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AUSTRALIA'S REFUGEE AND SPECIAL HUMANITARIAN PROGRAM:

CURRENT ISSUES AND FUTURE DIRECTIONS

Views From The Community Sector

November 2001

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1. INTRODUCTION

The Refugee Council welcomes the opportunity to discuss a number of issues pertaining to the size, composition and management of Australia's Refugee and Special Humanitarian Program (RSHP) ¹ and in doing so stresses that the views expressed reflect those of the Council's constituency.

It is acknowledged that in recent months the issue of "refugees and asylum seekers" has been at the centre of an emotionally charged election campaign. It is an issue on which the community has polarised, with many supporting the Government's efforts to prevent entry of asylum seekers into Australian territory. Others believe that the Government has been unnecessarily harsh and is ignoring the humanitarian imperative to assist those fleeing persecution.

Which ever view one takes, there are certain undeniable realities:

- every western country has become a destination for asylum seekers. This is a predictable result of globalisation;
- in many instances, those seeking asylum are coming not from their country of origin but from the country in which they first sought protection;
- many asylum seekers are engaging the services of people smugglers to get them to a country in which they can lodge a protection application;
- asylum seekers are not the only people to turn to smugglers. People motivated by poverty and/or poor employment prospects also use smugglers in order to get to western countries in which they believe their future will be better;
- separating those in need of protection from economic migrants and protecting vulnerable people from the more unscrupulous smugglers has become one of the major challenges confronting western governments today;
- amongst those who seek asylum are some who are taking advantage of the human rights and rule of law guiding principles that underpin western democracies such as Australia.

With the 2001 election campaign now over, the Refugee Council of Australia argues that it is time for the Australian Government to take these critical issues out of the political arena and to work cooperatively with UNHCR, other governments and the community sector to seek ways in which those in need of protection can receive it without jeopardising Australia's sovereignty or dividing the community.

A too ready equation of refugees with burdens is not only misguided, but it significantly distorts the perception of the refugee problem and the needs to be addressed. In a refugee situation the primary need to address is the human predicament of the refugee. The burdens it may provoke demand sensitivity and an international response - as indeed the 1951 Convention recognises - but they

¹ Reference is made to the fact that this paper complements an earlier paper: RCOA Position Paper on Australia's Humanitarian Program. July 2001.

cannot be allowed to obscure the fact that refugees present, primarily, a humanitarian and human rights responsibility of care, not burdens kept at bay.²

Before moving on to address some of the current issues in Australia, there is value in centring the discussion in the legal, political and ethical framework on which refugee protection is based. For this we look for guidance in the words of the UNHCR Director of International Protection:

... the 1951 Convention is the foundation of refugee protection, the only truly universal instrument setting out the baseline principles on which the international protection of refugees has to be built. These include:

- *Refugees should not be returned to face persecution or the threat of persecution (the principle of non-refoulement).*
- *Protection must be extended to all refugees without discrimination.*
- *As the issue of refugees is social and humanitarian in nature, it should not become the cause of tension between states.*
- *Since the granting of asylum may place unduly heavy burdens on certain countries, a satisfactory solution can only be achieved through international cooperation.*
- *As persons escaping persecution cannot be expected to leave their country and enter another country in a regular manner, they should not be penalised for having entered into or for being illegally in the country where they seek asylum.*
- *Given the serious consequences of expulsion for refugees, such measures should only be adopted in exceptional circumstances directly impacting on national security or public order.*
- *Cooperation of states with the High Commissioner for Refugees is essential if the effective coordination of measures taken to deal with the issue of refugees is to be ensured.³*

2. THE CURRENT ISSUES

In calling for submissions on the 2002-2003 Humanitarian Program, the Department of Immigration and Multicultural Affairs has asked the community sector to reflect on a number of issues. This and the following sections will take up many of the issues referred to in the discussion paper, and while the questions are not necessarily answered in the order in which they were asked, each will be addressed in the context of a thematic discussion.⁴

The current controversy about refugees in Australia has at its epicentre the unauthorised arrival by boat of significant numbers of people from the Middle East, largely from two countries, Afghanistan and Iraq. This one issue has dominated press coverage and public debate. It has also become intertwined with consideration of all refugee-related

² Extract from the opening remarks of the UNHCR Director of International Protection in the Debate on International Protection at Excom 2001. October 2001.

³ In "The Convention at 50: the way ahead for refugee protection". Forced Migration Review. April 2001.

⁴ The views presented are those of the Refugee Council, derived in large part from the Council's ongoing consultations with its members, other community based agencies and refugee communities. It is also based on international research and the Director's recent field visit to the Islamic Republic of Iran (the findings of which are the subject of a separate report).

issues, no matter how far removed. It is therefore appropriate that we begin by examining this vexed and complex issue.

2.1. Secondary Movement

*Unless we take time to look for the cause of our experience, we will never remove ourselves from the experience it creates.*⁵

It is acknowledged that the majority of those seeking to come to Australia through unauthorised channels at this time are people who have spent time in a country of first asylum before moving on, and sometimes have also transited in one or more countries in South East Asia for a period of time.

The Refugee Council argues that any efforts to control secondary movement of asylum seekers must first address the question of why people are moving onwards. More specifically: why have we seen a sudden increase in the number of asylum seekers coming from this region in the last two years when there was no appreciable change in the countries of origin?⁶

Thus far, the bulk of the Government's efforts to stem the flow have focused on removing the "pull factor", i.e. taking away those things that were considered to make Australia the preferred destination for asylum seekers: "permanent protection and family reunion."⁷ The package of legislation passed in late September is the latest in a long line of legislative disincentives which began with the introduction of mandatory detention in 1992 and also included the introduction of the Temporary Protection Visa (TPV) regime in 1999.

It is the contention of the Refugee Council that this response is based on a flawed assessment of the situation. People working closely with the new arrivals have reported to RCOA that:

- a significant proportion had little idea where they were going until they actually got on the boat to come to Australia;
- if Australia was a selected destination, it was often chosen on the basis of cost (i.e. passage to Australia is cheaper than passage to Europe⁸) rather than entitlements post-arrival;
- where "family links" have been a major motivation, these have determined the direction of movement rather than the decision to move *per se*. More recently too we have seen the wives and children of TPV holders having to avail themselves of smugglers because other avenues of reuniting the family have been denied them by the restrictions imposed by the Temporary Protection Visa regime;

⁵ His Holiness, the Dalai Lama, speaking on 11th September.

⁶ This leaves aside the events of 11th September and the subsequent actions in Afghanistan which occurred after most of the asylum seekers set out on their journey.

⁷ As suggested in the briefing from DIMA to NASREF, 14th November 2001.

⁸ For example, according to IRAC, the NGO umbrella body in Iran, passage from Iran to Europe will cost in the order of \$US6,000, whereas it costs only \$US2,000 to get to Australia.

- visions of the country they sought to come to are expressed in terms of “freedom”, “democracy” and “safety”, not financial advancement. Even the much-used term “better life” is rarely measured in purely fiscal terms.

In other words, it is hard to find evidence that people are being drawn to Australia by the benefits they are offered. Further, there is no evidence that the removal of “incentives” has had any substantial impact on reducing the number of people seeking to come to Australia (in fact, almost the opposite can be argued⁹).

It is also important not to lose sight of the fact that Australia is not the only destination for this cohort of asylum seekers. In the third quarter of 2001, Europe saw a 20% increase in the number of asylum seekers as compared to the previous quarter – a jump from 80,200 to 95,800 in EU countries excluding the UK¹⁰ - with the largest single group being from Afghanistan. Europe also experienced a 34% increase in the number of Iraqi asylum seekers in the same period. This trend parallels the increase in numbers headed to Australia.

If the pull factors are not the cause, do we then need to look at the push factors?

It is the opinion of the Refugee Council that the issue of secondary movement has at its core the conditions in the countries of first asylum, i.e. it is our contention that the push factors are far more important than the pull factors.

In most refugee situations traditionally there has been the expectation that refugees cross a border into a neighbouring state where they will receive protection until such time as they can return voluntarily to their country of origin. There has also been the expectation that any especially vulnerable refugees amongst the much larger caseload will be identified and assisted by resettlement. This ideal scenario depends on a number of factors including:

- the willingness of the host country to provide ongoing sanctuary;
- the adequacy of assistance provided by the international community to the host country and when the time comes for repatriation;
- the resources given to UNHCR to identify and process vulnerable individuals;
- the willingness of resettlement countries to offer places;
- the fairness and expedition of resettlement processing;
- the level of confidence that refugees have that their basic rights will be met and they will not be forced back to their country of origin.

The problem is that we do not live in an ideal world and rarely do things go according to predetermined models. Where one or more of these ingredients is missing, the groundwork is laid for secondary movement.

Before looking at how these factors have played out in the countries from which the current major groups of asylum seekers are moving, however, there is value in introducing the question that seems central to the current debate: “what responsibility should Australia have for people who had or could seek effective protection somewhere else?”

⁹ As the September 2001 legislation was introduced in response to the increased number of people heading to Australia.

¹⁰ Figures from UNHCR.

The Refugee Council suggests that this question can only be answered if first there is a clear understanding of what constitutes “effective protection”. It is our contention that in this context, reference must be made not only to a person’s rights under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (the Refugee Convention) but also to other relevant international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CROC).

While both protection from refoulement and/or access to status determination procedures are core refugee rights, they do not, by themselves, constitute full and effective protection. They must be accompanied by other fundamental human rights such as:

- the right to work (ICESCR Article 6)
- the right to fair wages and safe working conditions (ICESCR Article 7)
- the right to an adequate standard of living (ICESCR Article 11, CROC Article 27)
- the right to medical care (ICESCR Article 12, CROC Article 24)
- the right to education (ICESCR Article 13, CROC Article 28).

Further, when we examine “effective protection”, consideration must be given to the durability of the protection offered. Is it sustainable? Does it enable the refugee to enjoy their rights without fear of involuntary return and/or removal of rights? Does it allow a refugee to live without fear of discrimination, harassment or arbitrary arrest? And once status is bestowed, does it also allow the refugee to exercise other rights, in particular that to family reunion (as set out in Article 10 of ICESCR and Article 10 of CROC)?

To what extent do the countries from which and through which the current groups of refugees coming to this country offer effective protection?

Until the events of 11th September, **Pakistan** was a staunch supporter of the Taliban “regime” in Afghanistan. Not only is the systematic persecution by the Taliban of ethnic and religious minorities in Afghanistan (in particular the Hazaras, but also other groups such as the Tajiks) well documented, so too is the ill-treatment these minority groups can expect in Pakistan. Their chances for consideration for resettlement were until recently greatly reduced by the comparatively small number of Afghans minorities amongst the Afghan diaspora¹¹ and have been further affected by the closure of the Australian High Commission in Islamabad. It is therefore of little surprise that we are seeing these groups looking to smugglers to help them to travel to countries where they can seek effective protection.

Since 1998 refugees in **Iran** have been denied access to most forms of legal employment. The passage of Article 48 legislation¹² early in 2001 further increases the precariousness of the conditions for Iran’s 2.3 million Afghan refugees, over 95% of whom live in urban centres and receive little or no welfare support. Whereas previously most were able to sustain themselves, their options are now limited and precarious. The most common source of income is in the construction industry, but as their employment comes at a substantial risk to the employer, they are typically given the most dangerous

¹¹ As compared to the majority Pashtuns.

¹² This involved registration of all refugees in Iran and was intended as a precursor to possible removal.

jobs and are often exploited in terms of wages and conditions. Begging and drug smuggling are the only other real opportunities for Afghan refugees to earn money. Meanwhile, they still have to pay the Iranian landlords,¹³ find money for food, health care and their children's education. For many, this is a downward spiral into debt, underpinned by the fear that they will be compelled to return.

CASE STUDY: Afghan family with four children living in a slum area in southern Tehran. The man was an academic in Kabul, his wife a lawyer. They have been in Iran for 8 years and for most of the time, the man has been able to work and support his family. The new laws have meant that he can only get occasional "black" work and it is always a struggle to find the money for the rent. Most days the family lives on bread and black tea. A couple of days a week they might be able to afford vegetables and meat is an occasional luxury. Their home consists of two small rooms, one in which the family live and sleep, the other which serves as kitchen and bathroom. There are holes in the roof and the electrical wiring in the walls has been exposed by crumbling plaster. They would like to be resettled but the fact that their two eldest daughters (aged 11 and 13) both have cancer means that they are unlikely to be approved. They despair for their future, seeing no way out of their dilemma and knowing that there is no way they can pay for the treatment their children need. They are prime targets for an offer from enterprising smugglers.

The Government of Iran has been appealing to the international community for many years for assistance¹⁴, arguing that they are unable to cope alone. It costs the Iranian Government something in the order of \$US1.3 billion each year¹⁵ to have the refugees in the country. This does not include any welfare support. Meanwhile they receive less than \$US30 million in aid funding. They are therefore not well disposed to arguments that they should "do more" for the refugees, or even that they should prevent them from leaving in search of a more secure future elsewhere.

It is the view of the Refugee Council that the current "refugee crisis" cannot ignore the very potent push factors in the countries from which the refugees are setting off – not just the widely acknowledged persecution in the countries of origin but the equally real problems they are experiencing in the main countries of first asylum. If refugees are not protected from abuse or threat to their physical safety, and if refugees are unable to sustain themselves and their families, it cannot be argued that the protection they are offered is "effective".

In his opening address to the NGOs at the recent UNHCR Consultation with NGOs¹⁶, the High Commissioner for Refugees, Ruud Lubbers, argued that the international community has fallen into the trap of settling for "non-durable solutions". By leaving people in limbo for too long, and not allowing them to become productive members of the community in which they are living "you are doing a bad job with protection" he argued. Such people then become "fuel for criminal networks" and as well as being easy targets for receiving States who can argue that they are "phoney" and have no right to protection.

¹³ Afghans are not allowed to own property in Iran and Iranian landlords are infamous for charging high rents for squalid properties and taking strong action if rents are overdue.

¹⁴ This appeal has been made, inter alia, at the annual meeting of the UNHCR Executive Committee.

¹⁵ According to the Government of Iran, this is the cost of subsidies for basic commodities such as electricity, fuel and bread.

