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## AUSTRALIA'S REFUGEE AND SPECIAL HUMANITARIAN PROGRAM:

### CURRENT ISSUES AND FUTURE DIRECTIONS

#### Views From The Community Sector

February 2003

#### TABLE OF CONTENTS

1.	Executive Summary	3
2.	Introduction	5
3.	Refugee Resettlement	6
	3.1. The International Context	
	3.2. Australia's Response	
4.	Australia's Refugee and Special Humanitarian Program	8
	4.1. Basic Principles	
	4.2. Size of the RSHP	
	4.3. Composition of the RSHP:	
	4.3.1. Sectoral Composition	
	4.3.2. Regional Composition	
5.	The Current Issues	41
6.	List of Contributors	74



## 1. EXECUTIVE SUMMARY

Each year the Refugee Council prepares a detailed submission for the Minister for Immigration on the Refugee and Special Humanitarian Program for the coming year.

In an effort to grapple with contemporary issues and to provide constructive guidance to the Government, the Refugee Council undertook a series of consultations with policy agencies, community workers and affected communities to gather ideas and to ensure the Council's views are current, representative and have broad-based support. The results of this consultation process, supplemented with research, have been compiled into the following submission. It is divided into three main sections:

- the first section looks at the role of refugee resettlement in the international context and at how Australia can make a constructive response to this;
- the second considers the size and composition of the Refugee and Special Humanitarian program and makes specific recommendations in relation to the 2003-2004 program; and
- the third responds to the focus questions contained in the DIMIA Discussion Paper issued in the context of the consultation process.

Following is a summary of the Council's key recommendations.

### **Basic Principles**

The Refugee Council contends that the following basic principles should underpin the Refugee and Special Humanitarian Program:

- the program numbers should be determined independently of any consideration about the numbers of refugees granted protection visas in Australia;
- the size of the offshore program should be increased commensurate with the role afforded to resettlement in UNHCR's Agenda for Protection. Such an increase should occur incrementally so as to allow the expansion of the capacity of the essential settlement services;
- 50% of the numbers should be devoted to the refugee component of the program;
- 15% should be devoted to Women at Risk entrants;
- all offshore refugee entrants should be granted permanent visas and be able to gain access to all settlement services;
- greater provision should be made for people displaced within their own country to be included within the humanitarian program;
- there should be a separate program introduced in the family reunion program to target family members of humanitarian entrants;
- the program should make provision for a contingency reserve.

## Size of the Refugee and Special Humanitarian Program

The Refugee Council recommends that:

- 12,000 new places be made available for offshore entrants in the 2003-04 Refugee and Special Humanitarian Program;
- any unused visas be rolled over in the 2003-04 program;
- 6,000 places be made available for the refugee component of the program;
- for as long as the policy of issuing offshore temporary visas remains, those granted these visas not be counted against the refugee component of the program;
- at least 1,800 places be made available for Women at Risk entrants within the Refugee Program;
- plans be made to increase the program size by 1,000 places each year to bring the program to 15,000 places;
- a contingency reserve of 3,000 places be set aside to accommodate any major humanitarian emergency that necessitates the opening up of additional resettlement places.

In other words, the recommended program for the coming year would be as follows:

Refugee Program	6,000
Special Humanitarian Program	6,000
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TOTAL	12,000
Contingency Reserve	3,000

## Regional Composition of the Program:

The Refugee Council recommends that the regional composition of the program be as follows:

### Recommended Regional Distribution

Africa	43%
Middle East	35%
Europe	12%
SE and South Asia	7%
South America	3%

## 2. INTRODUCTION

Once again 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).

This submission is written at a time of great uncertainty. Most significantly there is the prospect of war with Iraq, steady deterioration of relations between Israel and the Palestinian Authority and growing tensions on the Korean peninsular. In addition we have, *inter alia*:

- an unstable world economy – both because of US and international factors – that will have significant and widespread flow-on effects;
- a new, internationally-backed government in Afghanistan facing an uphill challenge to gain control over its war-ravaged country;
- only a fragile truce between the two nuclear-armed claimants to Kashmir;
- increasing instability in various parts of South America, linked in large part to faltering economies and disputes over access to resources; and
- ongoing bitter conflict in various parts of western and central Africa.

It is thus even more difficult than usual to predict what will unfold in the coming year and to predict the nature of the response required from Australia. This being said, there are a number of facts that can be stated with assurance:

- UNHCR places great value on the role Australia has played as a leading resettlement country;
- resettlement places will be required for vulnerable cases amongst existing refugee populations;
- irrespective of where tensions arise, there will be new refugees in need of resettlement; and
- former refugee communities now resident in Australia will continue to desire to sponsor family and friends in refugee-like situations overseas.

If, in the coming year, there is a major conflict in the Middle East, North Asia or elsewhere, a different and more substantial response will be required of Australia. In this regard, the specifics cannot be dictated, save for the need for:

- flexibility;
- balance;
- responsiveness; and
- compassion

## 3. REFUGEE RESETTLEMENT

### 3.1. The International Context

In October 2002, the Members of the Executive Committee of the United Nations High Commissioner for Refugees adopted the **Agenda for Protection**. The Agenda is the product of the consultation process initiated by UNHCR to mark the 50<sup>th</sup> Anniversary of the establishment of the office and which was in response to the numerous challenges confronting States in terms of refugee protection. Through its membership of the Executive Committee and its active participation in the consultation process, Australia played an important role in the development of the Agenda for Protection and will be required to be active in supporting its implementation.

The Agenda for Protection sets out a concrete framework for refugee protection underpinned by a reaffirmation of the centrality of the 1951 Convention relating to the Status of Refugees<sup>1</sup>. This framework contains 6 specific goals:

- strengthening implementation of the 1951 Convention and its 1967 Protocol;
- protecting refugees within broader migration movements;
- sharing of burdens and responsibilities more equitably and building capacities to receive and protect refugees;
- addressing security-related concerns more equitably;
- redoubling the search for durable solutions; and
- meeting the protection needs of refugee women and refugee children.

In the context of the enhanced commitment to the search for durable solutions, the Agenda identifies the need to enhance the use of resettlement both as a protection tool and a durable solution. Similarly it identifies the need to expand resettlement opportunities by:

- encouraging more countries to cooperate with UNHCR in offering resettlement places;
- developing the capacity of new resettlement countries through training and mentoring programs;
- promoting the expansion of existing resettlement programs both in terms of their size and the diversification of the caseload; and
- ensuring that resettlement programs are supported by robust and effective settlement programs .

### 3.2. Australia's Response

Australia has been a world leader in the area of refugee resettlement for over 50 years. Successive governments have demonstrated this commitment through:

- their support for UNHCR's resettlement program;
- the number of refugees (on a per capita basis) accepted by Australia; and
- the quality of settlement programs put in place to assist refugees after arrival.

The adoption of the Agenda for Protection should be seen by the Government of Australia as an opportunity not only to take pride in the ground-breaking role this country has taken in relation to furthering resettlement as a durable solution but also to consider whether Australia's resettlement program can be modified in order to reflect better the objectives outlined in the Agenda.

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<sup>1</sup> As made by States Parties at a special Ministerial Meeting in December 2001.

With regard to the latter, the Refugee Council of Australia believes that as commendable as Australia's resettlement program has been over the years, there are a number of ways it could be strengthened. These include:

- increasing the size of the program to reflect the enhanced importance afforded to resettlement by UNHCR;
- ensuring that the program more accurately reflects contemporary resettlement needs by diversifying the caseload;
- making an active contribution to enhance UNHCR's capacity to identify refugees in need of resettlement (as outlined in Section 5);
- assisting the development of response capacity elsewhere.

In making these recommendations, the Council reiterates that resettlement must always be viewed as but one element of a total response to refugees. Australia's commitment to resettlement must be matched with a commensurate commitment to:

- prompting a respect for democracy, human rights and the rule of law;
- actively searching for peaceful resolution to conflict or potential conflict;
- providing development assistance to countries of first asylum and to countries in the post-conflict reconstruction phase;
- participating in peace keeping initiatives;
- ensuring that victims of persecution have access to protection; and
- supporting and strengthening the international protection regime.

## **4. AUSTRALIA'S REFUGEE AND SPECIAL HUMANITARIAN PROGRAM**

### **4.1. Basic Principles**

The Refugee Council has long held that there are certain basic principles that should underpin the Refugee and Special Humanitarian Program:

- the program numbers should be determined independently of any consideration about the numbers of refugees granted protection visas in Australia. The Council's reasons for the separation of the offshore and onshore programs have been iterated in many previous submissions and the Council notes that this position is consistent with that of UNHCR and has wide support from refugee agencies;
- the size of the offshore program should be increased commensurate with the role afforded to resettlement in UNHCR's Agenda for Protection. Such an increase should occur incrementally so as to allow the expansion of the capacity of the essential settlement services;
- 50% of the numbers should be devoted to the refugee component of the program;
- 15% should be devoted to Women at Risk entrants, coming as part of the refugee component of the program;
- all offshore refugee entrants should be granted permanent visas and be able to gain access to all settlement services;
- greater provision should be made for people displaced within their own country to be included within the humanitarian program;
- there should be a separate program introduced in the family reunion program targeting family members of humanitarian entrants;
- the program should make provision for a contingency reserve.

These principles will be expanded upon in the following sections.

### **4.2. Size of the Refugee and Special Humanitarian Program**

According to figures provided by DIMIA, it is anticipated that approximately 12,220 offshore visas will be issued in the current financial year (2002-2003). This is a 44.5% increase on the previous year, when 8,458 visas were issued. The change in numbers is a direct result of the numerical linkage of the offshore and onshore humanitarian programs, with many fewer onshore claimants being granted refugee status in 2002-2003. In addition to the many, oft articulated reasons given by the community sector for why the linkage is undesirable, it must be said that an increase of this magnitude has significant flow-on effects for settlement services and refugee communities. It is the view of the Council that if Australia is to preserve its reputation for world-leading settlement services, it is necessary that the offshore program numbers do not fluctuate too widely from one year to the next.

It is for this reason, combined with an awareness of the ongoing teething problems within IHSS, that the Council recommends that the program for the coming financial year be of

approximate size to that to be delivered in 2002-2003: 12,000 new places plus carry over of unused places from the current year's program (a practice with which the Council is in full support).

This being said, the Council and its constituency believe that the humanitarian program can and should be increased in response to international developments and community concerns. To enable services to make necessary adjustments, it is argued that any changes should be introduced incrementally over a period of years so as to allow settlement services to adjust their programs to meet the increased demand.

In addition, the Council believes that the internal composition of the program should be amended. Specific recommendations in this regard are set out below and are discussed in more detail in the following section.

**In relation to the 2003-04 humanitarian program, the Refugee Council recommends that:**

- **12,000 new places be made available for offshore entrants in the 2003-04 Refugee and Special Humanitarian Program;**
- **any unused visas be rolled over in the 2003-04 program;**
- **6,000 places (i.e. 50% of the total offshore program) be made available for the Refugee Program;**
- **at least 1,800 places (i.e. 15% of the program) be made available for Women at Risk entrants;**
- **for as long as the policy of issuing offshore temporary visas remains, those granted these visas not be counted against the Refugee Program;**
- **plans be made to increase the program size by 1,000 places each year to bring the program to 15,000 places;**
- **a contingency reserve of 3,000 places be set aside to accommodate any major humanitarian emergency that necessitates the opening up of additional resettlement places.**

In other words, the program for the coming year would be as follows:

Refugee Program	6,000
Special Humanitarian Program	6,000
	_____
TOTAL	12,000
Contingency Reserve	3,000

#### **4.3. The Composition of the Refugee and Special Humanitarian Program**

There are two significantly different ways of looking at the composition of the humanitarian program. One is the way the program is broken up into its constituent parts (its sectoral composition) and the other is the allocation given to the various regions around the world (regional composition). Each will be dealt with below.

#### **4.3.1. Sectoral Composition**

There have been significant changes in the sectoral composition of the humanitarian program in recent years, in large part due to the removal of the Special Assistance Category. In 1995-96, over 6,900 visas were issued to entrants in this category. By 1998-99 the number had fallen to 1,190 and three years later, the Category had all but disappeared. During this time, however, the number of visas issued to those in the refugee category (visa subclass 200) remained relatively stable – hovering around the 4,000 mark. The places made available by the abolition of the Special Assistance Category have been directed to the Special Humanitarian Program.

The Refugee Council believes that the program is currently too heavily weighted towards the Special Humanitarian Program and that if the objective is to target those in greatest need, there should be a compositional shift. The Council also feels that other areas of the program are being under-utilised. These issues will be explored in more detail below.

Before progressing, however, it is important to make two points:

- the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) has devoted significant effort to addressing what have been chronic problems in relation to processing of offshore humanitarian claims – in particular the often excessive processing times. DIMIA is to be commended for taking these steps and the Council is keen to work with the Department during the implementation of further initiatives such as onshore processing of Special Humanitarian claims;
- there is no doubt that there are large numbers of Convention refugees in very precarious situations in many parts of the world for whom resettlement is the only viable solution. The problem that has confronted Australia and other resettlement countries is that it has been very hard to identify those most needing resettlement. This problem has been exacerbated by UNHCR's funding shortfall and the consequent impact on staffing levels, which has in turn inhibited their capacity to provide referrals. RCOA presents a number of suggestions for addressing this problem in Section 5 of this report.

#### **i. Refugee Program (Visa Subclass 200)**

It is the view of the Council that the refugee program is central to our humanitarian response, forming as it does a way of protecting highly vulnerable refugees and assisting UNHCR to fulfil its mandate. In this regard, the Council contends that:

- the numbers allocated to the refugee component of the humanitarian program must be a clear demonstration of its importance within the program;
- selection for the refugee program should be on the basis of need for resettlement rather than an assessment of the individual's capacity to settle successfully;
- priority should be given to those identified by UNHCR for resettlement or whose resettlement is supported by them; and

- all entrants under the refugee program should be given access to the full range of settlement services.

The Council notes with concern the inclusion in the refugee program numbers of people granted temporary protection visas. In the first half of the 2002-03 program year, about 300 people arrived with visas from subclasses 447 and 451. In all cases they have been determined to be a Convention refugee. The Council's concern rests on the following:

- much has been made by the Minister and DIMIA that the most vulnerable refugees are those identified by UNHCR from countries of first asylum and it is important that Australia take steps to enable focus to be on these people. The inclusion of the offshore TPV cases in the refugee program takes places away from the very people the Minister has indicated his strong desire to assist;
- experience has taught us that certain specialised services are required by refugees in order to settle effectively in Australia. These services include initial information and support, language instruction, accommodation and household formation assistance, specialised medical care and counselling. Failure to provide these services can lead to complex settlement problems that require intensive intervention at a later date. The denial of access to basic settlement services to certain classes of refugees on the basis of their mode of arrival is considered short-sighted and destined to lead to major long-term problems for the entrants and the community as a whole.

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

The Refugee Council notes the existence of Visa Subclass 201 (In-Country Humanitarian Rescue) within the Refugee Program. In the past this was applied with a geographical limitation (limited almost exclusively to Latin America), however, it has more recently been used for very small numbers elsewhere.

RCOA believes that there is scope to expand the use of the existing in-country humanitarian rescue provisions to be able to assist people who are facing persecution in their own country and who need assistance to leave. 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.

It is acknowledged that it also requires the capacity to process people while they are still in their country of origin and the ability of people to leave their country. This is not the case for most people experiencing persecution in their own country but there are some countries where it is possible – for example in relation to Ahmadis in Pakistan.

## **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.

Section 5 of this submission (in particular the answers to questions 9 to 13) goes into considerable detail about various aspects of the implementation of this program, in particular how selection can be streamlined and how the proposers can be better assisted.

In addition, however, the Council would like to make the point that as over 50% of the people of concern to UNHCR are “in refugee-like situations”, many displaced internally, it is important that these people are not overlooked in considering who is to be resettled. When the Special Humanitarian Program was instigated, it was recognised that there are people in need of resettlement over and above those referred by UNHCR. Traditionally it has been an eligibility requirement that the person be outside their country of origin. More recently this has been relaxed, with people being granted 202 visas without having crossed an international border, for example to people in Kosovo. The Refugee Council supports this extension, seeing that it:

- picks up people who would previously have been eligible for Special Assistance Categories but who would otherwise be disadvantaged due to the cessation of this program;
- meets community demands to assist compatriots who are displaced within their country of origin.

Caseloads the Council sees as particularly suitable for consideration in this regard are Bosnians in unsustainable situations in minority areas, Kosovo Serbs, Coptic Christians in Sudan and those displaced internally in Indonesia.

#### **iv. Emergency Rescue (Visa Subclass 203)**

The Refugee Council has been suggesting for some time that there has been scope for Australia to expand its emergency response capacity, arguing that there are some instances where refugees would be endangered if they had to wait for normal processing to occur. Our submissions have pointed to the development of relationships between UNHCR and other resettlement countries, in particular Canada and New Zealand, which have enabled refugees to be moved within days of UNHCR passing on the file. The Council is therefore heartened to learn that negotiations are underway for a similar protocol for UNHCR referral of emergency cases to Australia that will provide for cases to be finalised within 2 days.

#### **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, the extremely limited range of options available to UNHCR and NGOs to remove those at risk from the abusive circumstances, and the 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 (AWR) 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 DIMIA guidelines:

- are outside their home country;
- do not have the protection of a male relative;<sup>2</sup>
- are in danger of victimisation, harassment or serious abuse.

