

# Refugee Newsletter

## From the Regional Representative

The Captain Cook Memorial Fountain, one of seven icons lit up in blue for World Refugee Day.  
Photo: UNHCR/M. Lech

obstacles in their path to flee persecution and rebuild their lives.

Here in Australia, in Canberra, the Captain Cook Fountain on Lake Burley Griffin was lit up in blue to mark World Refugee Day. This was a very welcome celebratory gesture in the nation's capital, where the topic of refugees is more often characterised by controversial political debate. UNHCR greatly appreciated the participation and support of the National Capital Authority in this international event. Few Australians will know that the nozzle design for Canberra's water jet, installed in 1975, was based on the *Jet d'eau* on Lake Geneva – where UNHCR's Headquarters is based. That water fountain is also lit up in blue each World Refugee Day, so there was a wonderful symbolism linking the two cities that day.

Symbolic gestures are important.....but so too are substantive developments that safeguard the rights of refugees and other displaced people.

The recent changes to Australia's Migration Act announced by the Prime Minister in June were a welcome step towards improving the treatment of refugees and asylum seekers.

The affirmation by Parliament that as a matter of principle, minors shall only be detained as a measure of last resort, was of particular import. This change for the better, as Australia's Human Rights and Equal Opportunities Commission has noted, enshrines important principles from the international Convention on the Rights of the Child into Australia's Migration Act.

*Continued on page 2...*

In the first half of 2005, there have been some notable landmarks regarding refugee issues in this region.

It was heartening to hear that the first 76 of the Afghan refugees rescued by the Norwegian freighter MV Tampa back in 2001 had received certificates of New Zealand citizenship from Prime Minister Helen Clark in Auckland in April 2005, including the renowned "Tampa Boys" – 37 unaccompanied teenagers most of whom have since been reunited with their families.

This happy outcome to a perilous and extraordinary journey provided a great backdrop to the "courage" theme celebrated on World Refugee Day 2005, which sought to highlight the courage of refugees as they overcome the enormous

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## From the Regional Representative

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The amendments also provide a softening of mandatory regulations for families with children; faster processing of TPVs; extended discretionary Ministerial powers; and greater independent scrutiny of long term detention cases by the Commonwealth Ombudsman.

Nevertheless, with regard to these positive developments, I feel it is important to take the opportunity to reiterate UNHCR's detention guidelines.<sup>1</sup> Any detention of asylum-seekers is viewed globally by UNHCR as inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs. While UNHCR recognises that detention by States is sometimes necessary to carry out health, identity and security checks, it should be for the shortest possible time and alternatives should be explored.

This matter is, however, but one amongst many echoes of real security concerns in today's world. Another is the growing need identified by the international community to develop complementary forms of protection.

In 2001, the concept of "complementary protection" was identified in UNHCR's "Agenda for Protection" as an important new tool. It is a concept which has been frequently debated since, and it will be addressed once again at UNHCR's Executive Committee (EXCOM) meeting in Geneva this October. To help stimulate discussion in this region, it is also the focus of the discussion papers in this Newsletter, and I hope the various contributions from a range of perspectives will stimulate the interest of our readers.

1. Copy of UNHCR's detention guidelines can be found at [www.unhcr.org.au/protlegal](http://www.unhcr.org.au/protlegal)

## New High Commissioner for Refugees

Mr. António Guterres officially assumed his duties as the 10th UN High Commissioner for Refugees on June 15, 2005, declaring support for the core values of international refugee protection.

The former Portuguese prime minister was nominated for the position on May 24 by the Secretary-General Kofi Annan and formally elected three days later by UN General Assembly to a five-year term.

Addressing refugee agency staff on his first day, Mr. Guterres said he had told Mr. Annan that he would be "firm in asserting the core values of the office and that refugees and states alike should expect a principled, effective and committed UNHCR."

The new High Commissioner noted that finding safety in today's world was becoming increasingly difficult. While developing countries least able to afford it host most of the world's refugees, many industrialized nations continue to impose ever stricter controls on asylum.

"All of us bear a responsibility for ensuring that those genuinely in need of international protection receive it," he said, adding that more also needs to be done for the estimated 20-15 million internally displaced people who are uprooted within the borders of their own countries.

Less than a week into the new post, Mr Guterres visited Uganda for World Refugee Day and to see for himself the situation of refugees in northern Uganda, a country he praised for its generosity in hosting refugees. He visited Palorinya, a refugee settlement on the Nile, to meet new arrivals from Sudan who have fled recent incursions into south Sudan by the Ugandan rebels known as the Lord's Resistance Army (LRA). He also visited some of the 1.5 million Ugandans who have been displaced within their own

country because of LRA attacks.

Before joining UNHCR, Mr. Guterres spent more than 20 years in government and public service. He served as the Portuguese prime minister from 1996 to 2002, and as president of the European Council in early 2000, co-chaired the first EU-Africa summit and led to the adoption of the so-called Lisbon Agenda. He founded the Portuguese Refugee Council in 1991, and was part of the Council of the State of Portugal from 1991 to 2002.

Mr Guterres succeeds former Dutch Prime Minister Ruud Lubbers, who served as UNHCR's head from January 2001 until February of this year.



Mr. Antonio Guterres, High Commissioner for Refugees. Photo: UNHCR/S. Hopper

# Australia's Resettlement Programme

Regional Representative Neill Wright has welcomed the Immigration Minister's announcement that Australia had delivered on its promise to increase Australia's refugee intake.

Senator Amanda Vanstone announced in late July that the Government had fully delivered on its increased Refugee and Humanitarian Programme for 2004-2005 by granting more than 13,100 visas, including some 6,000 places for refugees referred by UNHCR.

Millions of refugees around the world presently require timely and durable solutions to their plight. Effective use of resettlement, both as a protection tool and as a durable solution, is a key way to help refugees *most in need*. Australia is one of the top three resettlement countries in the world, with a quota of around 6,000 places for refugees every year.

Resettled refugees receive excellent support upon arrival, through the generosity and commendable efforts of the Australian Government, NGOs and concerned members of the community. The Australian Government's Integrated Humanitarian Settlement Strategy helps refugees become self-sufficient and participate in the community as quickly as possible. Assistance includes cultural orientation training prior to departure,

escorts to Australia and intensive reception and case management services on arrival.

In the Agenda for Protection, UNHCR calls on resettlement countries to give increased attention to gender-related protection needs in their resettlement programmes, in addition to the women-at-risk category. Australia has demonstrated a commitment to providing solutions for women-at-risk, exceeding its quota of 10.5% in the 2004-2005 program and accepting 15.3% women-at-risk cases.

The group resettlement this year of Liberian women from Laine Refugee Camp in Guinea Conakry contributed significantly to the women-at-risk quota. Many of the group fled twice or more from persecution. Typically, the refugees had fled the civil war in Liberia between 1990 and 1996 and settled in the Danane region of Côte d'Ivoire, until rebels from Liberia and Côte d'Ivoire attacked that region in November 2002, so the refugees fled to Guinea and elsewhere.

Liberian refugees in Guinea are among 38 caseloads of refugees determined by UNHCR to be in protracted refugee situations. Such refugees find themselves in a long-lasting and intractable state of limbo. Their basic rights and essential economic, social and physical needs

cannot be met after years in exile. It has been estimated that approximately 6.3 million refugees are stuck in protracted situations, 2.3 million of which are concentrated in Africa.

In 2005-2006, Australia has committed to maintain its newly-increased quota of 6000 places for refugees, with a focus on Africa. UNHCR works closely with the Australian government to find solutions for refugees most in need of durable solutions, including those in protracted situations.



Liberian refugees arrive in Australia.  
Photo: DIMIA

## Join in White Ribbon Day

*"wearing a white ribbon is a personal pledge not to commit, condone or remain silent about violence against women and children."*

November 25th marks the third anniversary of UNIFEM's White Ribbon Day – the largest effort by men across the world, working in

partnership with women, to end men's violence against women. The day was designated by the United Nations in 2002 as the International Day for the Elimination of Violence Against Women (IDEVAW). "This year we hope to encourage an even broader range of diverse organisations to join together and mark this important

event," said Libby Lloyd President of UNIFEM Australia. UNHCR's Regional Representative Neill Wright has agreed to be an ambassador for the event.



# Tribute to Contribution of Vietnamese Refugees

The 30th anniversary of the fall of Saigon and the arrival of Vietnamese refugees in Australia was marked in a special reception at Parliament House in Canberra on 25 May.

Hundreds of people from the Vietnamese community and parliamentarians past and present gathered in the Great Hall for the Vietnamese Australians' *30 years of Integration and Contribution Reception*.

Dr Tien Manh Nguyen, Federal President of the Vietnamese Community in Australia, welcomed the guests saying it was a great honour for Vietnamese Australians to have their contributions officially recognised in Parliament House.

"I look back at the past 30 years with amazement and pride. In such a short time, the Vietnamese community has grown from a small group of bewildered new comers to a confident and proud community, integrating successfully into Australian society," Dr Nguyen said.

The then Minister for Citizenship and Multicultural Affairs Peter McGauran congratulated Vietnamese Australians on their achievements and saluted their commitment to Australia, saying that "within just one generation, the Vietnamese community has firmly established itself."