¹⁶ UNHCR-NGO Consultation. 24 September 2001.

Australia should heed the High Commissioner's words. The flow of people will continue until such time as the refugees believe that they have found a solution. Refugees, almost by definition, will risk all in search of protection. All we are seeing in the movement to Australia is a group of people who believe that they have to look beyond the horizon to find it. And for so long as their compulsion remains, there will be other people, some of whom are unscrupulous, who will be prepared to provide the means for them to get there.

It is no longer possible to argue that we are seeing a flow of people who "want" rather than "need" resettlement. For as long as countries of first asylum are unable to provide effective protection, there will be vastly more people in need of help than any managed resettlement program can accommodate. It is only through donor states rethinking priorities and ensuring that the countries that are bearing the bulk of the burden receive sufficient assistance that the incidence of secondary movement will be minimised (though it is unrealistic to think that it will cease entirely). And if donor states do make a fairer and more equitable contribution, another of the issues that so vexes the Government will be addressed. If the refugee population at large is receiving sufficient support, the number of people in need of third country options will be much smaller and there will be more chance that their needs can be met through orderly resettlement programs.

Before moving on, reference must be made to the events of the 11th September and the subsequent "War Against Terror" in Afghanistan. This has added an increased level of complexity to an already difficult situation. While it will inevitably bring more aid money into the region, the numbers of vulnerable aid recipients is increasing daily, as are the difficulties in getting aid to those who need it. There is also the very real chance that the pre-existing refugee population will see little of the West's new-found largesse and will become further marginalised in the communities in which they are living. What these events will mean for the new refugees is of course pure conjecture as, at the time of writing, events are changing day to day. This will be taken up in the section of the report that deals with regional composition.

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Then we come to the issue of the countries through which asylum seekers travel. Here too the issue of "effective protection" is relevant and we begin by turning to the words of the Director of the UNHCR Division of International Protection, Erika Feller¹⁷:

Notions such as "effective protection elsewhere" are increasingly entering asylum systems, in effect substituting for the internationally agreed refugee definition. Whether or not an individual has found, or even could have found, protection in countries through which that person has passed is rarely easily or reliably assessed. In any case, the indicators of "protection" are too imprecise.

If the notion is to have any currency, its applicability should be determined on an individual basis, not on a country basis, and certainly not in the case of persons who have passed through countries of "mere transit". Any decision to return an asylum seeker to a safe third country should be accompanied by assurances that the person will be readmitted to that country, will enjoy there effective protection against refoulement, will have the possibility to seek and enjoy asylum and will be treated in accordance with accepted international standards.

¹⁷ In "The Convention at 50: the way ahead for refugee protection". Forced Migration Review. April 2001.

Much attention has been given in the current debate to the responsibility of **Indonesia** to curb the movement to Australia. Little attention is given, however, to the following:

- Indonesia, like all of the countries through which the asylum seekers are transiting, is not a signatory to the Refugee Convention. As a non-signatory State, the only obligation¹⁸ on Indonesia is to refrain from forcing refugees to return against their will to their country of origin;
- while there the possibility exists for asylum seekers to approach UNHCR and apply for refugee status, UNHCR is very under-resourced to perform this task and it is not possible to include the same procedural safeguards as exist in status determination in Australia;
- refugees granted refugee status in Indonesia are not permitted to remain in the country. The agreement with the Indonesian Government is that resettlement places will be found for them. This, however, is proving problematic. In just over 2 years since the screening began, less than 20 of the almost 500 people who have been granted refugee status have been resettled. The apparent lack of any “durable solution” from Indonesia is compelling many to either bi-pass the status determination processes or, if they have been successfully through it, to move on in the hope of finding an “end” to their journey.

In the meantime, it must not be forgotten that Indonesia:

- has some 1.3 million internally displaced people of its own;
- is trying to deal with two major separatist movements (in Aceh and Papua);
- is confronting serious ethnic violence in many provinces including Kalimantan , Sulawesi and the Moluccas;
- has massive economic and other infrastructural problems;
- has (according to DFAT) little centralised control over the police and military.

It has to be acknowledged that it is not in Indonesia’s interests to do anything other than allow asylum seekers en route to Australia to continue their journey. They are not legally obliged to halt their passage and, in so much as they have been attempting to do so at the request of Australia, they have been creating problems for themselves. Having large numbers of foreigners awaiting determination living in (often outlying) parts of the archipelago can exacerbate ethnic tensions and can divert attention from the more pressing social issues. Further, as we have already seen with the disturbances in Jakarta, having increasing numbers of recognised refugees caught in limbo is a recipe for unrest.

The Refugee Council therefore argues that while it is important to work closely with Indonesia in controlling the flow of asylum seekers and ensuring the protection of those who are being smuggled, it is both unreasonable and unrealistic to expect that they take the prime responsibility. Australia, as a signatory state, with sophisticated status determination procedures, a sound economy and social stability, is far better placed to take the responsibility for ensuring that the flow of people through the region is

¹⁸ As imposed by International Customary Law.

addressed in a way that protects the rights of all people and provides necessary protection to refugees.

Further, we reiterate that if the Australian Government believes that the flow from the Middle East must be checked, it must do so in a way that actually addresses the root causes of the flow rather than simply seeking to check it mid-stream. To this end, and as will be discussed in the conclusions to this section, attention must be directed to the countries from which these people are fleeing.

2.2. Choice of Country of Asylum

Much has been made in the current debate about refugees “forum shopping”, with the implication that they have no right to move beyond the country of first asylum nor to choose the country in which they seek protection. This argument ignores both:

- the enshrined right (in Article 14 of the Universal Declaration of Human Rights) to seek protection from persecution; and
- the fact that there is no requirement in the Convention that a refugee seeks asylum in the country nearest his or her home or to the first state to which he or she flees. Nor does it require a refugee to travel directly to the state in which it is intended to seek durable protection.

Further, Excom Conclusion 15 states, *inter alia*, that:

The intentions of the asylum seeker as regards the country in which he wishes to request asylum should as far as possible be taken into account. Regard should be had to the concept that asylum should not be refused solely on the ground that that it could have been sought from another State.

The only exception given to this is where the asylum seeker has “a connection or close links” to another country, implicit in which is the requirement that the refugee has rights of domicile and that the country is willing and able to offer effective protection.

The Council therefore argues that it is contrary to the spirit of the Convention to penalise refugees who have moved beyond the country of first asylum in any way.

2.3. The “Pacific Solution”

While the “Pacific Solution” which sees asylum seekers en route to Australia sent to Pacific Islands to be processed might have had value as a way out of an impasse that was acceptable to the Australian Government at the time, it cannot be argued that it is sustainable.

For a start, it is an enormously expensive exercise. Not only are there the costs of processing, which according to DIMA sources are five times the cost of determination in Australia, but there are also the costs of the incentives that have been given to the Pacific states in order to gain agreement to establish the processing camps.

Expense need not only be measured in dollar terms. We also have to factor in the cost to Australia’s reputation:

- amongst our Pacific neighbours, especially if (as will be discussed below) the asylum seekers remain beyond the agreed period;

- in the international community, with Australia's efforts to exclude asylum seekers being condemned by many countries, both developing and developed, and being used by Pakistan as an excuse for closing its border to fleeing Afghans.

The Council questions too how achievable the Australian vision for the Pacific camps is. There are two possible outcomes when people are processed to determine refugee status. Either:

- they are found not to be refugees, in which case there is an expectation that they will be returned to their country of origin. But in the case of the current caseload, the majority are from countries to which involuntary return is not possible;
- they are determined to be refugees and resettlement places will need to be found. ... but the Australian Government has said that they will not all come here and other countries have demonstrated with the Indonesian caseload that they are unwilling to provide resettlement places.

It would thus appear that the likely outcome is that irrespective of the results of their status determination, the majority of those being sent to the Pacific camps will remain long after their status is determined ... doubtless much to the chagrin of their hosts ... that is unless the Australian Government changes its policy and allows entry to Australia.

It is the view of the Refugee Council that Australia has particular a responsibility towards its smaller neighbours. We have already seen in both Papua New Guinea (within the Parliament) and the South Pacific Forum that the issue has caused dissent, and the issue is still new. What will happen as the months unfold, and as countries like Nauru face further economic crises, and as the asylum seekers are not moved elsewhere? Australia cannot afford to destabilise its immediate region.

The Refugee Council argues that the "Pacific Solution" is a solution in name only and cannot be sustained. Now that the election is over, access to the Australian territory for status determination must be resumed.

2.4. The Question of Costs

In addressing the issue of costs, it is relevant to begin by looking at the cost to the Australian tax-payer of the current arrangements for dealing with unauthorised arrivals. We can begin with the DIMA discussion paper which makes reference (on p28) to the fact that in 2000-2001 Australia "spent some \$211 million on detention, legal assistance, protection determination, and review and litigation costs for those who arrive unlawfully".

It is important to note that this figure does not include the cost of the interception agreement Australia has with UNHCR, IOM and the Indonesian Government which, if the figures presented in Peter Mares' book "Borderline" can be drawn upon, are in the order of \$90 million per annum. We then need to factor in the \$148 million the Government has announced for the "Pacific Solution", a figure which may well be exceeded.

Once these figures are added up, we arrive at an amount of almost \$450 million, devoted in most part to keeping out a few thousand people, the majority of whom (by the Government's admission) are Convention refugees.

Consider then:

- the situation of the Islamic Republic of Iran which, as previously mentioned, receives less than \$60 million per annum through UN agencies, NGOs and other governments to provide for over 2½ million refugees;
- Australia's recently announced contribution of \$21.5 million to assist the countries bordering Afghanistan.

For as long as this gross disparity persists, the problem cannot be solved. Further, it will become increasingly difficult for the Government to defend its priorities both internationally and domestically.

And while addressing the issue of costs, the Council must reiterate its concern that the decision to process asylum seekers "offshore" will result in each application costing in the order of \$250,000 to process compared to \$50,000 if the claim was assessed in Australia. Add to this the additional costs of establishing and resourcing the offshore detention centres and the many other associated costs. For fiscal reasons alone, the Council argues that there are sufficient grounds to abandon the "Pacific Solution", even before taking into consideration the cost to Australia's international reputation and the implications for this region if one or more countries is destabilised.

2.5. The TPV Regime

While UNHCR has to be there with protection and humanitarian support, countries around the world that are party to the Convention, must support with more than money. We must receive those asylum seekers who come to our borders well and give protection to all those in need.¹⁹

The views of the Refugee Council in relation to the Government's Temporary Protection Visa (TPV) policies are on the public record.²⁰ Further, the research that has thus far been conducted²¹ and all anecdotal reports from people working with the refugees, indicates that there are major deleterious social and economic consequences of the policy.

Rather than reiterating our opinions expressed in previous submissions, the Council would like to tackle this issue from another angle.

We begin by recalling that in the discussion about the events of 11th September, considerable attention was given to the reasons why people resort to taking desperate actions. Certain social and economic conditions were identified as catalysts:

- poverty
- discrimination
- alienation
- despair.

¹⁹ Statement by Sweden delivered the State Secretary, Ministry of Foreign Affairs at Excom 2001.

²⁰ See, for example, RCOA Intake Submissions of February and November 2001.

²¹ **Temporary Protection Visa Holders in Queensland** published by Multicultural Affairs Queensland. February 2001.

At this point it is necessary to stress that RCOA is not saying that TPV holders are or were terrorists, because to make such an equation would be, as the UN High Commissioner for Refugees reminded everyone at Excom, a highly irresponsible act. What we are saying is that the TPV regime created in Australia has all of the elements that could drive already vulnerable people to the edge.

Without access to language instruction and work-placement assistance, many TPV holders are finding it difficult to enter the workforce in any meaningful way. Further, many have family members overseas dependent on them for money. TPV holders are thus trapped in a cycle of poverty and dependency from which there is little chance of escape.

The politicisation of asylum has also resulted in refugees from the Middle East being seen by the public as “illegals”, despite their status having been recognised. They are subject to discrimination and abuse. Despite the valiant efforts of many TPV Support Groups, the message the refugees get from the general public and the media is that they are not welcome and should go home.

Further, the creation of the oxymoronic permanent Temporary Protection Visa, accompanied by the bar on family reunion, means that the refugees have nothing to hope for. Their future, as they see it, is one of permanent separation from their families, exclusion from the community and inability to rebuild any semblance of a dignified life.

Poverty, discrimination, alienation and despair are all features of the life of refugees granted TPVs in this country. It is the view of the Council that in pursuing this policy the Government is treading a dangerous path that could well have immense social repercussions, not just for the refugees but for the community as a whole.

It is also relevant to point to the costs of the TPV regime. No evidence has been presented that it has achieved its professed aim, i.e. deterring asylum seekers, so it cannot be argued that Australia has saved money this way. Further, while there might be some savings – though the Government has argued these are minimal – in excluding TPV holders from federally funded services, it is not possible to sustain an argument that there will not be longer term costs that far outweigh any savings. Having large numbers of welfare-dependent, non-English speaking marginalised (predominantly) men in the community will have both direct costs to the tax-payer and indirect costs in terms of community security, loss of potential and any number of other indicators.

From an Australian NGO perspective, one of the great sadnesses of the recent Global Consultations on Protection held in Geneva in September was that in the debate on reception standards for asylum seekers, country after country spoke about the importance of setting reception standards that are informed by international human rights norms, stressing the necessity of allowing asylum seekers access to employment, education, health care and family reunion. Yet we have a policy that not only fails to acknowledge the rights of asylum seekers, it denies the same rights to people recognised as refugees.

For as long as Australia persists with the policy of granting Temporary Protection Visas to Convention refugees (irrespective of where they are processed) we will be perpetuating suffering, threatening social cohesion and wasting precious human and fiscal resources. Australia will also find itself being marginalised and rapidly losing credibility in the international arena.

The Council reiterates its position that the circumstances in which there are legitimate uses for temporary protection visas are as follows:

- when events unfold overseas that require the evacuation of displaced persons, as happened in the case of people from Kosovo and East Timor;
- when conflict arises overseas and nationals of that country already in Australia are unable to return;

... and notes that this position is consistent with internationally accepted policy.²² We do not consider that it is acceptable to grant temporary protection visas to people determined to be refugees.