Currently 10.5% of offshore visas are set aside for Women at Risk visas. In the last program year (2001-2002), 478 AWR visas were granted. This represents 11.5% of all refugee visas granted, exceeding the target by 1% and exceeding the previous year’s program by 76 places (1.45%). This overall figure is commendable but it must be noted that the performance was not uniform:

Region	Number of AWR Grants	Percentage
Africa	110	8.4%
Europe	129	8.1%
M-East/SW Asia	234	19.0% <sup>3</sup>

The Council is most concerned about the failure to meet the target in Africa, this being the region where arguably the women refugees are in greatest immediate danger. It is noted that much of the shortfall was related to problems with UNHCR referrals, which is all the more reason for DIMIA to explore actively ways to enhance UNHCR’s resettlement referral capacity and also to supplement this by developing other identification pathways. This issue will be explored more fully in Section 5. It is the Council’s contention that the vulnerability of many refugee women should be the impetus for exploring new identification mechanisms and with these should come an increase in the proportion of the program devoted to Women at Risk entrants.

<sup>2</sup> 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.

<sup>3</sup> Figures from DIMIA.

Further, the Council reiterates its belief that in order to ensure that those most in need of protection receive proper consideration, it is necessary to take the following into consideration:

- **identification:** it should not be expected that women who have been highly abused and traumatised self-refer. To supplement UNHCR referral, 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 DIMIA 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 as the applicant 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. The posts that are dealing with arguably the most vulnerable caseloads: Nairobi, Beirut and Islamabad have tended to be 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 may have believed herself to be a widow but later discovered that her husband was alive; or
- there have been cases where the husband’s whereabouts were unknown; 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 an AWR visa. It can also lead to prolonged separation of children from their father.

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. It is important that DIMIA carefully track AWR entrants to ensure that they are receiving the support they require through the Integrated Humanitarian Settlement Strategy.

## **vi. Unaccompanied Minors**

While there is no Unaccompanied Minors (UAM) Program as such, there is provision for minors to be included in the humanitarian program as long as they meet the same requirements as other humanitarian entrants and it is determined that the grant of the visa to the child will not prejudice the rights and interests of any other person who has custody of guardianship of, or access to, the child.

The Council supports the existence of this provision in the program and notes that there are some very vulnerable minors in some refugee caseloads who are in need of resettlement options. An example would be orphans from Sierra Leone whose parent(s) had a high political profile and who face ongoing persecution because of their family history. It is suggested that for identification purposes, there is merit in developing relationships with the NGOs responsible for running UAM programs, in the aforementioned case this would be the International Rescue Committee, a highly respected international NGO that could assist with both identification of especially vulnerable cases and background checks to determine whether there are extant relatives with claims to the minor.

## **vii. Contingency Reserve**

The Refugee Council recalls that in 1995 UNHCR asked resettlement countries to make an additional allocation to assist refugees from Bosnia. The way this was handled at the time was to “borrow” places from the following years program, which were then “paid back” from the following program. This resulted in there being 2,000 places fewer in this program – i.e. 2,000 people from other parts of the world who might otherwise have been resettled but were not because of the response to UNHCR’s request. Furthermore, the reduction in numbers resulting from “payback” flowed into subsequent years with program numbers never being restored to the previous level.

The uncertainty existing in the world at this point of time – especially in the Middle East and on the Korean Peninsular – suggests that there could well be a time in the not too distant future when UNHCR again asks countries to provide additional resettlement places. And if not for these scenarios, possibly for somewhere else at some point down the track. Such is the nature of conflict – and such is the need for a coordinated humanitarian response to emergency situations.

The Refugee Council argues that there should be a standing provision in the humanitarian program for a Contingency Reserve, allowing additional places to be made available in emergency situations and at the request of UNHCR. Such a program would be an acknowledgement of the fragility of the world and the need for responses over and above the “normal” when humanitarian disasters occur. Funding for such a program could be argued for using the analogy to the way Australia responds to natural disasters, such as the recent bushfires in Canberra, and terrorist attacks, such as the Bali bombings.

## **vii. Humanitarian Family Reunion**

The nature of the refugee experience is such that separation from close family members is commonplace. Being reunited with family members is acknowledged as a key index of settlement and the failure to effect family reunion can greatly impair an entrant's ability to

function in other areas. 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 plans 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.

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 of this approach. On the plus side:

- processing times have been reduced in some instances and the families are reunited in a much more systematic fashion than was previously the case;
- immediate family members are not affected by the 2-year waiting time for income support 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 de facto family reunion program. In the last program year (2001-2002), 500 grants were made to split family members, representing 4.3% of all offshore humanitarian visa grants.

The focus of the family reunion provisions on immediate family also has a particular impact on humanitarian entrants. It is not uncommon for a refugee to feel very strong bonds to someone beyond the immediate family, either because the link was culturally defined (eg in some cultures aunts and uncles have a close and defined role which differs to that which is applied in our western culture) or because most or all of the immediate family members have been killed in the conflict.

Under the current arrangements, it is almost impossible for a refugee to be reunited with a "significant other" who is not an immediate blood relative. This is causing considerable anguish amongst humanitarian entrants.

In this regard, reference is made to the RCOA Position Paper on Family Unity and Family Reunification (August 2001) that explores these issues in significantly more depth.

**The Refugee Council stresses the importance of family reunion in the settlement process and reiterates our view that there should be a designated component of the family reunion program for family members of humanitarian entrants. For this to work effectively it would require that:**

- **visa fees be pegged at an affordable level;**
- **there be the possibility of waiving assurance of support;**
- **applications be processed expeditiously;**
- **entrants be entitled to immediate access to Centrelink;**
- **entrants be eligible for the same AMEP entitlements as humanitarian program entrants;**
- **entrants be able to make use of Migrant Resource Centres and the services of Community Settlement Support Scheme workers.**

**Such a visa class would address the needs of the sponsor and the entrant without taking places away from potential humanitarian entrants with protection needs.**

In addition, the Council would like to raise as a dilemma – with no obvious solution - an issue that arose in the course of its consultations: this being that of polygamous marriages. As the humanitarian program increasingly targets Africa, it is inevitable that situations will be encountered where a family is determined to be in need of resettlement but there is more than one wife, this being a both legally and culturally acceptable custom in a number of countries. It is not ethically acceptable to say that a polygamous family should be excluded from protection derived from resettlement but resettlement in a western country would inevitably result in:

- rejected wives being left behind without male support, thus making them vulnerable;
- separation of wives left behind from any children resettled with the father (the mother having given permission in the belief that the children will have a better life elsewhere);  
or
- separation of children who remain with their mother from their father.

This is clearly a case where western legal values, rights to family unity and protection needs are far from congruent. The participation of more African countries in UNHCR's resettlement program might be the key to finding solutions.

#### **4.3.2. Regional Composition**

In recent years there has been a marked shift in the composition of the offshore humanitarian program. For much of the 1990s, Europe was the region that dominated the program, with entrants coming in from various parts of the Balkans. With diminishing need in this region, the focus of the program has shifted to other regions of the world, most notably Africa and to a lesser extent, the Middle East. The following table shows this regional shift over the last 5 years.

**Regional Distribution as Proportion of Total Offshore Program<sup>4</sup>**

	<b>1997-98 Grants (actual)</b>	<b>2000-01 Grants (actual)</b>	<b>2001-02 Grants (actual)</b>	<b>2002-03 Projections</b>
<b>Europe</b>	50%	43.4%	32.1%	12%
<b>Middle East</b>	28%	26.9%	32.4%	39%
<b>Africa</b>	15%	25.4%	33.2%	43%
<b>Other</b>	7%	4.3%	2.3%	6%

The Refugee Council is supportive of the shift in regional focus. This being said, there are some points that it wishes to make:

- accepting that the reduction of numbers from Europe is warranted, the Council stresses the need to recognise that significant numbers of people remain in untenable situations in the Balkans, many of whom are internally displaced and unable to return to their home region. Ongoing provision for resettlement will be required for some time;
- the increased allocation for Africa can only be effectively achieved if there is a change in the way that cases are identified. As will be discussed in Section 5, it is important that consideration be given to expanding identification capacity by supporting and supplementing the identification and referral functions of UNHCR;
- it is important to ensure 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, Australia's geopolitical and aid focus and the existence of established support networks dictates that Australia should play a leading role in addressing the need that does exist;
- the situation in South America, in particular Columbia, is of a sufficiently serious and protracted nature to warrant greater focus on resettlement from this region than has thus been given.

**The Refugee Council recommends that the regional composition of the 2003-04 humanitarian program be as follows:**

**Recommended Regional Distribution**

<b>Africa</b>	<b>43%</b>
<b>Middle East</b>	<b>35%</b>
<b>Europe</b>	<b>12%</b>
<b>SE and South Asia</b>	<b>7%</b>
<b>South America</b>	<b>3%</b>

The specific reasons behind these recommendations are given in the following tables.

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<sup>4</sup> All figures from DIMIA.

REGION	% OF TOTAL	ISSUES FOR CONSIDERATION
<b>AFRICA</b>	43%	<p>July 2002 saw the end of the Organisation of African Unity (OAU) and the establishment of the African Union (AU), a body envisaged as a far stronger federation that will include a parliament, security council and a standby peacekeeping force intended for intervention in internal conflicts in Africa. This comes in the wake of the establishment of NEPAD (the New Partnership for Africa's Development) which also has its genesis on the continent and is intended as a holistic integrated strategic framework for the socio-economic development of Africa. Both initiatives have considerable potential, especially because of major donor backing, but it is too early to say whether they will have the intended consequences of promoting good governance, fostering respect for human rights and the rule of law, combating corruption and brokering solutions to the many problems besetting countries on the continent. Possibly the acid test will be the role the AU and NEPAD play in relation to emerging conflict situations such as those in the Ivory Coast and Zimbabwe.</p> <p>Throughout the continent there are many new and protracted problem areas worthy of attention in the planning of the humanitarian program:</p> <p><b><u>WEST AFRICA:</u></b></p> <p>The struggle for power over resources, especially diamonds, has led to grave instability in many West African states, impacting heavily on neighbouring states. As soon as progress is made in one area, it seems that a new conflict erupts elsewhere, displacing not only locals but also refugees from other conflicts. The situation is in a constant state of flux, so careful attention needs to be paid to this region, with particular reference to:</p> <p><b>Ivory Coast</b></p> <p>Ivory Coast was long seen as an oasis of stability in a troubled region but in the last four months the situation has deteriorated rapidly. At the time of writing, the French-brokered peace accords seem to be faltering. The conclusion of the Paris talks led to days of rioting in the streets of Abidjan and President Laurent Gbagbo has made statements that suggest that agreement has not yet been reached.</p> <p>Continuous fighting between three separate rebel groups and the government has resulted in an exodus of about 70,000 people to Liberia (over ½ of whom are Liberian refugees, with smaller numbers of refugees from other states) and a similar number have fled to other neighbouring states. In addition, WFP estimates that there are some 500,000 internally displaced persons, 400,000 from areas of conflict in the north and central regions and about 100,000 from the west.</p> <p>It is still too early to determine resettlement needs of people from the Ivory Coast though this is a situation that warrants careful monitoring. More immediate focus is justified in relation to the vulnerable groups amongst those who have been subjected to multiple displacements.</p> <p><b>Liberia</b></p> <p>Contrary to expectations that peace would come to Liberia following elections in 1997, the country plunged into recurring hostilities and instability, leaving ¼ of the population dependent on humanitarian aid. Collapse of the country's economic and political infrastructure has caused major internal dislocation. Armed groups have infiltrated the camps and have abused and exploited many of the internally displaced persons (IDPs), with women and children being the primary targets. During 2002 alone, over 80,000 Liberians</p>

fled to Sierra Leone, Ivory Coast, Guinea and Ghana.

Since the Ivorian civil war spread to the western part of the country in mid-November, the flow has been reversed. As previously stated, some 70,000 people have fled back into Liberia from Ivory Coast, many people who had previously fled the conflict in Liberia. In addition, there are significant numbers of Liberians who are unable to return to Liberia for political reasons but who are unsafe in Ivory Coast. Dependent on the area in which they are in, they are either targeted because they are perceived government sympathisers or rebel supporters.

#### **Sierra Leone**

Elections in May 2002 gave promise of a fresh start in Sierra Leone after a decade of a very brutal war that killed over 50,000 people, drove a third of the population from their homes and left tens of thousands of people mutilated. Despite efforts by the government after the elections to convince donors and investors that the country is stable in order to bring in funds, the reality on the ground is different. Many areas remain unstable, often due to payback and tribal killings, and the instability in neighbouring countries has the potential to flow into Sierra Leone. Groups previously targeted for resettlement programs remain vulnerable and the resettlement need continues.

#### **Elsewhere In The Region:**

Concern continues about the destabilising effect on **Guinea** of conflict in neighbouring states and about the cross border activities of the Liberian rebel group LURD.

Separatist activity continued in **Senegal** during 2002, with forces demanding self-rule for the Christian and animist regions in the south from the largely Muslim dominated north. Refugees continued to seek protection in Gambia.

At the time of writing, efforts by the UN to broker peace between the Algerian-backed Polisario Front and Morocco over the future of the people of **Western Sahara** have stalled. The fate of some 200,000 refugees remains in the balance.

Tension continues in Nigeria between the Muslim north and Christian south with sporadic violence and consequent dislocation. Each of these situations is worthy of careful monitoring.

#### **Resettlement needs for West Africa:**

**RCOA notes that responsibility for processing resettlement applications is being transferred from Athens to Pretoria. This in itself is considered a positive move but the point is made that the distance from the region and the infrequency of visits makes it difficult for DIMIA staff to develop the kind of relationships on the ground that facilitate identification of the most vulnerable refugees. This is particularly significant given the resource constraints under which UNHCR operates. RCOA recommends that longer and more frequent visits to the region are important in the identification process.**

**RCOA further recommends that on a regional basis, priority for resettlement should be given to:**

- **women at risk: especially female-headed households;**
- **families with young girls who have been returned from abduction by rebels;**
- **victims of torture and rape;**

- unaccompanied minors recommended for resettlement by UNHCR and their NGO partners;
- people who have been subjected to multiple displacement;
- those trapped in a new conflict situation who are unable to return to their homeland;
- people with a political profile; and
- people being targeted because of their ethnicity (for example young Kran or Mandinga men from Liberia).

#### **CENTRAL AND SOUTHERN AFRICA:**

##### **Democratic Republic of Congo**

The situation in the Democratic Republic of Congo (DRC) has deteriorated markedly throughout the year and there are some very troubling stories emerging about gross violations of human rights, including extrajudicial killings and cannibalism. Few have faith that the peace agreement reached in December 2002 will have any real impact on the situation, in large part because of the number of factions involved and also the large number of foreign soldiers who have joined/formed local militias in an effort to gain control over valuable mineral concessions. An estimated 2½ million people have died since 1998 as a direct result of the fighting or through hunger and disease. Aid agencies are struggling to assist those displaced by fighting and disease is a constant threat to those in camps where resources are scarce. There are almost 400,000 refugees from DRC in neighbouring countries.

##### **Uganda**

The World Food Program warned in January that Uganda is facing its worst humanitarian crisis since rebels took up arms against the government 16 years ago. The number of people in need of assistance has risen from 520,000 to 800,000 since July as fighting between the Ugandan army and the rebel Lord's Resistance Army (LRA) has intensified. Combatants have targeted civilians and aid agencies as well as their military opponents. In addition to the local affected population, some 150,000 refugees from southern Sudan have been directly affected by the upsurge of fighting in northern Uganda, with documented LRA attacks on refugee settlements.

##### **Congo Brazzaville**

"Ninja" fighters, opposed to President Denis Sassou Nguessou, have continued to cause instability in this oil-rich country leading to significant displacement, particularly from the southern province of Pool near the capital Brazzaville.

##### **Angola**

The death in combat of rebel leader Jonas Savimbi in February 2002 and the signing of a ceasefire April seem to have brought a sustained halt to the conflict that has raged in Angola for 27 years.

Peace has, however, exposed the parlous state of the Angolan economy and has brought the challenge of reintegrating:

- almost 80,000 UNITA rebel fighters;
- over 300,000 family members of the rebels;
- over 200,000 soldiers from the Angolan army (FAA) demobilized after the first abortive peace accord signed in 1991 and who have received

- no support thus far;
- 4 million IDPs; and
- some 500,000 Angolan refugees living in neighbouring countries.

The level of commitment by the international community to support Angola during the crucial years ahead will determine whether the peace can be maintained. Insufficient support could lead to destabilisation and renewed fighting.

### **Zimbabwe**

The situation in Zimbabwe continues to be the cause of concern. Regional intervention has not managed to resolve the political violence and the land crisis, and these are in turn exacerbating the economic instability of the country and food distribution. Refugees have continued to flee to South Africa, Botswana and Mozambique and more and more white Zimbabweans are looking for options elsewhere. While not as yet seen as a resettlement caseload, this will need careful monitoring.

### **Burundi**

South African-backed talks in January between the main Burundian rebel groups and Burundian President Pierre Buyoya attempted to salvage the faltering ceasefire agreement signed in December. The renewed fighting has resulted in new flows into Tanzania and has caused friction between UNHCR and the Tanzanian government over the issue of repatriation. About 400,000 Burundian refugees are currently sheltered in western Tanzania. Tanzania is keen to return the refugees or see them resettled elsewhere, citing the economic burden and the impact on relations with its neighbour as reasons.

### **Rwanda**

During 2002 almost 23,500 refugees returned to Rwanda under UNHCR auspices, concluding the repatriation from northwestern Tanzania. This being said, it is premature to say that all outstanding problems in Rwanda are resolved. There remain refugees who are unable to return and there is also the concerning situation of the residual refugee population in DRC who have been caught up in the spiralling violence in that country.

