormous dangers and risks of such journeys, some may consider these less than the risks and dangers faced by family members in countries of asylum or origin.

As noted earlier, the Special Humanitarian Program (SHP) has traditionally been the main way in which refugee and humanitarian entrants have sought to reunite with family members separated through conflict, flight and resettlement. Currently, demand for SHP visas far exceeds the number of places allocated, with estimates of some 20,000 applications awaiting processing and only 714 visas granted in 2011-12.

There are a variety of family reunion visa subclasses within the general Migration Program that are also open to refugee and humanitarian entrants. While statistics are not readily available on the extent to which refugee and humanitarian entrants have reunited with family members through the Migration Program, there is anecdotal evidence that refugee and humanitarian entrants are increasingly looking at other visa options in an attempt to bring family members to Australia. At the same time, there has been increasing recognition and frustration at the limited opportunities and multiple barriers for those who have settled under the Humanitarian Program to propose and support family members under the Migration Program. Concerns that have been raised in community consultations include:

- *Financial constraints* – Recently settled refugees applying to sponsor family under the Migration Program must cover the high costs of visa applications, (private) migration agents, health checks, DNA and documentation requirements and airfares, and support sponsored family members with complex settlement needs who have limited access to services and no or limited access to social security for up to ten years (i.e. for parent visa subclasses).
- *Documentation* – Some community members reported difficulties applying for family reunion visas due to the inability to meet documentation criteria, such as providing death and birth certificates. In some countries these documents do not exist, have been lost during periods of conflict or flight, or are unable to be obtained due to the breakdown of civil administrative systems and/or state discrimination. Some community members reported going to extraordinary lengths to obtain documentation that has subsequently been rejected by DIAC. One Iraqi man in Melbourne spoke of sending a family member back to Iraq to seek official documentation that proved his sister had custody of her children, placing this family member in grave danger.
- *Migration advice* – Many refugee and humanitarian entrants who have been able to access public or low-cost migration agents to help in filling out SHP applications (e.g. IAAAS-funded services) do not have the same access to help with filling out other types of visa applications. For example, in South Australia the Legal Commission can assist humanitarian entrants with SHP visas but will not help with any family stream visas, instead referring to private migration agents who charge, at a minimum, roughly \$2,000. Some private migration agents do not necessarily have the expertise in working with refugee and humanitarian entrants.
- *Services and support* – Service providers and community members have raised concerns about the isolation and lack of services available to family members of refugee and humanitarian entrants arriving on a range of family stream visa subclasses. Many of those sponsored have come from similar experiences as those coming under the refugee and humanitarian program but with no settlement support on arrival.

While RCOA believes that reuniting families should remain a cornerstone of the Refugee and Humanitarian Program, there may also be potential for exploring ways in which some refugees with family links could use the Migration Program as mechanism for reunification. Waiving the considerable visa application fees and lifting the bar on access to social security for people sponsored by humanitarian entrants under the Migration Program are two ways to remove some of the financial barriers for humanitarian families wishing to reunite under the Migration Program.

Consideration could also be given to both examining the criteria of other visas and providing flexible alternatives to the current requirements for people in refugee or refugee-like situations, as well as lifting the highly restrictive caps on other visas classes, such as the Orphan Relative or Last Remaining Relative visas. Many people in high-risk situations are prevented from entering Australia because of constraining visa criteria. Places of processing (in war-torn regions, for instance) mean that highly vulnerable people are unable to comply with the strict requirements (e.g. documentation requirements).

These thresholds should be examined to ensure that vulnerable people have access to effective remedies.

10. Some short-term options to prevent loss of life at sea and to enhance protection

The lack of legal options for people seeking protection in Australia remains a significant factor driving the number of people entering Australia without visas by boat. Many people who would seek to enter Australia as temporary visitors are excluded on the basis that they are from refugee-source countries and are deemed to be at high risk of overstaying their visas.