"Through your hard work, resilience and vision, you have worked to create better lives for yourselves, and for your families," he said.

Speaking of its multicultural society, Mr. McGauran said Australians come from every corner of the world and speak more than 200 languages, with 43% of Australians either born overseas or have a parent born overseas.

"We are a nation of diverse backgrounds, but what brings us together is our common bond of citizenship, which embodies our shared belief in the democratic process; respect for the rights and liberties of all Australians; and equal treatment under the rule of law. It is our joint respect for these values that is one of the greatest strengths of multicultural Australia."

"This commitment is particularly true of the Vietnamese-born, Australian community, with an impressive 96 percent of Vietnamese Australians taking up Australian citizenship," Mr McGauran said.

Opposition Leader Mr Kim Beazley said that in just three decades, "The 200,000 Vietnamese-born Australians and their 45,000 Australian-born children have given their energy, tenacity and loyalty to their new country."

"They have enlivened our society and strengthened our hope and belief in multiculturalism."

"Per capita, Australia welcomed more Vietnamese refugees than any other country – more than 130,000."

"Thirty years ago we welcomed our first Vietnamese citizens to this country. Since then, they, their children and their grandchildren have changed the face of Australia – and we are better for it," Mr Beazley said.



The boat Tu Do sailed into Darwin in 1977 with 39 Vietnamese refugees. It is being restored by the Australian National Maritime Museum in Sydney with the help of Tan Thanh Lu who built the boat for his family to flee. Photo: Australian National Maritime Museum

## Submissions to Parliamentary Inquiries

UNHCR's Regional Office Canberra has made a number of submissions to parliamentary inquiries in recent months. The following submissions can be found at [unhcr.org.au/subinq](http://unhcr.org.au/subinq):

- Submission by UNHCR to the Senate Legal and Constitutional References Committee, 28 July 2005  
The submission covers a range of issues regarding Australia's Refugee Protection

Arrangements including detention, the Temporary Protection Visa and Temporary Humanitarian Visa regimes, and the "Seven Day Rule". The submission argues that while certain aspects of the Migration Act and Migration Regulations don't meet international standards and best practices, they have the potential to be administered in such a way as to mitigate adverse impacts upon refugees and asylum-seekers.

- Submission by UNHCR to the Senate Foreign Affairs, Defence and Trade References Committee, July 2005

The submission focuses on the important principle of confidentiality in the context of refugee status determination.

- Submission by UNCHR to the Senate Legal and Constitutional Legislation Committee, April 2005

The submission focuses on the issues of refugees' access to courts and measures to discourage cases that have "no reasonable prospects of success." The submission urges a cautious approach in seeking to reduce unmeritorious litigation in asylum cases.

# Discussion Paper

## Complementary Protection

The issue of complementary forms of protection has been identified in the Agenda for Protection as an important protection tool to add to the Refugee Convention. The issue will be discussed at this year's Executive Committee meeting in October. For this discussion paper, UNHCR's Regional Office in Canberra invited perspectives on this issue and how it relates to our region from the Australian Government, the Refugee Council of Australia, and academic Jane McAdam. UNHCR's position drawn from Standing Committee papers, is also provided.



Asylum seekers attending computer classes held by AGORA, an organization that provides resources in Geneva, 2005. Photo: UNHCR/S. Hopper

### Complementary protection: A Comparative Perspective by \* Dr. Jane McAdam

*Dr. Jane McAdam is a lecturer in the Faculty of Law at the University of Sydney. She is the co author of the forthcoming edition of *The Refugee in International Law* with Dr. Guy S Goodwin Gill. She wrote her doctorate at the University of Oxford on complementary protection in international refugee law.*

Ever since the international community has sought to regulate the movement of refugees through international law, States have recognized that not all persons seeking protection fit neatly within legal definitions. Accordingly, some countries have allowed persons who are not technically 'refugees', but who nonetheless have a valid need for protection, to remain in their territories.

Australia is one of the only western States not to have a system of codified complementary protection. Although the term 'complementary protection' only emerged in the 1990s, the concept itself is an old one, encompassed by notions such as 'externally displaced persons', 'de facto refugee status', 'B status', 'war refugees' and 'humanitarian asylum'.

In general terms, 'complementary protection' describes protection granted by States on the basis of an international

protection need outside the 1951 Refugee Convention framework. Such protection may be based on a human rights treaty, such as the ICCPR, the Convention against Torture or the Convention on the Rights of the Child, or on more general humanitarian principles, such as providing assistance to persons fleeing from generalized violence. Its chief function is to provide an alternative basis for eligibility for protection. Understood in this way, it does not mandate a lesser duration or quality of status, but simply assesses international protection needs on a wider basis than the 1951 Convention.

On 29 April 2004, the European Union adopted the 'Qualification Directive'.<sup>1</sup> This instrument forms part of the first step towards a Common European Asylum System, which aims to reduce disparities between Member States' legislation and practices to ensure a consistent minimum level of protection throughout the EU, thereby reducing secondary movement between EU States based solely on differing rights and benefits accorded by different countries.<sup>2</sup> Member States must make sure that their national laws comply with the Qualification Directive by 10 October 2006.<sup>3</sup>

In addition to Convention refugees, the Qualification Directive establishes a further category of persons in need of international protection: beneficiaries of 'subsidiary protection'. A person eligible for subsidiary protection is defined as:

*a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.<sup>4</sup>*

'Serious harm' comprises:

- (a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Accordingly, persons seeking asylum in the EU are assessed against criteria far broader than the refugee definition in article 1A(2) of the 1951 Refugee Convention, and, if found in need of protection, are accorded a formal legal status.

Similarly, in Canada, protection is afforded not only to Convention refugees, but also to other persons 'in need of protection'. Both protection criteria are considered in a single process, and successful claimants are granted



Asylum seekers in the waiting room of the UNHCR refugee reception center in Moscow, 2004. Photo: UNHCR/V. Sokolova

permanent residence and the rights which that entails. Persons 'in need of protection' encompass people falling outside the Refugee Convention who face a personal danger of being tortured (as defined in article 1 of the Convention against Torture), as well as those who face a personal risk to life or a risk of cruel and unusual treatment or punishment where:

- (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
- (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
- (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
- (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.<sup>5</sup>

Regulations may prescribe further classes of such persons.

In addition to these 'front-end' protection categories, anyone who has been issued with a removal order in Canada may apply for Pre-Removal Risk Assessment (PRRA). This procedure acts as a safeguard for people facing imminent deportation, although unsuccessful asylum seekers may only apply for it where new information has come to light since the asylum decision was made. PRRA assesses the same grounds for protection as the 'protected person' claim (risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment), and may lead to permanent residency for persons identified as having protection needs.

In the US, people may also apply for protection on the basis of torture. If applicants can show that they are 'more likely than not' to be tortured if removed to a

particular country, then protection based on the Convention against Torture (CAT) will issue.

There are two types of protection within the CAT protection framework: 'withholding of removal' and 'deferral of removal'. 'Withholding of removal' is the more generous form of CAT protection, as it accords beneficiaries some of the same benefits as Convention refugees, but not family reunification or access to a special process to adjust to permanent residence. Once granted, the onus is on the Department of Homeland Security to show that return is safe.

Deferral of removal is a more transient form of relief. It is granted to persons who are more likely than not to be tortured if removed, but who are ineligible for withholding of removal. It does not confer a lawful or permanent immigration status<sup>6</sup> or necessarily require that an applicant be released from detention or prison if held in such a facility.<sup>7</sup> Furthermore, the grant is subject to review and can be withdrawn quickly and easily once the risk of torture has diminished.<sup>8</sup> It effectively amounts to nothing more than a 'tolerated' status.

By comparison to Australia, the protection regimes in the EU, Canada and the US appear generous and expansive. Nevertheless, there remain significant protection 'gaps' in national versions of complementary protection – in particular, the question of status for persons excluded from protection but who cannot be removed due to prohibitions on *refoulement* under international law. Furthermore, the quality of the domestic status granted to beneficiaries of complementary protection varies considerably. For example, Canada grants an identical status to Convention refugees and other persons in need of protection, whereas the EU accords beneficiaries of subsidiary protection a secondary status –

a decision reflecting political motivations but which is not justified by international law. Similarly, beneficiaries of subsidiary protection are given shorter residence permits than Convention refugees, despite the lack of empirical evidence to support subsidiary protection as a temporary status. Nevertheless, though the EU Directive is hallmarked by political compromise, it importantly recognizes States' broader *non-refoulement* obligations under international law and allows individuals to claim protection on those bases. In spite of its drawbacks, it is still preferable to Australia's narrow protection regime.

In any case, the shortcomings of national complementary protection systems, relative to the widened categories of persons protected by them, are an inadequate excuse to delay the implementation of complementary protection in Australia. Ultimately, it is the standards and obligations contained in international law, both in relation to eligibility for protection and substantive rights, that provide the crucial legal foundations for any domestic complementary protection regime.

<sup>\*</sup>(BA (Hons) LLB (Hons) (Syd) DPhil (Oxon); Lecturer, Faculty of Law, University of Sydney. Email: janem@law.usyd.edu.au.