### **Resettlement needs for Central and Southern Africa:**

**Central and Southern Africa have not traditionally been seen as source regions for the resettlement program.**

**The acceptance of a group of Burundian refugees from Tanzania in the 2002-03 program is seen as important, not only for the refugees involved but also in terms of acknowledging the significant resettlement needs in these regions.**

**The Refugee Council supports expansion of the resettlement program for Central and Southern Africa and recommends that priority be given to:**

#### **Refugees from Burundi, in particular:**

- 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.

**Refugees from DRC who:**

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

**Refugees in DRC, in particular:**

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

**Refugees in Uganda, in particular:**

- vulnerable groups amongst the Sudanese refugee population who have been affected by the conflict in Uganda.

**In addition, the Council recommends that:**

- careful attention be paid to the evolving situation in Zimbabwe, with consideration of resettlement applications when warranted;
- consideration be given to Angolan refugees who are facing protection issues in countries of first asylum and who are unable to return to Angola; and
- consideration be given to refugees from other regions of Africa who are experiencing protection problems in countries of first asylum in Southern Africa.

**HORN OF AFRICA:**

Possibly the most important development with respect to refugees in this region is the announcement in early February that the newly elected government of **Kenya** will review its policy of confining refugees to camps. The much criticised policy has seen some 220,000 refugees trapped in arid and remote camps in the north of the country (in particular Kakuma near Turkana and Dadaab near Garissa) without the right to own cattle or cultivate land, move freely, work or integrate with local people and thus has confined them to total dependence on humanitarian aid. The new Kenyan government is considering the establishment of smaller settlements in more productive areas where refugees will be allowed to farm and produce goods. This is a development worthy of strong support from the international community.

On the negative side, however, we have very troubling recent developments in **Egypt**. In December 2002, the Egyptian government embarked on a security crackdown that has had a serious direct impact on refugees in the country. Black Africans – men, women and children – are being picked up on the streets and from their homes, taken into custody and in some cases deported. This is a marked change of policy. In the past, only people engaged in criminal activity were deported. If refugees do not have their papers with them, they are very vulnerable. Most of those affected are Sudanese. Raids continued throughout January and are causing considerable concern to those working with the refugees.

**Elsewhere in the region:**

**Ethiopia**

In late November 2002 tensions between rival ethnic groups in Fugnido camp which houses Sudanese refugees erupted into fighting leaving over 40

people dead (mainly women and children). Fugnido houses more than 28,700 refugees and is the largest of the five camps in Ethiopia's Gamballa region where a total of 85,000 Sudanese refugees are sheltered. The fighting led to aid agencies pulling out, thereby creating a major humanitarian emergency in the camp. Recent UN reports suggest that the situation remains tense.

Elsewhere in Ethiopia, Oromo people fleeing famine in their home areas descended on the capital, Addis Ababa, after the failure of the government to supply adequate relief.

### **Eritrea**

January 2003 saw the cessation of *prima face* refugee status for more than 320,000 Eritreans in Sudan, with UNHCR having assessed that the root causes of the Eritrean refugee problem no longer exist as fundamental and durable changes have occurred. UNHCR has instigated an education campaign to inform Eritreans about their options and to assist those wishing to return to do so. Those who are reluctant to return will be required to undergo individual screening to determine whether they have ongoing protection needs. If there is a protection need, consideration will be given to whether local integration or resettlement is the best option.

### **Sudan**

Heavy fighting erupted once again in Western Upper Nile region of southern Sudan in late January, in contravention of an agreement between the rebel Sudanese People's Liberation Army (SPLA) and the Sudanese government. Reports suggest that the government launched a major offensive, capturing the town of Ler. This follows attacks during 2002 that involved blanket aerial bombardment of civilian targets such as market places, churches and IDP camps. The government activity calls into question their commitment to the peace talks that are being mediated by the Inter-Governmental Authority on Development in Kenya.

In addition, discrimination of Coptic Christians continues in northern Sudan, with Christians having difficulty in gaining access to education and employment.

### **Somalia**

Somalia remains a very dangerous place without an effective government and with no rule of law. Violence and discrimination on the grounds of identity: clan membership, women, minorities and other vulnerable groups, is rampant. In Mogadishu, in particular, there are almost daily killings, rapes and kidnappings for ransom, even of children, by faction militias or faction-linked militias. Both Somali and international humanitarian workers have been killed and kidnapped, and relief supplies stolen.

The UN-supported Transitional National Government (TNG) holds little power even in Mogadishu as it approaches the end of its three-year term. Two rival coalitions of over a dozen armed clan-based factions, one linked to the TNG and the other backed by Ethiopia, continue to struggle for power. Violations of the October 2002 cease-fire persist unpunished.

### **Resettlement needs for the Horn of Africa:**

**Priority groups for resettlement in this region include:**

- **Southern Sudanese refugees in Ethiopia and Kenya, with an emphasis on those in need of physical and legal protection and**

		<p>women at risk;</p> <ul style="list-style-type: none"> <li>• recognised refugees in Egypt (from Sudan and elsewhere) who are at risk of refoulement and/or have no real prospects for local integration;</li> <li>• 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;</li> <li>• Somali refugees from minority clans who are unable to return to Somalia and who face severe discrimination in refugee camps and settlements;</li> <li>• Somali refugees of mixed ethnicity (eg Somali-Bantu) who are unable to secure clan protection;</li> <li>• Oromo refugees from Ethiopia who need resettlement from Kenya because of security and protection reasons;</li> <li>• pre-1991 screened-in Ethiopians and Eritreans who are in Sudan;</li> <li>• the usual priority groups referred by UNHCR, such as Women at Risk.</li> </ul> <p style="text-align: center;">~~~~~</p> <p>It must be noted that the above list is not exhaustive and that there are a number of situations deserving of careful monitoring with the possibility of allocating resettlement places should the need arise. There are also small numbers of refugees from a number of other African states for whom resettlement could be considered on a case-by-case basis. In addition, it is important to note that many Africans have moved away from the continent in a vain search of protection and this should not preclude consideration of their cases.</p>
REGION	% OF TOTAL	ISSUES FOR CONSIDERATION
MIDDLE EAST	35%	<p><b>Iraq</b></p> <p>Despite growing international scrutiny, during 2002 the Iraqi government continued to commit widespread and gross human rights violations, including the extensive use of the death penalty and the extrajudicial execution of prisoners, the forced expulsion of ethnic minorities from government-controlled areas in the oil-rich region of Kirkuk and elsewhere, the arbitrary arrest of suspected political opponents and members of their families, and the torture and ill-treatment of detainees.</p> <p>At the time of writing the prospect of war in the Middle East is looking more and more likely. The USA is still trying to gather consensus for UN intervention in Iraq but has made it plain that if this is not forthcoming, it is committed to taking action to disarm the government of Saddam Hussein.</p> <p>It is hard to estimate the consequences of a war with Iraq. A UN document leaked to the public in January suggested that an Iraqi conflict could cause half a million casualties, create 900,000 refugees and displace another 2 million Iraqis. It went on to suggest that power, water, communications and</p>

oil installations could be devastated.

Neighbouring states are making plans for a possible exodus:

- Iran is preparing 16 sites along the border to house up to 700,000 refugees. It is probable that any border crossers will be tightly encamped with an expectation that the international community will be responsible for relief delivery. Iran is reluctant to repeat its past generosity towards refugees, citing the dispersal policies as the reason for the lack of international support. (See RCOA Report on its Field Visit to Iran. September 2002);
- Syria and Jordan are also making preparations but they expect fewer refugees as Iraq's main cities do not have as easy links to their borders as to other borders;
- Turkey has massed troops along the Iraqi border and has stated that it will not allow refugees to cross, indicating that it will try to encamp refugees on the other side of the border.

It is impossible to tell at present exactly what will happen if there is a war in Iraq. The important thing for involved states, such as Australia, is that plans are made to accommodate the worst possible scenario.

**It is the view of the Refugee Council that, if Australia participates in any conflict with Iraq, that this involvement must be accompanied by:**

- **commensurate expenditure on humanitarian relief to those affected by the conflict, over and above existing aid spending to the region;**
- **expeditious processing of cases with immediate resettlement needs, with this also being considered as additional to rather than part of the annual allocation (by way of a contingency reserve).**

It is also relevant to bear in mind the impact that any conflict is likely to have on other countries in the region and on refugees who have been living there.

Particular reference is made to the residual caseload of Iraqi refugees in Rafha Camp in Saudi Arabia. In the last decade UNHCR has overseen the resettlement over 25,200 people, however a residual caseload remains. The prospect that the remainder would be resettled decreased sharply after 11 September 2001, in large part due to the reduction in the USA's program. Saudi Arabia offers financial incentives for refugees who return to Iraq, a policy that could lead to refugees returning to a place where they might risk serious human rights violations. The 5,000 or so who continue to live in Rafha do so with no end to their suffering in sight.

#### **Iraqi Kurdistan**

The two principal Kurdish opposition groups in Iraqi Kurdistan, the KDP and the PUK, have managed to maintain control over most of the three northern provinces of Arbil, Duhok, and Sulaimaniya. Each group has continued to administer their respective areas through separate administrative, legislative, and executive structures and in October 2002, the unified Kurdistan National Assembly met for the first time since 1996. International observers report that the overall human rights situation in the region has markedly improved relative to previous years. This being said, the security situation in Iraqi Kurdistan remains precarious. Iraqi government agents and members of Kurdish Islamist groups carried out a number of acts of sabotage.

Between November 2001 and October 2002, there were at least five bomb attacks targeting public places, such as restaurants, parks and summer resorts and in April 2002 there was an attempt on the life of PUK Prime Minister Barham Saleh.

### **Afghanistan**

After over twenty years of conflict, it would appear that Afghanistan is making real progress towards achieving stable peace and legitimate governance. Sight must not be lost, however, of the fact that ongoing security problems in many parts of the country continue to threaten many Afghans, especially vulnerable populations such as women and girls, orphans, widows, displaced persons, the disabled and ethnic minorities.

The fall of the Taliban regime allowed numerous military warlords to return to power, many of them former commanders during the anti-Soviet "jihad" of the 1980s who later became local strongmen during the early 1990s. Some of these warlords were implicated in alleged war crimes committed against Taliban and al-Qaeda prisoners, reprisals against Pashtun villagers in the north and west of the country, as well as other human rights violations. Many of these warlords also manipulated the selection of representatives for the *loya jirga* process during May and June (or attended themselves) and generally intimidated the populations under their control throughout 2002.

Many observers agree that too little attention has been given to disarmament and compelling local warlords to comply with human rights norms. The situation in many parts of the country remains unstable with little central government control beyond major cities. This has serious implications not only for development but also for returning Afghans.

There were many positive developments during 2002, not least the removal of many of the most oppressive restrictions imposed by the Taliban. Gone also were threats and arbitrary harassment by Taliban troops and officials. Women in most areas were again able to work, attend school and university, and walk in public without the encompassing *burqa*. This being said, there were troubling signs that some Islamic fundamentalist groups were continuing to exert power, intimidating and controlling populations, especially in the south and west of the country and even in Kabul.

In addition, concern has been raised about what will happen in Afghanistan if conflict erupts in Iraq. There are suggestions that the residual Taliban and al-Qaeda forces inside Afghanistan will intensify their attacks on Afghan territory.

One of the greatest challenges facing the country must certainly be the reintegration of the more than 4 million people who were displaced by the war. In 2002 more than 250,000 IDPs went home under a joint UNHCR-Afghan government scheme and another 200,000 returned on their own. In addition, some 1.8 million Afghans returned from Pakistan and Iran. In 2003 UNHCR has plans to repatriate a further 1.2 million refugees and 300,000 IDPs, though this will still leave some 2.2 million refugees outside the

country, the largest number being in Iran.

Refugees are returning to a war-ravaged country. Many have no homes and no prospects of earning an income. In many areas the infrastructure has been destroyed, there is no clean water and sanitation and few if any medical facilities. Dependency on international aid is high. International agencies are struggling to meet demand and warn that too rapid a return could cause instability.

Security for aid workers remains a concern. As recently as late January, UNHCR was forced to suspend aid work in 3 districts in eastern Afghanistan after an attack on one of its convoys which left several people dead.

**The Refugee Council stresses:**

- **it is too early to say that there has been significant and sustainable change in Afghanistan;**
- **the security situation in many parts of the country remains poor;**
- **substantial and ongoing international assistance will be needed to bring about change;**
- **even with the repatriation programs that are underway, neighbouring countries will continue to host significant numbers of refugees for many years to come;**
- **unless there is ongoing international assistance for refugee programs in countries of first asylum, there is the potential for destabilisation and further secondary movement;**
- **resettlement will be required for Afghan refugees for many years to come – just as it is still required for refugees from the Balkan conflicts 7 years after the end of hostilities. No matter how things evolve inside Afghanistan, it is inevitable that there will be people who are unable to return and unable to remain in the country of first asylum. Resettlement options will be required for such people;**
- **any involuntary return of refugees to Afghanistan should be avoided;**
- **active encouragement of repatriation by vulnerable groups (AWR, UAMs, etc) should be avoided.**

**Iran**

Politics in Iran continues to be dominated by the struggle between the hard-line fundamentalist clerics and those who want political reform. The government is being forced to find a path between these two extremes and the impossibility of doing so has led to dissatisfaction with the government from both sides. The once popular support the government had from those who wanted social change is rapidly waning and there is increasingly open criticism of the government's failure to effect real change.

[See RCOA Report of its 2002 Field Visit to Iran]

Those who seek to challenge the government – be it through the media or through public action – are allowed some latitude but there is the ever-

present risk of sanctions, be these through criminal prosecution or delivered via the militias that operate with apparent impunity. Conservative domination of the judiciary influences the ability of reformists to get a fair trial.

Other groups who have been targeted include:

- senior Shi'a religious leaders and their supporters who dissented from the ruling clerical establishment;
- cultural figures (dancers, actors) who have been prosecuted for “corrupting public morality”;
- religious and ethnic minorities including Kurds, Baha’is and Jews;
- members of the banned Kurdish opposition party, the Peoples Democratic Party of Iran (PDKI);

The campaign by conservatives against moral decline was accompanied by an increase in public executions and corporal punishment.

The people of Iran are anxiously awaiting events in Iraq. There is a widely held perception amongst Iranian people that if the USA is successful in its endeavours to overthrow the Iraqi government, it will turn its sights of Iran, Iran being part of the “Axis of Evil”. Any conflict in Iraq will thus have a significant impact on internal stability within Iran.

#### **Israel, Palestine and the Occupied Territories**

The violence that erupted beginning in September 2000 intensified in 2002. Civilians increasingly paid the price for repeated, egregious violations of international humanitarian law by the Israel Defence Forces and Palestinian armed groups. At least 1,949 Palestinians and 637 Israelis were killed between September 2000 and late October 2002, the majority civilians, including 292 Palestinian and 79 Israeli children.

Efforts to curb the spiral of attack and retribution have thus far come to nothing and the results of the recent election in Israel suggest that there will not be an end to the violence in the foreseeable future.

#### **Turkey**

Despite Turkey’s efforts to secure a place in the European Union, its record for human rights observance is still cause for concern. Many lawyers and human rights defenders charged that the use of torture and ill-treatment increased throughout 2002. Detainees throughout the country reported that police or gendarmes inflicted torture by beating, death threats, hosing with cold water, sexual assault, electric shocks, and hanging by the arms. Victims included women and children. Women reported rape in police custody.

The Turkish government refused to abolish incommunicado detention, the principal factor in the persistence of torture in Turkey identified by U.N. and Council of Europe experts. Furthermore, the climate of impunity for torture remained unchanged. Where security personnel were charged and convicted of crimes based on torture, sentences were frequently light or suspended.

In addition, censorship remained a significant issue, with prosecutions and intimidation of journalists, political opponents and others. Lack of freedom of

expression carried over into other areas as well, with the ban on women wearing headscarfs being applied with increasing severity to students and public servants.

Despite a substantial reduction in hostilities between the government and PKK forces, more than 250,000 mainly Kurdish villagers remained unable to return to their homes in the southeast. The vast majority had been forced from their homes in the early and mid-1990s by security forces in brutal operations accompanied by torture and "disappearances." A smaller number had fled their villages after repeated PKK attacks. Returns were slow due to apparent official reluctance to repopulate distant rural areas. Where civil authorities granted permission to return, gendarmerie or the paramilitary village guards of neighbouring communities that had occupied their lands sometimes turned villagers back.

Attention is also drawn to the fact that asylum seekers in Turkey are frequently denied proper protection. Under Turkey's geographical reservation to the Refugee Convention, non-European asylum seekers are required to register with the police so that UNHCR can determine whether they were refugees and eligible for resettlement in a third country.

Hundreds of asylum seekers entering the country from Iran and northern Iraq have been summarily returned across the borders. Others have been arbitrarily refused permission to register or to report weekly to police stations, thereby exposing them to risk of summary return as illegal residents. In July 2002 more than two hundred African asylum seekers, including some recognized by UNHCR as refugees, were rounded up in Istanbul. One female member of the group died in custody, while others reported that gendarmes ill-treated, raped, or otherwise sexually assaulted them before forcing them at gunpoint across the Greek border. This has significant implications for existing asylum seekers and will have profound consequences if there is conflict in Iraq.

