

# Refugee Newsletter

## From the Regional Representative



Cousins and classmates, an image from *Rare View – a glimpse into Hamilton's Somali Community* exhibition, at the Waikato Museum, Hamilton New Zealand.  
Photo: Mark Hamilton

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2006 has so far been a remarkable year of proposals for legislative change to national laws relating to asylum-seekers and refugees on both sides of the Tasman and in the South Pacific. While some of the changes clearly demonstrate progress in strengthening international protection, some have raised fundamental concerns.

In New Zealand, the *Review of the Immigration Act 1987* is now underway, and UNHCR was one of 1,500 organisations to comment on the Government proposals. Of particular note, UNHCR has welcomed the Government's proposal to set out its obligations to

provide complementary protection for people facing torture, arbitrary deprivation of life or cruel, inhuman or degrading treatment or punishment, even if they fall outside the letter of the Refugee Convention. As UNHCR's new Assistant High Commissioner for Protection, Ms. Erika Feller, said in a recent paper on the emerging norm on the subject of the Responsibility to Protect, "providing complementary protection is one of the ways States can help fill gaps in the international protection system". UNHCR's submission also welcomed the Government's proposal to consider signing the 1954 Stateless Persons Convention, and urged the Government to also ratify the 1961 Convention on the Reduction of Statelessness and implement appropriate statelessness avoidance procedures.

UNHCR expressed concern, however, at proposals to introduce 'health and character' grounds for the exclusion of people in relation to refugee status, since they are not contemplated in the framework for exclusion under the Refugee Convention. UNHCR's submission argued that, in relation to refugees, the sole grounds for exclusion should be those contained in Article 1F of the Convention, designed to deprive those guilty of heinous acts and serious crimes from receiving the benefits of refugee status. In a similar vein, UNHCR also argued against the proposal to include health considerations in the expulsion

provisions to third countries, in so far as they deviate from responsibilities set out in the 1951 Refugee Convention.

The New Zealand Immigration Minister, David Cunliffe, hopes to have the Bill ready to be introduced into parliament by April 2007.

In Australia, in May, there was another round of amendments to immigration laws introduced, extending the offshore processing system to apply to all 'unauthorised boat arrivals', including those who make it to the mainland. The proposed Bill provoked immediate and widespread expressions of concern, including from the parliamentary committee tasked to inquire further into the implications of the proposals.

While the Government's response to the Senate Legal and Constitutional Legislation Committee Inquiry's report on the *Designated Unauthorised Arrivals Bill 2006* includes a number of welcome improvements (such as the provision of funds for independent legal advice for asylum-seekers at offshore processing centres), UNHCR remains very concerned that the practices proposed in the Bill, and in particular the potential detriment that offshore processing may cause for any asylum-seeker, set an unwelcome precedent which could influence other States both in this region and around the world.

UNHCR's submission argues that pushing all 'unauthorised boat arrivals' into an offshore stream – with fewer rights and benefits attached than are afforded to those arriving by air on the mainland -- is tantamount to penalisation for illegal entry by boat, and therefore at odds with the Refugee Convention. Furthermore, the Government's clarification that Australia is

to be a resettlement country only of 'last resort' for those processed offshore strengthens the perception that the proposed system will deflect elsewhere Australia's responsibility to provide protection to *bona fide* refugees.

In this respect, refugee protection is not just about process. Process is important, and should be fair and robust, but so too should be the efforts States exercise to provide solutions. UNHCR believes that other resettlement countries may be disinclined to accept under their generous but finite resettlement quotas refugees they consider to be the responsibility of Australia under the Refugee Convention. As a result, the proposed law and practices may delay solutions and cause extended separation of families, based on experience from the "Pacific Solution Round One".

In June, UNHCR acted as *amicus curiae* intervenor before the High Court of Australia in the matter of *MIMIA v QAAH; NBGM v MIMIA*. The case looks at the inclusion and cessation clauses of the Refugee Convention in relation to applications for Permanent Protection Visas at the time when Temporary Protection Visas expire. UNHCR argued in its submission that the refugee status determination process and the cessation procedures are separate and distinct, and that they do not mirror each other as suggested by the Federal Court's approach in *NBGM v MIMIA*. The High Court is expected to deliver its judgement shortly.

Finally, in the South Pacific, the Office hopes to see further progress this year on the development of national laws and procedures implementing Fiji's Immigration Act 2003 – in line with Fiji's

obligations as a signatory to the Refugee Convention. UNHCR continues to provide support to the Government of Fiji, through training officials to conduct refugee status determination, and by assisting in the development of fair and efficient procedures.

UNHCR's submissions to the New Zealand Immigration Act Review, to the Senate Inquiry into Australia's *Designated Unauthorised Arrivals Bill 2006*, and to the High Court of Australia for the *amicus curiae* can be found under the "submissions" menu at our Regional Office web site at [www.unhcr.org.au](http://www.unhcr.org.au)

The issue of whether asylum-seeker reception standards ensure respect for human dignity and basic rights will be discussed at this October's UNHCR Executive Committee (EXCOM) meeting in Geneva. To help foster informed discussion on the issue, this Newsletter includes discussion papers on the issue of Australian reception standards and employment, which provide perspectives from a range of different sources. This topic is also timely given both the 'work rights' campaign of Australian NGOs and the review of the Bridging Visa E currently being carried out by Australia's Department of Immigration and Multicultural Affairs. UNHCR looks forward to the outcome of that review.

I take this opportunity to thank all the contributors to the Newsletter, and to ask all its readers to continue to take an active interest in whether their Government is providing effective protection to asylum seekers and refugees, and is doing all it can to prevent statelessness.

**Neill Wright**  
**Regional Representative**



UNHCR Assistant High Commissioner for Operations Judy Cheng-Hopkins (left) gets a warm welcome at an income generation project for displaced people in the Colombian department of Nariño. Photo: UNHCR/M.H. Verney

UN High Commissioner for Refugees António Guterres announced in January, the appointment of two new Assistant High Commissioners to oversee the agency's field operations and its international protection work for millions of refugees and others of concern.

Ms. Judy Cheng-Hopkins was named Assistant High Commissioner for Operations, replacing Mr. Morjane, who left UNHCR in late 2005 to assume a government ministerial position in his native Tunisia.

Ms. Erika Feller was appointed to the new post of Assistant High Commissioner for Protection.

Both appointments, approved by Secretary-General Kofi Annan, became effective on 15 February.

In announcing the appointments, Mr. Guterres noted that Judy Cheng-Hopkins, a Malaysian national, brings with her to UNHCR 27 years of diversified UN experience.

## Two new Assistant High Commissioners

"I am sure that her wealth of experience will be of great benefit to UNHCR," the High Commissioner said of Ms. Cheng-Hopkins. "Her field experience, management experience and knowledge of UN operations across a wide spectrum of humanitarian and development activities will be particularly relevant."

Ms. Feller, an Australian national, is well-known as head of UNHCR's Department of International Protection since 1999. She came to UNHCR in 1986 after 14 years as an Australian diplomat, including three overseas postings as well as senior appointments in Canberra.

"Erika Feller's extensive experience and knowledge of international protection will benefit enormously the newly-created post of Assistant High Commissioner for Protection," Mr. Guterres said when announcing the decisions in January. "This new position and Ms. Feller's appointment demonstrate our firm commitment to international protection as the core of all of UNHCR's work on behalf of the world's refugees and displaced people."

Ms. Feller has more than 33 years of experience in international human rights and refugee law, a field in which she is a

widely acknowledged authority. She has published extensively in many major refugee and international law journals. In her 19 years at UNHCR, she has served in a variety of capacities in the Department of International Protection, but also as the High Commissioner's Regional Representative for Malaysia, Brunei and Singapore, and regional coordinator for the Comprehensive Plan of Action for Indo Chinese refugees in South East Asia. In addition to involvement in many of UNHCR's major field operations, she has closely followed developments in asylum policy and practice globally, including the European harmonisation process; regional protection initiatives in Africa, Asia and the Middle East; migration and asylum issues; sexual and gender-based violence problems; and policy and practice on internal displacement. She directly managed UNHCR's Global Consultations in 2001, which set the international protection agenda for the start of the new century. Ms Feller has also served as UNHCR's chief negotiator of protection agreements with governments, as well as of multilateral arrangements with agency partners.

### The Responsibility to Protect

On a recent visit to Australia, Erika Feller delivered a paper to the University of Sydney's *Moving On: Forced Migration and Human Rights Conference*, on the emerging norm of the 'responsibility to protect'.

Ms Feller, who has since been appointed UNHCR's Assistant High Commissioner for Protection, was in Australia last November

meeting with key officials, the Immigration Minister, and NGOs. In her paper to the conference, she discussed the recent EXCOM Conclusion on Complementary Forms of Protection within the broader framework of closing the gaps in the international protection framework and the notion of the responsibility to protect within the broader UN reform process. Her paper argues the 'responsibility to protect' provides a useful framework within which to

promote a more flexible and less discretionary approach to addressing the many protection gaps which confront the delivery of protection to persons of concern to UNHCR, including internally displaced people, stateless people, refugees and returnees.

For the full text of the speech visit <http://www.unhcr.org/cgi-bin/texis/vtx/admin/opedoc.htm?tbl=ADMIN&id=43a692122>

# New agreement aims to improve decision-making for refugees

On her trip to Australia last November, Ms Erika Feller, now UNHCR's Assistant High Commissioner (Protection), signed an agreement with Justice Tony North, President of the International Association of Refugee Law Jurists (IARLJ), to help improve decision-making on refugee claims and boost national asylum systems.

The IARLJ is a voluntary non-governmental organisation which brings together national judges and quasi-judicial decision-makers worldwide in the field of refugee status determination (RSD).

Speaking on the role of the IARLJ, Ms Feller said that based on UNHCR's review of asylum procedures worldwide over many decades, there was no doubt that the judiciary's involvement in national asylum systems is a very positive factor.

"UNHCR is working with the IARLJ to promote within the judiciary world-wide a common understanding of refugee law and asylum principles, to encourage the use of fair practices and procedures to determine refugee status, and to promote capacity building," Ms Feller said.

The overall objective of the recent agreement between UNHCR and the IARLJ is to enhance the delivery of international protection of refugees by improving the quality of RSD procedures in selected countries. This will be done through a number of ways, including:

- The IARLJ will assist UNHCR with the identification of international consultants, from within the IARLJ's constituency, to review standard operating procedures (SOPs) in specific country operations and train UNHCR staff involved in RSD.
- The deployment of IARLJ members as UNHCR RSD consultants to build capacity of national asylum systems and promote bilateral cooperation between host country refugee



IARLJ President Justice Tony North and UNHCR's Erika Feller sign the agreement.  
Photo: UNHCR/N. Wright

authorities and asylum authorities in the IARLJ's member countries.

- Reinforcing the overall capacity of the IARLJ in developing its own promotion and capacity building activities, including the establishment of regional chapters to reach out to countries in the process of developing their own national asylum systems.

"The value of the judiciary in asylum procedures is not only linked to its independence but also to its role of setting precedent, interpreting the definition, deciding individual cases and establishing procedural standards," Ms. Feller said. "Since 1997, well over 500 national judges in different countries have been trained by the IARLJ."

UNHCR currently undertakes refugee status determination under its mandate in some 80 countries (in 2004), with some

35,000 applications (or 76,000 persons) submitted to various UNHCR offices around the world.