1. Council Directive 2004/83/EC of 29 April 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 [2004] OJ L304/12.

2. Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on Minimum Standards for the Qualification and Status of Third-Country Nationals and Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection' (COM(2001) 510 final- 2001/0207 (CNS)) (2002/C 221/11) OJ C221/43 (17 September 2002) (Brussels 29 May 2002) [1.9].

3. The Directive does not apply to Denmark, in accordance with articles 1 and 2 of the Protocol on the Position of Denmark annexed to the Treaty on European Union [2002] OJ C325/5 and the Treaty establishing the European Community [2002] OJ C325/33: Directive recital 40.

4. 7944/04 ASILE 21 (31 March 2004) art 2(e). It was originally art 5, but was moved to the definitions section in art 2 by 11356/02 ASILE 40 (6 September 2002).

5. Immigration and Refugee Protection Act 2001 s 97(1).

6. CFR §208.17(b)(i) (2000).

7. CFR §208.17(b)(ii) (2000).

8. CFR §208.17(b)(iii) (2000).

# Complementary Protection

## Complementary Protection and Australian Practice by the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA)

The 1951 United Nations Convention Relating to the Status of Refugees is the cornerstone of the international protection of refugees. A full and inclusive application of the Refugees Convention ensures that persons who meet its requirements are recognized as refugees and are protected.

The Refugees Convention does not provide for protection of people who do not meet the Convention definition of a refugee. Practices which have come to be known as “complementary protection” are used by some European countries to provide temporary or permanent residence to people who are not owed refugee protection. The concept has been developed in individual countries through domestic legislation and is not defined or specified in any international treaty.

The nature and application of complementary protection differs between countries. It can include permanent or temporary residence on various grounds based on humanitarian concerns, obligations under international human rights treaties, or judgement by a State as to whether it is unsafe, inappropriate or not practicable to effect return to the country of origin. In general, the practice in those countries which offer complementary protection is that it affords fewer benefits and entitlements than those provided to refugees.

For example, in the UK, a person granted ‘humanitarian protection’ is initially given a three-year residence permit,

access to social security and health care and limited travel rights, but is not eligible for family reunion. They may apply at the end of the three-year period for indefinite leave to remain. Applications for indefinite leave to remain are assessed to determine whether the applicant still qualifies for humanitarian protection. It may be refused if protection is no longer required. Many other European countries (such as Denmark, Finland, France, Germany, the Netherlands) provide temporary residence initially to persons with complementary protection status with varying standards of access to benefits. Family reunion may be available in some countries (eg Denmark) but not in others (eg Germany).

Countries providing some form of complementary protection often have lower refugee status approval rates than is the case in Australia for applicants of a given nationality. In Europe, there is a tendency for complementary protection status to be granted more often than refugee status. For example, in 2002, the UK granted only 10% of asylum applications from asylum seekers on Refugee Convention grounds, but over 21% were given some status on humanitarian or other grounds. Sweden granted only 1.1% of asylum applications from asylum seekers on Convention grounds, but over 20% were granted some status on humanitarian or other grounds<sup>1</sup>. By comparison, Australia provided protection under the Refugees Convention to 29.4% of asylum seekers in 2001/02.<sup>2</sup>

Whilst other countries continue to have quite different practices with regards to complementary protection, it appears the European Commission is moving towards harmonising the approach to

complementary protection (termed ‘subsidiary protection’) in European Union countries. The Council Directive on ‘*Minimum Standards for the Qualification and Status of Third Country Nationals and Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection*’ was adopted in April 2004. This Directive provides a framework for an international protection regime based on existing international refugee and human rights instruments obligations, which emphasises the primacy of refugee status. Member States are required to have implementing national legislation in place by October 2006.

The EC Council Directive sets out minimum standards, with flexibility for States to give lesser benefits to holders of complementary protection (subsidiary protection) reflecting the potentially more temporary nature of this category. For example, the Directive dictates that persons with subsidiary protection status are provided with an initial one year residence permit, automatically renewed until protection is no longer required. Member states need only issue travel documents to persons with complementary protection status when they are unable to obtain a national passport from their consular authorities. Access to social security is immediate and access to employment is available after six months of subsidiary protection status.

Australia’s commitment to assisting refugees and others in humanitarian need is reflected in its Humanitarian Program. Under this program Australia resettles some of the refugees in greatest need of protection and others of humanitarian concern and provides protection to refugees who arrived in Australia who



Refugees from Kosovo at the East Hills Safe Haven, Sydney.  
Photo: UNHCR/H. J. Davies

engage our protection obligations under the Refugees Convention. Australia has resettled over 645 000 people fleeing persecution since World War Two. In 2003-04, more than 2 000 people already in Australia received protection under the Humanitarian Program, a significant proportion of the total of more than 13 800 people who received protection in Australia that year.

Australia provides appropriate temporary or permanent solutions to those in humanitarian need, although it has not in the past sought to label such responses as forms of “complementary protection”. For example, the Minister for Immigration and Multicultural and Indigenous Affairs’ public interest powers to intervene and grant a visa is one means by which Australia meets the needs of those people in Australia whose circumstances do not fit the criteria of the Refugees Convention, but to whom Australia may owe protection under other international treaties. Included in this group is a small number of cases relating to Australia’s obligations under the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment (CAT), the International Covenant on Civil and Political Rights (ICCPR), or the Convention on the Rights of the Child (CROC).

These arrangements allow protection claims to be tested first against the Refugees Convention definition which confers higher levels of entitlements to refugees than required under these other instruments. There is no indication that there are significant numbers of persons entitled to CAT, ICCPR or CROC protection against return who do not also meet the Refugees Convention definition of a refugee.

Australia also has classes of visas which have been used to provide temporary haven for certain prescribed groups. For example, in 1999 Temporary Safe Haven visas were used to provide temporary residence to some 4 000 Kosovars who were brought to Australia for temporary protection because they could not return home due to conflict. An equivalent ‘Safe Haven Visa’ was used to provide temporary protection to some 1 900 East Timorese evacuated by Australia from Dili in 1999. Similarly, the offshore humanitarian visa classes provide protection to persons on grounds broader than those set out under the Refugees Convention.

There have been other occasions in the past where groups in humanitarian need have benefited from Australian Government protection. In 1990 some 6 900 people were granted visas under a new visa category to allow certain people who were in Australia illegally prior to 19 December 1989 to apply to regularise their status. In November 1993, over 42 700 people from the People’s Republic of China, the former Yugoslavia, Sri Lanka and other countries were accommodated under three special visa categories. A further group of 7 200 people who did not meet the criteria for the November 1993 visas benefited from a further special initiative known as ‘Resolution of Status’ in June 1997.

The Australian Government’s willingness to provide flexible arrangements for those with particular differentiating circumstances can also be demonstrated through the Government’s legislative initiative in August 2004 to introduce the Return Pending Visa for those people who were formerly recognised as refugees and

who are no longer in need of Refugee Convention protection. The Return Pending Visa could also be seen as providing a form of complementary protection, as it provides 18 months of lawful stay in Australia with continued access to the same benefits and visa conditions as the Temporary Protection Visa, while the holder makes arrangements to depart Australia or to access other stay options. The Removal Pending Bridging Visa is a more recent initiative that could also be used as a form of complementary protection in certain circumstances where conditions in a country of origin made returns impracticable.

The above visa arrangements provide a range of mechanisms to provide continued lawful stay in Australia on general humanitarian grounds with considerable flexibility to respond appropriately to individual circumstances. It is not possible to anticipate and codify all human circumstances. Accordingly, the Ministerial intervention power plays a significant additional role in providing the capacity to flexibly and compassionately respond to other exceptional individual circumstances where there are public interest grounds in providing some form of continued stay in Australia. At the same time the migration framework allows the Government to develop regulations as necessary tailored to the particular circumstances of new groups as the need arises.

1. Data from UNHCR Statistical Yearbook 2002.  
2. Data from DIMIA source.

# Complementary Protection

## Complementary Protection – A New Model for Australia by the Refugee Council of Australia

Complementary Protection, or subsidiary protection as it sometimes known, is a concept that is being talked about a great deal in Australia at present. To many people involved in refugee and asylum issues, however, while the name might be familiar, the concept remains something of a mystery.

To understand complementary protection you need to realise that not everyone in need of protection is a refugee and thus can get access to the protection that refugee status affords. The Refugee Convention does not, for example, encompass all people who, for example:

- are stateless; and/or
- come from a country enveloped in civil war; and/or
- have been subject to gross violations of their human rights for non-Convention reasons; and/or
- would face torture on return to their country; and/or
- come from a country where the rule of law and order no longer applies.

Yet clearly these people have legitimate protection needs.

Some countries, such as Canada, have responded to this protection gap by expanding the definition of a refugee. This is also sometimes done on a regional basis such as in the Organisation of African Unity (OAU) Convention that covers refugees throughout Africa.

Most asylum countries, however, have elected to leave the definition of a refugee unchanged and instead introduce a separate – or complementary – form of protection to cover those people who fall outside the Refugee Convention. This is

the approach being adopted by the states of the European Union in their harmonized legal framework.