#### **Resettlement needs for the Middle East:**

**It is the view of the Refugee Council that resettlement of refugees from the Middle East is an important contribution that Australia can make towards promoting regional stability and also assisting refugees who have been unable to find effective protection within the region. It is considered that particular attention should be given to the following groups:**

#### **Refugees from Afghanistan, in particular:**

- **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 (whatever form this might take) and who have no prospects for local integration.**

#### **Refugees from Iraq, in particular:**

- **vulnerable cases such as women at risk and torture survivors;**
- **refugees with a high political profile who are at risk in the region;**

		<ul style="list-style-type: none"> <li>• refugees at risk of refoulement;</li> <li>• refugees with no prospects for local integration;</li> <li>• refugees detained in Israel as “enemies of the state”;</li> <li>• religious and ethnic minorities;</li> <li>• residual camp caseload from Rafha Camp in Saudi Arabia.</li> </ul> <p><b>Refugees from Iran, in particular:</b></p> <ul style="list-style-type: none"> <li>• religious and ethnic minorities who are unable to find durable solutions in the region - especially ex Pakistan and Turkey;</li> <li>• UNHCR referrals from Al Tash Camp in Iraq;</li> <li>• Iranian refugees in northern Iraq (if access is permitted).</li> </ul> <p><b>Refugees from Turkey, in particular:</b></p> <ul style="list-style-type: none"> <li>• Turkish Kurds with protection needs best met by resettlement.</li> </ul> <p><b>The Refugee Council also reiterates:</b></p> <ul style="list-style-type: none"> <li>• that any response to a UNHCR request to resettle significant numbers of refugees from a new crisis in Iraq be additional to the planned humanitarian program and not take numbers away from other needy groups;</li> <li>• 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;</li> <li>• 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.</li> </ul>
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REGION	% OF TOTAL	ISSUES FOR CONSIDERATION
<b>EUROPE</b>	12%	<p><b>Kosovo</b></p> <p>It has been more than 3 years since a US-led military campaign evicted Serbian forces from Kosovo and more than a year since the Kosovars elected their own fledgling government. Despite this, virtually all power in the Balkan province continues to reside with the UN administrators. Opinions on how the situation is going are divided and resentment of the international administrators has steadily risen. Many locals feel excluded from important decisions, in much the same way they were excluded under Serb occupation. 30,000 UN troops and 4,440 international police officers still control security in the province. Few Kosovars are ready to accept a solution short of independence and there is no real support for return of ethnic Serbs (despite this being a core part of the UN mandate). No real attempt has been made to bring those responsible for war crimes in 1999 to justice and former KLA commanders head two of the three main political parties.</p> <p>The future of 40,000 refugees and displaced persons from Kosovo in Montenegro remains uncertain. Few of the refugees are willing to return and international donors have announced that aid will be cut in 2003. Those in the most difficult situation are the Roma.</p> <p><b>Bosnia</b></p> <p>2002 saw a steady increase in the number of returns of refugees and IDPs</p>

to areas where they are part of an ethnic minority. As part of the peace agreement that ended the war, Bosnia was divided in 1995 into two zones – a Bosnian Serb republic and a Muslim-Croat federation. Return of the 1.8 million displaced by the conflict has been a key issue in the years since and much work has gone on in areas such as property rights to pave the way for this. The increase in minority returns (thus far over 300,000 have returned) reflects an improvement in the political and security climate. This being said, there are still tens of thousands of Bosnians who have been unable and are likely not to be able in the foreseeable future to return to their homes.

#### **Croatia**

The return of Croatia's ethnic Serbs, who fled the country during and after the 1991-95 conflict, remains a contentious issue. Less than 1/3 of the more than 300,000 Croatian Serbs have returned. Despite an improved overall climate after the moderates took over from nationalists in the 2000 elections, the government has been slow to end discriminatory practices in property repossession, occupancy rights and reconstruction assistance and there is still strong public opposition to the return of Serbs. For as long as the government continues its ambivalence in relation to return, it will not be able to live up to the commitment made at the election to transform Croatia into a genuine European democracy.

#### **Federal Republic of Yugoslavia**

There are still in the order of 390,000 refugees from Croatia and Bosnia in FRY. Despite the fact that FRY has made significant steps to regularise the status of the refugees and has opened up citizenship opportunities, there are still many refugees who are reluctant to avail themselves of this. For some it has to do with reluctance to allow sons to undertake military service. For others it is linked to the ongoing discrimination they face as "refugees" in FRY, with their status being used against them in professional and social settings.

In addition, there are more than 230,000 ethnic Serbs displaced from Kosovo living in FRY. As indicated above, their prospects for return are not good. While they technically enjoy FRY citizenship, they are treated as "outsiders" and are subject to discrimination.

#### **Russia**

Though little reported in the Australian press, the situation in the southern Russian province of Chechnya is clearly Europe's most intense human rights crisis. Human Rights Watch, OSCE and other human rights groups have each reported serious abuses by the Russian military against Chechen civilians including arbitrary detentions, disappearances, sexual abuse and forced camp closures. Particular concern has been expressed about Russia's "mopping-up operations" that have seen Chechen refugees in Ingushetia being forced to go home, even though mine explosions, shootings, skirmishes and bomb blasts are a regular part of life in Chechnya. Forced expulsions were even carried out in December and January during the height of the winter. In December Aki Yurt camp was closed, leaving the 3,000 residents – mainly women and children – to trek through dangerous territory in –10 degree weather to return to homes that might no longer exist.

#### **Eastern Europe**

The trend towards segregation of Roma in Eastern European countries continues, despite pressure from the EU to integrate ethnic minorities. In Slovakia, for instance, several towns in the eastern part of the country have recently passed ordinances banning Roma from entering the city limits, let alone living inside them. More and more Roma are being forced into squalid

		<p>rural settlements and urban ghettos and instances of sanctioned violence are regular occurrences.</p> <p><b><u>Resettlement needs for Europe:</u></b></p> <p>The Refugee Council acknowledges that the need for resettlement for refugees and IDPs from Former Yugoslavia is diminishing but argues that it is far too premature to ignore this region entirely. There are still many people, both outside their country of origin or displaced internally within it, for whom resettlement remains the best durable solution. RCOA considers that favourable consideration should be given to cases that fit into one or more of the following especially vulnerable groups:</p> <ul style="list-style-type: none"> <li>• survivors of torture, severe violence or trauma (including those who experienced prison camps or rape camps);</li> <li>• refugees in mixed marriages or in a family of mixed ethnic origin who are experiencing difficulties assimilating where they have settled;</li> <li>• Women at Risk cases;</li> <li>• potentially stateless refugees;</li> <li>• those made vulnerable by their being a witness before the war crimes tribunal in The Hague;</li> <li>• former supporters of Fikret Abdic who controlled the Cazin and Bihac regions of Bosnia during the war;</li> <li>• people who would face difficulties on return due to their current or past political profile, or because they are outspoken journalists or jurists;</li> <li>• those amongst the small number of Albanians from Kosovo and Southern Serbia in FYROM who have been unable to return, together with the other ethnic minorities, including Roma, for whom return has not been possible;</li> <li>• ethnic Serbs from Kosovo who are experiencing particular difficulties in FRY;</li> <li>• Krajina Serbs who have been unable to reassert their right to return and who have not found durable protection elsewhere; and</li> <li>• Bosnians who have been expelled from European countries (in particular Germany) and who have been unable to return to their home region.</li> </ul> <p>While refugees from Russia and eastern Europe have not been seen as part of the Australian resettlement caseload in recent years, RCOA argues that the situation is such that careful consideration should be given on a case by case basis to applications from these areas should they be received.</p>
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REGION	% OF TOTAL	ISSUES FOR CONSIDERATION
SE AND SOUTH ASIA	7%	<p>Burma</p> <p>The release of opposition leader Daw Aung San Suu Kyi in May after nineteen months of de facto house arrest, led to hope that the</p>

military junta might take steps to improve its human rights record. By late 2002, however, talks between Suu Kyi and the government had ground to a halt and systemic restrictions on basic civil and political liberties continued unabated. Ethnic minority regions continued to report particularly grave abuses, including forced labour and the rape of Shan minority women by military forces and armed offensives against Karen villages. Government military forces continued to forcibly recruit and use child soldiers.

Some 100,000 refugees remain in camps along the Thai-Burma border, most of them ethnic Karen. Throughout 2002 fears increased that Thailand was bowing to pressure from Burma to return Burmese refugees, in particular political activists and army deserters. Reports came in that in December an unspecified number of dissidents were rounded up by Thai authorities from border camps. Six Mon political activists were later released on the border. Whether others were forcibly repatriated remains unclear. There is general agreement that the situation for Burmese activists is becoming increasingly perilous in Thailand.

Similarly the situation for Burmese in Malaysia remains poor, with refugees being rounded up and detained by Malay authorities, irrespective of status given to them by UNHCR.

#### **Cambodia**

The Cambodian government again failed to make meaningful progress on human rights issues in 2002. The year just past saw political killings, mob violence and deportation of asylum seekers. Instances of intimidation and voter coercion have begun in the lead up to the mid-2003 elections. Press freedom is frequently compromised by intimidation and threats to journalists and media outlets. The judicial system is under-resourced, leading to many instances of people resorting to summary justice by beating and killing suspected criminals.

Cambodia deported to Vietnam hundreds of asylum seekers fleeing persecution of indigenous minorities there, in violation of its obligations under the 1951 Refugee Convention. Further, the government failed to adequately address trafficking in people. On the positive side, there was some progress in the field of labour rights, and environmentalists strengthened advocacy efforts on behalf of Cambodia's rural poor.

#### **Vietnam**

In seeking solutions to the wave of boat arrivals from the Middle East in 1999-2001, the Australian government made much reference to the need for comprehensive regional solutions and the Comprehensive Plan of Action (CPA) was hailed as a successful example. The CPA was the multilateral agreement that 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 the 2,000 Vietnamese in the Philippines who have lost their Vietnamese citizenship and who have no legal rights to remain in the Philippines.

For some time, the Philippine government has been talking about regularising their status but has been seeking an increased commitment from resettlement states to take a component of this caseload.

It is recognised that Australia has provided resettlement for a small number of these people in recent years, in particular those with links to Australia. It is stressed that there are still more Vietnamese in the Philippines who have family ties in Australia. RCOA argues that as a party to the CPA, Australia has a responsibility to help resolve the status of the remaining Vietnamese by continuing to press to regularise the status of the remaining cases. Only when durable solutions have been found for all Vietnamese covered by the CPA will it be possible to say that the CPA was a complete success.

Mention must also be made of the recent intensification of the crackdown on indigenous minorities in Vietnam's Central Highlands. The primary target has been the mainly Christian Montagnard minority who have endured detention, interrogation and beatings at the hands of Vietnamese officials. Adding to concern about this group are reports of forced returns of Montagnards by Cambodia. Though not seen as a resettlement caseload to Australia at this time (though noting that the USA has agreed to resettle 900 Montagnards out of Cambodia), this issue is worthy of careful monitoring.

### **Indonesia**

The administration of President Megawati Sukarnoputri has managed to restore some political stability to Indonesia during its year and a half in office but it has failed to deal with several major human rights challenges. These included continued violations of international human rights law by the country's military forces (Tentara Nasional Indonesia, TNI), pervasive corruption, separatist conflict in Aceh and Papua, religious violence in Maluku, Poso (central Sulawesi) and Kalimantan, attacks on human rights defenders and terrorist activity (most notably in Bali). These failures stemmed in part from the administration's lack of political will to resist former supporters and beneficiaries of the Soeharto government, including the TNI.

During 2002 there were a number of positive developments in conflict zones and the government aimed to repatriate victims. An OCHA report issued in late January, however, concluded that the government had missed its target of concluding the resettlement of hundreds of thousands of IDPs by the end of 2002. Estimates of numbers still displaced vary but it is thought there may still be as many as 400,000 IDPs throughout the country. While return or relocation within the country is the preferred option for the majority, there are people in this caseload who will continue to have legitimate fears while they remain in Indonesia. It is argued that selective targeting of such cases for resettlement on humanitarian grounds is warranted.

When looking at displacement in the Indonesian context, it is important not to lose sight of the fact that there are small but significant numbers of people who have sought sanctuary in neighbouring states

- the largest group are the 20,000 West Papuans in Papua New Guinea, many of whom have been there since 1984. The best solution for the vast majority of these is to have their status regularised in PNG. There are, however, small numbers of West Papuans who will never be given residency rights in PNG because of their political activities (active involvement in Presidium or the political wing of OPM). Third country options are required for this group and Australia can play an important

		<p>role in providing resettlement for some and in encouraging other countries to make similar offers;</p> <ul style="list-style-type: none"> <li>• there are also small numbers of refugees from Aceh in Malaysia whose situation has become more precarious with the Malaysian government stepping up its policy of detention and removal. Expedient resettlement of those identified by UNHCR as being at risk of <i>refoulement</i> is a contribution that Australia can constructively make.</li> </ul> <p><b>North Korea</b></p> <p>Tensions on the Korean peninsula have increased in recent months with North Korea indicating its intention to resume its nuclear program. Thus far the focus has been on international diplomacy in an effort to reduce tensions and the coming months will be critical in determining the success of this strategy.</p> <p>In addition, there has recently been an upsurge in the number of North Koreans who have fled into China to escape political persecution or famine. The number is unknown but estimates by human rights groups place it in the tens or even hundreds of thousands. China does not recognise these people as refugees and has provided no support for them. North Korea and China signed a bilateral accord in 1986 for the purposes of maintaining the security and social order along the border. It is a concern that China appears to be using this accord to justify the return of people without conducting any proper investigation into whether they would face persecution on return. In addition, around 2,300 people who have fled North Korea have also found their way to South Korea either with the help of NGOs or on their own.</p> <p><b>Bangladesh</b></p> <p>Since the beginning of 2002 there has been a pattern of politically motivated arrests of opposition politicians, beginning with the arrest of two senior Awami League leaders. Politicians have been arrested under Section 54 of the Criminal Code that allows detention without warrant for 24 hours. Reports indicate that during this time, they are interrogated and even tortured. Human rights activists, including academics, journalists and NGO workers seen as being critical of government policies are particularly at risk of prolonged detention and ill treatment in custody.</p> <p><b>India</b></p> <p>The steady rise of the government supported Hindu nationalist agenda has seen the situation for minorities in India steadily deteriorate in the last 12 months, with many instances of communal violence. In February and March state-supported anti-Muslim violence in the north western state of Gujarat claimed at least two thousand lives. As in Gujarat, attacks against historically discriminated groups in other parts of the country, including Christians, Dalits (or so-called untouchables) and tribal people, were carried out with virtual impunity. Attacks by militants continued to claim many civilian lives in the disputed region of Kashmir and in the northeast.</p> <p>The conflict in Kashmir persisted throughout 2002, as the safety of civilians and political leaders came under regular attack by militant groups. Hundreds were killed during, and in the weeks preceding, state assembly elections in September and October. Moreover, heightened tensions between India and Pakistan once again raised concerns of armed conflict, especially as both countries rapidly</p>
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deployed troops and refused diplomatic negotiation. Elections in Kashmir offered some hope for a resolution to the crisis in the state. The new coalition government's action plan included a commitment to investigate allegations of human rights violations by Indian security forces, and a proposal to urge Delhi to hold peace talks with Kashmiri groups.

### **Pakistan**

In October 2002 Pakistan conducted its first parliamentary elections since the October 1999 coup that brought President Pervez Musharraf to power. It was not, however, a free and fair election. Independent observers reported extensive fraud and coercion during voting for the referendum, and widespread poll rigging and harassment of candidates preceding the parliamentary elections. Constitutional amendments announced in August formalized the military's role in governance and extended restrictions on political party activities.

Internal groups coordinated and carried out attacks on foreigners and religious minorities in Pakistan. Increasing attacks on Christian community members raised concerns that they were being targeted because of anti-US sentiment. Discriminatory laws continued to limit women's security and safety. Hundreds of women were killed in the name of "honour." Journalists faced heightened harassment, and in some cases arrest, for reporting on government activities.

Blasphemy laws continued to be used in 2002 to persecute religious minorities. The laws, introduced in 1985, made it punishable by death to make derogatory comments about the Prophet Mohammed or other holy Islamic figures. Minority Muslim groups, not recognised as legitimate followers of the faith, risk breaching these laws every time they worship. Arrests under the law can be made upon complaint and without an investigation.

The situation for refugees from Afghanistan deteriorated. They suffered from a lack of humanitarian assistance and faced increased hostility from authorities. This is of particular significance as:

- return to Afghanistan must be staged so as not to overload services;
- it is inevitable that some Afghan refugees will be unable to return to their country because of well-founded fears of persecution in post-conflict Afghanistan.

### **Tibet**

Despite some dialogue between representatives of His Holiness, the Dalai Lama, and the Tibetan administration, there were few changes for the Tibetan people in the last year. Autocratic rule continued, with arrests of "political offenders" and heavy restrictions on religious practice. Human rights observers document many instances where monks and lamas were arrested and religious buildings desecrated. There are as yet no viable prospects for return of refugees to Tibet.

While local integration remains the most viable option for the majority of Tibetan refugees, the resettlement of small numbers identified with the assistance of the Tibetan administration in exile is considered an important contribution to this community.

### **Sri Lanka**

January 2003 saw the successful resolution of peace talks in Thailand between Sri Lankan officials and the Liberation Tigers of Tamil Eelam (LTTE), bringing the first real hope of enduring peace to this war-ravaged country. For the last 20 years the island state has been racked by a bitter ethnic and religiously motivated struggle that led to the deaths of over 62,000 people and forced almost a million from their homes. While the vast majority (>600,00) of those displaced by the conflict have been granted sanctuary in western countries, there remain at least 66,000 Sri Lankan refugees in 111 camps in Tamil Nadu State in southern India and a further 30,000 living outside camps in India. The peace agreement made specific reference to repatriation arrangements for the majority and the prospect of resettlement for 16,000 or so who come from areas in Sri Lanka now under rebel control.

A significant issue now facing the country in the post-conflict era is that of reintegration. In addition to the refugees, there are some 180,000 people who were displaced internally, many of whom have returned spontaneously since the end of the fighting. Return of such numbers places significant strains on the local infrastructure and it is important that donors provide sufficient assistance to avert destabilisation.