## Lebanon Crisis

The latest information and updates on the Lebanon Crisis is available at:  
<http://www.unhcr.org.au/>



Information on *UNHCR Considerations on the Protection Needs of Persons Displaced Due to the Conflict in Lebanon and on Potential Responses (3 August 2006)* is available at:  
<http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl+RSDLEGAL&id=44d707c44>

# Discussion Paper

## Reception Standards: Employment

The issue of reception standards for asylum-seekers which ensure that human dignity and basic rights are protected will be discussed at this October's UNHCR Executive Committee meeting of States. A particular focus will be the right to gainful employment for both refugees and asylum-seekers as perhaps paramount among the articles of the Convention. Arguably, without the right to work, many other provisions could be considered meaningless.

Ahead of this discussion, UNHCR's Regional Office in Canberra invited contributions on this issue and its application in our region from the Australian Government, the Hotham Mission Asylum Seeker Project and academic Alice Edwards, who provides internationally comparative data. UNHCR's position, drawn from Standing Committee papers, is also provided.



Sudanese refugee Anjelina Muraa runs a small restaurant in Maaji settlement, northern Uganda. UNHCR/K. McKinsey

### The Right to Work for Refugees and Asylum-Seekers: A Comparative View

by Alice Edwards\*

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#### Introduction

Granting the right to work to refugees is a relatively standard practice among industrialised countries, but the same rights are not always extended to asylum-seekers and efforts to do so have faced resistance by many governments. Economic factors and deterrence measures are cited by governments as reasons not to treat asylum-seekers in the same way as recognised refugees. The United Nations

High Commissioner for Refugees (UNHCR) identifies as best practice asylum systems that permit asylum-seekers residing for some time in the country to obtain a temporary work permit. UNHCR points out that not only will the need for assistance be reduced if an asylum-seeker is permitted to work, but dignity and self-respect will be enhanced.<sup>1</sup> Even if an asylum-seeker's application is rejected, their working experience in the temporary host country enhances prospects for reintegration in their home countries upon return, having acquired some skills or financial independence.<sup>2</sup> In fact, not allowing asylum-seekers to work can lead to dependency on the State system, loss of skills or expertise, feelings of inadequacy, and mental illness, such as depression. This is especially the case if asylum procedures are lengthy. The Executive Committee of the High Commissioner's Programme concluded in 1988 that whatever the ultimate durable solution for individual refugees and asylum-seekers, access to the labour market facilitates each of them.<sup>3</sup>

Apart from asylum-seekers, another group of concern is rejected asylum-seekers, whose circumstances are found not to fit neatly into the refugee definition, but who are nonetheless unable to return home, either due to ongoing armed conflict or other disturbances in their home countries, or because they cannot practically be returned, including because they no longer possess passports or other documentation to attest to their nationality. Some of these individuals and their families may qualify for subsidiary or complementary forms of protection in some countries, but not in all. Those who cannot be returned for practical reasons may find themselves in long-term detention or subject to intensive reporting mechanisms, usually without the right to work. Even where work rights are granted, unreasonable reporting mechanisms or short-term visas can prevent them from obtaining employment. In fact, some may be stateless and invoke a States' obligations under the relevant statelessness treaties.<sup>4</sup>

So what is the legal framework under international law in relation to refugees, asylum-seekers and/or failed asylum-seekers and their rights to work? Do they all have rights to access the employment market, or is that right reserved for only a few? What is the practice among States?

## **The Right to Work Under the Refugee Convention**

Among the economic rights protected under the Refugee Convention, Part III regulates 'gainful employment'. With respect to wage-earning employment, Article 17 requires States to accord to refugees 'lawfully staying in' their territory the most favourable treatment accorded to non-nationals in the same circumstances. In relation to self-employment, Article 18 obliges States to accord to a refugee 'lawfully in' their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to non-nationals generally in the same circumstances. Article 19 covers the liberal professions and recognition of diplomas.

What is noticeable from these provisions is that they do not treat refugees on equal terms with nationals. Plus, they appear to differentiate between different categories of refugees depending on their stay (e.g. those 'lawfully in' versus those 'lawfully staying in').<sup>5</sup> Under this analysis, not all recognised refugees benefit from the same rights, including in relation to employment. I would argue, in contrast, that at a minimum, the object and purpose of the Refugee Convention suggests that the full spectrum of rights contained within it should be made available to refugees immediately upon recognition. In fact, most industrialised countries seek to do

so. James Hathaway argues that an individual is 'lawfully present' if admitted to a state party's territory for a fixed period of time, or for as long as officially sanctioned.<sup>6</sup> That is, his analysis would suggest that asylum-seekers should benefit from rights that relate to lawful presence, as opposed to lawful residence, such as the right to engage in self-employment, but not wage-earning employment. In spite of all this complex and intricate reading of the wording of the Refugee Convention, it is not readily apparent why certain rights require higher levels of legal status or longer periods of stay than others.<sup>7</sup>

Although the right to work in the Refugee Convention is not generally seen as guaranteeing the right to work to asylum-seekers (and, therefore, leaving this to the discretion of individual governments), it is arguable that the denial of basic social and economic rights could amount to constructive refoulement. In addition, although most commonly interpreted in terms of 'prosecution, fine or imprisonment', the principle of non-penalisation on account of illegal entry or presence, contained in Article 31 of the Refugee Convention, could also be applied to prevent governments from denying work rights as a form of punishment to those asylum-seekers who enter or stay in the territory illegally.<sup>8</sup>

## **The Right to Work Under the ICESCR**

In spite of the lack of clarity as to who benefits from the right to work in the Refugee Convention, both refugees and asylum-seekers benefit from rights granted under more general human rights

law, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), as human beings. Unlike the Refugee Convention, the ICESCR does not distinguish between these two groups. For developed countries, granting rights under the ICESCR to all those in its territory on the basis of non-discrimination is a treaty obligation.<sup>9</sup> Although the concept of 'progressive realisation' of rights in the ICESCR exists and has been used by governments as justification for not allowing non-nationals, especially asylum-seekers, to work, it is subject to States implementing the rights according 'to the maximum available resources.'<sup>10</sup> In addition, some obligations are immediately actionable, including the non-discriminatory basis of the law. Moreover, any other limitation to such rights must be determined by law, compatible with the nature of the rights, and solely for the purpose of promoting the general welfare of a democratic society.<sup>11</sup> It is difficult to see how denying economic rights to asylum-seekers and refugees could lessen the general welfare of society. Rather, it would appear to do just the opposite. While these arguments can be raised for all non-nationals (and thereby invoking strong resistance by States on legitimate grounds), the reasons for extending such rights to asylum-seekers and refugees is compelling. Some governments believe that allowing asylum-seekers access to the labour market may diminish the possibility of an early return. However, the UNHCR states that it is increasingly recognized that such access for a reasonable period may actually facilitate reintegration into the country of origin by making it possible for the asylum-seeker to return home with a



UNHCR is helping former IDPs to rebuild a school in Balama, Liberia.  
UNHCR/A. Rehr

degree of financial independence or even some acquired work skills.<sup>12</sup>

The explicit right to work is not the only avenue through which refugees and/or asylum-seekers can argue for the right to work. The Committee on Economic, Social and Cultural Rights has noted that reception standards of asylum-seekers may be contrary to the right to an adequate standard of living in Article 11(1) of the ICESCR.<sup>13</sup> More recently, the approach of the UK House of Lords has been to find that denying asylum-seekers social benefits as well as the right to work constitutes 'degrading treatment' in contravention of Article 3 of the European Convention on Human Rights.<sup>14</sup> Similarly, the South Africa Supreme Court of Appeal in 2004 ruled that issuing a blanket prohibition on employment to all asylum-seekers, without offering social benefits, amounted to a breach of the constitutional right to dignity, as among those excluded from the workforce would be persons who had no other means of survival. The Court thus found that each asylum-seeker ought to be individually assessed as to whether they would be reliant on being able to work for survival.<sup>15</sup>

## Comparative Law and Practice

As indicated in the introduction, most industrialised countries provide work permits to refugees immediately after recognition. In Australia, all recognised refugees possess work rights. This includes those holding Refugee/Special Humanitarian visas, as well as Temporary Protection ('TPV') and Temporary Humanitarian Concern visas. Likewise, individuals granted Removal Pending Bridging or Return Pending Bridging visas

are entitled to work in the same way as other categories. The latter has been a positive development in conjunction with granting release from detention of some rejected asylum-seekers who are not able to return to their countries of origin. However, no work rights are available to asylum-seekers who arrive without authorisation, or having arrived lawfully (with appropriate documentation and valid entry visas), they do not apply for asylum within 45 days of arrival.<sup>16</sup> These visa holders are even prohibited from taking up voluntary work. The latter group also appear to be denied access to social benefits, including Medicare,<sup>17</sup> causing alarm that this approach may breach a number of human rights, as outlined above. So how does Australia's approach compare with international practice?

Like Australia, the EU requires Member States to authorise recognised refugees to work, as soon as refugee status has been granted. The same rights are available to persons granted subsidiary or complementary forms of protection,<sup>18</sup> a form of status not currently available in Australia. In addition, the European Council Directive on minimum reception standards for asylum-seekers calls upon each EU Member State to set a period of time from the date an asylum-seeker lodges an asylum application during which he or she shall not have access to the labour market. That is, asylum-seekers do not automatically have rights to work upon application for asylum, but they do have such rights after a minimum period has passed and this period cannot extend beyond one year, unless the delay in the application process is attributable to the asylum-seeker. Access to the labour market shall not be withdrawn during

appeal procedures. At all times, such persons are also entitled to 'material reception conditions to ensure a standard of adequate living for the health of the applicants and capable of ensuring their subsistence.'<sup>19</sup> However, in recruitment, EU Member States may give priority to EU citizens, nationals of States parties to the Agreement on the European Economic Area and to legally resident third-country nationals.<sup>20</sup>

In practice, some EU countries, such as the Netherlands and Sweden, were already operating under such a scheme of minimum periods prior to the Council Directive coming into force. Other countries, such as France, Germany, and Italy have traditionally denied asylum-seekers the right to work and will now be expected to change their approach or they have already done so. The UK previously allowed asylum-seekers to work six months' after entry, but revoked its policy in July 2002,<sup>21</sup> extending it to 12 months. As shown above, a recent House of Lords decision will require the government to review its current policy again, in light of its correlative denial of social benefits. As at November 2005, the European Council on Refugees and Exiles found that of the fifteen Member States they studied, the laws in most countries were in legal conformity with the employment provision of the Reception Directive, except for France, Lithuania, and Luxembourg.<sup>22</sup> This new Council Directive places the EU at the forefront of granting work rights to asylum-seekers. An exception is Ireland which has not accepted the Council Directive, and in 2000, it removed the right to work to any asylum-seeker entering the country after July 1999, amid much controversy.<sup>23</sup>

Beyond the EU, various policies and practices exist. In Canada, while refugees are granted automatic work rights upon recognition, asylum-seekers must apply for employment authorisation and this will be granted to those who cannot subsist without public assistance.<sup>24</sup> A similar situation exists in New Zealand, where recognised refugees possess work rights, but there is some discretion to granting such rights to asylum-seekers. In the 1999/2000 financial year, 11 percent of all work permits granted were to asylum-seekers.<sup>25</sup> The US permits recognised refugees to work, as well as asylum-seekers who have received recommended approval or conditional grant of asylum pending security checks. An asylum-seeker may also apply to work if 150 days has passed between submission of a complete application and no decision.<sup>26</sup> It is unclear in some countries on what basis the work right will be denied.

## Conclusion

This brief (and incomplete) audit of industrialised countries reveals that, without exception, recognised refugees are granted work rights immediately after recognition. The picture is less uniform, however, in relation to asylum-seekers. The EU has standardised its approach by calling upon Member States to set minimum periods before work rights are to be granted to asylum-seekers, with an outer maximum of 12 months. The US grants work rights to particular categories of asylum-seekers, while other countries continue to use discretion in the granting of work rights, such as New Zealand and Canada. Australia denies work rights to particular groups of asylum-seekers. It has

to be further acknowledged that other government policies, such as the detention of certain categories of asylum-seekers in the US and Australia, interfere with the ability to grant work rights.