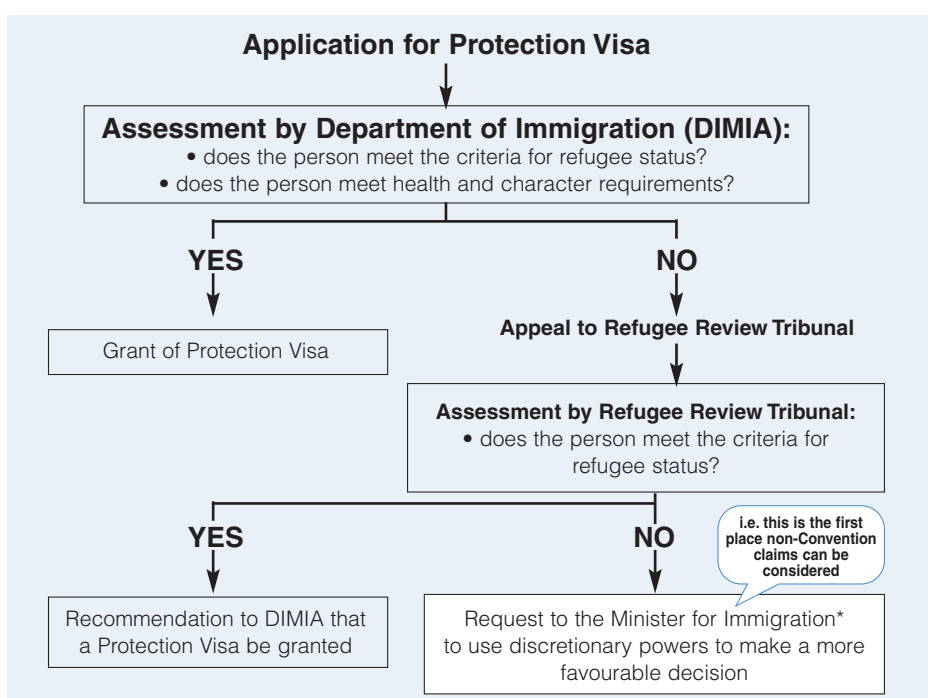
This second option (to introduce a separate form of complementary protection) is currently the one in greatest favour and it is consistent with the current direction of international protection. Not only is it being adopted by all 25 European Union states, it is also a concept endorsed by all of the members of the UNHCR Executive Committee, including Australia. This was done when they adopted the **Agenda for Protection** in 2002. The Agenda is the product of the wide-ranging Global Consultation process and sets out the framework for action by UNHCR, States and other players to further refugee protection and one of its core objectives is:

*Provision of complementary forms of protection to those who might not fall within the scope of the 1951 Convention*

*but require international protection.*

Current practice in Australia is not, however, consistent with this international trend. Australia does not have an administrative process to assess protection applications from people with valid non-Convention reasons not to be returned to their country of origin or habitual residence. These claims can only be considered after the person has been rejected by each stage of the refugee determination process and then seeks personal intervention by the Minister for Immigration. The Minister has non-compellable, non-reviewable powers under Section 417 of the Migration Act to grant a visa to any failed visa applicant. In other words, the applicant has to go through an entire administrative determination process where his or her claims cannot be considered in order to get to the only place where they can.

**Table 1: Current Procedure**





Outside Baxter detention centre, near Port Augusta.

Photo: UNHCR/R. Mignone

By leaving any consideration of non-Convention related protection claims to the very end of the process and by consigning the decision to Ministerial discretion, it can be argued that Australia's current practice is inefficient, unnecessarily expensive, places an unrealistic burden on the Minister for Immigration, lacks transparency and accountability, does not contain sufficient safeguards and is detrimental to both Convention refugees (by clogging up the system) and to those with non-Convention protection needs.

### A New Model for Australia

In order to address the identified deficiencies in Australia's current

procedures and to ensure that Australian practice is both consistent with internationally recognized best practice and the promises made by the Government when adopting the Agenda for Protection, Australian refugee groups are arguing that changes are required to the way that protection applications are considered.

Most of the advocates believe, and international practice would support this, that the most efficient and cost effective way to consider whether a person is in need of complementary protection is to use a single administrative procedure. This can first consider whether a person is a refugee and then, if the answer is no, assess whether there are grounds for the

grant of complementary protection. Table 2 gives a graphic representation of this process.

When considering the criteria for the grant of complementary protection, the first point that is necessary to stress is that it should be used only as a supplement to refugee status and never as a replacement for it. Refugee status affords particular protection under international law (most importantly protection from forced return to his or her country of origin) and where a person meets the criteria for the grant of refugee status, this form of protection should be used.

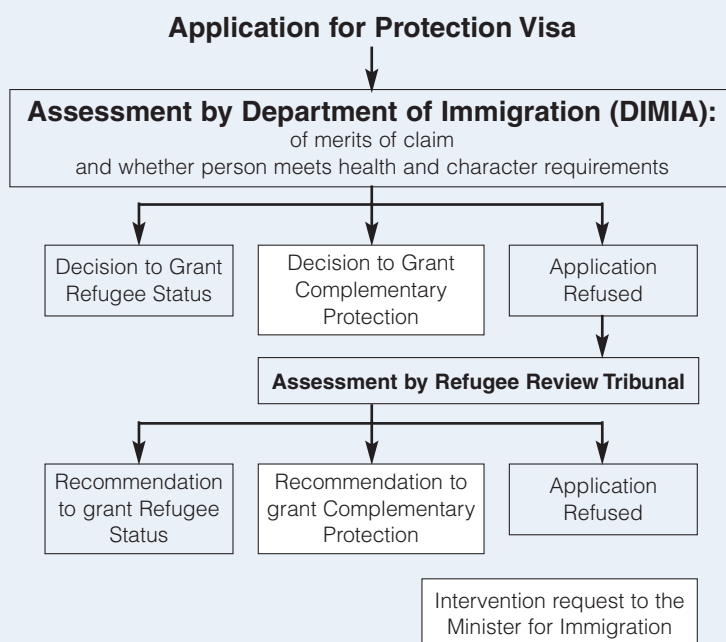
The deliberation process would necessarily involve the decision maker considering a series of questions in the following order:

- a. Does the person have a well-founded fear of persecution under the terms of the 1951 Convention (and thus meet the criteria for the grant of refugee status)? And if not:
- b. Does Australia have obligations to the person under other human rights treaties?
- c. Are there other protection-related reasons why a person should not be returned to his/her country of origin?

As the criteria for the grant of refugee status are already defined in Australian law, it is relevant to move on to how a decision maker should go about answering questions b and c.

The starting point for this consideration must be Australia's international treaty obligations. Australia is a party to a number of relevant international human rights treaties:

**Table 2: Proposed Model**



**Under the proposed model, an applicant's eligibility for complementary protection can be assessed at each stage of the determination process, thereby ensuring that those entitled to protection receive it at the earliest possible time.**

# Complementary Protection

- The Convention relating to the Status of Stateless Persons (1954);
- The Convention on the Reduction of Statelessness (1961);
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
- The International Covenant on Civil and Political Rights (1966);
- The International Covenant on Economic, Social and Cultural Rights (1966);
- The International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- The Convention on the Elimination of all Forms of Discrimination Against Women (1979);
- The Convention on the Rights of the Child (1989).

Two of these treaties place specific obligations on States Parties that they cannot ignore:

- the Statelessness Conventions require States to provide assistance and protection (including the grant of nationality) to persons who are not considered as a national by any other State;
- the Convention Against Torture obliges a State not to return a person to a country where there are substantial grounds for believing that he or she will be subjected to torture, taking into account the existence in the State concerned of a pattern of gross, flagrant or mass violations of human rights.

In addition, the International Covenant on Civil and Political Rights imposes an obligation on States not to return a person who, as a foreseeable consequence of their removal or deportation, would face a

real risk of violation of his/her rights under Article 6 (right to life) or Article 7 (freedom from torture and cruel, inhuman or degrading treatment or punishment).

The criteria for the grant of complementary protection must therefore make specific reference to people who are stateless and to people who would face torture or death if returned to their country of origin or habitual residence.

The other treaties do not impose such specific obligations on other States but they do provide a framework of internationally accepted human rights standards against which protection applications can be assessed. Naturally there needs to be some form of test applied to assess whether the violation of rights is sufficiently serious to warrant protection being granted. The European Union, for example, has adopted the threshold of “*well founded fear of unjustified serious harm*”, noting that such harm can be direct physical harm or substantial deprivation of fundamental rights.

## Advantages of Complementary Protection

It is argued that if the model of complementary protection proposed in this paper if adopted, it would:

- bring Australia into line with international best practice, ensure compliance with its obligations under the Convention Against Torture and the Statelessness Conventions and fulfil one of the commitments Australia made when endorsing the Agenda for Protection;
- result in consistency between Australia’s policy with respect to off-shore and on-shore refugees;
- result in significant cost savings for the determination bodies and also reduce welfare (ASAS) payments to asylum seekers and detention costs;
- enhance the efficiency and productivity of both the Department of Immigration and the Refugee Review Tribunal;
- make it easier for applicants to



More than 200,000 East Timorese who had fled widespread violence in 1999 returned to their homes after independence was gained in 2002. Photo: UNHCR/M. Kobayashi



Asylum seekers from various countries at the Sangatte Red Cross Centre near Calais, 2002.  
Photo: UNHCR/H. J. Davies

present their claims as it will reduce the perceived need to find tenuous links between their fears of returning and Convention grounds;

- ensure necessary transparency, accountability and consistency in decision making;
- reduce the burden on the Minister for Immigration and enable the Minister's discretionary powers to be used for the exceptional cases for which such powers were intended;
- ensure that those entitled to Australia's protection receive it in a timely fashion and thus enhance their ability to become productive members of the Australian community;
- enable detained asylum seekers to have all relevant claims considered simultaneously and thus reduce the duration and trauma of the detention experience;
- benefit Convention refugees by freeing up the determination processes;
- benefit holders of Temporary Protection Visas by enabling a

thorough examination of the implications of changed country circumstances when their applications for a Further Protection Visa are being considered;

- reduce the incentive for people to abuse the protection application process to extend their stay in the country as decisions will be made faster.