2.6. Fraud

*It is unfortunate that the trend towards criminalisation of asylum seekers and refugees seems to be on the increase. Indeed there some persons in both categories who have, or will be, associated with serious crime. But this does not mean that the majority should be damned by association with the few....Asylum seekers increasingly have a difficult time in a number of states, either accessing procedures or overcoming presumptions about the validity of their claim which stem from their ethnicity, or their mode of arrival. Because they arrived illegally does not vitiate the basis of their claim. Because they have a certain ethnic or religious background which may be shared by those who have committed grave crimes does not mean they, themselves, are also to be excluded.*²³

The Refugee Council accepts that it is essential to minimise fraud and abuse if the humanitarian program is to have the support of the public and be able to protect those most in need.

This being said, the Council argues that:

- the presumption that a person seeking protection will intentionally set out to defraud is unacceptable and fails to take into account the fear and desperation of many persecuted people;
- the act of seeking asylum must not be considered, in and of itself, as a criminal act
- efforts to detect fraud should be proportionate to its instance and must not impinge on the rights of the asylum seekers;
- if fraud or perceived fraud is used as the basis for denial of asylum or cancellation of a protection visa, the rules of natural justice must apply and the person must have access to appeal. Failure to comply with these provisions could lead to *refoulement*.

2.7. Abusive Claimants

²² For example the Conclusions of the Tampere Meeting of EU States. 1999.

²³ UNHCR Director of International Protection addressing the Executive Committee Meeting. October 2001.

The DIMA discussion paper poses the question: how can Australia ... remove the incentive for people without humanitarian claims to attempt to use the refugee programs to achieve migration outcomes?

In addressing this question it is necessary to make the distinction between four classes of people who lodge refugee status applications but who are not refugees:

- those who might not fit the definition but who genuinely believe that they would face serious problems if returned to their country of origin;
- those who are fully aware of the fact that they are not refugees but who, in order to have other humanitarian claims to remain considered by the Minister, must go through the status determination process; and
- those who are simply “coat-tailers”, i.e. people who see a group of asylum seekers moving towards a country and join in, misrepresenting themselves as someone from the same country/ethnicity/religion as the genuine asylum seekers;
- people who have entered on another visa type (eg tourist or student) and apply for asylum with the sole objective of extending their stay.

The first two groups can be dealt with together because in both cases there needs to be consideration of whether there are compelling non-Convention grounds for the person(s) to remain in Australia. The absence of a form of complementary status in Australia has long been a concern of the Council and is detrimental to:

- * those with humanitarian claims as they have to wait many months, and in some cases years - sometimes in detention, with all its associated financial and psychological costs - before their case is considered against appropriate criteria;
- * refugees, the processing of whose claims is delayed by the number of non-Convention claims in the pipeline; and
- * the refugee determination process, which is made more cumbersome by the inclusion of non-Convention claims.

One of the issues being considered in the context of the current UNHCR Global Consultations on Protection is that of complementary protection. Whilst many countries use one or more forms of subsidiary protection for people who fall outside the Convention, there is not yet any consistent application of the practice. In the discussion that took place when the matter was debated in Geneva in September 2001:

- there was widespread support for UNHCR developing Excom Conclusions on complementary protection to clarify about beneficiaries and mechanisms;
- it was stressed that complementary protection was different to temporary protection (with the argument being made that temporary protection is only acceptable in situations of mass influx) and to protection given to Convention refugees
- many countries spoke about the importance of having a single determination system in which the decision maker can decide whether refugee status or

complementary protection is the appropriate outcome. Several States reported that they were already using single determination procedure which they found both efficient and cost effective and were of the opinion that this is in the best interests of the applicant;

- it was widely felt that the entitlements for those granted complementary protection should be the same as for those granted refugee status.

The Council argues that it is time for Australia to revisit the concept of complementary protection and draw from the experiences of the countries that are using dual administrative processing to see how this can be done as effectively and expeditiously as they suggest.

Turning now to the third group, the “coat-tailers”. The Council argues that this issue can be addressed in various ways:

- if one concedes that the catalyst for this movement is the existence of a much larger group of genuine asylum seekers that they can “hide” themselves amongst, one obvious way to address the problem is to tackle the issue of the genuine asylum seekers, which, as the Council has already argued, must be done by ensuring effective protection for refugees in their immediate regions; and
- for so long as the movement persists, those misrepresenting themselves in the determination system should be returned to their countries of origin (subject to the provisos set out in Section 2.7), thus sending a message to others who might have similar intent that they will not achieve their objective.

Finally we have the “opportunists” who exploit the asylum process for no other reason than to extend their stay in Australia. Expeditious processing of manifestly unfounded claims can significantly reduce the incentive for people to abuse the system.

2.8. Program Management

i. Offshore-Onshore Linkage

There have been occasions where the Government has introduced policy about which reservations have initially been held but which, on acquaintance, is not seen to be a problem. This is not the case with the numerical linkage between the offshore and onshore humanitarian programs. Five years after the introduction of this policy, the Council’s concerns are, if anything, stronger than at its inception. In these five years, we have watched:

- rifts being created within and between communities in Australia on the basis that one group is being favoured over another;
- the public becoming increasingly confused about Australia’s humanitarian response, with many not able to conceptually separate resettling refugees from asylum seekers and, by extension, seeing refugees as undeserving;
- confidence in the offshore humanitarian program being eroded: as the number of offshore places has fallen (the size of the offshore program fell from 15,050 in 1995-96 to 7,992 in 2000-2001), the combination of long delays and little chance

of success has driven many desperate people to conclude that resettlement will not solve their immediate protection needs and thus they chance their fate to smugglers.

Further, it is significant to note that the concerns about the numerical linkage are not the Council's alone. The majority of community, church and human rights groups oppose the linkage and UNHCR has consistently spoken against it.

The Government argues that the numerical link is necessitated by the need to plan in advance for the cost of the humanitarian program. This argument is predicated on the notion that there is one humanitarian program. The Council, however, argues that the onshore and offshore programs, though currently linked in practice are, in fact, distinct in inception and motivation:

- the onshore program exists because of Australia's international obligations as a signatory to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. To fail to give protection to those who are determined to be refugees would be a breach of these obligations;
- the offshore program is driven by Australia's long held commitment to assist UNHCR find durable solutions for those for whom no other option exists. It is also acknowledged that the humanitarian program provides a tangible way for communities in Australia to assist members of their community in distress overseas. There is no legal requirement under the Convention that Australia have an offshore program but there is recognition that in providing resettlement places, Australia is playing its part as a good international citizen. This is a very valuable commodity and has gained Australia considerable respect within the United Nations framework.

If one accepts this premise, one can then accept that the costs should be considered separately:

- the costs associated with refugee status determination and support for onshore claimants should be viewed by the Government in much the same way as it views compliance costs associated with other treaties (trade, environmental and human rights). While it is not always possible to determine in advance exactly what the costs are, estimates can feasibly be made, with the actual costs being later adjusted and reported;
- being a voluntary contribution and easily the most significant contribution that the Australian Government makes to assist the work of UNHCR, the costs of the offshore program should be regarded in that light – as “aid” not a “conditional grant”.

Further, the Council argues that having a significant and stable offshore program has many benefits for this country, including:

- enhancing Australia's standing in the international community (noting that its resettlement program is the most significant contribution Australia makes to UNHCR);
- reducing the number of people who come irregularly because there are more resettlement places for which they can apply;

- assisting groups within the Australian community to feel that they are helping their compatriots or others who are need of resettlement.

ii. Access to the Program

In previous Intake Submissions the Refugee Council has documented the concerns that community members have raised about a number of recurrent issues including:

- the difficulties that refugees face in travelling to UNHCR offices or Australian migration posts. This is particularly problematic in Africa where the distances can be so great and Australia has only 2 main posts on the continent that process humanitarian claims;
- the difficulties that refugees encounter when trying to gain entry into UNHCR offices and migration posts because of interference by local people, either outside the post, employed as guards or engaged as local staff;
- the requirement that the applicant produce documents which they have no chance of obtaining other than by purchasing fakes in the black market;
- the high reported incidence of bribery and corruption in some countries;²⁴
- security issues involved in approaching certain posts (for example one hears frequent reports that Iraqi refugees will not go to the UNHCR office in Amman because they believe it to be under surveillance by Iraqi security forces).

Further, mention has already been made about the impact of the reduction in program size on the confidence that the resettlement program actually offers a viable option to people in need of protection.

The Refugee Council argues that if the program is to have integrity, every effort must be made to remove the impediments to accessing the program (including by ensuring adequate resourcing) and program size must reflect Government's stated commitment to resettlement as a durable solution.

iii. Entry Management

It is noted that substantial attention has been given in recent years to ensuring better management of visa issue so that arrivals could be spread throughout the year, and thus not cause problems for settlement agencies with peaks and troughs, and that there have been significant improvements in this area. This being said, it must be acknowledged that the introduction of the Integrated Humanitarian Settlement Strategy (IHSS) has added a whole new dimension to the need to ensure a steady flow of entrants to the various providers and that unlinked entrants are proportionally distributed to the different regions.

The success or otherwise of the IHSS service delivery model is predicated on each of the agencies having a sufficient "business level" to make the service financially viable,

²⁴ During the last year the UNHCR post in Nairobi has been the subject of an extensive investigation by the UN which has uncovered many suspect practices and has lead to the standing down of both locally engaged and international staff. RCOA has also recently had occasion to draw allegations about UNHCR activities in Islamabad to UNHCR's and DIMA's attention.

especially in the early years while the services are establishing and the relationships between services are being established. It is vitally important, therefore, that DIMA does everything possible to ensure that services are not placed under undue strain by receiving too few or too many clients in any given period. Further, due care must be taken to ensure that:

- entrants are active participants in the decision making process about their ultimate destination;
- aware of where they are being sent and what are the advantages of that particular location for them;
- there are no “hidden” links that will mean an entrant will move immediately from the state/city to which they were sent and/or not avail themselves of the services to which they were assigned;
- there is no ambiguity about the role of the IHSS provider to avoid any competition between agencies.

iv. Carry Over

In 1999 the Refugee Council drew to the Government’s attention to the fact that in the previous 5 years, 5,400 fewer entrants arrived under the offshore humanitarian program than there were visas issued.

The Council was most heartened when the Government responded to this by making provisions for unused places in any one program year to be carried forward into the program of the following year and welcomes this development in so much as it applies to the offshore humanitarian program.

2.9. Community Perceptions of Refugees

Everyone shares in the responsibility of ensuring respect for the individual dignity and worth of each and every refugee. Politicians and the media have a special charge to keep in combating racism, xenophobia and intolerance, and in resisting the temptation to scapegoat refugees. Let us therefore work together to create a culture of respect. The people who are of concern to UNHCR deserve it.²⁵

One of the regrettable consequences of the current debate about boat people is that the term “refugee” has become synonymous in many people’s minds with “illegal” and “criminal” ... and no distinction is being made between those who have entered by boat and those who Australia invited into this country as part of the offshore humanitarian program.

The Government’s efforts to secure community support for their programs have indirectly resulted in the generation of a climate of fear and distrust about “foreigners” in general and “refugees” and “Muslims” in particular. Refugees who have been resident in the community for many years and who now hold Australian citizenship report a negative change in community attitudes towards them. Veiled Islamic women report that they are afraid to go outside without male support.

²⁵ From the opening address of the United Nations High Commissioner for Refugees to the 52nd Session of the UNHCR Executive Committee. 1st October 2001.

The Refugee Council compares the current situation to the time just two years ago when Australia welcomed the Kosovars. At this time the strong messages from political leaders about the importance of supporting these vulnerable people and the need for the community to work together to show how compassionate and generous Australians can be had a profound impact on the community. The 4,000 (predominantly Muslim) Kosovars were welcomed warmly and embraced by the communities that hosted them, including a number in conservative rural areas. Further, lasting connections were forged between the local communities and the refugees.

Integral to the success of Operation Safe Haven was the recognition of community fears and tackling these head on. Efforts were made to ensure that people had access to information and that any concern they had were allayed. Operation Safe Haven showed just how generous and supportive of refugees the Australian community can be if they, themselves, are treated with respect and honesty.

The Refugee Council argues that the Australian Government has a responsibility to apply the same standards in relation to all refugees, irrespective of their country of origin or mode of arrival. Refugees, by definition, are victims of persecution. Australia has a responsibility to ensure that this persecution does not continue in this country.

2.10. Conclusions

In conclusion, the Refugee Council reiterates:

- push factors are stronger than pull factors in the current movement of unauthorised arrivals;
- there are clearly defined factors in countries of first asylum that indicate a significant breakdown of effective protection;
- blocking the movement in mid-stream (through interception arrangements) is unlikely to resolve the problem;
- fostering a “solution” that sees large numbers of people from the Middle East remaining in Indonesia for extended periods will only exacerbate the existing ethnic tensions in the archipelago and take resources away from dealing with the much more pressing internal problems;
- burden shifting to Australia’s Pacific neighbours is not a sustainable solution. It is excessively costly, will damage Australia’s relations with its neighbours, is bringing Australia into disrepute internationally and will almost inevitably have exactly the same net result as if the asylum seekers were not intercepted – i.e. they will come to Australia;
- the TPV regime has done nothing to deter entry, in fact, it can be argued that it has in fact encouraged more people (spouses and children of TPV holders) to come through smuggling routes. Further, it has caused incalculable suffering and may well cause major social problems that will take considerable time and resources to heal.

The Council therefore argues that the way ahead must involve a philosophical re-examination of the “problem” such that:

- protection is placed at the core of any solution in accordance with our Convention obligations;
- the emphasis is on cooperation rather than “burden shifting”;
- resources are redirected to target the root causes of the irregular movement; and
- the community is helped to understand that refugees and asylum seekers do not pose a threat when there is a well managed program.

The Refugee Council favours a multilateral rather than bilateral approach to finding a solution to the current “problems” and argues that the dialogue must engage all relevant players, not just governments but also UNHCR, IOM, NGOs ... and ideally representatives of the effected refugee communities.

The Council argues that, in preparing for this dialogue and in planning a coordinated, protection-focused response, the Australian Government should enter into dialogue with key intergovernmental organisations, NGOs, academics and others with expertise in this field.