But, are countries, including Australia, that deny work rights to all or some asylum-seekers actually infringing international law? It is arguable that the permissible restrictions on the right to work under the ICESCR are such as to ensure that asylum-seekers are entitled to work in developed countries; however, this is not readily reflected in State practice. The right to work under human rights law appears to have more scope than the provisions in the Refugee Convention to advance such arguments, the latter being limited to stay and residency criteria. Moreover, other human rights provisions, such as the prohibition on degrading treatment or the right to an adequate standard of living, may provide more fruitful places to argue for change, including in relation to rejected asylum-seekers who cannot return home within a reasonable period of time. In addition, legal challenges on constructive *refoulement* and non-penalisation under refugee law have not yet been adequately tested in the courts.

Irrespective of the particular right at issue, it makes enormous economic and social sense to allow asylum-seekers, whatever their mode of entry or particular circumstances, to work. Being able to participate as productive members of society is fundamental to individual self-esteem and dignity, and it can equally contribute to improving relations between asylum-seekers and the local community. As Nugent JA stated in the South African decision mentioned above, 'Human dignity has no nationality.'<sup>27</sup>

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I would like to thank Graham Thom, Amnesty International Australia, for his insights into current Australian debates on this issue, as well as Najam Ud Din for helping me with the research for this piece.

1. UNHCR, *Reception of Asylum-Seekers, including Standards of Treatment, in the Context of Individual Asylum Systems*, Global Consultations on International Protection, UN Doc. EC/GC/01/17, 4 Sept. 2001, para. 13. See, also, UNHCR, *Local Integration*, Global Consultations on International Protection, UN Doc. EC/GC/02/6, 25 April, 2002.

2. *Ibid.*, para. 13.

3. ExCom Conclusion No. 50(XXXIX) of 1988, para. (j).  
4. See, 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

5. See, e.g., G. Goodwin-Gill, *The Refugee in International Law* (2nd ed., Oxford University Press, 1996, reprinted 1998).

6. J.C. Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press, 2005), 173-186.

7. A. Edwards, *Human Rights, Refugees, and The Right To Enjoy Asylum* (2005) 17 *Int'l J. Ref. L.* 293, 322.

8. *Ibid.*, 323.

9. *Ibid.*, 325. Art. 2(3) allows developing countries only to limit the economic rights of non-nationals, giving due regard to human rights and their national economy.

10. Art. 2(1), ICESCR.

11. Art. 4, ICESCR.

12. UNHCR, *Reception of Asylum-Seekers*, above n. 1, para. 13.

13. ICESCR Committee, Report on the 25th, 26th and 27th sessions (23 Apr. – 11 May 2001, 13-30 Aug 2001, 12-30 Nov. 2001), ECOSOC Official Records, Supp. No. 2, UN Doc. E/2002/22, E/C.12/2001/17.

14. *R (Limuela, Tesema and Adam) v Sec'y of State for the Home Department*, [2005] UKHL 66. The equivalent provision under international law is Article 7, International Covenant on Civil and Political Rights 1966.

15. *Minister of Home Affairs v Watchenuka and another* (2004) 1 All SA 21 (SA SCA, 28 Nov. 2003).

16. It is a little more complicated than this, depending upon the date of application; see Department of Immigration and Multicultural Affairs, Fact Sheet 62.

17. Hotham Mission, *Welfare Issues and Immigration Outcomes for asylum-seekers on Bridging Visas* (2003).

18. Art. 26(1) & (2), Council Directive 2004/83/EC, 29 Apr. 2004, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

19. Art. 13(2), Council Directive 2003/9/EC, 27 Jan. 2003 laying down minimum standards for the reception of asylum-seekers; entered into force 6 Feb. 2003. It applies to all EU member states, except Denmark and Ireland.

20. Art. 11, Council Directive on minimum reception standards, *ibid.*

21. For a good overview of the practices in various countries, see J.C. Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press, 2005), 730-772.

22. ECRE, *The EU Directive on the Reception of asylum-seekers: Are asylum-seekers in Europe receiving the material support and access to employment in accordance with European legislation?* (Nov. 2005), 4.

23. See, Irish Refugee Council, <http://www.irishrefugeecouncil.ie/press00/right.html> (accessed 26 Feb. 2006).

24. Immigration and Citizenship Canada, <http://www.cic.gc.ca/english/refugees/asylum-5.html> (accessed 26 Feb. 2006).

25. New Zealand Immigration Service, *Work Visas and Permits Research*, Aug. 2001.

26. US Citizenship and Immigration Service, <http://uscis.gov/graphics/services/asylum/faq.htm#other5> (accessed 27 Feb. 2006).

27. *Minister of Home Affairs v. Watchenuka*, above n.15, para. 25.

# Reception Standards: Employment

## Australia's Reception Arrangements for Asylum-Seekers

by the Department of Immigration, Multicultural and Indigenous Affairs (DIMA)

### Introduction

The Australian Government's reception arrangements for asylum-seekers aim to provide an appropriate framework of support for affected persons during the period that their claims are being assessed whilst minimising incentives for misuse of the protection visa process.

Some aspects of the reception arrangements accorded to asylum-seekers depend on whether they entered Australia lawfully or unlawfully and the stage of the assessment of their claims for protection. In this context, it should be noted that the *1951 United Nations Convention and 1967 Protocol relating to the Status of Refugees* (Refugees Convention) does not confer a right on an asylum-seeker to enter the territory of a State of which that individual is not a national.

Individuals who arrive in certain parts of Australian territory (those which have been excised from the migration zone) are usually taken to an offshore processing facility to have any claims they may make for protection assessed. These people are provided with appropriate care and protection pending the determination of their refugee claims and while they await either resettlement or return.

For individuals who present at Australia's borders without authority, an entry screening process is conducted to assess whether the person is raising claims or information which may prima facie engage Australia's protection

obligations. Individuals are able to make an application for a protection visa if they wish, and there are legal safeguards which oblige the provision of assistance and forms if they do want to do that.

Asylum-seekers who arrive lawfully in Australia and apply for a protection visa are granted a bridging visa which allows them to remain lawfully in the community whilst their protection claim is being assessed. The kind of bridging visa a protection visa applicant is granted, and consequently, whether they are granted permission to work depends on their status at the time of making their protection visa application as well as the operation of the 45-day rule.

### Entitlements for Asylum-Seekers in the Community

Australia provides support and assistance to asylum-seekers in the community who apply for a protection visa. There are only some 1600<sup>1</sup> people in Australia waiting for a primary or review decision on their protection visa application and some two thirds of these people already have full work rights. In almost all cases these people are receiving decisions on their cases within 90 days of applying at each stage.

### Work Rights and the 45-Day Rule

Permission to work is granted to those who have been in Australia for less than 45 days in the 12 months prior to lodgement of their protection visa application. Some protection visa applicants may be granted permission to work if they have been waiting for six months for a primary decision on their application.

The limitations, enacted in July 1997, on access to work rights and Medicare for

people who have been in Australia for 45 days or more in the 12 months before making a protection visa application are consistent with Australia's obligations under the Refugees Convention. The obligation contained in Article 17 of the Refugees Convention does not oblige Australia to extend work rights to asylum-seekers as it only applies to persons found to be refugees under the Refugees Convention lawfully staying in the signatory country.

The availability of work rights is one of the matters being considered by the Department of Immigration and Multicultural Affairs in its review of bridging visas. DIMA has consulted with a broad range of external stakeholders in relation to the review. External consultations have now been finalised and a report is to be submitted to the Minister for Immigration and Multicultural Affairs shortly. The extent of any changes to bridging visa arrangements, including the issue of work rights, will of course be a matter for the Government.

### Financial Assistance

Financial assistance is available to protection visa applicants in the community who are unable to meet their most basic needs for food, accommodation and health care, through the Asylum-Seeker Assistance Scheme<sup>2</sup> (ASA), if there are delays in processing the application or earlier on the basis of a very generous range of exemption criteria.

The Scheme is administered by DIMA through contractual arrangements with the Australian Red Cross. Protection visa applicants cease to be eligible for ASA when their application has been finally decided, for example after a decision by



Rahima, joined by her nephew, will take another two months to finish this carpet. She can expect to sell it for around US \$250. UNHCR/T. Irwin

the Refugee Review Tribunal affirming a protection visa refusal. However, special payments can be authorised for persons otherwise not eligible for ASA payments. Such persons are generally referred to DIMA by the Australian Red Cross. Compelling cases being considered for Ministerial intervention are an example where special payments have been authorised.

## Healthcare

All asylum-seekers have access to emergency health care, however it is only those protection visa applicants who have permission to work that have access to full health care i.e. Medicare, the Australian Government's health insurance scheme. ASA recipients who do not have access to full health care can receive assistance with health care costs including pharmaceutical benefits and can also be referred to counselling services.

## Continuance of Entitlements

Asylum-seekers seeking review by the Refugee Review Tribunal of their primary protection visa decision continue to receive access to the same benefits they received during the application stage.

Dependent upon the application of the 45-day rule, permission to work will

continue for asylum-seekers who were lawfully in Australia at the time they made their protection visa application.

Australia also has in place a range of provisions that enable persons found not to be in need of protection to stay lawfully in Australia until arrangements are in place for their departure. For example, the Removal Pending Bridging Visa (RPBV) which enables the release, pending removal, of people in immigration detention who have been cooperating with efforts to remove them from Australia, but whose removal is not reasonably practicable at that time. RPBV holders are entitled to a range of benefits such as work rights; access to certain Centerlink benefits, such as Special Benefit and Rent Assistance and access to Medicare benefits.

## Entitlements for Asylum-Seekers in Detention

The majority of asylum-seekers arrive in Australia with a valid visa and live in the community while they pursue their claims. Asylum-seekers who arrive in mainland Australia without a valid visa are "unlawful non-citizens". In accordance with Australia's *Migration Act 1958*, all unlawful non-citizens who are in mainland Australia must be detained and, unless they are granted permission to remain in Australia, must be removed as soon as practicable.

People are detained because they are "unlawful non-citizens", not because they are asylum-seekers. Less than 30% of people in detention are asylum-seekers. The majority of people in immigration detention are compliance cases, such as people who have overstayed their visa or who have breached their visa conditions.

Following the introduction of the *Migration Amendment (Detention Arrangements) Act 2005*, the Minister has the power to allow families with children to reside in the community (instead of at a detention centre or residential housing project) in accordance with conditions that address their individual circumstances. The Minister also has a non-compellable power to grant a visa to a person who is being held in immigration detention where the Minister is satisfied that it is in the public interest to do so. This legislation has provided the Department of Immigration and Multicultural Affairs with the ability to allow some asylum-seekers in detention to reside in the community or provide an alternative outcome to a protection visa.

Asylum-seekers that remain in immigration detention receive full health care and their basic living needs are met. Visa application advice and assistance is available to all asylum-seekers in immigration detention through the Commonwealth-funded Immigration Advice and Application Assistance Scheme<sup>3</sup> (IAAAS). Disadvantaged protection visa applicants (including temporary protection visa holders) in greatest need in the community in Australia are also eligible for IAAAS services.

