



**UNHCR**  
The UN Refugee Agency

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## **UNHCR concerned about confirmation of TPV system by High Court**

The recent High Court decisions of *MIMIA v QAAH* and *NBGM v MIMA* assert the primacy of Australia's domestic legislation. The Office of the United Nations High Commissioner for Refugees is concerned that they do not, however, reflect the spirit of the legal framework for refugee protection envisaged in the 1951 Convention relating to the Status of Refugees.

UNHCR Regional Representative Mr. Neill Wright said that the High Court decisions maintain a temporary protection regime that creates uncertainty on the part of refugees, postponing unnecessarily solutions to their displacement, as well as their integration into society.

In June this year, UNHCR acted as *amicus curiae* intervenor in the case before the High Court which looked at the question of re-examining refugee claims on application for a Permanent Protection Visa at the time when the Temporary Protection Visa expires.

"The international legal framework of the Refugee Convention provides that refugee status applies until a cessation clause under Article 1C of the Convention is applicable," said Mr Wright.

"UNHCR is therefore concerned that the High Court decisions affirm provisions of the Australian Migration Act which override the international framework, since refugees in Australia will continue to need to prove afresh their refugee status after three years.

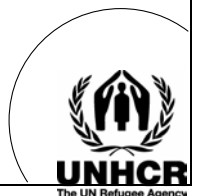
"Though the Refugee Convention does contemplate the cessation of refugee status when, for example, conditions in the country of origin have significantly changed, it does not envisage a potential loss of status triggered by the expiration of domestic visa arrangements," said Wright.

The rulings – which confirm arrangements already in place under Australia's Migration Act - may affect the futures of over a thousand persons who have been officially recognized as refugees in Australia and still hold Temporary Protection or Temporary Humanitarian Visas.

In addition to placing temporary protection visa holders in a situation of uncertainty with regard to their future, Australia's temporary protection regime, as UNHCR has pointed out in numerous previous submissions to

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the Government, denies recognized refugees the right to family reunion, the right to re-enter Australia, and the right to Refugee Convention Travel Documents. The latter is, in particular, considered by UNHCR to be inconsistent with the letter of Article 28 of the Refugee Convention.

“It is the view of UNHCR that the current system of Temporary Protection Visas detracts from the Australian Government's otherwise commendable reputation for providing durable solutions to thousands of refugees in need of international protection,” said Wright.

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**For further information** on UNHCR's position on the TPV system please see:

- *UNHCR's 2006 Amicus Curiae submissions on QAAH and NBGM* at: [www.unhcr.org.au/protlegal](http://www.unhcr.org.au/protlegal)
- *UNHCR's Discussion paper No 2-2002 on Temporary Protection* at: [www.unhcr.org.au/protlegal](http://www.unhcr.org.au/protlegal)
- *UNHCR's 2005 submission to the Senate Legal and Constitutional References Committee Inquiry into the Administration and Operation of the Migration Act 1958* at: [www.unhcr.org.au/pdfs/AdministrationandOperationMigAct.pdf](http://www.unhcr.org.au/pdfs/AdministrationandOperationMigAct.pdf)