### **Nepal**

Nepal remains in a fragile state, in large part because of the Maoist insurgents who have been conducting terror campaigns in many parts of the country, but also because of the problems with governance.

Nepal continues to host more than 100,000 Bhutanese refugees of Nepali descent who fled Bhutan in 1990 as the result of an aggressive anti-Hindu intimidation and a failed pro-democracy campaign. They have been confined to UNHCR-run camps in eastern Nepal and Nepal is not happy about their continued presence in the country.

UN intervention led to talks between Nepal and Bhutan and the commitment by the Bhutanese to begin a verification process to determine who could return. Despite the fact that about 12,000 people were screened over a year ago, no results have been issued and no Bhutanese have been repatriated. Tension resulting from the delay led to hunger strikes being initiated in January in the camps. International pressure is required to ensure that the verification process progresses. While not seen as a resettlement caseload *en masse*, there are small numbers of Bhutanese refugees who do meet criteria for active consideration for resettlement consideration and when screening is underway, there will be others who are unable to return to Bhutan who will be in need of an option outside the region.

### **Resettlement needs for SE and South Asia:**

**The Refugee Council recommends that the humanitarian resettlement program include:**

**Refugees from Burma, in particular:**

- **students and other activists from the safe camp;**
- **especially vulnerable cases from the Thai-Burma border and Malaysia;**

		<ul style="list-style-type: none"> <li>• <b>Muslims who have come to Thailand from western Burma.</b></li> </ul> <p><b>Refugees and IDPs from Indonesia, with reference to:</b></p> <ul style="list-style-type: none"> <li>• <b>UNHCR referrals of Acehnese ex Malaysia;</b></li> <li>• <b>protection cases from elsewhere in the archipelago (including in-country);</b></li> <li>• <b>at-risk cases from any future outflow to Papua New Guinea and long-term refugees in PNG from an urban background who are not able to get permissive residency.</b></li> </ul> <p><b>Refugees from Indochina:</b></p> <ul style="list-style-type: none"> <li>• <b>residual CPA caseload cases in the Philippines with links to Australia.</b></li> </ul> <p><b>Vulnerable Cases from South Asia, including:</b></p> <ul style="list-style-type: none"> <li>• <b>political opponents and religious minorities inside Pakistan who are facing persecution and who would be assisted by granting them an in-country humanitarian visa;</b></li> <li>• <b>vulnerable individuals in India for whom internal flight is not an option;</b></li> <li>• <b>a small program for referred Tibetan refugees.</b></li> </ul> <p><b>In addition, the Council recommends that careful attention be paid to developments with respect to North Korean refugees and those from other parts of the region, including Bhutan, Nepal and Cambodia, so that action can be taken if deemed necessary.</b></p> <p><b>Should conflict erupt on the Korean Peninsular, resettlement needs will need to be considered carefully, with possible use of the Contingency Reserve.</b></p>
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REGION	% OF TOTAL	ISSUES FOR CONSIDERATION
<b>LATIN AMERICA</b>	3%	<p><b>Colombia</b></p> <p>Colombia remains an extremely dangerous place. Political violence is increasing and becoming more urban, with clashes and selective killings occurring in the cities. Meanwhile violent attacks in rural areas continue. Kidnapping remains a source of income and political pressure. Ample evidence exists of police and military units either turning a blind eye to the activities of paramilitary groups or even actively supporting them. The government has thus far failed to take effective action to establish control over the security forces and to break their persistent ties to the paramilitaries.</p> <p>Those particularly at risk from the paramilitaries include human rights defenders and people in public office. During 2002 the Revolutionary Armed Forces of Colombia's People's Army (FARC-EP) ordered hundreds of mayors, city council members, regional legislators and other authorities to quit their jobs or be killed.</p> <p>Violence has led to the displacement of more than 2 million Colombians,</p>

many fleeing into rural areas where they face hardship. Refugees are either encamped along the borders or have fled to Venezuela, Ecuador and Panama. In January 2003 Colombian paramilitaries attacked a village in Panama, killing four and forcing about 500 people to leave their homes. The attack is viewed as a sign of the growing impact of the Colombian conflict on neighbouring states and the vulnerability of refugees who take shelter there.

### **Argentina**

Argentina was gripped in 2002 by the worst economic, political, and social crisis in its recent history. Half the population was living below the poverty line, according to government statistics, and unemployment stood at 22 percent. Argentines of all social classes took to the streets to protest when the government blocked the withdrawal of bank deposits. Social unrest and crime escalated.

Under these very difficult conditions, the human rights situation deteriorated on most fronts. Police violence, already a serious problem, continued unchecked. Journalists covering public protests suffered numerous attacks and threats, even as the press remained vigorous and independent. Although confidence in the judiciary was low, a few judges took positive steps to pursue investigations of the grave and systematic human rights violations committed during the country's period of military rule.

### **Venezuela**

Venezuela experienced extreme political turmoil in early 2002, which culminated in a failed attempt to oust President Hugo Chávez in April. After the attempted coup, Venezuelan society remained deeply polarized, political protests continued, and economic conditions worsened, leaving the country at risk of further violent conflict and jeopardizing democracy and the rule of law. The human rights situation was also marked by problems in the administration of justice, police abuses, and threats to freedom of expression.

High levels of violent crime continue to place stress on public institutions. Corruption and violence in the police force and prison system remain endemic and the judiciary – under-funded, inefficient and often corrupt – is incapable of dispensing justice in an efficient manner. Extra-judicial execution of criminal suspects by police continues as a major problem and death squads that appear to be operating with impunity have emerged.

2003 began very badly for Venezuela, with a general strike, widespread rioting and violence.

### **Resettlement needs for Latin America:**

**The Refugee Council argues that the situation in Latin America, in particular Colombia, is such as to warrant an increase in the number of resettlement places allocated to this region. Particular attention should be given to:**

- those with a high political profile;
- those from groups specifically targeted by the paramilitaries;
- victims of torture;
- **Women at Risk;**
- human rights activists.

**While this report highlights certain countries, it should be stressed that**

		<b>any potential caseload should not be limited to nationals of the countries mentioned as there are other countries in the region, including but not limited to Peru and Bolivia, where there is unrest and the human rights situation is wanting.</b>
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## 5. THE CURRENT ISSUES

The DIMIA discussion paper issued to coincide with consideration of the 2003-2004 Refugee and Special Humanitarian Program lists a number of questions. The section below seeks to provide answers to these based on the Council's research and the consultations held with members, workers and community members.

### Question 1:

**What more can Australia do, in cooperation with UNHCR, or bilaterally with the country concerned, to assist the country of first asylum to provide temporary protection to refugees and other displaced persons?**

Before addressing this question, the Refugee Council would like to make the following points:

- There is good evidence to argue that the international community, as a whole, has failed to grasp fully the concept of international responsibility sharing. Regrettably responses are often predicated on the furtherance of geopolitical interests rather than on the protection of people in need. Humanitarian emergencies that receive good media coverage and occur in places of strategic significance are typically oversubscribed, with agencies competing with each other for a slice of the “humanitarian space”. Elsewhere, away from the glare of international publicity, agencies struggle to deliver the bare necessities and are finding themselves forced to cut back on the distribution of “luxuries” such as soap.
- The notion that “refugees cross borders, the situation changes and then refugees return” is fine in theory but this does not always happen in reality. More often than not we see refugees remaining in countries of first asylum for years (even decades) in a state of legal limbo. Even in those instances where exile is brief (Kosovo and East Timor being recent examples), there are always people who are unable to return to their country of origin because they would face persecution under the new regime and/or can not be protected on return.
- The question is phrased in such a way as to suggest that “temporary protection” is the objective of international assistance. The Refugee Council suggests that this is a very narrow approach and that the focus should be on **finding durable solutions**. All too often temporary protection has, in the words of the United Nations High Commissioner for Refugees, resulted in “non-solutions”<sup>5</sup> that see refugees kept in prolonged situations of dependency. This is highly deleterious for the refugees, costly for donors and a waste of valuable resources that could be put to use to the benefit of the host country.

These points having been made, it is possible to turn to the issue of how Australia can assist countries of first asylum.

As a starting point, the Refugee Council reiterates its position that the Australian Government’s response to refugees has to be balanced and consistent. The Council has

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<sup>5</sup> UN High Commissioner for Refugees, Ruud Lubbers, at UNHCR Excom 2001.

often stated that to achieve this, it is necessary that there be coordination of policy and programming within and across all relevant portfolios.

It is the Council's contention that, at present, Australia's policy is neither balanced nor consistent. Far too much attention is being given to border protection and too little to assisting countries of first asylum protect and care for refugees – a fixation eloquently reflected in the last Federal Budget, which saw an allocation of \$2.8 billion to Border Protection<sup>6</sup> and effectively halved the core contribution to UNHCR (from \$14.3 million to \$7.3 million). Further, AusAID's priority areas (Asia and the Pacific) might have geopolitical relevance but they are not the areas with the most pressing refugee needs.

In answer to the question posed: what more Australia can do to assist countries of first asylum, the following suggestions are made:

- find ways to achieve greater consistency in Australia's response to refugees;
- increase aid expenditure for refugee relief programs - through UNHCR, other IGOs and NGOs;
- ensure that aid money is being used to enhance the protection of refugees;
- strengthen dialogue with countries of first asylum to ensure access to better information and enable the establishment of more effective mechanisms of support;
- assist UNHCR to promote the concept of responsible burden sharing;
- pursue joint arrangements between countries (such as the Comprehensive Plan of Action) that enable more equitable sharing of responsibility and more effective response to refugee crises;
- promote a collective focus on prevention strategies;
- support measures that enable countries to deal responsibly with situations of mass influx (for further discussion, see the responses to questions 6 and 7);
- support greater recognition being given to the contribution made by countries of first asylum;
- promote models of best practice for supporting especially vulnerable individuals within a refugee caseload (women, children, elderly people, torture/trauma victims and the infirm);
- participate actively in the UNHCR Tripartite Resettlement Consultation process;
- take steps to increase UNHCR's capacity to identify refugees in need of resettlement (see response to question 8);
- increase Australia's resettlement program;
- encourage more countries to provide resettlement places.

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<sup>6</sup> Spread over 4 years.

Reference is also made to plans for a UNHCR *Handbook on Strengthening Capacities in Host Countries for the Protection of Refugees* which should be a useful guide for further consideration of this topic.

Further discussion of this topic will occur in the response to question 4.

**Question 2:**

**What role should resettlement play in providing support to countries of first asylum?**

Resettlement is not, nor ever should be, the panacea for all refugee problems. Similarly it should never be considered in isolation as a way of supporting countries of first asylum. As indicated above, the key to addressing refugee problems is to consider the totality of the situation and ensure that there is a coordinated response that aims to meet as many needs as possible.

This being said, it is important to acknowledge that resettlement is an important tool of international protection and is currently a key focus of the work of UNHCR's Protection Division.<sup>7</sup> Resettlement has played and continues to play a role in assisting those for whom neither repatriation nor local integration are durable solutions. Depending on particular circumstances, it can also:

- assist countries of first asylum by alleviating the burden of caring for so many refugees;
- reduce tensions within the country of first asylum and/or lessen local opposition to the refugee population;
- remove a person or persons from a refugee population whose presence endangered the safety of others.

When a resettlement country decides to engage with a particular caseload, consideration should be given, *inter alia*, to:

- how does this response complement other humanitarian activities in the country?
- what mechanisms are in place to enable the identification of those most in need of resettlement?
- what impact will resettlement of this caseload or these individuals have on the refugee population as a whole? For instance, will it enhance stability or remove people who are needed by the refugee community and who will be important in the post-conflict period?

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<sup>7</sup> As set out in the presentation by the Director of the Division of International Protection, Erika Feller, to the UNHCR's Executive Committee in October 2002.

### Question 3:

**How can Australia, as far as possible, remove the incentive for people without humanitarian claims to use refugee programs to achieve migration outcomes?**

There is a level of ambiguity in this question. Does it mean:

- how can we stop people like those who have come to Australia by boat from Afghanistan and Iraq from coming here ... noting the Government's stated position that they were engaging in unwarranted secondary movement? or
- how can we deter people who have no protection concerns (such as many community-based asylum seekers) from using the refugee status determination system to prolong their stay in Australia?

Given that the two questions are so substantially different, they require entirely distinct answers.

In response to the first question: the Council does not accept the proposition that the boat arrivals from the Middle East "did not have humanitarian claims" and were "seeking to achieve a migration outcome". The fact that the vast majority were determined to be Convention refugees should be a sufficient response to the suggestion that they were abusive claimants. Whether or not they were seeking to achieve a migration outcome rests on whether they had effective protection elsewhere. It is the position of the Council that this was not the case and the reasons behind this are set out in the answer to the following question (question 4).

It is the second question that the Council believes has greater legitimacy as abusive use of a refugee status determination system has the potential to undermine both the system and community faith in it. In relation to ways to stop people from lodging manifestly unfounded claims, the following suggestions are made:

- **greater accountability for migration agents:** the establishment of the Migration Agents' Registration Authority (MARA) in 1992 and the requirement that all agents be registered was supposed to regulate the industry and weed out incompetent and unscrupulous agents. In the decade since then, some action has been taken against agents who are abusing the system, but not nearly enough. The Council hears regular reports of agents charging exorbitant fees to lodge applications about which the applicant has little comprehension. Unless MARA is made to be more robust and accessible, the problem will continue. In this regard, the Council notes with approval the increased attention that DIMIA is paying to identifying rogue agents and pursuing action against them (though adding a note of caution: not all clients of abusive agents are not in need of protection);
- **increased community migration advice:** the level of free immigration advice available to people in the community (as opposed to those in detention) has been reduced significantly in recent years. Not only have the various Legal Aid Commissions (once a major source of advice) stopped providing application advice

but also the specialised community legal centres (such as RACS, IARC and RILC) have had their funding for community cases reduced. It is thus more difficult for people who want to remain in Australia to get competent advice about the options open to them. They are thus more likely to resort to the agents who promise “\$30 work visas” and without their knowledge, lodge protection visa applications on their behalf;

- **expedite processing:** rapid processing of manifestly unfounded claims removes the incentive for people to lodge an application for a protection visa in order to extend their stay (working holiday or visit with relatives) in Australia;
- **offer alternatives:** if there are other ways for people with legitimate reasons to remain to be able to extend their stay without leaving the country, this would take some of the pressure of the refugee status determination system.

On the subject of offering alternatives, it is relevant to introduce the issue of **complementary protection**. Currently anyone who has legitimate fears of returning to his or her country for non-Convention related reasons is compelled to go through a lengthy and expensive process in order to have their actual claims for protection assessed at the Ministerial level. All applications for protection under s.417 must first have failed at both the primary and appeal stages of the refugee determination process. RCOA has consistently argued that the present system threatens the integrity of the refugee determination process because, amongst others:

- those with genuine non-Convention claims to protection are forced to wait many months, even years, before their cases can be considered against appropriate guidelines;
- those with genuine claims to Convention status suffer because the large number of non-Convention cases being considered cause unnecessary delays in the processing of claims by de jure refugees;
- the determination process becomes cumbersome and more expensive to maintain as its channels become bloated with pro-forma claims;
- given the many responsibilities that the Minister is charged with and the demands on his time, the present system does not appear to be the most efficient way in which to deal with such matters.

There are, the Council suggests, further problems with the current system in relation to transparency and accountability. Ministerial discretion is both non-compellable and non-appealable. This means that no actual decision on humanitarian status is actually taken. The Minister may simply choose to substitute a more favourable decision of the RRT, if he deems it to be in the public interest to do so. Because no decision is made against a set of legally binding criteria, there exists no avenue of appeal available to the applicant. This is despite the fact that the appeal to Ministerial discretion is in many instances the first time that the applicant's claims are being assessed against relevant guidelines. These guidelines are deliberately broad. They are thus open to a multitude of interpretations, yet, unlike the case with legally binding criteria, there is no way of ensuring that any principle of consistency across interventions is applied. Although there is no suggestion of this being the case with the present Minister, there exists no "built-in" protection against political influence or interference.

RCOA further questions whether the present arrangements adequately identify the actual protection needs of applicants. Although some controlling factors need to be considered including where stricter "manifestly unfounded" procedures exist, a comparison to a like

country reveals that Australia lags behind in terms of granting de facto refugee or humanitarian status. In 2001, Australia received 12,366 new asylum applications<sup>8</sup> and Denmark received 12,512. Australia granted Convention refugee status to 30.4% of cases, Denmark to 21.2%. It is when one looks at the overall protection rates (which combine refugee status and complementary protection) that the real divergence occurs. In Australia the figure remains at 30.4%, however in Denmark, 52.6% of applicants were granted permission to remain.

The Council thus reiterates its recommendation<sup>9</sup> that serious consideration be given to reforming the present process of recognising complementary status. The Council contends that this can be most efficiently and cost-effectively achieved through the introduction of parallel administrative processing of claims.

#### **Question 4:**

**How can we discourage refugees from making unnecessary and dangerous secondary movement from a country where they have effective protection from *refoulement*?**

Implicit in this question is an assumption that protection from *refoulement* is sufficient to constitute effective protection. It is the contention of the Refugee Council that this is an overly narrow and legally unsupportable interpretation.

In determining whether a state is affording effective protection to refugees, reference must be made not just to a single right (protection from *refoulement*) but to all rights set out in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (the Refugee Convention) and those in 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), especially:

- 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)
- the right to family unity (ICESCR Article 10.1, CROC Article 10.1).