1. Based on current data as at 10 March 2006  
2. More information on the Asylum-Seeker Assistance Scheme is available on the DIMA website at <http://www.immi.gov.au/facts/62assistance.htm>  
3. More information on the Immigration Advice and Application Assistance Scheme is available on the DIMA website at <http://www.immi.gov.au/facts/63advice.htm>

Internally displaced Afghans rebuilding their homes in the Shomali Plain.  
UNHCR/N. Behri



# Reception Standards: Employment

## The Need for a Uniform Community-Based Reception Policy for Asylum Seekers in Australia

by Grant Mitchell

*Hotham Mission's Asylum-Seeker Project is based in Melbourne and has for the past nine years provided a range of comprehensive services for asylum-seekers. The project has been recognised nationally and internationally for its high standard in community care programs for asylum-seekers. It was nominated for the French Republic Human Rights Prize (2004) and a recipient of the Human Rights Award for Community 2002 (Human Rights and Equal Opportunity Commission HREOC).*

Major discrepancies exist in Australia's reception and processing of asylum-seekers, including rights, entitlements and conditions imposed. These discrepancies relate to 1. the means and place of arrival, 2. when an asylum claim is lodged, 3. where the claim lies within the determination process. Under current policy, an asylum-seeker may be held for the duration of their claim in a detention facility, or in a community detention arrangement, or live in the community on a bridging visa. During this period, they may be eligible for essential government funded welfare support or they may be left destitute in the community with no right to an income or healthcare.

To add to these discrepancies, the Australian Government is now proposing that asylum-seekers who arrive by boat be processed in off-shore detention centres with no access to Australia's legal system

and no clear indication of right to residency for refugees.

Based on nine years of experience, this paper by Hotham Mission's Asylum-Seeker Project aims to unpack the welfare impact of existing reception policies, arguing for a uniform reception policy for all people seeking Australia's protection. We argue that a community-based model on the mainland for all asylum-seekers who have completed identity, health and security checks is in line with our international obligations, with UNHCR reception and detention guidelines, and is in the interest of the asylum-seeker, community and government.

### Introduction

While the concept of settlement is clearly defined and understood in Australia in relation to the integration and support needs of newly arrived and existing migrant and refugee communities, the concept of 'reception' remains little understood. Reception is defined as "the starting moment a person enters a country and presents his/her claims for asylum to a national authority, lasting through the period during which the application and any appeals are examined until the person either receives a more permanent residence permit, or is expelled, repatriated voluntarily or resettled into a third country".<sup>1</sup> Reception should thus be viewed in the Australian context as including both the Protection Visa determination process and the request on humanitarian and non-refugee protection grounds to the Immigration Minister under Section 417 of the Migration Act. The outcome for an asylum-seeker may be settlement or return, however, the process

they are undergoing is reception. There are legal and administrative elements of the reception and determination process. However, this paper shall focus on the welfare component of current reception policy, namely the entitlements and conditions allocated to people seeking asylum in Australia.

### The Reception Needs of Asylum-Seekers

Asylum-seekers exhibit a number of inherent vulnerabilities due to the likelihood of multiple stressors, including past trauma in home country or during flight, family separation, anxiety or fear and uncertainty about the present and future. Because of these vulnerabilities, as well as the fact that asylum-seekers may be found to be refugees, certain minimum standards of care should be adhered to. UNHCR guidelines stand as a clear indicator of appropriate care response as well as conditions to be imposed upon asylum-seekers. Particular concern is noted for female, minor and elderly asylum-seekers, survivors of torture and those with health conditions.

In the first instance, the UNHCR Guidelines on the Detention of asylum-seekers are quite clear that detention of asylum-seekers is "inherently undesirable", and should only be used where clearly evidenced identity or security concerns are present.<sup>2</sup> Any decision to detain should be reviewable, either judicially or administratively, with conditions imposed on asylum-seekers which are not punitive or arbitrary in nature. While certain restrictions may be placed on freedom of movement in relation to detention or reporting requirements, these should be



Asylum child in Australia.

Photo: Hotham Mission

based on comprehensive assessments of actual risk, and should be fair, reasonable, reviewable and time-limited.

Clear standards are outlined in terms of appropriate welfare, rights and entitlements to those remaining in detention. Other freedoms, such as freedom of information and association should not be limited. Asylum-seekers should be provided clear and concise translations of information relevant to their rights, entitlements, processing and conditions. Access to legal advice and information about NGO services available is crucial. Once asylum-seekers are assessed as not having any identity,

health or security concerns, they should be released under a uniform community-based reception system.

Certain minimum reception standards should be in place for all asylum-seekers awaiting a refugee or humanitarian decision in the community.<sup>3</sup> These standards should include:

- Work rights, ensuring a degree of self-sufficiency for individuals able to work
- Access to healthcare and the Pharmaceutical Benefits Scheme
- Access to income support and casework for vulnerable asylum-seekers.<sup>4</sup>

The provision of minimum entitlements to work, health care and welfare support for asylum-seekers are embedded in Australia's international obligations. The International Covenant on Economic, Social and Cultural Rights highlights appropriate and suitable healthcare, housing, and income support, which does not exclude asylum-seekers. These rights are also vital to ensure asylum-seeker children have access to essential health services and income support as required in accordance with the Convention on the Rights of the Child (CROC).<sup>5</sup>

*"States Parties shall take appropriate measures to ensure that a child who is seeking refugee status ...shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties."* CROC article 22(1)

Furthermore, in 2002, Australia endorsed by consensus the UNHCR ExCom Conclusion which stated, "reception arrangements can be mutually beneficial where they are premised on the understanding that many asylum-seekers can attain a certain degree of self-reliance, if provided with the requisite opportunities" (recommendation vii). The Conclusion also states that "asylum-seekers should 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 are met." (recommendation ii)<sup>6</sup>



Basket weaving at Hagadera camp in Dadaab helps empower refugee women economically. UNHCR/B. Press

## The Welfare Impact of Australia's Reception Policy

Australia's reception conditions for asylum-seekers are dictated primarily by two pieces of policy:

- The introduction of non-reviewable mandatory detention in 1992 of all unauthorized arrivals in Australia who are held until approved or removed
- The removal of the right to income and healthcare in 1997 for asylum-seekers in the community who had not lodged a claim within 45 days, or had approached the Minister under Section 417 of the Migration Act.

### 1. Detention Regime

The devastating impact of indefinite, non-reviewable mandatory detention on the lives of people seeking Australia's protection has been widely reported and researched.<sup>7</sup> In particular, this has included the impact on the mental health and wellbeing of children and long-term detainees, as well as the inflexibility and inability of the regime to provide an adequate welfare response to vulnerable persons for which the state has a duty of care. A number of these concerns have now been acknowledged by the Government in relation to:

- The release of families with children from immigration detention centres into community based detention in mid 2005
- The role of the Ombudsman in reviewing long-term detention cases
- Acceptance of recommendations of the Palmer report into the treatment of people in immigration detention centres.<sup>8</sup>

Despite these changes, a number of concerns remain about detention policy and practice in Australia, noted in ongoing research and most recently in the Senate Inquiry into the Operation and Administration of the Migration Act.<sup>9</sup>

Existing concerns include:

- Section 189 of the Migration Act, states that an officer is required to detain a person they know or reasonably suspect is an unlawful non-citizen. Greater flexibility is required within this power to ensure officers can issue bridging visas in circumstances where a person has become unlawful for reasons outside their control, where insufficient evidence of unlawful status exists, or where it is undesirable to detain, such as age or health reasons.
- Ministerial discretion being the primary basis for early release from a detention facility.
- Lack of judicial or administrative review mechanism to release individuals with health or other concerns into the community with welfare support.
- Urgent amendments are required to Migration Series Instructions relating to Alternative Detention arrangements to ensure they are in line with 2005 legislative changes. In particular there is continuing concern that vulnerable persons, including women, children, and those with physical and mental health concerns may remain in Alternative Places of Detention arrangements involving contracted security providers, when the new Section 197AB allows for a more appropriate NGO-based community option.
- Unnecessary restrictions on detainee freedom of information and

association, such as limitations on access to legal advice, NGO assistance, and translated information about rights and processing arrangements

- Logistical concerns about the ability to provide appropriate duty of care and welfare to detainees on Christmas Island and Nauru, particularly health and social services.
- The ongoing use of detention pending removal visas for community cases where there may be minimal concerns relating to flight or security
- The ongoing use of detention for unauthorized arrivals under Section 196 who, if assessed, would meet all identity, health and security checks

Of utmost concern is the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, that aims to process asylum-seekers arriving by boat in detention centres on Pacific Islands, removing their rights to Australia's legal system, and potentially leaving refugees stranded in off-shore camps for years. These concerns are heightened by the health and welfare impact of conditions imposed on asylum-seekers detained in Nauru and Manus Island for prolonged periods. Hotham Mission believes this legislation breaches our international obligations to people seeking Australia's protection as highlighted by the Refugee Council of Australia and many other groups.

### 2. Bridging Visa Regime

While there has been much public debate about the detention regime, the impact of the removal of the rights and entitlements of asylum-seekers in the community is little known and understood.



Ivorian and Liberian refugees assist with building the transit centre in eastern Liberia, near the border with Côte d'Ivoire.

UNHCR/B. Heger

While a small number of asylum-seekers may be eligible for the government funded Asylum-Seeker Assistance Scheme through the Red Cross, many are denied this payment as they have had a primary decision within 6 months of lodging their claim, or have been refused at the Refugee Review Tribunal.

There are a number of serious welfare and health consequences for asylum-seekers denied the right to work, Medicare and welfare assistance, particularly children and individuals with health issues. In 2003, Hotham Mission undertook the largest research of its kind in Australia, analysing the welfare needs of 200 asylum-seekers over a 2 year period. The research outcomes highlighted extremely high levels of abject poverty, including that:

- 45% were family groupings, including 15% single mothers
- 22% were children under the age of 15
- 69% presented as homeless or at risk of homelessness
- 25% had been refused medical treatment due to lack of eligibility or funds
- 40% were in debt

- 55% had been awaiting a decision for more than 5 years
- 24% had never had an income while in Australia<sup>10</sup>

Three primary welfare issues were also identified:

- Removal and/or denial to the right to work and Medicare or asylum-seeker Assistance Scheme
- Change of circumstances (loss of income, pregnancy, medical conditions or other welfare issues)
- Detention release community care issues

The research found regulatory changes in 1997 have left many asylum-seekers destitute in the community, dependent on

charities, friends or relatives to survive. Lack of income leads to high levels of nutritional and health concerns for children and pregnant mothers. High levels of anxiety, depression and isolation were also reported, with asylum-seekers denied the right to volunteer and study, and children unable to socialize normally due to lack of funds for extracurricular and recreational activities. In addition, asylum-seekers on Bridging Visa E were found to be forced to report regularly to DIMA offices, despite no assessment of their actual flight risk and no funds to pay for transport. This included single mothers and individuals with ongoing health concerns.

In Kakuma camp, refugees are being trained in a range of professions, including as electricians.  
UNHCR/E. Nyabera



# Reception Standards: Employment

## Moving Towards a Uniform Community-Based Reception Model for Asylum-Seekers

As highlighted above, Australia is currently not meeting its asylum-seeker reception obligations in a number of areas. Having individuals indefinitely in detention or left destitute in the community is neither in Australia's nor the asylum-seeker's best interests.

However Australia currently has a unique opportunity to revise and nurture a new way of working with asylum-seekers. With the Australian Government now moving towards a case management approach for persons within its detention facilities, comprehensive needs and risk assessments can be used as a basis for case-by-case decision-making on the necessity to detain unauthorized arrivals. While previously there has been a 'one size fits all' response to security requirements in detention facilities, legislative change in 2005 introduced the new Section 197AB, which essentially allows, for the first time, a tailored response to detention based on personal characteristics, such as age, health, behaviour and likelihood to abscond. This change in policy, together with the new case management approach, stands as an important opportunity for the government to introduce a new uniform community-based reception model for all persons seeking Australia's protection. Those who have been detained and found to have no outstanding identity, health or security concerns, should be released into the community with appropriate welfare supports pending a decision.