The Council further argues that any coordinated response must include, *inter alia*:

- a significant increase in Australian aid to assist those responsible for the protection and support of refugees in countries of first asylum;
- an increase in the numbers of resettlement places offered and the resources directed at processing resettlement referrals and applications;
- assisting transit countries to ensure that the rights of asylum seekers are protected;
- preserving the right to seek asylum and ensuring that the rights of asylum seekers are respected;
- rethinking the value of the “deterrent measures” that are currently in place. This would include an analysis of the true costs – financial, social and political – of the current policy;
- devising alternatives that address the Government’s concerns, are cost-effective and, most importantly, ensure that Australia is able to meet its protection obligations in a comprehensive and responsible fashion;
- helping the Australian public to understand the importance of such a coordinated response and the role they can play in assisting refugees.

*Compassion does not mean weakness.*²⁶

²⁶ Peter Mares’ concluding words in his acceptance speech on receipt of the 2001 Paul Cullen Award for Journalistic Excellence. 19 November 2001.

3. THE SIZE OF THE HUMANITARIAN PROGRAM

The importance of resettlement within the framework of durable solutions was reaffirmed in the Conclusion on International Protection at the 52nd Session of the UNHCR Executive Committee in October 2001. Reference was made to its importance as a tool of international protection to be “used strategically ... as part of a comprehensive approach to enhance protection, and as an expression of international solidarity and a means of burden or responsibility sharing, particularly in countries coping with large numbers of refugees or protracted refugee situations”.

As has been argued, addressing the issue of irregular secondary movement, and protecting people from exploitation by smugglers, requires a comprehensive and coordinated approach which combines, *inter alia*, development assistance and resettlement.

The Council argues that if resettlement is to play the role it should in alleviating the problem:

- the overall size of the program must be increased to allow more people to be assisted by it;
- the size of the program must be predetermined and not subject to restriction by being linked to the onshore program;
- additional numbers must be allocated to those countries from which the current cohort of asylum seekers is coming (which are undeniably “countries coping with large numbers of refugees or protracted refugee situations” as suggested in the Conclusion);
- this should not result in places being taken away from other needy resettlement caseloads.

In advocating an increase in the size of the program, the Council is mindful of the fact that settlement service delivery in Australia is undergoing substantial reorganisation with the introduction of the Integrated Humanitarian Settlement Strategy. We consider that it would be irresponsible to advocate too great an increase in any one year as this would overstretch the settlement services at a time when the new programs are still in their infancy. This being said, we believe that the humanitarian program is well below a level dictated by need and capacity, and is also not at a level that would indicate to observers that Australia is serious about providing viable options to people unable to find effective protection in their immediate region. We therefore argue that there should be an increase in the program size in 2002-2003 and that there should be further increases in coming years.

Further, the Council argues that in addition to the pre-assigned program, provision should be made for a contingency reserve which can be drawn upon in the event of an international humanitarian emergency so that places do not have to be taken away from the existing target areas.

The Refugee Council therefore recommends that:

- **12,000 places be allocated for the offshore humanitarian program in 2002-2003,**

- **there be an incremental increase in the size of the program over the next 3 years bringing the program to 15,000 places per annum;**
- **an additional contingency reserve of 3,000 places be set aside in each program year to accommodate any major humanitarian emergency that necessitates the opening up of additional resettlement places;**
- **that the composition of the program reflect the recommendations that will be made in the following section.**

In addition, the Council would like to make reference to the way that the size of the humanitarian program is reported to the public.

Commonly there is a juxtaposition in DIMA material and public statements between the “12,000 place Humanitarian Program” and Australia having the second largest program for refugees in the world (and on occasions, the claim is made that it is the largest). This, we contend, is misleading.

The 12,000 places referred to includes visas issued under both the onshore and offshore humanitarian programs. The ranking, on the other hand, relates only to offshore resettlement under the refugee program (i.e. the 4,000 places allocated to this), and the comparison is drawn between Australia and the relatively small number of countries that have a specific allocation for resettlement of UNHCR referrals.

If the information provided to the public is to be presented with integrity, it must make clear what the number “12,000” comprises, and if comparisons are to be made they must be made honestly. There are, in fact, 71²⁷ countries that accept refugees and asylum seekers in one form or another. Of the 71, the 12,000 places per annum places Australia 32nd. On a per capita basis, Australia is ranked 38th, slightly behind Kazakhstan, Guinea, Djibouti and Syria. Out of the 29 developed countries that accept refugees and asylum seekers, Australia is ranked 14th.

For every 10,000 of its own population, Australia took 9 refugees. Switzerland on the other hand, took 87 per 10,000, Slovenia took 63 and Belgium took 45. The figure for the USA is 23 per 10,000 and for Canada it is 17, almost double the number taken by Australia.

The Council reiterates the importance of honest representation to the Australian public about every aspect of the refugee program.

²⁷ Statistics from the Edmund Rice Centre.

4. THE COMPOSITION OF THE HUMANITARIAN PROGRAM

4.1. Sectoral Composition

The offshore humanitarian program is divided into a number of discrete sub-categories, each of which have a particular focus and intent. In relation to these categories, RCOA would like to make the following comments:

i. The Refugee Program (Visa Subclass 200)

As a country with an active migration program, it is only right and proper that a proportion of the numbers coming into Australia are selected not because of the benefit they bring to the country (as per the business and skills categories) but on humanitarian grounds. Further, it is appropriate that a significant proportion of any humanitarian entry program target people identified by UNHCR to be in need of resettlement.

Australia has for many years made a major contribution in this area, being one of a small but growing number of countries that accepts UNHCR's referrals. The support offered to UNHCR through the resettlement program is the largest contribution in dollar terms that Australia makes to UNHCR's programs.

It is important to note that while other components of the offshore humanitarian program have gone up and down over the years – or have been disbanded completely – the Refugee Program numbers have remained largely unchanged (at 4,000 per annum). In other words, throughout the recent years of controversy:

- a core commitment to work with UNHCR to assist the most vulnerable refugees has been maintained;
- the numbers have not been affected by onshore arrivals.

Both are, of course, highly commendable.

RCOA contends that we must not use the argument that “unauthorised arrivals are taking places away from those refugees UNHCR has asked us to take” because this is clearly not the case. The linkage between onshore and offshore programs is undeniably affecting the humanitarian program but it has had no impact thus far on the UNHCR referrals. To suggest otherwise, we argue, is wrong.

It is the view of the Council that the Refugee Program is central to our humanitarian response and that the numbers allocated to this must reflect this centrality. For this reason, we argue an increase in the numbers allocated.

ii. The SHP In-Country Program (Visa Subclass 201)

The Special Assistance Categories (SACs) which have been effectively phased out were beset with controversy largely centred around the fact these categories only benefited those groups with designated SACs and not others in equally deserving circumstances elsewhere.

This being said, it must be acknowledged that the SACs played an important role, in particular where people with genuine protection needs fell outside the criteria for the

other categories within the humanitarian program. This is especially the case when the person is inside his/her country of origin.

Given that over 50% of the people of concern to UNHCR are “in refugee-like situations”, many who are displaced internally, it is important that these people are not overlooked. If Australia is to maintain a responsible humanitarian program that extends beyond UNHCR referrals (which it already does with the Visa Subclass 202 provisions), it is important that it accommodate people who are excluded from the refugee or humanitarian components of the program because they have not crossed an international border.

The Refugee Council notes the existence of Visa Subclass 201 (in-country humanitarian rescue). In the past this was applied with a geographical limitation (limited to Latin America), however, it has more recently been used for very small numbers elsewhere.

RCOA believes that there is scope to significantly expand the use of the existing in-country humanitarian rescue provisions to meet the need created by the withdrawal of the SACs. This requires at least two things, that there be a policy decision that greater use be made of these provisions and that migration officers overseas be made aware of how the in-country visas can be used.

iii. The Special Humanitarian Program (Visa Subclass 202)

The Special Humanitarian Program (SHP) has traditionally played an important role in the offshore humanitarian program.

Whereas the Refugee Program, in most instances, requires a trigger from UNHCR, the SHP enables people in Australia to identify individuals or families of concern to them and trigger an assessment by the Australian authorities of their need for resettlement. Where the application is successful, this is highly beneficial to both the proposer and the entrant.

In recent years we have seen the number of places allocated to the SHP vary significantly. The phasing out of the Special Assistance Categories initially resulted in an increase in SHP numbers (from 3,500 in 1995-96 to 4,350 in 1998-99²⁸) but since then the numerical linkage between the onshore and offshore programs has cut into the program, with SHP numbers falling to 3,116 in 2000-2001. Initial planning figures for the current program year suggested a further – and dramatic – fall, with the possibility being suggested that if onshore numbers remained high, there would be no SHP visas issued. The introduction of the Border Control Legislation in late September will change things yet again, with the full impact being difficult to predict at this early stage.

The Council fears that SHP visas will lose out to the newly introduced offshore temporary visas (see below) with a number of consequences:

- people in Australia with relatives and friends overseas will become increasingly frustrated about their inability to sponsor them. This will result as anger directed at the Government and at successful entrants coming through other programs. Already concerning tensions within and between ethnic communities will be exacerbated;

²⁸ Figures rounded and derived from DIMA.

- refugees who have links to Australia will see no point in “doing the right thing” and approaching migration posts if there are few places available. They will thus be more likely to chance their fate to smugglers.

It is necessary not to lose sight of the very important function the Special Humanitarian Program performs for people already in the Australian community and to ensure that the SHP remains an integral part of the offshore humanitarian program.

Further the Council stresses that integral to the operation of the SHP is support for proposers. While one aspect of this has been recognised in the Integrated Humanitarian Settlement Strategy (i.e. practical advice to help them support the entrant in the post-arrival period), insufficient attention has yet been given to the “front-end”. Proposers, many of whom are from refugee backgrounds themselves, need access to competent advice about:

- how the offshore migration program operates;
- what are the selection criteria for the SHP and other programs;
- how they can best assist during the application process;
- what are the processing procedures, and the average time it will take to get an answer;
- how and to whom they can raise concerns.

At the moment this advice is only available in an ad hoc fashion and those providing the advice are not always competent to do so. This can result in much confusion, anguish and time wasting for the proposer, the refugee and the DIMA officers in posts. RCOA argues that it is important that DIMA recognises the importance of migration advice to the community as a core settlement response.

iv. Emergency Rescue (Visa Subclass 203)

Twelve months ago the Refugee Council drew attention to the fact that UNHCR had made only one emergency referral to Australia in the first six months of 1999 and none in the same period of 2000. The reason given for this was that Australia lacks the capacity to process such cases with expedition commensurate with the emergency nature of the referral.

Reference was also made to the program being piloted by the Canadian Government in Kenya and Turkey. This Urgent Protection Program in Kenya and Turkey aims to provide decisions in urgent cases within 24 hours of a referral being made. The pilot was considered a success with all but one of the refugees departing within 5 days of the submission having been made.

While there is some merit in the argument that resettlement countries specialise in certain things - with some countries taking larger generalist caseloads and others taking smaller numbers of more complex cases - the Refugee Council argues that a country such as Australia must share the responsibility for part of the emergency caseload if it is to continue to profess to having a needs-driven program. Emergency cases, after all, are the most needy of the needy.

That which appears to take the greatest time in cases referred to Australia is the medical checks that are required before travel can take place. The Refugee Council submits that when considering emergency rescue, the decision about whether to accept or reject has

nothing to do with the health status of the person but rather about their need for immediate protection. If there are actual or perceived health issues involved, we contend that these can be addressed after arrival in Australia and should not be used to exclude a person from rescue.

v. Refugee Women at Risk (Visa Subclass 204)

There are a number of factors that contribute to the high rate of sexual and domestic violence and exploitation of refugee women and girls in refugee camps and settlements. These include:

- the subordinate status of women in many refugee situations;
- problems of physical insecurity;
- lack of access to adequate food and housing;
- the breakdown of familial and social structures; and
- the altered relationships within a family due to the immense stresses of expulsion and exile.

Impunity for the perpetrators of violence and lack of legal recourse for women victims contribute to the persistence of violence in refugee settlements. The widely held view that domestic violence is a “private domain” issue is another major obstacle to ensuring adequate protection of refugee women. Violence against women in refugee camps is a particular issue in Kenya, as well as in Guinea and Pakistan.

The refugee Women at Risk program was introduced by UNHCR in recognition of the fact that within any refugee population there are women and girls who remain at risk and for whom there are inadequate local support mechanisms (either from within their own community or from the international and other agencies working with them).

Australia is one of only a few resettlement countries to have a designated Women at Risk program to target refugee women who, according to DIMA guidelines:

- are outside their country of origin;
- do not have the protection of a male relative;²⁹
- are in danger of victimisation, harassment or serious abuse; and
- either:
 - can demonstrate either that they are unwilling or unable to return to it because of a well founded fear of being subject to persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - are of particular concern to UNHCR.

Currently 10.5% of offshore visas are set aside for Women at Risk (AWR)³⁰ visas. In the last program year (2000-2001), 402 AWR visas were granted. This represents 10.05% of the total, 0.45% below the target.

²⁹ The Refugee Council argues that this criterion should not necessarily exclude women who have a male partner or teenage son as there are many instances where the male is unable or unwilling to offer protection, and in some cases is the perpetrator of the violence.

³⁰ The acronym now used for Women at Risk is “AWR”, a move away from the previously used “WAR” which has unfortunate connotations.