It is relevant to note the decision in the United Kingdom Court of Appeal (*R v. Secretary of State for Social Security, ex parte B and the Joint Council for the Welfare of Immigrants*. June 1996) in which it was found that if an asylum seeker – and by extension a refugee - was "left destitute, starving and at risk of grave illness or even death because he could find no one to provide him with the bare necessities of life" this would "almost certainly" be a breach of the 1951 Convention.<sup>10</sup>

<sup>8</sup> All figures used in this section from UNHCR Statistical Handbook. October 2002.

<sup>9</sup> See RCOA Position Paper on Complementary Protection. May 2002.

<sup>10</sup> Quoted in Human Rights Watch Report. December 2002. Volume 14, No.10. p.12.

In this regard, reference can also be made to Excom Conclusion No. 58 which focuses on the issue of irregular movement. In relation to what conditions are necessary to return a refugee or asylum seeker to a country of first asylum, it stipulates that protection from *refoulement* be one but adds that the person must be:

- “permitted to remain” in the country; and;
- “treated in accordance with recognised basic human standards until a durable solution is found for them”.<sup>11</sup>

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?

Effective protection does not remain static over time. Especially where a refugee situation is unresolved over long periods, a country that previously offered effective protection might change its policies in such a way that the protection regime breaks down.

The Council argues that Iran<sup>12</sup> is a case where this has happened. Iran has been a generous host to very large numbers (sometimes as many as 5 million) of refugees from neighbouring states for over 20 years. Since 1998, however, refugees in Iran have been denied access to most forms of legal employment. The passage of Article 48 legislation<sup>13</sup> early in 2001 further increased the precariousness of the conditions for the 2½ million Afghan and Iraqi refugees that were living in the country, over 95% in urban centres receiving little or no welfare support. With legitimate forms of employment denied, black work in the construction industry, begging and smuggling became the only real options for earning an income. As access to subsidised medical care is linked to employment, refugees have to pay full price for all medical care received. Refugee schools have been closed down and refugees must also pay for education in state-run schools.

The reason why Iran has cut back on entitlements is clearly linked to the lack of support they have received to help them to deal with the large and protracted refugee problem. The Government of Iran appealed to the international community for many years for assistance,<sup>14</sup> arguing that they are unable to cope alone. It costs the Iranian Government something in the order of \$US1.3 billion each year<sup>15</sup> to have the refugees in the country.

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<sup>11</sup> Excom Conclusion No. 58 (1989): clause fjii.

<sup>12</sup> In both 2001 and 2002 the Refugee Council undertook field visits to Iran (a country from which there has been a high level of secondary movement) to consider, *inter alia*, the question of whether refugees in Iran were enjoying effective protection and concluded that while this may have been the case in the past, it can no longer be held true. Full reports on both visits are available from RCOA.

<sup>13</sup> This involved registration of all refugees in Iran and was intended as a precursor to possible removal.

<sup>14</sup> This appeal has been made, *inter alia*, at the annual meeting of the UNHCR Executive Committee.

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

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.

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.

Finally, the point must be made that there is no basis in international law for using the mere fact of secondary movement as a barrier to the right to asylum. Asylum seekers having moved on from a country of first asylum have every right to be treated in the same way as asylum seekers who arrive directly from their country of origin. In this regard, mention must also be made of the impact of family reunion preclusions for holders of Temporary Protection Visas (TPVs). The denial of access to conventional channels is a certain way to ensure that people will use irregular migration channels and we have seen the wives and children of TPV holders exposed to the dangers of secondary movement. This is an issue on which the Council has expressed its deep concern on a number of occasions, noting the profound impact denial of family reunion has had on the refugees who have been granted TPVs.

**Question 5:**

**Within Australia’s finite budget for this strategy, how and where is money best spent on the *prevention* element?**

The views that RCOA would choose to express in answer to this question have been set out in sufficient depth in response to questions 1,4 and 7 that it is unnecessary to reiterate them again, save to stress that any prevention initiatives must have a strong protection focus and that measures that do not put protection at the forefront cannot be justified.

### **Question 6:**

**What strategies can be put in place to assist countries of first asylum to adequately deal with people flows?**

It is noted that there is considerable similarity between this question and question 1, and much that could be said in response to this question has already been said. Rather than going over the same ground, this section will focus on some specific and relevant areas not previously raised.

**Registration:** registration of refugees, be it in a situation of mass influx or where there are occasional border-crossers, is key to refugee protection and the management of refugee programs. Timely and efficient registration:

- enables an accurate assessment to be made of the size and nature of the caseload so that relief delivery can be appropriately targeted;
- minimises fraud and corruption;
- facilitates promotion and monitoring of voluntary return;
- enables the country of first asylum to make decisions about local integration;
- assists identification and selection of resettlement caseloads; and
- facilitates the reunion of families separated during flight.

Funding and technical assistance to enable registration programs to be put in place is a valuable contribution that can be made to countries of first asylum.

**Support for affected local communities:** in many parts of the world, the host community is also struggling, be it in terms of its own parlous economic state or with internal instability. If refugees are to be protected in countries of first asylum, it is necessary to take all possible steps to ensure that their presence does not exacerbate pre-existing problems. How this is done must be specific to the situation but could entail:

- targeting aid money to support projects for local communities in the areas where there are large refugee populations;
- providing technical assistance aimed at minimising the environmental impact of a large refugee influx;
- promoting the separation of civilians from combatants; and
- encouraging host countries to make suitable land available so that it is possible to move refugees away from areas where they will be the targets for cross-border military activity.

### **Question 7:**

**What priority and focus should Australia give each of the three elements of its comprehensive strategy?**

Before tackling this question, RCOA would like to make a few comments about the section of the discussion paper that leads into this question.

- When discussing **prevention**, the examples given relate to support for reconstruction efforts in Afghanistan, the emergency fund that has been set up to support work “within our region”, and the Afghan reintegration package. The Council suggest that these have little to do with prevention – in two cases being more akin to “closing the door after the horse has bolted” and in the third, ignoring the reality that the greatest refugee problems are not in our region.
- In the section on **disruption of people smuggling** the focus is entirely on systems and agreements. There is not a single reference to protection, nor on the need to ensure that asylum seekers’ rights are respected.
- The section on **reception arrangements** outlines the various measures that the Australian Government has implemented in response to the arrival of asylum seekers who do not have permission to enter. The Council’s views on excision, redirection to Pacific States, detention and the use of Temporary Protection Visas were outlined in detail in last year’s submission and various other statements. It is not worth repeating them here, save to reiterate the Council’s view that Australia’s response was totally disproportionate to the circumstances and is unsustainable legally, financially and ethically.

## **Prevention**

It is the view of the Council that when talking about prevention, the focus should be on addressing the root causes of population displacement through assistance aimed at:

- poverty alleviation: eight of the top ten refugee producing countries are amongst the 30 poorest in the world (UNDP 2002);
- promoting good governance: corruption and nepotism is endemic in many refugee producing countries. Wealth is usually held by a powerful elite, while most of the population lives in poverty. Rule is by intimidation and fear. Unless this pattern is changed, refugees will continue to flee;
- strengthening the rule of law: the absence of any protection from abuse within the country is a major reason for flight. This is often because the police and military are in league with (or are) the agents of persecution and the court system is unable or unwilling to provide protection;
- promoting respect for human rights: especially through supporting the establishment of national human rights bodies;
- supporting civil society: one of the cornerstones of democracy is a robust and functioning civil society that can keep abuses of government in check.

These are the type of programs the Council would like to see the Government funding if it serious about protecting people’s rights so that they are not subjected to persecution and not forced to flee their country.

This being said, the Council does acknowledge that there is an important role for donor states in the post-conflict period. Reconstruction of countries ravaged by war requires a concerted and long-term commitment. Here too the focus has to be not just on restoring the physical infrastructure but also on ensuring that the conditions that caused the disintegration of the state are not repeated. Here too, good governance, rule of law, human rights and civil society should be at the core of assistance efforts. Further, programs that are aimed at promoting reconciliation between the various groups within society are essential in a post-conflict phase.

### **Disrupting People Smuggling**

In relation to the disruption of people smuggling the Council reiterates the position articulated in its previous intake submission that efforts to discourage people from engaging smugglers must occur at the source. The best way to prevent people from resorting to smugglers is to take away the reasons why they turn to them in the first instance. In its first report on Iran (2001), RCOA documented the reasons why refugees have sought to move on. These were linked to the breakdown in protection offered by Iran and their fear of further deterioration and forced return. RCOA's views on this were supported by the interviews with asylum seekers on route to Australia undertaken by Human Rights Watch by way of research for their report: "By Invitation Only: Australian Asylum Policy" (December 2002). The responses to questions 1 and 4 above set out the Council's views on how countries of first asylum can be supported to give effective protection to refugees and, by extension, remove the incentive for refugees to seek out smugglers.

In relation to the disruption of smuggling mid route, the Council believes this is a highly undesirable practice, fraught with many dangers for asylum seekers, potential problems for the intercepting country and exorbitant costs for Australia. If it is used, the Council argues that certain factors must be in place to make any such action legally and ethically defensible. Agreements with any country in which interception is to take place must contain commitments to ensure that:

- the rights of asylum seekers are respected;
- asylum seekers are protected from intimidation, harassment or violence at the hands of locals or local agencies;
- there is free access to refugee status determination with appeal rights;
- all people determined to be refugees are assisted to find durable solutions, with Australia accepting those who do not have links elsewhere;
- all rejected asylum seekers are assessed as to whether there are compelling non-Convention related reasons not to return them to their country of origin and that any returns are conducted in such a way as to ensure respect for the safety and dignity of the returnee;
- the intercepting country has the necessary resources to undertake all of the above.

### **Reception Arrangements**

On the subject of reception arrangements the Council feels it is unfortunate that the DIMIA discussion paper failed to make reference to the most recent international guidance on this issue: Excom Conclusion No. 93 on the Reception Of Asylum-Seekers In The Context Of Individual Asylum Systems (2002). The focus of this Conclusion is on ensuring that:

- fair and expeditious asylum procedures are in place;
- reception measures respect human dignity and applicable international human rights law and standards;
- asylum-seekers have access to the appropriate governmental and non-governmental entities when they require assistance so that their basic support needs, including food, clothing, accommodation, and medical care, as well as respect for their privacy, are met;
- gender and age-sensitivity are reflected in reception arrangements and that these address the educational, psychological, recreational and other special needs of children (especially unaccompanied and separated children) and take into account the specific needs of victims of sexual abuse and exploitation, of trauma and torture, as well as of other vulnerable groups;
- reception arrangements allow for the unity of the family as present within the territory, particularly in the context of reception centres.
- there is recognition of need to ensure that public opinion is favourable to asylum-seekers and refugees and confidence and there is trust in the asylum system.<sup>16</sup>

The main thrust of this Conclusion is far removed from the focus of the discussion paper (moving to “declare countries”, “reduced grounds for judicial review,” “prompt removal of failed asylum seekers”, “less attractive package of entitlements for those who have arrived without authorisation”).

The Council argues that rather than seeking to determine the priority that should be given to each of the three elements (prevention, disruption and reception), it would be far better to refocus on what each of these elements should entail and for this, constructive dialogue with the community sector would be advantageous.

**Question 8:**

**How could the Refugee Program better target those in greatest need of resettlement?**

It is important to begin by acknowledging that the Refugee Program is that which caters for the most vulnerable of the humanitarian program entrants. They are Convention refugees and it has been determined that there is no other way to guarantee their physical or legal security. Included within the Refugee Program are subprograms that target arguably the most vulnerable of all refugees: Women at Risk and Emergency Rescue cases. It is therefore of vital importance that the program operates efficiently and that ways are found to identify those most at risk.

To a significant extent, Australia relies on UNHCR referrals as the way to identify cases for the Refugee Program. The following section will look at where some of the problems lie in relation to UNHCR referrals and will suggest ways to both strengthen UNHCR's

<sup>16</sup> Summarised and paraphrased from Excom Conclusion No. 93.

capacity to identify refugees in need of resettlement and to develop complementary identification procedures.

UNHCR's ability to perform its identification role is hampered by a number of factors including:

- resourcing: the budget shortfalls that UNHCR has experienced for many years have had a significant impact on staffing levels across the board, including on staff in the resettlement area. There are just not the number of trained staff on the ground to do the job properly, and those who are there, are not adequately resourced;
- access: many refugees find it difficult, if not impossible, to gain access to UNHCR offices so that they can speak with resettlement staff. In some cases this is due to distance, in others to obstruction (often from guards or locally engaged staff) and sometimes due to fear (some posts are deemed dangerous to visit – Khartoum and Amman being examples);
- the nature of the caseload: the most vulnerable refugees are the least likely to be visible in any refugee camp or urban setting. It is only people who are working very closely with the refugees who can identify such people.

The Refugee Council suggests the following as ways to enhance UNHCR's identification capacity:

- increasing funding for UNHCR: as previously mentioned, the last Federal Budget effectively halved the core contribution to UNHCR. While the opportunity was presented for UNHCR to seek further funds from the International Refugee Fund, this is money for specific purposes in our region and cannot be used for core activities;
- seconding staff from DIMIA to UNHCR and supporting NGOs to locate and release suitably qualified staff for secondment;
- enhancing the capacity of ICMC (which administers the secondment program) to recruit and train suitable staff, provide adequate support to staff in the field and ensure adequate debriefing. RCOA is concerned at reports that these key elements do not appear to be in place and that some seconded staff are being placed in untenable situations in some very difficult places. It must not be overlooked that Australia has considerable experience and expertise in the management of overseas placements, not least through the Australian Volunteers International program. It is argued that this experience could be drawn upon to enhance the secondment program so as to ensure that best use is made of this program;
- involving other UNHCR staff: in too many places the protection and resettlement functions of UNHCR are seen as entirely separate and protection staff do not see their role as making referrals. RCOA argues that this "siloeing" is unproductive, especially as resettlement is a tool that can be used to protect the most vulnerable. Steps should be taken to promote a conceptual shift by UNHCR staff such that all staff understand that they have a legitimate role in identifying vulnerable cases. Further, protection staff should see that resettlement is an option for refugees they identify as being especially vulnerable and be encouraged to recognise the importance of working closely with resettlement staff;

- intensifying efforts to encourage NGO implementing partners and other IGOs to refer refugees with urgent protection needs to UNHCR. A model would be the UNHCR-IRC Durable Solutions Project in Pakistan in which protection cases identified by local NGOs are carefully verified and interviewed by IRC and then re-interviewed by UNHCR prior to referral of the case to a resettlement country. This system has been found to be efficient in identifying vulnerable cases, while its checks and balances help guard against fraud.

In addition, the Council argues that it is important to find other ways to identify potential resettlement cases – not so much bypassing UNHCR but complementing it – noting its acknowledged deficiencies. It is suggested that DIMIA should:

- endeavour to develop links to some of the main NGOs operating in particular camps or urban settings, in recognition of the fact that NGO workers are often the people working most closely with vulnerable refugees. In most places there are umbrella agencies or regular NGO meetings through which this contact can be facilitated. If NGOs are familiar with the resettlement selection criteria and are aware of how cases of concern to them can be referred to DIMIA, they can play a part in finding solutions. It is acknowledged that for such a referral system to operate efficiently and not place undue demands on NGOs or create unrealistic expectations, it requires a degree of trust and good communication between the DIMIA staff person and the NGO worker, as well as a clear understanding that the role of the NGO worker is limited to identification, not selection;
- where feasible, make links to refugee community leaders in countries of first asylum and in Australia. It is acknowledged that in some cases, leaders and elders are not the most objective commentators on the needs of their community, but this is not always the case. In some situations they can give a good guide to community dynamics and also assist the identification of groups within the community who are isolated, ostracised, abused or otherwise in need of protection. Such links can also develop leadership capacity within refugee communities which is an essential part of rebuilding war-torn communities;
- take care when assessing applications for the Special Humanitarian Program to ensure that any especially vulnerable cases, such as women headed households with many children sponsored by a newly arrived humanitarian entrant, are considered under the Refugee Program rather than the SHP. This is in recognition of the high level of support such entrants will require and the challenges the proposer will face in providing this;
- explore ways to cooperate more closely with other resettlement countries for example through cross-referral of cases and/or joint selection missions;
- explore whether it is possible to enhance links to non-resettlement countries that have diplomatic posts in countries in which Australia does not have a presence, in particular on the African continent. This could be used for the purpose of communicating with applicants and document exchange;
- give careful attention to monitoring developments in refugee producing countries and countries of first asylum to enhance determination of vulnerable caseloads.

The need to think creatively about identification is important everywhere but is most important, RCOA suggests, in Africa because of the increased focus on this region in the caseload and because of the inherent challenges confronted. In Africa one must contend with the size of the continent, the complexity of the issues and the many difficulties that confront those who are trying to protect the most vulnerable refugees.

Further, when discussing issues pertaining to identification of the refugee caseload, it would be remiss of the Council not to mention an issue that is of great concern to many in the community. This is the issue of **health checks**. If Australia is serious about assisting the most vulnerable, excluding people on health grounds is hard to justify, especially where health needs enhance vulnerability. The nature of contemporary conflict is such that many refugees bear the scars of war – landmine victims, amputees, victims of mass rape ... - and these people should not be doubly disadvantaged if they need resettlement by being denied it on the basis of their injury. Further, there are many people with medical conditions that pose no risk to the community who are rejected, simply on the basis of an assessment of cost.

It is the view of the refugee Council that:

- health grounds should never be used to exclude an Emergency Rescue or Women at Risk case;
- health waivers should be used more widely; and
- families where one member is determined to have a health condition that prevents the family from being resettled be given the option to split the family. In some cases this would be unacceptable but there are others, for instance where there are family members remaining who are willing and able to care for the rejected person, where the family may decide this is the best option for the majority of family members. RCOA recognises that this would require a change to regulations but argues that this is justified to maintain the legitimacy of the program.