It is arguably in the national interest to provide such basic rights and supports to all asylum-seekers in the community. Research on this issue has outlined the

## An Asylum-Seeker Mother Tells her Story:

### Our Sad Story With Lots of Tears

*I am a lady from Sri Lanka. I came to Australia to seek protection in 1998. My family is consisting of 2 children and my husband. After arriving here we made an application for the protection visa within 45 days. At that time my children were 15 and 13 years old. In 1999 my children could be admitted to a school in Victoria and they could easily cooperate with the education. Meanwhile myself and my husband were able to find jobs and make our lives easy, peaceful and smoother than Sri Lanka.*

### Children's Education

*Meanwhile my children were studying and my elder child could get into University to do an engineering course. But we had to pay \$7,000 per semester. My husband and myself worked hard for our children's education. After one and a half years my elder child could not go on with education because of the high University charges. He could go to diploma course but he could not finish his education because of the stress and depression. By this time my whole family had depression, because of our uncertain future.*

### Our case

*As I remember my application was rejected by the Department after 6 months.*

*The decision was based on many research reports, but I did not get to tell my experiences. My individual little story is not in the reports. At the RRT hearing my husband was not able to concentrate on past memories... I had a very hard time in the hearing room. I felt the member was not favourable to me and had already decided something.*

### Going to the Minister

*The very sad part of our story begins from here. After applying to the Minister we lost our work rights and Medicare. Every member of my family had to leave their jobs suddenly. From this point we begged for food, shelter and medications. Actually we were like animals.*

*In December 2005 during the Christmas period, both my children were suffering from severe throat infection. They had a fever of 39.5 degrees. But I could not take them to the doctor because we had no money and no Medicare card. Although we are human beings we are not being treated as human beings at this stage in Australia. That's why I said we were like animals.*

*Mother Australia. We are not greedy for your money, materials or other things. We did not come here to earn money. We came for a safe life, a peaceful life. Sri Lanka is having more than 20 years civil war. We came for a peaceful life. Nothing else.*



Sewing project for internally displaced persons in Sierra Leone.

UNHCR/C. Shirley

positive role appropriate welfare and casework support plays in both improving welfare, and preparing, supporting and empowering asylum-seekers throughout the determination process, and its impact on higher levels of voluntary repatriation and lower levels of absconding.<sup>11</sup> The provision of the right to income and healthcare ensures a stable, managed on-shore program is in place and is more likely to ensure asylum-seekers are in a position to respond to immigration decisions appropriately. In addition, costing of such a community-based response has found that it is cheaper than current detention costs.<sup>12</sup> Recent research on the skills of asylum-seekers denied the right to work has found that the Australian economy could potentially gain hundreds of millions of dollars if they were allowed to work while awaiting a decision, particularly in relation to the skill-shortage crisis.<sup>13</sup> The Government's impending Bridging Visa Review is an important opportunity to

redress the welfare crisis that has emerged in the face of removal of entitlements from asylum-seekers over 8 years ago. As a minimum, it is critical that the right to work and healthcare be extended to the final Ministerial decision process as well as seeing the removal of the 45-day rule.

As outlined in this paper, Hotham Mission proposes that Australia nurture a new approach and practice in working with people seeking Australia's refugee protection or humanitarian intervention. This response should be based on a fair and uniform reception on the mainland, ensuring appropriate duty of care, facilitating the humane removal of those not in need of protection, and assisting settlement for those found to need protection. This community-based reception response will enable the interests of the government, community and the asylum-seeker to be upheld, while ensuring Australia meets its international obligations in our tradition of being an inclusive and fair society.

1. PERCO (Platform for European Red Cross Cooperation on Refugees, Asylum-Seekers and Migrants), *Guidelines on the Reception of Asylum-Seekers for National Red Cross and Red Crescent Societies*, Geneva, 2001, p.7.
2. UNHCR *Revised Guidelines on applicable criteria and the standards relating to the detention of Asylum-Seekers*, Geneva, February 1999.
3. UNHCR, *Reception Standards for Asylum-Seekers in the European Union*, Geneva, July 2002; UNHCR,
4. Asylum-Seekers Assistance Scheme Exception Criteria outlines the various vulnerability categories
5. States Parties shall recognize for every child the right to benefit from social security, including social insurance and shall take the necessary measures to achieve the full realization of this right in accordance with their national law: CROC article 26
6. *ExCom Conclusion on Reception of Asylum-Seekers in the Context of Individual Asylum Systems* (No. 93 (LIII) 2002).
7. [http://www.mja.com.au/public/issues/175\\_12\\_171201/steel/steel.html](http://www.mja.com.au/public/issues/175_12_171201/steel/steel.html)  
[http://www.humanrights.gov.au/human\\_rights/children\\_detention/psy\\_review.html](http://www.humanrights.gov.au/human_rights/children_detention/psy_review.html)
8. [http://www.minister.immi.gov.au/media\\_releases/media05/v05119.htm](http://www.minister.immi.gov.au/media_releases/media05/v05119.htm)
9. Further concerns and recommendations listed in the Senate Inquiry into Administration and Operation of the *Migration Act 1958*, March 2nd, 2006. [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/migration/](http://www.aph.gov.au/Senate/committee/legcon_ctte/migration/)
10. Welfare issues and immigration outcomes for Asylum-Seekers on Bridging Visa E, Hotham Mission ASP, November 2003.
11. Reception and Transitional Processing System, Justice for Asylum-Seeker (JAS) Alliance, 2002 & Asylum-Seekers in Sweden (Grant Mitchell).
12. Reception and Transitional Processing System, Justice for Asylum-Seekers Alliance, January 2002.
13. A Chance to Contribute - Forgone Gains to the Australian Economy of Disallowing Asylum-Seekers the Right to Work. Gwilym Croucher, February 2006

# Reception Standards: Employment

## Reception Standards: Employment

### by the UNHCR Regional Office Canberra

The expression "reception standards" refers to the measures which relate to the treatment of asylum-seekers from the time they make their claims, either in-country or at the border, including at an airport or sea port, until either a transfer is effected to the State deemed to be responsible for the examination of their claims or a final decision is taken with regard to the substance of their claims. These measures include the nature of reception conditions upon arrival at the border, access to legal counselling, freedom of movement, accommodation, adequate means of subsistence, access to education, medical care and employment.

States have broad discretion to choose what forms and kinds of support they will offer to asylum-seekers. These may range from "in kind" support, such as accommodation, food and health care, to financial payments or work permits to allow self-sufficiency. Although each state has this broad discretion, it is important that the combined effect of these measures is evaluated to ensure that, at a minimum, the basic dignity and rights of asylum-seekers are protected and that their situation is, in all circumstances, appropriate to the country in which they have sought asylum. Should the asylum procedure be unduly prolonged, asylum-seekers would normally be entitled to a broader range of benefits.<sup>1</sup>

The Executive Committee of the High Commissioner's Programme (ExCom), which currently consists of 70 member States regularly endorses Conclusions on international protection standards through

a consensual process requiring the agreement of its member States. In 2002, the Executive Committee recommended that the reception of asylum-seekers should be guided by the following general considerations:

- i. While there is scope for flexibility in the choice of reception arrangements to be put in place, it is important that the various reception measures respect human dignity and applicable international human rights law and standards;
- ii. Asylum-seekers should 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;
- iii. Gender and age-sensitivity should be reflected in reception arrangements; these should address in particular the educational, psychological, recreational and other special needs of children, especially unaccompanied and separated children. They should also take into account the specific needs of victims of sexual abuse and exploitation, of trauma and torture, as well as of other vulnerable groups;
- iv. Reception arrangements should allow for the unity of the family as present within the territory, particularly in the context of reception centres;
- v. For the purpose, *inter alia*, of protection against *refoulement*, as well as access to reception arrangements, both male and female asylum-seekers should be registered and be issued appropriate documentation reflecting their status as asylum-seekers, which should remain valid until the final decision is taken on the asylum application;
- vi. The range and scope of relevant social and economic benefits may vary, depending on the nature of the asylum procedure, and the type of reception arrangements in place;
- vii. Reception arrangements can be mutually beneficial where they are premised on the understanding that many asylum-seekers can attain a certain degree of self-reliance, if provided with the requisite opportunities;
- viii. In the context of facilitating cooperation between States and UNHCR, and in accordance with data protection and confidentiality principles, UNHCR should be given access to asylum-seekers in order to exercise its function of international protection, taking into account the well-being of persons entering reception or other refugee centres; and asylum-seekers are entitled to have access to UNHCR;
- ix. Key to the effective operation of any reception arrangement are public opinion favourable to asylum-seekers and refugees and confidence and trust in the asylum system, the promotion of both is an important responsibility to be pursued in tandem with the arrangements themselves.<sup>ii</sup>

The right of every individual (including refugees) to have the opportunity to secure material well-being through the exercise of gainful employment has received clear and authoritative recognition by the international community. Article 23 (1) of the Universal Declaration of Human Rights states:

"Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."

Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides:

“The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

The right to be gainfully employed is also expressed in Article 17 of the 1951 Refugee Convention. A much respected commentary on the history and meaning of the Convention, that of Nehemiah Robinson, points out that Article 17 is one of the most important in the Convention, possibly the most important, since without the right to work all other provisions are practically meaningless.<sup>iv</sup> Article 17 states:

### **Wage Earning Employment**

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be

applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

- (a) He has completed three years' residence in the country;
- (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse;
- (c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Though the wording of this article states “refugees lawfully staying in their territory”, the 1951 Refugee Convention does not draw a strict distinction between asylum-seekers and formally recognised refugees. In fact, the 1951 Refugee Convention applies in significant aspects before a formal recognition of refugee status. Otherwise important provisions, notably Article 33 [Prohibition of expulsion or return (“*refoulement*”)] and Article 31 (Penalising refugees unlawfully in the country of refuge), would be rendered meaningless. To this end, it is worthwhile remembering that a person is a refugee within the meaning of the 1951 Refugee Convention as soon as he or she fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which refugee status is formally determined. Recognition of refugee status

does not therefore make a person a refugee but declares him or her to be one.<sup>v</sup>

A closer examination of the 1951 Refugee Convention reveals that the benefits provided under its various provisions have different levels of applicability depending on the nature of the refugee's sojourn or residence in the country. Though lawful presence is to be distinguished from lawful residence or stay, the distinction is often difficult to maintain in practice due to the different approaches adopted within national systems.<sup>vi</sup> The term “lawfully staying” in Article 17 has no generally recognized interpretation although it describes a presence integral to the enjoyment of fundamental rights. Article 31 of the Vienna Convention on the Law of Treaties sets out a fundamental principle of treaty interpretation i.e. that a treaty should be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose. In brief, the purpose of the 1951 Refugee Convention is to assure to refugees the widest possible exercise of their rights.

There are a variety of practical refugee situations in which the lawfulness of the stay has been an issue affecting the exercise of rights. These have commonly been the result of the practice of some countries of tolerating the stay, even for prolonged periods, of certain individuals or groups without at the same time regularizing status in a way entitling the person in question to benefit fully from the terms of the Convention. Where stay is not regularized formally, States have argued that according to the strict interpretation of the words of the Refugee Convention, this

does not constitute “lawful stay” and, accordingly, the rights in the Refugee Convention for the enjoyment of which lawful stay is a prerequisite do not attach to the persons affected. The result is that the refugee, unable to secure entry to another State and denied regularized local settlement, yet benefiting from *non-refoulement*, falls into a legal limbo.