DIMA has sought input into ways to ensure that the AWR program targets those most in need. In response, the Council suggests that the following should be taken into consideration:

- **identification:** it should not be expected that women who have been highly abused and traumatised self refer. Staff in posts should make direct contact with NGO and IGO staff working in camps and settlements so as to explain the objectives of the AWR program and referral mechanisms. It is also important that staff are aware of the ways women from various backgrounds will describe their experiences. An African woman, for instance, is unlikely to say that she has been raped; she is more likely to say that she has “no one to care for her”. Further, staff should be able to identify applicants in other categories that would more appropriately be dealt with under the AWR program and transfer such cases;
- **interview process:** it is not appropriate that male officers conduct the interview for AWR applicants. It is vital that female interviewers who display cultural sensitivity and are sensitive to the needs of the AWR applicant conduct the interview. Female interpreters from the same ethnic or cultural background should be provided;
- **expeditious processing:** it has long been a concern of the Council that AWR entrants are, by definition, at risk in the country of first asylum but typically cases are taking lengthy periods to process, for example:

Percentage of AWR applicants processed within period³¹

Post	0-6 months	6-18 months	>18 months
Ankara	16.4%	58.2%	25.4%
Athens	30.8%	61.7%	7.5%
Beirut	18.5%	34.5%	47.0%
Belgrade	39.0%	57.0%	4.0%
Cairo	47.8%	44.3%	7.9%
Islamabad	31.3%	43.0%	25.7%
Nairobi	24.5%	37.4%	38.1%
New Delhi	45.6%	18.7%	35.7%
Vienna	17.1%	64.1%	18.8%

The posts that are dealing with arguably the most vulnerable caseloads: Nairobi, Beirut and Islamabad are those with the highest percentage of cases unresolved after 18 months. The Council argues that if the Government is serious about its commitment to this caseload, resources need to be devoted to ensuring that the majority of referrals are finalised within 6 months.

It is noted that AWR entrants are prohibited from sponsoring a spouse or intended spouse for a specified period and that this was intended to prevent the abuse of the program. While it is important to prevent programs from being used inappropriately, it is important to recognise the confusion that war and the different cultural contexts involved can cause, eg:

- it is possible that a woman who at the time of applying for a visa believed her husband to have been deceased and thus stated so but he later proved to be alive; or

³¹ Statistics from DIMA. September 2001.

- there have been cases where the husband's whereabouts were unknown, for example women from the Balkans whose husbands have been in internment camps for many years; or
- there have been cases where "separated" has been interpreted as "not presently in the company of" rather than "estranged".

In such cases, the lack of clarity in the definition and the absence of exemptions can cause real hardships to women in ongoing relationships who, at the time they were visaed, met all the criteria for a AWR visa.

Further, in order to ensure that AWR entrants are appropriately supported after their arrival in Australia, it is necessary to accept that these entrants have special settlement needs over and above those of other humanitarian entrants because of the high level of trauma they have experienced (the majority are victims of violence) and the fact that they are usually women-headed households without support networks.

In previous submissions, the Refugee Council has highlighted concerns about AWR receiving insufficient or inappropriate support in the initial period after arrival. We acknowledge that the intention of the Integrated Humanitarian Settlement Strategy is to ensure that all refugee entrants are assessed according to need and have access to the full range of services they require. In theory this should address the problems that have been experienced in the past. The challenge for service providers, particularly during the initial period, is to ensure that AWR are given priority both by the providers and by those monitoring service implementation, and for this to be reflected in reporting requirements.

vi. Offshore Temporary Visas (Visa subclasses 447 and 451)

The Migration Amendment (Excision from Migration Zone)(Consequential Provisions) Act 2001 that was passed in September 2001 introduced two new visa subclasses within the humanitarian program in a move, according to the DIMA Information Note, "designed to encourage asylum seekers to remain in their country of first asylum, rather than seeking the assistance of smugglers to abandon or bypass effective protection opportunities in order to obtain a preferred migration outcome".

The two new subclasses are as follows:

- Secondary Movement Offshore Entry (Temporary) – Subclass 447
- Secondary Movement Relocation (Temporary) – Subclass 451.

Visa subclass 447 will be given to people who:

- are outside their home country;
- are no longer in their country of first asylum;
- are subject to persecution or substantial discrimination in their home country;
- meet standard offshore health and character requirements;
- have entered Australia unlawfully at a place outside Australia's migration zone.

Holders of 447 visas will have to reapply for protection every 3 years. They will never be entitled to permanent residence.

The 451 subclass visa will be issued to people who:

- are outside their country of origin;
- have left the country of first asylum;
- are subject to persecution and substantial discrimination;
- are currently residing in a country other than their home country or country of first asylum and have not entered Australia;
- are not classed as an offshore entry person.

The 451 visa will be valid for 5 years, near the expiry of which the holder can apply for a permanent protection visa.

These visas extend the concept of temporary visas to the offshore humanitarian program where previously all entrants were granted permanent residence. Offshore temporary visa holders will have the same entitlements as the current onshore temporary protection visa (visa subclass 785) holders and will be subject to the same restrictions, most notably the preclusion on family reunion and no guarantee of the right of re-entry should they leave the country.

This submission and other past submissions of the Council have already noted the grave concerns the Council holds about the use of temporary visas for Convention refugees. These concerns apply irrespective of whether the visa was issued in Australia or offshore. Sentencing already traumatised individuals to extended or perpetual limbo is an entirely unsatisfactory way to address immigration concerns and, as discussed, are destined to result in major social consequences.

In conclusion, the Refugee Council recommends that:

- **the offshore humanitarian program have at least 6,000 places designated for Convention refugees referred by UNHCR;**
- **of these, at least 12% be designated for Women at Risk entrants;**
- **at least 1,000 places be set aside for people in circumstances that would otherwise have been accommodated by the Special Assistance Categories, in particular people who are still in their country of origin and who are facing severe human rights abuses;**
- **steps be taken to consider how Australia can respond expeditiously to UNHCR request for emergency evacuation;**
- **all offshore humanitarian visas offer permanent residency rights.**

4.2. Regional Composition

REGION	% OF TOTAL	ISSUES FOR CONSIDERATION
<p>MIDDLE EAST</p>	<p>35%</p>	<p>As has been discussed, the continued arrival in Australia of boats of asylum seekers from the Middle East has not been addressed by harsh deterrent measures. Rather, RCOA argues, we need a coordinated multilateral initiative, which includes the provision of many more resettlement places than have been offered in the past, plus the devotion of resources to both UNHCR and Australian posts to ensure that identification and selection are undertaken in an expeditious, transparent and efficient manner.</p> <p>Further, it is important that the events in the aftermath of the 11th September terrorist attacks do not obscure the very real needs of the pre-existing refugee populations in the region – both Afghan and others.</p> <p>AFGHANISTAN</p> <p>At the time of writing the situation is highly fluid, with grave concerns being expressed about factionalism and security now that the Northern Alliance has routed the Taliban in most major cities.</p> <p>Hundreds of thousands of Afghans have moved away from the cities as the result of the US bombing and the military activity on the ground. Because of closed borders to all but a small number of humanitarian cases, less than expected have crossed into neighbouring countries but as of mid November, UNHCR estimate that in the order of 135,000 have entered Pakistan (75,000 into the region near Peshawar and 60,000 into the Quetta region) and 40,000 have crossed into Iran (most into Sistan-Baluchistan province). Because they have not officially crossed the borders, few are receiving assistance.</p> <p>The task that lies ahead of UN agencies and NGOs in terms of supporting both IDPs and refugees through the coming winter is immense. This will be complicated by outbreaks of infectious diseases (including TB, cholera and dysentery) in camps and border settlements and the challenge of separating civilians from combatants.</p> <p>While much of the focus has been on the “War Against Terror” and the efforts to rid Afghanistan of the Taliban and Al Queda, it must not be forgotten that Afghanistan has been in a state of civil war for 22 years and that there were already many victims, over 4½ million of whom were sheltering in neighbouring countries. As was discussed in Section 2, both their protection and welfare needs were, in many instances, not being met. There is a real danger that they will be overlooked in the rush to support the “new victims” and their situation will deteriorate further. This is a particular worry for those in urban settings away from international observers.</p> <p>Experience has taught us that even in the best-case scenario – the overthrow of a dictatorial regime and the restoration of participatory democracy – things in a country ravaged by war do not change over night. Not only is development assistance required for many years, so too is it necessary that the resettlement program be continued to support the most vulnerable amongst the pre-existing refugee population and the new refugee population. Further, while it is too early to tell what the future face of Afghan politics will be like, we know too from past experience that any new political regime leaves people on the outside who, because of their beliefs, religion or ethnicity, will have no future in their country.</p>

ELSEWHERE IN REGION:

IRAN

Elections during 2001 confirmed the popularity of President Khatami's reformist agenda with the general populace. Inevitably, however, this result also lead to an increase in the tensions between the government and the hard-line conservatives amongst the clergy who still wield considerable power and who oppose the liberalisation and secularisation of Iran. The mullahs, by using their direct control of many institutions including the judiciary, the military (with special reference the Islamic Revolutionary Guards) and the Surveillance Council, have been able to silence many reformers, in particular those in the media. Persecution of some religious minorities, especially the Baha'is, continues.

IRAQ

The Iraqi Government has continued to commit widespread and gross human rights violations, including arbitrary arrests of suspected political opponents, executions of prisoners, and forced expulsions of ethnic minorities. Known or suspected political opponents living abroad continue to be at risk from government agents, as are family members remaining in Iraq.

Mention must also be made of the recently articulated threats by the US Government that once it has dealt with Osama Bin Laden, it will turn its attention back towards Iraq.

ISRAEL-PALESTINE

It is now over a year since the outbreak of the "Second Intifada" which has claimed hundreds of lives and has plunged the region into a highly destructive cycle of violence and retribution. While not considered to be a refugee producing situation, it is one that remains of grave concern and is deserving of careful monitoring.

RECOMMENDATIONS

The Council considers that a fundamental component of Australia's response both to the current conflict in Afghanistan and concerns about irregular boat arrivals must be the maintenance of a robust and well-resourced resettlement program in order to demonstrate to those in need of protection that there is a viable alternative to engaging the services of smugglers.

Further, the Council argues that it is far to early to consider the problem in Afghanistan to be "solved" by the withdrawal of the Taliban from major cities. Even in the best-case scenario (Afghanistan not descending into civil war) it will take many years for some semblance of normality to be restored, just as Bosnia is only now beginning to make headway 6 years after the signing of the Peace Accord. We stress that resettlement of Afghan refugees must be seen as an ongoing priority.

It is for these reasons that the Council is arguing that there be an increase in the proportion of places allocated for the resettlement of refugees from the Middle East and that the places made available target refugees who do not have effective protection within the region, including:

From Afghanistan:

		<ul style="list-style-type: none"> • women at risk and vulnerable female-headed households; • unaccompanied minors referred by UNHCR; • ethnic minorities, in particular Hazaras and Panjshiris who are not protected in countries of first asylum; • survivors of extreme violence and/or torture; • security cases who are in need of protection; • refugees at risk of refoulement; • Afghans in especially vulnerable situations in countries of first asylum such as those in Iran who do not have residency permits and/or have no access to income and those in India who are at risk because of the strict application of the Foreigners' Act; • people who will be unable to integrate into post-conflict Afghanistan (what ever form this might take) and who have no prospects for local integration. <p>From Iraq:</p> <ul style="list-style-type: none"> • vulnerable cases such as women at risk and torture survivors; • refugees with a high political profile who are at risk in the region; • refugees at risk of refoulement; • refugees with no prospects for local integration; • refugees detained in Israel as “enemies of the state”; • religious and ethnic minorities; • residual camp caseloads identified by UNHCR. <p>From Iran:</p> <ul style="list-style-type: none"> • religious and ethnic minorities who are unable to find durable solutions in the region - especially ex Pakistan and Turkey; • UNHCR referrals from Al Tash Camp; • Iranian refugees in northern Iraq (if access is permitted). <p>From Turkey:</p> <ul style="list-style-type: none"> • Turkish Kurds with protection needs best met by resettlement. <p>The Refugee Council also:</p> <ul style="list-style-type: none"> • reiterates the need to monitor developments in Israel and Palestine and be ready to offer protection through resettlement to those who cannot be protected within the region; • stresses the need to take steps to ensure that entrants, especially from Afghanistan (given the evolving situation), are not implicated in war crimes or crimes against humanity.
AFRICA	30%	<p>The relatively little attention Africa receives in the Australian press should not be misinterpreted as suggesting that there is little happening on the continent, nor that there are not large numbers of refugees in need of protection. Africa remains the continent with the highest refugee population (in the order of 6¼ million) and the continent in which there are the greatest number of complex and intractable conflicts.</p> <p>While resettlement has traditionally not been a favoured option in Africa because of the number of locally available solutions, a number of factors have changed this in recent years.</p> <p>Chief amongst these has been the compassion fatigue experienced by many countries, worn down by decades of support to successive waves of refugees with minimal international assistance. We also see in some areas, notably West Africa, how the presence of large numbers of refugees from</p>

one country will destabilise neighbouring countries. Resettlement is thus playing a more significant role than ever before as a durable solution and it is important that the world's resettlement countries respond accordingly.

WEST AFRICA

Sierra Leone, Liberia and Guinea remain wracked with insurgency and border conflict. The region presents possibly the most complex and dangerous refugee situation in the world where aid delivery is exceedingly difficult and places for refugees to go to seek protection are elusive. Refugees in a number of areas are subjected to arbitrary arrest and mistreatment at the hands of the authorities as well as severe violence at the hands of all parties. This is further complicated by chronic funding shortages for the agencies endeavouring to support more than 1 million aid dependent people. While the possibility of peace talks in January 2002 has been flagged, few see a quick resolution.

Elsewhere in West Africa, it is important to note:

- the significant escalation of Muslim-Christian violence in northern Nigeria since the terrorist attacks on 11th September, with many deaths and substantial dislocation.
- the rejection by Polisario in September of a Peace Plan which it was hoped would end the 26 year struggle for the independence of Western Sahara from Morocco.

These are situations which deserve careful monitoring and response if one is requested by UNHCR.

THE GREAT LAKES

Burundi remains a country of major concern and the efforts of Former South African President, Nelson Mandela, to broker peace and solicit donor funding are welcome. According to the US Committee for Refugees, some 600,000 people displaced within the tiny country and a further 400,000 have fled to neighbouring countries as a result of conflict between the Hutu rebels and the predominantly Tutsi government. Over 100,000 have been displaced during 2001.

Tanzania is host to the majority of refugees from Burundi. In the past the generous asylum policies have meant that there has been little need for resettlement. In the last couple of years, however, compassion fatigue has led to increasing pressure from the local population to return the refugees. There have been many incidents of violence against and by refugees who have added to the tension at the local level.

Burundian refugees who have fled to other neighbouring states: the Democratic Republic of Congo (DRC) and Rwanda are also fairing badly because of tensions within their host countries.

Given the ongoing difficulties in securing a solution inside Burundi, and the problems being encountered in countries of first asylum, resettlement places are required for a number of groups (see recommendations).