**Question 9:**

**How could the Special Humanitarian Program better target those in greatest need of resettlement?**

It is the purpose of the Special Humanitarian Program (SHP) to target people who are subjected to substantial discrimination amounting to gross violation of human rights and who are proposed by an Australian permanent resident or citizen or an organisation operating in Australia. Unlike the Refugee Program where the Government covers all costs, the SHP entrant or the proposer have to cover all of the costs of health checks and airfares. Further, the proposer is required to take responsibility for providing considerable post-arrival settlement assistance.

The existence of the SHP allows more humanitarian entrants to come to Australia than would be the case if there were only the Refugee Program. This is in large part because a significant proportion of the costs are not borne by the Government. It also allows

people in need of resettlement but who are not Convention refugees to be assisted. And finally, and importantly, it enables refugee communities here to identify people of importance to them who they would like to see come to this country.

It is, however, the very fact that the SHP is proposer driven that makes the issue of how the program can identify those most in need of resettlement such a challenge. Proposers are not motivated by a desire to help the most needy. They want to help the people they know – who are often close relatives about whom they have legitimate concerns.

As discussed in Section 4.3.1, changes to the family reunion program and the introduction of split family provisions in the humanitarian program, have meant that a significant number of entrants in the humanitarian program (500 in 2001-02) have close family links to Australia. It was argued in this section that if a specially targeted and managed humanitarian family reunion category was introduced, it would:

- accommodate the legitimate desire of humanitarian entrants to be reunited with family members;
- enable consideration of SHP claims to focus on resettlement need, without being clouded by considerations about the importance of reunited separated family members;
- free up additional places for people in need of resettlement.

There is also much that can be done to ensure that refugee communities in Australia and proposers have a proper understanding of the SHP application process. This issue will be taken up in response to question 10.

An issue worth mentioning in this context is the difficulty many communities have in obtaining visitors' visas. Because of risk profiles, it is very difficult for people from many refugee-producing countries or who are refugees living in another country to get a visa to visit their relatives or friends in Australia. Refugee communities feel this most acutely – especially where the visit is intended to coincide with a family wedding, the birth of a child or another important occasion. Out of desperation and frustration, SHP applications are submitted, even though the person in question would prefer to continue residing elsewhere. It would be far preferable for such relatives to come on visitor's visas (even extended visas) rather than as permanent entrants.

A further issue that has relevance in this section is that of community balance. In some emerging communities there is a dominance of one entrant type – typically either young single males or female headed households. Without wishing to bring into question the resettlement needs of these refugees, it is important to acknowledge that the imbalance has significant settlement implications. The absence of role models and community leaders places great strains on community members who are often not in a position to deal with the pressure of helping others while they themselves are finding their way. The solution to this issue is not easy – and consideration of options can verge on social engineering – but it is an issue worth bearing in mind in program planning never the less.

**Question 10:**

**How can the SHP be better managed to ensure proposer support for emerging new resettlement caseloads with small populations in Australia?**

For many years the humanitarian program had a strong focus on European entrants from countries where there were well-established communities living in Australia. While proposers may not necessarily have always had a sufficient knowledge of specialist settlement services, in most instances they were well settled themselves and able to provide valuable support to new entrants.

In recent years, however, we have seen a marked shift in the regional composition of the program:

**Regional Distribution as Proportion of Total Offshore Program**<sup>17</sup>

	<b>1997-98 Grants (actual)</b>	<b>2000-2001 Grants (actual)</b>	<b>2002-03 Planning Figures</b>
<b>Europe</b>	50%	43.4%	12%
<b>Middle East</b>	28%	26.9%	39%
<b>Africa</b>	15%	25.4%	43%
<b>Other</b>	7%	4.3%	6%

More and more entrants are now coming from Africa (the proportion having almost tripled in the last 5 years). There are, however, relatively few well-established African communities in Australia and what we are increasingly seeing is that proposers are themselves relatively newly arrived humanitarian entrants still actively involved in establishing themselves and with less time and fewer skills to pass on to new entrants. This trend will continue with further diversification of the African caseload. The Council does not want to imply that this issue is exclusive to the African communities but it is the group with the fewest support structures.

The fact that a proposer is challenged in his/her ability to assist should not, in itself, exclude a person from proposing an entrant. Rather, that person should be identified as someone who will need additional support (of the kind suggested in answer to question 11).

It is important not to lose sight of the fact that newly arrived entrants are often under considerable pressure to assist others who have been left behind. This is driven by extreme concern for their welfare mixed with survivor guilt, and in most cases fuelled by pressure from:

- those they left behind who they are obliged to send money to and/or sponsor, given that they are now living in a “rich country” and are “so much better off”;
- their community in Australia to fulfil their obligations to family and others.

<sup>17</sup> Figures from DIMA.

It is not uncommon for newly arrived humanitarian entrants to go without food, medicine and other basic requirements in order to send money overseas to support family members and to save money for medicals and airfares. Being able to be reunited with people of concern to them (either through the family reunion or humanitarian programs) is an important part of their own settlement process.

The following are suggested as ways to enhance proposer support for small and emerging communities:

**Application advice:** while the application procedures are designed not to require legal representation, experience has shown that many proposers find the process very confusing and stressful. Further, in their wish to secure their desired outcome, they might do or write things that can obstruct the process. If proposers had access to competent migration advice, they would be better placed to make a constructive contribution.

At the moment some migration advice is available in an ad hoc fashion (through some Migrant Resource Centres and community agencies and from fee-charging agents) but this is by no means sufficient to cater for the need and many of those providing advice are only able to deal with the most straightforward of cases. This can result in much confusion, anguish and time wasting for the proposer, the refugee and the DIMIA officers in posts. RCOA argues that it is important that DIMIA recognises the importance of migration advice to the community as a core settlement response and looks to support funded-services to engage staff qualified to provide migration advice and fund specialist community legal centres to provide training and expert advice to community-based agents.

**Proposer support:** in order to make informed decisions, proposers need to know:

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

In this regard, the Refugee Council would like to commend DIMIA for two recent initiatives which we feel will make a significant difference for proposers:

- the **DIMIA Africa Newsletter:** this quarterly publication is an initiative of the Regional Director for Africa and is produced quarterly. It is intended specifically for communities and workers and contains a wide range of information about how the program is being managed as well as answers to specific questions. This is an extremely valuable resource and RCOA recommends that DIMIA make every effort to increase awareness of its existence<sup>18</sup> and encourage staff in other regions to produce similar publications;

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<sup>18</sup> The Refugee Council discovered it “by accident” rather than learning about it from DIMIA staff at any one of the various consultations Council staff attend and we are concerned that other workers we know would benefit from it have been unaware that it is being produced.

- plans to pilot a **Proposer Management Unit**: RCOA has been advised of plans to establish a unit within DIMIA NSW that will, *inter alia*, engage more actively with newly arrived communities to disseminate information, assess support capacity and facilitate links to volunteers. The Council considers this to be a very exciting idea and hopes it will have the chance to support DIMIA during the pilot period.

**Travel loans:** finding money for the airfares for SHP entrants remains one of the most pressing problems facing proposers, especially those in the African communities where family sizes can be very large. In the past there have been a variety of loan schemes, mainly administered by the churches, most of which have folded. IOM has been and still is a source of some assistance. Other than this, there are only a few very limited (and often ethno-specific) loan programs still operating and for the majority of proposers there is little in the way of available support. RCOA notes that some work has been done by the Refugee and Travel Solutions (RATS) group in NSW that has brought together community workers, IOM and DIMIA and also that there is interest in DIMIA central office in exploring possible solutions. It is recognised that some solutions might take time to implement, both to secure the initial capital and to undertake negotiations with other departments (as would be required for the introduction of Centrelink deductions or a HECS-like program). Effort also needs to go into involving relevant communities to maximise the chances for repayments. It is, however, argued that the importance of the issue warrants the effort;

**Fraud:** the challenge that confronts DIMIA is separating deliberate fraud from the undeniable reality that people in desperate situations will say and do anything they feel will advantage their case. For many refugees, their very survival has depended on their ability to deceive authorities, border guards and even aid agencies and their only experience with government has involved dealing with corrupt and abusive officials. It is unrealistic to expect that every refugee will be entirely truthful in all his/her dealings or that every proposer will not “guild the lily” in order to suggest that his nominee is more deserving than may otherwise be the case. Management of fraud therefore becomes the issue. Not only should steps be taken to minimise the possibility of fraud (proposer advice and support being important in this) but there also needs to be both a way to assess the reasons behind the provision of any inaccurate information and sufficient flexibility for resultant problems to be managed humanely (eg where it is determined that not all children were included in an initial application)<sup>19</sup>;

**DNA testing:** increasingly DNA testing is being used to establish relationships in the African caseload. The cost of this testing (quoted to RCOA as \$2,500 to \$3,000 per case), plus courier costs, plus the costs of supporting the family overseas while the testing is going on, over and above the costs for medical and airfares and their own living costs, is imposing an enormous burden on many newly arrived entrants. DNA testing also imposes considerable delays on finalising applications. The Council questions whether DNA testing is required in all cases where it is sought and wonders whether there are:

- other ways to obtain information about family connections (eg though IGOs or NGOs who are familiar with the people in question); and/or

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<sup>19</sup> RCOA has been alerted to cases where families were advised (the person supposedly giving this advice differs – sometimes “someone at the Australian post”, sometimes “UNHCR”) not to list all the children – as big families are not favoured – and that it will be possible to bring other children “later”.

- ways to reduce the costs of processing: RCOA is aware of the impressive work being done by the International Commission on Missing Persons in the Former Yugoslavia (ICMP) on DNA testing. They have established a network of testing facilities and cheap and effective procedures for testing DNA samples collected from all over the world. We wonder whether competitive tendering could result in cheaper testing.

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Many of the above issues point to the importance of registration of new arrivals by UNHCR, as argued on p 49, or the host country and the extreme desirability of issuing birth certificates within refugee camps.

**Question 11:**

**How can proposers of SHP applicants be better supported in their settlement role by the community?**

It has always been the case that proposers have needed assistance to enable them to provide the necessary settlement support to an entrant and it is even more the case now that so many of the proposers are newly arrived refugees themselves. The fact that a proposer signs an undertaking to provide a high level of support cannot, in itself, be considered as a guarantee that this will happen. As previously indicated, proposers will sign any undertakings put before them in order to get a visa for a person about whom they have great concerns. This is not an attempt to deceive, it is basic human nature.

Currently proposers get support through the Integrated Humanitarian Settlement Strategy (IHSS). The nature of support provided depends on which agency has been contracted to provide the service. In some cases it is a simple information package, in others, more direct support is offered. There seems to be general consensus, however, that the level of support provided through IHSS under the current arrangements is not sufficient to meet the need.

It is suggested that this should be supplemented by:

- pre-arrival proposer support programs (as discussed in the previous section);
- related to the above, strengthening the relationship between DIMIA and proposers: a lot can happen in the time it takes to process an application and it is important that DIMIA knows about changed circumstances. For this to happen there needs to be a trust relationship. Proposers need to be able to report any changes of circumstances without fearing that the application will be jeopardised as a result;
- post-arrival monitoring, with provision for referral to Initial Information and Orientation Assistance (IIOA) providers if it is determined that the proposer is unable to cope and/or the proposers circumstances have changed. It is acknowledged that this provision currently exists, the problem however is that it is linked to a policy that prevents a proposer from being considered for future proposals if the entrant is

referred to IIOA. This gives the proposer a powerful incentive to hide any problems and agencies a disincentive to act on any they perceive;

- eligibility for support from Community Settlement Services Scheme (CSSS) workers if IIOA support is not being received. In many instances, the CSSS workers are known to the proposer, coming as they often do from the same community, and it is natural that they would seek out their assistance for the new arrival. The fact that the worker is unable to provide assistance because of the terms of the DIMIA contract means not only that the most accessible path to assistance is blocked to the applicant but also that the worker might lose face in the community for denying support (the finer points of service eligibility being lost on many community members);
- flowing on from but separate to the above: better resourcing of the CSSS so that it can operate more efficiently. Current fiscal and technical support problems have resulted in a high turnover of CSSS staff, which in turn results in loss of continuity, loss of expertise and disruption of work plans. This has a significant impact on community development initiatives, many of which involve current and prospective proposers; and
- accommodation assistance: one of the greatest challenges confronting proposers is finding suitable and affordable accommodation for the new arrivals, especially large families. New arrivals have no rental history in this country and thus present as an unattractive proposition for landlords and agents. In many cases, proposers find themselves having to share their home (more often than not a two bedroom flat) with the entrants, placing great strains on all concerned and risking the proposer being rendered homeless because he/she is violation of the lease. It is important that in the context of the IHSS, ways are found to assist proposers secure accommodation for new entrants

One thing that is required for most of the above is that someone other than the proposer knows when the entrant arrives. The fact that DIMIA has nothing to do with the travel arrangements means that SHP entrants can arrive without providers being aware that this has happened. If there are better links between proposers and DIMIA and if pre-arrival support is provided, it will be easier to get this necessary information at this critical time.

One further suggestion that the Council would like to make, to which we would like to give particular emphasis, is that there be greater use made of **volunteers** to support proposers.

The introduction of the IHSS inadvertently unravelled what had been a largely successful volunteer program: the Community Refugee Support Scheme (CRSS). Within CRSS there were many very active groups that derived a great deal of satisfaction from taking on active involvement in supporting a new entrant through the many requisites of initial settlement. While some have been retained, many have not found the level of involvement offered within IHSS to be what they are looking for. Feeling that it would be a tragedy to lose the goodwill and experience of the CRSS groups entirely, the Council recommends that serious consideration be given to establishing a volunteer program that links volunteers with proposers, especially those who are themselves relatively new arrivals.

Like any volunteer program, this would need to be appropriately resourced and supported (see question 16). It could tap into “lapsed” CRSS groups and also look to engage new participation from various sources such as service clubs, sporting groups, church groups and the like. Its aim would be to enhance the ability of the proposer to support the new entrant, with the primary relationship being between the volunteers and the proposer. This shift in the relationship would mitigate some of the dangers of the old CRSS arrangements – not least the issue of unsupervised exposure of new entrants to people/groups whose motives were not entirely altruistic – and would serve to build bridges between communities.

**Question 12:**

**How can applicants and proposers be encouraged to complete health and character checks more quickly?**

When asked what was needed in order to complete health checks more quickly, community members with whom the Council consulted were quick to proffer an answer and the answer was the same in each consultation: “make them cheaper”. Raising the money to pay for the requisite checks is a major burden for proposers, especially those who are newly arrived themselves. As with travel loans, there is real merit in exploring ways to assist proposers who have difficulty paying for medicals.

A further burden is created where processing is delayed and medical tests have to be repeated. Where the delays have been no fault of the proposer or applicant, the Council questions the requirement that they bear the costs of second or subsequent medical tests.

In relation to police clearances, the Council’s interlocutors spoke of the difficulty they experience getting the necessary documentation from relevant authorities and the temptation to obtain false papers when the officers with whom they are dealing make no concession for the difficulties they are experiencing.

**Question 13:**

**How could proposer support of an applicant be streamlined to ensure applications are processed as efficiently as possible?**

The issues that the Council would wish to raise in response to this question, in particular:

- access to immigration advice;
- targeted support programs; and
- access to financial assistance to cover the cost of travel;

... have been covered in previous sections.

**Question 14:**

**How can client services for both applicants and proposers be improved?**

In regard to services for both applicants and proposers, reference must first be made to the two current reviews – those into Settlement Services and into the Integrated Humanitarian Settlement Strategy. The Council has participated in both of these reviews and hopes that the final reports will provide constructive guidance as to how services can be further enhanced. Noting, therefore, that most of the things the Council would have wished to discuss in answer to this question are covered in the reviews, there are some additional issues that we feel are pertinent to the current consideration of the operation of the humanitarian program:

**Pre-Arrival:**

Planning of settlement services should not focus only on what happens after arrival. Consideration also has to be given to what can be done by overseas posts to enhance the prospects for successful settlement. The Council suggests the following two as being of particular importance:

- **Initial assessment of settlement needs:** it is important that the person doing the assessment of Refugee Program applications give careful consideration to the particular needs of the entrant and ensure this information is passed on to the referral unit so that the best possible decision can be made about where the refugees will sent and to whom they will be referred.
- **Pre-embarkation information:** the Council has expressed its views to DIMIA on a number of occasions about the importance of pre-embarkation information, not least in its report on this issue to DIMIA in August 2000. The provision of relevant, appropriately targeted information in a format that is suitable to the entrant can make a significant difference to the entrant's ability to cope with the initial period after arrival.

**Initial Planning:**

It is of great importance that when a decision is made to change the profile of the humanitarian program (such as we have seen in recent years with the shift away from Europe and towards Africa) and/or to admit a group not previously included in the caseload, that this triggers a planning process that will:

- assess the impact of the change on existing services;
- determine what new or additional services will be required;
- ensure that all relevant parties are aware of the changes.

Where there is a decision to shift the entrant profile, agencies need to be made aware of this so that they can, *inter alia*:

- make timely decisions about staffing levels, workplans, interpreter requirements etc;
- ensure appropriate referral pathways are in place;
- answer community concerns about the perceived implications of the changes.

Where a decision is made to admit a new caseload, it is even more important that careful planning is undertaken and that this flows down to the service delivery level. Basic pre-requisites for a new caseload, we suggest, are:

- a **needs assessment** of the group that identifies and documents specific needs in relation to language support, medical care, torture and trauma counselling, accommodation style, intensity of support required etc;
- **briefings for service planners** so that necessary services (eg interpreters, medical support, accommodation) can be organised in advance of arrival;
- **information for settlement workers** so that they have an understanding of the background of the refugees and their likely needs on arrival.