Further, it can be argued that the proposed model:

- is simply the transfer of existing decision making powers and as such, cannot be seen as creating a pull-factor;
- need not result in abusive applications for judicial review if appropriate safeguards are incorporated. It is suggested that such safeguards might include clearly enunciated regulatory requirements and judicially controlled leave provisions.

The introduction of Complementary Protection provisions in Australia would require amending Section 36(2)(b) of the Migration Act (1958) to set out the criteria

for the grant of a visa and introduce a new visa subclass. It would also require that a new regulation be introduced to set out the framework for the grant of a visa and the rights and entitlements afforded to successful applicants.

The community sector considers that the introduction of a mechanism to provide complementary protection would not only enhance the efficiency and fairness of the current protection system in Australia but would also address many of the challenges currently facing the Government. Key amongst these, of course, is the dilemma of how to deal with Afghans, Iraqis and others (including those on Nauru) who cannot be returned to their country of origin because of ongoing instability and with people who cannot be removed because no country will recognise them as citizens. Many of these people are currently destined to remain in indefinite detention. Complementary protection is a concept whose time has come.

**To read an expanded version of this paper, go to [www.refugeecouncil.org.au](http://www.refugeecouncil.org.au).**



Refugees from Kosovo at the East Hills Safe Haven, Sydney.

Photo: UNHCR/H.J. Davis

# Complementary Protection

## Complementary Forms of Protection – Evolving Best Practices by the UNHCR Regional Office Canberra

### Introduction

A number of asylum countries have in place administrative or legislative mechanisms for regularising the stay of persons who are not recognised as refugees but who cannot safely return to their home country. UNHCR welcomes these mechanisms, in as far as they address international protection needs which may not be covered by the 1951 Convention and 1967 Protocol relating to the Status of Refugees (the Refugee Convention), and refers to them as “complementary” forms of protection.

### Beneficiaries of Complementary Protection

States that allow people who are not recognised under the Refugee Convention to stay, do so for a variety of reasons. The reasons may be compassionate, such as when stay is permitted for reasons of age, medical condition, other specific vulnerabilities, or family connections. In other cases the reasons may be practical, such as when removal is not possible, either because transportation is not feasible, travel documents are unavailable or cannot be obtained, or readmission otherwise proves infeasible. Where grounds for stay are purely compassionate or practical, the permission to stay is not related to international protection needs. Persons who have been given permission to stay on purely humanitarian grounds must be

clearly distinguished from persons in need of international protection, where an obligation to respect the principle of *non-refoulement* applies. With regard to persons permitted to stay on humanitarian grounds, UNHCR will generally have no direct role to play.

A restrictive interpretation of the Convention refugee definition in some States has left persons with an alternative status, even though they could have been and should have been granted refugee status. It is UNHCR's view that such persons should be covered by the Refugee Convention rather than being given a complementary form of protection. Similarly, complementary protection should not be a substitute for the application, in good faith, of the Statelessness Conventions.<sup>1</sup>

Persons who are unable to return to their countries because of serious and indiscriminate threats to life, liberty or security of person resulting from generalised violence or events seriously disturbing public order, may be regarded by States as not covered by the Refugee Convention, when such threats are not linked to one of the specific Refugee Convention grounds (race, religion, nationality or member of a particular social group). For example, people fleeing the indiscriminate effects of violence and the accompanying disorder in a conflict situation with no specific element of persecution, might not fall under a strict interpretation of the Convention refugee definition. They may nevertheless still require international protection, and be assisted by UNHCR.

The regional refugee instruments in Africa and Latin America specifically include such people under the refugee definition. In other regions, States provide

complementary forms of protection.

UNHCR's mandate with regard to this refugee group derives from successive resolutions of the UN General Assembly and has also been confirmed by the Executive Committee of the High Commissioner's Programme (EXCOM).<sup>2</sup>

### Discussions on Complementary Forms of Protection at Excom

EXCOM meets each October in Geneva to review and approve UNHCR's programmes and budget, advise on international protection and discuss a wide range of other issues with UNHCR and its intergovernmental and non-governmental partners.

The consensus reached by EXCOM in the course of its discussions on international protection is expressed in the form of Conclusions on International Protection (EXCOM Conclusions). Although not formally binding, they are relevant to the interpretation of the international protection regime and constitute expressions of opinion which are broadly representative of the views of the international community. The specialist knowledge of EXCOM, and the fact that its Conclusions are taken by consensus, gives EXCOM Conclusions weight as a guide to international protection standards.

EXCOM has recognised that, while persons who are unable to return in safety to their countries of origin as a result of situations of conflict may not all be refugees within the terms of the Refugee Convention, they are nonetheless often in need of international protection, humanitarian assistance and a solution to their plight. EXCOM has encouraged



Asylum seekers arriving in Nauru. Part of Australia's "Pacific Solution".  
Photo: UNHCR/M. Bandharangshi

UNHCR to continue to provide international protection to such persons and to seek solutions to the problems arising from their forced displacement. It also called upon all States to assist and support UNHCR's efforts in this regard<sup>3</sup>.

EXCOM has also emphasised that complementary protection should not come at the expense of the protection already afforded by the Refugee Convention and other human rights treaties, nor should it undermine the integrity of the existing international protection regime. Indeed, developments in relation to complementary protection have been accompanied by a renewed commitment by States to fully and effectively implement the Refugee Convention, including its exclusion provisions for people not deserving of refugee protection, and to maximize their use of other existing protection tools.<sup>4</sup>

One of the goals of the Agenda of Protection, a programme of action adopted by States and UNHCR in 2002, is strengthening implementation of the Refugee Convention. The Agenda identifies provision of complementary forms of protection to those who might not fall within the scope of the Convention, but require international protection, as one way of achieving this goal.

The Agenda calls upon EXCOM to:  
*Within the framework of its mandate...work on a Conclusion containing guidance on general principles upon which complementary forms of protection should be based, on the persons who might benefit from it, and on the compatibility of these protections with the 1951 Convention and other relevant international and regional instruments.*  
States are asked to:

*... consider the merits of establishing a single procedure in which there is first an examination of the 1951 Convention grounds for refugee status, to be followed, as necessary and appropriate, by the examination of the possible grounds for the grant of complementary forms of protection.*

Both of these items are expected to be discussed at the EXCOM session in October 2005.

### **What Standard of Treatment for Complementary Forms of Protection?**

There is a growing consensus among States about the protection needs of persons who may not be covered by the 1951 Convention, even if it is fully and inclusively applied. However, as regards standards of treatment, State practice varies. To achieve greater harmonisation, the standards contained in the Refugee Convention could be used as a guide. Furthermore, the obligations deriving from international and/or regional human rights instruments need to be taken into account.

Beneficiaries of complementary forms of protection should enjoy a formal legal status with defined rights and obligations, and should be issued with documents certifying that status. The status should extend for a period of time which is long enough to allow the beneficiaries to regain a sense of normalcy in their lives. It should last for as long as protection is required.

The status afforded to beneficiaries should reflect basic rights as defined in relevant international and regional instruments. In some States or regions, domestic or regional human rights provisions may require standards of treatment which are higher than those of

other States or regions, but the standards to be respected should not fall below a certain minimal level.<sup>5</sup>

In the area of civil and political rights, beneficiaries should, in particular:

- be protected from *refoulement* and expulsion;
- not be subjected to discrimination on the basis or race, religion, political opinion, nationality, country of origin, gender, physical incapacity or other such basis;
- never be subjected to torture or cruel, inhuman or degrading treatment or punishment;
- enjoy basic freedom of movement, and in any case, not be subject to restrictions on their freedom of movement, other than those which are necessary in the interest of public health and public order;
- have access to the courts of justice and administrative authorities.

Their protection should, moreover, include basic social and economic rights comparable to those generally available in the host country, including, in particular:

- access to adequate housing;
- access to assistance or employment;
- access to health care as needed;
- access to primary and secondary education.

The family is acknowledged in human rights instruments as the natural and fundamental group unit of society. The importance of putting in place measures that ensure respect for the unity of the refugee family has been highlighted by EXCOM on a number of occasions.<sup>6</sup> Maintaining or reinstating family unity is one of the most important ways in which persons in need of international protection can enjoy the stability and certainty they require to continue their lives. Accordingly,

any complementary protection regime should similarly build in appropriate provisions for close family members to be reunited, over time, in the host country.

Complementary forms of protection need not necessarily be permanent in nature. However, the ending of complementary status, just like the cessation of refugee status, should be based on objective legal criteria, and should never be arbitrary. It also needs to be based on objective and reliable country of origin information. UNHCR has particular expertise in this area, and can play a consultative role in deciding whether it is appropriate to end complementary protection measures.