The security situation in the **Democratic Republic of Congo** is still highly volatile and many foreign troops remain in the country. This has resulted both in more refugees from DRC and an increasingly difficult situation for the 330,000 refugees in DRC from Angola, Burundi, Sudan and elsewhere. Resettlement is therefore needed both for refugees from DRC and for

refugees within DRC.

SOUTHERN AFRICA

The situation in **Angola** is the cause for grave concern with a further 384,000 people being displaced during 2001 and hopes for the end to the long-running civil war between the government and UNITA evaporating entirely. The conflict has been particularly fierce in recent weeks, with 3,500 people fleeing to Zambia in a 5-day period in mid October. These refugees, 60% of whom were children, were reported by UNHCR to be in a "deplorable condition". Resettlement of Angolan refugees is becoming an increasingly important response.

Zimbabwe is the other country in the region that provides cause for serious concern. Regional intervention has not managed to resolve the political violence and the land crisis, and these are in turn exacerbating the economic stability of the country and food distribution and in recent months we have seen an increase in the number of refugees fleeing to South Africa, Botswana and Mozambique. While not as yet seen as a resettlement caseload, this will need careful monitoring.

THE HORN OF AFRICA

This is the traditional source region for resettlement to Australia.

The situation in **Sudan** is still deeply concerning. Both sides in the seemingly endless civil war continue to commit gross human rights abuses and the government has both stepped up its brutal expulsions of southern villagers from the oil production areas and its bombings of civilian targets. Given the absence of any improvement in Sudan and ongoing protection problems in camps, resettlement remains an important solution for vulnerable refugees.

This being the case, it is heartening to note that there have been a number of positive developments in other parts of the region in the last 12 months, including a number of repatriation exercises to **Eritrea**, **Ethiopia** and **Somalia**. Despite these improvements there are still many refugees from these countries who are considered to be in need of resettlement.

RECOMMENDATIONS

The Refugee Council of Australia recommends that Australia's resettlement program for Africa:

- **be increased in number and proportion in recognition of the increase in need for resettlement places from Africa;**
- **increase its geographical spread in response to UNHCR's calls for diversification of the African caseload;**
- **explore new partnerships to facilitate identification of vulnerable groups and individuals in areas where the Australian Government does not have an active presence;**
- **be sufficiently flexible to accommodate the highly volatile nature of this region and the possibility that new resettlement caseloads could emerge during the program year;**
- **devote at least 10% of the places for refugees determined to be "at risk" and that further efforts be made to expedite processing of such cases.**

Further, the Refugee Council recommends that the program target the following groups considered to be in particular need of resettlement:

In West Africa:

- **Women at Risk and unaccompanied minors identified by UNHCR and other partners;**
- **survivors of sexual and physical violence;**
- **those for whom there are minimal prospects for local integration.**

In the Great Lakes:

i. Refugees from Burundi:

- **people of mixed racial origin and/or in mixed marriages**
- **ex-military personnel or deserters**
- **political figures and others being targeted within Tanzania**
- **women at risk;**
- **people who have been refugees for extended periods or who have been subjected to multiple instances of flight.**

ii. Refugees from DRC:

- **political opponents who have fled to Congo who are at risk from cross-border “security missions”;**
- **individuals who would face persecution on the basis of race;**
- **female-headed households.**

iii. Refugees in DRC:

- **in particular those who have been in the country for long periods, who have lost their connection to their country or origin and who are facing severe discrimination and violation of their rights because of their refugee status.**

In Southern Africa:

- **Angolan refugees, in particular for those facing protection difficulties in various Southern African states and those for whom there is no chance of local integration;**
- **refugees from elsewhere in Africa who are experiencing protection difficulties.**

In the Horn of Africa:

- **Southern Sudanese refugees in Ethiopia and Kenya, with an emphasis on those in need of physical and legal protection and women at risk;**
- **recognised refugees in Egypt (from the Horn of Africa and elsewhere) who despite Egypt’s open-door policy towards refugees, have no real prospects for local integration;**
- **refugees in Djibouti where there is an increasing climate of intolerance towards refugees, complicated by return agreements between Djibouti and its neighbours which give rise to concerns about refoulement;**
- **Somali refugees from minority clans who are unable to return**

		<p>to Somalia and who face severe discrimination in refugee camps and settlements;</p> <ul style="list-style-type: none"> • Eritrean refugees who are unable to return because of their status as former prisoners of war or civilian detainees or because they are Jehovah Witnesses; • Oromo refugees from Ethiopia who need resettlement from Kenya because of security and protection reasons; • refugees who, because they gave evidence into corruption at the Nairobi office of UNHCR, are no longer assured of security in Kenya; plus • the usual priority groups referred by UNHCR, such as women at risk. <p>It must be noted that the above list is not exhaustive and that there are a number of refugees situations that require careful monitoring with the possibility of allocating resettlement places should the need arise (eg Zimbabwe and Nigeria) and that there are also small numbers of refugees from a number of other African states (eg Kenya, Chad and Algeria) for whom resettlement could be considered on a case by case basis.</p>
<p>EUROPE</p>	<p>25%</p>	<p>Resettlement of refugees from the countries of the Former Yugoslavia has dominated the Australian humanitarian program for many years, with typically about half of the program coming from this one small region.</p> <p>RCOA argues that while resettlement remains an important protection tool for refugees from Former Yugoslavia, it is no longer possible to justify the dominance of this region given the considerable needs elsewhere. This assessment is made after balancing the positive and negative developments in the region during the last 12 months.</p> <p>On the positive side:</p> <ul style="list-style-type: none"> • the removal of Slobodan Milosevic from power in the Federal Republic of Yugoslavia (FRY) in October last year has meant that the sanctions have been lifted and conditions are slowly improving, which in turn will ultimately – if not immediately – be good news for the sizeable refugee population; • according to OSCE, the general security situation in Kosovo has improved and there are signs of Serb returns; • at the time of writing Kosovo has just had elections that will put in place a 120 member legislative assembly (with at least 1/6 of the places dedicated for minorities) that will rule alongside the UN administration for the next 3 years. As expected, the LDK, lead by the moderate, Ibrahim Rugova, won sufficient seats to enable Rugova to be declared President; • there has been a significant increase in the number of minority returns in Bosnia Hercegovina (BiH), especially of Bosnian Serbs; • relations between Croatia and Bosnia have improved, especially over the issue of returns;

- there are distinct signs that the ethnic violence that has plagued the **Former Yugoslav Republic of Macedonia (FYROM)** throughout the year is abating, with steps being taken to implement the October peace accord.

On the negative side:

- six years after the end of the Bosnian war, 213,000 refugees from BiH remain in need of durable solutions. Of these, 75% are in the Federal Republic of Yugoslavia and 25% in host countries in Europe. In addition, there are some 107,000 people internally displaced and unable to return to their pre-war homes;
- access to basic services such as education and health care remains problematic in many areas of BiH and unemployment is still at concerning levels;
- there are many groups for whom return to their country/region of origin is considered impossible for protection reasons;
- throughout the region ethnic minorities, especially Roma, continue to face severe discrimination, sometimes amounting to persecution and within Kosovo, there is not as yet any real confidence amongst the ethnic minorities that there will be a secure future for them in the province;
- it is expected that some 45,000 ethnic Albanian refugees from FYROM will spend the coming winter in Kosovo.

In addition to the developments in Former Yugoslavia, mention must be made of the situation in the **Commonwealth of Independent States**, in particular:

- the ongoing instability in the southern Russian province of Chechnya which saw a renewed exodus in mid 2001 and which now sees over 140,000 refugees facing their third winter in very poor conditions in camps in Ingushetia;
- continuing tension in Georgia and between Armenia and Azerbaijan,
- the presence within the CIS of significant numbers of refugees from outside the region, in particular from Afghanistan, Iraq, Iran and a number of African countries who are not considered to have effective protection.

RECOMMENDATIONS

RCOA recommends that consideration for resettlement of refugees from Former Yugoslavia should be given to those who fit into one or more of the following especially vulnerable groups:

- **survivors of torture, severe violence or trauma (including those who experienced prison camps or rape camps);**
- **refugees in mixed marriages in a family of mixed ethnic origin;**
- **Women at Risk cases;**

		<ul style="list-style-type: none"> • potentially stateless refugees; • those made vulnerable by their being a witness before the war crimes tribunal in The Hague; • former supporters of Fikret Abdic who controlled the Cazin and Bihac regions of Bosnia during the war; • people who would face difficulties on return due to their current or past political profile, or because they are outspoken journalists or jurists; • those amongst the small number of Albanians from Kosovo and Southern Serbia who have been unable to return, together with the other ethnic minorities, including Roma, for whom return has not been possible. <p>In addition, RCOA recommends that consideration be given to UNHCR referrals of refugees from within the CIS who are determined to be in need of resettlement.</p>
OTHER	10%	<p>SOUTH EAST ASIA</p> <p>Indonesia:</p> <p>The peaceful transition from President Wahid to Megawati Sukharnoputri may have lessened the possibility of a Balkan-style disintegration of Indonesia but it has far from resolved the many gravely concerning problems confronting the government. As was discussed in Section 2, there are separatist movements in Aceh and Papua (formerly Irian Jaya) that have claimed thousands of lives and have caused massive displacement. Much of the blame for the violence in both provinces is directed to the Indonesian BIMOB forces who appear to be able to operate with immunity.</p> <p>Further, ethnic and sectarian violence continues to rage in many provinces, including Central and West Kalamantan, Central Sulawesi, the Moluccas and West Timor and the central government has not demonstrated its ability to regain control over the police or military.</p> <p>In all, some 1.3 million people have been displaced internally within the archipelago and small but significant numbers have crossed into Malaysia and Papua New Guinea. While refugees in IPNG face no real dangers, the situation for Acehnese refugees in Malaysia has been deteriorating since mid 2000 when residency permits were discontinued. Acehnese are now considered "illegal migrants" and face deportation.</p> <p>Burma:</p> <p>The Burmese Government has taken no significant steps to improve its dire human rights record in the last year. The ruling State Peace and Development Council (SPDC) continued to pursue a policy of marginalizing the democratic opposition through detention, intimidation and restrictions on basic rights. Despite international condemnation, the system of forced labour remained in tact. Tens of thousands of villagers from ethnic minority groups continue to live in fear and there are no real prospects for safe return for the refugees currently in Thailand.</p> <p>Vietnam:</p> <p>In the search for solutions to the current wave of boat arrivals from the</p>

Middle East, much reference is being made to the Comprehensive Plan of Action (CPA), a multilateral agreement which enabled the exodus from Vietnam and Laos in the 1970s and 1980s to be contained. While the CPA has officially concluded, it is essential not to lose sight of the fact that there is still a small number of refugees who have yet to be offered a durable solution, in particular several hundred Vietnamese on Palawan Island in the Philippines and the small urban caseload in Thailand. It is recognised that Australia has taken a small number of these refugees in recent years, however, it is essential that the resettlement countries party to the CPA not cease their efforts until durable solutions are found for all of the residual CPA caseload. It will only be then that the operation can properly be designated as over.

SOUTH ASIA

Nepal:

Nepal has experienced a particularly difficult year with the majority of the royal family falling victim to an internecine feud, which in turn spurred on the activities of the Maoist guerrillas that have been causing havoc in many areas. This will invariably have an impact on the situation of refugees in Nepal the majority of whom are from Bhutan and Tibet.

A recent (November 2001) meeting that was hoped would resolve the problem of the Bhutanese refugees concluded without agreement. Some 100,000 ethnic Nepali refugees fled Bhutan 10 years ago when the government imposed harsh anti-Hindu cultural reforms and since then there has been an unresolved dispute about their "true identity". The situation has been further complicated by the murder in September of the leader of the Bhutanese exiles, Ramesh Budhathoki. While the Bhutanese have not in the past been seen as a resettlement caseload, UNHCR is re-examining this in the light of the instability in Nepal and the elusive nature of the hoped-for solution.

Tibetan refugees are not faring well either. Those who arrived after 1989 have not been granted residency rights, unlike the earlier arrivals. Their situation is precarious. So too is the situation of the small numbers of other refugees in Nepal, including Chinese, Iraqis and Sri Lankans for whom resettlement is the only durable solution.

Pakistan:

The Government of Pakistan has found itself in a particularly challenging situation since the 11th September terrorist attacks on the United States. Political expediency resulted in it withdrawing its long time support of the Taliban and offering its assistance to the USA's "War Against Terror".

This inevitably caused much tension within Pakistan and it remains to be seen how this will play out in the long term. It seems likely that the Government will crack down on those seen as opponents and possibly take the opportunity to target some of its traditional political and religious foes.

Sri Lanka:

The 18 year old conflict in Sri Lanka between the Sinhalese and Tamil communities which has led to the deaths of over 62,000 people shows little sign of abating despite the good efforts of Norway. As the general election slated for 5 December approaches, violence has intensified. Around 400 cases of electoral violence cases were reported by mid-November, including the murder of one of the candidates. Once again, political parties are promising peace but there are doubts as to their political will to deliver.

President C. Kumaratunga has accused the opposition of signing a secret deal with the militant Liberation Tigers of Tamil Eelam (LTTE) to contest the elections. She also promised a fresh beginning for peace talks. The radical Janata Vimukti Perumuna (JVP) is promising to put an end to the war by going all out against the LTTE. The four main Tamil parties have expressed open support for the LTTE, claiming they are the real representatives of the Tamils in Sri Lanka. This open support for the LTTE by Tamil parties previously seen as moderates, has rocked the electoral scene.

Bangladesh:

In recent weeks post-election violence against Hindus and other religious minorities in Bangladesh has caused many hundreds to flee into West Bengal. Refugees are blaming hard-line Islamic supporters of the Bangladesh National Party. It is hoped that the tensions will be able to be resolved and the refugees will be able to return. The situation, however, requires monitoring.

LATIN AMERICA

The Colombian Government's recent renewed offensive against leftist rebels has increased the flow of refugees from Colombia into neighbouring states (Costa Rica, Ecuador and Venezuela) as well as an ongoing flow of Colombian asylum seekers to the West. Amongst those in neighbouring countries are small numbers in need of resettlement.