While regional cooperation on refugee protection issues is developed, the Australian Government must focus on a range of short-term measures to provide refugees and asylum seekers with viable alternatives before they decide to take a boat journey to Australia. Some options which could be explored in the short to medium-term include:

- **Asylum applications through embassies** – Allowing people to make applications for asylum through Australian embassies in South East Asia and South Asia.
- **Temporary entry to Australia** – Providing a form of temporary entry to Australia for the purposes of seeking asylum. If the concern of government is that people's lives are at risk and that they are entering without legal permission, it would be possible for Australia to provide, under certain conditions, temporary access to the country for the purposes of seeking asylum. This could be done through existing visa streams.
- **Joint processing of asylum applications** – Establishing joint processing of asylum applications in Indonesia or other nations. This would need to be handled very sensitively from a national sovereignty perspective but it would be worthwhile for Australia to open up dialogue with countries in the region to see whether any of Australia's neighbours would be interested in participating in a short-term program to address refugee needs jointly and to share responsibility for outcomes. This would involve working with a particular state in which the processing of applications is led by UNHCR and brokering options for resettlement in Australia and elsewhere or for legal temporary stay in the country of asylum.
- **Broadening family reunion options** – Providing greater avenues for family reunion from countries where highly vulnerable people are at risk - both countries of origin and asylum (see section 8).
- **Use of in-country visas** – Exploring greater use of in-country visas such as the In-country Special Humanitarian Visa which provides avenues for people at great risk to be provided with a visa out of their country of origin.
- **Working visas** – Developing working visa pathways for people from refugee source countries (e.g. people from Afghanistan). These working visas would have lower visa criteria thresholds than other skilled visas, with a mechanism built-in for progressing to permanent residency.
- **Audit of access to asylum procedures** – Asking the Regional Support Office to work on an independent audit of access to asylum procedures and to durable solutions in Bali Process countries as a means of encouraging dialogue on what next steps need to be taken regionally to boost refugee protection.

11. Conclusion

The pursuit of 'deterrence' measures to discourage asylum seekers from directly approaching Australia for protection may be popular with some segments of Australian society but any deterrence Australia can develop is unlikely to compare to the threats faced by many refugees in their countries of origin or the impact of living in very difficult situations without legal status in some countries of asylum. Only by sacrificing the very values that are central to Australian identity, such as liberty and the rule of law, could Australia be made as unattractive as the countries that refugees seek to flee. As a party to the 1951 Convention, Australia has responsibilities towards refugees that it cannot shirk without inviting other countries to shirk their own responsibilities under international law. A further decline in refugee protection standards within our region would create greater instability and increased movement of asylum seekers – something which ultimately would not serve Australia's national interest. RCOA urges

the Expert Panel to put the needs of *refugees* at the heart of its focus. Policy options that do not take very serious account of refugees' needs will do nothing to reduce the risk of further loss of life at sea.

12. Recommendations

The Refugee Council of Australia recommends that the Australian Government:

- 1. Not pursue any option which involves removing asylum seekers from Australian territory.*
- 2. Engage the Indonesian Government and UNHCR in dialogue about collective options to respond to the situation of asylum seekers moving through Indonesia towards Australia, including the possibility of a joint approach to processing applications for refugee status and to finding durable solutions for those in need of protection.*
- 3. Engage UNHCR in dialogue about reducing delays in processing asylum and resettlement applications and improving communication with applicants, supporting UNHCR, if necessary, with additional resources to address these concerns.*
- 4. Explore how the Bali Process and the Regional Support Office can support the development of civil society dialogue on refugee protection in the Asia-Pacific.*
- 5. Develop a whole-of-government strategy for refugee protection which articulates how it intends to use the collective efforts of its different agencies (including DIAC, AusAID and the Department of Foreign Affairs and Trade) to promote refugee protection in the Asia-Pacific region and globally and to respond to issues in refugee source countries.*
- 6. Give greater funding support through AusAID to NGOs working to support vulnerable refugees and asylum seekers in Asia, the Middle East and Africa.*
- 7. Increase the offshore Refugee and Humanitarian Program to at least 20,000 places per annum as soon as possible.*
- 8. Remove the numerical link between the Onshore Protection and offshore Refugee and Humanitarian Programs, returning to the pre-1996 policy under which Onshore Protection visas were issued according to protection need without any impact on other humanitarian visas.*
- 9. Maintain significant refugee resettlement programs from Africa and the Middle East while exploring how resettlement to Australia can be used strategically to improve protection for refugees in Asia.*
- 10. Engage UNHCR and other resettlement states in developing a collective resettlement strategy to support the development of an Asia-Pacific Regional Cooperation Framework.*
- 11. 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 examining alternatives to complex legal and eligibility requirements which cannot be met by people living in refugee situations overseas.*
- 12. Explore how other existing visa options, including the In-Country Special Humanitarian Program and temporary work visas, can be used as a valid alternative pathway for people seeking to enter Australia to achieve greater protection.*
- 13. Consider providing alternative options for people to seek asylum in Australia, including by applying through Australian embassies in particular locations and providing legal permission to enter Australia on a temporary basis for the purposes of seeking asylum.*
- 14. Ask the Regional Support Office to work on an independent audit of access to asylum procedures and to durable solutions in Bali Process countries as a means of encouraging dialogue on what next steps need to be taken regionally to boost refugee protection.*

20 July 2012

APPENDIX 1

Table 2: International human rights treaties signature and ratification in the Asia-Pacific region⁴

Sub-region	Country	Refugee	ICCPR	CAT	CRC	ICESCR	ICERD	CEDAW	CRPD	FLC
South Asia	Afghanistan	✓	✓	✓	✓	✓	✓	✓	×	×
	Bangladesh	×	✓	✓	✓	✓	✓	✓	✓	✓
	Bhutan	×	×	×	✓	×	○	✓	○	×
	India	×	×	○	✓	✓	✓	✓	✓	✓
	Maldives	×	✓	✓	✓	✓	✓	✓	✓	×
	Nepal	×	✓	✓	✓	✓	✓	✓	✓	✓
	Pakistan	×	✓	✓	✓	✓	✓	✓	✓	✓
	Sri Lanka	×	✓	✓	✓	✓	✓	✓	○	✓
South East Asia	Cambodia	✓	○	✓	✓	✓	✓	✓	○	✓
	Indonesia	×	×	✓	✓	✓	✓	✓	✓	✓
	Malaysia	×	×	×	✓	×	×	✓	✓	✓
	Burma (Myanmar)	×	×	×	✓	×	×	✓	✓	✓
	Philippines	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Singapore	×	×	×	✓	×	×	✓	×	✓
	Thailand	×	✓	✓	✓	✓	✓	✓	✓	✓
	Timor-Leste	✓	✓	✓	✓	✓	✓	✓	×	✓
	Vietnam	×	✓	×	✓	✓	✓	✓	○	✓
East Asia	China	✓	○	✓	✓	✓	✓	✓	✓	×
	DPR Korea (North Korea)	×	✓	×	✓	✓	×	✓	×	×
	Japan	✓	✓	✓	✓	✓	✓	✓	○	✓
	Mongolia	×	✓	✓	✓	✓	✓	✓	✓	✓
	Republic of Korea	✓	✓	✓	✓	✓	✓	✓	✓	×
Pacific	Australia	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Nauru	✓	○	○	✓	×	○	✓	×	×
	New Zealand	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Papua New Guinea	✓	×	×	✓	✓	✓	✓	○	✓

✓ signed and ratified

○ signed only

×

⁴ Treaty abbreviations:

Refugee: Convention relating to the Status of Refugees

ICCPR: International Covenant on Civil and Political Rights

CAT: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CRC: Convention on the Rights of the Child

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICERD: International Convention on the Elimination of All Forms of Racial Discrimination

CEDAW: Convention on the Elimination of Discrimination against Women

CRPD: Convention on the Rights of Persons with Disabilities

FLC: CO29 Forced Labour Convention