In the past we have seen an unfortunate lag between the first groups arriving and appropriate services being arranged. The first Bosnians to arrive, for example, were given Serbian interpreters because there were not accredited Bosnian interpreters. This caused many problems for the service agencies and much angst to the entrants. A similar lag has been evident more recently affecting some of the African groups.

One of the best ways to inform service providers about new entrant groups is, the Council suggest, to develop profiles that provide background information on:

- the situation in the refugees' home country that forced them to flee;
- the conditions in the country(ies) of first asylum;
- the refugees' language, religion, culture and customs;
- typical family composition;
- possible medical needs;
- other factors that will have an effect on settlement needs.

It used to be the case that whenever a new entrant group was to be included in the humanitarian program, DIMIA would compile and disseminate written profiles of entrant groups. These would inform providers and enable them to make the necessary preparations to ensure that the services they provided were reflective of needs and culturally sensitive.

During Operation Safe Haven this concept was extended to include oral briefings as well. The Refugee Council was engaged to work with the Albanian community to develop background material on the Kosovars and then to undertake briefings for those who would be working with and living alongside the Kosovars. These briefings enhanced the

quality of service provision and also went a long way towards ensuring that the communities into which the Kosovars went were comfortable about their coming.

The fact that material about new entrant groups is no longer compiled and disseminated is seen as regrettable. Recently we have seen a number of entrant groups, including those from Sierra Leone, Burundi and Haiti, where there is no pre-existing population and little knowledge both about the people themselves and their experiences. The lack of this information affects the ability of services to plan in advance. The first entrants in any group thus do not receive the same quality of services as later entrants. This is a clear Access and Equity issue both in relation to DIMIA services and services provided by other agencies.

There is great merit in DIMIA reintroducing the policy of developing (or commissioning the development of) entrant profiles and ensuring these are disseminated to all relevant service providers (both government and non-government).

### **Longer Term Planning:**

When a new caseload of entrants begins to arrive in the country, it is important that consideration be given to how they can be assisted to establish a community and develop a degree of self-reliance and mutual support. There are two very important contributions that DIMIA can make to this:

- ensuring that there are specialist workers (CSSS or other) whose role it is to support the community;
- encouraging generalist agencies undertake community development activities with the emerging community.

#### **Question 15:**

**How can community involvement in the proposer process be enhanced to maximise the support provided to applicants during processing and after their arrival in Australia?**

The Council feels that it has covered the issues that it would give in answer to this question in its answers to questions 10, 11, 14 and 18.

#### **Question 16:**

**How can volunteers be best supported to assist in the settlement of entrants?**

It is fair to say that the role of volunteers in the settlement of humanitarian entrants has not been appropriately recognised in the last few years. Volunteers from both the mainstream community and from within ethnic communities have played a highly valuable role in refugee settlement programs for some time and have continued to provide essential support to refugees and humanitarian entrants. Volunteers bring a special quality and positive contribution to refugee settlement and are engaged with refugees in a number of ways.

Volunteers are typically used to provide intensive support and assistance in the initial period after arrival, with contact being reduced as entrants become more confident in their new environment. Volunteers are also useful 'ambassadors' for refugees. Through their own family, employment and social networks, volunteers add a human face to the refugee issue and help others in the community come to appreciate refugees and understand why they have come to Australia.

The challenge that confronts those working with volunteers is to balance the needs of refugees and with the needs and capacity of volunteers, ensuring there is no exploitation of either party. Volunteers perform a unique role but are vulnerable for a number of reasons:

- volunteers are often from refugee backgrounds and many are in early stages of settlement themselves;
- relationships between volunteers and entrants are often very close and form over a long period of time;
- many volunteers, due to these close relationships, may experience vicarious traumatisation or re-traumatisation as most refugees have a history of torture and trauma;
- volunteers can be called on by refugees 24 hours a day;
- the commitment required of volunteers is generally long-term, often extending long after the formal contact period.

If they are to work in refugee support programs, it is essential that volunteers not be viewed as 'resource-neutral'. Paid staff should be employed to manage volunteer staff in line with approved standards which include:

- planning;
- recruitment against job descriptions;
- initial induction and training;
- appropriate insurance;
- ongoing support and supervision, including regular de-briefing and feedback and the provision of emotional support and counselling;
- reimbursement for out of pocket expenses;
- being provided with accurate and comprehensive information about clients (while receiving training regarding client confidentiality and privacy legislation);
- referral at the rate volunteers can comfortably accommodate; and
- adequate recognition and reward.

Further, it is essential that volunteer programs incorporate:

- screening;
- training;
- monitoring;

- resourcing;
- education for agencies about working with volunteers;
- mechanisms to protect volunteers; and
- mechanisms to protect clients.

In addition to initial training for volunteers, continued training and support is required to ensure that volunteers feel valued and supported. In order to achieve this, volunteer programs not only require appropriate funding but also structure to support the program including coordination and management from within agencies.

It is vital to acknowledge that the failure to recognise the importance of nurturing and supporting volunteers during the introduction of the Integrated Humanitarian Settlement Strategy has led to a marked reduction in the number of volunteers with formal links to DIMIA or DIMIA-funded programs. Instead, a significant underground support network has developed which is:

- unrecognised;
- under-resourced and
- uncoordinated.

While there is doubtless much worthwhile activity being undertaken by these volunteers, the absence of any coordination means that none of the above pre-requisites for a responsible volunteer program are in place and entrants are left open to exploitation or, at the very least, to encountering settlement problems because of well-meaning but incompetent support.

**Question 17:**

**How can we assist the broader community to distinguish between unauthorised arrivals and those refugees and humanitarian entrants the government has welcomed?**

It would appear that there is an implicit assumption underlying this question, this being that the “refugees and humanitarian entrants the government has welcomed” are deserving of help and unauthorised arrivals are not.

This kind of distinction is somewhat akin to the Victorian notion of “deserving” and “undeserving” poor, a concept that was discredited at the time and which has no place in the twenty-first century.

Australia, as a signatory to all of the principle human rights treaties, is obliged to recognise the inherent human rights of all refugees and asylum seekers – irrespective of whether they have been “welcomed” or have arrived irregularly.<sup>20</sup> The rights extend

<sup>20</sup> See previous reference to the decision in the United Kingdom Court of Appeal *R v. Secretary of State for Social Security, ex parte B and the Joint Council for the Welfare of Immigrants*. June 1996.

beyond those articulated in the 1951 Convention Relating to the Status of Refugees to those in other treaties, in particular in relation to access to:

- accommodation;
- health care;
- education;
- income;
- family reunion.

If a person has been determined to be a Convention refugee, they have additional rights, including the right to protection from *refoulement* and the right to have access to services commensurate with those available to the local population. While not explicit in treaties, it can be argued that there is also an implicit right to respect of their status as refugees – i.e. as people who have a well founded fear of persecution in their own country and who have been granted the protection of another.

It is the view of the Refugee Council that all refugees should be accorded the same rights and that people whose status is yet to be determined should be treated in accordance with Australia's human rights obligations. To do less is a derogation of this nation's responsibility under international law.

Having stated this position, it follows on that the Council is deeply opposed to any suggestion that the Australian public should be asked to select those refugees to whom it shows sympathy and shun others. The substantial outpouring of assistance for the supposedly "undeserving" Temporary Protection Visa holders suggests that many members of the public share the opinion that this notion is entirely unethical and contrary to basic principles of justice and humanity.

**Question 18:**

**How can more humanitarian entrants be encouraged and supported to choose to settle and remain in those regional areas and the smaller capital cities where jobs and settlement services are available?**

Regional and rural communities may offer a number of advantages for humanitarian entrants when compared to urban settings, particularly with respect to community cohesion and lifestyle. This is particularly the case for entrants from rural backgrounds who might find it preferable to settle in rural areas of Australia because it is easier for them to adapt their knowledge and skills to the local economy and they will be less daunted by a smaller community than a large city.

For others, particularly those without English or from an urban background, regional areas may hold little attraction. It is understandable that refugees and humanitarian entrants, after often-extended periods of dislocation and upheaval, may wish to be near friends, family and community. Those with specialist health needs, such as torture and trauma survivors, may be better placed in capital cities. Urban areas also tend to have more employment opportunities, though this is not always the case.

In relation to determining who is directed to either a rural or urban area, the point must be stressed that entrants must be involved in the decision making process and must be given sufficient information to make an **informed choice**. Without this, inappropriate placements will be made, the incidence of secondary movement will be high and service providers will be inconvenienced because their funding depends on entrants remaining long enough for them to be able to submit a bill and the benefits of initial settlement assistance will be wasted.

For entrants to be able to make an informed choice, they need to be given accurate and relevant information about the options open to them and be assisted during the decision-making process by someone who is knowledgeable about the issues. Locally engaged staff members, for instance, are not the right people to give advice about the relative merits of Albury versus Sydney, for instance, if they have never been to Australia.

The decision making process should, ideally, enable the prospective entrant to determine what are the things most important to him/her. Each entrant will have varying needs in relation to employment, community support, housing type, education etc. If the entrant can then be provided with specific information about the settlement opportunities in various locations based on their needs, they will be better placed to see the relative merits of one location over another. The Council has wondered for some time about the possibility of developing something akin to a "McDonalds Index"<sup>21</sup> for settlement outcomes. Such an index would show the costs of rental accommodation, public transport, groceries, household goods etc in various locations compared to Centrelink payments and employment opportunities, and also include information about specialist services. It could help an entrant determine how much disposal income they would have in various locations, whether the services they required would be there etc ... in other words, to make an informed choice.

Information about the relative merits of various settlement locations should be considered an integral part of the Pre-Embarkation Kit that is currently being developed.

The commitment of the current government to improving settlement outcomes of refugees in rural and regional Australia is commendable. The Refugee Council notes in particular DIMIA's Discussion Paper *Supporting Settlement in Rural, Regional and Remote Australia* which identifies a number of issues and possible strategies to improve service delivery to migrants and refugees.

Currently the dominant service delivery models to migrants and refugees in rural and regional areas include:

- generalist migrant workers funded through the CSSS located at local neighbourhood centres or community groups;
- MRC/MSAs providing outreach services;
- settlement services being contracted to providers with regional arrangements such as AMEP programs operating through local TAFEs;
- urban-based services providing services to regional and rural areas via communication technology such as the Internet, video-conferencing, CD-ROM, and telephone;

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<sup>21</sup> The McDonalds Index compares the cost of a McDonalds meal in major cities around the world.

- urban-based specialist services providing training to mainstream services in rural and regional areas. For example, local health services may receive training from torture and trauma services on working with survivors of torture.

A range of service models are needed to respond to differences in regional infrastructure, the range of diverse needs presented by mobile seasonal workers, and the need to provide cost effective services to a numerically small group. No one model will be able to meet all these requirements. The choice of model must be matched to best meet the needs in the area. That said, the Council does wish to make particular mention of issues that must be taken into consideration when looking to promote humanitarian settlement in rural and regional areas.

### **Investing in Infrastructure**

Commonwealth and State Government policies to encourage migration to rural and regional areas must not be seen as a cost-saving strategy. For settlement programs to be successful and durable, there must be an investment in infrastructure matched by capital expenditure. In addition to the general costs of settlement services, investment in the infrastructure of rural and regional areas is required to:

- provide on-going training for mainstream services (in particular health workers, teachers etc) on working with refugees and humanitarian entrants. The use of purely technology-based training models in areas in which some workers will not have extensive experience with computer technology is not an appropriate substitution for face to face training;
- develop appropriate information provision strategies. Reliance on Internet technology to disseminate information to entrants is not effective for many refugee and humanitarian groups. The translation of local resource materials into community languages must also be factored into existing budgets;
- create links between mainstream and specialist settlement services;
- provide support and supervision for settlement service providers to avoid the isolation that generalist workers may face in regional and rural areas and to promote skill development. Where service providers are in stand-alone positions assistance in the development of procedure and policy guidelines can be invaluable. Mentoring programs between experienced service providers such as MRCs and regional settlement positions are seen as desirable;
- monitor whether providers in rural areas are equipped to make appropriate referrals. Entrants in rural areas have many needs that cannot always be met locally. A good example of this is in relation to family reunion. It is typical for entrants to want to sponsor family members from whom they have been separated but relevant expertise on this issue tends to be clustered in major cities. The challenge is to ensure that their local providers are sufficiently aware of where they can get information from or refer them to;
- ensure that religious needs can be met in regional areas, as religious expression is central to many cultures. This not only requires the facilitation of migration of religious minority leaders to Australia, it also requires active promotion of public tolerance and

understanding of other religions. The latter is central to ensuring that people feel they are free to practice their religion;

- ensure access to cultural needs. No matter how fluent you become in another language, there is something very comforting about being able to be entertained or informed in your own language. Ensuring access to a wide range of opportunities for refugees to have access to films, radio programs and reading material in their first language is important for all NESB entrants and invaluable for those for whom language acquisition is problematic and who are either unlikely ever to obtain a level of recreational English and/or who may have limited opportunities to meet others from their own ethnic background;
- ensure that appropriate leisure opportunities are available. In smaller communities recreation can provide an essential chance for newly arrived people to link with the local community and, through the promotion of culturally specific leisure, the whole community can learn more about other cultures in a positive environment;
- build on existing volunteer capacity to support humanitarian entrants. As was discussed in more detail in response to question 16, volunteer involvement can make a considerable contribution to settlement but requires support and supervision.

### **Fostering Community Support**

It is important not to lose sight of the need to sensitise the host community to the challenges facing refugees and humanitarian entrants and ensure their support for refugees and humanitarian entrants. This involves, *inter alia*:

- preparing the receiving community in advance of any movement into the area. Integral to this is gaining the active support of key community opinion leaders such as the Mayor or Shire President, the head of the Business Chamber, the presidents of the local service clubs (Rotary, Lions etc), the president of the Country Women's Association, the editor of the local paper, local religious leaders etc;
- education of the local community about who refugees are and what their needs are on arriving in Australia. For this it is useful to work in partnership with local government;
- promoting examples of successful regional settlement in Australia, such as those in Shepparton, Dubbo and Young;
- drawing on existing support structures, for example many regional communities have declared themselves "Refugee Welcome Zones" and/or have active Rural Australians for Refugees groups.

### **Avoiding Isolation**

If a decision is made to send refugees to a particular locality where there is no previous refugee settlement, consideration needs to be given to the numbers of entrants to be sent. Rarely will people want to be entirely divorced from people of their own community. For most it is important to have someone of the same gender with whom they can speak

in their own language and with whom they share memories of their home country. It is also important that there be role models and people to help others through rights of passage (eg a wedding, the birth of a child etc). If people are being sent to a particular area (as opposed to moving there of their own volition), groups rather than individual families should be selected so that a “critical mass” can be developed and refugees are not exposed to the trauma that isolation in a strange environment with no familiar reference points can bring.

Further, if the area has had no previous experience of refugee settlement, or of arrivals from that particular group, it is best to refer more independent and capable people in the first instance as they will be the “pathfinders” – the people who will be most exposed to loopholes in the system – and they will need to be able to cope with any uncertainties as services find their feet.

### **Incentive Schemes**

We know from experience that many humanitarian entrants have skills that are very much in demand in rural areas. We also know that many of these refugees experience considerable obstacles to:

- having skills recognised;
- finding money for bridging courses;
- gaining certification.

The Council suggests that there is merit in exploring ways to assist refugees with skills that are in demand in rural areas and who are willing to live in these areas to overcome the barriers they currently face to employment in their field. This could involve using a HECS-type program to cover fees for bridging courses, establishing internships or other arrangements suitable to the profession in question.

## **6. LIST OF ORGANISATIONS AND INDIVIDUALS CONSULTED IN THE PREPARATION OF THIS SUBMISSION**

Ahmadiyya Muslim Association of Australia  
Albanian Australian Community  
AMES  
Amnesty International  
Anglicare  
Auburn Migrant Resource Centre  
Australian African Welfare Association  
Australian Council for Overseas Aid  
Australian Croatian Community Services  
Australian Lebanese Welfare Group  
Australian Turkish Cultural Association  
Bhanin Association  
Burma Hope Foundation Inc  
Blacktown Migrant Resource Centre  
Bosnian Information and Welfare Centre  
Canterbury Bankstown Migrant Resource Centre  
Centre for Multicultural Youth Issues  
Ecumenical Migration Centre  
Ethiopian Community Association of Victoria  
Geelong Ethnic Communities Council  
Harari Community  
Hotham Mission  
Human Rights Watch  
Immigrant Women's Speakout  
Indo Chinese Refugee Association  
Inner Western Migrant Resource Centre  
Iranian Community  
Jesuit Refugee Service  
Karen Community Sydney  
Macarthur Migrant Resource Centre  
Mercy Refugee Service  
Migrant Resource Centre North East  
National Council of Churches in Australia  
NSW Refugee Health Service  
Refugee Consortium of Kenya  
Refugees from:

- Iran
- Iraq
- Ethiopia
- Sierra Leone
- Somalia
- Sudan
- Serbia
- West Papua

SAIL Program  
Serbian Orthodox Welfare Association  
Serbian Welfare Association of Victoria  
Service for the Treatment and Rehabilitation of Torture and Trauma Survivors

Sierra Leone Cultural Group  
South Eastern Region Migrant Resource Centre  
Springvale Community Aid and Advice Bureau  
Sudanese Community Association of Australia  
Swinbourne University  
United Nations High Commissioner for Refugees:

- Canberra
- Geneva
- Conakry (Guinea)
- Tehran (Iran)

Victorian Foundation for the Survivors of Torture  
Vietnamese Community in Australia  
Westgate Migrant Resource Centre