RECOMMENDATIONS

The Refugee Council recommends that the humanitarian resettlement program include:

Refugees from Burma, in particular:

- **students from the safe camp;**
- **especially vulnerable cases from the Thai-Burma border;**
- **linked cases from Malaysia, Bangladesh and India.**

Refugees and IDPs from Indonesia, with reference to:

- **UNHCR referrals of Acehnese ex Malaysia;**
- **protection cases from elsewhere in the archipelago (including in-country);**
- **at-risk cases from any future outflow to Papua New Guinea.**

Refugees from Indochina:

- **reconsideration of the residual CPA caseload in the Philippines.**

IDPs and refugees from Sri Lanka, with reference to:

- **at-risk cases from within Sri Lanka for whom there is no internal flight option;**
- **linked cases and referrals from human rights organisations from India.**

Vulnerable Cases from South Asia, including:

- **Bhutanese refugees from Nepal identified by UNHCR as being in need of resettlement**

	<ul style="list-style-type: none"> • political opponents and religious minorities inside Pakistan who are facing persecution and who would be assisted by granting them an in-country humanitarian visa; • vulnerable individuals in India for whom internal flight is not an option; • a small program for referred Tibetan refugees. <p>Refugees and IDPs in Latin America, in particular:</p> <ul style="list-style-type: none"> • those with a high political profile; • victims of torture; • women at risk; • human rights activists. <p>The Refugee Council also urges that there be careful monitoring of the situation in the Pacific and that should the need arise, there be a willingness to resettle at-risk or vulnerable cases.</p>
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It is significant to note that RCOA is advocating both a shift away from the composition of the actual program and from RCOA's own recommendations for the program for the current financial year:

Regional Distribution as Proportion of Total Offshore Program

	1997-98 Grants³² (actual)	2000-2001 Grants (actual)	RCOA Recommend'n for 2001-2002	RCOA Recommend'n for 2002-2003
Europe	50%	43.4%	30%	25%
Middle East	28%	26.9%	30%	35%
Africa	15%	25.4%	30%	30%
Other	7%	4.3%	10%	10%

The reasons for RCOA's recommended regional composition are alluded to in the table but are worth reiterating:

- the need to ensure that Australia's concern about the arrival of unauthorised arrivals from the Middle East is addressed in a comprehensive way that includes increasing the number of resettlement places available for those in need of a durable solution and who are currently in the belief that the only way to find this is to engage the services of a people smuggler;
- recognition that the need for resettlement places for African refugees has increased significantly in the last two years, not so much because any escalation of conflicts (though this has happened in some areas) but more as a result of UNHCR now being better able to assess resettlement needs within refugee populations in Africa.³³ It is argued that it is important that Australia responds accordingly by increasing the

³² Figures for 1997-98 and 2000-2001 from DIMA.

³³ This is an area where UNHCR has long acknowledged a deficiency.

number of places available and by diversifying the countries targeted by the program³⁴;

- the fact that there have been changes in the Balkans that, while they do not remove the need for resettlement places, make it possible to justify a reduction in the proportion of the program from this region, arguing as we do so that should RCOA's recommendations about the size of the program be accepted, this would result in only a marginal decrease in the number of places;
- the importance of ensuring that our immediate region is not neglected when considering resettlement. While it is acknowledged that the overall need for resettlement places might not be as great as in other areas, our proximity and the existence of established support networks dictates that Australia should play a leading role in addressing the need that does exist.

5. SETTLEMENT SERVICES

An essential component of any refugee resettlement program is the provision of carefully targeted and well-integrated specialist post-arrival support programs. Unlike migrants, refugees have not had the opportunity to plan for their new life and many bear the emotional and physical scars of their past trauma.

In calling for submissions on the humanitarian program, DIMA has specifically asked that the issue of settlement service provision be addressed.

In this regard, we would like to make reference to two major research undertakings of the Council:

- the report that was prepared by RCOA on behalf of the community sector for the Swedish conference on Reception and Integration in April 2001: "Refugee Settlement in Australia". This report traces the history of refugee settlement programs, sets out the collective wisdom of workers about what constitutes good service delivery, contains the experiences of many generations of humanitarian entrants and includes an extensive literature review;
- the report that RCOA has been commissioned to prepare for DIMA during the next six months setting out the research methodology for the Integrated Humanitarian Settlement Strategy.

Collectively these represent a comprehensive overview of the issue from the Council's perspective.

6. REGIONAL SETTLEMENT

In its discussion paper, DIMA has identified an important issue that needs to be grappled with: how can more humanitarian entrants be encouraged and supported to settle and remain in regional areas and the smaller capital cities of Australia?

On the one hand, it is well known that the in major capitals (Sydney and Melbourne):

³⁴ It will be argued below that changes should be made in the way that resettlement cases are identified to enable this to happen.

- accommodation costs are often prohibitively high;
- public transport is both patchy and costly;
- most services are over-stretched;
- there are “lots of holes” through which a vulnerable refugee can fall;

and that the smaller centres can offer, *inter alia*:

- affordable accommodation;
- a much easier environment in which to move around;
- better integrated services;
- a more welcoming and supportive environment.

But then we have the undeniable fact that both Sydney and Melbourne act as a magnet for refugees initially resettled in other states or regions.

In order to grapple with this, it is necessary to understand the reasons why refugees either elect to come to the major capitals in the first place or to relocate there after arrival. There are, of course, many different reasons and for each individual the importance of one or more will vary. Amongst the most common reasons are:

- the belief (not always well founded) that work will be easier to obtain;
- the presence of relatives, friends or compatriots;
- the existence of a place of worship or cultural centre;
- the availability of foodstuffs and other culturally familiar items; and
- the “fame” of Sydney (and to a lesser extent Melbourne).³⁵

While in some instances the decision to move on is well considered, this is often not the case. Information about the relative merits of one city or another can come from a variety of sources – more likely than not anecdotal and rarely well-informed.

While it will never be possible to prevent secondary movement (recognising that freedom of movement is a fundamental human right), it might be possible to reduce its incidence. To do this, reference must be made to the reasons why people gravitate to the major centres and steps taken to ensure that refugees’ needs can be met in the smaller centres.

The Refugee Council would like to suggest that there are some important ingredients that must go into any initiative which encourages refugees to settle in regional centres or smaller capitals:

- the development of good pre-embarkation information programs which set out the relative merits of various destinations. Consideration could be given to creating a modified “McDonald’s Index” showing relative costs and average time taken to acquire certain basic commodities;³⁶
- post-arrival programs that reinforce the above information;
- well-targeted support on arrival, such that the refugee feels that their priorities are being addressed and their immediate needs met.

³⁵ i.e. the notion that “if the place I am in is nice, Sydney must be so much better because it is famous”.

³⁶ This issue is explored in depth in RCOA’s report to DIMA on Pre-embarkation Information. 2000.

Further, it is the view of the Council that the potential of rural communities to host refugees has not been adequately explored. There are many examples of successful rural settlement – Gladstone, Shepparton, Wagga Wagga to name but a few. In most instances the establishment of refugee communities in regional centres has been “accidental” rather than planned, with one or two families moving in, doing well and then acting as a draw card for others.

While the current debate about asylum seekers has thrown up many negative attitudes towards refugees, it has also drawn out many people who want very much to be able to do something tangible to assist, and of these a good number are in rural areas. In recent months we have been made aware of the establishment of groups calling themselves “Rural Australians for Refugees” (or variants thereof) in Bowral, Wangaratta, Armidale, Tamworth and Scotts Head and suspect that there could be many more such pockets of support. The Council suggests that there is merit in exploring the possibilities of opening up new centres for refugee settlement, stressing as we do so, the importance of ensuring that:

- key people (in local government, chamber of commerce, church, CWA etc) are fully supportive of the idea and are committed to bringing others with them;
- the community is encouraged to be involved, in much the same way as we saw happen with great success with the Kosovar Safe Havens;
- the refugees being considered for regional settlement are those whose profile suggests that this might be a favourable option;
- the refugees are given information about this option and are involved in the decision-making process;
- consideration is given to settling a number of families from the same background in the one town so that there is mutual support;
- efforts are made to facilitate cultural links to people from the same background (eg invitations from the church/council etc to community members and/or religious leaders from elsewhere to visit the town);

and most significantly:

- real efforts made to ensure links are in place with essential settlement services, especially torture and trauma counselling.

7. FAMILY UNITY AND REUNIFICATION

7.1. Obligations in Relation to Family Unity

International human rights law provides guidance as to the binding and non-binding obligations on States with respect to the issues of family unity and family reunification.

The Universal Declaration of Human Rights proclaims that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (Article 15(3)). Further:

- the UN Covenant on Economic, Social and Cultural Rights requires that “the widest possible protection and assistance be accorded to the family, which is the natural and fundamental unity of society, particularly for its establishment and while it is responsible for the care and education of dependent children” (Article 10.1); and
- the Convention on the Rights of the Child requires that “applications by a child or his or her parents to enter or leave a State party for the purpose of family reunification shall be dealt with by State parties in a positive, humane and expeditious manner” (Article 10.1).

When considering this issue in relation to refugees, the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (1951) sets out at Article iv.B:

CONSIDERING that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unit is constantly threatened, and

NOTING with satisfaction that ... the rights granted to a refugee are extended to members of his family,

RECOMMENDS Governments to take the necessary measures for the protection of the refugee's family especially with a view to:

- (1) Ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.*
- (2) The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.*

Further, Conclusion No. 24 (XXXII) of the United Nations High Commissioner for Refugees Executive Committee sets out:

- 1. In application of the principle of unity of the family and for obvious humanitarian reasons, every effort should be made to ensure the reunification of separated refugee families...*
- 5. It is hoped that countries of asylum will apply liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family.*
- 6. When deciding on family reunification, the absence of documentary proof of the formal validity of a marriage or of the filiation of children should not per se be considered as an impediment ...*
- 8. In order to promote the rapid integration of refugee families in the country of settlement, joining close family members should be granted the same legal*

status and facilities as the head of the family who has been formally recognised as a refugee.

7.2. The Importance Of Family Reunification

The refugee experience is such that it is common for family members to be separated from each other before or during flight. It is also common for refugees to be unaware, often for long periods, whether a family member is alive or dead. The commonality of the experience does not, however, detract from the pain and anxiety felt by those who are separated from close family members. Finding lost relatives and finding a way to be reunited with them can easily assume paramount importance in a refugee's life.

A further complication can also be added when a refugee is selected for resettlement. While resettlement is undeniably an important durable solution for refugees, it has to be recognised that it takes them further away from relatives from whom they have been separated.

The importance of family reunification for resettled refugees is clearly acknowledged and was emphasised repeatedly at the first international conference on refugee settlement, the International Conference on the Reception and Integration of Resettled Refugees held in Sweden in April 2001.

Resettled refugees who are separated from family members are unable to devote their full energies to learning the new language, seeking employment and establishing themselves in the new community. Depending on their circumstances, they will be:

- preoccupied with locating lost family members, desperately trying to find out whether they are dead or alive;
- deeply concerned for the well-being of relatives who are in precarious situations in the country of origin or the country of first asylum;
- devoting a large part of their income to supporting family members overseas;
- unable to make any long-term plans, believing they must not do so until the family can make them together.

On the other hand, intact families are more likely to be able to devote their full energies to rebuilding their lives and the host country will, in turn, benefit from the economic and social contributions the family can make to their new country.

Many of the same issues apply in cases where a refugee has sought and been granted asylum in a country distant from the country of origin. As the journey to an asylum country can often be perilous, it is not uncommon for one or two members of the family to make the voyage, leaving women and young children behind in the hope that they can follow by safer routes.

Recognition of the importance of family reunification is thus very important in the government policies and programs of a country such as Australia which provides both resettlement places (through the offshore program) and asylum (through the onshore program) to refugees. Every effort should be made to ensure that refugees are assisted

to trace, contact and be reunited with significant family members from whom they have been separated.

Expedition of family reunion is very important. The longer family members are separated, the greater the gulf between spouses and between parents and children can become. Rebuilding the family after prolonged separation can be a painful process and one that is not always successful.

7.3. Current Concerns

Australia has a long and proud tradition of resettling refugees. In addition, a significant proportion of the refugee program is currently devoted to refugees whose status has been conferred in Australia.³⁷ While not seeking to diminish the contribution that is being made in this regard, the Refugee Council is concerned that a number of current policies and practices are inconsistent with the protection of family unity and the promotion of family reunification. These are:

i. Refusal of family reunification on health grounds:

The case of the Pakistani refugee who set himself alight outside Parliament House in Canberra and then died of his injuries drew stark attention to the issue of medical testing and family reunion. For many years this man had been trying to bring his wife and children to Australia and on each occasion, the application was rejected because one of his children was mentally impaired. His desperate act potently demonstrated the anguish many refugees feel at being separated from their families.

While it is acknowledged that countries have responsibilities to tax-payers in relation to the potential health costs a migrant might incur, it can be validly argued that the standards applied to migrants should not apply to refugees. People migrating to come to Australia have a choice as to whether they come or remain in their home country. Refugees do not. Migrants residing in Australia are (if finances permit) in a position to visit relatives barred from entering Australia on health grounds in the country in which they are living. Refugees are, by definition, unable to return to their country of origin.

For refugees, the decision to exclude a close family member on health grounds can mean a lifetime of separation for that family. This creates an intense sense of guilt and anguish for the refugee in Australia and will undoubtedly impact on his/her settlement prospects.

ii. Narrow interpretation of “family”:

When considering the concept of family, it is important to note that in the refugee context there are certain definitional issues that must be considered:

- the notion of “family” as defined by the refugee’s culture - the concept of the nuclear family (mother, father and children) as the significant family unit is a very western construct. In many parts of the world, people have close meaningful relationships with other family members such as grandparents, aunts, uncles and cousins. Sometimes these relationships are culturally prescribed, sometimes they come about as a result of

³⁷ It should be noted that the Refugee Council opposes the numerical linkage of the offshore and onshore refugee programs which has seen a marked reduction in the number of places available to refugees requiring resettlement in recent years.

cohabitation or some other form of interdependent relationship. Further, it is important to note that in many cultures, “dependency” does not cease when a son or daughter reaches the age of 18; rather, it is common for a young person to be seen as an integral part of the nuclear family until they marry;

CASE STUDY³⁸: Southern Sudanese couple who “adopted” and raised the daughter of the husband’s younger brother because of the rejection of the young man’s union by the family patriarch. The couple are the only parents the child has known. For complex reasons she did not travel to Australia with the couple. The child, now aged 14, has been sent by the grandparents to Cairo to await resettlement in Australia. The application to bring her to Australia has been rejected on the grounds that her mother (with whom she has no relationship) is still alive. The couple are extremely distressed by this and find it very difficult to understand why the Australian authorities do not understand the nature of the family relationship.