In some States there are separate procedures for determining whether a person is a refugee within the terms of the Refugee Convention, or whether a person is in need of a complementary form of protection. More efficient may be a single procedure for determining whether a person is in need of international protection. This would entail first an examination of the Refugee Convention grounds, to be followed, as necessary and appropriate, by an examination of the possible grounds for the grant of a complementary form of protection. A single procedure would also make it easier to ensure that appropriate legal guarantees, including a right of appeal to an independent body, are available in relation to all decisions concerning a person's entitlement to international protection.

## Conclusion

The Refugee Convention remains the cornerstone of the international protection of refugees and provides the basic

framework for such protection. A full, inclusive and dynamic interpretation of the Refugee Convention, in accordance with its object and purpose, diminishes the need for complementary forms of protection.

Persons who are unable to return to their countries because of serious and indiscriminate threats to life, liberty or security of person resulting from generalised violence, or events seriously disturbing public order, may be regarded by States as not fulfilling the refugee definition of the Refugee Convention, if no link to a Convention ground can be established. However, they may nevertheless be in need of international protection.

The absence of a definitive legal framework agreed unanimously by all States may result in a protection gap for such persons. Two approaches have been developed to close such a potential gap: some States have accorded Convention refugee status to such people. In other States, complementary forms of protection provide a pragmatic response to such international protection needs.

The standards elaborated in the Convention, together with developments in international human rights law, provide an important guide to the treatment that should be afforded to all persons who are in need of international protection.

The standards of treatment afforded to persons not formally recognised as refugees, but nevertheless acknowledged to be in need of international protection, should provide for the protection of basic civil, political, social and economic rights. Complementary forms of protection should be implemented in such a way as to ensure the highest degree of stability and certainty possible, including through

measures to ensure respect for other important principles, such as the fundamental principle of family unity.

UNHCR would encourage greater consistency in the provision of complementary forms of protection through the adoption of guiding principles, possibly in an EXCOM conclusion.

1. 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

2. For a more detailed view and full references to the resolutions, please see the article by Volker Turk "The role of UNHCR in the development of international refugee law" in *Refugee Rights and Realities: Evolving International Concepts and Regimes*, Cambridge University Press, 1999, ed. Frances Nicholson and Patrick Twomey.

3. EXCOM Conclusion No. 74 (XLV) – 1994.

4. Excom Conclusion No. 89 (LI) – 2000, paragraph 10.

5. The International Bill of Rights (consisting of the Universal Declaration of Human Rights and the two International Covenants, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights) sets out fundamental rights. Important is furthermore the Convention on the Rights of the Child. Regional instruments such as the European Convention for the Protection of Human Fundamental freedoms, the African Charter on Human and Peoples' Rights and the American Convention Human Rights ("Pact of San Jose") also provide useful guidance regarding fundamental human rights.

6. See for example Conclusions 9(XXVII)-1977; 24 (XXXII) – 1981, 88(L)-1999.



Refugee from Kosovo at the East Hills Safe Haven, Sydney.  
Photo: UNHCR/H. J. Davies

# It Takes Courage to be a Refugee

The theme for World Refugee Day 2005 – *It takes courage to be a refugee* – was celebrated around the region. Australian actor Jack Thompson lent his voice to UNHCR's Community Service Announcements for radio and television, profiling personal stories of courage from displaced people around the world.

Governments, NGOs, community groups and citizens saluted the courage of refugees who have overcome enormous obstacles in their path to flee persecution and rebuild their lives anew in a range of events throughout the region.

In Canberra, the Captain Cook Fountain and seven public buildings in the parliamentary zone were lit blue to coincide with the annual lighting of the *Jet d'eau* on Lake Geneva for World Refugee Day. The ACT government also sponsored the production of WRD flags that were flown on Commonwealth Bridge, Kings Avenue and Russell Circle.



World Refugee Day flags flying on Commonwealth Bridge, Canberra. Photo: UNHCR/S. Whyte



Immigration Minister Amanda Vanstone on World Refugee Day. Photo: DIMIA

A photographic exhibition at the Tuggeranong Arts Centre titled '*Sudan – Waiting for the Future*' featured over 100 images from Sudan and the Kakuma refugee camp, including photos by former UNHCR intern and Victorian Young Australian of the Year Mathew Albert

At Parliament House, Immigration Minister Senator Amanda Vanstone launched *Refugee and Humanitarian Issues: Australia's Response* and awarded citizenship to eight refugee and humanitarian entrants. UNHCR spoke at the event which was attended by refugees, embassies, national refugee advocacy groups and community organisations. The Immigration Department (DIMIA) also hosted several citizenship ceremonies around the country to coincide with WRD.

The Refugee Action Committee and Amnesty International held a "Show Compassion" rally calling for changes to Australia's mandatory detention and temporary protection visa systems, and gather signatures to the Refugee Council's 'Refugee Charter'.

In Brisbane, a World Refugee Day festival was sponsored by the Queensland Government, with cultural performances, food, fun, activities and speakers.

An African fashion parade and cultural entertainment were part of the WRD festivities in Darwin, at a picnic at the Water Gardens sponsored by Melaleuca Refugee Centre and the Department of Immigration, Multicultural and Indigenous Affairs. The sharing of stories and a citizenship ceremony were also part of the day's events.

Amnesty International launched its report *The Impact of Indefinite Detention* at the University of Sydney Law School and held 'Daybreak in Detention' installations at more than 30 locations across Australia including Sydney, Melbourne, Adelaide, Perth and Hobart.

In Sydney, Australia for UNHCR held a very successful fundraising breakfast launched by the Honourable J.J. Spigelman AC, Chief Justice of the Supreme Court of New South Wales.



Sudanese refugees Daniela (3) and Dianna Zakaria (4) are among many refugee children from all over the world who became Australian citizens on World Refugee Day during Citizenship ceremony at Parramatta in Sydney. Photo: Newspix/Quest/News Ltd



Former refugee and CEO of Jurlique, Mr Huy Truong, speaking at the Australia for UNHCR fundraising breakfast.  
Photo: Australia for UNHCR

Guest speakers included former refugee and CEO of Jurlique Mr Huy Truong, actor Jack Thompson, journalist Sandra Sully, Special Representative of Australia for UNHCR Ian Chappell. Reflecting on this year's courage theme, Huy Trong spoke about his family's escape from Vietnam and journey to Australia in 1978. He said the courage that refugees show in leaving their homes should indicate that their motivations extended beyond economic gains. "When you take those sort of risks, there is something that is much more real than money at stake," he said.

Actor Garry McDonald dedicated the performance of *Two Brothers* on 20 June at the Sydney Opera House, to the spirit and courage of refugees for WRD. Also in Sydney, the Italian Institute of Culture



Refugee Day Festival in Brisbane.

Photo: Newspix/Quest/News Ltd

dedicated a concert on the 18th of June to the courage of refugees. *Gli Archi* was performed by an Italian Chamber Orchestra as part of the Sydney Italian Festival.

In Melbourne, to an audience of approximately 1400 people, Circus Oz dedicated its performance to refugees for WRD. The dedication was part of the company's ongoing support to refugees in the Melbourne community. The Victorian Migrant Resource Centre and other NGOs, jointly hosted a WRD Celebration.

In South Australia, the Migrant Resource Centre held a seminar on new and emerging communities with guest speakers from the government and industry.

In Wellington, the RMS organized a joint event with the Multicultural Services Centre, a partnership of seven agencies which offer services for refugees and migrants. In Auckland RMS combined with other agencies to organize a celebration which took place at King's College, a school which has been a long-time supporter of the Mangere Refugee Reception Centre.

In Papua New Guinea, UNHCR Representative Johann Siffointe hosted an event to mark WRD in Port Moresby. Mr.

Siffointe noted that despite the myriad of challenging issues that PNG was facing, it was still able to fulfil its obligations under the Refugee Convention in providing asylum for those who have left their homelands. The event was a great success with over one hundred guests in attendance.

For more information on WRD events visit [www.unhcr.org.au/WRD2005](http://www.unhcr.org.au/WRD2005)



Mr Chris Kati, PNG's Department of Provincial Affairs, and UNHCR's Kasongo Kaparo at the WRD function in Port Moresby.

# Kiwis Celebrate Courage

World Refugee Day is a day to recognise journeys and trials and generosity but most importantly it's about hope for the future, Somali community leader Adam Awad told those celebrating at Wellington's Multicultural Services Centre in New Zealand.

"Young people make up the majority of former refugee communities and they are the people on whom so many hopes and dreams depend. We need to support them so they can be proud of who they are and so that they can walk in two worlds at once, the one that their parents came from, and the New Zealand world to which they now belong.

"If we want to be strong Kiwis, we refugees and migrants must also continue to be strong in our original cultures and identities. Those are almost all we were able to bring with us. They are what we have to carry to the future."

Adam Awad was one of around 180 people who gathered at the Multicultural Centre to celebrate the launch of its expanded services, timed to coincide with



Sam Manzanza (second left) and his drumming group. Photo: RMS

World Refugee Day. The MSC is a partnership of seven agencies offering refugees and migrants services such as English language tuition, job mentoring, counselling and interpreting services.