On the basis of the *travaux préparatoires* and other provisions of the Refugee Convention, “stay” embraces both permanent and temporary residence. While neither a prolonged stay nor the establishment of habitual residence is required, the refugee’s presence in the state party must be on-going in practical terms.<sup>vii</sup> The “lawfulness” of the stay is to be judged against national rules and regulations governing such a stay. However, a decision as to lawfulness should nevertheless take into account all the prevailing circumstances, including the fact that the stay in question is known and not prohibited (i.e. tolerated because of the precarious circumstances of the person).<sup>viii</sup> Extending lawfulness in such circumstances is a legitimate exercise of a State in furtherance of the broad humanitarian objectives of the 1951 Refugee Convention. Accordingly, adopting an interpretation of the requirement of “lawful stay”, based upon a common understanding of the words and the drafting history of the Refugee Convention, taking foremost into account the spirit and purposes of the Refugee Convention, it is apparent that refugees are entitled to gainful employment.

The most comprehensive instrument through which any regional body has addressed the issue of reception standards for asylum-seekers is the

European Union Council Directive 2003/9/EC of 27 January 2003 entitled *Laying down the Minimum Standards for the Reception of Asylum-Seekers* (the EU Directive).

Article 11 of the EU Directive addresses the issue of employment for asylum-seekers. It states as follows:

1. Member States shall determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant shall not have access to the labour market.
2. If a decision at first instance has not been taken within one year<sup>x</sup> of the presentation of an application for asylum and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant.
3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.
4. For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals.

UNHCR favours the global application of reception standards, which are implemented harmoniously across countries of refuge, and particularly where living standards differ significantly across regions.<sup>x</sup> An inconsistent approach is detrimental to the integrity of the asylum system, as States that are perceived to provide more favourable reception

standards will attract a disproportionately higher share of the world’s asylum-seekers, thereby encouraging misuse. The UNHCR Executive Committee has stressed “that responsibility and burden sharing and availability of durable solutions promote and strengthen the capacity of host States with limited resources to receive asylum-seekers and to provide adequate reception arrangements.”<sup>xi</sup>

UNHCR recommends that asylum-seekers be granted permission to work if the length of the asylum procedure is likely to exceed a certain period, or where the “package” of support offered to asylum-seekers requires independent financial resources to maintain an adequate standard of living. The Executive Committee acknowledges that “reception arrangements can be mutually beneficial [to asylum-seekers and host countries] where they are premised on the understanding that many asylum-seekers can attain a certain degree of self-reliance, if provided with the requisite opportunities”.<sup>xii</sup> This will assist the re-integration of asylum-seekers into either the country of origin or country of refuge with some degree of financial independence and development (or maintenance) of skills.<sup>xiii</sup>

Concerns expressed by States that granting work rights to asylum-seekers hinder the possibility of an early return to the country of origin are unfounded. Access to the labour market furthermore removes incentives for informal employment and may also facilitate the detection of failed asylum-seekers for removal upon completion of the asylum determination process. Moreover, conferring a right to work provides



A carpentry shop in Zwedru operated by UNHCR under the skills training programme. UNHCR/F. Fontanini

psychological benefits, and may open the way to technical and vocational training programs which accomplish the full realisation of the right to work.<sup>xv</sup> However, permitting asylum-seekers to engage in gainful employment, temporarily or otherwise restrictively, does not displace the responsibility of the State to provide all necessary support covering the basic necessities of life when asylum-seekers are unable to find adequate employment.<sup>xv</sup>

UNHCR urges States parties to the 1951 Refugee Convention to adopt appropriate reception standards, including the ability to engage in gainful employment, to ensure the human dignity and self-reliance of asylum-seekers. Circumstances where the asylum

procedure is likely to proceed over an extended period, or where the "package" of support offered requires independent financial resources to maintain an adequate standard of living, are of particular concern to UNHCR. This position is in accordance with established international human rights law, Executive Committee Conclusions and, importantly, the 1951 Refugee Convention relating to the Status of Refugees, as amended by the 1967 Protocol.

i. UNHCR, 2000 *Reception Standards for Asylum-Seekers in the European Union*, Geneva, July, p.6

ii. ExCom Conclusion No. 93 (LIII) 2002, *Reception of Asylum-Seekers in the Context of Individual Asylum Systems*, para (b)

iii. See also Articles 18 & 19 of the 1951 *Convention*.

iv. Robinson, N 1953, *Convention Relating to the Status of Refugees: Its history, contents and interpretation*, Institute of Jewish Affairs, p. 96

v. UNHCR, 1979, *Handbook on Procedures and Criteria for Determining Refugee Status*, Office of the United Nations High Commissioner for Refugees, Geneva, Re-

edited January 1992, p.9, para 28

vi. Goodwin-Gill, GS 1998 *The Refugee in International Law*, Clarendon Press, Oxford, 2nd ed, p.307

vii. Hathaway, JC 2005 *The Rights of Refugees under International Law*, Cambridge University Press, Cambridge, p.187

viii. Grahl-Madsen argues that lawful stay may be implied from an officially tolerated stay beyond the last date that an individual is allowed to remain in a country without securing a residence permit (usually three to six months). See Grahl-Madsen, *Status of Refugees II*, pp. 353-354

ix. UNHCR considers one year to be excessive and that a period of perhaps six months would be more appropriate.

x. Global Consultations on International Protection, 2001 *Reception of Asylum-Seekers, including Standards of Treatment, in the Context of Individual Asylum Systems*, U.N. doc. EC/GC/01/17, 4 September

xi. ExCom Conclusion No. 93 (LIII) 2002, *Reception of Asylum-Seekers in the Context of Individual Asylum Systems*, para (c)

xii. *ibid*, para (b)(vii)

xiii. Global Consultations on International Protection, 2001, *Reception of Asylum-Seekers, including Standards of Treatment, in the Context of Individual Asylum Systems*, EC/GC/01/17, 4 September, para 13; ExCom Conclusion No. 93 (LIII) 2002, *Reception of Asylum-Seekers in the Context of Individual Asylum Systems*, para (b)(vii)

xiv. UNHCR, 2000 *Reception Standards for Asylum-Seekers in the European Union*, Geneva, Jul, p.29

xv. Global Consultations on International Protection, 2001, *Reception of Asylum-Seekers, including Standards of Treatment, in the Context of Individual Asylum Systems*, EC/GC/01/17, 4 September

For more information on this issue the following research paper 'Rights of Refugees in the Context of Integration: Legal Standards and Recommendations', by Rosa da Costa, External Consultant (June 2006) is available on our website:

<http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=44bb90882>

# Rare View: a glimpse into Hamilton's Somali Community



One dollar sausage.

Photo: Mark Hamilton

In a national first, one of New Zealand's newest and most misunderstood communities was the focus of a social photography project at the Waikato Museum, Hamilton, in New Zealand recently.

The show, entitled 'Rare View', explored Hamilton's Somali community through a series of large photographs and personal items. It has been a collaborative effort between the Waikato Museum, photographer Mark Hamilton and the community itself, which was keen to take a leading role in shaping the shows direction.

Many Somali wanted to confront the stereotypes that exist about them, their culture and their religion. They were

determined to have the photographer capture them engaged in activities that clearly communicated the pride they feel about their culture and about being New Zealanders.

Mandeq Mohamed is a young woman working at the Waikato Hospital who, along with her family, took a leading role in organising this exhibition.

"This is the first time we can tell people more about our community, our culture, our religion. We have all these things, but that doesn't stop us from being New Zealanders," said Mandeq.

Mandeq and her family are among four thousand Somali living in New Zealand, and they feel the photographs are both a beautiful example of this art form and a

timely reminder for others that just like everyone else they have to earn a living, go to school and adhere to their own set of values and mores.

Abdirizak Abdi from the Ministry of Education worked closely with the Waikato Museum's social history concept leader and curator, Crystal Ardern, to bring the Somali community on board.

"I can feel the heat sometimes, being Muslim, but we don't want to be held up by that, we want to move on," says Abdi.

The exhibition also attracted interest from the Somali community outside of New Zealand. The exhibition's photographer Mark Hamilton received an email from Somali man, Yussuf Kalib who lives in Dallas, Texas who saw the story on a news website.

"I cannot thank you enough for presenting a portrait of my people so others may be able to be educated about them and their story. When I go to work everyday in western business attire, one may not think I have anything in common with the veiled Somali woman walking down the street in a town in New Zealand, but behind my own "veil" lies a true Somali who knows the value of his culture and his people," he said.

The exhibition clearly had an impact on the broader community. "We knew nothing of this culture, now we've learnt a bit," wrote one Hamilton visitor.

"The exhibition is a landmark action to increase awareness and tolerance in an increasingly diverse Aotearoa," said another visitor from Auckland.

Rare View ran at the Waikato Museum in Hamilton between December 2005 and March 2006.

## Australia's Humanitarian Programme helps Women at Risk



Nearly 1000 vulnerable women and children found refuge in Australia under the Humanitarian Programme in the past year, with 995 refugees entering on Women at Risk Visas.

Australia's Immigration Minister Amanda Vanstone said this was the largest since the category was introduced in 1989, and represented 16.5 percent of the refugee intake exceeding the nominal target of 10 percent.

"We know that women and children are the most vulnerable refugee group. They can be discriminated against, threatened and abused, and they often have no means of protecting themselves and their children," Minister Vanstone said.

"I'm very pleased we have far exceeded our target for assisting vulnerable women and children."

In the last Australian fiscal year (July 05 – June 06), 14,122 visas were granted under Australia's Humanitarian Programme. Of these, overseas applications accounted for 12,758 visas, while 1,364 were granted onshore protection. The humanitarian component catered for 8,100 and the refugee component 6,022.

Australia's Humanitarian Programme mainly comprises people from Africa, the Middle East and South and South-east Asia. In 2005-06, 118 visas were granted to Burmese people from the Thai-Burma border, Malaysia and India.

Felementu, from Ethiopia, is one of many refugee women to come to Australia under the Women at Risk programme in recent years, and is now living in Tasmania.  
Photo: DIMA

# Thanks to our donors

UNHCR Regional Office Canberra extends its warmest thanks to the Australian and New Zealand governments for their financial support to UNHCR this year and to private sector donations in Australia. UNHCR has received the following donations for its work world-wide for the Calendar year 2006.

## Australia

Source	Programme	Amount (USD)
AusAID	Core Contribution	5,328,467
AusAID	Protection in Asia	1,937,984
AusAID	Protection in Asia	1,937,984
AusAID	Afghanistan- Returnees and IDPs	2,688,372
AusAID	HIV-AIDS	158,861
AusAID	Timor-Leste IDP Situation	286,260
	AusAID sub-total	12,337,929
DIMA	Anti-fraud Plan of Action, Geneva	50,000
DIMA	Resettlement Activities, Malaysia	110,000
DIMA	Refugee Women's Protection Clinic, New Delhi, India	26,200
DIMA	Assistance to Internally Displaced People in Nepal	101,756
DIMA	Assistance to Bhutanese Refugees, Nepal	114,504*
DIMA	Part-funding of Protection Officer, Tanzania	52,125
DIMA	Resettlement interview/transport support, Sudan	47,875
DIMA	ICMC Deployment Scheme Sudan & Kenya	135,000
DIMA	Refugee Status Determination, Benin	57,520
DIMA	Staff for PROGRESS Database, Thailand	38,523
DIMA	Staff cost for Resettlement Clerk, India	22,688
DIMA	Staff cost Elegibility Assistant, Turkey	34,688
DIMA	ICMC Deployment, Tehran, Iran	120,000
	DIMA Sub-total	910,879
	<b>Total</b>	<b>13,248,808</b>

\*A further 318,092 is provided for 2007

We also extend warm thanks and appreciation to our private sector donors who, through our National Association Australia for UNHCR, have so far in 2006 contributed to the following programmes:

Source	Programme	Amount (AUD)
Australia for UNHCR	Afghan Shelter project	35,000
	Sudanese Refugee Emergency	155,000
	East Timor emergency:	50,000
	South Sudan Repatriation program:	46,000
	Malaria programs in Kenya	56,000
	Colombia Self reliance project	100,000
	<b>Total</b>	<b>442,000</b>

## New lease of life for refugee women's protection clinic in India

UNHCR's Refugee Women's Protection Clinic in West Delhi was facing closure earlier this year because of a lack of funding, but after the Australian government offered to help finance it in March, the facility will now remain open until the end of the year.