- the notion of “family” as defined by the refugee experience - some refugees have lost all family members in the conflict or unrest that precipitated their flight. In these cases, it is not uncommon for the refugee to make new links with “significant others” who, although not blood relatives, assume a special importance for the refugee.

CASE STUDY: Ethiopian man who was resettled in Australia in the early 1990s. On his application, he only made reference to the children of his current wife, omitting two daughters from a previous union. His former wife then died and the man sought to bring his daughters to Australia. Because of his original omission, his paternity was challenged. DNA testing established that one of the girls was his but not the other. He was given the option of bringing one of the girls to Australia and not the other. He chose this course of action but it has caused a great deal of distress. The daughter who came to Australia grieves for her sibling. The daughter left behind is unable to understand why she was “rejected” by the man who she believes to be her father. The father waited some time before informing the daughter of the reasons, fearing that being without a father would bring shame to her in their culture and this significantly affected the relationships between all family members. The matter is currently before the Migration Review Tribunal.

For the purpose of family reunion, Australia’s humanitarian program defines “family” as spouse and dependent children (ie under 18). None of the factors outlined above are taken into consideration. The Refugee Council argues that to have such a narrow notion of what constitutes a family member does not necessarily meet a refugee’s deep psychological need for family reunification.

iii. Proof of relationship:

While it is conceded that fraud does occur and that some refugees will fake relationships in order to be reunited with significant others, it is argued that, in many instances, the level of proof required is unrealistic. It is not reasonable to expect all refugees to have evidence of relationships either because they come from countries where birth and marriage certificates are not routinely issued or because such documents that do exist could well have been left behind during flight and are unobtainable by a person targeted by the very authorities who issue them. Failure to give proper recognition to these constraints has variously lead to:

- refugees feeling it necessary to resort to using the services of forgers to obtain documents that they have been told are essential for their application to be

³⁸ Each of the case studies contained in this section is that of a current or immediately past client of an RCOA Member Organisation.

considered. This then makes them vulnerable to having their visas cancelled at a later date if the “fraud” is detected;

- refugees being required to undertake very expensive DNA testing to establish the legitimacy of relationships. Given that most refugees in these circumstances are newly arrived and impecunious, this testing requirement can either send them heavily into debt or cause severe guilt when the test is not done because of lack of funds. In those cases where it is done, it is common for the process to be exceptionally drawn out, with family reunification being delayed for many years;
- refugees having to endure long periods of separation while proof of relationship is argued.

CASE STUDY: Chinese national who was granted a permanent protection visa and later reunited with his wife and “white” child. The couple also had a second child who, because of China’s One Child Policy, had been “hidden” with relatives in a rural area but whom the wife visited on a regular basis. When the wife came to Australia, she missed her second child terribly and this began to affect her health. When an attempt was made to sponsor the child, Department of Immigration officials were sceptical that the child was actually theirs. After an extremely lengthy process of applications to the Migration Review Tribunal and DNA testing, it was established that the child was in fact the progeny of both parents. The child finally arrived in Australia after 5 years separation from her mother.

iv. Need for flexibility to deal with changed circumstances:

Refugees, by definition, are people coming from precarious situations and in many instances, the risk is not significantly diminished after flight. This can be complicated by changes in the refugees’ circumstances which can exacerbate the risk.

CASE STUDY: Somali woman, kidnapped when she was 19 and held as a sex slave for 7 years. During this time she gave birth to a daughter. She escaped from her captors, made her way to her home with her child. Not long later, she was recaptured and taken back into slavery. The child was left behind with the grandmother. The woman managed to escape again and this time made her way to Australia where she was granted refugee status. An application was made to bring the child to Australia and the grandmother took the child to Kenya to wait for the visa (planning that she would return to Somalia once the child had left to join her mother). While waiting in the camp, the grandmother died. DIMA were notified of the changed circumstances but took no action. Meanwhile, the child’s relatives came to the camp and took the child, then aged 6, back to Mogadishu. DIMA were notified of the changed circumstances and the urgency of the situation. Before the visa could be issued, the Mogadishu home was raided by bandits. One person was killed and a teenage girl was kidnapped. The family fled, taking the now 7 year old with them. They are in hiding and the mother has no contact. She is distraught about the separation and the lack of contact.

Had the authorities acted immediately when notified that the grandmother had died and the 6 year old was alone in the refugee camp, the child would now be with her mother rather than lost somewhere in Somalia.

The lack of flexibility in the program also affects refugees when their circumstances have changed between the time of application and the time the visa is issued.

CASE STUDY: Sudanese family with 4 children who were granted visas to come to Australia. Four days before the family left, the woman gave birth to a fifth child. Because

there was no visa, the infant was left behind with family in the camp. The parents believed that they would be able to bring the infant soon after their arrival in Australia. At the time of writing, four months have passed and there is still no visa, despite the interventions of caseworkers supporting the family. As in the above case, the separation from her infant child is having a profound impact on the mother.

In this case, had there been the potential for the infant to travel with the family and have the visa problems resolved after arrival, much heartache would have been saved.

v. Need for family support in times of crisis:

Many refugees find themselves alone or with only a small number of family members in the country in which they are resettled. For many this might not be a problem during good times but when something happens, such as a serious illness, separation from family can be very distressing.

CASE STUDY: 42 year old Iranian woman who has resided in Australia for some years. She has no family in Australia. She has recently been diagnosed with terminal cancer and given 6 months to 2 years left to live. She is very fearful about her future and wants to have a member of her family with her as she approaches death.

Having provision for extended temporary or permanent entry in such cases would alleviate much suffering.

vi. Inclusion of family reunion cases in the humanitarian program:

Provisions introduced in the last few years have enabled immediate family members (spouse and children) to be visaed and to travel to Australia more expeditiously than was previously the case. Whereas previously they had had to apply under the family reunion program, if family members were included on the original application, they now come under the humanitarian program. There are some benefits but also some drawbacks to this approach. On the plus side:

- processing times have been reduced and the families are reunited in a much more systematic fashion than was previously the case;
- expensive family reunion application costs do not apply;
- immediate family members are not affected by the two year waiting time for income support³⁹ and they are able to access relevant support programs.

On the down side:

- the policy of bringing immediate family members under the same program as the entrant, and counting their numbers in this program, reduces the number of places available for others seeking access to the humanitarian program;
- this in turn means that family members who may not be in immediate danger take places away from others who may be. This debases the fundamental principle behind Australia's program - the protection of people in greatest need - and turns it into a defacto family reunion program.

³⁹ As applies to people who enter under the Family Reunion program.

This issue has been further complicated, however, by the current policy which sees the numerical linkage of the onshore and offshore humanitarian programs. The high number of onshore visa grants has meant that there are very few humanitarian places currently available. Refugees seeking to be reunited with immediate family members overseas are being told that they will have to wait for several years for a humanitarian place or pay the application fee for a family reunion application.

CASE STUDY: Palestinian couple with two children granted refugee status in Australia. The 3 minor sons of the man's first marriage, for who the couple has had sole care for the last 8 years, were left with the husband's relatives. When an application was made to DIMA to bring the sons to Australia, the family were told that they could either go through the humanitarian program, but would have to wait for 2 years, or pay in excess of \$3,000 in filing fees for family reunion visas and have the boys come more quickly. Because of their desire not to prolong the separation, and because the eldest boy will turn 18 within the next two years and thus would become ineligible for family reunion, the family has gone heavily into debt.

The pain of the separation can be further exacerbated by the way delays are communicated to applicants.

CASE STUDY: A woman granted a permanent protection visa in Australia applied to be reunited with her husband and children. She received a letter from the Senior Migration Officer in Pretoria which made reference to the impact of the large numbers of onshore grants on the size of the offshore program and concluded bluntly with the advice "you are advised that no further action will be taken on this application and it may (sic) be years before we will be in a position to recommence processing this application". Then woman is now being treated for severe depression.

vii. Restrictions on family reunion for holders of temporary protection visas:

Prior to October 1999 all refugees, irrespective of their mode of arrival, had family reunion rights. The introduction of the Temporary Protection Visa (TPV) regime changed this. People determined to be refugees after having arrived in Australia in an unauthorised fashion are now granted TPVs which have attached to them a number of restrictions, including a bar on family reunion. The Government's rationale for this is that it makes Australia a less attractive destination for would-be asylum seekers. The Refugee Council, on the other hand:

- questions whether the TPV regime has achieved its objectives, given that we have seen an increase in the arrival rate since the end of 1999;
- is deeply concerned at the impact this restriction is having on the TPV holders, many of whom are men who have left their wives and children behind in precarious situations, believing that they would be able to bring them via a safer route. There is ample evidence from people working with the TPV holders that they are deeply distressed by the separation and send most of their income overseas. This in turn impacts on their chances of becoming productive members of the community;

CASE STUDY: Refugee woman client of one of the torture and trauma counselling services begins each session with her counsellor by noting the number of days before she can apply to be reunited with her family.

- notes that there is as yet no certainty about whether the TPV holders will be able to be reunited with immediate family members if they are successful in their second claim for refugee status and sees the anxiety this lack of clarity is causing;
- notes too that the period of family separation will be much greater than 3 years once time in detention and the time it takes to process family reunion applications is included. It is possible that families could be looking at a period closer to 5 years before they can be together again;
- is concerned that the longer family members are separated, the greater the likelihood that other attachments will be formed, thereby undermining the prospects for the family being able to once again form a cohesive unit. This has very obvious implications for the children;
- recognises that there could well be many cases where the extended delay in being able to submit family reunion applications could mean that the child of a TPV holder will reach the age of majority and thus will no longer qualify as a dependent child, thus making separation permanent;
- argues that the policy is in fact forcing women and children into the hands of smugglers and exposing them to the dangers of clandestine travel. Since the introduction of the TPV regime there has been an increase in the number of family groups arriving as well as arrivals of women and children whose husbands have arrived previously.

CASE STUDY: Iraqi man now resident in Victoria. He was a high profile military engineer who, because of his opposition to the Hussein regime, was forced to flee and eventually made his way to Australia where he was granted protection. His wife and children are in Jordan. They have had to be constantly on the move because they are being pursued and threatened by Iraqi government agents. UNHCR and the Red Cross have identified an immediate resettlement need. Because the man is on a temporary protection visa, he is ineligible to sponsor his family. Efforts by community workers to get the family considered under other programs have thus far produced no results. Because of this, and the immediate danger the family is in, consideration is now having to be given to seeking resettlement for them in the USA or Canada. This would mean long term and possibly permanent separation

viii. The trial release of women and children from detention centres:

In response to criticisms about the detention of women and children, the Minister for Immigration has announced his intention to trial releasing a small number of women and children from the detention centre in Woomera. This would involve separating the family members as release of the male head of household is not being considered, neither is release of female headed households. As such, it indicates a lack of respect for the principle of family unity and potentially presents families with a Hobson's choice: either the family remains together and the children are kept in the unnatural detention environment or the children are in a better physical environment but separated from their father.

ix Unaccompanied Minors:

While Australia has not experienced the number of unaccompanied minors (under 18 year olds with no links) seeking asylum as European states, such arrivals do occur. As at 1st June 2001 there were 39 unaccompanied minors in detention. Unaccompanied minors present many challenges to authorities including, but not limited to:

- determining whether the minor has Convention-related protection needs (this can be especially difficult if the child is young and/or unable to articulate their circumstances);
- establishing what family, if any, the minor has in the country of origin or elsewhere;
- deciding what course of action is in the best interests of the minor;
- ensuring that, until he/she reaches the age of 18, the minor is appropriately cared for and protected.

If the minor is determined to be a refugee, or if it is determined that it is not in the best interests of the child to be returned to his/her country of origin, it is of paramount importance that reunion with remaining family be expedited, especially in cases of young refugees.⁴⁰ The current TPV regime, however, makes this impossible.

Should the argument be made that allowing family reunion for minors would encourage families to send anchor children, it should be countered by arguing the importance of protecting the rights of children already in this country and by stressing that, if the Government is so concerned about stopping irregular movement, far greater emphasis should be placed on addressing push factors.

7.4. Recommendations

In order to remedy the perceived deficiencies in the way that Australia's policies impact on refugees' rights to be reunited with their families, the Refugee Council recommends the following:

- i.* That family members of refugees not be excluded from entry solely on health grounds if no other option is available for the family to be reunited.**
- ii.* That in cases where a refugee has no immediate family members, consideration be given to facilitating reunion with members of the extended family and/or a person or persons who, through shared experiences or interdependence, has taken on a special meaning to the refugee.**
- iii.* That it be acknowledged that for many refugees it is impossible to obtain documentary proof of relationships and that lesser measures (such as statutory declarations with a clear explanation of the implications of misrepresentation) be adopted.**
- iv.* That measures be put in place to allow for visas to be expedited in emergency circumstances or when there is a change in family composition due to the birth of a child.**

⁴⁰ There have been cases of unaccompanied minors of 11 and 12 years of age and a recent arrival who is believed to be 8 years of age.

- v. That provision be made for refugees to be reunited with family members on compassionate grounds such as serious illness or family tragedy.
- vi. That there be a designated component of the family reunion program for the family members of humanitarian entrants, allowing these family members access to essential settlement services but not resulting in their entry taking places away from unlinked humanitarian entrants.
- vii. That the restrictions on family reunion be removed from the Temporary Protection Visas.
- viii. That alternatives to the current policy of mandatory detention that do not involve disruption of the family unit be explored.
- ix. That, for so long as extra-territorial interception measures are engaged in, refugees with family ties in Australia be eligible for resettlement in Australia.
- x. That, for so long as the Temporary Protection Visa regime is in place, the barriers to family reunion not apply to unaccompanied minors.