The NZ Minister of Immigration, Paul Swain, the MP for Wellington Central Marian Hobbs and the Mayor of Wellington Kerry Prendergast all took part in the ceremony. The speeches were

followed by Cambodian and Sri Lankan dance, African drumming, traditional Chinese music, songs by adult English language learners and refreshments.

In Auckland the Director of the Office of Ethnic Affairs, Mervyn Singam, addressed those who gathered at Kings College to mark the occasion. He applauded the courage of refugees likening it to "a lamp that illustrates the way forward for us if only we could see". He urged host communities and refugee communities to share their stories for greater understanding. "You bring with you to this country your journeys of strength and endurance. You teach us and remind us about what is important in life. You are like the strongest threads in a beautiful tapestry of different peoples that makes the entire fabric more durable."

In Hamilton refugees, friends of refugees and staff members gathered at the Waikato Migrant Resource Centre marking this important day in the refugee calendar with speeches from former refugees and the local Member of Parliament followed by a morning tea.

## Tsunami Thank you

UNHCR Regional Office Canberra would like to thank everyone in the region who helped the agency respond to the Indian Ocean Earthquake-Tsunami Emergency in Sri Lanka, Indonesia and Somalia where we provided emergency relief and shelter.

Regional Representative Neill Wright was sent on an emergency mission to Sri Lanka to manage UNHCR's response to the disaster for the month of January, just a few months after he had left his previous post

there to take up the one in Canberra.

Seeing first hand the devastation in Sri Lanka and also the positive impact of quick and effective response, Mr Wright extends particular thanks to all those in our region who helped UNHCR to respond.

- Australia for UNHCR raised over Aus \$750,000 for UNHCR's Tsunami operations
- AUSTCARE contributed Aus \$50,000 to UNHCR's emergency operations in Sri Lanka.

A tsunami-displaced family move into a new temporary home built by UNHCR in Ampara District, Sri Lanka. Photo: UNHCR/C. Fitch



- NZAID donated NZ \$3million to Tsunami operations.
- AusAID donated Aus \$1 million to UNHCR operations in Sri Lanka

A Progress Report on UNHCR's response to the Indian Ocean Earthquake Tsunami Emergency January-June 2005 is available online at [www.unhcr.org.au/pubinfo](http://www.unhcr.org.au/pubinfo)

# New Youth Representatives for Australia for UNHCR

Australia for UNHCR has appointed two new Youth Representatives, Adut Dau Atem and Sophie Weldon, to educate their peers about the work of the UN Refugee Agency and to raise funds for its humanitarian programmes for refugees.

Nineteen-year-old medical science student Adut Dau Atem spent eight years in a refugee camp in Kenya after fleeing her village in southern Sudan during the civil war.

"It is very special for me to have this honour, to talk to young people about what it is like to be a refugee, about the work of UNHCR. I have experienced first hand, what it is like to be saved by UNCHR, to be given food or shelter when you are driven from your home and family. Now I want my voice to keep alive the plight of the refugees still in camps so they are not forgotten," said Adut.

Year 10 student Sophie Weldon, from Sydney's northern beaches, drew attention to Adut's compelling story by entering a UNCHR writing competition in 2003.

Through a family friend she was introduced to Adut who had recently arrived in Australia from the Kakuma refugee camp in Kenya. Sophie's story of Adut's refugee experiences won the 2003



Jack Thompson with Special Youth Representatives Adut Atem Dau and Sophie Weldon .  
Photo: Australia for UNHCR

Competition and in the meantime a special relationship developed between the girls and their families that has had an enormous impact on both their lives.

Wanting to do more to promote the work of the UN Refugee Agency, Sophie approached Australia for UNHCR with a proposal to engage young Australians resulting in both girls' appointments as Special Youth Representatives.

"I have come to understand the value of the work of UNHCR from the inside from Adut's story. Who would've thought that now, our lives would interweave in such a way. I am honoured and grateful for the opportunity to talk to young people about the work of UNHCR, in the hope that they may come to understand that the word refugee is not an issue, but a real person," said Sophie.

## WATER FOR LIFE APPEAL

Australia for UNHCR has launched its 2005 Mid Year Appeal – Water for Life – which aims to provide safe clean drinking water to refugees and communities in Africa. Lack of clean drinking water is one of the major causes of death and diseases, such as cholera and dysentery, for so

many people in Africa and especially children.

What your money can buy:

- \$117 can provide jerry cans for 35 refugee families
- \$243 can provide sanitation facilities for a large school, reducing the risk of disease

- \$360 can sink a well to provide clean, safe water for a village
  - \$1146 can provide a hand pump used for up to 300 people
  - \$8536 can drill a borehole to provide clean water for up to 500 people
- To donate to the Appeal, call 1300 362 288



Alen O'Hran with Queensland Premier Peter Beattie.

*Young Australians are being recognised for their work with refugees or achievements since arriving as refugees.*

### Young Queenslander of the year

"Having flown on many previous occasions with my parents, I thought it would be the usual 'tea or coffee' affair!" recalls 24 year old Alen O'Hran of his flight from war-torn Bosnia "But to my disbelief, this was a plane with no windows, no seats – it was a cargo plane!"

With his cargo of life experience, Alen ultimately came to Australia under the humanitarian programme, picked up an Irish surname and, this year, he landed himself

the title of Young Queenslander of the Year.

When he arrived in Brisbane eight years ago Alen spoke no English. Since then he's become the first member of his family to graduate with a university qualification, started a Masters in Law, been appointed Associate to a Queensland Supreme Court Judge, been an ambassador for Queensland University of Technology, been part of the 2004 National Youth Roundtable, and also heavily involved with voluntary and community activities. Now he's Young Queenslander of the Year 2005 and couldn't be happier.

"The award means so much more to me as it's a recognition of a lifetime struggle on my part to make something out of my

life. Hopefully I'll get to meet young people around Queensland and share my story with them and at least show them what a wonderful journey life is, and how, despite being tough, challenging and hard, it is indeed rewarding!

Alen's family named gained an apostrophe courtesy of an enrolment officer at a Brisbane high school. "The enrolment officer asked me to spell the name to her. So I did O-H-R-A-N. She thought I was Irish so she put an extra apostrophe in it and capitalized one of the letters. So now it's O'Hran. So figure this – I'm half Serbian, half Bosnian, with an Australian passport containing an Irish surname!," said Alen.

## All Sails are up for Victorian Young Australian of the Year

At the age of 24, Matthew Albert has done much already. He has been a photojournalist, a UNHCR Protection Intern in Kenya, graduated in law, was co-founder of the Sudanese Australian Integrated Learning (SAIL) Program and was named Victorian Young Australian of the Year 2005.

SAIL started with Matthew and his friend Anna Grace helping out a Sudanese family in Melbourne. Soon, the word spread and the participant numbers grew. SAIL now has 350 Sudanese and 250 volunteers, collectively known as SAILors. SAIL runs six mini-programs, providing services to all age groups from toddlers to adults at three campuses every week.

On paper, the SAIL Program provides English tutoring and support to the Sudanese community but in practice, it provides a venue and the means for people to create friendships.

"SAIL has fulfilled many of our expectations with tutors and students

coming together. Tutors attend parent-teacher interviews and invite their students over for Christmas. This is priceless and is a testament to the incredible welcome from the Sudanese community and to the dedication and commitment of the volunteer that makes SAIL work", said Matthew.

The experience in Kenya as a UNHCR protection intern helped Matthew understand what life is like before resettlement for Australia's fastest growing ethnic community. "This was a valuable lesson and it helps us tailor SAIL's programs towards the Sudanese community," he said.

"The UNCHR Internship gave me perspective on the how the international community operates and what the Sudanese community have survived. I also learnt about my place in the world. Like all of us in Australia we are very fortunate," he said.

For more information about the SAIL Program visit <http://www.SAILProgram.cjb.net>



Victorian Young Australian of the Year Mathew Albert at the Tuggeranong Arts Centre Sudanese photographic exhibition. Photo: The Canberra Times

## Seeking Refuge: A Fight for Freedom



Left to Right, Simon Kragh (left) and Sam Needham. Photo: UNHCR/S. Whyte

Year Seven Students at Canberra's Orana School took a theatrical approach to learning about refugees with their production of their play *Seeking Refuge: A Fight for Freedom*.

Teacher Emily McKenzie said the production was designed to enhance the student's understanding of issues that surrounded refugees in a positive and memorable way. "I guess only two in the class really knew anything much about any refugee stories," she said. "We'd been talking a little bit about refugees as a general topic... I thought to bring that a little closer to home we could talk about cultures mixing as in a multicultural Australian society. What better way to do that than have a story of a refugee family, their journey to Australia and their reception?"

The play was based on a story from Rochelle E. Ball's compilation of some of the experiences of Canberra's refugee population – *World's Turned Upside Down*. Students were put into groups to work on a particular scene and would then report back to the class for discussion. The script was drafted over four to five weeks. To keep the students on track (and to give them some real-life experience), the scripts were then given to a former Immigration Department case worker who made suggestions on the story's plausibility.