Australia's Minister for Immigration and Multicultural Affairs, Senator Amanda Vanstone visited the clinic in March, the first such visit ever by an immigration minister from another country to a refugee operation in India.

Senator Vanstone spent time chatting and drinking tea with the women attending the clinic which was set up to meet the needs of hundreds of women refugees mainly from north-western Myanmar. Around 80 per cent of them are Chin, but the group includes some Kachin and Burmese as well. They have fled violence and trauma, arriving in New Delhi after a gruelling five-day voyage on buses and trains having travelled over 1,000 kilometres.



Australia's Minister for Immigration and Multicultural Affairs, Senator Amanda Vanstone, meets refugee women from Myanmar at UNHCR's Women's Protection Clinic in Delhi. Photo: UNHCR/N. Bose

## New Zealand

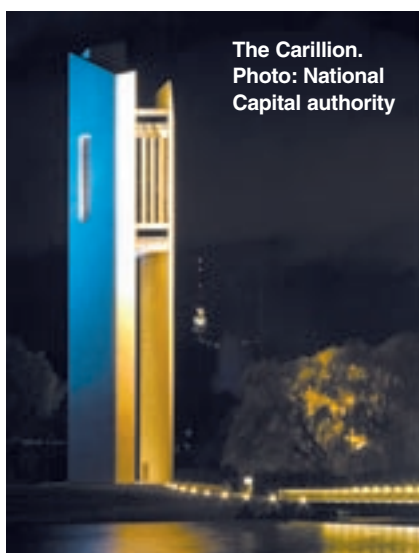
Source	Programme	Amount (USD)
NZAid	Core Contribution	2,461,320
	<b>Total</b>	<b>2,461,320</b>

## Keeping the flame of Hope alive

'Hope' was the theme for the 2006 World Refugee day for the millions of refugees that continue their daily struggle for survival. This year the United Nations High Commissioner for Refugees Mr António Guterres asked us to recognise the indestructible hope of refugees, which drives them to defy all odds in order to survive and to rebuild their lives.

The day was celebrated in various ways in our region in both capital cities and rural centres.

Canberra's Chief Minister Jon Stanhope launched the hoisting of World Refugee Day flags in the Parliamentary Zone, and a 'welcome book' with more than 1,200 signatures was presented to the ACT Assembly. A number of Canberra's key icons were lit blue again this year to coincide with the lighting of *Jet d'eau* in Geneva where UNHCR headquarters is based. The Carillion, the National Library, the National Art Gallery, Questacon, the National Archives, and Old Parliament House. The ACT Refugee Committee hosted a public forum and a breakfast to mark this year's event.



**The Carillion.**  
Photo: National Capital authority



**Ms Ibsai Ohinde, Paul Cullen Humanitarian Award recipient and Mrs Marlena Jeffery, wife of the Governor-General.**  
Photo: Austcare

Also in Canberra, Australian Immigration Minister Senator Amanda Vanstone hosted a citizenship ceremony for refugees in Mural Hall, at Parliament House. This year, twenty three refugees and their families were joined by embassy staff, advocacy groups and community organisations and welcomed as Australian citizens. "For these people, World Refugee Day carries two meanings – a reminder of their journey to a new life in Australia and the day they embraced Australia as home by becoming citizens of this proud nation," Senator Vanstone said.

Australia's Governor-General Major General Michael Jeffery AC CVO MC and Mrs Marlena Jeffery hosted a reception to present the 2006 AUSTCARE Paul Cullen Humanitarian Awards at Government House Canberra. The awards honour 'local heroes' who work with refugees.

UNHCR's National Association held its fifth annual World Refugee Day Breakfast at the Westin Hotel in Sydney. *Australia for UNHCR* patron, the Hon Tim Fischer AC; Special Representative of Australia for UNHCR, Mr Ian Chappell; and former refugee Ibsai Ohinde were joined by over 450 guests for this year's World Refugee Day Breakfast.

The event, which was set against the background of the FIFA World Cup, marked the importance of sport in the lives of refugees. A football signed by the Socceroos World Cup team was bought at an impromptu auction held at the Breakfast for \$8000. Funds raised on the day (around \$80,000) will be used to support education, health and sports programs for young refugees around the world.



Mr Tim Fischer AC, Patron of Australia for UNHCR, auctions a football signed by the Soccerroos. Photo: Australia for UNHCR

In the Paramatta district of Sydney, the Baulkham Hills Parramatta Migrant Resource Centre hosted a week of events which celebrated the lives of refugees through song, dance and speeches. The crowd was entertained by the MRC singers.

The theme of 'Hope' for this year's World Refugee Day was echoed when three students spoke of their experiences as refugees and migrants. Kim Hue Nguyen explained how she and her family became refugees, about their escape from Vietnam and subsequent settlement in Australia.

Lismore City Council in northern NSW hosted an event with the participation of refugees, businesses, government and community organisations which all help refugees settle in the region. Sudanese women and girls performed traditional dances and a video from Kakuma Refugee Camp, North Kenya, was shown.

In Perth, the Murdoch University Law School in conjunction with the WA Refugee Alliance and SCALES Community Legal Centre held a forum called 'Turning Them Away' on the Migration Amendment Bill 2006. Speakers included Carmen Lawrence, MP, Mary Anne Kenny, and



Aranaea Ayres; Wambui Ngunjiri, Kellie Hill, Tanya Heaslip, Dr Judyth Watson, Secretary CARAD, Mary Anne Kenny, Hon Dr Carmen Lawrence MP at the 'Turning Them Away' forum. Photo: Elaine Smith



Parliamentary Secretary for Justice, Jenny Mikakos MP, presents a certificate for outstanding contribution to Nennerkor Tuazama, a panelist at the Department of Justice World Refugee Day Forum. Photo: Dept of Justice Peter Firmin

testimonials were read from people who had been on Nauru were read.

In Melbourne, the Victorian Department of Justice held a lunch forum, hosted by the Parliamentary Secretary for Justice, Ms Jenny Mikakos MP, at the Immigration museum.



Sudanese dancers celebrate World Refugee Day. Photo: Lismore City Council

The Hope theme for WRD was explored by a panel of newly arrived refugees who discussed the challenges of settling into a new country. Parliamentary Secretary for Justice presented a Certificate of Achievement to Nenkerkor Tuazama, a recently arrived refugee from Liberia, one of the four young people who spoke in a panel about his experiences of resettlement in Australia.



Painting from Kate Durham exhibition. Photo: Maree Klemm

In Brisbane, the Queensland College of Art had a weekend of events including the launch of an exhibition by Kate Durham to commemorate WRD. A forum was held, followed by a rally and march through the city to the college to hear other speakers and join a group of Maadi (Sudanese) women and children for some food, dancing and craft making.

The Refugee Tutoring Committee in Brisbane held a day of festivities including African dancing, soccer, drumming, workshops, bands and choirs. Over 600 people attended the event held at the Marymac Hall in Annerly.



Childrens banner. Photo: Refugee Tutoring Committee

The Brisbane Multicultural Arts Council hosted a Citizenship Ceremony at Yungaba, once a hostel for migrants and refugees. Refugees from Afghanistan, Eritrea, Iraq, Liberia, Rwanda and Somalia received their citizenship.

In South Australia, the African Communities Council held an Australia Family Fun day to celebrate WRD and Rural Australians for Refugees held a public event with music, speakers, and posters in City Square, Mount Gambier.

In Darwin, the Melaleuca Refugee Centre celebrated the day at the Water Gardens Jingili with stories, drawings, music and cultural entertainment, and a citizenship ceremony.



PNG Foreign Affairs and Immigration Minister the Hon. Sir Rabbie Namaliu opens the UNHCR WRD reception in Port Moresby. Photo: UNHCR

In PNG, UNHCR hosted an exhibition of photos, films and refugee children's artwork, opened by Foreign Affairs Minister Sir Rabbie Namaliu. The UNHCR Representative Ms Wallaya Pura also participated in a radio talk show on FM 100 to talk about WRD and UNHCR's work.

In Wellington, New Zealand, Immigration Minister David Cunliffe and the Mayor of Lower Hutt, David Ogden and community leaders attended a WRD a performance of the Sudanese Theatre Group and Photographic Exhibition *Walk with Me* at the Petone Settlers Museum. Earlier in the day, Somali dancers performed at the Petone Library where a photographic exhibition was on display.

## Outback trip to promote cultural understanding

Fourteen young refugees took part in a six-day tour to Outback Queensland last September, giving them a taste of 'quintessential Australia' and promoting cultural understanding on both sides.

The 14 Sudanese and Liberian teenagers all came to Australia in the Unaccompanied Humanitarian Minors Programme, and the tour was made possible through a partnership of private and government sponsors.

Highlights of the Outback tour included sharing African songs around a campfire on Longreach's Thomson River; visiting a sheep and cattle property; learning about Aboriginal dreamtime in one of Australia's oldest carving sites; shearing a sheep at the wool scour in Blackall; and learning about Australian history at the Stockman's Hall of Fame in Longreach.

The trip provided an opportunity to communicate the experiences of refugees to Queenslanders so that others could understand the hardship they have

endured and the efforts made to fit in and contribute to their new communities.

Dr John Skala of the Brisbane Travellers Medical Service, whose parents were post-war European refugees and whose company was a key sponsor of the project, said it was important that refugees in Australia were treated right and given such opportunities.

"I really welcomed the opportunity to support a project that focused on travel and the importance of cultural understanding," Dr Skala said.

"Travelling is a great way to broaden people's understanding of different cultures, and this trip has afforded the children the chance to learn more about Australian culture and for other Queenslanders to hear their stories. It is important for refugees in Australia to feel welcome in their new country," he said.

For James Atem, a 17-year-old Toowoomba resident and former

Sudanese refugee, it was a trip he would never forget.

"Our Outback trip has been very successful," he said. "Most important of all, I learnt more about Indigenous people in relation to their background. I am looking forward to learning more on Australian history. I also thank the local community for being so welcoming when we first arrived. It was a wonderful trip, I have never had an experience like this in my life, and it was great to meet and make new friends," Atem said.

The trip was made possible through the generosity of sponsors including Dr John Skala of the Brisbane Travellers Medical Service, the Queensland Government through Multicultural Affairs Queensland and Minister Cummins' Office, the Australian Workers Heritage Centre, Mercy Family Services, and QANTAS. Other state government department in-kind support was also provided through QRail and Education Queensland.



Forming new friendships were Joyce Odokopira (Sudanese) from Brisbane, Achol Bol (Sudanese) from Toowoomba, Anike Akello (Sudanese) from Toowoomba and Alice Cardio (Liberian) from Brisbane, at a campfire on the banks of the Thomson River in Longreach.