For the students it seems the play was well worth their efforts. "It was a good thing to do," said student Simon Kragh. "It was interesting and I learnt a lot about refugees." "It was also to make people a lot more aware of refugee issues, especially young people," said another student Cordelia Powrie. "Some people just think that its people coming over from a different country, like it will all just work out for them...we tried to show them in a slightly less serious way that these things happen and that they should be aware of them." Ms. McKenzie agreed, and found the student's reactions to the topic quite interesting. "A lot of the comments that were made by the students when I brought it up were 'why don't we just let

them all in the country?' or 'can't we just give them a city?'" The play also included a scene showing the home life of a guard at a detention centre. "It was interesting for the kids to see both sides of the story and show that he (the guard) is not a monster because he works at a detention centre" she said.

The play proved to be a success with 26 students involved in the production, and around 150 patrons attending the matinee and evening shows. The students hoped the play would have an impact on other students and all those in the Orana School community attending the performances. "Hopefully it will send them a message" said Miss Powrie, "because that's what we're trying to do."



Cordelia Powrie and Sam Needham.

Photo: UNHCR/S. Whyte

# Telling Refugee Stories

## Latest writing comp winners announced

### First place

Eighteen-year-old Mina Ardic has trouble remembering her father. "The sad thing is that his face remains vague in my memory and it's slowly fading away."

Mina escaped from war-torn Bosnia with her mother and three siblings as refugees, and was resettled to Australia where it was rumoured her father had fled. Sadly however, as it turned out, Mina's father Hajrudin was one of the many lives lost to the break-up of the former Yugoslavia.

Mina's story, as told by her classmate and friend Dragica Dacic, whose Serbian family also fled conflict in the Balkans some years earlier, is one of many entered in the UNHCR high school writing competition and won first place in the main category.

"I thought I had been to hell and back but when Mina, who is Bosnian, told me her story, I thought how lucky I am and how lucky she is to have survived", said Dragica.

Dragica writes how as a six-year old Mina was suddenly forbidden to play with her childhood friends because they were Serbian and Croatian. She narrates her friend's story of war closing in on the family until they were forced to flee; the story of Mina's younger brothers having to be dressed up in girls' clothes to stop them being killed by soldiers targeting men and boys; the story of an anguished mother, alone and desperate for her children to survive, let alone lead a 'normal' life.

While statistics give scale, they can hide the humanity behind the numbers. In running its annual writing competition, *Refugees: telling their stories*, UNHCR hopes to engage young Australians in



Dragica Dacic (left) was the winner of this year's competition for her story on her friend Mina Ardic (right). Photo: UNHCR

telling the human stories behind the numbers. Announcing the winners of last year's competition in May, UNHCR Representative Neill Wright said: "These compelling tales help to humanise a group of people too often cited as mere statistics or an abstract political problem."

"Through talking and listening with compassion and writing with respect, we hope this competition helps to build understanding as well as forge new friendships," he said.

Dragica agrees: "Although I have extracted one story, it captures what people have gone through and hopefully it will raise awareness of the plight of refugees" she said. More importantly, "Writing this piece about Mina's journey proves people can put war aside and get over it. We can share stories and sympathise with each other" Dragica adds.

Winning first place has been a boost to Dragica and Mina and the whole school.

"I didn't even expect to get short listed" says Dragica, "To be given that title of winner – it feels amazing. This is definitely an achievement for the whole school and not just for Mina and me". St Alban's College teacher Phil McMillan agrees, saying it shows the students can compete at a statewide level with other schools. "Both Dragica and Mina stand out as the students who really do want to make the best of their time at school," he said.

### Second place

**The story which made second place is not available in the on line version of this publication. If you'd like a copy, please email [aulcapi@unhcr.org](mailto:aulcapi@unhcr.org)**

# Highly Commended Friendships

## Third place

For Natalie Fallaw, a year 9 student at Koonung Secondary College in Victoria and this year's third place winner, the competition has also been an eye-opening experience. She wrote the story of Martina Milosevic, another young Bosnian refugee and family friend. "I understood that by entering this competition I was asking her family to relive something that was painful" she said. The story begins "A world torn. Lives changed. But in the end...a new beginning". Natalie learnt not to make assumptions about refugees seeking asylum, but importantly, there are also some universals "not everyone's story is the same but the feelings of loneliness, fear and anguish are shared," she said.

*The first, second and third place winners all received book vouchers kindly donated by the Penguin Group Australia and UNHCR backpacks and t-shirts.*

*The book of the 2004 Refugees: Telling Their Stories can be found online at [unhcr.org.au](http://unhcr.org.au) or ordered at [aucapi@unhcr.ch](mailto:aucapi@unhcr.ch) For details of the 2005 competition, watch [unhcr.org.au](http://unhcr.org.au).*



Razia Zahidi (right), and Najeeba Wazefadost were both prize winners in this year's Writing Competition. Photo: Parramatta Advertiser

**Razia Zahidi and Najeeba Wazefadost met aboard a rickety fishing boat on a 10 day journey from Indonesia to Australia in 2001. Today, they're both prize winners in UNHCR's annual writing competition *Refugees: Telling their stories* which they independently entered last year while attending different schools in NSW. The girls are planning careers in medicine and politics.**

"It all began one winter. A dreadful day when tears were falling from everyone in my family's eyes" writes Razia Zahidi, 16, in an account of her own escape from Afghanistan as a 12-year-old. Razia won the Regional Representative's Prize for a Personal Story.

Her compelling story is "told with a quiet dignity," said competition judge and Time Magazine journalist Tom Dusevic. "It has

immediacy, with telling descriptions and memorable episodes and provides a strong sense of Razia's journey and reflections on her life in Australia," he said.

For Razia, writing is the best way to convey her experiences, "I really want Australians to know more about our lives" she said.

Her schoolmate Najeeba Wazefadost, also a former refugee from Afghanistan, feels the same. She too entered her story, described by Dusevic as "emotionally compelling, with terrific insights into the refugee condition", and won the Highly Commended Award for a Personal Story.

The stories tell the incredible tales of the girls' journeys with their families from war-torn Afghanistan to seek asylum in Australia, and their experiences once they arrived – including two months together in Curtin

Detention Centre in Western Australia before being recognized as refugees.

"It was horrible" Najeeba recalls, "It wasn't something you would expect, being locked up". Upon release Najeeba and her family were sent to Tasmania where they felt more welcomed: "It was really nice, people really welcomed us," she said. Speaking fondly of the kindness and generosity of her Tasmanian neighbours, Najeeba felt more positive about the new start. "I thought, 'I shouldn't judge everyone.'"

For Razia the challenges continued: "Outside the detention centre we had to learn English and we have to live in a new society," she said. But she appreciates the support of the local Afghan community which helped her family settle in over those first few months and years.

"We were always going to each others' houses and having fun" recalls Najeeba of the time they then spent together in Sydney before Razia moved away to Griffith. While the two girls lost touch over that period, to their delight they were reunited when Razia returned to Sydney and was enrolled at Holroyd High School.

Their parents are very pleased at their success in the competition and Najeeba's father is proud that his child is contributing to Australian society, particularly after four years of uncertainty over whether they would be granted residency.

"When we got residence my dad had tears and my mum jumped up and down. My dad said 'From now on, we are more responsible to this country, we have to do things to benefit this country and make it

proud of us'" said Najeeba, who plans to live by her father's vow and become Australia's first female Prime Minister. Razia also has high ambitions: "I would like to go to uni and possibly study medicine if I get the marks."

Awarding the prizes to the two girls last May, UNHCR's Regional Representative Neill Wright said: "It's a testament to the courage and resilience of Razia and Najeeba that after all they've been through, they are now doing well at school and have won places in this national writing competition."

Both girls received book vouchers donated by Gleebooks and the two stories have been published (along with other finalists) in a book by *Refugees: telling their stories* which can be viewed on line at [www.unhcr.org.au](http://www.unhcr.org.au) or ordered at [aulcapi@unhcr.ch](mailto:aulcapi@unhcr.ch)

## New UNHCR Resources

### Thematic Compilation of Executive Committee Conclusions (2nd edition, June 2005)

This new reference tool groups all relevant ExCom references since 1975 by subject, mapping the evolution of thinking on key protection issues.

The 2nd edition incorporates ExCom conclusions adopted in 2001 through 2004, and includes new subject headings such as:

- age, gender and diversity mainstreaming
- capacity building
- Convention Plus
- durable solutions
- interception
- participation/community development approach/empowerment
- reception of asylum-seekers
- return of persons found not to be in need of international protection

- smuggling and trafficking

The updated Compilation is available at [www.unhcr.ch/protect/Protectionpublications/compilationsandcommentaries](http://www.unhcr.ch/protect/Protectionpublications/compilationsandcommentaries).

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

### UNHCR's Global Appeal 2005



the year 2005.

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

### Global Report 2004



programmes worldwide during the previous year, published June 2005.

UNHCR's annual review of the achievements and impact of its

### UNHCR REGIONAL OFFICE NEWSLETTER No. 2/2005 (Published August 2005)

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15 Hunter Street,  
Yarralumla ACT 2600

Tel: +61 2 6273 2733

Fax: +61 2 6273 6822

E-mail: [aulca@unhcr.ch](mailto:aulca@unhcr.ch)

Web: [www.unhcr.org.au](http://www.unhcr.org.au)

Editors: Sylvana Whyte and  
Ariane Rummery