# UNHCR helps improve conditions for Dili's IDPs

In June, UNHCR sent an Emergency Response Team (ERTeam) to Timor-Leste to help improve conditions of the tens of thousands of internally displaced people (IDPs) who had fled to makeshift encampments in Dili and surrounds since late April.

The team's deployment followed a specific request for assistance from the Timor-Leste President Xanana Gusmao and the Special Representative of the Secretary General in Dili in late May.

UNHCR's specific focus was shelter provision and an initial airlift of some 200 tonnes of relief supplies was launched, including lightweight family tents, plastic sheets, blankets, kitchen-sets and stoves.

UNHCR Canberra's Ariane Rummery was part of the initial 12-strong Emergency Response Team, and spent six weeks in Dili from early June to mid-July.

"When we arrived in Dili, the focus of the ERTeam's work was to improve conditions in some of the most congested camps, and those with the poorest conditions," she said.

"People had fled to places where they felt safe – in some cases this was in church institutions like churches, seminaries and convents, and in others in public spaces near to where there was a strong foreign troop presence such as the airport or near the port.

"Near the airport, for example, people were literally camping on the side of the road and some had been there for several weeks without adequate shelter or sanitation facilities," said Rummery.

UNHCR cleared land adjacent to the airport and pitched almost 600 tents at the site, working with other specialist agencies to install proper sanitation facilities.

Elsewhere in Dili and surrounds, UNHCR distributed tents, blankets, plastic sheets, blankets and other items to makeshift encampments according to needs and gaps, and working in close concert with other agencies.

"When I left Dili in mid-July, the security situation had improved markedly since early June. There were more and more signs of normalcy with more schools resuming, shops opening and more traffic on the streets.

"Some people had started to leave the IDP sites, although there was no discernible large-scale movement home. And for many people, their houses have been destroyed," Rummery said.

UNHCR is supporting the process for safe voluntary return and reintegration by offering to give tents to those families whose houses have been destroyed, once it is safe for them to their bairros (or suburbs).

While Ms Rummery returned to her post in Canberra in mid-July, other members of UNHCR ERT remain in Dili and continue to address urgent issues in remaining IDP sites and carry out protection work.



UNHCR's ERTeam quickly set about improving shelter in some of Dili's most congested makeshift encampments. Photo: UNHCR/N. Ng

## Support UNHCR's ERTeam

UNHCR's National Association has a regular giving scheme to support the work of the Emergency Response Team (ERTeam) – a specially trained group of staff ready to assist in emergencies at 72 hours notice.

By becoming a UNHCR Emergency Response Team supporter you will help

give the team year round support and bring rapid relief to people in need. Last year alone, the team responded to dozens of emergencies, helping to deliver life saving essentials like food, water, shelter and health care.

Monthly support from you will provide our Emergency Response Team with steady, reliable support all year round. Instead of waiting for funds to arrive in response to a situation, your monthly

donations will enable the team to prepare for future emergencies – and go straight into action when a crisis occurs.

To find out more please call Australia for UNHCR on 1300 361 288 or visit [www.refugees.org.au](http://www.refugees.org.au)

*In July, UNHCR deployed ERTeams to provide humanitarian relief to the thousands of displaced people in Lebanon and those fleeing into Syria. For more information visit [www.unhcr.org/cgi-bin/texis/vtx/lebanon-crisis](http://www.unhcr.org/cgi-bin/texis/vtx/lebanon-crisis)*

# Immigration Museum programme helps challenge myths about refugees

Year 11 students from Erinbank Secondary College, a school from Tullamarine in the northern suburbs of Melbourne, were the first to sample UNHCR poster packs when they visited the Immigration Museum recently. The packs, which provide information on refugees and asylum seekers, are part of the museum's *Refugees* programme aimed at school students in years 9-12.

Education Officer Simon Dalton explains that the *Refugees* programme strives to look

at both the facts and the myths about refugees so students can gain a more informed opinion about the issue.

"Through the programme, students have the opportunity to learn human stories behind the stereotypes about refugees and evaluate public, media and government responses to related topics such as human rights, detention centres, temporary protection visas and illegal immigration," said Dalton.

The Refugees programme is part of the Museum's broader education programme

that aims to "personalise and challenge our thinking about the migrant experience which, along with the story of Indigenous Australians, is the story of who we are and where we have come from," said Dalton.

The Immigration Museum is part of the Museum Victoria which also includes Scienceworks and the Melbourne Museum.

Further information on the programme can be at <http://immigration.museum.vic.gov.au/education/>



Year 11 students from Erinbank Secondary College from Tullamarine in Melbourne's north are among the first to receive UNHCR's poster packs. Photo: Museum Victoria/J. Augier

# Determination and hard work pays off for young refugee

A 97.8 percent score in the VCE (final year exams) is a strong reward for any high school student. But last year's dux of McGuire College in Shepparton Victoria earned the results after only two year's study in Australia and almost a lifetime on the move as a refugee.

And for 20-year-old Mohammed Yassin, it was his experiences faced as a consequence of fleeing Saddam Hussein's regime, that helped drive him to achieve success.

"It wasn't a single year. This mark I believe is a result of my whole life education and experience," he said.

Yassin and his family (father Sittar, mother Shada, and younger brother Muhanand) fled their home town of Diwaneya in southern Iraq in 1990, spending time in refugee camps in Iran and then in Damascus. Eventually, failing to find the protection they needed in Syria, Yassin's father travelled to Australia via a hazardous boat trip from Indonesia in 2000, with his family joining him in 2003 after recognition of his refugee status.

One of the hardest things Yassin faced when resuming his studies in Australia was the language barrier. "Although I had some English from my previous study, it wasn't enough to fully understand the subjects

and be able to answer and explain my answers most of the time," he explains.

Yassin is today studying biomedical science at Melbourne University with the help of a scholarship, and hopes to transfer to medicine in future years.

"After this long journey I've learnt how to make new friends, how to respect other cultures, how to learn the new language (he now speaks Arabic, English and some Persian) and most importantly, I've learnt not to give up so easily," he said.



Mohammed Yassin, 2005 dux of McGuire College in Shepparton, celebrates his results with his mother Shada Hussein. Photo: The Age/P. Scala

## Face the Facts

The Australian Human Rights and Equal Opportunity Commission's (HREOC) has published an excellent resource of statistical and primary evidence, called *Face the Facts*.

*Face the Facts* provides a readily accessible resource for anybody wishing to gain knowledge of an issue such as asylum-seekers in relation to Australia, free of opinion, bias or populist stereotypes. It breaks the issue down to its bare facts and figures,

sourced from Parliamentary law, government policies and figures from the Australian Bureau of Statistics.

In today's resource-ready, yet highly populist media and oft motive-driven world, *Face the Facts* provides an accessible resource to promote nothing more than simply a better understanding of the issues.

Available at:

[http://www.humanrights.gov.au/racial\\_discrimination/face\\_facts/index.html](http://www.humanrights.gov.au/racial_discrimination/face_facts/index.html)

## A sporting opportunity for new arrivals

When 19 year old Gogbeh Workolo saw the sign on a bulletin board at Adelaide TAFE's English Language Services, he was excited. Basketball South Australia's "New Arrivals" program was looking for refugees and migrants to join their team and the point guard from Liberia was keen to get back on the court. "When I saw the advertisement, I thought, wow, that would be great to go and socialise with my friends. It's good because it's a means of uniting young people - especially boys - instead of just hanging out and doing nothing in the streets," says Workolo, who quickly joined the Thursday evening training sessions where players come from countries such as Sudan, Sierra Leone, Bosnia, Iraq and Philippines. "It's like the entire world on a plate," laughs Workolo, "When I see us playing I see a bond of unity."

Like other team members, Workolo developed his ball skills on the dirt courts of a Guinean refugee camp. Melissa Lange, Junior Development Officer at Basketball SA, admits the structured training program and formal games can be a struggle for new arrivals. "Cost, attendance and transport are the main issues we have to deal with," explains Lange who runs modified games to keep the participants - generally aged between 17 and 23 - interested. Players pay \$4.00 a week but their uniforms and team nomination fees are picked up by Basketball SA. Many have obtained sneakers through the Migrant Resource Centre. Lange believes that flexibility is the key to running a successful sports program that benefits the players. "In terms of transition to Australian culture, they benefit hugely," she says, "The kids are practising their language skills in a new environment; they are learning to catch the bus to the games; learning how to be on



Philip Deng blocking a shot.  
Photo: Indoor Soccer Australia

time, and because we are playing in a social competition they are getting the chance to meet Australian people in a different format to a school setting."

On a Monday night at Adelaide's Gepps Cross High School, more than a hundred young Afghani and African boys tear around the soccer field. "Sport is the best way to bring people together," says Ian Wallace, a volunteer coach for the Kilburn Indoor Soccer League, a partnership with Lutheran Community Care. "The boys absolutely love

it. This is a game where you work for your team - no matter what culture or tribe you come from - so we concentrate on getting out there and making friends," says Wallace who was inspired to help organise the league after attending an African Congress meeting in Adelaide in 2004. The next challenge will be to get more girls involved though according to Wallace the teams are not lacking female audience, "the Liberian boys seem to have quite a few local fans," he laughs.

# Help them play, let them learn

UNHCR has launched a global campaign on World Refugee Day: [ninemillion.org](http://ninemillion.org).

Ninemillion refugee children in the world dream of a better future. This campaign is helping them realise their dreams by improving their lives in refugee camps through education and sport. Learning and play create stronger children. Stronger children build stronger communities.

Education, play and sport in refugee camps engage children in positive activities that give them hope and provide vital life tools, which can be used to rebuild lives and regain a sense of normalcy and structure in their daily lives. Refugee boys and girls each have unique needs. Girls, in particular, play an essential role in their communities. Yet they face the harshest barriers. Full of potential, they need a



**Nine million faces. nine million names. Nine million stories. nine million children are refugees right now. Help them play, let them learn.**

chance to grow, dream, achieve and help change tomorrow.

The objectives of the campaign are to:

- raise awareness about refugee children and youth
  - raise funds for education and sport programs for refugee children and youth
- For more details, please visit [ninemillion.org](http://ninemillion.org)

## Suraya Narsirova, age 11, striker/goalie, displaced person in Azerbaijan

My family came from Lachin in 1992. I was born in Sumgayit. I love English. I want to be a teacher because I think I can keep the children calm. I also want to help people wounded by war. When I play and see weak players, I wish for them to play stronger. My goal for them is to win.

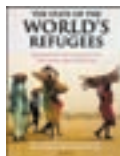
## New UNHCR Resources

### New UNHCR Resources

The following resources are available from UNHCR's Regional Office in Australia.

#### ***The State of the World's Refugees: Human Displacement in the New Millennium***

looks at the challenges to refugee protection and response of the international community. This edition provides an overview of key developments related to forced displacement from 2001 to September 2005.



#### **UNHCR Global Appeal 2006**

This report provides an overview of UNHCR's strategies and programmes for 2006.



#### **The Global Report 2005**

UNHCR's annual review of achievements and impact of its programmes worldwide during the previous year, published December 2004.



### The Handbook for self-reliance

A handbook to assist formulating and implementing self-reliance strategies for refugees and refugee communities.



#### **Refworld 2006 (issue 15)**

An updated UNHCR's Refworld CD-Rom and DVD is out now. The new edition contains over 90,000 refugee-related documents and bibliographic references from a wide range of sources, including background country reports, guidelines, UNHCR position papers and statistics.



More information on Refworld can be found at the following website: <http://www.unhcr.org.au/>  
To order Refworld or request more information email [aulcapi@unhcr.org](mailto:aulcapi@unhcr.org) or [hqpr11@unhcr.org](mailto:hqpr11@unhcr.org)

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